



Comments on

S. 750: The Fair Elections Now Act

United States Senate Subcommittee on the
Constitution, Civil Rights, and Human Rights

April 12, 2011

by

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The Center for Competitive Politics has serious concerns about S. 750, the Fair Elections Now Act (FENA). Simply put, programs of this nature do not work, and only waste significant amounts of taxpayer dollars.

The Center has conducted extensive research and analysis of programs similar to that proposed in S. 750. While the shortcomings of FENA are numerous, I would like to focus here on two central failures:

- Providing taxpayer dollars to political candidates as a replacement to private contributions does not in any way reduce the ability or desire of organized interest groups to support favored candidates, and in fact can force candidates to rely on interest groups for aid in fundraising
- The Act would primarily benefit incumbents, along with candidates backed by well-organized interest groups and party insiders as well as celebrity candidates who are already well known, while most outsider and challenger candidates would be unable to qualify

Interest group influence not diminished, and possibly is increased

While government-financed political campaigns are often touted as a way to reduce the influence of organized interest groups, there is little reason to believe this is the case. Research by the Center on New Jersey's 2007 pilot project found that approximately half of all \$10 qualifying contributions collected by candidates came from the members of a handful of major interest groups, such as unions, the National Rifle Association, pro-life and pro-choice groups, and the Sierra Club.¹

In Arizona, the practice of interest groups soliciting the necessary qualifying contributions on behalf of favored candidates is so common and widespread that a news report noted "...special interest groups routinely collect the necessary number of \$5 contributions to help candidates qualify for public funding."²

And in Maine unsuccessful gubernatorial candidate John Richardson enlisted unions endorsing his campaign to supply manpower for his effort to qualify for funding.³ This was reported in the media with little fanfare, again suggesting that this practice is common and unremarkable.

¹ Sean Parnell, Laura Renz, Sarah Falkenstein, *Special Interests, Partisan Pouts, and the Usual Suspects: A Study of Donors to New Jersey's "Clean Elections" Candidates in 2007*, p. 4, Center for Competitive Politics, February 2009

² Christian Palmer, "Clean Elections Institute loses national money stream, seeks donations," *Arizona Capitol Times*, December 29, 2008

³ Sasha Issenberg, "Maine blazes a trail in funding," *Boston Globe*, March 29, 2009. Available at: http://www.boston.com/news/local/main/articles/2010/03/29/maine_blazes_path_in_funding/?page=1

S. 750 would essentially compel candidates to rely on organized interest groups to raise the large number of qualifying contributions that are needed to receive millions in tax dollars, particularly non-incumbents.

Consider the case of someone running in the state of Illinois for U.S. Senate were S. 750 to become law. According to the qualifying standards contained in FENA, that person would need to raise approximately \$231,000 from a minimum of 11,000 Illinois citizens in a 5 month period.⁴

Because of the extremely low limit on contributions, it will be nearly impossible for a candidate to raise sufficient funds early in the process to establish a viable campaign without significant outside support. Just as we have seen in Arizona, Maine, and New Jersey, where the number of contributions to be raised is far fewer than 11,000, we can expect candidates to turn to well organized interest groups in order to provide the volunteer support and infrastructure capable of raising so many small contributions.

Primarily benefits incumbents and other political insiders

While advocates of FENA and similar programs often tout how outsider, non-traditional, and challenger candidates benefit, there is little evidence suggesting this is accurate. And the specific structure of this program make it all but certain to primarily benefit incumbents, candidates favored by the political establishment, and celebrity candidates.

As noted earlier, a key to qualifying under this program will be the involvement of well-organized interest groups. An incumbent is almost always going to have the support of their own party, and just as we typically see PAC contributions generally favor incumbents, we are likely to see a similar pattern for which candidates organized interest groups throw their support behind.

A review of the New Jersey pilot project in 2005 demonstrates how difficult it is for non-incumbents and those without the support of their party infrastructure and organized interest groups to qualify. As described in *Fairly Flawed*, the Center's analysis of an earlier version of FENA, only two out of ten candidates who attempted to qualify in New Jersey's program were able to do so, the incumbent in the race and his slate partner.⁵

⁴ Based on the following statutory provisions of S. 750: Sec. 501(3) and Sec. 512(a)

⁵ *Fairly Flawed: Analysis of the 2009 Fair Elections Now Act*, p. 20, Center for Competitive Politics, July 2009.

By establishing substantial qualification standards to receive tax funding for political campaigns, FENA would make it nearly impossible for a candidate who is not backed by their political party establishment or well-organized interest groups to qualify.

Looking again at a candidate attempting to qualify in Illinois, it is simply not feasible for such an “outsider” candidate to find a way to raise a minimum of \$231,000 from 11,000 state residents. They could not afford direct mail or rely on an established network of volunteers, and without prospects for success they are unlikely to receive positive media coverage that might get them enough attention to kickstart a fundraising drive.

Incumbent re-election rates also do not appear to have been noticeably affected by tax funding of political campaigns. Connecticut’s program has been in existence since 2008, and incumbent re-election rates have ranged between 88% and 97% of incumbents running for re-election.⁶

Likewise, New York City’s program has seen a high rate of re-election under the program, with 43 out of 44 incumbents winning in 2005⁷ and 34 of 39 in 2009.⁸

Simply put, FENA is a program that is designed for use by incumbents and others favored by the political establishment, who will be the only candidates capable of raising the large number of small contributions in the required time frame.

Other failings of similar tax funded political campaigns

Briefly, I’d like to list further failures of similar programs:

- The number of women and people from non-traditional backgrounds elected to the legislature has not increased as a result of “clean elections”⁹
- Taxpayers have not realized any savings as a result of “clean elections” programs¹⁰

⁶ Ibid at page 8, see also *Citizens Election Program 2010: A Novel System with Extraordinary Results*, p. 22, Connecticut State Elections Enforcement Commission, January 2011.

⁷ Public Dollars for the Public Good, A Report on the 2005 Elections, p. 20, New York City Campaign Finance Board, 2006

⁸ “Analysis: Public Funds Provided through the Campaign Finance Program Help Fuel Competitive Races,” p. 3, New York City Campaign Finance Board, November 5, 2009, available at:

http://www.nycfb.info/press/news/press_releases/2009-11-05.pdf and Rachael Fauss, “New York City Council Races Get More Competitive,” December 2009, available at: <http://www.gothamgazette.com/article/governing/20091216/17/3127>

⁹ Laura Renz, Issue Analysis #2, *Legislator Occupations: Change or Status Quo after Clean Elections*, April 2008, Center for Competitive Politics, and Laura Renz, Issue Analysis #3 *Do “Clean Elections” Laws Increase Women in State Legislatures*, August 2008, Center for Competitive Politics

¹⁰ Sean Parnell, Issue Analysis #4, *Do Taxpayer-Funded Campaigns Actually Save Taxpayer Dollars?*, September 2008, Center for Competitive Politics

- The number of candidates running for election has not appreciably increased since Maine's "clean elections" program began¹¹
- Public confidence in state government has not increased as a result of the "clean elections" program¹²
- There is little real evidence that campaign contributions influence the votes or behavior of candidates or elected officials¹³

Finally, a word of caution about tales of the alleged success of FENA-like programs in the states. Advocates of these schemes often resort to anecdotal stories claiming that were it not for the program, some particularly important or popular bill would not have passed because legislators, beholden to their campaign contributors, would have prevented the bill from advancing.

One example of this is the testimony of Hannah Pingree, former Speaker of the Maine House of Representatives, to a Congressional committee in July 2009 considering tax financing of Congressional campaigns. In her testimony, Speaker Pingree claimed that a bill regulating chemicals was able to pass with bipartisan support because the state's "clean elections" program meant legislators could ignore a "fierce lobbying effort" by the chemical and consumer products industries.¹⁴

But a closer look at this bill, LD-2048, tells a much different tale.¹⁵ In 2008, when the bill was voted on, six of 35 Maine State Senators had been elected relying on private contributions, three Republicans and three Democrats. All six voted for LD-2048, which passed unanimously.

In the House, 23 state legislators ran their campaigns on private contributions, 18 Republicans and five Democrats. All five Democrats voted for LD-2048, as did 14 of 18 Republicans who had not participated in the "clean elections" program. LD-2048 passed with 129 votes for and

¹¹ *Experience of Two States That Offered Full Public Funding for Political Candidates*, p. 41, General Accounting Office, May 2010. Available at: <http://www.gao.gov/new.items/d10390.pdf>

¹² *Ibid* at p. 75

¹³ See: Stephen Ansolobehere, James Snyder Jr., and Michiko Ueda, *Did Firms Profit from Soft Money?*, 3 *Election Law Journal* 193 (2004); Stephen Ansolobehere, John de Figueiredo, James Snyder Jr., *Why Is There So Little Money in U.S. Politics*, 17 *Journal of Economic Perspectives* 105 (2003); Robert Franciosi, "Is Cleanliness Political Goodliness?" p. 2, *The Goldwater Institute*, November 2001. Available at:

<http://www.goldwaterinstitute.org/article/899>; Sean Parnell, "Meet the New Legislature, Same as the Old Legislature," p. 9, March 2, 2010, *Center for Competitive Politics*. Available at:

<http://www.campaignfreedom.org/research/detail/meet-the-new-legislature-same-as-the-old-legislature>

¹⁴ Testimony of Speaker Hannah Pingree to the Committee on House Administration of the U.S. House of Representatives, July 30, 2009, on H.R. 1826, the 'Fair Elections Now Act.' Available at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_house_hearings&docid=f:52711.wais

¹⁵ Voting and candidates funding information found online at the web sites of the Maine State Legislature and the Maine Commission on Governmental Ethics and Campaign Practices

nine votes against, with five of the nine 'no' votes coming from Republicans who had participated in the "clean elections" program.

So, of the 29 Senators and Representatives supposedly inclined to favor donor interests over the public interest, 25 voted the way Speaker Pingree presumably felt was the "right," non-corrupt way. Plus, the bill was signed into law by Governor John Baldacci, who also rejected "clean elections" funding for both of his gubernatorial campaigns.

Clearly, whatever impulses and motivations were behind decisions to vote 'yes' or 'no' on LD-2048, the role of campaign contributions and whether or not a legislator had been elected as a "clean" candidate played little if any role.

Conclusion

The Fair Elections Now Act relies upon false premises and flawed analysis to advance a bill that, in operation, would almost exclusively benefit entrenched incumbents and other political insiders without providing any noticeable benefits to the public. Should FENA be enacted into law, it would represent simply one more failed effort to "reform" campaign finance in America, distinguishable only for the fact that it would cost hundreds of millions or even billions of taxpayer dollars wasted.

Public confidence in government is unlikely to be improved by such an outcome, and it may in fact be diminished as the public sees politicians helping themselves to public funds while otherwise continuing to go about business as usual. For these reasons, I urge the Senate to reject the Fair Elections Now Act.