



**Boston City Council  
Hearing on Campaign Finance Reform  
April 9, 2009**

**Testimony of Brenda Wright  
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Honorable Maureen Feeney, Chairperson, Government Operations Committee:

My name is Brenda Wright. I am the Legal Director of the Democracy Program at Dēmos: A Network for Ideas & Action, a national, nonprofit, nonpartisan research and advocacy organization established in 2000. Dēmos works with policy makers, advocates and scholars around the nation to improve our democracy and achieve greater economic equity. Before joining Dēmos in 2007, I worked for the National Voting Rights Institute here in Boston, which worked to support and promote campaign finance reform around the country. I applaud the Council for holding this hearing on the important topic of campaign finance reform.

**Campaign Finance Reform: Basic Principles**

Because this hearing reflects an initial look at ideas for campaign finance reform, it seems appropriate to start with some foundational principles that may help provide a framework for discussion. Much discussion about campaign finance reform proposals

around the country is devoted to examining how a particular reform will affect the fortunes of a particular political party; how it might affect candidates; how it will affect donors. I would like to suggest a different framework for analyzing proposed reforms that developed out of my experience with the National Voting Rights Institute and the work we did around the country to help promote the understanding of campaign finance reform as a basic voting rights and civil rights issue. A standard that NVRI and many other groups and advocates decided to incorporate into their work became known as the “Fannie Lou Hamer” standard.

The Fannie Lou Hamer standard recalls the Mississippi civil rights leader who challenged the nation to get serious about fighting segregation and the exclusion of people of color from the political process. Under the standard, you determine if a reform is real by asking “Does this reform make the process fairer for someone like Fannie Lou Hamer” – a passionate leader, a person of color but without access to wealth, without high-level connections, whose influence depends on the strength of her ideas and the rightness of her cause. Asking how a proposed reform measures up against that standard puts the right framework in place, because it brings the discussion back to how a reform advances the responsiveness of government to the citizens it serves, a core goal of democracy.

### **Public Financing**

I believe that public financing for electoral campaigns is the reform that best lives up to the Fannie Lou Hamer standard. I recognize that current fiscal realities make it particularly challenging to think about a public financing program in Boston at this time. Nevertheless, if this is the beginning of a discussion about how best to advance the goals

of campaign finance reform, it is important to talk about the gold standard, which is how I would characterize public financing.

Public financing laws have several benefits that are important to a strong democracy. By substantially reducing the need for candidates to rely upon private contributions to finance their campaigns, they strengthen public confidence in the integrity of government, encourage candidates from all walks of life to enter the arena, and free candidates from the burden of fundraising so they can spend their time talking to voters instead of dialing for dollars. For those who are elected to office, the benefits of public financing continue because officeholders do not have to spend time worrying about raising funds for their next campaign. Public financing for state or municipal elections empowers average citizens because candidates no longer need to depend on fundraising by wealthy private interests to secure election to office.

Full public financing programs have been enacted in several states (Maine, Arizona, New Mexico, North Carolina, New Jersey, Vermont and Connecticut) and municipalities (for example, Albuquerque, New Mexico and Portland, Oregon). Candidates generally qualify for the program by raising a set number of small, \$5 donations from voters in their district, and by agreeing to forgo most private contributions and limit their total campaign expenditures. Candidates who do not wish to accept such limits are not required to participate, but are then ineligible to receive public funding for their campaigns. Because participation is voluntary and the caps are not mandatory, these kinds of reforms have repeatedly been upheld by the courts.<sup>1</sup> Other models of

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<sup>1</sup> *Buckley v. Valeo*, 424 U.S. 1, 57, 91-93 (1976) (per curiam) (upholding presidential public financing provisions); *Daggett v. Comm'n on Governmental Ethics and Election Practices*, 205 F.3d 445 (1st Cir. 2000) (upholding Maine's "Clean Elections" initiative providing full public financing to qualified candidates); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26 (1st Cir. 1993) (upholding Rhode Island's public

public financing rely in whole or in part on matching funds for small private donations, such as New York City's model of a 6-1 match for private donations.

We can look at the experience in other states to see the impact of full public financing programs.

***Bi-partisan support.*** In Arizona, 24 Republicans and 18 Democrats won legislative races as participants in the public financing program in 2004. In Maine, 85 Democrats and 56 Republicans won their legislative races as public financing participants.<sup>2</sup>

***Growing participation.*** In Maine, where Clean Elections has been in place for all state races since 2000, 85 percent of the current legislature in 2009 consists of people who won using public funding. This includes 80% of the state senate (28 seats) and 86% of the house (130 seats). In Arizona, 54 percent of the current legislators were elected using public financing in 2008, including 39 of 60 House members and 11 of 30 Senate members. In North Carolina, which instituted full public financing for its top judicial races, all five persons elected to the Court of Appeals ran with public financing, as did the two candidates for Supreme Court.<sup>3</sup>

***Encouraging Diverse Representation.*** Full public financing has been particularly helpful for women and minority candidates seeking public office. In Arizona, of the 34 women who won office in 2006, 21 ran under the full public financing program,

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financing provisions); *Gable v. Patton*, 142 F.3d 940 (6th Cir. 1998), *cert. denied*, 525 U.S. 1177 (1999) (upholding Kentucky's public financing provisions); *Rosenstiel v. Rodriguez*, 101 F.3d 1544 (8th Cir. 1996) (upholding Minnesota's public financing provisions); *Republican National Committee v. FEC*, 487 F. Supp. 280, 283-86 (S.D.N.Y.) (three-judge court), *aff'd mem.*, 445 U.S. 955 (1980) (upholding voluntary limits for presidential campaigns).

<sup>2</sup> Public Campaign, "Record Number of 'Clean' Candidates Elected in Maine and Arizona; System Also Takes Hold in North Carolina," November 5, 2004.

<sup>3</sup> Public Campaign, Clean Elections Winners, <http://www.publiccampaign.org/>.

including 18 of 31 legislators.<sup>4</sup> Eight members of the legislature who are racial and ethnic minorities were elected using public financing<sup>5</sup> (out of 18 total minority legislators),<sup>6</sup> and more than half of the racial and ethnic minorities who ran for the legislature used the system.<sup>7</sup> In Maine, 49 women were elected to the legislature using public financing in 2006 – 39 in the House and 10 in the Senate.<sup>8</sup> In North Carolina, of the candidates who won judicial races using public financing in 2008, two were women and two were African American.<sup>9</sup>

### **“Pay to Play” Regulations**

Several states and municipalities have responded to concerns about so-called “pay to play” contributions by banning or severely limiting contributions from persons or entities that engage in business with the government. These reforms also meet the Fannie Lou Hamer standard because they help to ensure public confidence that the business of government is operated in the interests of all the citizens and is not influenced by campaign support from entities with a financial stake in government contracts.

The provisions of these laws vary from state to state in terms of the dollar size of the contract that is subject to the ban, the types of entities and persons subject to the ban, and other details. Public Citizen has published on its website a very useful chart

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<sup>4</sup> Public Campaign, “Clean Elections Lawmakers: 2006 Elections Results,” updated January 5, 2007 (available at <http://www.publiccampaign.org/2006results>).

<sup>5</sup> *Id.*

<sup>6</sup> Clean Elections Institute, “2006 Election Statistics,” revised December 6, 2006 (available at [http://azclean.org/documents/2006ElectionStatistics\\_000.PDF](http://azclean.org/documents/2006ElectionStatistics_000.PDF)).

<sup>7</sup> *Id.*

<sup>8</sup> Public Campaign, “Clean Elections Lawmakers: 2006 Elections Results.”

<sup>9</sup> Public Campaign, Clean Elections Winners, <http://www.publiccampaign.org/>.

comparing the provisions of “pay to play” limits in different states.<sup>10</sup> In addition, in New Jersey the Governor issued an Executive Order last year that extends the state’s pay-to-play ban so as to bar state redevelopment agencies from entering into contracts with redevelopers who have made political contributions to state or local candidates for office once a request for proposal has been issued.<sup>11</sup> Connecticut’s ban on contributions by entities that enter into state contracts also defines quite broadly the kinds of contracts that are covered, so as to include contracts with “the state or any state agency or any quasi-public agency.”<sup>12</sup>

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<sup>10</sup> Public Citizen, “Pay to Play Restrictions on Contributions from Government Contractors 2007-2008, available at <http://www.cleanupwashington.org/documents/paytoplay2008.pdf>

<sup>11</sup> New Jersey Executive Order 118, paragraph 3, states as follows:

A State redevelopment entity shall not enter into or propose to enter into a redevelopment agreement with any redeveloper if, beginning after the public issuance of a request for proposal, a request for qualifications, or similar solicitation in accordance with Paragraph 2 of this Order, that redeveloper has made a contribution to (i) a candidate committee or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, (ii) a State, county, or municipal political party committee or a legislative leadership committee, or (iii) a candidate committee or election fund of any candidate for or holder of a State legislative, county, or municipal elective public office in a State legislative district, county, or municipality in which any property subject to the redevelopment agreement is situated.

(available at <http://www.nj.gov/infobank/circular/eojsc118.htm>).

<sup>12</sup> Connecticut’s law defines “state contract” as follows:

[A]n agreement or contract with the state or any state agency or any quasi-publicagency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. "State contract" does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan or a loan to an individual for other than commercial purposes.

Conn. Gen. Stat. § 9-612(g)(1)(C).

Court challenges to these types of “pay to play” bans have been largely unsuccessful. Indeed, just a few months ago a federal court rejected a constitutional challenge to Connecticut’s ban on contributions by government contractors.<sup>13</sup>

### **Limits on “Carry-Over” Funds**

Another reform worth considering is a limit on the amount of unused campaign funds that a candidate may carry over from election to election. The purpose of collecting campaign funds is allow a candidate to communicate with the electorate and engage in activities in support of his or her election campaign. The practice of carrying over unused campaign funds from election to election, when combined with the fact that Massachusetts contribution limits apply on an annual basis rather than a per-election basis, tends to create a built-in advantage for incumbents as compared to challengers who may not decide to enter the arena at all when faced with massive “war chests” compiled by an opponent. Electoral competition is the engine of government accountability, and practices that deter competition should therefore be scrutinized carefully. A limit on carry-over funds would be responsive to the Fannie Lou Hamer standard because it would help foster government accountability to ordinary citizens by reducing the incentive to collect large unneeded donations from special interests.

I am aware of at least one state, Alaska, that has enacted limits on the amount of funds a candidate may carry over from one election to another.<sup>14</sup> The law allows a candidate to apply unused campaign funds to pay off campaign debts, of course, and to maintain some portion of funds for other specified purposes, but otherwise requires

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<sup>13</sup> Green Party of Connecticut v. Garfield, 590 F. Supp. 2d 288 (D.Conn. 2008).

<sup>14</sup> AS §15.13.116.

unused funds to be donated to charities, returned to contributors, or turned over to state or local general accounts.

Alaska's limits on carry-over funds were upheld against a First Amendment challenge. Nevertheless, some caution is warranted here because a similar law in Missouri was struck down by a different court, and the U.S. Supreme Court has never addressed this precise question.<sup>15</sup> As with any campaign finance reform, the City Council should examine the likely impact of such limits and consider the factual background that supports a limit on carry-over funds.

## **Conclusion**

I again applaud the Boston City Council for holding this hearing on the important topic of campaign finance reform. Dēmos shares your aspiration for exploring reforms that will ensure public confidence in the integrity and accountability of government to all citizens, and we look forward to working with you in support of meaningful reform. Thank you very much for the opportunity to provide this testimony.

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<sup>15</sup> Compare *Shrink Mo. Gov't PAC v. Maupin*, 71 F.3d 1422, 1428 (8th Cir. 1995) (striking down limit on carry-over funds), with *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 632 (Alaska 1999) (upholding limit on carry-over funds).