

Voter-Owned Elections in North Carolina: Public Financing of Campaigns

Philip G. Rogers, Carl W. Stenberg,
and Sarah J. Waterman



It was not a typical late-night public-service television advertisement. With the April 15 deadline for filing income tax returns on the horizon, two former North Carolina governors, a Democrat and a Republican, urged taxpayers to check off a contribution for the North Carolina Public Campaign Fund on their income tax return. The contribution was earmarked to raise money to support candidates for judicial offices and to publish a voter guide to state elections. The ex-governors' efforts were part of a reform movement across the country to provide public financing of state election campaigns.

Public financing of elections in North Carolina became a topic of discussion and debate in the recent election year

Rogers, a 2007 graduate of the School's Master of Public Administration (MPA) Program, is executive assistant to the chancellor, East Carolina University. Stenberg is director of the MPA Program. Waterman is a second-year MPA student. Contact them at rogersp@ecu.edu, stenberg@sog.unc.edu, and sjwaterman@gmail.com.

and will likely continue to be on the state's political radar screen. This article looks at the pros and the cons of public financing and examines the evolution of publicly funded elections across the nation. It summarizes the history of public financing in North Carolina, explores future directions, and identifies lessons from other states relevant to North Carolina policy makers.

The Pros and the Cons of Public Financing

The case for public financing rests on a desire to reduce the influence of special interest money in elections. By requiring candidates to show grassroots support and abide by spending limits, advocates of the system hope to curb the perceived and actual negative effects of private funding on the behavior and the policy making of public officials.

Common perceptions of money's impact on politics include favoritism, corruption, and exclusion of minorities and women.

Public opinion surveys have revealed common perceptions about the impact of money on state politics, including contributors having greater access to public officials and seeking special favors from them; officials pressuring contributors for large donations; fundraising being a major source of corruption and conflicts of interest; officials spending too much time raising campaign contributions; money being the single most important factor in winning elections; and the current system of campaign financing discouraging women and minorities from running.¹

Proponents claim that public financing would have a number of benefits, as follows:

- More people would be willing to run for office, and the candidate pool would be more diverse.



Lew Powell Memorabilia, North Carolina Collection, Wilson Special Collections Library

- Instead of having to “dial for dollars,” candidates would be able to devote more time to meeting with voters, discussing issues, and engaging in debates.
- Support from citizens, rather than the ability to raise money from special interests, would be the single most important asset in elections.
- Races would be more competitive because challengers would be more willing to take on incumbents.

- The campaign-spending gap between incumbents and challengers would be narrowed.
- Special-interest campaign contributions would no longer lead to pork-barrel subsidies.
- Citizens and groups would have the same access to elected officials that private donors have.

Proponents argue that these improvements would bolster citizens’ confidence in the integrity of public officials and produce more policy outcomes in the public interest.²

Opponents point out the following philosophical, practical, and political limitations:

- Citizens often react negatively to using taxpayers’ monies to enable people to campaign for office, especially those whom they may not support.
- The high costs of competitive campaigns, especially in statewide and urban races, limit the attractiveness of public financing to viable candidates.
- Public financing encourages fringe candidates who seek a forum for their views but have little or no chance of winning.
- Groups created under Internal Revenue Code Section 527 to receive and disburse funds to influence the election of candidates can subvert restrictions on contribu-

States with Public Financing of Election Campaigns, 2008

Public Funding (Full or Partial) for All Statewide and Legislative Offices

Arizona	Minnesota
Connecticut	Nebraska
Hawaii	Wisconsin
Maine	

Public Financing for the Governorship and Selected Other Statewide Offices

Florida
Massachusetts
Rhode Island

Public Financing for the Governorship

Maryland (including the lieutenant governorship)
Michigan (including the lieutenant governorship)
New Jersey
Vermont (including the lieutenant governorship)

Public Financing for Selected Statewide Offices (Excluding the Governorship)

New Mexico (members of the Public Regulation Commission)
North Carolina (the auditor, the commissioner of insurance, and the superintendent of public instruction)

Public Financing for the Legislature

New Jersey (pilot program involving two district-based seats in the general assembly)

Public Financing for Judges

New Mexico
North Carolina

Public Financing for Political Parties

Arizona	North Carolina
Idaho	Ohio
Iowa	Rhode Island
Minnesota	Utah
New Mexico	Virginia

Income Tax Refunds/Credits/Deductions for Contributions to Candidates or Political Committees

Arizona	North Carolina
Arkansas	Ohio
Hawaii	Oklahoma
Minnesota	Oregon
Montana	Virginia

Sources: Center for Governmental Studies, *Mapping Public Financing in American Elections* (Los Angeles: Center for Governmental Studies, 2007); National Conference of State Legislatures, "Public Financing of Campaigns: An Overview," February 5, 2008, www.ncsl.org/programs/legismgt/about/PubFinOverview.htm#indiv.

recognition will become more of a factor.

- Publicly financed campaigns give the government too much control of political speech and are a form of welfare for politicians.

Opponents assert that for these reasons, entrenched special interests like incumbents, political leaders, and lobby groups have been able to defeat public financing legislation.³

The Building Blocks of a Public Financing System

Public financing was first authorized for presidential elections under the Federal Election Campaign Act of 1971. However, because of the costs of national campaigns, candidates have preferred private funding.

At the state level, more interest and activity have been apparent.⁴ As of 2008, twenty-five states have laws for public financing of state election campaigns (see the sidebar on page 32). Those states have two types of systems: one that provides public financing directly to individual candidates for the governorship, other statewide offices, and/or the state legislature (15 states); and one that provides public financing for political parties (10 states). Of the 15 states with the first type, 7 finance all statewide elective offices, 3 the governorship and selected other statewide offices, 4 the governorship only or the governorship and the lieutenant governorship only, 2 selected other statewide offices only, and 1 the legislature only. Two states (New Mexico and North Carolina) are unusual in also providing public financing of judges. Four states authorize public financing of council members in one of their cities (New Mexico for Albuquerque, New York for New York City, North Carolina for Chapel Hill, and Oregon for Portland).

The most common arrangement for financing individual candidates is a partial system by which candidates raise private funds up to a specified limit and then those funds are matched by public monies on a 1–1 or 2–1 basis. A recent innovation, adopted in three states (Arizona, Connecticut, and Maine),

tions and disclosures and escape scrutiny by a state board of elections or a secretary of state.

- Public financing is not completely voluntary because candidates may feel pressured to participate by

the media, opponents, and public opinion.

- Incumbents will have an advantage in running as publicly financed candidates because if candidates have equal amounts of financing, name

U.S. and North Carolina Legal Challenges to Public Financing of Campaigns

Litigation related to public financing of election campaigns has been plentiful over the years, most often based on First Amendment concerns about the effect of such plans on the exercise of free speech. In response, the courts have upheld public financing programs that are based on voluntary participation.

The landmark decision on public financing, and still the controlling law, is the U.S. Supreme Court's 1976 ruling in *Buckley v. Valeo*.¹ Partly in reaction to the developing Watergate scandal, Congress had enacted the first major reform of campaign finance laws in 1971. The act limited the amounts that individuals and political committees could contribute to candidates for federal offices, imposed new requirements for reporting those contributions, restricted the amounts that candidates could spend on their campaigns, and provided for the public financing of presidential election campaigns. The *Buckley* case challenged this law. When the case finally reached the Supreme Court, the justices struck down the limitations on campaign expenditures, holding that the right to freedom of speech encompassed the spending of money by candidates. The Court found, however, that the public interest in preventing corruption in government justified the limitations on the amounts that individuals could contribute to candidates and the reporting of those contributions. Most important, the Court upheld the public financing of presidential campaigns, including the provision that campaign expenditures could be restricted as a condition of a candidate voluntarily accepting public funds.

Buckley thus laid the structure for public financing of campaigns at all levels of government: It is constitutional to provide public funds to candidates for office, and as a condition of acceptance of such funds, the candidate may be required to agree to limit expenditures. Spending limits may not be imposed, however, on candidates who reject public financing.

No other case directly challenging public financing has reached the Supreme Court, but in 2006 the Court revisited some of the other *Buckley* issues when it decided *Randall v. Sorrell*.² In 1997, citing new evidence of the corrupting influence of money in politics that had developed since the *Buckley* decision, Vermont attempted to strictly limit expenditures by all statewide and legislative candidates and to prohibit individuals from contributing more than \$400 to gubernatorial candidates for a two-year election cycle, \$300 to candidates for the State Senate, and \$200 to candidates for the State House of Representatives. A divided Supreme Court affirmed the *Buckley* ruling of thirty years earlier that the state violated candidates' right to freedom of speech by limiting their campaign expenditures. The Court also found that the restrictions on individual contributions were so low as to violate the First Amendment rights of the contributors.

Several rules are clear from these and other federal cases: First, regulation of campaign financing implicates the right to freedom of speech and must clearly advance the public interest in reducing corruption if it is to be upheld. Second,

public financing programs must be voluntary for the candidates. Third, as a condition of receiving public funds, a candidate may be required to limit campaign expenditures.

In North Carolina, the public interest in combating corruption was at issue in a 2005 unsuccessful challenge to the Judicial Campaign Reform Act. In *North Carolina Right to Life Committee Fund for Independent Political Expenditures et al. v. Leake et al.*, the Fourth Circuit Court of Appeals rejected arguments that the reporting required of nonparticipating candidates was too burdensome; that the right to freedom of speech was violated by restrictions on contributions to nonparticipating candidates in the last twenty-one days before the election, when such contributions would trigger "rescue," or matching, funds for participating candidates; and that the rescue fund provisions had a chilling effect on nonparticipating candidates and independent groups' expenditures.³ The challengers to the judicial campaign financing law now are seeking review of the case by the U.S. Supreme Court.

Following the 2006 election, an unsuccessful candidate for the North Carolina Supreme Court, Ann Marie Calabria, protested the election results on the basis of the State Board of Elections' failure to award rescue funds to her after an independent organization, FairJudges.net, ran a last-minute television advertisement touting her opponent, Robin Hudson, as one of several "fair judges" who were on the ballot that year, although the ad did not mention the election or say to vote for the judges.⁴ The protest was denied, and Hudson, who had no involvement with the advertisement, was seated, but the episode led the General Assembly to modify the rescue fund provisions.

There also is a challenge to the part of the law on judicial campaign financing that imposes a \$50 surcharge on licensed lawyers to support public financing. After the federal district court ruled that it did not have jurisdiction to decide the issue, a state lawsuit raising the same issues was brought in Wake County Superior Court.⁵ It is still pending.—Michael Crowell

Notes

Crowell is a School faculty member specializing in the law of judicial administration, including judicial elections.

1. *Buckley v. Valeo*, 424 U.S. 1 (1976).
2. *Randall v. Sorrell*, 548 U.S. 230 (2006).
3. *North Carolina Right to Life Committee Fund for Independent Political Expenditures et al. v. Leake et al.*, 441 F.3d 773 (4th Cir. 2008).
4. Andrea Weigl, "Money to Fight Judge Ad Refused," *Raleigh News & Observer*, November 4, 2006, www.newsobserver.com/news/story/506132.html; Andrea Weigl, "Judge Denies Request for New Judicial Election," *Raleigh News & Observer*, December 12, 2006, www.newsobserver.com/front/story/520663.html.
5. *Jackson v. Leake*, 476 F. Supp. 2d 215 (E.D.N.C. 2006); *Catherine M. El-Khoury et al. v. State of North Carolina et al.*, No. 07 CVS 16422 (Wake County Super. Ct. filed October 10, 2007).

enables candidates for all statewide and legislative races to finance nearly all the costs of their primary and general election campaigns with public funds. These are sometimes called “Clean Election States.”

The basic features of these systems vary, but due to First Amendment prohibitions on restricting candidates’ spending (see the sidebar on page 33), a common component is their voluntary nature. Candidates are not required to accept public financing and the accompanying restrictions on private fund-raising and spending. If they do, they may have to compete against privately financed candidates. They must first demonstrate grassroots support by collecting small contributions from voters. They also must agree to ceilings on expenditures, limitations on contributions, and requirements of disclosure. In some states, they must agree to participate in debates. Contribution limits and thresholds tend to be modest. For example, candidates in Arizona must raise 4,000

contributions of \$5 each, and candidates in Maine, 2,500 contributions of \$5 each.

Under most systems, participating candidates receive seed money up front, which enables them to pay for promotional materials and mailings. Once they obtain sufficient contributions from a specified number of voters (in their district or state) to meet the fund-raising threshold, they qualify for public funds for the primary and general elections. If a participating candidate is outspent by a privately financed candidate, the system provides him or her with “rescue,” or matching, funds up to a specified amount.

Ten states rely on earmarked income tax check-offs (which redirect part of a taxpayer’s income tax liability to a special fund) and add-ons (which increase taxes owed or decrease the refund due) as the chief sources of public election funds for candidates or political parties. Eight other states rely on appropriations for most of their funding. Revenues from fees and penalties, as well as voluntary contributions, supple-

ment monies collected from earmarks and appropriations. For example, in North Carolina, a \$50 annual surcharge on lawyers is an important source of revenue for the judicial campaign fund. An independent state commission on elections, ethics, or public finance oversees collection, distribution, reporting, and auditing of public funds.⁵

Public Financing of Elections in North Carolina

The history of public financing for elections in North Carolina dates to 1975, when a law was passed providing for a limited, trial system of public financing in general elections.⁶ The law was a response to concerns about the increasing costs of campaigns and the difficulties that political parties and candidates were experiencing raising money during hard economic times. It also reflected the reform movement taking place across the country in the wake of the Watergate scandal, featuring tighter re-

Organizations Supporting Clean Elections in North Carolina

Groups Specifically Concerned with Public Financing or Clean Elections

AARP of North Carolina
Common Cause North Carolina
Common Sense Foundation
Democracy North Carolina
League of Women Voters of North Carolina
North Carolina Center for Voter Education
North Carolina Council of Churches
North Carolina Public Interest Research Group
Triad Pro-Democracy Nexus

Groups Concerned with Broader Principles of Equity and Democracy

American Association of University Women
American Postal Workers Union
Black Workers for Justice
Church Women United
Equality North Carolina
National Association of Social Workers—North Carolina Chapter
North Carolina Bankers Association
North Carolina Conference of Branches of the National Association for the Advancement of Colored People

North Carolina Fair Share
North Carolina Justice Center
Southern Piedmont Central Labor Council—AFL—CIO
SURGE (Students United for a Responsible Global Environment, a network of young leaders and youth organizations)
United Steelworkers of America, North Carolina Local 959
Western North Carolina Alliance

Groups Devoted to Specific Causes Unrelated to Public Funding but Standing to Benefit from the Furthering of Progressive Efforts

American Planning Association—North Carolina
Association of Early Childhood Professionals
Conservation Council of North Carolina
Covenant with North Carolina’s Children
Environmental Defense
Federation of Business and Professional Women
North Carolina Association of Educators
North Carolina Coastal Federation
North Carolina Conservation Network
New River Foundation
Self-Help—Center for Responsible Lending
Southerners for Economic Justice
United Holy Church of America

quirements on campaign contributions and expenditures.

The temporary program (scheduled to expire on December 31, 1977) allowed taxpayers to designate \$1 of their tax liability to be used by a political party specified on the income tax form.

The funds were set aside in the North Carolina Election Campaign Fund and paid to the officially recognized parties in the state. The state party chairs were authorized to use the monies to assist

candidates who were opposed in the general election for the positions of governor, lieutenant governor, members of the Council of State (attorney general, auditor, commissioner of agriculture, commissioner of insurance, commissioner of labor, secretary of state, superintendent of public instruction, and treasurer), U.S. senator or representative, supreme court justice, and court of appeals judge. In 1975, 6.45 percent of the tax returns made a contribution. The proportion climbed to 7.10 percent a year later. These rates were significantly below levels of taxpayer giving to candidates in federal campaigns or to candidates in the six other states that authorized such contributions at the time.⁷

Political parties in the general election received campaign funds for the first time in 1976, an approach intended to strengthen the party system. Under the law, taxpayers could indicate on their tax form which political party should

receive their donation. Unspecified monies were allocated to the officially recognized parties on the basis of their percentage of statewide voter registration. Contributions accounted for about one-third of the Democratic Party's budget and about one-quarter of the Republican Party's budget.

The political parties used different approaches to spending their funds. The Democratic Party took a "unified party campaign approach," employing the funds for general assistance

to the party and all its candidates, rather than for direct grants to individual candidates. The Republican Party divided public funds between general campaign expenditures and cash grants to selected candidates eligible for financing.⁸

During the 1978 General Assembly session, the temporary check-off system was extended for three years. However, changes were made, in part because of the state Democratic Party's allocating no funds to specific candidates. Jack Fleer explained the legislation in a 1979 *Popular Government* article: "This new legislation provides that, except for a transition period, future disbursements of public funds will be equally divided between party and candidates in both presidential-year and nonpresidential-year general elections. Allocation of funds among the candidates will be determined by a committee in each of the respective parties."⁹ This compromise was unique. Other states with public

A coalition formed in 1999 to promote public financing has taken an incremental approach, starting with campaigns for judicial offices.

financing had designated monies either to parties only or to candidates only, but not to both. Furthermore, North Carolina was the only state that had extended public financing to congressional candidates as a result of the new legislation.¹⁰

Candidates' response to the trial of public financing was unenthusiastic. The voluntary income tax check-off generated insufficient funds to attract their interest. New legislation was not enacted after December 31, 1981. However, taxpayer contributions continued to accumulate in the Election Campaign Fund until January 1, 2003.

The issue of publicly funded elections reemerged in 1999. Two nonprofit organizations, Democracy North Carolina and the North Carolina Center for Voter Education, led the advocacy effort. A larger coalition, North Carolina Voters for Clean Elections (NCVCE), was founded that year. This umbrella organization "seeks to improve the vitality of democracy in North Carolina by enacting a voluntary public financing program for state-level candidates who earn the public's trust."¹¹ NCVCE began promoting bills for public financing of all state-level political offices, but soon realized the need to take a more incremental approach. On the advice of supporters inside the General Assembly, it made achieving judicial public financing its first major goal.¹²

The debate over funding judicial elections engaged a large and diverse assortment of stakeholders. The arguments advanced by supporters and opponents of public financing in North Carolina have generally mirrored those made in other states. Specific to North Carolina were two other factors: perceptions that partisan election of judges was inconsistent with fair and impartial decisions by judges; and fears that attorneys would have undue influence when they argued cases before justices to whom they had made large campaign contributions. Although judicial election campaigns in North Carolina had not experienced the significant infusions of private money or the bitterly contested races that had occurred in states like Alabama and Texas, there were concerns that these conditions could develop.



Members of NCVCE fell into three broad categories (see the sidebar on page 34):

- Groups specifically concerned with public financing or clean elections (9 organizations)
- Groups concerned with broader principles of equity and democracy (14 organizations)
- Groups devoted to specific causes unrelated to public financing but standing to benefit from the furthering of progressive efforts (13 organizations)

Opponents of public financing have included the John Locke Foundation, the John William Pope Civitas Institute, the Libertarian Party, and the Republican Party, as well as several members of the General Assembly, chiefly Republicans.¹³ The John Locke Foundation, for example, has argued that public financing (referred to as “taxpayer financed elections” in organization materials) violates First Amendment protections, favors incumbents, and provides insufficient funding for viable campaigns.¹⁴

A Pioneering Approach: The Judicial Campaign Reform Act of 2002

The initial victory for campaign finance reformers was the Judicial Campaign Reform Act of 2002.¹⁵ The legislation changed the elections of supreme court justices and court of appeals judges to nonpartisan ones, called for publication of a voter guide profiling candidates in specific elections, decreased campaign contribution limits for individual contributors from \$4,000 to \$1,000, and provided a public financing option for judicial candidates. This law was the nation’s first publicly funded election program for judicial elections.¹⁶

Beginning with the 2004 election cycle, the legislation provided full financing in the general election for supreme court and court of appeals candidates who chose to participate. Public financing depended on a candidate’s voluntary acceptance of fund-raising and spending limits. Among the conditions for participation were the following:¹⁷

- Before declaring participation in the program, a candidate must not raise

or spend more than \$10,000 on the campaign after January 1 of the year before the election.

- After declaring participation, the candidate must demonstrate public support by raising the minimum in qualifying contributions as follows:
 - ◆ Contributions must be in amounts between \$10 and \$500 each, from a minimum of 350 North Carolina registered voters.
 - ◆ Contributions must be raised during the qualifying period beginning September 1 of the year before the election and ending on primary day.
 - ◆ All qualifying contributions must be in a range set to a multiple of the filing fee for the political office sought, the minimum total of qualifying contributions being approximately \$33,000 for court of appeals judges and the maximum total being approximately \$69,000 for supreme court justices.
- In the primary race, candidates may spend no more than the qualifying contribution cap, with excess funds typically returned to contributors. They must limit their expenditures to qualifying contributions plus any funds remaining from the \$10,000 they can raise between January 1 of the year before the election and the date on which they file their declaration of intent.
- Candidates must agree to use only designated public funds in the general election plus any remaining funds raised during the qualifying period.
- Candidates may receive limited matching or rescue funds if a non-participating candidate or group makes independent expenditures opposing a participating candidate that exceed the amount of monies provided by the fund.

Eight of the 16 candidates for judge in 2006 qualified for public financing, and 5 of the 6 winners participated in the program.

The largest portion of the North Carolina Public Campaign Financing Fund comes from a \$3 optional check-off on individual state income tax forms, with 1 percent of the state’s population usually participating. The second-largest portion is from a mandatory \$50 surcharge, passed in 2006, on the annual fee charged to attorneys for their license to practice law in the state. (A lawsuit challenging this surcharge is pending in Wake County Superior Court.)¹⁸ The monies go directly to the North Carolina Public Campaign Financing Fund. Additional funding includes the accumulated balance from the North Carolina Election Campaign Fund established by the 1975–81 pilot programs, funds that certified candidates received from the public financing program that were unspent by election day, funds returned because of participating candidates’ violations of the law or decision to drop out of the public financing program, and donations from businesses, labor unions, and professional associations.¹⁹

During its first two election cycles in 2004 and 2006, the North Carolina judicial public financing program gained much ground. The size of the public campaign fund across 2005 and 2006 reached about \$3.4 million. The \$3 check-off generated \$1.12 million in 2005, \$1.13 million in 2006, \$1.27 million in 2007, and \$1.26 million in 2008. The \$50 surcharge on attorneys generated little funding in 2005, but \$1.02 million was raised in 2006 when the contributions were changed from voluntary to mandatory. The total grew to \$1.06 million in 2007 and \$1.09 million in 2008.

Across 2005 and 2006, program expenses totaled about \$2.4 million. In 2006, eight qualified candidates received about \$1.5 million total for the general election. Sarah Parker, a candidate for chief justice of the supreme court, also received \$155,000 in matching funds because her opponent, Rusty Duke, exceeded the fund-raising limit she had accepted. Other than awards to candidates, expenses totaled

\$650,000 for printing and mailing about 4 million voter guides in 2006 and \$40,000 in administrative costs to the State Board of Elections.²⁰ In 2007 and 2008, program expenses totaled \$3.7 million. The program paid \$1.9 million to candidates for the general election, not including matching funds. Ten certified candidates each received a share of \$113,345 in matching funds. Costs for printing and mailing about 7.4 million voter guides (for the 2008 primary election and the 2008 general election) totaled \$1.2 million. Administrative costs for 2007–8 totaled \$61,196 as of October 31, 2008.

Twelve of the 16 judicial candidates qualified for public financing in 2004, and 8 of the 16 qualified in 2006. Over both cycles, about 71 percent of the candidates for the supreme court and the court of appeals enrolled in and qualified for the program in the general election. The demographics of the qualifiers included challengers and incumbents, men and women, and Democrats and Republicans. Three of the 5 winners

in 2004 were enrolled in the program (Sarah Parker, Linda McGee, and Wanda G. Bryant), and 5 of the 6 winners in 2006 (Sarah Parker, Patricia Timmons-Goodson, Robin Hudson, Bob Hunter, and Donna Stroud).²¹

This trend continued into the 2008 general election. According to the State Board of Elections' website, all but one of the candidates in contested judicial races filed notices of intent and were certified to participate in public financing. Candidates for the court of appeals each received an initial disbursement of \$160,000. Candidates for supreme court associate justice each received \$233,625.

With respect to the benefits of this pioneering reform, Court of Appeals Judge Robert C. "Bob" Hunter, a former legislator, thinks that the 2002 legislation has gone a long way toward removing the public's perception that lawyers were controlling elections and unduly influencing judicial decisions through their large campaign contributions. He says that public financing has allowed him and other participating

candidates to demonstrate broad-based support by meeting the threshold requirements, and to campaign more actively during both the primary and the general election. Initially, Judge Hunter says, he was concerned about the ability of judicial candidates (in contrast with legislators) to raise qualifying monies, the possible presence of nonviable candidates, and the adequacy of available public funds to wage a statewide campaign, but he acknowledges that his concerns have proven unfounded. Combined with the shift to nonpartisan elections and the publication of the voter guide, the financing reform has produced positive benefits for the judicial system, in Judge Hunter's view.

Looking to the future, Judge Hunter suggests two changes: in the short run, significantly increasing the general funding levels to enable candidates to wage effective statewide races as the costs of campaigns rise; and in the long run, changing the judicial selection system from election, to merit selection by appointment with a subsequent



confirmation election by the voters. The latter reform, Judge Hunter points out, could ultimately free up public financing monies for use in other races.²²

Expansion of Public Financing

In 2005, advocacy groups launched efforts to expand public financing. They urged members of the General Assembly to support a bill providing for public financing of Council of State elections, but the bill was not introduced. In 2006, the House Select Committee on Ethics and Governmental Reform considered several legislative proposals, including a pilot program of public financing for two seats in the House and two in the Senate. After being passed by the House Judiciary Committee, this proposal failed to gain sufficient political support for further consideration before the end of the session.²³

The 2007 session of the General Assembly produced two statutes expanding the reach of public financing. One, the 2007 Voter-Owned Elections Pilot, established a pilot program for certain members of the Council of State (the auditor, the commissioner of insurance, and the superintendent of public instruction).²⁴ The other, Chapel Hill Campaign Finance Options, authorized the Town of Chapel Hill to initiate a program.²⁵ Two bills were introduced to create a pilot program for public financing of the legislature, modeled on the judicial scheme, involving four districts in the Senate and six in the House, but no committee action was taken. Also, legislation was enacted to strengthen the judicial program by expanding the circumstances for releasing matching monies to participating candidates under challenge by nonparticipating candidates.²⁶

The pilot program providing public financing for participating candidates running for auditor, commissioner of insurance, and superintendent of public instruction began in 2008. Candidates who chose to receive funding under the program had to agree to strict fundraising and expenditure rules, and to follow qualification procedures to be

certified by the State Board of Elections to participate. For example, candidates had to demonstrate voter support by obtaining qualifying contributions (no less than \$10, no more than \$200) from at least 750 registered voters. The State Board of Elections was authorized to produce a voter guide to the general election and distribute it to all North Carolina residences. The guide explains

the functions of the offices affected by the law and provides candidate information, including limited endorsements and candidate statements.²⁷ With respect to the general intent and impact of the law, according to

In 2008, North Carolina experimented with public financing of campaigns for auditor, commissioner of insurance, and superintendent of public instruction.

John Thompson, executive director of the North Carolina Center for Voter Education, “It puts a big dent in any possible credibility problem, and it restores confidence in the voters that their vote does count and that people aren’t getting elected based on how much money they raised.”²⁸

Fund monies were distributed in two allotments: one-third within five business days of a candidate’s being approved to appear on the ballot in a contested general election and the remainder on August 1 before the general election. Under the law, if trigger conditions are met, funds may be used for contested primaries, with a cap of 200 times the filing fee for the office sought. For contested general elections, the funds are determined by the average amount of campaign-related expenditures made by all winning candidates for that office in the preceding three elections, but no less than \$300,000.

An important aspect of this statute is that, unlike the financing program for judges, appropriations are made from the General Fund to bolster monies available from other sources, including unspent funds from previous elections, money ordered returned because of civil penalties, funds that exceed allowed contributions before the qualifying period, and voluntary donations. For the 2007–8 fiscal year, \$1,000,000 was appropriated, and for the 2008–9 fiscal year, \$3,580,000.

The Chapel Hill authorization was the product of more than two decades of history. The precedent for Chapel Hill’s request was a State Board of Elections ruling on actions by the Town of Cary. Campaign spending in Cary’s 1999 town council election exceeded \$500,000, half of which was contributed by political action committees. In reaction, Cary adopted the first scheme of public financing in North Carolina. To curb excess spending and eliminate the influence of special interests, Cary offered matching funds to the top vote-getters in the primary if they agreed to a spending limit. District races had a \$10,000 cap, at-large races a \$25,000 cap. In 2001 the State Board of Elections ruled that Cary’s actions were illegal. Although the board did not argue that Cary lacked authority to create a public financing scheme, it asserted that the Town of Cary was an individual contributor and thus subject to the state’s \$4,000 contribution limit. The two town council members who received the matching funds had to repay all but the \$4,000 that the town was allowed to contribute to their campaigns. An appeal was not filed.²⁹

Since 1987, Chapel Hill proponents have worked to build support for a public financing program. In 1999 the General Assembly approved an individual contribution limit, and in 2003 Dennis Markatos, a Chapel Hill resident, brought a petition to the town council calling for a voter-owned election program. The council tabled the petition, citing the recent legal challenge in the Cary case and a bill proposed by State Senator Wib Gulley authorizing local governments of 50,000 or more to sponsor public financing. The council agreed to wait until the General Assembly considered this proposal before moving forward. In the 2007 General Assembly session, Representative Verla Insko introduced a local bill to allow public financing of Chapel Hill town council elections, and it was passed.

The law allows Chapel Hill to establish a public financing program during the 2009 and 2011 elections. Participation in it must be voluntary. Participants will receive public financing if they agree to stringent expenditure and fund-raising limits.

spouse were out of the country on April 15 and

N.C. Public Campaign Fund		N.C.
<p>Mark 'Yes' if you want to designate \$3 of taxes to this special Fund for voter education materials and for candidates who accept spending limits. Marking "Yes" does not change your tax or refund.</p>		<p>Fill in \$3 to whether</p>
	<p><u>You</u> <u>Your Spouse</u></p>	<p><input type="radio"/> Dem</p> <p><input type="radio"/> Rep</p> <p><input type="radio"/> Libert</p> <p><input type="radio"/> Unspe</p>
<p>(Fill in appropriate circle)</p>	<p><input type="radio"/> Yes <input type="radio"/> Yes</p> <p><input type="radio"/> No <input type="radio"/> No</p>	

turn

Fill in circle  if negative

On June 9, 2008, following hearings in which proponents cited increasingly high costs for participation in council races and critics objected to the entrenchment of incumbents and restriction of free speech, the Chapel Hill Town Council passed the Voter-Owned Elections Pilot Program by an 8-1 vote, authorizing public financing of town council elections beginning in fall 2009. The ordinance was passed as written with three minor amendments: First, participants with campaign materials from previous elections will be required to sign a statement of their value and to agree to have the public grant reduced by that amount. Second, the value of mailings supporting multiple candidates will be divided across all participants. Finally, noncertified candidates who agree to raise or spend no more than \$3,000 for the election cycle will be exempt from reporting requirements.

A Look Ahead

The new laws have encouraged proponents to predict a bright future for

public financing in North Carolina. Interviews with advocacy group representatives from Common Cause North Carolina, Democracy North Carolina, the League of Women Voters of North Carolina, and the North Carolina Center for Voter Education suggest that North Carolina's public financing of state election campaigns will continue to evolve in at least two areas.³⁰

First, building on the 2007 program, the General Assembly might designate additional positions in the Council of State for public financing. An article in the *Raleigh News & Observer* in March 2008 indicated that 6 of the 11 candidates for auditor, insurance commissioner, or superintendent of public instruction were planning to participate in public financing. As one candidate for the superintendent position noted in that article, "It allows for regular, ordinary citizens to be involved in a campaign without having to raise millions and millions of dollars . . . I don't think I would have done it if this had not happened." The candidate's opponent in the primary stated, "It really allows the candidates

to focus on meeting people, talking with people about issues in education."³¹

On the other hand, a candidate for superintendent who opposed public financing said, "I have a major problem accepting any sort of public money when there are children in our state living in poverty, when there are children who go to sleep hungry, when there are school buildings that are crumbling."³² All but one of the candidates for auditor, commissioner of insurance, and superintendent of public instruction in the 2008 general election filed a notice of intent to participate in public financing, and all but one who did file were certified.³³

Second, there is interest in increasing the number of local governments experimenting with public financing. Local progress is viewed as more feasible and having more bipartisan support than state-level progress.³⁴ Likely communities are Asheville, Cary, Charlotte, Greensboro, Greenville, Raleigh, and Wilmington. Asheville, for example, has considered seeking authorization for publicly funded campaigns like those in

Chapel Hill. Citizens for Clean Elections, a group from Greensboro, is pursuing similar goals. Changes in election jurisdiction and the record-breaking expense of Wilmington's recent mayoral race have generated conversations about reform in the eastern part of the state.³⁵

At some point, NCVCE and other advocates note, interest in public financing might spread to open-seat races (races in which there is no incumbent) for the General Assembly and other statewide offices. One indicator is the support that House Speaker Joe Hackney gave to the 2006 and 2007 public-funding legislative initiatives (serving as a primary cosponsor of the former), together with emergence of caucuses on campaign finance reform in both houses of the General Assembly.

Another indicator is the growing consensus in the reform community that too much money is needed to wage successful political campaigns, requiring candidates to pander to special interests to be viable. Indeed, in March 2008, Democratic Lieutenant Governor Beverly Perdue called for a \$50 million Endowment for Positive Gubernatorial Campaigns, based on a 1995 proposal by Democrat Dennis Wicker, then lieutenant governor. The endowment would be governed by a twelve-member bipartisan board appointed by legislative leaders, which would determine candidate eligibility, distribute funds, and manage debates. A modified version of the endowment was endorsed by Democratic Treasurer Richard Moore. According to Lieutenant Governor Perdue, "The people of North Carolina, like the rest of the nation, are losing trust in the political system. The perception of corruption and a 'pay to play' environment has led to the belief that ordinary citizens do not have as much influence in politics as the rich and powerful."³⁶ On January 12, 2009, her first day in office, Governor Perdue signed Executive Order Number 1, creating the Governor's Task Force for the Development of an Endowment for Positive Gubernatorial Campaigns. The task force is charged with determining

steps needed to establish an endowment, developing an organizational and legal structure for receiving pledges, and securing pledges.

As the cost of running a campaign continues to rise, support for publicly financed campaigns has grown and become more bipartisan. For example, former Republican North Carolina Representative Gene Arnold, former Democratic U.S. Representative Tim Valentine, and former Republican U.S. Representative and Lieutenant Governor Jim Gardner have recently declared

their support for a publicly funded system. Citing the exponential increase

in the cost of campaigning, all three called for the overhaul of a system that they consider to be "totally out of hand." Unlike their party platform, which rejects public financing, Arnold and Gardner stood firm in their support, stating, "Finance reform would give the government back to the people."³⁷

A 2007 poll of registered voters conducted by American Viewpoint for the North Carolina Center for Voter Education revealed continuing concerns about the influence of campaign contributions on elected officials' decisions, with 87 percent of the respondents indicating such contributions exert "a great deal" or "some" influence. Sixty-nine percent favored continuation of the

Governor Beverly Perdue proposes to establish a fund for positive gubernatorial campaigns.



judicial public financing program, and 68 percent supported the program for selected Council of State offices. Similarly, 61 percent favored creation of a voluntary pilot program to publicly fund legislative campaigns in a few districts. The poll found that Republicans, very conservative voters, men aged 45–64, women aged 65 or older, and Raleigh-Durham residents were less likely than other voter groups to support this expansion of public financing.³⁸

At the same time, proponents recognize that North Carolina's experience with public financing at the state level has been limited to positions that some reformers think should be appointive, not elective, or if the latter, nonpartisan. Gaining incumbent and party support for higher-profile, partisan, and politically competitive offices like governor and state senator or representative will be much more challenging. Moreover, although advocates claim that the costs of a more expansive system would be less than a penny a day per eligible voter, in tough economic times, public financing of elections would have to compete with other priorities like education, transportation, and job creation. Opponents could argue that "paying politicians to run for office" would lead to tax hikes or cuts in popular programs.³⁹

Voter-Owned Elections: Lessons from Other States

If interest in expanding public financing continues in North Carolina, lessons from other states could be instructive. Studies by advocacy groups, the U.S. Government Accountability Office, state study commissions, and academic experts have concluded that the following positive outcomes can be expected from publicly funded elections:⁴⁰

- Candidate participation will increase as the system matures.
- Candidates will be generally pleased at having more time to meet with voters to collect qualifying contributions and discuss issues.
- The availability of public financing will attract candidates who might not otherwise run for office, especially women and minorities.

- Running as a "clean" candidate may be an advantage in open-seat races and occasionally against incumbents.
- More challengers will compete against incumbents in general elections, reducing the number of uncontested races and giving voters more choices.

Particularly useful might be the experiences of one recent addition to the roster of public financing legislation, the Arizona Citizens Clean Elections Act, which was adopted through a public initiative and referendum, not by the legislature.⁴¹ Public financing has made possible the successful campaigns of nearly half of the candidates for statewide and legislative offices since 2000, with increases in both participation and success reported in each cycle. Clean Elections candidates came from both political parties, and the total number of candidates running in contested primaries increased. The numbers of women, Latino, African-American, Native American, and Asian candidates grew, many of whom would not have otherwise run for office. Candidates were generally pleased that they spent more time meeting with voters and attending forums and less time fund-raising.⁴² In 2006, nine of 11 statewide officials (including the governor, the secretary of state, and the attorney general) and 38 of 90 legislators were elected with Clean Elections funding.⁴³ Arizona's system costs about \$12 million per year.

The Arizona Citizens Clean Elections Act has been challenged six times, most recently in *American Association of Physicians and Surgeons v. Brewer*, which alleged that the act neutralized the voice of independent spenders and coerced participation. When first heard in May 2005, the case was dismissed by the district court. The U.S. Court of Appeals for the Ninth Circuit dismissed it in February 2007.⁴⁴

At the same time, public financing has encountered obstacles and limitations in a number of states:⁴⁵

- Most state programs rely heavily on tax check-offs and add-ons to support participating candidates.

They have raised only modest amounts of monies from appropriations and other sources.

- "Running clean" does not receive strong bipartisan support. Democrats seem to be more inclined to run as publicly funded candidates than Republicans seem to be.
- Name recognition and other advantages of incumbency remain formidable in both privately and publicly funded election systems.
- Spending limits can disadvantage a publicly funded candidate running against a privately funded opponent or an opponent who benefits from independent expenditures.
- Unregulated groups created under Internal Revenue Code Section 527 still can wield considerable influence in elections, undermining public financing reforms.
- Public financing has not significantly increased voter turnout, made general elections more competitive, or decreased campaign spending.
- If voters are told that "taxpayers' money" will be used to pay for public financing of election campaigns, they likely will oppose it (unless the alternative language is "special interest money"). They will be less negative toward income tax check-offs or add-ons or even general appropriations.

These arguments, coupled with continuing concerns about possible First Amendment violations, have contributed to the failure of recent campaign-finance reforms in California, Maryland, Massachusetts, Missouri, Oregon, Virginia, and West Virginia.

In summary, proponents will have to overcome political, legal, philosophical, and financial hurdles as they seek to make a compelling case to skeptical incumbents, entrenched political leaders, and well-connected lobby groups. Moreover, convincing citizens that taxpayers' money should be used to enable candidates to run for political office, and persuading governors and legislators that they should support general fund appropriations to bolster campaign coffers, are difficult tasks.

More time will be needed in the local and state “laboratories of democracy” to determine whether the experiment with clean elections will produce the outcomes promised by advocates and avoid the pitfalls claimed by opponents. In North Carolina, reformers seem cognizant of the challenges they face, but are optimistic that persistence, a smattering of scandals, and incremental successes will continue the march toward a comprehensive publicly financed election system.

Notes

1. For example, see State of Maryland, Study Commission on Public Funding of Campaigns in Maryland, *Final Report* (Annapolis, MD: Maryland General Assembly, February 2004), 65, http://mlis.state.md.us/2004rs/misc/campaign_financing.pdf.
2. Carl W. Stenberg, “Running Clean in the American States: Experience with Public Funding of Elections,” in *Winning Elections with Political Marketing*, ed. Philip John Davies and Bruce I. Newman (London: Haworth Press, 2006), 211–26.
3. Representatives of Common Cause North Carolina, Democracy North Carolina, the League of Women Voters of North Carolina, and the North Carolina Center for Voter Education, interviews by Sarah J. Waterman and Carl W. Stenberg, February 2008.
4. Stenberg, “Running Clean.”
5. *Ibid.*; National Conference of State Legislatures, “Public Financing of Campaigns: An Overview,” February 5, 2008, www.ncsl.org/programs/legismgt/about/PubFinOverview.htm#indiv.
6. N.C. GEN. STAT. ch. 775 [hereinafter G.S.].
7. Jack D. Fleer, “Campaign Finance in North Carolina: The ’76 Experience,” *Popular Government*, Summer 1979, pp. 39–40. See also Joan G. Brannon, ed., *North Carolina Legislation 1975* (Chapel Hill, NC: Institute of Government, University of North Carolina at Chapel Hill, 1975), 102–3; and James C. Drennan, ed., *North Carolina Legislation 1978* (Chapel Hill, NC: Institute of Government, University of North Carolina at Chapel Hill, 1978), 32–34.
8. Fleer, “Campaign Finance.”
9. *Ibid.*, 40.
10. Fleer, “Campaign Finance.”
11. North Carolina Voters for Clean Elections, “Mission Statement,” www.ncvce.org/index.php?page=about.
12. Bob Hall, Democracy North Carolina, interview by Sarah J. Waterman, February 29, 2008.
13. Brian Balfour, “Voter-Owned” Elections: *Cleaning Up Campaign Financing or Limiting Free Speech?* (Raleigh, NC: JWP Civitas Institute, 2007), www.jwpcivitasinstitute.org/files/Public-Financing-Campaigns.pdf; Libertarian Party of North Carolina, Libertarian Party Platform, art. 4, no. 2, “Fair Campaigns,” www.lpnc.org/platform.php; North Carolina Republican Party, Report of Platform Committee, North Carolina Republican Party Platform, 2008, art. 6, no. 5, http://ncgop.org/documents/2008_platform.pdf; North Carolina General Assembly, 2007–8 Session, roll calls on HB 1828, Strengthen Judicial Fund, www.ncga.state.nc.us/gascripts/voteHistory/RollCallVoteTranscript.pl?sSession=2007&sChamber=H&RCS=1245;www.ncga.state.nc.us/gascripts/voteHistory/RollCallVoteTranscript.pl?sSession=2007&sChamber=S&RCS=1203.
14. John Locke Foundation, “Agenda 2008,” www.johnlocke.org/site-docs/agenda2008/campaignfinance.html.
15. Judicial Campaign Reform Act, G.S. 163-278.61 through -278.70.
16. North Carolina Voters for Clean Elections, “History of Progress,” http://ncvce.org/index.php?page=progress_history.
17. Democracy North Carolina, “Legislative Summary—Senate Bill 1054: N.C. Judicial Campaign Reform Act of 2002,” adapted from a summary prepared by the Legislative Research Office staff, www.democracy-nc.org/nc/judicialcampaignreform/judreform/SB1054summ.pdf.
18. Catherine M. El-Khouri et al. v. State of North Carolina et al., No. 07 CVS 16422 (Wake County Super. Ct. filed October 10, 2007).
19. Democracy North Carolina, “Legislative Summary.” See also William A. Campbell, ed., *North Carolina Legislation 2002* (Chapel Hill, NC: Institute of Government, University of North Carolina at Chapel Hill, 2003), 41–47.
20. Democracy North Carolina, *A Profile of the Judicial Public Financing Program, 2004–06* (Carrboro, NC: Democracy North Carolina, 2007), www.democracy-nc.org/nc/judicialcampaignreform/overviewjan07.pdf.
21. *Ibid.*
22. Judge Robert C. “Bob” Hunter, interview by Carl W. Stenberg, August 6, 2008.
23. North Carolina Voters for Clean Elections, *2007 Legislative Scorecard on Campaign Reform*, vol. 2, no. 1, pp. 2–3, www.ncvce.org/image_uploads/scorecard-2007-FINAL-January08-font%20fix-3.pdf.
24. Voter-Owned Elections Pilot, S.L. 2007-540, H 1517.
25. Chapel Hill Campaign Finance Options, S.L. 2007-222, H 483.
26. S.L. 2007-510, H 1828.
27. For a copy of the 2008 voter guide, go to www.sboe.state.nc.us/content.aspx?id=29.
28. As quoted in David Ingram, “State Candidates Test Public Campaign Financing,” *Raleigh News & Observer*, March 3, 2008, www.newsobserver.com/news/story/977694.html.
29. Brad Deen, “Cary Adopts Public Finance of Campaigns,” *Cary News*, December 16, 2000, p. A1. See also <http://townhall.townofchapelhill.org/archives/agendas/ca030324/10-Public%20Finance%20of%20Campaigns.htm>.
30. Representatives of advocacy groups, interviews.
31. As quoted in Ingram, “State Candidates,” p. 1A.
32. As quoted in *ibid.*
33. North Carolina State Board of Elections, *NC Public Funding Programs: 2008 General Election Voter Guide* (Raleigh: North Carolina State Board of Elections, 2008), www.sboe.state.nc.us/content.aspx?id=29.
34. Representatives of advocacy groups, interviews.
35. Hall, interview.
36. As quoted in Ryan Teague Beckwith, Benjamin Niolet, and Bill Krueger, “Endow Campaigns for Governor, Perdue Says,” *Raleigh News & Observer*, March 5, 2008, www.newsobserver.com/659/story/982603.html.
37. M. Hixenbaugh, “Ex-Politicians Back Campaign Finance Reform,” *Rocky Mount Telegram*, May 24, 2008, p. A1.
38. Randall Gutermuth, “American Viewpoint,” a report prepared for the North Carolina Center for Voter Education, June 12–13, 2007, pp. 4–11.
39. *Ibid.*, 11.
40. Stenberg, “Running Clean.”
41. ARIZ. REV. STAT. ANN. § 16-940 *et seq.*
42. Arizona Clean Elections Institute, “2006 Elections Statistics,” http://azclean.org/documents/2006ElectionStatistics_000.pdf; “2006 Elected State Officeholders,” <http://azclean.org/documents/2006ElectedStateOfficeholders.pdf>. See also Marc Caplan and Amber French, “Clean Elections and Public Campaign Financing: New Strategies for a Healthy Democracy,” *National Civic Review*, Summer 2008, pp. 57–60.
43. Arizona Clean Elections Institute, “2006 Elections Statistics.”
44. American Association of Physicians and Surgeons v. Brewer, 363 F. Supp. 2d 1197 (D. Ariz. 2005), *dismissed*, 486 F.3d 586 (9th Cir. 2007). For a history of the case, see www.brennancenter.org/content/resource/aaps_v_brewer/.
45. Stenberg, “Running Clean.”