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FEDERAL ELECTION COMMISSION
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OFFICE OF COMMISSIONER ANN M. RAVEL

AGENDA ITEM

For Meeting of 9-29-16

To: The Commission

From: Ann M. Ravel, Commissioner

Date: September 22, 2016

RE: Presidential Public Financing Legislative Recommendations

In keeping with the Commission's duties to oversee the public funding of presidential elections, this memorandum proposes legislative recommendations to modernize the program and make improvements. I hope the Commission will incorporate these into the agency's recommendations later this year, and I am open to suggestions about how to improve the program.

As it exists today, the presidential public funding program needs repair. The nominees of neither major party are using it. Digital fundraising provides significant new opportunities to promote participation and reduce barriers to running for office. It is much easier to fuel a competitive campaign from a broad base of support now than it was when the Commission administered the first public financing program in 1976.

The presidential public funding program, at its peak, was effective—albeit imperfect. Every Republican and Democratic nominee for president from 1976 to 2008 used it to fund their general election campaigns (with the exception of President Obama). The 2012 election was the first in nearly forty years where neither major party candidate participated.

Still, voluntary public financing is an important tool to empower voters of more modest means. *Citizens United* and other decisions have led to a large increase in outside spending, which puts pressure on candidates to spend more time and resources raising money. Most of it comes from a small, highly unrepresentative segment of society. Just one third of one percent of the population contributes about 70% of the money raised by candidates, political parties and PACs.[1] According to a report last year by the *New York Times*, only 158 families—"overwhelmingly white, rich, older and male, in a nation that is being remade by the young, by women, and by black and brown voters"—provided nearly half of the money in the early phase of the 2016 presidential campaign.[2]

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[1] Donor Demographics, Center for Responsive Politics, http://www.opensecrets.org/overview/donordemographics.php (last accessed Sept. 21, 2016).

[2] Nicholas Confessore *et al.*, "The Families Funding the 2016 Presidential Election," N.Y. TIMES, Oct. 10, 2015, http://www.nytimes.com/interactive/2015/10/11/us/politics/2016-presidential-election-super-pac-donors.html.

The reasons for public financing—boosting civic participation, reducing dependence on major donors, and protecting the representative character of our government—have not faded.[3] The Supreme Court said in *Buckley v. Valeo* that the purpose of public financing is to "facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people."[4] In affirming its constitutionality, the Court held that it "cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant government interest" and that it is "an appropriate means of relieving major-party presidential candidates from the rigors of soliciting private contributions."[5]

One statistic in particular shows how things have changed. According to Trevor Potter, a former Chair of the Commission, "[d]uring his 1984 re-election campaign, Ronald Reagan attended a grand total of three fundraising events—and even then, they were for the Republican National Committee, not his campaign. In fact, he never attended a *single fundraiser* for his own reelection campaign. Why would he? It was publicly funded; he didn't need to."[6]

In keeping with the principles as articulated by the Supreme Court in *Buckley*, I request that the Commission make legislative recommendations to restore the strength of the public financing program. Doing so is consistent with a long history of previous public funding program legislative recommendations that the Commission made every year from 1977 until 2005.

Legislative Recommendations

Remove expenditure limits. Due to the current rubric of unlimited outside spending, the expenditure limits are not practicable. At the same time, there should be a reasonable cap on available public funds.

Increase the ratio of matching funds for participating candidates during the primary, and permit general election candidates to raise limited funds by matching a portion of contributions. Currently, only the first $250 of a contribution is matched on a one-to-one basis during the primary. Increasing the ratio may encourage more individuals to contribute to political campaigns and could encourage candidates to raise money from a broader base of supporters.[7]

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[3] *See generally* Marilyn Thompson, "The Dream is Dead: Can Taxpayer Money Save Presidential Campaigns?", Harvard Kennedy School Shorenstein Center on Media, Politics and Public Policy, Discussion Paper #D-99, May 2016, *available at* http://shorensteincenter.org/can-taxpayer-money-save-presidential-campaigns/ (last accessed Sept. 21, 2016).

[4] *Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976).

[5] *Id.* at 96.

[6] Trevor Potter, "The Money in Politics Disaster," Remarks from "Red, White, and on the Brink" Plenary Session, Independent Sector National Conference (Miami, FL) (Oct. 28, 2015), http://www.campaignlegalcenter.org/sites/default/files/The%20Money%20in%20Politics%20Disaster%20-%20Trevor%20Potter%20Independent%20Sector%20for%20Distribution.pdf (last accessed Sept. 21, 2016).

[7] Jurisdictions with municipal public financing programs that include matching ratios greater than one-to-one include Los Angeles, CA and New York City.

General election candidates should also be permitted to raise funds by matching a portion of contributions.

Raise the threshold level of support that a candidate must demonstrate to qualify for public funds for a primary campaign. To qualify under the current system, candidates need only raise $5,000 in each of 20 states. This threshold should be increased to balance the availability of public funds with the goal of robust participation by viable candidates. This new threshold could also be set to inflation.

Increase the voluntary tax "check-off" amount. Congress has not raised the voluntary check-off designation since 1993, when it was raised from $1 to $3. To guard against any shortfall in funds, this voluntary check-off should be increased to maintain sufficient resources for participating candidates.

Permit national parties to make unlimited coordinated expenditures with participating candidates, provided that the parties use funds raised from a pool of contributions of a modest size.[8] This will create a new way for parties and candidates to address unlimited outside spending in the wake of *Citizens United* and its progeny.

Establish a similar voluntary public funding program for candidates to the House and Senate. The same principles that support public funding for presidential candidates apply to congressional candidates: promoting participation in the political process, reducing the influence of large private campaign contributions, and relieving candidates of some of the burden of soliciting money.[9]

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[8] *See* ANTHONY J. CORRADO, MICHAEL J. MALBIN, THOMAS E. MANN AND NORMAN J. ORNSTEIN, REFORM IN THE AGE OF NETWORKED CAMPAIGNS 48 (2010), *available at* https://www.brookings.edu/wp-content/uploads/2016/06/0114_campaign_finance_reform.pdf (last accessed Sept. 21, 2016).

[9] *Buckley*, 424 U.S. at 92-93.