

Public Campaign Financing in Portland:

Should “Voter-Owned Elections” Survive?



CENTER *for* GOVERNMENTAL STUDIES

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Foreword

This report examines the public campaign financing system in Portland, Oregon. The report is especially timely as Portland voters will be deciding whether to retain, or repeal, this innovative campaign financing system during the upcoming November 2, 2010 elections.

The Center for Governmental Studies (CGS) has studied public financing of elections in state and local jurisdictions for 27 years. The goal of these studies is to gauge whether public campaign financing laws are working and whether improvements are necessary.

CGS has published several general reports on public financing: a comprehensive analysis of state and local jurisdictions, *Keeping It Clean: Public Financing in American Elections* (2006); *Investing in Democracy: Creating Public Financing Elections in Your Community* (2003); and a report on innovative ways to fund public financing programs, *Public Financing of Elections: Where to Get the Money?* (2003).

CGS has also published detailed, jurisdiction-specific analyses of public financing programs in numerous state and local jurisdictions, including *Public Campaign Financing: North Carolina Judiciary—Balancing the Scales* (2009); *Public Campaign Financing in Florida: A Program Sours* (2008); *Public Campaign Financing in Wisconsin: Showing Its Age* (2008); *Public Campaign Financing in New Jersey—Governor: Weeding Out Big Money in the Garden State* (2008); *Public Campaign Financing in New Jersey—Legislature: A Pilot Project Takes Off* (2008); *Public Campaign Financing in Minnesota: Damming Big Money in the Land of 10,000 Lakes* (2008); *Public Campaign Financing in Michigan: Driving Towards Collapse?* (2008); *Political Reform That Works: Public Campaign Financing Blooms in Tucson* (2003); *A Statute of Liberty: How New York City's Campaign Finance Law is Changing the Face of Local Elections* (2003); *Dead On Arrival? Breathing Life into Suffolk County's New Campaign Finance Reforms* (2003); *On the Brink of Clean: Launching San Francisco's New Campaign Finance Reforms* (2002); and *Los Angeles: Eleven Years of Reform: Many Successes, More to be Done* (2001).

Copies of these and other CGS reports are available on the CGS website (www.cgs.org) and CGS' PolicyArchive (www.policyarchive.org).

Hilary Rau principally authored this report. Editorial insight and invaluable support for this report were provided by CGS President Bob Stern, CEO Tracy Westen, CGS Director of Political Reform Jessica Levinson and CGS legal intern Anais Martinez. Steve Williams of Smart Art and Design created the cover. The Rockefeller Brothers Fund provided a generous grant to make this report possible. The Fund, however, is not responsible for the statements and views expressed in this report.

CGS thanks the public officials, administrators and advocates on both sides of the public financing debate who provided CGS with invaluable information, suggestions, reports and observations about public financing in Portland, Oregon. In particular, CGS thanks Janice Thompson, Common Cause Oregon, for her invaluable comments and insights.

CGS is a non-profit, national non-partisan organization that creates innovative political and media solutions to help individuals participate more effectively in their communities and governments.

Executive Summary

In 2005, the Portland City Council enacted the first full or “clean money” local public campaign financing system in the nation. Now, after three city-wide elections under the new system, Portland voters are being asked on November 2, 2010, to decide whether to retain, or repeal, this landmark legislation.

Portland’s Campaign Finance Fund (“the Fund”), also known as Voter-Owned Elections, is a voluntary “clean money” program that allows candidates for Mayor, Commissioner and City Auditor to raise a qualifying number of small contributions and then receive a larger sum of public money to conduct their campaigns. The primary purpose of the Fund is to reduce the actual or perceived “corrupting” influence of large campaign contributions over candidate positions and officeholder decisions. Other program goals include promoting competitive elections, diversity among candidates and increased candidate contact with voters.

To qualify for the program, candidates must file a declaration of intent with the Auditor and collect a sizeable number of five dollar contributions. Candidates for Auditor and Commissioner must collect 1,000 five dollar contributions; candidates for Mayor must collect 1,500 five dollar contributions. Candidates seeking public funding must demonstrate that they have complied with all relevant rules, including strict limits on campaign expenditures and contributions.

Certified mayoral candidates are eligible for an initial grant of \$200,000 for the primary, while candidates for auditor and commissioner are eligible for an initial grant of \$150,000. Additional public funds are available to candidates who advance to a runoff general election. Publicly financed candidates are also eligible to receive supplemental matching funds if they are outspent by a nonparticipating opponent, independent expenditures or a combination of the two.

As planned from the program's beginning, the Fund has been placed on the ballot for voter review in the upcoming November 2, 2010 election. A majority of Portland voters must vote yes on Measure 26-108 for the program to continue in effect.

Portland's young public campaign financing system has not produced dramatic change in its first three election cycles, but it has shown promise as a method of reducing the role of large contributions and high campaign spending in city elections. Whether the program is successful in promoting its goals over the long term will take more time to tell. It is unfortunate that Portland voters are being asked to approve or rescind this program in the absence of more long-term, helpful data about its efficacy. More elections must take place before the Fund can be assessed fully and fairly.

Findings

In *Should "Voter-Owned Elections" Survive?*, the Center for Governmental Studies (CGS) analyzes the Fund's strengths and weaknesses over the first three election cycles. The report finds:

- 1. Reduced Role of Large Contributions.** Public financing has shown promise as a means of reducing the role of large donations in elections. Before the law, the majority of donations came from a narrow range of economic sectors and geographical areas and sometimes in large contributions. After the law, some non-participating candidates agreed to limit their overall expenditures and contributions. If voters repeal the Fund, candidates may fail to voluntarily reduce their contributions and expenditures.
- 2. Decreased Overall Spending.** So far, overall campaign spending has gone down since the program was implemented. However, Portland has witnessed only eight contested city races since creating the Fund in 2005, and seven of these involved primary elections only; runoff

general elections were not held because the primary election victors garnered more than 50% of the vote. Because competitive races that proceed to general elections historically involve much higher campaign spending than less closely contested races, the program's effects on campaign spending cannot be fully assessed until more competitive races have occurred.

3. Effective Citizens Campaign Commission. The volunteer Citizens Campaign Commission, created by the Fund, has provided valuable program oversight and policy recommendations to the City Council. As a result, the city has consistently improved and refined the Fund, and it exhibits an important public commitment to ongoing improvement of local elections.

4. Low Candidate Participation. One of the program's early weaknesses has been low candidate participation—although this has lowered the program's costs. Since 2006, only 17.3% of opposed candidates successfully qualified as publicly funded candidates, creating doubts in the minds of some whether the program was necessary. More robust candidate participation would increase the Fund's ability to directly regulate campaign finance activity in city elections and would strengthen social pressure for nonparticipating candidates to self-limit their contributions and expenditures.

Recommendations

If Portland voters retain the city's campaign financing program, the city should consider the following improvements to the law:

1. Impose criminal penalties for serious violations of public financing rules. Portland has already reformed its program after a 2006 scandal involving fraud and misuse of public funds. In addition, Portland should impose specific criminal penalties for serious violations of

the City Code, such as falsifying signatures or knowingly misusing public funds. These penalties would further deter fraud and misuse and make it easier to prosecute offenders.

2. Prohibit paid gathering of qualifying contributions. Currently, the City Code allows candidates to hire paid canvassers to collect qualifying contributions, and there is no limit on the money candidates can spend to do so. This undermines the program's goal of candidate-voter interaction and could allow candidates without significant grassroots support to buy their way into public financing for their campaigns. The city should amend the law to provide that qualifying contributions may only be collected by unpaid volunteers.

3. Explore alternatives to supplemental matching funds to meet independent or wealthy candidate expenditures. The United States Supreme Court is currently considering whether or not to hear a case challenging the constitutionality of a supplemental matching funds provision in Arizona's public financing law that provides qualifying candidates with additional funds to meet independent expenditures or expenditures by nonparticipating candidates. Because Portland's program also provides for supplemental matching funds, Portland must consider how it should change its program should such provisions be found unconstitutional.

Public Campaign Financing in Portland: Should “Voter-Owned Elections” Survive?

I. Introduction

In 2005, the City Council in Portland, Oregon passed a landmark campaign finance program known as the Campaign Finance Fund (the “Fund”) or “Voter-Owned Elections.” Portland thus became the first U.S. city to offer full or “clean money” public campaign financing of local campaigns.

The Fund is a voluntary program. Candidates for Mayor, Commissioner and City Auditor who apply and qualify receive full public funding for their campaigns. To qualify, candidates must gather a specified number of five dollar contributions and agree to limit their spending to the public funds provided. Fundraising by participating candidates is strictly limited. The Fund is administered by the City Auditor with assistance and oversight by the Citizen Campaign Commission.

The ordinance enacting the Fund states that its purpose is to reduce the actual and perceived undue influence of large donations and special interests in campaigns. Other program goals include promoting competitive elections, diversity among candidates and increased candidate contact with voters.¹

A. Portland’s City Government

Portland, a city of 582,130, is the most populous city in Oregon and the second most populous city in the Pacific Northwest region of the United States. Portland has six elected

¹Portland City Council Resolution No. 36789; Portland Ordinance No. 1792598; Citizen Campaign Commission, Second Report to the City Council and Citizens of Portland, April 2009, at 10, *available at* <http://www.portlandonline.com/auditor/index.cfm?c=44428&a=241731>

officials: a Mayor, four Commissioners and a City Auditor. The mayor and the four commissioners make up Portland's City Council.

The City Council is the governing legislative body for the city. In addition, members of the City Council serve as administrators for city departments. The Mayor is responsible for assigning individual departments and bureaus to particular members of the City Council and may change those assignments at his or her discretion.

The City Auditor is responsible for conducting performance audits of city operations and performing a variety of other tasks that require independence or neutrality, such as managing city records, managing elections and handling complaints against the city. The City Auditor must be a certified auditing or accounting professional.

All Portland elected officials are elected at large on a non-partisan basis and serve four-year terms. Their terms are staggered by two years, so only three city offices are voted on in a typical election cycle. Candidates for city office compete in a nonpartisan primary election in the spring. If no candidate receives more than 50 percent of the vote, the top two finishers face off in a runoff election the following November. When a vacant seat needs to be filled, Portland holds a special nominating election, which is similar to a primary. If no candidate receives more than 50 percent of the vote, the top two candidates proceed to a special runoff election.

There are no term limits on Portland's elected offices. Portland pays its public officials well: as of 2010, the Mayor of Portland makes \$118,144 per year while the City Auditor and Commissioners make \$102,294 per year.² As a result, Portland city offices are considered desirable in the Oregon political community. Portland officeholders often have significant experience in politics before becoming elected.

² Two of the City Commissioners make slightly less—\$99,507—because they turned down a cost-of-living pay raise in 2009 due to the recession.

B. The Enactment of the Campaign Finance Fund

The Portland City Council enacted the Fund in 2005, primarily in response to growing concerns among Portland voters that large campaign contributions were unduly influencing the behavior of their elected officials. A majority of Portland voters supported at least the idea of public financing: in 2000, 57 percent of Portland voters voted in favor of statewide Measure 6, which would have implemented public financing in Oregon state elections. By 2002, public officials in Portland began to call for a public financing program in city elections. In 2004, the City Council unanimously passed a resolution ordering the preparation of a city public financing ordinance. The Council enacted the resulting ordinance four to one on April 7, 2005.

In the 2005 resolution adopting the Fund, the Council ordered the program to be referred to voters in the November 2010 election. To implement the referral, on May 26, 2010, the Council added a sunset provision providing that the Fund would only continue through the November 2010 general election. On the same day, the council voted to refer the pre-sunset provision version of City Code Chapter 2.10 to the voters. Both ordinances were approved by a vote of four to zero.³

As a result, the program will be referred to voters as Measure 26-108 on the November 2, 2010 ballot. A “yes” vote on Measure 26-108 is a vote for continuing the program. A “no” vote on the measure is a vote to terminate the program.

II. The Campaign Finance Fund

A. Sources of Funding

The money for the program comes from Portland’s General Fund. The City Code dictates that the City Auditor must appropriate funds of no more than 0.2% of the city’s General

³ Commissioner Dan Saltzman did not cast a vote on either ordinance.

Fund to cover the costs of the programs. No special taxes or fees are collected for the Fund. If the money appropriated for the Fund in a given election cycle exceeds the amount allocated to certified candidates, the surplus may be returned to the city's General Fund or reserved for use in a subsequent election. The program can also obtain funds from private donations and fines levied against participating candidates who violate the public financing rules.⁴

B. Candidate Certification Process

Candidates seeking certification for public funding must fulfill various requirements during a four month and a half qualifying period that ends four months before the primary election. Candidates must first file a Declaration of Intent to seek certification with the City Auditor.⁵ Candidates must then demonstrate a broad base of support by collecting a significant number of five dollar contributions from registered voters in Portland. Candidates for City Commissioner and City Auditor must collect 1,000 five dollar contributions, and mayoral candidates must collect 1,500 five dollar contributions.⁶ Candidates seeking certification must also attend a mandatory Campaign Finance Fund training conducted by the Auditor's office during the qualifying period.⁷

Candidates seeking certification must demonstrate that they have complied with all relevant rules, including strict limits on campaign expenditures and contributions during the qualifying and exploratory periods. Candidates are not eligible for certification if they have any outstanding money judgments or are running unopposed.⁸

After collecting the required number of qualifying contributions from Portland registered voters, a candidate must file for certification with the Auditor by the end of the qualifying period.

⁴ Portland City Code 2.10.040.

⁵ Portland City Code 2.10.060(A).

⁶ Portland City Code 2.10.070(D).

⁷ Portland City Code 2.10.070(H).

⁸ Portland City Code 2.10.080(B).

The Auditor must review the candidate's petition, verify the qualifying signatures and make a determination within ten business days. Once the Auditor verifies that a candidate has obtained the required number of contributions from Portland city residents and has met all other requirements, the candidate is certified for public funding. Upon certification, the candidate's remaining contributions must be returned to the contributor or placed into the Fund.⁹

C. Available Public Funds

1. Initial Grant

The Fund provides participating candidates with an initial, one-time grant of public funds based on the offices for which they are running. Qualified mayoral candidates receive \$200,000 in the primary and \$250,000 if a general election is required because no candidate received more than 50 percent of the vote in the primary. Candidates for City Commissioner and City Auditor receive \$150,000 in the primary and \$200,000 if a general election is held.¹⁰

Candidates in special nominating elections receive the same amounts as normal primary candidates: \$200,000 for mayoral candidates and \$150,000 for candidates for Commissioner or Auditor. In the event of a special run-off election, mayoral candidates receive \$137,000 and candidates for Commissioner or Auditor receive \$110,000.¹¹

2. Matching Funds

The City Code also provides for the allocation of supplemental public matching funds to promote equity and fairness in campaign spending. Certified candidates may be eligible to receive additional public matching funds if they are outspent by a nonparticipating opponent, independent expenditures or a combination of the two. Distribution of additional matching funds

⁹ This includes any contributions that were found to be non-qualifying and any qualifying contributions in excess of the minimum.

¹⁰ Portland City Code 2.10.110.

¹¹ Portland City Code 2.10.070.

is not automatic: eligible candidates must request them. The total amount of matching funds allocated by the Auditor may not exceed \$150,000 per office in a Primary Election or \$300,000 per office in a General Election.¹²

D. Rules for Participating Candidates

1. Restrictions on Private Contributions

Portland has no contribution limits for nonparticipating candidates.¹³ Candidates who accept public funds, however, are limited in their ability to raise outside funds, both after certification and during the preceding qualifying and exploratory periods. Subject to certain restrictions, candidates seeking public funding may accept the following types of outside contributions: (1) qualifying five dollar contributions, (2) seed money, (3) in-kind contributions and (4) contributions to retire debts from prior campaigns.

Table: Acceptable Outside Contributions for Candidates Seeking Public Financing

Exploratory Period	Qualifying Period	Post-Certification
<p>In-kind contributions, subject to limit*</p> <p>Seed money contributions of no more than \$100 per source and no more than \$15,000 total</p> <p>Contributions to retire previous campaign debts</p>	<p>In-kind contributions, subject to limit*</p> <p>Seed money contributions of no more than \$100 per source and no more than \$15,000 total</p> <p>Qualifying \$5 contributions from registered Portland voters</p>	<p>In-kind contributions, subject to limit*</p>

*Limits range from \$6,600 to \$15,000 depending on the office and type of election involved. See section (d) below.

¹² Portland City Code 2.10.150.

¹³ The decision to omit contribution limits may have been in part due to concerns about their compatibility with the Oregon Constitution. In *Vannatta v. Keisling*, 324 Or 514 (1997), the Oregon Supreme Court struck down a \$500 limit on contributions to candidates for statewide office as violative of Art. I, sec. 8 of the Oregon Constitution.

a. Seed Money

Candidates wishing to participate in Portland's public campaign financing program can accept small contributions, called seed money, during the exploratory and qualifying periods to test the waters for a campaign run while still remaining eligible for public financing. Candidates may not accept more than \$100 of seed money from any given source, including their own personal funds, and the total amount raised may not exceed \$15,000. Upon certification, the total amount of seed money collected by a candidate is subtracted from any public funds distributed to that candidate. Candidates may not raise additional outside seed money after being certified.¹⁴

b. Qualifying Five Dollar Contributions

During the qualifying period only, candidates seeking public financing must obtain contributions of exactly five dollars from persons who are registered to vote in Portland. In order for a donation to count toward a candidate's total, the donor must complete and sign a form affirming that he or she is registered to vote in Portland, has contributed exactly five dollars to the candidate, supports allocating public funds to the candidate, and has not received anything of value in exchange for his or her signature and contribution.

After certification, a candidate may not keep qualifying contributions in excess of the required minimum, nor may the candidate keep qualifying contributions that could not be verified by the Auditor's office. Such contributions must be disposed of in one of three ways: they may be (1) returned to the contributor, (2) donated to the Fund or (3) counted toward the candidate's seed money total.

¹⁴ Portland City Code 2.10.050(A).

c. Prior Campaign Debts

If a candidate seeking certification has outstanding debt from a prior campaign in which he was not certified, he may accept contributions during the exploratory period only for the sole purpose of retiring that debt.¹⁵

d. In-Kind Contributions

Participating candidates may receive a limited amount of in-kind contributions, which are goods or services that have monetary value. Candidates may accept in-kind contributions worth up to 6 percent of their expenditure limit. Therefore, mayoral candidates may accept in-kind contributions of up to \$12,000 in a primary or special nominating election, up to \$15,000 in a general election and up to \$8,820 in a special runoff election. Candidates for Commissioner and Auditor may accept up to \$9,000 in in-kind contributions in a primary or special nominating election, up to \$12,000 in a general election and up to \$6,600 in a special runoff election. Any in-kind contribution in excess of these amounts will disqualify a candidate from receiving public funding.¹⁶

Unlike the other three categories of outside contributions that are limited to early stages of the campaign, in-kind contributions below the specified limits may be accepted at any point during the campaign. There are no restrictions on the amount of in-kind contributions that a single source may give, provided that the aggregate amount is below the relevant limit. Volunteer work hours are not considered in-kind contributions.¹⁷ The City Auditor is responsible for determining whether a contribution or donation to a candidate will be considered

¹⁵ Portland City Code 2.10.050(B).

¹⁶ Portland City Code 2.10.050. (C)-(D).

¹⁷ *Id.*

an in-kind contribution. Candidates are entitled to request a hearing concerning the Auditor's decision.¹⁸

2. Restrictions on Campaign Expenditures

Publicly financed candidates may only make campaign expenditures out of their allocated public funds and any remaining qualifying and seed money contributions. In addition, candidates must comply with City Code provisions prohibiting personal, non-campaign related, and other impermissible expenditures. Participating candidates may not contribute public funds to other candidates, political committees, or ballot measure campaigns.¹⁹ If a participating candidate does not use all of her allocated funds during her campaign, she must return them to the Fund at the end of the campaign.²⁰

3. Other Rules for Participating Candidates

In order to facilitate oversight by the Auditor, participating candidates must submit timely reports of all campaign expenditures and contributions to ORESTAR (Oregon Elections System for Tracking and Reporting), the state campaign finance database, much more frequently than nonparticipating candidates. Non-participating candidates are required to submit campaign finance activity reports to ORESTAR monthly. Participating candidates, on the other hand, must submit reports biweekly. During the last forty-two days before an election, participating candidates must submit their reports weekly.²¹

¹⁸ Portland City Code 2.10.230(B)-(D).

¹⁹ Portland City Code 2.10.090(A)-(C).

²⁰ Portland City Code 2.10.160.

²¹ Portland City Code 2.10.120-130.

In addition, participating candidates must include in their campaign advertisements statements indicating (1) who paid for the ad, (2) that the candidate is certified and (3) that the candidate takes personal responsibility for the contents of the advertisement.²²

E. Penalties for Violation of Fund Rules

A participating candidate who misuses funds or otherwise violates one of the Fund rules may be subject to three forms of penalties upon the discretion of the Auditor: (1) a fine of between \$1,000 and \$10,000, (2) decertification as a publicly funded candidate and (3) repayment of public funds.²³ The City Code does not specifically provide for criminal penalties for violation of Fund rules.

Originally, Portland maintained a “one strike, you’re out” standard for candidate violations of program restrictions on campaign expenditures: any violation automatically resulted in decertification. However, after the Citizens Campaign Commission raised concerns that this standard was too harsh, the City Council amended the code. Under current rules, the Auditor has the authority to decertify a candidate after any violation of the Code. Decertification is mandatory if a candidate has committed (1) more than one violation of rules regarding campaign expenditures or (2) three or more violations of rules regarding campaign advertisements.²⁴

F. Administration

1. City Auditor

Pursuant to the City Code, the City Auditor is responsible for administering the law. The Auditor certifies candidates for public funding and ensures that the candidates comply with all its provisions. The Auditor verifies that expenditure reports are made on time and ensures that all

²² Portland City Code 2.10.90.

²³ Portland City Code 2.10.220(A)-(C).

²⁴ Portland ADM-2.17, 2.19.

signatures and donations are registered voters in the city of Portland.²⁵ Additionally, the Auditor makes a determination as to whether matching funds are appropriate in every contest in which he or she is not running for re-election. When the Auditor is running for re-election, the decisions regarding the certification for candidates for Auditor are made by the Citizens Campaign Commission.²⁶

2. Citizen Campaign Commission

The City Council established the Citizen Campaign Commission (“the Commission”) to enforce the Fund. The Commission is comprised of seven unpaid members who are appointed by the City Council to serve four-year terms. City Code specifies that Commission appointees must have a demonstrated interest in campaign finance and, as far as possible, represent diverse interests in the Portland community.²⁷ Under the Commission’s self-imposed Code of Conduct, members are prohibited from taking an active role in any campaign in which candidates could be eligible for public financing and must disclose their membership in any political organization that takes an active role in such races.²⁸

The Commission’s primary purpose is to oversee the functioning of the Fund and make policy recommendations to the Auditor and the City Council. The Commission acquires its information through regular meetings with the City Auditor and the City Elections Official and by conducting surveys and interviews of participating and non-participating candidates. The Commission is required by law to meet at least twice a year. In practice, however, the Commission meets far more often: commission meetings typically take place, at a minimum, every one to two months.

²⁵ Portland City Code 2.10.020.

²⁶ Portland City Code 2.10.030

²⁷ Portland City Code 2.10.030(B).

²⁸ Citizens Campaign Commission Code of Conduct.

Every two years, the Commission issues a detailed report analyzing the previous election cycle. These biannual reports assess the degree to which the Fund is accomplishing its stated goals, detail any problems or public concerns and recommend changes to address those problems. On occasion, the Commission also issues special reports and memos to City Council to address problems that arise between election cycles.²⁹

In addition to its oversight responsibilities, the Commission is responsible for making decisions about matching funds for City Auditor candidates when the current Auditor is running for reelection.³⁰

III. Analysis and Findings

A. History of Program

Public financing has been used to date in three Portland election cycles: 2006, 2008 and 2010.³¹ At least one candidate applied for certification in six of the eight races³² in which public funding was available. Candidates in those six races obtained certification a total of eleven times. Two candidates went on to win their respective races and two were later decertified. Only one race involving public funding has involved a runoff general election: the 2008 runoff for Commissioner #1 between publicly funded candidates Amanda Fritz and Charles Lewis.

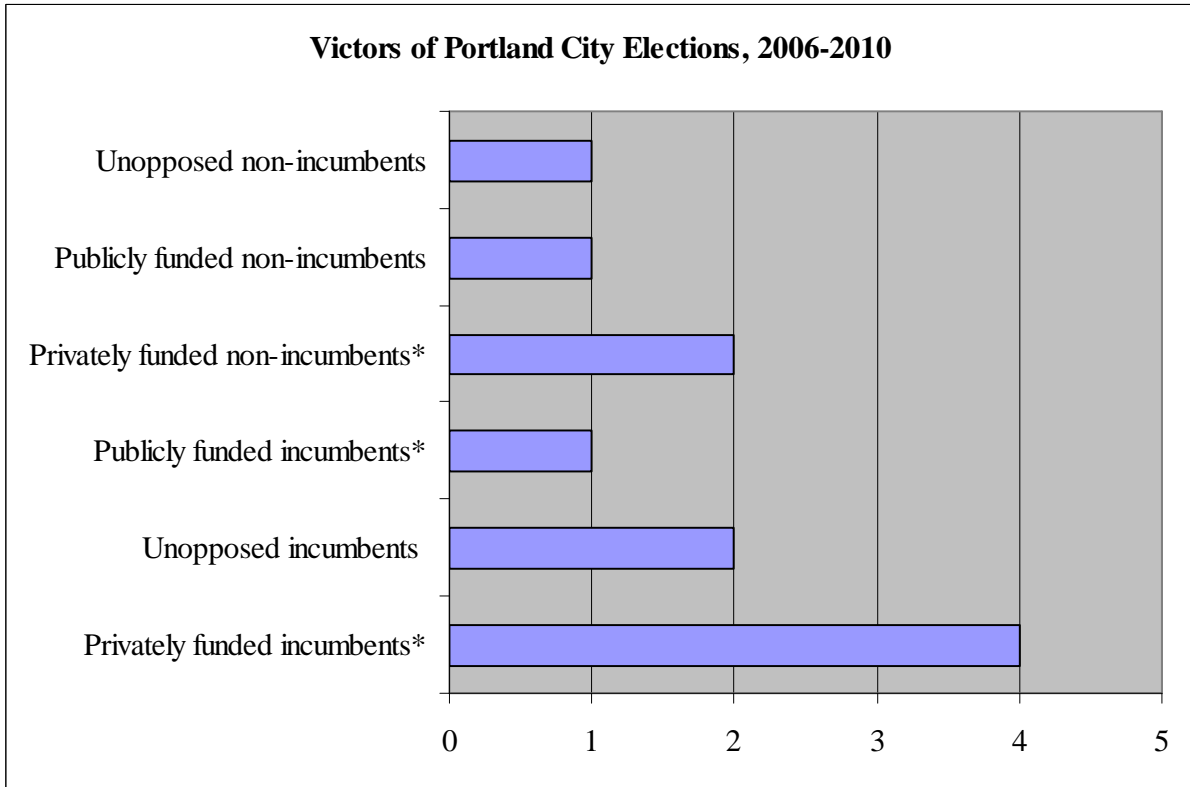
This comparatively small sample size makes it difficult to draw definitive conclusions about the efficacy of Portland's public financing program. The effects of the program, both positive and negative, have been small thus far. However, the Fund's short history provides some insight into the program's strengths, challenges and potential.

²⁹ Portland City Code 2.10.030(A).

³⁰ *Id.*

³¹ An additional special election was held in 2009 to fill the office of City Auditor. Because current Auditor Lavonne Griffin-Valade ran unopposed, she was not eligible to receive public funding.

³² There were a total of eleven races for eligible public offices during the applicable period, but only eight of the eleven were contested.



*Starred categories do not include candidates who ran unopposed.

Table: Candidates of Portland City Elections, 2006-2010

	2006	2008	2009 (Special)	2010	Total
Positions up for elections	3	4	1	3	11
Open seats	0	3	1	0	4
Candidates on ballot	15	28	1	10	54
Candidates requesting certification	4	7	0	2	13
Candidates certified	3, 1 later decertified	7, 1 later decertified	0	1	11, 2 later decertified
Victorious certified candidates	1	1	0	0	2
Public funds allocated	\$389,253	\$1,224,466	\$0	\$141,300	\$1,755,019

*Candidates who ran in multiple years are counted separately for each campaign year

1. 2006 Election Cycle

Portland's 2006 primary election involved three races: two for seats on the City Council (seats two and three) and one for City Auditor. There were no open seats and the incumbent prevailed in each race. Each victor won by a sufficient margin in the primary to avoid a runoff general election, so the primary results were dispositive in each race.

Of the three victorious incumbents, only one—Commissioner Erik Sten, a co-author of the ordinance creating the Fund—sought and obtained certification. Because incumbent City Auditor Gary Blackmer ran unopposed, he was ineligible for public funding. Commissioner Dan Saltzman, who voted in favor of the Fund in 2005, chose not to participate. Saltzman attributed his non-participation to his discomfort with taking public funds when, as a well-known

incumbent, he had little difficulty raising funds on his own.³³ However, Saltzman voluntarily limited the size of his contributions to \$500 and agreed to abide by the \$150,000 expenditure limit imposed on publicly funded candidates.³⁴

Among the challengers, thirteen filed Declarations of Intent to participate, three filed requests for certification and two successfully obtained certification. One of the certified challengers was later decertified.³⁵ The city spent a total of \$389,252 in public funds in the primary, \$59,956 of which were allocated as matching funds.³⁶

Table: Candidates in 2006 Election

	Commissioner #2	Commissioner #3	Auditor
Candidates on ballot	7	7	1
Candidates requesting certification	2	2	0
Candidates certified	2, 1 later decertified	1	0
Open Seat?	No	No	No
Victor	Participating incumbent	Non-participating incumbent	Unopposed incumbent

The Emilie Boyles Scandal

The 2006 primary was tainted with scandal when a candidate for Commissioner #2—homeless activist Emilie Boyles—was certified, then decertified, penalized and asked to return

³³ Citizen Campaign Commission, 2007 report.

³⁴ Saltzman did not abide by his self imposed limits perfectly: he accepted contributions larger than \$500 from family members and exceeded his self-imposed spending limit by \$16,497 dollars.

³⁵ Citizen Campaign Commission, 2007 report at 9.

³⁶ See Portland City Auditor, “Financial Summary for Campaign Finance Fund Certified Candidates,” 2006-2010, <http://www.portlandonline.com/auditor/index.cfm?c=52769&a=302228>.

public funding. Boyles' campaign consultant, Volodymyr Golovan, falsified qualifying signatures and contributions for both Boyles and another City Council candidate, Lucinda Tate, who unsuccessfully sought certification. Golovan admitted to forging signatures, was later convicted of ten felonies in connection with his forgeries for the Tate campaign³⁷ and served time in jail.³⁸

In addition, Boyles violated several fund rules regarding expenditure of public money. Boyles illegally used public funds to repay old debts, pay her home utility bills, prepay a lease, and pay her teenaged daughter \$12,500 for non-bona fide campaign services.³⁹ The city imposed \$14,000 in penalties and demanded that Boyles repay the funds. Boyles has repaid some, but not all, of the funds she owes. As of May 2010, Boyles still owed the city \$90,340 plus interest.⁴⁰

2. 2008 Election Cycle

The 2008 election cycle in Portland saw unusually high numbers of races and open seats. In addition to the three normally scheduled races—two for City Council and one for Mayor—a fourth council race was held to fill Commissioner Erik Sten's seat after his unexpected resignation. Three of these four races involved open seats, a highly unusual occurrence. While three candidates won their primary races by sufficient margins to avoid runoff elections, one of the commissioner's races went to a runoff general election.

The 2008 election cycle involved an unusually large number of candidates, both participating and non-participating. Of the twenty-eight candidates on the ballot, fourteen filed Declarations of Intent and seven requested certification. All seven candidates who requested

³⁷ Anna Griffin, "Golovan found guilty," Oregon Live, July 2, 2007, http://blog.oregonlive.com/portlandcityhall/2007/07/golovan_found_guilty.html

³⁸ Golovan was tried and acquitted of two additional felonies connected to his alleged forgeries for the Boyles campaign. *Id.*

³⁹ *In the Matter of Emilie Boyles*, OAH Case No. 128257.

⁴⁰ Ryan Frank, "Debate begins as Portland City Council sends public campaign financing to ballot," THE OREGONIAN, May 25, 2010.

certification were initially approved, but one was later de-certified before being awarded any funds. The unusually large number of competitive, open races made the 2008 election cycle a particularly expensive one for the Fund. The Auditor distributed \$1,224,467 to certified candidates, more than double the amounts distributed in 2006 and 2010 combined.⁴¹

Table: Candidates in 2008 Election

	Commissioner #1	Commissioner #4	Commissioner #2 (Special)	Mayor
Candidates on ballot	6	4	5	13
Candidates requesting certification	5	0	1	1
Candidates certified	5	0	1	1, later decertified
Open Seat?	Yes	No	Yes	Yes
Victor	Participating candidate	Non-participating incumbent	Non-participating candidate	Non-participating candidate

Amanda Fritz

In 2008, the Fund's biggest success story was that of Amanda Fritz. Fritz, who successfully ran for Commissioner #1, became the second certified candidate and the first non-incumbent certified candidate to win an election. Fritz was only the seventh woman elected to the City Council. Prior to her election, Fritz was a psychiatric nurse and community leader. Fritz had significant volunteer experience in Portland city politics, including seven years as a

⁴¹ See Portland City Auditor, "Financial Summary for Campaign Finance Fund Certified Candidates," 2006-2010, <http://www.portlandonline.com/auditor/index.cfm?c=52769&a=302228>.

member of Portland's volunteer Planning Commission, but unlike many of her colleagues on the City Council, she had no prior professional political experience.

Fritz has stated that she would not have run in 2008 if public financing had not been available. "I am not very good at asking for money," Fritz said, "and I don't think that being good at asking for money should be a prerequisite for serving on the City Council."⁴²

Since her election, Fritz has gained a reputation as a fiscally responsible, principled and independent-minded commissioner. Fritz has also been praised for her strong work ethic and exceptional attendance: Fritz was the only member of the City Council not to miss a single council meeting in 2009. In that time, she only missed one vote: when she ran out of the chambers to give a spare pair of her own shoes to a woman who had testified before the council that owned none. Her fellow council members, by comparison, missed between twenty-five and ninety votes each during the same time period. Critics have alleged that Fritz's independence and principled nature have led her to be a voice of dissent much more often than a coalition builder, thereby limiting her effectiveness as a legislator. However, the consensus is that Fritz has been a fresh, principled voice on the City Council.⁴³

Special Election

The unexpected resignation of Erik Sten created the need for a special election, which was held on the same day as the primary election in 2008. Because the City Code did not specify the amount of funding available to candidates in a special election, the City Council asked the Citizens Campaign Commission for guidance. The City Council and the Commission ultimately agreed that, because they had not had time to consider the matter thoroughly, it was best to

⁴² Telephone conversation with Commissioner Fritz.

⁴³ Beth Slovic, "Hi, I'm Amanda...", WILLAMETTE WEEK, August 11, 2010, *available at* <http://wwweek.com/editorial/3640/14385/>; Dave Lister, "Looking for Answers from Amanda Fritz," Oregon Live, http://www.oregonlive.com/opinion/index.ssf/2010/09/looking_for_answers_from_amand.html; Mark Larabee, "Amanda Fritz Prefers Lone Wolf Council Role," The Oregonian, September 3, 2009.

proceed without changing the length of the qualifying period or amount of funds appropriated for the primary.

The Commission recommended that publicly financed candidates receive \$150,000 in special runoff elections. The City Council disagreed, ultimately setting the funding level for special runoff elections at \$115,000. A non-publicly funded candidate received over 50 percent of the vote in the May primary election, so no runoff special election was held.

Decertification of Sho Dozono

As in the 2006 election, a certified candidate was later decertified. Sho Dozono, a candidate for mayor, accepted an in-kind contribution in the form of a poll one month before declaring his intent to participate in public financing. The cost of the poll, \$27,000, far exceeded the \$12,000 in-kind contribution limit. The City Auditor determined that Dozono was not yet a candidate when he commissioned the poll and that, therefore, the poll did not count toward Dozono's in-kind contribution limit. Dozono's opponents requested a hearing to challenge his certification. An administrative law judge examined Dozono's other activities during this time, including purchasing a domain name and setting up a committee, which exhibited sufficient intent to run for office, and Dozono was decertified. Dozono continued his campaign without public funding but lost to non-participating candidate Sam Adams.

3. 2010 Election Cycle

Three offices were up for election in 2010: two seats on the City Council and the office of City Auditor. The incumbent Auditor ran unopposed and was, therefore, ineligible for public funding. Both commissioner seats were won by incumbents who declined to participate in the program. Each race was decided in the primary with no need for a runoff election.

Only one candidate was certified in 2010: Jesse Cornett, who ran against heavily favored incumbent Dan Saltzman for Commissioner #3. Cornett placed third in a race among nine candidates.

Table: Candidates in 2010 Election

	Commissioner #2	Commissioner #3	Auditor
Candidates on ballot	4	9	1
Candidates requesting certification	0	2	0
Candidates certified	0	1	0
Open Seat?	No	No	No
Victor	Non-participating incumbent	Non-participating incumbent	Unopposed incumbent

B. How Well Has the Program Accomplished Its Goals?

1. Perceived Influence of Large Contributions

Public financing has shown promise as a means of reducing the role of large donations in elections. In the 2004 election that preceded the implementation of public financing, contributors donating \$50 or less comprised less than 5% of all the money raised in the contested general election. The majority of donations came from a narrow range of economic sectors and geographical areas. The geographical areas that provide the most political contributions historically received more city services, contributing to public perception that private donors have significant influence over candidates.⁴⁴

⁴⁴ Citizens Campaign Commission 2007 report at 13-14.

Since the implementation of public financing, participating candidates have been prohibited from accepting large donations. Some nonparticipating candidates continued to depend upon large donations. However, a number of candidates who did not receive public funding voluntarily agreed to limit the size of their cash contributions to \$500 or less, including City Commissioner Dan Saltzman and Mayor Sam Adams. Both certified and self-limiting candidates routinely emphasize the lack of big money donations in their campaign advertisements, thereby contributing to voter awareness of the role of money in elections.⁴⁵

While some candidates continue to accept large donations, the Fund has increased the number of viable candidates, both certified and self-limiting, who rely on smaller donations and public money to fund their campaign. As a result, Portland voters now have more opportunities to support candidates who do not rely on large donations.

2. Overall Campaign Spending

So far, overall campaign spending has gone down since the program was implemented. However, campaign spending in Portland has historically been much higher in races that proceeded to a general election. Since the Fund was implemented, only one race has proceeded to a general election—the 2008 race for Commissioner #1. That race, which was by far the most expensive race since the Fund was implemented, was less expensive than the three previous races for open council seats.⁴⁶ However, more competitive races that proceed to general elections must occur before one can fully assess the program's effects on total campaign spending.

The Fund has had some success in reducing high campaign spending among individual candidates, including nonparticipating candidates. Since the Fund was enacted, a number of

⁴⁵ *Id.*

⁴⁶ See Citizen Campaign Commission 2009 Report at 13; Official Election Results, *available at* <http://www.portlandonline.com/auditor/index.cfm?c=27132>

nonparticipating candidates have agreed to adopt self-imposed contribution and expenditure limits. Dan Saltzman, Sam Adams, and Sho Dozono all agreed to cap their contributions at \$500 and limit their expenditures to around the level permitted for participating candidates. While these candidates did not comply with these self-imposed limitations perfectly, their actions represent a positive move toward voluntary self-restraint in spending. This self-restraint among non-participating candidates may be an attempt to avoid triggering the allocation of matching funds to participating candidates. It may also be a response to a local culture that is suspicious of the role of money in politics: candidates who decline to participate in the Fund may face pressure from voters to demonstrate that they are not beholden to big money.

3. Competitive Races

Historically, very few challengers have defeated incumbents in Portland. The last three election cycles have been consistent with that trend: no challenger—participating or not—has defeated an incumbent since the implementation of public campaign financing. Some critics have suggested that the \$150,000 or \$200,000 allocation for participating candidates may be too low to unseat an incumbent. Proponents of the program respond that the purpose of the program is not to unseat incumbents, but rather to give non-incumbents a fair chance.

There is evidence that the fund allows a greater number of candidates to mount viable campaigns against incumbents. Most participating candidates report that they would not have run if public funding had not been available. In addition, some candidates have reported that receiving certification gave them public recognition and resulted in their invitation to major campaign events to which they might not have otherwise been invited.⁴⁷

⁴⁷ *Id.* at 15, Citizen Campaign Commission 2007 Report at 16-17.

4. Diversity in City Politics

Women and racial minorities have historically been underrepresented in Portland city politics. At the time the program was passed, the Portland City Council was made up of five white men. Recognizing that they did not reflect the demographics of their city, the Commissioners expressed hope that the Fund would increase the diversity of Portland office-holders.⁴⁸

Because only two publicly financed candidates have won their respective races, the program's short term impact on diversity in city government has been small. One of the two successful publicly financed candidates was a white woman: Amanda Fritz. The second successful publicly financed candidate, Erik Sten, was an incumbent white man.

Early data seems to indicate that public funds attract more women and minority candidates. In 2008, of the fifteen candidates who filed preliminary declarations of intent asking for public funds, eight were female or members of a racial minority. In addition, two were openly gay. Among the seventeen candidates who did not file declarations of intent, only two were women and only one was openly gay.⁴⁹ So far, few of these candidates have successfully obtained certification. Only two women and two members of racial minorities have obtained certification over the last three election cycles. Of these, two—Boyles and Dozono—were later decertified. Nonetheless, if public financing continues to attract more diverse candidates, a more diverse candidate pool may eventually translate into a more diverse city government.

Whether or not the fund will promote diversity among Portland's elected officials over the long term is difficult to determine at this point. While the short term impact of the program on diversity has been small, positive indicators warrant further observation. It will take more

⁴⁸ Citizen Campaign Commission 2009 Report at 15.

⁴⁹ *Id.*

time and, in particular, more open races before the public financing's programs effects on diversity can be fully and fairly assessed.

5. Interaction between Candidates and the Public

Certified candidates have nearly unanimously reported that Portland's public campaign financing system enabled them to spend more time directly interacting with voters. Candidates listed two primary reasons for this. First, some candidates reported that knowing they had enough money to run their campaigns freed them to spend more time interacting with a wide variety of voters and less time meeting with big donors or "dialing for dollars." Second, some candidates reported that very process of gathering the necessary qualifying contributions allowed them to spend valuable time with voters. Candidates report that contributing five dollars to a campaign made voters feel more invested in the political process, creating a sense of "pride in ownership."⁵⁰

6. Protection and Management of City Funds

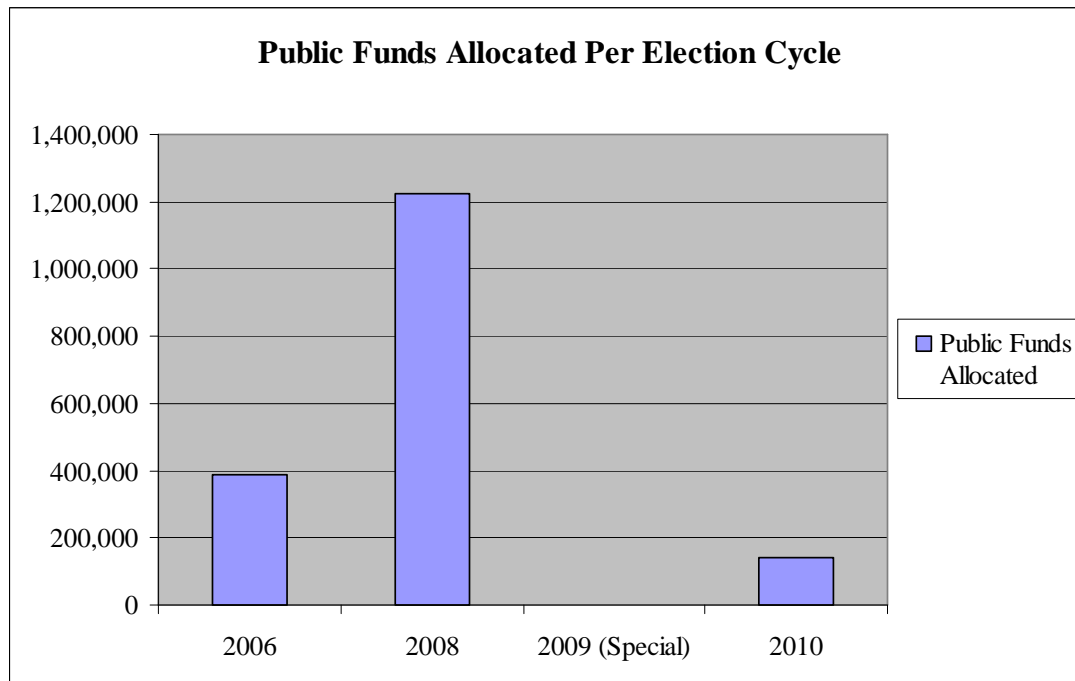
a. Cost

The overall cost of the program is limited, by law, to 0.2% of the city's General Fund. However, the Fund has historically spent only a fraction of that amount. Since 2006, Portland has allocated approximately \$1.7 million dollars to the Campaign Finance Fund. The vast majority of this expense was incurred in the 2008 election, which involved an extra city race, a high number of open seats, and a runoff general election.⁵¹ The 2008 election was atypical and future elections are not likely to be as expensive. As a result, the average cost per election may go down over time. On the other hand, increased awareness of public financing may encourage more candidates to participate as time goes on, which could increase the program's expense.

⁵⁰ Citizens Campaign Commission 2007 report at 19-20; Citizens Campaign Commission 2009 Report at 16-17.

⁵¹ Portland City Auditor, "Financial Summary for Campaign Finance Fund Certified Candidates," 2006-2010, <http://www.portlandonline.com/auditor/index.cfm?c=52769&a=302228>

Until more election cycles have passed, it is not possible to predict with any accuracy how expensive the program is likely to be.



Critics of Portland's public financing program have expressed concern that because the program is supported by the General Fund, it could take away available money from essential community services like law enforcement. For this reason, Commissioner Randy Leonard has argued that it would be better to support the Fund with a special levy rather than the General Fund.⁵²

b. Accountability and Misuse of Funds

Fraud and misuse of funds have created problems for Portland's campaign finance system, most notably with the Emilie Boyles scandal in 2006. As discussed above, Boyles was decertified after it came to light that her campaign consultant, Volodymyr Golovan, had falsified

⁵² Telephone conversation with Commissioner Leonard.

many of her qualifying contributions, and Boyles herself had committed numerous violations of the program rules regulating campaign expenditures. Boyles still owes Portland \$90,340.

Portland learned from the Boyles debacle and took steps to prevent similar abuses from occurring in the future. Golovan was promptly tried, convicted and sentenced to nine months in jail, sending a strong message that fraud would not be tolerated. In addition, many changes were made to the qualifying process to discourage fraud and promote accountability. Contribution forms were redesigned to provide better records of the transaction and to include stronger warnings about the consequences of violating rules. The city amended its law so that only registered Portland voters could make qualifying contributions. This change made it possible to compare qualifying signatures with the signatures on file for the signee's voter registration. All qualifying signatures were posted to the internet for the public to review. Mandatory trainings were implemented to ensure that candidates understand the requirements of the program. In addition, mindful of Boyles' unpaid debt to the city, the City Council amended the code to provide that candidates with outstanding money judgments cannot qualify for public funds.⁵³

So far, these changes appear to be successful. While some candidates have committed minor rule violations, no candidate since Boyles has been accused of fraud or improper use of public funds. Although Sho Dozono was decertified in the 2008 mayoral election for exceeding his in-kind contribution limit, this violation was non-fraudulent and was addressed promptly before Dozono received any public funds.

Some candidates have suggested that, as a further anti-fraud measure, qualifying contributions should be made in check or credit card only. Currently, qualifying contributions may be made in cash or by check but not by credit card. Proponents of a credit card and check

⁵³ Citizens Campaign Commission 2009 report at 20.

system argue that credit cards and checks leave a paper trail, unlike cash, which is very difficult to track.

However, allowing credit card transactions could be logistically challenging. Candidates would have to account for the per-transaction fee charged by most credit card merchants. For example, PayPal, which allows a user from home to make an online payment, will deduct 2.9% of the transaction as well as a thirty cent fee per transaction.⁵⁴ Therefore, if a supporter contributed five dollars to a candidate using PayPal, that candidate would receive only \$4.56. Under current rules, a contribution must be exactly five dollars in order to count as a qualifying contribution. Candidates could address this by paying the per-transaction fee from seed money or by passing the extra fee on to the contributor. In addition, a point-and-click system and a move away from cash donations could seriously undermine the Fund's goal of facilitating face-to-face interaction with a wide cross-section of the public.

c. Non-viable candidates

One of Portland's ongoing challenges has been determining how difficult it should be to obtain certification. Ideally, the certification process should be challenging enough to filter out non-viable candidates who lack community support, but not so challenging that good candidates are unable to obtain certification or are discouraged from trying.

The program drew criticism in 2010 when Jesse Cornett, the only candidate to obtain certification that year, placed a disappointing third in his race for commissioner. Cornett, despite spending \$145,000 in public funds, received just 8.02% of the vote. By contrast, the second place finisher received 11.91% of the vote after raising just \$23,000. The fourth place finisher,

⁵⁴ See "What are the fees for PayPal accounts?"

https://www.paypal.com/helpcenter/main.jsp?sessionId=fDhTMRWWXPyvyvZJqQSjMfMvmwGSPIf213v3wLQr1GDwJShVlCrZ!-187315550?locale=en_US&_dyncharset=UTF-8&countrycode=US&cmd=_help-ext&serverInstance=9014&t=solutionTab&ft=browseTab&ps=solutionPanels&solutionId=11927&isSrch=Yes

whom Cornett edged out by just over 900 votes, was a college student who raised and spent nothing. While no one alleged that Cornett's uses of public funds were improper, some claimed that Cornett's campaign expenditures were poorly thought out and wasteful. Cornett's disappointing performance prompted criticisms that the fund did not adequately distinguish between viable and non-viable candidates.⁵⁵

To some degree, this problem may be unavoidable: one of the primary purposes of public campaign financing is to give candidates without wealth or preexisting political connections a fair opportunity to present their platforms to voters. It is very difficult, if not impossible, to judge which candidates will be viable or popular before they have been given this opportunity to present their views. However, if Portland develops an ongoing problem with nonviable candidates qualifying for public funds, the City Council could remedy this by shortening the qualifying period, increasing the number of required qualifying contributions or otherwise raising the bar for obtaining certification. The Citizens Campaign Commission is currently monitoring this issue.

The Portland City Council has periodically adjusted the length and timing of the qualifying period to ensure that it presents an appropriate but not insurmountable hurdle to obtaining certification. Initially, the qualifying period lasted seven months, from September 1 to March 31. After the 2006 election cycle, the City Council, at the suggestion of the Citizens Campaign Commission, moved the qualifying period earlier in the year so that summer months would be included in the campaign season. After the 2008 election, the Citizens Campaign Commission became concerned that the seven month qualifying period was longer than necessary. Because candidates initially had to spend so much time explaining the unfamiliar

⁵⁵ See Ryan Frank, Portland candidate Jesse Cornett spent \$145,000 in public money ... to come in third, *The Oregonian*, available at http://www.oregonlive.com/portland/index.ssf/2010/05/portland_candidate_jesse_corne.html

system to the public, a seven month qualifying period was felt to be appropriate for the 2006 election cycle. However, once candidates and the public became more familiar with the system, less time was needed to acquire the necessary qualifying contributions. Accordingly, the City Council shortened the qualifying period to four and a half months.

C. Constitutional Questions

In light of recent Supreme Court case law, the matching funds provision of Portland's campaign finance system may be vulnerable to attack as an unjustifiable burden on candidate speech.

In *Davis v. Federal Election Commission*, the Supreme Court held that the "Millionaire's Amendment" of Bipartisan Campaign Reform Act (BCRA) was an unconstitutional burden on the exercise of the First Amendment freedom of speech.⁵⁶ Under the Millionaire's Amendment, the contribution limits for a candidate who ran against a self-funding candidate would triple if the self-financed candidate spent \$350,000 or more of her own money.⁵⁷ The Court found that this provision was a serious burden on the First Amendment rights of self-financed candidates, who were forced to choose between abiding by campaign expenditure limits and being subjected to a "scheme of discriminatory contribution limits."⁵⁸ The Court found that the state's asserted interest in leveling electoral opportunities for candidates with differing personal wealth was insufficient to justify the burden on self-financed candidate's First Amendment rights.⁵⁹

Based on the Court's rationale in *Davis*, public campaign financing systems that provide for matching funds now face additional constitutional challenges.⁶⁰ The Ninth Circuit recently

⁵⁶ *Davis v. Federal Elections Commission*, 128 S.Ct. 2759 (2008).

⁵⁷ *Id.* at 2766.

⁵⁸ *Id.* at 2772.

⁵⁹ *Id.* at 2773.

⁶⁰ Prior to *Davis*, three circuits considered challenges to public financing schemes with matching funds provisions. The First and Fourth Circuits concluded that the matching funds provisions did not burden expression, while the Eighth Circuit concluded the law at issue imposed an unconstitutional burden on political speech. See *N.C. Right to*

considered a challenge to Arizona's Citizens Clean Election Act in *McComish v. Bennett*.⁶¹

Similar to Portland's campaign finance system, the Arizona law provides candidates who participate in the state's public campaign financing program are eligible to receive matching funds based on the amount raised by non-participating opponents.⁶²

Plaintiffs argued that matching funds, like the altered contribution limits in *Davis*, constitute a severe burden on the First Amendment rights of nonparticipating candidates. The 9th Circuit disagreed, finding that the Arizona law was distinguishable from the Millionaire's Amendment in *Davis* on a number of grounds.

- a. *Lack of identity discrimination.* The Millionaire's Amendment targeted the wealthy by disadvantaging candidates capable of contributing a significant amount of their own money to their campaigns. By contrast, the Arizona law does not distinguish between expenditures based on whether they were financed with a candidate's personal funds.
- b. *Different regulatory framework.* In *Davis*, the law treated candidates running against each other under the same regulatory framework differently based on that candidate's decision to self-finance his or her campaign. Under the Arizona law, candidates are treated under completely different regulatory frameworks based on whether they choose to accept public financing.
- c. *Lack of restraints on candidate speech.* In *Davis*, self-financed candidates had to abide by stricter contribution limits that placed a direct burden on their speech rights. By contrast, candidates who decline to participate in the Arizona

Life v. Leake, 524 F.3d 426 (4th Cir. 2008), *Dagget v. Comm'n on Gov'tal Ethics and Election Practices*, 205 F.3d 445 (1st Cir. 2000); *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994).

⁶¹ *McComish v. Bennett*, 605 F.3d 720 (9th Cir. 2010).

⁶² *Id.* at 727.

law are subject to less stringent contribution limits than their participating counterparts.

- d. *Sufficient state interest.* The law at issue in *Davis* was constitutionally problematic because it sought to “level electoral opportunities for candidates of different personal wealth,” an interest that the court deemed insufficient to justify campaign finance restrictions. By comparison, the purpose of the Arizona law was to reduce corruption and apparent corruption, which has long been held to be a sufficiently compelling governmental interest. In light of Arizona’s long history of *quid pro quo* corruption and bribery, the 9th Circuit concluded that the state had a substantial and non-illusory interest in reducing corruption and its appearance among participating candidates.

The Ninth Circuit concluded that because the Arizona law imposed a minimal burden on free speech, it should be subject to intermediate scrutiny rather than strict scrutiny. Applying intermediate scrutiny, the Ninth Circuit concluded that the matching funds provisions were substantially related to the state’s non-illusory interest in reducing *quid pro quo* corruption. Therefore, the Ninth Circuit held that the Arizona law did not violate the First Amendment.⁶³

Since the Ninth Circuit’s decision in *McComish*, the Supreme Court has granted a stay pending grant of writ of certiorari. Because it takes five votes to issue a Supreme Court stay and only four votes to grant certiorari, it is very likely that the Supreme Court will eventually grant certiorari and hear the case. If so, the outcome of *McComish* may determine the constitutionality of matching funds programs across the country.

⁶³ The 2nd Circuit and the 11th Circuit later ruled on challenges to similar matching funds provisions and reached the opposite conclusion, holding that matching funds provisions impermissibly burdened the First Amendment rights of nonparticipating candidates. See *Green Party of Connecticut v. Garfield*, WL 2737134 (2nd Cir. 2010) and *Scott v. Roberts*, 612 F.3d 1279 (11th Cir. 2010).

The matching funds provision of Portland's campaign finance ordinance is similar to the matching funds provision at issue in *McComish*. Therefore, if the Supreme Court agrees with the Ninth Circuit's reasoning, Portland's matching funds provision is probably constitutional. Although Portland does not have Arizona's history of political corruption and vote-buying, Portland's desire to alleviate perceived bias and corruption would probably be a sufficient interest to uphold the law under the Ninth Circuit's reasoning.⁶⁴

If, however, the Supreme Court overturns the Ninth Circuit's decision and finds that Arizona's matching funds provision violates the First Amendment, Portland's matching funds provision will be vulnerable to attack. Arizona's campaign finance system is not identical to Portland's, so it is possible that Portland's matching funds system could pass constitutional muster even if Arizona's does not. If Arizona's matching funds provision is ruled unconstitutional, Portland's matching fund provision is probably unconstitutional as well.

D. The Citizens Campaign Commission

1. Investment in Continued Improvement

One of the most distinctive and important features of Portland's public financing system is the role of the Citizens Campaign Commission, which provides ongoing oversight and advice for improvements to the Fund. Over its brief history, the Commission has already demonstrated its commitment, efficacy and responsiveness. The City Council and Auditor have not always agreed with the Commission's conclusions, but they have been cooperative and responsive to the

⁶⁴ Arizona's matching funds system is designed differently than Portland's. Portland's program provides an initial grant that is expected to be enough to cover election costs in most cases. Matching funds in Portland exist to protect candidates in the event that someone spends an unusually large amount. Arizona, by contrast, gives small initial grants of \$10,000 designed to cover costs in noncompetitive races. Matching funds in Arizona are granted to provide an appropriate amount of funding in a normal, competitive race. Depending on the Supreme Court's reasoning, these differences could render one program unconstitutional even if the other survives.

Commission's concerns. The Commission and the city government have been willing to take feedback and make changes to the City Code when needed.

To take one notable example: the Boyles and Golovan scandal revealed many vulnerable and problematic aspects of Portland's public financing program. The Commission thoroughly analyzed these weaknesses in its first biannual report and made a long list of proposals designed to remedy them. The City Council acted on the Commission's recommendations promptly: it redesigned contribution forms, refined procedures for verifying qualifying signatures, imposed mandatory candidate trainings and enacted new requirements for participating candidates. As a result, the program is now less vulnerable to fraud.

The Commission's influence is not limited to big, headline-grabbing scandals. The Commission has also taken a hard look at many smaller aspects of the program, suggesting changes in candidate training, finance tracking mechanisms and the timing of the qualification process. The City Council has been generally responsive to these recommendations as well.

When analyzing possible weaknesses and shortcomings of the Fund, it is important to keep in mind that Portland has clearly shown its ability to take feedback, course-correct, and make improvements for the good of the program.

2. Advisory Model

While the program's commitment to ongoing improvement and self-correction is laudable, the structure of its administration raises some causes for concern. The Commission, unlike citizen commissions in many other jurisdictions, does not have any administrative or enforcement authority. Actual enforcement is carried out by the Auditor. Delegating all enforcement and administrative authority to one elected official could allow administration of the Fund to become politicized.

Nonetheless, unique aspects of Portland’s political culture make the current system more appropriate than it would be in other places. In Portland, it would be highly unusual to ask a volunteer commission to administer and enforce a city program; Portland has many volunteer commissions in all areas of city government, and almost all act in an advisory rather than administrative capacity. This advisory model for citizen commissions, while not appropriate everywhere, seems to work for Portland. In addition, the office of City Auditor is not significantly politicized in Portland. The Auditor, whose purpose is to carry out tasks that require independence and neutrality, must be a certified accounting or auditing professional. Auditors tend to serve for long periods of time and rarely run opposed: the last contested race for Auditor took place in 1986.

IV. Recommendations and Issues to Consider

A. Criminal Penalties for Serious Violations of Public Financing Rules

The City Council has already taken many laudable, apparently effective steps to reduce fraud and misuse of public funds. However, the City Council should also add specific criminal penalties for serious violations of the City Code, such as falsifying signatures or knowingly misusing public funds. Such penalties would deter fraudulent conduct and would make it simpler to prosecute any offenders.

Our advice runs contrary to that of the Brennan Institute, which advises against the imposition of criminal penalties for campaign finance violations because they tend to draw increased judicial scrutiny.⁶⁵ However, a provision that targets only fraud and misuse of public money does not implicate the same First Amendment interests that more general contribution

⁶⁵ Deborah Goldberg, *Writing Reform*, Brennan Center for Justice (Rev.2008). See also *Buckley v. Valeo*, 424 U.S. 1 (1976) at 40-41 (“Close examination of the specificity of the statutory limitation is required where . . . the legislation imposes criminal penalties in an area permeated by First Amendment interests.”).

and expenditure limits do. As long as such criminal provisions are clear and non-ambiguous, they should survive judicial scrutiny.

B. Method of Gathering Qualifying Contributions

Currently, the City Code does not prohibit the use of paid canvassers to collect qualifying contributions. Allowing paid canvassers to collect qualifying contributions undermines the program's goal of candidate-voter interaction and could allow candidates without significant grassroots support to buy their way into public financing for their campaigns. The City Code should be amended to clarify that qualifying contributions may only be collected by unpaid volunteers.

C. Low Candidate Participation Rate

Currently, relatively few candidates are participating in Portland's public financing program. Since 2006, only 17.3% of opposed candidates successfully obtained and kept certification as publicly funded candidates. Participation has been much higher in other cities with public financing. For example, the majority of city candidates in Albuquerque, New Mexico have participated in the city's public financing program during the last two election cycles.

It is not immediately clear why participation has been so low in Portland. Critics of the program have suggested that viable candidates in Portland already have the means to raise sufficient funds and may therefore lack incentives to participate. Alternately, it may be that the available funding is too low to incentivize most candidates to participate. It could also be that the qualifying process is too difficult. (The Citizens Campaign Commission recently concluded that, on the contrary, the qualifying process had become too easy, and it shortened the qualifying period accordingly.) Whatever the reasons, low candidate participation will diminish the

program's ability to support influence-free elections and accomplish its goals. The Citizens Campaign Commission should attempt to determine why so few candidates have chosen to participate in the program and should make recommendations to remedy this problem.

D. Alternatives to Additional Matching Funds

The City Council and the Citizens Campaign Commission are currently exploring alternatives to providing additional matching funds in the event that the Supreme Court finds that matching funds are unconstitutional. Because Portland's campaign finance law has a severance clause, the rest of the public financing system would remain in effect even if the matching funds provision were found unconstitutional. However, Portland's city government should explore whether the program will continue to meet its goals without the matching funds provision. Specifically, Portland must determine (1) whether publicly financed candidates would be able to stay competitive without the benefit of matching funds, and 2) whether campaign costs would increase without matching funds to disincentivize exorbitant campaign spending.

Some in Portland, including Commissioner Fritz, believe that additional matching funds are not necessary for Portland's public financing system to run effectively. The city has only allocated matching funds to one candidate since the Fund was implemented: incumbent Erik Sten, who successfully won reelection to his office in 2006 despite being heavily outspent by business-backed candidate Ginny Burdick. In other races involving certified candidates, either the nonparticipating candidates have not spent enough to trigger the allocation of matching funds or the participating candidates have declined matching funds that were offered to them. If the program can function without the need for matching funds, Portland may be minimally affected by an adverse Supreme Court holding.

This trend of low spending, however, is relatively recent and seems correlated with the implementation of the Fund. It is possible that matching funds have discouraged high spending, and that their removal will prompt a shift toward higher spending by non-participating candidates. If this happens, participating candidates may find it difficult to stay competitive.

If the removal of matching funds causes an increase in campaign spending by non-participating candidates, Portland should consider adjusting its system. One alternative would be to allow participating candidates to continue to raise small amounts of money after certification. In order to reduce any indebtedness to donors, Portland could set a low contribution limit for participating candidates and agree to match any raised funds up to a set point. This system, while imperfect, would help participating candidates to stay competitive without letting them become overly beholden to wealthy or corporate donors.⁶⁶

V. Conclusion

Portland's young public campaign financing system has not produced dramatic change in its first three election cycles, but it has shown significant promise as a method of reducing the role of money in politics and promoting greater interaction between candidates and voters. The program has also shown promise as a method of encouraging a wider, more diverse pool of candidates to run for city office. Whether the program is successful in promoting its goals over the long term will take more time to tell. It is unfortunate that Portland voters are being asked to approve or rescind this program in the absence of more long-term, helpful data about its efficacy.

The program has faced challenges with candidate fraud and misconduct, but the city government and Citizens Campaign Commission have taken strong action to discourage such behavior. Based on the last two election cycles, it appears that the implemented reforms have

⁶⁶ We would typically advise the application of contribution limits to help keep campaign spending down and promote more competitive elections. However, *Vannatta v. Keisling*, 324 Or 514 (1997) may be an impediment to that approach.

been effective. These early scandals should not overshadow the potential of the current, improved program.

So far, the program's biggest problem has been low candidate participation. The program can only influence the behavior of nonparticipating candidates indirectly. One of the program's strongest tools for discouraging excessive spending—the offer of additional matching funds to meet independent or nonparticipating candidate spending—may be declared unconstitutional by the Supreme Court in the near future. If this happens, the program can only influence the behavior of nonparticipating candidates by creating a social pressure to self-limit spending.

The power of social pressure to change candidate behavior, however, should not be discounted. A number of candidates have agreed to self-limit their contributions and expenditures in recent election cycles. Nonetheless, more robust candidate participation would both strengthen this social pressure and increase the Fund's ability to directly regulate campaign finance activity in city elections.

The law's greatest strength is Portland's commitment to ongoing adjustment and improvement of the program through the use of the Citizens Campaign Commission. Portland stepped into uncharted territory by implementing full municipal public financing, but the city has committed to learning from its mistakes. The Commission has been hardworking, thorough and effective. Both Portland and other nascent public financing programs will benefit from this self-examination and experimentation.

Portland, like most American cities, has faced budget challenges in the wake of the recent economic recession. Voters and elected officials alike must make difficult decisions about

funding priorities. Portland voters must decide this November whether the program's expense is justified by its potential as a long-term investment in Portland's democracy.

Public Campaign Financing in Portland:

Should “Voter-Owned Elections” Survive?

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The Rockefeller Brothers Fund provided generous support to make this report possible.



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