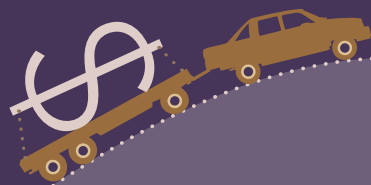


Public Campaign Financing:

Michigan



driving towards collapse?

by Sasha Horwitz

CENTER *for* GOVERNMENTAL STUDIES





Public Campaign Financing in Michigan

DRIVING TOWARDS COLLAPSE?

Sasha Horwitz

CENTER *for* GOVERNMENTAL STUDIES

2008



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The Center for Governmental Studies (CGS), founded in 1983, creates innovative political and media solutions to help individuals participate more effectively in their communities and governments.

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Foreword

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The Center for Governmental Studies (CGS) has studied public campaign financing in state and local elections for 25 years. This report examines public campaign financing in Michigan, one of the nation's oldest public financing programs. The goal of the project is to gauge how these programs are working and determine whether changes or adjustments 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); a primer, *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 Wisconsin, *Public Campaign Financing in Wisconsin: Showing its Age* (2008); New Jersey, *Public Campaign Financing in New Jersey-Governor: Weeding Out Big Money in the Garden State* (2008) and *Public Campaign Financing in New Jersey-Legislature: A Pilot Project Takes Off* (2008); Minnesota, *Public Campaign Financing in Minnesota: Damming Big Money in the Land of 10,000 Lakes* (2008); Tucson, *Political Reform That Works: Public Campaign Financing Blooms in Tucson* (2003); New York City, *A Statute of Liberty: How New York City's Campaign Finance Law is Changing the Face of Local Elections* (2003); Suffolk County, NY, *Dead On Arrival? Breathing Life into Suffolk County's New Campaign Finance Reforms* (2003); San Francisco, *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 at www.cgs.org).

CGS thanks the public officials, administrators and advocates on both sides of the public financing debate who assisted in the preparation of this report by providing invaluable information, suggestions and stories about public financing in Michigan.

Sasha Horwitz, CGS Project Manager, authored this report. CGS Chief Executive Officer Tracy Westen and President Bob Stern provided editorial comments.

CGS is a non-profit, non-partisan organization that creates innovative political and media solutions to help individuals participate more effectively in their communities and governments. CGS uses research, advocacy, information technology and education to improve the fairness of governmental policies and processes, empower the underserved to participate more effectively in their communities, improve communication between voters and candidates for office, and help implement effective public policy reforms.

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EXECUTIVE SUMMARY

In 1976, in the wake of Watergate, the state of Michigan enacted the Michigan Campaign Finance Act, which established a public campaign financing program for gubernatorial elections. To lessen the influence of private contributions, the program provides supplemental public money to candidates willing to limit their spending.

Michigan's program has fallen into disrepair. Inflation has driven campaign costs upwards and program revenue and disbursements of public money have failed to keep pace. Participation, which had been nearly unanimous for 20 years, now appears incompatible with running viable campaigns. Michigan must undertake significant efforts to revitalize its program, but the cost of serious reforms in the short term may make them impractical given the state's poor economic situation.

Under the current program, candidates for governor qualify for public funding by agreeing to limit their spending to \$2 million per election¹ and by raising \$75,000 in qualifying contributions—defined as the first \$100 of any size contribution from Michigan residents.² Once qualified, major party candidates are eligible to receive \$2 in public money for every \$1 raised, up to \$990,000 in public funds for the primary election. General election candidates receive a lump sum of \$1,125,000. Both the primary and general elections have separate \$2 million expenditure limits. Candidates can supplement the public money with private contributions. Third party candidates receive money in smaller quantities.

While it was possible to run a competitive gubernatorial campaign and abide by the spending limit at the time the Act was passed, this is no longer the case. In 2006, candidates for governor spent an average of \$15 million on the general election. The escalating costs of running viable campaigns have led candidates either to forego public money or to opt into the program expecting to be excused from the expenditure limit when facing a wealthy, privately financed opponent.

The growing inadequacies of Michigan's public campaign financing system highlight the need for reform. "While Michigan has not experienced major political scandals of the type that have unfolded in Ohio, Wisconsin and Illinois, money plays a large and growing role in state politics."³ Outside groups are spending millions of dollars without having to meet the same disclosure requirements as candidates.

¹ Michigan Compiled Laws § 169.267. An election is defined as "a primary, general, special or millage election held in [Michigan] or a convention or caucus of a political party held in [Michigan] to nominate a candidate." It also includes a recall vote. Michigan Compiled Laws § 169.205(2).

² Michigan Compiled Laws §§ 169.264(1)(a) and 169.212(1).

³ Michigan Campaign Finance Network, "A Case for Political Reform in Michigan," (2007), available at www.mcfn.com.

This report analyzes Michigan's public financing program, identifies a number of problems that require reform and proposes four distinct alternatives to deal with its outdated and ineffective program.

ALTERNATIVE ONE: INCREASE PUBLIC FUNDING FOR THE PROGRAM

This option includes four recommendations that would again make the program an attractive option for candidates. The recommendations all require additional program funding.

1. *Increase Funding Amounts and Spending Limits*

The current spending limit for candidates, last updated in 1993, is set at \$2 million for the primary and \$2 million for the general election. At most, a candidate can receive \$990,000 for the primary and \$1.125 million for the general election in public money. The spending limit needs to be updated to at least \$10 million (\$5 million per election) to reflect the costs of modern campaigns. It should also be automatically adjusted for inflation. For the program to be most effective, a significant portion of candidate funding should come from public sources and not private contributions.

2. *Explore Alternative Funding Sources*

Funding comes exclusively from voluntary taxpayer check-offs, which earmark \$3 of the tax bill to the program but do not increase personal taxes. Check-offs have proven unreliable because the number of designations is low and varies year to year. Funding the program at meaningful levels would take a significant increase in the check-off amount. Michigan should explore alternative funding options such as general fund appropriations, surcharges on certain criminal fines and money from sales of unclaimed property.

3. *Provide Additional Money to Counter Wealthy Opponents and Independent Spending*

Publicly-financed candidates may only spend up to \$2 million in an election, but that ceiling is waived if an opponent contributes more than \$340,000 to his or her own campaign. If the ceiling is removed, publicly-financed candidates can then raise vast amounts of private money, which defeats the purpose of public financing. Instead, the program should provide additional public money to publicly-financed candidates when an opponent spends more than the expenditure ceiling. Additional money should also be available to allow candidates to respond to spending by independent groups and political parties.

4. *Create Independent Blue Ribbon Campaign Finance Commission to Review Laws Every Ten Years*

Michigan's public campaign financing law has atrophied with time and would undoubtedly benefit from review by an independent decennial commission. An independent commission can provide impartial recommendations to rejuvenate the program and provide public credibility. The state should provide funding for the commission.

ALTERNATIVE TWO: REDUCE CONTRIBUTION LIMITS AND TOUGHEN DISCLOSURES

The next set of recommendations advises changing the Campaign Finance Act in ways that would strengthen the laws without increasing the cost of the program. These recommendations, however, would not be as effective as increasing the program's funding.

1. *Lower Contribution Limits to Match Federal Limits*

Michigan's current gubernatorial contribution limits of \$3,400 are too high, permitting donors to buy too much access to, or influence over, a candidate or elected official. Furthermore, loopholes enable donors to avoid contribution limits altogether by funneling money through PACs or parties that have greater contribution limits than individuals. Michigan should tie its contribution limits to federal limits, currently \$2,300 per contributor. Doing so would rein in larger contributions and eliminate the aforementioned loophole.

2. *Strengthen Penalties for Campaign Finance Violations*

Too many violations of the Campaign Finance Act meet toothless enforcement. Most penalties impose civil fines of \$1,000 and up to 90 days in jail, but the penalty of incarceration has never been used. The Secretary of State is responsible for identifying violations but lacks many of the powers needed to do so. The state should impose fines that require violators to pay up to three times the amount of the offense where appropriate. The Secretary of State should also have subpoena power to help meet the mandated investigatory responsibilities of the office.

3. *Improve Disclosure*

The program's disclosure schedule does not promote transparency. Campaigns have infrequent reporting requirements and do not have to report contributions made late in the campaign cycle until after the election. This deprives journalists, watchdog groups, rival campaigns and the public of information that could affect their vote.

Michigan should shift its disclosure calendar to better coincide with the election calendar, increase the number of disclosure reports filed, especially in non-election years and require daily disclosure of large, last minute contributions.

ALTERNATIVE THREE: SHIFT MICHIGAN'S GUBERNATORIAL PUBLIC FINANCING TO FINANCING OF JUDICIAL ELECTIONS

Michigan's struggling economy presents a tremendous challenge to its under-funded public financing program. Furthermore, privately financed Michigan Supreme Court campaigns often leads to apparent conflicts of interest. Judges and judicial candidates must raise money from private donors who are simultaneously seeking particular judicial outcomes. Public financing of judicial campaigns would help create a truly independent judiciary.

While funding for the gubernatorial program is too low to encourage participation, the revenues it receives could cover the costs of public financing for state supreme court

ances. To eliminate apparent conflicts of interest springing from privately financed judicial elections, the state could phase out its gubernatorial public financing program and replace it with judicial public campaign financing.

ALTERNATIVE FOUR: REPEAL GUBERNATORIAL PUBLIC FINANCING

Every year Michigan's gubernatorial public campaign financing program appropriates approximately \$1.5 million from the general fund to a segregated account. If present funding and spending limits continue, candidates will only participate in the program if they are freed from the expenditure ceiling. When that happens, those who accept public funding are permitted to raise unlimited amounts of private money, in direct contradiction of the program's intent. In effect, these candidates are privately financed, but receive a subsidy of public money that does little to offset contributor influence and simultaneously allows a candidate to declare himself or herself publicly-financed.

Michigan's program should be improved under any of the three preceding scenarios. If these are deemed fiscally infeasible, Michigan should consider repealing its program altogether. This is the least desirable of all alternatives, but it may be preferable to sustaining an unworkable—and costly—campaign financing program.



INTRODUCTION

“Campaign contributions are investments by individuals or interest groups that are seeking a public policy return on investment.”⁴

.....
Suffering primarily from inherent design flaws and legislative neglect, the program cannot, in its current state, offset the influence of large campaign contributors, reduce the cost of seeking office or provide a viable alternative to privately financed campaigns.
.....

In 1976, the Michigan state legislature passed the Michigan Campaign Finance Act, a comprehensive campaign finance reform package creating the Michigan Public Funding Program for Gubernatorial Elections. Conceived in the wake of the Watergate scandal to lessen the influence of large contributions by special interests, the legislature modeled the program on federal reforms. Congress adopted contributions limits for all federal candidates and, for presidential candidates, expenditure ceilings linked to public matching funds in the primary election and full public financing in the general election.⁵ However, Michigan’s program has not kept up with the times and now is practically defunct. Some reformers have even called the program broken beyond repair.⁶

Michigan has taken few steps to modernize its program over the past 32 years. Suffering primarily from inherent design flaws and legislative neglect, the program cannot, in its current state, offset the influence of large campaign contributors, reduce the cost of seeking office or provide a viable alternative to privately financed campaigns.

Time has revealed weaknesses and loopholes that undermine the effectiveness of public financing programs in many states including, Michigan. In response, many of those states have created new and more innovative solutions to lessen the influence of private sponsorship. Michigan, however, has failed to do so.

⁴ Michigan Campaign Finance Network, “A Case for Political Reform in Michigan,” (2007), at 3, available at www.mcfn.com.

⁵ Presidential Election Campaign Fund Act, 26 U.S.C. §9001 *et seq.*

⁶ Telephone Interview with Rich Robinson, Michigan Campaign Finance Network, January 31, 2008.

Michigan should strengthen its gubernatorial public campaign financing program, preferably by increasing program funding and spending limits. Yet Michigan’s current budget crises and ongoing recession⁷ will make this difficult, unless it can muster the political will to make this a high state priority.

A. GUBERNATORIAL ELECTIONS IN MICHIGAN

Public campaign financing in Michigan only covers candidates for governor. Michigan’s governors are elected in even-numbered years that do not include a presidential election.

..... Term limits prevent governors from serving more than two four-year terms in their lifetimes.

Because publicly-financed candidates must agree to voluntary expenditure limits to receive public money, campaign spending remained low until 1998.

The state’s public financing program, which first went into effect in 1978, has provided an alternative funding source to candidates for the last eight elections. In the first five of those, every gubernatorial candidate running in the general election accepted public money, but more recently participation has faltered. Because publicly-financed candidates must agree to voluntary expenditure limits to receive public money, campaign spending remained low until 1998. Since then, spending has skyrocketed. Candidates have apparently felt they could not run strong campaigns under the public financing system’s spending restrictions.

B. HOW THE MICHIGAN PUBLIC FUNDING PROGRAM WORKS

Michigan intended its public financing program to reduce the influence of large campaign contributions, provide public money to offset private contributions and offer voluntary expenditure ceilings as a condition of receiving public financing, thereby capping pressure on candidates to raise large sums of potentially corrupting private contributions. Gubernatorial candidates qualify for public money by agreeing to limit their spending to \$2 million per election⁸ and by collecting \$75,000 in qualifying contributions, which are defined as the first \$100 of any size contribution made by a Michigan resident in a given year.⁹ Qualified candidates receive matching funds for the primary election and a lump sum for the general election. Candidates may opt for public money in either the primary or general election, or both. Candidates that decline public funding in the primary, but accept it in the general, still must qualify during the primary.

Public funds can be used to pay for campaign advertising, campaign staff salaries, campaign travel, telephones, postage and other expenses permitted by the Act.¹⁰ Candidate committees may still accept contributions from political or independent committees, political parties and various business entities, but these contributions are not matched with public funds.

⁷ Daniel Vock, “One State Recession Hampers Michigan,” *www.Stateline.org*, April 11, 2007.

⁸ Michigan Compiled Laws § 169.267.

⁹ Michigan Compiled Laws §§ 169.264(1)(a) and 169.212(1).

¹⁰ Michigan Compiled Laws § 169.266.

I. FUNDING SOURCE

Funding for Michigan's public financing program comes entirely from taxpayers who designate \$3 of their taxes or \$6 for a joint return (not indexed for inflation) to the state campaign fund, a segregated account.¹¹ If at any time the balance exceeds \$10 million immediately following a gubernatorial election, the excess reverts to the general fund, although this has never happened.¹² In 2007, the legislature made a one-time only diversion of \$7.2 million in program funds to the state general fund to pay for other state programs.¹³

2. DISTRIBUTION OF FUNDS

Public money is distributed to qualified, major party candidates as matching funds in primary elections and as a lump sum in general elections. Publicly funded primary election candidates receive \$2 in matching funds for every \$1 raised in qualifying contributions.

..... The amount of the public disbursement is capped at \$990,000, but candidates
Public money is dis- can continue to raise private money up to the expenditure ceiling. Qualified
tributed to qualified, general election candidates receive a lump sum of \$1,125,000 and can raise
major party candi- private money up to the \$2 million expenditure limit.
dates as matching
funds in primary
elections and as a
lump sum in general
elections.
.....

During the primary election, candidates from third parties face the same qualification thresholds and funding formulas as major party candidates, but they have different funding formulas for the general election. Public money disbursements are calculated using a complicated formula (discussed in Appendix 2) to ensure that third party candidates only receive public funds in amounts appropriate to their political viability. Candidates from parties with wide public support are eligible to receive as much money as major party candidates.

3. EXPENDITURE CEILINGS

Participating gubernatorial candidates who wish to receive campaign funding from Michigan's public financing program must agree to spend no more than \$2 million (excluding incidental expenses) for each election.¹⁴ Under Michigan law, the primary and general elections are separate elections and each has its own \$2 million expenditure ceiling. Candidates who knowingly exceed the spending cap are guilty of a misdemeanor punishable by a \$1,000 fine or imprisonment. In some situations, the Act may prevent a candidate from assuming office or bar that candidate from receiving public money again in the future.¹⁵

¹¹ Michigan Compiled Laws § 169.261.

¹² *Id.*

¹³ "For fiscal year 2006-2007 only, \$7,200,000.00 shall be transferred from the state campaign fund to the general fund of this state." Michigan Compiled Laws § 169.261(6).

¹⁴ Michigan Compiled Laws § 169.267. An election is defined as "a primary, general, special or millage election held in [Michigan] or a convention or caucus of a political party held in [Michigan] to nominate a candidate." It also includes a recall vote. Michigan Compiled Laws § 169.205(2).

¹⁵ Michigan Compiled Laws § 169.267.

.....
Unlike other public financing programs, Michigan's program does not provide additional public money beyond the initial disbursement (often called "rescue funds") to participating candidates when they are significantly outspent by wealthy opponents or become the target of independent expenditures.
.....

Unlike other public financing programs, Michigan's program does not provide additional public money beyond the initial disbursement (often called "rescue funds") to participating candidates when they are significantly outspent by wealthy opponents or become the target of independent expenditures. Participating candidates are released from the expenditure limit once a privately financed opponent contributes \$340,000 or more to his or her own campaign.¹⁶ Only an opponent's contribution to his or her campaign waives the spending limit. When this happens, participating candidates receive public financing but can still raise and spend as much in private contributions as possible. Spending by outside groups has no effect and does not trigger the payment of additional public funds to a candidate.

¹⁶ Michigan Compiled Laws § I69.269.



ANALYSIS OF MICHIGAN'S PUBLIC CAMPAIGN FINANCING PROGRAM

Michigan's public financing program was never a strong campaign finance reform, but it functioned as the legislature intended for the first 16 years of its existence. Recently, it has struggled to meet the fiscal realities of modern elections, including the increased expenses of running for office and the rise of advertising by independent groups. Michigan's low spending limits have also discouraged candidates from participating, because they find it difficult, if not impossible, to run a competitive statewide campaign for \$2 million.

.....
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.....

Participants are not bound by expenditure limits when facing a wealthy opponent who contributes over \$340,000 to his or her campaign. When this occurs, private contributors can fund most of a publicly-financed candidate's campaign. Independent groups and PACs can also support candidates at substantially higher levels, because independent groups and PACs have high contributions limits. Issue ad groups do not contribute directly to candidates and do not have to disclose the names of their supporters.

A. CANDIDATE PARTICIPATION IS LOW

Of the major party candidates running between 1978 and 1994, all but one primary election candidate and every general election candidate accepted public money.¹⁷ This wholesale acceptance of public financing changed in 1998, when Geoffrey Fieger became the first general election candidate to reject public money.

Fieger spent over \$5 million self-financing his campaign. Although he lost, his decision inspired later candidates to reevaluate the fundraising compromises made by participating in the program. Participation rates have declined as a result. Other trends, such as increasing campaign costs, the growing availability of private contributions and the expanding role of outside groups in the political process, have encouraged a movement away from public financing.

¹⁷ No third party candidates have qualified for public funding.

FIGURE 1 Percentage of Candidates Accepting Public Financing¹⁸

Year	Primary	General
1978	100% (5 of 5)	100% (2 of 2)
1982	100% (10 of 10)	100% (2 of 2)
1986	80% (4 of 5)	100% (2 of 2)
1990	100% (2 of 2)	100% (2 of 2)
1994	100% (5 of 5)	100% (2 of 2)
1998	60% (3 of 5)	50% (1 of 2)
2002	80% (4 of 5)	100% (2 of 2)
2006	0% (0 of 2)	50% (1 of 2)

Sources: Michigan Secretary of State; National Institute of Money in State Politics, www.followthemoney.org.

In 2002, four of five competitive candidates accepted public money including both general election candidates. In 2006, for the first time, no candidate accepted public funding in the primary. Dick DeVos, who also rejected public money in the general election, self-financed his campaign to the tune of \$35 million. His opponent, Governor Jennifer Granholm, technically participated in the general election program, but she was functionally analogous to a privately financed candidate since DeVos' large contributions to his campaign released her from expenditure limits.

In 2006, for the first time, no candidate accepted public funding in the primary.

The low number of candidates accepting public financing is primarily a product of an unrealistically low \$2 million spending limit. In addition, no supplemental funds are available to publicly-financed candidates to respond to advertising by outside groups or wealthy candidates. Candidates feel doubly pigeonholed by restrictive spending limits and the unlikelihood they can respond to better funded attacks.

B. FUNDING IS INSUFFICIENT

Public support for public financing declined in concert with gubernatorial candidates' reluctance to accept the program and its restrictions. One barometer of public support is the number of voluntary taxpayer check-offs made each year. As check-offs have declined, the Michigan State Campaign Fund has become drastically under-funded.

Since the program's inception in 1976, a steadily decreasing number of Michigan taxpayers have contributed money to the State Campaign Fund. After reaching a peak of 28.3 percent in 1977, the percentage of Michigan taxpayers designating money into the State Campaign Fund reached a low point of 6.3 percent participation in 1999. It remains low with only 6.8 percent participating in 2005.¹⁹ Since 1992, not more than ten percent of taxpayers have contributed to the State Campaign Fund.

¹⁸ Of candidates that raised or spent over \$100,000.

¹⁹ Michigan Department of State, *Michigan Gubernatorial Public Funding Update for 2006 Elections*, (2006).

State Campaign Fund revenue comes exclusively from voluntary taxpayer designations, which are now set at \$3 per individual (\$6 for couples). The check-off earmarks money from a person's tax bill, but it does not increase the tax owed. Adjustments to the designated amount have been infrequent; the most recent occurred in 1993. That year, the legislature raised the amount from \$2 to \$3, but the increase did little to improve program revenue. The State Campaign Fund has not received more than \$2 million in a single year since 1983.

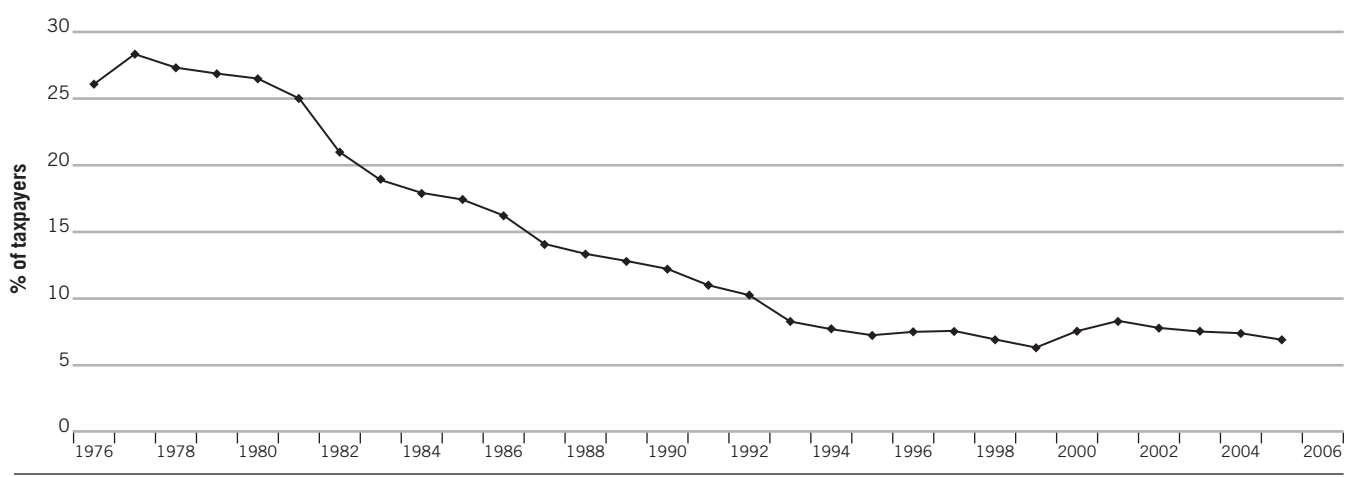
.....
 The combination
 of inflation and
 dwindling taxpayer
 contributions has
 left Michigan's State
 Campaign Fund
 drastically under-
 funded.

In addition to declining numbers of taxpayers opting to earmark money into the fund, the tax designation itself is not indexed for inflation. The purchasing power of a dollar today pales in comparison to a 1976 dollar. For this reason, the program brought in \$2,607,560 in 1976, the equivalent of \$8,950,000 in 2005 dollars. By contrast, in 2005 taxpayers only earmarked \$1,276,578 to the program.²⁰ For a detailed chart showing the decrease in program funding, see Appendices I and 2.

The combination of inflation and dwindling taxpayer contributions has left Michigan's State Campaign Fund drastically under-funded. The program has never run a deficit, although it came close in 1994.²¹ It would be a mistake to attribute this solvency to the strength of the State Campaign Fund. Instead, the program's solvency is a product of two factors: the program receives four years of check-offs per election and public funding levels remain low. At current funding levels, the program could not afford to adjust spending limits and public grants to appropriate levels without simultaneously increasing program funding.

The State Campaign Fund, which is exclusively funded by voluntary \$3 taxpayer check-offs, does not receive enough money to fund candidates at levels appropriate to

FIGURE 2 Percentage of Taxpayers Contributing to Michigan State Campaign Fund, 1976–2005



Source: Michigan Secretary of State, *Michigan Gubernatorial Public Funding Update for 2006 Elections*, (2006).

²⁰The most recent check-off designation data available is from 2005.

²¹Michigan Department of State, *Michigan Gubernatorial Public Funding Program 1998 Analysis*, (1998).

..... Michigan's reliance on taxpayer check-offs hobbles the program and should be abandoned or at least supplemented by other funding sources. modern campaigns. For the check-off to equal the value of 1976 funding, it would have needed to take in \$8,950,000 in 2005, but that year taxpayers only checked-off \$1,276,578. Only about 425,000 taxpayers use the check-off according to the most recent data. At that rate, the check-off amount would need to be increased to at least \$20 per taxpayer. Unfortunately, this assumes the number of contributors would stay constant, a dubious proposition given that the increase would obviously discourage many from using the check-off, even though that sum would not increase their tax bills. Michigan's reliance on taxpayer check-offs hobbles the program and should be abandoned or at least supplemented by other funding sources. Ideally, the money should be appropriated directly from the general fund. Alternatively, Michigan could take a lesson from states like Arizona, which levies a surcharge on certain fines, or Connecticut, which uses proceeds from the sale of unclaimed and abandoned property.

Recently, Michigan's program has faced greater problems than insufficient funding. Due to budget shortfalls in fiscal year 2007, the legislature added a line to the Campaign Finance Act allocating most of the balance of the State Campaign Fund to the general fund "for general purposes of balancing the budget."²² The public did not seem to notice.²³

C. EXPENDITURE LIMITS ARE TOO LOW

In 1976, when Michigan enacted the Campaign Finance Act, the expenditure limit enabled participating candidates to spend up to \$1 million on their campaigns plus an additional \$200,000 on fundraising (the "fundraising exemption"). Public Act 95 of 1989 increased the limit to \$1.5 million and the fundraising exemption to \$300,000, starting in 1990. The most recent revision, in 1993, Public Act 262, increased the expenditure limit to \$2 million and eliminated the fundraising exception.

Although it may once have been possible to wage a competitive gubernatorial campaign under those limits, today \$2 million for a statewide campaign is "woefully low, leading many candidates to opt out" of the public financing program.²⁴ Campaign costs have increased drastically in recent years, both nationally and in Michigan, while revenue to the State Campaign Fund has remained stagnant for 15 years.

The table below shows the amount of money spent by gubernatorial candidates in each election since the Campaign Finance Act passed. Although spending has increased dramatically in recent years, these figures only capture campaign spending that appears in candidate disclosure reports. The table does not include money spent by independent groups in support of or opposition to a candidate. The rise of independent spending poses a significant challenge to those interested in reducing the money spent on political campaigns.

²² Telephone Interview with Rich Robinson, Michigan Campaign Finance Network, January 31, 2008; Michigan Compiled Laws § 169.261(6).
²³ Telephone Interview with Bill Ballenger, Inside Michigan Politics, February 6, 2008.
²⁴ Suzanne Novak and Lauren Jones, *Campaign Finance in Michigan*, Brennan Center for Justice, (2007), at 14.

FIGURE 3 Expenditures for Gubernatorial Campaigns, 1978–2006

Year	Primary		General		Both
	Total Public and Private Expenditures	Median Expenditure per Candidate	Total Public and Private Expenditures	Median Expenditure per Candidate	Total Expenditures
1978	\$2,674,695	\$612,394	\$2,068,144	\$1,034,072	\$4,742,839
1982	\$7,683,643	\$817,507	\$2,489,007	\$1,244,503	\$10,172,650
1986	\$7,438,435	\$1,373,545	\$2,010,402	\$1,005,201	\$9,448,837
1990	\$3,685,891	\$1,842,945	\$3,075,627	\$1,537,814	\$6,761,518
1994	\$7,427,584	\$1,572,812	\$3,742,575	\$1,871,287	\$11,170,158
1998	\$6,047,220	\$1,839,345	\$9,402,237	\$4,701,119	\$18,378,713
2002	\$8,322,831	\$2,831,015	\$4,099,022	\$2,049,511	\$12,421,853
2006	\$32,174,169	\$16,087,085	\$30,970,996	\$15,485,498	\$63,145,165

Source: Michigan Secretary of State, *Michigan State Campaign Fund Gubernatorial Public Funding Program Statistics*, (1978–2006). Data from 1998 taken from Michigan's Gubernatorial Committee Search website, http://miboecfr.nictusa.com/cgi-bin/cfr/gub_search.cgi.

D. CONTRIBUTION LIMITS ARE TOO HIGH

Gubernatorial candidates running in Michigan have much higher contribution limits than federal candidates. At nearly 150 percent of federal limits, Michigan's contribution limits give individual contributors too much influence over a candidate's political future.

Individuals can give up to \$3,400 to gubernatorial candidates in Michigan. Federal limits, on the other hand, are currently set at \$2,300 for Representatives, Senators and Presidential candidates (adjusted upward for inflation each election year). Michigan and federal laws allow donors to make the maximum contribution limit in both the primary and general elections.

FIGURE 4 Contribution Limits to Candidates

Type of Contributor	Michigan Limit	Federal Limit (2008)
Individual	\$3,400	\$2,300
Political PAC	\$3,400	\$5,000
Independent PAC	\$34,000	\$5,000
County/District Party	\$34,000	\$10,000
State Party	\$68,000	\$10,000

FIGURE 5 Contribution Limits from Individuals to PACs or Parties

Type of Recipient	Michigan Limit	Federal Limit (2008)
PAC	Unlimited	\$5,000
Party	Unlimited	\$20,000

Michigan's public financing program is designed to encourage small contributions, since candidates must collect \$75,000 in contributions of \$100 or less in order to qualify. Yet, it fails to do so, because even the first \$100 of the largest contributions counts toward the \$75,000. There is no incentive, whatsoever, to collect small contributions from donors. Inevitably, candidates will raise many contributions from large donors, since it is no longer feasible to run a campaign for under \$2 million.

E. CANDIDATES NO LONGER CONSIDER PUBLIC FINANCING A VIABLE OPTION

Candidates who accept public money must voluntarily agree to spend no more than \$2 million per election. Only when every candidate in an election accepts public funding is the expenditure limit likely to have an effect. Once a privately financed candidate contributes \$340,000 or more to his or her own campaign, the spending limit for the publicly-financed opponent is waived and both can raise and spend unlimited amounts of money. The spending limit remains when the privately financed candidate raises outside money or independent groups spend heavily, because the waiver *only* goes into effect when a privately financed candidate contributes \$340,000 of his or her own money. By design, the public funding system can only reduce the influence of private contributors if both general election candidates opt into the system.

.....
 By design, the public funding system can only reduce the influence of private contributors if both general election candidates opt into the system.

In 1998, Geoffrey Fieger became the first general election candidate to reject public money when he self-financed his campaign against incumbent John Engler. In 2002, Jennifer Granholm refused public funds in the primary election, but she and her opponent both accepted them in the general. She made the same decision in 2006 but faced a self-financed general election opponent and was not bound by the spending limit.

Clearly, for any public financing system to be effective, candidates must participate at high rates. Michigan's program specifically requires that all candidates accept public money, because if one opts out, the expenditure limits will most likely be waived. Without expenditure limits, public money cannot offset private contributions.

F. INDEPENDENT EXPENDITURES CAN TOO EASILY INFLUENCE ELECTIONS

Michigan's restrictions on spending by publicly-financed candidates, in conjunction with national trends toward increased campaign spending, have spurred outside groups to increase their campaign spending. Independent expenditures (IEs), issue ads and other forms of political communication produced by groups interested in the outcome of the election, but unaffiliated with the campaigns themselves, have hurt the ability of the state to control spending. These sources are more difficult to regulate and tend not to be bound by the same high disclosure standards as traditional campaign spending.

Wealthy contributors can easily circumvent contribution limits by funneling money through PACs or other non-candidate campaign organizations. Michigan law classifies PACs as either "political" or "independent" and has different reporting requirements for each. Political PACs can give up to \$3,400 to a candidate, the same amount as from indi-

.....
 Independent expenditures (IEs), issue ads and other forms of political communication produced by groups interested in the outcome of the election, but unaffiliated with the campaigns themselves, have hurt the ability of the state to control spending.

viduals. Independent PACs, on the other hand, can contribute \$34,000 to a single candidate, but their “independent” status is contingent on certain conditions. They must be established at least six months before the election, have 25 unique contributors, and support or oppose at least three candidates in amounts of \$3,400 or less in the same calendar year those 25 contributions were received.²⁵

In Michigan, individuals are permitted to give unlimited sums of money to PACs or state political parties. Independent PACs and parties can contribute \$34,000 and \$68,000 respectively to candidates, effectively subverting contribution limits. Some public financing activists have described the practice of contributing to a committee for the purpose of avoiding low individual contribution limits “legal money laundering.”²⁶ PACs and party organizations also have a different reporting schedule from candidate committees and only file three times each year.

Parties and PACs that make independent expenditures are allowed to raise and spend unlimited sums supporting or opposing candidates, as long as they do not coordinate their expenditures with those candidates. Contributors are free to give unlimited amounts of money to the parties or PACs in addition to any contributions they may have made directly to the candidate. IEs flaunt the spirit of campaign expenditure and contribution limits by running advertisements that can far exceed the permitted expenditures of the candidates themselves. Their potential for large expenditures further deters candidates from accepting public financing.

Although IEs are uncoordinated with the campaigns, they appear to be functionally equivalent in the eyes of voters. In most cases, voters are unable to differentiate between IEs and campaign ads.

Similar to IEs are issue ads, another form of expenditure that is uncoordinated with a candidate’s campaign. Issue ads are communications that clearly identify a candidate for public office (often pejoratively and usually within a certain time period before the election) but do not expressly advocate the election or defeat of the candidate, (e.g. “Vote for X.”).²⁷ Issue ads are unregulated, because only communications that expressly advocate the election or defeat of candidate fall under Michigan’s campaign finance law.

Michigan’s failure to recognize that [issue ads] are electioneering communications creates an enormous loophole. While Michigan law prohibits corporations and unions from contributing money from their treasuries to political candidates and political action committees, they are free to provide funds to political parties and interest groups for campaign ads masquerading as issue ads. Furthermore, such soft-money contributions and the advertisements they support never have to be reported.²⁸

²⁵ Michigan Department of State, Bureau of Elections, “Independent Committee and Political Committee (PAC) Manual,” (2007).

²⁶ Michigan Campaign Finance Network, *supra* note I, at 6.

²⁷ See, e.g., 2 U.S.C. § 434(f)(3).

²⁸ Michigan Campaign Finance Network, *supra* note I, at 10.

“Since 2000, undisclosed issue ads have become a major feature of Michigan’s most contested statewide campaigns and some legislative contests.”²⁹ A report by the Michigan Campaign Finance Network found that the major parties spent over \$10 million “characterizing” gubernatorial nominees in 2002. In 2006, the Michigan Democratic Party alone spent \$12.8 million promoting Governor Granholm.

G. MANY WEALTHY CANDIDATES SELF-FUND THEIR CAMPAIGNS

Like other parts of the country, Michigan has recently witnessed the emergence of wealthy candidates who self-finance their campaigns. In 1998, Democratic challenger Geoffrey Fieger contributed more than \$5 million to his gubernatorial campaign;³⁰ in 2006, Republican challenger Dick DeVos contributed \$35 million to his campaign. DeVos’ challenger, incumbent Jennifer Granholm, declined public funds for the primary but accepted them in the general election. Both self-financed candidates lost, but their decision to forego public financing affected the way other campaigns think about campaign spending.

.....
Privately financed candidates are not bound by spending limits and can raise unlimited amounts of campaign money; however, publicly-financed candidates must agree to \$2 million spending limits as a condition of receiving public money.
.....

Privately financed candidates are not bound by spending limits and can raise unlimited amounts of campaign money; however, publicly-financed candidates must agree to \$2 million spending limits as a condition of receiving public money.

Publicly-financed candidates are freed from the \$2 million spending cap in the primary or general election, once their opponent contributes \$340,000 or more to his or her own campaign for that election. For this reason, wealthy opponents encourage candidates to opt-in to the program since they can collect public money and probably will not be restricted by the expenditure ceiling. Granholm, for instance, accepted public money for the general election recognizing that DeVos’ contributions to his own campaign would waive her expenditure ceiling.

Granholm received \$1.125 million in public funds, but she raised nearly \$14 million in private money. Public funding therefore failed to reduce the influence of big contributors or free her from the pressures of fundraising.

H. WEAK ENFORCEMENT ALLOWS VIOLATORS TO AVOID COMPLIANCE WITH THE LAW

Michigan generally imposes light penalties for violations of the Campaign Finance Act. Most violations are misdemeanors for which the state may levy a \$1,000 fine and/or up to 90 days imprisonment.³¹ Michigan has never sent anyone to jail for a violation.³² The Secretary of State is responsible for enforcing the Act but only has the power to hold

²⁹ *Id.*

³⁰ *Id.* at 7.

³¹ A candidate found guilty in a circuit court of breaking the spending limit instead may be restricted from receiving public money in the future or assuming office. Michigan Compiled Laws § 169.267.

³² Telephone Interview with Kelly Chesney, Michigan Department of State, April 15, 2008.

hearings and levy fines and cannot issue subpoenas. If the Secretary of State determines a violation has occurred, he or she may require the person to pay a fine “equal to the amount of the improper contribution or expenditure” and an additional \$1,000 civil penalty.³³ The Secretary of State may refer the matter to the Attorney General for the enforcement of a criminal penalty if he or she is unable to correct or prevent a future violation.³⁴

.....
 Small fiscal penalties tend not to deter campaigns from violating the Act. Some campaigns may even exploit the system by knowingly violating the Act with the intent to absorb the penalty.

Small fiscal penalties tend not to deter campaigns from violating the Act. Some campaigns may even exploit the system by knowingly violating the Act with the intent to absorb the penalty. A report by the Brennan Center for Justice identified one such exploitation by a PAC that chose not to file a campaign finance report in time for that year's election. The PAC filed the late report and paid the \$1,000 penalty several months after the election.³⁵ “Accordingly, voters were not able to trace contribution sources until months after they had cast their votes.”³⁶

Campaign finance laws in other jurisdictions tend to have violation-specific penalties—often criminal penalties or fines contingent on the size or type of violation. Arizona and Nebraska have some of the sternest campaign finance laws and have ousted officials from office for violations. Michigan may prevent a publicly-financed candidate from taking office if, and only if, he or she is found guilty of breaking the spending cap. This provision is too narrow. Michigan needs to strengthen its enforcement and impose tougher penalties to prove its commitment to deterring future violations.

I. DISCLOSURE REQUIREMENTS ARE BADLY TIMED AND DO NOT COVER ALL SPENDING

All PACs, party and campaign committees must file regular disclosure reports with the Secretary of State. Unfortunately, the reporting schedules do not serve the public interest. Disclosure reports are filed so infrequently that they are sometimes meaningless to journalists, watchdog organizations, rival campaigns and interested members of the public.

Candidates are required to disclose campaign contributions only once in non-election years and four times in election years. The first election year report is due two weeks before the primary election, thereby providing a limited view of contributions and spending in the last two weeks of the campaign. The second report is due about one month after the primary. By then, its disclosures of later contributions and expenditures are irrelevant to the primary. The third report spans a two month period and is due nearly two weeks before the general election. The final report is not due until December, long after voters have gone to the polls. It covers the final two weeks of the campaign and any spending that takes place through the end of November. The timing of these reports

³³ Michigan Compiled Laws § 169.215.

³⁴ *Id.*

³⁵ The PAC, Generations PAC, contributed to Detroit Mayor Kwame Kilpatrick's campaign.

³⁶ See Novak and Jones, *supra* note I, at I5

makes it possible for campaigns to conceal contributions that they believe could hurt their public image if publicized before the election.

If they are active, political parties, PACs and IEs must disclose all contributions and expenditures, up to three times each year. In the 14 days preceding an election, party committees must make daily disclosures if they receive contributions or make expenditures of \$1,000 or greater.³⁷ IEs made in the final two weeks before an election are not disclosed until after the election. Candidate committees do not have these requirements.

The Michigan Campaign Finance Act does not require issue ad reporting. In the eyes of most voters, issue ads are indistinguishable from regulated forms of campaign advertising. Therefore, their exclusion from reporting requirements is a serious loophole enabling individuals to spend anonymous and unlimited amounts of money to influence an election.

Secretary of State Terri Lynn Land, expressing her dissatisfaction with reporting requirements in 2006, released a 10-point plan for improving campaign financing entitled "Michigan Campaign Finance: Full, Timely Disclosure."³⁸ The proposal recommends reforms ranging from requiring real-time disclosure, to requiring issue ads to disclose sponsors and revising the disclosure calendar. The legislature has not acted on her recommendations.

J. "RESCUE FUNDS" ARE UNAVAILABLE

When privately financed candidates can outspend publicly-financed candidates, it poses a significant challenge to any campaign financing program. Without safety valves, publicly-financed candidates can be bound by spending limits that tie their hands when facing wealthy opponents. Some programs in other states provide matching "rescue funds" to publicly-financed candidates when their privately financed opponents exceed the expenditure limit. Others increase the spending cap once an opponent has crossed a given spending threshold. Still others waive the spending limit altogether. The different approaches each have good and bad consequences.

Michigan waives the spending limit, but only when one candidate contributes \$340,000 or more to his or her own campaign—not when publicly-financed candidates face opponents who raise private contributions or IEs that oppose them. This model keeps program costs down and simplifies accounting because the program will never pay out more than \$1.125 million of public money to a candidate in the general election. The main problem with this response is that it presses publicly-financed candidates to raise more private money to stay competitive, which violates the spirit of public financing.

Publicly-financed general election candidates that have had their expenditure ceilings waived are only nominally different from privately financed candidates. They can raise and spend unlimited private money just like non-participating candidates. Moreover, they can portray themselves as publicly-financed even as they raise large sums of private money. For instance, in 2006 Governor Granholm accepted public money but then was released

³⁷ Michigan Compiled Laws § 169.233.

³⁸ Michigan Department of State, *Michigan Campaign Finance: Full, Timely Disclosure*, (2006).

.....
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from the expenditure limit in the general election. As a result, 92 percent of her total general election spending came from private donors. Public funding therefore failed to insulate her from private contributions. In fact, it provided little more than a public subsidy without a social benefit, at a cost to taxpayers of \$1.125 million.

Because Michigan does not offer rescue funds, publicly-financed candidates are vulnerable to excessive spending by opponents or independent groups. In 2006, both candidates made the strategic decision to forego public financing in the primary election in order to raise competitive sums of money. In general, low expenditure limits create a disincentive to participate in the program since they undermine public financing's ability to create opportunities for non-wealthy candidates and/or insulate candidates from undue influence by large contributors. Alternatively, in circumstances where a candidate expects to face a wealthy opponent, the program actually creates an *incentive* to participate, since the expenditure limit will likely be waived and the candidate will be able to accept public money and collect unlimited private funds, as Granholm did. When this happens, public financing fails to lessen the influence of private contributions.

Rescue funds, which are available in many jurisdictions, but not in Michigan, allow candidates to respond to spending by IEs in addition to spending by rival campaigns. From a strategic standpoint, Michigan's decision to waive spending caps, instead of providing rescue funds, enables publicly-financed candidates to behave like their wealthy opponents, that is, raising and spending unlimited amounts of money from private contributors. On the one hand, this helps avert situations where a publicly-financed candidate is unilaterally bound by a spending limit while his or her self-financed opponent can spend money freely. On the other hand, waiving the limits provides no remedy against excessive spending by IEs or issue ads.

Finally, the trigger for waiving the expenditure limit is arbitrary and unnecessarily specific. Although it has not happened, the worst case scenario for a publicly-financed candidate is that he or she faces a privately financed opponent who contributes less than \$340,000 of his or her own money to the campaign. The publicly-financed candidate would be unable to spend more than \$2 million, while his or her opponent can raise unlimited sums of money. Any independent spending by parties, PACs, IEs or issue ads would only add to the disparity.



RECOMMENDATIONS

Michigan’s Gubernatorial Public Funding Program is clearly broken and unsustainable in its current form. Without a significant increase in funding, the program is worse than dysfunctional; it is subject to costly abuse by the candidates it was designed to benefit. Bringing the program into the 21st century requires a sizable financial investment that may be untenable given Michigan’s anemic economy and current political environment. Under no circumstance will the benefits of gubernatorial public campaign financing be realized without increased funding.

The following are four proposals for solving problems with Michigan’s campaign finance laws. Alternative One is a multifaceted recommendation that would increase expenditure limits and program funding, provide additional resources for participants to respond to excessive spending from opposing sources and establish a once-a-decade commission to review the program’s status. This alternative requires money that the state may not have available at this time, especially in light of the 2007 allocation of public financing money to the general fund.³⁹

.....
Without a significant increase in funding, the program is worse than dysfunctional; it is subject to costly abuse by the candidates it was designed to benefit.
.....

Alternative Two includes several ancillary recommendations, such as enhanced disclosure, that would strengthen the law without added cost. These recommendations would compliment Alternative One, but they can stand alone as well. They should be implemented if Michigan keeps its program, but they are not as effective as Alternative One.

Alternative Three proposes transforming the existing gubernatorial financing program into a judicial public financing program and using the existing fundraising machinery for that purpose. If Alternative One is not possible, this approach would use existing funds more effectively.

Alternative Four acknowledges what some campaign finance advocates have argued: that without significant new funding, the program is beyond repair and should be abandoned. Recognizing that the time, money and political will needed to modernize the program are elusive commodities, the recommendation would scrap the program entirely. Doing so would free up resources for the cash strapped state.

³⁹ Michigan Compiled Laws § I69.26I(6).

ALTERNATIVE ONE: INCREASE PUBLIC FUNDING FOR THE PROGRAM

I. INCREASE FUNDING AMOUNTS AND SPENDING LIMITS

Michigan's gubernatorial public financing system is ineffective and almost obsolete. The costs of gubernatorial elections have increased significantly in recent years, and the public financing program's funding amounts and spending limits have not kept pace. Unless the funding amounts and spending caps are substantially raised, candidates will continue to opt out of the program in future elections. To encourage future candidate participation and ensure program success, Michigan should increase both the available funding amounts and the spending limits for participating candidates.

At least one major party candidate has opted out of at least one phase of the program in each of the last three gubernatorial campaigns. In 2006, for the first time, both major party candidates declined to participate in the program in the primary election. Unsuccessful Republican challenger Dick DeVos spent over \$35 million of his own money to finance his campaign. Democratic incumbent Jennifer Granholm opted into the program in the general election, thereby receiving a grant of \$1.125 million, but she was released from the spending cap because of her opponent's high spending. Had public money sufficed, she would not have had to raise large sums from private donors.

.....
 Under no circumstance would it be reasonable to select a spending limit below \$4.5 million, which reflects the inflation-adjusted limit established in 1976.

The appropriate funding amount and contribution limit requires fiscal analysis out of the scope of this report. However, under no circumstance would it be reasonable to select a spending limit below \$4.5 million, which reflects the inflation-adjusted limit established in 1976. The criteria for determining the new limit should be based on affordability for the state, the cost of campaigns and whether the new amount will encourage participation. It must also be automatically adjusted for inflation or be subject to adjustment by the Secretary of State without legislation.

The cost of gubernatorial races in states with similar population sizes to Michigan best indicates the market's valuation of the cost of an election. Michigan is the eighth largest state. Its closest neighbors in terms of population are Ohio (the seventh largest) and New Jersey (the ninth largest).⁴⁰ Gubernatorial races in New Jersey are usually publicly-financed and campaign costs therefore do not represent market forces.

Ohio, on the other hand, is a viable analogue because it shares a border with Michigan and both are Midwestern Great Lakes states. Since 1998, effective gubernatorial campaigns in Ohio have cost at least \$9 million for the primary and general elections combined. That year, the winning candidate raised \$9.6 million and the losing candidate raised \$10.8 million. In the 2002 election, the incumbent raised \$10.6 million to defeat a challenger who raised a mere \$1.7 million. Most recently in 2006, with no incumbent running for governor, the winning candidate raised \$16.8 million and the losing candidate raised \$11.8 million.⁴¹ Assuming Ohio's spending costs are applicable, Michigan's

⁴⁰ U.S. Bureau of the Census, 2000.

⁴¹ National Institute of Money in State Politics, www.followthemoney.org.

expenditure limit should be no less than \$10 million in the aggregate, and at least \$5 million each for the primary and general elections.

2. EXPLORE ALTERNATIVE FUNDING SOURCES

Michigan’s gubernatorial public financing program currently receives its funding from a voluntary tax check-off of \$3 per individual. This funding mechanism has proven unreliable and insufficient in Michigan, other states and at the presidential level. As discussed above (*see II. A. Candidate Participation Is Low*), Michigan would need to increase the check-off to the prohibitively high amount of \$20 per taxpayer to provide ample funding for the program. Michigan should therefore eliminate the check-off and fund the program through direct general fund appropriations adjusted annually for inflation.

.....
 Michigan would
 need to increase the
 check-off to the
 prohibitively high
 amount of \$20 per
 taxpayer to provide
 ample funding for
 the program.

Michigan should also explore alternative funding sources for its public financing program, such as using funds from one or more dedicated sources. Potential sources that have worked in other states include a surcharge on civil and criminal fines (Arizona) and proceeds from the sale of unclaimed and abandoned property (Connecticut).⁴²

3. PROVIDE ADDITIONAL MONEY TO COUNTER WEALTHY OPPONENTS AND INDEPENDENT SPENDING

Wealthy candidates are on the rise in Michigan. A major party candidate has self-funded in two of the last three gubernatorial campaigns. In addition, independent expenditure groups have spent heavily in recent gubernatorial and state Supreme Court elections. The large number of issue ads being run is of particular concern. In 2006, for instance, the Michigan Chamber of Commerce and the Coalition for Traditional Values (among other groups) spent over \$5 million on issue ads in the gubernatorial campaigns. The former group spent an additional \$2.5 million on issue ads in the state Supreme Court campaigns in the 2002, 2004 and 2006 elections.⁴³

Because the U.S. Constitution places a high premium on free speech—especially political speech—wealthy candidates and groups that make independent expenditures are allowed to spend as much as they wish on a given campaign. While few would argue that political speech is a bad thing, excessive and one-sided spending can distort the electoral process and drown out voices of legitimate candidates with fewer resources to compete. Non-candidate spending in the form of issue ads (which are not regulated under Michigan’s public financing program) and independent expenditures creates the appearance that certain special interests have the potential to exert undue influence over public officials. The threat of large independent expenditures or opponents who can raise large sums discourages candidates from accepting spending limits because they want to remain competitive.

⁴² For more information on alternative funding sources see *Where to Get the Money?*, Center for Governmental Studies, (2003), available at www.cgs.org.

⁴³ Michigan Campaign Finance Network, *supra* note I, at 10.

It is currently impossible under constitutional doctrine to limit independent expenditures and spending by wealthy candidates. Still, the Michigan public financing program can minimize their impact by providing additional funding to participating candidates to compete against independent or wealthy candidate expenditures and by requiring greater disclosure of issue ad expenditures.

Political parties in Michigan operate largely unchecked. In 2006, the Michigan Democratic Party spent over \$12.8 million in the 2006 gubernatorial election supporting

..... Democratic Governor Jennifer Granholm and opposing Republican Dick DeVos.
 Michigan should provide “rescue funds” to publicly-financed candidates.
 The Republican Governors Association and Michigan Republican Party also spent heavily in that election. These expenditures do not currently trigger rescue funds for candidates participating in the public financing program, but they should.
 Michigan should provide “rescue funds” to publicly-financed candidates.
 These funds should be available when candidates are outspent by privately financed opponents, political parties and political party committees, IEs or issue ads. In addition, Michigan should require greater disclosure of contributions by issue ad committees.

4. CREATE INDEPENDENT BLUE RIBBON CAMPAIGN FINANCE COMMISSION TO REVIEW LAWS EVERY TEN YEARS

Michigan’s campaign finance law has atrophied over time. Candidates participate at low rates, taxpayer contributions are anemic and the program has failed to keep pace with the ever increasing costs of running for office. The most recent revision to the law came in 1993, and even it was outdated soon after. The Secretary of State issues an analysis of the program after every election, but this needs to be supplemented with a detailed decennial review of the law and recommendations for going forward.

Michigan should convene an independent Blue Ribbon Commission every ten years to review the current law and recommend changes.

ALTERNATIVE TWO: REDUCE CONTRIBUTION LIMITS AND TOUGHEN DISCLOSURES

I. LOWER CONTRIBUTION LIMITS TO MATCH FEDERAL LIMITS

Statewide limits on political contributions in Michigan are much higher than federal limits, thereby increasing the possibility that a small number of contributors will have a disproportionate impact on campaign decisions and subsequent political decisions if the candidate is elected. Contributions to federal candidates are currently set at \$2,300 (indexed for inflation), but Michigan legislative and gubernatorial candidates can accept contributions up to \$3,400. Limits this high have been the norm in Michigan for years, but they serve no discernable public interest.

Michigan should index its contribution limits to the federal limits. Doing so would reduce the individual contribution from \$3,400 to \$2,300; reduce “independent PACs”

from \$34,000 to \$5,000; reduce party contributions from \$34,000 (county party) or \$64,000 (state party) to \$10,000; and impose limits on currently unrestricted individual contributions to PACs and parties. It would also simplify compliance, since both federal and state candidates would be bound by similar laws.

By imposing a limit on individual contributions to PACs and parties, Michigan would be able to solve a second problem, referred to previously as “legal money laundering” (*see II. F. Independent Expenditures Can Too Easily Influence Elections*). Contributors would no longer be able to circumvent the limits by funneling money through PACs or party committees.

2. STRENGTHEN PENALTIES FOR CAMPAIGN FINANCE VIOLATIONS

Monetary penalties for campaign finance law violations are unnecessarily lax and do not provide a necessary deterrent. Also, the Secretary of State does not have the authority to subpoena witnesses or records when violations are suspected. The office is expected to hold hearings but must defer to the Attorney General if penalties are ineffective or criminal proceedings are warranted.

Michigan should empower the Secretary of State to issue subpoenas for suspected violations.

Finally, the vast majority of penalties impose maximum \$1,000 fines regardless of the size of violation. Where appropriate, Michigan should replace these with fines of up to triple the size of the violation. For example, if a candidate exceeds the \$2 million expenditure limit, he or she should be fined three times the amount of the excess spending.

3. IMPROVE DISCLOSURE

Michigan’s disclosure schedule promotes obfuscation by delaying reporting during the last two weeks of the campaign until after votes have been cast. In certain non-election years, Michigan does not require committees to submit reports for more than 13 months.

<p>.....</p> <p>Michigan should increase the number of disclosure reports to at least two in non-election years and at least four in election years.</p> <p>.....</p>	<p>Michigan should increase the number of disclosure reports to at least two in non-election years and at least four in election years. Additionally, it should adjust the reporting calendar to better coincide with the election calendar.</p> <p>Contributions to and expenditures made by a candidate committee in the last two weeks before an election should be reported daily at the close of business. Political parties and PACs already have this requirement.</p> <p>Issue ads currently avoid disclosure requirements because they do not expressly advocate the election or defeat of a candidate, usually by avoiding certain “magic words” such as “vote for” or “vote against.” Michigan should close this loophole and require issue ads to abide by the same campaign finance reporting requirements as other non-candidate committees. These include filing disclosure reports throughout the campaign and requiring daily disclosure of contributions in the last two weeks of the campaign.</p>
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ALTERNATIVE THREE: SHIFT MICHIGAN’S GUBERNATORIAL PUBLIC FINANCING TO FINANCING OF JUDICIAL ELECTIONS

At least one reform organization, the Michigan Campaign Finance Network (MCFN), has argued that gubernatorial elections in Michigan have become too costly and that the gubernatorial public financing program is broken and irreparable. MCFN therefore recommends abandoning the gubernatorial public financing program and instead creating a public financing program for state Supreme Court justice elections, where the money is more needed to ensure judicial impartiality.

In 2007, several state senators introduced SB 128, a proposal to create a public financing program for state Supreme Court candidates. The legislation appears unlikely to pass before the end of the 2007–2008 legislative session.

If obtaining adequate funds was not an issue, this report would not recommend abandoning the gubernatorial public financing program. It might recommend expanding it to other statewide and even state legislative offices. But if the funding situation remains dismal and expectations for viable gubernatorial financing continue to look grim in the near future, this report agrees with MCFN and recommends eliminating the gubernatorial program and replacing it with judicial public financing. Under MCFN’s proposal, the check-off funding source used to fund the gubernatorial program would be sufficient to cover the costs of judicial financing.

ALTERNATIVE FOUR: REPEAL GUBERNATORIAL PUBLIC FINANCING

If Michigan cannot salvage gubernatorial public financing in the current political environment, it should eliminate its public financing program altogether. If current trends prevail, the program will continue into obsolescence and no candidate will opt-in and expect to abide by the spending limit. Those who accept public money under a waived expenditure limit cost the state \$1.125 million. Because most will still be able to raise

..... unlimited private money, there will be no discernable social benefit from the public subsidy.

If current trends prevail, the program will continue into obsolescence and no candidate will opt-in and expect to abide by the spending limit.
.....

With the continued likelihood that candidates who opt into the program will do so only if they do not expect to be bound by expenditure limits, candidates are legally encouraged to abuse the program when they face wealthy opponents.

As it is presently configured, Michigan’s gubernatorial public campaign financing program is more of a financial burden on the state than a benefit. In 2006, only eight percent of Jennifer Granholm’s total fundraising consisted of public money. Granholm raised approximately \$14 million, slightly more than a million of which came from the program. Clearly, the program did not replace or offset her dependence on private contributors.



CONCLUSION

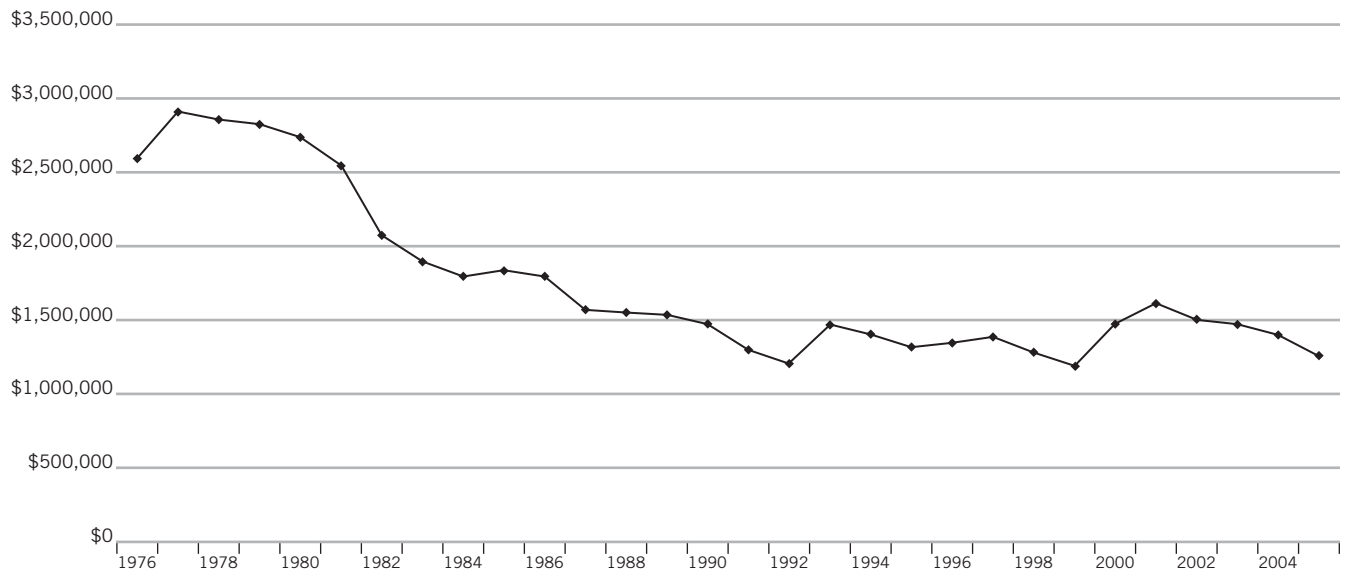
Once promising campaign finance reform, Michigan's public financing program has deteriorated to the point of obsolescence. Because funding amounts and expenditure limits are stuck in a bygone era, candidates who opt into the program in future elections do so at their own peril. Moreover, some participants can exploit a programmatic loophole that allows them to raise and spend money like privately financed candidates and still receive public subsidies. Michigan needs to implement immediate reforms to its existing program if it wishes to save the state's system of gubernatorial public campaign financing.



APPENDICES

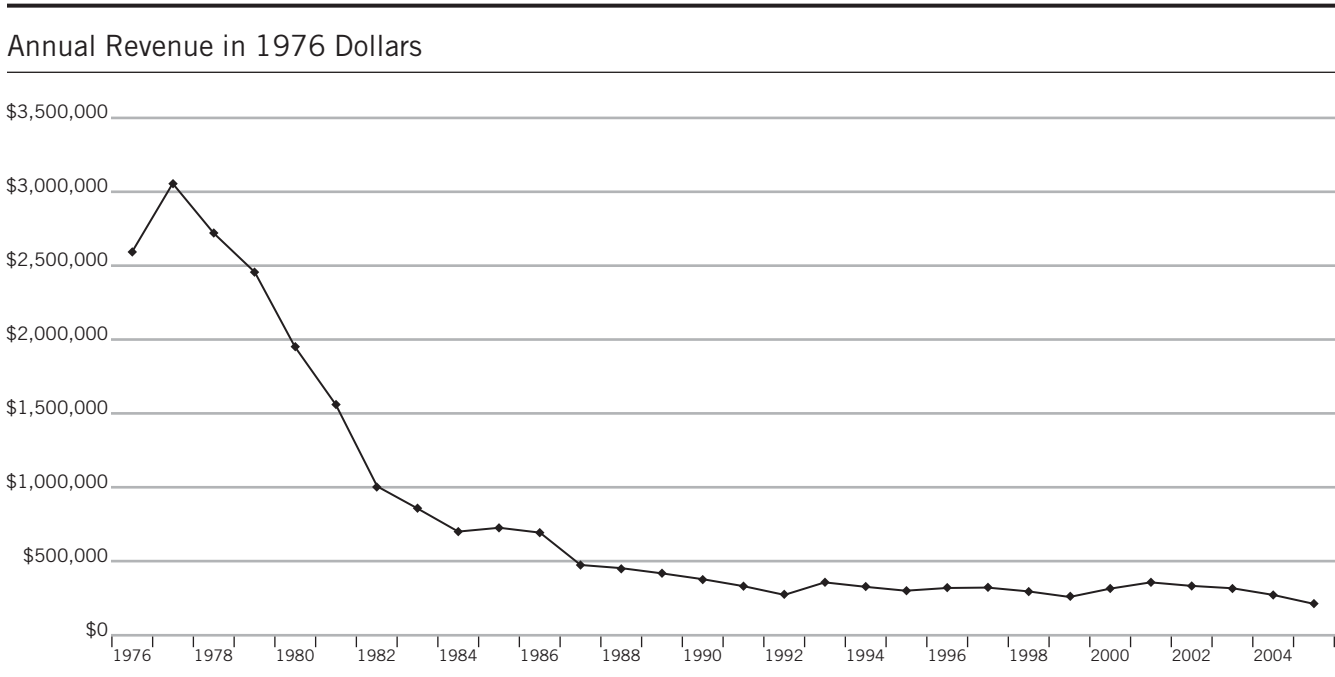
APPENDIX 1: MICHIGAN STATE CAMPAIGN FUND REVENUE, 1976–2006

The following chart supplements Figure 2 (*see page 11*), by showing the amount of revenue brought in through the taxpayer check-off each year. From 1976 through 1992, the amount was set at \$2 per taxpayer; in 1993, it increased to \$3. Over time the amount of money designated to the fund has fallen radically.



Source: Michigan Secretary of State, *Michigan Gubernatorial Public Funding Update for 2006 Elections*, (2006).

The following chart converts the data into 1976 dollars to emphasize the relative decline of purchasing power since the program was created. In 2005, the program received \$1,275,578, the equivalent of \$182,083 in 1976.



Sources: Analyzed by the author using data from U.S. Bureau of Labor Statistics, *CPI Inflation Calculator* and Michigan Secretary of State, *Michigan Gubernatorial Public Funding Update for 2006 Elections, (2006)*.

APPENDIX 2: FUNDING FOR MINOR PARTY CANDIDATES

If the party received at least five percent of the votes in the previous gubernatorial election, the candidate is eligible to receive \$1,125,000 times the number of votes received divided by the average number of votes received by the major party candidates in the last election. Candidates that did not receive five percent of the votes in the preceding election are matched one-to-one, up to \$750,000. Any minor party candidate who wins a greater vote share than his or her predecessor did in the previous election or receives more than five percent is eligible for a post-election reimbursement.



BIBLIOGRAPHY

STATUTES

Michigan Compiled Laws §. 169, *et seq.*

2 U.S.C. § 434(f)(3).

26 U.S.C. §9001 *et seq.*

NEWS ARTICLES

Gray, Kathleen, “Election 2006: Granholm Joins Campaign Ad War,” *Detroit Free Press*, June 9, 2006.

Hoffman, Kathy Barks, “Gubernatorial Hopefuls May Forgo Public Funds,” *Associated Press*, February 21, 2006.

Hoffman, Kathy Barks, “2006 Shaping Up as High-Spending Election Year,” *Associated Press*, June 11, 2006.

Hoffman, Kathy Barks, “Gov’s Race Spending Could Hit \$60 Million,” *Associated Press*, October 20, 2006.

McGillivray, Brian, “Campaign Finance Reform Bogs Down in Legislature,” *Traverse City Record Eagle*, May 25, 2007.

Vock, Daniel, “One State Recession Hampers Michigan,” *www.Stateline.org*, April 11, 2007.

POLLS, REPORTS AND BOOKS

Where to Get the Money?, Center for Governmental Studies, (2003).

National Institute of Money in State Politics, *www.followthemoney.org*.

Michigan Campaign Finance Network, “A Case for Political Reform in Michigan,” (2007).

Michigan Campaign Finance Network, “A Citizens Guide to Michigan Campaign Finance 2004,” (2005).

Michigan Campaign Finance Network, “2006 Citizens Guide to Michigan Campaign Finance,” (2007).

Michigan Department of State, Bureau of Elections, “Independent Committee and Political Committee (PAC) Manual,” (2007).

Michigan Department of State, *Michigan Gubernatorial Public Funding Program Analysis*, eds. 1978–2006. (2006).

Michigan Department of State, *Gubernatorial Public Funding Manual*, (2005).

Michigan Department of State, *Michigan Campaign Finance: Full, Timely Disclosure*,”(2006).

Novak, Suzanne and Lauren Jones, *Campaign Finance in Michigan*, Brennan Center for Justice, (2007).

U.S. Bureau of the Census, 2000.

INTERVIEWS

Telephone interview with Bill Ballenger, Inside Michigan Politics, February 6, 2008.

Telephone interview with Kelly Chesney, Michigan Department of State, April 15, 2008.

Telephone interview with Rich Robinson, Michigan Campaign Finance Network, January 31, 2008.

Public Campaign Financing: Michigan

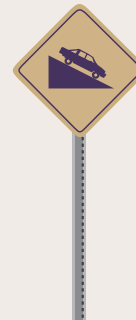
driving towards collapse?

Michigan's once promising public campaign financing program for gubernatorial elections is driving towards collapse. Although most candidates accepted public financing and expenditure ceilings during the program's first 20 years, candidates today cannot be competitive under the program's outmoded provisions.

Michigan's program suffers from several problems. Inflation has driven up campaign costs, yet the state has failed to increase the public funding amounts to candidates for governor. Spending limits are too low, and contribution limits are too high. Candidates can accept public financing and still raise unlimited amounts of private money when facing wealthy opponents, yet they cannot receive additional public funding when they are opposed by independent spending.

Michigan must revitalize its public campaign financing program, even though the short term costs may be daunting given the state's currently poor economic situation. Michigan should pursue at least one of several alternatives :

- ◆ Modernize the gubernatorial campaign financing program at a significant cost.
- ◆ Replace the gubernatorial program with judicial public financing.
- ◆ Strengthen existing campaign finance laws at no cost.
- ◆ Abandon the current program.



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