

May 23, 1977

## **GOVERNMENT FINANCING CONGRESSIONAL CAMPAIGNS**

H.R. 5157, S.926

### STATUS

These bills would provide Federal matching funds to Congressional campaigns from the same voluntary income-tax check-off that is already used to subsidize Presidential campaigns. The Senate bill covers only Senate races; the House bill covers both House and Senate races. The Senate bill includes primary campaigns; the House bill does not. Detailed provisions are summarized in the April Heritage Foundation Issue Bulletin, "Carter's Election Reform Proposal."

The House bill is now under consideration by the House Administration Committee, the Senate bill by the Rules and Administration Committee. Senate committee hearings have been concluded, but the House committee has scheduled additional hearings in June.

### ARGUMENTS FOR GOVERNMENT FINANCING

Supporters of these bills have emphasized the following points:

1.) The combination of contribution ceilings and matching funds will reduce the ability of special-interest groups to "buy" candidates and officeholders.

2.) Government financing of campaigns for Federal office is necessary to combat abuses like the ones immortalized by President Nixon's 1972 campaign.

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NOTE: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

3.) Federal subsidies will be entirely voluntary, since they will be drawn from a pool created by the optional "dollar check-off" line on individual income tax forms.

#### ARGUMENTS AGAINST GOVERNMENT FINANCING

Opponents of these bills have made the following points:

1.) Special-interest groups which are rich in volunteer or pseudo-volunteer manpower actually gain relative strength under public financing. The only equitable way to discourage under-the-table deals is not to fix arbitrary limits which let PAC's give more than individuals, but to compel public disclosure of contributions - as is already mandated by the 1971 Campaign Reform Act. The failure of government-financing to reduce special-interest incentives is demonstrated by the National Education Association's enthusiastic expansion of its political activities in the 1976 Presidential campaign.

2.) The string of abuses known as "Watergate" was detected, prosecuted, and punished under statutes that had nothing to do with contribution ceilings or government subsidies. As former Senator Eugene McCarthy has pointed out, "Every major offense of President Nixon's men was a crime before the FECA (Federal Election Campaign Act) was passed. Bribery, wiretapping and bugging, burglary, perjury, subornation of perjury, and obstruction of justice were crimes long before the FECA was passed."

3.) The "dollar check-off" pool of funds was adequate for 1976 Presidential campaign subsidies, but the additional drain created by subsidies to House and Senate candidates may be more than the system can handle. The Federal Election Commission may have to make a string of unenviable and arbitrary decisions regarding the allocation of insufficient funds. In the long run, the special pool would quite likely have to be supplemented with funds from the government's general revenues.

The "voluntary check-off" model is of dubious legitimacy in a representative republic. In the "best" year to date, only 25 percent of the taxpayers chose this option even though it was clearly explained that the option would have no effect on their total tax burden. One can imagine other areas of government spending where at least 25 percent of the taxpayers would like to have a choice. Why not have a voluntary check-off for aid to Zaire, or for the salaries of OSHA inspectors? Form 1040 would be transformed into an annual multiple-choice referendum.

4.) In fact, far fewer than 25 percent of the people are enthusiastic about public financing. When Maryland citizens were offered the chance to add two dollars to their state taxes in order to remove the "evils of private money in state elections", only 3.4 percent took advantage of it.

5.) Far from fighting grass-roots apathy and alienation from politics, campaign subsidies would reinforce these traits by removing an important dimension of popular participation. This would be especially true in the event of total government financing, the stated ultimate goal of the sponsors of S. 926.

6.) Human nature being what it is, it is impossible to separate the job of changing the rules of the political game from the desire to manipulate the results of the game. The more complicated the regulatory structure, the more decisions there are to make, the more opportunities for abuse are present; the more such opportunities there are, the more likely it is that they will be seized. Congressional incumbents have a considerable personal stake in all those decisions, and - as attorneys Brice Clagget and John Bolton have observed - "The 1976 amending process suggests that once campaign finance becomes a heavily regulated and subsidized industry, politicians will be unable to resist continual tinkering with the rules for partisan political advantage."

7.) Since the FEC itself must include three Democrat and three Republican members, partisanship and partiality are just as likely among the Commissioners as among the legislators. The 1976 campaign saw the Commission split along obviously partisan lines several times - e.g., the question of the McCarthy campaign's possible eligibility for subsidies, considered at a time when the McCarthy campaign was seen as a handicap to Jimmy Carter.

This problem would not be so serious if the Commission did not have to make many crucial but essentially arbitrary decisions, in which its legislative mandate gives it little guidance. For example: where does one draw the line between (a) purely nonpartisan educational expenditures by organizations, (b) expenditures which should be considered as being made "in connection with" an election but which fall short of partisan contributions "for the purpose of influencing" the election's result; and (c) direct partisan contributions on behalf of one identified candidate? How much contact must there be between Mr. Jones and Mr. Jones' favorite Senator for an "independent

expenditure" to become a "contribution"? Or (to cite one of the examples mentioned in testimony by the FEC itself), "Should Senate matching cease if a candidate stops campaigning altogether, and, if so, who should make such a determination?"

8.) As Michael Malbin observed in a meticulously detailed study of the FEC (National Journal, March 26, 1977), FEC officials themselves are "frightened and upset at the thought of public financing of Congressional elections. 'We're worried', Commissioner Neal O. Staebler said in an interview. 'Very skeptical' were the words used by staff director, Orlando B. Potter."

9.) The prospect of the government playing an ever-larger role in financing and regulating the process by which the government itself is chosen seems to turn on their heads the traditions of popular sovereignty, freedom of speech, freedom of assembly. Political campaigns for Federal office are not an exotic, specialized activity walled off in a League of Women Voters auditorium; they are an integral part of the whole intricate web of dreaming, debating, proposing, and posturing that we call "the free market place of ideas." To qualify, condition, regulate, or subsidize these campaigns is to qualify and regulate the First Amendment.

If this line of argument seems overly abstract, consider what the American Enterprise Institute did last year. AEI has long sponsored televised debates on public-policy issues among the best spokesmen it can find: academics, journalists, politicians. In 1975, it aired a fascinating exchange between Ralph Nader and Ronald Reagan. But this was before AEI consulted the FEC for an informal opinion on corporate expenditures "in connection with" federal elections. Since then AEI has found it more prudent to avoid inviting active candidates for Federal office to its forums.

Episodes like this don't merely "chill" free speech; they freeze it half to death.

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