



**Before the Maryland Senate Education, Health, and
Environmental Affairs Committee:**

Hearing on campaign finance legislation
SB 657

Thursday, March 10, 2011
1 p.m.

Written testimony of:

Laura Renz

Government Relations & Research Director
Center for Competitive Politics
124 S. West St., Suite 201
Alexandria, VA 22314
<http://www.campaignfreedom.org>

Thank you for the opportunity to testify. My name is Laura Renz, and I am the Government Relations and Research Director at the Center for Competitive Politics, headquartered in Alexandria, Virginia. The Center's mission is to educate the public on the role of money in politics and to protect the First Amendment political rights of speech, assembly, and petition.

Taxpayer financed campaigns like the one proposed in SB657 are always touted with sweeping promises of reforming the nature of elections and improving the way legislators vote by compelling them to favor the "public interest" over "special interests." However, the experience of states that have operated under these programs demonstrates the failure of this approach.

My testimony today will discuss continued problems with similar programs around the country as well as specific provisions of SB 657 that warrant concern.

TAX FINANCING PROGRAMS FAIL TO MEET THEIR GOALS

Maine and Arizona have operated taxpayer financed election systems since 2000. Over a decade later, little has changed in either state in terms of improved governance or notably different election outcomes. In general, elections are no more competitive than before, taxpayers have not realized any savings or reductions in spending, the number of women or citizens from non-traditional backgrounds elected to office has not increased, and the voting patterns of legislators have not noticeably changed.¹

In addition, Maine has witnessed a significant increase in independent spending since the implementation of taxpayer financing.² Without the ability to directly contribute to the candidates of their choosing, taxpayer financing of campaigns compels individuals wanting to support candidates to seek out other means of expressing their views, often through independent expenditures.

Another mistaken belief about taxpayer financing schemes is that they will lead to different legislative outcomes, presumably more representative of the interests of citizens and constituents. This is based on the premise that, without contributions from individuals and

¹ United States General Accountability Office, "Campaign Finance Reform: Early Experiences of Two States That Offer Full Public Funding for Political Candidates," May 2003, <http://www.gao.gov/new.items/d03453.pdf>; Center for Competitive Politics, "Meet the New Legislature, Same as the Old Legislature," March 2010, http://www.campaignfreedom.org/doclib/20100303_ConnecticutCEPReport.pdf; Parnell, Sean, "Do Taxpayer Financed Campaigns Save Taxpayer Dollars," Center for Competitive Politics, September 2008, available at http://www.campaignfreedom.org/doclib/20080930_Issue_Analysis_4.pdf; Renz, Laura, "Do 'Clean Elections' Increase Women in State Legislature," Center for Competitive Politics, August 2008, http://www.campaignfreedom.org/doclib/20091014_IssueAnalysis3.pdf; Renz, Laura, "Legislator Occupations: Change of Status Quo After 'Clean Elections?'" Center for Competitive Politics, May 2008, http://www.campaignfreedom.org/doclib/20091014_IssueAnalysis2.pdf

² Maine Commission on Governmental Ethics and Election Practices, "2007 Report on the Maine Clean Election Act," pp. 40-70, http://www.campaignfreedom.org/doclib/20090916_2007_study_report.pdf

groups with interests contrary to the broader public good, it would be relatively easy to pass popular legislation.

Noted political scientists Stephen Bronars and John Lott explored this issue in a 1997 study which revealed that campaign contributions are driven by ideology and that legislators vote according to their own beliefs, their party loyalty, and the views of their constituents. They found no evidence that contributions influence legislative votes.³

In another study, the Goldwater Institute in Arizona analyzed the voting records of legislators elected with taxpayer dollars compared to legislators who relied on private contributions. The study concluded that legislators funded with taxpayer dollars “voted no differently from legislators who accepted private contributions.”⁴

Preliminary results from a study conducted by the Center for Competitive Politics on Connecticut’s taxpayer financing program, enacted in 2008, reached similar conclusions. There was no evidence that providing taxpayer dollars to legislative candidates reduced the likelihood that a legislator will vote with an interest group. In four of the six vote sets observed, the number of times that legislators voted in favor of the interest groups studied actually rose.⁵

Tax financed campaigns also divert public funds away from other priorities. Ironically, a system that claims to make government more responsive to voters actually siphons off money that could be going to infrastructure, education, and other essential services in favor of hand outs to political candidates.

“MATCHING FUNDS” POSE CONSTITUTIONAL PROBLEMS

Especially problematic about tax financing schemes are that most, including the one being discussed today, include a provision for “matching funds,” or a stipulation that allows participating candidates who are opposed by a nonparticipating candidate to raise additional private funds. There are several problems with this.

First, tax financing programs have been upheld as constitutional in previous legal challenges so long as the program is, and remains, voluntary. Matching fund provisions challenge this notion by tipping the scales so in favor of participating candidates that it really becomes unclear whether or not participation in the program is a choice.

³ Stephen Bronars and John Lott, *Do Campaign Donations Alter How a Politician Votes? Or, Do Donors Support Candidates Who Value the Same Things That They Do?*, 40 J. LAW & ECON. 317, 346-47 (1997).

⁴ Robert J. Francosi, “Is Cleanliness Political Godliness,” Goldwater Institute, November 2001,

⁵ Center for Competitive Politics, “Meet the New Legislature, Same as the Old Legislature,” March 2010, http://www.campaignfreedom.org/doclib/20100303_ConnecticutCEPReport.pdf

The additional filing requirements mandated for nonparticipating candidates under this bill also raise that question. SB 657 would require nonparticipating candidates who outspend the expenditure limit established for participating candidates to file a campaign finance report of all of the candidate's expenditures biweekly through and including the week after the election. In addition, during the 30 days preceding an election, a nonparticipating candidate has to notify the state board within 48 hours of each expenditure made over \$500.

It is difficult to see how these extraordinarily burdensome requirements are designed to do anything aside from make participation in the program a candidate's only real choice. These increased reporting requirements were also addressed in the Supreme Court's ruling in *Davis v. Federal Election Commission* that overturned a similar provision of federal campaign finance law.⁶

Finally, there are several serious legal challenges to the idea of matching funds within a tax financing program. Recent court rulings in both Arizona and Connecticut have struck down similar provisions as a violation of the First Amendment,⁷ in line with the Supreme Court's ruling in *Davis* that the state cannot provide preferential benefits to some candidates based on the spending of other candidates.⁸ The U.S. Supreme Court is scheduled to hear a challenge to Arizona's "matching funds" provision in March and is widely expected to uphold the lower court ruling striking down so-called "matching funds."

FAILURE OF SIMILAR PILOT PROGRAMS

New Jersey implemented a pilot program of tax financing for statewide candidates in a limited number of districts in 2007. However, the legislature opted to discontinue the program after analyzing the functionality of the program, the constitutional issues, and considering testimony from many candidates who participated in the program.

Both first time candidates and incumbent representatives had trouble raising the appropriate amount of qualifying contributions. This is an inherent flaw in these programs because if the qualifying amounts are set too low, candidates without significant support can run and waste money, but if the thresholds are set too high, they are simply not attainable for a large number of candidates.

⁶ *Davis v. Federal Election Commission*, 128 S. Ct. 2759, 2771-74 (2008).

⁷ In January, U.S. District Court Judge Roslyn Silver struck down the matching funds in Arizona's Clean Elections Program in the case *McComish v. Bennett*. She issued a stay with her order, which the Ninth Circuit Court of Appeals extended to allow the program to continue distributing funds until the next hearing on the case. On June 8, 2010, Justice Kennedy, as Circuit Justice for the Ninth Circuit, also issued a stay. Earlier, in Aug. 2009, U.S. District Court Judge Stefan Underhill struck down the state of Connecticut's entire program of taxpayer financed political campaigns, based on the program's discriminatory impact on minor-party candidates and the program's matching funds provision.

⁸ *Ibid.*, at 6.

Several candidates who participated in New Jersey's program testified to the New Jersey Clean Election Commission that traditional fundraising techniques like direct mail did not yield significant results, and that door to door solicitation also failed.⁹

As a result, one of the unintended consequences of that program was a reliance on special interest groups to help participating candidates raise the necessary amount of qualifying contributions.¹⁰ While this isn't inherently a bad thing, it is worth considering given one of the main goals of these programs being a decrease in interest group influence.

Without the ability to raise significant funds at the start of a campaign to increase their name recognition, unknown candidates are unable to mount significant challenges. The format of tax financing programs does not alleviate this problem and is more likely to help incumbent politicians free up their time than widen the field of potential candidates.

In conclusion, I hope my testimony has illuminated many of the problems with tax financed campaigns, and I will be happy to provide any additional commentary or research as you continue to consider this legislation.

⁹ Center for Competitive Politics, "Fairly Flawed: Analysis of the 2009 Fair Elections Now Act," July 2009, available at http://campaignfreedom.org/doclib/20090916_CCPFENABrief2009.pdf

¹⁰ Center for Competitive Politics, "Special Interests, Partisan Pouts, and the Usual Suspects," February 2009, available at http://campaignfreedom.org/doclib/20090223_SR1NJ.pdf