POLICY REPORT

Political Welfare

Why Taxpayer-Funded Campaigns Are Bad for Taxpayers and Democracy

DAREN BAKST

APRIL 2006

John Locke FOUNDATION

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Executive Summary

Proponents of taxpayer-financed cam paign finance systems call them "clean elections." Instead of raising their own money through contributions, political candidates get subsidized by the govern ment. The purpose is to allow candidates to act independently without feeling beholden to outside interests.

This approach is bad not only for taxpayers but also for democracy. North Carolina's experience with taxpayer-fund ed judicial campaigns provides a great example of some of the critical problems.

The money to support the judicial campaign system, like many other similar systems, is supposed to come from tax payers who voluntarily divert some of the taxes they owe to the fund that supports the system. However, taxpayers simply do not support these systems. As a result, the government moves away from the voluntary nature of the program and be gins funding it through higher taxes.

The Judicial Campaign Reform Act of 2002, which created the judicial cam paign system, specificies that the system will not be supported from money in the General Fund. Despite this, the legisla ture in 2004 allocated money from the General Fund to support the system. As a result, taxpayers are forced to subsidize at least some candidates that they oppose.

The North Carolina judicial campaign fund would provide extra money, called "rescue funds," to subsidized candidates to help against "traditional" candidates who spend beyond a certain level. Candi dates could literally find themselves sup porting their opposition when they spend money. Even worse, the system is set up so that it is possible for a subsidized can didate to spend more than a traditional candidate and still receive rescue funds. All of these issues are constitutionally and ethically problematic.

Taxpayer-financed systems in general also fail to accomplish their objectives and even hurt democracy. By trying to create an artificial cap on funding, these systems actually limit speech and keep voters from being informed on the issues and the candi dates.

Proponents of taxpayer-financed sys tems assume that if less money goes di rectly to candidates through contributions, candidates will not feel beholden to out side groups and individuals with their own policy interests. This is a false assumption. When organizations and individuals spend money on behalf of candidates, as opposed to providing contributions, candidates that would have felt beholden because of contri butions are still going to feel beholden.

These systems also fail to reduce the amount of money in elections because they simply shift money that would have gone to contributions to independent expenditures and spending on issue advocacy. Proponents of these systems also argue that they would allow candidates to worry much less about fundraising, which is just a nuisance anyway.

In fact, fundraising is an integral part of the democratic process. Private contribu tions are a measure of a candidate's sup port and help to ensure that only qualified candidates are on the ballot. It also should be noted that candidates have incredible advantages today in the area of fundraising that did not exist even a decade ago, in cluding the Internet and cell phones.

Subsidized candidates take taxpayer money that could be used for other purpos es. These candidates also take money from individuals that do not even support them. This certainly is far from "clean elections." North Carolina's current judicial campaign system should be repealed, and the state should return to a traditional campaign financing system for judicial elections and quickly dismiss expanding this bad public policy to other elections.

Introduction

Organizations such as Public Campaign and Democracy North Carolina are pushing an alternative to the traditional campaign finance system. Instead of candidates seek ing private contributions to support their campaigns, North Carolina taxpayers would provide public financing to pay for their campaigns. This "clean elections" approach, as it is referred to, is supposed to reduce the influence of special interest money in politics. In theory, candidates would feel free to be independent in developing public policy because they would not be beholden to donors with their own policy interests.[1]

Some states, including North Caro lina for its Court of Appeals and Supreme Court elections, have jumped on this "clean elections" bandwagon. Currently, the House Select Committee on Ethics and Governmental Reform is exploring the possibility of expanding publicly financed campaigns in North Carolina.

This Policy Report explains why these taxpayer-funded systems are bad public policy and constitutionally questionable. It provides a brief overview of how North Carolina's system works and identifies the major problems with these systems in general. It then explains why these publicly subsidized systems not only do not provide promised benefits, but also actually hurt the democratic process.

North Carolina's Judicial Campaign Finance System: A Brief Overview

In 2002, the North Carolina legislature passed the Judicial Campaign Reform Act, which created a nonpartisan taxpayer-funded campaign system.[2] Candidates for the North Carolina Court of Appeals and Supreme Court can choose to run as tradi tional candidates who raise their own mon ey or as subsidized candidates who receive public financing. In return for public fi nancing, subsidized candidates agree not to raise or spend private money in the general election. They get a significant lump sum payment for the general election and must not spend anything beyond this amount. For the primary election, subsidized can didates are required to raise money from private contributions if they want to get subsidized in the general election.

In addition, if the opposing candidate in either the primary or general election spends or raises money that exceeds the subsidized candidate's spending limit, the state will provide "rescue funds" that are equal in amount to that extra money. Res cue funds also can be triggered if indepen dent expenditures[3] spent by outside groups exceed the spending limit for subsidized candidates. Also, the sum of both a candi date's money and independent expenditures are another means of triggering rescue funds. Independent expenditures are a type of spending for messages that clearly sup port or oppose a candidate and are made by an entity without any coordination with a candidate.

To fund this program, taxpayers, on their state tax returns, can voluntarily divert $3 of their taxes to the judicial campaign fund. For example, if a taxpayer owes $100, they still will owe $100, but can divert $3 of their taxes owed to the judicial fund. As a result, $3 that normally would have gone to the General Fund to sup port other programs is instead subsidizing judicial candidates. The other major source of funding was supposed to be voluntary attorney contributions of $50—it was replaced with a mandatory contribution. The program's funding is just one of the many problems with the system and similar taxpayer-financed systems.

A Textbook Example of the Failure of Taxpayer-Financed Systems

North Carolina's judicial campaign system provides a clear example of the fail

ure of taxpayer financing. Since voluntary funding sources usually are inadequate, all taxpayers are forced to fund the program. The funds are dispersed to subsidized candidates that use the money to promote their campaigns and get their messages out to voters. Therefore, taxpayer-financed systems force taxpayers to support at least some candidates and speech they oppose. These systems are constitutionally prob lematic and at a minimum unethical.

Funding Problems in North Carolina

North Carolina's judicial campaign fund, like other similar programs, has failed to generate enough voluntary contribu tions. The funding problem was so bad in 2004 that there was not enough money to fully fund the five candidates that sought taxpayer subsidies for the unexpected va cancy in the Supreme Court.[4]

The $3 check-off has been a disaster. Only about 6-7% of all tax filers diverted $3 of their taxes to the fund.[5] The attorney contributions were so low that former Gov ernors Jim Holshouser and Jim Hunt wrote a letter to members of the entire North Carolina Bar pleading with them to make contributions, "Last year, the participation rate among attorneys was embarrassingly low – less than 12 percent."[6]

The attorneys' lack of support did not go down well with fund supporters. The legislature mandated that starting in 2006, attorneys have to pay an additional $50 annual fee when they renew their "privilege license" to practice law in North Carolina.[7]

North Carolina already had a bad expe rience with these types of taxpayer-funded campaign finance programs. In 1988, North Carolina created a partial campaign finance program for Governor that allowed tax payers to divert parts of their income tax refunds to the Governor's fund. As a recent legislature research division memo de scribes "It never generated enough money to support the program, and the General Assembly finally repealed the statute in 2002, pouring over the accumulated add-on proceeds into the Public Campaign Fund for appellate judges."[8]

Funding Problems Beyond North Carolina

The Presidential public financing sys tem is another example of a failed taxpayer-financed campaign system. In 2003, Mi chael Toner, a Commissioner on the Federal Elections Commission (FEC) stated, "From the mid-1970s through the mid-1980s, the check-off averaged between 25-30%...during the last four years [the number] has hov ered between 11 and 12%."[9]

Other state systems are just as bad. According to a study conducted by politi cal scientists Michael Malbin and Thomas Gais, between 1980 and 1994, the "typical check-off state went from 20 percent par ticipation to 11 percent participation."[10]

Polling data also has shown strong op position to taxpayer-financed campaign programs. A 2000 CBS News/*New York Times* poll, which specifically mentioned tax dollars would be used, found that 75% of the respondents opposed public financing, while only 20% favored public financing. In another 2000 CBS News/*New York Times* poll that did not mention taxpayer dollars, but did mention that government funds would be used, still resulted in 65% op posed and only 31% in favor.[11]

Higher Taxes and Involuntary Subsidies

Often, the lack of voluntary contribu tions means that legislators shift to forcing taxpayers to support a taxpayer-financed system. For all practical purposes, anyone that is in favor of taxpayer financing also is in favor of higher taxes. The higher taxes may come in the form of additional fees, as they already have for attorneys in North Carolina, the reallocation of tax revenue, or direct taxes.

For example, North Carolina's Judicial Campaign Reform Act, passed in 2002, specifically states that all expenses for the taxpayer-funded system will be paid by the judicial campaign fund and not from the General Fund.[12] Despite this, in 2004, the legislature allocated $725,000 from the General Fund for the judicial campaign fund.[13] The legislature simply decided to ig nore its own restrictions. This is not illegal since new legislation, as always is the case, can override old legislative requirements. As a result of this allocation, all taxpayers involuntarily provided subsidies for many politicians they oppose.

In the 2004 appropriations bill, the legislature also specifically required un used State Board of Elections money for fiscal year 2003-2004, which came from the General Fund, to be used for the tax payer-financed judicial campaign system.[14] This unused General Fund money should have reverted back to the General Fund for other purposes. If this same tactic is used again to fund the taxpayer-financed judicial campaign system, the legislature can con tinue to create a backdoor way to fund a program that has little public support. The legislature can simply appropriate more money than needed by the State Board of Elections, and then let the unspent money go to the unpopular judicial campaign sys tem.

Even the voluntary $3 check-off likely will result in higher taxes. Since taxpayers can divert taxes away from other programs, there will be shortfalls that legislators will want to supplement with new revenue (i.e. taxes/fees).

Constitutional Problems

There are many constitutional prob lems with taxpayer-financed systems. Like other systems, the state's judicial campaign finance system has serious free speech problems. Several plaintiffs, including two judges, are challenging the constitutional ity of the state's taxpayer-financed judi cial campaign system based on numerous grounds, including the violation of free speech.[15] There are two free speech prob lems that stand out.

1) Speech Restrictions and Favoring Sub sidized Candidates' Speech. Under the cur rent judicial campaign system, traditional candidates and independent organizations supporting them may feel compelled to limit how much money they raise or spend to promote their campaigns. In other words, they will limit their speech because the funds necessary for speech have to be limited. If a traditional candidate raises or spends money that exceeds the subsidized candidate's spending limit, rescue funds are triggered. A traditional candidate could literally find himself supporting his op position because he is raising or spending money for his own campaign. An organiza tion that supports a traditional candidate through independent expenditures also can trigger rescue funds. As a result, it may choose not to support a traditional candi date because in doing so it would be sup porting the opposition.

Also, while subsidized candidates can receive rescue funds, traditional candidates are not eligible to receive them. To deter mine if the total spending for a traditional candidate has exceeded the subsidized candidate's spending limit (which would trigger rescue funds), independent expen ditures are added to the money spent or raised by a traditional candidate. Instead of simply comparing the money spent by each candidate, the system looks at independent expenditures as well.

As a result, the system does not just help subsidized candidates from being outspent, but also helps subsidized can didates even when they spend more than traditional candidates. For example, a traditional candidate could spend less than

Table 1: An Example of a Subsidized Candidate Receiving Rescue Funds When Outspending a Traditional Candidate

Notes: This exercise assumes a 2006 Court of Appeals General Election, but the same problem could oc cur with Supreme Court elections. The specific figures used here were chosen to demonstrate a problem with rescue funds — all the numbers could be changed (even to make the problem worse) except for the subsidized candidate's spending limit.

This example shows how all of the following can happen, and the subsidized candidate still can receive rescue funds:

- A subsidized candidate outspends a traditional candidate
- Independent expenditures for the subsidized candidate exceeds the independent expenditures for the traditional candidate
- The total spending for the subsidized candidate exceeds the total spending for the traditional candidate

Traditional Candidate Funding

Candidate's spending (raised from private contributions):	$110,000
Independent expenditures:	$55,000
Total Spending:	$165,000

(The traditional candidate is not eligible to receive rescue funds.)

Subsidized Candidate Funding

Candidate's spending (maxi mum allowed — this is the taxpayer-financed lump sum payment):	$144,500
Independent expenditures:	$100,000
Total spending:	$244,500

Subsidized candidate receives rescue funds worth ($165,000-$144,500): $20,500

a subsidized candidate yet the subsidized candidate would still receive rescue funds—the independent expenditures, and not the traditional candidate himself, would trigger the rescue funds. Subsidized candidates also could receive rescue funds if their own spending and the independent expenditures spent to support them, when added togeth er, are far greater than the total support for a traditional candidate (see Table 1).[16] This type of funding system clearly favors subsi dized candidate's spending over traditional candidate spending, and as a result, favors their speech.

In *Day v. Holahan*,[17] the United States Eight Circuit Court of Appeals held that a similar rescue fund scheme in Minnesota was unconstitutional. Besides the speech restrictions, the scheme was unconstitu tional because it favored subsidized can didate speech over traditional candidate speech (it was not content-neutral, which violates the First Amendment).[18]

2) Coerced Spending Limits. In *Buckley v. Valeo*,[19] the United States Supreme Court held that spending limits are unconstitu tional because they restrain expenditures and thereby restrain speech:

> A restriction on the amount of money a person or group can spend on politi cal communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audi

> ence reached. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.[20]

The Court did allow *voluntary* spending limits.[21] A candidate can voluntarily decide to limit expenditures. If, however, there is enough coercion placed on traditional can didates to become subsidized candidates, voluntary spending limits could become unconstitutional restrictions on spending. When is the line crossed?

There are serious problems with North Carolina's judicial campaign system that support the contention that it crosses the line. Rescue funds are provided to subsi dized candidates even when traditional candidates spend less money. This may be enough for some traditional candidates to feel coerced into becoming subsidized candidates. In addition, the 2002 judicial campaign legislation made it harder for tra ditional candidates to run for office. In all other state elections, candidates can receive a maximum of $4,000 contributions. Until the 2002 law was enacted, judicial elections also allowed $4,000 contributions. Howev er, the law reduced the limit to only $1,000. This change most likely was made to coerce traditional candidates into becoming subsi dized candidates.

Judiciary Can Be Independent Without NC's Taxpayer-Financed System

A justification for the state's judicial cam paign finance system is to ensure the in tegrity of the judicial system. There is no question that the judiciary should be fair, independent, and impartial. If it can be es tablished that there are genuine problems, then the proper solution may be to elimi nate judicial elections and go to an alterna tive system such as judicial appointments.

However, there has been no outcry re garding judicial bias probably because there already are plenty of protections in place to ensure that the judicial system is fair and impartial, including the North Caro lina Code of Judicial Conduct.[22] If a party in a case is concerned about the judge, a motion can be filed to disqualify the judge from the case. According to the Code, "a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned."[23]

A violation of the Code can lead to disciplinary actions that can be enforced under the law, including censure and even removal from office.[24] Also, judges, unlike legislators, have to clearly explain their opinions and put those opinions in writ ing. They have to explain their rationale and make decisions that are transparent for the public to see. If these protections are inadequate, then there is no reason why the Code could not be made more stringent—this would be the logical and appropriate first step. A taxpayer-financed system, for all of the reasons state above, is a cure that is worse than the disease.

Providing Few Benefits while Harming Democracy

Taxpayer-funded campaign systems are sup posed to promote ethics in the political sys tem. There is a fear that private campaign donations directly affect the policy deci sions made by political officials. To solve this problem, taxpayer-funded campaign systems provide politicians taxpayer dollars to fund their campaigns so that politicians are not beholden to any specific individu als. Money also is seen as playing too large a role in campaigns in part because candi dates are constantly worried about getting more money to win their campaigns. To solve this problem, these systems attempt to create artificial equal levels of funding for campaigns. Taxpayer-funded campaign systems, including North Carolina's own judicial campaign finance system, not only

fail to serve these purposes and related objectives, but also harm the democratic elections they are trying to protect.

Artificial Spending Limits Are Detrimental

Taxpayer financed systems assume that legislators and not citizens should decide what amount of money is appropriate to run a campaign. The amount of funding is designed to be equal for subsidized candi dates, even if a candidate does not need the money to run a campaign.

A system that allows citizens to freely decide for themselves whether or not to give money to candidates is the only demo cratic way to provide funding. There is no appropriate amount of money but simply the amount of money a candidate receives based on the support of citizens. If a can didate does not have support, he will not be able to raise money. This is a good thing, not a bad thing. This ensures that only credible candidates are on the ballot.

It also is impossible for the govern ment to determine an appropriate amount of funding for campaigns. One size does not fit all. For example, a subsidized can didate in one race may have so much name recognition that his campaign does not need as much money as another subsidized candidate in another race. There also can be ethical concerns in the decision-mak ing process. Legislators could set low limits that favor their re-election or set limits that are so high that there is significant waste because subsidized candidates will use money they do not need.

Artificial caps also create other ethical problems. If the number is too low, this will encourage some subsidized candidates to seek illegal private financing. If the number is too high, there will be waste and some subsidized candidates will spend taxpayer money simply because they have it.

The idea that equal campaign spend ing means a "fair" campaign is false. An artificially determined "equal" amount would restrict speech and undermine citi zens' ability to challenge incumbents. The United States Supreme Court in *Buckley v. Valeo* explains this problem, "Moreover, the equalization of permissible campaign expenditures might serve not to equalize the opportunities of all candidates, but to handicap a candidate who lacked substan tial name recognition or exposure of his views before the start of the campaign."[25]

Campaign advertising is critical to elections and voters. A recent study in the *American Journal of Political Science* under scores this importance:

> Specifically, our findings show that exposure to campaign advertising produces citizens who are more interested in the election, have more say about the candidates, are more familiar with who is running, and ultimately, are more likely to vote.[26]

Senator John Kerry (D-MA), recently on "Meet the Press," argued that his biggest mistake in the 2004 Presidential election was accepting federal funding. By accept ing federal funds, his campaign was not able to get his message out to voters. Accord ing to Kerry, "I think the biggest mistake was probably not going outside the federal financing so we could have controlled our own message... I think the most impor tant thing would have been to spend more money, if we could have, on the advertising and responding to some of the attacks."[27]

The Amount of Money Will Stay the Same

A key purpose of many taxpayer-fi nanced systems is to reduce the overall amount of money spent on campaigns. However, it is doubtful they will accom plish this objective. Taxpayer-financed systems only cap the money that can be spent by subsidized candidates and entice

Table 2: Independent Expenditures in Arizona and Maine — Before and After Public Financing

	*1998 (no public financing)	2000 (public financing)	*2002 (public financing)
Maine	Negligible	$136,000	$595,000
Arizona	$80,700	$38,300	$2.6 million

*Comparing 1998 and 2002 for both states is probably more accurate since they were both gubernatorial election years — most of the spending, at least in 2002, is for those races. Also, in Arizona, 2002 was the first year that five out of the seven statewide races could receive public funding.

traditional candidates to limit their spend ing. There still are independent groups and individuals that have no spending limits and will spend money to support their candi dates. Both independent expenditures and campaign-related issue advocacy likely will increase to offset any reductions in total campaign-related spending. It not even is clear that candidate spending will decrease.

The United States Government Ac countability Office[28] (GAO) examined the early impact of two comprehensive state taxpayer-funded campaign systems in Ari zona and Maine. Both Arizona and Maine provide taxpayer funding for legislative races. For statewide races, Arizona pro vides taxpayer funding for Governor and six state "cabinet" positions, while Maine only provides funding for Governor. While the GAO cautions that its findings cover only two election cycles, its report provides critical insights into state taxpayer-funded systems.[29]

Ironically, the GAO actually found that in Arizona, candidate spending went up considerably after public financing became available. In each state, independent expen ditures skyrocketed (see Table 2).[30]

The GAO did not measure the change in issue advocacy spending because it is very hard to measure. Issue advocacy is basically all the political advertisements by individuals and organizations that do not expressly support or oppose a candidate. Given the large amount of speech that issue advocacy covers, it likely is the most signifi cant category of political speech.

While issue advocacy spending is dif ficult to measure, the Congressional Re search Service (CRS) in a recent report estimated some data for federal elections. In 2000, $509 million was spent in issue advocacy. According to the report, however, this number did not distinguish between campaign-related and non-campaign-re lated communications. When comparing this number to independent expenditures, it is clear how important issue advocacy has become. In 2000, there was $25.6 million spent on independent expenditures—issue advocacy was about 20 times greater than independent expenditures.[31]

Taxpayer-Financed Systems Will Not Improve Ethics

Proponents of taxpayer-financed sys tems argue that these systems will reduce unethical conduct in the political system. However, simply because there is taxpayer financing does not mean unethical behavior will decline. The examples of bad apples in taxpayer-financed systems can be as easily demonstrated.

In Arizona, for example, three subsi dized candidates were ordered to pay back $104,237 in public finance funds after it was

discovered they illegally used the money for "food, alcoholic beverages, and other goods and services arguably of a festive and personal nature."[32] On election day, another subsidized candidate received some ad ditional state funding. Instead of immedi ately returning the money, he decided to use more than half of the money to turn a volunteer into a paid consultant. Some of the other money was used for a party and to reimburse his father for food and drink costs.[33]

Proponents of a taxpayer-financed system have concerns that dependence on private contributions causes candidates to give political favors to contributors. Again, there are going to be some bad apples that break the law. However, a few bad apples should not mean that the entire system should be thrown out at the expense of our democratic principles, especially when taxpayer-financed systems do not address the problems.

The evidence does not support the contention that quid pro quo relationships, which are illegal, are a systemic problem. Illegal quid pro quo arrangements certainly are not the only way a candidate could feel beholden to a contributor — there may be perceived or implicit pressure to vote a certain way. However, there is no evidence that there is a systemic problem of con tributions influencing candidates' voting patterns. Three MIT professors conducted a major review of the research on the relationship between contributions and legislative voting patterns (in Congress) and concluded:

> The evidence that campaign contri butions lead to a substantial influence on votes is rather thin. Legislators' votes depend almost entirely on their own beliefs and the preferences of their voters and their party. Contribu tions explain a miniscule fraction of the variation in voting behavior in the U.S. Congress. Members of Congress care foremost about winning re-elec tion. They must attend to the con stituency that elects them, voters in a district or state and the constituency that nominates them, the party.[34]

The Goldwater Institute conducted a study on the voting patterns of subsidized and traditional candidates in the Arizona legislature after their state's taxpayer-fi nanced system was enacted. The study found:

> It [The report] finds, after control ling for the ideology of legislators, no meaningful difference in the way subsidized and unsubsidized legisla tors voted. That is, legislators who used public funds to get elected were equally likely to vote for or against most interest groups such as the Arizona Chamber of Commerce, the Sierra Club, the National Rifle As sociation, and Planned Parenthood as their privately financed counterparts in the same party.[35]

A taxpayer-financed system would not solve the quid pro quo problem even if a major systemic problem did exist. Sub sidized candidates still can do favors for contributors. Just because private con tributions in general elections are illegal for subsidized candidates does not mean candidates will not take them. Those same bad apples that would engage in illegal quid pro quo transaction are not going to worry about other election laws. In fact, the taxpayer-financed system is even worse for citizens when it comes to addressing quid pro quo problems. On top of the illegal quid pro quo, the unethical candidate also is receiving tax dollars. These systems sim ply exchange artificial contribution limits

for artificial levels of public funding. Some candidates are going to ignore these limits whatever their form.

Finally, any "non–quid pro quo" influ ence that money has on candidate voting would not change. Proponents of taxpayer-financed systems assume that if less money goes directly to candidates through contri butions, candidates will not feel beholden to outside groups and individuals with their own policy interests. This is a false assumption. Candidates do not exist in a vacuum. When organizations and individu als independently spend money on behalf of candidates, as opposed to providing contributions, candidates that would have felt beholden because of contributions are still going to feel beholden. Candidates know who supported them financially, be it through contributions or other means.

Private contributions also are not even eliminated from many taxpayer-financed campaign systems, including North Caro lina's judicial campaign system. They still require subsidized candidates to solicit private contributions for primary elections.

Faith in Government Might Even Decrease

There also is the argument that even if there are no real ethical problems in the current campaign finance system, there is still the perception that ethical problems exist and citizens will therefore lose faith in the political system. In the first study of its kind, two leading scholars, David Primo of the University of Rochester and Jeffrey Milyo of the University of Missouri, found that state public financing leads citizens to have less trust in the system. To explain this result, they state "...public financing may be predicated on false promises for a bet ter democratic process. When the smoke clears and 'politics as usual' returns after reform, individuals may become even more disenchanted with their government."[36]

A benefit of taxpayer-funded campaign systems is supposed to be that citizens will have more confidence in state government. If a state did take a drastic step and change to taxpayer financing, taxpayers should expect that there would be a lot more confidence in state government. However, in GAO's study on the Arizona and Maine systems, citizens in both states were asked if public financing increased or decreased their confidence in state government. In Arizona, only 21% of those surveyed had more confidence in state government. This compares to 33% that said the change had no effect. In fact, 15% said they had even less confidence in state government. Maine was no better. Only 17% had more confi dence in state government. It had no effect for 39% of those surveyed and 8% said it decreased their confidence.

Candidates Should Raise Money

Proponents argue that candidates should not have to raise money because it takes too much of their time. If there were taxpayer financing there would be more time for candidates to talk with constitu ents.

Candidates know what they are getting into and should have to raise money. In fact, fundraising is an integral part of the democratic process. Private contributions are a measure of a candidate's support and help to ensure that only candidates that can be competitive in a general election are on the ballot. Taxpayer-financed systems provide a candidate public funds for the general election even if he does not have a chance to be competitive in the election.

Candidates *are* meeting with constitu ents during fundraising events and can delegate fundraising responsibilities when necessary. Most importantly, today's candi dates have an incredible fundraising ad vantage over their counterparts from even less than a decade ago. Through web sites, email lists, blogs, and other facets of the

Internet, fundraising is much easier. There also are advances in communications, such as cell phones, that make fundraising more efficient. A candidate can talk to a potential donor or a constituent almost anywhere at anytime.

More is Worse

Finally, proponents of taxpayer-financed systems argue that these systems are successful because a lot of candidates decide to become subsidized candidates. Former FEC Chairman Bradley Smith concisely refutes this argument: "And saying the system is working just because candidates take advantage of it is like saying welfare must be working when there are a lot of people receiving it."[37]

Conclusion

Ironically, proponents of taxpayer-financed campaign systems call them "clean elections." Subsidized candidates take taxpayer money that could be used for other purposes, including letting taxpayers keep their own money. These candidates also take money from many individuals that do not even support them. This is far from clean.

There are, of course, some corrupt politicians that will take advantage of the traditional campaign finance system. Identifying appropriate reforms is critical, such as providing better disclosure of how policy decisions are reached, not just better disclosure of how much money is raised. However, the appropriate reforms certainly are not taxpayer-financed systems. North Carolina never should try and fix some ethical problems by building an entire system that is more unethical and likely unconstitutional.

The current judicial campaign system should be repealed and North Carolina should return to a "traditional" financing system for judicial elections. Replacing traditional systems with taxpayer-financed systems is like throwing the baby out with the bath water.

Appendix: Taxpayer Funds to Subsidized Candidates in the 2006 Election

Funding

(the lump sums that would be paid to subsidized candidates for con tested general elections)

Court of Appeals	$144,500 (125 times the filing fee)
Associate Justice	$211,050 (175 times the filing fee)
Chief Justice	$216,650 (175 times the filing fee)

Trigger Amounts

(the amount when rescue funds are triggered)

	Primary*	General Election**
Court of Appeals	$69,360	$144,500
Associate Justice	$72,360	$211,050
Chief Justice	$74,280	$216,650

*Primary: *The trigger amount is the same as the maximum qualifying contribution level.*

**General Election: *The trigger amount is the same as the maximum amount a subsidized candidate can spend absent rescue funds—it is the amount of the lump sum payment to subsidized candidates for the general election.*

Rescue Funds

(A subsidized candidate can receive rescue funds up to the following limits)

	Primary	General Election	Total
Court of Appeals	$138,720	$289,000	$427,720
Associate Justice	$144,720	$422,100	$566,820
Chief Justice	$148,560	$433,300	$581,860

Source: *"2006-2007 Campaign Finance Manual," Campaign Finance Office of the North Carolina State Board of Elections, pp. 115-137.*

Notes

1. For a general discussion on the "Clean Elections" movement, see http://www.publicampaign.org/congress/howitworks.htm

2. S.L. 2002-158 at http://www.ncga.state.nc.us/Sessions/2001/Bills/Senate/HTML/S1054v10.html

3. This provision applies only to entities spending in excess of $3,000 in opposition to a subsidized candidate or in support of a traditional candidate opposing a subsidized candidate.

4. Doug Bend, "North Carolina's Public Financing of Judicial Campaigns: A Preliminary Analysis," *Georgetown Journal of Legal Ethics* (Summer 2005).

5. Data obtained through April 2006 phone conversations with Bill Spencer, Policy Analysis and Statistics Division, North Carolina Department of Revenue, and supported by the Department of Revenue's table entitled "Table 25: Statistics of Special Programs"; see also Democracy North Carolina fact sheet on judicial campaign reform at http://www.democracy-nc.org/nc/judicialcampaignreform/JCRAsuccess.pdf

6. Letter to the members of the North Carolina Bar from former Governors James E. Holshouser Jr. and James B. Hunt Jr. listed on the Democracy North Carolina web site at http://www.democracy-nc.org/improving/attysreform.html

7. S.L. 2005-237 (2005 budget bill), § 23A.1.(a) at http://www.ncga.state.nc.us/Sessions/2005/Bills/Senate/PDF/S622v9.pdf

8. William R. Gilkeson, memorandum regarding "Overview of Public Financing of Campaigns," House Select Committee on Ethics and Governmental Reform, Subcommittee on Campaign Finance/Reporting and Election Laws, March 23, 2006.

9. Text of comments presented by FEC Commissioner Michael E. Toner before the Campaign Finance Institute Task Force on Financing Presidential Campaigns, January 31, 2003, at http://www.fec.gov/members/toner/speeches/speech20030131.pdf

10. John Samples, "The Failures of Taxpayer Financing of Presidential Campaigns," Cato Institute, *Policy Analysis* No. 500, November 25, 2003, at 11 citing Michael J. Malbin and Thomas L. Gais, *The Day after Reform: Sobering Campaign Finance Lessons from the American States* (Albany, NY: Rockefeller Institute Press, 1998), p. 68, figure 4-1, and p. 70.

11. *Ibid.* at 12.

12. S.L. 2002-158 at §163-278.63.

13. See the Joint Conference Committee Report on the Continuation, Expansion, and Capital Budgets, July 17, 2004, p. J -27 at http://www.ncga.state.nc.us/Sessions/2003/budget/2004/budgetreport7-17.pdf

14. S.L 2004-124, § 26.2.(a) at http://www.ncga.state.nc.us/Sessions/2003/Bills/House/HTML/H1414v8.html

15. Complaint in the North Carolina judicial campaign system litigation at http://www.democracy-nc.org/nc/judicialcampaignreform/lawsuit.pdf

16. "2006-2007 Campaign Finance Manual," Campaign Finance Office of the North Carolina State Board of Elections, pp. 115-137.

17. *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994); but see *Daggett v. Commission on Gov't Ethics & Elec. Practices*, 205 F.3d 445 (1st Cir. 2000) at http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=1st&navby=case&no=992243

18. *Ibid.*

19. *Buckley v. Valeo*, 424 U.S. 1 (1976) at http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&linkurl=http%3a//www.law.umich.edu/&graphurl=http%3a//www.findlaw.com/images/michigan.gif&vol=424&invol=1

20. *Ibid.* at 19.

21. *Ibid.* at footnote 65.

22. North Carolina Code of Judicial Conduct at http://www.aoc.state.nc.us/www/public/aoc/Amendments-NCJudicialCode.pdf

23. *Ibid.* at Canon 3C.

24. N.C. Gen. Stat § 7A at http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_7A/Article_30.html

25. *Buckley v. Valeo*, note 18 at 56-57.

26. Paul Freedman, Michael Franz, and Kenneth Goldstein, "Campaign Advertising and Democratic Citizenship," *American Journal of Political Science* Vol. 48, No. 4, October 2004, at p. 734.

27. Douglas K. Daniel, "Kerry: Taking Federal Money a Mistake," Findlaw, April 9, 2006 at http://news.findlaw.com/ap/p/621/04-10-2006/e48b002958769fd5.html

28. The GAO was called the General Accounting Office when the report was issued.

29. U.S. General Accounting Office, *Early Experiences of Two States that Offer Full Public Funding for Political Candidates*, GAO-03-452 (Washington, DC: May 2003).

30. *Ibid.*

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37. "Down and Dirty: New Goldwater Institute six-year review finds Clean Elections fails to meet its promises," Goldwater Institute Press Release (March 30, 2006) at http://www.goldwaterinstitute.org/article.php/942.html

About the Author

Daren Bakst, Esq., is the Legal and Regulatory Policy Analyst for the John Locke Foundation. In 1998, Bakst founded the Council on Law in Higher Education (he still serves as its President), an independent, nonprofit organization that analyzes the regula tory and legal burden on colleges and universities. He has served as Policy Counsel for the National Legal Center for the Public Interest in Washington, D.C., and written for such organizations as the Competitive Enterprise Institute and Frontiers of Freedom. He currently serves on the Federalist Society's Administrative Law and Regulation Practice Group's Executive Committee.

A licensed attorney, Bakst earned his J.D. from the University of Miami and his LL.M. in Law and Government from American University, Washington College of Law. Both his B.A. and M.B.A. are from The George Washington University.

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"To prejudge other men's notions before we have looked into them is not to show their darkness but to put out our own eyes."

JOHN LOCKE (1632–1704)

Author, *Two Treatises of Government* and *Fundamental Constitutions of Carolina*

John Locke FOUNDATION

200 West Morgan St., #200
Raleigh, NC 27601
V: 919-828-3876
F: 919-821-5117
www.johnlocke.org
info@johnlocks.org