



Back to the Future?

The Quest for Public Financing of Congressional Campaigns

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In his 1907 message to Congress, President Theodore Roosevelt proposed what he called “a very radical measure,” one that he conceded would “take some time” to consider: the public financing of federal campaigns (Roosevelt 1907, 78).¹ The president argued that “the need for collecting large [private] campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties” sufficient to run campaigns. Roosevelt’s proposal, however, was not without strings. He stipulated that, in exchange for public money, “no party receiving funds from the Treasury should accept more than a fixed amount from any individual” in private funds. This first proposal for public funding was limited to presidential campaigns,² but its effect could have been easily translated to congressional campaigns because, in Roosevelt’s day, political parties were the major forces in electoral politics.

In some ways, Roosevelt’s proposal could not be farther from the public financing debates of in recent years. First and foremost, it is unlikely that parties could today be a feasible mechanism for funding thousands of individualized federal campaigns. Indeed, limits on “coordinated” campaign expenditures would prevent parties from communicating with campaigns

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in some circumstances.³ More generally, the candidate-centered campaign has allegedly led to a decline in the importance of political parties, often in favor of political consultants (Shea and Burton 2001; Garrett 2010a). Although national parties continue to play large fund-raising roles, candidate campaigns are now much more involved in their own financial fates than they would have been in Roosevelt's era (La Raja 2008).

Even the form of Roosevelt's message today seems antiquated. His call for public financing amounted to a relatively brief paragraph among a laundry list of legislative recommendations on topics ranging from the military to public health. What was then a written message to Congress would today be known as the State of the Union address, a prime-time, televised event that generally focuses on a few major themes.

But another look suggests that this first public financing proposal⁴ started a conversation that has remained largely consistent for the past century. Public financing still has ardent supporters and fierce opponents. The form and specifics of the debate between those two groups may have changed in the past hundred years, but the core issues remain largely unchanged.

Even in the most active periods of House and Senate support for congressional public financing, the 1970s and 1990s, few observers alleged outright corruption resulting from what one prominent work has labeled the "money chase" of private fund-raising (Magleby and Nelson 1990). Those favoring public financing have generally always contended, however, that *private* financing presents at least the potential for conflicts of interest among lawmakers (or would-be lawmakers). As Roosevelt suggested, concerns of influence peddling are particularly strong when "special interest" money is involved—from corporate and union contributions before modern campaign finance law banned the practices in the early and mid-twentieth century, to political action committee (PAC) money in the 1980s (see, for example, Wertheimer 1986; La Raja 2008). More recently, attention has turned to "bundlers," who critics say provide a new example of circumvention of federal law limiting campaign contributions.⁵ Against this backdrop, public financing proponents suggest that only eliminating or significantly curtailing private money in politics can ensure that lawmakers and candidates are not beholden to a relatively few individual donors and PACs. Supporters also view public financing as a means to limit ever-growing campaign spending. Anticorruption efforts and cost containment remain cornerstones of arguments supporting public financing.

Opponents counter that public financing is unnecessary. In particular, they argue that the public simply does not support using taxpayer funds to finance political campaigns (see, for example, McDonald and Samples 2006). They also often suggest that taxpayer funds could be better spent on

other needs, that public financing risks wasting money on unqualified or “fringe” candidates, or that viable candidates should be able to attract sufficient support from private contributions. More to the point, opponents say, the need for public financing is not necessarily compelling, or a viable solution is constitutionally unworkable (see, for example, Smith 2001). These perspectives, too, remain hallmarks of the debate.

This chapter explores how the debate over public financing evolved in Congress during the twentieth century and beyond. The following discussion is limited primarily to congressional public financing bills passed by at least one chamber. The first serious public financing proposal, introduced in the mid-1950s, begins the discussion. Congress was particularly focused on public financing during the mid-1970s and again in the early 1990s. Only once, in 1992, have both the House and Senate enacted duplicate public financing legislation for the president’s consideration. George H. W. Bush vetoed that measure. Public financing of congressional campaigns received some renewed attention in 2007, during the 110th Congress, but that legislation did not advance beyond a Senate committee hearing. The 111th Congress (2009–2011)—the current Congress as of this writing—also reconsidered proposals to publicly finance House and Senate campaigns.

How Congressional Campaigns Are Financed Today

Before understanding how public financing would change the status quo, it is first essential to understand how campaigns are financed today. Congressional campaigns have never been publicly financed. Instead, they are funded by private contributions from individuals, party committees, and PACs. Most candidates receive support from all three sources. Most candidates also contribute at least some of their own money to their campaigns, although the extent to which they do so varies widely. Each election cycle, a few candidates’ campaigns are almost entirely self-financed. Most, however, raise the bulk of their money from other sources. In short, for good or ill, the entire structure of House and Senate campaigns is based on an ingrained system of private financing.

Under the Federal Election Campaign Act (FECA),⁶ U.S. citizens and permanent resident aliens (“green card” holders) may contribute to federal campaigns, as may PACs and party campaign committees. The most recent changes to federal contribution limits came with the passage of the 2002 Bipartisan Campaign Reform Act (BCRA), which amended FECA.⁷ Also known as McCain-Feingold for its principal Senate sponsors, John McCain (R-AZ) and Russell Feingold (D-WI), BCRA represented the first increase

in federal contribution limits since Congress enacted FECA in 1971.⁸ BCRA also indexed most federal contribution limits, including the individual limit, for inflation. These changes occurred largely because the \$1,000 limit on individual contributions established in FECA was widely viewed as antiquated by the 1990s. Even as the cost of campaigns grew steadily between the 1970s and the early 2000s, federal candidates still had to raise large sums in comparatively small increments under the old limits.

As Table 1.1 shows, for the 2008 cycle, BCRA's inflation-adjustment provisions raised the individual contribution limit to \$2,300. As a practical matter, this meant that an individual could give \$2,300 *per candidate, per election*, for a total of \$4,600 (\$2,300 each in the primary and general) to any one federal candidate campaign. If a rare runoff election occurred, another \$2,300 could be contributed.⁹

Public financing would represent a dramatic change in the way in which Americans elect politicians. As the preceding discussion suggests, federal campaigns depend heavily on private contributions (and lots of them). As Table 1.2 shows, during the 2008 election cycle, the average winning House candidate raised almost \$1.5 million and spent about \$1.4 million. Slightly more than half the amount raised (51 percent) was from individual contribu-

TABLE 1.1. FEDERAL CONTRIBUTION LIMITS, 2008 ELECTION CYCLE

	To Candidate Committees	To National Party Committees	To PACs	Aggregate Limit for Entire Cycle
Individuals	\$2,300 per candidate, per election*	\$28,500 per calendar year	\$5,000 per calendar year	\$108,200 (\$42,700 to all candidates; \$65,500 to parties and PACs)
Party committees	\$5,000 [†] per candidate, per election	Unlimited	\$5,000 per calendar year	Unlimited [§]
PACs [‡]	\$5,000 per candidate, per election	\$15,000 per calendar year	\$5,000 per calendar year	Unlimited

Source: Adapted by the author from Federal Election Commission, "Contribution Limits for 2007–2008," available at http://www.fec.gov/ans/answers_general.shtml#How_much_can_I_contribute; accessed July 5, 2008.

*Individuals may give \$2,300 to any one candidate committee during the primary and during the general (and runoff, if applicable) campaigns.

[†]This amount refers to direct contributions, not coordinated party expenditures. Coordinated party expenditures are purchases parties may make on behalf of, and in concert with, candidate campaigns.

[‡]Refers to "multicandidate" PACs, which are the most common type of PAC. Multicandidate PAC status is triggered when these committees make certain aggregate contributions to multiple candidates. For a straightforward discussion of PAC status, see Federal Election Commission (2007, 5).

[§]This excludes a special \$39,900 limit for contributions by party committees to Senate campaigns (shared between the party campaign committees and the national committee—e.g., the National Republican Senatorial Committee and the Republican National Committee).

TABLE 1.2. AVERAGE FUND-RAISING AND SPENDING BY 2008 WINNING CONGRESSIONAL CAMPAIGNS

	Average Amount Raised	Average Amount Raised from Individuals	Percent Raised from Individual Contributors	Average Amount Spent
House	\$1,472,146	\$755,161	51.3	\$1,372,591
Senate	\$7,297,936	\$4,811,856	65.9	\$7,539,470

Source: Adapted by the author from Center for Responsive Politics analysis of Federal Election Commission data, available at <http://www.opensecrets.org/bigpicture/stats.php?cycle=2008&Type=W&Display=A>, accessed September 15, 2010. The author calculated percentages in the "Percent raised from individual contributors" column.

Note: Senate expenditures outpaced receipts. Presumably, funds from the previous cycle explain the "additional" spending.

tors. By contrast, the average winning Senate candidate raised approximately \$7.3 million and spent about \$7.5 million.¹⁰ Senate candidates raised almost two-thirds of their funds (66 percent) from individuals.

Party committees, PACs, and 527 and 501(c) organizations raised and spent even more.¹¹ Although some 2008 fund-raising and spending in congressional races was less than comparable amounts in 2006, the overall trend in political money has steadily increased for decades.

As this book was going to press in the fall of 2010, every indication was that 2010 would witness substantial spending. Many experts predicted that "outside" spending would be bolstered by the January 2010 Supreme Court ruling in *Citizens United v. Federal Election Commission*, which permitted corporations and unions to use their treasury funds, for the first time in modern history, to explicitly call for election or defeat of political candidates. The effects of the ruling will take years to definitely sort out, but it almost certainly placed additional pressure on candidates to be financially well armed to fend off criticism not only from opponents but also from outside interests.

What does all this mean for a historical discussion of attempts to enact congressional public financing legislation? First, the financial overview presented in the preceding paragraphs highlights evidence that often appears in ideological debates surrounding public financing. For proponents of public financing, the "money chase" of electoral politics has become all-consuming. And, these observers say, the only way to regain control over political fund-raising is to replace or heavily subsidize private money with public money. However, opponents of public financing have not changed their positions either. As the following pages demonstrate, although the specifics of congressional public financing proposals have changed in the past fifty years, ideological differences have remained consistent.

Second, the data reinforce the obvious but nonetheless fundamental point that money is essential in congressional elections. If the private money that

funds campaigns today were to be replaced by public funds, substantial resources would be required. Historically, most public financing legislation would require those participating in public financing to limit their campaign spending, including spending from the candidate's personal resources. Some more recent proposals would permit unlimited spending, but private fund-raising would still be limited. Therefore, campaign spending would not necessarily be as voluminous under a public financing system as under the current system of private financing. However, in its landmark *Buckley v. Valeo* (1976) decision, the U.S. Supreme Court held that limiting candidate spending violated the First Amendment—unless the campaign *voluntarily* limited its spending in exchange for accepting public financing. In the absence of a constitutional amendment to the contrary, public financing would uniformly reduce campaign spending only if all candidates chose to participate.

Therefore, the challenge for public financing supporters becomes creating a benefits package that is attractive to all candidates and that is constitutionally viable. Constitutional concerns have not always been at the forefront of the debate, but as we will see, Congress has consistently and sometimes fiercely debated which provisions public financing legislation should include—and whether public financing should be enacted at all.

An Overview of Congressional Public Financing Legislation

The House, Senate, or both chambers have passed congressional public financing legislation eight times (excluding conference measures) since 1973. Table 1.3 summarizes those bills; the remainder of this chapter discusses the debate surrounding those bills. At the outset, it is important to note that although the legislation that we discuss has advanced farthest in the legislative process, Congress has also considered dozens or hundreds of other congressional public financing proposals during the past fifty years. In addition, although this discussion emphasizes public financing, the bills at issue often contained other campaign finance provisions not discussed here.

A First Attempt at Congressional Public Financing, 1956

Congress first considered legislation to publicly finance its campaigns in the 1950s and 1960s. Specifically, Senator Richard Neuberger (D-OR) introduced S. 3242 on February 20, 1956. The bill was untitled, but Neuberger called the legislation the Teddy Roosevelt bill, after the president's 1907 public financing

TABLE 1.3. CONGRESSIONAL PUBLIC FINANCING BILLS PASSED BY AT LEAST ONE CHAMBER OF CONGRESS

Legislation	Year of Passage	Congress/ Session	Overview of Major Provisions (congressional public financing only)	Outcome
S.Amdt. 651 to H.R. 11104	1973	93rd 1st session	Mandatory public financing in general-election campaigns Spending limits equal to federal grant	Passed by Senate
S. 3044	1974	93rd 2nd session	Voluntary public financing in primary and general-election campaigns Matching funds in primary campaigns Spending limits equal to federal grant in general-election campaigns	Passed by Senate
S. 137	1990	101st 2nd session	Voluntary public financing (benefits) in general elections Grants in general-election campaigns provided only in response to certain levels of opponent spending independent expenditures Public benefits of broadcast vouchers, reduced advertising rates, and reduced mailing rates provided to participants	Passed by Senate
H.R. 5400	1990	101st 2nd session	Voluntary public financing (benefits) in general elections Subsidies for one free broadcast ad for every two ads purchased, reduced advertising rates, and reduced mailing rates provided to participants	Passed by House
S. 3 (see also conference version below)	1991	102nd 2nd session	Voluntary public financing (benefits) in general elections Grants in general-election campaigns provided only in response to certain levels of opponent spending or independent expenditures Public benefits of broadcast vouchers, reduced advertising rates, and reduced mailing rates provided to participants	Passed by Senate
H.R. 3750 (see also conference version below)	1991	102nd 2nd session	Voluntary public financing (benefits) in general elections Matching funds in general-election campaigns for small contributions Grants in general-election campaigns provided only in response to certain levels of opponent spending or independent expenditures Public benefits of reduced mailing rates provided to participants	Passed by House

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TABLE 1.3. *Continued*

Legislation	Year of Passage	Congress/ Session	Overview of Major Provisions (congressional public financing only)	Outcome
S. 3 (conference version)	1992	102nd 2nd session	Voluntary public financing (benefits) in general elections Matching funds in general-election campaigns for small contributions (House candidates only) Grants in general-election campaigns provided only in response to certain levels of opponent spending independent expenditures Public benefits of broadcast vouchers (Senate candidates only), reduced advertising rates (Senate candidates only), and reduced mailing rates provided to participants	Passed by House and Senate; vetoed by President George H. W. Bush
H.R. 3	1993	103rd 1st session	Voluntary public financing (benefits) in general elections Grants in general-election campaigns provided only in response to certain levels of opponent spending or independent expenditures Advertising vouchers based on matching-fund structure	Passed by House
S. 3	1993	103rd 1st session	Voluntary public financing (benefits) in general elections Grants in general-election campaigns provided only in response to certain levels of opponent spending or independent expenditures Reduced advertising and mailing rates	Passed by Senate

Source: Author analysis of bill text and related documents.

proposal (Neuberger 1956, 2855). Indeed, S. 3242 was similar to Roosevelt's proposal—as we shall see, far more so than later congressional public financing bills. There is no record of congressional action on S. 3242 beyond introduction, but the bill offers important lessons for subsequent proposals.

Like Roosevelt's proposal, S. 3242 proposed public funds for political parties rather than individual campaigns. The legislation would have provided federal grants to "major political parties," meaning those whose candidates received at least 10 percent of the popular vote in the preceding election. For all practical purposes, this meant that third parties would be ineligible for funds. Those parties that were eligible would have received 15 or 20 cents (depending on whether it was a congressional or presidential election year) multiplied by the average number of votes cast in recent elections. Neuberger projected that, under his bill, the Democratic and Repub-

lican parties would have each received between approximately \$5 million and \$11 million for every election cycle between 1952 and 1958 (Neuberger 1956, 2856). Participation in public financing would have been voluntary—as is typically the case—but public funds would have been reduced if parties chose to accept more than \$100 in private contributions from any individual.

How does this first attempt at congressional public financing compare with later efforts? Although S. 3242 was similar to Roosevelt's proposal, it generally stands in stark contrast to later bills, at least in its technical provisions. First, the bill assumed that parties were the central force in electoral campaigns. As noted previously, this point is debatable today, but congressional campaigns now are far more responsible for their own fund-raising and spending than they were in the 1950s. Second, the Neuberger bill is remarkable today for its simplicity. The entire bill appears on a single page of the *Congressional Record* (Neuberger 1956, 2855), despite the major change it would have represented. Modern public financing bills tend to be far longer and more complex, because of both the changing nature of campaigns and the changing nature of the law. In Neuberger's day, public financing legislation could essentially begin from a blank slate, whereas later efforts typically attempted to amend FECA, the Internal Revenue Code (IRC), or both. Therefore, although Neuberger's proposal was perhaps a greater departure from the status quo than more recent bills, his task was arguably simpler because the legislation did not have to fit into the preexisting and complex framework of campaign finance and tax laws that surround public financing legislation today.

Despite those technical differences with more recent proposals, the brief debate over S. 3242 foreshadowed many of the arguments that would appear in future public financing legislation. Neuberger's introduction of S. 3242 came just weeks after two select (special) Senate committees had been formed to investigate an oil and gas company's alleged attempt to curry favor with another senator in exchange for a \$2,500 campaign contribution.¹² Citing that episode and other concerns, Neuberger stated:

[Private] contributions, in my opinion, have become an unbearable yoke to many of the men who must accept them. They even have become onerous and objectionable to the individuals who parcel out such contributions. Yet everyone has been caught in the ensnaring web of campaign financing. . . . [Large campaign] expenditures have become necessary because of the tremendous cost of reaching people through modern media of communication, particularly through radio and television. . . . I am convinced that neither candidates nor

contributors want this frenzied scramble for campaign financing to continue. (Neuberger 1956, 2854)

Those favoring congressional public financing often echo Neuberger's sentiment. In particular, three points found in Neuberger's quotation would become hallmarks of arguments in favor of congressional public financing: (1) Private contributions are potentially corrupting; (2) the increased need for money is directly related to broadcast communications; and (3) large private contributions are distasteful for candidates and donors alike.

Although little opposition to Neuberger's bill appears in the record of debate, at least one of Neuberger's colleagues raised the question of possible overreaction. Senator Homer Capehart (R-IN), while suggesting that he might have supported S. 3242 in general, warned against "legislat[ing] against honest men" with an overly punitive bill. Capehart continued:

I feel very sorry that because of the contribution of \$2,500, it is said there is a need for [S. 3242]. Let each Senator take a good look at himself in a mirror; he knows whether he has a clear conscience. . . . How else is a candidate going to handle his campaign if he does not obtain contributions from his friends, or put up all the money himself? Who says that every contribution is made for some ulterior motive? I say shame on any Senator who makes such a suggestion. (Capehart 1956, 2863)

In the future, these and similar sentiments would become themes often found in opposition to public financing. In short, those opposed to public financing generally contend that public financing advocates too often use isolated cases of abuse to make the claim for broad reform. Whether for those reasons or others, there is no evidence that S. 3242 received any additional consideration beyond Neuberger's introductory statement. Even if the Senate (not to mention the House) shared Neuberger's concerns, they chose not to enact congressional public financing legislation in the 1950s or 1960s.

Despite the lack of movement on the Neuberger bill, public financing continued to attract periodic attention. Throughout the 1960s, various committees inside the legislative and executive branches considered public financing measures or other issues related to campaign fund-raising or spending (see, for example, U.S. Senate Committee on Rules and Administration 1961 and U.S. President's Commission on Campaign Costs 1962). Congress passed a *presidential* public financing bill in 1966, but the measure was repealed the following year (Corrado 2005, 19).¹³ Although there was

some committee action on other public financing bills during the 1960s, not until the 1970s did congressional public financing legislation make significant legislative progress.

The 1970s: Renewed Attention amid FECA and Watergate

Just as a perceived scandal had provided fodder for the first attempt at congressional public financing in 1956, Watergate gave the issue renewed focus in the mid-1970s. Even before Watergate, in the early 1970s, congressional attention turned to campaign finance as it never had before. In 1971, Congress passed, and President Richard Nixon signed, the Federal Election Campaign Act. FECA replaced the Corrupt Practices Act, which had last been amended in 1925 and was widely regarded as inadequate to address modern campaign finance (Corrado 2005, 20). FECA remains the cornerstone of the nation's campaign finance law.¹⁴

Also in 1971, Congress again enacted voluntary public financing for presidential campaigns. That system also remains in effect today, although even supporters of the program agree that it needs updating.¹⁵ Nonetheless, even with all these factors that would suggest improved chances for congressional public financing, Congress would not enact such legislation until the 1990s.

The House and Senate made significant progress on legislative public financing bills at two different points in the 93rd Congress (1973–1974). This period marked the first time that either chamber passed congressional public financing legislation. First, in November 1973, the Senate passed an amendment to an unlikely legislative “vehicle,” H.R. 11104 (introduced by Representative Albert Ullman, D-OR), which was aimed at increasing the nation's public debt limit. Senator Ted Kennedy (D-MA) sponsored a public financing measure in the form of Senate Amendment 651 (S.Amdt.) to H.R. 11104.¹⁶

Senate Amendment 651 differed from the 1956 Neuberger legislation in at least three major respects. First, the Kennedy amendment was longer and more complex than Neuberger's bill, reflecting the evolution of campaign finance law that had occurred in the interim (most notably the enactment of FECA). Second, the Neuberger bill would have permitted congressional appropriations to cover public financing, but did not speak in detail about how those appropriations would be funded. By contrast, the Kennedy amendment, like many public financing bills today, amended federal tax law (specifically the Internal Revenue Code, today found in Title 26 of the

United States Code). The connection to tax law has been prominent in public financing proposals since at least the 1971 Revenue Act, in which Congress enacted the current *presidential* public campaign financing system. In the most visible connection to tax law, as a result of the Revenue Act, individual federal tax-return forms contain a “checkoff” question that permits individuals to voluntarily designate a portion of their tax dollars for the presidential public financing program. Kennedy’s amendment, and many public financing proposals since, proposed adopting the checkoff mechanism for legislative campaigns rather than providing funding through congressional appropriations. (However, Kennedy’s amendment also allowed for congressional appropriations to prevent insolvency in the proposed public financing fund.) Third, S.Amdt. 651 proposed providing funds directly to candidate campaigns rather than routing them only through political parties.

The Senate eventually passed Kennedy’s amendment, which envisioned broad public financing of presidential and congressional campaigns.¹⁷ Specifically, the amendment proposed mandatory public financing of general-election campaigns. Funds would have been available to all candidates who met specific qualifying criteria. For congressional candidates, federal funding would have been limited to the greater of 15 cents multiplied by the voting-age population (VAP) of the state or \$90,000 for House candidates, or the greater of the formula amount or \$175,000 for Senate candidates.¹⁸ Minor-party candidates would have been eligible for lesser amounts. Those thresholds were consistent with spending limits previously passed by the Senate (in S. 372) earlier in 1973, although that bill did not become law. In exchange for receiving public funds, candidates would have had to certify to the U.S. comptroller general that their campaigns would submit to federal audits, that they would make no expenditures in the general election beyond the amount provided by federal funds, and that they would not raise private funds for the general election.¹⁹

During floor debate, senators considered what goals public financing should accomplish and how, and whether the initiative was truly necessary. As Neuberger had in 1956, Kennedy invoked concerns about corruption. He said when the amendment was introduced:

I am convinced that most, and probably all, of the very serious problems facing this country today have their roots in the way we finance political campaigns for high Federal office. We would have a different America today if the political power of campaign contributions were measured by their votes and voices instead of their pocketbooks. Beyond any doubt, the year-long revelations of Watergate demon-

strate the insidious influence of private money in American politics. (Kennedy 1973, 38177)

Senator Walter Mondale (D-MN), who noted that the amendment was the product of various senators' proposals, echoed those comments, saying, "The average person who works every day, pays his taxes, and maybe gives 10 bucks to a candidate, cannot find anyone in Government who cares about him or his problems. No wonder he feels cut off from Government. No wonder he does not trust politicians. No wonder he thinks we are all crooks" (Mondale 1973, 38183).

Others, however, were skeptical. Senator James Allen (D-AL), for example, questioned why private contributions in general elections would be permitted, but only if given to parties rather than candidates. Allen contended that the flow of individual contributions through parties "looks like a subsidy added to private contributions" (Allen 1973, 38185). Allen also questioned the cost of public financing—a point that has been a common topic of congressional debates over the issue. Barry Goldwater (R-AZ), among others, also raised constitutional concerns about barring private contributions. Others senators objected to raising the public financing issue by means of the debt-ceiling bill rather than through other procedural avenues. Senator Adlai Stevenson III (D-IL) cautioned after S.Amdt. 651 was passed that Kennedy's amendment was "a pure public financing proposal" because, except in some circumstances, it "permits no private contributions" to publicly financed candidates (Stevenson 1973, 38226). Instead, Stevenson proposed an alternative amendment (which was unsuccessful) that would have created a hybrid system combining elements of private and public financing. The House companion bill did not include a congressional public financing provision.

Many of the same issues raised in the 1973 debate reemerged when Congress turned to congressional public financing during consideration of the 1974 FECA amendments. The FECA amendments eventually became law, but congressional public financing did not. As with S.Amdt. 651 the previous year, in 1974 the Senate passed congressional public financing legislation, but the House did not.

The Senate version of the FECA amendments, S. 3044, was sponsored by Senator Howard Cannon, a Nevada Democrat and chairman of the Senate Committee on Rules and Administration, which typically has jurisdiction over campaign finance matters.²⁰ The committee held hearings on the bill, including a congressional public financing provision, in February 1974 (U.S. Senate Committee on Rules and Administration 1974). The majority views in the committee report held that public financing was an essential

reform. Although the committee recognized “that the issue of public financing has been a controversial one for several years” and that various competing proposals existed, “there is no question that the public appreciates the pervasive evils of our present system for campaign financing. The potentials for abuse are all too clear” (U.S. Senate Committee on Rules and Administration 1974, 4). Nonetheless, although S. 3044 was ultimately successful in the Senate, it was not without controversy, even among some supporters.

The measure came to the Senate floor in April 1974. It was principally concerned with other amendments to FECA, but the version reported to the Senate by the Rules and Administration Committee also included language that would have extended the checkoff-based model of presidential public financing to congressional campaigns. The committee-reported version of S. 3044 proposed full public financing of general-election campaigns and a matching fund system for primary campaigns (in which public funds would have supplemented private fund-raising, as is the case with the presidential public financing system). Much of the bill’s language was based on S. 372, a 1973 campaign finance bill that was ultimately unsuccessful. By including primary campaigns, S. 3044 represented another phase in the evolution of congressional public financing proposals. In addition, perhaps because of the previous lack of success moving mandatory public financing legislation, S. 3044 would have made participation voluntary.²¹

The bill’s supporters viewed the continued press for public financing, and the proposed expansion to primary campaigns, as a continuation of Congress’s efforts to restore faith in government following Watergate. Others, however, argued just the opposite. Although he emphasized the need for political reform generally, Senator Peter Dominick (R-CO) strongly criticized the bill’s public financing language:

I support reform and have consistently voted for it. I am against—irrevocably against—efforts to establish a Federal financing system as proposed in [S. 3044]. Giving taxpayers’ money to politicians to run for election can only reduce further whatever confidence Americans retain in their political leadership and institutions. Taking away from the individual the decision as to whom their money will go excludes the individual from a vital part of the political process and reduces the voters’ involvement, participation and commitment to candidates and parties. Reducing the dependence of candidates and elected officials upon the rank and file of their party and upon the individual citizen voter will insulate representatives further from individual taxpayers who will be, nonetheless, paying their campaign

bills. . . . To adopt “public financing” would be the ultimate evil legacy of the Watergate era. (Dominick 1974, 10948)

Adlai Stevenson, who had raised objections to elements of S.Amdt. 651, reiterated his concern that S. 3044 would unnecessarily restrict small contributions, saying, “This bill implicitly distrusts the people and their good sense” (Stevenson 1973, 10950).

These objections to public financing (especially Dominick’s remarks) emphasized some of the most common arguments against public financing at the time and throughout the history of debate over the issue. As Dominick suggested, opponents often view public financing not as a method of “cleaning up” politics, but as a method of limiting individual liberty. In their view, public financing forces voters to make political contributions indirectly through their tax dollars, and to do so in ways that they might find objectionable. Furthermore, they say, *private* financing is not a means to corruption, but an incentive to keep candidates close to their constituents and their concerns. Critics also often contend that public funds could be better spent elsewhere.

Despite some opposition to the bill, S. 3044 passed the Senate on April 11, 1974.²² Even some senators with reservations about the bill were persuaded that congressional public financing was a necessary approach to achieving renewed trust in government. For example, despite what Senator Pete Domenici (R-NM) called “glaring deficiencies” in the bill, “to be effective in reforming our election procedures, we must follow a comprehensive approach. . . . [P]ublic financing is required to achieve the fundamental objectives of limited contributions and limited spending, both of which must be strictly enforced and completely disclosed” (Domenici 1974, 10951).

As with S.Amdt. 651 the previous year, the House did not follow the Senate’s lead on S. 3044. There were attempts to include congressional public financing provisions in the House version of the bill, but the language was eventually dropped from the 1974 FECA amendments that became law. However, an expansion of the presidential public financing program survived a House-Senate conference committee and became law, as did spending limits on congressional campaigns. The Supreme Court would declare the spending limits unconstitutional in its 1976 *Buckley v. Valeo* decision, which also preserved presidential public financing as long as participation was voluntary.

Although there were attempts to revise congressional public financing throughout the 1970s, including various congressional hearings, no legislation advanced as far as S.Amdt. 651 had in 1973 or S. 3044 in 1974. Jimmy

Carter's support for congressional public financing was also insufficient to substantially move the issue in Congress (Carter 1977, 482). The stalemate would last throughout the 1980s in one form or another. The debate over campaign finance policy also shifted in the 1980s to concerns about PACs and whether their role as vehicles for "special interest" money circumvented federal law (see, for example, Sabato 1984; Matasar 1986). Neither chamber of Congress would pass public financing legislation again for almost twenty years.

The 1990s: Different Proposals, More Legislative Progress

In the late 1980s, attention began to shift back toward congressional public financing, but in a different form than in the 1970s. The primary differences in the public financing legislation that passed the House and Senate in the early 1990s compared with the 1970s were twofold. First, the 1990s marked the first time that the House, rather than just the Senate, passed public financing legislation. By contrast, despite several ambitious House proposals during the 1970s, none of that legislation passed the chamber. Second, and more important, the 1990s legislation that passed the House, Senate, or both shifted the understanding of what constituted "public financing." Whereas the 1970s legislation focused on providing subsidies—public funds—directly to campaigns, the 1990s legislation proposed indirect benefits to campaigns. Specifically, the 1990s legislation would have provided direct funds in some cases, but emphasized advertising vouchers or mail subsidies that would have provided less-direct financial benefits than traditional proposals for grants or matching funds.

The House and Senate had begun considering legislative public financing bills again in earnest during the 100th Congress (1987–1988). In the 101st Congress, the House passed public financing legislation for the first time. However, even though both chambers passed public financing bills during that Congress, efforts to resolve differences between the chambers in a conference committee were unsuccessful.

When the 1990s arrived, the Senate passed its bill first, on August 1, 1990. Sponsored by Oklahoma Democrat David Boren, S. 137 had been debated on the floor throughout late July, after being revised during the preceding spring. The bill was subject to multiple amendments on subjects ranging from political use of union dues to soft money and public financing.

Unlike the legislation that the Senate had passed in the 1970s, S. 137 proposed providing public money directly to campaigns only under lim-

ited circumstances. Participating campaigns would have received taxpayer funds only if nonparticipating opponents exceeded a spending cap of no more than \$5.5 million. Federal funds also would have been available to respond to spending on independent expenditures—typically broadcast advertisements aired by political parties, PACs, or other groups—that exceeded certain amounts.

Most of S. 137's benefits, however, would not have provided federal funds directly to campaigns. Instead, participants would have received federally funded vouchers for broadcast advertising time. Similarly, the bill would have provided favorable advertising rates to participants through adjustments to a federal provision known as the "lowest unit charge" (sometimes called the "lowest unit rate"), which essentially requires that uniform, comparatively low prices be charged for the same class of broadcast advertising during the same period of a given day.²³ Participants would also have received discounted postal rates.

Support for S. 137 was based on familiar arguments surrounding public financing, as was opposition to the bill. Debate over providing public financing in exchange for limiting campaign spending was particularly prominent, as it had been in the past and continues to be today. As Senator George Mitchell (D-ME), then the Senate majority leader, noted before the Senate began debate on final passage of S. 137:

[It has been] clear to all that the central difference between the two parties on campaign finance reform was spending limits. Democrats in good faith believe deeply that some limit should be placed on the amount spent in political campaigns in America. Republicans in equally good faith believe deeply that there should be no limit to the amounts spent on political campaigns in America. The debate . . . has served merely to confirm that difference. As we have heard over and over and over again from our colleagues, it is opposition to spending limits which is at the heart of the disagreement over this bill. (Mitchell 1990, 20314)

As Senate passage of S. 137 neared, proponents, including Boren, suggested that the bill deemphasize the previous and controversial topic of providing taxpayer funds directly to candidate campaigns. Those favoring the bill hoped these changes would appease the bill's critics. They apparently did not. Senator Mitch McConnell (R-KY), a critic of public financing legislation, said during floor debate that the bill's supporters "have dredged the 1970's [and] found a lemon of a campaign finance vehicle, tuned it up a little and unveiled

it in 1990 as the panacea for real and perceived corruption in the political process. Mr. President, underneath the hood, it is the same old lemon running on taxpayer financing and spending limits” (McConnell 1990, 20303).²⁴

The House took up floor debate on its own bill, H.R. 5400, just days after the Senate passed S. 137 in August 1990. That bill was sponsored by Representative Al Swift (D-WA). The House and Senate measures were generally similar, but contained one major difference. The version of H.R. 5400 eventually passed by the House contained no provisions for providing public funds directly to candidate campaigns. As noted previously, S. 137 proposed to do so in response to nonparticipant spending or independent expenditures. Also, H.R. 5400’s advertising benefits differed from those of S. 137. Although vouchers proposed in the Senate bill would have covered partial costs of broadcast ads, participating candidates under H.R. 5400 would have received one free ad for every two purchased. The two bills’ other public benefits, such as reduced mailing rates, were largely similar.

As with some other bills containing public financing provisions during this period, much of the debate over H.R. 5400 focused on unrelated issues, particularly provisions concerning PACs. When debate did turn to public financing (or benefits) provisions, supporters contended that the legislation included a variety of needed reform measures and emphasized concessions that had removed direct subsidies to candidate campaigns. They also emphasized that the bill provided incentives to limit campaign spending. Opponents, however, countered that public funds nonetheless were subsidizing benefits such as reduced mailing rates. Some opponents also complained that the bill had not been considered in committee.

Although each chamber had passed similar legislation, details relating to public financing provisions and, perhaps more importantly, other campaign finance issues, kept the two chambers far apart. The House and Senate bills were never reconciled in conference committee. Those efforts would nonetheless become the foundation of monumental public financing legislation in the 102nd Congress.

In 1991–1992, both houses of Congress finally agreed on and passed public financing legislation. Although the act was vetoed, the episode marks the most substantial legislative progress a congressional public financing bill has ever attained. The public financing provisions of the Senate bill, S. 3, were substantially similar to S. 137, which the chamber had passed in the previous Congress. As with S. 137, S. 3 would have permitted direct payments to candidate campaigns only in response to certain opponent spending or independent expenditures. The bill’s main public benefits provisions included broadcast vouchers and reduced mail rates.

As proponents had done since public financing reemerged in the late 1980s, S. 3's supporters framed the bill not primarily as a public financing measure, but as a means to controlling campaign costs, as the bill's benefits would be available only to those who agreed to limit spending. As David Boren, S. 3's sponsor, explained shortly before the bill passed the Senate:

This [bill] is not about financing. It is not about taxpayer financing. . . . This bill is about whether or not we are going to stop the money chase in American politics. . . . If you can really say that you think more and more money pouring into American politics has encouraged competition, then of course you should oppose S. 3 and spending limits. But when you look at the facts, I do not see how you can answer the question that way. (Boren 1991, 12340)

Opponents, however, as they had also done in previous Congresses, objected to the bill and raised constitutional questions about whether the legislation unfairly rewarded participants while punishing those who chose not to limit their spending. According to Wyoming Republican Alan Simpson, "Candidates who do not agree to the spending limits [in S. 3] not only do not get any public subsidies if they go over their [spending] limits, their opponents get additional public money as a penalty. . . . [A]s a constitutional matter, there is nothing 'voluntary' about the campaign finance system established by the pending legislation" (Simpson 1991, 12339).

Representative Sam Gejdenson (D-CT) sponsored the House bill, H.R. 3750. In a departure from the House's bill that had passed during the 101st Congress, H.R. 3750 would have provided matching funds for small contributions (up to \$200 each, for a \$200,000 aggregate). The bill also proposed grants in response to certain opponent spending or independent expenditures. Public benefits were confined to reduced mailing rates. A House working group, the Campaign Finance Reform Task Force, was responsible for much of H.R. 3750's development.

Like other bills considered during the period, much of the debate surrounding H.R. 3750 concerned the bill's proposed restrictions on PACs rather than public financing per se. Also like other bills proposed during the period, H.R. 3750 was framed more as a spending-limit bill than a public financing bill. Representative Charles Rose (D-NC), Committee on House Administration chairman, called spending limits the "cornerstone" of the bill and emphasized H.R. 3750's matching-fund provision. The latter (like all such provisions) relied on private contributions to determine the amount of funds available to candidates rather than providing an automatic

grant. Supporters also argued that the major elements of the bill were already tested. For example, Representative Gerald Kleczka (D-WI) suggested that the bill's "system of spending limits and public financing is not some radical idea the authors of this bill thought up. This is the system which now funds our Presidential elections" (Kleczka 1991, 34680).

H.R. 3750's critics countered that public-benefits portions of the bill were, in fact, akin to direct candidate subsidies because of their effect on the Treasury. Representative Bill Thomas (R-CA.), ranking member of the House Administration Committee, urged his colleagues, as various version of the legislation were being debated, to "make no mistake. There is nothing in this bill, nothing in this bill, that takes away from the taxpayer financing on postal subsidies, on matching funds, and on tax credits, if those are, in fact, the incentives that we are going to have in the bill" (Thomas 1991, 34680). Despite objection from some in the House and Senate, both chambers passed their bills.

In April 1992, a conference committee reported a measure combining the House and Senate bills (U.S. House of Representatives 1992). In terms of public financing provisions, the reported measure largely adopted S. 3's language regarding Senate campaigns and H.R. 3750's language regarding House campaigns. (The bill sent to the president was labeled S. 3.) Both houses of Congress assented to the conference committee's recommendation and sent an act to the president that emphasized direct subsidies only in response to certain opponent spending or independent expenditures (except for matching funds to be made available to House candidates) and provided broadcast vouchers or reduced advertising rates and reduced mailing rates. Spending limits and PAC provisions occupied much of the legislation.

On May 9, 1992, President George H. W. Bush vetoed S. 3. Although Bush called the existing campaign finance structure "seriously flawed," he contended that the measure would not accomplish the goals of increasing competition or balancing resources among candidates. The president also concluded that the measure "would limit political speech protected by the First Amendment and inevitably lead to a raid on the Treasury to pay for the Act's elaborate scheme of public subsidies" (Bush 1993, 736).

Although Congress revisited public financing legislation in the 103rd Congress, legislative momentum on the issue had reached its zenith (at least thus far). In the 103rd Congress, the House and Senate each passed bills (H.R. 3 and S. 3, respectively) that were substantially similar to the legislation vetoed in 1992. Sponsored by Boren, S. 3 proposed reductions in broadcast-advertising and mailing rates. The bill also would have provided direct payments to Senate campaigns, but again only in response to indepen-

dent expenditures and opposition spending. Sponsored by Gejdenson, H.R. 3 proposed advertising vouchers (based on a matching-provision system). Like the Senate bill, H.R. 3 would have provided direct subsidies in response to independent expenditures or opponent spending. Each chamber passed its bill in 1993. President Bill Clinton's support for public financing seemed particularly promising. Nonetheless, the bills were not reconciled in conference, and the measures died.

As of this writing, Congress has not devoted substantial legislative attention to public financing since. The issue received little attention after Republicans gained control of the House and Senate in 1995 (the 104th Congress). This outcome is not surprising given many Republicans' traditional objections to public financing legislation. In addition, both chambers, and indeed members of both parties, may have simply grown frustrated by several unsuccessful efforts to enact public financing legislation. Finally, although campaign finance issues did receive substantial attention in the late 1990s and early 2000s surrounding BCRA, those debates generally focused on other issues.

Congressional Public Financing in 2008 and Beyond

As the preceding discussion shows, as of this writing, congressional public financing legislation has enjoyed only limited success in Congress. No congressional public financing bill has become law. But supporters have not been deterred. Their opponents have remained equally vigilant.

The 110th Congress (2007–2008) showed renewed interest in public financing. A June 2007 Senate Rules and Administration Committee hearing on S. 1285, introduced by Senator Richard Durbin (D-IL), marked the first congressional hearing on the topic since the 103rd Congress (1993–1994). Two public financing bills (H.R. 1614, sponsored by Representative John Tierney, D-MA; and H.R. 2817, sponsored by Representative David Obey, D-WI), were introduced in the House, but those measures did not receive hearings. In the 111th Congress (2009–2010), the Committee on House Administration held a hearing on H.R. 1826, sponsored by Representative John Larson (D-CT). The committee also considered another Larson bill, H.R. 6116. The Durbin bill also reemerged in the Senate, in the form of S. 752, but the legislation did not receive a hearing.

In some ways, these bills harkened back to those Congress has debated for the past fifty years. In others, they suggested new (or at least renewed) approaches. Like their predecessors, the 110th and 111th Congresses' bills included a combination of matching funds, grants, or advertising vouchers.

Accordingly, it seems that Congress has maintained a consistent vision of how public financing benefits would be structured and delivered since the 1970s. Nonetheless, political context and other factors have shaped the evolution of individual proposals.

At the same time, unlike some of the bills that passed Congress—but did not become law—in the 1970s and 1990s, recent bills’ authors appear to be moving toward a more comprehensive approach to public financing. Whereas Congress limited direct subsidies to candidate campaigns and often previously tied public financing provisions to broader reform issues, the more recent bills envision a structure that would cover a substantial portion of (or perhaps all) campaign costs for those who chose to participate. In doing so, although in a very different form than the first congressional public financing bill offered in 1956, the scope of the latest proposals is perhaps not that different from Neuberger’s original vision of federally funded campaigns. Recent bills also assume that constitutional challenges could be brought if the legislation became law, and propose expedited review and “severability” mechanisms to prevent other elements from being invalidated if parts a law were held unconstitutional.

Perhaps most notably, H.R. 1826 and H.R. 6116 in the 111th Congress—and S. 752, a Senate counterpart—abandoned spending limits and additional funding in response to opponent fund-raising or independent expenditures. Instead, the bills concentrated on providing public benefits to supplement unlimited fund-raising of contributions of \$100 or less. The revamped approach came at least partially in response to increasing concern about the constitutionality of public financing that equalized resources rather than simply providing an alternative funding source compared with traditional private funds.²⁵ These developments suggest that proponents of public financing may be ready for a renewed debate over extensive public financing legislation, yet mindful that their opponents also are prepared to rebuff those efforts. The history of congressional public financing legislation suggests nothing less.

NOTES

1. The full history of congressional public financing legislation is beyond the scope of this chapter, which presents a discussion of selected bills. Related discussion of the topics addressed in this chapter appears in R. Sam Garrett, “Public Financing of Congressional Campaigns: Background and Analysis,” Congressional Research Service report RL33814. Joseph E. Cantor, whose knowledge of campaign finance legislation is unsurpassed, originally served as a coauthor of that report. For additional discussion of related legislative history, see also Mutch 1988, chap. 5).

2. The subheading for the relevant section of Roosevelt's message is "Presidential Campaign Expenses." The accompanying text refers to "Presidential or National campaigns" (Roosevelt 1907, 78).

3. Essentially, "coordinated" spending refers to purchases on which parties and campaigns may communicate and share strategic resources. On coordination, see 2 U.S.C. § 441a(d).

4. Mutch states that "the first bill providing for [public financing of presidential campaigns] was introduced in 1904" (1988, 118). What legislation Mutch is referring to is unclear.

5. Bundlers typically either assemble groups of individuals' campaign contributions ("bundles") or are credited with soliciting certain contributions that go directly to a campaign.

6. FECA is 2 U.S.C. § 431 et seq.

7. BCRA is P.L. 107-155; 116 Stat. 81.

8. Congress enacted major amendments to FECA in 1974, 1976, and 1979.

9. Notably, however, BCRA did not index PAC contributions for inflation. They have remained at \$5,000 per calendar year.

10. The "additional" funds are presumably remaining amounts from the previous election cycle.

11. It is beyond the scope of this chapter to address 527s and 501(c)s, but the extent to which their spending is campaign related is a subject of contentious debate.

12. The details of these events are beyond the scope of this chapter.

13. See 80 Stat. 1587 and 81 Stat. 57.

14. On other themes in the FECA debate throughout the 1970s compared with more recent campaign finance measures, see Garrett 2010b.

15. The current presidential public financing system was established in the 1971 Revenue Act. See 85 Stat. 573. FECA amendments later modified elements of the program.

16. As if to underscore the growing concerns about potential corruption surrounding money in politics, the Senate confirmation vote of Gerald Ford's nomination as Richard Nixon's vice president (following the Agnew resignation) interrupted consideration of S.Amdt. 651. The timing was apparently coincidental.

17. For the text of the amendment as introduced, see *Congressional Record* 119, pt. 29, November 27, 1973, p. 38172.

18. *Ibid.*, 38173.

19. On these conditions, see *ibid.*, 38172.

20. Bill referral can vary depending on the issues addressed in individual legislation. In addition to the Committee on Rules and Administration, public financing bills are often referred to the Senate Committee on Finance, which has jurisdiction over tax issues. The Commerce Committee also sometimes receives bills that would affect political advertising or broadcasting issues. In the House, the principal campaign finance committee is the Committee on House Administration. The Ways and Means Committee handles tax issues; the Committee on Energy and Commerce handles telecommunications issues.

21. Today, virtually all public financing proposals include voluntary-participation provisions, due in no small part to the *Buckley v. Valeo* decision.

22. See legislative vote no. 146, *Congressional Record*, April 11, 1974, p. 10952.

23. See 47 U.S.C. § 315(b). See also Williams 1992-1993.

24. The reference to "Mr. President" is to the president of the Senate.

25. The renewed focus on constitutional issues arose after the Supreme Court ruled in *Davis v. FEC* (2008) that the so-called Millionaire's Amendment, a BCRA provision,

unconstitutionally provided additional fund-raising limits for traditionally financed opponents facing wealthy, self-financed opponents. The case did not directly concern public financing but was generally considered to place additional public financing benefits—such as traditional proposals for matching funds provided in response to nonparticipant fund-raising or spending—on questionable constitutional footing.

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