Exhibit No. 8
Date 2-8-05
Bill No. SB 319

Public Funding for Judicial Elections
What Is It?
Information from the Montana Citizens' League

What Is It?

Public funding for judicial elections is a way to remove even the appearance of impropriety from elected judges. A recent Harris poll showed that 72% of Americans are concerned that the impartiality of judges is compromised by their need to raise campaign money. Public funding for campaigns would remove any perceptions that a justice rules in favor of the lawyers and special interests which might have funded his or her campaign.

How would public funding for judicial races work?

Here is how it could work, based on experience and proposals in other states:

1. Every judicial candidate would choose either to rely on public funding or to solicit private financing, as under the current system.
2. In order to qualify for public funding, a candidate would have to collect a minimum amount (usually from $5 to $25) from a certain number of residents in the judicial district (perhaps 50-300 for a district court candidate to 500-1,000 for a Supreme Court candidate.) This shows that there is wide enough support for the candidate to merit public attention.
3. Qualified candidates receive public funds in specific limited amounts for contested primaries and contested general elections, and lower specific amounts for uncontested races.
4. If the candidate qualifies for and accepts public funding, he or she cannot accept money from other sources, including their own personal funds.
5. To discourage well-connected candidates from raising large amounts of private cash, the public-funded candidate could receive more public funding to match excess expenditures above the cap by a non-participating candidate or to match independent expenditures.
6. The Commissioner of Political Practices would administer the law.
7. Candidates receive a "credit card" that allows them to charge for campaign expenses.
8. Funding comes from donations, tax credits and/or the general fund.

Has this idea ever been tried?

Four states have passed Clean Election laws that apply to all statewide and legislative campaigns, and North Carolina has just passed a law providing public funding for appellate and Supreme Court judicial races. Maine, Arizona and Vermont conducted elections under their new laws in 2002. The reforms have overwhelming public support. In Arizona in 2002, 29 of the 34 candidates for statewide offices participated, including 7 of the 8 major candidates for governor.

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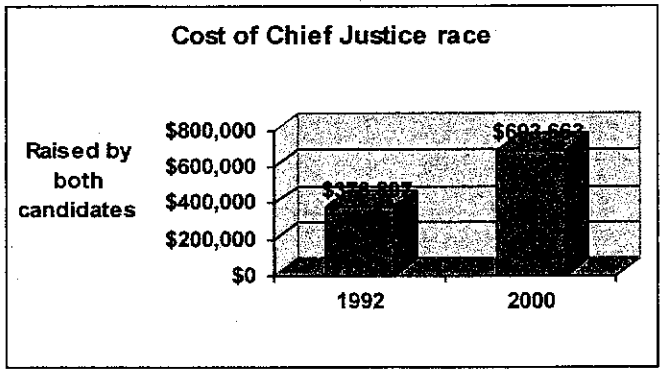
Who Needs It?

Information from the Montana Citizens' League

So what's the problem?

1. A Republican legislator from Wisconsin said it best: **"The people want judges to be impartial, but contributors want judges to be partial."** (Rep. Scott Jensen, R-Brookfield, Wisconsin) According to a recent poll conducted by Harris Interactive, 72 percent of Americans are concerned that the impartiality of judges is compromised by their need to raise campaign money. Judges need to avoid even the appearance of impropriety for the public to have full confidence that there is justice for all, regardless of wealth or influence.

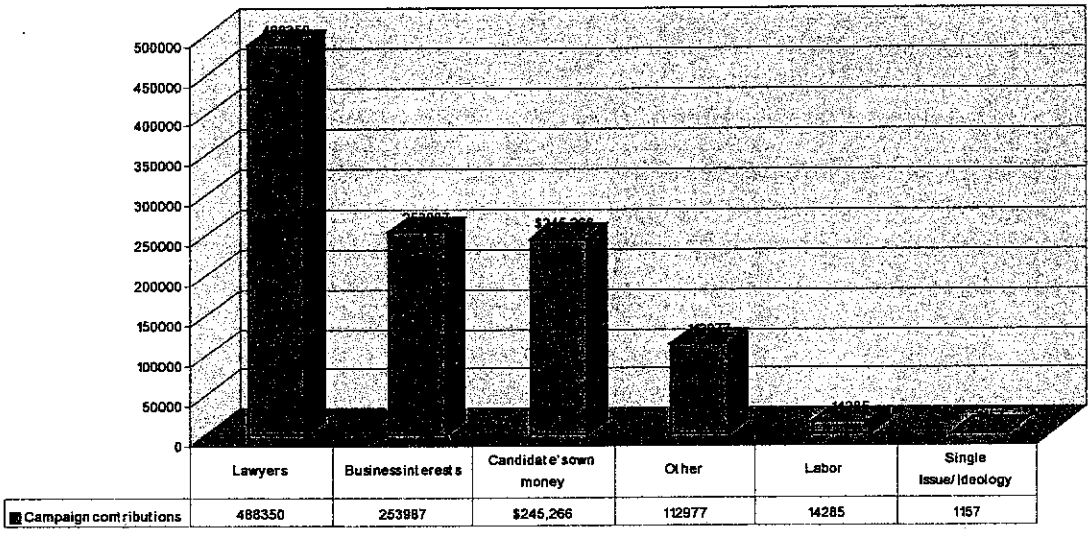
2. As in elections for other offices, spending for contested court races is rising rapidly. Contributions for both candidates for a contested Chief Justice seat in the Montana Supreme Court rose 84 percent from 1992 to 2000.



Source for charts: National Institute on Money in State Politics

2. Judicial candidates' campaigns are disproportionately dependent on lawyers and lobbyists, many of whom stand to gain by favorable decisions. Successful candidates usually have to spend significant amounts of their own money, which limits those who can run.
   Here are the results for Montana Supreme Court races in the last decade:

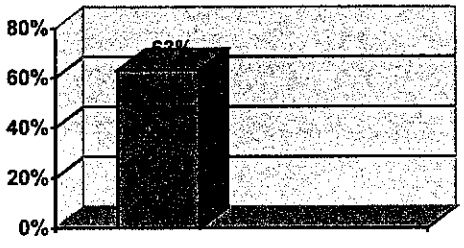
Sources of funds for Supreme Court candidates, 1990-1998



The "other" category includes private non-profits, clergy, military and government employees. Single issue groups contributed very little. In other states, however, these groups have begun to contribute large amounts of money in court races in order to get judges with particular biases.

3. When a justice votes in a manner that benefits a contributor, it raises a question as to whether the money affected the vote, whether that is the case or not.

Percentage of MT Supreme Court cases involving at least one contributor



In 63% of the cases before the Montana Supreme Court from 1991 to 1999, at least one campaign contributor to a sitting judge was part of the case as a party, an

attorney, or in a friend-of-the-court role. So the potential for the appearance of conflict is high. We must note that a study by the National Institute on Money in State Politics says that it cannot accurately calculate whether contributors receive better treatment, due to the complexity of the cases and the number of split decisions. No one is accusing our Montana justices of partiality. But even the appearance of impropriety can reduce public confidence.

4. In other states, special interest groups have spent large amounts of money supporting or opposing candidates, often on a single issue. This is not yet the case in Montana, but we cannot wait until this trend hits Montana, as it has in Idaho. Candidates can rarely respond to attacks, because they are not supposed to discuss how they would vote on particular cases or issues. As Abraham Lincoln said, **"We cannot ask a man what he will do on the court, and if we should, and he should answer us, we should despise him for it."**

5. Our legal system depends on public confidence that there is justice for all. The public must be confident that elected justices are not beholden to any special interests or people. When justices are elected, as provided by the Montana Constitution, then public funding is the best way to ensure independence.

We haven't had any major scandals in Montana yet. Shouldn't we wait until there is a documented problem?

By then, it will be too late. As John F. Kennedy observed, "The time to repair the roof is when the sun is shining." Other states are show these trends in judicial elections: big money required for campaigns, donations coming primarily from individuals and groups that stand to gain from particular decisions, and money poured in by groups with a particular agenda for the Court.

Source: "Campaign Contributions and the Montana Supreme Court," by Samantha Sanchez. National Institute on Money in State Politics, www.followthemoney.org 648 N. Jackson, Helena, MT 59601; 449-8878.

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Who Wants It?

Information from the Montana Citizens' League

Is anybody really serious about public funding for the judiciary?

North Carolina has passed the nation's first full-funding system for judicial elections. The 2002 law provides money from a public trust to candidates for the state's appellate and Supreme Courts.

Arizona, Maine, Vermont and Massachusetts have passed public funding laws for their legislature and/or statewide offices. Arizona and Maine have gone through 3 election cycles using public funding.

Serious attempts for public funding for judicial elections are being made in *Idaho, Wisconsin, Georgia, Ohio, Michigan, Illinois and Texas*. *Minnesota and Oregon* are working on general public funding.

Yes, but who is for it specifically?

Well, *the public,* for one rather important party. Maine voters voted directly for their public funding in a referendum. Arizona voters are excited about their public funding law. And a recent poll in Texas showed that 79% of Texas voters support public funding for Supreme Court candidates.

Any groups that we have heard of?

Nationally, there are groups that either support public financing in some form, or have state chapters that have been active supporters. These include *Common Cause, the League of Women Voters, the AFL-CIO, and Public Citizen. Families USA* is a state network-based organization working on health care issues at the national level. Civil Rights groups support it, including the *NAACP, the League of United Latin American Citizens, and the Fannie Lou Hamer Project.*

Faith organizations include international boards of *the United Methodist Church, the Episcopal Church, the Evangelical Lutheran Church in America and the United Church of Christ, Network* (a Catholic Social Justice Lobby), and the Washington offices of *Church Women United and the National Council of Churches.*

Environmental groups include *the Sierra Club* and *the Izaak Walton League of America.*

And in a Minnesota campaign, supporters included most of the groups above and also *many individual unions, the AAUW, the Children's Defense Fund, the Minnesota Farmer's Union, the MN Senior Federation, and the MN Council of Churches.*

Won't Lawyers Oppose Public Funding?

Perhaps many will. But the ***American Bar Association*** is on record for it. The ABA appointed a Commission on Public Financing of Judicial Campaigns, which found "The Commission recommends that states which select judges in contested elections finance judicial elections with public funds, as a means to address the perceived impropriety associated with judicial candidates accepting private contributions from individuals and organizations interested in the outcomes of cases those candidates may later decide as judges."

What Do Candidates Think about Public Funding?

A survey of candidates opting for public funding in 2000 in Maine by the Maine Citizens for Clean Elections found these results:
The candidates:

- Are satisfied with the public funding system. 99% of the candidates were "very satisfied" or "reasonably satisfied."
- Have a strong belief in the ideals of campaign finance reform.
- Are enthusiastic about the process, because they could spend more time on issues and less time raising money.
- Ran more grassroots campaigns, with "more shoe leather and less glossy advertising."
- Want to use Clean Elections again. 97% said they are likely to use the system again. Just over half said they would not run under the old system.

Both parties participated and are in favor of the system.

Sources: American Bar Association, www.abanet.org (see section entitled "Justice for Sale" 541 North Fairbanks Court, Chicago, IL 60611; 1-800-285-2221
Public Campaign, www.publicampaign.org (202) 293-0222
"Revitalizing Democracy" by the Money and Politics Implementation Project, www.neaction.org 30 Germanis St., Boston MA 02130; (617) 541-0500
"Clean Elections at Work: A Survey of Maine Clean Election Act Candidates," Maine Citizens for Clean Elections, mclf@maine.rr.com 1 Pleasant St., Portland, ME 04101; (207) 780-8657

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Will it Work?

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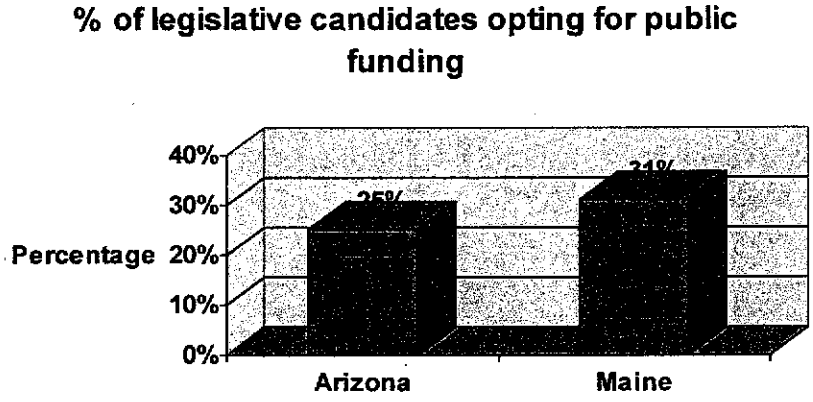
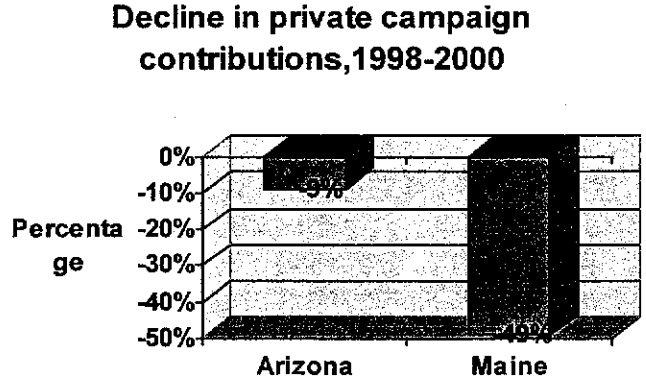
Isn't this one of those pie-in-the-sky ideas that won't work in real life?

It is working right now! Arizona, Maine and Vermont have gone through at least one election cycle using voluntary public funding for legislative and/or statewide candidates. A study by the National Institute on Money in State Politics shows the following results for Arizona and Maine for the 2000 elections:

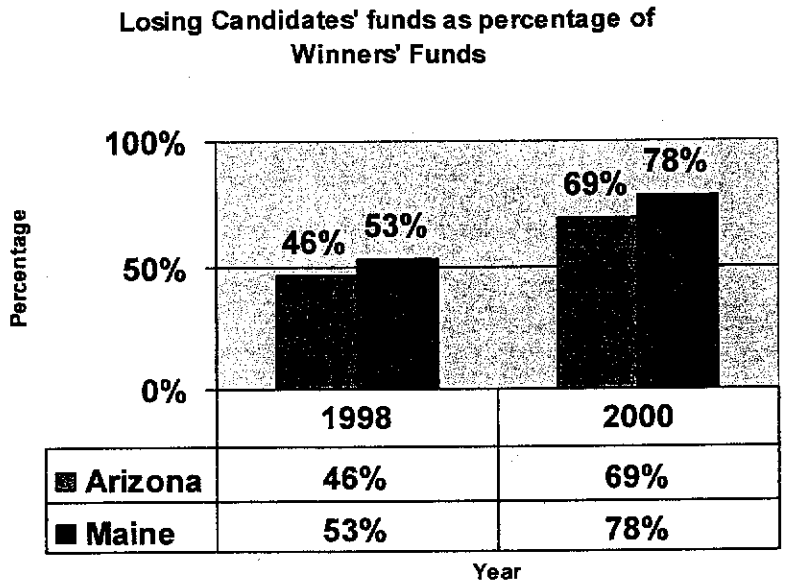
1. The participation of candidates is good and is increasing.



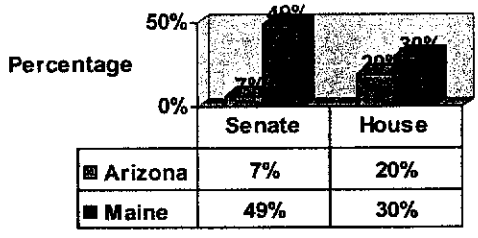
2. Private donations (and the implicit strings attached) are decreasing.



3. The playing field is being leveled. Losing candidates were raising more money compared to the winners, which makes elections closer and fairer.



4. Candidates using public funding are being elected.



Results from the 2002 elections in Arizona are even more impressive: 29 of the 34 candidates for statewide offices participated, including 7 of the 8 major candidates for governor

5. More people are running, especially women and ethnic minorities. In Arizona, of the 15 Clean Elections female candidates, 13 would not have run without Clean Elections funds. This was true also for 4 of the 5 Latino candidates.

Is this a partisan thing?

No. Both major parties (and third parties too) are embracing the idea. Republican President of the Maine Senate, Rick Bennett, who is a Clean Elections candidate, says "We were able to field some really terrific people in seats that frankly would have been difficult to find good candidates in the past."

Maine Rep. Boyd Marley, a newly elected Democratic House member, says, "It absolutely changed the way I campaigned. I spend more time on issues and I budgeted better as well, since I know how much I could count on. It totally changed the focus – it was no longer on money. I did a lot of door-to-door and phone banking."

How do they afford it?

Arizona and Maine in 2002 spent less than $1 per resident to fund participating legislators and statewide elected officials, and to pay associated administrative costs. This is a tiny cost for a huge benefit. Providing funding just for judicial races would cost far less than public funding for all candidates.

Sources: "First Returns on a Campaign Finance Reform Experiment" by Samantha Sanchez, National Institute on Money in State Politics, www.followthemoney.org 648 N. Jackson, Helena, MT 59601; 449-8878.
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