

Making Free Speech Affordable: A Discussion of Legislation to Provide Public Funding to

Candidates for the U.S. Congress

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Introduction

In 2004, over \$600,000,000 was raised by candidates running for seats in the U.S. House of Representatives.¹ In one district alone, the Republican and Democratic candidates combined to raise over \$8,000,000 for one general election.² Although the United States has enjoyed relatively low and stable inflation rates, the cost of running for office continues to skyrocket with no signs of abatement or reversal.³ The contributions that are raised for every election are used to buy the materials and advertisements necessary to run a winning political campaign. However, the people arranging these contributions are sometimes trying to buy something far more valuable: access.⁴

It is well known in the halls of government that money, in the form of campaign contributions, will buy a lobbyist or special interest group access to elected officials.⁵ Although it may appear otherwise to a great many people,⁶ these contributions rarely lead to votes being bought outright.⁷ However, this does not mean that excessive campaign contributions cannot lead to a corrupting influence so great that it causes votes to change as easily as money changes

¹ Center for Responsive Politics, *2004 Election Overview, Stats at a Glance*, <http://www.opensecrets.org/overview/stats.asp?Cycle=2004> (Nov. 16, 2004) (1,216 candidates combined ran in 2004 for the U.S. House of Representatives, raising \$623,014,063 in campaign contributions for the election cycle).

² Center for Responsive Politics, *Total Raised and Spent, 2004 Race: Texas District 32*, <http://www.opensecrets.org/races/summary.asp?cycle=2004&id=TX32> (Nov. 16, 2004) (Martin Frost (D) raised \$4,341,937 in his failed bid to defeat eventual winner Pete Sessions (R) who raised \$4,097,360 in his successful bid for reelection).

³ Center for Responsive Politics, *The Big Picture, The Price of Admission*, <http://www.opensecrets.org/bigpicture/stats.asp?display=A&type=W&Cycle=2002> (Nov. 16, 2004).

⁴ LARRY MAKINSON, *SPEAKING FREELY: WASHINGTON INSIDERS TALK ABOUT MONEY IN POLITICS* 59 (Center for Responsive Politics 2003).

⁵ *Id.*

⁶ *Id.* at 69 (“I’m sure that the public has the sense that this whole thing is . . . unfair because money buys influence.”, Sen. Chuck Robb (D-VA) speaking on the influence of money in politics).

⁷ *Id.* at 59 (Although none of the elected officials interviewed in this book admitted to changing a vote based on campaign contributions, some were willing to name occasions where others had done so.).

hands.⁸ Because of this, some members of Congress have taken it upon themselves to effect a system of campaign finance reform that will “create transparency, equality, and participation, and inspire confidence [in the voting public].”⁹

One such attempt at campaign finance reform is a bill put forward by Representative Robert Andrews (D-NJ), known as the Public Campaign Financing Act of 2003, to provide for public financing of campaigns for the U.S. House of Representatives.¹⁰ Although this bill has yet to be passed¹¹ it does provide an opportunity to examine the many ways in which the federal government, as well as governments in the several states, has undertaken to finance campaigns for elected office. After examining the reasons for public financing, as well as some of the different methods that have been crafted to provide public financing, the Public Campaign Financing Act of 2003 will be examined in-depth and amendments will be proposed to make the bill more effective.

Background

Modern public financing of campaigns began in America following the series of scandals that arose out of the Watergate affair.¹² At that time, reform through public financing at the federal level was coupled with reforming the way that campaign finances were traced and reported to the federal government.¹³ At the same time, a number of states began to put these same reforms in place at the state level.¹⁴ By 1986, twenty-three states and the District of

⁸ *Id.* (“Across the spectrum, money changed votes.”, Rep. Joe Scarborough (R-FL) referring to the lobbying that took place during the debate on Most Favored Nation status for China in Congress).

⁹ 150 CONG. REC. S576 (daily ed. Feb. 4, 2004) (statement of Sen. John McCain (R-AZ) on the Bipartisan Campaign Reform Act).

¹⁰ H.R. 1878, 108th Cong. §1 (2003).

¹¹ 2003 Bill Tracking H.R. 1878, 108th Cong. (2003) (the only action taken on this bill following its introduction has been to refer the bill to the House Committee on House Administration).

¹² Chris Haughee, *Review of Florida Legislation; Article: The Florida Election Campaign Financing Act: A Bold Approach to Public Financing of Elections*, 14 FLA. ST. U.L. REV. 585, 586 (Fall 1986).

¹³ *Id.*

¹⁴ *Id.*

Columbia provided for campaign financing to candidates for public office within their jurisdiction.¹⁵

However, some would say that the public financing system for federal offices no longer works to prevent the influence of special interest money on political campaigns.¹⁶ Moreover, although public financing may dilute the impact of special interest money on presidential campaigns, the only federal public financing laws in force today make no attempt to provide funding for candidates to the United States Congress.¹⁷ However, a bill introduced by Representative Robert Andrews, known as the Public Campaign Financing Act of 2003, would provide the first major change in public financing of federal campaigns since the introduction of public financing for presidential contests was introduced in 1971.¹⁸ Upon passage, this bill would provide funding to candidates running for the U.S. House of Representatives provided they meet certain minimum qualifications.¹⁹ Although this bill would become law through a series of amendments to the Federal Election Act of 1971,²⁰ the standards and qualifications set forth in the Public Campaign Financing Act of 2003 are more closely related to the public financing statutes enacted by a number of states; statutes that are still in use today.²¹ To better understand the different aspects of the Public Campaign Financing Act of 2003, this article will examine the public financing statutes of four different states: Florida,²² Massachusetts,²³

¹⁵ *Id.* at 587.

¹⁶ Theodore Lazarus, Note, *The Maine Clean Election Act: Cleansing Public Institutions of Private Money*, 34 COLUM. J.L. & SOC. PROBS. 79, 79-80 (Fall, 2000).

¹⁷ See 26 U.S.C. § 9002(2) (2004) (defining candidate as “an individual who (A) has been nominated for election to the office of President. . . or the office of Vice President).

¹⁸ H.R. 1878, 108th Cong. (2003).

¹⁹ H.R. 1878, 108th Cong. § 2 (2003).

²⁰ *Id.*

²¹ See e.g. FLA. STAT. ch. 106.34 (2003) (providing specific limitations on campaign expenditures in the public financing system), NEB. REV. STAT. § 32-1608 (2003) (limiting contributions that can legally be accepted from sources other than individual citizens), MICH. COMP. LAWS § 169.265 (2004) (providing mechanisms for candidates from both major and minor parties to receive public financing for political campaigns).

²² FLA. STAT. §§ 106.30-106.36 (2003).

²³ MASS. GEN. STAT. ch. 55C, §§ 1-12 (2004).

Michigan,²⁴ and Nebraska.²⁵ These states have been selected because they represent the entire spectrum of political leanings in American politics: a deeply conservative state, a deeply liberal state, and two states that have been, and will likely continue to be, political battlegrounds.²⁶

Each of these four states currently has public campaign financing statutes that deal specifically with a number of issues raised by the Public Campaign Financing Act of 2003.

These issues include which candidates should be entitled to public funding,²⁷ how much each candidate is allowed to spend under a public financing system,²⁸ and what limitations are imposed on those candidates who choose to operate within the public financing system.²⁹

However, the Public Campaign Financing Act of 2003 differs from these state public financing in a number of ways. For example, this statute places limitations on the amount of financing available to a candidate based on the district in which that candidate is running³⁰ as well as limitations on how public funding can be used during the campaign.³¹

In the end, any discussion of the practical aspects of any type of campaign finance reform legislation must be viewed in terms of that most practical of all measurements: dollars. Without a doubt, the high cost of running for office has become one of the greatest impediments to the

²⁴ MICH. COMP. LAWS §§ 169.261-169.271 (2004).

²⁵ NEB. REV. STAT. §§ 32-1602- 32-1614 (2003).

²⁶ CNN, *Election 2004 Results*, <http://www.cnn.com/ELECTION/2004/pages/results/> (Jan. 27, 2005) (Nebraska Presidential Results, Bush: 66%, Kerry: 33%; Massachusetts Presidential Results, Bush: 37 %, Kerry: 62%; Michigan Presidential Results, Bush: 48%, Kerry: 51%; Florida Presidential Results, Bush: 52%, Kerry: 47%).

²⁷ See e.g. MICH. COMP. LAWS § 169.265 (2004) (providing regulations to determine which candidates are entitled to full or partial public financing), NEB. REV. STAT. § 32-1604 (2003) (promulgating regulations regarding required fundraising targets that must be met to receive public financing).

²⁸ See e.g. FLA. STAT. ch. 106.34 (2003) (mandating campaign expenditure limits in both general and primary election campaigns), MASS. GEN. STAT. ch. 55C, §§4-5 (2004) (providing specific dollar limitations on campaign expenditures in both general and primary election campaigns).

²⁹ See e.g. NEB. REV. STAT. § 32-1608 (2003) (prohibiting candidates in the public financing system from accepting campaign contributions from businesses, corporations, independent committees and political parties above certain amounts in aggregate), FLA. STAT. ch. 106.36 (2003) (imposing fines on all candidates in the public financing system who exceed their race's expenditure limit or file a false report regarding contributions eligible for public matching under the system equal to three times the amount at issue).

³⁰ H.R. 1878, 208th Cong. § 2 (2003) (providing a disbursement formula based on the costs of paid media in a given U.S. House district).

³¹ *Id.* (naming eleven specific expenditures that are allowed under this statute as well as two expenditures that are explicitly forbidden).

ability of ordinary men and women in America to run for office.³² This fact is best shown by the information collected by the Center for Responsive Politics, an organization that “tracks money in politics, and its effect on elections and public policy.”³³ According to the Center for Responsive Politics, some races for the United States House of Representatives have already spent over three million dollars and a number have already raised that much in the 2004 election cycle,³⁴ It is against the backdrop of this heavy rate of spending that any public financing statute must be considered.

This paper will discuss the current state of public campaign financing legislation, the political ramifications of such legislation, and what the most effective legislation would look like. Because the constitutionality of public campaign financing at the federal level has already been decided,³⁵ this paper will focus instead on the dual goals of allowing more candidates to enter the political arena and maintaining an air of incorruptibility about political campaigns in this country. These important goals have already been adopted by those states which have chosen to provide public financing for candidates in electoral races within their borders and are an appropriate touchstone for the intent and purpose of any federal campaign finance legislation.³⁶

However, mere constitutionality will not save a campaign finance system from the corrupting influence of excessive financial entanglement. Indeed, the current system has been

³² NEB. REV. STAT. § 23-1602 (2003) (legislative findings showing that the cost of running for office has risen by a large amount and “many qualified candidates are excluded from the democratic system as a result of such rising cost.”).

³³ Center for Responsive Politics, *The Center for Responsive Politics, Who We Are*, <http://www.opensecrets.org/about/index.asp> (accessed Sept. 21, 2004).

³⁴ Center for Responsive Politics, *Most Expensive Races*, <http://www.opensecrets.org/overview/topraces.asp> (accessed Sept. 21, 2004).

³⁵ *Buckley v. Valeo*, 424 U.S. 1, 90 (1976) (“public financing of Presidential elections as a means to reform the electoral process” is constitutionally valid).

³⁶ *See e.g.* NEB. REV. STAT. § 32-1602 (2003) (“the utilization of public financing of campaigns is a constitutionally permissible way in which to encourage candidates to adopt voluntary campaign spending limitations.”).

found to be constitutional, yet the unequal distribution of financial wealth has led to a system where a select few are able to essentially buy the political favors of elected officials.³⁷ For this reason, the practical benefits, effects, and flaws of this legislation will be the only concern of this comment.

Discussion

Federal Legislation

Just prior to the re-election of Richard M. Nixon to a second term as President of the United States, the U.S. Congress passed and President Nixon signed into law a series of statutes aimed at reducing the skyrocketing costs of running campaigns for the office of President and making the entire process more transparent.³⁸ These statutes were collectively known as the Federal Election Campaign Act of 1971.³⁹ Although the Federal Election Campaign Act of 1971 changed campaigns for President in a number of significant ways, there were only three changes that could be considered essential to the goals of this legislation: limitations on personal contributions by candidates and their families, strict limits on media expenditures, which was later amended to limit all campaign expenditures, and full disclosure of all campaign contributions, as well as additional disclosure requirements for donors who gave more than \$100 in a given election cycle.⁴⁰ Although these regulations may have been successful in preventing the appearance of corruption and reducing the influence of wealthy donors in presidential elections, the Supreme Court ruled that limitations on expenditures are an unconstitutional

³⁷ Jamin Raskin and John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160, 1162 (May 1994).

³⁸ Theodore Lazarus, Note, *The Maine Clean Election Act: Cleansing Public Institutions of Private Money*, 34 COLUM. J.L. & SOC. PROBS. 79, 84 (Fall, 2000).

³⁹ *Id.*

⁴⁰ *Id.* at 84-85.

limitation on free speech,⁴¹ although limitations on contributions are constitutional and within the power of Congress to establish.⁴² Following this ruling, the federal statutes regulating campaign financing were amended to place the restrictions present in the unconstitutional version on only those candidates who accept public financing of their campaigns.⁴³

Under the federal system, any candidate of a “major party”⁴⁴ is entitled to receive an amount equal to \$20,000,000,⁴⁵ adjusted upward on an annual basis according to changes in the Consumer Price Index beginning in 1976.⁴⁶ For the 2004 election, President George Walker Bush, the Republican nominee, and Senator John Forbes Kerry, the Democratic nominee, each received \$74,600,000 in government funding for the general election campaign.⁴⁷ By accepting these funds, neither major party nominee is allowed to raise funds for the general election, except in such situations where contributions are acceptable to make up for any shortfall in disbursements by the federal government.⁴⁸ Furthermore, these public funds may only be expended on “qualified campaign expenses” by the candidates and their respective election committees or to pay back loans taken out before receiving public funding when those loans were used for “qualified campaign expenses.”⁴⁹ For the purposes of this system, “qualified

⁴¹ *Buckley v. Valeo*, 424 U.S. 1, 19 (1976) (“The expenditure limitations contained in the Act represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech.”).

⁴² *Id.* at 20-21 (“By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person. . . may contribute to a candidate. . . entails only a marginal restriction upon. . . free communication.”)

⁴³ 26 U.S.C. § 9003(a) (2004) (requiring those candidates who receive public financing to furnish materials necessary for audits to the Federal Election Commission), 26 U.S.C. § 9004(c) (2004) (requiring those candidates who receive public financing to expend those public funds on “qualified campaign expenses” as defined by statute).

⁴⁴ 26 U.S.C. § 9002(6) (2004) (defining a “major party” as one whose candidate received more than twenty-five percent of the popular vote in the previous presidential election).

⁴⁵ 2 U.S.C. § 441a(b)(1)(B) (2004).

⁴⁶ 2 U.S.C. § 441a(c)(1)(A) (2004).

⁴⁷ The Center for Responsive Politics, *2004 Presidential Election*, <http://www.opensecrets.org/presidential/index.asp> . Oct. 16, 2004.

⁴⁸ 26 U.S.C. § 9003(b)(2) (2004).

⁴⁹ 26 U.S.C. § 9004(c) (2004).

campaign expenses” are those expenses incurred by a candidate for president, vice-president, or their committees to further the election of the candidates to their respective offices.⁵⁰

Although “major parties”⁵¹ are treated in an equal fashion under the federal system, third parties are treated very differently. Third parties, referred to as “minor parties” in the federal statute, are required to meet very stringent qualifications before being eligible for the public financing system and must rise to the level of popularity of the Republicans and Democrats before being treated in the same manner as these two major parties.⁵² If a “minor party” candidate, or a candidate from a new party seeks funding under this system, the funds will only be distributed following the election, effectively cutting off public funding for all newly formed parties.⁵³

Under the current federal system, candidates from “minor parties” are only entitled to a small portion of the funds available to those candidates from the “major parties.”⁵⁴ However, “minor party” candidates are entitled to augment their campaign war chest through private contributions up to the amount received by the “major party” candidates, provided such contributions are used for qualified campaign contributions as defined by the statute.⁵⁵

Following the election, the federal system requires the Federal Election Commission to conduct an audit of all campaign expenses of every presidential campaign that accepted public

⁵⁰ 26 U.S.C. § 9002(11) (2004).

⁵¹ “Major parties”, barring any unforeseen circumstances will effectively mean “Republicans and Democrats” for the foreseeable future.

⁵² 26 U.S.C. § 9002(7) (2004) (defining a “minor party” as one that received more than five percent of the popular vote in the previous presidential election, and will continue to be treated as a “minor party” until receiving over twenty-five percent of the popular vote in a presidential election)

⁵³ 26 U.S.C. § 9004(a)(3) (2004) (eligible candidate of a new party (defined by 26 U.S.C. § 9002(8) as any party that has not received greater than five percent of the vote in a preceding election) is entitled to funds provided that candidate receives more than five percent of the vote in the upcoming election).

⁵⁴ 26 U.S.C. § 9004(a)(2)(A) (2004) (a “minor party” candidate is entitled to public funding that is a percentage of the total received by each “major party” candidate determined by using a ratio derived from dividing the total number of popular votes received by the “minor party” in the previous election by the average number of popular votes received by both “major party” candidates in the previous election.

⁵⁵ 26 U.S.C. § 9003(c) (2004).

funding.⁵⁶ If, during the course of these audits, it is discovered that a campaign exceeded the agreed upon spending limits, the campaign will be required to pay to the Secretary of the Treasury an amount equal to the portion which exceeded the limit.⁵⁷ Likewise, if a campaign accepted contributions that were not permitted under the system, the campaign will also be required to pay the Secretary of the Treasury an amount equal to those contributions.⁵⁸ If necessary, the Federal Election Commission may file suit in federal district court to recover these funds.⁵⁹ Furthermore, the knowing violation of the expense and contribution restrictions, or knowingly using any public campaign payments in an unlawful fashion is also subject to criminal penalties as well.⁶⁰

Although it was not widely used in this year's election cycle,⁶¹ the federal government also has a system to assist in the financing of primary campaigns to secure party nominations. Although the requirement that candidates agree to a post-election audit is very similar to that required under the system for general elections there are some very important differences.⁶² First and foremost, the primary election system makes no distinction between candidates for the nomination of a "major party" or a "minor party."⁶³ Also, instead of defining eligibility in terms of votes received by a party in previous elections, candidates become eligible for public

⁵⁶ 26 U.S.C. § 9007(a) (2004).

⁵⁷ 26 U.S.C. § 9007(b)(2) (2004).

⁵⁸ 26 U.S.C. § 9007(b)(3) (2004).

⁵⁹ 26 U.S.C. § 9010(b) (2004).

⁶⁰ 26 U.S.C. § 9012(a-c) (2004) (knowingly exceeding the expense limits or accepting unauthorized contributions is punishable by a fine of up to \$5,000 and up to one year in prison, knowingly using federal payments in an unlawful fashion is punishable by a fine of up to \$10,000 and up to five years in prison).

⁶¹ The Center for Responsive Politics, *2004 Presidential Election*, <http://www.opensecrets.org/presidential/index.asp>, Oct. 16, 2004 (President George Walker Bush, Senator John Forbes Kerry, and former Vermont Governor Howard Dean all chose to forego public financing of their primary campaigns during the 2004 campaign).

⁶² 26 U.S.C. § 9033(a) (2004).

⁶³ 26 U.S.C. § 9032(2) (2004) (a "candidate" is defined simply as "any individual who seeks nomination for election to be President of the United States").

financing after receiving contributions from individuals for their political campaign.⁶⁴ After becoming eligible, a candidate will receive a dollar for dollar match against all of their contributions, however each contribution will only be matched up to a total of \$250 for each contributing individual.⁶⁵ However, these contributions, as well as all campaign expenditures, are subject to an audit requirement similar to that in the general election system⁶⁶ and similar, albeit stricter criminal penalties.⁶⁷

State Legislation

Nebraska

State legislation, unlike federal legislation, covers a wide variety of offices.⁶⁸ Because of the large number of offices up for election in many states, state public financing legislation becomes vital to maintaining an electoral system with an air of legitimacy while at the same time encouraging candidates for public office who might otherwise be unable to seek public office.⁶⁹ An excellent example of legislation designed to accomplish these dual goals is the public financing system established by Nebraska.

Under the Nebraska system, candidates become eligible for public financing after agreeing to limits on their spending in both the primary and general elections⁷⁰ and raising an

⁶⁴ 26 U.S.C. § 9033(b)(3) (2004) (a candidate becomes eligible for matching contributions after receiving an amount that exceeds \$5,000 in contributions from twenty states).

⁶⁵ 26 U.S.C. § 9034 (2004).

⁶⁶ 26 U.S.C. § 9038 (2004).

⁶⁷ 26 U.S.C. § 9042 (2004) (for example, excessive campaign expenses are illegal under this system, just as they are under the general election system, but in the primaries, knowingly exceeding the campaign expense limits is punishable by a fine up to \$25,000 and imprisonment up to five years).

⁶⁸ *E.g.* NEB. REV. STAT. § 32-1603(1) (2003) (public financing system covers candidates for the state legislature, governor, state treasurer, secretary of state, attorney general, auditor of public accounts, public service commissioners, University of Nebraska Board of Regents, and the state board of education). It is worth noting that none of the state financing laws discussed in this article provide funding for state judicial elections.

⁶⁹ *E.g.* NEB. REV. STAT. § 32-1602 (2003) (purpose of public financing legislation is to encourage more qualified candidates for public office and to preserve the integrity of the electoral process in state elections).

⁷⁰ NEB. REV. STAT. § 32-1604(1),(3) (2003) (requiring candidates for governor to limit campaign spending to \$1,650,000, candidates for state treasurer, secretary of state, attorney general, and auditor of public accounts to limit campaign spending to \$150,000, candidates for the legislature to limit campaign spending to \$73,000, and

amount equal to twenty-five percent of the applicable expenditure limit for their office from residents of Nebraska.⁷¹ However, if a candidate chooses not to abide by the spending limits and accept public financing, that candidate must file an affidavit stating that fact and must then file an estimate of their expected expenditures for the race.⁷² This estimate may exceed the spending limits set by the public financing statute, but a candidate with an estimate above the limit must file an affidavit after expending forty percent of the estimated amount.⁷³

The funds available under Nebraska's system are only distributed after a candidate has spent twenty-five percent of the expenditure limit for that office.⁷⁴ However, the amount to be disbursed is not guaranteed under this system.⁷⁵ Importantly, additional funds are made available for candidates accepting public funding that are campaigning against an opponent who has forgone public funding and has exceeded the voluntary limits set by statute.⁷⁶ However, this allowance may be meaningless for all candidates running for offices other than the legislature given the limitations placed on the Commission for disbursing funds as they see fit.⁷⁷ However, if the funds deposited in the Campaign Finance Limitation Cash Fund⁷⁸ exceed \$150,000, then funds shall be distributed in a manner prescribed by statute leaving little discretion for the

candidates for public service commission, board of regents of the University of Nebraska, and the state board of education limit campaign spending to \$50,000 and for all primary campaigns every candidate for every office limit campaign spending to fifty percent of the applicable limit for their respective offices).

⁷¹ NEB. REV. STAT. § 32-1604(4) (2003) (statute also requires that sixty-five percent of the twenty-five percent be raised from individuals, remaining portion may be raised from businesses, corporations, partnerships, LLCs, and associations with offices in and transacting business within the state of Nebraska).

⁷² NEB. REV. STAT. § 32-1604(5)(a) (2003).

⁷³ NEB. REV. STAT. § 32-1604(5)(b) (2003).

⁷⁴ NEB. REV. STAT. § 32-1606(1) (2003) (a candidate, upon spending twenty-five percent of the limit for that office, must file an affidavit stating that fact before receiving public funding).

⁷⁵ NEB. REV. STAT. § 32-1611(1) (2003) (allocation of public funding shall be calculated and disbursed by the Nebraska Accountability and Disclosure Commission [the Commission]).

⁷⁶ NEB. REV. STAT. § 32-1606(1) (2003) (a publicly funded candidate opposed by a candidate who has forgone public funding and has estimated campaign expenditures over the statutory limit shall be entitled to the difference between the highest estimate and the statutory limit).

⁷⁷ NEB. REV. STAT. § 32-1611(1) (2003) (the first \$150,000 of available funds for public funding of campaigns shall be disbursed to candidates for the Nebraska legislature).

⁷⁸ NEB. REV. STAT. § 32-1610 (2003) (section creates the Fund for public funding and provides that it shall consist of all funds deposited at the direction of the legislature, money repaid into the fund by candidates, and contributions by taxpayers).

Commission.⁷⁹ In order to make up for these funding limitations, candidates are still allowed to accept campaign contributions under this system, albeit with significant restrictions.⁸⁰

After accepting public funding, each candidate must maintain records to substantiate all affidavits filed, as well as maintaining records of how all such public funds have been spent.⁸¹ Also, if any candidate exceeds the spending limits set under this statute, that candidate shall be required to repay the amount spent over the limit within six months.⁸² However, if a candidate exceeds the limits by more than five percent, far more stringent penalties will then apply.⁸³

Massachusetts

The Massachusetts system also establishes primary and general campaign expenditure limits for candidates accepting public funding⁸⁴ and provides for increased expenditure limits in the event that a publicly funded candidate is competing against one or more candidates who have refused public funding.⁸⁵ However, the Massachusetts system also contains similarities to the

⁷⁹ NEB. REV. STAT. § 32-1611(1) (2003) (all funds available for public funding above \$150,000 shall be distributed in the following order in the following amounts, \$1,000 for the public service commission, \$25,000 for the board of regents for the University of Nebraska, \$1,000 for the state board of education, \$50,000 for the auditor of public accounts, \$50,000 for the attorney general, \$50,000 for the secretary of state, \$50,000 for the state treasurer, and \$550,000 for the governor).

⁸⁰ NEB. REV. STAT. § 32-1608 (2003) (candidates for covered elective office cannot accept contributions from “independent committees, corporations, unions, industry, trade, or professional associations, and political parties” in aggregate amounts above \$825,500 for governor, \$75,000 for state treasurer, secretary of state, attorney general, and auditor of public accounts, \$36,500 for the legislature, or \$25,000 for the public service commission, board of regents of the University of Nebraska, and the state board of education).

⁸¹ NEB. REV. STAT. § 32-1608.02 (2003).

⁸² NEB. REV. STAT. § 32-1607(1) (2003).

⁸³ NEB. REV. STAT. §§ 32-1607(2-3) (2003) (any candidate exceeding the limits by more than five percent will be forced to repay the *entire* amount received under the public funding system, plus interest, and that candidate, and the campaign treasurer, will be subject to criminal penalties (emphasis added)).

⁸⁴ MASS. GEN. LAWS ch. 55C, § 1A(a) (2004) (setting expenditure limits for primary and general election campaign limits in the following amounts: governor, \$1,500,000, lieutenant governor, \$625,000, attorney general, \$625,000, secretary, \$375,000, treasurer and receiver general, \$375,000, and auditor, \$375,000; for the purposes of the general election, the governor and lieutenant governor run as a ticket and the lieutenant governor’s expenditures are subsumed under the gubernatorial campaign’s expenditures).

⁸⁵ MASS. GEN. LAWS ch. 55C, § 1A(c) (2004) (providing that a publicly funded candidate opposed by a candidate refusing public funding and estimating a maximum campaign expenditure above the statutory limit shall have the required limit raised to that level).

federal system in defining qualifying contributions⁸⁶ and in determining how much funding shall be distributed to each candidate.⁸⁷ The Massachusetts system also includes some significant differences as well.

First, the Massachusetts system only provides public financing for statewide candidates and makes no funding available for candidates to the Massachusetts legislature.⁸⁸ Second, eligibility for public financing is determined by raising a pre-determined amount in qualifying contributions for both the primary⁸⁹ and general elections⁹⁰ unlike the percentage requirement under the Nebraska system. Third, the Massachusetts system requires each candidate to deposit a bond with the director of campaign and political finance in the amount which has been credited to the candidate's campaign account from the public financing system.⁹¹ The Massachusetts system also includes separate civil⁹² and criminal penalties for violations of the Massachusetts public financing regime.⁹³

⁸⁶ MASS. GEN. LAWS ch. 55C, § 1 (2004) (defining a qualifying contribution as “any contribution made by an individual” but only to the extent that it does not exceed \$250 in total for the calendar year).

⁸⁷ MASS. GEN. LAWS ch. 55C, §§ 5,7 (2004) (contributions will be matched dollar for dollar up to the first \$250 of each contribution, similar to the presidential primary financing system, up to an amount equal to 50% of the limit of each candidate's respective office).

⁸⁸ MASS. GEN. LAWS ch. 55C, § 1 (2004) (only definition of covered office under the statute is for “statewide elective office” which only includes governor, lieutenant governor, attorney general, secretary, treasurer, and receiver general and auditor).

⁸⁹ MASS. GEN. LAWS ch. 55C, § 4 (2004) (requiring candidates for elective office to raise the following amounts: governor, \$75,000, lieutenant governor, \$15,000, attorney general, \$37,500, secretary, \$15,000, treasurer and receiver general, \$15,000, and auditor, \$15,000).

⁹⁰ MASS. GEN. LAWS ch. 55C, § 6 (2004) (requiring candidates for elective office to raise the following amounts: governor and lieutenant governor, \$125,000, attorney general, \$62,500, secretary, \$25,000, treasurer and receiver general, \$25,000, and auditor \$25,000).

⁹¹ MASS. GEN. LAWS ch. 55C, § 8 (2004).

⁹² *E.g.* MASS. GEN. LAWS ch. 55C, § 1A(e) (2004) (any candidate receiving public financing who exceeds the statutory limit for that office is required to repay to Massachusetts two times the amount by which the campaign exceeded the limit).

⁹³ MASS. GEN. LAWS ch. 55C, § 12 (2004) (violation of any provision of this statute results in criminal penalties of a fine up to \$1,000, imprisonment of not more than one year, or both).

Michigan

The political battleground of Michigan⁹⁴ has also developed a system where taxpayer funded⁹⁵ public financing is made available for political campaigns, but for gubernatorial campaigns only.⁹⁶ Although this is a limitation on the ability of people to mount candidacies for public office, it has been determined that limiting public financing to only those candidates running for governor is within the legislature's powers under the Michigan constitution.⁹⁷ However, even with this limitation, the Michigan public financing statutes still contain a number of provisions which bear examination and comparison.

Much like the Nebraska and Massachusetts systems, Michigan also establishes limits on how much a candidate can spend if accepting public financing.⁹⁸ However, the Michigan expenditure limit does include a provision allowing a candidate to purchase advertising for the express purpose of responding to an unfavorable editorial or an editorial endorsement of an opposing candidate without that purchase counting against the expenditure limit.⁹⁹ However, because the Michigan system makes no allowance for candidates running against candidates that have chosen to forego public financing, this is the only exception available under the Michigan statutes.

⁹⁴ CNN, *Election 2000 Results*, <http://www.cnn.com/ELECTION/2000/results/> (Oct. 16, 2004) (Michigan Presidential Results, Bush: 47%, Gore: 51%).

⁹⁵ MICH. COMP. LAWS § 169.261 (2004) (public campaign financing shall be provided by an optional designation on state tax forms to put three dollars per individual into the state campaign fund; this money shall be matched by an annual legislative appropriation).

⁹⁶ MICH. COMP. LAWS §§ 169.263(2-3) (2004) (secretary of state shall only notify those candidates for nomination for governor of qualification for public funding and only those candidates who have received notification from the secretary of state are eligible to receive public funding).

⁹⁷ Advisory Opinion On Const. Of 1975 PA 227 (Questions 2-10), 242 N.W.2d 3, 16 (Mich. 1976) ("Similarly, the Michigan Legislature has determined that public financing of gubernatorial elections is for the general welfare of the public, and it is well within the Legislature's powers to so determine.").

⁹⁸ MICH. COMP. LAWS § 169.267(1) (2004) (limiting a candidate accepting public financing to expending a maximum of \$2,000,000 in the aggregate over the course of one election).

⁹⁹ MICH. COMP. LAWS § 169.267(2) (allowing a candidate to purchase advertising space in a periodical or air time on a radio or television station to rebut an unfavorable editorial or the endorsement of an opponent, provided it is done only once, the advertisement occurs in the same periodical or on the same station as the original unfavorable editorial, and the candidate has been refused free space or time to provide a rebuttal).

In order to be eligible for public financing, a Michigan candidate must establish a single candidate committee,¹⁰⁰ and file a statement requesting funds and agreeing to abide by the expenditure limit.¹⁰¹ After filing this statement, a candidate is eligible to request public financing for both a primary election campaign¹⁰² and a general election campaign.¹⁰³ Both the primary election financing system and the general election financing system are very similar to the systems used at the federal level for presidential campaigns.

Under the primary system in Michigan, no distinction is made between major and minor party candidates.¹⁰⁴ No matter what party a candidate represents, he or she will be eligible for matching funds in a campaign to win that party's nomination.¹⁰⁵ However, the state does place a limit on how much public financing the state will make available to a candidate in a primary election.¹⁰⁶

The general election system in Michigan also provides matching funds for gubernatorial candidates.¹⁰⁷ Importantly, the statute does make a distinction between major and minor party candidates regarding the amount of money a candidate can receive in matching funds for a general election campaign.¹⁰⁸ In the general election, both major and minor party candidates are

¹⁰⁰ MICH. COMP. LAWS § 169.262(1) (2004).

¹⁰¹ MICH. COMP. LAWS § 169.262(2) (2004).

¹⁰² MICH. COMP. LAWS § 169.264 (2004).

¹⁰³ MICH. COMP. LAWS § 169.265 (2004).

¹⁰⁴ MICH. COMP. LAWS § 169.264(1) (2004) (providing every candidate, without exception, with an equal opportunity at public financing provided at least \$75,000 in qualifying contributions have been accepted and the proper record keeping requirements have been met).

¹⁰⁵ MICH. COMP. LAWS § 169.264(1) (2004) (providing for public funds equal to two dollars for each dollar in qualifying contributions that has been accepted by a candidate's primary campaign).

¹⁰⁶ MICH. COMP. LAWS § 169.264(3) (2004) (providing that a primary candidate cannot receive more than \$990,000 in public financing).

¹⁰⁷ MICH. COMP. LAWS § 169.265(5) (2004) (providing that a candidate in the general election is entitled to one dollar for each dollar in qualifying contributions received by the candidate's campaign up to the statutory limit).

¹⁰⁸ MICH. COMP. LAWS §§ 169.265(1-4) (2004) (providing that a major party candidate can receive up to \$1,125,000 in matching funds for a general election campaign whereas a minor party candidate is only entitled to an amount equal to the percentage of the vote garnered by that minor party in the last election, or the percentage of the vote garnered by that minor party in the current election, whichever is greater, provided it is above five percent, multiplied by \$1,125,000)

permitted to raise private contributions to make up for the difference between the public funds received and the statutory expenditure limit.¹⁰⁹ However, these private contributions are subject to certain limitations that if violated, are subject to criminal sanctions.¹¹⁰ Criminal penalties are also available for violations of expenditure limits¹¹¹ and contribution regulations.¹¹²

Florida

Florida, much like Nebraska, chose to enact legislation to provide public campaign financing to improve the political system in the state.¹¹³ These statutes were also intended to encourage qualified persons to run for office who would otherwise be unable to engage in a political campaign.¹¹⁴ Unlike the system in Nebraska, the Florida system has no mechanism that allows for taxpayers to contribute to the public financing system directly.¹¹⁵

Florida's system also resembles the public financing system used in Massachusetts regarding the offices for which public financing is available¹¹⁶ and the contribution requirement necessary to receive public financing.¹¹⁷ Although there is no bond requirement as in

¹⁰⁹ MICH. COMP. LAWS § 169.265(1) (2004).

¹¹⁰ MICH. COMP. LAWS § 169.269 (2004) (providing for limits on campaign contributions by political organizations and committees, as well as limits on contributions from a candidate's personal funds or from a candidate's immediate family, with violations being punishable by a fine of up to \$1,000 and ninety days in prison for individuals and a fine up to \$10,000 for organizations).

¹¹¹ MICH. COMP. LAWS § 169.267(3) (2004) (candidates and their committees can be fined up to \$1,000 and imprisoned for up to ninety days for a knowing violation of the aggregate campaign expenditure limit).

¹¹² MICH. COMP. LAWS § 169.271 (2004) (knowingly funneling contributions to a candidate through another individual or organization for the purpose of contributing to a gubernatorial candidate is punishable by a fine of up to \$1,000 and imprisonment of up to ninety days).

¹¹³ FLA. STAT. ch. 106.31 (2003) (legislature finds that political campaigns have become prohibitively expensive, thus limiting candidacy to the independently wealthy and those who are supported by special interests; legislation passed to make elected officials more responsive to the public and to "dispel the misperception" that elected officials are beholden to those special interests contributing to political campaigns).

¹¹⁴ *Id.* (purpose of this legislation is to encourage qualified individuals to run for statewide office who are unable to because such individuals lack the necessary funding).

¹¹⁵ FLA. STAT. ch. 106.32 (2003) (provides for the creation of an Election Campaign Financing Trust Fund to be funded by filing fees, penalty assessments, and direct transfers from the general fund by the state legislature).

¹¹⁶ FLA. STAT. ch. 106.33 (2003) (providing public financing to candidates for the offices of governor, lieutenant governor, and members of the cabinet, all public offices that are elected statewide).

¹¹⁷ FLA. STAT. ch. 106.33(2) (2003) (requiring all candidates for governor to receive \$150,000 in contributions and all candidates for cabinet office to receive \$100,000 in contributions from individuals who are residents of Florida at the time of contribution).

Massachusetts, Florida still requires that eligible candidates file a request for funding before being eligible to collect qualifying contributions.¹¹⁸

The statute also requires that candidates abide by restrictions relating to personal and political party contributions¹¹⁹ as well as strict contribution limits.¹²⁰ The statute also provides separate expenditure limits for candidates facing only primary campaigns.¹²¹ However, these limits are adjusted on a regular basis to account for inflation.¹²² Furthermore, the limits do not include expenses related to accounting and legal services rendered on behalf of a candidate.¹²³ Importantly, Florida also includes a provision in its system that provides for an increase in expenditure limits when facing a candidate who foregoes public financing and exceeds the statutory limits.¹²⁴

Under the Florida system, there is no distinction between candidates based on party affiliation.¹²⁵ Instead, funds are distributed on a matching basis similar to that in place for the federal primary system.¹²⁶ Also like the federal system, only certain contributions will qualify for matching under this system.¹²⁷ Finally, although there are no criminal penalties under this

¹¹⁸ FLA. STAT. ch. 106.33 (2003).

¹¹⁹ FLA. STAT. ch. 106.33(3) (2003) (limiting contributions from candidate to \$25,000 and contributions from political party contributions to \$25,000 in the aggregate).

¹²⁰ FLA. STAT. ch. 106.34(1) (2003) (limiting total election expenditures to \$5,000,000 for gubernatorial candidates and \$2,000,000 for cabinet office candidates).

¹²¹ FLA. STAT. ch. 106.34(2) (2003) (limiting candidates facing only primary opposition to sixty percent of the applicable total expenditure limit for that office).

¹²² FLA. STAT. ch. 106.34(3) (2003) (expenditure limits are adjusted every four years according to inflation and deflation as indicated by the Consumer Price Index).

¹²³ FLA. STAT. ch. 106.34(4) (2003).

¹²⁴ FLA. STAT. ch. 106.355 (2003) (publicly financed candidates, when campaigning against a candidate who exceeds the statutory limit for that office, will be released from those limits to the extent which the privately financed candidate exceeded the limit; publicly financed candidates will also be eligible for matching funds up to the new expenditure limit).

¹²⁵ FLA. STAT. ch. 106.33 (2003) (referring only to candidates with no reference to major or minor parties).

¹²⁶ FLA. STAT. ch. 106.35(2)(a) (2003) (providing for a match of two dollars for every dollar in qualifying contributions up to the threshold amounts required for eligibility under this system, one dollar for every dollar in qualifying contributions thereafter).

¹²⁷ FLA. STAT. ch. 106.35(2)(b) (2003) (only contributions made by individuals registered to vote after September 1 of the calendar year prior to the election being financed that are less than \$250 will be considered qualifying

system¹²⁸ it is worth noting that the civil penalties are more stringent than those under the federal system and the public financing systems of Nebraska, Massachusetts, and Michigan.¹²⁹

Analysis

The Public Campaign Financing Act of 2003, sponsored by Representative Robert Andrews of New Jersey, would take effect by, upon passage, amending the Federal Election Campaign Act of 1971, which was passed to provide for public financing of presidential campaigns.¹³⁰ This bill would provide for the public financing of campaigns for the U.S. House of Representatives for all candidates who meet the requirements set forth in the bill.¹³¹ Although this is an admirable goal and there are many excellent provisions set forth in the bill, there are certain glaring omissions and failures which must be rectified for this bill to have the effect of reducing the high cost of campaigns and opening the political process to all and not just the wealthy and well-connected few.

Unlike the public financing system used to fund presidential candidates, Representative Andrews' bill makes no explicit distinction between "major parties" and "minor parties." Although this is admirable, the distinction still exists upon examining the "qualifications for public financing" which places the Republican and Democratic Parties at a distinct advantage when applying for public financing.¹³² This problem can be easily remedied, however, by providing for funding to all candidates who successfully raise a small amount of money which can then be matched by the Federal Election Commission. By removing the automatic

contributions under this statute; individuals under this section refers to persons registered to vote in the state of Florida; contributions greater than \$250 will be matched up to the first \$250 contributed).

¹²⁸ Specifically, there are no provisions that provide for a sentence of imprisonment under this system.

¹²⁹ FLA. STAT. ch. 106.36 (2003) (exceeding the applicable expenditure limit or falsely reporting qualifying campaign contributions will result in a candidate being assessed a penalty equal to three times the amount at issue).

¹³⁰ H.R. 1878, 108th Cong. (2003).

¹³¹ *Id.*

¹³² H.R. 1878, 108th Cong. § 2 (2003) (providing public financing to any candidate who is the candidate of a political party that received at least twenty-five percent of the vote in the previous general election or if a candidate collects signatures from three percent of all registered voters in the Congressional district).

qualification for those parties who have received more than twenty-five percent of the vote, the inherent advantage enjoyed by the Republicans and Democrats will be less pronounced and third parties and independent candidates will be able to enter the campaigns on a more level playing field.

It is also important to note that this funding is also only made available for general elections¹³³ leaving all candidates who may wish to challenge an incumbent who is a member of the same political party without any ability to use public financing to get a political message out to the electorate. In those states without any viable opposing party, such as Massachusetts,¹³⁴ a primary campaign may be the sole option for a candidate who wishes to challenge an incumbent. However, given the enormous advantage that incumbents often enjoy,¹³⁵ any primary challenge will be disadvantaged from the beginning. Combining this with the fact that incumbents often enjoy a huge financial advantage throughout the election¹³⁶ shows a playing field that is so tilted that failing to provide for public financing at all stages of the electoral process will only serve to exacerbate the situation.

After a candidate has accepted public financing, contribution limits take effect which prevent candidates from accepting more than one hundred dollars from any individual in a given election cycle.¹³⁷ These limitations also prevent candidates from collecting excessive

¹³³ *Id.* (referring only to general elections and candidates who are “the candidate of a political party”, thus assuming that a primary campaign has already occurred).

¹³⁴ Office of the Clerk – U.S. House of Representatives, *Member Information*, <http://clerk.house.gov/members/index.html> (Jan. 27, 2005) (the Massachusetts delegation is made up entirely of Democrats).

¹³⁵ Center for Responsive Politics, *Incumbent Advantage – All Candidates*, <http://www.opensecrets.org/overview/incumbs.asp?cycle=2004> (Nov. 14, 2004) (in the 2002 election cycle, ninety-eight percent of incumbents won reelection, excluding races pitting incumbents against each other).

¹³⁶ *Id.* (in 2004, incumbent candidates raised an average of \$7,212,068 for their races while challengers raised only \$869,688 for their races).

¹³⁷ H.R. 1878, 108th Cong. § 2 (2003).

contributions from out of state.¹³⁸ However, there is no provision in this bill to allow for increased contribution limits when campaigning against a candidate who has chosen to forego the limits. Given the fact that incumbents are able to raise large amounts of money under the current campaign financing regime, challengers will not be allowed to collect the necessary contributions to be a viable competitor. This becomes even more apparent after considering the rather low maximum disbursement limit imposed by this bill: \$750,000.¹³⁹ This amount pales in comparison to the amount spent in the most expensive Congressional races in 2004¹⁴⁰ and is even less than the amount raised by the very member of Congress who has submitted this bill to the House of Representatives, Robert Andrews.¹⁴¹ Furthermore, most candidates likely will not receive the full \$750,000, but will instead receive an amount that will be determined by the Federal Election Commission according to a formula set forth in the bill.¹⁴² Finally, this legislation ignores the advantage wealthy and incumbent candidates have in being able to spend time away from their jobs for the purposes of campaigning. This is shown by the fact that the legislation in its current form includes no provision allowing a candidate to be paid a salary while campaigning.¹⁴³

In order to avoid the problems of candidates being underfunded when competing against incumbents, this bill, instead of providing a set limit on the amount a candidate will receive, should provide for matching funds in a manner similar to the presidential primary system. The

¹³⁸ *Id.* (requiring eighty percent of all contributions to qualifying candidates to be from the state in which the congressional district is located).

¹³⁹ *Id.*

¹⁴⁰ Center for Responsive Politics, *2004 Election Overview – Most Expensive Races*, <http://www.opensecrets.org/overview/topraces.asp> (Nov. 14, 2004) (the ten most expensive Congressional races in 2004 all incurred expenditures between the candidates of over \$3,500,000).

¹⁴¹ Center for Responsive Politics, *Representative (D-NJ) Robert E. Andrews* (Nov. 14, 2004) (Representative Andrews raised \$864,661 over the 2003-2004 reporting period and had \$1,330,894 on hand as of Oct. 13, 2004).

¹⁴² H.R. 1878, 108th Cong. § 2 (2003) (providing funding to a qualifying candidate in an amount equal to or closely approximating the cost of two and a half hours of commercial television air time in the district's media markets).

¹⁴³ *Id.*

contribution limit should also be increased to allow candidates to raise an effective amount of money from the limited number of people allowed under the statute since the majority of campaign contributions must be collected from within the state. Also, this funding should be made available for primary campaigns in the same amount as general election campaigns to provide for effective competition in all races, including those races where the primary campaign is where the real decision regarding representation of the district is made. Finally, candidates should be allowed to use this funding to pay a salary to the candidate so that they may concentrate all of their efforts on putting their views into the marketplace of ideas.

There are a number of very useful and practical provisions put forth in this bill that are long overdue. For example, a candidate accepting public financing under this bill would be required to participate in two televised debates.¹⁴⁴ However, the provision does fail to require other candidates who eschew public financing to participate in these public debates.¹⁴⁵ This bill also requires radio and television stations to accept all political advertising, within a certain limit, and also requires these stations to submit to random advertising rate checks as a condition for maintaining their FCC license.¹⁴⁶ This bill also serves to streamline the reporting process by allowing state political party committees, including those who are intimately involved with a candidate's campaign for the U.S. House of Representatives, to file the same report with the Federal Election Commission as they do with their respective states.¹⁴⁷ However, all of these provisions leave one glaring omission. This bill fails to provide for funding to candidates for the United States Senate. The need to provide for public financing to encourage more candidates

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* (requiring only “qualifying House of Representatives candidate[s]” to participate in the debates).

¹⁴⁶ *Id.* (requiring television and radio stations to accept all orders for advertising under this bill until such advertising constitutes forty percent of a station's total advertising time).

¹⁴⁷ H.R. 1878, 108th Cong. § 3 (2003) (state party committees can file a report with the Federal Election Commission that was required under state law provided such reports contain substantially the same information).

and to prevent the appearance of corruption is just as vital in the upper house of Congress as it is in the lower house. Furthermore, it is highly unlikely that the Senate would be willing to pass a statute providing for public financing of candidate to the House of Representatives without making sure that candidates for the Senate would be able to receive such funding as well. In order to demonstrate how these changes would appear in this bill a draft of the original legislation proposed by Representative Andrews, including the amendments suggested by this article, follows this analysis.

Section 1. Short Title

This Act may be cited as the “Public Campaign Financing Act of 2005”.

Section 2. Public Funding for Congressional Elections.

The Federal Election Campaign Act of 1971 is amended by adding at the end the following new title:

Title V – Public Funding for Congressional Elections

Sec. 501 Qualifications for Public Funding.

A Candidate for the U.S. Congress qualifies for public funding if, as determined by the Commission-

(a) the candidate is a candidate for the U.S. House of Representatives and has raised at least \$25,000 in qualifying contributions; or

(b) the candidate is a candidate for the U.S. Senate and has raised at least \$25,000 multiplied by the number of districts for the U.S. House of Representatives in the candidate’s state.

Sec. 502. Limitations on Contributions to Qualifying Congressional Candidates.

(a) A qualifying Congressional candidate may not accept contributions other than contributions from individuals that total more than \$500 per individual per election cycle.

(b) With respect to each reporting period for an election, at least 80 percent of the total sum of contributions accepted by a qualifying Congressional candidate shall be from the state in which the congressional district is located. For the purposes of this section, the state in which a candidate for the U.S. Senate is running shall be considered the congressional district.

(c) All contributions lawfully collected under this section shall be considered qualifying contributions for the purpose of matching funds under this title.

Sec. 503 Use of Public Funding

(a) A qualifying Congressional candidate may use public funds only for-

- (1) buying time on radio, cable, or television broadcast stations;
- (2) buying rental space on billboards or other outdoor signs;
- (3) buying advertising space in magazines, newspapers, periodicals, and other advertising media, including theaters and any and all websites on the Internet;
- (4) payment of the cost of producing advertisements for media referred to in paragraphs (1), (2), and (3);
- (5) procurement of computerized campaign software, voter lists, and other voter contact tools;
- (6) payment of the cost of printing and mailing campaign literature;
- (7) payment of the cost of telephone expenses;
- (8) payment of legal and accounting costs associated with campaigning;
- (9) payment of campaign employees' salaries;
- (10) payment of a candidate's salary;

(11) payment of the cost of campaign office equipment, supplies, and rent;

(12) payment of incidental expenses of the candidate and campaign, such as, but not limited to, travel and food.

(b) The Federal Election Commission shall make disbursements of public funds under this title in an amount equal to one dollar for every dollar of qualifying contributions received by a qualifying Congressional candidate. These disbursements shall be made upon receipt by the Commission of evidence that the Candidate has received a sufficient amount of qualifying contributions to qualify for public funding under this title. Disbursements shall be made on a quarterly basis following a filing by each campaign detailing the total amount of qualifying contributions accepted by each campaign.

Sec. 504 Maximum Amount of Public Funding

(a) The maximum amount of public funding a qualifying candidate may receive, subject to exceptions detailed in (b) shall be-

(1) \$1,125,000 for qualifying candidates to the U.S. House of Representatives; or

(2) \$1,125,000 multiplied by the number of districts for the U.S. House of Representatives in that state for candidates to the U.S. Senate.

(b) In the event a qualifying candidate is engaged in a campaign against a candidate who has chosen to forego public funding, the qualifying candidate shall be entitled to matching public funding up to the total amount expended by the candidate foregoing public funding.

(c) The amount under subsection (a) shall be increased as of the beginning of each even-numbered calendar year, based on the increase in the price index determined under section 315(c), except that the base period shall be calendar year 2005.

Sec. 505. Television Debate Requirement

(a) A qualifying Congressional candidate shall be required to participate in at least 2 televised debates, organized by a bipartisan or nonpartisan group, in the Congressional media market.

(b) In the event that a qualifying Congressional candidate is campaigning against a Congressional candidate who has chosen to forego public funding, the qualifying Congressional candidate shall be entitled to at least 2 televised interviews with a bipartisan or nonpartisan group should the candidate who has chosen to forego public funding choose not to debate the qualifying Congressional candidate.

Sec. 506. Requirement for Acceptance of Advertising by Radio and Television Stations.

(a) In General. Each radio station and each television station shall be-

(1) required to accept orders for advertisements to be paid for under this title until such advertising constitutes 40 percent of the station's total advertising time; and

(2) subject to random periodic examination of advertising charges paid under this title to ensure that such charges are correct.

(b) Condition of License. The continuation of an existing license, the renewal of an expiring license, and the issuance of a new license under section 307 of the Communications Act of 1934 shall be conditioned on the agreement by the licensee to abide by the provisions of subsection (a)(1).

Sec. 507. Definitions.

As used in this title-

(1) the term 'Congressional candidate' means a candidate for the office of U.S. Representative or U.S. Senator, or Delegate or Resident Commissioner to the Congress;

(2) the term 'qualifying Congressional candidate' means a Congressional candidate who qualifies for public funding under this title; and

(3) the term 'congressional media market' means, with respect to a congressional district, the media market of that district, or the media market for that state with respect to candidates for the U.S. Senate, as determined from the licensing records of the Federal Communications Commission.

Sec. 3. Reporting Requirements.

(a) Section 304 of the Federal Election Campaign Act of 1971 is amended by adding at the end the following new subsection:

(i) Filing of State Reports. In lieu of any report required to be filed by this Act, the Commission may allow a State committee of a political party to file with the Commission a report required to be filed under State law if the Commission determines such reports contain substantially the same information.”

(b) Other Reporting Requirements.

(1) Authorized committees. Section 304(b)(4) of such Act is amended-

(A) by striking "and" at the end of subparagraph (H);

(B) by inserting "and" at the end of subparagraph (I); and

(C) by adding at the end the following new subparagraph:

"(J) in the case of an authorized committee, disbursements for the primary election, the general election, and any other election in which the candidate participates;"

(2) Names and addresses. Section 304(b)(5)(A) of such Act is amended-

(A) by striking "within the calendar year"; and

(B) by inserting ", and the election to which the operating expenditure relates" after "operating expenditure".

Sec. 4. Reporting of Election Activity of Persons Other Than Political Parties.

Section 304 of the Federal Election Campaign Act of 1971 as amended by section 3(a), is amended by adding at the end the following new subsection:

(j) Election Activity of Persons Other Than Political Parties.

(1) Requirement described.

(A) If any person to which section 323 does not apply makes (or obligates to make) disbursements for Federal election activities (as defined in section 301(20)) in excess of \$2,000, such person shall file a statement-

(i) on or before the date that is 48 hours before the disbursements (or obligations) are made; or

(ii) in the case of disbursements (or obligations) that are required to be made within 14 days of the election, on or before such 14th day.

(B) An additional statement shall be filed each time additional disbursements aggregating \$2,000 are made (or obligated to be made) by a person described in subparagraph (A).

(2) Contents of statement. Any statement under this section shall be filed with the Secretary

of the Senate or the Clerk of the House of Representatives, and the Secretary of State (or equivalent official) of the State involved, as appropriate, and shall contain such information as the Commission shall prescribe, including whether the disbursement is in support of, or in opposition to, 1 or more candidates or any political party. The Secretary of the Senate or Clerk of the House of Representatives shall, as soon as possible (but not later than 24 hours after receipt), transmit a statement to the Commission. Not later than 48 hours after receipt, the Commission shall transmit the statement to--

(A) the candidates or political parties involved; or

(B) if the disbursement is not in support of, or in opposition to, a candidate or political party, the State committees of each political party in the State involved.

(3) Determinations by commission. The Commission may make its own determination that disbursements described in paragraph (1) have been made or are obligated to be made. The Commission shall notify the candidates or political parties described in paragraph (2) not later than 24 hours after its determination.

(4) Exceptions. This subsection shall not apply to--

(A) a candidate or a candidate's authorized committees; or

(B) an independent expenditure (as defined in section 301(17))."

Sec. 5. Contributions Through Intermediaries and Conduits.

Section 315(a)(8) of the Federal Election Campaign Act of 1971 is amended to read as follows:

(8) For the purposes of this subsection:

(A) Contributions made by a person, either directly or indirectly, to or on behalf of a particular candidate, including contributions that are in any way earmarked or otherwise

directed through an intermediary or conduit to a candidate, shall be treated as contributions from the person to the candidate. If a contribution is made to a candidate through an intermediary or conduit, the intermediary or conduit shall report the original source and the intended recipient of the contribution to the Commission and the intended recipient.

(B) Contributions made directly or indirectly by a person to or on behalf of a particular candidate through an intermediary or conduit, including contributions arranged to be made by an intermediary or conduit, shall be treated as contributions from the intermediary or conduit to the candidate if-

(i) the contributions made through the intermediary or conduit are in the form of a check or other negotiable instrument made payable to the intermediary or conduit rather than the intended recipient; or

(ii) the intermediary or conduit is-

(I) a political committee, a political party, or an officer, employee, or agent of either;

(II) a person whose activities are required to be reported under section 4 of the Lobbying Disclosure Act of 1995 the Foreign Agents Registration Act of 1938, or any successor Federal law requiring a person who is a lobbyist or foreign agent to report the activities of such person;

(III) a person who is prohibited from making contributions under section 316 or a partnership; or

(IV) an officer, employee, or agent of a person described in subclause (II) or (III) acting on behalf of such person.

(C) The term 'contributions arranged to be made' includes-

(i) contributions delivered directly or indirectly to a particular candidate or the candidate's authorized committee or agent by the person who facilitated the contribution; and

(ii) contributions made directly or indirectly to a particular candidate or the candidate's authorized committee or agent that are provided at a fundraising event sponsored by an intermediary or conduit described in subparagraph (B).

(D) This paragraph shall not prohibit-

(i) fundraising efforts for the benefit of a candidate that are conducted by another candidate or Federal officeholder; or

(ii) the solicitation by an individual using the individual's resources and acting in the individual's own name of contributions from other persons in a manner not described in paragraphs (B) and (C).

Sec. 6. Effective Date.

The amendments made by this Act shall apply with respect to elections occurring after December 31, 2006.

Conclusion

At this time, the legislation put forward by Representative Andrews is currently in committee.¹⁴⁸ However, the debate over campaign financing continues to rage in the public forum.¹⁴⁹ Following the unprecedented cost of many prominent races for federal office, it is likely that this debate will become more prominent in the months and years to come.¹⁵⁰ Because

¹⁴⁸ 149 CONG. REC. H 3569 (2003) (referring the Andrews bill to the House Committee on House Administration).

¹⁴⁹ Julia Malone, *Elections for federal offices cost \$3.9 billion; Money flowed freely from new sources in wake of campaign finance reform law*, *The Atlanta Journal-Constitution*, 7A (Nov. 8, 2004) (discussing the continuing debate over the efficacy of current campaign finance reform statutes).

¹⁵⁰ Center for Responsive Politics, *2004 Election Overview – Most Expensive Races*, <http://www.opensecrets.org/overview/topraces.asp> (Dec. 20, 2004) (showing the top five Senate races all costing more than \$20,000,000 and the top five House races all costing more than \$5,300,000).

of this, a serious debate regarding the merits of public financing of campaigns is imperative.

Although public financing legislation has proved workable and successful at the state level, only time will tell if legislation like that discussed in this article will prove successful in reducing the influence of large contributions on campaigns for Congress.