PRESIDENTIAL ELECTION CAMPAIGN FUND ACT

The Presidential Election Campaign Fund Act, passed in 1971, violates the First and Fourteenth amendments. It provides a new method for the financing of future presidential election campaigns that favors the extablished parties -- the Democrats and Republicans -- over all other parties.

By this new law, each taxpayer is entitled to designate $1.00, or $2.00 per joint return, to the presidential candidate of the political party of his choice. If no political party is designated, the dollar is deposited in a general fund, which is then divided (not equally) among all 'eligible' candidates.

The law also places a limit on the amount of money presidential candidates may spend to get elected, equal to 15 cents for each American over 18 as of June 1 of the presidential election year.

The law creates three categories of political parties: Major -- a party whose presidential candidate received 25% of the popular vote in the last election; Minor -- a party whose presidential candidate received between 5% and 25% of the popular vote; New -- a new party or one whose presidential candidate received less than 5% of the popular vote in the last election.

According to this definition, there are currently two major parties, the Democrats and the Republicans. There are no minor parties. All other parties in the U.S. are classified as new parties.

The law also places a limit on the definition of an 'eligible' candidate. To qualify for funds, a presidential candidate must be on the ballot in 10 states.

These classifications are important, as they are the basis for determining how much money is be be received by a candidate from the taxpayers' fund. Major party candidates are entitled to more money than minor or new party candidates.

What does the Supreme Court have to say about such classifications? In Williams v. Rhodes, William Douglas wrote:

> "The Equal Protection Clause of the Fourteenth Amendment permits the states to make classifications and does not require them to treat different groups uniformly. Nevertheless it bans any "invidious discrimination." Harper v. Virginia Board, 383 U.S. 663, 667.
>
> "That command protects voting rights and political groups (Carrington v. Rash, 380 U.S. 89), as well as economic units, racial communities and other entities. When "fundamental rights and liberties"

are at issue (Harper v. Virginia Board, supra, 670), a state has less leeway in making it difficult or impossible for citizens to vote for whomsoever they please and to organize campaigns for any school of thought they may choose, whatever part of the spectrum it reflects."

By the law, major parties are entitled to be reimbursed for expenses up to the ceiling fixed in the law for campaigning.

The law limits the dates during which such campaign expenses may be incurred. For major parties, this period extends from the date of the nominating convention (or September 1, whichever is earlier), to 30 days after the election. At any time during that period the candidate or party may apply for and be reimbursed from the party's taxpayer fund. Thus, the candidate has the benefit of the taxpayers' donations during the election campaign.

New parties don't get the maximum they can spend from the taxpayers' fund. The amount they can be reimbursed is determined by a formula which compares the number of votes cast for their candidate to the average number of votes cast for a major party candidate. And of course, any candidate that doesn't get 5% of the vote won't get any money.

New parties, unlike major parties, don't get their money from the taxpayers' fund until after the election, as the eligibility of the candidate depends on whether he gets on 10 state ballots and then gets 5% of the vote.

The expenses for which a new party candidate will be reimbursed must also occur during a specified period. This is defined as the shortest major party expenditure period.[1] What does this mean for a new party candidate? If major party A nominates its candidate in June and major party B nominates its candidate in August, the new party candidate must wait until August to make any expenditures for which he will be reimbursed. Some limited expenses incurred outside this period are covered, such as rent. Travel and printing costs, a major small party expense, are not.

---

[1]A similar requirement, in which a major party activity controlled the filing deadline of a smaller party, was invalidated in United Citizens Party v. South Carolina State Election Commission, 319 F.Supp. 784 (1970). "It is a black letter rule so firmly fixed that it is found in legal encyclopedias that a legislature may not delegate legislative functions to private persons or associations."

There are further discriminatory aspects of the law. For example, the money in the general fund, which comes from taxpayers who do not specify a political party, is divided among all candidates according to the same formula used to determine how much money will be allocated. Further, new parties will not receive any money from the general fund until after the election. And by then, according to the law, 80% of the general fund money may already have been divided among the major parties.

The clearest example of how the law discriminates against smaller parties in favor of the Democrats and Republicans is the way that money is divided evenly among the two major parties, regardless of the differences in their vote, as long as they get 25% of the vote.

> "There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental politics is at the core of our electoral process and of the First Amendment freedoms. Williams v. Rhodes, 393 U.S. 23 (1968)

The ability to finance elections has long been recognized as an important factor in a candidate's ability to present his views to the public and to win votes. To illustrate the undemocratic nature of this law, take the following example:

Political party	1972 vote	1976 vote
Major party A	40 million	20 million
Major party B	20 million	40 million
Minor party C	15 million	10 million
New party D	1 million	10 million

Ceiling on spending = 15¢ x 70 million persons =
" " " = $10,500,000

Average of A and B vote = $\frac{40\text{ m} + 20\text{ m}}{2}$
" " " = 30 million

Major parties A and B are entitled to $10,500,000 each from the taxpayers' fund. This amount does not take into account any differences in the vote of the two parties. Major party B got half the vote of A in 1972, yet they get the same amount from the fund.

Minor party C's share of the vote would be:

$$\frac{\text{C's 1972 vote}}{\text{average of A and B's vote}} \times \text{ceiling on spending}$$

or

$$\frac{\text{15 million}}{\text{30 million}} \times \$10,500,000 = \$\underline{5,250,000}$$

Thus, while minor party C got three-fourths the vote of major party B in 1972, its candidate is entitled to only half the money major party B's candidate is entitled to.

D's share, which would not be collectable until after the election, would be:

$$\frac{\text{D's 1976 vote}}{\text{average of A and B's vote}} \times \text{ceiling on spending}$$

or

$$\frac{\text{10 million}}{\text{30 million}} \times \$10,500,000 = \$\underline{3,500,000}$$

Thus, while new party D's candidate got half the vote of major party A's candidate, he gets only a third of the funds that major party A's candidate is entitled to, and he doesn't get the money until after the election.

If there were a new party E, which did not receive 5% of the vote in 1976, that party would get nothing from the taxpayers credit system, no matter how much was designated by taxpayers as a donation for that party. Every party now in existence in the U.S. except the Democrats and Republicans is in this category, since no party got 5% of the vote in 1972. This new tax law was obviously designed to eliminate the possibility that any smaller party would benefit from it.

> "In our political life, third parties are often important channels through which political dissent is aired: "All the political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted.... The absence of such voices would be a symptom of grave illness in our society. Sweezy v. New Hampshire, 354 U.S. 224, 250-251.

Because this Presidential Election Campaign Fund Act gives major political parties a decided advantage over smaller parties, it is being challenged by the Committee for Democratic Election Laws.