

Public Campaign Financing: Wisconsin



showing its age

by Steven M. Levin



Public Campaign Financing in Wisconsin

SHOWING ITS AGE

Steven M. Levin

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 financing of elections in state and local jurisdictions for 25 years. This report examines public campaign financing for state executive, legislative and judicial office elections in Wisconsin. The goal of the project is to gauge how this program is 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 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); Michigan, *Public Campaign Financing in Michigan: Driving Towards Collapse?* (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 that assisted CGS in the preparation of this report. These experts provided invaluable information, suggestions and stories about public financing in Wisconsin.

Steven M. Levin, former CGS Director of Political Reform, authored this report. CGS Chief Executive Officer Tracy Westen and President Bob Stern provided editorial comments. Intern Leah Stecher provided data and research support.

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

“Wisconsin has a rich and long tradition of clean elections. Experts have regularly cited the reforms enacted in 1975 . . . as a national model. Since then, though, the spreading problems of campaign finance have begun to infect Wisconsin’s model system and have eroded its preeminent position. What first began as small problems in the mid-1980s have gradually bubbled over into a quiet but serious crisis.”¹

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In 1977, the state of Wisconsin passed a comprehensive campaign finance reform law that included the creation of a public financing program known as the Wisconsin Election Campaign Fund (WECF). Like many campaign finance laws of the day, Wisconsin created the WECF in response to the Watergate scandal and meant it to address the influence of money in the state’s political system. The program was widely used, was cited as a “model” for the nation and worked successfully for almost a decade. Thirty years after its enactment, however, the WECF has failed to stay current with contemporary campaign realities and is now practically defunct. Wisconsin has fallen from leadership in campaign finance reform to a “no-show” in the race to improve democratic state governance.

The WECF is a segregated fund established to help finance the election campaigns of qualifying candidates for state executive, legislative and judicial office. Until 2007, the State Elections Board administered the fund; in February 2007, the state unified the State Elections Board with the State Ethics Board under a single Government Accountability Board (GAB), which will be responsible for future enforcement of the program.

The basic premise of WECF is straightforward. Qualified candidates running in the general election, who voluntarily agree to limit their spending during the election, become eligible to receive public grants to run their campaigns. The WECF is unique among other public financing programs, however, in that it combines elements of full and partial public financing programs. The WECF gives participating candidates a grant equal to 45 percent of the spending limit, and it then reduces this grant by the amount of contributions candidates accept from political actions committees (PACs), other candidates’ committees and political party committees.

¹ Governor’s Blue Ribbon Commission on Campaign Finance Reform, State of Wisconsin (May 1997), at I.

The purpose of this type of public financing is to encourage candidates to solicit individual contributions.²

The WECF is funded by a tax check-off program. Wisconsin taxpayers can designate \$1 of their income taxes (\$2 for couples) to go from the state's general treasuries into the fund. The money in the WECF is distributed among qualified candidates for partisan (Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, State Senator and Member of the Assembly) and non-partisan (Superintendent of Public Instruction, Supreme Court Justice) state offices.

Though initially successful in many regards, the WECF has not kept up with the times and is now considered failing. In 1986, the Wisconsin Legislature voted to freeze the spending limits. In so doing, the spending limits fell below the real costs of running a competitive campaign in the state. Under the program, for instance, participating candidates running for State Assembly must limit their spending to \$17,250 for the general election. The median amount spent in competitive State Assembly races in 2004, however, was \$51,631 (adjusted for inflation).³ In 2006, Governor Jim Doyle raised more than \$10 million for his re-election campaign, while a gubernatorial candidate who accepted public funding was limited to just over \$1 million. Because Wisconsin's spending limits are so low, fewer candidates are participating in the program. Doing so would risk almost-certain defeat by better-financed opponents. In addition, participating candidates are helpless against independent expenditures⁴ and issue ads⁵ (both on the rise in Wisconsin), because the WECF does not provide any additional funding to these candidates to counter these attacks.

The Center for Governmental Studies (CGS) conducted an extensive analysis of the WECF, which included examining the history of the program, reviewing relevant literature and data from various elections, and interviewing key political players in Wisconsin. From this analysis, CGS has identified those aspects of Wisconsin's public financing programs that are working, and those that are ripe for reform.

Wisconsin can proceed in a number of ways to save its ailing public financing program:

ALTERNATIVE ONE: REPEAL THE EXISTING PROGRAM AND REPLACE IT WITH A CLEAN MONEY PROGRAM.

This option, which has been proposed for a number of years in the Legislature, would repeal the existing hybrid public financing program and replace it with a full public financing (or "clean money") program. To campaign finance reform purists, full public

² See Suzanne Novak and Seema Shah, *Campaign Finance in Wisconsin*, Brennan Center for Justice (2007), at 13.

³ A "competitive" race is defined as a race where the margin of victory was 10 percent or less.

⁴ An "independent expenditure" is an expenditure made by a person or group in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, which is not made in cooperation or consultation with the candidate or agent. *See generally*, Wisconsin Statutes Section 11.06(7) (2007).

⁵ An "issue ad" is a communication which advocates for or against a specific election issue, but does not expressly advocate the election or defeat of a candidate.

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financing would resolve many problems created by the extensive influence of money in politics. However, a full public financing program is more costly than the existing program, and therefore also presents political challenges.

ALTERNATIVE TWO: IMPROVE THE EXISTING PROGRAM.

An alternative option would be for Wisconsin to fix its existing program. Some of the most basic ways to do this include:

1. *Increase Funding Amounts and Spending Limits*

Wisconsin's candidates are no longer participating in the program because the law's spending limits have not kept pace with the true costs of running competitive campaigns in Wisconsin. The number of legislative candidates agreeing to spending limits and receiving public grants has decreased considerably between 1984 to 2006.

To encourage future candidate participation in Wisconsin's public financing program and increase electoral competition, Wisconsin should increase both the available funding amounts disbursed to candidates and the spending limits by which those candidates must abide.

2. *Explore Alternative Funding Mechanisms to Supplement or Replace Tax Check-Off*

The voluntary tax check-off program has left the WECF woefully under-funded. This amount has never been adjusted for inflation, and the percentage of contributing taxpayers has decreased significantly since the inception of the program.

Wisconsin should increase the amount of the tax check-off and change the default check-off on the tax form from opting in to the program to opting out of the program.⁶ Wisconsin should also seek additional funding for the WECF to supplement the tax check-off with other sources of revenue, such as a direct appropriation from the state's general fund or from one or more dedicated sources. Examples of dedicated sources used in other states include proceeds from a surcharge on civil and criminal fines or the sale of unclaimed and abandoned property. Finally, Wisconsin should appropriate funding for the Board to increase public awareness about the WECF and the tax check-off program.

3. *Provide Additional Funding to Counter Independent Expenditures and High-Spending Opponents*

Wisconsin's public financing program does not provide matching funds to participating candidates who face independent expenditures, issue ads or opponents who spend over the limit. Independent expenditures and particularly issue ads have increased

⁶ Wisconsin's individual income tax forms (Forms I and Ia) are currently worded to require taxpayers to affirm that they want to designate part of their returns to the WECF, rather than requiring taxpayers to check off if they do *not* want part of their returns to go to the WECF. This opt-in approach, as opposed to an opt-out approach, most likely contributes to the low number of designations to the WECF. Moreover, it is likely that taxpayers do not realize that their opting into this program does not increase their tax liability; instead, it merely earmarks general fund revenues for the WECF program.

significantly in Wisconsin politics. In 2006, for instance, issue ad groups spent almost \$10 million on the gubernatorial election, up three times from what they spent in 2002. Issue ads are not currently regulated by Wisconsin law, although some lawmakers sought to close that loophole in 2007.

Without safeguards to allow participating candidates to respond to attacks by independent expenditures, issue ads and high-spending opponents, candidates have a reduced incentive to participate in Wisconsin's public financing program.

Wisconsin should improve disclosures for issue ad committees as well as matching funds to participating candidates who face independent expenditures, issue ads and opponents who spend over the limit.

ADDITIONAL NEEDED REFORMS:

Whether Wisconsin replaces its existing public financing program with a full public financing program or merely makes adjustments to the current law, it should also take the following two steps to create a stronger campaign finance regime:

1. *Create an Independent Blue Ribbon Campaign Finance Commission and Require It to Review the State's Campaign Finance Laws Every Ten Years*

Wisconsin's public financing law is a perfect example of a sound law when created but one that fell into disrepair over time. Experience shows that campaign finance laws need to be reviewed and updated at least every ten years.

A Blue Ribbon Commission would provide credibility and a fresh look at state campaign finance laws. Its recommendations would stimulate the Legislature to consider needed reforms.

2. *Allow Wisconsin Localities to Create Public Financing Programs*

For years, the city of Madison, Wisconsin has tried to create its own public financing program for local races. Ambiguities in the state campaign finance and "home rule" laws, however, make it unclear whether cities like Madison have the authority to do so.

Wisconsin should amend its campaign finance and home rule laws to allow local jurisdictions such as Madison to enact their own, stricter campaign finance laws and create public financing programs, thereby building broader support for the concept around the state.

By implementing some or all of these reforms, Wisconsin can restore the successes of its once-promising public financing program. Without them, the system will continue to go unused and may eventually disappear altogether.



INTRODUCTION

A. HISTORY OF CAMPAIGN FINANCE REFORM IN WISCONSIN

For over a century, Wisconsin has served as “a model of campaign finance reform”⁷ around the nation. The nonprofit Wisconsin Democracy Campaign, which promotes campaign finance reform in the state, describes Wisconsin’s history of reform as follows:

[I]n response to concern about growing corporate influence around the turn of last century, Wisconsin banned corporate contributions to political campaigns in the early 1900s. Wisconsin also was the first state to prohibit legislators from accepting gifts from lobbyists. The state has been a breeding ground for political reformers—from “Fighting Bob” La Follette a century ago to the state’s current junior U.S. Senator, Russ Feingold, one of the chief architects of the recently enacted McCain-Feingold campaign finance reform law.⁸

With such a rich history of campaign finance reform, it should come as no surprise that Wisconsin was one of the first states to enact a public financing program following the Watergate scandal in the early 1970s.

I. THE 1977 ACT

In 1973, the Wisconsin Legislature codified into one chapter its campaign finance laws, which included mandatory contribution and spending limits. That law also established a State Elections Board, which was charged with administering and enforcing the new rules. In 1976, in the landmark campaign finance case *Buckley v. Valeo*,⁹ the United States Supreme Court upheld federal contribution limits, but it invalidated mandatory spending

⁷ *Supra* note I, at I.

⁸ Mike McCabe, “Campaign Finance Reform in Wisconsin: Where We’ve Been, Where Things Stand Today and Where We Go From Here,” Wisconsin Democracy Campaign (October 17, 2002), available at www.wisdc.org.

⁹ 424 U.S. 1 (1976).

limits on the basis that such limitations unconstitutionally abridged candidates' freedom of speech.

Relying on *Buckley*, Wisconsin Attorney General Bronson La Follette issued an opinion concluding that the spending limits created in the 1973 act were unconstitutional.¹⁰ However, La Follette further opined that Wisconsin could offer *voluntary* spending limits to candidates as a precondition for receiving public financing to run their campaigns.

Acting upon the Attorney General's opinion, the Wisconsin Legislature in 1977 passed a comprehensive campaign finance reform law, which, among other things, created contribution limits, a strong campaign finance disclosure program and voluntary expenditure ceilings linked to public financing. The law also created the Wisconsin Election Campaign Fund (WECF), a public financing program for state executive, legislative and judicial offices.

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The bill's declaration of policy stated:

[E]xcessive spending on campaigns for public office jeopardizes the integrity of elections. It is desirable to encourage the broadest possible participation in financing campaigns by all citizens of the state, and to enable candidates to have an equal opportunity to present their programs to the voters. . . . This chapter is intended to serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate.¹¹

Today, the WECF is a segregated government fund which helps finance the election campaigns of qualifying candidates for the partisan offices of Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, State Senator, and Member of the Assembly as well as the non-partisan offices of Superintendent of Public Instruction and Supreme Court Justice.

Qualified candidates in the general election who voluntarily agree to limit their spending during the election are eligible to receive public grants to run their campaigns.

The WECF combines elements of a full and partial public financing program.¹² Participating candidates are given a grant equal to 45 percent of the spending limit, which is then reduced by the amount of contributions accepted by the candidates from PACs, party committees and other candidates' committees. This type of public financing is aimed at encouraging candidates to reach out to individuals for contributions.¹³

Until 2007, the State Elections Board administered the fund. In February 2007, Governor Jim Doyle signed into law legislation unifying the State Elections Board with the State Ethics Board under a single Government Accountability Board (GAB), which will be responsible for future enforcement of the program.

¹⁰ See Wisconsin Attorney General Opinion OAG 55-76 (August 16, 1976).

¹¹ Wisconsin Statutes Section 11.001 (2007).

¹² Full public financing programs provide qualified candidates with all of the funding necessary to run a campaign, while partial public financing programs provide candidates with some, but not all, of the money necessary to wage a campaign.

¹³ See Novak and Shah, *supra* note 2, at 13.

2. THE 1986 AMENDMENTS

Candidates used the WECF for the first time in the 1978 election. According to one analysis, the WECF “worked extremely well for over a decade. The vast majority of candidates in both parties accepted public financing and ran campaigns under spending limits.”¹⁴

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In 1986, however, the Wisconsin Legislature voted to freeze the spending limits for candidates participating in the program. Today, they remain at the same low levels. The negative impact of these amendments on the system will be discussed at greater length; suffice it to say, the system fell into disrepair by the mid-1990s and has remained there ever since.

3. THE 1997 BLUE RIBBON COMMISSION ON CAMPAIGN FINANCE REFORM REPORT

In late 1996, almost twenty years after enactment of the WECF and ten years after it was amended by the Legislature, Governor Tommy Thompson convened a five-member Blue Ribbon Commission on Campaign Finance Reform to “tackle the quiet crisis of Wisconsin’s campaign finance practices.”¹⁵ Chaired by former University of Wisconsin, Madison political science professor Donald Kettl, the Commission conducted extensive polling of Wisconsin residents and found widespread dissatisfaction with the state’s ailing campaign finance system and strong support for reform. Two-thirds of the respondents called the political election process “in big trouble” and more than 84 percent of the respondents wanted “to see sweeping and fundamental campaign finance reform.”¹⁶

Based on this dissatisfaction, the Commission put forth a package of far-ranging recommendations revising the campaign finance laws based on five stated principles:

- Ensuring full and immediate disclosure of campaign finance information;
- Making elections candidate- and party-centered;
- Encouraging more competitive elections;
- Leveling the playing field; and
- Improving campaign finance regulation.

With regard to the WECF, the Commission recommended that Wisconsin:

- Revise the spending limits to \$60,000 for State Assembly races, \$140,000 for State Senate races and \$3.5 million for the gubernatorial race;¹⁷

¹⁴ See McCabe, *supra* note 8.

¹⁵ *Supra* note I, at I.

¹⁶ The polling found that while citizens found campaign finance reform to be important, other “bread-and-butter issues” mattered more. According to the Commission, however, this did not diminish the case for reform. The Commission distinguished campaign finance not so much a “‘sky is falling’ issue,” but rather a “‘termites in the basement’ problem” that could, over time, erode the foundation of democracy. *Id.* at 2-3.

¹⁷ *Supra* note I, at 29.

- Offer public financing grants to candidates who agree to limit their spending equal to 25 percent of the spending limit;¹⁸
- Provide \$750,000 of general tax revenue to fund the public financing grants;¹⁹
- Create increases in existing contribution limits on political parties and PACs;²⁰
- Enact registration and reporting requirements for issue ads and other independent expenditure activity;²¹ and
- Release candidates from spending limits, remove the limit on allowable contributions from a political party and double all other contribution limits if candidates have issue ads or other independent expenditures run against them.²²

According to the Wisconsin Democracy Campaign, the Commission's recommendations "were not enthusiastically received in the reform community and failed to gain traction in the Legislature."²³ From the issuance of the Commission's report in 1997 until 2001, legislators offered multiple proposals to overhaul Wisconsin's campaign finance system, none of which passed.

4. THE 2001 LEGISLATION AND SUCCESSFUL COURT CHALLENGE

The late 1990s and the 2000s witnessed the emergence of a high-level statewide scandal involving the state legislative caucuses.²⁴ The legislative caucuses were originally conceived in the 1960s to provide legislators with staff members to do research for them. Over time, they became the political armies of legislative leaders. In the 1996 election and for several elections thereafter, several legislators used legislative caucus staff members to perform campaign activities, in violation of state law. The scandal resulted in the criminal convictions of five legislators and four legislative aides, leading one observer to call the incident "the most serious and widespread political scandal in Wisconsin's history."²⁵ A complete analysis of the legislative caucus scandal is beyond the scope of this report, but at least one of its effects was to make Wisconsin's campaign finance laws ripe for reform.

In mid-2001, the Legislature passed and Governor Scott McCallum signed Act 109, a budget bill that included a major overhaul of the state's campaign finance laws. Among the changes included in Act 109 were the following:

¹⁸ *Id.*

¹⁹ *Id.* at 28.

²⁰ *Id.* at 18-19.

²¹ *Id.* at 17.

²² *Id.* at 46-47.

²³ See McCabe, *supra* note 8.

²⁴ For complete coverage of this scandal from the *Milwaukee Journal Sentinel*, see www.caucusscandal.com.

²⁵ Quoted in Dee J. Hall and Phil Brinkman, "Jensen Guilty," *Wisconsin State Journal*, March 12, 2006.

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- Increasing the income tax designation supporting the WECF from \$1 to the lesser of \$20 or the taxpayer's tax liability prior to making such a designation;
- Creating political party accounts and a general account in the WECF and permitting a taxpayer to designate which account receives funding from the taxpayer's WECF income tax designation;
- Increasing the spending limits applicable to candidates accepting WECF grants;
- Providing supplemental grants to match an opposing candidate's disbursements that exceed the applicable spending limit;
- Requiring special interest committees, during the last 30 days prior to a general, special or spring election, to pre-report their independent advocacy and issue ad disbursements and obligations;
- Providing supplemental grants to match independent advocacy and issue ad disbursements and obligations by special interest committees;
- Expanding the role of political parties by transferring approximately 55 percent of the annual WECF income tax designation revenue in a given political party account to the political party to be distributed by the party to provide supplemental grants;
- Halving the contribution limits for legislative candidates who neither accept a WECF grant nor file an affidavit of voluntary compliance to abide by the spending limits for the applicable office;
- Doubling contribution limits for candidates subject to an opposing candidate's disbursements exceeding the applicable spending limit, or subject to independent advocacy and issue ad disbursements and obligations by committees exceeding five percent of the spending limit for the applicable office;
- Increasing the amount that political parties may receive from all committees in a biennium from \$150,000 to \$450,000, excluding transfers between political party committees of the same party;
- Specifying that political parties may receive an additional \$450,000 in contributions every two years, from committees, conduits and individuals to a special party account with segregated State Assembly and State Senate accounts. These contributions would be used to fund supplemental grants and to provide up to 65 percent of the spending limit for the applicable office;
- Generally prohibiting a candidate or personal campaign committee applying for a grant from the WECF from accepting a contribution from a committee, other than a political party committee; and
- Requiring public television stations and public access channel operators to provide a minimum amount of free airtime to certified state office candidates.²⁶

²⁶ See Wisconsin Legislative Fiscal Bureau, *Informational Paper 94: Public Financing of Campaigns in Wisconsin*, January 2007, at 3.

The bill contained a number of provisions—most prominently, a requirement that special interest committees *pre-report* their independent expenditures and issue ads during the last 30 days prior to any election—that were of questionable constitutionality. After the Governor signed Act 109 into law on July 26, 2002, the Wisconsin Attorney General filed a petition seeking a declaratory judgment on the Act’s constitutionality. Concurrently, a group of private parties (consisting mainly of trade associations) challenged the Act’s constitutionality in federal court. While the Wisconsin Supreme Court ultimately denied the Attorney General’s petition, the federal district court invalidated the pre-reporting requirement as unconstitutional.²⁷

To the dismay of campaign finance reformers, Act 109 contained a non-severability clause, which meant that if a court invalidated one provision of the bill, then the entire bill, other than the free airtime provision, would be voided. Because the district court found Act 109 to be unconstitutional, all other provisions besides the free airtime provision were voided, and the operation of the WECF reverted to its pre-Act 109 status.²⁸

5. CURRENT REFORM PROPOSALS AND CHALLENGES

Not to be discouraged by court challenges, some legislators and grassroots groups have continued the push for campaign finance reform in Wisconsin. According to Kevin

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 Wisconsin has
 actively pursued
 legislation to
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 growing problem
 of issue ads in
 the state.

Kennedy, Executive Director of the State Elections Board (now the Government Accountability Board), the Legislature’s response to the legislative caucus scandal was to emphasize more enforcement, rather than to increase or modify the public financing program.²⁹ In February 2007, Governor Jim Doyle signed a bill unifying the State Ethics and Elections Boards into a single Government Accountability Board.

Wisconsin has also actively pursued legislation to respond to the growing problem of issue ads in the state. Issue ads are not currently regulated in Wisconsin. In February 2007, several state senators introduced SB 77, which would impose registration and reporting requirements for issue ads. SB 77, which passed in the Senate, was written before the Supreme Court ruled in *Wisconsin Right to Life v. FEC*,³⁰ where Wisconsin Right to Life challenged disclosure provisions in the federal Bipartisan Campaign Reform Act of 2002 (BCRA) (also known as the “McCain–Feingold” law). In February 2008, the Legislature revised SB 77 to take into account the Court’s decision and introduced SB 463, which was passed by the Senate on March 6, 2008. SB 463 required disclosure of special interest electioneering. The legislative session ended without the passage of SB 463.

²⁷ See *Wisconsin Realtors Association et al. v. Ponto et al.*, 299 F.Supp 2d 899 (2002).

²⁸ One organization urged Governor McCallum to use his partial veto to eliminate the pre-notice requirement, calling it a “poison pill” that, along with the non-severability clause, would ultimately bring down the act. See McCabe, *supra* note 8.

²⁹ Telephone interview with Kevin Kennedy, Executive Director Wisconsin State Elections Board, December 5, 2006.

³⁰ See *Wisconsin Right to Life v. FEC*, 551 U.S. ____ (2007).

The Supreme Court recently dealt with federal regulation of issue ads in Wisconsin. In *Wisconsin Right to Life*,³¹ at question was the constitutionality of Section 203 of BCRA, which prohibited corporations from using general treasury funds to pay for electioneering communications in the days before a federal primary or general election.³² A pro-life corporation, Wisconsin Right to Life, Inc. (WRTL), which planned to run ads urging Wisconsin Senators Herb Kohl and Russ Feingold (one of BCRA's architects) to oppose a Senate filibuster delaying and blocking federal judicial nominees, filed suit against the Federal Election Commission (FEC) challenging the constitutionality of Section 203.

The Court had already upheld Section 203 in a similar case in 2003, calling issue ads the “functional equivalent” of express advocacy,³³ but the turnover of justices in the years between cases prompted a reversal in thinking. Writing for the majority in the *WRTL* case, Chief Justice John Roberts concluded that the WRTL ads were genuine issue ads, *not* express advocacy or its functional equivalent under *McConnell*, and therefore found that no compelling interest justified BCRA's regulation of such ads.

Nothing in the Court's decision suggests that states with public financing programs could not provide candidates participating in the programs with matching funds to counter independent expenditures or issue ads run against them. Nevertheless, the Court's position on campaign finance issues is clearly shifting toward deregulation, and the next few years could bring many surprises.

Finally, Wisconsin legislators have introduced several bills aimed at improving the WECF and bringing full public financing to judicial races in the state. All of these proposals will be discussed below.

B. SOURCES OF FUNDING

When originally conceived in 1977, Wisconsin funded the WECF with a tax add-on of \$1. In other words, taxpayers would increase their tax liability by \$1 if they elected to make a designation to the WECF. However, then-acting Governor Martin J. Schreiber partially vetoed this provision “in such a manner that the original tax surcharge language, as passed by the Legislature, was converted to a check-off.”³⁴ An analysis of the partial veto in Wisconsin states:

By 1977, Acting Governor . . . Schreiber had expanded the editing veto to enact an alternative that the Legislature expressly rejected. His partial veto of Assembly Bill 664 (Chapter 107, Laws of 1977), relating to campaign financing and creating an election campaign fund, involved one of the most controversial uses of the partial veto. As passed by the Legislature, the bill appropriated to the election campaign fund any moneys raised from a \$1 voluntary add-on to a taxpayer's individual income tax bill. Acting Governor Schreiber's partial veto

³¹ *Id.*

³² See 2 U.S.C. Section 434(f)(3) (2007).

³³ See *McConnell v. FEC*, 540 U.S. 93 (2003).

³⁴ See Wisconsin Legislative Fiscal Bureau, *supra* note 26, at 2.

had the effect of replacing the add-on with a check-off, which meant the \$I would be paid from the state's general fund rather than collected through individual tax returns.³⁵

Two legislators at the time challenged the veto in court, but the State Supreme Court upheld it, stating that a “partial veto may, and usually will, change the policy of the law.”³⁶ As a result of the veto and the *Klecza* decision, taxpayers could designate that \$I be transferred from general fund revenues to the WECF without affecting their own tax liabilities.

A provision in the law also allows committees or individuals to make unlimited contributions of their own money to the fund,³⁷ although this amount accounts for a small percentage of the total amount of money in the fund.

Every year, monies appropriated to the fund are apportioned into separate office accounts (one for Governor, one for Lieutenant Governor, etc.) under a prescribed formula, depending upon what offices are scheduled for election.³⁸ When there is an insufficient amount of money in the fund to provide full grants to candidates, the grants awarded are prorated by dividing the actual amount of funding available in each office account by the number of eligible candidates.³⁹ Since 1988, the combination of the small taxpayer check-off amount (\$I) and the declining number of taxpayers electing to designate money into the WECF have left the fund unable to provide the full amount of grants available under the program in many offices.⁴⁰

C. CANDIDATE QUALIFICATION

To be eligible to receive a public financing grant from the WECF, candidates must file a grant application with the Government Accountability Board, certifying that they agree to spending limits and personal contribution limits, no later than the deadline for filing nomination papers for the office.⁴¹ Eligible candidates may withdraw their application seven days after the primary election, in which case they are no longer bound by the limits.⁴²

Following the primary election, the GAB must determine whether the candidate meets the following eligibility requirements:

- The candidate's application is timely and the candidate is certified to appear on the general election ballot⁴³;

³⁵ State of Wisconsin Legislative Reference Bureau, *Informational Bulletin 04-1: The Partial Veto in Wisconsin*, January 2004.

³⁶ See *State Ex rel. Kleczka v. Conta*, 82 Wis. 2d 679 (1978).

³⁷ See Wisconsin Statutes Section II.50(13) (2007).

³⁸ See Wisconsin Statutes Section II.50(3) and (4) (2007). For a complete description of how funds in the WECF are apportioned among partisan and nonpartisan offices, see Wisconsin Legislative Fiscal Bureau, *supra* note 26, at 9-10.

³⁹ See Wisconsin Legislative Fiscal Bureau, *supra* note 26, at 12.

⁴⁰ *Id.*

⁴¹ See Wisconsin Statutes Section II.50(2)(a) (2007).

⁴² See Wisconsin Statutes Section II.50(2)(h) (2007).

⁴³ See Wisconsin Statutes Sections II.50(2)(b)(1) and (2) (2007).

FIGURE 1 Qualifying Contributions

Office	Total Amount of Contributions
Governor	\$53,910
Lieutenant Governor	\$16,174
Attorney General	\$26,950
State Treasurer, Secretary of State, Superintendent of Public Instruction, Supreme Court	\$10,781
State Senate	\$3,450
State Assembly	\$1,725

- The candidate has a certified opponent in the general election⁴⁴;
- If the office sought is a partisan office, the candidate has received at least 6 percent of the votes in the primary election and won the primary, or, if the office sought is a nonpartisan office, the candidate has been certified as a candidate⁴⁵; and
- The candidate has received the requisite amount of qualifying contributions of \$100 or less from individuals⁴⁶ (see Figure I).

D. SPENDING LIMITS

Candidates receiving grants from the WECF must abide by certain spending limits and limits on personal contributions (i.e., money they give themselves), which depend upon the office sought⁴⁷ (see Figure 2). Before 1986, a provision in the law gave the State Elections Board the authority to adjust the spending limits for inflation every odd-numbered year. When the Legislature repealed this provision, it froze those spending limits at 1986 levels.

Importantly, although candidates are freed from these spending limits if they face a non-participating, privately-financed opponent who receives more than 6 percent of the vote in the primary election, the law does not provide them with any matching funds or additional resources to meet that opposition.⁴⁸ Moreover, nothing in the law lifts the spending limits if participating candidates face independent expenditures or issue ads attacking them.

In addition to the overall spending limits, all candidates (whether or not they participate in the public financing program) may not receive more than 45 percent of the spending limit from political action committees (PACs) and other candidates' campaign committees, or 65 percent of the spending limit for their office in contributions from PACs, other candidates' campaign committees and political party committees.⁴⁹

⁴⁴ See Wisconsin Statutes Section 11.50(2)(b)(3) (2007).

⁴⁵ See Wisconsin Statutes Section 11.50(1)(a) (2007).

⁴⁶ See Wisconsin Statutes Section 11.50(2)(b)(5) (2007).

⁴⁷ See Wisconsin Statutes Sections 11.31(1) and 11.26 (2007).

⁴⁸ See Wisconsin Statutes Section 11.50(2)(i) (2007).

⁴⁹ See Wisconsin Statutes Section 11.26(9) (2007).

FIGURE 2 2006 Spending Limits and Candidate Personal Contribution Limits

Office	Spending Limit	Candidate Personal Contribution Limits
Governor	\$1,078,200	\$20,000
Lieutenant Governor	\$323,475	\$20,000
Attorney General	\$539,000	\$20,000
State Treasurer, Secretary of State, Superintendent of Public Instruction, Supreme Court	\$215,625	\$20,000
State Senate	\$34,500	\$2,000
State Assembly	\$17,250	\$1,000

E. FUNDING AMOUNTS

The WECF combines elements of full public financing and partial public financing programs. Candidates are eligible to receive a maximum permissible grant equal to 45 percent of the total spending limit for that office⁵⁰ (see Figure 3). The grant is then reduced by the amount of contributions the candidate receives from PACs, other candidate campaign committees and political party committees. The purpose of this system of public financing is to encourage candidates to solicit contributions from individuals.⁵¹

Candidates seeking the maximum grant may only accept contributions from individuals and political party committees. If candidates accept any contributions from PACs or other candidates' campaign committees, their maximum grant is reduced on a dollar-for-dollar basis based on the amount of money received from those entities. In addition, if candidates accept contributions from political party committees in excess of 20 percent of the spending limit, their maximum grant is reduced on a dollar-for-dollar basis.⁵²

FIGURE 3 Maximum Grant Amounts

Office	Maximum Grant Amounts
Governor	\$485,190
Lieutenant Governor	\$145,564
Attorney General	\$242,550
State Treasurer, Secretary of State, Superintendent of Public Instruction, Supreme Court	\$97,031
State Senate	\$15,525
State Assembly	\$7,763

⁵⁰ See Wisconsin Statutes Section II.50(9) (2007).

⁵¹ See Novak and Shah, *supra* note 2, at I3.

⁵² See Wisconsin Legislative Fiscal Bureau, *supra* note 26, at II.

The calculation and provision of the grant amounts assumes that the program is sufficiently funded in every election. The funds available in the accounts in some elections, however, have been insufficient to fully fund the maximum amounts for all eligible candidates who applied for a grant. In such cases, the maximum amount was prorated by dividing the actual amount of funding available in each office account by the number of eligible candidates.⁵³

Once grants are allotted, they can only be used for various prescribed election-related expenses, including purchases of services from a communications medium, printing, graphics arts and advertising services, office supplies and postage.⁵⁴

⁵³ See *id.* at 12.

⁵⁴ See Wisconsin Statutes Section 11.50(7) (2007).



ANALYSIS OF WISCONSIN'S PUBLIC CAMPAIGN FINANCING PROGRAM

A. GENERAL OBSERVATIONS

..... The Blue Ribbon Commission noted in 1997, “Wisconsin’s partial public financing grant system has proven of great value” and “can play a valuable role in the campaign finance process.”	<p>The Blue Ribbon Commission noted in 1997, “Wisconsin’s partial public financing grant system has proven of great value” and “can play a valuable role in the campaign finance process.”⁵⁵ The Commission found that public financing:</p> <ul style="list-style-type: none">• May attract more candidates for office;• May spur competition;• Tends to benefit challengers more than incumbents;• Helps candidates diminish—but not eliminate—the potential excess of private money;• Provides valuable incentives to candidates to accept reasonable and voluntary spending limits; and• Reduces the pressure on candidates to devote excessive time to raising funds.
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The language and tone of the Commission’s report paints a bright picture of public financing in Wisconsin, but the report provides little data or anecdotal evidence to support the notion that public financing is working in the state.

Indeed, while participation in and enthusiasm for the WECF were high during the program’s first decade in existence, both have tapered off significantly. Two 2005 comparative reports on public financing, co-written by public financing expert Kenneth Mayer, professor of political science at the University of Wisconsin, Madison, found that inadequately funded public financing programs such as Wisconsin’s neither bring more

⁵⁵ *Supra* note I, at 24–25.

women into the political process nor affect election outcomes, competitiveness or candidate behavior.⁵⁶

It is difficult to evaluate whether Wisconsin's public financing program continues to achieve its desired goals of increasing electoral competition and bringing more women, minority and newcomer candidates into the political process, because the program is no longer functioning adequately. Since the 1986 amendments to the law, fewer candidates (whether incumbent or challenger, male or female, etc.) have chosen to participate in the program, because doing so would significantly impede their ability to compete effectively. According to Mike McCabe, Executive Director of the Wisconsin Democracy Campaign:

The depleted WECF and the 1986 decision to no longer adjust the spending limits proved to be a fatal combination. Prorated grants gave candidates less incentive to abide by spending limits. And the spending limits were increasingly seen as artificially low and unrealistic. Candidates began to abandon the system, declining to accept the public financing grant and accompanying spending limit.⁵⁷

B. CANDIDATE PARTICIPATION

Up to 1986, the majority of candidates in both parties accepted public financing and ran campaigns under spending limits. For example, in 1986, the last year before the Legislature voted to freeze the spending limits, nearly three-quarters of candidates running for state office accepted public funding and abided by the accompanying spending limits.⁵⁸

The low number of eligible candidates and candidates accepting public grants is understandable for two reasons. First, to be eligible for the program, candidates must raise a certain number of qualifying contributions. However, if candidates do not have any competition, then they have no reason even to try to qualify.

Second, the Legislature's decision to freeze the spending limits in 1986, in combination with other factors, has contributed to decreased participation in the WECF over time. "[L]ow limits accompanied by small grants in Wisconsin have discouraged participation in the system"⁵⁹ (see Figures 4 and 5). In 2004, 115 legislative seats were up for election, but candidates in only a small number of races received public funding and were subject to the spending limits.⁶⁰

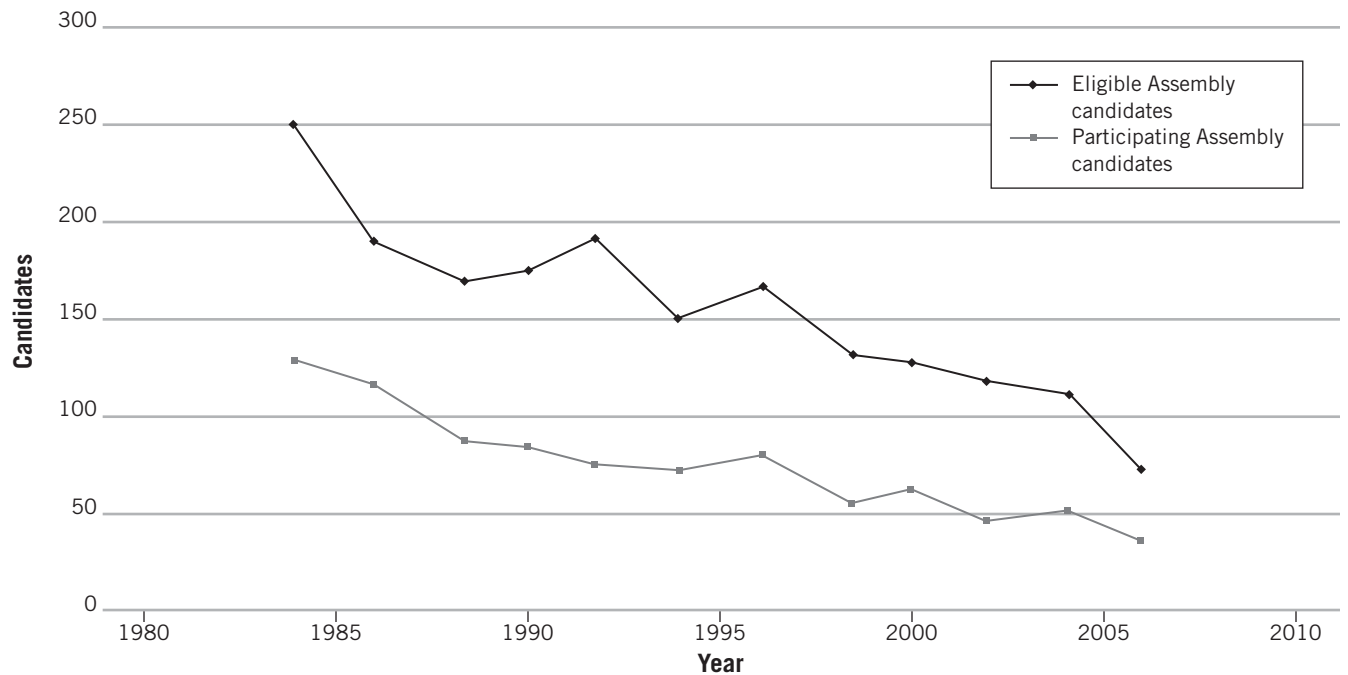
⁵⁶ See Kenneth R. Mayer, Timothy Werner, Amanda Williams, "Do Public Funding Programs Enhance Electoral Competition?" Paper presented at the Fourth Annual Conference on State Politics and Policy Laboratories of Democracy, Kent State University (March 2005); Timothy Werner and Kenneth R. Mayer, "The Impact of Public Election Funding on Women Candidates: Comparative Evidence from State Elections," Paper presented at the 2005 meeting of the Midwest Political Science Association (April 7, 2005); both papers on file with CGS.

⁵⁷ See McCabe, *supra* note 8.

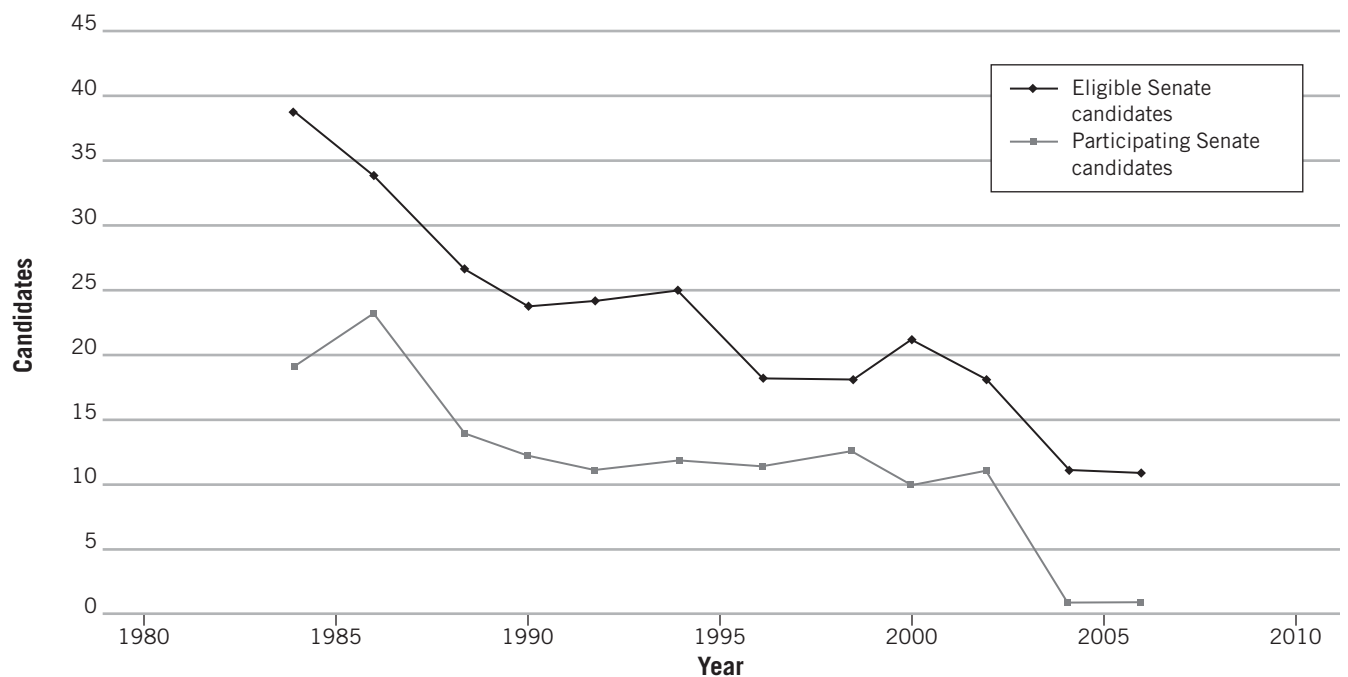
⁵⁸ See Novak and Shah, *supra* note 2, at 14.

⁵⁹ *Supra* note 1, at 23.

⁶⁰ Wisconsin Democracy Campaign, "Wisconsin Money in Politics Index," June 16, 2005, available at www.wisdc.org.

FIGURE 4 State Assembly Candidate Participation, 1984–2006

Source: Wisconsin Legislative Fiscal Bureau

FIGURE 5 State Senate Candidate Participation, 1984–2006

Source: Wisconsin Legislative Fiscal Bureau

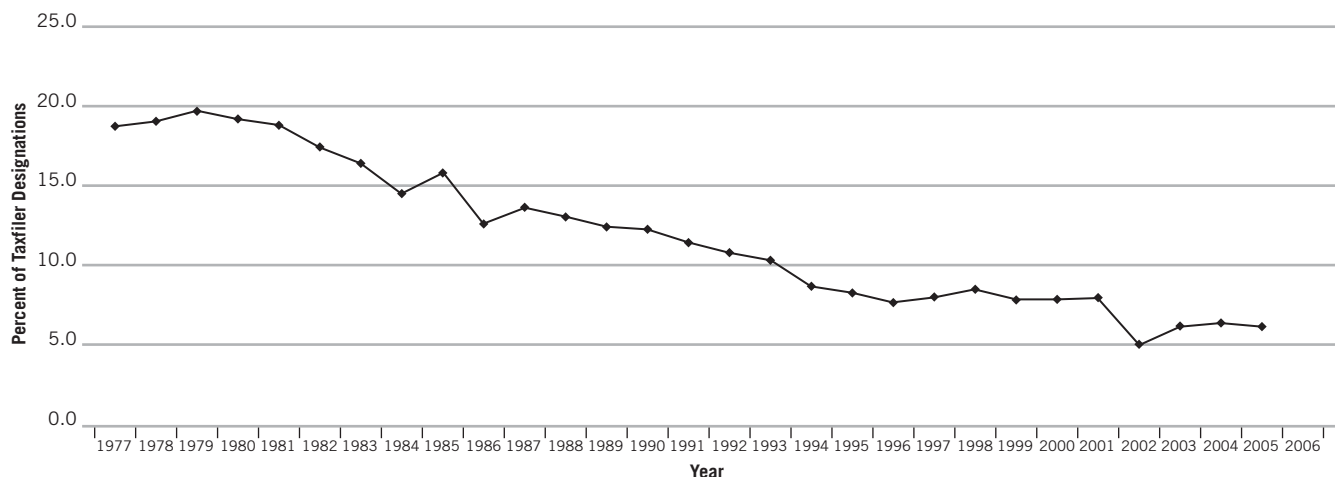
C. INSUFFICIENT FUNDING AMOUNTS

Under the current tax check-off program, Wisconsin taxpayers can designate that \$1 of their returns (\$2 for joint returns) goes from the state's general fund to the WECF.⁶¹ This designation does not increase their tax liability. The amounts in the fund are then distributed among qualified partisan (Governor, Lieutenant Governor, Attorney General, State Treasurer, Secretary of State, State Senator and Member of the Assembly) and non-partisan (Superintendent of Public Instruction, Supreme Court Justice) candidates.

After modest growth in the first few years in existence, the percentage of taxpayers electing to designate part of their tax returns to the WECF has generally declined since the program was created⁶² (see Figure 6). The number reached a peak of 20 percent in 1979, but has fallen below 10 percent since 1994.

According to Kevin Kennedy, at least two reasons could account for the decrease in taxpayer designations to the WECF. First, many Wisconsin taxpayers are either unaware of or misinformed about the program. Like taxpayers in other places that have check-off systems, and despite information on the income tax form telling them otherwise, Wisconsin taxpayers may mistakenly think that the check-off increases their tax liabilities, when, in fact, it does not. Second, Wisconsin's individual income tax forms (Forms I and Ia) are currently worded to require taxpayers to affirm that they want to designate part of their returns to the WECF, rather than requiring taxpayers to check off if they do *not* want part of their returns to go to the WECF. This opt-in approach, as opposed to an opt-out approach, most likely contributes to the low number of designations to the WECF.

FIGURE 6 WECF Taxpayer Check-Offs, 1977–2006



Source: Wisconsin Legislative Fiscal Bureau

⁶¹ Wisconsin Statutes Section 71.10(3) (2007).

⁶² See Wisconsin Legislative Fiscal Bureau, *supra* note 26, at 5.

A third reason could also explain the decreasing number of taxpayers marking the WECF check-off on their tax forms: the declining popularity of politicians. Nationwide, public officials have seen their popularity and approval ratings decline. Political scandals in Wisconsin and the ever-present and increasing use of robo-calls, issue ads and other campaign tactics have turned people off to public officials and to the notion of funding more campaign activity through public financing. Where public financing was once seen as a solution to the problem of corruption, now many view it more skeptically as a ploy to use valuable taxpayer resources to fund politicians and their political activities.

.....
 “[S]ince 1988, the funds available in the [WECF] accounts for some offices [have been] insufficient to fully fund the maximum grant amounts for all eligible candidates who applied for a grant.”

Since enactment of the WECF, the \$1 check-off has not been raised or adjusted for inflation. In 2001, Act 109 increased the income tax designation supporting the WECF from \$1 to the lesser of \$20 or the taxpayer’s tax liability prior to making such a designation. The court however, struck down this bill for other reasons, and it never took effect.

As a result of waning taxpayer participation and the failure of the Legislature to adjust the check-off to keep up with the times, “[s]ince 1988, the funds available in the [WECF] accounts for some offices [have been] insufficient to fully fund the maximum grant amounts for all eligible candidates who applied for a grant”⁶³ (see Figure 7). A cursory glance at the ending balances available in the WECF reveals that the program is insufficiently funded to provide candidates with adequate funding to mount competitive campaigns for any state office. Candidate grants have been prorated, “with candidates for many offices getting less than half of the full grant.”⁶⁴

FIGURE 7 WECF Receipts, Expenditures and Balances, 1978–2006

Year	Opening Balance	Amounts Received	Amounts Disbursed	Ending Balance
1978–79	\$0	\$499,415	\$229,133	\$270,282
1979–80	\$270,282	\$550,292	\$65,623	\$754,951
1980–81	\$754,951	\$651,606	\$534,364	\$872,193
1981–82	\$872,193	\$664,190	\$0	\$1,536,383
1982–83	\$1,536,383	\$727,344	\$1,461,692	\$802,035
1983–84	\$802,035	\$618,461	\$12,251	\$1,408,245
1984–85	\$1,408,245	\$610,909	\$1,044,285	\$974,869
1985–86	\$974,869	\$559,656	\$0	\$1,534,525
1986–87	\$1,534,525	\$596,889	\$1,820,175	\$311,239
1987–88	\$311,239	\$444,847	\$15,198	\$740,888
1988–89	\$740,888	\$498,416	\$874,907	\$364,397
1989–90	\$364,397	\$491,924	\$33,085	\$823,236
1990–91	\$823,236	\$494,474	\$1,105,584	\$212,126
1991–92	\$212,126	\$485,780	\$28,567	\$669,338

continued on next page

⁶³ See Wisconsin Legislative Fiscal Bureau, *supra* note 26, at 5.

⁶⁴ See McCabe, *supra* note 8.

FIGURE 7 *continued*

Year	Opening Balance	Amounts Received	Amounts Disbursed	Ending Balance
1992–93	\$669,338	\$443,131	\$749,971	\$362,498
1993–94	\$362,498	\$400,537	\$88,333	\$674,702
1994–95	\$674,702	\$354,518	\$969,844	\$59,376
1995–96	\$59,376	\$331,106	\$63,967	\$326,515
1996–97	\$326,515	\$326,850	\$463,543	\$189,822
1997–98	\$189,822	\$308,998	\$14,389	\$484,431
1998–99	\$484,431	\$337,566	\$778,979	\$43,018
1999–00	\$43,018	\$338,391	\$25,169	\$356,240
2000–01	\$347,373	\$342,978	\$457,677	\$232,674
2001–02	\$232,674	\$344,751	\$2,332	\$579,757
2002–03	\$574,472	\$342,026	\$586,626	\$329,872
2003–04	\$329,872	\$199,374	\$9,969	\$519,277
2004–05	\$519,277	\$246,074	\$282,374	\$482,977
2005–06	\$482,977	\$257,950	\$1,743	\$739,184

Source: Wisconsin Legislative Fiscal Bureau

D. LOW SPENDING LIMITS

When the WECF was created in 1977, the cost of running for office in Wisconsin was relatively low. In 1986, the state Legislature voted to freeze the WECF's spending limits. The result has been that the limits have failed to keep up with the real costs of running competitive campaigns in Wisconsin.

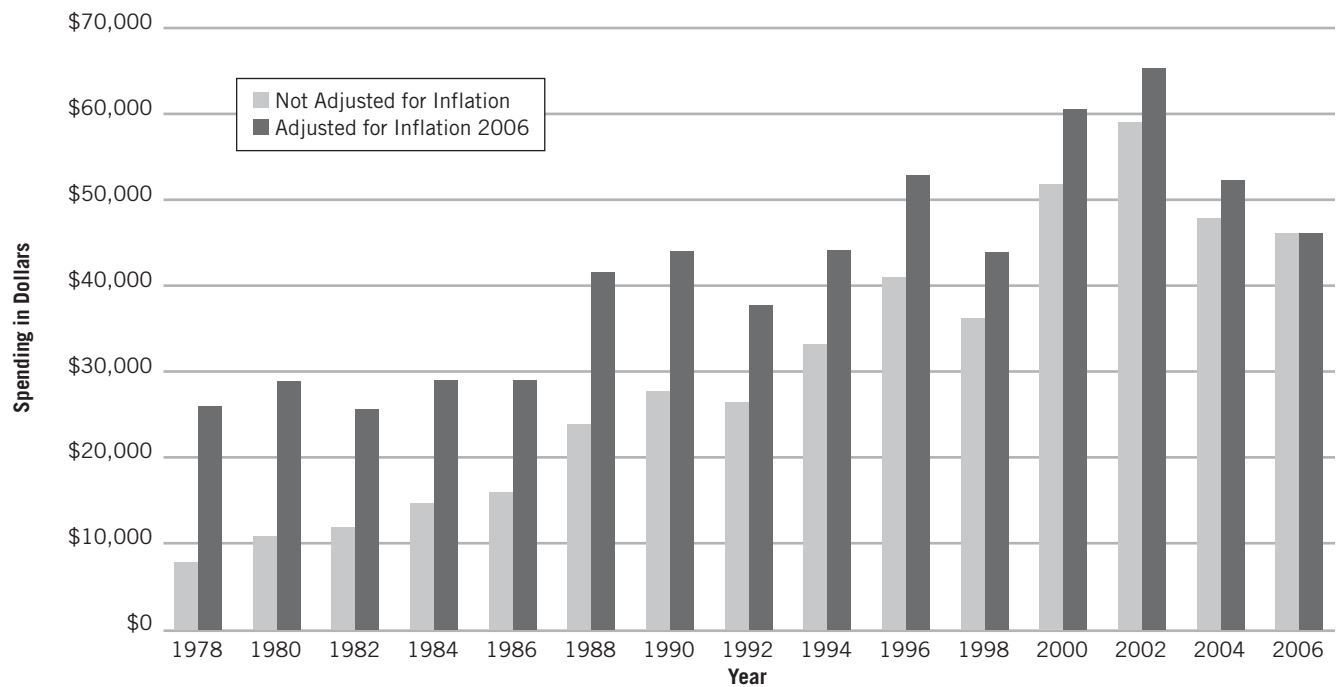
After the Legislature froze them in 1986, the spending limits became unreasonably low compared to median spending in those races.

CGS has analyzed campaign spending data in competitive State Assembly and State Senate races from 1978 (the first year that the program was used) to 2006 (the most recent election). After the Legislature froze them in 1986, the spending limits became unreasonably low compared to median spending in those races⁶⁵ (see Figures 8 and 9). For example, the spending limit for State Assembly candidates participating in the WECF is \$17,250; in 2002 (one of the most expensive elections in Wisconsin history), median spending in competitive State Assembly races was over \$65,500 (adjusted for inflation)—almost 4 times the limit. Comparing the current spending limits with actual campaign spending in State Senate races shows a greater contrast: the current spending limit for State Senate candidates is \$34,500, while median spending in competitive State Senate races in 2000 was almost \$300,000 (adjusted for inflation)—almost ten times the limit.

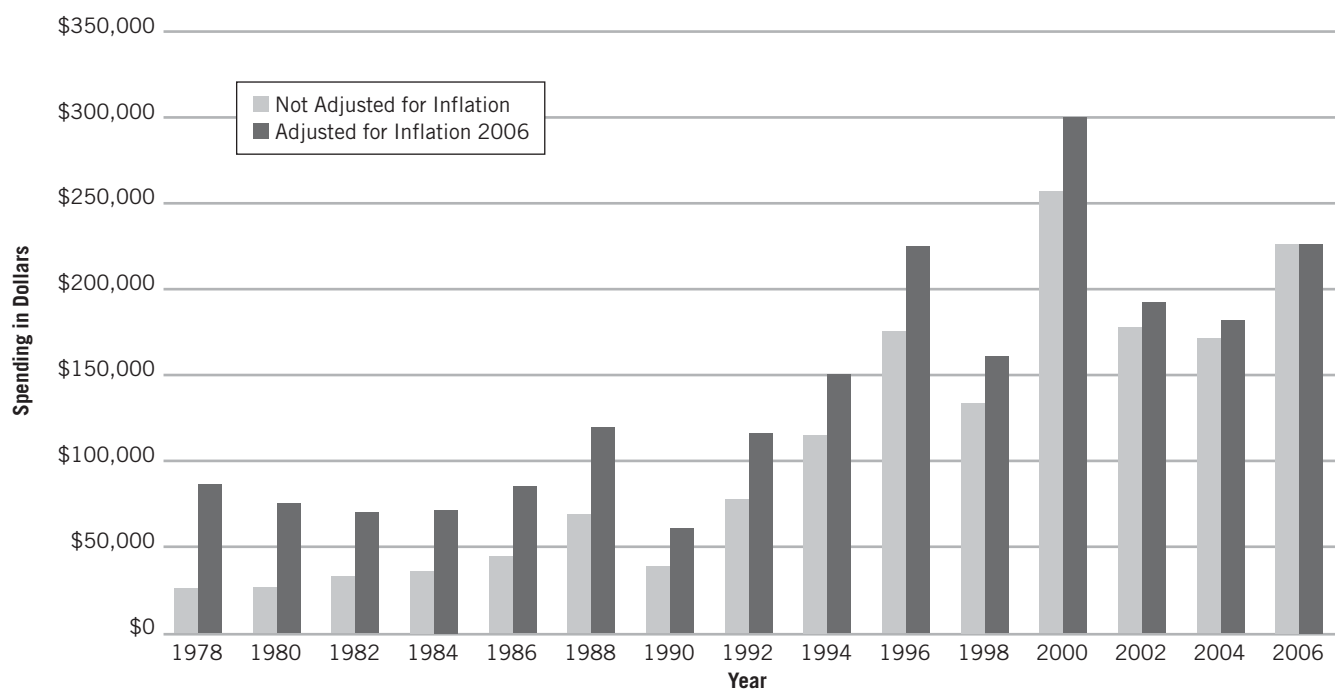
Individual high spending candidate figures show even more dramatic differences:

- 2004 marked the largest sum ever spent by a candidate running for State Assembly in a regular election year: Speaker John Gard, the Republican incumbent, spent \$221,403 during his race.

⁶⁵ A “competitive race” is a race where the winner wins by a margin of 10 percent or less.

FIGURE 8 Median Spending in Competitive State Assembly Races, 1978–2006

Source: Wisconsin Campaign Finance Project

FIGURE 9 Median Spending in Competitive State Senate Races, 1978–2006

Source: Wisconsin Campaign Finance Project

- The highest sum spent by a candidate for State Senate during the 2004 race was \$353,168, by Reince Priebus of the 22nd district.⁶⁶

Similar trends appear in gubernatorial and other statewide campaigns. In 2006, Governor Jim Doyle raised more than \$10 million for his campaign, while a gubernatorial candidate who accepted public funding was limited to just over \$1 million.⁶⁷ According to one newspaper article, over \$32 million in total was spent in the 2006 gubernatorial race.⁶⁸

E. NO MATCHING FUNDS FOR INDEPENDENT EXPENDITURES AND ISSUE ADS

Independent expenditures and issue ads have increased significantly in Wisconsin politics.

“By 1998, an explosion of issue ad spending coupled with unlimited candidate spending produced [Wisconsin’s] first-ever million dollar State Senate race.”⁶⁹ Two years later, candidates and committees spent \$3 million in the 10th Senate District race.

According to the Wisconsin Democracy Campaign, issue ad groups spent almost \$10 million on the 2006 gubernatorial election, up more than three times from what they spent in 2002.⁷⁰

Issue ads are not currently regulated in Wisconsin, although legislation to require greater disclosure of issue ads was proposed last session.⁷¹

However, mere disclosure of issue ads does nothing to entice candidates to accept public financing and spending limits. The Wisconsin public financing law does not have triggers which provide participating candidates with matching funds when they are faced with independent expenditures and issues ads.

Without built-in safeguards that allow participating candidates to respond to attacks by independent expenditures and issue ads, candidates have little incentive to agree to spending limits and participate in the WECF. “Even candidates who . . . remain . . . committed to running campaigns under spending limits ha[ve] to think twice about tying their own hands when they could face unlimited-cost campaigns run against them by special interest groups fueled by corporate and labor money.”⁷²

F. NO MATCHING FUNDS FOR HIGH-SPENDING OPPONENTS

Rather than provide participating candidates with additional resources to respond to high spending by non-participating candidates, the WECF simply eliminates the spend-

⁶⁶ See Wisconsin Democracy Campaign, Money in Wisconsin Politics Index, available at www.wisdc.org/moneyinpolitics.php#as.

⁶⁷ See Novak and Shah, *supra* note 2, at I5.

⁶⁸ Scott Bauer, “Justice Backs Public Financing,” *Wisconsin State Journal*, April 11, 2007.

⁶⁹ See McCabe, *supra* note 8.

⁷⁰ Cited in Patrick Marley, “‘Issue ads’ drove spending spree,” *Milwaukee Journal Sentinel*, February 6, 2007.

⁷¹ See S.B. 463, 2007-2008 Legislature (Wisconsin, 2008).

⁷² See McCabe, *supra* note 8.

ing limits for those participating candidates. This defeats one of the central purposes behind public financing programs: to control the skyrocketing costs of campaigns.

To date, Wisconsin has had few candidates who self-financed their own campaigns in state races.⁷³ However, the trend in state and local jurisdictions around the country is for more wealthy candidates to use personal funds to run for office. Extremely wealthy individuals—from Steve Westly in California to Jon Corzine and Douglas Forrester in New Jersey to Michael Bloomberg in New York City—have used their personal fortunes to mount expensive campaigns for state and local public office.

Often, candidates are disinclined to accept spending limits without additional matching funds to respond to independent expenditures, issues ads, high-spending opponents or wealthy candidates who self-finance their campaigns. A preferable solution to the problem of high-spending opponents would be to provide participating candidates with additional resources—often called “matching” or “rescue” funds—to candidates who face high-spending, privately-financed opponents. Even if they do not match high-spending opponents dollar-for-dollar, many state and local public financing laws include some form of rescue funds which would keep participating candidates competitive with their non-participating opponents.⁷⁴

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A state's campaign
finance laws are only
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cies which administer
and enforce them.
.....

G. ENFORCEMENT

A state's campaign finance laws are only as good as the agencies which administer and enforce them. Following the legislative caucus scandal in 2001, the Wisconsin State Ethics and Elections Boards were criticized for failing to probe any wrongdoing by the legislative leaders. While Dane County and Milwaukee County District Attorneys investigated and charged legislative leaders and their aides with felonies, the Ethics and Elections Boards reached a deal with the legislative leaders in which the caucuses would be abolished and each caucus would pay \$10,000 in forfeitures, payable with campaign funds.⁷⁵ Professor Donald Kettl, Chair of the Blue Ribbon Commission, said:

The whole purpose of the Ethics Board is to enforce a system of ethics in this state. . . . If the board's position is that either it doesn't want to take a position for fear it would get in the way of a negotiated settlement, or that it wants to allow district attorneys and others to take up the investigation instead, it really has to make you wonder why we have one to begin with.⁷⁶

⁷³ In 2003, State Senate candidate Alex Paul spent more than \$400,000 out of a total of \$450,000 on his campaign using personal funds. See <http://www.wisdc.org/moneyinpolitics.php>.

⁷⁴ See, e.g., Arizona Revised Statutes Section 16-952 (2007); Maine Statutes 21A Section 1125 (2007); Los Angeles Municipal Code Section 49.7.14 (2007).

⁷⁵ See Dennis Chaptman and Richard P. Jones, “Ethics Board's caucus deal fuels investigation dispute,” *Milwaukee Journal Sentinel*, October 19, 2001.

⁷⁶ *Id.*

For their parts, the Ethics and Elections Boards justified their actions by arguing that they wanted to reform the system rather than conduct investigations, and that they did not want to duplicate the work of the district attorneys.⁷⁷ They further noted that the Legislature did not provide them with sufficient resources to conduct investigations.⁷⁸

In February 2007, Governor Jim Doyle signed Wisconsin Act I, a bill which unified the State Ethics and Elections Boards into a single Government Accountability Board (GAB). Under the bill, the board is comprised of at least six members serving staggered six-year terms.⁷⁹ According to one of the bill's sponsors, Act I "would serve as a prime deterrent to further wrongdoing. It would also keep lawmakers accountable to the people they serve, whether on a state-wide or local basis."⁸⁰

GAB members have been selected and held meetings. GAB is required to conduct a full-scale review of the policies, regulations and opinions of both the State Ethics and Elections Boards. One prominent feature of the new GAB is that it has an unlimited budget for investigations of violations of the act.

Because it has only been in existence for a short period of time, it is difficult to evaluate the effectiveness of the GAB. In general, however, any agency that administers and enforces campaign finance laws should be given broad authority and powers to adjust the dollar amounts as necessary to close any loopholes that might be created.

H. "HOME RULE" LAWS

"Home rule" refers to the legal authority of local governments to enact and enforce laws outside of state laws. Hundreds of municipal and county governments in at least 18 states have enacted local laws addressing the role of money in local elections. Whether localities can create their own campaign finance laws, however, is the subject of debate and litigation in states like New York, Pennsylvania and Florida. Some states, such as California, explicitly allow their local jurisdictions to create campaign finance rules, so long as those rules do not conflict with the state law.⁸¹ Other states prohibit local laws or are silent on the question.

For years, the city of Madison, Wisconsin has tried to create its own public financing program for local races.⁸² Wisconsin state law, however, is unclear on Madison's authority to do so. On the one hand, the Wisconsin Legislature has indicated that it views campaign finance to be a "statewide concern": Wisconsin's campaign finance law applies to "every candidate for public office"⁸³ and imposes contribution and spending limits on

⁷⁷ *Id.*

⁷⁸ See Steven Walters, "Caucus flap shows bigger problems," *Milwaukee Journal Sentinel*, October 21, 2001.

⁷⁹ In July 2007, the Wisconsin Legislature confirmed six retired judges to serve as the first members of the GAB.

⁸⁰ Terri McCormick, "Reform bill should be passed," *Wisconsin State Journal*, March 11, 2006.

⁸¹ See, e.g., California Government Code Section 81013 (2007).

⁸² In 2005, Madison Alderperson Austin King contacted CGS to help draft a full public financing program for local offices. In 2007, CGS contacted former Wisconsin Governor Tony Earl about public financing in Madison.

⁸³ See Wisconsin Statutes Section 11.001 (2007).

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 financing system.

candidates for local office. On the other hand, a June 1, 2004 letter from Robert J. Conlin, Senior Staff Attorney at the Wisconsin Legislative Council, to state Representative Mark Pocan, states that, “[w]ith respect to a [Wisconsin] city implementing a campaign finance system for candidates for local office, the statutes relating to campaign financing do not explicitly prohibit cities from enacting local campaign finance regulations.”⁸⁴ The letter further states:

An argument may be made that the Legislature has enacted a system of campaign regulation that is of statewide concern and that effectively forecloses a city from enacting its own system of campaign finance regulation. However, given that the conduct of local elections may be viewed as one of primarily local concern and given that the Legislature has not provided funding for campaign grants to local candidates, thereby reducing the effectiveness of spending limitations under state law as to those candidates, one may also argue that a city could adopt at least some elements of local campaign finance regulation under its home rule authority. [I]t is not clear how a court would rule on this matter.

In general, there does not appear to be a problem with local jurisdictions enacting campaign finance rules for local races. Many major cities, including Los Angeles, New York, and San Francisco, not only have enacted their own campaign finance laws for local races, but have also created fully-functioning public financing programs. Without a strong argument or statement from the Wisconsin Legislature as to why a city like Madison should not be able to do so, local jurisdictions in Wisconsin should be able to enact strong local campaign finance regulations, which may include a public financing system.

I. JUDICIAL PUBLIC FINANCING

This report focuses primarily on public financing for legislative and executive candidates, but it is worth mentioning that there have been significant efforts to create judicial public financing programs to address the problem of money in Wisconsin judicial campaigns as well. The Wisconsin Democracy Campaign estimated that candidates and committees spent about \$6 million on the 2006 Supreme Court race won by Annette Ziegler—more than three times the previous high set in 1999.⁸⁵ In April 2007, in the wake of the most expensive Supreme Court race in state history, Wisconsin Supreme Court Chief Justice Shirley Abrahamson said that she believed all races for the state’s highest court should be publicly funded.⁸⁶ The 2008 Supreme Court race proved just as expensive, with

⁸⁴ See June 1, 2004 Letter from Robert J. Conlin, Wisconsin Legislative Council, to State Representative Mark Pocan, at 3.

⁸⁵ Scott Bauer, “Justice Backs Public Funding,” *Wisconsin State Journal*, April 11, 2007.

⁸⁶ *Id.* In December 2007, the Wisconsin Supreme Court wrote a unanimous letter in support of “realistic, meaningful” public finance of judicial elections. Letter from Wisconsin Supreme Court (December 10, 2007), <http://www.wicourts.gov/news/archives/view.jsp?id=60>.

candidates and committees spending a combined \$5.8 million on a “racially charged and interest group dominated” race that unseated incumbent Louis Butler.⁸⁷

Previous efforts to provide public financing to Wisconsin state judicial candidates have proven unsuccessful. Introduced during the 1999–2000 legislative session, SB 181 (also known as the “Impartial Justice” bill) would have provided full public financing to

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Previous efforts
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state Supreme Court candidates who agreed to limit their spending. Although the State Senate passed the bill by a 30-3 vote, the State Assembly held up the bill and ultimately finished the legislative session without passing it.

In 2007, legislators re-introduced the Impartial Justice bill in the form of SB 171 and AB 250. Among other things, the bill would have created a separate “Democracy Fund” that would provide funding for Supreme Court Justice candidates and allowed Supreme Court candidates to qualify by collecting qualifying contributions in amounts between \$5 and \$100 up to \$5,000, but not more than \$15,000, and seed money contributions of up to \$100 with an aggregate of \$5,000. The Senate passed the bill on February 19, 2008, but on March 21, 2008 the Assembly failed to pass the bill.

Instead, pursuant to a special session on campaign finance reform called by Governor Doyle, a comprehensive reform plan was introduced, Special Session Senate Bill I. The bill combines SB 12 and SB 171. Special Senate Bill I provides, among other things, public financing of all state races and full public financing of state Supreme Court elections. On February 28, 2008, the committee on Campaign Finance Reform, Rural Issues and Information Technology approved the bill. The legislative session ended without its passage.

⁸⁷ “O’Connor: Wisconsin Judges Shouldn’t Be Elected,” *Associated Press*, May 7, 2008; “Wisconsin Supreme Court Election Raises New Questions About Judicial Election Reform,” Brennan Center for Justice, April 4, 2008, http://www.brennancenter.org/content/resource/wisconsin_supreme_court_election_raises_new_questions_about_judicial_electi/.



RECOMMENDATIONS

Wisconsin can fix its public financing program in one of many ways. Carrying out any type of reform, however, necessarily depends on several factors, including the current political environment, the efforts of grassroots groups and the will of legislators to push through reforms.

ALTERNATIVE ONE: REPEAL EXISTING PUBLIC FINANCING PROGRAM AND REPLACE WITH FULL PUBLIC FINANCING PROGRAM.

Campaign finance reform purists argue that Wisconsin's hybrid approach to public financing is flawed, because it allows too much private money into the political process, and that Wisconsin should therefore adopt a system of full public financing for elected offices. Under a full public financing system (known in some jurisdictions as "Clean Money" or "Clean Elections"), candidates who raise a specified number of small (e.g., \$5) qualifying contributions would receive *all* of the funding necessary to run their campaigns. Once the candidate meets the fundraising qualification threshold, the candidate must cease all private fundraising activity.

Prominent full public financing programs for all statewide and legislative offices are already in place in Arizona, Maine and Connecticut. New Jersey, New Mexico and North Carolina offer full public financing for some statewide, legislative or judicial offices. The effects of these programs on increasing electoral competition, bringing more people into the political process and reducing the influence of money in the political process, discussed in numerous reports and studies, are promising.⁸⁸

I. CITIZEN'S PANEL ON A CLEAN ELECTION OPTION PROPOSAL

In 1997, with funding from the Evjue Foundation, two prominent Wisconsinites, Ed Garvey and Midge Miller, convened a Citizen's Panel on a Clean Election Option to

⁸⁸ Steven M. Levin, *Keeping It Clean: Public Financing in American Elections*, Center for Governmental Studies (2006).

study “how [Wisconsin] citizens could regain control of their political process.”⁸⁹ Chaired by retired Supreme Court Chief Justice Nathan Heffernan, the Panel recommended a system of full public financing of state elections. The report stated:

The ability to raise large sums of money stands as the first barrier to candidacy and, in fact, defines a candidate’s viability. The Citizen Panel on a Clean Election Option proposes to supplant that system with one where economic status and access to wealth are not qualifying factors for a potential candidate, where all citizens may participate in the election process in an equal and meaningful way as voters and as candidates.

The Panel has reached a consensus that only complete public financing would free candidates and public officers from the time-consuming and compromising activity of fundraising and free them to be independent agents in the best interest of all citizens. The objective is citizen control of elections at the state level.⁹⁰

Among other things, the Citizen’s Panel proposed funding the clean money system with an appropriation from the Legislature equal to \$5 per taxpayer per year. The Panel’s proposal provided matching funds (up to 2.5 times the original amount allocated) to participating candidates when they faced a non-participating candidate who exceeded the spending limit; however, the proposal did not include matching funds for participating candidates who faced independent expenditures. Rather, the proposal put limits on the amount of money that independent expenditure groups could spend in the final weeks before the election—a provision that raises constitutional concerns.

The Panel’s proposal also caused concern for its lack of specificity. First, the proposal stated that candidates must obtain the “requisite number of \$5 [qualifying] contributions” in order to obtain public funding, but it failed to specify what the qualifying threshold for each office should be. Other jurisdictions with public financing programs—such as New Jersey—have had difficulty setting the qualification threshold—some have put it too high (so that fewer candidates qualify).

In addition, it is clear that *some* of the Panel’s proposed funding amounts (even when adjusted for inflation) are too low to mount competitive campaigns in Wisconsin (see Figure 10). For example, a combined spending limit and public fund allocation for the primary and general elections of under \$2 million for the Governor’s race is probably too low to entice candidates to participate in the program.

2. LEGISLATIVE PROPOSALS

More recently, in the last few legislative sessions, state legislators have introduced several bills proposing to create a full public financing program in Wisconsin. Companion bills SB 182 and AB 355—collectively referred to as the Risser-Pocan Clean Elections bill—were introduced in May 2007. Modeled after the Arizona, Maine and Connecticut programs, the Risser-Pocan Clean Elections bill would have replaced the WECF and provide full public financing for most state legislative, executive and judicial races. (Unlike the

⁸⁹ Citizen’s Panel on a Clean Elections Option, Final Report, June 1997, available at http://fightingbob.com/files/heffernan_commission_report.pdf.

⁹⁰ *Id.*

FIGURE 10 Citizen's Panel Proposed Spending Limits

Office	Primary Election (adjusted for inflation 2006 and rounded to the nearest \$1,000)	General Election (adjusted for inflation 2006 and rounded to the nearest \$1,000)
Governor	\$621,000	\$1,242,000
Lieutenant Governor	\$93,000	\$248,000
Secretary of State	\$93,000	\$248,000
State Treasurer	\$93,000	\$248,000
Attorney General	\$497,000	\$745,000
State Superintendent	\$186,000	\$373,000
Circuit Court Judge	\$31,000	\$31,000–\$62,000 (amount depends on the population of the district)
Court of Appeals Judge	\$62,000	\$93,000
State Supreme Court Justice	\$124,000	\$373,000
State Senate	\$45,000	\$89,000
State Assembly	\$22,000	\$45,000

Citizen's Panel model, the proposal does not include funding for lower court judges.) Qualified candidates would have received grants for both the primary and general elections. A public hearing was held on February 28, 2008, and the Committee on Campaign Finance Reform, Rural Issues and Information Technology approved the bill on a 3-1 vote. SB 182 failed to pass the Senate on March 21, 2008.

One of the biggest concerns with a full public financing program is funding it. As the Blue Ribbon Commission noted in 1997:

[P]roviding full public financing would . . . prohibit individuals from contributing to candidates whose views they favor. The Commission believes that such participation by citizens in the electoral . . . processes is important. Citizens have shown that they value the right to choose who to support and how strongly to support them. Of those surveyed, 87 percent agreed that "It's important for citizens to contribute individually to political campaigns." . . . Many citizens have expressed deep concern about using public money to fund election campaigns. The Commission has not found broad or deep public support for full public financing of state campaigns.⁹¹

Certainly funding a full or partial public financing program is challenging, and it will inevitably face public opposition. However, as discussed below, there are a number of possible funding mechanisms which could cover the costs of a full public financing program.

The Blue Ribbon Commission also expressed concern that moving to a system of full public financing would not remove private money from the political process altogether—it would merely shift the flow of private money through independent expenditures or

⁹¹ *Supra* note I, at 24.

issue ads.⁹² This might be true, but independent expenditures and issue ads are going to be a problem in almost any jurisdiction where contribution limits exist. Because of First Amendment concerns, independent expenditures and issue ads cannot be outlawed; but full and partial public financing programs that provide matching funds to candidates to respond to independent expenditures and issue ads can at least minimize their impact.

Full public financing in Wisconsin could work in one of many ways. The broadest approach would be to provide full public financing for all statewide and legislative races. However, this approach is also the most expensive and therefore politically challenging. An alternative approach would provide full public financing for some but not all offices (e.g., just legislative races or State Supreme Court Justices). The advantage of this approach is that it saves money; however, some would argue that not including high-profile, statewide races (such as the gubernatorial race) defeats the purpose of a public financing program.

ALTERNATIVE TWO: FIX PROBLEMS IN EXISTING PUBLIC FINANCING PROGRAM.

Although Wisconsin's current program is broken, it is certainly not beyond repair. Many would argue that Wisconsin should not repeal its current law altogether and replace it with a full public financing program, but rather it should fix the law's principal deficiencies. Any attempt to repair the current system, however, must start with raising both the amount of funding in the program, and the spending limits.

I. INCREASE FUNDING AMOUNTS AND EXPLORE ALTERNATIVE FUNDING MECHANISMS TO SUPPLEMENT OR REPLACE TAX CHECK-OFF.

The WECF is woefully under-funded. Wisconsin's public financing program currently receives its funding from a voluntary tax check-off of \$1 per individual. This amount has never been adjusted for inflation, and the number of contributing taxpayers has decreased significantly since the inception of the program.

Wisconsin should raise the amount of the tax check-off and provide funding to raise awareness of the check-off with taxpayers. First, the Legislature could appropriate some funding to the GAB and Department of Revenue to educate the public about the check-off system and the WECF itself. North Carolina implemented such a public education campaign and is starting to see some success. Second, the tax check-off on the tax return should be changed from an opt-in to an opt-out system.

Wisconsin should also find an additional funding mechanism for the WECF, including, but not limited to, an appropriation of money to the program directly from the general fund. While many would argue that money from the general fund could be used more wisely elsewhere in the state budget, a tamper-proof, annual appropriation from the general fund is the most reliable funding mechanism for a public financing program.

Wisconsin should also consider funding the WECF with one or more dedicated sources. Examples of states using dedicated sources to fund their public financing pro-

⁹² *Id.*

grams include Arizona, which uses proceeds from a surcharge on civil and criminal fines, and Connecticut, which uses proceeds from unclaimed and abandoned property.

2. INCREASE SPENDING LIMITS AND GRANTS

Statistical and anecdotal evidence in Wisconsin overwhelmingly shows that WECF's spending limits are currently too low.

To encourage future candidate participation in Wisconsin's public financing program and increase competition in legislative races, Wisconsin should increase the grant amounts and spending limits for participating candidates. There are two worthwhile proposals—

both very similar—that can be used as starting points to affix numbers. First, the Governor's Blue Ribbon Commission recommended increasing the spending limits and grant amounts in 1997 (see Figure 11).

Statistical and anecdotal evidence in Wisconsin overwhelmingly shows that WECF's spending limits are currently too low.

More recently, Senators Michael Ellis (R-Neenah) and Jon Erpenbach (D-Middleton) introduced SB 12, which would increase candidate spending limits and provide a maximum grant equal to 35 percent of the limit (see Figure 12). This bill failed to pass pursuant to Senate Joint Resolution I, hence the legislative session ended without SB 12's passage.

SB 12 would have established a biennial adjustment of the limitations based on inflation. SB 12 would have provided participating candidates with a supplemental grant (or "rescue funds"). These funds would match the total amount of disbursements exceeding the spending limit made by a non-participating candidate and the total amount of disbursements made in close proximity to the election by special interest committees to oppose the participating candidate or to support that candidate's opponent, if those totals exceeded ten percent of the spending limit, up to three times the spending limit.

The numbers in the Governor's Blue Ribbon Commission proposal and in SB 12 are a far more realistic indication of what candidates actually spend in today's state races than the WECF's current grant amounts and spending limits.

FIGURE 11 Governor's Blue Ribbon Commission Proposed Spending Limits

Office	General Election Grant Amounts (adjusted for inflation 2006 and rounded to nearest \$1,000)	General Election Spending Limits (adjusted for inflation 2006 and rounded to nearest \$1,000)
Governor	\$1,087,000	\$4,349,000
Lieutenant Governor	\$349,000	\$1,398,000
Attorney General	\$233,000	\$932,000
State Treasurer, Secretary of State, Superintendent of Public Instruction	\$109,000	\$435,000
State Supreme Court Justice	\$124,000	\$497,000
State Senate	\$43,000	\$174,000
State Assembly	\$19,000	\$75,000

FIGURE 12 SB 12 Proposed Spending Limits

Office	General Election Grant Amounts	General Election Spending Limits
Governor	\$1,400,000	\$4,000,000
Lieutenant Governor	\$175,000	\$500,000
Attorney General	\$245,000	\$700,000
Secretary of State, State Treasurer, State Supreme Court Justice, State Superintendent	\$87,500	\$250,000
State Senate	\$52,500	\$150,000
State Assembly	\$26,250	\$75,000

3. INCLUDE PUBLIC FINANCING FOR THE PRIMARY ELECTION

The WECF currently only provides public funding to candidates in the general election. As previously mentioned, the program essentially uses the primary election as a qualification threshold for candidates to receive public financing in the general election. If the office sought is a partisan office, the candidate must receive at least 6 percent of the votes in the primary election and win the primary; if the office sought is a nonpartisan office, the candidate must be certified as a candidate.

There is some debate about whether the WECF (and public financing programs in general) should fund candidates in primary *and* general elections. In public financing programs that fund candidates in both elections, candidates qualify for public funding by raising a certain threshold amount of private money, often in smaller amounts.⁹³ One could argue that providing public funding in the primary election is just as important—if not more important—than providing public funding in the general election, because primary races are often more competitive, and as such, the money that funds those campaigns should come from a neutral source. On the other hand, providing public financing in the primary *and* general elections can be significantly more costly, and one could argue that it is only important to provide a neutral source of funding for the general election.

When it created the WECF in 1977, the Legislature decided to provide public financing only to candidates in the general election, presumably because of cost concerns. Using a candidate's performances in the primary election as a prerequisite to qualify him or her for public funding in the general election is a perfectly acceptable way to weed out fringe candidates and prevent them from receiving public money. However, the same goals of public financing that apply in a general election (minimizing undue influence, bringing more candidates into the political process, etc.) also apply in a primary election, and there are other ways to ensure that fringe candidates do not receive public financing—most importantly, by setting an appropriate qualification threshold. Therefore, Wisconsin should amend the WECF to provide public financing in the primary election.

⁹³ See, e.g., Los Angeles Municipal Code Section 49.7.19 (2007).

4. PROVIDE ADDITIONAL FUNDING TO COUNTER INDEPENDENT EXPENDITURES AND HIGH-SPENDING OPPONENTS.

Although the WECF currently releases candidates from their respective spending limits if they face non-participating, privately-financed opponents who receive more than 6 percent of the vote in the primary, it does not provide matching funds to participating candidates who face independent expenditures (including issue ads) or high-spending opponents.

Wisconsin should create disclosure for issue ad committees as well as provide matching funds to participating candidates who face independent expenditures and issue ads. In addition, rather than release candidates from spending limits when faced by privately-financed opponents, Wisconsin should provide matching funds up to 2 or 3 times the spending limit to participating candidates who face high-spending non-participating opponents.

ADDITIONAL NEEDED REFORMS

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

Wisconsin's initially sound public financing law has fallen into disrepair over time. Candidates, committees and political operatives continue to seek new ways around campaign finance laws. Legislators have weakened the laws, as demonstrated by the 1986 amendments to the WECF. Campaign finance laws must be reviewed and updated at least every ten years.

Wisconsin should adopt an independent Blue Ribbon campaign finance commission in Wisconsin and require it to review campaign finance laws and recommend changes every ten years.

Once this commission makes its recommendations, the state can take one of several approaches to make sure that the recommendations are heeded and implemented. First, the commission's recommendations could instantly become law (without legislative review or approval). However appealing this might be to reformers, it is likely a political non-starter because legislators do not like to cede power to legislate to agencies, particularly when the subject matter involves their own election and livelihood.

As an alternative, the commission's recommendations could go into effect unless they are vetoed by a two thirds vote of the Wisconsin state Legislature.

Finally, the legislature could put the commission's recommendations on the next election ballot for approval by voters.

2. ALLOW WISCONSIN LOCALITIES TO CREATE PUBLIC FINANCING PROGRAMS.

Wisconsin's campaign finance law regulates both state and local politics. Unfortunately, one could interpret language in the state law as preventing local jurisdictions such as Madison from creating stronger campaign finance laws and local public financing programs of their own.

Wisconsin should amend its state campaign finance law to allow local jurisdictions such as Madison to create public financing programs, thereby building broader support for the concept around the state.



CONCLUSION

The state of Wisconsin has a proud tradition as a leader on campaign finance issues. When it was working properly, the WECF served as a model public financing program. Since it has fallen into disrepair, however, reform has been difficult and hard-fought.

The WECF has deteriorated into an unusable program with few takers. By freezing the spending limits in 1986, the Legislature effectively doomed the program. However, Wisconsin has a number of options, many of which are included in this report, and which would reinvigorate its deteriorating campaign finance law. Adopting these proposals would go a long way towards fixing the state's campaign finance problems. Though many proposals to fix the system have been suggested, Wisconsin is having the same difficulties passing reform that legislatures in the rest of the country are facing.



BIBLIOGRAPHY

STATUTES

- 2 U.S.C. Section 434(f)(3) (2007).
Arizona Revised Statutes Section 16-952 (2007).
California Government Code Section 81013 (2007).
Los Angeles Municipal Code Section 49.7.14 (2007).
Maine Statutes 21A Section 1125 (2007).
S.B. 463, 2007-2008 Legislature (Wisconsin, 2008).
Wisconsin Statutes Section 11.001 (2007).
Wisconsin Statutes Section 11.06(7) (2007).
Wisconsin Statutes Section 11.26 (2007).
Wisconsin Statutes Section 11.31(1) (2007).
Wisconsin Statutes Section 11.50 (2007).
Wisconsin Statutes Section 71.10(3) (2007).

NEWS ARTICLES

- Bauer, Scott, "Justice Backs Public Financing," *Wisconsin State Journal*, April 11, 2007.
Chapman, Dennis and Richard P. Jones, "Ethics Board's caucus deal fuels investigation dispute," *Milwaukee Journal Sentinel*, October 19, 2001.
Hall, Dee J. and Phil Brinkman, "Jensen Guilty," *Wisconsin State Journal*, March 12, 2006.
Marley, Patrick "Issue ads' drove spending spree," *Milwaukee Journal Sentinel*, February 6, 2007.
Walters, Steven, "Caucus flap shows bigger problems," *Milwaukee Journal Sentinel*, October 21, 2001.
"O'Connor: Wisconsin Judges Shouldn't Be Elected," *Associated Press*, May 7, 2008.
"Reform bill should be passed," *Wisconsin State Journal*, March 11, 2006.

LEGAL OPINIONS

- Buckley v. Valeo*, 424 U.S. 1 (1976).
McConnell v. FEC, 540 U.S. 93 (2003).
State Ex rel. Kleczka v. Conta, 82 Wis. 2d 679 (1978).
Wisconsin Realtors Association et al. v. Ponto et al., 299 F.Supp 2d 899 (2002).
Wisconsin Right to Life v. FEC, 551 U.S. __ (2007).
Wisconsin Attorney General Opinion OAG 55-76 (August 16, 1976).

CONFERENCE PAPERS, POLLS, REPORTS

Citizen's Panel on a Clean Elections Option, Final Report, June 1997, available at http://fightingbob.com/files/heffernan_commission_report.pdf.

Governor's Blue Ribbon Commission on Campaign Finance Reform, State of Wisconsin (May 1997).

Letter from Wisconsin Supreme Court (December 10, 2007), <http://www.wicourts.gov/news/archives/view.jsp?id=60>.

Letter from Robert J. Conlin, Wisconsin Legislative Council, to State Representative Mark Pocan.

Levin, Steven M., *Keeping It Clean: Public Financing in American Elections*, Center for Governmental Studies (2006).

Mayer, Kenneth R., Timothy Werner and Amanda Williams, "Do Public Funding Programs Enhance Electoral Competition?" Paper presented at the Fourth Annual Conference on State Politics and Policy Laboratories of Democracy, Kent State University (March 2005)

McCabe, Mike, "Campaign Finance Reform in Wisconsin: Where We've Been, Where Things Stand Today and Where We Go From Here," Wisconsin Democracy Campaign (October 17, 2002), available at www.wisdc.org.

Novak, Suzanne and Seema Shah, *Campaign Finance in Wisconsin*, Brennan Center for Justice (2007).

Werner, Timothy and Kenneth R. Mayer, "The Impact of Public Election Funding on Women Candidates: Comparative Evidence from State Elections," Paper presented at the 2005 meeting of the Midwest Political Science Association (April 7, 2005)

Wisconsin Democracy Campaign, "Wisconsin Money in Politics Index," June 16, 2005, www.wisdc.org.

Wisconsin Democracy Campaign, Money in Wisconsin Politics Index, www.wisdc.org/moneyinpolitics.php#as.

Wisconsin Legislative Fiscal Bureau, *Informational Paper 94: Public Financing of Campaigns in Wisconsin*, January 2007.

Wisconsin Legislative Reference Bureau, *Informational Bulletin 04-1: The Partial Veto in Wisconsin*, January 2004.

"Wisconsin Supreme Court Election Raises New Questions About Judicial Election Reform," Brennan Center for Justice, April 4, 2008, http://www.brennancenter.org/content/resource/wisconsin_supreme_court_election_raises_new_questions_about_judicial_electi/.

INTERVIEWS

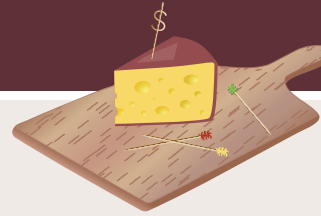
Telephone interview with Kevin Kennedy, Executive Director Wisconsin State Elections Board, December 5, 2006.

Telephone interview with Mike McCabe, Wisconsin Democracy Campaign, Fall 2007.

Telephone interview with Jay Hecht, Wisconsin Common Cause, Fall 2007.

Telephone interview with Tony Earle, former Governor of Wisconsin, Fall 2007,

Public Campaign Financing: Wisconsin



showing its age

Cited by many as a model for the nation, Wisconsin's public campaign finance law worked successfully for many years. Recently, however, the program has failed to keep up with the times and is now practically defunct. Although Wisconsin once led in campaign finance reform, it is now a "no-show" in the race to improve state governance.

This report recommends several potential reforms to save Wisconsin's ailing public financing program :

Alternative One :

- ◆ Replace the existing program with a clean money system of full public financing.

Alternative Two — Make the following changes to the existing program :

- ◆ Increase funding amounts and spending limits.
- ◆ Explore alternative funding mechanisms to supplement or replace the tax-check-off.
- ◆ Provide candidates with additional funds to help them counter independent expenditures and high-spending opponents.

Additional Reforms :

- ◆ Create an independent Blue Ribbon Campaign Finance Commission and require it to review the state's campaign finance laws every ten years.
- ◆ Allow Wisconsin localities to create their own public financing programs.

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