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Plan for Clean Gubernatorial Elections - 3/4/2008

**Bev Perdue’s Plan for Clean Gubernatorial Elections:**

*A North Carolina Endowment for Positive Gubernatorial Campaigns*

**Time for Change**

In February, Bev Perdue issued her plan for making North Carolina one of the leading clean energy states in the nation. One of her central commitments was that as North Carolina’s next Governor, Bev will put an end to the era of dirty coal-based power plants in our state. [See [Beyond Cliffside...](#)]

In this paper Bev makes clear her commitment to ending another very long-standing era – the era of perceived special-interest influence in gubernatorial campaigns. As North Carolina’s next Governor, Bev Perdue’s goal will be to turn North Carolina into one of the leading clean-elections states in the nation.

Many politicians continue to insist that we do not need major change in our campaign finance system. They claim that today’s minimal requirements for after-the-fact disclosure of campaign contributions are fundamentally adequate.

But studies have established that no state has an “A” grade disclosure system and that “the public’s ability to access information is very poor.”[2] The larger truth, moreover, is that even the best disclosure system by itself would hardly be sufficient. Bob Hall of Democracy North Carolina hit the nail on the head when he explained:

*“We need a cure, not just a better picture of the disease.”[3]*

**The Problem With the Current System**

As someone who was first elected to the General Assembly in 1986, Bev Perdue has lived with the private financing system we have today for the last two decades. Bev has always strived to follow the rules – and to quickly address any questions if they arose during the course of her campaigns.[4]

Bev also continues to believe that charges of outright corruption apply only to a relatively few bad actors among our elected officials. In these exceptional cases, firm enforcement of current campaign finance laws along with long-standing criminal sanctions against bribery and extortion should be able to bring them to justice for their actions.

But Bev’s concern with the need for major reform has to do with what the United States Supreme Court has aptly characterized as “the appearance of corruption” in our current system. In the landmark case of [Buckley v. Valeo](#), the Supreme Court held that beyond the issue of actual *quid pro quo* corruption, policymakers “could legitimately conclude that the avoidance of the appearance of improper influence” is “critical... if confidence in the system of representative Government is not to be eroded to a disastrous extent.”[5]

In a similar but more direct way, Bob Hall of Democracy North Carolina has explained the problem with the campaign finance status quo and made the call for change:

*“It smells bad.... The donors get tainted, and the public hates it. Nobody really likes this system, but somebody’s got to change it. Who’s going to change it? Who’s going to be the leader to change it?”[6]*

Bev Perdue has lived in this system for a number of years. She knows its shortcomings. As North Carolina’s next Governor, Bev will step forward and change the system.

**Campaign Finance “Hot Spots” Undermining Public Trust**

There are clearly some “hot spots” which are especially feeding the fever that is undermining public confidence in North Carolina politics and government.

One obvious hot spot involves campaign contributions by private investment managers and advisers from Wall Street and elsewhere who compete for state pension contracts from the State Treasurer.[7] Its hot spot nature is evidenced in the following:

In order to end this pay-to-play system nationally, the Clinton administration’s Securities and Exchange Commission (SEC) Chair Arthur Levitt had advocated a ban on political contributions from pension investment managers and advisers.[8]

Time ran out on Levitt’s reform leadership at the SEC and the Bush administration came to power before his proposal could be enacted.

But the lack of action throughout most of the nation continues to be a deep source of concern for such reformers as former SEC chief Levitt. In a recent speech, according to the [New York Times](#), Levitt “expressed great concern over the practice of some pension officials of soliciting campaign contributions from Wall Street firms...Mr. Levitt said he thought the problems were worse than ever.”[9]

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It is clear that DOT is a major "hot spot" as well. As Bev has emphasized in a major speech and policy paper, we face very formidable challenges in meeting our transportation needs over the next few decades and the DOT will need to be transformed into a highly cost-effective 21st century entity in order to re-establish public confidence.[12]

#### **The Problem with Selective Reforms**

Thus reform needs to address the perceived political influence of DOT Board members as well as contributions from pension advisers and managers competing for state contracts.

The problem is that the list cannot justifiably stop with these two hot spots. In the end, it makes no sense to select two hot spots and leave others unattended – such as the Local Government Commission, the Banking Commission, the Utilities Commission, the Industrial Commission, the University of North Carolina Board of Governors, the State Board of Community Colleges, and the State Board of Education.

Inevitably these or other new areas will emerge as hot spots, especially if others are cooled off. And it is simply not fair to settle for a system that plays selective games in prohibiting only some private contribution sources and disadvantage one type of candidate over another.

But by itself reform that cracks down on all private contribution sources also fails to constitute a constructive approach. Bev Perdue has been and remains a supporter of lowering overall contribution limits. Yet, as the News & Observer editors wrote in response to one of the legislative efforts Bev supported, "the trouble with trying to reform the campaign finance by concentrating on contributions" is that it does not address "the broader problems" having to do with "the high cost of running for political office." [13]

Rather than simply trying to stop special interest influence in elections, we must establish a real finance path that will allow candidates to compete. We certainly cannot expect a candidate to unilaterally disarm while an opponent exploits all legal sources. This is especially true when certain candidates can forswear private contribution sources because they have constitutionally-protected access to large reservoirs of family wealth that may even come from out of state.[14]

On the other hand, the North Carolina public does not seem ready for taxpayer financing of gubernatorial campaigns. Bev understands the reluctance of hard-working taxpayers to take on the burden of subsidizing the status quo of negative attack campaigning.

#### **A Comprehensive Response: An Endowment for Positive Gubernatorial Campaigns in North Carolina**

An innovative response to this dilemma came in legislation introduced by former Senator Wib Gulley of Durham in 1995. This legislation would have established a trust fund or endowment for gubernatorial candidates who agreed to conduct positive campaigns. It looked to the wealth of our individual philanthropists, businesses, foundations, labor unions and other civic organizations to take the lead in funding and promoting a positive campaign endowment for gubernatorial campaigns.

Along with a majority of her Senate colleagues, Bev voted for the Gulley legislation in 1995 (Senate Bill 1040).[15] Yet the legislation contained some unrelated constitutional provisions and did not obtain the required 3/5 super-majority. The Gulley legislation was praised by such groups as North Carolina Common Cause and the League of Women Voters.[16]

(It should also be noted that in 2000 Vice-President Al Gore and the Senate's leading campaign reformer Russ Feingold of Wisconsin similarly proposed an endowment at the national level for House and Senate campaigns.)[17]

The Gulley legislation will serve as the basis for Bev's renewed push to change how gubernatorial campaigns are financed in North Carolina.

Bev Perdue will lead a statewide effort to fill the coffers of the Endowment for Positive Gubernatorial Campaigns with \$16-20 million dollars for the 2012 election cycle. The larger goal, however, will be to raise a \$50 million endowment which will continue to be supplemented over the years. Such an endowment should be able to generate between \$4-5 million annually in income or \$15-20 million over each four-year period between gubernatorial campaigns. Half of the Endowment monies will be dedicated to qualifying candidates in the primary cycle and half to qualifying nominees in the general election.

While the dollar amount goals for the endowment may seem large by ordinary standards, they are mere drops in the bucket for the combined philanthropic, corporate, and civic wealth now in North Carolina. National philanthropists and reform organizations will also be able to contribute to this new endowment model for positive campaigns. And ordinary taxpayers will be free to participate by using an up to \$5 check-off on their state tax form or make larger separate contributions. The state will provide the incentive of treating any contribution as tax-deductible. The Endowment will be able to accept unlimited contribution amounts from sources because all of the money will in effect go into a public washing machine and then be equitably distributed to all qualifying candidates, as opposed to contributions going directly to particular candidates.

The whole area of campaign finance law is subject to ever-evolving constitutional rulings and changes. But based largely on the Gulley bill, Bev envisions legislation establishing the following:

- The Endowment will be managed by a bipartisan board of 12 individuals appointed by the four top legislative leaders of both parties. Each legislative leader would have to appoint at least one "unaffiliated" or independent board member.
- Gubernatorial primary candidates will have to meet a high qualifying bar by either collecting a substantial number of small private contributions or a large number of petition signatures throughout the state.
- All qualifying candidates will have to pledge that:
  - their advertising will not name or otherwise refer to another candidate;
  - their advertising will address questions on a menu of major-issues developed by the

Endowment; and

- they will not spend any other monies on paid advertising (including television, radio, mail, telephone, and internet) beyond that provided by the Endowment.
- All qualifying candidates will have to agree to a series of statewide television debates in contested primary and general elections.
- Endowment candidates will not be able to contribute any of their own personal or family wealth. They will be able to raise and spend money from small private contributions in an overall amount equal to the total amount provided by the Endowment. This additional money will be used to cover other campaign expenses including grassroots field activities.
- The maximum amount that can be contributed by an individual or political committee directly to an Endowment or non-Endowment gubernatorial candidate will be \$250. The prohibition in current law against lobbyist "bundling" of contributions shall be extended across-the-board in gubernatorial campaigns and a total ban on bundling by anyone in gubernatorial elections will be imposed.
- Gubernatorial candidates will have to decide whether to accept money from and follow the rules established by the Endowment when they first register their political committee with the State Board of Elections for the purposes of raising money.
- An exception will be made in the case of Endowment candidates competing in a primary or general election where an opponent has refused to opt into the Endowment and its positive campaign. Endowment candidates will be able to raise additional private funding at a maximum level of \$2,000 per contribution without an overall spending limitation and use that additional money as they see fit on advertising or any other aspect of their campaign. They will also be able to contribute up to \$500,000 of their own personal wealth.
- In order to qualify for Endowment support, a party nominee must obtain and present a binding legal agreement from the nominee's state party not to do media advertising in the governor's race. An Endowment candidate must also agree to publicly request that no independent expenditures take place and to publicly disavow such assistance.
- Violations of the conditions established for Endowment-funded candidates will result in significant money penalties against the offending campaign and/or political party, plus the candidate personally.

### Conclusion

Bev Perdue believes that establishment of the Endowment for Positive Gubernatorial Campaigns will serve to create an irresistible momentum behind the movement toward clean elections in North Carolina.

Bev envisions the Endowment ultimately serving as the clean money source for all executive state-wide races. And as already noted, Vice-President Al Gore and Senator Feingold in 2000 proposed such an endowment at the national level for House and Senate campaigns.

But in the case of legislative races, it is probably not realistic to think of the Endowment as being able to manage and enforce all the same conditions relating to positive campaigning that could be established for gubernatorial campaigns. Thus we may well need to consider "clean election" models for legislative elections that are now being developed in other states.

Yet the clean gubernatorial campaigns funded by the Endowment will set a new positive and clean tone for all of North Carolina politics and help restore trust in our state government.

[2] See, e.g., [www.Stateline.org](http://www.Stateline.org), "Campaign Finance Disclosure Lagging, Report Finds" (September 18, 2003). In the study cited from the Pew Charitable Trusts, North Carolina received a grade of C-.

[3] [Associated Press](http://www.associatedpress.com), "NC Governor Candidates Release Board Donor Information," (February 14, 2008).

[4] See, e.g., [New Bern Sun Journal](http://www.newbernsunjournal.com), "Perdue fund cleared by state board" (August 20, 1998) and [New Bern Sun Journal](http://www.newbernsunjournal.com), "Perdue returns campaign money" (May 7, 1999).

[5] [Buckley v. Valeo](http://www.supremecourt.gov), 424 U.S. 1 (1976), p12.

[6] [WRAL](http://www.wral.com), "Legal Donations Raise Broader Questions About Political Fund-Raising" (August 23, 2006). See <http://www.wral.com/news/local/story/1057618/>.

[7] See, e.g., [Forbes](http://www.forbes.com), "Pensions, Pols, Payola" (March 12, 2007), [The Fayetteville Observer](http://www.fayettevilleobserver.com), "Our View: Pilot Program would extend public financing to Council of State" (June 24, 2007), [Wilmington Star-News](http://www.wilmingtonstarnews.com), "Let the voters buy politicians" (July 31, 2007), [Charlotte Observer](http://www.charlotteobserver.com), "Change money game" (April 4, 2007) and [Raleigh News & Observer](http://www.raleighnewsobserver.com), "A Public Trust" (April 2, 2007).

[8] Contributions by bond underwriters/dealers were banned in 1994. But as a 1999 S.E.C. analysis explained about contributions from investment advisers and managers: "Pay to play practices have been a significant problem in the municipal securities market...Pay to play practices are rarely explicit: participants do not let it be typically known that contributions are made or accepted for the purpose of influencing the selection of an adviser. As one court noted, 'actors in this field are presumably shrewd enough to structure their relations rather indirectly.'" See U.S. Securities and Exchange Commission Proposed Rule: Political Contributions by Certain Investment Advisers (Release No. IA-1812; File No. S7-19-99) [<http://www.sec.gov/rules/proposed/ia-1812.htm>].

[9] In his recent speech Levitt explained: "I...am deeply concerned with the conflicts of interest seemingly built into public pension plans....With the escalating costs of political campaigns...the enormous sums of money to be invested...and the prospect of huge payoffs for private equity firms, hedge funds, and their

agents if they are able to attract even a sliver of this capital...we have created a situation in which workers' retirement savings are being used for private gain. What I'm talking about is pay-to-play – the selection of investment advisers to manage public funds based on their – or their representatives' – political contributions." See, e.g., [The New York Times](#), "Ex-Chief of S.E.C. Says Pension Funds in Danger" (October 31, 2007) and Remarks by Arthur Levitt, Jr. New York Private Equity Conference; New York, NY (October 30, 2007) [[http://www.pebc.ca.gov/images/files/071113\\_Pension.pdf](http://www.pebc.ca.gov/images/files/071113_Pension.pdf)].

[10] [The Charlotte Observer](#), "3 in House: Curb Funds in Race for Treasurer..." (Feb. 28, 2007).

[11] Moore's deputy campaign manager also said his opposition to board members raising money wouldn't apply retroactively. See [Asheville Citizen-Times](#), "Asheville DOT Board member raised \$21,000 for Moore" (February 14, 2008) <http://citizen-times.com/apps/pbcs.dll/article?AID=200880214045>.

[12] See [http://www.bevperdue.com/release\\_details.asp?id=15](http://www.bevperdue.com/release_details.asp?id=15).

[13] [The News & Observer](#), "Fresh idea from Wicker" (March 14, 1995).

[14] A very controversial element of the [Buckley](#) decision ruled that personal contributions from wealthy candidates cannot be limited in a privately-financed system.

[15] North Carolina General Assembly Senate Bill 1040 (1995). See <http://www.ncleg.net/Sessions/1995/Bills/Senate/PDF/S1040v1.pdf>.

[16] [The News & Observer](#), "Plan would limit political spending" (June 7, 1995). See also the following editorials: [Greensboro News & Record](#), "Wicker's Plan Might Clean Up Elections" (March 23, 1995), [The News & Observer](#), "Fresh idea from Wicker" (March 14, 1995), [Hickory Daily Record](#), "Wicker Plan Worthy" (May 10, 1995), [The Charlotte Observer](#), "Cleaning Up Campaigns" (June 27, 1995).

[17] [The Washington Post](#), "Gore Plan Would...Endow Elections" (March 27, 2000).

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