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Challenges in the Presidential Public Financing Program

July 19, 2012—The presidential public financing system, created in the wake of the Watergate scandal, was designed to reduce the corrupting influence of campaign contributions by providing candidates with infusions of public funds in exchange for abiding by spending caps. The system was also designed to give candidates incentives to seek large numbers of small contributions rather than a smaller number of large contributions.

The system worked reasonably well for several elections, but has unraveled in recent election cycles due to new and prolific expansions of private fundraising practices, especially bundling, and congressional inaction in the wake of these changes.

There are three major problems with the current system:

- It requires participating candidates to agree to spending limits that are dwarfed by the amount privately funded candidates are now able to raise—and further hampers participating candidates by imposing specific limits on how much they can spend in each state;
- Participating candidates receive their infusions of cash too late in the campaign;
- The presidential public financing Fund continually struggles with insolvency.

In 2012, Rep. David Price (D-N.C.) and Sen. Mark Udall (D-Colo.) proposed concurrent bills (S. 3312 and H.R. 414) that would fix many of these problems.

1. New Contribution Limits Make Private Money Look More Attractive than Public Funds

2. Public Funds Are Given to Candidates Too Late in the Primary Season

3. The Fund Is Becoming Insolvent

1. New Contribution Limits Make Private Money Look More Attractive than Public Funds

The 2002 Bipartisan Campaign Reform Act (BCRA), which banned political parties from accepting soft money, also doubled the amount of money individuals could contribute to candidates. This change made it possible for privately funded candidates to amass ever larger war chests.

The law did not, however, increase the amount of money given to candidates who participate in the presidential public funding system. Candidates continued to receive a one-to-one match for contributions of up to $250. And the formula for determining the spending limits imposed on publicly funded candidates remained tied to inflation.[1]

The increase in contribution limits and lack of a corresponding increase in allotments and spending limits for participants in the presidential public funding system create a major advantage for non-participating candidates.

Consider this: In 2008, five presidential candidates from both parties opted out of the matching primary funding system, including Barack Obama, Hillary Clinton, John McCain, Mitt Romney, and Mike Huckabee. These five candidates raised $336.7 million, $207 million, $120.8 million, $59.7 million, and $15.9 million, respectively.[2] Had they remained in the public financing system, they would have been restricted to spending $42.6 million each.[3] Sen. John Edwards, who received $7.4 million in public funding, raised an additional $35.1 million and spent just under the expenditure limit ($42.6 million) during the primary.

The contrast between candidates pursuing privately funded campaigns and those accepting public funds was glaring in the 2012 primary election: Gov. Buddy Roemer and Gov. Gary Johnson—two long-shot candidates with limited support—accepted public funding in the primary, for a total of $351,321.[4]

The presidential public funding system further constrains participating candidates by imposing limits on how much they can spend in individual states. These limits are calculated using the voting age population of the state, after a base level allotment. This means that the spending limits in a small state like New Hampshire, which has a key primary, remain unreasonably low. In 2012, for example, participating candidates could spend only $912,400 in New Hampshire, while the spending limit in Texas, not generally considered a key primary state, was $13,659,900.[5]

In 2008, Obama became the first general election candidate to opt out of the system entirely, allowing him to sidestep the spending ceilings and vastly outspend McCain. For

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[1] "Public Funding of Presidential Elections," Federal Election Commission Web site (July 2012)
[2] "Spending in the 2008 Election," *Financing the 2008 Election*, ed. David Magelby, (Brookings Institution Press, Washington, D.C., 2010).
[3] "Presidential Election Campaign Fund," Federal Election Commission Web site (July 2012)
[4] "2012 Presidential Matching Fund Submissions," Federal Election Commission Web site (July 2012)
[5] "Presidential Spending Limits 2012," Federal Election Commission Web site (July 2012)

the 2012 election, neither Romney nor Obama will use public financing, and both campaigns have stated goals of raising $800 million or more (mostly from high dollar donations and bundled donations), dwarfing the public funding expenditure limit of $91.2 million. These expected candidate expenditures do not include what is expected to be a tsunami of outside expenditures for and against the presidential candidates.

With candidates opting out of the primary and general election system across the board, spending in the 2008 election increased 85 percent from the 2004 election, and more of this money emerged from individuals seeking connections to the presidential campaign.[6]

Just as damaging to the presidential public financing program is today's Wild West of outside spending. Following the Supreme Court's 2010 *Citizens United* decision that allows unlimited corporate and union spending in elections, and the subsequent *SpeechNow.org* decision by another federal court that removed all contribution limits to committees and groups that make independent expenditures and electioneering communications, vast and unlimited spending by outside groups render the low spending ceilings of the public financing program a crippling liability, pushing serious presidential candidates to opt out of public financing and join the unlimited special interest money race. (*See* discussion on outside spending)

2. Public Funds Are Given to Candidates Too Late in the Primary Season

Presidential campaigns used to begin later than they do today, and the process used by parties to choose their nominee used to last longer. Now, presidential campaigns are beginning sooner and sooner, and parties' primary and caucus schedules are front-loaded to ensure a quick selection of the nominees.

As late as July 1991, former Sen. Paul Tsongas (D-Mass.) was the only Democratic candidate who had shown up in the key primary state of New Hampshire. Bill Clinton, the eventual winner, did not announce his candidacy until October 1991.

In contrast, the 2012 presidential campaign was well underway more than 18 months before Election Day. Yet candidates who participate in the presidential public financing system are not eligible to receive any public funds until Jan. 1, 2012.

This gives candidates who accept public funding only two days to spend that money before the January 3, 2012 Iowa Caucuses, and two months to cover 23 primaries before the March 6, 2012 "Super Tuesday."

3. The Fund Could Become Insolvent.

[6] "Spending in the 2008 Election," *Financing the 2008 Election*, ed. David Magelby, (Brookings Institution Press, Washington, D.C., 2010).

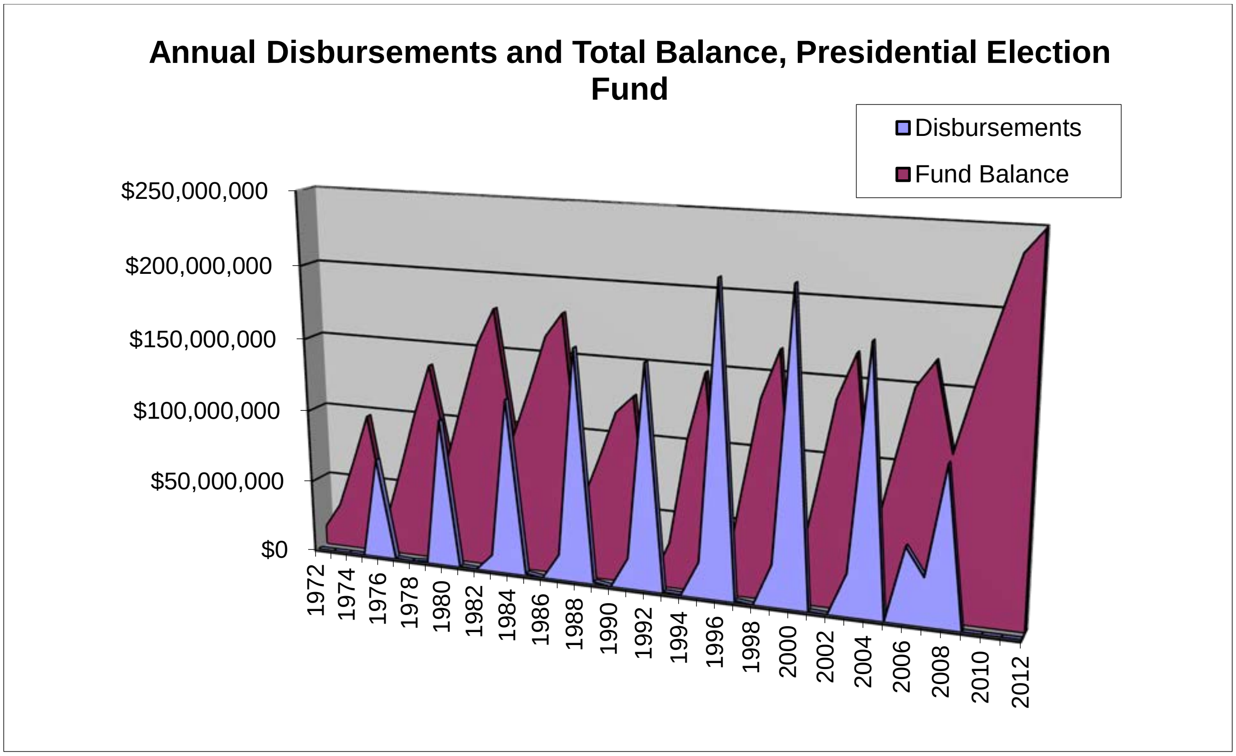
The Presidential Election Campaign Fund, which provides funds to publicly funded presidential candidates, derives its revenues from the federal tax checkoff program. Taxpayers may choose to direct $3 from the U.S. Treasury to the fund without any cost to themselves. The rate of taxpayers choosing to direct money to the fund has been in decline, falling from a high of 28.7 percent in 1980 to 6.4 percent in 2011.[7]

Despite predicted shortfalls in the Presidential Election Campaign Fund ever since 1996, the Fund has managed to scrape by, though it likely would have been exhausted in the 2004 election cycle had Bush and Kerry participated in the public financing program during the primary season.[8]

As of March 2012, the Fund was just over $249 million.[9] If both major parties were to use public funds for their conventions—about $17 million for each—and both of the general election candidates from the major parties were to receive the estimated $91 million from opting into the system, then the Fund would end the election year with only $31 million dollars, nearly a record low. (This is a major improvement from 2007: with only $167 million at the time, the fund would have been insolvent had both presidential candidates participated in the public financing program for the 2008 general election.)

While the fund has yet to become insolvent, there have been instances in which the FEC was unsure at the beginning of an election year whether that year's checkoff would bring in enough money to cover the funds dispersed. When this uncertainty occurs, the FEC lessens the matching funds provided during the primaries, as the general election and the nominating conventions are higher priorities in the law. Thus far, the FEC has been able to pay the funds in full later to those candidates who were not given the full amount right away.

[7] "Presidential Fund Income Tax Check-Off Status," Federal Election Commission (July 2012)
[8] By the end of 2004, the fund had $45 million in it. Had Bush and Kerry received the maximum matching funds, $19 million each, that would have left only $7 million in the fund. However, those funds would have been needed to have been paid out earlier in 2004, before all of that year's check-off had been collected. *See* "Presidential Fund Income Tax Check-Off Status," Federal Election Commission (July 2012)
[9] "Presidential Fund Income Tax Check-Off Status," Federal Election Commission (July 2007)



Source: "Presidential Fund Income Tax Check-Off Status," Federal Election Commission, July 2012.