



**To: Editorial Page Editors**  
**Fr: Meredith McGehee, Policy Director, The Campaign Legal Center**  
**Re: Presidential Public Financing in the Wake of Clinton Announcement**  
**Date: January 24, 2006**

The recent announcement by Senator Hillary Clinton (D-NY) that she would not accept public funding for her 2008 White House run is only the first of many such announcements by presidential aspirants. The reasons for candidates abandoning the current presidential public financing system are, sadly, logical, given that opponents have blocked attempts over the years to make sure the system kept up with changing times.

The 110<sup>th</sup> Congress should make fixing the presidential system a top priority to ensure that the Presidency of the United States is not put on the auction block, nor is won by a candidate simply because of their ability to raise the most money. For more than 30 years, the presidential public financing system, from Reagan to Bush to Clinton, has helped make our election for the highest office more a battle of ideas than money. More than ever, our nation needs a system which puts greater emphasis on the character and ideas of candidates rather than their skill at soliciting contributions. Like the reasons for candidates abandoning the system for the 2008 election, the fixes are clear and logical as well.

Attached below is an updated version of a memo originally distributed in September 2006 outlining the history of the system, how it works, why it is broken, and a summary of legislation proposed in the 109<sup>th</sup> Congress to repair the system in time for the 2012 election. Similar legislation is expected to be introduced for the 110<sup>th</sup> Congress in the next week.

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## **Repairing the Presidential Public Financing System**

For the first time since the presidential public financing systems was enacted, major party candidates are opting out of the presidential public financing system in both the primary and general elections in 2008. The 30-year-old system, a resounding success over the years, is now in danger of becoming obsolete.

The presidential field for 2008 is wide-open on both sides of the aisle: For the first time since 1952, there will be no sitting President or Vice President running for our nation's highest office. Undeclared presidential candidates have already begun raising money in earnest and courting voters in New Hampshire, Iowa and other important early primary states. The upcoming presidential election will surely be one of the longest — and most expensive — presidential races in our nation's history.

All presidential candidates, whether or not affiliated with a major political party, have the option of using the presidential public financing system to help defray some of the exorbitant costs of campaigns. Campaign finance expert, and Brookings Institution Senior Fellow, Tom Mann calls the presidential system the “crown jewel” of campaign finance regulation in this country, designed to increase competition among candidates and encourage the participation of small money donors in presidential elections. But by all accounts, the system is out-of-date. Changes must be made to make this system again viable for presidential candidates in the 21<sup>st</sup> century.

“For nearly 30 years the presidential public financing system has been successful in its original goals of containing the spending arms race and increasing the importance of small donors in presidential campaigns,” said the Campaign Legal Center Policy Director Meredith McGehee. “But the system is like any other 30-year-old piece of machinery: It needs attention and maintenance in order to continue running well. In the case of publicly-financed presidential elections, the system has not received the necessary maintenance to keep it running well.”

### **A Brief History of the Presidential Public Financing System**

The presidential public financing system was established in 1974 as part of the landmark campaign finance law the Federal Election Campaign Act (FECA). FECA sought to address the rising costs of federal campaigns, particularly after the increased spending in the 1972 presidential election and the subsequent Watergate scandal which involved huge amounts of corporate funds being secretly funneled to Richard Nixon's campaign. As part of the new reform law, the presidential public funding system had several goals, including:

- limiting the influence of large contributors;
- increasing the opportunity for presidential candidates to compete;
- increasing competition among candidates in both the primary and general elections;
- increasing the importance of small donors;
- containing the spending arms race; and

- reducing the fundraising burden on candidates.

The first election to utilize the new system in 1976 demonstrated the important role that public financing can play in presidential campaigns. At the end of 1975, challenger Jimmy Carter had only \$42,000 in the bank. The infusion of matching funds kept him in the Democratic primary and helped push him to victory against President Gerald Ford. Primary matching funds have played a pivotal role in nearly every presidential campaign since then. Presidents Ronald Reagan and George H.W. Bush also would have been out of their respective races at certain points without public money.

The public financing system has also played a crucial role in financing the campaigns of important challenger candidates. If it weren't for public money John McCain, Pat Buchanan, Jesse Jackson and John Edwards would have been out of money and out of the race before any primary ballots had been cast. Non-major party candidates also are eligible for public financing. Most notably, Ross Perot received \$42 million in public funds during his 1992 campaign.

<b>Presidential Public Financing System: Distribution of Funds Since 1976</b>	
Total amount distributed by the presidential public financing system since 1976	\$1.3 billion
Amount given to Democrats (conventions and primary and general elections)	\$646 million
Amount given to Republicans (conventions and primary and general elections)	\$628 million
Amount given to independent candidates	\$60 million
Amount distributed for primary elections	\$352 million
Amount distributed for general elections	\$839 million
Amount distributed for party conventions	\$152 million

In 2000, George W. Bush became the first major party candidate to opt out of the public financing system in the primary elections. Rather than accepting the primary matching funds and abiding by the spending limits, then-candidate Bush raised all the money for his primary campaign from private sources. Using these funds, George W. Bush was able to outspend his chief primary challenger, John McCain, and went on to win the Republican nomination. President Bush's decision to stay out of the public funding system in the primaries signified a huge shift in the way presidential campaigns are run and, consequently, the efficacy of the public financing system.

The 2004 elections reinforced the fact that the presidential public financing system has broken down as opponents of public financing had over the past decade successfully rebuffed attempts to pass legislation in Congress to update the system. On the Republican side, President Bush again opted out of primary matching funds and financed his re-election campaign using private money. On the Democratic side, Senator John Kerry also opted out of the system in the primaries. Despite his unprecedented success with small donors, even Howard Dean, an early leader in the Democratic primaries, made the decision to opt out of the public funding system.

“For the last several Congresses, supporters of the current presidential financing system have tried to update the system to keep up with the changing times,” said McGehee. “However, opponents of the system, such as Senate Minority Leader Mitch McConnell (R-KY), have repeatedly rebuffed these efforts and instead have looked for opportunities to weaken the system. Simply by blocking efforts to update the system, opponents are winning.”

## **How the System Works**

Funding for the presidential public financing system comes from the voluntary tax check-off on individual federal income tax forms. Money designated for public financing through the check-off is transferred to the Presidential Election Campaign Fund (“the Fund”), which is maintained by the Department of the Treasury. Individuals may earmark three dollars of the taxes they already owe to go to the Fund (*i.e.*, earmarking three dollars to the Fund *does not* increase the amount of taxes owed). The money in the Fund is the sole source of funding for the three components of the public funding system: the primary elections, party conventions, and general elections. No additional general treasury funds other than those designated through the tax check-off may be used to fund the public funding system.

Opponents of the presidential public financing system often argue that the public does not support this system. The tax check-off rate has declined in recent years to about 11 percent of individual tax returns. The declining check-off rate is partially due to the increased use of federal income tax preparation software that has historically defaulted to “no” when individuals were asked if they want to contribute to the Fund. Recently, in response to an initiative by the Campaign Finance Institute (CFI) and Federal Election Commission (FEC) Commissioner Michael Toner and former Commissioner Scott Thomas, two major retail tax software makers, Intuit and H&R Block, changed their tax preparation software to eliminate the default to “no” check box. “The rate is not as low as it appears at first blush when compared to the less than one percent of Americans who contribute more than \$200 to any federal election,” said McGehee.

The Treasury Department sets aside enough money for the party conventions and general election grants on January 1 of an election year. If there is not enough money available in the Fund to pay candidates for their matching fund requests, candidates are given partial payment and fully paid when more funds become available. While there has always been sufficient money in the Fund to cover the costs of the system, the recent decline in the check-off rate has reduced the amount of money in the Fund.

Presidential candidates qualify for matching funds by first agreeing to spending limits and other restrictions (described below) and then raising \$5,000 in contributions of \$250 or less in twenty states for a total of \$100,000. Once a candidate meets the eligibility requirement, he or she may then receive a one-to-one match from the Fund for

the first \$250 contributed by an individual. Only individual contributions received after January 1 of the year before the election are matched.

As mentioned above, candidates who seek primary matching funds must agree to certain financial restrictions. For example, a candidate may only contribute \$50,000 to his or her own campaign, as opposed to privately funded candidates who may contribute an unlimited amount to their own campaign. Publicly funded candidates are also subject to aggregate and state-by-state spending limits in the primary election. The 2004 aggregate spending limit was \$37.3 million plus an additional \$7.4 million to cover fundraising costs. The state spending limits, determined by FECA, allow candidates to spend \$0.16 for each of the state's voting-age-residents, plus adjustments for inflation. The 2004 state spending limits ranged from \$746,200 to \$15.6 million depending on the size of the state.

Presidential candidates who qualify for public matching funds are eligible to receive up to one half of the law's base primary spending limit, which was \$18.7 million in 2004. Ronald Reagan's 1984 campaign is the only campaign so far to have reached the maximum matching funds amount. Concerns exist regarding the schedule the U.S. Treasury Department uses to disburse those funds, which only takes into account the amount actually in the Fund in January of the election year, rather than the monies coming into the system in April of that year. Opponents of public financing have repeatedly opposed attempts to clarify this process either by legislation or by regulation. To ensure that the public money goes to competitive candidates, each candidate must achieve and maintain certain thresholds for continued eligibility throughout the primary elections. Thus, a candidate's public funding will be terminated within 30 days if he or she does not receive at least ten percent of the vote in two consecutive primaries. A candidate may regain eligibility by winning 20 percent of the vote in a subsequent primary.

The Fund is also used to pay for the parties' nominating conventions. Parties accepting the public funding grant may not spend any additional money on their conventions. In the 2004 election, the Republican and Democratic parties received \$14.9 million to finance their conventions.

The majority of Fund money is spent on the two major party candidates in the general election. In 2004, President Bush and Senator Kerry each received \$74.6 million for their general election campaigns. As with primary election funding, candidates who accept the general election grant must agree to certain conditions. Publicly funded candidates cannot raise additional private contributions to finance their campaigns; they must abide by spending limits; they may not spend more than \$50,000 of their own money on the campaign; and all publicly financed candidates are subject to an audit after the election.

## **Why the System is Broken**

For most of its existence the presidential public funding system has been successful in fulfilling its original purposes, according to most observers. Due to a lack of maintenance, however, most politicians, campaign consultants and outside experts believe the system no longer meets the needs of today's presidential campaigns and leaves those who accept public financing at a disadvantage. Legislative efforts to update the system have been blocked by the system's opponents, rendering the system out-of-date. Presidential public financing opponents have undermined the system by prohibiting efforts to keep it viable. As campaign finance expert and Colby College Professor Anthony Corrado pointed out, staying in the public financing system no longer makes "strategic sense" for candidates.

A confluence of several circumstances in presidential campaigns has decreased the effectiveness of the public financing system. The primary schedule is now heavily "frontloaded" — candidates are forced to raise and spend more money earlier in their campaigns. Yet candidates who accept primary matching funds do not receive the public funds until January 1 of the election year, and cannot compete with privately funded candidates who campaign vigorously in key early primary states, like New Hampshire and Iowa. By the time the first primary ballots are cast, many of the publicly funded candidates are already out of the race because they have not been able to spend as much money in the crucial early primary states.

The state-by-state primary spending limits put publicly funded candidates at a distinct disadvantage. Candidates who opt out of matching funds are not limited in the amount of money they can spend in New Hampshire, Iowa and other states where it is crucial to build early momentum. Unfortunately for those candidates who use the public financing system, there is no "escape hatch" if their primary opponent opts out of the system and is able to spend limitless amounts of money. Even if publicly funded candidates have money to spend, under the current state-by-state limits they cannot use it to compete with the unrestricted spending by rivals who have opted out of the system. (To be clear, this is not a critique of the *aggregate* spending limit – which is a vital component of the public financing system.)

The frontloading of presidential campaigns heavily favors candidates who are able to raise large amounts of money early. According to the Campaign Finance Institute, candidates with early fundraising success fall into three categories: candidates who are willing to invest heavily in their own campaigns, (Ross Perot and Steve Forbes); candidates who have a strong factional following (Howard Dean); and well-connected frontrunners favored by their party (George W. Bush).

"Public financing helps sustain competition by allowing candidates who do not fall into one of these three categories make viable presidential bids," said McGehee. "If this valuable system is to survive, it must be revised to more effectively address 21<sup>st</sup> century presidential campaigns.

The campaigning and fundraising for the 2008 presidential election is already in full swing. Still undeclared candidates are busy raising millions of dollars to fund their

political travel and ground organizing. Many are speculating that any candidate hoping to make a viable presidential run will need to raise at least \$100 million dollars by the end of 2007 – 11 months *before* the election. The total bill for the two major party candidates is expected to top \$500 million dollars apiece. The \$83 million in public financing available to each the major party candidates in the general election is dwarfed by the reality of today's fundraising. Candidates who have not already started their fundraising efforts in earnest have little chance of competing with the deeper pockets of early fundraisers.

With potential presidential candidates building substantial war chests over the last year, FEC Chairman Michael Toner, a Republican supporter of the system, predicted well-funded candidates might well opt out of public funding in *both* the primary and general elections. Toner's speculation was confirmed when Senator Clinton unofficially announced that she would opt out of primary matching funds *and* the general election grant if she is the Democratic nominee. Other strong candidates are likely to follow suit. This would leave the system to fund only less competitive candidates who cannot raise substantial campaign funds and in all likelihood have little chance to mount competitive campaigns even with public funding.

Professor Corrado notes that, in the 1980 presidential campaign, qualifying for matching funds early was seen as a sign of a campaign and candidate's strength. Now, it is seen as a weakness. Today, qualifying for matching funds early is seen as a red flag, indicating that a candidate has spent too much time courting small dollar donors and may not have the large contributions necessary to sustain a competitive campaign.

### **Fixing the System and Why We Should**

As FEC Chairman Toner has stated, fixing the current problems with the presidential public financing system "is not rocket science." There is consensus among both Republican and Democratic supporters regarding the changes necessary to make the system viable again, and these proposed changes are relatively straightforward.

Most of the changes identified by Republicans, Democrats and interested groups involve changes to funding the primary elections, including: increasing the aggregate primary spending limit; removing the state-by-state primary spending limit; and distributing primary matching funds earlier.

"Publicly funded candidates need the flexibility to make strategic decisions on how they spend their campaign money," McGehee said. "These changes would give publicly financed candidates more control over how they spend their money, and, thus more control over their own campaign efforts."

Other suggested updates to the public financing system include encouraging the participation of small dollar donors in presidential elections by increasing the one-to-one match of small dollar donations to a multiple dollar match. Additionally, some have

suggested creating an “escape hatch” for candidates whose opponents opt out of public financing. Most of these changes require more money in the Fund, which can be done by increasing the current three dollar tax check off designation — a minuscule fraction of the \$2.7 trillion federal budget.

“Because the presidential public financing system plays the unique roll of both promoting competition among candidates and reducing the reliance on well-connected fundraisers, it must be repaired and revived,” said McGehee. “The U.S. presidential election is the most important election in the world. For such an important race it is crucial to foster a competitive environment where voters have their choice of candidates. The White House should not go to whichever candidate has the best connections and largest bankroll.”

## Legislative Update

On July 26, 2006, Senator Russ Feingold (D-WI) and Representatives Chris Shays (R-CT) and Marty Meehan (D-MA) introduced the Presidential Funding Act of 2006, S. 3740 and H.R. 5905 respectively. They are expected to reintroduce this bill for the 110<sup>th</sup> Congress next week. This bill would make the public financing system a viable option for future presidential candidates. The bill would not dramatically change the current public financing system; it seeks simply to bring the system up-to-date with the way presidential campaigns are run now, 30 years after the system’s creation. The proposed legislation addresses many of the problems listed above, including:

- **Increasing the spending limit for publicly funded candidates in the primaries from approximately \$45 million to \$150 million.** One of the original purposes of the public financing system was to control the spending arms race. With more well-funded candidates opting out of primary matching funds, a limitless amount of money is being spent in the primary campaigns. In order to bring the well-funded candidates back into the system, the spending limits for the primary elections must be increased. The current limit does not reflect the amount of money necessary to finance a viable, competitive campaign.
- **Repealing the state-by-state primary spending limit.** Removing these limits (while retaining an increased aggregate limit) would enable candidates to make crucial strategic decisions regarding how and where to spend their money. This is particularly important with the increasingly frontloaded primary system. If a candidate chooses to campaign heavily in a particular state and spend a large amount of money in that state, he or she would have the freedom to make that spending choice.
- **Increasing the primary matching rate from 1:1 to 4:1.** The new 4:1 match would apply to the first \$200 contributed by an individual through March 31 of the election year. Candidates still in the race after March 31 would receive an additional 1:1 match, up to \$200, for every contributor. The new multiple dollar

4:1 match would not only increase participation of small dollar donors in presidential campaigns, it would also increase the incentives for candidates to pursue those donors.

- **Changing the date candidates receive matching funds from January 1 of the election year to July 1 of the year before the election.** Currently, candidates receive public matching funds on January 1 of the election year, and by this time, they are usually behind candidates who opt out of the system and who have been raising and spending unlimited amounts of money earlier in the cycle. To alleviate the disadvantage that is caused in part by the heavily frontloaded primary campaigns and rapidly increasing early spending in these races, primary matching funds would be distributed much earlier in the election cycle. Candidates would receive matching funds in a time frame that more accurately reflects the spending cycle of recent presidential campaigns.
- **Creating an “escape hatch” for candidates whose opponent opts out of the public financing system.** If a publicly financed candidate’s opponent spends more than \$300 million in the primary and general elections, the publicly funded candidate’s general election grant will be doubled to \$200 million. Candidates who stay in the public financing system are often at a disadvantage running against a candidate who opts out of the system. Publicly-funded candidates simply can not compete with the unrestricted spending of privately-funded candidates.
- **Increasing the amount of money available in the Fund by increasing the tax check-off from \$3 per individual and \$6 per couple to \$10 per individual and \$20 per couple.** Most of the above changes require additional money for the Fund. The Fund may only receive general treasury money through the tax check-off designation. In order to increase the amount of money in the Fund and provide financing for these crucial changes, the tax check-off needs to be increased from the current \$3 limit.

In addition, Presidential Public Funding Act would also:

- **Increase the general election grant for publicly funded candidates from \$75 million to \$100 million.**
- **Increase the limit for coordinated spending by a national party on behalf of its presidential candidate from approximately \$15 million to \$25 million.** (Note: an additional \$25 million may be spent by a national party in coordinated spending after April 1 of the election year, for a grand total of \$50 million.)
- **Increase the primary qualifying amount from \$20,000 to \$25,000 that must be raised in 20 states in contributions of no more than \$200.**

- **A candidate would be required to accept public funding in the primary campaign in order to be eligible for general election funding.**

Unfortunately, the changes included in these bills would not take effect in time to make public financing a viable option for 2008 presidential candidates. However, supporters see these bills as valuable vehicles which not only outline the steps needed to fix the presidential financing system, but also as the start to building broad bipartisan support for these reform efforts.

## **Conclusion**

“The presidential public financing system and presidential campaigns have reached a critical crossroads,” McGehee states. “With 2008 presidential candidates already beginning to opt out of public financing in the primary and general elections, the way presidential campaigns are run will change drastically for the worse. A return to pre-Watergate, arms race fundraising will only alienate voters further from their elected officials. There is already a growing public perception that deep-pocketed special interests pull the strings in Washington and it will only spread,” added McGehee.

“The system must be repaired. We cannot afford to have this issue break down along partisan lines. The presidential public financing system has historically received strong bipartisan support and has played a critical role in financing the presidential runs of both Democrats and Republicans. It is a system which has not favored one party over another. Nor has the system favored incumbents over challengers. Opponents of the system are strong and well-placed, and there is more work to be done, especially with Republicans in Congress, but we believe that the more people learn about how the system will work once it is updated, the stronger they will support reforming and reviving it.”

“The presidential public financing system has played a vitally important and constructive role in our nation’s political process over the last three decades.” McGehee concluded. “But if the system is to remain relevant, it must be updated to meet the realities of today’s presidential campaigns.”

*Thank you for your time and consideration of these materials. I sincerely hope that you will seriously consider editorializing on this extremely important subject. Please do not hesitate to call me at (202) 736-2200 if I can answer any questions.*