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Public Financing's Last Breaths

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THE LEGISLATION AND POLICY ROUNDTABLE



ELECTION LAW: LEGISLATION AND CONTROVERSIES

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Public Financing's Last Breaths

Kellen Clemons

The 2008 election cycle has sparked a mind-boggling array of changes in the way we, as Americans, treat and understand politics. To state that classical rules of politics have changed would be a gross oversimplification. New types of candidates have emerged. New locations for competitive elections have emerged. New issues have emerged. New methods of running campaigns have emerged. Every single facet of politics has evolved. There are many reasons for this evolution and it is difficult to claim to understand exactly what caused it. However, in the background is one facet of politics that the public, but certainly not the candidates, tend to overlook: financing.

There have been multiple events in the 2008 presidential election that have caused the way campaigns are financed to be addressed and our considerations of it to change substantially. Of particular interest are Senator Barack Obama's decision to opt out of public financing, believing that his own "public financing" could surpass the limitations imposed on him if he were to opt in to the public financing system; former Senator John Edwards' solicitation of an advisory opinion from the Federal Election Commission board as to whether credit card donations filed through a third party "clearinghouse" that is registered as a Political Action Committee can be matched in the public finance system; and Senator John McCain's use of a pledge to opt in to the public finance system in order to obtain a large loan—and then publicly considering opting out of the system.

If the public financing system were truly effective and worthwhile there would not be this massive level of confusion coming from the candidates. An average voter not understanding the

public financing system is not surprising. An attorney not understanding the system is a little more disheartening, but still not shocking. A whole campaign being confused by this system should be surprising. It shows that these regulations are difficult to navigate in any unique way, which suddenly seems to be a necessity in the current political climate.

After this peculiar and unique election cycle, the public financing laws will have to be redeveloped in order to have any bearing on future elections. Without some change to the rules, candidates will continue to opt out and use the Internet and grassroots initiatives to out-raise one another, to the possible disadvantage of the goals of the public finance system. In essence, this election cycle has seen politics destroy the current public financing system. Through the advisory opinions of the Federal Election Commission and the decisions of the major candidates to opt out of public financing, the role of the system in elections has greatly diminished. The Federal Election Commission and the public financing system may become less and less appealing as the cycles go on, to the point that they will become irrelevant.

The primary and most alarming problem with the current financing system is that the system, either through the Federal Election Commission or through unchanged archaic rules, is rendering itself obsolete. The ActBlue advisory opinion shows an unwillingness to engage in the modern process of campaign fund raising.¹⁷² Coupled with the low cap on primary expenditures, it is easy to understand why so many candidates opt out of the system. The general election public financing program is no more secure than the primary, as Senator Obama has shown that his fund raising abilities far outweigh any benefit that the program may grant a candidate, primarily because the internet has made it easier for candidates to raise sums far in excess of the spending cap. The primary system is falling into disuse and with Senator Obama's decision to opt out it seems possible that the general system is headed in that direction as well. Two former

172 Advisory Opinion 2007-31, (Dec. 17, 2007) <http://saos.nictusa.com/aodocs/2007-31.pdf>.

chairmen of the Federal Election Commission foresaw the continued downfall of the program and made multiple recommendations to Congress that would make the program more appealing to candidates and preserve their legislative purpose.¹⁷³ Most of their recommendations involve adjusting the monetary values present in the system for current day campaign expenses and then indexing them for inflation. Looking through all of these problems, the need to update the programs is apparent. The updates proposed by Chairmen Thomas and Toner seem to be very sensible and drawn out of the issues the programs face.

I. The History and Purpose of the Public Finance System.

Public financing in the United States began in 1971 with the Federal Election Campaign Act.¹⁷⁴ The Act set down limitations on the amount and the type of money that a campaign could accept, as well as limiting the way that those accepted funds could be spent.¹⁷⁵ The Act was the first to implement the idea of separate funding groups (e.g., Political Action Committees) for companies and organizations to solicit money to assist in the election of candidates and the progression of certain issues.¹⁷⁶ However, the Act did not have a centralized enforcement agency, which led to immense difficulties in implementation.¹⁷⁷ The authority was spread across the executive and legislative branches.¹⁷⁸

Congress passed the Revenue Act in 1971, which included an option for taxpayers to mark a single dollar of their taxes towards public financing.¹⁷⁹ The program was implemented in

173 Chairman Scott E. Thomas and Vice Chairman Michael E. Toner, *Legislative Recommendations Regarding Presidential Public Funding Program* (Feb. 9, 2005).

174 The Federal Election Campaign Act of 1972, Pub. L. No. 92-225, 86 Stat. 3 (1972).

175 *Id.*

176 *Id.* at § 302.

177 Federal Election Commission, *The Federal Election Campaign Laws: A Short History*, <http://www.fec.gov/info/appfour.htm#anchor614551> (last visited Oct. 20, 2008).

178 *Id.*

179 The Revenue Act of 1971, Pub. L. No. 92-178, 85 Stat. 497 § 801 (1971).

1973 and shortly thereafter began accumulating money.¹⁸⁰ In 1976, enough money had accumulated that the first American publicly funded presidential election was held.¹⁸¹

This program was not the final effort to advance public financing. Congress amended the Act in 1974, creating the primary public financing system that provided two hundred and fifty dollars in matched funding for each contribution but limited spending to a set amount.¹⁸² Immediately after the passage of the amendments, the law was challenged and eventually ruled on by the Supreme Court.¹⁸³ The Court held that the expenditure limits were unconstitutional unless the candidate had voluntarily opted in to the public financing system.¹⁸⁴ The Court found many of the other aspects of the law to be constitutional, but also held that the newly created Federal Election Commission needed to have its officials chosen in a manner similar to other commissions, where officials were appointed by the President and confirmed by the Senate.¹⁸⁵ In 2002, the laws were changed again, though very little of the system was substantively affected.¹⁸⁶ The new laws sought to restrict the effect that Political Action Committees and 527s could have on the election process while also increasing the donation caps for individuals.¹⁸⁷

II. Modern Matched funding and Online Clearinghouses

The Internet has permanently changed politics. Quick dissemination of information and even more rapid responses to the attacks and issues of opponents have made effective Internet activity by candidates a must. But the Internet has also had a heavy impact on fund raising

180 Federal Election Commission, *The Federal Election Campaign Laws: A Short History*, *supra* note 4.

181 *Id.*

182 Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 1974 Stat. 3044 § 9033.

183 *Buckley v. Valeo*, 424 U.S. 1 (1976).

184 *Id.* at 99.

185 *Id.* at 117.

186 Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 166 Stat. 81.

187 *Id.* at §§ 101-214, 304.

Prior to Internet-based fund raising enhancing the ability of House and Senate candidates to effectively raise large sums of money necessary to compete effectively in a Senate race or an expensive congressional district, a candidate had to rely on wealthy individual donors, Political Action Committees, and large business donors. Candidates who lacked the connections to these fundraising sources were largely unable to compete against candidates who did.

The Bipartisan Campaign Reform Act of 2002 went a long way to remedying this imbalance by placing caps on the amount of money that a person or Political Action Committee could donate to a candidate or cause.¹⁸⁸ The candidate with connections to donors with deep pockets no longer had as large a financial advantage as before. However, a problem still remained: raising the amount of money necessary to compete across an array of states was a difficult task.

In 2004, ActBlue was founded and attempted to solve this dilemma.¹⁸⁹ It is registered as a Political Action Committee, though it behaves very little like one. ActBlue allows Democratic candidates and other affiliated organizations to set up fundraising web pages and solicit donations over the Internet.¹⁹⁰ ActBlue does not take a cut of the money that they raise; they cut a check directly to the candidates at the end of each month.¹⁹¹ ActBlue attempts to provide a simple and efficient method for candidates to obtain funds from across the country via the Internet and only behaves as a filter for that money.¹⁹²

However, ActBlue has hit a peculiar wall in raising matchable funds for presidential candidates. Under a cursory understanding of the ActBlue system, it is plausible to assume that the money is matchable for a presidential primary candidate. Former Senator John Edwards

188 *Id.* at §§ 201-214.

189 ActBlue, *About ActBlue* <http://www.actblue.com/about> (last visited Oct. 20, 2008).

190 ActBlue, *About ActBlue* <http://www.actblue.com/about> (last visited Oct. 20, 2008).

191 ActBlue, *Frequently Asked Questions* <http://www.actblue.com/faq> (last visited Oct. 20, 2008).

192 Lora Haggard, CFO, John Edwards for President, *Comment on AO 2007-31 2* (Dec. 13, 2008) <http://saos.nictusa.com/aodocs/961681.pdf>.

requested exactly this, being one of the few candidates operating off the public financing program for primaries in this cycle.¹⁹³

In December of 2007, the Federal Election Commission issued an Advisory Opinion briefly detailing why funds earmarked for presidential candidates through the ActBlue system were not matchable.¹⁹⁴ The Commission ruled that because ActBlue is a Political Action Committee that is forwarding funds to a presidential committee, the funds could not be matched because the law clearly stated that money transferred under such circumstances might never be matched through the matched funding program.¹⁹⁵ The Commission ruled that ActBlue is a Political Action Committee because its behavior fits within the three provided definitions.¹⁹⁶ The Commission also presented a second reason, that even if ActBlue is not considered a Political Action Committee, it still cannot have its contributions to a presidential candidate matched because the regulations state that funds from a committee, even if it is not political, cannot be matched even if the funds are drawn from money given by an individual and clearly earmarked for a particular presidential candidate.¹⁹⁷

The Edwards campaign argued that the Advisory Opinion draft relied on insufficient legal research and neglected prior opinions that seemed to set forward different interpretations of the statutes.¹⁹⁸ The campaign claimed that the commission had neglected a prior opinion that stated that the commission would interpret the statutes in a way consistent with emerging technologies.¹⁹⁹ The campaign felt that the lack of discussion on this issue left the opinion to be

193 Lora Haggard, CFO, John Edwards for President, *Advisory Opinion Request on Behalf of John Edwards for President* (Oct. 23, 2007) <http://saos.nictusa.com/aodocs/955993.pdf>.

194 Advisory Opinion 2007-31 (Dec. 17, 2007) <http://saos.nictusa.com/aodocs/2007-31.pdf>.

195 *Id.* at 2.

196 *Id.* at 3-4.

197 *Id.* at 4.

198 Lora Haggard, CFO, John Edwards for President, *Comment on AO 2007-31* 1.

199 *Id.* at 2.

insufficient in the scope of its legal reasoning.²⁰⁰ Further, the campaign contended that the commissions understanding of the term “transfer” disregarded the legal meaning of the term.²⁰¹

The FEC contended that ActBlue was giving contributions to the Edwards campaign, which the campaign contended was an incorrect analysis of the circumstances.²⁰² Instead, the campaign argued that the money was passing through the ActBlue system.²⁰³ The Edwards campaign's argument was that the intent of the Act was to prevent organizations who raise money for their own campaigning purposes, such as issue advertisement, from making matchable donations to a candidate, but that because ActBlue does not engage in activities similar to what these other Political Action Committees do they ought not be treated in the same way.²⁰⁴ Instead, ActBlue should be understood to be more akin to a credit card processing company that processes funds to candidates (and should be matchable).²⁰⁵ The Edwards campaign made it very clear that they felt that the advisory opinion would harm efforts to encourage grassroots involvement in political activities and would discourage presidential candidates from participating in public financing for the primaries.²⁰⁶

Many third parties that make active use of the ActBlue system filed letters with the commission, particularly Markos Moulitsas Zuniga of DailyKos, and BlogPAC.²⁰⁷ They echoed the arguments of the Edwards campaign, noting that, while ActBlue may be considered a Political Action Committee, they do not operate in a manner consistent with such a title.²⁰⁸ Given the nature of the organizations it is no surprise that they noted that the ActBlue system

200 *Id.*

201 *Id.*

202 *Id.*

203 *Id.*

204 *Id.* at 2-4.

205 *Id.* at 3-4.

206 *Id.* at 2.

207 Adam C. Bonin on behalf of DailyKos and BlogPAC, *Comment on AO 2007-31*.

208 *Id.* at 2

worked in a way to encourage small donors and grassroots impact.²⁰⁹ Their argument was that the funds flowing through ActBlue are not substantively different from any other small donor funding other than that the funds are passing through the ActBlue servers.²¹⁰ The bloggers contended that the Advisory Opinion treated these small donors as if they were giving “dirty money” when their money may be the cleanest.²¹¹

The arguments presented by the Edwards Campaign and the bloggers hearken to the original intent of the Act: allowing candidates without access to deep-pocket donors to be more viable, and encouraging participation by small donors.²¹² ActBlue is not soliciting the money for its own functions or choosing where to allocate the money based on its own private decisions.²¹³

However, the Advisory Opinions raises an interesting question: what should be done about candidates who cannot afford the credit card services necessary to manage large scale online donations which otherwise would be matchable? ActBlue, and its Republican counterpart SlateCard, would appear to candidates as a viable alternative, given that it is free to use and manages the system for the candidate.²¹⁴ But poorly funded candidates would then not be able to receive the additional, federal funding that they would need to run their campaign.

There is another problem with the Advisory Opinion that was only alluded to by those involved. The goal of the Federal Election Commission, the matched funding program, and the general election public financing system is to perpetuate the use of the system. If the system is considered to be a worthwhile expenditure and endeavor, it must strive to maintain its own

209 DailyKos has made extensive use of the ActBlue system in fund raising for congressional and presidential candidates, *see* <http://www.actblue.com/page/orangetoblue>. DailyKos's Orange to Blue fund raising program has raised over one million dollars for sponsored candidates (last visited Oct. 20, 2008).

210 *See* Adam C. Bonin on behalf of DailyKos and BlogPAC, *Comment on AO 2007-31 2 and Lora Haggard, CFO, John Edwards for President, Comment on AO 2007-31 2*.

211 *Id.*

212 Adam C. Bonin on behalf of DailyKos and BlogPAC, *Comment on AO 2007-31 2, supra* note 36.

213 ActBlue, *Frequently Asked Questions* <http://www.actblue.com/faq> (last visited Oct. 20, 2008).

214 *See* ActBlue, *Frequently Asked Questions* <http://www.actblue.com/faq> (last visited Oct. 20, 2008); Slatecard, *Frequently Asked Questions* <http://www.slatecard.com/faq> (last visited Nov. 4, 2008).

relevance. If the system is operating in a way that discourages involvement, it will assuredly collapse. There has been a trend in recent cycles to opt out of the primary matched fund system because the limitations to expenditures outweigh the benefit of a guaranteed amount of money. That assessment has not been true for every candidate—clearly Senator Edwards did not feel he could raise an amount of money so substantial as to outweigh the matched funding system—but this ruling severely cripples the efforts of less funded candidates and will encourage many of them to forgo the system altogether, particularly if online contributions through systems of this nature are becoming dominant fund raising systems.

III. The Beginning of the End and the Emergence of New Public Financing

The 2008 general election period has been just as peculiar as the primary was for campaign finance. Once Senator Obama and Senator McCain became the clear presumptive candidates for their respective parties, a peculiar back-and-forth, highly tense debate occurred between the two campaigns over public financing.²¹⁵

Senator Obama had initially stated he would join in public financing if his opponent did so as well. Senator Obama presented some nuances on this decision, attempting to strictly limit the efforts of 527s and other allied organizations and make donations come from public donors.²¹⁶ Senator Obama has since decided that he will opt out of this program, sparking a great deal of political turmoil.²¹⁷ Senator Obama gave many reasons for his decision to opt out, particularly citing his opponent's unwillingness to control his 527s and the need to protect

²¹⁵ See Kate Pickert, *Campaign Finance: A Brief History*, TIME, June 30, 2008, <http://www.time.com/time/nation/article/0,8599,1819288,00.html>.

²¹⁶ *Obama opts out of public funding*, ASSOCIATED PRESS, June 19, 2008.

²¹⁷ *Id.*

himself from a perceived oncoming assault of dirty politics.²¹⁸ Senator Obama also believed that the current campaign finance system in general and the public financing program in particular were broken and in need of a major overhaul.²¹⁹

Senator McCain was engaged in an equally uneasy internal, but very public, back-and-forth over whether to opt in to the system.²²⁰ He applied for a large loan from a bank in Bethesda, MD and offered his promise to opt in to the public finance system for the primaries if his campaign became unlikely to succeed, guaranteeing him a faster route to paying off the loan, as collateral.²²¹ After receiving the loan, Senator McCain publicly considered opting out of the system.²²² This elicited the outrage of his opposition who saw his loan as a very clear decision to opt in and as a receipt of the funds.²²³ Initially, Senator McCain had agreed on a form similar to the one that Senator Obama is commonly cited for, to engage in the public financing system if his opponent did.²²⁴ After all of the peculiarities of the primary financing for Senator McCain, he decided to opt in to the general public financing program.²²⁵

Depending on what one considers to be the true goals of public financing, it is possible to consider what Senator Obama has done in this election to be a new sort of public financing. His fundraising does not encourage or dissuade finance fraud but it does encourage individual participation. Considering that the current system requires candidates to obtain a certain amount of funds from a certain number of individuals, a bar that would have been much more difficult to meet at the creation of the public finance system, the encouragement of individual participation

218 *Id.*

219 *Id.*

220 See Kate Pickert, *Campaign Finance: A Brief History*.

221 *McCain loan raises FEC questions*, ASSOCIATED PRESS, Feb. 21, 2008.

222 *Id.*

223 Michael Luo, *Democrats Raise Legal Point Over McCain and Ohio as He Opts Out of Public Money*, N.Y. TIMES, Feb. 27, 2008.

224 *Id.*

225 *Id.*

in a campaign in a financial manner by voters appears to have been a goal. Senator Obama claims to have raised his current estimated funds of 600 million dollars from 3.1 million individuals.²²⁶ The campaign estimates that the average donation is 86 dollars.²²⁷

This new wave of campaign fund raising, which has exceeded anything seen in previous elections, could be described as a new conceptualization of public financing. In the month of September, Senator Obama's campaign raised just over 150 million dollars and added a new 636,000 donors to their system.²²⁸ The funds came at an average of less than one hundred dollars per person.²²⁹ With the limitations set on donations by a donor, candidates are encouraged to promote more involvement by more, and new, donors. The Obama campaign has seemingly mastered this concept. At the very least, the Obama campaign has shown that the general election financing program provides little benefit for able fundraisers.

IV. How to Keep Public Financing Alive

In 2005, then-Chairman Scott Thomas and Vice Chairman Michael Toner of the Federal Election Commission wrote to Congress, encouraging them to take immediate action to reform the failing Presidential Public Funding Program.²³⁰ The chairmen informed Congress that if extensive considerations of the problem were not undertaken the program would be severely under funded and most likely irrelevant by the current, 2008, presidential election.²³¹ Most of the recommendations dealt with the Primary Matched Funding Program, though they did have one suggestion for the General Presidential Financing Program.

226 Michael Luo, *Obama Recasts the Fund-Raising Landscape* N.Y. TIMES, Oct. 19, 2008.

227 *Id.*

228 *Id.*

229 *Id.*

230 Chairman Scott E. Thomas and Vice Chairman Michael E. Toner, *Legislative Recommendations Regarding Presidential Public Funding Program* (Feb. 9, 2005).

231 *Id.* at 1.

The chairmen had eight suggestions for ways to improve the Primary Matched Funding Program.²³² The first was that the spending cap on primary presidential campaigns from \$45 million dollars to \$75 million dollars or more.²³³ The chairmen reasoned that the extended period of presidential primaries meant that candidates could not run a campaign with a mere \$45 million dollars.²³⁴ In many cases, at least prior to 2005, presidential candidates were determined very early on in their party's primaries on account of front loaded elections.²³⁵ This meant that a candidate had to go through roughly an 18-month span with a severe limitation on their ability to campaign.²³⁶ Most candidates will choose to opt out of the matched funding system and use the expansive time to raise massive funds and maintain a large public persona. The chairmen cite that Senator Kerry and President Bush raised, collectively, in excess of 500 million dollars.²³⁷ If either of them had opted for matched funding they would have been limited to \$45 million apiece in a primary campaign that began in the previous year and ran all the way to the party conventions.

The presidential campaign of 2004 provides evidence that a \$45 million campaign chest is insufficient for waging a substantial campaign. The chairmen also recommended that the state-by-state spending caps be abolished.²³⁸ The chairmen point out that the limits would turn candidates off from the system because it would severely limit their ability to function in certain states.²³⁹ Given that the primary system operates off a method of a few early primaries and then a heavily front-loaded system, it could conceivably be necessary for candidates to spend much more money in the early primary states than in some of the later states.

²³² *Id.*

²³³ *Id.* at 4-5.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.* at 5.

²³⁸ *Id.* at 9.

²³⁹ *Id.*

In conjunction with that recommendation, the chairmen's second recommendation was to abolish the separate fund raising limit.²⁴⁰ According to their description of the rule, it only allows for an increase of twenty percent to the primary fund raising cap.²⁴¹ The theory is that a substantial increase to the fund raising cap will remove any perceived necessity for the extra allowance. The chairmen also cited the extensively complicated nature of the required computations, which make it unnecessarily burdensome for candidate and his committee.²⁴²

The third suggestion by the chairmen is to change the percent cap placed on match funding.²⁴³ Under the current system a candidate may only obtain matched funding in an amount of up to 50% of the primary spending limit before the separate fund raising limit.²⁴⁴ According to the chairmen this would limit matched funding for a primary candidate to less than \$20 million.²⁴⁵ The chairmen recommend maintaining the 50% limit and tying it to an increased spending cap, allowing a candidate to obtain 75 million if the spending cap is increased to 150 million dollars.²⁴⁶ For reference, President Bush raised \$250 million, and the recommendations provided by the chairmen would allow a public financed primary candidate to have a total of \$225 million, substantially more competitive and lucrative.²⁴⁷ Once again, the chairmen acknowledge that people will disagree about the spending but believe that people will agree that some increase is needed.²⁴⁸

240 *Id.* at 5.

241 *Id.*

242 *Id.*

243 *Id.* at 6.

244 *Id.*

245 *Id.*

246 *Id.*

247 *Id.*

248 *Id.*

The chairmen also believe that the amount of funds per donor that will be matched should be doubled and indexed to inflation.²⁴⁹ Currently the amount that will be matched is \$250 and is not indexed to inflation. The chairmen cite that the maximum contributions allowed by a donor have increased substantially while no changes to the amount matched have been made.²⁵⁰ Under the previous maximum donation limit matched funding was giving a one fourth match on what donors gave. At the time of the chairmen's letter that percentage had decreased to one eighth.²⁵¹ It also appeared important to the chairmen that the qualifications necessary to obtain access to the primary funding program be increased substantially.²⁵² As with the matched funding amounts, the requirements for enter the system have not been indexed for inflation. To obtain matched funding a candidate only needs to obtain \$5000 from at least twenty donors in each of twenty states.²⁵³ The prior justification for this requirement was formerly an intention to prohibit frivolous candidates from entrance into the system. Currently this bar is irrelevant to access, as the chairmen note only one of the public financed candidates in a primary in 2000 did not manage to raise at least a million dollars.²⁵⁴

The chairmen also acknowledged another problem with the matched funding: it isn't coming early enough.²⁵⁵ Many primaries are being held in the month of January, meaning that candidates must spend preceding months in those states campaigning. The money, however, does not come in until January.²⁵⁶ This means that candidates must raise funds in the late months of the preceding year in order to have enough money to be functional in the early primaries. This could substantially affect the amount of time those candidates have to campaign. The campaigns

249 *Id.* at 7.

250 *Id.*

251 *Id.*

252 *Id.* at 7-8.

253 *Id.*

254 *Id.*

255 *Id.* at 8-9.

256 *Id.*

need to be running at a high level of performance during these primaries and cannot do that without substantial funding. If they cannot obtain the public finances they will have to spend time fundraising, which counters one of the more valuable aspects of the public financing system for candidates.

The chairmen wrote their letter in 2005, and did not see it necessary to recommend many substantial changes to the general public financing system. They particularly did not see a need for an increase in the spending cap. The chairmen did, however, see a need to request a single point at which general election finances would be dispensed.²⁵⁷ The chairmen noted the wide separation between conventions in the 2004 election.²⁵⁸ These sorts of circumstances can leave a candidate with a limited amount of finances, waiting for their convention, while the other candidates can make use of a much larger general campaign limit during the time span and thereby gain an unfair advantage.

Most of the chairmen's suggestions increase the amount of money that will go into the campaign financing programs. This requires an increase in the amount of money that comes into the program. The chairmen strongly encouraged congress to maintain the taxpayer check-off system.²⁵⁹ One of the primary reasons was that a standard financial appropriations method would likely result in political conflict in congress, with sides attempting to increase or decrease the amount for their own party's gain.²⁶⁰ The chairmen also recommended that the amount that the check-off counts for be increased.²⁶¹ The chairmen proposed six dollars and believed that the check-off, like the rest of their proposals, be indexed for inflation.²⁶²

²⁵⁷ *Id.* at 10.

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 10-11.

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

V. A System Falling on Its Sword

The primary public financing seems to have become an archaic tool for candidates, given the consistent decrease in use of the system by potential presidents and the lack of use for the system by even second tier candidates. The primary public financing systems bars have not been raised enough in recent years to provide incentive for use by most legitimate candidates. Given how much money the average major party candidate is capable of raising, it is not a surprise that candidates will forgo the system. More importantly, however, is that it appears to be the case that the political system, the Federal Election Commission and the public financing system itself that are causing the system's disuse. The disuse of the system is proof that it is broken. Its cost of living adjustment does help the cap on spending grow but the growth does not account for the increased cost of elections in modern cycles.

The political powers have abandoned the system. The system's formulas for expenditure limits have not allowed it to be as alluring as is necessary for political relevance. The Federal Election Commissions rulings, while attempting to be narrow and technically specific, have chosen to prevent the increase of worth in the system.

If Congress wishes for the public financing programs to maintain relevance they will have to address the issues that the chairmen raised. They must do this with an eye to the fact that the primary matched funding program has fallen into near complete disuse and that the immense fund raising capabilities of modern presidential candidates may well bring the general election funding program to its knees as well. 