

A STUDY ON THE CONSTITUTIONALITY OF
PUBLIC FINANCING OF PRESIDENTIAL ELECTIONS
IN THE UNITED STATES

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Abstract

The concept of public financing of federal elections had been considered by Congress several times. In 1966, Presidential Election Campaign Fund Act had been enacted which allocated to each major party's national committee about \$30 millions for the general elections expenses. The law never became operative, but five years later public financing was revived in the Revenue Act of 1971. This legislation authorized the tax checkoff scheme whereby, beginning in 1973, taxpayers could designate on their federal income tax form that \$1 of their tax money be paid to the Presidential Election Campaign Fund (those filing joint returns could designate \$2 of their tax money). This revenue would be used to fund presidential general election campaigns.

The Federal Election Campaign Act Amendments of 1974 went further in establishing government funding, providing subsidies for two more different stages of presidential campaigns: the primaries and the nominating conventions. The 1974 Amendments split political parties into three categories to determine eligibility for public funds. Major-party candidates would be eligible to receive the full amount of public funding in each of the three phrases of the campaign. Qualified minor parties were eligible for public financing in direct proportion of their share of the vote. If a new party emerged and became successful, the candidate of that party would qualify retroactively after the November election.

While the Federal Election Campaign Act Amendments of 1974 became effective in January, 1975, it was immediately clouded by a legal suit — *Buckley v. Valeo* — challenging the

constitutionality of most of its major provisions, including those stipulating public financing of presidential election. In this case, the federal courts confronted a difficult judicial task. The problem, in its simplest form, was to balance the First Amendment rights of free speech and free association against the power of legislature to enact laws designed to protect the integrity of electoral process. Involved in this case were questions of public discussion and political dialogue, certainly the highest order of meaning of the First Amendment. Basically, the plaintiffs sought to ensure that the election reform, however well meant, did not have a chilling effect on free speech or on citizen participation.

On January 30, 1976, the Supreme Court ruled in a *per curiam* opinion that upheld the forms of public financing contained in the 1974 Amendments and the Revenue Act of 1971. This ruling has had profound impacts not only on the regulation of presidential election, but also on state and local law as well. In that presidential election year, all but one (J.B. Connally) major party candidates decided to accept public subsidies, and Jimmy Carter, an outsider not familiar with Washington politics, and without access to traditional sources of funds, won the Democratic Party's nomination and subsequently the White House.

The scheme of public financing of presidential elections had undergone two more minor revisions during the subsequent enactment of Federal Election Campaign Act Amendments of 1976 and 1979. In 1980 presidential election, all major-party candidates had once again decided to accept public funding. Obviously, it has been well accepted by the candidates and the general public, and has become an integral and essential part of the whole campaign finance system in the United States.