FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 9, 2005

Dear Congressional Leader:

We write today to renew our recommendation that Congress review the Presidential Public Funding Program.

Two years ago we reported to Congress that the presidential public financing system was in serious trouble. The 2004 election, in which for the first time the nominees of both major parties opted out of the system during the primaries, provided further proof that the program is badly outdated.

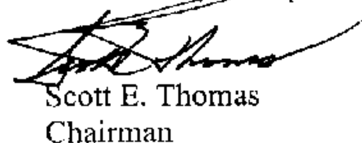
Declining taxpayer check-off rates, antiquated primary spending limits, frontloaded primaries, and the exploding cost of presidential campaigns have all conspired to marginalize the public financing system.

We strongly urge Congress to examine all aspects of the presidential public financing system. Specifically, Congress should decide whether the public financing system should be maintained or abolished. If Congress decides to maintain public financing, we believe the system should be significantly overhauled so that top-tier candidates of both major parties have incentive to participate in all aspects of the system, including the matching fund program for the primaries.

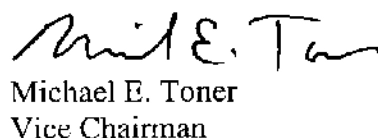
Towards that end, we have developed a bi-partisan package of legislative proposals for your consideration that would modernize the presidential public financing system. Our legislative recommendations would, among other things, allow presidential candidates who participate in the system to raise and spend significantly more money during the primary season and would increase the amount of public funds that participating primary candidates could receive. Our recommendations also would deregulate certain aspects of the system that have become dysfunctional, including abolishing the state-by-state spending limits, and would tighten the eligibility requirements to receive public funds.

The presidential public financing system is at an historic crossroads. If Congress does not act within the next two years, the system runs the serious risk of being totally irrelevant in the 2008 election and beyond. The legislative proposals contained herein reflect our views as FEC Commissioners and are not made on behalf of the Federal Election Commission as a body. We are available at your convenience if you would like to discuss our proposals further.

Respectfully submitted,



Scott E. Thomas
Chairman



Michael E. Toner
Vice Chairman

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Legislative Recommendations Regarding Presidential Public Funding Program
Chairman Scott E. Thomas and Vice Chairman Michael E. Toner
Federal Election Commission
February 9, 2005

Overview

The presidential public financing system, particularly the system for presidential primaries, is in serious trouble. Increased contribution limits, stagnant primary spending ceilings, front-loaded primaries, the exploding cost of presidential campaigns, and declining taxpayer check-off rates have all conspired to marginalize the system. In 2000, President Bush opted out of the public financing system during the primaries and became the first candidate to do so to ever win the presidency. In 2004, both President Bush and Senator Kerry opted out of the system in the primaries, which marked the first time that the nominees of both major parties declined matching funds, and Governor Dean opted out of the system as well.

In short, during the last two presidential elections, top-tier candidates of both major parties have confronted the choice of either remaining in the public financing system during the primaries, and potentially putting themselves at a competitive disadvantage, or operating outside the system. Serious candidates for President cannot be blamed for opting out of a public financing system that has the potential to disadvantage their candidacies. When this occurs, it indicates there are significant problems with the system itself.

In light of the foregoing, we believe that Congress should systematically examine all aspects of the presidential public financing system. Congress should decide first—in light of candidates opting out of the system, declining taxpayer check-off rates, and other systemic problems—whether the public financing system should be abolished or maintained.

If Congress decides to maintain the presidential public financing system, major structural changes are needed to make the system compatible with the practical realities of running for President in the 21st century.

First and foremost, the primary spending limit for candidates who take matching funds should be significantly increased to reflect the modern cost of waging a successful campaign during the primaries.

Second, Congress should double the maximum match amount from $250 to $500 per donor, and greatly increase the total amount of matching funds that candidates can receive if they participate in the public financing system.

In addition, Congress should, among other things, abolish the state-by-state spending limits, make matching funds available to candidates earlier in the primary season, and tighten the eligibility requirements for candidates to receive public funds.

If Congress fails to take decisive action now, we believe top-tier presidential candidates in the future will continue opting out of the public financing system for the primaries, and may do so for the general election as well, which would render the system totally irrelevant.

Discussion

I. Congress Should Decide Whether the Presidential Public Financing System Should Be Maintained.

Begun as a means of separating presidential candidates and party convention committees from traditional reliance on private contributions collected by fundraisers, the public financing program has been used by most major party candidates and convention committees over the years, and has been used by several minor or new party candidates and convention committees as well.

In recent years, however, the primary matching fund program has proven less attractive, to the point that several top-tier Republican and Democratic presidential candidates have opted out. In 2000, President Bush declined matching funds for the primaries and became the first candidate to do so to win the presidency. In 2004, three top-tier candidates declined matching funds, and both major party nominees for the first time bypassed the system in the primaries. In 2008, there is a real possibility that one or more candidates may opt out of the system not only for the primaries, but for the general election as well.[1] In addition, the percentage of taxpayers allocating funds to the public financing system on their tax returns has dropped markedly in the last 20 years.

In light of these historical trends, we believe Congress should decide whether the presidential public financing program should be preserved or abolished.

A. Does the Public Financing System Have Sufficient Popular Support?

Any system of public financing must have some degree of popular support to succeed. Low taxpayer check-off rates cast doubt on whether the presidential public financing system has broad public support. From the mid-1970s through the mid-1980s, the check-off percentage averaged between 25 – 30%, and never dropped below 23%. However, from the mid-1980s through 2002, the average percentage ranged from the teens through

[1] No major party nominee has ever turned down public funds for the general election.

the low 20s, and during the last six years the percentage has hovered between 11 – 12%. For tax returns received in 2003, the check-off rate was 11.25%. When only approximately one out of nine of the nation's taxpayers is participating, it is very hard to conclude that the public financing system has broad public support.

On the other hand, some polling surveys have indicated a much higher level of support for presidential public funding than the check-off rates would indicate. Moreover, the number of taxpayers who checked "yes" in 2004 (more than 18 million taxpayers) is reportedly higher than the number of individuals who make political contributions to presidential campaigns.

Little research has been done to evaluate why the check-off rate has declined. Years ago the FEC conducted focus groups regarding the check-off. Lack of understanding of the program and general frustration with "politicians" seemed to be the primary factors leading participants to disfavor the public funding system. In addition, some tax software providers have discouraged users from checking "yes" on their tax return.

In deciding whether to abolish or maintain the presidential public financing system, Congress should evaluate the threshold question of how much support the presidential public financing system has among the American people.

B. Other Issues to Consider.

A fair evaluation of the presidential primary public funding program will raise longstanding arguments about whether public funding provided by taxpayer check-offs is better than private financing provided by contributions raised by candidates (or parties in the case of convention funding). Most such arguments begin with assertions about popular acceptance of public funding. As noted above, while some will argue that the decline in taxpayer participation in the check-off program (from a high of about 40 million individuals in 1981 to a low of about 18 million in 2004) signals broad opposition to the public funding concept, others will point to various opinion surveys indicating the opposite. Similarly, some will argue that if only 11% of the returns filed have a YES box checked, a minority of taxpayers are forcing the rest to go along with using tax dollars for the program. Others, of course, will argue that a duly elected Congress passed the program (and the check-off mechanism), and it allows taxpayers a free choice of whether or not to earmark $3 of their own taxes for this purpose.

More fundamentally, opponents of public funding are likely to assert that reliance on traditional fundraising fosters better contact with supporters and the voting public. Proponents of public funding are likely to counter that less reliance on fundraising means more freedom on the part of candidates to campaign directly with the broad electorate. Opponents probably will assert that public funding has not shielded presidential candidates from allegations of improper ties to fundraisers, particularly in light of the "soft money" allowances in past election cycles. Proponents probably will reply that without public funding things would have been worse because the program has

substituted the funds collected from millions of citizens at $3 each for hundreds of millions of dollars that would have been raised the traditional way in recent elections.

We recommend that Congress assess the soundness of these competing viewpoints in deciding whether to maintain or abolish the presidential public financing system.

II. If Congress Decides to Preserve the Presidential Public Financing System, Major Structural Changes Are Needed to Make the System Viable.

If Congress concludes that the presidential public financing system should be maintained, it should address the very real fact that many aspects of the primary matching program are outdated and are not working as intended. We believe that several major changes must be made to the program to address this core, structural problem.

A. The Primary Spending Limit Should Be Significantly Increased.

The most significant concern for primary candidates has been the spending limit that applies in the primary campaign if a candidate accepts public funding. In the 2004 presidential election, the primary spending limit was approximately $45 million (adding the $37.3 million base and the $7.5 million add-on for fundraising expenses). See 2 U.S.C. § 441a(b)(1)(A), 431(9)(B)(vi).

Compared to the general election spending limit, which was approximately $75 million in 2004, the primary limit has proven very restrictive. This has especially been the case as the presidential primary process has become more front-loaded and lasted longer. The primary season now typically lasts 18 months or longer—from the winter and spring of the year before the presidential election through the national conventions the following year. Many key political events that are critical to securing the nomination occur during the year before the presidential election.[2]

By contrast, the general election lasts only several months from the national conventions through early November. Even though the general election period is much shorter than the primary season, the spending limit under current law for the general election is more than 1 ½ times greater than the spending limit for the primaries. This may help explain why no major-party nominee has ever opted out of public financing for the general election.

With recent changes to the campaign finance law, particularly the increase in the contribution limit for individuals to $2,000 per election, many presidential candidates likely will be even less inclined to opt for primary matching funds in the future if the

[2] In addition, many states in recent years have moved up their presidential primary and caucus contests into the first two or three months of the presidential election year. The intense competition during this compacted time frame has left several top-tier candidates from both major parties very close to their spending limit with months until the nominating convention. These campaigns have been compelled to dramatically slow down operations, reduce staff, and rely on the assistance of party-funded or outside group-funded activity.

system is not overhauled.[3] The extraordinary fundraising success of the candidates who opted out of system during the 2004 presidential election, the first conducted with the higher $2,000-per-election limits, dwarfed the spending limit that applied to candidates who remained in the system.

For example, President Bush raised approximately $270 million in connection with the primary in 2004, which was six times the $45 million spending limit that would have applied if the President had opted for matching funds. Similarly, Senator Kerry raised approximately $235 million for the primaries, which was more than five times the spending limit. President Bush and Senator Kerry combined raised over $500 million for the primaries. If they had remained in the public financing system, they would have been limited to spending only approximately $90 million. The bottom line is that the primary spending limits are completely obsolete in terms of running for President in the 21st century, and serious candidates who opt to stay in the system run the risk of putting their candidacies at a major disadvantage.[4]

In light of the foregoing, we believe Congress must significantly increase the primary spending limit in order to provide top-tier candidates of both major parties with adequate incentive to participate in the system. Two years ago we urged Congress to increase the current primary spending limit by 60% to $75 million, matching the general-election limit. Given that both major party nominees in 2004 raised more than $200 million, the spending limit may need to be even higher to help ensure that top-tier candidates – the candidates who have a realistic chance of being elected President – can participate in the system during the primaries without potentially harming their candidacies.

Accordingly, in addition to a $75 million primary spending limit, we recommend that Congress consider a number of higher limits, including those in the $150 million, $200 million, and $250 million range. While reasonable people can differ on where to set the mark, we believe that Congress should be guided by one key question—how high does the primary spending limit need to be for the top-tier candidates of both major parties to participate in the system in 2008 and beyond? Congress is well situated to make that key judgment, and the future success of the presidential public financing system may well depend on it.

In deciding what primary spending limit is appropriate, we believe that Congress should err on the high side given that all of the funds the candidates would be spending are either hard dollars, raised subject to the prohibitions and limitations of federal law, or public funds. Moreover, the spending limit Congress selects must be high enough to accommodate future top-tier Democratic and Republican candidates alike. Whatever

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[3] Because the candidate contribution limits have been indexed for inflation, the individual contribution limit for presidential candidates will be higher than $2,000 in 2008. The Commission recently announced that the individual limit to federal candidates will be $2,100 per election for the 2006 election cycle. Depending upon the inflation rate during the next two years, the individual contribution limit to presidential candidates in 2008 will likely be even greater.

[4] It should be noted that Governor Dean, who dropped out of the presidential race in March 2004 , raised approximately $51 million, which was 113% of the primary spending limit.

Congress does in this area should be designed to endure for decades, not only for an election or two.

B. The Separate Fundraising Allowance Should be Eliminated.

We recommend eliminating the separate fundraising allowance that simply adds an additional 20% to the base spending limit. See 2 U.S.C. § 431(9)(B)(vi). The complicated rules and calculations involved in the separate fundraising allowance outweigh any possible benefits from its application. This could be accomplished by deleting 2 U.S.C. § 431(9)(B)(vi). If the spending limit is set at the proper level, there is no need for a separate fundraising allowance.

C. The Total Amount of Matching Funds Available to Primary Candidates Also Should Be Significantly Increased.

Current law limits the total amount of matching funds that any candidate can receive to no more than 50% of the base primary spending limit. See 26 U.S.C. § 9034(b). In 2004, under this formula, the maximum amount of matching funds that any candidate could receive in the primaries was less than $20 million.

We recommend that Congress greatly increase the total amount of matching funds that candidates can receive who choose to participate in the public financing system during the primaries. One of the most straightforward ways of accomplishing this result would be to tie a 50% matching funds ceiling to the newly increased primary spending limit.

If Congress proceeded in this fashion, the total amount of matching funds that participating candidates could earn could sharply increase, depending upon how high the primary spending limit was set. For example, under this approach, if Congress raised the spending limit to $75 million, candidates would be eligible to receive up to $37.5 million of matching funds. If Congress set the primary spending limit at $150 million, the maximum amount of matching funds available to each candidate would increase to $75 million. With a spending limit of $200 million, the maximum amount of matching funds would rise to $100 million.

Similar to the decision of where to set the primary spending limit, reasonable people can disagree about what ceiling should be placed on the total amount of matching funds each participating candidate can receive. However, there is no question that if candidates could receive $75-$100 million of matching funds, which is four to five times the current limit, it would be a powerful incentive for top-tier candidates to participate in the system.[5] We believe that Congress should seriously consider these options.

[5] For example, a candidate who raised $100-125 million of private contributions could be eligible for $75-100 million of matching funds, which would provide the candidate with a total of up to $225 million. Such a candidate would have a much stronger incentive to take matching funds than exists under the current program.

D. The Maximum Matchable Amount Should Be Doubled and Indexed for Inflation.

In light of the increase in the individual contribution limit from $1,000 per election to $2,000 per election, we recommend that the maximum matchable amount be increased from $250 per donor to $500 per donor. See 2 U.S.C. § 9034(a). We also recommend that the $500 maximum matchable amount be indexed for inflation to keep pace with the higher contribution limits as they are adjusted for inflation in the future.[6]

These increases in the maximum match would help make the public funding program more worthwhile for candidates. Without these changes, candidates would receive a relatively small public funding inducement compared to previous election cycles ($250 out of a possible donation of $2,000 versus $250 out of a possible donation of $1,000).[7] Even with the increased overall spending limit suggested above, some candidates might find the advantages of the public funding program insufficient to warrant participation. Increasing the match and indexing it for inflation would restore and preserve the original 4-1 ratio between the contribution limit and the maximum matchable amount, which has now dropped to 8-1.

E. Congress Should Tighten the Qualification Threshold for Primary Matching Funds.

Another area that Congress should address to modernize the public funding program concerns the qualification threshold for primary matching funds.

Congress is permitted to condition the receipt of public funds on candidates making a showing that they have significant, broad-based political support. The current matching fund eligibility requirements, which have not been adjusted for inflation since 1974, no longer require any meaningful showing of popular support. To be eligible to receive matching funds, a candidate must simply raise $5,000 in each of at least 20 States, with the qualifying contributions not exceeding $250 per donor. See 26 U.S.C. § 9033(b)(3). This means that with 20 donors in each of 20 States—a total of only 400 donors and $100,000—a candidate can qualify for public funding. Some presidential candidates receive 400 such contributions in a single week or even in a single day.

We offer several alternatives to consider. First, Congress could increase the current dollar amounts to account for the over 200% increase in inflation since 1974. This would mean that the threshold to receive matching funds would be $15,000 in each of 20 States, for a total of at least 1,200 donors and $300,000. A second approach would be to increase the threshold to $25,000 in each of 20 states, which would require at least 100

6 The indexed maximum match amount could be rounded to the nearest $100 as has been done with the indexed contribution limits. See 11 C.F.R. § 110.17(c).

7 This relative inducement will shrink even further as the contribution limits to presidential candidates increase in future election cycles to adjust for inflation. See footnote 3, supra.

donors in each State and at least $500,000. A third approach would be to increase the matching funds threshold to $50,000 in each of at least 20 States, making the requirement at least 200 donors in each State and the total needed at least $1,000,000. Congress could amend 26 U.S.C. § 9033(b)(3) and (4) to implement any of these proposals.

We recognize that any increase in the threshold may mean that some candidates that otherwise could qualify for matching funds will not be able to do so. This was a dilemma faced by Congress when it created the program almost 30 years ago. It should be noted that of the ten candidates who received matching funds in the 2000 presidential primary elections, only one had not raised over $1 million in contributions by individuals by the end of 2000. We are confident that Congress could devise a formula that meets the proper balance. In any event, we believe that any change in the formula should apply even-handedly to major party and minor party candidates.

F. Matching Funds Should be Made Available to Candidates Sooner in the Presidential Election Cycle.

Candidates opting to use the public financing system for the primaries currently can begin receiving matching funds on January 1st of the presidential election year, but are prohibited from receiving public funds any sooner. However, during the last several presidential primary seasons, political events occurring the year before the election have grown in importance, and, increasingly, candidates who fail to do well the year before the election cease being candidates before the presidential election year even begins.

In light of this contemporary political reality, candidates who participate in the public financing system should be able to receive matching funds during the year before the presidential election, when many key political tests take place. Accordingly, we recommend that Congress allow candidates to begin receiving matching funds on July 1 of the year before the presidential election. This could be accomplished by amending 26 U.S.C. § 9032(b).

When the public financing system was first instituted in the 1970s, the presidential primary season was not nearly as front-loaded as it is today. Historically, presidential primaries and caucuses were held in the late winter and spring of the presidential election year, and many times the parties' nominees were not known until May or even June. Over the last 15-20 years, however, many states have vied for greater relevance in the presidential-selection process by holding their primaries and caucuses earlier in the election year, resulting in a significant front-loading of the primary campaign calendar.

In 2004, for the first time, both the Iowa caucuses and New Hampshire primary took place in January of the presidential election year. Moreover, in 2000 and 2004, both major party nominees were known by the first or second week of March. In addition, during the last decade, presidential preference straw polls, conducted the year before the presidential election year, have grown in political importance. For some candidates, straw polls – conducted more than a year before the presidential election – decided their electoral fate, with candidates who performed poorly dropping out of the presidential

race. For example, in August 1999, Iowa held a Republican straw poll, and several candidates withdrew from the race after finishing outside of the top five contenders. Whereas straw polls used to be about getting publicity to fuel fundraising for a campaign, now straw polls increasingly are one of the early determinants of a campaign's political viability.

Due to these trends, presidential candidates frequently begin active campaigning as early as a year before the first primary and two years before the general election. Campaigns must kick into high gear earlier than the campaigns of a generation ago and resources are needed sooner. Delaying the disbursement of public funds until January 1 of the election year is not consistent with the modern world of presidential campaigns and is a disincentive for candidates to participate in the system. By moving up the disbursement date of public funds to July 1 of the year before the presidential election, the public financing system would be more in sync with the contemporary presidential selection process.

G. The State-by-State Primary Spending Limits Should be Abolished.

We continue to believe that Congress should eliminate the primary state-by-state spending limits. See 2 U.S.C. § 441a(b)(1)(A). The state-by-state spending limits are determined by a formula based on the voting age population of each state. However, these limits ignore the fact that certain states have greater political importance than others. For example, New Hampshire's spending limit in 2004 was only $746,200—the same limit as American Samoa. Moreover, the spending limit for the Iowa caucuses was only $1.3 million, not much more than the limits for Mississippi and Kansas. Such low limits are another disincentive for top-tier candidates to remain in the system.

We are unable to identify any compelling anti-corruption rationale for limiting what a candidate can spend in individual states. The state-by-state primary limits potentially hamstring candidates while failing to serve any rational governmental interest. By abolishing the state-by-state limits, candidates would be able to freely develop their campaign strategies and invest as many resources in particular states as they deem appropriate. This would remove a powerful disincentive that currently exists for candidates to participate in the system.

H. There Should Be A Comparable Coordinated Spending Limit For National Parties During The Primary Season.

We recommend the creation of a separate coordinated spending limit for national political parties during the presidential primary season. Because the primary election period is being "frontloaded" with early primary election dates, it is becoming more common for a nominee to be effectively chosen by the end of March of the election year. Moreover, it is not unusual for the presumptive nominee to have virtually exhausted most of the primary spending limit by the end of March as a result of the frontloaded primaries. Even with the increased spending limit we suggest, there still will be immense pressure to spend whatever is needed to win the critical early primaries.

For 2004, there was a coordinated spending limit of approximately $16.2 million for the national parties. 2 U.S.C. § 441a(d)(2). As a practical matter, parties have wanted to "save" this allowance for the post-convention phase. We would allow the national party of a participating candidate to spend an amount comparable to the general election coordinated expenditure allowance during the pre-convention period.

I. Payment Of General Election Funds Should Be Made To All Candidates On The Same Date.

Under present law, participants in general election funding normally receive their payments on the day they accept their respective party's presidential nomination. See 26 U.S.C. §§ 9005, 9006(b). When, as in 2004, there is a significant time period between nominating conventions, this can create a disparity in the use of those funds and, thus, a disincentive for participating in the general election funding program. For example, in 2004, one candidate received his general election funds on July 30, 2004, and the other candidate received his general election funds on September 2, 2004. Because of the time lag between the two conventions, one candidate had to stretch his $75 million over 14 weeks, while the other candidate was legally able to continue to raise and use primary funds until September 2 and could spend his $75 million over the course of only nine weeks.

Obviously, this discrepancy may make the general election program very unattractive to the disadvantaged candidate who, as a result, may opt out of the system. Accordingly, we recommend that the general election grant be disbursed to the participating candidates on the same date. We recommend that date be either the day after the date on which the last of the major party candidates receives the nomination, or a date certain such as September 1--whichever is latest. As an alternative, the candidate whose nomination comes first could be allowed to choose either the day after he or she is nominated or the day after the last major party candidate's nomination.

III. Options for Financing the Presidential Public Funding Program.

Increasing the overall primary spending limit, the primary public funding limit, and the maximum matchable amount would increase the cost of the primary matching fund program. In recent election cycles, this particular program has cost as much as $65 million (an annualized cost of approximately $16 million).

A. Congress Should Maintain the Voluntary Taxpayer Check-Off System.

We strongly urge Congress, whatever it does, to maintain the voluntary taxpayer check-off system that provides funds for the presidential public financing system.

Impending shortfalls, increased limits, and other proposals to overhaul the system may prompt Congress to contemplate making the presidential public financing program part of the regular appropriations process. However, the program was never designed to be

within the regular appropriations process, but instead was designed to stem from the voluntary decisions of the nation's taxpayers. When the 89th Congress originally debated how to fund the public financing system, the Report of the Senate Finance Committee stressed that "space is to be provided on the income tax return forms to permit each individual taxpayer to designate, if he so desires, that $1 be appropriated from general revenues and paid into the presidential election campaign fund. The size of the fund will thus be determined by the voluntary acts of individual taxpayers, each of whom will have the opportunity to make a financial contribution of similar size." S. Rep. No. 89-1707, at 75 (1966).

The Supreme Court has likewise recognized the unique structure of the program, noting that the appropriation to the fund is "like any other appropriation from the general revenue except that its amount is determined by reference to the aggregate of the one and two dollar authorizations on taxpayers' income tax returns" and the check-off "is simply the means by which Congress determines the amount of the appropriation." *Buckley v. Valeo*, 424 US 1, 91-92, n. 124 (1976).

We recognize that with fewer people opting to use the tax check-off, any proposed overhaul of the program that allows candidates to qualify for more public money will need to generate additional revenue. However, as a number of states that attempted their own public financing systems have shown, making the program part of the regular appropriations process potentially subjects the system to political wrangling and may deprive eligible candidates of funds. For example, faced with budgetary constraints, Massachusetts' legislators refused to fund the public finance system, resulting in a court ordered auction of state assets. Published reports indicate that late model vehicles, furniture, and even a hospital site were auctioned to fund the system. Although the taxpayer check-off funding mechanism is far from perfect, it is an integral part of the presidential public financing system and should be preserved.

B. Congress Should Increase the Taxpayer Check-Off Amount and Index the Figure For Inflation.

Congress should increase the check-off amount to a level sufficient to fund the foregoing changes. (26 U.S.C. § 6096(a)). In theory, every $1 increase could generate another $18 million in check-off proceeds each year.[8] Increasing the check-off from $3 to $6 would likely provide significantly more revenue for the program. Of course, at some level, taxpayers will become less inclined to check YES.

Even if no changes to the primary or general programs are made, Congress should index the current $3 check-off amount to inflation. The check-off amount has not been adjusted since 1993; inflation alone would justify at least an increase to $3.50 per taxpayer. Assuming the current number of taxpayers checking YES stayed steady, this would bring in an as much as an additional $9 million per year.

[8] In 2004, slightly more than 18 million taxpayers checked YES.

C. Congress Should Permit the Treasury Department to Fund the Program With Revenues That Are Received During the Presidential Election Year.

The Commission has previously urged Congress to focus primarily on a fairly discrete problem in the presidential public funding program. Specifically, because the funding mechanism for the program has not kept pace with the growth in payouts, and because the Department of Treasury has treated check-off proceeds expected to come in from January through July of the presidential election year as "unavailable" when calculating the general election "set aside" and the remaining primary matching fund account balances, the primary candidates have experienced temporary shortfalls in matching fund payments in the last three elections.

The temporary shortfall in matching funds that has occurred in the past two presidential elections may recur in 2008. Under the most realistic assumptions, it appears that the January 2008 payout will be well short of the funds to which candidates will be entitled.

The temporary shortfall causes participating candidates to resort to short-term borrowing, which can involve significant interest charges. A shortfall complicates the matching fund payment process due to the need for repeated calculations of the available matching fund account balances and tracking the "make up" payments needed to make candidates whole as matching fund proceeds become available.

An immediate fix would be a simple change in the statute directing the Department of Treasury to rely on the January to July projected check off proceeds when evaluating the funds that are "available" for the general election "set aside" and the funds that therefore remain for primary matching fund payouts. As was noted above, under the existing statute, the Department of Treasury must pay convention entitlements in the year before the presidential election and then must "set aside" funds for the projected general election payouts. Whatever is left after these calculations may be placed in the primary matching fund account. The Department of Treasury has interpreted the statute to mean that projected proceeds coming in from January through July (when the general election payouts actually will have to be made) cannot be considered "available" when the "set aside" calculation is made. Thus, the general election "set aside" relies only on proceeds actually in Treasury accounts, thereby disregarding the funds that Treasury expects to receive from January through July of the presidential election year. This means that the funds placed in the primary matching fund account is reduced by the same amount. (In the January 2004 time frame, this reduced the matching fund's balance by about $52 million.)

Simply changing the statutory provision (26 U.S.C. § 9037) to "will be available" would authorize the Department of Treasury to rely on expected January to July check off proceeds when calculating the "set aside," and would thereby make the same amount available for the early matching fund payouts. It would be understood that calculations of expected check-off proceeds, just like calculations of expected payouts, would be based on sound statistical methods to produce a cautious, conservative estimate of funds that will be available to pay general election and other expenses.

D. Congress Could Use Repayments to Help Fund the Program.

Repayments from primary election committees are required to be deposited in the Matching Payment Account. See 26 U.S.C. § 9038(d). Repayments from general election and convention committees, however, are required to be deposited in the "general fund of the Treasury." See 26 U.S.C. § 9007(d) (general election repayments); 26 U.S.C. § 9008(h) (convention repayments). Congress could determine that all repayments of taxpayer designated funds should benefit the public financing program. Amending 26 U.S.C. § 9007(d) would accomplish this for both general election and convention committees because the convention committee provision (26 U.S.C. § 9008(h) cross-references the general election committee provision.