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# The Brief History of "Voter-Owned Elections" in Portland, Oregon: If Public Financing Can't Make It There, Can It Make It Anywhere?

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# THE BRIEF HISTORY OF “VOTER-OWNED ELECTIONS” IN PORTLAND, OREGON: IF PUBLIC FINANCING CAN’T MAKE IT THERE, CAN IT MAKE IT ANYWHERE?

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## TABLE OF CONTENTS

I. BACKGROUND ON PUBLIC FINANCING .....	638
II. PUBLIC FINANCING COMES TO PORTLAND .....	643
III. LESSONS FROM PORTLAND’S VOE .....	651

In 2005, Portland, Oregon became the first city in the nation to adopt a system of “clean” public financing for citywide political campaigns. Portland’s “Voter-Owned Elections” program (VOE) promised to fully fund the campaigns of candidates who demonstrated political viability by raising a large number of small donations from city residents.<sup>1</sup> In contrast, other cities with public financing programs at that time had merely matched private contributions up to a certain amount. Following several states’ adoption of similar programs, VOE was a beacon of hope for proponents of public financing. In addition, VOE inspired advocates of the belief that local elections can attract a more diverse candidate pool and broaden political involvement.<sup>2</sup> If Portland’s experiment with public

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1. *See generally* PORTLAND, OR., ORD. NO. 179258 (2005) (codified as subsequently amended at PORTLAND, OR., CODE ch. 2.10 (2010)) (PORTLAND VOE ORD.).

2. *See, e.g.*, BRIAN E. ADAMS, CAMPAIGN FINANCE IN LOCAL ELECTIONS: BUYING THE GRASSROOTS 190 (2010) (citing Portland as one of “[a] few cities” that had adopted “‘clean money’ regimes,” which are a “qualitatively different type of reform than the partial funding regimes” and “ha[ve] the potential to . . . fundamentally alter electoral dynamics by increasing the number of candidates, reducing incumbency advantage, and changing the composition of

financing succeeded, such advocates hoped, perhaps more cities would adopt similar programs. A mere five years later, however, Portland's VOE died when the city's voters refused to renew the program by a narrow margin. This Article assesses the brief track record of Portland's VOE and explores why a city whose political culture would otherwise seem favorably inclined to public financing ultimately jettisoned the idea. VOE's checkered five-year run may offer clues to other cities and states about how to design a more durable system of public financing.

## I. BACKGROUND ON PUBLIC FINANCING

The United States is unique among Western democracies in having a largely privately funded system of campaigns for public office.<sup>3</sup> The federal Supreme Court has protected this status quo by ruling that candidates have a First Amendment right to raise private funds and to fund their own campaigns.<sup>4</sup> Current Supreme Court doctrine permits caps on private campaign contributions.<sup>5</sup> But some state courts, including Oregon's, interpret their constitutional free-speech provisions to go beyond the federal First Amendment and prohibit government-imposed limits on campaign contributions.<sup>6</sup> Given this constitutional backdrop, a system of compulsory public financing is unattainable, but government may offer public financing as a voluntary program to willing candidates.<sup>7</sup> When doing so, the

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the contributor pool").

3. See Stephen Ansolabehere, *Arizona Free Enterprise v. Bennett and the Problem of Campaign Finance*, 2011 SUP. CT. REV. 39, 45 (2012) (noting that "the U.S. system of campaign finance is distinctive" among Western democracies in "rel[ying] almost entirely on contributions from private citizens and organizations").

4. The seminal case on this point is *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), which struck down federal limits on total campaign expenditures and the use of a candidate's personal funds to finance his campaign. Ansolabehere, *supra* note 3, at 58. Crediting the government's interest in preventing corruption or the appearance of corruption, *Buckley* upheld federal restrictions on how much an individual donor was allowed to donate to a particular campaign. *Id.*

5. See Ansolabehere, *supra* note 3, at 58.

6. See *Vannatta v. Keisling*, 931 P.2d 770, 787 (Or. 1997) (relying on OR. CONST. art. I, § 8). It bears noting that the invalidated contribution limits in *Vannatta* were quite low, capping donations to statewide candidates at \$500 and those to state legislative candidates at a mere \$100. *Id.* at 784 (citing "Measure 9," the ballot initiative passed by Oregon voters in 1994 that imposed the donation caps). For more on the Measure 9 that *Vannatta* invalidated, see Courtney C. Muraski, Note, *Obstacles to Oregon Campaign Finance Reform: Vannatta v. Keisling*, 78 OR. L. REV. 365, 365–66 (1999) (describing Measure 9's campaign contribution limits as "extremely low").

7. See Richard Briffault, *The Future of Public Funding*, 49 WILLAMETTE L. REV. 521,

government often requires that participating candidates accept certain conditions, such as limiting contributions or spending,<sup>8</sup> or participating in training or debates.<sup>9</sup> The United States Supreme Court invalidated a recent effort to make the amount of public financing contingent on the spending activity of a candidate’s opponent(s), holding that such a scheme burdens an opponent’s political speech.<sup>10</sup> Whether this line of jurisprudence might be extended to invalidate conditions that attach to voluntary participants in public financing remains to be seen.<sup>11</sup> Regardless, at least under current doctrine, any public financing scheme not only must be purely voluntary, but also must largely stand apart from the activities of participating candidates’ opponents.

Scholars and commentators classify public financing schemes as either “partial” or “full.” Full schemes are sometimes also called clean or “clean money.” Partial schemes provide government funds to match or amplify private parties’ contributions. These schemes sometimes restrict the qualifying contributions based on dollar amounts or residency of the contributor and usually provide government funds up to a limit. New York City has one of the oldest partial systems of public financing. The city matches private contributions to city council campaigns, for instance, at a 6 to 1 ratio, but only for contributions of less than \$175, and up to a maximum of \$88,550 per election.<sup>12</sup> Full financing schemes, on the other hand,

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530 (2013).

8. *E.g.*, PORTLAND VOE ORD., *supra* note 1, ch. 2.10.070.

9. *E.g.*, *id.* (requiring candidates receiving VOE funds to participate in campaign-finance-related training); N.Y.C. ADMIN. CODE § 3-709.5 (2013) (requiring debate participation of candidates receiving public campaign funding).

10. *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011) (invalidating, under the First Amendment, Arizona’s campaign finance provision that allocated additional money to publicly financed candidates when their privately financed opponents—or independent interest groups opposing them—spent more than a certain amount of money); *see also* *Davis v. FEC*, 554 U.S. 724 (2008) (invalidating, under the First Amendment, the federal “Millionaire’s Amendment,” which raised the contribution caps applicable to (privately financed) opponents of self-funding candidates (“millionaires”) when the latter’s expenditures exceeded a certain threshold).

11. *Cf.* Richard Briffault, *Public Funds and the Regulation of Judicial Campaigns*, 35 IND. L. REV. 819, 839–40 (2002) (assessing whether mandatory debate participation for candidates receiving public funds violates the unconstitutional conditions doctrine).

12. *See* N.Y.C. ADMIN. CODE § 3-705(2)(a) (establishing matching ratio of 6 to 1); *id.* § 3-705(2)(b) (allowing for reimbursement of up to 55 percent of campaign expenditure limits); *id.* § 3-706(1)(a) (establishing a \$161,000 spending cap for participating city council candidates); *see also id.* § 3-703(2)(a)(iv) (requiring that a certain amount of a council candidate’s threshold donations be from residents of the district he seeks to represent).

purport to provide all the funding a candidate needs for running a race, but they first require that the candidate demonstrate viability by raising small monetary donations from a broad base of people.<sup>13</sup> Hence, candidates in such systems are not technically fully publicly funded since they must raise private contributions, albeit at low monetary levels, to qualify for public financing. Full systems sometimes also permit additional “seed” donations from private contributors to supplement the qualifying amount. Nonetheless, because the public to private funding ratio is much higher, as a general matter, in clean-money schemes as compared to partial schemes, commentators use the term full to describe them even if the term is not technically precise.

Clean-money systems aim to provide the full amount a candidate needs to run a competitive campaign, and concomitantly cap participant spending at the amount of public money contributed (in addition to qualifying and seed donations raised). Whether this predetermined amount will prove adequate for a campaign is quite difficult to predict ahead of time, since every election holds the possibility of shattering old spending records so long as non-participating candidates are involved. To address this contingency, some full (and partial) schemes attempted to index the amount of public funding a participating candidate received to how much a candidates’ nonparticipating opponents spent during the race, but the Supreme Court invalidated this tactic in 2011.<sup>14</sup> With such a “trigger mechanism” no longer available, full schemes face an uncertain future, particularly if their designated allocation of funds—and concomitant limits on spending—fail to keep up with what privately funded candidates actually spend on campaigns.<sup>15</sup>

The rationale for public financing of campaigns is multifaceted. By reducing the need for political candidates to raise funds from wealthy donors and interest groups, public financing can help reduce corruption or the appearance of corruption.<sup>16</sup> Irrespective of

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Technically, New York City reimburses candidates for qualified campaign expenditures; it does not send matching contributions directly to the candidate’s campaign fund where it may or may not be spent. *Id.* § 3-704.

13. See *infra* note 50 and accompanying text.

14. See *supra* note 10 and accompanying text.

15. See Briffault, *supra* note 7, at 538–39.

16. See, e.g., *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2830 (2011) (Kagan, J., dissenting) (“By supplanting private cash in elections, public financing eliminates the source of political corruption.”).

corruption, which is notoriously difficult to define,<sup>17</sup> public financing may also influence government outcomes—*e.g.*, regulatory policy, taxes, public benefits—by reducing the influence of persons and interest groups who donate frequently and in large amounts to privately financed campaigns.<sup>18</sup> Indeed, advocates of public financing have often argued that despite the up-front cost, public funding ultimately saves taxpayers’ money by reducing wasteful government spending that results from the influence of campaign donors.<sup>19</sup> Putting aside its effects on government policy, public financing can also broaden the base of those who run for public office by making it easier for otherwise qualified candidates to raise the funds necessary to run a credible campaign.<sup>20</sup> As such, public financing may broaden opportunities for groups historically under-represented in public office: women, members of certain minority groups, and persons with less wealth and income.<sup>21</sup> Public financing can also change the nature of campaigns by allowing candidates to spend more time interacting with voters instead of soliciting contributions.<sup>22</sup> By virtue of these effects—or perceived effects—on

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17. See Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 373–83 (2009) (noting that corruption is “difficult to define,” but is “not a word without powerful meaning”).

18. See Spencer Overton, *The Donor Class: Campaign Finance, Democracy, and Participation*, 153 U. PA. L. REV. 73, 86–89 (2004) (explaining the importance of money in politics). The precise influence of campaign donations on politicians’ stances is hotly disputed among political scientists. See Adam Bonica & Jenny Shen, *Breaching the Biennial Limit: Why The FEC has Failed to Enforce Aggregate Hard-Money Limits and How Record Linkage Rechnology Can Help*, 49 WILLAMETTE L. REV. 563, 570–71 (2013) (recounting debate). The existence of such influence, however, seems obvious to many. *E.g.*, *FEC v. Wis. Right to Life*, 551 U.S. 449, 522 (2007) (Souter, J., dissenting) (observing that the “documented threats to electoral integrity . . . posed by large sums of money from corporate or union treasuries” are “obvious to any voter”).

19. *E.g.*, Kelly Moeller, *ABC News Video: Obama in 2006 Said Public Financing Saves Taxpayers Money*, ABCNEWS.GO.COM (June 19, 2008, 2:55 PM), <http://abcnews.go.com/blogs/politics/2008/06/abc-news-video/>.

20. See ADAMS, *supra* note 2, at 190.

21. See STEVEN M. LEVIN, CTR. FOR GOVERNMENTAL STUDIES, KEEPING IT CLEAN: PUBLIC FINANCING IN AMERICAN ELECTIONS 7 (2006), *available at* <http://www.policyarchive.org/handle/10207/bitstreams/4523.pdf> (“Evidence to support the argument that public financing programs have encouraged more women, people of color and people from various social and economic backgrounds to run for public office”).

22. See CTR. FOR GOVERNMENTAL STUDIES, PUBLIC CAMPAIGN FINANCING IN PORTLAND: SHOULD “VOTER-OWNED ELECTIONS” SURVIVE? 28 (2010) [hereinafter *VOE SURVIVE?*], *available at* <http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/PortlandReport.pdf> (“Certified candidates have nearly unanimously reported that Portland’s public campaign financing system enabled them to spend more time interacting directly with voters.”).

government policy, candidate demographics, and campaign strategy, public financing may reduce voter ennui and cynicism, perhaps resulting in a more involved and inspired citizenry.

All of the reasons for public financing apply to both partial and full schemes, but the latter seek to amplify the positive effects. By completely freeing candidates of the need to raise large private contributions, full schemes aim to root out campaign donation-based influence. Hence, full financing schemes offer the promise that the voters as a whole, rather than any subset of deep-pocketed contributors or interest groups, will “own” the candidates they elect. Moreover, full financing programs aim to free candidates from an obligation to raise money after they qualify for funding, thus allowing them to engage more with voters throughout the campaign. Further, by reducing the amount of money to be spent by the candidates who participate in public financing, full financing schemes aim to reduce the total amount of money spent on political races.<sup>23</sup>

While advocates of public financing have pushed for such programs at all levels of government, some scholars and commentators see local government as particularly fertile ground for promoting the goals of public financing. In particular, proponents of local government who embrace “communitarian” values see public financing as a means of furthering local government’s unique ability to engage citizens in democratic governance, as well as to provide opportunities for public service to persons less likely to run for office at the state and federal level.<sup>24</sup> For those who laud the unique capability of local governments to adopt innovative regulatory policies, public financing offers the promise of changing the composition and interests of elected officials in a way that might foster more innovation. By reducing the influence of vested interest groups that often donate in large sums to campaigns, public financing can reinforce other aspects of local governance—such as a more streamlined lawmaking process—that enhance the ability of local governments to adopt regulatory policies that higher levels of government eschew.<sup>25</sup>

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23. See LEVIN, *supra* note 21, at 9–10. Whether reducing the amount of money spent on political campaigns is normatively desirable depends on other issues, like whether that money might otherwise be deployed in a more socially beneficial fashion.

24. *E.g.*, ADAMS, *supra* note 2, at 3–10 (recounting arguments that local government can uniquely promote “citizen participation and engagement”).

25. See generally Paul A. Diller, *Why Do Cities Innovate in Public Health? Implications of Scale and Structure*, 91 WASH. U. L. REV. (forthcoming 2014) (manuscript on

## II. PUBLIC FINANCING COMES TO PORTLAND

Portland is by far the most populous city in Oregon and the anchor of the state’s largest metropolitan area.<sup>26</sup> With the only international airport and major-league sports team(s) in the state, the city is central to Oregon’s economy and self-image.<sup>27</sup> Portland’s politics are notoriously politically “liberal,” leaning far to the left of much of the rest of the state.<sup>28</sup> By virtue of its large population, the Portland metropolitan area, which includes Multnomah County (in which almost all of the city of Portland is located), frequently plays a decisive role in statewide elections.<sup>29</sup> Like all Oregon cities, Portland enjoys relatively strong home-rule powers under the Oregon constitution.<sup>30</sup> The city may initiate legislation with respect to any social or economic matter not preempted by the state, and in deciding

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file with author) (arguing that local governments’ unicameral legislatures and lack of supermajority requirements enables heightened regulation, at least in the field of public health).

26. Portland’s population in the 2010 census was 583,776 out of a statewide population of 3,831,074, or 15 percent of the statewide total. See UNITED STATES CENSUS BUREAU, STATE & COUNTY QUICKFACTS, POPULATION ESTIMATES (2012), *available at* <http://quickfacts.s.census.gov/qfd/states/41000lk.html> (click on “Places in Oregon Listed Alphabetically”) (last visited July 19, 2013); *id.* (click on “Demographic Profile”). The second largest city, Eugene, had a population of 156,185. *Id.* (click on “Places in Oregon”).

27. Portland has been home to the Trail Blazers of the National Basketball Association since 1970. See Joe Freeman, *Trailblazers history: Retiring Bill Walton’s No. 32 and Honoring the Inaugural 1970 Team*, OREGONLIVE.COM (Nov. 3, 2011), [http://www.oregonlive.com/blazers/index.ssf/2011/11/trail\\_blazers\\_history\\_retiring.html](http://www.oregonlive.com/blazers/index.ssf/2011/11/trail_blazers_history_retiring.html). Since 2009, Portland has been home to the Timbers of Major League Soccer. While the MLS considers itself “major league,” it still lags the NBA, NHL, NFL, and Major League Baseball considerably in television ratings and revenue and “is unique among American sports leagues in that it is clearly *not* the best league of its kind in the world.” BEAU DURE, LONG-RANGE GOALS: THE SUCCESS STORY OF MAJOR LEAGUE SOCCER xxi (2010); see also Seth Vertelney, *Will Major League Soccer ever have major league television ratings?*, GOAL (Jan. 21, 2013), <http://www.goal.com/en-us/news/1110/major-league-soccer/2013/01/21/3688186/seth-vertelney-will-major-league-soccer-ever-have-major> (discussing the MLS’ place among American pro leagues).

28. ATLAS OF THE 2008 ELECTIONS 248 (Stanley D. Brunn et al. eds., 2011) (“Oregon’s liberal reputation is largely a function of its major metropolitan areas. Portland is recognized as a leader in progressive planning, environmentalism, and leftist politics.”).

29. See David Sarasohn, *On Road to Governorship, Can’t Bypass Multnomah*, OREGONLIVE.COM (Nov. 27, 2010), [http://www.oregonlive.com/news/oregonian/david\\_sarasohn/index.ssf/2010/11/on\\_road\\_to\\_governorship\\_cant\\_b.html](http://www.oregonlive.com/news/oregonian/david_sarasohn/index.ssf/2010/11/on_road_to_governorship_cant_b.html) (explaining how Democratic candidates have won close races against Republican candidates for senate and governor in recent years by racking up huge majorities in Multnomah County).

30. OR. CONST. art. XI, § 2; see also Paul A. Diller, *The Partly Fulfilled Promise of Home Rule in Oregon*, 87 OR. L. REV. 939, 943–45 (2009) (concluding that, “as a practical matter,” article XI, section 2 of the Oregon constitution “ensures that Oregon cities can exercise a broad range of substantive lawmaking authority”).



on the form and mode of its municipal government Portland enjoys near-total immunity from state legislative override.<sup>31</sup> In 2005, therefore, Portland was in some ways well-positioned to adopt public financing of campaigns. First, Portland's population had previously demonstrated support for public financing,<sup>32</sup> and the city clearly had the legal authority to adopt such a program. Second, Oregon had never had a system of public financing for candidates at any level of government.<sup>33</sup> Thus, by adopting public financing, Portland could legislate on a clean slate without fear that a conflicting state law impliedly preempted any local program.<sup>34</sup> Finally, Oregon is one of just a handful of states that has no limits on campaign contributions by individuals or corporations per judicial interpretation of the state constitution.<sup>35</sup> Portland, therefore, likely could not constitutionally adopt contribution caps unlinked to public financing.

Portland's municipal government is unique among large cities because it retains the "commission" form.<sup>36</sup> Under this form of

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31. See *City of La Grande v. Pub. Emps. Ret. Bd.*, 576 P.2d 1204, 1211, 1215 (Or. 1978) (holding that the state legislature may routinely preempt local government enactments on matters of "substantive social, economic, or . . . regulatory" concern, but with respect to matters of "local organization," the state's powers are more limited), *aff'd on reh'g*, 586 P.2d 765.

32. See *VOE SURVIVE?*, *supra* note 22, at 7 (noting that in 2000, "57 percent of Portland voters voted in favor of Measure 6 [which failed statewide], which would have implemented public financing in Oregon elections").

33. Measure 6 proposed public financing for Oregon state office candidates but lost 59 percent to 41 percent statewide. See MEASURE 6, OREGON SECRETARY OF STATE, *available at* <http://oregonvotes.org/pages/history/archive/nov72000/guide/mea/m6/m6.htm> (text of measure); November 7, 2000 General Election Results, State Measure No. 6, *available at* <http://oregonvotes.org/pages/history/archive/nov72000/other.info/m6.htm> (election results). It bears noting that Oregon provides a tax credit for political contributions to candidates for state and local offices in Oregon, as well as for contributions to Oregon Congressional candidates. See OR. REV. STAT. § 316.102 (2011), *amended by* Or. HB 3367 § 6, *available at* <http://www.leg.state.or.us/113reg/measures/hb3300.dir/hb3367.en.html> (limiting the political tax credit to joint filers with less than \$200,000 in adjusted gross income and single filers with less than \$100,000).

34. *Cf. Nutter v. Dougherty*, 938 A.2d 401 (Pa. 2007) (considering, but ultimately rejecting, claim that Philadelphia's campaign finance law was impliedly preempted by state campaign finance law).

35. See *supra* note 6; see also NAT'L CONF. OF STATE LEGS., STATE LIMITS ON CONTRIBUTIONS TO CANDIDATES 2011–12 ELECTION CYCLE (2012), *available at* [http://www.ncsl.org/Portals/1/documents/legismgt/Limits\\_to\\_Candidates\\_2011-2012v2.pdf](http://www.ncsl.org/Portals/1/documents/legismgt/Limits_to_Candidates_2011-2012v2.pdf) (noting that only 11 other states allow unlimited individual contributions, and that only 3 of those states—Missouri, Utah, and Virginia—allow unlimited corporate contributions like Oregon).

36. DOUG MORGAN ET AL., MORE THAN MAYOR OR MANAGER 279 (James H. Svara & Douglas J. Watson eds., 2010) (describing Portland as "the only city to retain the commission system of government").

government, the legislative and executive branches are combined.<sup>37</sup> City councilors (or commissioners) not only legislate, but also serve as chief executives of city bureaus. The mayor has a vote on the council, and decides which commissioners will lead which bureaus, and thus remains chief executive of the city, but his or her powers are in other ways weaker than in “strong-mayor” city governments.<sup>38</sup> The auditor is the only other citywide elected official. The auditor is not a member of the council and, true to the name, audits the finances and activities of city bureaus.<sup>39</sup>

In addition to having a commission system, Portland stands out among big cities in that *all* of its councilors are elected at-large, and the council is relatively small—just four councilors plus the mayor.<sup>40</sup> Councilors and the mayor serve four-year terms, and there are no term limits.<sup>41</sup> While good comparative data is difficult to obtain, the small number of councilors, combined with the fact that all elections are at-large, likely make Portland’s municipal campaigns relatively expensive compared to cities with larger councils and systems of district representation.<sup>42</sup> On the other hand, even before the adoption of VOE in 2005, Portland occasionally saw candidates succeed while voluntarily refusing large donations, like Tom Potter winning his insurgent run for mayor in 2004 against the better-funded Jim Francesconi.<sup>43</sup>

Amid this backdrop, in 2004, Portland City Councilor Erik Sten and City Auditor Gary Blackmer proposed a clean-money system for Portland elections.<sup>44</sup> At the time, Sten was an energetic and

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37. *Id.* at 280–83 (describing the commission system).

38. *Id.* at 282–86, tbl.15.1 (describing ten failed efforts to change Portland’s system to a “strong-mayor” system).

39. *See* AUDITOR’S OFFICE, PORTLAND, OR. CITY CHARTER ch. 2, art. 5 [hereinafter PORTLAND CHARTER], *available at* <http://www.portlandonline.com/auditor/index.cfm?c=28149> (describing the office of the auditor); *id.* § 2-501 (requiring the auditor to be a “Certified Public Accountant, Certified Internal Auditor, or Certified Management Accountant”).

40. *Id.* § 2-201.

41. *Id.*

42. *See* ADAMS, *supra* note 2, at 87 (noting that in two cities that each had at-large elections were more expensive than district elections).

43. Potter limited contributions to \$25 in the primary and \$100 in the general election and won despite being outspent 3 to 1 by Francesconi. *See* Anna Griffin, *Portland Oks Campaign Cash*, THE OREGONIAN, May 19, 2005, at A1; Hank Stern, *Francesconi’s Column on Publicly Funded Elections*, WILLAMETTE WEEK (Oct. 26, 2010), [http://www.wweek.com/portland/blog-53-francesconis\\_column\\_on\\_publicly\\_financed\\_city\\_elec.html](http://www.wweek.com/portland/blog-53-francesconis_column_on_publicly_financed_city_elec.html).

44. *See* Henry Stern, *City Matters: Timing Is Uncanny for Sten’s Proposal on Campaign Finance*, THE OREGONIAN, Mar. 26, 2004, at D2. According to media accounts,

progressive voice on the council touted as a potential mayoral candidate.<sup>45</sup> Sten convinced three of his colleagues to support the measure, and in May 2005 the council enacted the VOE by a vote of 4 to 1.<sup>46</sup> In order to obtain at least one additional vote on the council, Sten agreed to a five-year sunset provision for the program, requiring that voters re-authorize it in 2010.<sup>47</sup> Upon passage, VOE was hailed as the first of its kind for any city in the nation—a fully funded, clean system of public financing for municipal candidates.<sup>48</sup>

The details of VOE were complex. The program required candidates for auditor and commissioner to collect 1,000 five-dollar contributions from qualified voters, and candidates for mayor to collect 1,500 contributions of the same amount from the same pool in order to receive \$145,000 and \$195,000 for the primary and general elections, respectively.<sup>49</sup> Portland has a nonpartisan primary for each office; if no candidate receives more than 50 percent of the vote in the primary, the top two finishers advance to the general, or “runoff,” election.<sup>50</sup> Qualifying candidates who advanced to a runoff would receive \$195,000 in public funds for council positions and auditor, and \$245,000 for mayor.<sup>51</sup> VOE also included a trigger mechanism akin to the Arizona provision that the Supreme Court invalidated under the First Amendment in 2011.<sup>52</sup> Had VOE survived the 2010 vote, this provision would have been on extremely shaky constitutional footing. In addition to the five-dollar contributions, VOE also allowed candidates to raise seed money in the form of small donations of \$100 or less, up to a maximum of \$15,000 during both the exploratory and qualifying phases of their campaigns.<sup>53</sup> VOE also

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Sten got the idea for VOE from a fellowship at Harvard University in 2002. *See* Anna Griffin, *Marshall Runkel, a key architect of Portland's public financing of political campaigns, mourns its defeat*, OREGONLIVE.COM (Nov. 9, 2010), [www.oregonlive.com/news/oregonian/anna\\_griffin/index.ssf/2010/11/marshall\\_runkel\\_a\\_key\\_architec.html](http://www.oregonlive.com/news/oregonian/anna_griffin/index.ssf/2010/11/marshall_runkel_a_key_architec.html).

45. *See* Anna Griffin, *Developing Intrigue: Sten to Lead PDC?*, THE OREGONIAN, Apr. 28, 2005, at InPortland 4 (noting that Sten had “quite the political future ahead of him”).

46. *See* Griffin, *supra* note 43.

47. *See* Anna Griffin, *City Council Watch: Campaign Financing*, THE OREGONIAN, May 12, 2005, at D2.

48. *See* Griffin, *supra* note 43; *see also* ADAMS, *supra* note 2.

49. PORTLAND VOE ORD., *supra* note 1, §§ 2.10.070; 2.10.110.

50. PORTLAND CHARTER, *supra* note 39, § 2.08.040.

51. PORTLAND VOE ORD., *supra* note 1, § 2.10.110.

52. *Id.* § 2.10.150.

53. *Id.* §§ 2.10.010 (defining seed money); 2.10.050 (explaining limits on seed money).

permitted the acceptance of in-kind contributions subject to limits.<sup>54</sup> In exchange for public funding, VOE prohibited participating candidates from raising funds any other way, effectively capping a participating campaign’s spending.<sup>55</sup> The city auditor was responsible for ensuring that candidates complied with VOE and city rules for campaign expenditures.<sup>56</sup> A volunteer committee of citizens assisted the auditor in making discretionary judgments about the program’s enforcement.<sup>57</sup> The council funded VOE through the general fund, limiting its cost to no more than 0.2 percent of the city budget and prohibiting the raising or implementing of any new taxes or fees to fund the program.<sup>58</sup>

During its five-year run, VOE was in effect for three city election cycles: 2006 (two council seats and auditor), 2008 (two council seats and mayor), and 2010 (two council seats and auditor). VOE hit a serious snag in its first election cycle. Novice council candidate Emilie Boyles received certification for public money after seemingly collecting the necessary donations. Ultimately, it was discovered that Boyles’s campaign consultant—Vladimir Golovan—falsified qualifying contributions and signatures for both Boyles and another candidate who never received certification.<sup>59</sup> Boyles also used campaign funds improperly, paying personal expenses with campaign funds and employing her teenage daughter as a paid campaign worker, resulting in her decertification.<sup>60</sup> In 2007, a Multnomah County jury found Golovan guilty of ten felonies related to his forging of documents to obtain VOE financing.<sup>61</sup> Golovan’s well-publicized trial, which included testimony from Boyles and other would-be candidates, essentially put VOE on trial.<sup>62</sup> Opponents of

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54. *Id.*

55. *Id.* § 2.10.070.

56. *Id.* §§ 2.10.020; 2.10.030.

57. *Id.*

58. *Id.* § 2.10.040.

59. See Anna Griffin, *Analysis: Verdict Doesn’t Fix Campaign Loopholes*, THE OREGONIAN, July 4, 2007, at D1.

60. See Anna Griffin, *News Update: Boyles Files Appeal Over Campaign Cash*, THE OREGONIAN, May 4, 2006, at B2.

61. Anna Griffin, *Jury Finds Golovan Guilty of 10 Charges*, THE OREGONIAN, July 3, 2007 at A1; see also Anna Griffin, *One Sent to Prison; 3 Heaped with Scorn*, THE OREGONIAN, Sept. 5, 2007, at A1 (noting that the judge in Golovan’s case sentenced him to nine months in prison).

62. See Anna Griffin, *Campaign Finance Rules Go on Trial*, THE OREGONIAN, June 26, 2007, at B1.

VOE, such as the editorial page of the *Oregonian* (Portland's sole daily newspaper), capitalized on the scandal as a reason to repeal the program prior to the 2010 election cycle.<sup>63</sup>

The Boyles-Golovan scandal likely soured many Portland voters on VOE early in its implementation. Although the city council promptly amended the law in an attempt to prevent similar malfeasance in the future,<sup>64</sup> there were other unanticipated snafus in 2008. The first was a lack of clarity regarding how much funding would be given to a candidate running in a special election precipitated by Erik Sten's unexpected resignation less than halfway through his term.<sup>65</sup> The second issue arose when mayoral candidate Sho Dozono was disqualified from using VOE funds due to his receipt of an in-kind donation far beyond the permissible limit before he had officially declared his candidacy.<sup>66</sup> Although neither of these contretemps approached the magnitude of the Boyles-Golovan scandal, opponents—especially, the *Oregonian*—seized on them as a reason to further tarnish VOE.<sup>67</sup> Despite the negative attention, VOE experienced some success in 2008. Amanda Fritz, who had run unsuccessfully for a council seat in 2006 with VOE funding, prevailed in her council race in 2008, again with VOE funding.<sup>68</sup>

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63. See Editorial, *Portland's Poorly Conceived Magnet for Scoundrels*, THE OREGONIAN, Sept. 6, 2007, at D6.

64. See PORTLAND, OR., ORD. NO. 181054 (June 13, 2007), available at <http://www.portlandonline.com/auditor/index.cfm?a=162325&c=37740>. Among other “fixes,” the revised ordinance prohibited candidates with “unresolved money judgments” (as was later discovered about Emilie Boyles, see Anna Griffin, *Candidate May Face Financial Straits*, THE OREGONIAN, Apr. 13, 2006, at A1) from qualifying for public financing, and added registered voter status as a requirement for qualifying contributions, which previously could be made by any Portland resident regardless of whether actually registered to vote. See PORTLAND VOE ORD., *supra* note 1, §§ 2.10.010; 2.10.070; 2.10.080.

65. See VOE SURVIVE?, *supra* note 22, at 22–23; Anna Griffin, *Era of Public-Funded Elections May be Short*, THE OREGONIAN, Mar. 13, 2008, at A1.

66. See Griffin, *supra* note 65; VOE SURVIVE?, *supra* note 22, at 23.

67. See Editorial, *Another Blow to Democracy*, THE OREGONIAN, Mar. 21, 2008, at B4 (“[F]ault[ing] the city for making up the rules for the taxpayer-financed system as it goes along.”). Although the editorial page of the *Oregonian* came out clearly and consistently against public financing, see, e.g., Editorial, *The Emperor Still Has No Clothes*, THE OREGONIAN, Nov. 8, 2008, at B4 (calling for the city council not to “spend another dime” on VOE); Editorial, *supra* note 63, its news coverage, including the headlines used, also frequently painted the program in an unflattering light. E.g., Griffin, *supra* note 65; Ryan Frank, *Portland Candidate Jesse Cornett Spent \$145,000 in Public Money . . . to Come in Third*, OREGONLIVE.COM (May 19, 2010), [http://www.oregonlive.com/portland/index.ssf/2010/05/portland\\_candidate\\_jesse\\_corne.html](http://www.oregonlive.com/portland/index.ssf/2010/05/portland_candidate_jesse_corne.html).

68. See Mark Larabee, *Fritz Is Newest Addition to City Council*, THE OREGONIAN, Nov. 5, 2008, at B1 (“Fritz also becomes the first new council member—not an incumbent—

Fritz would remain a supporter of VOE through its demise and beyond, crediting the program with making her a viable candidate.<sup>69</sup>

In its final primary election cycle before going to the voters, VOE suffered another black eye when council candidate Jesse Cornett, who received and spent \$145,000 in VOE funds, finished a distant third in his bid to unseat sitting councilor Dan Saltzman.<sup>70</sup> Cornett finished behind a candidate who raised a mere \$23,000, and barely beat out a college student who raised and spent nothing.<sup>71</sup> Opponents of VOE lampooned Cornett as a poster boy for VOE’s alleged waste of taxpayer money.<sup>72</sup>

By the time Portland voters considered VOE in November 2010,<sup>73</sup> the program had a decidedly mixed track record. In three election cycles, two of nine participating candidates were elected to the city council: Erik Sten in 2006 and Amanda Fritz in 2008 (although Fritz beat another of the nine participating candidates in the only runoff to feature two VOE participants).<sup>74</sup> The sole mayoral race, in 2008, featured no participating candidates after Sho Dozono was decertified.<sup>75</sup> The program had distributed \$1.76 million to campaigns and incurred \$220,000 in overhead expenses.<sup>76</sup> While the program had ardent backers on the council, including Fritz, Sten’s midterm resignation in 2008 cost it a prominent public supporter, and the *Oregonian* and the Portland Business Alliance consistently

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elected after a campaign paid for solely by taxpayers.”).

69. See Aaron Mesh, *Voter-Owned Redux*, WILLAMETTE WEEK (Jan. 23, 2013), available at [http://www.wweek.com/portland/article-20178-voter\\_owned\\_redux.html](http://www.wweek.com/portland/article-20178-voter_owned_redux.html) (discussing Fritz’s “determin[ation] to revive voter-funded campaigns” after her 2012 re-election to the council).

70. Frank, *supra* note 67.

71. *Id.*

72. Editorial, *City Elections Prove Again They’re Already Voter-Owned*, OREGONLIVE.COM (May 22, 2010), [http://www.oregonlive.com/opinion/index.ssf/2010/05/city\\_elections\\_prove\\_again\\_the.html](http://www.oregonlive.com/opinion/index.ssf/2010/05/city_elections_prove_again_the.html); Ryan Frank, *How Jesse Cornett Spent Taxpayers’ \$145,000 Contribution in Race Against Dan Saltzman for Portland City Council*, OREGONLIVE.COM (May 21, 2010), [http://www.oregonlive.com/portland/index.ssf/2010/05/where\\_jesse\\_cornett\\_spent\\_taxp.html](http://www.oregonlive.com/portland/index.ssf/2010/05/where_jesse_cornett_spent_taxp.html) (noting that after Cornett’s poor showing, the Portland Business Alliance began “lobbying to kill [VOE]”).

73. Under Oregon’s vote-by-mail system, Portland voters actually began casting their ballots on VOE in October 2010. See OR. REV. STAT. § 254.470(2)(a) (requiring that ballots be mailed to voters between 14 and 18 days before an election).

74. See Brad Schmidt, *Effort to Revive Publicly Funded Campaigns Launched by Former City Council Candidate*, OREGONLIVE.COM (Jan. 7, 2011), [http://www.oregonlive.com/portland/index.ssf/2011/01/effort\\_to\\_revive\\_publicly\\_fund.html](http://www.oregonlive.com/portland/index.ssf/2011/01/effort_to_revive_publicly_fund.html).

75. See VOE SURVIVE?, *supra* note 22, at 23.

76. Schmidt, *supra* note 74.

opposed it. On the other hand, civic groups like the League of Women Voters and Common Cause Oregon, as well as a Portland municipal employees' union, strongly supported the program.<sup>77</sup> Indeed, proponents of retaining VOE outraised its opponents by a margin of 5 to 1 during the ballot measure campaign.<sup>78</sup> Despite this financial advantage, Portland voters rejected VOE in November 2010 by the slimmest of margins: 50.38 to 49.62 percent, or 1600 votes.<sup>79</sup> No doubt the election's timing affected the results. Nationally, the 2010 midterm election was a great year for more conservative candidates and causes, and turnout was lower among more liberal or progressive voters.<sup>80</sup> In Oregon, a close gubernatorial contest kept turnout relatively high, but it still lagged behind presidential election levels.<sup>81</sup> While views about public financing do not neatly track party affiliation, even a slightly depressed turnout among progressive voters may have been enough to cost VOE a win at the ballot box.<sup>82</sup> Had the election been held in November 2008 or 2012, the outcome may well have been different.

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77. Janie Har, *Union, Clean-Government Groups Give to Portland's "Voter-Owned Elections,"* OREGONLIVE.COM (Aug. 4, 2010), [http://www.oregonlive.com/portland/index.ssf/2010/08/union\\_clean-government\\_groups.html](http://www.oregonlive.com/portland/index.ssf/2010/08/union_clean-government_groups.html).

78. Brad Schmidt, *City Hall: Portland's Publicly Funded Campaign System Ends Without Reaching Aspirations,* OREGONLIVE.COM (Nov. 4, 2010), [http://www.oregonlive.com/portland/index.ssf/2010/11/city\\_hall\\_portlands\\_publicly\\_f.html](http://www.oregonlive.com/portland/index.ssf/2010/11/city_hall_portlands_publicly_f.html); Har, *supra* note 77 ("It takes big money to keep big money out of elections.").

79. See Nov. 2, 2010 General Election, MULTNOMAH COUNTY ELECTIONS, <http://web.multco.us/elections/november-2010-general-election> (click on "City of Portland") (citing official results for Measure 26-108) (last visited July 23, 2013).

80. See *A Clear Rejection of the Status Quo, No Consensus About Future Policies*, PEW RESEARCH CENTER (Nov. 3, 2010) (updated Nov. 17, 2010), <http://www.pewresearch.org/2010/11/03/a-clear-rejection-of-the-status-quo-no-consensus-about-future-policies/> (noting that the voters that turned out in 2010 were "older and much more conservative" than the electorate in 2006 or 2008).

81. Turnout in Oregon in the 2010 general election was 52.6 percent, as compared to 67.7 percent and 63.2 percent in the 2008 and 2012 general elections, respectively. See UNITED STATES ELECTION PROJECT, <http://elections.gmu.edu/index.html> (click on "Voter Turnout," then click on "Data Tables," then select 2008, 2010, and 2012 general elections) (last visited July 23, 2013). The numbers cited above are the "VEP," or Voting-Eligible Population turnout statistic.

82. A recent national opinion poll, for instance, shows registered Democrats more likely to support public financing of federal campaigns than Republicans, but the margin between the two is less than 20 percent. See Lydia Saad, *Half in U.S. Support Publicly Financed Federal Campaigns*, GALLUP POLITICS (June 24, 2013), <http://www.gallup.com/poll/163208/half-support-publicly-financed-federal-campaigns.aspx> (asking whether respondents would support a system in which campaigns were financed completely by the government and private contributions were banned and reporting that adults favored the proposal 50 to 44 percent, with Democrats favoring 60 to 34 percent, and Republicans opposing 54 to 41 percent).

### III. LESSONS FROM PORTLAND’S VOE

What can VOE tell us about the efficacy and viability of public campaign financing, especially at the local level? With respect to efficacy, the data points are too few to reach firm conclusions. Only two candidates emerged using VOE funds, both on the city council. One resigned less than halfway through his term. The other candidate, Amanda Fritz, largely self-funded her 2012 re-election campaign, voluntarily capping private contributions at \$50 and \$250 during the primary and general election campaigns, respectively.<sup>83</sup> After her 2012 re-election, Fritz led the successful effort to adopt paid sick leave in Portland, an effort vehemently opposed by the *Oregonian* and the Portland Business Alliance.<sup>84</sup> Whether Fritz’s strong advocacy for paid sick leave can be traced to her having been first elected with VOE funds is difficult to say, but it is an example of a once-publicly-funded candidate trumpeting a policy that was opposed by powerful and well-funded interest groups. Furthermore, a report from the nonpartisan Center for Government Studies concluded that VOE may have helped cement a culture of more candidates—even those not participating in the program—relying on smaller donations and lowered campaign costs.<sup>85</sup> With respect to increasing candidate diversity and making races more competitive, the report concluded that VOE showed promise in both respects.<sup>86</sup> The report also cited feedback from participating candidates indicating that VOE allowed them to spend more time with voters rather than focus on raising large sums of money.<sup>87</sup>

With respect to the political viability of public financing—particularly, full financing schemes—VOE teaches some valuable lessons. First, as evidenced by the significant damage caused by early

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83. See Mesh, *supra* note 69 (noting that Fritz “spent more than \$375,000 of her own money” on her 2012 campaign); see also Brad Schmidt, *Portland Commissioner Fritz Approaches \$250,000 in Self-Funding for Re-Election Bid*, OREGONLIVE.COM (Oct. 16, 2012), [http://blog.oregonlive.com/portlandcityhall/2012/10/portland\\_commissioner\\_amanda\\_f.html](http://blog.oregonlive.com/portlandcityhall/2012/10/portland_commissioner_amanda_f.html) (discussing Fritz’s self-imposed contribution limits).

84. See Ryan Kost, *After Months of Debate, Portland City Council Approves Sick Leave Ordinance – Now What?*, OREGONLIVE.COM (Mar. 13, 2013), [http://www.oregonlive.com/portland/index.ssf/2013/03/after\\_months\\_of\\_debate\\_portlan.html](http://www.oregonlive.com/portland/index.ssf/2013/03/after_months_of_debate_portlan.html); see also Editorial, *Portland’s Sick-Leave Mandate Fever*, OREGONLIVE.COM (Mar. 6, 2013), [http://www.oregonlive.com/opinion/index.ssf/2013/03/portlands\\_sick-leave\\_mandate\\_f.html](http://www.oregonlive.com/opinion/index.ssf/2013/03/portlands_sick-leave_mandate_f.html) (opposing Fritz’s proposed sick-leave ordinance).

85. See VOE SURVIVE?, *supra* note 22, at 26, 41–42.

86. *Id.* at 26–27.

87. *Id.* at 28.



scandals, a fully financed system must be perceived as cleaner than the supposedly dirty system it replaces! Hence, significant, proactive steps must be taken to ensure that candidates play by the rules in gathering donations and spending taxpayer funds. Second, a public financing program needs to be perceived as utterly apolitical and well-planned. The “on-the-fly” determinations made in 2008 regarding financing for a special election and the denial of funds to a mayoral candidate might have been avoided with a more detailed scheme and a more neutral adjudicator of unanticipated questions. Third, serious consideration should be given to more rigorous screening mechanisms for candidate viability. While a third layer of elections is probably undesirable, a program could either shorten the qualifying period or increase the number or amount of “small” donations needed to qualify, thus requiring the candidate to show more organizational skills.<sup>88</sup> Of course, to some extent, candidates that ultimately prove nonviable are an unavoidable part of a system that seeks to broaden participation.<sup>89</sup>

Although Portland’s experiment with full public financing failed, at least two other cities—Albuquerque and Santa Fe, New Mexico—have recently begun such programs. Chapel Hill, North Carolina, also started a pilot full public financing program in 2009 but the state legislature recently declined to renew it.<sup>90</sup> In addition, a small number of state clean-money programs remain.<sup>91</sup> That VOE was

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88. *See id.* at 32 (recommending improvements to VOE).

89. *See id.*

90. Daniel Schere, *No More Public Funds for Chapel Hill Candidates*, DAILY TAR HEEL (July 2, 2013), <http://www.dailytarheel.com/article/2013/07/no-more-public-funds-for-town-candidates>. Unlike Oregon cities, which enjoy home rule under the state constitution, *see supra* notes 30 to 31 and accompanying text, cities and towns in North Carolina must receive a specific grant of authority from the state legislature in order to make law. *See Bowers v. City of High Point*, 451 S.E.2d 284, 287 (N.C. 1994) (“Municipalities, as creatures of the State, can exercise only that power which the legislature has conferred upon them.”); *see also* Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?*, 84 N.C. L. REV. 1983, 2003 (“North Carolina is one of only a few non-home rule states.”). The legislature granted Chapel Hill specific authority to adopt a public campaign financing system only on a pilot basis in 2007. *See* 2007 N.C. Sess. Laws 222 (amending N.C. GEN. STAT. §§ 163-278.6; 160A-499.1).

91. Arizona, Connecticut, and Maine make full public financing available for all state offices and legislative candidates. *See* NAT’L CONF. STATE LEGS., PUBLIC FINANCING OF CAMPAIGNS: AN OVERVIEW (updated Jan. 23, 2013), <http://www.ncsl.org/legislatures-elections/elections/public-financing-of-campaigns-overview.aspx>. Vermont has a full public financing program for candidates for governor and lieutenant governor. *Id.* New Mexico offers full financing to candidates for statewide judicial seats and a statewide regulatory commission. *Id.* West Virginia has a pilot program for the state supreme court. *Id.* North

defeated in Portland, often seen as one of America’s most liberal cities, shows that a left-leaning electorate will not necessarily embrace public financing, just as Arizona’s program shows that a more conservative electorate is not necessarily opposed to such a program, particularly when it comes on the heels of a “dirty-money” scandal.<sup>92</sup> Portland’s experience also demonstrates that if a public financing system is going to be put to the voters, it needs to be explained well, and the timing of the election may matter quite a bit. Committing to a vote at a predetermined time can be a tactical error for proponents of public financing. Finally, because Portland has demonstrated—before, during, and after VOE—that it has a relatively strong political culture of self-imposed contribution limitations for candidates, voters may have seen VOE as less necessary.<sup>93</sup> Thus, ironically, Portland’s grassroots political culture may have contributed to the defeat of an effort that is supposed to help strengthen democratic participation.

In sum, Portland’s VOE was a well-intentioned, if flawed, experiment. At least one candidate, Amanda Fritz, emerged from the process and has had a significant impact on Portland’s political landscape. How much more of an impact VOE might have had if it had lasted longer will now never be known. While Fritz hopes to resurrect the system through a ballot initiative in the near future, it is

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Carolina had a system of full public financing for judicial offices and some other elected state offices until recently. *See id.*; Jim Morrill, *Voting Bill Signed; Legal Challenges Start*, CHARLOTTEOBSERVER.COM (Aug. 12, 2013), <http://www.charlotteobserver.com/2013/08/12/4232398/gov-mccrory-signs-voter-id-bill.html> (noting that the state’s new voting law, among other things, “ends public financing of judicial races”).

92. *See* Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett, 131 S. Ct. 2806, 2832–33 (2013) (Kagan, J., dissenting) (describing the scandal preceding Arizona’s adoption of public financing).

93. For instance, in the 2012 city election, councilwoman Amanda Fritz voluntarily imposed a limit on contributions to her campaign, *see supra* note 83 and accompanying text, and the two mayoral candidates in the runoff—Charlie Hales and Jefferson Smith—each adopted contribution limits. *See* April Baer, *Smith Sets Contribution Limits for Portland Mayor’s Race*, OPB (Aug. 1, 2012), <http://www.opb.org/news/series/portlandmayoralraces/-smith-sets-contribution-limits-for-portland-mayors-race> (noting that Smith announced that he would accept contributions no greater than \$1000, while Hales pledged to limit contributions to \$600). Hales’ and Smith’s inconsistent compliance with their self-imposed contribution limits, and their frequent “amendments” of such limits, demonstrate how such soft caps are hardly a substitute for the hard caps imposed by law. *See* Beth Slovic, *Portland Mayor-Elect Will Work ‘Every Day’ to Make City Proud*, OREGONLIVE.COM (Nov. 6, 2012), [http://www.oregonlive.com/portland/index.ssf/2012/11/portland\\_mayor-elect\\_charlie\\_h.html](http://www.oregonlive.com/portland/index.ssf/2012/11/portland_mayor-elect_charlie_h.html) (discussing how Hales “repeatedly bent his own campaign-contribution limits”).

uncertain whether that effort will gain traction.<sup>94</sup> For now, scholars of public financing must turn to Albuquerque and Santa Fe to see how well clean elections work in the municipal context.

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94. See Mesh, *supra* note 69.