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# Public Campaign Financing in Florida

A PROGRAM SOURS

Jessica A. Levinson

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CENTER *for* GOVERNMENTAL STUDIES

2008



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# Foreword

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This report examines public campaign financing for gubernatorial and cabinet office elections in Florida. The Center for Governmental Studies (CGS) has studied public financing of elections in state and local jurisdictions for 25 years. The goal of these studies is to gauge whether public campaign financing laws are working and whether improvements are necessary.

CGS has published several general reports on public financing: a comprehensive analysis of state and local jurisdictions, *Keeping It Clean: Public Financing in American Elections* (2006); 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 numerous state and local jurisdictions, including; *Public Campaign Financing Wisconsin: Showing Its Age* (2008); *Public Campaign Financing in New Jersey—Governor: Weeding Out Big Money in the Garden State* (2008); *Public Campaign Financing in New Jersey—Legislature: A Pilot Project Takes Off* (2008); *Public Campaign Financing in Minnesota: Damming Big Money in the Land of 10,000 Lakes* (2008); *Public Campaign Financing in Michigan: Driving Towards Collapse?* (2008); *Political Reform That Works: Public Campaign Financing Blooms in Tucson* (2003); *A Statute of Liberty: How New York City's Campaign Finance Law is Changing the Face of Local Elections* (2003); *NY, Dead On Arrival? Breathing Life into Suffolk County's New Campaign Finance Reforms* (2003); *On the Brink of Clean: Launching San Francisco's New Campaign Finance Reforms* (2002); and *Los Angeles: Eleven Years of Reform: Many Successes, More to be Done* (2001) (copies of CGS reports are available at [www.cgs.org](http://www.cgs.org) and [www.policyarchive.org](http://www.policyarchive.org)).

CGS thanks the public officials, administrators and advocates on both sides of the public financing debate who provided CGS with invaluable information, suggestions, reports and observations about public financing in Florida.

Jessica Levinson, CGS Political Reform Project Director, authored this report. Levinson also authored recent CGS reports on public campaign financing for governor and legislature in New Jersey. Legal Intern Nicole Pereira greatly assisted in obtaining research for this report. CGS Chief Executive Officer Tracy Westen and President Bob Stern provided invaluable editorial comments and oversight.

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

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# EXECUTIVE SUMMARY

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**F**lorida enacted its public campaign financing program in 1986, with the passage of the Florida Election Campaign Financing Act (“the Act”). Under the Act, participating candidates for governor and lieutenant governor (running together as a team), and state cabinet posts may receive public funding for their campaigns. The legislature designed the program to insulate candidates from the influence of special interest money and to increase the number of qualified candidates financially able to run for office.

The Act provides matching funds to certified candidates. Qualifying candidates must limit loans or contributions from her or his personal funds to an aggregate of \$25,000 (for both the primary and the general elections combined) and limit contributions from political parties to \$250,000 in the aggregate (for both the primary and general election). Neither of these amounts counts toward the threshold levels that candidates must raise in order to qualify for the program. Candidates receive

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The current program allows candidates to raise and spend large amounts of private contributions and still receive public funds. This is both because expenditure limits are high and because political parties can receive unlimited contributions and spend large sums on behalf of candidates—amounts which do not count toward the candidates’ expenditure limit.  
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public matching funds on a two-to-one basis for qualifying contributions of up to \$150,000 or \$100,000 (depending on the office the candidate is running for) and on a one-to-one basis for subsequent contributions of \$250 or less for both the primary and general elections. In addition, participating candidates may receive so-called “rescue” funds if her or his non-participating opponent exceeds the expenditure limit.

While Florida’s public campaign financing program functioned well for almost a decade, it now faces growing problems, primarily from recently increased expenditure limits—triple the previous amount—and large spending by political parties. Although all of the major party candidates accepted public financing in 2006, the current program allows candidates to raise and spend large amounts of private contributions and still receive public funds. This is both because expenditure limits are high and because political parties can receive unlimited contributions and spend large sums on behalf of candidates—amounts which do not count toward the candidates’ expenditure limit. This erodes the intent of the program, harming those without a pre-existing network of financial support or access to large private donors or special interest groups that can funnel money to candidates through the political party.

This report recommends the following reforms to improve Florida's law:

**1. *Lower Expenditure Limits***

Florida's high expenditure limits erode the central purposes of the public financing program by: (1) prolonging fundraising until the expenditure limit is reached; (2) increasing the time candidates spend talking only to potential donors and decreasing the time spent with those unable to donate; (3) advantaging those with established fundraising networks who can raise many \$500 contributions; (4) wasting taxpayer money on well-funded candidates who do not need public funding; and (5) decreasing public confidence in public financing programs and the independence of officeholders from their fundraisers.

Florida should lower limits to pre-2005 amendment levels and tie spending limits to both the consumer price index (based on goods and services used to run for office) and the number of registered voters.

**2. *Limit Contributions to and Spending by Political Parties***

Political parties can spend unlimited funds on advertisements so long as they mention at least three candidates. In addition, political parties may give \$250,000 in allocable contributions to candidates and unlimited sums in so-called non-allocable contributions. Non-allocable contributions include polling services, research services, costs for campaign staff, professional consulting services and telephone calls. Candidates can thus avoid the expenditure limits by suggesting that contributors give money to the political parties, and there is no limit on these contributions.

Florida should eliminate the ability of political parties to spend money on non-allocable candidate campaign costs. Florida should also limit the ability of the political party to give up to \$25,000 in allocable costs.

Contributions to political parties are unlimited. Hence candidates can in effect completely avoid the contribution limit by directing that those who want to give more than \$500 to simply give to the party, while both the candidate and the contributor know that the party will likely use that money on behalf of the candidate. Florida should therefore limit contributions to political parties to \$2,300.

**3. *Provide Rescue Funds Based on Independent Expenditures, Issue Advertisements and Political Party Spending***

Florida provides candidates with additional funding ("rescue funds") if their opponent exceeds the spending limits, but it does not give such funds to help participating candidates counter independent expenditures and issue advertisements that negatively target a participating candidate or support her or his opponent. Florida should expand candidate eligibility for rescue funds.

Candidates should also be able to obtain rescue funds triggered by high-spending from the opposing political party. A candidate's ability to ask for or accept high levels of spending by her or his own political party, defeats the spirit of the public financing program. When a candidate directs money to the politi-

cal party, the candidate can avoid both contribution and expenditure limits, as contributions to and expenditures by the political party are essentially unlimited. The party can in effect act as a shadow co-candidate without any restrictions, while the participating candidate can reap the benefits of public funds *and* political party spending. It will be particularly important to make these changes once Florida lowers its expenditure limits. Otherwise, candidates can essentially prevent their participating opponents from ever receiving rescue funds.

#### ***4. Improve Disclosure based on Issue Ads and Political Party Spending***

Florida's campaign finance law should require disclosure of the identities of those making issue ad expenditures and the amounts that they spend. This information should be disclosed on the Department of State's website.

In addition, state parties making expenditures on behalf of a candidate or candidates should be required to file disclosure reports earlier than five days before the election (the current rule). State parties should, like candidate committees, file weekly finance reports as the election nears. These reports should be electronically available through the Department of State's website.

#### ***5. Tighten the Limit on Candidates' Ability to Lend Personal Funds***

Currently, candidates can lend their campaigns unlimited funds and still obtain public financing so long as the campaign repays the loan before the candidate applies for public funding. This erodes the purpose of the program. Candidates can spend large sums of their own money early in the race to gain invaluable name recognition, for example, and still later obtain public financing. This puts wealthy self-financed candidates at a distinct advantage. Florida should specifically provide that candidates cannot obtain public funding if they lend their campaigns more than \$25,000.

#### ***6. Change the Trigger for the Rescue Funds Provision***

Florida should provide rescue funds and release candidates from spending limits when a non-participating opponent *receives* contributions over the spending limit. Currently, non-participating opponents do not trigger this provision until they *spend* more than the expenditure limit. Once Florida lowers the expenditure limits it will be important to make this change. Otherwise, non-participating candidates can simply raise and retain large sums of money and spend them at the very end of the election when it may be too late for publicly financed candidates to obtain rescue funds and respond to those expenditures.

#### ***7. Explore Alternative Funding Mechanisms***

Currently the Florida public financing program receives its funding from general fund appropriations, fines and filing fees. Florida is facing a budget crisis and may want to explore other sources of funding, such as surcharges on civil and criminal fines or proceeds from the sale of unclaimed property.

### **8. *Improve Disclosure for Political Party Expenditures***

Political parties are required to disclose, among other things, how much they spend on candidates in the form of non-allocable costs and how much they spend on three-candidate advertisements. This information is available through the Department of State's website, but is difficult to find. In addition, party expenditures are listed by date, so it is quite challenging to manipulate the data in order to determine how much the party spent in non-allocable costs on behalf of candidates, and on three-candidate advertisements. The Division of Elections should make this information easier to find and easier to organize.

### **9. *Explore Public Financing for the Legislative Elections***

Florida should consider creating a pilot project for public financing of legislative elections. New Jersey created a successful pilot project in selected legislative districts for its 2005 and 2007 elections.<sup>1</sup> One could argue that public financing is most effective at addressing the real or perceived undue influence of significant private money backing at the legislative level. Legislative races tend to be lower profile, and hence the candidates have less name recognition. A public campaign finance program could allow qualified candidates to run competitively for legislative office.

### **10. *Explore Full Public Financing***

If Florida's budgetary situation improves, the state could also switch to full public financing for gubernatorial candidates and cabinet level candidates, instead of the partial public financing program now in effect. In February 2007, Senator Frederica Wilson introduced SB 2264, a full public financing proposal for candidates for statewide and legislative 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* the funding necessary to run their campaigns. Once the candidate meets the fundraising qualification threshold, the candidate must cease all private fundraising activity.

### **11. *Create an Independent Blue Ribbon Campaign Finance Commission to Review the State's Campaign Finance Program Every Ten Years***

Campaign finance laws must be reviewed and updated at least every ten years. Florida should create an independent Blue Ribbon campaign finance commission every ten years and require it to review the state's campaign finance laws and recommend any necessary changes.

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<sup>1</sup> See Jessica A. Levinson, "Public Campaign Financing—New Jersey Legislature: A Pilot Project Takes Flight," *Center for Governmental Studies* (2008).



## INTRODUCTION

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In 1986, the Florida legislature passed the Florida Election Campaign Financing Act (“the Act”), creating a public campaign financing program for statewide candidates for governor and lieutenant governor,<sup>2</sup> chief financial officer, attorney general, and commissioner of agriculture.<sup>3</sup> In 1998, voters added public campaign financing to the state constitution.<sup>4</sup>

Candidates for statewide office can receive contributions up to \$1,000 per election cycle, \$500 for the primary election and \$500 for the general election. If candidates agree to limit their expenditures (approximately \$20 million for candidates for governor and lieutenant governor and \$10 million for candidates for cabinet level posts), the program provides qualified candidates with public matching funds on a two-to-one basis for qualifying matching contributions up to \$150,000 or \$100,000 respectively<sup>5</sup> and on a one-to-one basis for all subsequent qualifying

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<sup>2</sup> Candidates for governor and lieutenant governor, who are on the same ticket, are one candidate for purposes of meeting the expenditure limit and receiving matching funds under the Act Florida Statute Section 106.33; *see also* Florida Statute Section 99.063 (“No later than 5 p.m. of the 9th day following the primary election, each candidate for Governor shall designate a Lieutenant Governor as a running mate”).

<sup>3</sup> Prior to a cabinet reorganization in the early 2000’s that affected the number of candidates eligible for funding in the 2002 and 2006 elections, elections five state cabinet posts—attorney general, commissioner of agriculture, commissioner of education, comptroller, secretary of state, and state treasurer—were eligible for public financing in 1994 and 1998.

<sup>4</sup> Florida’s Constitution provides for the creation of a thirty-seven member constitutional revision commission every twenty years to review the state constitution and propose changes for voter consideration. In 1998, the Constitution Revision Commission proposed to place the state’s public campaign financing law in the state’s constitution, and 64 percent of the voters across the state agreed. *See* Linda Kleindeinst, “\$19 Million Governor’s Race Set Money Record,” *Orlando Sentinel*, February 6, 2003.

<sup>5</sup> Qualifying matching contributions are defined as contributions of \$250 or less from an individual state resident made after September 1 of the calendar year prior to the election. Florida Statute Section 106.35. Under this definition, a candidate who receives a \$500 contribution would receive a two-to-one match for the first \$250, totaling \$500 in public money.

matching contributions in both the primary and general elections.<sup>6</sup> Candidates may only receive matching funds for the first \$250 of contributions up to \$500. If an individual state resident contributes \$1,000 to a candidate—\$500 in the primary election and \$500 in the general election—the most the state will match is \$250 for both the primary and general elections combined.<sup>7</sup> Candidates must also limit loans from their personal funds to \$25,000 in the aggregate (in the primary and general election combined) and must limit contributions from national, state and county executive committees of a political party to \$250,000 in the aggregate. Those amounts do not count toward the threshold amounts that candidates must raise in order to qualify for the program. Candidates may also receive so-called “rescue” funds if a non-participating opponent exceeds the expenditure limit.

**A. PURPOSE OF FLORIDA’S PUBLIC FINANCING PROGRAM**

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In passing the Act, the legislature found that the costs of running a campaign for statewide office were so high that qualified people were discouraged from becoming candidates. The legislature further found that only those who were indepen-

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 The legislature stated that the purpose of public financing “is to make candidates more responsive to the voters of the State of Florida and as insulated as possible from special interest groups.”  
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dently wealthy, supported by political committees<sup>8</sup> representing wealthy special interests groups or able to appeal to special interest groups for campaign contributions ran for office. The legislature concluded that contributions from political committees were “having a disproportionate impact *vis-à-vis* contributions from unaffiliated individuals, which leads to the misperception of government officials unduly influenced by those special interests to the detriment of the public interest.”<sup>9</sup>

The legislature stated that the purpose of public financing “is to make candidates more responsive to the voters of the State of Florida and as insulated as possible from special interest groups.”<sup>10</sup> The legislature further stated that the purpose of the Act was to remedy the problems set forth above and to “encourage qualified persons to seek statewide elective office who would not, or could not otherwise do so, and to protect the effective competition by a candidate who uses public funding.”<sup>11</sup> Similarly, in *Connor v. Division of Elections*, the court found that one of the

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<sup>6</sup> Contributions that are made prior to September 1 of the year preceding the election, or made from non-state residents, are not eligible for state matching on any basis.

<sup>7</sup> The statute does not provide for a maximum amount of public funds that a candidate can receive for any election—rather candidates can receive and spend money until they reach the expenditure limits.

<sup>8</sup> Political committees are committees formed by business, labor or other special interest groups to raise money for political candidates. These committees often solicit small contributions from a large amount of individuals to circumvent the low contribution limits. This is an especially effective strategy in Florida where the contribution limits are relatively low.

<sup>9</sup> Florida Statute Section 106.31.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

main purposes of the Act was to “minimize the impact of contributions from political committees representing special interests . . . [and] support candidates who are free from the influence of special interest money and to remove corruption and the appearance of corruption from that process.”<sup>12</sup>

## B. FUNDING SOURCE

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The Act established the Election Campaign Financing Trust Fund (“the Trust Fund”) to pay for the public campaign financing program. Florida funded the Trust Fund from an appropriation from the general fund and proceeds from filing fees and penalties for violations of the Act.<sup>13</sup> In 1992, voters approved a constitutional amendment, Article III, section 19(f) (2), providing that the Trust Fund would expire on November 4, 1996. In 1993, the legislature enacted a statute to implement that constitutional directive, and the Trust Fund terminated in 1996.

In 1997, in *Mortham v. Milligan*,<sup>14</sup> the First District Court of Appeals held that the legislature did not intend to abolish the public campaign financing program when the Trust Fund terminated. The court held that the Act survived the termination of the Trust Fund because Florida Statute section 106.32 contains a separate authorization for the financing of election campaigns from the state’s general revenue fund.<sup>15</sup> The court ruled that the funds formerly placed in the Trust Fund would be deposited in the general revenue fund where they could be more effectively monitored, and candidates would receive the public funds from this fund. The purpose of eliminating the Trust Fund, the court held, was not to void the Act but to make state spending more transparent, thus allowing citizens to make better and more informed judgments as to how their money is spent.

A year later, in 1998, the First District Court of Appeals ruled on another challenge to the program related to its funding source. In 1997, the legislature amended Florida Statute section 215.3206(2) by adding the following sentence: “No appropriation or budget amendment shall be construed to authorize any encumbrance of funds from a trust fund after the date on which the trust fund terminated or is judicially determined to be invalid.” In *Chiles v. The Department of State, Div. of Elections*, the court held that the amendment did not suspend public funding of state political campaigns and that the “statute merely prohibits the appropriation

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<sup>12</sup> 643 So.2d 75, 77 (1st Dist. 1994).

<sup>13</sup> Florida Statute Section 106.32.

<sup>14</sup> 704 So. 2d 152 (1st Dist. 1997).

<sup>15</sup> In 1994 the Republican Party challenged the constitutionality of this section, in *Republican Party of Florida v. Smith* 638 So.2d 26 (1994). The Republican Party asserted that section 106.32(1) was an unlawful appropriation as the language of the amendment includes the word “transfer,” rather than “appropriate.” The party argued that the word “transfer” had a different meaning than the word “appropriate,” and as such that “transfer” does not meet the statutory definition of “appropriation.” The court disagreed and held that the statute was a valid appropriation of public funds despite using the word “transfer” rather than “appropriate.”

of money from a trust fund that has been terminated by operation of law.”<sup>16</sup> The public campaign financing program continued, the court held, because the funds necessary to implement the law could be appropriated from the general revenue fund. Consequently, Florida’s program today is funded by money from the state’s general fund.

## C. CANDIDATE QUALIFICATION

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In order to receive a public funding grant, candidates for statewide office must file a request for such contributions with the Department of State Division of Elections and they must:

- Run against another candidate;<sup>17</sup>
- Agree to expenditure limits;
- Raise a threshold amount of \$150,000 for a candidate for governor and \$100,000 for a candidate for a cabinet office in contributions from state residents;
- Limit loans or contributions from the candidate’s personal funds (which cannot be used towards meeting the qualifying amounts) to \$25,000 and contributions from national, state, and county executive committees of a political party to \$250,000 in the aggregate;<sup>18</sup> and
- Submit to a post-election audit of the candidate’s campaign account by the Division of Elections.<sup>19</sup>

A candidate with only primary opposition can spend up to 60 percent of the expenditure limits in the primary election. This has never happened. If there is general election opposition, the full expenditure limits apply to the primary and general elections together. There is no requirement that candidates who raise public funds in the primary must spend those funds in the primary. Candidates may spend public funds on either the primary or general elections.

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<sup>16</sup> 711 So.2d 151, 155 (1st Dist. 1998).

<sup>17</sup> “‘Unopposed candidate’ means a candidate for nomination or election to an office who, after the last day on which any person, including a write-in candidate, may qualify, is without opposition in the election at which the office is to be filled or who is without such opposition after such date as a result of any primary election or of withdrawal by other candidates seeking the same office.” Florida Statute Section 106.011(15).

<sup>18</sup> However, candidates may make loans greater than that amount so long as they are paid back by the time the candidate files the request for public funds. See *Matching Funds*, Op. Div. of Elections No. 07 (June 3, 2002).

<sup>19</sup> Florida Statute Section 106.33.



**D. CONTRIBUTION LIMITS AND DISTRIBUTION OF FUNDS**

Contributions needed to qualify for the program must come from individual state residents.<sup>20</sup> Florida limits contributions to \$500 for the primary election and the same amount for the general election.

Upon candidate certification, the Division of Elections distributes matching funds to candidates beginning on the 32nd day before the primary election and every seven days thereafter as follows:

- \$2-to-\$1 for qualifying matching contributions of up to \$250, up to \$150,000 for candidates for governor and lieutenant governor, and \$100,000 for candidates for cabinet offices.
- \$1-to-\$1 for all subsequent qualifying matching contributions of \$250 or under.<sup>21</sup>

**E. SPENDING LIMITS**

Florida's expenditure limits—over \$20 million for governor and lieutenant governor and over \$10 million for other statewide candidates—are now the highest in the country for states with public campaign financing laws. New Jersey has the second highest expenditure limit: over \$10 million for both the primary and the general election for gubernatorial candidates.<sup>22</sup> The majority of states with public campaign financing programs, including Arizona, Hawaii, Maryland, Massachusetts and Michigan, have expenditure limits around \$1 to \$2 million dollars. However, it is important to note that Florida is far bigger and has a larger population than any of those states, and hence elections in Florida are more expensive. Expenditure limits in some of those states may be too low.

Florida, the fourth most populous state in the United States, ties spending limits to the number of registered voters. There are approximately 18 million residents of the state; by comparison, there are approximately 36 million residents in California, 24 million in Texas, and 19 million in New York.

<sup>20</sup> Only individuals (not entities, corporations or other organizations) can make qualifying contributions to candidates who participate in the program. Florida Statute Section 106.31 *et seq*; see also "Bill Analysis and Fiscal Impact Statement," *The Florida Senate*, SJR 956 (March 6, 2008).

<sup>21</sup> Florida Statute Section 106.35 (2007). Aggregate contributions (e.g., a sequence of individual contributions of \$100, \$50, \$200 and \$150) from an individual of \$250 or more are only matched up to the first \$250.

<sup>22</sup> Steven M. Levin, "State Public Financing Charts 2007," *Center for Governmental Studies*, Nov. 2007, available at <http://www.cgs.org>.

<b>FIGURE 1</b> General Election Spending Limits		
<b>Office</b>	<b>Spending Limits in 2002</b>	<b>Spending Limits in 2006</b>
Governor/Lieutenant Governor	\$6.7 million	\$20.5 million
Commissioner of Agriculture, Attorney General and Chief Financial Officer	\$3.3 million	\$10.2 million

The Division of Elections sets the spending limit each odd-numbered year. In the 2006 election, participating candidates for governor and lieutenant governor, running on the same ticket, *together* had a limit of \$2.00 for each registered voter. As there were 10,501,148 registered voters in 2005,<sup>23</sup> the spending limit for candidates for governor and lieutenant governor was \$20.5 million. Cabinet officer candidates had to limit expenditures to \$1.00 for each registered voter. Therefore, the spending limit for candidates for these offices was about \$10.2 million in the 2006 elections (see Figure 1).<sup>24</sup> A candidate with only primary opposition can spend up to 60 percent of the limits in place for the general election in the primary election. A candidate may not run unopposed and still receive public funding.<sup>25</sup>

Prior to the 2005 amendments, the program had much lower general election expenditure limits. Florida originally set the expenditure limit at \$5 million for gubernatorial races and \$2 million for cabinet officials. The Secretary of State adjusted these limits according to the Consumer Price Index.<sup>26</sup> In the 2002 election, the spending limit was \$6.7 million for gubernatorial candidates and roughly half that amount for candidates running for cabinet level offices.<sup>27</sup>

**F. HIGH SPENDING NON-PARTICIPATING CANDIDATES:  
“RESCUE” FUNDS AND INCREASED SPENDING LIMITS**

When non-participating candidates exceed the spending limits applicable to their publicly financed opponents, those opposing participating candidates may both: (1) receive increased public funds (so-called “rescue funds”) equal to the amount by which the non-participating candidate exceeds the spending limit, up to twice

<sup>23</sup> Florida Dept of State, Division of Elections, “Division’s Certification of Registered Voters as of June 20, 2005,” available at <http://election.dos.state.fl.us/pdf/flregvote62005.pdf>; see also Florida Statute Section 106.343.

<sup>24</sup> Compensation for legal and accounting services fall outside the expenditure limit. Florida Statute Section 106.355.

<sup>25</sup> Florida Statute Sections 106.33 and 103.34.

<sup>26</sup> H.B. 1589, 19th Legislature, Reg. Session (Fl. 2005).

<sup>27</sup> John Kennedy and Sean Mussenden, “GOP Pushes for Campaign Cash,” *Orlando Sentinel*, April 28, 2005.

the amount of the spending limit; and (2) spend more than the spending limit to the extent that the non-participating candidate exceeds the limit.<sup>28</sup>

It is important to note that a non-participating opponent's *receipt* of contributions exceeding the spending limit does not release the participating candidate from the spending limit; rather, the non-participating opponent must *spend* more than the expenditure limit to trigger this provision.<sup>29</sup>

## G. PENALTIES

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Both civil and criminal penalties can be imposed for violating the Act. For instance, candidates who knowingly and willfully accept a contribution in excess of the applicable limit, fail to report any contribution, falsely report or deliberately fail to include required information or make or authorize prohibited expenditures are guilty of a misdemeanor; they are also subject to a civil penalty equal to three times the amount involved in the illegal act. In addition, candidates who exceed the expenditure limit, or falsely report matching contributions, and thus receive more public funds than they are entitled to, must pay a fine of up to three times the amount at issue.<sup>30</sup>

## H. ENFORCEMENT

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The Division of Elections under Florida's Department of State administers the public campaign financing program and must, among other things, make field investigations and conduct mandatory post-election audits of all candidates participating in the program. To fulfill its duties, the Division of Elections has subpoena power and shall provide advisory opinions relating to violations or possible violations of the Act.<sup>31</sup>

The Florida Elections Commission, a division of the Department of Legal Affairs, enforces the campaign finance laws. The Commission, comprised of nine members, has jurisdiction to investigate and determine violations of the Act.

Upon receiving a sworn complaint (based on personal information or information other than hearsay) or information from the Division of Elections, the Commission must investigate all violations of the Act. The Commission performs an investigation as to whether there is probable cause to believe a violation occurred. The Commission can hold a hearing to determine whether there is probable cause

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<sup>28</sup> Florida Statute Section 106.355.

<sup>29</sup> Public Campaign Financing, Op. Div. of Elections No. 05, April 13, 1998.

<sup>30</sup> Florida Statute Sections 106.01 *et seq*, 106.19 and 106.36.

<sup>31</sup> Florida Statute Sections 106.22–106.23. In order to file a complaint with the Division of Elections, an individual must have personal knowledge of a violation of the election law. *See also* Telephone interview with Ben Wilcox, Executive Director of Common Cause Florida, September 10, 2008 (transcript on file with CGS).

for a violation, which is the conclusion of the preliminary investigation. If no probable cause is found, the Commission must dismiss the case. If the Commission finds probable cause, it must then determine whether to consider the matter or refer the matter to the state attorney for the judicial circuit in which the alleged violation occurred, who must then undertake a thorough investigation.<sup>32</sup>

## I. HISTORY OF FLORIDA'S PUBLIC CAMPAIGN FINANCING PROGRAM

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Two occurrences have affected the four elections held under the public financing program and the amount of public funds dispersed in each of those elections. First, in the 1994 and 1998 elections, six cabinet offices were eligible for public financing (Governor, Attorney General, Secretary of State, Comptroller, Treasurer, Commissioner of Education, and Commissioner of Agriculture); however, after the Cabinet reorganization in the early 2000's, only four cabinet level posts (Governor, Chief Financial Officer, Attorney General, and Commissioner of Agriculture) were eligible for public financing in the 2002 and 2006 elections. Second, the 1994 and 1998 election cycles included three elections per race—two primaries and a general election—whereas the 2002 and 2006 elections included only one primary and one general election.<sup>33</sup>

### I. The 1994 Election

The first real test of Florida's program came in the 1994 election. While the legislature passed the Act in 1986, it did not fully go into effect until 1994 due to numerous legal challenges and the legislature's failure to provide the money needed to make the program work.<sup>34</sup> In the 1994 election, Florida dispersed a total of \$ 10.4 million in public funds to candidates.<sup>35</sup> All six cabinet offices were eligible for public financing.

In the state comptroller race, two Republican candidates and two Democratic candidates competed in the primary elections. Both Democrats received funding in the primary election and Republican Robert Milligan did as well. In the race for treasurer, three Democrats and two Republicans ran in the primary election. Both Democrats and one Republican received public financing in the primary. In the race for commissioner of education, two Democrats and three Republicans participated in the primary election. In that case, two Republicans and a Democrat received public financing. (See Figure 3 and the Appendix 1.)

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<sup>32</sup> Florida Statute Section 106.25.

<sup>33</sup> The legislature eliminated the second primary election prior to the 2002 election cycle.

<sup>34</sup> Lucy Morgan, "Ruling May End Election Funding," *St. Petersburg Times*, September 25, 1997; Diane Hirth, "If Chiles Wins, Blame Limits on Donations," *South Florida Sun Sentinel*, May 13, 1990.

<sup>35</sup> "Bill Analysis and Fiscal Impact Statement," *The Florida Senate*, SJR 956 (March 6, 2008).

In the primary elections, there were two teams of candidates for governor and lieutenant governor on the Democratic side and seven teams of candidates on the Republican side. In the general election for governor and lieutenant governor, Democratic candidate Lawton Chiles opted into the program while Republican candidate Jeb Bush, who has often called public financing “welfare for politicians,” did not. Bush, subject to the \$500 contribution limit for both participating and non-participating candidates, raised and spent nearly \$ 8.7 million, well above the \$5 million spending limit in place for participating candidates. Chiles, on the other hand, voluntarily limited all individual contributions to \$100. Since individual contributions up to \$250 are subject to public matching funds, all of Chiles’ contributions were matched.<sup>36</sup>

Because Bush’s spending exceeded the program’s expenditure limit, Chiles obtained rescue funds (additional public funding based on a non-participating candidates’ spending over the expenditure limit), receiving a dollar for every dollar

Bush spent over the \$5 million expenditure limit.<sup>37</sup> Chiles stated that the \$3.7 million in rescue funds he received helped him defeat Jeb Bush.<sup>38</sup>

Because Bush’s spending exceeded the program’s expenditure limit, Chiles obtained rescue funds (additional public funding based on a non-participating candidates’ spending over the expenditure limit), receiving a dollar for every dollar Bush spent over the \$5 million expenditure limit. Chiles stated that the \$3.7 million in rescue funds he received helped him defeat Jeb Bush.

Similarly, state comptroller candidate Robert Milligan had never held public office and used \$206,000 in public funds to defeat a 20 year incumbent, Gerald Lewis in 1994. Milligan primarily used his rescue funds to air television ads.<sup>39</sup> Milligan said, “I’d be a hypocrite now that I’m elected if I wanted to end a system for those who want to run against me.”<sup>40</sup>

In the Secretary of State’s race, Republican Sandra Mortham successfully ran against current Democratic Representative Ron Saunders.<sup>41</sup> Mortham was a high profile opponent of public financing. Mortham and Bush were the only statewide candidates to opt out of the program in the 1994 election.<sup>42</sup>

A unique test of Florida’s public financing system relating to the 1994 election occurred in *Smith v. Crawford*.<sup>43</sup> In 1994, Jim Smith participated in the public campaign financing program as a candidate for governor. After spending more than \$2 million with his running mate for lieutenant governor, Smith withdrew

<sup>36</sup> Editorial, “Citizens for Anti-Reform,” *St. Petersburg Times*, January 12, 1996.

<sup>37</sup> *Id.*

<sup>38</sup> John Kennedy, “Don’t Let Votes go to the Highest Bidder; He Warned that Killing the Public Campaign Finance Law Would Send the Wrong Message,” *Orlando Sentinel*, March 28, 1997.

<sup>39</sup> Jim Freer, “Milligan Managed to Stay Above the Political Fray,” *South Florida Business Journal*, January 10, 2003.

<sup>40</sup> Lucy Morgan, “Political Foes Defend Public Finance Law,” *St. Petersburg Times*, March 28, 1997.

<sup>41</sup> Bill Moss, “Cabinet Candidates Feud over Campaign Finances,” *St. Petersburg Times*, July 23, 1993.

<sup>42</sup> Michael Griffin, “Court to State: Pay Candidates; Judges Rule Campaigns Can Keep Taking Taxpayer Money” *The Orlando Sentinel*, May 13, 1998.

<sup>43</sup> 645 S.2d 513 (1st Dist. 1994).

from the race. Bob Crawford, incumbent Commission of Agriculture, was running for reelection in 1994 against Frank Darden. Because both candidates were unopposed, no primary election was held for this cabinet post. Darden eventually withdrew his candidacy. The Republican Party requested an opinion from the Division of Elections as to whether a party could fill a vacancy in a cabinet race through the nomination of a candidate who had withdrawn from the race for governor. If the answer to that question was yes, the Republic Party further requested that the Division of Elections determine whether if such a former gubernatorial candidate were to be nominated, the expenditures by that candidate in the gubernatorial race would be required to be counted toward the \$2 million limit for cabinet officers under the Act.

The Division of Elections determined that if a candidate for cabinet office (Frank Darden) withdrew his candidacy after September 15, the Republican Party could designate as the nominee a former candidate for governor (Jim Smith) who had accepted public financing pursuant to the Act. The Division of Elections stated, “These expenditure limits are for each race and are not cumulative if a former candidate is a candidate for another office under the circumstances you have described.”<sup>44</sup>

Bob Crawford subsequently challenged Jim Smith’s right to participate in public campaign financing under the Act in his campaign for Commissioner of Agriculture. The court held that Smith could receive public financing in his campaign for Commissioner of Agriculture. The court specifically stated, “Although Mr. Smith has received public campaign financing in his race for Governor of Florida and Mr. Smith’s campaign expenditures in his race for Governor exceeded the \$2,000,000 limitation applicable to a candidate for Commissioner of Agriculture set forth in section 106.34(1)(b), Florida Statutes (1993), these contributions and expenditures do not render Smith ineligible for public financing of his campaign for Commissioner of Agriculture.” The court further held that “Mr. Crawford does not have a right to obtain public matching funds by reason of any contributions received or expenditures made by Jim Smith in his campaign for governor.”<sup>45</sup>

## 2. The 1998 Election

In 1998, the state dispersed \$4.6 million in public funds to participating candidates.<sup>46</sup> All six cabinet offices were eligible for public financing. In five of the six primary races, candidates either ran unopposed or ran against only one other candidate (three Democratic candidates participated in the primaries in the race for commissioner of education). Of the 22 candidates who ran in the primary and general elections, 14 received public funds. Outside of the governor’s race, Republican Secretary of State Katherine Harris received the greatest amount in public funds, obtaining a total of \$468,058 in public funds.

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<sup>44</sup> 645 S.2d at 515.

<sup>45</sup> *Id.* at 527.

<sup>46</sup> “Bill Analysis and Fiscal Impact Statement,” *The Florida Senate*, SJR 956 (March 6, 2008).

.....  
 Bush, cognizant of the fact that the rescue funds Chiles received played a role in Chile's 1994 victory, spent just under the program's expenditure limits so that MacKay was not eligible to receive any rescue funds.  
 .....

Jeb Bush again ran for governor, this time successfully, against Democrat Buddy MacKay. MacKay participated in the program and Bush did not. MacKay received a total of \$1,149,406 in public funds. Bush, cognizant of the fact that the rescue funds Chiles received played a role in Chile's 1994 victory, spent just under the program's expenditure limits so that MacKay was not eligible to receive any rescue funds. While Bush was careful to stay below the expenditure limits, the Florida Republican Party made significant expenditures (nearly \$2 million) on Bush's behalf, which did not count toward the candidate expenditure limit that triggers the receipt of rescue funds.<sup>47</sup>

### 3. The 2002 Election

In 2002, the state dispersed more \$5.2 million in public funds.<sup>48</sup> Only three state-wide offices were eligible for public funding (Governor, Attorney General and Commissioner of Agriculture).<sup>49</sup> Fifteen candidates participated in the primary election, seven received public funds.

The race for Commissioner of Agriculture was not hotly contested. In that race, Charles H. Bronson, who was appointed by Governor Jeb Bush in 2001, was the only Republican to run. Bronson was victorious in the general election. He received a total of \$432,749 in public funds. In the race for Attorney General, three Republicans and four Democrats ran in the primary election. Former Attorney General and current Governor Crist prevailed in the general election. Six of the seven candidates received public funds, ranging from a low of \$114,520 to a high of \$424,705 for Governor Crist.

In the race for governor, former Attorney General Janet Reno unsuccessfully battled Bill McBride in the primary for the Democratic nomination. Reno loaned her campaign \$100,000 and paid it back prior to applying for public funds so that she was eligible to participate in the program. Under the Act, candidates who loan their campaigns more than \$25,000 are excluded from participating in the program unless they pay back the loan prior to applying for public funding.<sup>50</sup>

In the general election, Governor Jeb Bush and McBride raised a combined \$19.2 million in the race for governor, making it the most expensive race in the state's history. Bush raised \$10.5 million and McBride raised \$8.7 million.<sup>51</sup> Governor

<sup>47</sup> Grant Davis-Denny, "Coercion in Campaign Finance Reform: A Closer Look at Footnote 65 of *Buckley v. Valeo*," 50 UCLA L. Rev. 205, (2002).

<sup>48</sup> Gary Fineout, "Florida Elections: Lawmakers Scrap Public Financing, Calling It A Misuse of Public Money," *Miami Herald*, November 27, 2007; "Bill Analysis and Fiscal Impact Statement," *The Florida Senate*, SJR 956 (March 6, 2008).

<sup>49</sup> The Chief Financial Officer was not up for election in 2002. Republican Tom Gallagher took the post of CFO unopposed in that year. The 2006 election was Florida's first for the post.

<sup>50</sup> See Florida Statute Section 106.33(3) (2007).

<sup>51</sup> Linda Kleindeinst, "\$19 Million Governor's Race Set Money Record," *Orlando Sentinel*, February 6, 2003.

Bush again opted out of the program and spent just under the expenditure limit, seemingly in an effort to prevent his opponent from receiving rescue funds. McBride received \$1,196,062 in public funds. The Republican Party again made significant expenditures on Bush's behalf. Bush won.

#### 4. The 2005 Amendments

In May 2005, the Republican-controlled legislature amended the public financing program and raised the expenditure limits from over \$6 million to \$20 million for gubernatorial candidates and from \$2.5 million to \$10 million for cabinet candidates.<sup>52</sup> According to one report, “[s]upporters of the overhaul by the Florida Legislature this past spring say it was needed to account for the rapidly rising cost of campaigning in a state of more than 17 million people.” State Rep. Ron Reagan (R-Bradenton) who authored the changes, said the spending limit needed to be raised because campaigning across Florida has become so expensive. However, Democrats, skeptical of the amendment, said it was a ploy to help GOP candidates in 2006. A former Florida Democratic Party chairman said the amendment “effectively stacked the deck in favor of Republicans.”<sup>53</sup> Republicans had far out raised Democrats in the years leading up to the amendments.

The net effect of the bill was to allow candidates to raise and spend over three times as much money as in past years and still receive public funds to supplement their campaign accounts.

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 .....

#### 5. The 2006 Election

Jeb Bush was termed out in 2006. Campaign spending increased as a result of the 2005 amendments to the program. In total, the state dispersed \$11.1 million in public funds.<sup>54</sup> Eighteen candidates participated in the primary elections, eight received public funds, including both general election gubernatorial candidates.

In the race for governor, Republican Charlie Crist defeated Democrat Jim Davis. Crist spent just under the \$20 million expenditure limit and still received \$3.3 million in matching funds.<sup>55</sup> This was nearly double the amount his opponent Democrat Jim Davis raised.<sup>56</sup>

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<sup>52</sup> The 2005 public financing increases initially appeared in floor amendments to an omnibus election reform package (HB 1589) in both the House and the Senate. Because the issue was not heard in committee, there was not a bill analysis in either chamber; see also Aaron Deslatte, “Reform law raises campaign spending,” *Florida Today*, June 21, 2005.

<sup>53</sup> Joe Garcia, “Taxpayers may foot higher campaign bill,” *Orlando Sentinel*, July 26, 2005.

<sup>54</sup> “Bill Analysis and Fiscal Impact Statement,” *The Florida Senate*, SJR 956 (March 6, 2008).

<sup>55</sup> Steve Bousquet, “Easier to Discard after you Break it,” *St. Petersburg Times*, February 23, 2008.

<sup>56</sup> John Kennedy, “Florida’s Public Financing Seen as ‘Frivolous Spending,’” *Orlando Sentinel*, November 26 2007.



The amount of public money utilized in cabinet level races also increased (see Figure 3). Three cabinet offices were up for election, two of which were highly competitive races in which candidates for both major parties accepted public funding. Florida dispersed \$897,104 to Republican Bill McCollum and \$483,907 to his Democratic opponent Skip Campbell in the race for attorney general. McCollum won that election. In the race for state Chief Financial Officer, Democrat Alex Sink obtained over \$1 million and his opponent Republican Tom Lee received \$651,143 in public funds. Sink prevailed in that election. In the race for Commissioner of Agriculture, Republican Charles Bronson received \$393,000 in a race against Democrat Eric Copeland, a relatively unknown candidate.<sup>57</sup> Bronson, the incumbent, won.

**FIGURE 2** Disbursements to Gubernatorial Candidates in Florida Public Financing Program, 1994–2006

<b>1994 Matching Funds Distributed</b>				
<b>Candidate</b>	<b>First Primary: September 8</b>	<b>Second Primary: October 4</b>	<b>General Election</b>	<b>Total</b>
Tom Gallagher/Curt Kiser (R)	\$642,167			\$642,167
Lawton Chiles/Buddy McKay (D)	\$957,901	\$341,580	\$2,198,071.97	\$3,497,553
Jim Smith/Barbara Sheen Todd (R)	\$727,547	\$102,297		\$829,845
Ander Crenshaw/Chester Clem (R)	\$996,432			\$996,432
Kenneth L. Connor/Mel R. Martinez (R)	\$532,555			\$532,555
<b>1998 Matching Funds Distributed</b>				
<b>Candidate</b>	<b>First Primary: September 1</b>	<b>Second Primary: October 1</b>	<b>General Election</b>	<b>Total</b>
Buddy Mackay (D)	\$666,168	\$101,793	\$381,444	\$1,149,406
<b>2002 Matching Funds Distributed</b>				
<b>Candidate</b>	<b>Primary</b>	<b>General Election</b>	<b>Total</b>	
Daryl Jones (D)	\$142,576		\$142,576	
William H. McBride Jr. (D)	\$999,618	\$964,443	\$1,964,061	
Janet Reno (D)	\$889,284		\$889,284	
<b>2006 Matching Funds Distributed</b>				
<b>Candidate</b>	<b>Primary</b>	<b>General Election</b>	<b>Total</b>	
Charlie Crist (R)	\$2,022,837	\$1,286,501	\$3,309,338	
Jim Davis (D)	\$1,120,877	\$704,975	\$1,825,853	
Tom Gallagher (R)	\$1,331,416	\$3,818	\$1,335,234	
Rod Smith (D)	\$910,350	\$34,548	\$944,899	

<sup>57</sup> Scott Maxwell, “Public Campaign Cash There for the Taking—and They Do” *Orlando Sentinel*, December 14, 2006.

**FIGURE 3** Disbursements to Statewide Candidates Other than Lieutenant Governor and Governor Candidates, 1994–2006

1994	First Primary: September 8	Second Primary: October 4	General Election: November 8	Total
<b>Secretary of State</b>				
Ron Saunders (D)	\$192,878	\$135,166	\$78,7280 LOST	\$406,772
<b>Comptroller</b>				
Art Simon (D)	\$130,970 LOST			\$130,970
Robert Milligan (R)	WON		\$100,633 WON	\$100,633
Gerald Lewis (D)	\$152,605 WON	\$133,495	\$93,878 LOST	\$379,978
<b>Treasurer</b>				
Tim Ireland (R)	\$91,116.00 WON	\$24,280	\$140,826 LOST	\$256,222
Bill Nelson (D)	\$314,644.00 WON	\$210,065	\$55,540 WON	\$580,249
Karen Gievers (D)	\$250,793.97 LOST			\$250,793
<b>Commissioner of Education</b>				
Bob Morris (R)	\$234,589 LOST			\$234,589
Frank Brogan (R)	\$145,842 WON	\$25,286 WON	\$91,800 WON	\$262,929
Doug Jamerson (D)	\$227,517 WON	\$77,562	\$114,623 LOST	\$419,702
<b>Commissioner of Agriculture</b>				
Jim Smith (R)	Only candidate		\$164,944 LOST	\$164,944
Bob Crawford (D)	\$222,275.00 Only candidate	\$14,810	\$257,380 WON	\$495,465
1998	First Primary: September 1	Second Primary: October 1	General Election: November 3	Total
<b>Secretary of State</b>				
Karen Gievers (D)	\$129,890 Only candidate		\$90,919 LOST	\$220,809
Katherine Harris (R)	\$320,063 WON		\$147,995 WON	\$468,058
<b>Attorney General</b>				
Bob Butterworth (D)	\$232,410 WON		\$76,541 WON	\$308,951
Fred Dudley (R)	\$268,690 LOST			\$268,690
David Bludworth (R)	WON		\$143,670 LOST	\$143,670
<b>Comptroller</b>				
Bob Milligan (R)	\$154,134 Only candidate		\$52,787 WON	\$206,921
<b>Treasurer</b>				
Bill Nelson (D)	\$374,157 Only candidate		\$33,085 WON	\$407,242
Tim Ireland (R)	\$254,335 WON		\$42,488 LOST	\$296,823

**FIGURE 3** *continued*

<b>1998</b>	<b>First Primary: September 1</b>	<b>Second Primary: October 1</b>	<b>General Election: November 3</b>	<b>Total</b>
<b>Commissioner of Education</b>				
Tom Gallagher (R)	\$217,76 WON		\$100,439 WON	318,193
J. Keith Arnold (D)	\$211,629 LOST			\$211,629
Faye Cup (R)	\$70,028 LOST			\$70,028
Peter Rudy Wallace (D)	\$40,896 Runoff indicated (with Howard)	\$66,721	\$155,061	\$262,678
<b>Commissioner of Agriculture</b>				
Bob Crawford (D)	\$210,920 Only candidate		\$70,300 WON	\$281,220
<b>2002</b>	<b>Primary Election: September 10</b>	<b>N/A</b>	<b>General Election: November 5</b>	<b>Total</b>
<b>Attorney General</b>				
Locke Burt (R)	\$335,371 LOST			\$335,371
Charlie Crist (R)	\$326,30 WON		\$98,400 WON	\$424,705
Buddy Dyer (D)	\$322,708 WON		\$90,667 LOST	\$413,375
Scott Maddox (D)	\$238,378 LOST			\$238,378
George Sheldon (D)	\$114,520 LOST			\$114,520
Tom Warner (R)	\$272,462 LOST			\$272,462
<b>Commissioner of Agriculture</b>				
Charles Bronson (R)	\$311,466 Only candidate		\$121,283 WON	\$432,749
<b>2006</b>	<b>Primary Election: September 5</b>	<b>N/A</b>	<b>General Election: November 7</b>	<b>Total</b>
<b>Chief Financial Officer</b>				
Randy Johnson (R)	\$268,663 LOST			\$268,663
Tom Lee (R)	\$553,110 WON		\$98,033 LOST	\$651,143
Alex Sink (D)	\$699,826 Only candidate		\$324,331 WON	\$1,024,157
<b>Attorney General</b>				
Walter "Skip" Campbell (D)	\$274,015 WON		\$209,892 LOST	\$483,907
Bill McCollum (R)	\$599,999 Only candidate		\$297,105 WON	\$897,104
<b>Commissioner of Agriculture</b>				
Charles H. Bronson (R)	\$322,649 Only candidate		\$70,810 WON	\$393,459

NOTE: Candidates who lost in the primary elections may have received a distribution of funds a few days after that election; we have included those amounts as distributions in the primary elections.





## ANALYSIS OF FLORIDA'S PUBLIC FINANCING PROGRAM

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Florida's public campaign program currently faces a number of problems. The most pressing are high levels of political party spending on behalf of candidates and high expenditure limits. The program also faces significant political opposition. In 2008, proposals surfaced to repeal the program entirely. The public and lawmakers have also expressed concerns over the large amounts of public money spent on elections during a state budget crisis.

The following section discusses differing opinions about the program, analyzes whether it is achieving its goals and explores its principal challenges.

### A. ALTERNATE VIEWS OF FLORIDA'S PUBLIC FINANCE PROGRAM

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Opinions in Florida are sharply divided regarding the merits of public financing programs in general, and this division often tracks party lines. Typically Democrats support public financing programs while Republicans, like Jeb Bush and former Secretary of State Sandra Mortham, feel that such programs are "welfare for politicians."

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Many Republicans, for example, echo Representative Alan Hays' belief that public funds should not be used for political campaigns.<sup>58</sup> Hays stated that until the state has excess funds, the legislature has no business using tax dollars to fund political campaigns. He argues that hundreds of millions of dollars are wasted on political campaigns, and that under the current system the public loses while media profit from sales of advertising time and space.<sup>59</sup> Democrats, on the other hand, support the idea of public

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<sup>58</sup> Telephone interview with Representative Alan Hays (R), September 10, 2008 (transcript on file with CGS); see also Catherine Dolinski, "Panel OKs Bill to End Public Election Financing," *The Tampa Tribune*, March 26, 2008.

<sup>59</sup> Telephone interview with Representative Alan Hays (R), September 10, 2008 (transcript on file with CGS).

.....  
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 campaign financing,  
 voting to add the  
 program to the state  
 constitution.  
 .....

campaign financing, believing that it allows qualified candidates to run successfully for office and reduces the power of private contributors.

In 1998, 64 percent of Floridians expressed their clear approval of public campaign financing, voting to add the program to the state constitution. As Democratic Representative Lorraine Ausley pointed out, “[t]he voters have spoken on the issue, they overwhelmingly voted to put public financing in our constitution.”<sup>60</sup>

While Floridians disagree over the merits of public campaign financing in general, they appear to agree that the 2005 amendments hurt the program. Florida’s high expenditure limits have lengthened the time spent fundraising, given an undue advantage to those with a pre-existing fundraising network and wasted taxpayer money by giving it to those who can raise millions in private contributions.

Robert Milligan (R), former State Comptroller, said that the 2005 amendments fundamentally and detrimentally changed the character of the program, by giving those with a large fundraising base a huge advantage. He added that individuals may feel they don’t have a chance of running competitive elections because of the large amount of money needed to run. Milligan advocates a scaled back version of the program, perhaps lowering expenditure limits to below pre-2005 levels.<sup>61</sup> Similarly, Republican state Representative Bob Allen (Merritt Island) rhetorically questioned, “When another guy can come in with a record sum—and still qualify for public tax dollars—then where is the fairness and equalizing in that?”<sup>62</sup> Others have reported that the legislature ruined the program “by cynically raising the spending cap from \$5 million to \$20 million, destroying any incentive for a candidate to limit spending and rewarding politicians who raise obscene amounts of money.”<sup>63</sup> Similarly, Bill Newton, Executive Director of the Florida Consumer Action Network, stated that the program merely provides candidates with a state subsidy.<sup>64</sup> For these reasons, critics of the 2005 amendments, such as Ben Wilcox, Executive Director of Common Cause Florida, believe that “lawmakers took a system designed to help poorer candidates compete against richer ones and turned it on its ear.”<sup>65</sup> Republican Senator Alex Villalobos similarly stated that checking the power of the special interests will save taxpayers more money in the long run: “the people pay for it when the lobbyists pay for it.”<sup>66</sup>

<sup>60</sup> Thomas Collins, “Public Campaign Money Question Closer to Ballot,” *The Palm Beach Post*, April 3, 2008.

<sup>61</sup> Telephone interview with Robert Milligan, former State Comptroller, September 22, 2008 (transcript on file with CGS).

<sup>62</sup> Joe Garcia, “Taxpayers may foot higher campaign bill,” *Orlando Sentinel*, July 26, 2005.

<sup>63</sup> Steve Bousquet, “Easier to Discard After You Break It,” *St. Petersburg Times*, February 23, 2008.

<sup>64</sup> Telephone interview with Bill Newton, Executive Director of Florida Consumer Action Network, October 23, 2008 (transcript on file with CGS).

<sup>65</sup> Jason Garcia, “Taxpayer may foot higher campaign bill,” *Orlando Sentinel*, July 26, 2005; Telephone interview with Ben Wilcox, September 10, 2008.

<sup>66</sup> Jim Ash, “Bill repealing public campaign finance likely won’t see vote,” *Tallahassee Democrat*, April 30 2008.

Many now believe that the program should be reformed. Jeanne Zokovitch, a lobbyist with the League of Women Voters, acknowledged that the system is not functioning properly but stated that “the principle upon which it is founded is not one we can afford to move away from.”<sup>67</sup> Florida House Democratic Leader Dan Gelber stated his support for the program when he said, “[u]nfortunately the Legislature has really perverted the intent of public financing and made it almost nonsensical. It ought to be reformed. I think there is a bonafide public policy in it.”<sup>68</sup> Ben Wilcox said, “I agree that, as it stands now, the system isn’t working.”<sup>69</sup> Wilcox noted that the 2005 amendments distorted the purpose of the program so that it no longer achieves its goals and taxpayers do not get any benefit from the program. Wilcox further stated that in its current form, public financing is just another source of campaign cash for candidates.<sup>70</sup>

On the other hand, some support the 2005 amendments. Senate Elections Republican Chairman Bill Posey, who sponsored the bills raising the limits, believes that the higher expenditure limits take into account the rising costs of running a campaign in an era of expensive advertising and heavy outside spending from independent expenditures and issue advertisements. In support of his position, Posey additionally points out that the new expenditure limits only increase when the number of voters does.<sup>71</sup> Bill Newton, however, contends that the Republican-led legislature increased expenditure limits in 2005 in order to further capitalize on the fundraising advantage Republicans have over Democrats in Florida.<sup>72</sup>

**B. POLITICAL CLIMATE OPPOSING PUBLIC FINANCING**

..... Since the inception of the Florida’s public financing program, many politicians and legislators have opposed it. ....

Public financing programs rise or fall on the willingness of voters and political players to accept them. Since the inception of the Florida’s public financing program, many politicians and legislators have opposed it. This resistance has appeared through court challenges, attempts to find and exploit loopholes and political efforts to amend or abolish the law.

A number of state legislators currently oppose the public financing program.<sup>73</sup> In 2008, for instance, Republican Representative Alan Hays sponsored HJR-281, a proposed constitutional amendment that would repeal Florida’s campaign finance program.<sup>74</sup> Hays reasoned that “we have no business extracting money from our taxpayers and giving it to

<sup>67</sup> Aaron Deslatte, “State could turn off tap for causes, candidates,” *Orlando Sentinel*, February 21, 2008.

<sup>68</sup> Gary Fineout, “Lawmaker: Scrap public financing,” *Miami Herald*, November 27, 2007.

<sup>69</sup> Jim Ash, “House to ask voters to kill public campaign finance,” *Tallahassee Democrat*, March 26, 2008.

<sup>70</sup> Telephone interview with Ben Wilcox, September 10, 2008.

<sup>71</sup> Aaron Deslatte, “Reform law raises campaign spending,” *Florida Today*, June 21, 2005.

<sup>72</sup> Telephone interview with Bill Newton, October 23, 2008.

<sup>73</sup> Telephone interview with Ben Wilcox, September 10, 2008.

<sup>74</sup> Steve Bousquet, “Easier to Discard After You Break It,” *St. Petersburg Times*, February 23, 2008.

politicians.” The House Policy and Budget Council passed HJR-281. The bill then passed on the house floor but died in the senate. A nearly identical measure introduced by Republican Senator Steve Oerlich, SJR 956, also failed in the senate. A significant coalition in both the senate and house are strongly opposed to public financing and are constantly attempting to chisel away at the existing program. According to Bill Newton, barring redistricting or a political scandal, the current legislature will not reform the campaign finance law.<sup>75</sup>

**C. PRINCIPAL GOALS OF FLORIDA’S PUBLIC CAMPAIGN FINANCING PROGRAM**

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Large political party expenditures on behalf of candidates and high expenditure limits have damaged the original goals of Florida’s public campaign financing program by: (1) allowing qualified candidates without significant money backing to run competitively for office; and (2) decreasing the influence of special interest money on candidates and making them more responsive to voters.

**I. Increased Competition from Qualified Candidates**

One of the primary purposes of Florida’s public campaign financing program is to encourage the candidacies of qualified individuals who are not independently wealthy or do not have pre-existing access to significant financial support. Florida’s

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 Milligan stated that the public funds he received allowed him to gain much needed media attention, running radio and television ads in the week prior to the election. Without media attention to gain name recognition, he stated it is virtually impossible to run a successful campaign for statewide office.  
 .....

public campaign financing program previously provided the funds necessary to help at least some candidates competitively run for office. Lawton Chiles’ campaign for governor and Robert Milligan’s campaign for state comptroller are two examples. Milligan stated that the public funds he received allowed him to gain much needed media attention, running radio and television ads in the week prior to the election. Without media attention to gain name recognition, he stated, it is virtually impossible to run a successful campaign for statewide office. Based on his experiences, Milligan said that public financing programs can allow people who do not have a broad base of political support or a large political constituency to run competitively for office. He added that prior to the 2005 amendments, Florida’s program made the opportunity to run competitive campaigns affordable, saying one could run a campaign on a relatively austere budget.<sup>76</sup>

Currently, however, the program’s high expenditure limits and political party spending on behalf of candidates harms the ability of qualified candidates without networks of monetary support to remain competitive. Instead, the program rewards those with pre-existing networks of contributors and allows the party in essence to funnel

<sup>75</sup> Telephone interview with Bill Newton, October 23, 2008.

<sup>76</sup> Telephone interview with Robert Milligan, September 22, 2008.



unlimited amounts of money to their favorite candidate—who is likely to be the already-established candidate. In addition, and importantly, high expenditure ceilings and political party spending allow candidates to prevent participating opponents from receiving rescue funds, which otherwise could help them remain competitive. In this way, the state may be spending taxpayer money on candidates who already have more than enough money from private donors and special interests to run competitive races.

**2. Decreased Influence of Special Interest Money**

The legislature designed Florida's public financing system to decrease the impact of political committee campaign contributions and diminish the resulting perception or reality that candidates and office holders are unduly influenced by special interests to the detriment of the public. With public financing, many reasoned, candidates would be more responsive to their constituents and make decisions on behalf of the public good.

However, because contributions to political parties are unlimited, and because political parties can spend large sums on behalf of participating candidates, special interest groups can still influence publicly financed candidates. In addition, even

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through there are \$500 contribution limits to candidates in place, bundling and aggregation of contributions allow corporations, unions, and PACs still to contribute large sums of money to candidates. Hence, the program does not reduce the effects of special interest money on the political process as effectively as it previously did.

Charlie Crist, for instance, raised a substantial amount of money from interest groups and still received over \$3 million in public funds to run his \$20 million gubernatorial campaign.<sup>77</sup> Florida electric and telephone companies made substantial contributions to the Crist campaign as well as to the Florida Republican Party during the 2006 electoral cycle.<sup>78</sup>

Many assume that when candidates accept contributions from special interests, they will feel the need to repay the favor when they reach office. Many fear that these politicians will respond more to a few special interests than their constituents. At the very least, special interest contributions can create the perception that politicians respond more favorably to special interest groups than the voters. The ability of political parties to accept unlimited contributions and spend large sums on behalf of candidates, in conjunction with the new expenditure limits, erodes the original purpose of the program by allowing parties to receive special interest contributions and funnel them to or spend them on behalf of candidates.

<sup>77</sup> Aaron Deslatte, "A nail in the Coffin of Florida's public financing," *Orlando Sentinel*, February 20, 2008.

<sup>78</sup> John Kennedy, "Utilities Generous to Crist," *Orlando Sentinel*, October 8, 2006.

**D. ADDITIONAL CHALLENGES FACING FLORIDA'S PUBLIC CAMPAIGN FINANCING PROGRAM**

Florida's public campaign financing program currently faces a number of problems in addition to high expenditure ceilings and increased influence of special interest contributions.

**I. High Political Party Spending**

Political party spending has opened a major loophole in Florida's public campaign financing program. Political parties can give \$250,000 to statewide candidates and spend unlimited amounts on some of candidates' priciest campaign expenses, including payroll, polling services, research costs and phone banks, without that spending counting towards the publicly funded candidate's expenditure ceiling.<sup>79</sup>

Political parties may also run any type of advertisement about a candidate, so long as at least two other candidates are identified in the ad.<sup>80</sup> In effect, these two loopholes mean that by directing money to the political parties, candidates may avoid reaching the expenditure limit and thus prevent their opponents from receiving rescue funds.

Some believe there is no effective limit on the amounts that can be on behalf of a candidate, so long as the money is directed to the party.<sup>81</sup> This means that non-participating candidates who wanted to spend more than the expenditure limit, can prevent their opponents from receiving rescue funds by having or allowing the parties to make expenditures on their behalf, instead of making expenditures themselves. Because candidates can coordinate with their parties, this loophole undercuts the effect of spending limits.

Jeb Bush took advantage of political party spending in both the 1998 and 2002 elections. Following his defeat to Lawton Chiles in 1994, in part attributable to rescue funds Chiles received, the Bush campaign adjusted its strategy. In 1998, Bush spent just under the expenditure limit, and the Florida Republican Party made significant expenditures on his behalf, nearly \$2 million.

Bush's opponent Bill McBride, was not eligible for rescue funds. If anything, more money was spent by or on behalf of Jeb Bush's campaign in 1998 than in 1994 because the Florida Republican Party paid for a large portion of his campaign

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 Political parties can give \$250,000 to statewide candidates and spend unlimited amounts on some of candidates' priciest campaign expenses, including payroll, polling services, research costs and phone banks, without that spending counting towards the publicly funded candidate's expenditure ceiling.  
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<sup>79</sup> Florida Statute Section 106.08(2); Telephone interview with Mark Herron, Election law attorney, September 22, 2008 (transcript on file with CGS).

<sup>80</sup> Florida Statute Section 106.021. In a 1998 Advisory Opinion, the Division of Elections ruled that participating candidates can receive matching funds only when a non-participating candidate exceeds the expenditure cap and not when the political party makes expenditures on behalf of a privately financed opponent; See also William March and Garrett Therolf, "Republicans Push Campaign Finance Changes," *Tampa Tribune*, April 28, 2005.

<sup>81</sup> Telephone interview with Mark Herron, September 22, 2008.

expenses that Bush's campaign would otherwise have had to incur. Due to political party spending, some reports put the actual 2002 amounts spent in the gubernatorial election at more than double the amounts the campaigns admitted to spending; \$7.6 million for Bush and \$6.7 million for McBride.<sup>82</sup>

This loophole was utilized by both the Republican and Democrat Parties in 2006. The Republican Party, for instance, funded TV advertisements that featured Charlie Crist for the majority of the ad but mentioned two other candidates in a disclaimer at the end. Because three candidates were mentioned, the ad was considered for the Republican Party and not a specific candidate.

State parties are not required to file disclosure reports until 5 days before the election. This prevents the public from knowing how much parties expend on behalf of particular candidates before the election. Candidate committees, on the other hand, must file weekly finance reports as the election nears.<sup>83</sup>

## 2. Inadequate Funding

Florida's public financing program is funded from the state's general fund plus fines and filing fees. The funds for each election are appropriated during the fiscal year in which the election will occur.<sup>84</sup> Because Florida is facing a severe budget crisis, and because many legislators oppose the program, the legislature may not appropriate enough money from the general fund to keep the program fully operating in coming years.

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Florida also has one of the most expensive public financing programs in the country,<sup>85</sup> making it challenging to sustain. Michigan's gubernatorial public campaign financing program, by comparison, appropriates only \$1.5 million from the general fund to a segregated account to utilize for the public financing program.

Members of the Republican-led legislature have also expressed disdain for the program, asserting that public financing wastes money, especially when the funds could be used for other necessities such as schools or welfare. Some believe that "Republican legislators are using the state budget crisis as a convenient cover for renewing their partisan attack against public campaign financing."<sup>86</sup> In sum, a combination of legislative hostility towards the program and the very real need to cut expenditures may make it more difficult to sustain the appropriations necessary to maintain the public funding program.

<sup>82</sup> William March and Garrett Therolf, "Republicans Push Campaign Finance Changes," *Tampa Tribune*, April 28, 2005.

<sup>83</sup> William March, "Election Spending Skirts Regulations," *The Tampa Tribune*, September 25, 2006.

<sup>84</sup> Email correspondence with Kristi Bronson, Chief of Bureau of Election Records, Division of Elections, September 15, 2008.

<sup>85</sup> John Kennedy and Michael Griffin, "Public Financing of Campaigns Under Fire Again," *Orlando Sentinel*, March 31, 1996.

<sup>86</sup> Editorial, "Republican Budget Knife Trained on Public Good," *St. Petersburg Times*, February 26, 2008.

### 3. Lack of Issue Ad Disclosures

Independent expenditures are made to advocate expressly the election or defeat of a candidate; they are not controlled by, coordinated with, or made upon consultation with any candidate (or a candidate's committee or agent).<sup>87</sup> By contrast, issue advertisements, unlike independent expenditures, are communications which do not "expressly advocate" the election or defeat of a candidate by using the words "vote for," "elect," "support," "cast your ballot for," "vote against" or defeat."<sup>88</sup> But issue ads can often marshal support for or opposition to specific candidates (e.g., "Write candidate X and tell him to stop wasting taxpayers' money on issue Y.>").

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 issue ads.  
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Florida's campaign finance law requires disclosure of the identities of those making independent expenditures and the amounts of money that they spend, but it requires no such disclosure for issue ads. Therefore, as long as outside groups do not specifically tell voters how to vote, Florida does not require disclosure of spending by these groups. As one newspaper rhetorically asked, "Why seek a \$500 check for your own campaign when you can steer a \$50,000 check to a shadow group to air the message you want when you want?"<sup>89</sup>

While current First Amendment jurisprudence prohibits expenditures limits on groups making independent expenditures and issue ads, the law still allows states to require comprehensive disclosure. This Florida fails to do.

### 4. Lack of Rescue Funds for Independent Expenditure or Issue Advertisements

While Florida's public financing program provides rescue funds for participating candidates when non-participating opponents spend money above the expenditure limit, the program does not provide funds for participating candidates who face independent expenditures or issue advertisements—that attack the participating candidates, or support their opponents. In light of the state's high expenditure limits—not to mention the ability of political party spending to circumvent those limits—candidates need additional funds to rebut independent expenditures and issue advertisements. Not every candidate will be able to raise enough money to respond to these attacks. Candidates in that position need rescue funds to remain competitive.

Rescue funds for independent expenditures and issue ads are also crucial to the success of public financing programs. Candidates are less likely to participate

<sup>87</sup> Florida Statute Section 106.011(5) (2007).  
<sup>88</sup> Federal Election Commission, Campaign Guide for Corporations and Labor Organizations 31, 84, *Federal Election Commission*, (2001).  
<sup>89</sup> Perspectives, "Florida forecast: a flood of campaign contributions," *St. Petersburg Times*, October 2, 2005.

in a public financing program if they know that they will be attacked by independent expenditure or issue ads without the means to respond. Candidates need the resources to defend themselves.

A discussion of rescue and matching funds provisions would not be complete without an analysis of the Supreme Court's 2008 decision in *Davis v. FEC*.<sup>90</sup> In that case, the Court held that the so-called "Millionaire's Amendment" in BCRA was an unconstitutional infringement on the First Amendment rights of high-spending candidates. Under the amendment, the contribution limit for a candidate running against a wealthy high-spending candidate could triple, increasing from \$2,300 to \$6,900. The purpose of the amendment was to allow opponents of wealthy candidates to raise more money in order to remain competitive.

The Court stated that Congress has a strong interest in limiting contributions to stop corruption or the appearance of corruption, but not to promote "fairness" in politics by reducing the influence of wealth. Congress cannot cure a wealth imbalance among candidates by allowing the lesser-financed candidate to raise contributions in larger amounts. The Court reasoned that any such regulation would be an unconstitutional tax or penalty on the First Amendment rights of the wealthy candidate.

Florida's program may be distinguishable from BCRA because Florida provides matching funds to candidates facing wealthy, high-spending opponents, rather than increasing the contribution limit for such candidates.<sup>91</sup> Matching funds provisions, therefore, might survive challenge under *Davis*. Following *Davis*, however, a number of lawsuits have been filed challenging public campaign financing program matching provisions. Some election law experts have called into question the continued validity of such provisions in light of the *Davis* rationale.

If Florida's matching funds provision does not survive constitutional scrutiny, Florida could provide a "fall-back" position, such as the one proposed by the Brennan Center concerning New Jersey's public campaign financing program. The Brennan Center suggests that all qualified participating candidates get a one third grant of public funds with the option of petitioning the Election Law Enforcement Commission ("ELEC") for additional funds with a good faith sworn affidavit. ELEC would then provide the candidate with additional funds upon a showing of various factors, including the magnitude of expenditures by non-participating opponents or all candidates in the district in past comparable election cycles, adjusted for inflation. In this way, a grant of additional funds would not depend on an opposing candidate's expenditures and hence not burden the First Amendment expenditure rights of the opposing candidates under *Davis*.

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<sup>90</sup> 07-320 (2008).

<sup>91</sup> For an analysis of the implications of *Davis v. FEC* that is positive about the future of public campaign financing programs, see Paul Ryan, "Public Financing After *Davis*: 'The Reports of My Death Are Greatly Exaggerated'" *Campaign Legal Center* (July 23, 2008), available at: [http://www.clcblog.org/blog\\_item-239.html](http://www.clcblog.org/blog_item-239.html).

## 5. Lack of Legislative Public Financing

Some argue that public financing in legislative elections is even more important than in statewide elections. Legislative races tend to be lower profile, and the candidates have less name recognition. It is likely that qualified individuals who are not independently wealthy or able to raise large amounts of money are unable to competitively run for legislative office. However, because the state is facing a budget crisis, it may be difficult for the state to extend its public campaign financing program to legislative candidates.

It would also be a large undertaking to craft an effective law that would provide public financing in all of Florida's legislative elections. A public campaign financing program for legislative elections would require resources just to determine which candidates are entitled to public funding, how much they are entitled to, and when it is appropriate to administer the funds. This problem is not present in smaller states, where it may be more feasible to expand public financing programs.



## RECOMMENDATIONS

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### I. LOWER EXPENDITURE LIMITS

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Florida's high expenditure ceilings are currently undermining the state's public campaign financing program. High expenditure limits encourage a longer fundraising arms race. Candidates feel obligated to fundraise until they have reached those limits. This decreases the amount of time candidates can spend talking to those who cannot afford to contribute money and decreases the amount of time candidates can spend talking to anyone about issues other than fundraising.

High expenditure limits benefit politicians who already have a broad base of support and or who have already established name recognition. This disadvantages qualified individuals who want to run or are running for office but do not have a pre-existing network of monetary support. Hence, high expenditure limits can keep candidates without already established financial backing out of races or decrease their ability to remain competitive.

.....  
High expenditure limits benefit politicians who already have a broad base of support and or who have already established name recognition. This disadvantages qualified individuals who want to run or are running for office but do not have a pre-existing network of monetary support.  
.....

Public matching funds programs with high expenditure limits can waste taxpayer money because they require the use of additional tax dollars. More importantly, candidates who can raise tens of millions in private contributions likely do not need the extra support of public funds. As one reporter noted prior to the passage of the amendment, "taxpayers could end up helping even the most deep-pocketed contenders in 2006 pay for everything from more campaign mailers to ads."<sup>92</sup>

Finally, high expenditure limits decrease public confidence in the effectiveness of public campaign financing systems, the independence of office holders and the belief that office holders are free from corruption. Instead, the public may feel that because candidates

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<sup>92</sup> Joe Garcia, "Taxpayers may foot higher campaign bill," *Orlando Sentinel*, July 26, 2005.

must keep raising money to get elected, they will do and say things in order to obtain donations and not necessarily for the public good.

**2. LIMIT CONTRIBUTIONS TO AND SPENDING BY POLITICAL PARTIES**

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Florida allows political parties to spend unlimited funds on advertisements so long as they mention at least three candidates. In practice, these ads feature one candidate for 59 seconds of a one minute ad and merely mention two other candidates in passing at the end. Spending on these ads is not considered a contribution to the candidates.

In addition, political parties may give \$250,000 in allocable contributions to candidates and unlimited sums in so-called non-allocable contributions. Non-allocable contributions include polling services, research services, costs for campaign staff, professional consulting services and telephone calls. Florida should eliminate the ability of political parties to spend money on non-allocable candidate campaign costs. Florida should limit the ability of the political party to not more than \$25,000 in non-allocable costs.

Florida does not limit contributions to political parties. Candidates can, in effect, completely avoid the contribution limit by directing those who want to give more than \$500 to simply give to the party, while both the candidate and the contributor know that the party will likely use that money on behalf of the candidate. Florida should limit contributions to political parties to \$2,300. This would limit the real or perceived corruption that occurs from donors being able to funnel large contributions to candidates through the political party.

**3. PROVIDE RESCUE FUNDS TO MEET INDEPENDENT EXPENDITURES, ISSUE ADVERTISEMENTS, AND POLITICAL PARTY SPENDING**

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Florida’s public financing law provides so-called “rescue” funds to participating candidates when non-participating candidates make expenditures over the spending limit imposed on participating candidates—which is now unlikely to happen,

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Candidates should also be able to obtain rescue funds based on political party spending. A candidate’s ability to ask for or accept high levels of spending by the political party defeats the spirit of the public financing program.  
.....

given the current expenditure limits—but the law does not provide rescue funds to help participating candidates counter independent expenditures and issue advertisements that negatively target a participating candidate or support her or his opponent. Florida should expand eligibility for rescue funds to help participating candidates respond to independent expenditures and issue advertisements.

Candidates should also be able to obtain rescue funds based on political party spending. A candidate’s ability to ask for or accept high levels of spending by the political party defeats the spirit of the public financing program. When a candidate directs money to the political party, the candidate can avoid both contribution and expenditure limits, as contributions to and expenditures by



the political party are essentially unlimited. The party can, in effect, act as a shadow co-candidate with few restrictions, while the participating candidate can reap the benefits of public funds *and* political party spending. It will be particularly important to make this change once Florida lowers its expenditure limits. Otherwise, candidates can essentially prevent participating opponents from ever receiving rescue funds.

If Florida fails to provide these safeguards, candidates may opt not to participate in the program. Without these protections, outside groups may use independent expenditures, issue advertisements and political party spending to dominate campaign messages and election outcomes.

Rescue funds, however, should have limits. The state is facing a budget crisis and cannot provide unlimited rescue funds to publicly-financed candidates. Rescue funds should be capped at two times the (lowered) spending limit.

In light of the *Davis* decision, Florida could provide a “fall-back” position if the matching funds provisions are invalidated. It should provide additional funds based on various factors, including the magnitude of expenditures by non-participating opponents or all candidates in the district in past comparable election cycles, adjusted for inflation.

#### 4. IMPROVE DISCLOSURES OF ISSUE ADS AND POLITICAL PARTY SPENDING

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Florida scored highly in a recent study that analyzed and compared campaign finance disclosures of all the 40 states and the District of Columbia.<sup>93</sup> Florida has mandatory electronic filing for all statewide and legislative candidates and does not allow waivers of this requirement.

Despite its good rankings, Florida could improve its disclosure provisions. Florida’s campaign finance law should require disclosure of the individuals or organizations that make issue ad expenditures and the amounts that they spend. This information should be disclosed on the Department of State’s website.

In addition, state parties making expenditures on behalf of a candidate or candidates should be required to file disclosure reports earlier than 5 days before the election (the current rule), well in advance of the election. State parties should, like candidate committees, file weekly finance reports as the election nears. These reports should be electronically available through the Department of State’s website.

#### 5. TIGHTEN THE LIMIT ON CANDIDATES’ USE OF PERSONAL FUNDS

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Candidates currently can lend their campaigns unlimited funds and still obtain public financing, so long as their campaigns repay the loans before the candidates apply for public funding. This erodes the purpose of the program. Candidates can

<sup>93</sup> *Grading State Disclosure* (2008), California Voter Foundation, Center for Governmental Studies and UCLA School of Law.

spend large sums of their own money early in the race to gain invaluable name recognition, for example, and still later obtain public financing. This puts wealthy self-financed candidates at a distinct advantage. Florida should specifically provide that candidates cannot obtain public funding if they lend their campaigns more than \$25,000.

## 6. CHANGE THE TRIGGER FOR THE RESCUE FUNDS PROVISION

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Florida should provide rescue funds and release candidates from spending limits when a non-participating opponent *receives* contributions over the spending limit. Currently, non-participating opponents do not trigger this provision until they *spend* more than the expenditure limit. If Florida does not make this change to its program, non-participating candidates will be able to raise and retain large sums of money and spend them at the very end of the election, when it may be too late for publicly financed candidates to obtain rescue funds and respond to those expenditures.

## 7. EXPLORE ALTERNATIVE FUNDING MECHANISMS

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The Florida public financing program currently receives its funding from general fund appropriations, fines and filing fees. Florida is facing a budget crisis and should explore other sources of funding, such as a surcharge on civil and criminal fines or proceeds from the sale of unclaimed property.

## 8. IMPROVE DISCLOSURE FOR POLITICAL PARTY EXPENDITURES

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Political parties are required to disclose how much they spend on candidates in the form of non-allocable costs as well as how much they spend on three-party advertisements. While this information is available through the Department of State's website, it is incredibly challenging to find on that site. Party expenditures are listed on the site by date, so it is hard to manipulate the data in order to determine how much the party spent in non-allocable costs on behalf of candidates and on three-party advertisements. The Division of Elections should make this information easier to find and easier to organize according to what the party spent their money on.

## 9. EXPLORE PUBLIC FINANCING FOR THE LEGISLATIVE ELECTIONS

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Florida should consider creating a pilot project for public financing of legislative elections. New Jersey created a successful pilot project in selected legislative districts for its 2005 and 2007 elections. Some believe that public financing is most effective at addressing the real or perceived undue influence of large contributions at the legislative level. These races are generally lower profile and candidates have less name recognition. A public campaign finance program could allow qualified candidates without such support to run competitively for legislative office.

## 10. EXPLORE FULL PUBLIC FINANCING

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If the state's budgetary situation improves, Florida should consider upgrading its system to full public financing for gubernatorial candidates and cabinet level candidates, instead of the partial public financing program it now has in effect. In February 2007, Senator Frederica Wilson introduced SB 2264, a full public financing proposal for candidates for statewide and legislative 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 receive *all* the funding necessary to run their campaigns. Once candidates meet the fundraising qualification threshold, they 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. These programs have increased competition and the number of qualified candidates able to run competitively for office and reduced the influence of private money in the political process.

## II. CREATE AN INDEPENDENT BLUE RIBBON CAMPAIGN FINANCE COMMISSION TO REVIEW THE PROGRAM EVERY TEN YEARS

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Campaign finance laws must be reviewed and updated at least every ten years. Florida should create an independent Blue Ribbon campaign finance commission and require it to review campaign finance laws and recommend changes once a decade.

Once this commission makes its recommendations, the state could implement those proposals in several ways. First, the commission's recommendations could instantly become law (without legislative review or approval). The commission's recommendations could go into effect unless they are vetoed by a two thirds vote of the Florida state Legislature. Or, the legislature could put the commission's recommendations on the next election ballot for approval by voters.





## CONCLUSION

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**W**hile the introduction of public financing in Florida was meant to address the problems associated with large private contributions and special interest money, the program does not serve those purposes and is currently facing additional challenges, including political opposition, high spending by political parties and high expenditure limits. Candidates with a pre-existing network of financial support are at a distinct advantage, and the program does not accomplish its goal of allowing qualified candidates without significant financial backing to run competitively for office.

In addition, unlimited contributions to political parties coupled with the ability of parties to spend large sums on behalf of candidates, means that special interest groups can still exert influence over candidates. Candidates can, in effect, avoid both contribution and expenditure limits and still receive public funds. For these reasons, Florida's program needs significant reform; otherwise, the state's public campaign financing program will continue to fail to achieve its goals.





## APPENDICES

### APPENDIX I: PRIMARY ELECTIONS CANDIDATES WHO RAN FOR STATEWIDE OFFICE FROM 1994–2006

	Democratic Party	Republican Party
<b>1994</b>		
Governor and Lieutenant Governor	Lawton Chiles / Buddy MacKay * # + Jack “Thro” Gargan / James H. King	Jeb Bush / Tom Feeney * Josephine A. (“Dr. Jo”) Arnold / Bob Brown Bob Bell / George Roller Kenneth L. Connor / Mel R. Martinez + Ander Crenshaw / Chester Clem + Tom Gallagher / Curt Kiser + Jim Smith / Barbara Sheen Todd +
Comptroller	Gerald Lewis * + Art Simon +	Bob Milligan * # + Chris Comstock
Treasurer	Bill Nelson * # + Karen Gievers + Fred Westman	Tim Ireland * + R.K. (Skip) Hunter
Commissioner of Education	Doug Jamerson * + John Griffin	Frank T. Brogan * # + Bob Morris + John J. Kager
Secretary of State	Ron Saunders +	Sandy Barringer Mortham #
Commissioner of Agriculture	Bob Crawford * # +	Jim Smith +
<b>1998</b>		
Governor and Lieutenant Governor	Buddy MacKay / Rick Dantzler +	Jeb Bush / Frank Brogan #

	<b>Democratic Party</b>	<b>Republican Party</b>
Comptroller	Newall Jerome Daughtrey	Bob Milligan # +
Treasurer	Bill Nelson	Tim Ireland * # Joseph Smith
Commissioner of Education	Ron Howard Peter Rudy Wallace * + (in runoff elections) J. Keith Arnold +	Tom Gallagher * # + Faye Cup +
Secretary of State	Karen Gievers +	Katherine Harris * # + Sandra "Sandy" Mortham
Commissioner of Agriculture	Bob Crawford # +	Rich Faircloth * Timothy Lee Bearson
Attorney General	Bob Butterworth * # + Ellis Rubin	David H.(Dave) Bludworth * + Fred Dudley +
<b>2002</b>		
Governor and Lieutenant Governor	Bill McBride / Not Yet Designated * + Daryl L. Jones / Not Yet Designated + Janet Reno / Not Yet Designated +	Jeb Bush / Frank T. Brogan #
Attorney General	Buddy Dyer * + Walt Dartland Scott Maddox + George Sheldon +	Charlie Crist * # + Tom Warner + Locke Burt +
Commissioner of Agriculture	David Nelson * Mary L. Barley 'Dr. Andy' Michaud	Charles H. Bronson # +
<b>2006</b>		
Governor and Lieutenant Governor	Jim Davis * + Glenn Burkett Carol Castagnero John M. Crotty Rod Smith +	Charlie Crist * # + Michael W. St. Jean Vernon Palmer Tom Gallagher +
Chief Financial Officer	Alex Sink # +	Tom Lee * + Milt Bauguess Randy Johnson
Attorney General	Walter "Skip" Campbell * + Merrilee Ehrlich	Bill McCollum # +
Commissioner of Agriculture	Eric Copeland	Charles H. Bronson # +
* Indicates the winner of primary, # Indicates the winner of general elections, + Indicates a candidate who received public financing		



## APPENDIX 2: CHECKLIST OF PROPOSED REFORMS TO FLORIDA'S PUBLIC CAMPAIGN FINANCING LAW

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The following is a checklist of recommendations to improve Florida's public campaign financing law for statewide candidates.

### 1. Lower Expenditure Limits

- Florida should lower its expenditure limits to pre-2005 levels and tie those limits to both the consumer price index (based on goods and services used to run for office) and the number of registered voters.

### 2. Limit Contributions to and Spending by Political Parties

- Florida should eliminate the ability of political parties to spend unlimited sums on candidates' non-allocable candidate campaign costs.
- Florida should reduce the ability of political parties to spend money on candidates' allocable costs from \$250,000 to \$25,000.
- Florida should limit contributions to political parties to \$2,300.

### 3. Provide Rescue Funds to Meet Independent Expenditures, Issue Advertisements and Political Party Spending

- Florida should provide rescue funds to help participating candidates counter independent expenditures, issue advertisements that negatively target a participating candidate or support her or his opponent and spending by opposing political parties.

### 4. Improve Disclosures of Issue Ads and Political Party Spending on the Department of State's Website

- Florida's campaign finance law should require disclosure of the identities of those making issue ad expenditures and the amounts that they spend.
- Florida should require state parties making expenditures on behalf of a candidate or candidates to file disclosure reports earlier than five days before the election (the current rule), and to make them available electronically through the Department of State's website.

### 5. Tighten the Limit on Candidates' Use of Personal Funds

- Florida should provide that candidates cannot obtain public funding if they lend their campaigns more than \$25,000.

### 6. Change the Trigger for the Rescue Funds Provision

- Florida should provide rescue funds and release candidates from spending limits when non-participating opponents receive contributions over the spending limit.

**7. Explore Alternative Funding Mechanisms**

- Florida should explore other sources of funding, such as a surcharge on civil and criminal fines or proceeds from the sale of unclaimed property.

**8. Improve Disclosure for Political Party Expenditures**

- Florida should make political party expenditures easier to find on the Division of Elections website and should organize this information to make clear how much political parties spend on behalf of candidates in any given election.

**9. Explore Public Financing for the Legislative Elections**

- Florida should consider creating a pilot project for public financing of legislative elections.

**10. Explore Full Public Financing**

- Florida should consider upgrading its system to full public financing for gubernatorial candidates and cabinet level candidates, instead of the partial public financing program it now has in effect.

**11. Create an Independent Blue Ribbon Campaign Finance Commission to Review the Program Every Ten Years**

- Florida should create an independent Blue Ribbon campaign finance commission and require it to review campaign finance laws and recommend changes once a decade.



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