

ESSAY

THE BIPARTISAN CAMPAIGN REFORM ACT: UNINTENDED CONSEQUENCES AND THE MAINE SOLUTION

MICHAEL SAXL*
MAEGHAN MALONEY**

The Bipartisan Campaign Finance Reform Act of 2002 dramatically re-designed the rules of campaign finance for federal elections. Since passage, a loophole in the Act has led to a system where large private donations still play a domineering role in campaigns, albeit through unaffiliated organizations rather than the candidates themselves. This Essay argues that instead of pursuing legislation that merely regulates contributions and expenditures, the only way to ensure that big money does not dominate political campaigns is to replace the current system with public campaign financing, using the Maine Clean Elections Act as a model.

Who are to be the electors of the Federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States¹

The presumptive 2004 Democratic presidential nominee, Senator John Kerry, plans to raise \$100 million for his campaign.² America Coming Together and its sister organization—two groups that oppose President Bush’s re-election—project that they will spend \$190 million in the course of the same election.³ How is it that organizations dedicated to defeating an incumbent are able to raise more money than the candidate running to unseat that incumbent? Why would a donor choose to contribute to such an organization, rather than to the candidate himself? The answer is the

* Counsel, Verrill & Dana LLP; Principal, Maine Street Solutions. Member, Maine House of Representatives 1995–2002; Speaker, 2000–2002. J.D., University of Maine School of Law, 1998; A.B., Bowdoin College, 1989.

** Assistant Attorney General, State of Maine. J.D., Harvard Law School, 1997; B.A., Swarthmore College, 1993. The ideas expressed here are the author’s and co-author’s own and do not necessarily reflect the views of the Attorney General.

¹ THE FEDERALIST NO. 57, at 390 (James Madison) (Edward Gaylord Bourne ed., 1961).

² See Jim VandHei & Thomas B. Edsall, *Kerry Capitalizing on Party Resources to Fill Coffers*, WASH. POST, Mar. 19, 2004, at A6.

³ See Martin Kasindorf & Mark Memmott, *'04 Slugfest May Appeal To, Not Repel, Voters: Interest High Despite Early Start To Traditional Turnoffs*, USA TODAY, Mar. 12, 2004, at 1A.

Bipartisan Campaign Reform Act of 2002 (BCRA),⁴ which, in seeking to decrease the role of money in federal elections, insufficiently addresses reform for organizations other than the national political parties.

While BCRA mandates unprecedented restrictions on the size of contributions that national parties can receive,⁵ it fails to place equally stringent restrictions on contributions to state and local parties.⁶ Contributions to non-party organizations face even fewer restrictions than do those to state and local parties.⁷ As a result, the Act facilitates a greater power transfer from national parties to new non-party organizations, as BCRA either failed to anticipate the emergence of such entities or chose to ignore them altogether. The result has been a mere reorganization of the political clout that can be purchased by private fundraising, rather than a true reduction in the role that large-scale donations of private money play in federal elections. Thus, it seems that BCRA's legacy will be the continued domination of national political campaigns by private money, albeit through non-party associations rather than state and national parties.

Does this mean that campaign finance reform is doomed to failure? Not necessarily. The problem is that BCRA attempts to change campaign finance through regulation, and no matter how comprehensive the regulation, loopholes always form.⁸ This Essay proposes a different approach to the issue of federal campaign finance reform: the Maine way. Maine's experience with campaign finance reform via public funding has been overwhelmingly positive. The chief difference between Maine's success and BCRA's failure is that Maine chose to approach reform with a carrot rather

⁴ Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified in scattered sections of 2 U.S.C.). BCRA was challenged in *McConnell v. Federal Election Comm'n*, 124 S. Ct. 619 (2003). All of the Act's provisions that are relevant to this Essay were upheld.

⁵ 11 C.F.R. § 110.1(c)(1) (2003); BCRA § 203(a), 2 U.S.C.A. § 441b(a) (West Supp. 2003). Regulated political contributions are commonly but imprecisely referred to as "hard money," while unregulated contributions are known as "soft money." Before BCRA, certain types of contributions to national parties were not regulated and were thus deemed "soft money." See, e.g., Eric Schmitt, *House Also Plans a Debate on Campaign Finance Reform*, N.Y. TIMES, Sept. 25, 1997, at A24 (noting definitions of "hard" and "soft" money). See also Federal Election Campaign Act Amendments of 1979, Pub. L. No. 96-187, 93 Stat. 1339 (regulating certain political contributions). Because BCRA regulates contributions to national parties that were previously unregulated, it can be said to transform this formerly soft money into hard money. For a more thorough discussion of soft money, see Gregory Comeau, Recent Development, *Bipartisan Campaign Reform Act*, 40 HARV. J. ON LEGIS. 253, 261-62 (2003).

⁶ See *infra* notes 14-19 and accompanying text.

⁷ See *infra* notes 22-28 and accompanying text.

⁸ In the words of the Supreme Court, "Money, like water, always finds an outlet." *McConnell*, 124 S. Ct. at 706. Indeed, the history of campaign finance reform shows that reform efforts have consisted of "insufficient provisions for administration and enforcement and sufficient loopholes to undermine the regulations on campaign contributions." Marty Jezer et al., *A Proposal for Democratically Financed Congressional Elections*, 11 YALE L. & POL'Y REV. 333, 333 (1993); see also *id.* at 342. See generally Harold E. Ford, Jr. & Jason M. Levien, *A New Horizon for Campaign Finance Reform*, 37 HARV. J. ON LEGIS. 307 (2000).

than a stick. By giving participating candidates money in exchange for their agreement to spending caps, Maine has ensured the near removal of fundraising from a legislator's job description.

I. BCRA'S RESTRICTIONS, THE CURRENT FEDERAL SYSTEM, AND CURRENT LOOPHOLES

A. *Limits on Federal Contributions*

1. *National Parties*

An analysis of BCRA's restrictions most fittingly begins with a discussion of national parties, for it is precisely the inability of such parties to receive uncapped contributions that will re-direct those contributions into the hands of other organizations.

Under BCRA, national parties cannot accept any contributions in excess of statutory limits.⁹ According to the statute, they also cannot "solicit, receive or direct" political contributions to any other organization.¹⁰ Significantly, the Federal Election Commission ("FEC") has interpreted this latter prohibition to mean merely that the national parties cannot directly "ask" a donor to contribute to another organization.¹¹ As the Supreme Court has noted, BCRA allows national party officials to aid state and local parties by advising them on how best to raise and spend money that, because it is not contributed to a national party, is not regulated by BCRA.¹²

2. *Federal Candidates*

BCRA also limits the size of contributions that federal candidates may receive from individuals, political action committees (PACs), and national parties.¹³ The statute does not, however, limit contributions to

⁹ Under BCRA, the amount of money national parties can receive per election is limited to \$25,000 from an individual and \$15,000 from a multicandidate Political Action Committee (PAC). 11 C.F.R. § 110.1(c)(1) (2003). National parties cannot receive any money directly from corporations or unions. BCRA § 203(a), 2 U.S.C.A. § 441b(a) (West Supp. 2003).

¹⁰ BCRA § 101(a), 2 U.S.C.A. § 441i(a) and (c) (West Supp. 2003).

¹¹ Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,086-87 (July 29, 2002) (codified at 11 C.F.R. pt. 300 (2003)).

¹² *McConnell*, 124 S. Ct. at 670 ("Nothing on the face of § 323(a) prohibits national party officers, whether acting in their official or individual capacities, from sitting down with state and local party committees or candidates to plan and advise how to raise and spend soft money.").

¹³ An individual can contribute \$2,000 to a candidate per election. BCRA § 307, 2 U.S.C.A. § 441a(a)(1)(A) (West Supp. 2003). A state, district, or local party or a multicandidate PAC can contribute \$5,000 per election per candidate (state, district and local parties share the limit unless independence can be demonstrated). 2 U.S.C.A. § 441a(a)(2)(A) (West Supp. 2003); 11 C.F.R. § 110.2(b)(1) (2003); *id.* § 110.3(b)(3). Additionally, national parties may contribute \$35,000 per candidate, per campaign for Senate elections, although that amount is shared with the Senate campaign committee. *Id.* at § 110.2(e)(1).

state and local parties on behalf of a given federal candidate,¹⁴ and federal candidates may participate in state and local candidates' campaign events. State and local parties may even finance these events as long as they do not refer to a federal campaign.¹⁵ In other words, federal candidates can benefit from unregulated contributions to local campaigns by appearing and speaking at these fundraisers, because they technically are not promoting their own candidacy.

BCRA does, however, bar state parties from paying for activities specifically targeted at federal campaigns,¹⁶ with some minor exceptions.¹⁷ In the past, state parties used unregulated contributions to run what were known as "coordinated campaigns."¹⁸ These shadow campaigns were aimed at benefiting federal candidates and consisted of get-out-the-vote and voter identification events, as well as issue advocacy.¹⁹ Since BCRA now bars the contributions to state and local parties that fueled such activities, those contributions will now probably go to technically non-partisan national organizations, known as 527s,²⁰ with a nearly identical result.

B. Organizations Exempt from the Restrictions of BCRA

Title I of BCRA, described above, was written to address contributions to national, state, and local parties. Title II of BCRA restricts corporations and unions from influencing federal elections, essentially by prohibiting them from running campaign advertisements.²¹

BCRA leaves certain other organizations unregulated, however: 501(c)(3) corporations,²² Qualified Nonprofit Corporations ("QNC")²³ (also known as

BCRA allows opponents of self-financing candidates to raise money in larger increments. BCRA § 304, 2 U.S.C.A. § 441a(i) (West Supp. 2003).

¹⁴ BCRA §§ 101(e)(2), 103(b), 2 U.S.C.A. § 441(i)(e)(2) (West Supp. 2003).

¹⁵ BCRA § 101(a), 2 U.S.C.A. § 441i(e)(1) (West Supp. 2003).

¹⁶ BCRA § 101(a), 2 U.S.C.A. § 441i(b) (West Supp. 2003).

¹⁷ See BCRA § 101(a), 2 U.S.C.A. § 441i(b)(2) (West Supp. 2003); Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,067-70 (July 29, 2002) (codified at 11 C.F.R. pt. 100 (2003)).

¹⁸ BCRA § 202, 2 U.S.C.A. § 441b (West Supp. 2003).

¹⁹ See Bart Jansen, *Familiar Fuel Heats Campaigns; Labor Unions Support Democratic Candidates, While Big Business Backs Republicans In Maine's Key Congressional Races*, PORTLAND PRESS HERALD, Oct. 6, 2002, at 1A.

²⁰ 527s are named for the section of the tax code in which they appear. I.R.C. § 527 (2000).

²¹ BCRA § 203(a), 2 U.S.C.A. § 441b(b)(2) (West Supp. 2003).

²² BCRA § 101(e)(4), 2 U.S.C.A. § 441i(e)(4) (West Supp. 2003). Section 501(c)(3) of the Internal Revenue Code exempts from taxation certain trusts and corporations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, or to prevent cruelty to children or animals. I.R.C. § 501(c)(3) (2000). The tax code expressly prohibits organizations described in section 501(c)(3) from "participat[ing] in, or interven[ing] in . . . any political campaign on behalf of (or in opposition to) any candidate for public office." *Id.* For this reason, it was deemed unnecessary to include 501(c)(3) organizations in BCRA's prohibitions. Electioneering Communications, 67 Fed. Reg. 65,190, 65,200 (Oct. 23, 2002).

²³ BCRA § 101(e)(4), 2 U.S.C.A. 441i(e)(4) (West Supp. 2003). The characteristics of

“MCFL” corporations),²⁴ unincorporated 501(c)(4) organizations,²⁵ and 527 organizations.²⁶ Of these, 527s are the organizations with the widest latitude to engage in political activities.²⁷ Recently, however, the FEC has proposed rules that would limit 527s’ influence.²⁸

C. *The Current Presidential Public Financing Program*

In addition to BCRA, which limits contributions and expenditures, federal law provides a limited public financing system for presidential campaigns. Presidential candidates qualify for public financing under two sets of rules, one applying to the primary season and the other applying to the general election.²⁹ In order to qualify for public funds in the primary, candidates must raise \$5,000 in at least 20 states in increments of \$250 or less.³⁰ A candidate who agrees to a spending cap in the primary³¹ will

a “QNC” corporation are that

- (1) Its only express purpose is the promotion of political ideas;
- (2) It cannot engage in business activities;
- (3) It has no shareholders;
- (4) It was not established by a business corporation or labor organization, and it does not directly or indirectly accept donations of anything of value from business corporations or labor organizations; and
- (5) It is described in 26 U.S.C. § 501(c)(4) (2000).

11 C.F.R. § 114.10(c) (2003).

²⁴ The term “MCFL corporation” is derived from *Federal Election Comm’n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 263 (1986) (holding that independent spending restrictions on a nonprofit, nonstock corporation are an unconstitutional infringement of the First Amendment). The FEC uses the term “QNC” corporation to mean “MCFL.” *Electioneering Communications*, 67 Fed. Reg. 65,190 65,203–04 (Oct. 23, 2002).

²⁵ BCRA § 203(c), 2 U.S.C.A. 441b(c)(2) (West Supp. 2003). A 501(c)(4) organization is a civic league, an organization not organized for profit but operated exclusively for the promotion of social welfare, or a local association of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes. I.R.C. § 501(c)(4) (2000); 11 C.F.R. § 114.10 (2003).

²⁶ BCRA § 203(c), 2 U.S.C.A. § 441b(c)(2) (West Supp. 2003). A 527 organization is a political party, committee, association, fund, or other organization (“whether or not incorporated”) that is organized and operated for the purpose of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office, or the election of presidential or vice-presidential electors. I.R.C. § 527(e) (2000).

²⁷ I.R.C. § 527(e)(2) (2000).

²⁸ See Political Committee Status, 69 Fed. Reg. 11,735 (Mar. 11, 2004) (to be codified at 11 C.F.R. pts. 100, 102, 104, 106, 114). These regulations would limit contributions to groups whose publications advocate the election or defeat of a clearly identified candidate for federal office. *Id.* at 11,745. Exempted from these regulations would be all groups that have as their purpose “to elect candidates holding a particular position (e.g., pro-business candidates or pro-environmental candidates) without specifying which candidates hold those positions.” *Id.*

²⁹ See 26 U.S.C. §§ 9001–9013, 9031–9042 (2000).

³⁰ 26 U.S.C. § 9033(b) (2000).

³¹ 11 C.F.R. § 110.8(a)(1)(ii) (2003).

receive a one-to-one match of public funds for the first \$250 of each individual's private contribution to that candidate,³² with the total public grant not to exceed fifty percent of the spending cap in the primary.³³ In 2004, a candidate who agreed to spend no more than approximately \$37 million in the primary was eligible to receive up to just more than \$18.5 million in matching public funds.³⁴

In the general election, only candidates nominated by a party that received at least five percent of the last presidential popular vote are eligible for public funds.³⁵ For 2004, that means that only the Republican candidate, George W. Bush, and the presumptive Democratic nominee, John Kerry, qualify for public funding.³⁶ The amount of money the candidate of a major party³⁷ is given to spend in the general election, which is also the overall cap on spending to which the candidate must agree,³⁸ is set according to an established formula.³⁹ In the 2004 election, the formula creates a general election spending cap for major party candidates of approximately \$75 million.⁴⁰

The presidential election campaign fund gets its money from a voluntary tax check-off on the federal income tax form.⁴¹ Agreeing to the tax check-off does not increase the amount of money a taxpayer owes.⁴²

Many feel that the presidential public financing system is in trouble.⁴³ Among other problems, in recent years, serious candidates often have had to forgo public financing for the primary in order to be competitive, only to opt back into the system during the general election.⁴⁴ Partly to blame for

³² 26 U.S.C. § 9034(a) (2000).

³³ *Id.* at § 9034(b) (2000).

³⁴ Candidates must also agree to state-by-state primary spending limits. 11 C.F.R. § 9035.1(a)(1) (2003). For specific state limits for 2004, see Fed. Election Comm'n, *2004 Presidential Spending Limits*, at http://www.fec.gov/pages/brochures/pubfund_limits_2004.html.

³⁵ 26 U.S.C. §§ 9002, 9004(a) (2000).

³⁶ See, e.g., Dan Balz, *Bush, Gore Down to Wire; Automatic Recount in Florida Climaxes Dramatic Night of Ballot Counting to Fix Financing*, WASH. POST, Nov. 8, 2000, at A1.

³⁷ Major parties are those whose "candidate for the office of President in the preceding presidential election received, as the candidate of such a party, 25 percent or more of the total number of popular votes received by all candidates for such office." 26 U.S.C. § 9002(6) (2000).

³⁸ 26 U.S.C. § 9003(b)(1) (2000).

³⁹ 11 C.F.R. § 9004.1 (2003); 11 C.F.R. § 110.8(a)(1)(ii) (2003).

⁴⁰ See Fed. Election Comm'n, *supra* note 34.

⁴¹ 26 U.S.C. § 6096(a) (2000).

⁴² See *id.* § 6096(b).

⁴³ See, e.g., David S. Broder, *Level the Presidential Playing Field*, WASH. POST, Oct. 19, 2003, at B7; E.J. Dionne Jr., *How to Fix Financing*, WASH. POST, Nov. 28, 2003, at A41; Thomas Edsall & Dan Balz, *Kerry to Forgo Public Campaign Financing; Democrat Says He Will Use His Own Money*, WASH. POST, Nov. 16, 2003, at A12; Pamela Yip, *Fewer Tax Filers Choose to Send \$3 for Election*, SEATTLE TIMES, Apr. 11, 2004, at A7; Editorial, *Your Turn; Fix the Finance Rules for Presidential Races; The Public-Financing Program for Presidential Candidates, Designed to Even the Playing Field, is Broken*, SAN ANTONIO EXPRESS-NEWS, Nov. 12, 2003, at 6B.

⁴⁴ See, e.g., Broder, *supra* note 43, at B7; Dionne, *supra* note 43, at A41. When a candidate opts out of the primary only to turn around and take public funds in the general

this opting out is that the political landscape has changed considerably since the system was created in the 1970s—now, primary races for the presidency begin long before the start of the election year.⁴⁵ The proposed legislation recommended in Part IV would address this concern as well as the broader concerns facing all federal candidates.⁴⁶

II. THE MAINE CLEAN ELECTION ACT

Is BCRA as close as the federal government could get to fulfilling the vision of James Madison as described in the introduction? The approach to campaign finance reform taken by the State of Maine illustrates that there is another, better way to achieve Madison's conception of voter equality. The Maine Clean Election Act⁴⁷ (MCEA) has established a workable system of campaign finance reform through the establishment of public election financing.

MCEA provides public funding to candidates for state office who agree to spending caps and limited fundraising.⁴⁸ The goal of MCEA was to reduce the influence of campaign contributors on elected officials and to encourage the participation of candidates averse to fundraising.⁴⁹ MCEA was amended in the last legislative session to require that candidates choose whether to run as a clean election candidate before entering the primary election, rather than after the primary election but before the general election.⁵⁰ As of 2003, fifty-five percent of legislators in Maine's House of Representatives and seventy-seven percent in its Senate had run exclusively on public funding.⁵¹

election, it distorts the purpose of the public financing program. Campaign finance reform passed at the state level has addressed this problem. *See infra* note 50 and accompanying text. Legislation recently introduced by the authors of BCRA, Senators John McCain and Russell Feingold and Representatives Christopher Shays and Marty Meehan, proposes requiring candidates to participate in the entire public financing system, both primary and general election, or not at all. *See* Presidential Funding Act of 2003, S. 1913, 108th Cong. § 3 (2003); Presidential Funding Act of 2003, H.R. 3617, 108th Cong. § 3 (2003).

⁴⁵ *See, e.g.*, Broder, *supra* note 43, at B7; Dionne Jr., *supra* note 43, at A41.

⁴⁶ Other changes proposed to the presidential public financing system in the legislation introduced by Senators McCain and Feingold and Representatives Shays and Meehan include allowing candidates to begin receiving funds on July 1 the year before an election, increasing the federal match for contributions from one-to-one to four-to one, raising the primary spending limits, and increasing the amount that a taxpayer can check-off on the tax form. *See* Presidential Funding Act of 2003, S. 1913, 108th Cong. §§ 2(c), 2(a), 5(a) (2003); Presidential Funding Act of 2003, H.R. 3617, 108th Cong. §§ 2(c), 2(a), 5(a) (2003).

⁴⁷ ME. REV. STAT. ANN. tit. 21-A, §§ 1121–1128 (West Supp. 2003).

⁴⁸ *Id.*

⁴⁹ Nancy Perry, *Key Panel Backs Bill to Limit, Reform Campaign Spending*, PORTLAND PRESS HERALD, Mar. 15, 1996, at 1A.

⁵⁰ An Act to Amend the Laws Governing the Qualification of Candidates, 2003 Me. Laws 270 (codified at ME. REV. STAT. ANN. tit. 21-A, § 1125(5)(D-1) (West. Supp. 2003)).

⁵¹ Peter Ross Range, *Running "Clean": In Maine and Arizona, Campaign Finance Reform Starts at the Grass Roots*, FORD FOUNDATION REPORT, Spring 2003, at http://www.fordfound.org/publications/ff_report/view_ff_report_detail.cfm?report_index=397. "In both Maine and Arizona, the number of legislative candidates who chose to use public financing for

A candidate becomes eligible for MCEA funds by raising qualifying contributions.⁵² These contributions are mandatory, and require every MCEA candidate to raise \$5 each from a certain number of registered voters in the jurisdiction in which he or she will campaign.⁵³ The number of qualifying contributions needed varies depending the level of state government at which a candidate chooses to run.⁵⁴

In order to assist them with qualification, candidates may also raise a limited amount of seed money.⁵⁵ Unlike qualifying contributions, seed money is optional.⁵⁶ An MCEA candidate can raise seed money from individuals anywhere in Maine in \$100 increments up to certain maximum amounts.⁵⁷

All qualifying contributions must be given to the Maine Commission on Ethics and Elections.⁵⁸ In addition, any seed money not spent at the time that the candidate formally registers as an MCEA candidate must be turned over to the Commission.⁵⁹

Once certified as an MCEA candidate, the candidate must limit all campaign expenditures and obligations to the amount distributed from the MCEA fund.⁶⁰ In addition to the initial disbursement, an MCEA candidate receives dollar-for-dollar matching funds, up to a statutorily defined cap, for any monies raised or spent by a non-participating opponent after the opponent raises, borrows, or spends more than the initial disburse-

their campaigns increased greatly from 2000 to 2002. In the 2000 primary and general elections, approximately one of every three candidates in Maine and one of every four candidates in Arizona chose to participate in the state's public financing program. In the 2002 primary and general elections, participation increased significantly in both states, with about one-half or more of all candidates participating." U.S. GEN. ACCOUNTING OFFICE, CAMPAIGN FINANCE REFORM: EARLY EXPERIENCES OF TWO STATES THAT OFFER FULL PUBLIC FUNDING FOR POLITICAL CANDIDATES 8 (2003). "[A]fter the 2000 general elections, the elected legislators who had run with public funds held 33 percent of the total seats in Maine's legislature and 18 percent of the total seats in Arizona's legislature. After the 2002 general elections, the proportions increased to 59 percent of Maine's legislature and 36 percent of Arizona's legislature." *Id.* But see *id.* at 38-39 (stating that the competitiveness of the races as compared to pre-campaign finance reform is inconclusive due to the length of time that reform has been in place, and recent swings in electoral participation from 1996 to 2002).

⁵² ME. REV. STAT. ANN. tit. 21-A, § 1125 (West Supp. 2003).

⁵³ *Id.* § 1125(3).

⁵⁴ A gubernatorial candidate must obtain contributions from at least 2500 registered voters, a candidate for the State Senate must obtain contributions from at least 150 registered voters, and a candidate for the State House of Representatives must obtain contributions from at least fifty registered voters. *Id.*

⁵⁵ *Id.* § 1125(2).

⁵⁶ *Id.*

⁵⁷ Seed money is limited to \$50,000 for a gubernatorial candidate, \$1,500 for a candidate for the State Senate; and \$500 for a candidate for the State House of Representatives. *Id.*

⁵⁸ *Id.* § 1124(2)(A).

⁵⁹ *Id.* § 1124(2)(D).

⁶⁰ *Id.* § 1125(6). The initial disbursement equals the average expenditures made by all candidates for the same office in the two preceding elections. *Id.* § 1125(8).

ment allotted to the MCEA candidate.⁶¹ Matching funds are also provided to correspond to independent expenditures made by entities making non-coordinated expenditures on behalf of a candidate.⁶²

MCEA is financed through taxes taken from the General Fund and a voluntary tax check-off on the state income tax form, for which the tax payer receives a matching tax credit.⁶³

MCEA and BCRA have a few important similarities. Both limit the size of donations to traditionally funded candidates.⁶⁴ But in stark contrast to BCRA, which applies to all federal candidates,⁶⁵ MCEA applies only to those who choose to participate.⁶⁶ Additionally, while candidates under BCRA must still spend a lot of their time raising funds, an MCEA candidate can access public funds as soon as he or she raises qualifying contributions.⁶⁷

The latter distinction between MCEA and BCRA has generated a good deal of controversy among election pundits. Some argue that the Maine system allows non-traditional candidates who find fundraising distasteful, or who lack political connections, to attract enough donations to run.⁶⁸ Others think that the threshold is too low and wastes taxpayers' money.⁶⁹ For example, Green Party candidate for governor Jonathan Carter received more than \$800,000 in public financing during the 2002 Maine gubernatorial campaign.⁷⁰ Yet he received as low a percentage of the vote as he had in a previous, non-publicly funded campaign. Public financing opponents relied upon that outcome to argue that Carter could not be considered a serious candidate and should never have received public funds.⁷¹

BCRA and MCEA also differ most significantly on the issue of campaign coordination. BCRA restricts whom federal candidates can coordi-

⁶¹ *Id.* § 1125(9).

⁶² *Id.*

⁶³ *Id.* § 1124(2).

⁶⁴ *Id.* §§ 1015, 1123; BCRA, § 101, 2 U.S.C.A. § 441a(a) (West Supp. 2003).

⁶⁵ 2 U.S.C.A. § 431(2) (West Supp. 2003).

⁶⁶ ME. REV. STAT. ANN. tit. 21-A, § 1122(1) (West Supp. 2003).

⁶⁷ *Id.* § 1125(5).

⁶⁸ See Peter Ross Range, *supra* note 51, at 2. "As costs of election campaigns spiral upward in a media-saturated political environment, the field of potential candidates shrinks down to the independently wealthy and the well connected. Nationally, campaign expenditures have grown 700% since 1976. Several studies have documented that, increasingly, the winner of an election at any level is associated with a single factor: who raises the most money. The race for funding rivals the race for votes in what reform advocates call 'the wealth primary.'" But see Patrick Basham & Martin Zelder, Cato Inst., *Maine's "Clean" Elections Are Not More Competitive*, Oct. 17, 2002, available at <http://www.cato.org/dailys/10-17-02.html>.

⁶⁹ RAYMOND J. LA RAJA & MATTHEW SARADJIAN, CTR. FOR PUB. POLICY & ADMIN., CLEAN ELECTIONS: AN EVALUATION OF PUBLIC FUNDING FOR MAINE LEGISLATIVE CONTESTS 16 (Apr. 2004), available at http://pubpol1.sbs.umass.edu/docs/laraja_fullrpt.pdf.

⁷⁰ *Id.* at 33.

⁷¹ Jeff Tuttle, *Maine Legislator Seeks Cleaner Election Act*, BANGOR DAILY NEWS, Dec. 4, 2002, at A1.

nate with and how.⁷² By separating candidates from responsibility for messages associated with their campaigns, BCRA has encouraged the erosion of political dialogue.⁷³ Before BCRA, a negative advertisement might have emanated from a candidate, or at least from someone coordinated or affiliated with that candidate. Now, it will more often be from an organization like a 527 with no permissible contact with the candidate or her campaign. Such ads will be truly independent, seemingly excusing the candidate from all responsibility for them. MCEA, in contrast, allows candidates to continue to use the state party as the coordinating vehicle for their campaigns. Thus candidates remain visibly accountable for campaigning done on their behalf.

Ultimately, BCRA simply moves money around a broken system, while MCEA, although imperfect, fundamentally changes the nature of elections. Under BCRA, unregulated contributions are in no way eliminated, but are simply re-directed to non-party organizations, while under MCEA, the importance of private money in elections is significantly diminished. Overall, MCEA does a better job than BCRA at limiting fundraising and encouraging new voices to enter the political fray.⁷⁴

III. OTHER PUBLIC FINANCING REFORM EFFORTS

Maine is not the only state that has enacted clean election legislation. In 1998, the citizens of Arizona passed the Citizens Clean Elections Act (CCEA).⁷⁵ The purpose of the CCEA was to “improve the integrity of the Arizona state government by diminishing the influence of special-interest money” and to “encourage citizen participation in the political process.”⁷⁶ Arizona’s system is virtually identical to Maine’s, with the following exceptions: (1) the number of qualifying donations a candidate must raise;⁷⁷ (2) the amount of seed money a candidate is allowed to raise;⁷⁸ (3) the cap on matching funds for candidates running against non-participating

⁷² BCRA § 202, 2 U.S.C.A. § 441a (West Supp. 2003).

⁷³ *But see* BCRA § 311(2), 2 U.S.C.A. § 441d(d)(1) (West Supp. 2003) (requiring that television or radio advertisements paid for by a candidate or “an authorized political committee of a candidate” be accompanied by an appearance or statement, respectively, stating that the candidate has approved the advertisement).

⁷⁴ *See* Rick Klein, *Clean Elections Act Alters Terrain in Maine*, BOSTON GLOBE, Feb. 26, 2001, at A1 (discussing the career of Representative Deborah Simpson, a single mother and waitress, who says, “With the Clean Elections, it seemed less daunting a task to run. I could do what I can do, which is talk to people, as opposed to raising money, which in my life, I didn’t have any experience in.”).

Interestingly, BCRA directed the General Accounting Office to study and report to Congress on the effects of the public financing laws passed in both Maine and Arizona. BCRA § 310, 2 U.S.C.A. § 431 (West Supp. 2003).

⁷⁵ ARIZ. REV. STAT. §§ 16-940 to 16-961 (West Supp. 2003).

⁷⁶ *Id.* § 16-940.

⁷⁷ *Id.* § 16-946.

⁷⁸ *Id.* § 16-945.

opponents and third-party expenditures;⁷⁹ (4) the candidates to whom the law applies;⁸⁰ and (5) the source of funds for the financing.⁸¹ The CCEA has faced legal challenges, but has remained by and large intact.⁸²

Like Maine and Arizona, Vermont has embraced public financing for elections, albeit on a more narrow basis. In 1997, Vermont enacted comprehensive campaign finance reform⁸³ that included a public finance option for governor and lieutenant governor candidates.⁸⁴ In order to qualify for public funds, a candidate for either of these offices must obtain a specified number of qualifying contributions.⁸⁵ If a candidate is able to obtain such contributions within the specified period,⁸⁶ has not accepted contributions totaling \$500 or more during the two years preceding the general election cycle⁸⁷ or made expenditures of \$500 or more,⁸⁸ agrees to refrain from soliciting, accepting, or expending any contributions except qualifying contributions and public funds,⁸⁹ and follows other minor restrictions,⁹⁰ then the candidate is entitled to public funds.⁹¹ Funds are distributed separately for the primary and general elections.⁹² In one of the more interesting provisions of the law, a candidate who is an incumbent

⁷⁹ While MCEA caps the amount of matching funds a clean elections candidate can receive to respond to third party attacks or if running against a non-participating opponent at twice the general election amount, CCEA caps the same at three times the general election amount. ME. REV. STAT. § 1125(9) (West Supp. 2003); ARIZ. REV. STAT. § 16-952 (West Supp. 2003).

⁸⁰ CCEA applies to candidates for the state legislature, governor, secretary of state, treasurer, superintendent of public instruction, corporation commission, and mine inspector. ARIZ. REV. STAT. § 16-950(D) (West Supp. 2003).

⁸¹ CCEA is funded through contributions made through tax forms (for which the payer receives a matching tax credit up to a specified limit), an increase in civil and criminal penalties, and an increase in the lobbying registration fee. *Id.* at §§ 16-954A, 16-954B, 16-954C, 16-944.

⁸² See *Lavis v. Bayless*, 233 F. Supp. 2d 1217 (D. Ariz. 2001); *Citizens Clean Election Comm'n v. Myers*, 1 P.3d 706 (Ariz. 2000).

⁸³ 1997 Vt. Acts & Resolves 64 (codified at VT. STAT. ANN. tit. 17, §§ 2851–2883 (2002)).

⁸⁴ VT. STAT. ANN. tit. 17, §§ 2851–2856 (2002).

⁸⁵ *Id.* § 2854. For governor, a candidate must raise no less than \$35,000 from no fewer than 1,500 individual contributors making a contribution of no more than \$50 each. *Id.* § 2854(a)(1). For lieutenant governor, a candidate must raise no less than \$17,500 from no fewer than 750 individual contributors making a contribution of no more than \$50 each. *Id.* § 2854(a)(2). All contributions must come from individuals registered to vote in Vermont. *Id.* § 2854(b). No more than twenty-five percent of the total number of qualified individual contributors may be residents of the same county. *Id.*

⁸⁶ *Id.* § 2851.

⁸⁷ *Id.* § 2853(a).

⁸⁸ *Id.*

⁸⁹ *Id.* § 2853(b)(1).

⁹⁰ *Id.* § 2853(b)(2)–(3). Among other provisions, the law requires that a candidate who receives public funds must, no later than forty days after the general election, deposit in the Vermont campaign fund (the fund out of which the public funds for elections are drawn) the balance of any amounts remaining in the candidate's election account. *Id.* § 2853(b)(3).

⁹¹ *Id.* § 2855.

⁹² *Id.* § 2855(a).

of the office being sought is entitled to receive only eighty-five percent of grants available to other candidates.⁹³

Although some have seen Vermont public financing as a positive example of campaign finance reform,⁹⁴ the current law has a number of problems. First, the public financing provisions of Vermont's campaign finance reform were passed as part of a larger package of reforms including mandatory limits on campaign expenditures for all candidates for state office.⁹⁵ In *Landell v. Sorrell*, however, a decision currently on appeal, such mandatory limits on expenditures were struck down as unconstitutional under the First Amendment to the U.S. Constitution.⁹⁶ Therefore, the law today does not work well to "level the playing field"⁹⁷ among candidates with different backgrounds or to decrease the need for private fundraising, because extra matching funds are not provided to candidates whose opponents are not clean election candidates or who face third-party attacks.⁹⁸ The second problem with Vermont's law is that it is limited to races for governor and lieutenant governor, providing no incentive at all for other statewide candidates to limit their fundraising or expenditures.

Massachusetts also joined the ranks of the clean election states, although only for a brief period. In 1998, the citizens of Massachusetts passed the Massachusetts Clean Election Law.⁹⁹ Simply stated, individuals could qualify for public financing by raising a minimum number of qualifying contributions, which could not exceed \$5 per individual donation, from registered voters in their districts.¹⁰⁰ Once an individual qualified as a clean elections candidate, the candidate received public funding for his or her campaign, limits on which were set by the statute.¹⁰¹ After the state leg-

⁹³ *Id.* § 2855(b)(3).

⁹⁴ *See, e.g.*, Ford & Levien, *supra* note 8, at 313–15.

⁹⁵ *See* VT. STAT. ANN. tit. 17, § 2805(a) (2002).

⁹⁶ 118 F. Supp. 2d 459, 481 (D. Vt. 2000). For discussion of the case, see generally Kristen Kay Sheils, Note, *Landell Bodes Well for Campaign Finance Reform: A Compelling Case for Limiting Campaign Expenditures*, 26 VT. L. REV. 471 (2002).

⁹⁷ Memorandum from Vermont Secretary of State Deborah L. Markowitz to Vermont Senate Government Operations and Vermont House Local Government Committees (Jan. 9, 2001), available at <http://vermont-elections.org/elections1/2001GAMemoCF.html>.

⁹⁸ *See generally id.* The Secretary of State of Vermont has noted Maine's success in avoiding this problem. *See* Memorandum from Vermont Secretary of State Deborah L. Markowitz to Vermont Senator Peter Shumlin, Senate *pro tempore*, Senator John Bloomer, Minority Leader, Representative Walter Freed, Speaker of the House, Representative John Tracy, Minority Leader, and Representative Steven Hingtgen, Progressive Caucus Chair, (Mar. 29, 2001), available at <http://vermont-elections.org/elections1/campfinmarch2001prop.html> (stating that Vermont "would do well to look to Maine as a state whose public finance scheme was enormously successful"). In 2000, then-Governor Dean, the governor who had signed the campaign finance bill into law, facing a tough reelection, announced that his campaign was abandoning public financing. *See* Michael Kranish, *To Dean, Finance Law Is Familiar Dilemma*, BOSTON GLOBE, Sept. 6, 2003, at A1. Both Governor Dean and his opponent ended up spending about \$1 million. *Id.*

⁹⁹ 1998 Mass. Legis. Serv. 395 (West) (codified at MASS. GEN. LAWS ch. 55A (West Supp. 2004)).

¹⁰⁰ MASS. GEN. LAWS ch. 55A, § 4(a) (West Supp. 2003).

¹⁰¹ *Id.* § 6.

islature refused to fund the system, the Massachusetts Supreme Judicial Court held that the state constitution required the legislature “to appropriate such money as may be necessary to carry the law into effect.”¹⁰² Shortly following the 2002 elections, the only election in which the law applied, the state legislature repealed the law, and thus clean elections no longer exist in Massachusetts.¹⁰³

IV. THE ARCHITECTURE OF A NEW SYSTEM

The drafting of a new federal system of publicly funded elections does not have to be done in a vacuum. The federal system can capitalize on the success of Maine and use the model that it has already put forth.¹⁰⁴

A. *Qualifying for Public Funds*

One major consideration that a potential federal public financing system would need to address is exactly how a candidate would qualify for public financing. In this instance, Maine law provides an excellent starting point, by basing the number of qualifying contributions required on the number of signatures required of an individual to qualify as a candidate. For candidates affiliated with an official party,¹⁰⁵ Maine law requires a candidate for governor to collect at least 2000 signatures,¹⁰⁶ a candidate for state senate to collect at least 100 signatures,¹⁰⁷ and a candidate for state house representative to collect at least twenty-five signatures.¹⁰⁸ These signatures must be from registered voters affiliated with the candidate's party.¹⁰⁹ These numbers are very close to the number of qualifying contributions a candidate must collect to become a clean elections candidate under MCEA, 2500, 150, and 50, respectively.¹¹⁰

A new federal system could be modeled in a similar fashion, capitalizing upon existing state laws to determine the number of signatures needed to

¹⁰² *Bates v. Dir. of the Office of Campaign & Political Fin.*, 763 N.E.2d 6, 11 (Mass. 2002).

¹⁰³ 2003 Mass. Acts 26, § 43(c). See also Rick Klein & Anand Vaishnav, *Without Roll Call, Senate Votes to End Clean Elections*, BOSTON GLOBE, May 30, 2003, at B6.

¹⁰⁴ Although the financial analysis of a new public financing system is beyond the scope of this Essay, some possible sources of revenue include increasing the voluntary contribution on income tax forms, additional penalties on campaign finance violations, and slightly increasing civil and criminal penalties. For further information on the cost of funding such a system, see Ford & Levien, *supra* note 8, at 320–21.

¹⁰⁵ Unaffiliated candidates, that is, candidates running with a party that does not have official party status, must gather a higher number of signatures, but they may be from any registered voter in the corresponding electoral division. ME. REV. STATE. ANN. tit. 21-A, §§ 353, 354(2), 354(5) (West Supp. 2003).

¹⁰⁶ *Id.* § 335(5)(A).

¹⁰⁷ *Id.* § 335(5)(F).

¹⁰⁸ *Id.* § 335(5)(G).

¹⁰⁹ *Id.* § 335(2).

¹¹⁰ See *supra* note 54 and accompanying text.

qualify for public funds. The federal law would require a candidate to collect a certain number of qualifying contributions based on the number of signatures required under the laws of the state the individual is running in. For instance, in Maine, a candidate for the United State House of Representatives needs at least 1000 signatures to qualify as a primary candidate.¹¹¹ Based on that existing law, a federal public financing law would require a candidate for Congress from Maine to obtain at least 1000 qualifying contributions. As with the Maine law, those contributions should be required to come from the candidate's own party as a measure of viability.

If the candidate is not affiliated with a recognized party, the threshold should increase in a parallel fashion to the signatures required to qualify by petition.¹¹² As in the case of Maine law, these contributions could come from any registered voter within the electoral district.¹¹³ This higher threshold would protect the interest of those worried about abuse of a publicly financed system.

Public financing for presidential candidates poses a more difficult problem. Because congressional elections are straightforward popular elections, the proposed qualifying rules for congressional public financing could sensibly be based on the signature requirements a congressional candidate is running under. Conditioning the number of qualifying contributions required on the population of the United States at large, however, is illogical, as it would fail to take into consideration that a presidential candidate cannot win an election by winning the popular vote alone. Likewise, requiring a presidential candidate to raise qualifying contributions in all fifty states is also illogical because it fails to consider that a presidential candidate need not receive support from every state in order to be successful.

As discussed above, the authors of BCRA have proposed revamping the current public financing system.¹¹⁴ Their proposal would require a demonstration of viability by requiring small-dollar fundraising in twenty states to qualify.¹¹⁵ Such a proposal fails to take into account regional and

¹¹¹ ME. REV. STATE. ANN. tit. 21-A, §§ 335(5)(C) (West Supp. 2003).

¹¹² See *supra* note 105.

¹¹³ ME. REV. STATE. ANN. tit. 21-A, § 354(2) (West Supp. 2003). Note that MCEA currently requires candidates affiliated with a recognized party and unaffiliated candidates to collect the same amount of qualifying contributions in order to qualify for clean elections money. *Id.* § 1125(3). Requiring an increased number of qualifying contributions for non-party candidates (just as nonparty candidates are required to obtain a higher number of signatures than party candidates) might help counter the perception that clean elections money is wasted on nonviable candidates. See *supra* note 105.

¹¹⁴ See *supra* note 45; Presidential Funding Act of 2003, H.R. 3617, 108th Cong. (2003); Presidential Funding Act of 2003, S. 1913, 108th Cong. (2003).

¹¹⁵ Presidential Funding Act of 2003, H.R. 3617, 108th Cong. § 2(b)(1) (2003); Presidential Funding Act of 2003, S. 1913, 108th Cong. § 2(b)(1) (2003). Current law requires the candidate to raise aggregate contributions of at least \$5,000 from at least twenty states. 26 U.S.C. § 9033(b)(3) (2000). The proposed legislation would increase the \$5,000 amount to \$15,000, but would not affect the requirement that no individual's donation that counts toward the aggregate amount from the state exceeds \$250. *Id.* § 9033(b)(4).

size differences among the fifty states. Consequently, a presidential candidate with little viability could meet the qualifying requirements under such a system by raising the required donations in twenty smaller states. A better way to determine qualification for public financing might be to require a presidential candidate to raise qualifying contributions from the same number of people whose signatures a state requires of qualifying gubernatorial candidates,¹¹⁶ and to do so in thirty states, ten each from states with small, medium, and large populations. Categories would be determined by electoral votes; states with fewer electoral votes than two-thirds of the rest of the states would be small states, those with fewer electoral votes than one-third of the rest would be medium states, and the remaining would be large states.¹¹⁷ Such a formula borrows what is best about the electoral college—that all states have value, regardless of size.

B. Seed Money and Distribution Amount

Maine law allows a candidate to raise a small amount in seed donations while raising qualifying contributions toward becoming certified as a clean elections candidate.¹¹⁸ Like MCEA's caps on seed money for state representative and senatorial candidates, caps on seed money in a federal public financing system should be ten percent of the total amount of public financing funds available to be distributed to the candidates.¹¹⁹ Thus, if the total amount available for distribution is \$500,000, the cap on seed money would be \$50,000.

In order to determine both the amount of seed money allowed and the amount that could be distributed to presidential candidates, a formula simi-

¹¹⁶ For instance, in Maine, a presidential candidate would be required to raise qualifying contributions from at least 2000 residents of the state because a gubernatorial candidate must obtain that many signatures to qualify as a candidate. ME. REV. STATE. ANN. tit. 21-A, § 334(5)(A) (West Supp. 2003).

¹¹⁷ For the 2004 presidential election (and through at least 2008), such a system would classify the states as follows: Small—Nebraska, New Mexico, Utah, West Virginia, Hawaii, Idaho, Maine, New Hampshire, Rhode Island, Alaska, Delaware, District of Columbia, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming; Medium—Arizona, Maryland, Minnesota, Wisconsin, Alabama, Colorado, Louisiana, Kentucky, South Carolina, Connecticut, Iowa, Oklahoma, Oregon, Arkansas, Kansas, and Mississippi; Large—California, Texas, New York, Florida, Illinois, Pennsylvania, Ohio, Michigan, Georgia, New Jersey, North Carolina, Virginia, Massachusetts, Indiana, Missouri, Tennessee, and Washington. See THOMAS H. NEALE, *THE ELECTORAL COLLEGE: HOW IT WORKS IN CONTEMPORARY PRESIDENTIAL ELECTIONS* 6, tbl.1 (Sept. 8, 2003), available at <http://fpc.state.gov/documents/organization/28090.pdf>. Note that while fifty states and the District of Columbia divide evenly into thirds, a state that has the same number of electoral votes as those in the bottom third or two-thirds cannot be classified as medium or large, respectively, because medium and large states must have more electoral votes than two-thirds or one-third of all other states.

¹¹⁸ ME. REV. STAT. ANN. tit. 21-A, § 1125(2) (West Supp. 2003). See *supra* note 56 and accompanying text.

¹¹⁹ Compare ME. REV. STAT. ANN. tit. 21-A, § 1125(2) (West Supp. 2003) with *id.* § 1125(8).

lar to the one applied to state representative and senate elections under MCEA should be used.¹²⁰ First, the average total expenditure in the last two federal elections in a district, or in the case of presidential elections, in the last two presidential campaigns, would be determined.¹²¹ Ninety percent of that number would equal the total amount of funds available for distribution for both the primary and general election. Candidates would be allowed to raise seed money up to ten percent of the total distribution in increments not to exceed \$100. Therefore, if a candidate raised the maximum amount of seed money allowed, his or her total campaign funds would equal the average amount spent in the last two elections in that federal district. As under MCEA, a candidate who failed to spend all of his or her seed money before registering for public financing must turn over the excess.¹²² In one departure from MCEA, the federal public financing system should allow for matching contributions to counter independent and third-party expenditures during the primary, in an amount not to exceed three times the contested primary distribution limit. This would encourage candidates to run under clean elections without making them vulnerable to third-party attacks during the primary. Under MCEA, only a contested primary candidate receives distribution to respond to such attacks. This means that a candidate running uncontested in the primary election is unable to respond to attack ads promulgated by potential general election opponents. For example, the Democratic presidential hopefuls initiated attacks against President George W. Bush more than eight months before the general election.¹²³ If Bush was operating under clean elections and had no primary opponent, Bush would not be eligible to receive matching funds with which to defend against the attack ads.

The timing of raising seed money and qualifying for matching funds is critical given the changing landscape of political campaigns.¹²⁴ Presidential campaigns, for example, now begin four years or more before the

¹²⁰ *Id.* § 1125(8)(A)–(D).

¹²¹ Because campaign costs vary greatly from state to state, applying a one-size-fits-all distribution amount for all Senate and House races would be irrational. Any workable system needs to take into account the extraordinarily high media costs a congressional district in New York City faces, or even that a candidate in a rural state like New Hampshire must depend on expensive Boston media markets, while campaign costs in Maine, a similarly rural state, are generally low. Additionally, it is important not to use previous presidential elections as a complete guide. A battleground state one election may be decidedly in one party's camp in the next election. Instead, seed money should be fungible, used for the best strategic purpose and place as determined by the presidential candidate.

¹²² ME. REV. STAT. ANN. tit. 21-A, § 1125(5) (West Supp. 2003).

¹²³ Wayne Slater, *Bush Troops Out In Force In NH; Giuliani, McCain and Pataki Cavass State to "Set the Record Straight,"* DALLAS MORNING NEWS, Jan. 28, 2004, at 10A.

¹²⁴ Under MCEA, the qualifying period for a gubernatorial candidate begins the November 1 before the election year and ends on April 15 of the election year. If an individual has not yet registered as a candidate by April 15, the qualifying period is extended to June 2. ME. REV. STAT. ANN. tit. 21-A, § 1122(8)(A) (West Supp. 2003). The qualifying periods for state Senate and House candidates are the same as that for the gubernatorial candidates, except that they do not begin until January 1st of the election year. *Id.* § 1122(8)(B).

election.¹²⁵ The acceleration of the political process places into question how and when a candidate becomes a candidate. Regardless of changing mores, however, we estimate that no one should need more than two years to engage in active campaigning for the presidency. We recommend that seed money can be raised following the formal declaration of candidacy, not to exceed two years prior to the general election.

V. CONCLUSION: THE HOPE FOR REPRESENTATIVE LEADERS

After a protracted debate, BCRA was passed with much fanfare.¹²⁶ There can be no doubt that the Act was an improvement over the pre-BCRA campaign finance system. There should also be no doubt, however, that BCRA's promise of a decreased role for large-scale private money in federal elections has largely rung hollow. In the past year, by collecting unlimited donations from what often are extremely wealthy individuals, 527s have carved out a role of ever-increasing prominence. Consequently, the nation's airwaves are saturated with ads sponsored by these groups—ads that to a layperson are virtually indistinguishable from traditional campaign ads. Although the FEC is slowly moving to tighten the loophole that has led to this development,¹²⁷ we suggest that it is inevitable that additional loopholes will be found.

In short, the problem with BCRA is not only that it does not have enough restrictions on organizations other than traditional political parties—though that is the case—but that it approaches campaign finance reform from the wrong direction. BCRA seeks to limit the corrupting influence of big money on federal elections by limiting the supply of such funds. Such an approach, however, is inherently flawed, because our system continues to reward the candidates who spend the most money.¹²⁸ The solution must be to attack the problem where it starts—on the demand side of the equation.

MCEA could become a national model for campaign finance reform. With little effort, BCRA could be expanded to include a public financing option. If federal candidates were allowed to qualify for public funds as they do in Maine, they could spend more time meeting voters instead of

¹²⁵ See Raymond Hernandez, *Political Memo: A Wary Mrs. Clinton Runs a Perpetual Race*, N.Y. TIMES, Oct. 17, 2003, at B1 (discussing Hillary Clinton's potential as a presidential candidate in 2008 and her actions that affect and indicate such a candidacy).

¹²⁶ See, e.g., David Rogers, *Bush Is Expected to Sign Campaign-Finance Bill; Court Challenges Loom*, WALL ST. J., Mar. 21, 2002, at A24 ("Once enacted, the measure promises the most sweeping revision to campaign-finance law since the post-Watergate overhaul.").

¹²⁷ See Political Committee Status, *supra* note 28.

¹²⁸ See Note, *The Ass Atop the Castle: Competing Strategies for Using Campaign Donations to Influence Lawmaking*, 116 HARV. L. REV. 2610, 2612–13 (2003) (reporting that in 2002, the biggest spender won seventy-eight of the open-seat (i.e., no incumbent) races in the House and five of the seven open-seat races in the Senate).

raising dollars, and more nights in debates, rather than at fundraisers.¹²⁹ And, when candidates get to office, they would be beholden to no particular industry or particularly successful check-bundler,¹³⁰ but to the whole of the electorate.

There is no question that public financing of elections is costly, and in a time of budget deficits and terrorism, such reform may seem like a luxury. But our current system is even more costly, as increasing numbers of people stop voting every year based partly on the understandable conviction that the federal government is run for the benefit of special interests alone.¹³¹ Public financing of elections is an idea whose time has come. Government must be sponsored by all the people, or it will serve only some of the people.

¹²⁹ “Former Congressman Bob Edgar (D-Pa.) resigned from Congress in frustration over the amount of time spent raising money. During an election, he said, ‘Eighty percent of my time, 80% of my staff’s time, 80% of my events and meetings were fundraisers. Rather than go to a senior center, I would go to a party where I could raise \$3,000 or \$4,000.’” Jezer et al., *supra* note 8, at 341 (citing PHILIP M. STERN, *THE BEST CONGRESS MONEY CAN BUY* 101 (1988)).

¹³⁰ See George Soros, *Why I Gave*, WASH. POST, Dec. 5, 2003, at A31. Check bundling is a process in which political action committees or individuals solicit personal checks from members and then passing them along to a candidate. See *id.*; John T. Cooke, *Making the Case for Campaign Finance: One Theory Explaining the Withdrawal of Landell v. Sorrell*, 27 VT. L. REV. 685, 690 n.38 (2003).

¹³¹ See Farrah Nawaz, Note, *Campaign Finance Reform “Dollar for Dollar Votes”—the American Democracy*, 14 ST. JOHN’S J.L. COMM. 155, 167 (1999).