

City Club Research Study

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Ballot Measure 6: Public Funding of Political Campaigns

Committee Recommends “YES” on 6

Your Committee found:

Serious problems exist with Oregon's system of campaign finance. Campaign costs have escalated dramatically in recent years. Most money used in campaigns comes from a small number of contributors. These contributors appear to have a disproportionate and inappropriate influence on the legislative process—this perception has exacerbated public cynicism and eroded public confidence in Oregon's political process.

Candidates spend too much time raising campaign funds rather than considering important public issues and serving their constituents. Many qualified potential candidates choose not to run for office because they do not want to spend long hours raising money, or do not have access to large contributors or personal fortunes, or do not want to be beholden to special interests. Candidates who spend the most money usually win. Measure 6 would help remove these barriers and level the playing field by providing public campaign funding for eligible candidates.

Measure 6 offers a reasonable solution to the problems in Oregon's current system of campaign finance. The measure was thoughtfully and carefully drafted and has strong bipartisan support. While not a total solution, Measure 6 is a major step in the right direction. Measure 6 is a statutory measure, not a constitutional amendment. The legislature will be able to modify the program, if adjustments are needed. Measure 6 offers Oregonians an important opportunity to reclaim our political system.

Your Committee unanimously recommends a “YES” vote on Measure 6.

As reported in the Bulletin dated November 3, 2000, the City Club membership voted on October 20, 2000 to adopt the committee's recommendation to support passage of ballot Measure 6.

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I. INTRODUCTION

Ballot Measure 6 will appear on the ballot as follows:

Caption:	Provides Public Funding To Candidates Who Limit Spending, Private Contributions
Result of "Yes" Vote:	"Yes" vote provides limited public funding to candidates accepting limits on spending and private contributions.
Result of "No" Vote:	"No" vote retains system of no public funding, unlimited private contributions to state office candidates.
Summary:	Provides for limited public funding of qualifying candidates' campaigns for Governor, Secretary of State, Treasurer, Attorney General, state senator, representative. Candidates qualify by: (1) agreeing to accept only certain permitted contributions and make expenditures only from those sources; (2) receiving specified number of \$5 contributions from Oregon residents. Creates fund to finance qualifying candidates' campaigns. After qualifying, candidates may spend revenues only from fund, remaining permissible private contributions. Mandates adequate funding. Partially repeals political tax credit. Increased disclosure requirements. Penalties for violations. Other changes.

(The language of the caption, question, and summary was prepared by the Oregon Attorney General.)

Measure 6 proposes a significant change to the way campaigns are financed in Oregon. The City Club created our committee to review Measure 6 and to recommend a position on the measure to the City Club general membership. City Club screened committee members for conflicts of interest to ensure that no member had an economic interest in the outcome of the study or was publicly identified with an existing position on the study topic.

Committee members met weekly during September. Committee members interviewed Measure 6 proponents and opponents, campaign professionals, television advertising managers, and candidates and elections officials in four states that have adopted programs similar to Measure 6. We also reviewed relevant articles, reports, and other materials.

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What would Measure 6 Do?

Measure 6 is a citizen initiative that would amend state statute and create a program to publicly fund certain state candidate election campaigns. Measure 6 creates a system that will provide campaign funds to qualifying candidates running for state office "who agree to limit the political contributions they receive and the amount of their campaign spending." (Measure 6 Explanatory Statement)

Measure 6 is long and complex and includes a number of different provisions. The main elements are summarized below:

Which Election Races are Included? Governor, secretary of state, treasurer, attorney general, state senator, state representative.

When can Candidates Apply for Public Funding? Major party candidates can receive funding for both primary and general election campaigns. Minor party candidates can receive funding only for a general election campaign.

Major party candidates can seek to qualify for the program starting 250 days before the primary election. They must have qualified by 40 days before the primary election. Minor party candidates can seek to qualify beginning 15 days after the primary election and up to 40 days before the general election.

Candidates can collect and spend unlimited amounts of money before they qualify for the program. Once they qualify they must abide by the program's contribution and spending limits.

How Does a Candidate Qualify? To qualify for public funds, candidates must:

- 1) File a declaration of intent to seek certification and agree to the requirements of the program
- 2) Collect a specified number of \$5 contributions from Oregon residents to demonstrate public support:
 - Governor—8,000
 - Secretary of State—6,000
 - Attorney General and Treasurer—4,000
 - state senator—500 (at least 75 percent from individuals in the legislative district)
 - state representative—300 (at least 75 percent from individuals in the legislative district)

They may also accept "seed money contributions" of up to \$100 each from individuals or political committees (up to 10 percent of the amount of public funding for which the candidate is eligible).

Once a candidate qualifies for public funding, the candidate may spend money on his or her campaign from the following sources: their \$5 qualifying contributions, their "seed money" contributions, and funds provided to

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them by the program. The total of these amounts cannot exceed the candidate's overall allotment under Measure 6. Candidates may accept in-kind contributions—in addition to their public funding—up to a value of five percent of the public funding for which they are eligible.

After the election, candidates must return any unspent public money to the "Political Accountability Fund" created by Measure 6.

How much money do candidates get? For contested biennial primary elections, major party candidates would receive:

- Governor—\$600,000
- Other statewide office—\$200,000
- State senator—\$40,000
- State representative—\$25,000

(Candidates that run unopposed in a primary election would receive 30 percent of these amounts.)

For contested general elections, major and minor party candidates would receive:

- Governor—\$1,200,000
- Other statewide office—\$400,000
- State senator—\$80,000
- State representative—\$50,000

(Candidates that run unopposed in a general election would receive 10 percent of these amounts.)

These amounts would be adjusted for inflation starting in 2005.

What can they spend it on? Publicly funded candidates may spend their funds only on legitimate campaign expenses.

What if a publicly-funded candidate is outspent by a non-publicly-funded opponent? If a publicly funded candidate's opponent spends more than the amount available to the publicly funded candidate, the publicly funded candidate would be eligible for additional public funds up to 100 percent of their original allotment. (For instance, in a state senate race the publicly funded candidate would be eligible for \$80,000 in funding and up to \$80,000 additional money to match their opponent's expenditures).

Matching funds are also available if a combination of contributions to a non-participating candidate and independent expenditures targeting a particular candidate exceed the allowed funding level for a participating candidate.

Candidates or their opponents may challenge the secretary of state's decision to grant or refuse to grant matching funds. They can then appeal to the state Court of Appeals.

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How is the program funded? The program would be funded from revenues generated by a repeal of the \$100 Political Tax Credit and by additional funds appropriated by the legislature. Measure 6 would require the legislature to fully fund the program.

The repeal of the political tax credit would only apply to contributions to candidates for the state level positions eligible for public funding. Taxpayers would still be able to claim the credit for contributions to political committees, ballot measure committees, and candidates for races not covered by Measure 6.

Overall Cap on the Fund. Although Measure 6 requires the legislature to fully fund the program, the measure caps the amount of funding that can be distributed to participating candidates in any one biennium. The cap is \$5 times the number of Oregonians eligible to register to vote (The cap would be \$24 million for the 2002 election.)

Reporting Requirements. "Measure 6 includes increased disclosure requirements for contributions and independent expenditures. Non-qualifying candidates must give notice to opposing candidates and the Secretary of State when they receive or spend an amount that exceeds the amount of public funds to be distributed for that race. Any person or organization making an independent expenditure of more than \$1,000 must give notice to affected candidates and the Secretary of State." (Measure 6 Explanatory Statement)

Political Ads: "Political advertisements for participating candidates must include the statement: 'I take personal responsibility for the content of this campaign ad.' Candidates participating in the Political Accountability Act will be identified in the Voters Pamphlet." (Measure 6 Explanatory Statement)

Administration: "Measure 6 will be administered by the Secretary of State Elections Division with expedited hearing options available. Civil penalties up to \$10,000 may be imposed for violations." (Measure 6 Explanatory Statement) The Measure 6 Fiscal Impact Statement estimates the cost of administration at \$403,000 per year.

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II. BACKGROUND

People have long been concerned about the growing influence of money in political campaigns and politics—both in Oregon and across the nation. Despite a number of attempts to reform the way campaigns are financed, campaign expenditures continue to set new records with each new election. Citizen groups and some elected officials warn that large campaign contributors increasingly dominate our political system leading to distortions in public policy and growing cynicism among voters.

A number of attempts to limit campaign contributions and expenditures have been overturned by state and federal courts as violations of free speech rights. Reformers and civic organizations have now shifted their focus from mandatory contribution and spending limits, to voluntary public financing of campaigns. Public Campaign, a national non-profit campaign finance reform advocacy group, has developed a model program for the public funding of state election campaigns. Four states have adopted variations of this model. In Oregon, a broad, bipartisan coalition of politicians and civic organizations worked with Public Campaign to develop a similar proposal, which will appear on the November 7, 2000 ballot as Measure 6.

This section provides some background on past attempts at campaign finance reform, describes court decisions that have restricted the options for reform, and describes current levels and patterns of campaign contributions and spending in Oregon. This is followed by an examination of the four states with existing publicly funded campaign programs, and a review of relevant City Club positions on campaign finance reform.

Previous Efforts to Reform Campaign Finance in Oregon

Campaign finance reform is not a new issue. A 1973 City Club report raised concerns about the "soaring" costs of campaigns in Oregon. The report warned that the high cost of campaigns "may discourage many qualified candidates from running for office, and may force a candidate to compromise his independence in office to raise the necessary funds." The report found that the "cost of running for public office has escalated out of control and will continue to increase unless specific limitations are enacted into law." The report called for limits on campaign expenditures and full public disclosure of campaign contributions and expenditures.

The Oregon Legislature subsequently passed a law that limited the amount of campaign expenditures by political treasurers running campaigns. (See former ORS 260.027 and 260.154, both repealed by Or. Laws 1975, Ch. 684, § 11.) The legislature also prohibited expenditures by third parties on behalf of a candidate without prior approval by the candidate. If the candidate did approve the third party expenditures, then they were deemed to have been made by the candidate.

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In 1975, the Oregon Supreme Court overturned these expenditure limits (*Deras v. Myers*). The court found that the limits violated rights of free expression and free assembly guaranteed by the Oregon Constitution. The Court noted that the evils that the expenditure limit sought to prevent "could be treated by providing some form of public subsidy for campaign expenditures." The Court added that this "should not be taken as an expression as to the effectiveness of public subsidy or its desirability, but only that it is likely to be at least as effective as direct restrictions and is less clearly subject to Constitutional attack." (535 P2d 549)

In 1976, Oregon voters rejected Measure 7—a statutory referral from the legislature—which would have provided partial public funding for general election campaigns for statewide and state legislative offices. Proponents said the funding would help candidates get out their message and would help deter ever-increasing and excessive campaign expenditures. The measure was not intended to help more candidates run for office.

In 1976, the U.S. Supreme Court (*Buckley v. Valeo*) invalidated the 1971 Federal Election Campaign Act, for reasons similar to those raised in *Deras v. Myers*. The Act had set a ceiling on total campaign expenditures and on personal expenditures by a candidate. However, the Court sustained the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, which provided a form of public campaign financing.

Campaign spending continued to grow as did public concerns about the influence of money in Oregon's political system. Between 1972 and 1992 the cost of state legislative campaigns grew three times the rate of inflation. The average spent on an Oregon state house campaign went from \$3,100 to \$38,000; average spending on Oregon state senate campaigns increased from \$5,500 to \$49,000.

Whereas, in the early 1970s, state campaigns were financed largely through contributions from individuals, by the early 1990s, state legislative candidates received the majority of their campaign funding from Political Action Committee (PAC) contributions. Some political groups had begun to shift spending to run political advertisements independent of formal candidate campaigns. Because the ads were not part of a formal candidate campaign, they were free of any state reporting or other campaign finance restrictions.

Increased voter concern led Oregonians to approve two campaign finance reform ballot measures in 1994—Measure 6 and Measure 9. Measure 6 limited candidates to accepting and spending campaign contributions only from individuals who lived in the candidate's electoral district. Measure 9 limited contributions to \$100 for legislative races and \$500 for statewide and legislative candidates. The measure banned contributions from corporations and unions, and established voluntary campaign spending limits.

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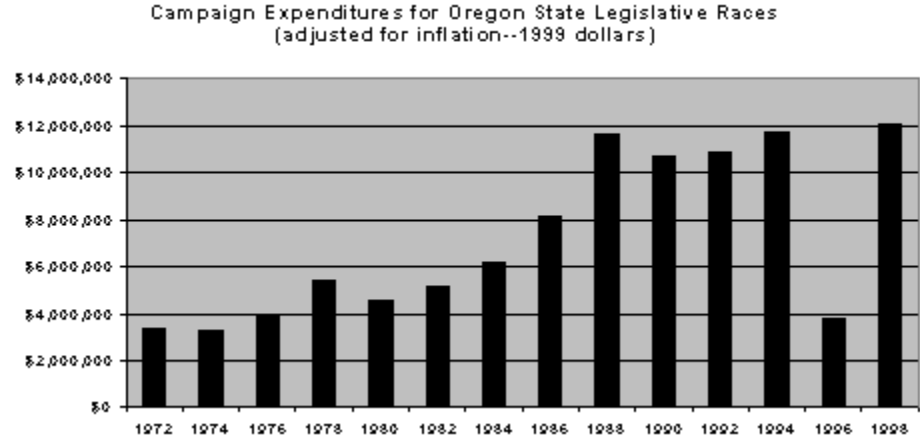
Both measures were challenged in court. The United States District Court for the District of Oregon quickly invalidated Measure 6. Measure 9 stayed in effect longer and led to a sharp drop in campaign spending in 1996 (see Figure 1). The Oregon Supreme Court later overturned Measure 9's mandatory contribution limitations, leaving Oregon with no limits on campaign contributions or spending.

Campaign Contributions and Spending in Oregon

Campaign contributions and expenditures have continued to expand rapidly in Oregon. According to the Money in Politics Research Action Project, the cost of state legislative elections increased 52 percent between 1992 and 1998. The \$12.5 million raised for 1998 legislative races set a new record. In 1998, the average cost of a campaign (primary and general election) for the state House of Representatives was about \$60,000; the average cost for a state Senate campaign was about \$100,000. Under Measure 6 publicly funded candidates would receive \$120,000 for a state senate campaign (\$40,000 for the primary and \$80,000 for the general election) and \$75,000 for a House of Representatives campaign (\$25,000 for the primary and \$50,000 for the general election).

Figure 1 below shows how dramatically total campaign spending has increased for state legislative races—even when adjusted for inflation. Expenditures dropped significantly in 1996 in response to 1994 Measure 9's short-lived contribution limits.

Figure 1: The Growth in Expenditures for Oregon State Legislative Races



Source: Oregon Secretary of State, Elections Division

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Measure 6 would allow up to \$24 million in overall public funding of campaigns for the 2000-2001 biennium. The largest inflation adjusted amount spent on races for the elected positions that could qualify for public funding was in 1994 when the equivalent of \$20.5 million (in 1999 dollars) was spent on all state-level, statewide and legislative races.

Most campaign contributions in Oregon now come from large donors. In 1998, contributions of less than \$50 represented only four percent of the total raised. Sixty-seven percent of the contributions that year came from sources that gave \$10,000 or more. In legislative and statewide races during the 2000 primaries, 105 contributions of more than \$10,000 were made, including contributions from PACs, businesses and unions (according to the Portland-based Money in Politics Research Action Project). Large contributions accounted for half the \$3.3 million total campaign spending on legislative and statewide primaries. Collectively, the thousands of contributors who gave \$50 or less accounted for only five percent of campaign giving.

What Constitutional Options Remain for Reform?

State and federal court decisions have significantly narrowed the options for effective campaign finance reform. In 1975, the Oregon Supreme Court invalidated limits set by the legislature on expenditures by candidate campaigns and on third party campaign expenditures. The Court ruled those provisions invalid because they were a restriction on free speech that was not justified by any compelling state need. *Deras v. Myers*, 272 Or 47 (1975).

In 1995, the United States District Court for the District of Oregon overturned Measure 6's geographic limit on campaign contributions on the grounds that it violated contributors' First Amendment rights. *Vannatta v. Keisling*, 899 F. Supp. 488 (D. Or. 1995). In another case, the Oregon Supreme Court upheld Measure 9's voluntary expenditure limitation but overturned the contribution limits, ruling that they impermissibly restricted freedom of expression under the Oregon Constitution. *Vannatta v. Keisling*, 324 Or. 514 (1997).

The United States Supreme Court has held that contribution limits to candidates are permissible because they are supported by a compelling state interest in preventing improper influence, but that expenditure limitations are a violation of the First Amendment. *Buckley v. Valeo*, 424 U.S. 1 (1968). Accordingly, between the United States Supreme Court and Oregon Supreme Court case precedence, neither contribution nor expenditure limitations are a constitutional method of campaign finance reform in Oregon.

Reporting Requirements

Oregon Election Law requires any individual who receives a contribution or makes an expenditure supporting or opposing any candidate, measure, or political party to file Contribution and Expenditure (C&E) reports. All

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reports filed by a candidate are available for public inspection in the office of the filing officer.

A candidate who expects to receive or spend a total of more than \$2000 for an entire election must file two C&E reports before the election and one after. The first report must be filed by the 29th day before the election (for the period prior to the 29th day), the second between the 8th and 5th day before the election (for the period after the 29th day). The third report is filed after the election. Candidates in statewide races, or campaigns that spent \$50,000 or more, must file the reports in electronic format.

Contribution reports must include information on the date the contribution was received by the candidate, the name, address, and occupational information of the contributor and the amount of the contribution. Expenditure reports must include the date the check is written, check number, payee's name, and expenditure purpose, type and amount.

Persons making an independent expenditure in excess of \$50 in support of or opposition to any candidate must file a Statement of Independent Expenditures. This report must be filed by the deadline for the period in which the expenditure was made.

Public Financing of Campaigns

Stymied in their efforts to directly limit campaign contributions and expenditures, some reform advocates have turned to public financing of campaigns as a way to counteract the influence of large campaign contributors. Measure 6 is based on a model developed by the national non-profit organization Public Campaign. Public Campaign is working in states across the country to get public financing programs adopted and implemented.

Public Campaign was co-founded by former third-party presidential candidate John Anderson. Public Campaign's advisory board includes a long list of prominent current and former U.S. Senators and Representatives, governors, and leaders of a wide variety of public interest and civic organizations. Public Campaign receives funding from a number of foundations that generally appear to focus on community building and encouraging political discourse (www.publiccampaign.org).

Three states, Maine, Arizona, and Massachusetts, have already passed initiatives similar to Oregon's Measure 6. The Vermont Legislature recently passed a law that established public financing for gubernatorial campaigns. Most of the differences between these programs stem from the differences between each state's size and form of government and electorate. However, several distinctions are worth noting for their probable effects on the viability of the particular systems.

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How the Program was Adopted: Arizona, Maine, and Massachusetts all passed programs, similar to Measure 6, by citizen initiative. Maine's Clean Elections Act was approved in the November 1996 election. In June of 1997, the Vermont Legislature passed the "Vermont Campaign Option," modeled on the Maine law. Arizona voters approved a public financing program (Proposition 200) in November of 1998, as did Massachusetts voters (Question 2). The Arizona, Maine, and Vermont systems went into effect for the November 2000 electoral cycle. The Massachusetts program will be implemented in 2002.

Qualifying Contributions, Seed Money, and Disbursement: Each of the four states requires candidates to collect a specified number of small donations from registered voters to qualify for public funding. Unlike Measure 6, the other states require all qualifying donations for legislative races to be collected from within a candidate's electoral district. Maine and Arizona require \$5 qualifying contributions. Vermont's system—which applies only to candidates for Governor and Lieutenant Governor—allows qualifying contributions to range from \$5 to \$50. Massachusetts allows qualifying contributions to range from \$5 to \$100.

Candidates may raise and spent seed money in each state prior to and during the qualifying period. The total of a candidate's qualifying contributions, seed money contributions, and public funds cannot exceed the total amount of funding for which the candidate is qualified. After a general election, candidates must return any unspent funds.

In each of these four states, candidates receive an specified amount of money from the Clean Election Fund. In some cases, unopposed and/or incumbent or minor party candidates may receive a reduced amount. Qualifying candidates in Maine also receive a specific amount of free or discounted television and/or radio programming time during both the primary and general elections. Finally, most states allow—as does Measure 6—for matching funds to be given to a participating candidate if an independent expenditure is made on behalf of a non-participating candidate.

Sources of Funding: All four states use qualifying contributions and a check-off on state income tax returns as sources of funding for the Clean Elections Fund. In addition, Arizona uses a 10 percent surcharge on criminal and civil fines as well as a voluntary tax credit to a maximum of \$500 to finance its fund. Maine's law allows it to fund its Clean Election program from a \$2 million annual allocation from the state General Fund in addition to the other more common revenue sources. Vermont's program also receives funds from campaign finance law violation fines, corporate annual report fees, a tax on lobbying expenditures, a non-specified income tax add-on, and legislative appropriations from the General Fund. Massachusetts relies on legislative appropriations to ensure the stability of its Clean Elections Fund.

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Legal Challenges: The new public financing laws were challenged in all four states. Maine's program was challenged by the Maine Civil Liberties Union and National Right to Life PAC. This case, *Daggett v. Webster*, was argued on several grounds. On November 5, 1999, the US District Court for the District of Maine rejected the challengers' most notable argument that the public funding system is coercive.

In Vermont, a group of plaintiffs challenged the mandatory spending and contribution limits in the bill, not the public funding system itself. A ruling by the Federal District Court on August 10, 2000 invalidated the spending limits but upheld the contribution limits.

On June 16, 2000 the Supreme Court of Arizona upheld as constitutional all but one provision of Arizona's Citizens Clean Elections Act. Since that time, a separate challenge has been filed by the Arizona Chamber of Commerce but will not be argued until late October, 2000, too late to affect this current election cycle.

Finally, in Massachusetts, the governor blocked an attempt by the legislature to undermine the state's new public financing program. House Speaker Thomas M. Finneran and Senate President Thomas F. Birmingham, both Democrats, attached a rider to the state budget bill stipulating that the Clean Elections Law would only be in effect for the six months prior to each election. Their proposal would have allowed officeholders and candidates to raise and spend large sums up to six months prior to each election, and then still have the option of participating in the public-funding system. Massachusetts Governor Celluci vetoed the proposal in November 1998.

Relevant City Club Positions

1973, Oregon Election Campaign Financing. Among its many conclusions, this long-term study found that the increasing cost of campaigns may discourage qualified candidates from running. It also found that high costs may require candidates to compromise their independence in office to raise the necessary funds to run a competitive campaign.

The report recommended limits on campaign expenditures, expanded reporting of contributions and expenditures, severe limits on independent expenditures, reporting requirements for ballot measure campaigns, and the establishment of a non-partisan commission to investigate and prosecute campaign law violations. The City Club membership voted on Feb. 16, 1973 to adopt all but one of the report recommendations. Club members rejected a recommendation not to set limits for campaign contributions.

1976, Oregon State Measure No. 7: Partial Public Funding of Election Campaigns. The City Club membership voted to support Measure 7 by adopting the recommendation of the minority of the study committee that reviewed the measure. The minority found that the measure "will provide the

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means for a reasonable level of campaign visibility" for alternate candidates, and would help "limit exorbitant campaign expenditures." The minority concluded that:

...too often the quality and the amount of campaign information received depends on someone else's money. Our campaign system should not depend on the personal wealth of the candidate or the candidate's circle of supporters. It should not depend on the candidate's ability or willingness to solicit contributions. [Measure 7] stands on the principle that the true worth of a candidate should be measured by the ability to attract voters, not the ability to attract dollars." (emphasis added).

1994, *Ballot Measures 6 and 9: Campaign Finance Reform.* The City Club opposed Measure 6 because it was likely to be found unconstitutional. The City Club supported Measure 9 as a way to decrease the high percentage of contributions from PACs—and, in turn, increase the percentage of contributions from individuals—to reduce or at least limit campaign spending, and to increase the visibility of money contributed to campaigns.

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III. ARGUMENTS PRO AND CON

A. Arguments Advanced in Favor of Measure 6

Measure 6 proponents offered the following arguments in favor of Measure 6:

- Big money rules the electoral process in Oregon. A small handful of lobbyists and political powerbrokers decide who can run for office and what kinds of bills make it through the legislature.
- Cynicism and disinterest threaten our basic relationship to government. As politicians continue to set new spending records, fewer and fewer voters are willing to participate in a system they see as removed from their lives and not serving their basic interests.
- The influence of money in politics is a barrier to full participation in the democratic system. In our country today, whole groups of people are systematically ignored through the legislative process because they are not significant enough financial contributors.
- The increasing cost of campaigns has forced candidates to spend the majority of their time begging for money from special interest groups and lobbyists. This environment breeds the potential for abuse and lack of accountability to the voters.
- Many talented and qualified people often choose not to run for public office because of the high cost of campaigns and the need to raise large amounts of money.
- The Oregon Legislature has not passed a single piece of substantive reform since 1973. Politicians from both parties admit that the current system is broken, but are unable or unwilling to break the ties of big money. That's why it's up to the people to enact real reform.
- We need public funding of campaigns, because contribution and expenditure limits alone don't work and have been found unconstitutional.
- Measure 6 will bring much needed accountability to the political process by limiting spending and creating strict reporting requirements for qualified candidates.
- Measure 6's comprehensive campaign finance reform will help level the playing field in Oregon politics and allow those candidates with the best qualifications and ideas to compete with those with the most money.
- Measure 6 will cut the ties that bind candidates to big money contributors, therefore allowing elected officials to make decisions based on the merits of legislation and the interests of their constituents alone.

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- Measure 6 will help restore confidence in our basic electoral process, and help give the public an equal voice with special interest lobbyists.
- Measure 6 was developed by a broad, bipartisan array of political leaders and concerned community organizations through a thoughtful two and a half year process of research and consultation.
- Measure 6 was carefully crafted to create comprehensive reform and stand up in court. This model of reform has already passed in Maine, Vermont, Arizona, and Massachusetts. Courts have now extensively tested its core provisions and found that they do not undermine Federal or Oregon constitutional rights.
- No one reform can fix everything, but Measure 6 is a critical first step toward helping restore the health of our democracy.
- Measure 6 is statutory and does not amend the state constitution. Because Measure 6 is statutory, the legislature can correct any problems that arise after it is implemented.
- Measure 6 will not require higher taxes. Eliminating the special favors that go to large contributors will save Oregon more than Measure 6 will cost.
- Measure 6 provides Oregonians with an historic opportunity to achieve meaningful, constitutionally valid campaign finance reform.

B. Arguments Advanced Against Measure 6

Measure 6 opponents offered the following arguments against Measure 6:

- Oregon's political system is not corrupt. Legislators and state office holders are generally not beholden to any particular group or "special interest." All Oregonians have access to our political system as it is.
- Measure 6 is part of a national campaign financed by some very wealthy, very powerful, extreme left-wing individuals and groups. They are using the public's desire for campaign finance reform to pass measures that would force taxpayers to fund political campaigns.
- Measure 6 will fund campaigns of fringe candidates whose views you do not share or you find offensive. Lon Mabon and the Oregon Citizens Alliance or radical environmental groups could tap millions of dollars of taxpayer money to disseminate their radical points of view.

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- Wealthy candidates could spend large amounts of money to pay for independent ads that ostensibly help their opponent, but are presented in a way that actually hurts the opponent. The original candidate would get matching funds to match the "independent" expenditure that "helped" his opponent.
- Measure 6 will flood our campaigns with campaign ads from candidates promoting extreme agendas paid for with tax money, and may discourage voter participation.
- Every ideologue and self-promoter will use tax money to run for public office in Oregon. All they need to get started is three hundred \$5.00 contributions from individuals. A \$1500 investment in "seed money" produces \$25,000 of tax money that can be spent on personal "political" expenditures.
- Measure 6 proposes to spend \$24 million of public money to fund political campaigns. This money should be spent on Oregon's more pressing needs, such as schools, public safety, or health care for our children.
- Measure 6 increases taxes by \$1 million, will cost the secretary of state \$400,000 to administer, and may cost as much as \$24 million per election cycle.
- Measure 6 provides matching funds for independent expenditures, but there is no effective way to determine who the independent expenditure was truly intended to support or oppose.
- Measure 6 includes 39 sections of new laws. These provisions are rife with opportunities for abuse and mischief.
- Measure 6 attempts to bind future legislatures to fund the campaigns of multitudes of candidates who will seek public financing to disseminate their messages. "Free public money" may encourage special interests to pressure the legislature to increase funding beyond the \$24 million limit.
- Politicians don't need the money. Gov. Kitzhaber had \$136,000 left over in his campaign coffers even though he can't run again. Two candidates for state treasurer each spent over \$200,000 in the primary alone.
- Measure 6 will grab up to \$24 million every election cycle from those who need it most, and put it in the pockets of those who don't need it at all.
- We need more money in politics not less.

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IV. DISCUSSION

Measure 6 raises a number of important issues. Are there significant problems with the current campaign finance system in Oregon? Should public money be spent to support political campaigns? Is public funding of campaigns a good alternative to achieve the goals of campaign finance reform? Will extremist or single-issue candidates receive funding under Measure 6 to carry their message around the state? How easily can Measure 6 be refined in response to problems that arise? Would Measure 6 violate important constitutional rights? Will Measure 6 receive enough funding to work? We discuss these issues below.

Is there a Problem?

Both the cost of campaigns and the source of campaign contributions have changed in Oregon in recent years. The overall cost of campaigns has grown dramatically. Measure 6 proponents report that, in competitive races, about 80 percent of a candidate's funding typically comes from PACs along with corporations and unions. The report, *Undermining Democracy* (published by Oregon Action Money in Politics Program) reports that, in the 1998 Oregon elections, 67 percent of the total amount of money contributed to candidates came from donors who each gave \$10,000 or more. Yet, these donors represented only 0.6 percent of the total number of contributors. A very limited number of individuals and PACs give the majority of the money that candidates need to get elected.

No one we spoke with said they knew of direct examples of quid pro quo exchanges of campaign contributions for specific policy actions by an elected official in Oregon. Measure 6 proponents—including former state elected officials—did say that large donors get better access and are better able to get elected officials to consider and respond to their concerns. They also said that elected officials often shy away from taking positions or pursuing issues that may run counter to the agendas of individuals or organizations who have been, or might be, large donors to their campaigns.

Many citizens believe that large campaign donors are better served by our political system—often at the expense of the broader or long-term public good. Citizen participation in elections and in the day-to-day process of shaping public policy appears to continue to decline. Measure 6 proponents say a public perception of the undue influence of large political donors leads ordinary people—who cannot afford to give large sums of money to the candidates—to feel they have little voice in the political system.

Political party activists who recruit candidates to run in state legislative races told us that many qualified candidates choose not to run because they do not want to spend the time and energy required to raise the large amount of money needed to mount a competitive campaign. They said the current system discourages qualified candidates from running for office who do not have access to large campaigns or personal fortunes—a concern raised

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by past City Club reports. A former elected official said, the first question a party asks when considering an individual as a possible candidate is whether that person will be able to raise the necessary funds.

Political activists also told us that the high cost of campaigns reduces competition in primary races. Qualified candidates are often discouraged from running, because they will have difficulty raising enough money to mount a competitive campaign against an incumbent. Contributors of large amounts of money tend to contribute to incumbents.

We heard that, because many promising candidates are discouraged from running, many races are uncontested. According to the National Institute on Money and State Politics, 70 percent of legislative seats went unchallenged in the 1998 Oregon primary election. In the 1998 general election, all of the 43 statewide and legislative incumbents won reelection.

Measure 6 opponents said that citizens currently do have access to the political process, and that a candidate's ability to raise money is a good indicator of her support in the community.

Are there Good Alternatives to Public Financing of Campaigns?

If one accepts that there is a problem with the way campaigns are financed in Oregon, is Measure 6 a good way to fix the problem? The Oregon Supreme Court has repeatedly held that restrictions on either campaign contributions or expenditures violate the free speech guarantees in the Oregon Constitution. Some campaign finance problems may only be resolved through a change in court precedent or a constitutional amendment.

Proponents told us they recognize that Measure 6 is not a final and complete solution to the problem of money in politics. However, they said that Measure 6, which proposes a voluntary system of contribution and expenditure limitations, should not run afoul of past constitutional concerns raised by the Court. Measure 6 opponents argue that the public funding proposal would be a coercive restriction on speech, because no rational candidate would choose not to participate in a system where he or she can get free campaign money from the government. The experience in Maine, which has passed a measure very similar to Measure 6, indicates otherwise. Only one third of Maine's candidates chose to participate in Maine's new program of public funding for campaigns. The others choose to raise their campaign funds from private sources.

Measure 6 proponents and opponents agree that the public should have more immediate and broader access to information about campaign contributions and expenditures. Voters could then get more information about where each candidate gets his or her funding. Both sides suggested the development of an "instantaneous" electronic reporting system. That would provide current information about who is giving money, how much,

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and how it is being spent. Measure 6 would expand reporting requirements for all candidates, whether publicly or privately funded.

However, increased reporting alone will not solve the problems that public funding of campaigns seeks to address—the large amount of money required to run for office and the public perception that candidates are beholden to the individual and special interests that give them the majority of their election funds.

Should public money be spent to support political campaigns?

A central issue raised by Measure 6 opponents is the philosophical question of whether public funds should be used to finance private political campaigns—and thereby private political speech. Opponents say taxpayers should not be forced to pay to support candidates whose ideas they may find abhorrent.

Measure 6 proponents argue that society would benefit from a more accessible campaign process that would encourage greater diversity of expression and a broader representation of ideas and constituencies in the public arena. Proponents also argue that public funds are already used to fund speech that individual taxpayers may disagree with. Elected officials receive public funding once they are in office even though many citizens may disagree with their beliefs or actions. Public funds also support a wide range of educational, artistic, and political speech.

Each voter will need to determine his or her own position on this issue.

How easily can Measure 6 be modified to respond to any problems that may arise?

Measure 6 opponents argue that the measure is long and complex and may led to unintended and undesired consequences. Measure 6 proponents grant that the measure is complex, but counter that it was carefully drafted and was the result of a long and thoughtful process that involved a broad range of individuals and groups involved in campaigns and campaign management and regulation.

Proponents noted that they chose to make Measure 6 a statutory measure rather than a constitutional amendment so the legislature could amend the system or "get the kinks out" as the program is implemented. One opponent suggested that the number of qualifying contributions may be too low for some positions. If this is a problem, the legislature could choose to raise the number without going back to voters.

Will Measure 6 attract extremist or single-issue candidates?

Measure 6 opponents argue that the number of \$5 contributions required to qualify for public funding is too low, and that extreme or single-issue

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candidates could take advantage of public funding to publicize and advance their agendas around the state. One opponent said "anyone with a mailing list can easily get the required number of contributions to qualify for public funding." Proponents responded that, if problems arise, the legislature would have the freedom and responsibility to make it more difficult to qualify for public funding or implement other changes to respond to these concerns.

Other witnesses suggested that an increase in the number of candidates—even ones who may be viewed as extreme or outside the public mainstream—would expand and diversify political discourse, which is beneficial in the long-run to the democratic process.

Would Measure 6 Violate Constitutional Rights?

One Measure 6 opponent told our committee that, if Measure 6 passes, he would consider challenging the measure in court. Similar programs in other states have been challenged, but so far have passed constitutional muster. Measure 6 opponents raise two arguments to support their claim that the measure is unconstitutional. First, they claim that the measure amounts to forced speech, i.e. forcing taxpayers to pay for speech they may feel is abhorrent. However, taxpayers already subsidize a substantial amount of speech that some taxpayers may view as abhorrent. Examples include legislator salaries, professor salaries at public universities and public health messages. These examples, which are subsidized by public dollars, are abhorrent to some taxpayers, yet their support with public funds has never been held to be unconstitutional.

The opponents also assert that the measure's independent expenditure provisions chill third party speech because third parties are not likely to make expenditures if they know those expenditures will be matched by public funds. This does not appear to be a restriction on speech, but rather encouragement of additional speech. It is important to note that the ACLU has never supported and has often led constitutional challenges against campaign finance reform measures. ACLU-Oregon has endorsed Measure 6.

Independent Expenditures

Opponents argue that Measure 6 would allow individuals or organizations to run misleading independent political ads and inappropriately trigger public matching funds for the wrong candidate. They suggest that someone who favors candidate A could run a television advertisement that appears to favor candidate B, but draws attention to some elements of candidate B's platform that are not very popular with the general public.

For example, candidate B supports a sales tax. While this is part of her platform, she is sensitive to the history of public opposition to a sales tax in Oregon and so is not strongly pushing this part of her platform. Candidate A's independent supporter pays for an ad that applauds Candidate B for her

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strong support of a sales tax. Candidate A is the true beneficiary of the independent advertisement. Measure 6 opponents claim that Candidate A could then receive matching funds to respond to an advertisement that was run to benefit her in the first place.

Under Measure 6, the secretary of state would have the authority to decide which candidate actually benefits from an independently run political advertisement. If an independent advertisement clearly benefits one candidate, the decision will be easy. If the advertisement is more subtle, the secretary of state may have a problem determining which candidate actually benefits. Our committee was unable to determine in the abstract whether this is likely to become a problem or not.

Interestingly, Maine has not experienced any of this gamesmanship in its first campaign with public funding, and two Maine candidates, who qualified for public funding, believe that these problems are unlikely to arise. Measure 6 was designed so that the legislature and/or secretary of state may address problems such as these with regulations or additional statutory provisions.

Other problems include whether candidates will have sufficient matching funds to respond quickly enough to late third party or opposition advertisements. Again, Maine has addressed this with an automatic 24-hour-a-day hotline and a debit card that candidates can use and election officials can credit almost instantaneously.

Will Measure 6 receive enough funding to work?

Measure 6 proponents estimate publicly-funded candidates would qualify for about \$10 million in the first election cycle after Measure 6 passes. This assumption is based on a projection that, similar to Maine, about a third of the candidates will qualify for public funding. This projection also reflects an assumption that more candidates will run if public funding is available. The \$10 million equates to about \$2.50 times the number of Oregonians eligible to register to vote. The actual amount of funding required will not be clear until the measure is in effect and used by candidates.

The mechanism for funding the program is somewhat vague in Measure 6. The measure identifies specific funding sources, such as the elimination of the tax credit, the \$5 contributions and sums collected as penalties for violation of the provisions. It also requires the legislature to fully fund the system. Measure 6 identifies as a major source of funding the elimination of the current Oregon political tax credit for contributions to candidates—but not for ballot measure campaigns. Current taxpayer use of this tax credit reduces state revenue by about \$8 million per biennium. The Secretary of State's Office has conservatively estimated that partial elimination of this credit will generate about \$1 million per year, or \$2 million per biennium. It is clear that the legislature will need to appropriate additional revenue to fully fund Measure 6.

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Opponents argue that, instead of using public money to fund private political campaigns, the money should be put toward important public priorities such as education, health care, and public safety. Proponents told our committee that the projected \$10 million cost of the program represents less than one tenth of one percent of the \$10.8 billion budgeted General Fund expenditures in the 1999-2001 biennium. In contrast, the state will spend \$4.6 billion on K-12 education.

Some witnesses raised concerns that the elimination of the tax credit will actually decrease participation in the system. The Maine candidates told the committee that they experienced increased voter participation first hand as they gathered the \$5 contributions. They felt that the \$5 contribution requirement substantially increased voter participation and felt that this increase would more than make up for any decreased participation from the elimination of Oregon's tax credit.

Potential Impact of Measure 98

Even if voters approve Measure 6, the legislature may be unable to implement it if Measure 98 also passes. Measure 98, which is also before voters on the November 7, 2000 ballot, proposes to prohibit the use of public resources for political purposes. While it was not the committee's direction to investigate and analyze Measure 98, it appears that Measure 98, which is a constitutional amendment, would prevent the implementation of Measure 6 if voters approve both measures in November.

City Club Initiative Criteria

Because Measure 6 proposes a statutory change, rather than a constitutional amendment, and because it identifies a funding source and does not require significant additional budget expenditures, this measure meets the City Club's criteria for an appropriate subject for a ballot measure.

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VI. CONCLUSIONS

Serious problems exist with the present system of campaign finance in Oregon. These problems have persisted and intensified since the City Club first studied the issue in 1973. Our committee found:

- The cost of statewide and legislative campaigns has escalated dramatically over the past several decades. In most cases, candidates who spend the most money win.
- Most of the money used in political campaigns comes from a very small number of large contributors and political action committees. Large contributors appear to have a disproportionate and inappropriate influence on the legislative process.
- The perception of undue influence of large campaign donors has exacerbated public cynicism and eroded public confidence in the political process in our state. It has contributed to record low voter turnouts and the recent proliferation of initiatives.
- Candidates are forced to spend too much of their time raising campaign funds rather than on important public issues and service to their constituents.
- Qualified potential candidates often choose not to run for office, because they do not want to spend long hours raising the money, or do not have access to large contributors or personal fortunes, or do want to be beholden to special interests. Their choice not to run leaves many races uncontested and is a significant loss to our political system and the quality and breadth of political discourse in Oregon.

Measure 6 offers a reasonable solution to the problems in Oregon's current system of campaign finance. The measure was thoughtfully and carefully drafted and has strong bipartisan support. Measure 6 does not appear to be vulnerable to the kind of successful constitutional challenges that invalidated past campaign finance reforms.

While not a total solution, Measure 6 is a major step in the right direction. The fact that this measure is statutory, rather than a constitutional amendment, will allow the legislature to modify and improve the measure as implemented and its strengths and weaknesses become apparent.

While Measure 6 could result in public funding for fringe candidates, our committee believes that the requirements candidates must meet to qualify for public funding and the demands of a campaigning—especially a statewide campaign—will prevent this from becoming a significant problem.

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Under Measure 6, independent campaign expenditures will continue to be a problem. However, our committee believes that the reporting requirements and matching funds available to publicly funded candidates will reduce the influence and attractiveness of independent political advertisements.

The partial repeal of the political tax credit would not generate the amount of money needed to adequately fund candidate campaigns under Measure 6. Our committee believes that the estimated \$10 million cost is a very good investment for the health, vitality, and diversity of our political system. The cost is minimal, given the potential benefits, and represents less than one tenth of one percent of the General Fund.

While both Measure 6 proponents and opponents support increased reporting and public disclosure of campaign contributions and expenditures, increased reporting alone will not change the balance of power or solve the other problems of campaign finance.

Measure 6 offers Oregonians an important opportunity to reclaim our political system and deserves the City Club's support.

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VII. RECOMMENDATION

Your Committee unanimously recommends a YES vote on Measure 6.

Respectfully submitted,

Henry Gerhard
Kimberly Hanks McGair
Marty McCall, vice chair
Chris Smith, chair

Jane Cease, research advisor
Suzanne Jeffreys, research assistant
Paul Leistner, research director

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VII. APPENDICES

A. WITNESS LIST

The following individuals were interviewed by either our committee or by individual committee members:

Barb Ackerman, KGW Television

Andy Anderson, Oregon Farm Bureau & Citizens to Protect Free Speech

John Brautigam, executive director, Maine Citizen Leadership Fund

John DiLorenzo, No Taxpayer Handouts for Politicians

Jennifer Drage, policy specialist, National Conference of State Legislatures

Margaret Evans, KATU Television

Darryl Howard, executive director, Oregon Republican Party

Phil Keisling, former Oregon Secretary of State

Kat Logan, Missouri Voters for Fair Elections

Susan Longley, Maine Republican legislative candidate

Kevin Loofer, Oregon Public Accountability Campaign

Cecilia Martinez, Clean Elections Institute (Arizona)

Stan Matthews, C & E Systems

Susan Matthews, C & E Systems

Paddy McGuire, chief of staff, Oregon Secretary of State

Becky Miller, Oregon Tax Payers United

Charlie Mitchell, Maine Democratic legislative candidate

Fred Van Natta, Center to Protect Free Speech

Fred Neal, manager, Elections Division, Oregon Secretary of State

Len Norwitz, former recruiter, Oregon Democratic Party

Maidi Terry, executive director, Oregon Public Accountability Campaign

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B. RESOURCE MATERIALS

City Club of Portland

- "Oregon Election Campaign Financing," Bulletin, February 16, 1973.
- "State Measure No. 7: Partial Public Funding of Election Campaigns," Bulletin, October 8, 1976.
- "Ballot Measures 6 and 9: Campaign Financial Reform," Bulletin, October 7, 1994.

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Oregon Department of Administrative Services, Budget and Management Division. "Income Tax Oregon Credits, 1.150 Political Contributions," *ax Expenditure Report: 1999-2001*.

Oregon's Future Magazine, Summer/Fall 2000.

- Settevendemie, Melinda. "Campaign Finance Reform in Oregon: A Brief History."
- Keisling, Phil and Krane, Paula. "Accounting & Accountability: An argument in favor of Measure 6."
- LaMoutain, Richard F. "The Political Accountability Act Would Subvert Democracy."

Oregon Legislative Fiscal Office. Budget Highlights: *Legislatively Adopted 1999-2001 Budget*, August 1999.

Oregon Public Accountability Campaign. Media packet.

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- Measure 6 text, ballot title, explanatory statement, and fiscal impact statement.
- Campaign expenditure statistics, 1972 - 1998.

Public Campaign. "Clean Money Campaign Reform," December 1999