Public Financing of Congressional Campaigns

Herbert E. Alexander

LAST SUMMER Congress apparently reached a dead end in its efforts to arrive at an acceptable formula for public financing of general election campaigns for the Senate and House of Representatives. For the fourth time in five years, the House Administration Committee voted against public financing proposals. The impasse may well indicate the sterility of the usual approach. New ways of thinking about congressional campaign financing are required if partial public financing is to become a reality—as this writer believes it ought to. Moreover, in my judgment, it can be done in a way that serves the multiple purposes of reducing the advantages of incumbency and the influence of "big money" and single-issue politics, and of strengthening our party-based political process generally.

Regulation of Campaign Financing: Proposals

Most proposals have called for mixed private and public financing of general election campaigns. The basic goal has been to increase the role of individual contributors of modest amounts and to limit the influence of special interest groups. To qualify for public funds under such a system, each congressional candidate would be required to raise a threshold amount of small contributions from individuals (perhaps $10,000 for the House, $100,000 for the Senate) in order to demonstrate viability as a candidate. With the threshold reached, contributions from individuals would then be matched from public funds up to $100 per contributor. An overall spending limit would be imposed on those accepting public funds, and candidates also would be limited in the amounts of their own money they could spend. Finally, the limitations on individual and group contributions currently in effect would be retained, or possibly revised upward for individuals, downward for political action committees (PACs).

Under most of the proposals, the Federal Election Commission (FEC) would administer the public financing of congressional campaigns, just as it now administers presidential public funding. But, because the FEC has not been particularly effective with the relatively few presidential candidates, some question its ability to deal with hundreds of candidates for the Senate and House. It therefore has been proposed in the House that public funds be handled in some alternative way—through the political parties, perhaps, or the secretaries of state in the various states. More of this key point later on.

Advocates maintain that partial public financing of congressional elections would have a positive effect on the political system. Candidates, they say, would not then be forced into a role of undue financial dependence on special interest groups. The role of the individual contributor would be enhanced, because candidates would seek as many small contributions as possible in order to secure the matching public funds (which apply only up to the first $100 per contributor). Most significant, partial public financing would lessen the advantage of

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incumbents and increase the funds available to challengers.

The rationale for public funding arises from parallel approaches to two related problems. The first is that some candidates, especially incumbents, attract more money than others (quite apart from incumbents' other advantages) and that this creates imbalances in candidate spending. The remedy usually proposed is to limit expenditures and contributions, and to provide public funds—thus holding the advantaged (incumbent) down and helping the disadvantaged (challenger) up: the result, presumably, is to make elections more competitive. The second problem is large contributor and special interest influence on public policy. Here, the proposed remedy is twofold—contribution limits in order to reduce candidates' dependence on special interests or a few large contributors, and partial public funding in order to permit candidates to refuse contributions from PACs or those offered with strings attached.

Neither the rationale nor the practical approaches suggested have yet persuaded a majority in the House, although the Senate has three times passed such legislation. Reassessment of both the rationale and the approaches—new ways, in other words, of achieving widely shared goals—may help to break the current impasse.

Limits and Public Funding: Untying the Tie

According to the U.S. Supreme Court's 1976 ruling in *Buckley* v. *Valeo*, campaign expenditure limits are permissible constitutionally only if imposed as a condition of public funding. Even with public funding, expenditure ceilings cannot be enforced if a candidate chooses to refuse public funding. Thus public funding has attracted some support because it appears to be the only constitutional way of limiting what some regard as excessive personal or family spending by wealthy candidates—on the further assumption that, in the current political climate, the American public will react negatively to candidates who refuse public funds and instead spend large sums of their own or contributors' money. On the other hand, some who accept public funding in principle nevertheless oppose it in practice because they believe it is necessarily conjoined with spending and contribution limits and because they believe further that these limits hurt challengers more than incumbents. Challengers, they maintain, often need to spend more in order to achieve parity of recognition. In present thinking then, on both sides of the issue, public funding and spending limits are assumed to be inextricably tied together.

But must this be? Some supporters of public funding, including the author, think not.

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They advocate public funding *floors* rather than spending limit *ceilings*. Partial public funding—a floor—would give candidates at least threshold access to the electorate and provide an alternative source of funds, so that candidates could more easily refuse to accept private contributions that might be embarrassing (because of their source, for example, or the implication of "captive" candidacies) or have strings attached. Ensuring that all serious contenders have a reasonable minimum is more important, in this view, than limiting how much candidates can spend. We should seek to encourage all forms of political involvement, including both contributing and personal spending, not restrict them unduly.

Public funding floors would provide the benefits of current proposals but avoid their drawbacks. One problem with spending ceilings is to find one that is more or less equitable to incumbents and challengers alike. If the ceiling is too high, candidates tend to spend up to the limit and may leave themselves short for last-minute contingencies. (An experience of that sort in New Jersey is recounted below.) But if the ceiling is too low, it may discourage accepting public funds altogether—which occurred in Minnesota and Wisconsin in their 1978 state elections. In both cases, spending limits coupled with public funding that provided too little money caused some candidates for governor to reject public funds and raise their money privately.

If we are to have an open political system, spending limitations are undesirable: they tend to favor the status quo. One key goal should be intense political competition that helps to make the system more responsive. Spending limitations reduce opportunities for voters to hear about candidates and issues, and put out-party candidates at a considerable disadvantage. They also are one of the factors that reduce voter turnout. These statements are, of course, truisms—but from time to time we need to remind ourselves that they are indeed important.

The 1977 New Jersey gubernatorial campaign illustrates the problem of finding an equitable expenditure ceiling. Both major party candidates raised up to the maximum in private contributions and received matching public funds close to the limit. All other things being equal, this gave an advantage to the incumbent, Governor Brendan Byrne, who was better known across the state. But that was not all. The limits additionally worked to the disadvantage of his challenger, state Senator Ray Bateman: when Bateman wanted to change strategies and revise campaign themes late in the campaign, he was unable to do so and still stay within the expenditure limit. Spending limits in this case made the system more rigid and tended to perpetuate the status quo. Moreover, such limits focus simply on the regulation of money and give decided advantages to candidates with the backing of superior party organization, celebrity status, or the ability to enlist volunteers.

A majority of the commission administering New Jersey's campaign finance law has since recommended continued limits on contributions, loans, and a candidate's use of personal funds, with a cap on the amount of public funds available to the candidate—but with no *overall* spending limit. This recommendation has now been passed by the New Jersey legislature in a bill awaiting the governor's signature. Congress would do well to follow suit.

Current Contribution Limits

Focusing now on contribution limits, they are currently of two kinds: (1) a $1,000 limit on individual contributions to candidates for federal office per primary or election, with a $25,000 calendar-year limit on all such contributions made by an individual; and (2) a $5,000 limit on PAC contributions per candidate per primary or election, with *no* overall limit on the amounts PACs can give to all candidacies together.

Rather than minimizing financial pressures on candidates, these limits exacerbate the pressures. They deprive some candidates (especially challengers and, even more, challengers of modest means) of the early seed money they need to compete effectively in congressional contests—the kinds of larger gifts from friends and associates willing to help set up an organization and a fund-raising mechanism and thus to begin to attract a multiplicity of small private contributions. As long as there is no public funding of congressional campaigns, and insofar as wealthy candidates can spend unlimited amounts of their own money, it seems particularly unfair to limit individual contributions to their opponents. Even with public funding, indeed, it is doubtful that current individual contribution limits enable most challengers and nonwealthy candidates to raise the funds needed for effective campaigns. Contribution limits have one important side effect, to be sure: they act as an indirect form of expenditure limit.

A comparison of fund raising in 1972 and 1976 House and Senate campaigns illustrates these conclusions. Roland McDevitt of Winthrop College has found that current contribution limits hurt mostly challengers (see Chapter 5, *Political Finance,* Sage, 1979). The $1,000 limit on individual contributions has increased reliance on small contributors and has encouraged the proliferation of PACs—two groups that, on the record, tend to aid incumbents more than challengers. Challengers need larger individual contributions if they are to compete effectively. Moreover, raising the limit on contributions from individuals would tend to balance the increasing PAC contributions, holding PAC money to a reasonable share—say, about 20 percent of all candidate receipts. PAC contributions are now edging close to that figure.

No congressional public financing scheme that includes contribution and spending limits is likely to make elections more competitive unless it takes the varied advantages of incumbency into account. In an analysis of campaign spending data from the 1972 and 1974 congressional elections, Gary Jacobson of the Univer-

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sity of California, San Diego, has shown that campaign spending does not have the same consequences for incumbents and challengers: spending by challengers has more impact on election outcomes than spending by incumbents (see *American Political Science Review*, June 1978). "In simple terms," he claims, "the more incumbents spend, the worse they do." Jacobson explains that incumbents raise and spend money in direct proportion to the magnitude of the electoral threat posed by the challenger. But, he notes, "this reactive spending fails to offset the progress made by the challenger that inspires it in the first place." When data from the 1976 elections were included, Jacobson still found that the amount spent by challengers had a stronger effect on election outcomes than that spent by incumbents.

Simply being known and remembered by voters is, obviously, an important factor in electoral success. The average incumbent, with the resources of office, already enjoys an advantage in voter recognition prior to the campaign (according to Americans for Democratic Action, fully $567,191-worth of advantage). The dissemination of additional information about the incumbent during the campaign may therefore be superfluous. On the other hand, the challenger, normally not as well known, has everything to gain from an extensive—and expensive—voter awareness effort.

Translated into financial terms, this means that incumbents usually need less campaign money than challengers—even though they are able to raise more. When challengers do raise more money than incumbents, either by attracting it or by contributing to their campaigns out of their own wealth, they become better known and are more likely to win. If incumbents then raise (and spend) money to meet these threats, that money helps less per dollar spent than additional dollars spent by the challengers. In short: those votes that change as a result of campaign spending generally change in the direction of challengers.

Any policy, that is to say, that increases spending for both incumbents and challengers should work to the benefit of the latter, thus making elections more competitive. Conversely, any policy that limits campaign contributions and spending should benefit incumbents, thus lessening electoral competition.

The Parties

Some provisions of the Federal Election Campaign Act work to separate candidates from political parties. Limits on party activity for and contributions to candidates are imposed along with limits on individual or interest group and PAC activity and contributions, although in different amounts. But the parties should be unrestricted in their ability to help their candidates—and to bind them to party.

Candidates are not now dependent on parties for their election and hence are independent-minded to a degree that tends to produce deadlock on vital national issues. The greater the dependence of the candidate on the party, the greater the party's leverage, the greater the chance to achieve some policy coherence and discipline among candidates and elected officials, the greater the chance of mobilizing party majorities for key votes in the Congress—and, paradoxically, the greater the possible national

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unity and consensus on some issues. It is easier to get two parties to agree than 535 fiercely independent members of Congress! Strengthening the parties could lead not only to more sharply defined policy *differences* between them —which is desirable in a two-party system— but also to a greater degree of *consensus* on some national issues that transcend party.

Today, more interest groups than ever before are seeking attention, with ever more stridency, and each has its subgroups dealing with a specific industry or issue. The voices that are most effective are those backed by large resources or having dramatic appeal. Fragmentation abounds; what often is heard is a vast clamor. Few broadly based groups can deliver voters with diverse interests—indeed, this is a partial cause of current public dissatisfaction over the inability of the national government to "get the country moving" or to accomplish much of anything—while these voters can be delivered by charismatic single-interest groups.

In the face of these divisive tendencies, we need restructured and stronger political parties able to produce effective congressional majorities, which means (among other things) parties free from legal restraints on spending. No force other than political parties is likely to produce coherent majorities working in the public interest. We need to encourage citizen participation in the electoral process through the parties, thereby creating an environment in which public policy alternatives can be debated fully and freely within the context of a vibrant two-party system.

Public funding through the parties would help markedly to achieve three goals: (1) It would enable candidates to refuse special interest or PAC money at their discretion. (2) If it allowed the parties to retain a percentage of the public funds to finance their federal election activities (such as voter registration and voter turnout), it would strengthen both the parties and their relationships with their candidates. (3) These stronger political parties would in turn be able to free themselves from special interest domination and would have the incentive to reform themselves, to be more issue-oriented than job-oriented, and to root out the corruption that has developed from time to time in the past.

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Many members of Congress are understandably reluctant to rely on state and local party committees for funding. They enjoy the ability—and the freedom—to raise their own funds directly, often from PACs. But raising money in this way gives the PACs direct access to the incumbent once elected, without the mediation of the party acting as broker to accommodate the conflicting claims of all the individuals and groups seeking to influence public policy. It will be no easy task to restore closer ties between members of Congress and their state and local party committees, but the effort would be aided if public funds for supporting congressional campaigns were given to the parties, not the candidates. We are talking here only about public funding of general election campaigns. Primaries, of course, involve a further range of very tough problems.

We already have some experience with state funding of campaigns via political parties. Seventeen states now have some form of public financing, with thirteen of these using a state income-tax checkoff and four having a surcharge which uses the tax system as a collection agency. (In the latter case, any taxpayer due a tax refund may stipulate that $1 of the refund be paid to a specified party; if no refund is due, the taxpayer may add $1 to his or her tax liability—and the state treasury then turns the money over to the party.) Nine states permit party designation, which means that the taxpayer can direct a contribution to the Democratic, the Republican, or some other party; seven of these have a checkoff and two a surcharge.

These nine states provide money for general elections only. In five states—Idaho, Iowa, Kentucky, Maine, and Rhode Island—the money goes to the state party committees to use at their discretion. In two states—Oregon and Utah—50 percent of the money must be given to county central committees, but both the state and county committees can spend the money at their discretion. In North Carolina only candidates for certain offices are eligible to receive money from the parties, but the parties determine which of these to support. In Minnesota the parties are required by law to distribute the money in given proportions to various categories of candidates.

With the states' experience of public funding via parties as a guide, it is only reasonable to assume that Congress would write some ground rules into any federal funding legislation for congressional campaigns. One might be a requirement that a certain percentage of the total fund for each state party be reserved for House campaigns—varying of course with the need to fund state-wide Senate contests; further, a major share of this House campaign fund might be required to be divided equally among all of the party's certified House candidates as "floor" or base grants, thus assuring these candidates the threshold access to the voters that is a principal rationale for public funding in the first place; and there might even be a requirement that a good portion of the funds set aside for the parties' discretionary use go to activities that tend to benefit all candidates equally—for example, voter registration, issues awareness, and the like. There would in all likelihood still be a substantial reserve or contingency fund that the party could target to key races and campaigns in swing districts, thus enhancing the party's role and influence. My point is simply that, in moving to public funding of congressional campaigns via the parties, Congress would doubtless want to move with caution and due regard for equity —in order to help bring the parties more centrally into the process, without at the same time reducing the candidates' independence too much too fast.

Obviously, where the party has some discretion in allocating funds to candidates, it gains substantial leverage. While state experience has not yet been fully assessed, most candidates have accepted party money when offered, and the effect should eventually take the form of greater party cohesion. Given the same general scheme for congressional elections, this effect should be felt in time at the national level.

In the current atmosphere, with the presidency changing and Congress asserting itself more aggressively, parties could—in my view, must—become the new anchors of our political system. They must be the dynamic and relevant instrumentalities responsive to some "best" amalgam of national interest and local concerns. Legislative reform can enhance and strengthen parties, or it can serve to further their decline. Because money in politics is the immediate issue, the steps taken to reform political financing will be crucial in determining which way we go.

If public funding through political parties were to make the parties better able to exert some degree of control over campaigns (and over candidates), the millennium would not have been reached. But election law does offer a starting point for strengthening the parties—perhaps not to regain the central position in our system that they held at times in the nineteenth century, but to produce more policy cohesion than now exists. And that would be no negligible step forward.

The Time Has Come . . .

Partial public financing of congressional campaigns is an idea whose time has come. Unfortunately, flaws in proposed legislation have led so far to a legislative dead end. Only by rethinking the matter—specifically, by severing the tie between public financing *and* contribution and spending limits—will we find a way out of the current impasse. The following recommendations, by way of summary, may serve to put public financing back on track:

- Congressional candidates should receive partial public funding, but no expenditure limits should be imposed. In other words, there should be floors without ceilings.
- Caps should be placed on the amounts of public funds disbursed to individual candidates, but the caps must be high enough to ensure the candidates at least threshold access to the electorate.
- Individual contribution limits should be increased, perhaps up to $5,000 per candidate per election—the same limit PACs now enjoy —with a $100,000 aggregate calendar year limit instead of the current $25,000. This would help balance increased PAC giving.
- There should be few if any limits on what political parties can do on behalf of candidates on their tickets.
- Public funding should be channeled through the political parties, not given directly to candidates or through the offices of secretary of state in the states. There is no real value in using the offices of secretaries of state except to bypass the Federal Election Commission—which, for all its faults, is the appropriate agency to certify the disbursement of public funds and to administer this federally funded program.

In short, if individual citizens are enabled to give more, not less, and if parties are strengthened, we will do much to reduce the advantages of incumbency and revitalize the political process at the same time. Now, if only Congress can persuade itself to weigh the country's welfare above that of its own incumbent members, we may be able to move closer to both of these goals. ■