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Small Donors, Large Donors and the Internet:

The Case for Public Financing after Obama

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By

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The Case for Public Financing after Obama

Michael J. Malbin *

The public funding system for presidential elections collapsed in 2008. The policy question for the future will be whether to revive it at all and, if so, how. It is clear that whatever purposes the system once served, the political context has so changed as to make the system at best insufficient. Some will seek to change the system to serve its original purposes. Others will say that any public financing program, however modified, has become irrelevant or worse. Still others, including this author, argue that the purposes themselves need rethinking. Public policy is, after all, a means to some other end as opposed to an end in itself. I would argue that some of the law's original purposes – most importantly, limiting the amount of spending in politics – cannot be achieved. Others – such as promoting competition, candidate emergence and public participation – can be helped through some forms of public support, but the system needs a redesign if these are the main goals. The current program has become vestigial. The debate therefore should be over whether the presidential system should be redesigned or repealed. I shall argue for redesigning in light of both redefined goals and a new context. The essay concludes with a brief introduction of new legislative paths being pursued in the U.S. Congress that explore some of the paths for which this essay will argue.

The presidential public financing system in effect since 1974 is made up of two distinct policy programs. During the nomination contest participating candidates receive one-for-one federal matching funds for the first \$250 the candidate raises from each individual contributor. In return the candidate must abide by a pre-nomination spending limit that in 2008 came to about \$50 million (\$42.05 million plus an allowance for legal and accounting costs). In the general election the two major party nominees may receive a flat grant that came to \$84.1 million in 2008. In return, a participating candidate must agree to spend only the grant money plus legal and accounting costs. Over the past three decades, either the matching fund or flat grant approach has been a model for almost all state and local systems of public financing. Since the same policy - and constitutional issues as have bedeviled the presidential system exist elsewhere, the presidential system's collapse and ultimate fate is likely to speak volumes for the future of public financing more broadly.

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Any public funding system's success depends on the choices of candidates. In 1976, the U.S. Supreme Court ruled in the landmark case of *Buckley v. Valeo* that the First Amendment prohibits Congress and other legislatures from imposing *mandatory* spending limits on candidates, even if the limits were accompanied by a sweetener like public funds. However, legislatures are free to condition public funds on a candidate's *voluntarily* accepting some limits or obligations in return. As a result, a system will remain useful only if enough candidates decide that the benefits outweigh the costs.

In 2008, almost every one of the two major parties' leading candidates for the nomination refused to accept public matching funds and the attendant spending limits. John McCain accepted public funds for the general election after rejecting them for the primaries, but Barack Obama became the first major party nominee since 1976 to opt out of both phases. In the end, Obama spent nearly four times the \$84.1 million public grant during the general election season.

The system's collapse had been building for some time. George W. Bush in 2000 was the first major party nominee to reject public money for the primaries. Two of the leading candidates in 2004 (Howard Dean and John Kerry) did the same and Kerry seriously considered opting out for the general election. So 2008 was no surprise, but it was a clear turning point. One factor that made the turning point so obvious was that several candidates said from the start that they would not be participating, without any apparent concern that this might make them look bad to voters. Even typically reform-minded editorial boards did not criticize the decision. Some regretted Congress's failure to amend the law after 2004, but all sympathized with the strategic calculations that led candidates to reject a \$50 million spending ceiling as they were running against opponents who said they planned to be spending much more.

The primaries may have left some with the impression that the system's problems could be repaired with a few simple changes – for example, by raising the spending ceiling. But the general election raised deeper questions. These were expressed by many during the election season but we have taken the liberty of quoting extensively from two articles published during the campaign's closing week. The authors – normally on opposite sides on this issue – were former Federal Election Commission Chairman Bradley Smith and former Senator Bob Kerrey. Smith, who opposes most campaign finance regulation, wrote the following in *The Washington Post*, shortly after Barack Obama's disclosure reports showed him to have raised nearly \$640 million in combined primary and general election funding as of October 15:

"Obama's epic fundraising should put to rest all the shibboleths about campaign finance reform – that it is needed to prevent corruption, that it equalizes the playing field, or that tax subsidies are needed to prevent corruption....

"We should consider it a healthy thing when Americans support their political beliefs with their dollars. What we see in this election is that contributions don't really cause 'corruption' and that we don't really want the government deciding who has spoken too much and who has not spoken enough. If Obama's fundraising shows us the emptiness of the arguments for campaign finance 'reform,' he will have done us a great service, in spite of himself." (Smith 2008)

More surprising than Smith's position, however, was an opinion article in *The New York Post* by former Senator Bob Kerrey, who over the years has been a co-chair of Americans for Campaign Reform and a supporter of public campaign financing:

"On the question of public funding of presidential campaigns, we Democrats who strongly support Sen. Barack Obama's candidacy and who previously supported limits on campaign spending and who haven't objected to Obama's opting out of the presidential funding system face an awkward fact: Either we are hypocrites, or we were wrong to support such limitations in the first place.

"The next time we speak of the virtue of level playing fields or state our strong belief that democracy can't survive in the modern age unless big money is taken out of campaigns, we'll be counting on our audience's forgetting our silence this year, when the free market was flowing in our direction....

"Of course, there's another option: Admit I was wrong on such limitations in the first place. And that's exactly what I'm likely to do.

"For the facts in evidence seem to make the case that this presidential campaign is the most exciting, most closely watched and most expensive in my lifetime. That is, there seems to be no correlation between the amount of money spent and disillusionment among the voters. Indeed, the contrary appears to be true....

"So maybe I was simply wrong about placing limits on spending and providing public monies in exchange for adhering to these limits.... [P]erhaps this will be the moment that causes me to change my views. It certainly feels better than remaining a hypocrite forever." (Kerrey 2008)

These two articles may leave the reader with the impression of an emerging right-to-left consensus on the failures of public financing. To a certain extent, the impression is correct. The 2008 election did create a consensus that old premises need to be rethought. But there is not a similar consensus about what the goals of public policy should be, let alone about what policy mechanisms would best help to further those goals.

To illustrate, let us look again at the quotations from Smith and Kerry. Both seem to argue that the main purpose against which public financing ought to be judged is whether it reduces corruption. Kerrey also spelled out other purposes – such as leveling the playing field and reducing disillusionment – but all, in his understanding, flowed from the spending limit. When higher spending in 2008 seemed to him to be associated with citizen excitement rather than disillusionment, he saw no further reason for public financing and was therefore prepared to consider abandoning it.

Two problems immediately come to mind with this argument. First, public financing for candidates should not ever have been expected to limit private spending on politics, given the First Amendment's protections for independent speech. This has been doubly true since the Supreme Court ruled that political parties have the same right to

unlimited independent spending as non-party groups and individuals^{*}. Public financing systems limit the *candidates* who participate in them but they do not limit the other participants in the system. Presidential candidates who take public funds for the general election have benefitted for years from unlimited party spending, first in the form of soft money and then from independent spending. Party spending does not give a candidate the same degree of control as money in the candidate's own account, but it does create real options for getting around the spending cap legally. In contrast, primary candidates do not have such an option. The national party committees do not engage independent spending to support one candidate over another while the primaries are still being contested. Hence the candidates in the primaries face greater pressures than a general election candidate to opt out if they face an opponent who is doing the same. So if limiting the amount of private money in politics were the only reason for public financing, the system has been undermined for a long time.

This observation leads in two directions. The first harks back to the fact that the system was devised in part as a reaction to President Nixon's reliance on major donors in 1972. On that view, the real reason to limit candidate spending was (as Kerrey says) to shift the balance between large donors and small. If so, a more complete version of Kerrey's argument would be that the Obama campaign's use of the Internet showed that public financing is not needed to accomplish such a shift in balance. (We examine later whether the evidence on this is settled.) The second path broadens our vision beyond spending.

Goals, Successes and Failures of Public Financing, 1976-2004[†]

The goals of the presidential public financing system from the beginning were not confined to fighting corruption or putting limits on spending. After all, the authors of the Federal Election Campaign Act Amendments of 1974 put the same contribution limits on presidential as on congressional candidates and they mistakenly believed mandatory spending limits (overturned by the Supreme Court in its 1976 decision in *Buckley v. Valeo*) could be imposed on Congress without public financing. The public financing provisions therefore were not meant as a lever for limits (since they thought they could impose the limits anyway) but to supply alternative funds to help elections serve their purposes without the problematic funds the limits were meant to rule out. That is, *the decision to include public money was not about preventing but enabling*. One of the primary goals was about maintaining competition within a system newly constrained by contribution limits. Before FECA, underdog candidates (such as Eugene McCarthy, the 1968 presidential candidate who was a co-plaintiff in *Buckley*) could rely on a few rich patrons to get their campaigns started. Public matching funds were meant to give underdogs an alternative way to remain competitive until they were tested by the voters in early primaries. Second, while the public money was supposed to encourage competition, the spending ceiling was not meant to be so low as to stifle it. Finally, the system was meant to encourage candidates to broaden their fundraising bases.

^{*} *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 US 604 (1996); *Federal Election Commission v. Colorado Republican Federal Campaign Committee* 533 US 431 (2001); *McConnell v. Federal Election Commission*, 540 US 93 (2003).

[†] The next section of this essay is adapted from material in two reports published by the Campaign Finance Institute's Task Force on Financing Presidential Nominations (Campaign Finance Institute, 2003 and 2005). The present author was also the principal author of both task force reports.

Competition

Public matching funds before 2008 worked successfully to provide a meaningful boost to underdog candidates in the primaries – whether Republican or Democrat, conservative, liberal, or moderate. Matching funds typically have been responsible for between one-quarter and one-third of the money raised by participating candidates, with candidates who emphasize small contributions receiving the higher percentages. Examples of the latter have included Democrats Jesse Jackson (1984 and 1988) and Jerry Brown (1992) along with Republicans Pat Robertson (1988), Patrick Buchanan (1992) and Gary Bauer (2000). The high water mark was established by Ronald Reagan in his 1984 reelection campaign, when he received about 60 percent of his funding from small donors and earned \$9.7 million in matching funds, the maximum amount permitted under the limits in effect at the time.

Matching funds have also had a strong impact on competition. A remarkable number of significant candidates, including three future presidents, were underdogs who were just about out of money, running against well funded opponents, when an infusion of public funds made it possible for them to remain viable. These have included:

- Ronald Reagan (1976) had only \$43,497 cash on hand at the end of January 1976. President Gerald Ford had fifteen times as much in the bank on that day. If the challenger's campaign had not received \$1 million in public money in January, and another \$1.2 million in February, his advisors have said they could not have continued. Reagan's strong campaign in 1976 fueled his success in 1980.
- Jimmy Carter (1976) had \$42,000 in cash at the end of 1975. Public funds let him continue through Iowa and New Hampshire, which propelled the underdog to victory.
- George H.W. Bush (1980) was down to his last \$75,000 on December 31, when the now favored Reagan had seven times that much cash. Public money let Bush earn enough votes to get an offer later to run as Vice President.
- Gary Hart (1984) had about \$2,200 at the end of December 1983, \$2,500 in January 1984 and \$3,700 at the end of February. Walter Mondale had \$2.1 million in cash on January 31, 1984 – more than 800 times as much as his opponent.
- Jesse Jackson (1988) was down to \$5,700 at the end of 1987 at a time when the frontrunner, Michael Dukakis, had \$2.1 million.
- Paul Tsongas (1992) had \$80,000 in cash on January 31, compared to Bill Clinton's \$1.4 million.
- Pat Buchanan (1992) had \$12,000 in cash on January 31 compared to the incumbent President Bush's \$8.9 million.

- John McCain (2000) was comparatively the richest of these underdogs, with \$350,000 in cash on January 31, 2000. His opponent, George W. Bush, had \$20.5 million in cash on the same day, spent down from \$31 million the previous month.
- In 2004 John Edwards, Wesley Clark, Richard Gephardt and Joseph Lieberman would not have been in a position to run competitive races during the early primaries if it had not been for public funds. John Kerry would have been in a similar position against Dean if he were not rich enough to lend his own money to the campaign.
- Finally, John Edwards' (2008) second place finish in the Iowa caucuses was once again fueled by public matching funds. However, it is likely that if his campaign had remained viable beyond the first races, the spending limit would have prevented him from contesting many primaries effectively in later weeks.

All of these candidates garnered significant public support, testing the frontrunners, remaining viable until at least some voters could cast real ballots. One key policy question, therefore, is whether the public has been well served by hearing these candidates and others. The list clearly is not a collection of fringe candidates. For three of them (Carter, Reagan and the elder Bush) matching funds sustained the political careers of future presidents. In every other case, the public learned something about the frontrunner(s) because of underdog's challenge. But by 2008, the public money and spending limit no longer provided enough money to permit most participating candidates to mount full-fledged campaigns. The spread between the financial top tier and the next was simply too great.

Spending Limits, Frontloading and Opting Out – A Mini-History

In the hyper-specialized conversations about campaign finance that typically take place in the public arena, we sometimes forget the importance of the fact that 1972 was the first year in which the newly reformed presidential nominating process was to be dominated by primaries. The 1974 campaign finance law's presidential financing provisions were designed to serve a nomination process that had been through only one previous election cycle. The nomination and campaign finance regimes did fit together for a while. But then the nomination process changed, along with much of the rest of the political environment. But the system for financing presidential elections remained static. Rather than continuing to hold on to an anchor in the midst of a swirling pool, candidates eventually have chosen to let go.

Consider just the impact of the delegate selection calendar. In 1976, Jimmy Carter, a decided underdog, came in first behind "uncommitted" in the Iowa caucuses and then, with more than a month between the two events, won the New Hampshire primary. Using his new visibility to raise funds for the next round of contests, Carter was able to campaign through three and a half more months of relatively evenly spaced primaries until he wrapped up the nomination in June. On the Republican side, the former Governor of California, Ronald Reagan, took on a sitting President and came

within a hair's breadth of winning. Gerald Ford's victory over Ronald Reagan was in doubt until the GOP convention in August. Small contributions and public matching funds substantially funded both the Carter and Reagan campaigns.

Contrast this leisurely pace with the frenetic nomination process of recent years. In 1976, neither party had selected half of its convention delegates until early May – a full 15 weeks after the Iowa caucuses and 10 after the New Hampshire primary. In 1980, the halfway point was about the same: 14 weeks after Iowa and 9 after New Hampshire, at the end of April. By 1996 the calendar had shifted dramatically. The midpoint in 1996 had moved up to March 12, only four weeks after Iowa and three after New Hampshire (Mayer and Busch, 2004). This had a dramatic effect on the out-party's campaign finance needs.

The eventual GOP nominee in 1996 was Robert Dole. One of his opponents (Steve Forbes) was a self-financed multi-millionaire who chose not to be bound by the spending limits. This was the first time a candidate who opted out of the system had put up a serious challenge in the primaries. By March 26, Dole had effectively clinched the nomination, having worked his way through 24 primaries and 13 caucuses that together selected 74% of his Republican Party's convention delegates. Like most winners since 1976, Dole had used almost his full spending limit to gain the nomination. But because of the compressed primary season, he now faced a new problem. Past nominees could turn almost seamlessly from the nomination to the convention and then to the publicly funded general election. In contrast, Dole's victory was coming months before the convention. The nomination contest may have been over practically but not legally. Legally, the candidate is considered to be within the pre-nomination period, governed by the pre-nomination spending limit, until formally nominated at the party's national convention. That was not going to occur for another four months. But Dole at that point was facing an incumbent President who had not been opposed for the nomination. President Clinton could spend million of dollars in unused primary money to run general election campaign advertisements during what was legally still the pre-nomination season. Dole, in contrast, had no leeway under the spending ceiling to raise and spend any money in return. By the time Dole received his general election grant, the contest was all but over.

Three years later, when George W. Bush announced he was going to run for the presidency, the Texas Governor faced a strategic situation that looked uncomfortably like Dole's. Bush knew that he too could be running against the self-financed Forbes in the Republican primaries and that whoever won the GOP nomination probably would be up against an incumbent Vice-President (Al Gore) in the general election. But in one crucially important respect, Bush's situation was different from Dole's: Bush was able to tap a network of financial supporters from Texas as well as his father's fundraising base. With confidence in his ability to raise money and a serious concern about being squeezed by the spending limit, Bush decided that the benefits of public money were just not worth the risks. "I'm mindful of what happened in 1996 and I'm not going to let it happen to me," Bush told reporters. (Glover 1999).

By avoiding the limit in 2000, Bush was able to spend almost twice as much as a publicly funded candidate. His principal challenger, John McCain, was an underdog who needed public funds. McCain lost to Bush during the first week of March ("Super Tuesday") and withdrew from the race. However, had McCain done better with the voters on Super Tuesday he still would not have been able to continue because he had

already spent up to the limit. McCain had made a Faustian bargain: in return for the money that sustained his insurgent campaign in January and February, he had to follow a diet that would starve the campaign by mid-March. The system offered him no escape, even though he was running against a candidate whose spending was not limited.

Of course, the cycle did not stop there. Just as the Dole example weighed on Bush, so did the Bush and McCain examples weigh on the Democrats. In 2003, Howard Dean referred to Bush when he opted out of the public funding system, as Bush had referred to Dole. Then John Kerry in a similar announcement referred to Dean. The situation may have been triggered by frontloading but the issue was more general. Candidates have to weigh the risks and rewards before they decide whether to sign up. Public money is a benefit, especially to a long-shot candidate who cannot raise more money than the spending limit anyway. But for a candidate who can raise more, it would be crazy to abide by a limit that is too low for the political context if the opponent is not doing so too. No public funding system can remain viable if a decision to participate carries with it the risk of political suicide.

If anything, the political context has become tougher in the years since Dole ran. In 2008, more than half of the delegates were selected by February 5, a full month earlier than in 1996. This was only three and a half weeks after Iowa and four weeks after New Hampshire. Instead of having the five weeks between Iowa and New Hampshire that Jimmy Carter was able to use in 1976, the candidates in 2008 had only five days. Then, only one month after New Hampshire, the candidates of 2008 were facing contests in twenty-four different states, including some of the largest, from all parts of the country.

This schedule forces candidates to run a national campaign early, rather than the series of state campaigns envisioned by the Congress that enacted the system in 1974. Knowing there would be almost no time between the first test and the next crucial ones, candidates in the top financial tier felt they had to raise enough money before Iowa to prepare for the massive expenditures to follow. From the beginning, therefore, pundits were predicting (accurately, it turns out) that candidates in the top tier would raise as much as \$100 million in calendar year 2007 alone. That means that the top money raisers of 2007 (Hillary Clinton, Barack Obama and the partially self-financed Mitt Romney) brought in twice as much money before the Iowa caucuses of January 3, 2008 as a publicly funded candidate was allowed under the spending limit for the entire pre-nomination period through August.

Participation by Small Donors

Frontloading appears to have had a significant effect not only on the amount of money the candidates raise but how they raise it. One of the stated purposes of the matching fund system was to give candidates an incentive to raise money in small contributions. In 1976, 38 percent of Jimmy Carter's individual contributions and 40 percent of Gerald R. Ford's came in amounts of \$200 or less. At the same time, according to the Federal Election Commission, Ford raised only 24 percent of his money, and Carter 18 percent, in contributions of \$750 or more.

The leisurely calendar of 1976 helped with this distribution. Because the pace was slow, candidates did not need to raise the bulk of their money until they had a chance to gain public visibility. Small donor fundraising on a national scale (especially before the Internet) has presupposed name recognition that usually has taken some time and success to develop. As frontloading forced candidates to compress their fundraising schedules, the mix of contributions began changing. By the late 1980's, when frontloading was becoming noticeable, the leading candidates typically were raising more than half of their money from large contributions. The election of 2000 was the last before the contribution limit went up from the \$1,000 limit that had been in place (with no cost of living adjustment) since 1974. In that election, Al Gore raised 63 percent of his money from \$1,000 donors, Bill Bradley raised 66 percent and George W. Bush raised 72 percent.

The 2004 election saw a significant increase in the importance of small contributions, but not because of matching funds. Because the Bipartisan Campaign Reform Act had doubled the maximum contribution to \$2,000 (plus a cost of living adjustment), most observers expected to see a greater dependence on large contributions. In fact there was an increase in the percentage of money coming from small contributions, largely because of the Internet and – ironically – because candidates who opted out of public financing were still raising money after they were very well known.

Howard Dean led the way with a strong Internet presence. Dean raised the bulk of his money in the year before the first primary, with about half of his total coming in amounts of \$200 or less. But Dean's early performance was an exception. Through the early primaries (January 2007 through February 2008) more than two-thirds of the money raised by all candidates except Dean was coming in amounts of \$1,000 or more. George Bush and John Kerry did eventually raise large amounts over the Internet. For both, however, the bulk of the small contributions came after Kerry had sewn up the Democratic nomination and the race had essentially boiled down to a two-person general election contest. The two candidates were able to keep raising and spending money during the pre-nomination period because they had rejected public money and were therefore free from the spending limit.

Thus the one-for-one matching fund system over the years stopped being an effective incentive for promoting small contributions. As political imperatives changed, the calendar was helping to push candidates to raise more money early from major donors. The candidates who seemed to be bringing small donors back into the process (Dean, followed by Kerry and Bush) had rejected public funding and then used the Internet's low fundraising costs to build up their fundraising networks. The 2008 election would bring this new model of fundraising to center stage.

The 2008 Election

The 2008 election put many of public financing system's assumptions to a severe test. For examples, even if one assumes the system can be changed to lure candidates back into accepting public funds, can one continue to argue after 2008 that some form of public financing is important for promoting competition and participation? Second, when Barack Obama rejected public funds for the general election, his campaign said that his

broad fundraising base was the functional equivalent of public financing? Is this true? And if so, is it reasonable to expect other candidates to be able to replicate his success? We shall return to these questions after describing what happened in 2007-2008.

Fundraising Juggernauts and Early Money

Presidential candidates raised \$1.1 billion in contributions from individuals during the 2008 pre-nomination season from January 1, 2007 through August 31, 2008. This nearly doubled the \$604 million raised in 2004. It was five times as much as the \$217 million in private money raised from individuals in 2000 when all of the major candidates except Bush opted for public financing. In 2004, President Bush and John Kerry were the first candidates ever to break the \$200 million mark. (In 2000, Bush set the previous record of \$101 million.) In 2008 Hillary Clinton raised 214 million and John McCain raised \$216 million. Barack Obama raised \$424 million before the nomination, which was almost as much as Clinton's and McCain's receipts combined. (All figures in the remainder of this essay exclude money raised and set aside for the general election.)

Of course, it took time for the candidates to raise this much money. At the beginning of the campaign, many knowledgeable observers thought presidential races in a frontloaded primary system would quickly narrow into a contest between a frontrunner, who could raise a lot of money, and one or perhaps two underdog challengers. In the year before the first primary, the task for an underdog is to separate oneself from the pack, and to remain within striking distance of the frontrunner. For the press (and many others) money was seen by the press (often not correctly) as the best early marker for the candidates' relative strength.

Table 1

Early Fundraising, January - June 2007

	Democrats			Republicans			
	Jan-March	April-June	Total	Jan-March	April-June	Total	
	(\$ millions)	(\$ millions)	(\$ millions)	(\$ millions)	(\$ millions)	(\$ millions)	
Obama	25.8	30.9	56.7	Romney	23.4	21.0	44.4
Clinton	36.1	15.5	50.5	Giuliani	18.0	14.9	32.9
Edwards	14.0	7.9	21.9	McCain	14.7	9.7	24.4
Richardson	6.3	7.0	13.3	Brownback	1.9	1.4	3.3
Dodd	8.8	3.3	12.1	Paul	0.6	2.7	3.0
Biden	4.0	2.5	6.5	Tancredo	1.3	1.5	2.8
				Hunter	0.5	0.9	1.4
				Huckabee	0.5	0.8	1.3

SOURCE: Federal Election Commission

Hillary Clinton raised more money than any other candidate during the first quarter, as expected. But second place was a surprise: Barack Obama, a freshman Senator, far outdistanced a former candidate for the Vice Presidency (John Edwards), a Governor who had also been a Cabinet Secretary (Bill Richardson) and two Senate

committee chairmen (Christopher Dodd and Joseph Biden). Even more stunning was that Obama had actually raised as much as Clinton during the first three months of 2007, if you discounted the \$10 million Clinton had transferred from her Senate campaign committee. Then, as if to prove this was no fluke, Obama raised twice as much as Clinton in the second quarter to vault into the financial lead. For the other candidates, the public financing system as currently structured was not going to be able to provide enough money to make up the gap these leaders were opening.

The early picture was more confusing on the Republican side, where there was no clear front runner. Mitt Romney raised almost as much as Clinton. In fact, by June 2007, Romney, Clinton and Obama had already raised as much as Howard Dean had in all of 2003, when he was the Democrats' financial front runner. Rudy Giuliani's numbers were a notch below Romney's. John McCain was third but was nearly out of cash because his spending budget had assumed much higher receipts. By any previous standards these candidates were doing well: Giuliani and McCain raised more in the first six months of 2007 than John Kerry in all twelve months of 2003. Interestingly, Ron Paul and Mike Huckabee at this stage were well down in the financial pack. Future policy makers will have to face the fact that the three GOP candidates whose campaigns lasted the longest in 2008 – Huckabee, Paul and McCain – lost the off-year "financial primary." Without a clear frontrunner and break-out-of-the-pack challenger, the three were able to use free media, debates and the Internet to close the political gap. (The media's saturation coverage of Obama and Clinton made this a less viable path for the remaining Democratic candidates.)

Small and Large Contributions

It has frequently been said that Obama's fundraising advantage was based on a groundswell of support from an unprecedented number of people who were willing to make small contributions over the Internet. (A small contribution is defined here as one of \$200 or less, which is the threshold for disclosure under federal law.) The total amount he received over the primary season in amounts of \$200 or less (\$217 million) bettered what Clinton or McCain received from all sources combined. Almost three-quarters of the financial advantage Obama ultimately held over Clinton can be explained by his advantage in small contributions. So the basic claim about the importance of small contributions is true. But the full story is more complicated.

The following table shows receipts by all of the leading candidates of 2007-2008 over time. Presidential candidates file reports with the Federal Election Commission quarterly during the off-year and monthly during the election year. To simplify, the table groups the FEC reports in time frames that make sense for the 2008 campaign. Most of the campaigns maintained fairly consistent financial profiles over the first three quarters of 2007. The final quarter of 2007 was the run-up to Iowa and therefore is shown separately. Most of the primaries took place in January and February. Most Republican candidates and all Democratic candidates except Obama and Clinton ended their fundraising by the end of February. During March through May, the Democratic race was down to two candidates. Clinton did little fundraising after May and suspended her campaign in June. From June through the end of the pre-nomination season the field was left to the two presumptive nominees, who were in effect running a general election campaign against each other.

Table 2

Large and Small Contributions Over the Primary Season

Leading Candidates' Fundraising, Jan. 2007 - Aug. 2008

	From All Sources (\$ millions)	From Individuals (\$ millions)	In Amounts \$200 or less (Percent)	In Amounts \$1,000 or more (Percent)
<u>DEMOCRATS</u>				
OBAMA				
Jan. - Sep. 2007	76.1	74.7	28%	60%
Oct. - Dec. 2007	23.5	22.5	46%	33%
Jan. - Feb. 2008	90.5	87.4	52%	26%
Mar. - May 2008	95.5	91.4	62%	18%
Jun. - Aug. 2008	138.6	134.7	62%	21%
Obama Subtotals	424.2	410.6	53%	29%
CLINTON				
Jan. - Sep. 2007	74.6	61.6	13%	78%
Oct. - Dec. 2007	24.0	22.4	16%	69%
Jan. - Feb. 2008	52.9	45.3	47%	43%
Mar. - May 2008	62.5	51.1	61%	19%
Clinton Subtotals	214.1	180.5	37%	49%
EDWARDS				
Jan. - Sep. 2007	27.9	27.5	31%	56%
Oct. - Dec. 2007	13.4	4.3	68%	6%
Jan. - Feb. 2008	7.2	3.5	35%	3%
Edwards Subtotals	48.5	35.2	39%	46%
<u>REPUBLICANS</u>				
McCAIN				
Jan. - Sep. 2007	30.3	28.0	22%	67%
Oct. - Dec. 2007	9.6	6.3	38%	39%
Jan. - Feb. 2008	23.0	21.1	22%	62%
Mar. - May 2008	55.9	53.2	25%	63%
Jun. - Aug. 2008	97.6	94.4	39%	43%
McCain Subtotals	216.4	203	31%	54%
ROMNEY				
Jan. - Sep. 2007	62.8	43.7	11%	79%
Oct. - Dec. 2007	27.2	8.8	18%	70%
Jan. - Feb. 2008	20.8	10.8	30%	50%
Romney Subtotals	110.9	63.3	26%	63%
HUCKABEE				
Jan. - Sep. 2007	2.3	2.3	25%	56%
Oct. - Dec. 2007	6.7	6.6	39%	44%
Jan. - Feb. 2008	7.1	6.9	53%	30%
Huckabee Subtotals	16.1	15.8	43%	40%

PAUL

Jan. - Sep. 2007	8.3	8.2	50%	31%
Oct. - Dec. 2007	20.0	19.8	66%	16%
Jan. - Feb. 2008	6.5	6.1	70%	9%
Paul Subtotals	34.7	34.2	63%	18%

GIULIANI

Jan. - Sep. 2007	42.2	39.2	8%	83%
Oct. - Dec. 2007	13.9	13.3	7%	81%
Giuliani Subtotals	58.8	55.2	8%	81%

* **NOTE:** Table excludes funds raised and sequestered for the general election. "Totals" include loans, self-financing, public financing, and other items. Percents are of net individual contributions.

SOURCE: The Campaign Finance Institute, based on data from the Federal Election Commission

This table makes it clear that all of the candidates started off by relying more on large donors than small. Of course, not all candidates followed the same profile: Clinton, Romney and Giuliani received proportionally the most from \$1,000-plus contributors through September 30. But all of the candidates emphasized large contributions in the early stage. Obama raised 60% of his money during the first nine months of 2007 in amounts \$1,000 or more. Even Ron Paul – the libertarian Republican who raised half of his money through the three-quarter mark in small contributions – started during the first quarter with half of his money in amounts of \$1,000 or more. For all of the candidates with viable campaigns, small contributions increased over time as the candidates gained name recognition. Obama jumped from receiving 28% of his money from contributions of \$200-or-less over the first three quarters of 2007 (24% in the third quarter) to 46% in the fourth quarter and then above 50% in 2008. Edwards, Huckabee and Paul also ratcheted up their \$200-or-less contributions in the fourth quarter as did Clinton after the first of the year.

It is worth lingering over these numbers because of their policy implications. The first three-quarters were when Obama established himself as one of the two major alternatives to Clinton. Edwards, the other major alternative, was well known to the general public for having been the party's candidate for the Vice Presidency in 2004. But Obama's visibility was being fueled by the media largely because of his financial success, which rested at the time on contributions of \$1,000 or more. This early reliance on large contributions should not be a surprise. As noted earlier, raising large amounts of money through small contributions presupposes visibility. Some have argued that the Internet can do away with this problem. Perhaps, but it has not yet done so. The Internet does open new avenues of communication for gaining visibility. It lets candidates develop networks of volunteers and financial supporters without spending a fortune on postage for direct mail. Peer-to-peer communications, with supporters forwarding fundraising emails to their own friends, lets a candidate piggy-back on supporters' networks to reach low-dollar donors. Presumably – since fundraising, networking and communications costs are so much lower over the Internet and because it is easier through social networking tools to discover a niche market – an underdog candidate may not have to gain quite as much national recognition as s/he once would have needed for mass fundraising. But the candidate still has to get the campaign off the ground. Support has to reach some kind of a critical mass. In an underdog campaign for the presidency, the candidate either has to develop a following within a

niche (Howard Dean as the antiwar candidate in 2004, Ron Paul as the libertarian Republican) or the candidate needs to become seen as the (or a) credible alternative to the frontrunner. And the higher the financial frontrunner sets the spending bar, the more money will it take to be perceived as a credible challenger.

All of this means that it takes money to raise money. Candidates typically have to start by persuading a few people to give larger amounts before s/he can branch downward and outward. Might this change? After what has been happening to communications in recent years, it would be unwise to dismiss the possibility. But it also would be imprudent to count on it. Unless and until such a change occurs, having the wherewithal to break out of the pack will either have to begin with an established constituency or with those who can give a lot. The alternative is some form of a public policy – such as a revised public financing system – to help a potentially strong candidate get started.

Functional Equivalence?

In the end, as already noted, Obama's Internet-based operation produced more money for him in \$200-or-less contributions than Clinton or McCain raised from all sources combined. But it would be a mistake to see Obama's Internet operation as a one-dimensional fundraising tool. Many of his donors gave more than once. They also volunteered: the givers were also doers. By the end of the general election campaign the campaign had 13 million addresses on its campaign's email list. The campaign's integrated social networking tools became the engine of its voter mobilization campaign, imitating and improving on the Republican innovations of 2002 and 2004. The Obama staff built a structure *within the campaign* that previously had been handled by ongoing organizations with more permanence than a candidate's campaign committee. Among Republicans this work typically was done by the party; among Democrats it was handled by labor unions and advocacy groups. Because these resources belonged to the candidate, the same tools that helped Obama raise more money than Clinton or McCain also helped him to out-organize them. They were keys to his victory. Obama's nomination rested in large part on his beating Clinton in the caucus states to open a delegate lead she was never able to combat in proportional representation primaries.

When Obama announced in June 2008 that he was going to reject public financing for the general election, he said that his fundraising base, with millions of donors giving \$200 or less, was the functional equivalent of public financing. He had 3 million donors by the end of the primary season and 4 million by the time of the general election. More than half of his primary money (53%) came in amounts of \$200 or less. During the general election, 46% of Obama's individual contributions were in amounts of \$200 or less. With so many people contributing (and volunteering) there can be no doubt that more people were involved in 2008 than in the past.

But the claim of "functional equivalency" is essentially a claim that Obama's support base was more representative of the general public than that of previous candidates. There is something to the claim, but once again the full picture is complicated. We do not yet have the information needed to draw a full picture of Obama's donors – particularly not of the vast majority of his donors who never gave enough money cumulatively to break the \$201 disclosure threshold. But we are able to make some preliminary and still provisional inferences from the disclosed donor lists.

Table 2 earlier presented the percentage of total contributions that candidates received from *contributions* or *transactions* of various size ranges. This is how the press and the Obama campaign staff typically described what they were calling a small donor revolution. This is also how the Campaign Finance Institute (CFI) described candidates' receipts for most of the two-year election cycle. Under this definition, if a donor gives five \$100 contributions to a candidate, each one is counted in the \$200-or-less category. However, there is another way to look at the numbers, making the *donor* the unit of analysis rather than the single *contribution* or *transaction*. In CFI's various state studies (where disclosure thresholds permit) a donor has been categorized as a "small donor" if he or she gives an aggregate of \$100 or less after all of his or her contributions are combined. When CFI reported Obama's donors in this manner, the decision to restrict the use of the term "small donor" to those who gave a total of \$200 or less was questioned by some. (For the original release and a follow-up, see CFI 2008 and Malbin 2008.) To clarify the intent, therefore, we shall refer in this essay to "aggregate small donors." In the following table, we separate aggregate donors into three categories for the sake of simplicity. First are those whose contributions aggregated to \$200 or less. We use \$200 as the cutoff for federal donors, rather than the \$100 level we used in state studies, because the federal disclosure threshold makes it impossible to learn about donors whose contributions aggregate to less than \$200. Most *donors* for most candidates fall into this category. For the top group we used "\$1,000 or more." Most of the *money* typically comes from this group. We picked this number because federal law prohibited contributions above \$1,000 before 2004 and we may want eventually (although not in this essay) to take the time series back to 2000. As a third category, we lumped together all people whose total contributions fell between the other two, aggregated to between \$201 and \$999. The categories are rough, but they illustrate some important points.

Table 3**Individual Donors (Aggregated Contributions) to Leading Presidential Candidates through August 31**

Candidate	Total # Itemized Individual Donors	Total Amount of Itemized Contributions	Net Individual Contributions	% of Individual Contributions from ...		
				% From Donors Aggregating to \$200 or less	% From Donors Aggregating to \$201-999	% From Donors Aggregating to \$1000 or more
2008						
Dem						
Obama	403,341	301,118,063	452,852,990	26%	27%	47%
Clinton	170,777	167,048,346	210,901,574	16%	21%	63%
Edwards	33,135	31,060,174	38,638,348	15%	22%	63%
Rep						
McCain	169,783	154,806,518	206,363,245	21%	20%	59%
Romney	44,795	52,972,073	63,065,340	14%	13%	73%
Giuliani	39,489	51,211,030	61,022,495	15%	9%	76%
Paul	32,234	18,372,743	34,336,193	39%	29%	32%
Thompson, F.	17,058	13,905,983	23,369,742	38%	18%	44%
Huckabee	13,728	10,449,883	15,991,901	29%	24%	47%
2004						
Dem						
Kerry	209,894	164,134,439	215,915,455	20%	24%	56%
Dean	57,448	27,947,961	51,360,995	38%	30%	28%
Edwards	18,589	20,173,933	21,880,659	7%	14%	78%
Rep						
Bush	190,640	183,235,226	256,081,557	25%	13%	60%

SOURCE: The Campaign Finance Institute, based on data from the Federal Election Commission

In Table 2 we saw that over the full primary season Obama received a substantially higher percentage of his money than other candidates (except Ron Paul) in contributions of \$200 or less as well as a substantially lower percentage in amounts of \$1,000 or more. Table 3 shows that after multiple contributions from the same donors have been aggregated, the differences between Obama and other candidates look more subtle.

Obama received 26% of his money for the primary season from donors whose contributions aggregated to \$200 or less. This was more than Clinton's 21%, Edwards' 22% and McCain's 20% but about the same as Bush's 25% in 2004 and less than Dean's 38%. And while Obama depended less on aggregate donors of \$1,000 or more than Clinton, McCain, Kerry or Bush, it is nonetheless true that \$1,000-or-more donors accounted for nearly half (47%) of Obama's money which is a much higher percentage (80% higher) than what came from his aggregate donors of \$200 or less.

While we cannot verify the number of Obama's undisclosed donors, the numbers provided by the campaign staff are consistent with what else we know about this and other campaigns. Based on CFI's analysis of the disclosed records, Obama had about 403,000 different donors during the primary season who gave enough (\$201) to trigger disclosure. Subtracting this number from the 3 million donors claimed by the campaign staff for the primary season would mean that five out of every six Obama donors, or 83%, stopped at \$200 or less. These people gave an average total of about \$65 per person. Both of these figures are comparable to other candidates in past years. In 2000, the typical below-\$200 donor averaged about \$52. Moreover, the percentage of total donors who stayed in the \$200-or-less range was about the same for Obama as for past candidates: In 2004, according to CFI's published estimates, 83% of all donors to all candidates gave \$200 or less (Graf *et al.* 2006, p.5). In 2000, it was 77%, but if you remove Bush it was 84%. And then again in 1996, the number for all presidential candidates combined was 84% (Campaign Finance Institute, 2003). Obama had an unprecedented *number* of under-\$201 donors but the under-\$201 group was roughly the same *percentage* of his donor pool as it was for past candidates. He also raised an unprecedented dollar amount from \$1,000-and-up donors. His ship was riding higher at all levels, among aggregate small donors and large.

One set of Obama's donors may have been different in kind as well in numbers: the ones CFI had referred to as the repeat donors. Obama received 27% of his money from people whose aggregate contributions fell between \$201 and \$999. This number is slightly higher than John Kerry's (24%), more so than John McCain's (20%) and substantially higher than George W. Bush's (13%). This middle group explains how Obama's extraordinarily high proportion of under-\$201 *contributions* turned into a more ordinary percentage of under-\$201 aggregate donors. He had an unusually high proportion of donors who gave under-\$201 contributions more than once and whose aggregates ended up between \$201 and \$999. According to CFI's review of the records, approximately 212,000 of the 403,000 disclosed donors were people who started off by giving at least one contribution of \$200-or-less and then gave again (usually over the Internet) to cross the \$200 mark. Almost all of these (about 200,000 of the 212,000) stayed below \$1,000 in the aggregate. In a sense, this was one of Obama's "sweet spots." These repeat donors gave the candidate about \$100 million. We suspect they were also responsible for a fair portion of the campaign's energy and volunteer activism.

But having acknowledged the importance of these repeat donors, it would be premature to reach any conclusions about how representative they were of non-donating Obama supporters. In time, CFI will survey these donors and publish the results. Until then we note that in our surveys of state donors, the donors who gave \$100-or-less, were in many important ways better representative of the non-donating public than were the donors who gave an aggregate \$500-or-more. Obama's under-\$201 donors (who gave an average of about \$65 per person) probably would look in many ways like the under-\$101 donors from the states. (Unfortunately, we cannot know this for certain because the lack of disclosure precludes sampling them.) It is more problematic just to make assumptions about the repeat donors, who were clearly important. On average, they gave Obama nearly \$500 per donor (\$490). While this is very close to the \$500 that defined an aggregate large donor in CFI's past surveys of state donors, we suspect that the emotions of a presidential campaign will have made these donors different from the \$500 donors we have surveyed in the past. But there still may be significant differences between the \$500 donors, the \$65 donor and the non-donor. Without a survey, we cannot know.

For the sake of balance, it also needs to be noted that the \$100 million coming from Obama's repeat donors, and the \$100 million from the under-\$201 donors, were balanced by an approximately equal amount (about \$200 million) from those who aggregated to \$1,000-and-above. Within this \$1,000-plus group, nearly half was raised by so-called "bundlers" – people who receive recognition for soliciting contributions and directing them to the candidate. According to the Center for Responsive Politics (CRP), 561 "bundlers" had raised a *minimum* of \$63 million for Obama by mid-August and 534 people had raised a minimum of \$75 million for McCain. The bundlers undoubtedly were responsible for more than these amounts because the campaigns reported the bundlers in ranges and CRP's minimum totals were based conservatively on the low end of each range. A reasonable guess might estimate the real amount at the mid-point for each range. This would yield a total of about \$90 million for Obama as of mid-August and more than \$100 million for McCain. At the top of the bundlers were 47 of Obama's and 65 of McCain's who were listed by the campaigns in mid-August as being responsible for at least \$500,000 each.

In addition to fundraising directly for their own committees, the candidates were raising money for "joint fundraising committees." Under current law, a donor in 2008 was able to write a single check to a joint fundraising committee of up to \$67,800 or \$70,100, which could then be distributed by the joint committee to candidate and party committees. Because this money may be solicited by the candidate, it is seen by many as having functionally raised the general election contribution limit for presidential candidates. (For a time, Sen. McCain even conducted joint fundraising through his campaign committee's website.) With that single check, a donor in 2008 could give up to \$2,300 for a candidates' primary campaign, another \$2,300 for the candidate's general election campaign *if* the candidate has opted out of public financing, \$28,500 for a national party committee, and up to \$10,000 for any of number of state party committees, up to the annual maximum contribution of \$65,500 for all party committees combined. The advocacy organization Public Citizen listed 2,205 people as having contributed at least \$25,000 to joint fundraising committees supporting Obama and 1,846 people as having made similar contributions to joint fundraising committees supporting McCain (<http://whitehouseforsale.org>).

According to records filed with the Federal Election Commission that cover the period through November, Democratic joint fundraising committees supporting Obama had raised \$208 million, of which \$84 million went to the candidate and \$96 million to the national party. Republican committees supporting McCain raised \$221 million, of which \$33 million went to the candidate before the general election, \$120 million went to the national party and \$24 million to state parties. How the parties would spend the money was strongly influenced by whether the candidates accepted public financing. Because John McCain had accepted public financing, political party independent spending was more important for him than for Obama. As of Election Day, the Republican National Committee had reported \$53 million in independent spending to support McCain, compared to less than \$500,000 spent independently by the Democratic National Committee to support Obama. The committees also spent money for coordinated advertising, voter mobilization and other activities. This was in addition to the \$84.1 million in public money that went to McCain as well as the \$318 million Obama raised for the general election in private contributions.

Whither Public Financing and Why

The presidential public financing system collapsed in 2008 because the system no longer served most candidates' needs. Since any system with spending limits must be voluntary under the Constitution, no system can accomplish much unless candidates see benefits for themselves outweighing costs. But a system that *only* gives benefits to candidates would not justify spending public money unless it also served the public's interest. So the key questions for a policy maker considering a revised public financing program must be: what are the public interests to be served and how might a system be designed to serve them?

Some have argued that spending limits remain important but they have to be increased to become more realistic. The problem is in knowing at what level a limit is "realistic" for a specific election context. Without specifying dollar amounts, we can imagine limits in three kinds of ranges. In one, a limit is so low as to prevent serious candidates from running a competitive race. The public financing system in Wisconsin reached this level some years ago and the presidential system has now reached it. Alternatively, a spending limit might be set so high as to constrain no one and therefore serve no useful purpose. Somewhere in a middle ground, a spending limit will modify behavior. Candidates will weigh the cost of public funding against the constraints and calculate the constraint to be worth the benefit. But whether the constraint is accepted will vary markedly with the context. For example, state legislative candidates in Minnesota typically accept public financing with low spending limits. Their decisions seem collectively to relate to the manner in which legislative candidates in that state typically campaign, expectations of the public, and other factors not easily translated. But Minnesota also has calibrated its spending limits upward periodically by statute in a context where legislators of both parties seem willing to look for limits that most of the legislators consider reasonable. The legislators thus have been adjusting to a changing context in a background of unusual bipartisan cooperation. By contrast, the presidential system was never adjusted, even as the primary calendar, media and constitutional contexts changed. As contexts changed, so did the candidates' assessments of costs and benefits. And once some candidates opted out, the cost of staying in went up markedly.

Some state laws try to respond to the situation in which a participating candidate runs against one who opts out by providing extra money to the participating candidate – sometimes two or three times as much as the state's standard level of public funding. Recently, constitutional concerns have been raised about such an approach.* But even if constitutional, this approach puts off the question without answering it. Whether two or three times the statutory limit will be "enough" will depend upon context – including the spending potential of one's opponent. If the limit is higher than a candidate would spend anyway, then the limit is serving no purpose. If it does constrain seriously, candidates at some point will either opt out or they will help their political parties raise money to be spent in unlimited independent expenditures. We do not and probably cannot ever know enough to calibrate firm limits well in a manner that will endure. The inherent problem is that the limits are fixed, or pegged to a non-political cost index, while the context is changing. Having said this, there are alternative ways to address the

* The Supreme Court in *Davis v. Federal Election Commission* (2008) overturned the so-called "Millionaire's Amendment" provision in the Bipartisan Campaign Reform Act which had increased the contribution limit for money given to candidates who are running against a self-finance opponent.

problem. We return to these shortly, because the problem is only worth addressing if the program brings about other public benefits deemed worth the effort.

I would argue that public funding could continue to serve the positive goals we have discussed, provided the system is structured properly to do so. I am not arguing that public financing is the only useful means to serve these ends but that it is one useful and often effective means. For example, the public funding system once strengthened competition for the presidency. It helped future presidents of both parties sustain underdog campaigns against frontrunners until the public was ready to vote. The system could serve competition in this way again, but only if it provides enough money for the underdogs to run viable campaigns. The system could also be re-designed to foster participation by small donors and reduce candidates' dependence on large donors. Some will argue that this is superfluous in the age of the Internet. It is true that President Obama had many small donors without public funding, but: (a) small contributions did not kick in even for him in a major way until the fourth quarter of 2007; (b) even for Obama, the financial contributions made by those who gave an aggregate of \$200 or less were much less than those who aggregated to \$1,000 or more; and (c) there is no reason to believe that even Obama's significant level of success will transfer to other candidates – particularly those running for less visible offices.

Before candidates began opting out of presidential public financing because of the spending limit, we saw that they system's one-for-one matching fund had stopped giving them enough of an incentive to orient their fundraising toward small contributors. But the presidential primary matching fund is not the only matching fund model to consider. For example, the New York City's public financing system offers a six-to-one match for the first \$175 a donor gives to a participating candidate. Under this formula, a \$175 contribution is worth \$1,225 to the candidate. With this kind of a match, the incentives change radically. Suddenly, it would "pay" even more for the candidate to look for the small donor than a \$1,000 one. In addition, if the public matching funds were made available early enough, it would be possible for candidates to build up their initial visibility without relying so heavily on major donors and bundlers.

Eventually, any policy designer (and candidate) will have to face up to the spending limit. Even a six-for-one match would not be enough of an incentive for a serious candidate if it meant accepting an impossible limit. Again there are alternatives. One, favored by the American Civil Liberties Union, is to see public financing as a floor with no ceiling. Another, proposed in 2003 by the previously cited Campaign Finance Institute Task Force on Financing Presidential Elections, would have used multiple matching funds (like New York's), set a higher spending limit, and would have allowed candidates to raise and spend as much money as an opponent if the opponent opts out. Finally, Fred Wertheimer, President of Democracy 21, floated an intriguing set of ideas in an opinion article published shortly after the 2008 election. His proposal contained the following elements: (1) a four-for-one match for \$200; (2) a "spending ceiling" of \$250 million for the primaries and another \$250 million for the general election; (3) public money would cease after candidates have reached the \$250 million mark; but (4) after this point candidates will be able to raise and spend an unlimited amount of money as long as it is contributed by donors who give no more than \$200 in the aggregate (Wertheimer 2008). A proposal based on these ideas is likely to be introduced by Senators Russell Feingold (D-WI) and Susan Collins (R-ME). While the details may change before introduction, the general structure is designed to get around the problems

that have sunk the current system while at the same time supporting competition and promoting small donor participation.

A congressional public financing bill introduced by in 2009 by Senators Richard Durbin (D-IL) and Arlen Specter (R-PA) (S. 572), along with a companion bill introduced by Reps. John Larson (D-CT) and Walter Jones (R-NC) (H.R. 1826), similarly seek to enhance the role of small donors by (1) providing a basic flat grant for candidates who wish to participate and who pass a qualifying threshold; (2) reducing the maximum permissible contribution from private sources to \$100 for participating candidates; (3) providing four-to-one matching funds above the flat grant for small contributions, up to a maximum amount of public funds per candidate; and (4) permitting candidates to spend unlimited amounts as long as the funds continue to come from donors who give no more than \$100 each.

By putting these ideas forward at the end of this essay, I am not endorsing them as the best of all solutions. Rather, they are put forward to show that the collapse of the current system, particularly the collapse of its spending limits, does not signal a fatal flaw with public financing *per se*. There are many ways to design a system that can further competition, candidate emergence and citizen participation while respecting the constitutional limits. To do so, however, it is important to recognize that the goals themselves have to be part of the conversation. Hard and fixed spending limits may be popular, but they do not accomplish the goals that their supporters once claimed for them. But other goals at least as important, can be furthered through proper design. While public financing may be tough to sell, that is a more of a political than a policy flaw.

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