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**TAXPAYER FINANCING OF ELECTIONS:
GOVERNMENT AS A SPECIAL INTEREST
(H.R. 1)**

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(H.R. 1)

STATUS

On January 15, Representative Abner Mikva (D-Ill.), along with more than 150 cosponsors, introduced H.R. 1, a bill providing for partial government funding of general election campaigns for the House of Representatives. The bill was referred to the Committee on House Administration where hearings were scheduled for March 15, 20, 21, 22, 27 and 28.

BACKGROUND ON FEDERAL FUNDING OF ELECTIONS AND FEDERAL ELECTION LAW

In 1966, Congress passed, and President Johnson signed into law, a measure establishing a Presidential Election Campaign Fund, financed by a voluntary \$1 checkoff from income taxes paid by individual taxpayers. But Congress repealed the law at the beginning of the next Congress.

In 1970, Congress approved a bill limiting spending on radio and television political broadcasting, but President Nixon vetoed the bill. The Senate failed to override the veto.

On April 7, 1972, President Nixon signed into law the Federal Election Campaign Act of 1971. Among its provisions, the new law restricted campaign spending for all media -- television, radio, newspapers, magazines, and billboards. The law also placed a ceiling on contributions by any candidate or his immediate family to his own campaign of \$50,000 for president or vice-president, \$35,000 for senator and \$25,000 for representative.

Also in 1971, the Presidential Election Campaign Fund was established into law. The new statute allowed taxpayers to contribute to a general fund for all eligible presidential and vice-presidential candidates by authorizing \$1 of their annual income tax payment to be placed in such a fund. In addition, the law provided for the complete federal financing of presidential campaigns for all major party candidates who chose federal financing. The presidential election of 1976 was the first campaign to be so funded.

In 1973, the Senate passed a sweeping bill limiting campaign expenditures and contributions and creating a Federal Election Commission, but the House did not act on the bill. The bill included federal financing of congressional campaigns.

In 1974, comprehensive amendments to the 1971 Federal Election Campaign Act were signed into law. A Senate amendment providing for government financing of congressional campaigns was deleted in conference with the House.

Among its provisions, the new law:

- * created a Federal Election Commission;
- * established limitations on campaign contributions to candidates by individuals, political parties, and political action committees (whether union-affiliated, corporate-affiliated, or independent);
- * prohibited independent expenditures of more than \$1,000 on behalf of a candidate;
- * repealed the media spending limitations of the 1971 Act;
- * retained the limitations on a candidate's personal spending of the 1971 Act;
- * provided for optional government financing of presidential conventions and general elections and matching government payments for presidential primary campaigns;
- * established spending limitations for all federal elections -- \$10 million per candidate for all presidential primaries; \$20 million per candidate for the presidential general election; \$100,000 or eight cents per eligible voter, whichever was greater, for Senate primaries; \$150,000 or twelve cents per eligible voter, whichever was greater, for Senate general elections; \$70,000 for House primaries; \$70,000 for House general elections.

Provisions of the 1971 Act and its 1974 Amendments were challenged in a suit, Buckley v. Valeo, which the Supreme Court decided on

January 30, 1976. The Court upheld the provisions of the law that set limits on how much individuals and political committees could contribute to candidates, that provided for the public financing of political party conventions and presidential primary and general election campaigns, and that required the disclosure of campaign contributions and campaign expenditures.

But the court found that the composition of the Federal Election Commission violated the Constitution's separation of powers clause because some commissioners were appointed by Congress but exercised executive powers. The Court also overturned limitations on independent expenditures, personal expenditures by candidates on their campaigns, and spending ceilings in congressional races. For presidential campaigns, the court stated that the ceiling on expenditures of those candidates who accepted public financing was constitutional.

Immediately following the Supreme Court's decision, Congress passed the 1976 Amendments to the FEC Act, which were signed into law on May 11, 1976. Besides reconstituting the FEC along the lines laid down by the court, the major provision of the amendments laid down new restrictions on political fund raising by unions and corporations.

During the first session (1977) of the 95th Congress, both houses of Congress turned serious attention to federal financing of congressional races. President Carter, Speaker of the House Tip O'Neil (D-Mass.), and Senate Majority Leader Robert Byrd (D-W.V.) all expressed support for the idea. On June 24, the Senate Rules Committee reported a bill, S. 926, providing for federal financing of Senate general elections only. A provision of the original bill providing for government financing of primary elections was deleted in committee. S. 926, as reported, established a campaign spending ceiling of \$250,000 plus ten cents multiplied by each state's voting-age population. Major party candidates would have automatically received 25 percent of their spending ceiling in federal funds, and in addition, would have been eligible for matching funds on all individual contributions of \$100 or less up to the spending limit. Only contributions received within fourteen months of the general election would have been matchable.

The bill further provided that candidates accepting federal financing would have been limited to spending only \$35,000 of their own money in their campaigns. If a candidate exceeded the personal or total spending limit, his rival would have been eligible for up to 62.5 percent more than the spending limit in matching funds. Third party candidates would not have been eligible for automatic grants but could have received matching funds if they raised \$100,000 or 10 percent of the spending limit through individual contributions of \$100 or less. Money to finance S. 926 would have come from the Presidential Election Campaign Fund. When the bill came to the floor of the Senate, Republicans and southern Democrats initiated a filibuster which survived three cloture votes and finally succeeded in killing the bill.

In October of 1977, public financing of House elections was revived after 155 Democrat members signed a letter asking that a bill be reported. An unnumbered bill was introduced into the House Administration Committee for markup on October 25. The bill provided up to \$25,000 in matching public funds for major party candidates who agreed to limit general election campaign spending to \$125,000 plus \$25,000 for fund raising costs. Only private contributions of \$100 or less would have been matched. If a candidate exceeded the limit, his rival would have been eligible for up to \$50,000 more in matching funds. The bill also provided \$25,000 per candidate in federal grants for a district-wide mailing to be used between July 1 and two weeks before the election. The grant counted against the spending total.

Third party and independent candidates could receive money only retroactively. To qualify for matching funds, they had to receive at least 5 percent of the vote. Like the Senate plan, the bill was to be financed from the Presidential Election Campaign Fund. But the bill was killed when the committee voted to accept an amendment by Mendel Davis (D-S.C.) to extend federal financing to primaries as well. The amendment would have increased the cost to the government dramatically.

In 1978, during the second session of the 95th Congress, the Democrat leadership made two attempts to bring federal financing of House campaigns directly to the floor of the House. In March, the public financing proposal was attached to a controversial bill (H.R. 11315) lowering the limits on spending by parties and political action committees. By a 198-209 vote, the House refused to approve the rule that would have allowed floor consideration of the bill. Republican members voted unanimously against the rule, 0-140; Southern Democrats also voted against the rule 35-49; Northern Democrats favored the rule, 163-20.

Two major changes were made in the bill after the March defeat. The effective date was pushed back from 1978 to 1980, and the spending limits were raised from \$125,000 plus \$25,000 for fund raising costs to \$150,000 plus \$30,000 for fund raising. The rest of the bill remained the same.

On July 19, 1978, during floor consideration of the FEC fiscal 1979 appropriations bill, a motion was made to end debate. Supporters of government financing sought to defeat the motion in order to permit drafting of an alternative rule that would have allowed a House vote on the revised government financing bill. The motion carried 213-196, with the majority, therefore, voting against government financing of House elections. Republicans supported the rule 106-30; Southern Democrats 62-22; but Northern Democrats opposed the rule 45-144.

CURRENT FEDERAL ELECTION LAW

Some relevant definitions from and provisions of the Federal Election Campaign Act of 1971, as amended in 1974 and 1976:

Election. A general, special, primary, or runoff election; a convention or caucus of a political party which has the authority to nominate a candidate; a primary election held for the expression of a preference for the nomination of persons for elections to the office of president; a primary election held for the selection of delegates to a national nominating convention of a political party.

Contribution. A gift, subscription, advance, loan, or deposit of money or anything of value, including in-kind contributions, made for the purpose of influencing an election, but does not include: 1) legal and accounting services; 2) the value of the services of a person who on his own initiative volunteers his services without remuneration; 3) the use of real or personal property of a value up to \$500; 4) the value of the discount given on the sale of food or beverages up to the value of \$500; 5) unreimbursed travel expenses up to \$500; 6) sample ballots listing at least three candidates which are distributed by political parties.

Contribution Limits. An individual can give no more than \$5,000 a year to a political action committee, no more than \$20,000 a year to the national committee of a political party, no more than \$25,000 a year aggregate political contributions. An individual can give \$1,000 per election to candidates or their authorized political committees.

Multi-candidate political committees (which includes political party committees) can give no more than \$15,000 a year to the national committee of a political party, no more than \$5,000 per election to a candidate or his authorized committees. A special exception allows the Democrat and Republican senatorial campaign committees to give \$17,500 a year to their senatorial candidates.

Expenditures. A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, including costs for fund raising used for the purpose of influencing federal elections, but does not include: 1) any media coverage of a campaign; 2) non-partisan get-out-the-vote drives; 3) internal communications of unions and corporations; 4) political communications not for the purpose of influencing elections; 5) unreimbursed travel expenses up to \$500; 6) the use of real or personal property up to a value of \$500; 7) the distribution of sample ballots; 8) presidential candidate fund raising costs up to 20 percent of the spending ceiling; 9) legal and accounting services; 10) a loan by a bank to a candidate.

Expenditure Limits. Presidential and vice-presidential candidates are limited to spending no more than \$50,000 of their own or their family's money on their campaigns if they accept public financing. Presidential candidates who accept matching funds

(which match individual private contributions of \$250 or less) can spend no more than \$10,000,000 combined public and private money (plus an additional 20 percent for fund raising costs) on their primary campaigns. In addition, there is a per capita spending limitation per state for each candidate campaigning in primaries. The major party general election candidates are limited to a government grant of \$20 million plus 20 percent for fund raising costs for their general election campaigns. For congressional campaigns, national and state political party committees can separately spend the greater of \$20,000 or two cents multiplied by the voting age population of a state for Senate races, and \$10,000 for House races. The national committee of a political party may also spend two cents multiplied by the national voting age population on behalf of its presidential candidate. There is no limitation on "independent expenditures," that is, expenditures by any individual or non-party political committee in support or opposition to a candidate as long as such expenditures are not coordinated with or approved by a candidate or his campaign committees. Unions and corporations may not spend any of their treasury funds directly on behalf of a candidate. But they may use treasury funds in order to set up political committees for the purpose of soliciting campaign funds from their employees, stockholders, or members.

Principal Campaign Committee. The main campaign committee designated by a candidate to administer his campaign. A principal campaign committee normally collects most of the contributions and makes most of the expenditures on behalf of a candidate, although this is not always so.

Authorized Committees. A committee empowered in writing by a candidate to solicit or receive contributions or make expenditures on his behalf. Any authorized committees are in addition to the principal campaign committee. A candidate may authorize as many of these committees as he wants. These committees conduct campaign activities separately from the principal campaign committee. They are normally not as large nor do they play as prominent a role in the campaign as the principal campaign committee.

H.R. 1

H.R. 1 includes two important definitions:

Authorized Committee. For purposes of the bill, an authorized committee would embrace the current law's definitions of both principal campaign committee and authorized committee. All authorized committees would have to abide by the provisions of H.R. 1.

Election. "Any regularly scheduled, special or runoff election which directly results in the election of a person to the office of

representative in, or delegate or resident commissioner to, the Congress." Thus any primaries or nomination caucuses or conventions are excluded.

1. Spending Limitations. Limits overall expenditures by a candidate to \$150,000 for a general election campaign, plus 20 percent (\$30,000) for fund raising costs, and 10 percent (\$15,000) for one mailing within the district, for a total of \$195,000. To this total, a candidate can contribute and/or loan \$25,000 of his personal funds or those of his immediate family.

By way of comparison, under the FEC Act of 1976, presidential nominees, are given 20 percent (\$2 million) from the government for fund raising costs over and above the \$20 million they receive for the general election campaign. They are given no additional allowances for any mailings. The 1974 Amendments to the FEC Act, since struck down by the Supreme Court and subsequently repealed by Congress, had provided spending limitations of \$70,000 per primary or general election to the House, plus a 20 percent (\$14,000) exemption above the limit for fund raising costs.

The plan would be optional. If a candidate chose to fund his election completely from private sources and spent more than \$75,000 and/or more than \$25,000 from his personal funds, and/or received more than \$75,000 in contributions, whether he spent that sum or not, (he must notify the FEC within forty-eight hours after any of these three occur), then the expenditure ceiling for his opponent would be lifted.

Once a candidate has agreed to the government funding matching program, he must abide by the restrictions.

In addition, the FEC could suspend the spending ceiling for another reason. If the combination of independent expenditures and internal communications (partisan political communications by unions to their members or corporations to their stockholders) with respect to any one House election exceeded \$50,000 and if one of the candidates received the benefit of not more than one-third of this amount, then that candidate could petition the FEC to lift his spending limitation of \$150,000.

For example, if the total of independent expenditures and internal communications on behalf of both candidates in an election, as reported by the spenders to the FEC in pre-election reports, was \$60,000 -- \$45,000 for Candidate X and \$15,000 (less than one-third of \$60,000) for Candidate Y, then Candidate Y could petition the FEC to lift his spending limit of \$150,000. Another example: if the total of independent and internal communication spending was at least \$50,000 in support of Candidate X and none in support of Candidate Y, then candidate Y could request the suspension of the spending limit.

2. Matching Funds. Establishes the House of Representatives Election Campaign Fund, a new account of the Presidential Election Campaign Fund, in the U.S. Treasury. Authorizes government payments to match individual contributions of \$100 or less received after January 1 of the election year only. No individual's contribution or combination of contributions in excess of \$100 would be matched by government funds. Eighty percent of the contributions used for matching funds must come from the individuals residing in the state, not necessarily the congressional district, where the election is held. Loans would not be matched.

A candidate would receive an initial matching payment of \$1,000, and then additional matching payments adding up to 40 percent (\$60,000) of the spending limit. These additional matching payments would be paid in \$10,000 sums matching the receipt of \$10,000 in private contributions, except that a candidate could designate "a final matching payment" in order to receive all of the money entitled to him at once.

If a candidate's opponent had rejected the public funding system and had spent more than \$25,000 of his own money, and/or received more than \$75,000 in private contributions, and/or spent more than \$75,000 in his campaign, then that candidate would be eligible for up to \$60,000 more in matching funds. In addition, the candidate would be allowed to solicit new contributions, to be matched by federal payments, from individuals who had already contributed the matchable maximum of \$100.

If a candidate's opponent incurred the benefit of two-thirds of aggregate internal communications and independent expenditures, that candidate would not be eligible for any more matching funds, but he would not have to abide by the \$150,000 spending limit.

Considering all possibilities, the total federal matching payments could not exceed \$180,000 for all candidates for any one House seat.

The new House of Representatives Election Campaign Fund would be an additional account in the Presidential Election Campaign Fund (the Fund) which now has three other accounts: the presidential primary matching fund account, the presidential party convention fund account, and the presidential general election fund account. Money for the entire Presidential Election Campaign Fund comes from a system whereby taxpayers may designate one dollar of their income taxes to be placed in the Fund. Current law states that only money from this Fund can be used to pay for the presidential campaigns and conventions.

In presidential years, H.R. 1 requires the Secretary of the Treasury to determine how much will be necessary for the three presidential accounts and then release the remainder for use in the new House account for matching payments. By May 15 in non-presidential years, H.R. 1 requires the Secretary of the Treasury

