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STATE OF MAINE
114TH LEGISLATURE
FIRST REGULAR SESSION

Interim Report of the Commission
to Study Public Financing
of State Elections

December 1989

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Sen. John E. Baldacci
Sen. Pamela L. Cahill
Sen. Robert G. Dillenback
Sen. Zachary E. Matthews

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EXECUTIVE SUMMARY

The Commission to Study Public Financing of State Elections was created by Resolves 1989 ch. 59 (Appendix A), which charged the Commission with studying "the existing method of election financing and explor[ing] alternative mechanisms for the public financing of any primary, general or special election for state or county offices...."

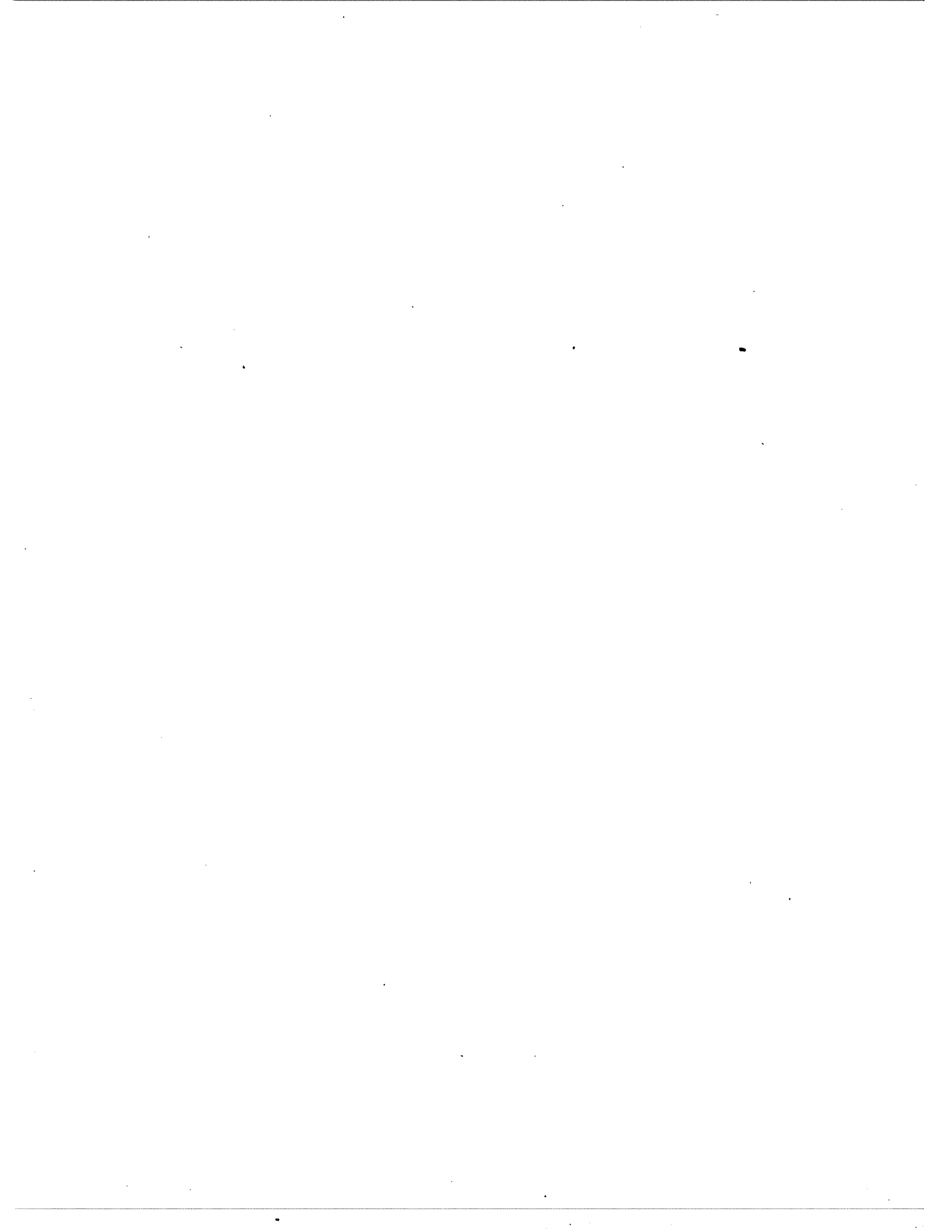
The Commission's members are -

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Resolves ch. 59 requires the Commission to submit an interim report on December 1, 1989, to the 114th Legislature's Second Regular Session and a final report on December 1, 1990 to the First Regular Session of the 115th Legislature. The Commission submits this report in satisfaction of its interim reporting requirement.

The Commission focused its first year efforts on development of background information on public financing and analysis of the public financing initiative proposed as question #1 on the November 7, 1989 ballot. The initiative, championed by Maine Common Cause, would have created a system for financing state gubernatorial campaigns with money raised by a tax check off supplemented by general fund appropriations as necessary. The voters defeated the initiative.

The Commission considered data from the five states which currently fund gubernatorial elections in a manner comparable to the initiative's proposal and testimony regarding the operation of the federal campaign financing system. The Commission examined the legal and policy implications of the Common Cause initiative as well as estimates of the cost of the initiative to the State. In addition, the Commission developed a study plan to examine trends in contributions to and expenses incurred by Maine legislative campaigns. The Commission intends to initiate its second term efforts with consideration of results of the legislative phase of its study plan.



The Commission made the following interim findings:

- (1) There is insufficient evidence to support establishment of a system for publicly financing Maine gubernatorial elections at this time, especially in light of voter rejections of this proposal at referendum on the November ballot;
- (2) The public financing scheme proposed by Maine Common Cause, see LD 256, 114th Legislature, First Regular Session, is not workable and would require substantial amendment to make it so; and
- (3) Inadequate information exists at this time to determine whether public funding of other state elections is merited or whether changes to the State's campaign financing laws are needed.

In light of these findings, the Commission recommends that no substantial changes in State campaign financing policy be made at this time.

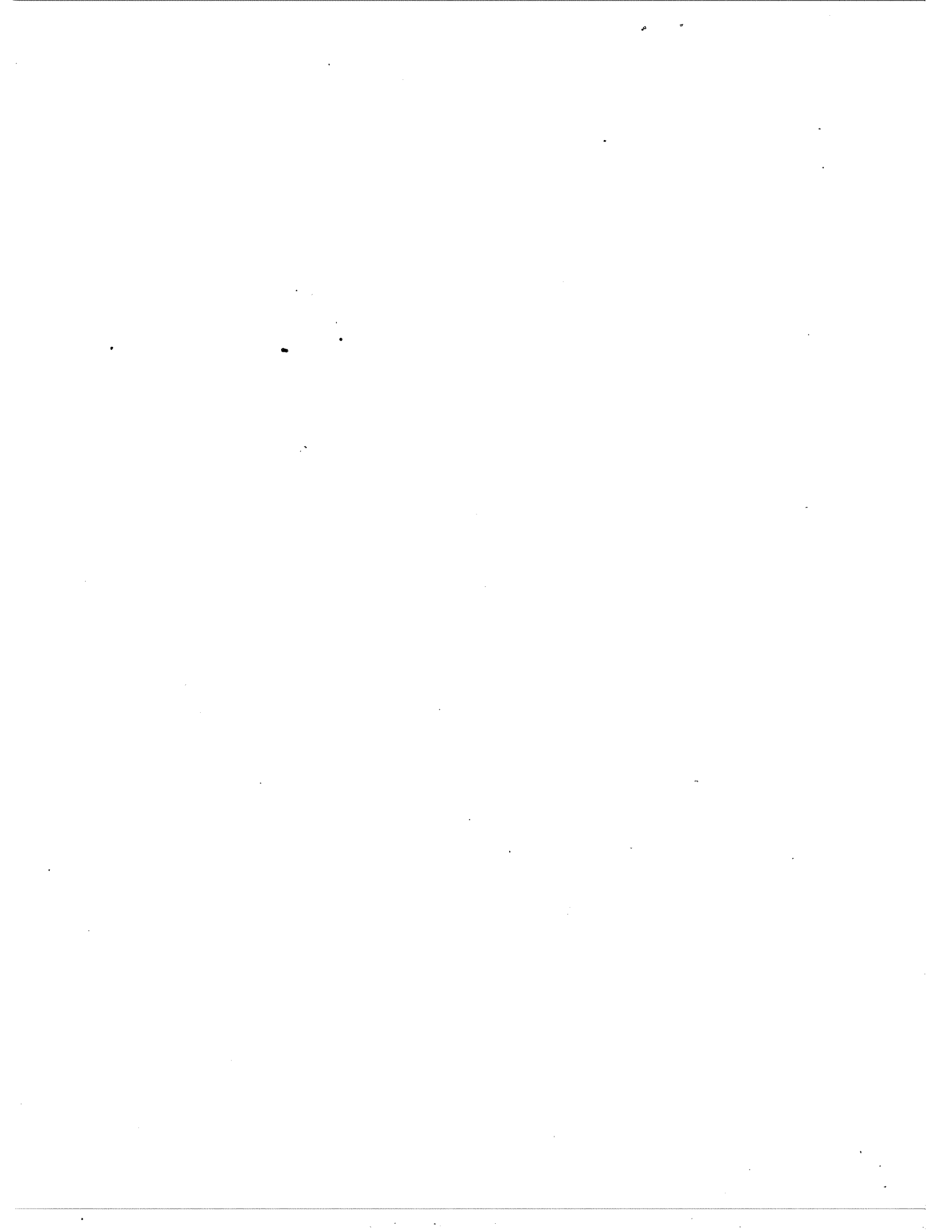


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I. Background

The purpose of this background section is to provide information on public financing of political campaigns. Part A provides an overview of the approaches of the states which have adopted a public financing system. Part B deals with the federal system for financing presidential races with tax dollars. Part C describes the gubernatorial public financing system proposed by LD 256.

A. Public Financing in the States

The following passage, taken from "An Analysis of the Public Financing of State Political Campaigns," North Carolina Center for Public Policy Research, (draft), August 21, 1989, provides a useful and accurate description of the state level public financing landscape. In addition, the passage explains the difference between a tax "check-off" and a tax "add-on".

"Within five years after Watergate unfolded, 16 states adopted public financing laws. While the pace of reform has slackened, another 10 states have passed laws since 1979, including three since 1986. Of these 26 states, four have repealed their laws, or the programs are currently inoperable -- Maryland, Alaska, Oklahoma and Iowa. Oregon's program that was adopted in 1977 was repealed, but in 1986, a new program was enacted. Currently, 22 states have operating public financing programs.

As a source of revenue for public financing programs, most states adopted either a "check-off" or an "add-on" provision on the individual income tax form. The "check-off" is patterned after the federal income tax form that allows the taxpayer to divert a \$1 of his or her tax liability from the general fund to the Presidential Campaign Fund. The check-off neither increases nor decreases the taxpayer's liability. Of the 13 states with check-off programs, all but one enacted their laws in the 1970s. Two of these programs have been repealed. The "add-on" provision was first used in California for a wildlife fund. It allows tax refunds to be contributed to the organization by subtracting on the income tax form the amount that the taxpayer wishes to contribute from his or her tax refund. The concept of add-on provisions on the income tax form gained popularity in the states in the 1980s. Of the nine states using add-on public financing programs, six enacted their laws after 1981. One of these programs has been repealed.

Table 1. Date of Enactment of Public Financing Programs

<u>Check-off Programs</u>		<u>Add-on Programs</u>	
Iowa*	1973	Maine	1973
Rhode Island	1973	Maryland*	1974
Utah	1973	Massachusetts	1975
Minnesota	1974	Montana	1975
New Jersey	1974	California	1982
Idaho	1975	Virginia	1982
North Carolina***	1975	Alabama	1983
Kentucky	1976	Oregon**	1986
Michigan	1976	Arizona	1988
Wisconsin	1977	North Carolina***	1988
Hawaii	1978		
Oklahoma*	1978		
Ohio	1987		

* Repealed or inoperative.

** Oregon had an earlier program adopted in 1977, but it was repealed.

*** North Carolina is the only state with both a check-off and an add-on program.

Only three states -- Alaska, Florida, and Indiana -- developed public financing programs funded by a source other than a check-off or add-on provision on the individual income tax form. Alaska provided cash refunds for political contributions; Florida allocates money from the general fund; and Indiana provides a check-off on the motor vehicles registration form."

In States which finance election campaigns with funds generated by a tax check-off, there is concern regarding the effectiveness of the funding mechanism and thus the public financing program. The Commission examined data from 5 check-off states all of which are experiencing declining taxpayer participation in, and thus decreasing revenues for, the check-off program. See Section II, B, *infra*.

B. Public Financing of Presidential Campaigns

Presidential candidates receive federal funding, garnered through an income tax check-off, to pay for legitimate campaign expenses in both the primary and general elections. The Federal Election Campaign Act (FECA), 2 U.S.C. §431 *et seq.*, is the legal framework of this federal Presidential campaign financing system.

1. Constitutional Framework

A legal challenge to the 1974 Amendments to FECA, resulted in a Supreme Court decision, *Buckley v. Valeo*, 424 U.S. 1. (1976), outlining basic constitutional standards for

state or federal public financing systems. Buckley v. Valeo, involved a challenge by a number of individuals and organizations who asserted, among other things, that the 1974 FECA Amendments violated the First Amendment. The Amendments established contribution and expenditure limits applicable to Presidential candidates' campaigns. Their argument was based on the notion that meaningful political communication requires expenditure of money and thus limiting campaign expenditures or political contributions unlawfully infringes on free political discourse.

The Court's ruling acknowledged that spending money was a form of political expression entitled to First Amendment protection. The bulk of the Court's decision involved the extent to which Congress under FECA could limit this form of expression.

The Court sustained the Act's contribution limits on the ground that limiting the amount one could contribute only slightly limited the quantity of contributor's communication and the government had a legitimate, compelling interest in preventing corruption or the appearance of corruption occasioned by large contributions from wealthy individuals or interest groups. For much the same reason, the court rejected the Act's limitation on the amount candidates and their families could spend on the candidate's own campaigns, since these expenditures reduced reliance on outside funding sources.

The Court analyzed the Act's expenditure limits differently. The Court ruled that limits on how much a person or group may spend in promoting a candidate's election, independent of the candidate, are unconstitutional since these limits inhibit communication, and there are no state interests involving corruption being furthered. However, the Court ruled that expenditure limits applicable to candidates whose receipt of public financing was conditioned on agreement to those limits are constitutional. Moreover, the Court ruled that use of public funds to finance the Presidential race was within Congress' power to act as it sees fit to promote the general welfare.

2. How the System Works

The federal campaign financing system works as follows. Funds are provided to candidates in both the primary and general elections.

Only candidates seeking nomination for the office of President by a political party are eligible to receive primary matching funds. Primary candidates must raise over \$5,000 in each of 20 states to be eligible. Eligible candidates are entitled to a 1:1 match of properly documented, qualifying contributions up to \$250.

General election candidates for President are funded not by matching, but with a grant. Major party candidates may receive a grant of \$20 million (plus a cost of living adjustment) provided they agree to spend no more than the grant amount and to accept no private contributions. (Private contributions may, however, be accepted and used to pay certain legal and accounting expenses). Minor party candidates are entitled to a grant based on the ratio of the party's share of the vote in the preceding election. A new party candidate may receive funding after the election if the candidate receives 5% or more of the vote. In addition, each major party may receive \$4 million (plus a cost of living adjustment) to fund its political convention; minor parties may receive funding, too, on the basis of their share of the vote in the prior election. Parties and their candidates are required to repay public funds in specified circumstances, including instances where surplus funds remain and spending limits are exceeded or the funds are used for things other than qualified campaign expenses.

The Federal Election Commission (FEC) is charged with implementation of the Presidential campaign financing system. The FEC determines whether candidates meet eligibility requirements and certifies payment of federal funds made by the Treasury. The FEC, through a sampling procedure, reviews submissions for matching funds to determine their matchability and audits publicly funded candidates expenses to ensure compliance with the FECA and FEC regulations. The agency may require repayment or in egregious cases initiate enforcement actions.

Like a number of check-off States, the federal government is concerned that the future effectiveness of the program for financing the Presidential election may be threatened by a lack of funds due to decreasing participation by taxpayers in the income tax check-off. See Section II, B, infra.

C. The Gubernatorial Campaign Financing System Proposed by LD 256

The purpose of this part is to outline the provisions of LD 256, 114th Legislature, First Regular Session.¹ That bill, the text of Maine Common Cause's public funding initiative,

¹ On March 28, 1989, the Legislature's Legal Affairs Committee held a public hearing to discuss this bill. At a work session on May 19, 1989, the Commission voted to unanimously recommend that the bill ought not to pass. The Legal Affairs Committee expressed concern over numerous drafting problems with the bill and the lack of facts indicating a need for public financing. The Legislature accepted the Committee's recommendation. LD 256, as an initiative, was placed before the voters as ballot question #1 on November 9, 1989. The initiative failed by a margin of approximately 56% to 44%.

proposed to finance Maine's gubernatorial elections with public funds. Consideration of this bill and its implications was at the heart of the Commission's deliberations during its first term. Under the bill, a candidate for Governor who agrees to accept public funding, must limit campaign spending to \$400,000 in the primary and \$600,000 in the general election. Publicly financed candidates may accept contributions only from individuals. In order to be eligible for public funding, a candidate must raise at least \$25,000 in contributions from individuals. Only the first \$250 of an individual's contribution is counted to determine eligibility.

Under the bill, the State pledges to match every qualifying dollar a candidate raises after the first \$25,000 with \$2. Only the first \$250 in contributions from an individual is matched.

The bill provides that the matching funds will come from two sources. First, taxpayers will be allowed to "check off" \$1 (couples filing jointly \$2) on their state income tax returns thereby directing a part of their tax owed into the fund. Second, the bill calls on the Legislature to appropriate any additional funds needed. The bill directs the Commission on Governmental Ethics and Election Practices to promote use of the tax check off.

The Commission on Governmental Ethics and Election Practices is charged with enforcement of the campaign financing law. The bill appears to provide that a violation of any of its provisions subjects the violator to criminal liability (Class E crime) and civil penalties up to \$50,000.

II. The Commission's Work to Date

This section summarizes the work of the Commission at the three meetings held during its first year.

A. Development of Study Questions: First Meeting, September 14, 1989

At the initial meeting, Commission members focused on developing specific questions on which to focus during its first year. Due to the impending November election and the possibility that voters could elect to establish a system for publicly financing the gubernatorial race, Commission members decided to focus inquiry on the public financing system proposed by LD 256, First Regular Session 114th Legislature, the text of ballot question #1 on the November ballot. See Appendix B.

While some Commission members agreed that in theory public financing of elections can be wise public policy, all members questioned whether such a policy is necessary or financially plausible in Maine, where evidence of corrupt politics has not been adduced and where budget constraints have forced difficult funding priority choices on legislators.

The Commissioners questioned the workability of the particular public financing system put before the voters as ballot question #1. Commissioners observed that the proposal left many questions unanswered and would require substantial revision by the Legislature, if enacted, to permit its implementation.

In addition, Commissioners considered information compiled by Commission staff regarding candidate and PAC spending during the 1988 legislative campaign.

Based on these concerns and observations, the Commission decided to next address the following questions:

- (1) If LD 256 is enacted at referendum, how much general fund revenue will be required to finance the next gubernatorial election? How much money will the tax check-off generate?
- (2) What amendments to LD 256 will be needed to allow implementation of the public financing system it proposes?
- (3) What has been the experience of other states which finance gubernatorial races with a tax check-off? What has been the federal experience in funding the presidential race through a tax check-off?

In addition, Commissioners directed staff to begin development of a means of studying trends in spending of and contributions to legislative campaigns. The Commissioners agreed that identification of trends would help isolate factors which may be increasing the cost of politics in Maine.

B. Analysis of Federal and State Campaign Financing Laws and Data; Issues Raised by the Public Funding Initiative; Estimated Cost of Financing the 1990 Maine Gubernatorial Election: Second Meeting, October 12, 1989

The Commission dedicated its second meeting to consideration of testimony and information prepared by staff in answer to the three major questions developed at the initial meeting.

Joseph Stultz, a Senior Auditor at the Federal Election Commission's Audit Division, addressed the Commission. Stultz explained to Commissioners how the federal campaign financing system² operates and offered comments on the campaign financing system proposed for Maine by LD 256. Stultz's main points were these:

- (1) To date, the federal campaign financing system, funded by a tax check-off, has provided adequate funds. The FEC encountered initial start-up difficulties which the agency overcame through extensive rulemaking;
- (2) The federal system is facing a possible financial crisis in 1996, because payments to candidates have been steadily increasing whereas taxpayer participation has been declining;
- (3) The federal campaign financing program does not appear to have occasioned an increase in the number of candidates running for election with public funds;

²U.S. taxpayer dollars, generated by an income tax check off, are used to fund the Presidential/Vice Presidential race. See 26 U.S.C. §9001 *et. seq.* The Federal Election Commission is the agency which oversees implementation of the Act. See section I, B, *supra.*

(4) Implementation of a matching funds program (like that proposed for Maine) is administratively burdensome and requires legislative or regulatory decisions on how much evidence is needed to qualify a contribution for matching;³

(5) The FEC often advances matching funds to candidates before it takes the time to analyze evidence a candidate submits to show that contributions qualify for matching. The FEC advances these funds to ease its own administrative burdens and to help candidates' cash flows. The FEC examines candidates' past reporting history before it advances these funds; and

(6) A program for providing assistance to candidates embarking on a political campaign enhances cooperation and compliance by eliminating reporting errors due to inexperience and misunderstanding.

In addition, Stultz noted that the public financing system proposed for Maine was silent on two key issues: (1) what proof need be submitted to support a matching request and (2) when would those requests be submitted and paid. He thought that these issues would have to be resolved before the law could be effectively implemented.

The Commission next discussed materials prepared by staff regarding gubernatorial campaign financing in five states, Hawaii, New Jersey, Michigan, Minnesota and Wisconsin, which employ a check-off system similar to that proposed for Maine.

The major points made by staff regarding these states' experiences with public financing were:

- (1) Each of the states examined has experienced decreasing taxpayer participation over the last few election cycles;
- (2) In two of the states examined, Hawaii and Wisconsin, decreased taxpayer participation in the public financing system has been coupled with decreased participation by candidates;
- (3) Lack of relevant data in most states makes the success of state-level public financing, measured by the impact of public money on candidates' and contributors' fund-raising behaviors, difficult to gauge; and

³Stultz emphasized the virtual necessity of using a sampling procedure, such as that used by FEC. See PPS Sampling Implementation Guide, FEC (Sept. 1979). Use of a well-designed sampling procedure allows a great deal of accuracy and eliminates the need to examine every item submitted for matching.

(4) Based on the number of Maine taxpayers in 1987 and assuming 20% taxpayer participation (roughly the national average in check-off states), the check off proposed by LD 256 would generate approximately \$430,000 over 4 years. In other words, the check-off would raise approximately \$430,000 to finance a gubernatorial race.

Commissioners agreed that, if the staff estimate is accurate, the check-off scheme proposed by LD 256 would fall far short of raising the funds needed to finance a gubernatorial election. The Commissioners expressed concern that, if the additional funds were needed, appropriation of general fund money would be required. Rep. Philip Jackson questioned whether tax dollars should be taken from a host of state programs serving the people of Maine to pay for candidates' elections.

The Commissioners agreed that the apparent trend of decreasing taxpayer participation could reflect voters' dissatisfaction with public financing. As a result, before Maine adopts a public financing system its advocates should demonstrate that public financing is necessary to correct particular flaws in the way State elections are funded. Rep. Priest emphasized that the Commission had been presented with no evidence that Maine elections are corrupt. Moreover, he noted that Common Cause's 1988 report "Out of Control" failed to make a compelling case for the reforms proposed by LD 256.

Rep. Mayo noted that decreased taxpayer participation may also reflect the public's disgust with "negative campaigning" expenditures made to discredit a political opponent.

The Commission next discussed amendments to LD 256 necessary in the event that the people vote in public financing for the gubernatorial race at the next November election. Commission staff presented an analysis of the following issues raised by LD 256:

(1) If a candidate opts for public financing, the initiative precludes receipt of funds from PACs, corporations or other associations. This provision needs to be cross referenced to the section of current law, 21-A MRS §1015, dealing with contribution limits;

(2) The forms on which candidates report campaign contributions and expenditures to the Commission on Governmental Ethics must be amended to include the following information:

(a) the source of a contribution, regardless of its size,⁴ since all contributions from certain sources are banned; and

(b) whether a contribution came from an individual "qualified to vote in the State of Maine", since under the initiative only the first \$250 of contributions from such person counts towards the \$25,000 candidates must raise to qualify for matching funds;

(3) The initiative's provision on penalties for violations of its provisions appears to subject the violator to civil and criminal liability for the same conduct. This presents the following constitutional problems:

(a) the law may be subject to challenge on "vagueness" grounds since a violator has no way of knowing whether conduct will result in civil or criminal penalties;

(b) if enforced, the law could be challenged as an improper delegation of legislative authority since a prosecutor is given no guidance on when to initiate a criminal versus a civil action; and

(c) one charged with a civil violation could challenge the law on due process grounds by arguing that the "civil penalty" is in fact penal since its purpose is apparently punitive and the fine is large.⁵

(4) The initiative fails to indicate what evidence candidates must furnish to the agency managing the matching fund to qualify a contribution for matching funds and how often submissions for matching funds should be made;

(5) The initiative does not indicate when matching funds would be disbursed;

(6) The initiative contains no provision limiting how much matching funds a candidate may receive and no provision requiring return of unutilized matching funds to the State;

(7) The initiative bans contributions by political parties to candidates of that party who accept matching funds;

⁴Under current law, candidates are required to itemize only contributions over \$50. See 21-A MRSA §1017, sub-§5.

⁵See State v. Freeman, 487 A.2d 1175, 1177-78 (Me. 1985)

(8) The initiative attempts to require subsequent Legislatures to appropriate funds to finance the gubernatorial election in the likely event that the check-off fails to generate adequate funds. However, currently seated Legislature can enact no law which binds a successor Legislature to enact a law;

(9) PACs, corporations and other associations could legally make contributions to candidates by directing their funds through individual contributors; and

(10) The initiative raises equal protection issues since independent candidates, lacking a primary election, may spend a maximum of \$600,000 in the general election. However, party candidates may spend an additional \$400,000 in a primary even if unopposed and are entitled to State matching funds for contributions made during the primary.

Commissioner David Emery questioned whether concern about an equal protection challenge was valid. He noted that the existence of a primary election for party candidates might itself be the rational basis for granting party candidates access to additional public funds and the right to spend money to run a primary campaign.

Commissioner Karen Stram noted that development and implementation of statutory changes, or regulations, necessary to make the initiative workable might preclude provision of public funds for the 1990 election.

Given the Commissioners' concerns about the workability of the public funding scheme proposed by LD 256, Commissioner Richard Pierce suggested that the Commission go on record, prior to the November election, as opposed to the initiative. However, Commission Chair Rep. Priest pointed out that the charge of the study did not empower the Commission to take such a position. The Commissioners also agreed, on Rep. Mayo's suggestion, to refrain from taking a position out of concern for using public funds to influence a referendum question.

The Commission next took up the question of the cost of the public financing scheme proposed by LD 256. Commissioners had requested staff to prepare an estimate of the cost of financing the 1990 gubernatorial election with general fund revenues in the manner proposed by LD 256.

Staff based the estimate on the campaign financing data compiled by Maine Common Cause.⁶ The calculations and methodology used in developing the estimate are described in Appendix C.

⁶See "Out of Control: Financing Maine's Gubernatorial Campaigns," Common Cause/Maine (Nov. 1988) pp. 10; A1-A16.

Commission staff developed a high estimate and a low estimate. The high estimate is based on an assumption that banned contributions, e.g. those from PACs, would be made available to candidates through other legal means, i.e. as contributions from individuals. The low estimate is based on an assumption that candidates would not receive the benefit of contributions from sources outlawed by the initiative.

The high estimate was \$4,144,057 for financing the 1990 gubernatorial election.

The low estimate was \$2,948,423 for financing the 1990 gubernatorial election.

Staff noted that the approximately \$0.4 million in estimated check-off funds should be considered General Fund dollars as well, since the tax check-off does not increase the taxpayer's tax liability but directs that \$1 of the tax owed be routed into a special fund rather than the General Fund. Staff noted that only 1-2% of Maine taxpayers currently use Maine's tax add-on to give money to political parties. See Appendix D; 36 MRS §5283.

Marilyn Canavan, staff to the Commission on Governmental Ethics and Election Practices, informed the Commission that her agency would need \$21,279 in fiscal year 1990 and \$15,899 in fiscal year 1991 for a computer and a part-time accountant to implement the initiative.

In addition, the Bureau of Taxation noted that it would need \$9,200 in fiscal year 1990 and \$6,200 in fiscal year 1991 to meet computer programming and administrative costs associated with the initiative.

Noting the general agreement among Commission members that the estimated costs of the initiative far outrun revenues anticipated from the check-off and that the initiative's public financing scheme would need substantial amendment if enacted, Commission Chair Rep. Priest suggested the Commission focus its attention on development of the necessary changes, in priority order, in the event the initiative was approved by the people. If the initiative failed, he suggested staff update the Commission on progress in the case study of House and Senate districts requested by the Commission. The Commissioners agreed to these suggestions.

C. Development of Next Study Phase: Third Meeting, November 16, 1989

Ballot question #1, the initiative to create a public financing system for Maine's gubernatorial race, failed by a margin of approximately 56% to 44% at the November 7th election.

In light of this development, Commissioners directed their attention to the next phase of the study. Section III outlines this phase of the study.

In addition, Commissioners agreed to hold a short meeting in February, 1990, for a briefing on the states of the legislative case study. Commissioners further agreed to hold its next major meeting in May, 1990 and use the results of the case study as a starting point for discussion of possible changes to the State's campaign financing laws. Finally, the Commission, at the suggestion of Rep. Lawrence, resolved to invite Maine Common Cause to its May, 1990 meeting to discuss that organization's plans and objectives in light of the public's rejection of its campaign financing proposal.

III. Anticipated Work

At its initial meeting, Commission members had directed staff to devise a method to examine if and why costs are rising in state legislative races. Commission members had stressed that a method should be devised for capturing trends regarding:

- (a) contributions from PACs;
- (b) expenditures for media coverage, especially political advertising on television;
- (c) expenditures on direct mail;
- (d) contributions from corporate sources; and
- (e) large contributions from individuals.

In short, Commission members agreed to hypothesize that the overall cost of campaigns, if rising, is traceable to increases in these expenditures; and likewise, if there are problems associated with sources of campaign contributions, those problems stem from these classes of contributors.

The Commission agreed to the following proposed plan of study which will initiate the next phase of the Commission's work. Staff will prepare a case study of six House and six Senate districts. Those districts are the three House and three Senate districts with the highest aggregate expenditure of campaign funds in 1988, and the three House and three Senate districts at the median in terms of aggregate campaign expenditures. In addition, the districts selected represent a number of different geographic areas of the State.

The data will be aggregated and the identities of candidates and the districts involved masked to further the Commission's bipartisan objectives and in recognition of the fact that campaign spending is in fact a district-by-district phenomenon.

This study phase involves examination of contributions from the following sources: PACs (both Maine registered and nationally registered), business organizations, political parties, and individuals divided into contributions over and under \$50. In addition, the study involves examination of expenditures for the following: media coverage (television and print), direct mail, printing and miscellaneous.

The information collected will be taken from candidates' campaign finance reports. Data from the 1984, 1986, 1988 and, if available, 1990 campaign finance reports will be compiled and analyzed for the districts under study. Staff has already begun data collection and data entry tasks.

Data from the 1990 gubernatorial election will also be compiled and analyzed to allow the Commission to take a hard look at possible trends in gubernatorial campaign spending. The Commission believes that the cost of the 1988 election may have been an aberration due to the large number of well financed candidates. Thus, the 1990 will be useful for comparative purposes.

Once the data is computerized and analyzed, the Commission intends to concentrate on its questions regarding trends in spending and contribution sources for the districts studied and use the track record in these districts as case studies to come to generalized conclusions regarding trends in legislative campaign financing.

IV. Interim Findings and Recommendations

The Commission finds that establishment of a system for public financing of the State's gubernatorial election is not appropriate at this time for the following reasons. First, the voters of the State rejected this proposal by defeating Ballot question #1 at the November 7, 1989 election by a convincing margin. Second, no evidence was presented to the Commission that state political campaigns are corrupt or that contributors whose contributions would have been banned under the system proposed by the initiative have undue influence. Third, there is inadequate information regarding trends in rising costs of gubernatorial campaigns. The Commission believes that data derived from the upcoming gubernatorial campaign will help in determining whether campaign costs are steadily escalating or whether recent increases in gubernatorial campaign spending are aberrations attributable to an unusually large number of candidates.

The Commission further finds that the public financing scheme proposed by LD 256 is unworkable. Legislation establishing a system for publicly funding campaigns must answer a host of questions left unaddressed by LD 256. Those questions involve proof of qualifying contributions, a schedule for making matching fund payments, provision for return of surplus campaign funds, fair treatment of independent candidates and limits on the amount of matching funds to which a candidate is entitled. Moreover, public financing should not negate the role of political parties in the campaign process.

The Commission further finds that inadequate information exists at this time to decide whether public financing of legislative, county or statewide campaigns, other than the gubernatorial campaign, is merited.

In conclusion, the Commission recommends that it complete its analysis of the State's current system of financing political campaigns prior to enactment of laws marking a significant change in the State's campaign financing policy.

The Commission has no recommendations for legislation at this time.

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APPENDIX A

JUL 12 '89

59

BY GOVERNOR

RESOLVES

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE
—

H.P. 653 - L.D. 887

Resolve, to Create the Commission to Study Public
Financing of State Elections

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is necessary for this study to begin during the summer in order to be completed; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Commission established; study. Resolved: That there is established the Commission to Study Public Financing of State Elections. The commission shall study the existing method of election financing and explore alternative mechanisms for the public financing of any primary, general or special election for state or county offices; and be it further

Membership; appointment; chair. Resolved: That the commission shall be comprised of the following 13 members to be appointed within 30 days of the effective date of this resolve: six Legislators, 3 of whom shall be Senators to be appointed by the President of the Senate and 3 of whom shall be members of the House of Representatives to be appointed by the Speaker of the House of Representatives; 6 members to be appointed by the Governor; and one member to be appointed jointly by the President of the Senate and the Speaker of the House of Representatives, who shall serve as chair of the commission; and be it further

Compensation. Resolved: That the members of the commission who are Legislators shall receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, for days in attendance at commission meetings. All members of the commission shall receive reimbursement for expenses upon application to the Legislative Council; and be it further

Staff assistance. Resolved: That, if assistance is desired, the commission may request necessary staff assistance from the Legislative Council, except that the Legislative Council shall not provide staff assistance during the second regular session of the 114th Legislature; and be it further

Report. Resolved: That the commission submit an interim report to the 114th Legislature by December 1, 1989, and a final report, together with any necessary implementing legislation to the First Regular Session of the 115th Legislature by December 1, 1990; and be it further

Appropriation. Resolved: That the following funds are appropriated from the General Fund to carry out the purposes of this resolve.

1989-90

LEGISLATURE

Study Commissions - Funding

Personal Services	\$3,960
All Other	\$11,400

Provides funds for legislative per diem, meetings and related expenses of the Commission to Study Public Financing of State Elections. These funds shall carry forward to June 30, 1991.

LEGISLATURE
TOTAL

\$15,360

Emergency clause. In view of the emergency cited in the preamble, this resolve shall take effect when approved.

APPENDIX B



114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 256

I.B. 2

House of Representatives, February 16, 1989

Transmitted to the Clerk of the House of the 114th Maine Legislature by the Secretary of State on February 15, 1989. On Motion of Representative GWADOSKY of Fairfield referred to the Committee on Legal Affairs and 2,000 ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Limit Spending and Contributions in Campaigns for
Governor.



1 Be it enacted by the People of the State of Maine as follows:

3 I. Campaign spending limits

5 If a candidate for Governor agrees to accept matching funds
7 from the State, he or she and any committee controlled by the
candidate shall not spend any more than:

9 A. \$400,000 in the primary election;

11 B. \$500,000 in the general election.

13 II. Campaign contribution limits

15 A. A candidate who agrees to accept matching funds and any
17 committee controlled by the candidate may accept
19 contributions only from individual persons and is prohibited
21 from accepting contributions from any other source,
including corporations, political action committees or
associations of any kind.

23 B. A candidate who agrees to accept matching funds and his
25 or her spouse are prohibited from contributing more than
\$25,000 between them to the candidate's primary and general
27 election campaigns combined.

29 III. Matching funds for small campaign contribution

31 A. When a candidate for Governor registers his or her
33 campaign treasurer or committee, the candidate shall file a
statement accepting or rejecting matching funds.

35 B. To qualify for matching funds, the candidate must raise
37 at least \$25,000 in contributions from individuals who are
qualified to vote in the State of Maine. Only the first
\$250 from any individual may be counted for this purpose.

39 C. Once a candidate accepts and qualifies for matching
41 funds, all additional contributions shall be matched by the
State in the amount of \$2 for each \$1 received by the
43 candidate or any committee controlled by the candidate.
Only the first \$250 from any individual, per election, may
45 be counted for this purpose.

47 IV. Matching funds to come from state income tax checkoff

49 A. The matching funds shall come from a fund created by a
51 voluntary checkoff on the state personal income tax form.
The checkoff shall allow an individual taxpayer to assign to
this fund \$1 of his or her state tax due. Couples filing
jointly may assign \$2.

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B. The Commission on Governmental Ethics and Election Practices shall actively promote the use of the checkoff as an exercise in good government, but if there is not enough money in the checkoff fund to provide matching funds, the balance shall come from the General Fund.

V. Commission on Governmental Ethics and Election Practices shall administer this Act

A. The commission shall administer this Act, maintain proper records and promptly issue regulations to achieve its purposes.

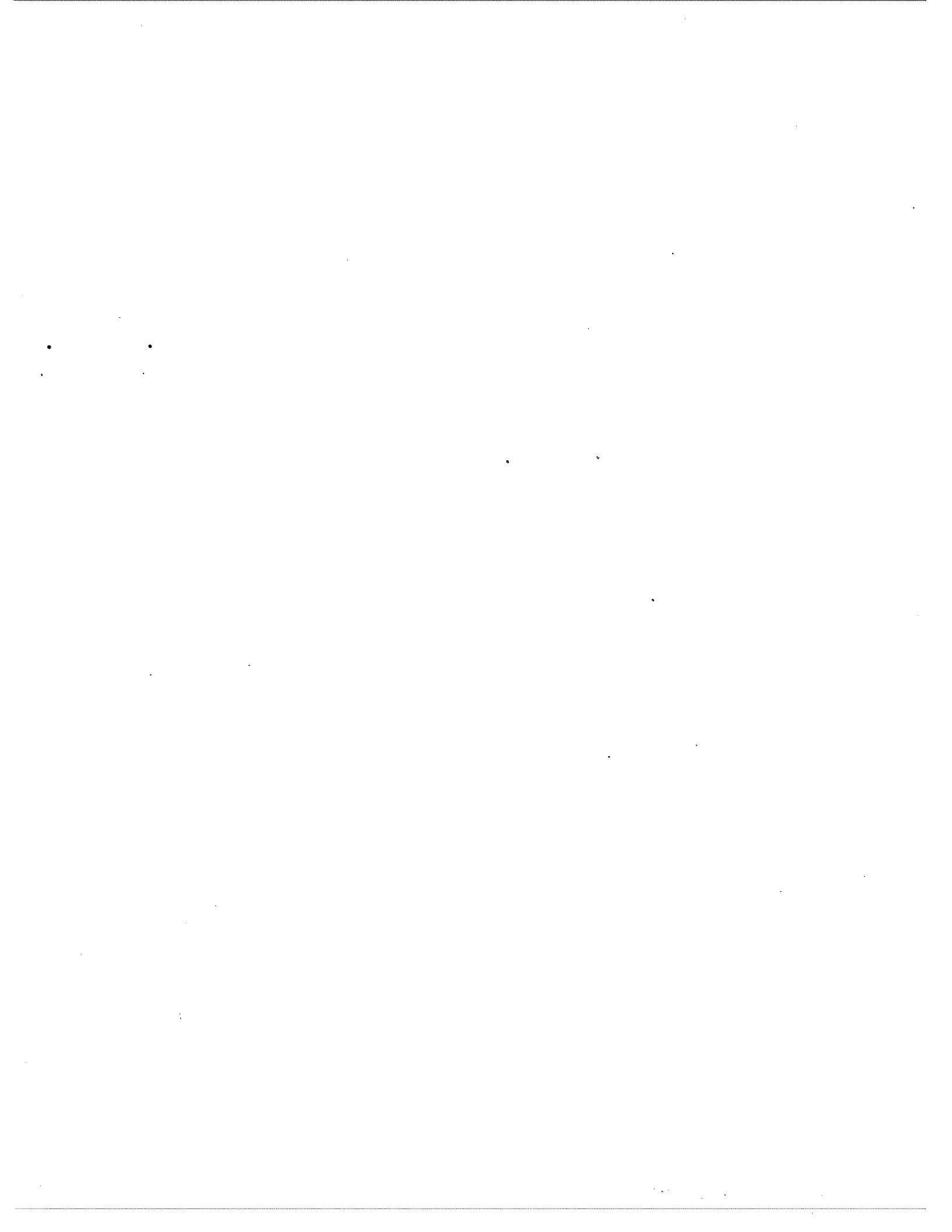
B. Any person who violates any provision of this Act or any regulation promulgated under this Act:

(1) Shall be subject to a civil penalty payable to the State of not more than \$50,000;

(2) Shall be guilty of a Class E crime.

STATEMENT OF FACT

This bill creates a voluntary system of public financing for candidates for Governor.



APPENDIX C

MARTHA E. FREEMAN, DIRECTOR
 WILLIAM T. GLIDDEN, PRINCIPAL ANALYST
 JULIE S. JONES, PRINCIPAL ANALYST
 DAVID C. ELLIOTT, PRINCIPAL ANALYST
 GILBERT W. BREWER
 TODD R. BURROWES
 GRO FLATEBO
 DEBORAH C. FRIEDMAN
 JOHN B. KNOX



STATE OF MAINE
 OFFICE OF POLICY AND LEGAL ANALYSIS
 ROOM 101/107/135
 STATE HOUSE STATION 13
 AUGUSTA, MAINE 04333

PATRICK NORTON
 HARTLEY PALLESCHI
 MARGARET J. REINSCH
 PAUL J. SAUCIER
 JOHN R. SELSER
 HAVEN WHITESIDE
 JILL IPPOLITI, RES. ASST.
 BARBARA A. MCGINN, RES. ASST.
 BRET A. PRESTON, RES. ASST.

October 4, 1989

TO: Members, Commission to Study Public Financing of State Elections

FROM: Todd R. Burrowes, Legislative Analyst
 Paul J. Saucier, Legislative Analyst

RE: Estimated Cost of Public Financing Initiative

I. Summary

This memo provides an estimate of the amount of General Fund money necessary to finance the 1990 gubernatorial election in the manner provided by LD 256 (pages 67-69 in Commission's materials), at referendum in the upcoming election. This memo does not include administrative costs of implementation which will be incurred by the Commission on Governmental Ethics and the State Bureau of Taxation. The focus is the amount of matching dollars the Legislature will need to appropriate. No estimate of the amount of check-off generated funds is made, since these funds in essence will come from the General Fund.

The following table summarizes the conclusions reached:

COST OF PUBLIC FUNDING FOR 1990 GUBERNATORIAL ELECTION	
CASE 1 (high estimate) =	1986 estimate (\$3,371,549) adjusted for inflation = \$4,144,57
CASE 2 (low estimate) =	1986 estimate (\$2,398,500) adjusted for inflation = \$2,948,423

The bulk of this memorandum describes the assumptions built into the Case 1 and Case 2 estimates and the calculations made.

II. Methodology*

The estimates summarized above were arrived at using standard estimation methods and the 1986 gubernatorial campaign data provided in Maine Common Cause's 1988 report titled "Out of Control" (pages 32-66 of materials provided to the Commission.) The estimates are based on the itemization for individual candidates as well as the tabular, categorized information in that report.

Two cases are examined. Each case makes certain assumptions. Each case estimates the amount of public matching money needed if the initiative were law in 1986 and all candidates elected to participate. Case 1 is the high estimate. Case 2 is the low estimate. The 1990 estimate is arrived at by adjusting the 1986 estimates for inflation.

A. Case 1

The fundamental assumption of Case 1 is that all contributions a candidate actually received would have been made in a manner which avoided the initiative's ban on corporate, PAC and other contributions not from individuals.

The estimation of matching funds is arrived at by calculating the total number of qualifying contributions and multiplying that number by \$500 (since the first \$250 of each qualifying contribution is matched 2:1).

The number of qualifying contributions from individuals is estimated using Maine Common Cause's itemization of candidates' top 100 individual contributors. The estimate is the sum of the number of contributions in excess of \$250, plus the estimated number of contributions from \$250 to the low end of the itemized list. Contributions of less than \$250, which are matched at 2:1, are assumedly captured by the "All Other" category.

Corporate contributions are similarly analyzed to estimate the number of qualifying contributions they would have represented. Common Cause's itemized list of the top 100 corporate contributors is the data source. The estimated number of qualifying contributions is the sum of the number of corporate contributions in excess of \$250, plus an estimated number of corporate contributions at the \$500 level.

* Data for Sherry Huber's campaign was handled somewhat differently since itemized information existed for nearly all contributions to her campaign. To the extent possible, the actual, rather than estimated, number of qualifying contributions to all campaigns was used in the calculations.

The number of qualifying contributions represented by the "All Other" category is obtained by dividing that figure by \$250. Operative here is an assumption that these contributions were made in a manner which qualifies for matching. The "All Other" category in Case 1 includes labor union, political committee and PAC donations.

B. Case 2

The methodology used for Case 2 is shaped by a different basic assumption. Case 2 assumes that candidates would not receive contributions which do not qualify for matching under the initiative. Thus, the number of individual matchable contributions is reckoned as in Case 1. Corporate, PAC, labor union, and political committee contributions to the extent possible using the Common Cause's data are not counted for matching purposes. This estimate assumes that the "All Other" category is comprised of only matchable contributions. This is divided, as in Case 1, into matchable contributions at the \$250 level. As in Case 1, the total number of matchable contributions is multiplied by \$500 to determine the amount of matching funds needed in this scenario.

C. Primary-only candidates - Case 1 and Case 2

Itemized expenditure information for 1986 gubernatorial candidates who ran only a primary campaign is not readily available. The initiative on the November ballot calls for state matching in both the primary and general election. Therefore, an estimate of the amount of matching money generated by these primary campaigns is necessary.

An estimate was obtained for the 5 primary-only candidates as follows:

A ratio of the number of qualifying contributions to the total contributions in dollars -

$$\frac{\# \text{ matchable contributions}}{\text{total } \$ \text{ contributions}} -$$

was calculated for 3* general election candidates for whom itemized information exists. The average ratio was then calculated. Thus, the following equation provides an estimate of the amount of matching money for each primary candidate:

$$\text{average ratio} \times \text{money spent in primary} \times \$500 = \text{amount of matching money.}$$

* No ratio was calculated or averaged for Sherry Huber's campaign, to avoid distortion of the estimate. Ms. Huber's matching rate was unusually low, since her campaign was essentially self-financed.

III. Estimates of Cost of Initiative if Operative 1986
Gubernatorial Election

A. Case 1 (High estimate)

1. ESTIMATED TOTAL MATCHING FUNDS* = \$3,371,459

TOTAL for Primary Election = \$1,774,385

TOTAL for General Election = \$1,597,074

2. PRIMARY ELECTION BREAKDOWN

<u>Candidate</u>	<u>Matching Funds</u>
McKernan	\$ 397,110
Tierney	\$ 370,940
Beliveau	\$ 360,000
Diamond	\$ 98,335
Leighton	\$ 201,500
Redmond	\$ 146,500
Ricci	\$ 200,000
TOTAL	\$1,774,385

3. GENERAL ELECTION BREAKDOWN

<u>Candidate</u>	<u>Matching Funds</u>
McKernan	\$ 548,390
Tierney	\$ 720,060
Menario	\$ 281,000
Huber	\$ 47,624
TOTAL	\$1,597,074

B. Case 2 (Low estimate)

1. ESTIMATED TOTAL MATCHING FUNDS* = \$2,398,500

TOTAL for Primary Election = \$1,265,300

TOTAL for General Election = \$1,133,200

* This total does not reflect deduction for money generated by the initiative's tax check-off. This amount is assumedly negligible and, at any rate, must also come from funds otherwise destined for the General Fund.

2. PRIMARY ELECTION BREAKDOWN

<u>Candidate</u>	<u>Matching Funds</u>
McKernan	\$ 288,750
Tierney	\$ 257,550
Beliveau	\$ 257,000
Diamond	\$ 70,000
Leighton	\$ 143,000
Redmond	\$ 144,000
Ricci	\$ 105,000
TOTAL	\$1,265,300

3. GENERAL ELECTION BREAKDOWN

<u>Candidate</u>	<u>Matching Funds</u>
McKernan	\$ 398,750
Tierney	\$ 499,950
Menario	\$ 187,500
Huber	\$ 47,000
TOTAL	\$1,133,200

IV. Calculations*

A. Case 1

1. McKernan

a. Individual contributors

104 @ \$2,000
371 between \$500 and \$1,999

b. Corporate contributors

138 @ \$1,000 or more
82 @ \$500

c. All other contributors

1,196 @ \$250

* The amount necessary to qualify for matching funds under the initiative, \$25,000, was deducted from the "All Other" category. Under the initiative, the first \$25,000, in contributions of \$250 or less, would not be matched.

APPENDIX C

TOTAL # of Matchable Contributions = 1,891
TOTAL Matching Funds (1,891 x \$500) = \$945,500

Approximate Primary Match
(42% x \$945,500) = \$397,110

Approximate General Match
(58% x \$945,500) = \$548,390

Ratio: $\frac{\# \text{ matchable contributions}}{\text{total \$ contributions}} = .0014$

2. Tierney

a. Individual contributors

1 (candidate) @ \$10,350
99 @ \$1,250 or more
349 @ \$501 to \$1,249

b. Corporate contributors

100 @ \$500 or more
46 @ \$500

c. All other contributors

1,587 @ \$250

TOTAL # Matchable Contributions = 2,182
TOTAL Matching Funds = (2,182 x \$500) = \$1,091,000

Approximate Primary Match
(34% x \$1,091,000) = \$370,940

Approximate General Match
(66% x \$1,091,000) = \$720,060

Ratio: $\frac{\# \text{ matchable contributions}}{\text{total \$ contributions}} = .0018$

3. Menario

a. Individual contributors

1 (candidate) @ \$17,600
99 @ \$700 or more
56 @ \$501 to \$619

APPENDIX C

b. Corporate contributors

100 @ \$800 or more
87 @ \$500

c. All other contributors

219 @ \$250

TOTAL # Matchable Contributions = 562
TOTAL Matching Funds = (562 x \$500) = \$281,000

Ratio: $\frac{\# \text{ matchable contributions}}{\text{total } \$ \text{ contributions}} = .0010$

4. Huber

a. Individual contributors

1 (candidate) @ \$1,029,926
17 @ \$500 or more

b. Corporate contributors

\$62 @ 2:1 match = \$124 matching funds
\$500 @ 2:1 match = \$500 matching funds

c. All other contributors

76 @ \$250

TOTAL # Matchable Contributions of \$250 or more =
94 x \$500 each = \$47,000
+ \$ 624 (corporate match)
\$47,624 (TOTAL Matching Funds)

5. Primary only candidates

Ratio = $\frac{\# \text{ of matching contributions}}{\text{Total } \$}$

Average ratio of JRM (.0014) JM & JET = (.0001) & (.0018)

.0014

APPENDIX C

<u>Candidate</u>	<u>Total Contributions</u>	<u>Matchable Contributions</u>	<u>Matching Funds</u>
Beliveau	\$514,214	720	\$ 360,000
Diamond	\$140,478	197	\$ 98,335
Redmond	\$287,651	403	\$ 201,500
Ricci	\$209,607	293	\$ 146,500
Leighton	\$285,888	400	<u>\$ 200,000</u>
TOTAL Matching Funds			\$1,006,335

B. Case 2

1. McKernan

a. Individual contributors

104 @ \$2,000 or more
371 @ \$501 to \$1,999

b. Corporate contributors

(not counted)

c. All other contributors (less PACs, labor unions, political committees)

900 @ \$250

TOTAL # Matchable Contributions = 1,375

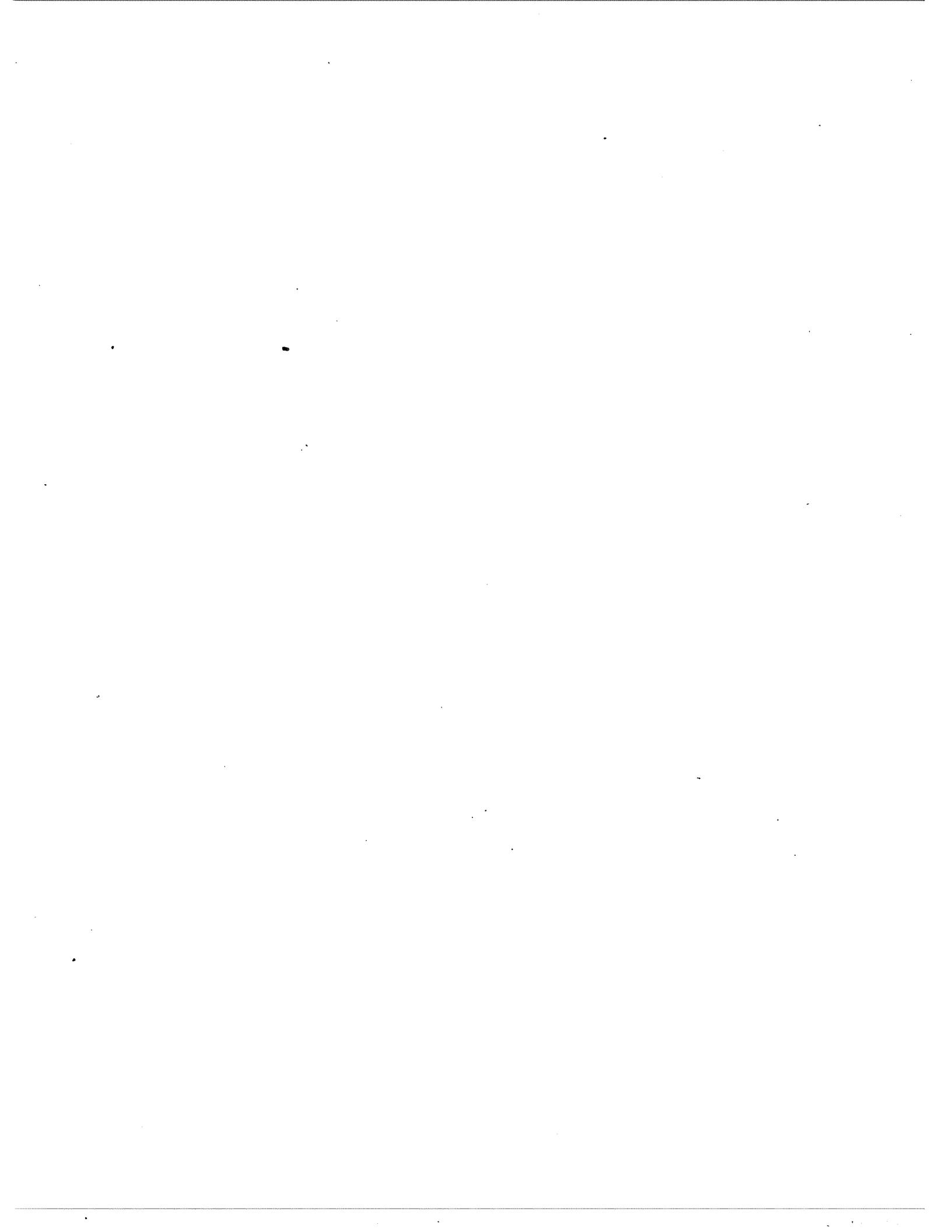
TOTAL Matching Funds = (1,375 x \$500) = \$687,500

Approximate Primary Match
(42% x \$687,500) = \$288,750

Approximate General Match
(58% x \$687,500) = \$398,750

Ratio: $\frac{\text{\# matchable contributions}}{\text{total \$ contributions}} = .001$

APPENDIX D



POLITICAL PARTY INCOME TAX FORM ADD-ON

CONTRIBUTIONS HISTORY

Tax Year	Date of Report	Democratic Party			Republican Party		
		Number	Amount	* % of Participation	Number	Amount	* % of Participation
1973	12/28/74	3,174	\$ 4,859.00	.86%	1,696	\$2,668.00	.46%
1974	12/29/75	2,499	3,768.00	.64%	1,297	2,008.00	.33%
1975	12/20/76	2,070	3,109.00	.53%	1,212	1,880.00	.31%
1976	12/27/77	1,980	2,978.00	.48%	1,043	1,641.00	.25%
1977	12/07/78	1,488	2,132.00	.35%	841	1,261.00	.20%
1978	12/01/79	2,289	3,205.00	.52%	1,311	1,929.00	.30%
1979	12/03/80	1,567	2,154.00	.34%	903	1,324.00	.20%
1980	12/21/81	1,313	1,777.00	.29%	1,001	1,463.00	.22%
1981	12/13/82	1,413	1,923.00	.31%	959	1,367.00	.21%
1982	12/20/83	1,685	2,274.00	.36%	988	1,406.00	.21%
1983	12/14/84	5,130	6,930.00	1.08%	3,187	4,453.00	.67%
1984	12/16/85	4,860	6,700.00	.99%	3,987	5,590.00	.82%
1985	12/15/86	4,413	11,089.82	.89%	3,540	9,081.31	.71%
1986	12/28/87	4,200	11,375.38	.82%	3,113	8,704.88	.61%
1987	12/30/88	3,958	10,294.40	.73%	2,786	7,459.76	.52%
To Date 1988	08/25/89	3,196	9,637.99	.58%	2,637	7,437.75	.48%

* Number of contributors divided by number of returns filed

Information compiled by Maine Bureau of Taxation

TB/jlj/309P