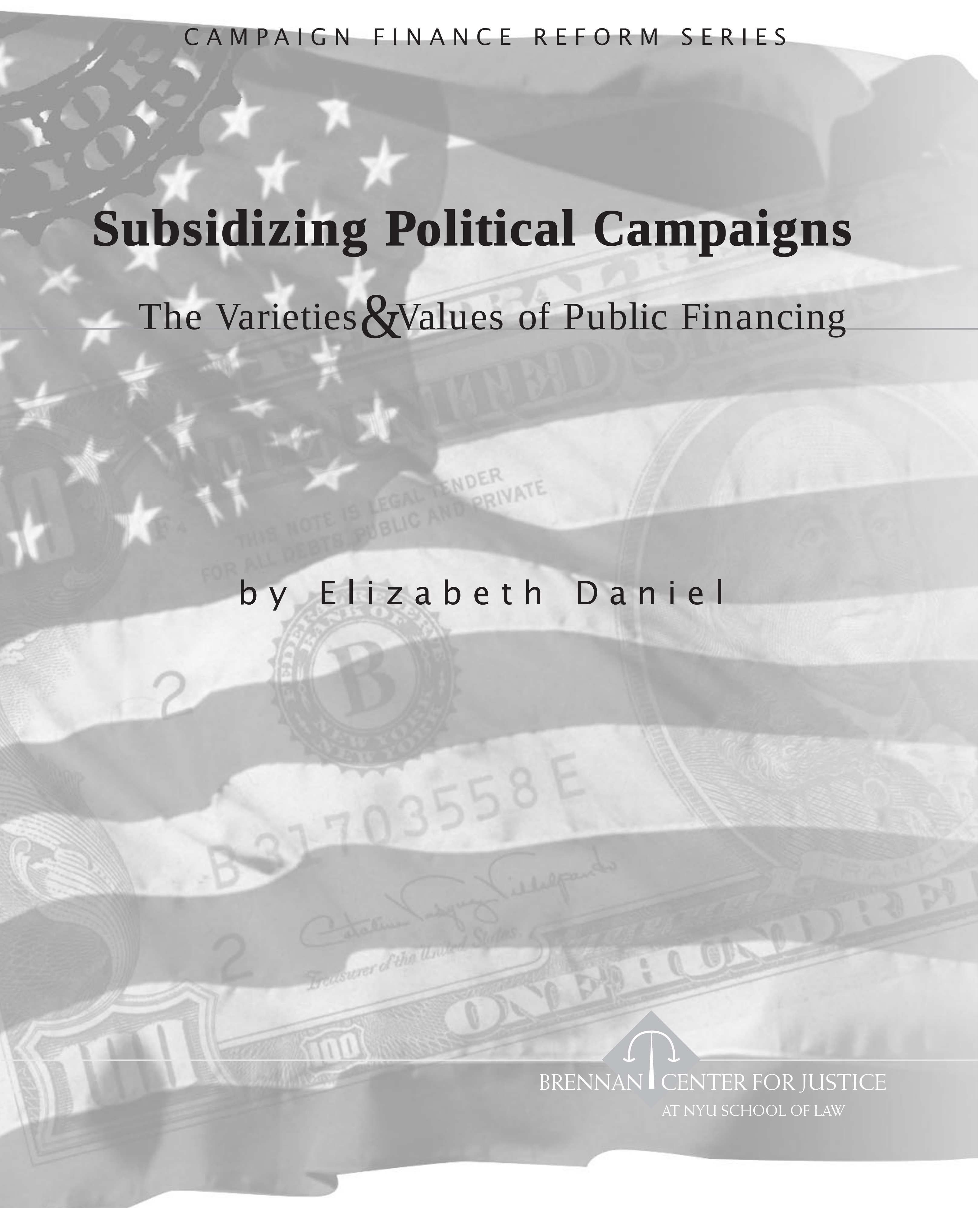
CAMPAIGN FINANCE REFORM SERIES

Subsidizing Political Campaigns

The Varieties & Values of Public Financing

by Elizabeth Daniel

BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW



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The Democracy Program is one of the Center's primary program areas. In keeping with its mission to enhance the openness of our democracy, the Brennan Center is a public education resource for campaign finance reform advocates, local and national public officials, and journalists.

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The Values of Campaign Finance Reform **By Burt Neuborne**

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Introduction

No political campaign can run without money. Without it, there are no television ads, no newspaper ads, no bumper stickers — not even leaflets. Moreover, there is nothing wrong with candidates sending letters to voters' homes or using television advertisements to deliver their campaign messages — such activities are essential to a vital electoral process. But as long as the political campaign takes place within our market economy, these communications will cost money.

This need for money to run our core democratic institution — elections — raises a serious question: How is our political system affected by a money chase that seems to preempt the rest of the electoral process and turn the ability to raise huge sums of money into a prerequisite for a viable candidacy, driving many potential candidates out of the political system and perhaps reshaping the loyalties of those who stay in? Three fundamental concerns drive the debates surrounding this question: (1) assuring that enough money is available to finance a broad array of political speech, while (2) preventing wealthy interests from exercising too much influence over elected officials and the political process, and (3) providing less wealthy candidates a fair opportunity to compete in the political arena.

Lately, more and more states and cities have addressed these concerns by trying to provide some type of public subsidy for campaigns. In the year 2000, Maine, Arizona, and Vermont are scheduled to conduct their state elections under systems providing full public funding. Massachusetts will follow suit in 2002. Meanwhile, a number of other states and cities are considering instituting similar systems that provide substantial public subsidies to replace or supplement private campaign contributions. Almost half the states — and many metropolitan areas — have implemented some form of partial public funding, and some are considering expanding those programs.

Public financial support for political campaigns has a 25-year history. In the 1970s, in response to the abuses uncovered during the Watergate scandal, Congress implemented a public funding system for presidential campaigns. Since 1976, the campaigns have been largely funded by a check-off on tax returns. The presidential primaries operate under a system of voluntary partial public funding, while the general election runs under a system of voluntary full public funding. Bills have been proposed in Congress to establish a system of partial funding for congressional campaigns, but none have been adopted.

Part of the impetus behind the burgeoning interest in public funding at the local and state levels comes from the peculiar legal status of another form of regulation popular with reformers — campaign spending limits. The Supreme Court in *Buckley v. Valeo*, the landmark campaign finance case from 1976, held that legislators could not mandate how much candidates may spend on their campaigns. In the same decision, however, the Court said candidates could be asked to agree to spending limits in exchange for public money. In essence, public funding was turned into a brake that reformers could use to halt the skyrocketing cost of campaigns, along with the more explicit goal of using public funding as a means of equalizing the resources available to candidates.

While these goals may make the decision to subsidize campaigns fairly easy — at least from the point of view of some reformers — determining how to subsidize them is not. Behind the appealing slogan of "public financing" is a menagerie of plans with different types of subsidies, different standards for candidate qualifying, and different implementation mechanisms. What these plans have in common, of course, is that each provides some sort of government subsidy to candidates. But the mix of mechanisms arises in part from the distinct circumstances for which the proposals were created. What might work for presidential general elections, for instance, might make less sense for the primaries; what fits Minnesota's political traditions might have little appeal in Arizona, and so on.

The wide variety of public financing proposals also reflects deeper philosophical disagreements among their proponents about which problems in the political system are most pressing and how best to solve them. Some programs are designed to banish private money from the electoral arena as thoroughly as possible, while others dismiss this goal as impractical or even undesirable. Indeed, some programs seek to encourage smaller donations as a way of expanding political participation. Some programs deliver cash directly to the campaign, while others offer services to the candidates in lieu of money, and still others bypass the campaigns entirely by delivering a benefit to contributors.

The different programs are not value neutral. Behind each one is a particular and sometimes unexpressed normative vision of American democracy.

This monograph explores a menu of existing proposals to subsidize political campaigns.[1] The paper identifies the nuts and bolts of how each program operates, while also touching on the program's goals and underlying values. Then, using supporters' claims as a starting point, the paper analyzes the strengths and weaknesses of each plan. While no single approach can be perfect from every perspective, this review will examine how different versions of public funding can help reduce the influence of private money in our political system and the potential effects the proposals may have on other parts of the political process.

VALUES

Only with some understanding of the values proponents want to advance can they imagine and construct an effective system of campaign finance regulation. Some systems promote some values more than others. Some of the values at issue in any campaign finance system are:

Political Autonomy: The right to be left alone. Campaign finance regulations may be seen as interfering with this value because they may attempt to limit spending or contributions to campaigns. But the system of privately financed campaigns could be seen as infringing on the autonomy of all those who do not contribute to campaigns, when contributors have more power to set the political agenda than voters.

Efficiency: Making sure that resources are not wasted. Some systems are more likely to link the allocation of resources to some showing of public support. Some are easier to administer. Although efficiency is an important value for any campaign system, assessing it can be tricky because two kinds of markets — the political and the economic — and their very different values are mixing.

Political Equality: A political system where each citizen is an equal participant — or at least has an equal opportunity to participate — in the democratic process. The ideal of a process where power is distributed according to "one person one vote" is deeply undermined by a system where access to power is closely linked with financial wealth.

Preventing Political Corruption: Reducing both the reality and appearance that officeholders neglect their public obligations because of political debts to donors. This is one of only two "values" that have been explicitly approved by the Supreme Court as a government interest in regulating campaign finance, but the breadth of this interest and value is open to debate. Is preventing corruption really a more modest way of expressing a goal of "restoring confidence in our democratic system" or is it merely about preventing the explicit exchange of political favors for money?

Enhancing the Quality of Representation: Working toward a system that produces and permits a higher quality of representation. There is substantial conflict over what this value means — in general political theory and in campaign finance debates. Is the representative only an agent for her constituency or is she an independent moral actor? Regardless of one's view on this question, however, there is a substantial consensus that representatives should not "represent" contributors instead of voters.

Increasing Voter Knowledge: A populace with knowledge about candidates and representatives is essential to the democratic process. The Supreme Court recognized increasing voter knowledge as a compelling government interest that could justify campaign finance regulation when it upheld FECA's public disclosure rules. Subsidies are also seen as a way of increasing voter knowledge because they assure that candidates who otherwise would not have sufficient resources can reach voters. Critics of spending limits and contribution limits argue that these regulations can reduce voter knowledge because they may limit the debate.

Improving the Quality of Democratic Discourse: This value is closely linked with increasing voter knowledge. The current campaign system is often criticized for being devoid of real debate. Some campaign subsidies, particularly free or reduced-rate television time, are primarily aimed at improving the quality of debate by emphasizing longer and more substantive advertisements.

[1] It grows out of a conference sponsored by the Brennan Center for Justice at New York University School of Law on October 23, 1998, featuring advocates of four of the public subsidy alternatives and panel of experts. The vibrant discussion that day underscored the variety of public financing alternatives and shed light on the advantages and disadvantages of each approach. Thank you to our advocates: Susan Anderson of Public Campaign, Gene Russianoff of New York Public Interest Research Group, Kathy Czar of the Minnesota Democratic-Farmer-Labor Party, and Paul Taylor of Alliance for Better Campaigns. Thank you also to our experts: Thomas Mann of the Brookings Institution, Dorothy Samuels of *The New York Times*, Nicole Gordon of New York City Campaign Finance Board, and Anthony Corrado of Colby College.

Options for Reform: A Brief Sketch of Public Subsidy Programs

Public subsidies for political campaigns take a number of different forms. At bottom, the subsidy programs involve some way of putting public resources into the political system, usually to replace private money, though sometimes simply to supplement it. The means of delivering the subsidy, the extent of the subsidy, and the form it takes may vary widely. Almost all subsidy programs target candidate campaigns, but a handful provide public money for parties and even political action committees, and almost all public subsidy programs or proposals are linked with other types of campaign reform, such as contribution limits, increased disclosure, and spending limits.

The main options for public financing fall into four broad categories:

Full public funding. Sometimes known as the "Clean Money Option," full public funding is a voluntary system under which participating candidates are given a grant of public money in exchange for their promise not to spend more than the money given to them and not to accept private contributions – thus the notion that the grant provides total support for the campaign. Candidates remain free to reject the public's money and its conditions, allowing them to raise and spend private money on their own. It's worth noting that the moniker "full" public funding is not precise; the more accurate phrase is "substantial" public funding since almost every full funding system requires the candidate to raise some private money to qualify for public aid. These qualifying requirements help preserve the integrity of the ballot by ensuring that the candidates who are on the ballot have some public support. In short, they prevent every single candidate who wants to run for office from receiving public money.

The most well-known example of full funding is the system for presidential general elections. Both the Democratic and Republican nominees automatically qualify for a substantial grant from the "Presidential Election Campaign Fund," a dedicated account maintained by the treasury and created by money from the check-off on federal tax returns. The size of the grant is set by statute and adjusted for inflation. In 1996, President Clinton's and Senator Dole's campaigns each received checks for $61.8 million immediately after their parties' conventions. In theory, these checks should have freed them from all fundraising concerns. In practice, both men continued to raise enormous sums of money for their parties to spend promoting their candidacies.

In addition to Clinton and Dole, Ross Perot also received $29 million from the campaign fund on the strength of his showing in 1992. The case of Perot illustrates one important way in which the presidential system differs from the programs contemplated by activists in many states and localities. The federal system forces third parties to demonstrate some electoral strength before providing funding commensurate with that strength. The mechanism for determining how to fund minor parties deprives these parties of some of their best opportunities to succeed by basing their grants on their performance in the prior presidential election. Indeed, new parties receive no money at all until after the election. These delays inevitably leave them on unequal footing with the two major parties.

Partial public funding. A partial funding system gives participating candidates some public money for their campaigns, again in exchange for their voluntary agreement to cap their election

GLOSSARY OF PUBLIC SUBSIDY TERMS

Spending Limits: In exchange for accepting public money, the candidate usually agrees not to spend more than the legislated amount. After the Supreme Court's decision in *Buckley v.Valeo*, striking down mandatory spending limits as unconstitutional, reformers have often turned to some form of public funding as a way to encourage voluntary limits on spending.

Triggers: Some programs with a voluntary spending limit include what is called a "trigger," a mechanism that raises or eliminates the spending cap if the participating candidate is, or is at serious risk of being, outspent by her non-participating opponent or, less often, an independent spending campaign.

Qualifying Requirements: Any program that gives away taxpayer money must include some standards to determine who qualifies for the money.

Contribution Limits: Most campaign finance systems that include public funding also include contribution limits. In full public funding systems, once seed money and qualifying contributions have been collected, the limits apply only to candidates who are not accepting public money. In the partial systems, some limits apply to all candidates, although some systems apply a lower limit to candidates who have not agreed to spending limits.

Disclosure: Almost every campaign finance system requires candidates to disclose information about their donors and how much the donors give, as well as information about candidates' expenditures.

Cap Gaps: Some systems allow candidates who have accepted spending limits to receive larger contributions.

Issue Advocacy: Politically oriented advertising or speech that does not call for the election or defeat of a candidate, but discusses "issues" exclusively. This type of advocacy is unregulated because it is considered not to involve "electioneering," but rather issue-based political speech. The term is often used pejoratively to describe election advocacy that masquerades as issue advocacy by avoiding use of certain words such "vote for" or "defeat" while otherwise making it clear that its message is a request to vote for or against a candidate.

Independent Spending: Money spent to support or oppose a candidate during a political campaign by individuals or groups other than the candidates but not coordinated with the candidates in any way.

Soft Money: Contributions and spending that are not subject to regulation because the money was given for "party building" activities rather than candidate support. Federal soft money includes contributions given to state parties, which may or may not be regulated under state laws.

spending. A handful of such programs provides public funding to parties. The programs are structured in a variety of ways, including block grants and matching funds (i.e., public dollars pegged in some way to the amount of money raised from private donors). Partial funding plans range from the substantial, like New York City's recently enacted 4-to-1 matching program, to less lavish systems, like Alabama's, that provide token grants to political parties. As with full public funding systems, candidates are not required to participate.

The best known example of a partial funding program comes from the presidential system — here, in the nomination process rather than in the general election. Once they meet a variety of fundraising requirements, candidates for their party's nomination may qualify for federal money to match the first $250 of each contribution from an individual. In return, candidates accept aggregate as well as state-by-state limits on their spending. One obvious requirement for this system is a fairly well-developed bureaucracy to administer the financial match and enforce the various spending limits. Prior to 2000, only three major party candidates had chosen to reject partial funding and rely on their own efforts. In 1999, apparently motivated by Steve Forbes' ability to spend far above the aggregate limit (as he did in 1996) as well as his own resounding success raising money, Texas Governor George W. Bush became the first frontrunner since the system went into effect in 1976 to refuse partial public funds.

Credits, refunds, and vouchers. These programs involve subsidies to contributors rather than candidates or parties. Under them, the government provides some type of reimbursement for contributions to candidates, parties, or political committees. Some offer tax credits for small political contributions. Minnesota and several other jurisdictions let contributors apply immediately to the state for reimbursement for the first $50 of their donations, a move designed to make certain that low-income residents (who might have no tax liability) are able to take advantage of the program. A more aggressive version of the refund concept is a voucher plan, a program under which citizens are allotted a certain amount of money from the government to contribute to candidates, committees, or parties.

While credits, refunds, and vouchers do not provide support directly to candidates, they still involve the use of public resources for campaigns, adding government dollars to the private campaign economy. The difference, of course, is that these systems rely on individuals, rather than any sort of formula, to route public funds to the candidates. That approach has obvious political appeal for empowering citizens to decide which candidates deserve support. But credits, refunds, and vouchers — perhaps more than the other public financing plans — place an explicit value on increasing the rate of citizen participation in the electoral process, including participation by giving money to candidates.

Free or discounted services. Other programs target specific services used by candidates and provide them at no or reduced cost, instead of providing money, to qualified candidates. A much-discussed proposal is a plan that gives candidates free or reduced-cost time on commercial television and radio stations either by government regulation mandating that the stations provide the time (known by its shorthand, "free TV") or through a system of vouchers allowing candidates to buy time at a lower rate. Other proposed programs include vouchers for direct mail, voter guides, campaign web sites, and air time on public television stations. Some of them include spending limits, while others do not.

One potential advantage of providing services rather than grants is that it might save taxpayers money. Before such a plan will save money, however, the government must force private industry — most notably television broadcasters — to give political candidates free air time. Obviously, broadcasters object and have fought these proposals vigorously — one reason why free TV has never become law. Its proponents argue, however, that broadcasters make a huge profit off of the public airwaves without providing much public service in return. As an alternative, some reformers have suggested that the government buy air time during campaign season and distribute it to candidates who have agreed to spending limits and certain other restrictions.

FOUR FLAVORS

Any discussion of public funding must recognize that it is just one model of campaign finance regulation and quite often is a supplement to one of the models we call the "Contribution Caps Model." The other three common models of campaign finance regulation are:

The Disclosure-Only Model: This model involves only disclosure of very large contributions and enforcement of laws against bribery. This model is the closest to the federal system that preceded Congress's 1974 enactment of the Federal Election Campaign Act ("FECA"). An important variation on this model is one that calls for increasing the efficiency of disclosure requirements by requiring more frequent and accessible disclosure of contributions but no other regulation.

The Contribution Caps Model: This system has governed federal congressional races since 1976, when the Supreme Court decided *Buckley v. Valeo*, 424 U.S. 1 (1976). This system caps and regulates contributions and mandates disclosure for even modest contributions and expenditures, but following the *Buckley* decision, it does not limit individual, candidate, or campaign spending.

This model — basically contribution limits and disclosure — is probably the most common model in the states.

The Full Caps Model: Probably the most comprehensive regulatory model, this proposed system places limits on contributions and candidate and individual spending. After the Supreme Court struck FECA's spending limits in *Buckley*, no other system of mandatory spending limits has been upheld by a court.

Even the award of a government-provided commodity like free postage will not help to solve one of the political problems associated with public funding, namely the specter of giving taxpayer money (what critics dub "welfare") to politicians, an unpopular group. Several of the main Democratic proposals from the 1980s used services rather than partial funding to help bolster public support.

But beyond the politics, providing services instead of money has the effect of giving policymakers some influence over the content of campaigns. No one would argue, of course, that government ought to be policing what candidates say as they run for office. Rather, proponents hope to nudge candidates to make their campaigns more informative. For example, the Alliance for Better Campaigns, the chief advocacy organization behind free TV, argues that giving candidates relatively long blocks of time would allow them to address the issues in greater depth than does the standard 30-second commercial.

Measuring the Success of Public Funding

The recent embrace of public subsidies is generally motivated by a belief that private money fundamentally distorts our political system and that reducing its influence is crucial to restoring public confidence in the political process and thereby building a more democratic nation. A system of privately financed elections is inherently in tension with the democratic government that the system selects. Privately financed elections give — or at least appear to give — the wealthy disproportionate influence over elected officials and the political process, from legislative access to agenda-setting to votes. They also create an unavoidable conflict of interest for almost all politicians, who are forced to seek money from people and businesses that may be affected by governmental decisions. Many also claim that private money drives up the cost of running for office without raising the quality of campaign discourse or increasing voter education. Additionally, the high cost of campaigns not only discourages non-wealthy and non-traditional candidates from running, it also forces those who do run and win to spend too much time raising money rather than serving their constituents. Finally, the need to raise large amounts of private dollars also creates an additional set of advantages for already advantaged incumbents.

Proponents of public funding programs make a variety of claims about how different models would address the problems of privately financed elections. What would an effective public funding system do? How would politics look different under these systems? The following are some of the goals by which the success of these plans may be measured.

Reducing undue influence. The disproportionate influence of wealthy donors on elected officials and the political process is perhaps the most common complaint about contemporary American politics. Whether or not donations buy votes or legislative access or affect the legislative agenda, the appearance of this distortion is a reality to the vast majority of citizens who are not able to donate to political campaigns, threatening the legitimacy of the democratic process. Any public subsidy proposal must be evaluated by the degree to which it removes the appearance or actuality of the undue influence of donors.

Controlling the cost of campaigns. The cost of campaigns has been rising for years, but this trend has increased only the volume and length of campaigns — it has not raised the level of voter education or improved the quality of campaign discourse. As campaigns get more expensive, candidates are forced to spend more time raising money, rather than tending to official business or communicating their ideas. Lowering the cost of campaigns would free candidates from some of these burdens and may improve the quality of campaign discourse.

Expanding the field of candidates. Another common complaint about privately funded elections is that the system encourages only a narrow range of people to run for office. Only those with money, or with access to money, are able to run for office, leaving voters to choose among candidates with strikingly similar backgrounds and views — or worse, leaving voters with no choice at all, as many races are completely or virtually uncontested. Backers of public funding claim that it can help attract a broader range of candidates to the political stage, including those without access to wealth and those without a traditional political background. Minnesota Governor Jesse Ventura, for example, was helped immensely by Minnesota's public subsidy in his successful 1998 campaign. Jimmy Carter probably could not have competed effectively for the 1976 Democratic presidential nomination, let alone won it, had it not been for public funds.

Increasing Competition.

While many potential challengers choose not to run because of the daunting fundraising challenges that await them, those who do run are often hampered by huge financial disparities during the campaign. Since 1980, over 95% of Congressional incumbents have been re-elected, a level of electoral continuity sometimes compared to that of the former Soviet Union. In 1998, 95% of House winners and 94% of Senate winners outspent their opponents. Public funding programs seek to level the playing field, providing the funds to allow challengers to compete more effectively, if not win.

Revitalizing Democratic Participation.

Many citizens perceive our political system to be driven only by large donors and feel shut out of a system they feel unable to influence. Some programs, such as vouchers, seek to remedy this inequality by providing citizens with an opportunity to contribute to campaigns. Matching fund programs also seek to re-orient campaigns towards small donors, attempting to bring a larger number of people into the political process. Both of these programs also encourage candidates to develop a broader base of contributors and supporters.

Potential Unwanted Consequences

No program could actually accomplish all of these objectives at once. Some solutions may address one problem without affecting another, and many could have unintended and unwanted consequences. Different models can also be assessed by considering some possible negative consequences, such as:

Creating Shadow Campaigns: No factor has altered the dynamics of recent federal elections more than the emergence of outside money — spending by interest groups, often on expensive broadcast commercials. Outside groups have long been able to make independent expenditures on behalf of candidates, but many groups are spending millions of dollars on so-called "issue advocacy," election ads that skirt the explicit support of or opposition to candidates running for office and thus fall outside the federal election law. These groups include corporations and unions, both of which are barred from using treasury funds for electioneering purposes. The AFL-CIO, for example, spent $35 million attempting to defeat Republican House members in the 1996 election, and other groups have followed this effort with their own large-scale campaigns. Similarly, corporations and other big money donors have been able to make unlimited contributions to political parties for so-called party-building activities and for sham issue ads by using "soft money," money that is not regulated by federal election law.

Most public funding models do nothing to address the development of non-candidate spending, and many may in fact make the problem worse by driving money outside the regulated system of candidate campaigns. Outsider and political party spending over certain limits is nominally uncoordinated — if it were coordinated, it would count towards contribution limits — and is not always welcomed by the candidates it is supposed to assist. It has, however, the possibility of deeply influencing the debate during any campaign and can, in some circumstances, amount to a kind of parallel campaign.

Wasting Money, Rewarding Fringe and Non-Serious Candidates: Any public funding program must strike a balance between encouraging candidates who are serious but come from outside the traditional system and rewarding candidates who are simply not serious. For example, though the presidential public funding system has helped a number of relatively obscure candidates campaign effectively, it has been attacked when fringe candidates received public funds. Any system with qualifying requirements that are too low runs the risk of losing legitimacy when it rewards extremist candidates, such as a representative of a white supremacist group.

Limiting Participation: Some critics argue that contributing money to campaigns is a crucial form of democratic participation and is often the only way that busy but politically interested people can participate. Systems that take away this opportunity may encourage a disconnection from the democratic process.

Protecting Incumbents: If spending limits are not set high enough, public funding schemes can actually hinder competition. Incumbents are aided if their challengers, who tend not to enjoy the same name recognition as incumbents, are hampered by stingy subsidies and low limits. Spending limits must be set high enough to allow challengers to get their message out aggressively.

The Constitution and Public Subsidies

Any campaign finance regime — including public subsidies — involves the regulation of political speech and as such implicates the First Amendment. *Buckley v. Valeo*, 424 U.S. 1, the Supreme Court's 1976 landmark decision reviewing the Federal Election Campaign Act ("FECA"), established the framework — or straitjacket — for analyzing the constitutional implications of any campaign finance regulations. Basically, the *Buckley* Court held that because almost all campaign speech requires an expenditure of money, any attempt to limit campaign spending must be analyzed, for constitutional purposes, as if it were an effort to limit political speech itself.

The *Buckley* decision, which remains the touchstone decision in this area, reviewed the comprehensive set of campaign finance reforms passed in 1974 on the heels on President Nixon's resignation and the Watergate scandal — FECA. FECA had four substantive components: (1) contribution limits; (2) expenditure limits; (3) disclosure rules; and (4) public financing of presidential elections. *Buckley* addressed each of these components.

Applying a traditional First Amendment analysis, the Court struck FECA's spending limits because they severely limited speech without advancing the "compelling" government interest in combating corruption. The Court rejected the argument that the government's interest in fostering equal political participation was a compelling interest that would support spending limits. However, the Court upheld FECA's contribution limits as regulations that advance the government's interest in combating corruption.

The *Buckley* Court also approved the presidential public funding system. In upholding the system, the Court seemed to recognize a First Amendment interest in encouraging public debate. Indeed, the *Buckley* Court stated that public funding could "facilitate and enlarge public discussion and participation." As such, public funding "furthers, not abridges, pertinent First Amendment values."

The most significant aspect of the *Buckley* Court's public funding discussion, however, was a footnote in which the Court observed that lawmakers could condition public funding on a candidate's promise to abide by spending limits. This aside has provided reformers with a key tool by which they have been able to set spending limits; indeed, for many reformers, public funding is primarily a vehicle for encouraging some limit on spending in campaigns.

The Court's analysis as well as the footnote do not provide a constitutional free pass to all public subsidy systems that require a promise from the candidate to abide by a spending limit and to decline or to limit private contributions. These plans — like mandatory spending limits and contribution limits — trigger a First Amendment review. While *Buckley* clearly determined that public funding offered in exchange for a candidate's agreement to abide by spending limits is constitutionally acceptable, lower courts have held that public subsidy plans that penalize candidates who decline to accept the subsidy (and spending limit) may be unconstitutional — if the penalty is too harsh. The Supreme Court has yet to address the question of whether certain incentives to accept public funding are so generous that they amount to a penalty on those who decline.

A Guide to Subsidy Plans

Most public subsidy plans involve several kinds of regulation, and some plans have several ways of delivering the subsidy. For instance, a matching fund program might also provide refunds to individuals for their campaign contributions and vouchers for reduced-cost television time. The plans and the individual regulations advance different goals and put a premium on different values. Outlined below are the nuts and bolts of public subsidy programs and a brief discussion of the values furthered by the particular component.

How Do Candidates Qualify for Public Subsidies?

The threshold issue for any public subsidy program is who gets the subsidy. In most programs, this determination involves two components: (1) prerequisites for candidate qualification, and (2) restrictions the candidate voluntarily accepts. Both elements will vary depending on the goals being served and depending on the structure of a particular program.

1. Qualifying Requirements: Any program that gives away taxpayer money must include some standards to determine who qualifies for the money. Because one of the goals of almost all public subsidy programs is to make it easier for more candidates to run for office, the qualifying provisions cannot be onerous. If it is too easy to qualify, however, the program runs the risk of losing credibility when, for instance, a marginal candidate makes a career of losing elections at public expense or simply too many candidates flood the system. Eligibility requirements may be less crucial in matching fund and rebate or credit programs than they are in block grant programs because the candidate's subsidy is subjected to a kind of ongoing market test — the candidates will benefit from public money only if they are able to raise money on their own.

The principal mechanisms for qualifying are:

- *the collection of signatures on a petition*. Most programs include some restriction on the residency of the signatories. For district races, for instance, the petition signers usually must reside within the district. For statewide races, signatures must be collected from a set number of districts around the state.
- *the collection of a certain amount of qualifying contributions*. This system generally includes a limit on the amount of each qualifying contribution and usually restricts the contributions to individuals. Like programs requiring signatures, programs requiring qualifying contributions often include a geographic requirement for donors.
- *votes in a prior election*. General election candidates may qualify for public funding if they (or a candidate from their party) have received a certain percentage of the popular vote in the most recent election.

Advocates often recommend a combination of the petition signature and small contribution method because raising even small contributions can be difficult in low-income areas. Because raising contributions and collecting signatures cost money, candidates are generally permitted to raise "seed money" from private sources. The seed money contributions usually have a higher limit than the qualifying contributions, but they rarely exceed $200 per contribution.

2. Restrictions the Candidate Voluntarily Accepts: Almost all public subsidy programs try to shape some part of the political process in addition to providing a subsidy to candidates. The programs have a goal of improving the quality of political debate, for instance, or limiting the cost of campaigns. To achieve these goals or others, candidates who accept the subsidy also agree to certain restrictions.

Spending Limits: Almost all subsidy programs require a candidate to limit campaign spending in exchange for receiving the subsidy. Indeed, for many reformers, the primary value of subsidies is that they allow the government to extract this promise, which, under the Supreme Court's *Buckley* decision, cannot be compelled.

But spending limits can be controversial. The limits must be high enough so that candidates can communicate effectively with voters and conduct meaningful campaigns. Plus, if the limits are too low, candidates simply will not accept them — then, the limits and campaign finance program will exist in name only. Yet, lawmakers may find it difficult to set reasonable limits that are also politically acceptable. Additionally, some civil libertarians object to all spending limits on the ground that they are an unconstitutional — and possibly unwise — restriction of speech.

Setting spending limits in a way that accounts for structural differences among candidates and races can also be difficult. A single state may have distinctly different competitive styles and costs among its different legislative districts, making it very difficult to assign spending limits that fit the needs of every jurisdiction. For instance, one district may have a tradition of hard fought primaries yet have perfunctory general elections, while others may have the reverse.

Other complications include accounting for the advantage in name recognition usually enjoyed by incumbents. Obviously, the structure of spending limits can exert a tremendous impact on whether the subsidy program encourages competition or diminishes it.

Nebraska has an interesting program that focuses explicitly on spending limits, rather than subsidies. The public subsidy money is used only as a last resort. If both candidates agree to the spending limit, neither receives public money. If one candidate refuses to accept the voluntary spending limit, that candidate must file a spending estimate with the state, and a candidate who agrees to cap spending will receive public funds to make up the difference between the spending limit and the non-participating candidate's estimate. In its two election cycles of operation, every candidate has agreed to participate, and no public money has been used.

FLOORS WITHOUT CEILINGS

Some observers are deeply opposed to using subsidies as an incentive for promises of limited spending. They believe that spending limits are a government infringement on the candidates' speech and, as a whole, undermine the debate that goes on during the political process. Others oppose voluntary spending limits simply because they are seen as impractical. Both groups prefer what is known as the "floors without ceilings" approach. Under this approach, candidates are given subsidies but are not required to agree to spending — or any other — limits.

A handful of states fund political parties without requiring any agreement to limit spending. They are loose programs that are justified as a means of building parties and as a way of allocating money to the parties so that they can spread it to the races the party considers the most valuable.

Also, some programs that reimburse contributors for their political contributions are similar to the "floors without ceilings" proposals in that they often allow candidates to benefit from subsidized contributions without agreeing to spending limits.

- **Triggers:** A key component of most voluntary spending limit programs is the "trigger" — a mechanism that allows candidates who have agreed to a spending limit to spend more if their non-participating opponent spends or receives money over a certain "triggering" amount. The triggers are considered crucial to most public funding provisions. Without them, the participating candidate may feel she is fighting with one hand tied behind her back.

  Triggers operate in different ways depending on the program. In full public funding programs and some partial public funding programs, the outspent participating candidate is given additional money. In other programs, the participating candidate is simply released from his agreement and allowed to raise, then spend, more money up to a new limit. Under this system, the trigger should be structured in a way that allows the participating candidate enough time to raise money in the last leg of the campaign. However, if the trigger is too generous, it could raise constitutional problems because it may be seen as coercing candidates to agree to spending limits.

Some systems also provide additional money when independent expenditures are made in opposition to a participating candidate or in support of her opponent. Many advocates consider these additional funds important to maintaining opportunities to compete for the participating candidate. Although courts have generally upheld triggers based on the spending of non-participating candidates, triggers based on the spending of independent groups have met with a mixed response. The one appellate court to consider such triggers, the Eighth Circuit in *Day v. Holahan*, held that the trigger chilled the speech of independent groups because they understood that their expenditures would trigger publicly funded speech of the opposing candidate. On the other hand, in *Daggett v. Webster,* a district court in Maine more recently upheld such a trigger because the "marketplace of ideas" metaphor common in First Amendment jurisprudence "does not recognize a disincentive to speak in the first place merely because some other person may speak as well."

Other Requirements: In exchange for accepting public subsidies, candidates may also be asked to limit the amount of money they accept from PACs or from non-residents. These are called "source restrictions." In New York City, for instance, candidates who accept matching funds must agree to forgo corporate contributions.

Candidates who accept a public subsidy might also be required to participate in public debates with their opponents. Some states have also considered adding a requirement that candidates who accept a public subsidy agree to what is called a "stand by your ad" provision, under which the candidate promises to appear in all television advertisements.

Methods of Delivering Public Subsidies

Block Grants.

Block — or flat — grants are used to deliver public funding to qualifying candidates in a set amount, generally established according to a statutory formula. Under these systems, once candidates qualify for funding, they are eligible for the full amount, which may be distributed all at once or according to a timetable. The full public funding systems use the block grant method to distribute funds, as do several states with substantial partial funding systems.

Along with qualifying requirements, one of the most difficult and, particularly for full funding systems, controversial parts of any public funding scheme involves the setting of funding levels and the distribution of the money. Drafters must determine what constitutes a sufficient amount of money with which to run a campaign, so that candidates will have enough money to conduct effective advocacy. Without sufficient funding, serious candidates are unlikely to agree to participate, and even if they do, there may not be enough money to fuel the political speech that occurs in campaigns. Setting accurate levels is crucial for full public funding programs because that money represents all of the funds with which the candidate can campaign.

A model public funding bill written by Public Campaign, a non-profit organization that advocates full public funding, suggests that the initial allocation for races should be derived from an inflation-adjusted median of the amount spent on competitive races in the last three or four election cycles. That amount would be reduced by 15 to 25 percent to reflect the amount candidates will save by not having to raise the money themselves.

Drafters must also determine how to allocate the money between the primary and general elections — taking into account a myriad of local factors, such as whether there is an open primary or party primary, whether the decisive race is generally the primary, and the amount of time between the primary and general elections. In Massachusetts, for instance, candidates are allocated slightly more for the primary than the general election; while in Arizona, the general election allocation is greater, but candidates in virtual one-party districts, where the primary is the real race, are allowed to allocate a greater percentage of their grant to the primary race.

In some plans, candidates who are unopposed in the primary election but likely to face challengers in the general election receive a certain percentage of the otherwise available grant so that the candidate can have visibility during the primary period. In others, the money available to candidates unopposed in the primary is tightly restricted.

Additionally, how money is allocated among independent candidates and third party nominees should reflect the goals of the program and should be sensitive to local political realities. For instance, if the state does not have any realistic third parties — or tradition of independent candidates — should third party nominees (or independent candidates) be funded at the same levels as the major party candidates? On the other hand, the public funding allocation may be instrumental in giving rise to vibrant third parties or independent candidacies.

Funding levels can also be fine-tuned to reflect district patterns rather than statewide rates. This more complex system could, however, be very difficult to administer.

There seems to be no good way to take into account all of these variables, but some observers think that these problems could be minimized by allowing more party participation in the allocation of money. The parties could distribute more money to races that are highly competitive and less to those that are not. This recommendation, of course,

THE MASSACHUSETTS "CLEAN ELECTIONS" PROGRAM

Beginning with races in 2002, Massachusetts will have a voluntary substantial public funding program for all statewide offices and all state legislative offices. The program is organized as follows:

Qualifying Requirements: Participating candidates file a declaration of intent to participate and then gather qualifying contributions of $5 each. The number of qualifying contributions varies with the office sought: Candidates for governor must raise 6,000 qualifying contributions; lieutenant governor, 3,000; state senator, 450; and state representative, 200.

Participating candidates also agree to accept no contribution higher than $100 and to limit the aggregate total of private contributions to $450,000 for governor, $112,000 for lieutenant governor, $18,000 for state senator, and $6,000 for state representative.

Contributions to non-participating candidates are also capped at $100 but there is no limit to the amount that can be collected and spent.

Spending Limits: The spending limits are split between the primary election and general election. Between qualifying and the end of the primary, a participating candidate may spend: for governor, $1.8 million; lieutenant governor, $450,000; state senator, $54,000; state representative, $18,000. The general election spending limits are: governor, $1.2 million; lieutenant governor, $300,000; state senator, $36,000; and state representative, $12,000.

Public Funding: Qualifying candidates for governor receive $1.5 million during the primary; lieutenant governor, $383,000; state senator, $43,000; and state representative, $15,000. During the general election, candidates for governor receive $1.05 million; lieutenant governor, $255,000; state senator, $36,000; and state representative, $9,000. Candidates without an opponent receive half of the allotted public money for the period.

Trigger: If a non-participating candidate exceeds the spending limit for participating candidates, the non-participating candidate must file a report within seven days and continue filing every seven days until the two weeks preceding the election. During those two weeks, non-participating candidates must file reports every two business days. Participating candidates then receive grants that match the spending of the non-participating candidate up to two times the amount of the original spending limit.

Adjustments: All of the spending limits are adjusted for inflation.

Funding: The program is funded by a voluntary check-off on state income tax returns and appropriations from the state legislature.

requires a belief that party organizations are a helpful part of the democratic process — a belief viewed with great skepticism by some public funding advocates.

When the block grants are substantial — or full — they provide an aggressive solution to the problem of the disproportionate influence of wealth on the political process. Not only do such programs get rid of most private money and thus minimize the risk of corruption, they are also quite likely to increase the number and diversity of candidates running for office because the wealth barrier is removed. It is quite possible that over time this influx of new candidates with sufficient funding to communicate their messages to voters could substantially reshape political debate.

There is some concern that block grant programs, when they are substantial, undermine a form of democratic expression — giving money to political campaigns. Some critics believe that such programs will drive private money into unregulated areas and create a kind of parallel campaign system. Additionally, block grant programs may be seen as wasting public money because they give frivolous or hopeless candidates the same amount of money that they give legitimate candidates.

Also, when block grants are not substantial, such programs may be perceived as throwing good money after bad; in a system of smaller partial block grants, the politician's check from the government just adds to the money he raises from the usual suspects.

Because no full public funding system has been in effect, except for the federal presidential system, it is difficult to determine how the systems would work at the local and state levels. The federal system, however, should give reformers pause. Since public funding of the general election started with the 1976 presidential campaign, the federal system has seen an explosion of spending outside the system — in independent expenditures, in unregulated so-called issue advocacy, and, most recently, in soft money.

Matching Fund Grants.

Under these programs, when an individual makes a contribution, the government matches that contribution (usually of $100 or $200) with a contribution of an equal amount or higher. Most of these programs provide a 1-to-1 match but some, like New York City's, provide a 4-to-1 match for the first $250 of a contribution from a city resident. Matching fund programs are usually structured to maximize the power and importance of small contributors by multiplying the value of their contributions. This is considered more effective if only smaller contributions are matched, and the program is linked with an overall program of contribution limits and voluntary spending limits.

In addition to increasing the importance of small donors, matching fund programs are thought to have several advantages. Unlike the block grant programs, candidates receive public funding only when they raise money, limiting the possibility that a completely marginal candidate could receive a large sum of public money. Also, a candidate whose popularity drops severely over the course of the campaign and is no longer raising money will no longer receive the subsidy.

Some advocates of subsidies are deeply critical of this analysis because it continues to use the ability to raise money as a proxy for public support. They point out that certain candidates may need the infusion of public money to get their message out before they could even begin to challenge more established candidates. Thus, while matching fund programs may help increase competition and reduce the protection for incumbents, they may not be as effective as a full funding program in furthering these goals.

If the matching funds are distributed quickly and early during an election cycle, the program will increase competition more effectively and will be more helpful to candidates. This may require a fairly sophisticated administrative system, which may not be necessary for block grants.

Because matching funds encourage candidates to reach out to smaller donors and may, in turn, encourage people of modest means to contribute, matching fund programs may assist in a revitalization of the democratic process. Additionally, because donors will still be able to give to candidates, the matching fund programs may be less likely to create a kind of parallel campaign of independent spending.

Refunds, Credits, and Vouchers.

Some programs are designed to help finance campaigns by offering individuals monetary incentives to contribute to candidates and, sometimes, political organizations. The incentive takes the form of a rebate, tax credit, or tax deduction for contributions up to a specified limit.

These programs allow for a great deal of flexibili-

NEW YORK CITY: MATCHING FUNDS

Since 1989 New York City has had a matching fund system for its local elections for all city-wide offices, borough president, and city council. Beginning in 1999, participating candidates receive 4-to-1 matching funds for each contribution of $250 or less from a New York City resident. Some of the key elements of New York City's matching fund program are:

Qualifying Requirements: Candidates in New York City qualify for matching funds by raising a threshold amount from a minimum number of New York City residents in contributions of $10 or more. Mayoral candidates must raise $250,000 from at least 1,000 New York City residents. Candidates for other city-wide offices must raise $125,000 from at least 500 residents. City Council candidates must raise $5,000 from at least 50 residents.

Spending Limits: Participating candidates must agree to spending limits for both the primary and general elections. In the next mayoral race, the spending of participating candidates will be capped at $5,231,000 for the primary race and $5,231,000 for the general election. City Council races are capped $137,000 for the primary and $137,000 for the general election. The spending limits can be lifted if a non-participating opponent exceeds the limit. Additionally, the matching funds are delivered more quickly when the trigger is reached.

Contribution Limits: New York has a system of graduated contribution limits. The limits in 2001 for candidates for mayor and all other city-wide offices will be $4,500; borough president, $3,500; and city council, $2,500. These limits apply to participating and non-participating candidates.

ty because they often do not necessarily involve spending limits or other qualification rules, and they put the allocation burden on the contributor. There is no need for a government agency to distribute the funds, and they ensure that the amount of public money spent on campaigns is closely correlated with the level of a candidates' support — often among small donors.

Eight states currently allow refunds or tax credits for political contributions. The most effective credit programs are those that not only provide a 100 percent refund, but refund the money quickly and are not linked to filing a tax return. Minnesota, for instance, which allows a 100 percent refund of contributions of $50 to parties or candidates who accept spending limits, and which returns the refund promptly, has seen a surge in its use over the past several years.

Because these programs generally, but not always, include an agreement to accept spending limits before a candidate can benefit from the tax credited contribution, they can be seen as sharing many of the values of the other public funding plans — such as reducing campaign costs and leveling the playing field by reducing reliance on large contributors. They are also aimed at increasing the participation of people of moderate means in the process by making political contribution almost cost-free.

While these programs have the potential to bring a lot of money into the system in small increments, even the most successful programs — like Minnesota's — have not brought in enough money to change the shape of fundraising substantially and may be seen as only tinkering with the problems of the campaign finance system. Only six to seven percent of Minnesota's taxpayers seek the credit. Yet, in Arkansas, supporters cite anecdotal evidence that the tax credit had a substantial effect in encouraging donations to candidates in low-income districts.

As grassroots groups and political parties learn how to use the tax credit, it could shift the way money is raised in campaigns — making it more

MINNESOTA'S PUBLIC FUNDING SYSTEM

Minnesota's uniquely extensive and complex program subsidizes campaigns through block grants to parties and candidates, as well as by refunding contributions to candidates and parties.

Block Grants to Candidates: Direct grants to participating candidates for all state offices in the general election are set according to a statutory formula based on percentages of an election fund paid for by a $5 tax check-off and a $1.5 million election year supplement from general revenues. The grants may not exceed 50 percent of the spending limit for a given race and are made after the election to any participating candidate who, for statewide office, received at least 5 percent of the votes cast, or, for legislative office, received at least 10 percent of the votes cast.

Block Grants to Political Parties for Disbursement to Candidate Campaigns: Funded from a $5 voluntary tax check-off, which allows taxpayers to designate that the money go to a political party. The party is required to spend the money in general election races in the legislative district from which it came.

Refunds for Individual Contributions to Candidates: Contributions to candidates who have agreed to spending limits are refundable for up to $50 for an individual per year or $100 for a married couple. These refunds are available for contributions made during the primary as well as the general election.

Refunds for Individual Contributions to Political Parties: Contributions to political parties are refundable for up to $50 for an individual per year or $100 for a married couple. The parties may use the money in candidate campaigns.

Candidate Qualifying: Candidates qualify to receive the direct grants and refundable contributions when they agree to spending limits and raise a modest threshold amount in $50 contributions: $35,000 for governor; $3,000 for senate; and $1,500 for house.

Spending Limits: The limits are indexed to inflation. They attempt to take into account a disparity created by incumbency by raising the spending limit 10 percent for first-time candidates and by 20 percent for candidates who won their primary by less than a 2-to-1 margin.

Triggers: Participating candidates may exceed the spending limit if a non-participating opponent exceeds the spending limit. But no additional public money is made available.

In 1998, Minnesota distributed almost $4 million to participating candidates, and almost 90 percent of the eligible candidates participated.

likely that candidates could rely on a large base of very small donors. Although in Minnesota, Republican candidates have used the credit more effectively — ironically even by those who oppose the credit — supporters there believe that unions or grassroots groups will learn to use the credit as a fundraising tool.

Finally, the rebate should be separate from the tax filing process and should be provided promptly, particularly if it is to be used by lower- and moderate-income citizens.

One of the more interesting programs discussed in the last few years is one proposed by two law school professors: vouchers for contributors.[2] Under that system, when a citizen registers to vote, he or she will be issued a voucher or a kind of credit card that allows the donor to give a certain amount to candidates or political groups. The system could either limit all candidate campaign spending to contributions from the fund or could continue to allow private contributions in some form. In almost all electoral systems, the aggregate of $10 contributions from all registered voters would far exceed the amount usually raised and spent by candidates.

Proponents of the system suggest it would give rise to a more egalitarian system of campaign finance than other forms of full public funding because it would decentralize all of the funding decisions among the voters — and would not require a system of spending limits. Additionally, the proposed system would allow voters to contribute their voucher money to a political party or a political action committee that would then distribute it.

The program could revitalize the democratic process by encouraging all voters to make contributions, by increasing competition, and by diversifying the political debate. While some money would go to candidates considered "fringe" by mainstream politicians, the program would not face the same criticism as block grant funding because the voters themselves would have made the contributions. Of course, such a program could make incumbents only more secure because their name recognition and institutionalized contact with the public will give them quite an advantage over newcomers.

The program remains an "idea" and has not been proposed in any state or local government. The proposal faces a serious constitutional obstacle because a program that does not allow potential candidates to choose between public money and their own money is likely to be held unconstitutional under *Buckley v. Valeo.*

Free or Reduced-Cost Services.

The government can provide certain services to candidates for free or at a reduced cost. These programs can take many different forms and involve very different levels of complexity. They are, however, usually linked with other subsidy programs. All of these programs are aimed at making it less expensive for candidates to reach voters, and as such, increasing the amount of discussion and debate during a campaign.

Some of the most commonly recommended plans include:

> **Free or Reduced-Cost Television Time:** A number of reformers have proposed that the government require television and radio stations to provide free air time to candidates who promise to abide by certain rules when using air time. Because the commercial stations and broadcast licenses are regulated by the federal government, which does not seem likely to impose such a requirement on broadcasters anytime soon, states cannot force commercial stations to provide free time. But they can buy time on stations — or, as Rhode Island did, provide time for candidate use on public stations. They could allow individual candidates to use the time or they could use it for a forum or both. By establishing guidelines for the use of the time, these programs not only provide a powerful way for candidates to reach voters, but they also could improve the quality of the political debate.

[2] The idea was proposed by Bruce Ackerman in the New Prospect, "Crediting the Voters," Spring, 1993. Richard L. Hasen expanded and modified the idea in *Clipping Coupons for Democracy: An Egalitarian/Public Choice Defense of Campaign Finance Vouchers*, 84 Cal. L. Rev. 1 (1996).

While these proposals would move towards reducing the need to raise money and increasing competition, they may be seen as tinkering with the edges of reform. They do not address the fundamental funding process of campaigns or independent spending and fake issue advocacy.

Free or Reduced-Cost Mailing Privileges: At the federal level, the government could simply provide participating candidates with free or reduced-cost postage — similar to the congressional franking privilege. States and local governments, which do not regulate the postal system, could provide postage for free mailings from participating candidates.

Voter Guides: Voter information guides generally provide statements from all candidates qualified to appear on the ballot, occasionally statements of support or opposition from various groups, and information on the candidate's position on certain issues. These are distributed to all registered voters by the government.

Web Sites: The government could assist candidates in setting up their own web sites and could establish an election web site on which debate and public comment could take place. The candidates could use the sites to make statements. The government could use the site as a kind of public forum in which candidates could respond to questions from citizens and each other.

How Much Does It Cost and How Is It Paid For?

All public funding plans — whether partial, full, or tax credits — result in a cost to someone. Of course, even the most expensive form — full public funding — probably would not be that expensive in the context of overall government spending. For instance, experts have estimated that the cost of subsidizing all U.S. House and Senate races, and all state elections for governor and the legislature, would be about $1 billion per year, or less than the federal allocation for many a military project, or less than $4 per person. In Massachusetts, advocates estimated that full public funding will cost about $45 million during an election cycle, about five times what elections generally cost in Massachusetts. Advocates, however, argued that the estimate was probably high because it was based on an assumption that all races would be contested. Still, the advocates said, "We think taxpayers are willing to pay $3 per person to ensure that they have a real choice on election day and candidates who are not beholden to special interest money." Additionally, under some public funding plans, campaigning will be cheaper because candidates will need to spend less money raising money.

Public subsidy plans rely on several methods to fund the programs. Most subsidy programs rely on tax return check-offs of a minimal amount to fund the plans; some of these plans add to the taxpayer's tax liability, but the more effective programs do not add to the tax liability and make that clear to the taxpayer. Some programs look to new or increased court fees, lobbying fees, and other earmarked funds, such as additional surcharges or lottery money. More and more, states are paying for these programs, at least in part, from general tax revenue. These are more successful — and safe — if the amount is man-

Arizona's Clean Election Funding Formula

The Arizona Citizens Clean Elections Act, which begins funding candidates in the 2000 elections, is supported by a variety of funding mechanisms:

Lobbyist Fees: For-profit lobbyists are charged a $100 registration fee.

Fine and Fee Surcharges: A 10 percent surcharge on all criminal fines and civil penalties goes into the Clean Elections Fund.

Donation Tax Credits: Taxpayers may donate up to $500 or 20 percent of their annual income tax liability to the fund and receive a tax credit.

Tax Check-Off: Taxpayers who designate $5 to the Clean Elections Fund receive a $5 tax reduction.

dated by the statute rather than left to the whim of any particular legislative year.

In recent years, participation in tax check-off programs has declined substantially. At the federal level, where the check-off results in no additional tax liability, participation has fallen from 28 percent in the 1970s to 13 percent in the ’90s. Participation is so low that in the 2000 primaries the presidential fund may not be able to match contributions fully until after April when the year’s tax revenue is received. Even in Minnesota, with its program known for popular support, funding has dropped sharply in recent years.

It is not clear whether the decline in participation represents a rejection of the program or a lack of understanding. Certainly at the federal level, there has been very little public education about the check-off and its use. It is quite likely that the decline in participation stems from misunderstandings and general cynicism about the electoral process.

Administrative Regimes and Enforcement.

While an efficient and effective administrative program is one of the most important elements of any campaign finance system, it becomes even more important in a system of public subsidies. This is true in part because the delivery of the subsidy simply requires more administration, but it is also true because the program’s integrity is more crucial when large sums of public money are being distributed. Despite this importance, administration and enforcement are often afterthoughts — in both development and funding.

Most agencies have been seriously underfunded. Even as campaign finance programs have grown more complex over the years, with increased disclosure requirements and public subsidy programs, the administrative bodies have grown little. This is true in part because most agencies, federally and at the state level, are funded by the very constituencies they regulate — legislators and executives — constituencies that, not surprisingly, often leave the agencies without sufficient resources to accomplish their missions. Statutory funding outside the usual budget process can help secure sufficient funding. In addition to sufficient funding, the administering agency should be structured so that it can operate efficiently and independently. A nonpartisan, independent agency is more likely to achieve this efficiency and independence. The FEC, for instance, with its bipartisan membership of three Republicans and three Democrats, is notorious for gridlock and paralyzing partisanship. A nonpartisan agency that takes its mission seriously can be one of the most effective means of building public support for a public subsidy program.

Any agency delivering public subsidies must also operate efficiently in delivering the subsidy, enforcing spending limits, and enforcing the reporting requirements. If the agency is unable to get money to the candidates efficiently and on schedule, the programs simply cannot work properly.

The agency also needs sufficient enforcement powers, such as the power and resources to conduct audits, issue subpoenas, conduct investigations, depose witnesses, and bring civil enforcement actions. The agency should be under direction to undertake random audits and other enforcement procedures during campaigns. Without adequate enforcement powers, the agency will not be able to ensure that candidates are complying with the law and that the public subsidy is being used properly. As part of the enforcement program, reformers should consider charging the board with the responsibility to publicize violations. Avoiding negative publicity during a campaign may be a stronger incentive for compliance than penalties.

Conclusion

All of the subsidy plans — from full public funding to the modest reduced-cost services subsidies — share a core value that the political debate and process will be enriched if candidates are able to reach voters, at least in some instances, without regard to their access to private wealth. Elections are seen as a public good where much of our democracy transpires — they are processes that government should promote and enhance. To one extent or another advocates of public subsidies believe that the democratic process will be enhanced if the influence that wealthy interests have over government officials is reduced and candidates who are not wealthy, or have little access to large sums of money, have a realistic opportunity to compete in the electoral process.

Whether public subsidies — in any form — will enhance the democratic process remains unclear. The promises, goals, and criticisms of the subsidy programs are, to some degree, speculative. Substantial public financing of political campaigns has been tried only on a limited scale — and, until these systems have been tested more thoroughly, it will be difficult to assess their successes and failures. But what is clear is that the current system is in trouble, and the experiments with public funding should be given a serious chance to prove their value.

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