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THE FLORIDA ELECTION CAMPAIGN FINANCING ACT: A BOLD APPROACH TO PUBLIC FINANCING OF ELECTIONS

CHRIS HAUGHEE*

Florida’s explosive population growth and the changing ways of life in this urban state have created problems in the political process just as troubling as the substantive problems of the environment, social services, and criminal justice. After all, these substantive issues can only be addressed by consensus solutions if the political process itself has integrity. In this Article, the author reviews the history of modern campaign reforms in Florida and other jurisdictions, then examines the new system for public financing of statewide elections in Florida. He concludes that, despite the good intentions of the legislature, the ultimate success or failure of the program will depend upon its acceptance by all players in the electoral process.

If you watch Florida politics, the wealthy are taking over.¹

WHILE there is no minimum financial status required for a person to run for statewide elected office, it should not surprise even a casual observer of Florida’s political scene that the Governor and most of the present Cabinet members are wealthy people.² Our political system increasingly has become the domain of the rich and famous,³ and the high cost of campaigning is one

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¹ House Speaker advocates public financing for political campaigns, St. Petersburg Times, Nov. 21, 1985, at 2B, col. 1 [hereinafter cited as Speaker advocates public financing].

² According to financial disclosure reports filed with the Secretary of State, the net worth of the Governor and Cabinet members is: Gov. Bob Graham, $8.16 million; Att’y Gen. Jim Smith, $9.69 million; Secretary of State George Firestone, $1.3 million; Comm’r of Educ. Ralph Turlington, $939,992; Treasurer Bill Gunter, $911,416; Agriculture Comm’r Doyle Conner, $780,212; Comptroller Gerald Lewis, $140,706.

³ There is a widely held perception that the electoral process is increasingly restricted to wealthy candidates. “I think what we are talking about is a system that is only going to provide an opportunity for the rich to pursue public office and I think that is contrary to everything we believe in.” Fla. H.R. Comm. on Ethics & Elect. (unpaginated partial transcript) (Feb. 6, 1985) (on file with committee) (statement of Secretary of State Firestone). “We are rapidly approaching the time when only the rich or those with access to great individual or interest group wealth can afford to compete.” Study of the American Electorate, 1985: Hearings on S. 1310 Before the Senate Comm. on Com., Science, and Transp.,
reason why. This high cost has bred a host of distasteful and shady campaign practices and spurred rampant growth of political action committees (PACs). Many people, in and out of politics, are questioning the system. One United States senator summed up the concern: "[We] in this country should begin asking the question, is the present state of political campaigns what we want in America? Is this what we deserve from the democratic process or has something gone terribly wrong?"

At the urging of Speaker James Harold Thompson, the Florida Legislature passed the Florida Election Campaign Financing Act (FECFA) in 1986. The Act offers state funds to gubernatorial and Cabinet office candidates who agree to certain conditions—including a limit on campaign spending. In this Article, the author reviews the provisions of the FECFA, places it in historical context, and considers its future.

I. Regulation of Campaign Financing

Modern initiatives to reform campaign practices began in 1972, not coincidentally, the year of Watergate and other election abuses that were blamed on the influence of money. The principal reform measures adopted involved more thorough public reporting of campaign finances and public financing.

A. Other Jurisdictions

Beginning in Washington State in 1972, a wave of campaign finance reform swept the nation, picking up momentum in the post-Watergate years. Most legislative reforms focused on disclosure requirements for campaign contributions, but public financing provisions also proved popular. Within five years, at least fourteen states had adopted legislation providing state funds for election

4. According to Curtis Gans, "In constant dollars, the cost of campaigning has tripled since 1960, doubled since 1972." U.S. Senate Hearings, supra note 3, at 28.
5. Id. at 2 (statement of Sen. Danforth).
8. This Article does not include extensive discussion of the policy arguments for and against public financing of campaigns or the empirical basis for the legislation. For a more thorough examination of these areas, see generally Moore & La Belle, Public Financing of Elections: New Proposals to Meet New Obstacles, 13 FLA. ST. U.L. REV. 863, 865 n.12 (1985).
campaigns. Currently, twenty-three states and the District of Columbia offer some form of assistance for campaign financing. Four states provide only tax incentives to campaign contributors. Eleven states provide funds to political parties which, in some cases, may support general election candidates. Eight states distribute funds directly to candidates for various positions ranging from governor to a local office, including judgeships.


Oklahoma lawmakers enacted a public financing law in 1979, but, in an opinion left undisturbed by the state supreme court, the Attorney General found that it violated the Oklahoma Constitution. See Democratic Party v. Estep, 652 P.2d 271 (Okla. 1982).


15. See supra note 14.
With the exception of Indiana, which finances candidates from personalized license tag fees, each state's public financing scheme is funded through a checkoff provision on state income tax forms. In five states the checkoff adds to the tax liability of the taxpayer, and these states have generally had low participation rates. The other states use a checkoff system, similar to that on federal tax returns, which does not add to the taxes paid.

Congress addressed campaign financing reforms in 1974 by substantially amending the Federal Election Campaign Act of 1971 (FECA). A major component of these reforms was the Presidential Election Campaign Fund Act (Fund Act) which provided public funding of presidential campaign activities. The public funding under the Fund Act applies to general election candidates and covers the period from the nominating conventions to thirty days after the general election. FECA regulates campaign financing and reporting for all federal elections, including presidential primaries. The provisions of both Acts were reviewed and generally upheld by the United States Supreme Court in 1976 in *Buckley v. Valeo*.

**B. Florida**

Florida joined this reform movement early. Prior to 1973, campaign financing was governed by section 99.161, Florida Statutes. In 1973, a comprehensive revision was enacted and codified in chapter 106, Florida Statutes, but it did not include public financing. From 1975 through 1980, twenty-five bills proposing some form of public financing were filed. Fifteen bills sought to create

21. 424 U.S. 1 (1976). The decision upheld limits on contributions, struck down limits on overall spending by a candidate and on personal spending by a candidate, struck down limits on independent spending, and upheld the public financing provisions for presidential elections.
23. FLA. STAT. ch. 106 (1973). The Act strengthened reporting requirements and provided more effective enforcement procedures, including the establishment of the Florida Elections Commission to hear allegations of violations and recommend civil penalties.
trust funds to finance judicial campaigns; ten others addressed funding campaigns for various statewide offices, including governor, the Cabinet, comptroller, and—when it was still an elected body—the Public Service Commission.24 With the exception of two 1978 bills,25 none of this legislation reached the floor of either house for debate. No public financing bills were filed between 1981 and 1984. Another judicial trust fund bill was filed in 1985, but it died without receiving a committee hearing.26

C. Recent Activity

The renewed interest in public financing in 1986 occurred in many states and in Congress. Arizona and California experienced petition drives to place on the ballot initiatives to limit contributions and spending in political races.27 A bill providing partial public funding for state and legislative offices passed the Iowa House of Representatives, but, despite favorable committee hearings, died in the Senate.28 In Missouri, a campaign financing bill passed both houses but died in conference committee.29 A public financing bill for judicial elections passed the Pennsylvania House of Representatives but also needed Senate approval.30 Maryland lawmakers passed a public financing bill in 1974 but delayed implementation at least twice and then stopped collecting funds; the state has set a one-time implementation for 1990 to include only gubernatorial

24. Fla. HB 1404 (1975); Fla. SB 1298 (1975); Fla. HB 3228 (1976); Fla. HB 3382 (1976); Fla. SB 1260 (1976); Fla. HB 614 (1977); Fla. HB 1703 (1977); Fla. HB 1903 (1977); Fla. HB 2075 (1977); Fla. SB 941 (1977); Fla. HB 382 (1978); Fla. HB 635 (1978); Fla. HB 1052 (1978); Fla. SB 474 (1978); Fla. HB 61 (1979); Fla. HB 464 (1979); Fla. HB 465 (1979); Fla. HB 887 (1979); Fla. HB 960 (1979); Fla. HB 1470 (1979); Fla. HB 1725 (1979); Fla. SB 608 (1979); Fla. SB 1225 (1979); Fla. HB 1242 (1980); Fla. SB 975 (1980).
25. Fla. HB 1052 (1978) and Fla. SB 474 (1978) each passed its respective house but died in committee in the opposite chamber. Both bills created judicial trust funds. Their relative success can be attributed in part to a legislative reaction to the decision in Richman v. Shevin, 354 So. 2d 1200 (Fla. 1977), where the Florida Supreme Court held that a similar system established in 1972 by the Dade County Bar Association violated state law.
26. Sen. Mattox Hair, Dem., Jacksonville, filed Fla. SB 865 (1986), which provided public funding only for gubernatorial candidates. The Senate Judiciary-Civil Committee amended it to apply only to candidates for treasurer. The Committee passed the bill as a committee substitute, but it died in the Senate Appropriations Committee. FLA. LEGIS., HISTORY OF LEGISLATION, 1986 REGULAR SESSION, HISTORY OF SENATE BILLS at 143, SB 865.
27. CONGRESSIONAL QUARTERLY, INC., 13 CAMPAIGN PRACTICES REPORTS, No. 4, at 9 (Feb. 24, 1986); CONGRESSIONAL QUARTERLY, INC., 13 CAMPAIGN PRACTICES REPORTS, No. 7, at 6 (Apr. 7, 1986).
28. Iowa House File 2377; Iowa House File 2476 (as amended and filed by the Appropriations Committee).
29. Mo. HB 1175 (1986).
candidates. Michigan legislators considered legislation to increase the spending limit for gubernatorial campaign financing to $2 million. In New York, the Commission on Integrity in Government issued its first report April 30, 1986, calling for public financing of various state and municipal offices.

Both houses of Congress had numerous bills relating to campaign financing filed in 1986. Five of eleven Senate bills and six of thirteen House bills proposed public financing of campaigns for the respective chambers.

II. HOUSE BILL 1194

The Florida Election Campaign Financing Act is a voluntary program that provides only partial public financing for qualifying candidates for statewide office. It came to life after careful examination by legislative committees and an eleventh-hour resurrection from what had seemed certain death.

A. The Road to Passage

House Bill 1194 passed the Florida Senate by a twenty-one to twelve margin at 2:20 a.m. on June 7, 1986, exactly six months after the Speaker’s request to draft the bill. That request came in a meeting of Speaker Thompson, Representative Joe Allen, Representative Mary Figg, and staff. Though the Speaker had publicly mentioned his interest in financing legislation in November, he had not decided to have a bill filed until January, and did not discuss the bill publicly until he announced it at a press conference on March 26, 1986. One month later it passed the House relatively unchanged.

31. CONGRESSIONAL QUARTERLY, INC., 13 CAMPAIGN PRACTICES REPORTS, No. 6, at 6 (Mar. 24, 1986); CONGRESSIONAL QUARTERLY, INC., 13 CAMPAIGN PRACTICES REPORTS, No. 7, at 6 (Apr. 7, 1986).
32. CONGRESSIONAL QUARTERLY, INC., 13 CAMPAIGN PRACTICES REPORTS, No. 7, at 6 (Apr. 7, 1986).
33. CONGRESSIONAL QUARTERLY, INC., 13 CAMPAIGN PRACTICES REPORTS, No. 11, at 7 (June 2, 1986).
35. Dem., Key West.
36. Dem., Temple Terrace.
37. Speaker advocates public financing, supra note 1.
40. Fla. H.R. Jour. 194 (Reg. Sess. Apr. 28, 1986). The vote was 60-to-47. The proposed bill, PCB EE-1, was heard for the first time in the Elections Subcommittee of the House.
Senate action was also completed in only a month, but it was the crucial last month of the legislative session. In the waning hours, passage was far from assured. The Senate companion bill, Senate Bill 669, had been filed within a week of the Speaker's press conference by Senator Frank Mann, but it did not receive a hearing until after the House bill had been approved by the House. The Senate Judiciary-Civil Committee heard the bill on May 1, and, after adopting amendments conforming it to the House bill, added three more amendments and approved the bill as a committee substitute. The House bill was taken up by the Senate Judiciary-Civil Committee on May 21, and summarily approved. Both bills were then awaiting hearing in the Senate Appropriations Committee. On May 27, the Committee held its last scheduled meeting without taking up either bill. Following Senator Mann's public accusation that Senate President Harry Johnston had tried to kill the bill, another Committee meeting was scheduled for June 6, the last day of the session. "I forced [the meeting] so it would not be an issue in the campaign," Senator Johnston said later. The Appropriations Committee debated the House bill before approving it eleven to four, and without debate passed the Senate committee substitute by the same margin.

Later that evening, the Senate took up the House bill. Despite little debate and no amendments, the bill failed by a single vote. Afterwards, Senator Mann worked the Senate floor, trying to

Committee on Ethics and Elections on April 9, 1986. It was approved the next day by the full Committee by a vote of 16-to-2 and filed with the Clerk. On April 21, Fla. HB 1194 (1986) was passed as amended by the Appropriations Committee. The bill was heard on the House floor the next day and the Appropriations Committee amendments were adopted. Final debate and the vote on passage took place on April 28. FLA. LEGIS., HISTORY OF LEGISLATION, 1986 REGULAR SESSION, HISTORY OF HOUSE BILLS at 364, HB 1194.

42. FLA. LEGIS., HISTORY OF LEGISLATION, 1986 REGULAR SESSION, HISTORY OF SENATE BILLS at 120, SB 669.
43. Id.
44. FLA. LEGIS., HISTORY OF LEGISLATION, 1986 REGULAR SESSION, HISTORY OF HOUSE BILLS at 364, HB 1194.
45. Dem., West Palm Beach, 1974-1986.
47. Finally, Senate to look at Mann's campaign bill, Ft. Myers News-Press, June 6, 1986, at 6B, col. 5. Throughout the session, Sens. Johnston and Mann were rival candidates for the Democratic nomination for governor.
49. The vote was 16-to-15. FLA. S. JOUR. 885 (Reg. Sess. June 6, 1986).
gather support for a motion to reconsider while Bill Jones, Executive Director of Common Cause/Florida, lobbied senators outside the chamber. As the time for adjournment approached—midnight, June 6, 1986—these efforts seemed destined to fail. With neither house able to finish work on other major issues, however, the legislature extended the 1986 Regular Session to 3:00 a.m. The result was a twenty-one to twelve vote in favor of the Florida Election Campaign Financing Act.

B. Major Provisions

It is important to emphasize two points about the FECFA. First, it is a voluntary program. Candidates are free to decide, for any reason, not to participate and to raise and spend funds without regard to the FECFA limitations. Such a decision probably would become an issue in the campaign, and ultimately the voters would have the opportunity to judge that decision. Second, the FECFA provides only partial funding for a campaign, matching dollar for dollar certain contributions from individuals. Other legal sources of campaign funds are not restricted.

However, there are conditions attached to the receipt of state funds, in an attempt to control abuse and wasteful, unnecessary, or excessive spending without creating disincentives to participation in the program. How successfully the FECFA achieves this objective can only be learned through its use.

1. Qualifying for Funding

A candidate must make the decision to participate in the FECFA program at the time of qualifying. The decision to participate is irrevocable. Once the decision to accept public funding is made, the candidate cannot change his mind, return any public money he has received, and ignore the spending limitations. A request for funds includes an agreement to abide by the applicable campaign spending limits and to submit the campaign account to

50. Sen. Larry Plummer, Dem., South Miami, made the motion to reconsider after conversations with Rep. Allen, with whom Sen. Plummer shares a constituency. No other votes changed. The different vote totals primarily reflect the movement of senators in and out of chamber during the last hours of the session.


52. Id. (to be codified at Fla. Stat. §§ 106.33(2), 35(2)).


54. Id. (to be codified at Fla. Stat. § 106.33(1)).
a post-election audit by the Division of Elections. In addition, a candidate must raise certain funds in a specific manner. Because qualifying takes place less than two months before the first primary and fundraising normally begins long before that, a candidate must make the decision about participating in the program when he develops his campaign budget and sets a fundraising strategy.

One of the arguments against public financing legislation is that it encourages single-issue and fringe candidates to run and take advantage of state funding. Therefore, public financing programs include a requirement that candidates demonstrate a minimum amount of public support—cross a threshold of legitimacy—in order to qualify for public funds. Under the FECFA, candidates must raise five percent of the applicable spending limit in qualifying matching contributions (QMCs). QMCs are contributions of $250 or less from individuals made after September 1 of the calendar year prior to the election. Based on spending limits derived from 1982 election result totals, gubernatorial candidates would have to raise $100,000—400 contributions of $250—and Cabinet candidates would have to receive $33,750-135 QMCs. Individual contributions of more than $250 are prohibited. Contribution limits to candidates for statewide office set in section 106.08, Florida Statutes, are undisturbed by the FECFA, but for purposes of qualifying for matching state money, only the first $250 of any individual contribution will be considered. This restriction is consistent with other states which have limited matching funds.

The FECFA does not restrict matching to monetary contributions,
therefore, loans and in-kind contributions are eligible to be matched up to $250.62

Matching is limited to contributions from individuals,63 eliminating matching of contributions from corporations, unions, PAC's and political parties. This limitation is not to imply anything negative or sinister about such contributions—though there is a long-running debate about the influence of “special interest” campaign contributions—rather, it is an attempt to shift the focus of campaign fundraising and electioneering to the average citizen by providing encouragement to individuals to get involved in campaigns. As the bill was presented to the House Subcommittee on Elections, corporate contributions were matchable. However, when Representative Mike Abrams64 noted the inequity of allowing corporate contributions to be matched, an amendment to delete corporate matching was adopted.65

The provision limiting matching funds to only those contributions given after September 1 of the calendar year prior to the election was designed to discourage potential candidates from campaigning and soliciting contributions more than a year before the first primary.66 Because campaign issues are not well-defined more than a year before an election, the early part of most lengthy campaigns is used primarily for fundraising. The campaign purpose is twofold: to establish the candidate's political credibility and to scare off potential opponents. The more expensive a candidate expects the campaign to be, the longer the campaign. By creating a dependable source of funds based on a candidate's own fundraising, the FECFA is intended to reduce the need for candidates to start early campaigning and fundraising.67

63. The term “individual” was used instead of the more broadly defined “person.” See FLA. STAT. § 106.011(8) (1985).
64. Dem., Miami.
66. In both houses, there was discussion of the deleterious effects of long campaigns, particularly boredom and voter apathy. Fla. H.R. Comm. on Ethics & Elect., tape recording of proceedings (Apr. 10, 1986) (on file with committee); Fla. S. Comm. on Jud'y-Civ., tape recording of proceedings (May 1, 1986) (on file with committee).
67. An amendment to Fla. SB 669 (1986) was adopted in the Senate Judiciary-Civil Committee to prohibit all fundraising more than 12 months before the general election by candidates seeking public funds. Sen. Curt Kiser, Repub., Palm Harbor, offered the amendment and argued that longer campaigns drive up the cost of elections. Sen. Pat Frank, Dem., Tampa, suggested a similar limitation for all candidates, but this restriction would be unconstitutional. In Sadowski v. Shevin, 345 So. 2d 330, 332-33 (Fla. 1977), the Florida Supreme Court held such a limitation in FLA. STAT. § 106.15(1) (1975) to be a violation of
2. Spending Limits

A campaign expenditure limit is not essential to a public financing program, but it was considered a critical element in Florida. Given Speaker Thompson’s objective of allowing individuals of average means to effectively compete for statewide office, providing funds without setting a limit on spending would have been counterproductive and much more difficult to sell politically. Such a measure would only add to the treasure chests of well-financed candidates without creating an equitable situation for all candidates receiving public funds.

The spending limit set by FECFA is a formula tied to the number of votes cast for that office in the last general election: seventy-five cents per vote for governor and twenty-five cents per vote for Cabinet office. A spending limit dependent on voter turnout or registration gives an incentive to candidates, political parties, and others to get voters registered and to turn out the vote, thus producing a secondary benefit. Thus, under the FECFA, an increase in voter turnout will result in a corresponding rise in the spending limit for the next election.

first amendment free speech rights. The court stated: “In the free society ordained by our Constitution it is not the government but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.” Sadowski, 345 So. 2d at 333 (quoting Buckley v. Valeo, 424 U.S. 1 (1976)).


69. Speaker advocates public financing, supra note 1.

70. Such a “floor without a ceiling” concept was suggested by Moore & LaBelle, supra note 8, at 863. A quid pro quo could still be required for receiving state funds, such as foregoing certain special interest money.

71. Ch. 86-276, § 1, 1986 Fla. Laws 2030 (to be codified at Fla. Stat. § 106.34(1)). In the event a Cabinet office was not contested in the previous general election, the spending limit would be tied to the number of votes cast for governor in the last contested gubernatorial election. Though it is less likely that the gubernatorial race would be uncontested, the formula in such an event would be based on the number of votes cast in the last contested gubernatorial general election. Id.

In addition to holding down campaign spending, an expenditure limit, especially one based on a matching formula, restricts the amount of state funds which must be committed. Under the FECFA, no candidate could qualify for state funds of more than fifty percent of the spending limit. A publicly funded candidate who has only primary opposition is restricted to sixty percent of the spending limit which would otherwise apply. 72 This limit recognizes the significant startup costs associated with a campaign but assures that a candidate with only primary opposition will not be entitled to the same funding as a candidate in the general election.

The Florida formula, tied to the vote totals for the 1982 general election, yields an expenditure limit of $2,016,425 for gubernatorial candidates and $672,141 for Cabinet candidates. 73 The vote totals for 1986 and, concomitantly, the spending limits for 1990, are expected to be higher due to several factors. First, there were no high interest statewide races in 1982. The power of incumbency yielded only weak competition for United States Senator Lawton Chiles, Governor Bob Graham and most Cabinet officers. 74 There was only a fifty-five percent voter turnout in 1982, a five percent drop from 1978. The 1986 elections stand in sharp contrast. The campaign for the United States Senate between incumbent Paula Hawkins, and Governor Graham was spirited. Both major parties had crowded primaries for governor, and for the first time in years every Cabinet office was contested in the general election. In addition, the casino gambling and lottery initiatives were on the state ballot.

With a vote total for governor and the Cabinet offices of three million, the 1990 spending limits would be $2,250,000 for gubernatorial candidates and $750,000 for Cabinet candidates. These limits would be lower than the anticipated expenditures of many 1986 candidates. Of course, these limits are intended to reduce cam-

72. Ch. 86-276, § 1, 1986 Fla. Laws 2030 (to be codified at Fla. Stat. § 106.34(2)).
73. Only two Cabinet offices were contested in the 1982 general election, secretary of state and commissioner of agriculture. The spending caps for these two offices in 1990, based on 1982 vote totals, would be $647,217 and $644,872, respectively. Statewide vote totals from the 1982 general election are as follows: governor—2,688,217; secretary of state—2,588,869; agriculture commissioner—2,579,487. A. Morris, FLORIDA HANDBOOK 532, 540, 545 (19th Biennial ed. 1983-1984).
74. Comptroller Gerald Lewis had strong primary opposition but was unopposed in the general election. Of the two Cabinet offices contested in the general election, the closest race was for secretary of state in which the incumbent George Firestone outspent his opponent four-to-one and outpolled him by 300,000 votes—1,459,084-to-1,129,785. Id. at 540.
75. The 1982 turnout was 2,688,000 of 4,865,000 registered voters. Id. at 532.
ELECTION FINANCING

Campaign spending. As the bills to cap campaign expenditures made their way through the legislative process, little attention was given to the gubernatorial spending limit except as it compared with the Cabinet limits. Representative Peter Dunbar,\(^7^6\) arguing that Cabinet officers are coequal members of Florida’s board of directors, and as such deserved to be treated equally for campaign purposes, offered an amendment in the House Ethics and Elections Committee to raise the Cabinet limit to seventy-five cents per vote, the same as the gubernatorial limit.\(^7^7\) The committee adopted the amendment after agreeing that if the amendment’s cost hurt the bill’s chances for passage, the House Appropriations Committee could amend or remove it from the bill.\(^7^8\) The provision would have had a $14.5 million fiscal impact, so the original language was restored in the Appropriations Committee.\(^7^9\)

The argument made on behalf of the Dunbar amendment is enticing but ignores historical spending levels for Cabinet offices. Without limits, only one Cabinet race has ever seen spending above the level set by the FECFA.\(^8^0\) Thus, history does not justify a spending limit of over $2 million for Cabinet candidates.

Conversely, the gubernatorial limit is below the spending levels of three out of four candidates in the 1978 and 1982 general elections.\(^8^1\) No one attempted to raise that level, and it generated little discussion. Three factors may have contributed to this. First, though Speaker Thompson did not comment publicly on the provisions of the bill, his support for the concept may have been perceived as support for its substantive provisions. Second, the measure was not to become effective until after the 1986 elections, the

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\(^7^6\). Repub., Crystal Beach.

\(^7^7\). Fla. H.R. Comm. on Ethics & Elect., tape recording of proceedings (Apr. 10, 1986) (on file with committee) (amendment 4 to PCB EE-1).

\(^7^8\). Id.

\(^7^9\). Fla. H.R., Comm. on Approp., tape recording of proceedings (Apr. 21, 1986) (on file with committee) (amendment 4 to HB 1194).

\(^8^0\). Spending in the 1982 Democratic primary for comptroller between incumbent Gerald Lewis and Rep. Ralph Haben, Dem., Palmetto, 1972-1982, exceeded the limits of the Act. Haben spent $701,368, and Lewis spent $1,029,872. (Lewis spent another $460,375 after the primary, though he was unopposed in the general election). Campaign Treasurer’s Report, 1982 (on file, Division of Elections). Otherwise the highest spenders on record were unopposed Treasurer Bill Gunter, who spent $509,156, and Att’y Gen. Jim Smith, who spent half of his $425,813 after he defeated his only primary opponent. Id. Gunter and Smith were expected to be candidates for governor in 1986, and much of their spending has been attributed to those aspirations.

turnout for which could set new spending limits. Third, even if the new limits were too low, the legislature would have four opportunities to address the issue before the 1990 elections.

3. Distribution of Funds

Unlike states which simultaneously passed campaign disclosure and public campaign financing laws, Florida already had a comprehensive campaign finance reporting system—chapter 106, Florida Statutes. Chapter 106 provides that a candidate may not collect or expend money in a campaign for public office unless a campaign treasurer has been appointed and a primary campaign depository designated.82 Once a treasurer has been appointed and a depository established, the candidate and treasurer are responsible for filing quarterly reports of campaign finance activity.83 After the last day of qualifying, reports are due three times before each primary election, and twice before the general election.84 A final report is due within ninety days after the termination of candidacy, whether by withdrawal, defeat, election, or other cause.85 Similar reporting requirements apply to political committees,86 committees of continuous existence,87 political parties,88 and any person making independent expenditures.89

The distribution of state funds under the FECFA is tied to the reports required under current law. Each report is to be reviewed by the Division of Elections to verify the amount of funds to be distributed.90 A candidate must initially request participation in the program at the time of qualifying, and the Division of Elections must certify that the candidate is eligible to receive funding.91 Once certified, a candidate is entitled to receive the initial disbursement of state matching funds according to the quarterly reports filed prior to qualifying.92

82. FLA. STAT. § 106.021 (1985).
83. Id. § 106.07.
84. Id.
85. Id. § 106.141.
86. Id. §§ 106.03, 07.
87. Id. § 106.04.
88. Id. § 106.29.
89. Id. § 106.071.
90. Ch. 86-276, § 1, 1986 Fla. Laws 2030 (to be codified at FLA. STAT. § 106.35(2)).
91. Id. (to be codified at FLA. STAT. § 106.35(1)). The Division of Elections is to adopt rules providing a procedure for appealing an adverse decision on certification.
92. Id. (to be codified at FLA. STAT. § 106.35(3)(a)). The initial disbursement is to occur within seven days after the close of qualifying, and subsequent disbursements within seven
Rapid distribution of the matching funds is necessary to encourage candidates to participate. The distribution schedule puts money in the candidate's hands on the twenty-fifth and eleventh days before an election or earlier if the candidate opts to have the funds distributed directly to his campaign account by electronic fund transfer.\textsuperscript{93} In order to facilitate verification and distribution, the Division of Elections may prescribe separate reporting forms for statewide candidates.\textsuperscript{94}

To prevent a candidate from receiving the maximum in state funds (which could be as much as one million dollars for gubernatorial candidates) without reaching the general election, and to prevent wasteful spending, the distribution schedule restricts the disbursement of state funds to candidates with both primary and general election opposition. For the first primary, up to fifteen percent of the spending limit will be available, and for the second primary, funding will be provided up to a cumulative total of twenty-five percent of the spending limit.\textsuperscript{95} This allows a candidate attempting to qualify for the maximum amount of state funds to receive as much as half the available state funds before the second primary, with the remaining half available for the general election. If a candidate also accepts nonmatchable contributions, the percentage of state money available for distribution during the primaries is actually higher in relation to total state funds disbursed. This restriction safeguards the Election Campaign Financing Trust Fund\textsuperscript{96} and also yields a formula for determining the maximum amount of state money necessary to fund the program.\textsuperscript{97}

\begin{align*}
\text{Based on days after the periodic reports required on the 32d and 18th days prior to the first and second primaries and on the 18th day prior to the general election.} & \text{Id.} \\
\text{93. Id. (to be codified at Fla. Stat. § 106.33).} & \text{Id. (to be codified at Fla. Stat. § 106.35(2)).} \\
\text{94. Id. (to be codified at Fla. Stat. § 106.35(3)(b)).} & \text{In monetary terms, based on the 1982 vote totals, a gubernatorial candidate would be entitled to $302,000 in state funding for the first primary, and another $202,000 for a total of $504,000, for the second primary. A Cabinet candidate could receive up to $100,800 for the first primary, and up to $168,000 for the second primary.} \\
\text{95. Ch. 86-276, § 1, 1986 Fla. Laws 2030 (to be codified at Fla. Stat. § 106.32).} & \text{The formula is derived from the following step-by-step analysis: (1) Only the two general election candidates can qualify for the maximum amount of matching state funds: 50% of the spending limit x 2 = SL. (2) Two candidates in each party can qualify for the second primary funding level of 25% of the spending limit, but since one in each party goes on to the general election and additional funding, this leaves only two candidates at the second pri-}
\end{align*}
that formula, estimated appropriations of $12 million over a four-year period would be necessary to fully fund the program.\textsuperscript{98} This assumes all candidates will accept only matchable contributions—an unlikely situation. A more realistic estimate of the appropriations necessary to satisfy candidate requests in 1990 would be $5 million to $6 million.

4. Funding

Florida and Indiana are now the only states not utilizing a checkoff on income tax forms as the principal funding mechanism for public financing programs.\textsuperscript{99} Florida, however, is unique in funding the program from general revenue funds.\textsuperscript{100} In those states which do not employ a surcharge or add-on provision, the tax monies voluntarily committed to campaign financing reduce the pool of general revenue dollars otherwise available. The distinction in Florida is that the legislature makes the funding decision, rather than individual citizens.

mary funding level: 2 \times 25\% \text{ of the spending limit} = .5 \text{ SL}. (3) All the other candidates (X-4) will be eliminated after the first primary, and will have been funded at this amount: (X-4)(15\% \text{ of the spending limit}) = ? (4) Any independent or minor party candidates who qualify for the general election are entitled to match and receive up to 50\% of the spending limit in state funds; this amount is in addition to the amount otherwise determined under the formula. \textit{See generally} ch. 86-276, 1986 Fla. Laws 2030 (to be codified at FLA. STAT. §§ 106.30-.36).

\textsuperscript{98} This funding requirement was reached by making the following assumptions: 10 candidates for governor, with at least 3 in each party, and requiring a second primary for each party; 6 candidates for each Cabinet office, 3 in each party, requiring a second primary in each party.

Another funding requirement analysis was made based on the number of declared candidates as of March 1, 1986: seven Republicans, six Democrats, and one independent for governor; two Democrats and one Republican for secretary of state; one Democrat and one Republican for treasurer; three Democrats and two Republicans for attorney general; five Republicans and five Democrats for commissioner of education; one Democrat each for comptroller and commissioner of agriculture. This yielded a need for $10.8 million.

\textsuperscript{99} Indiana funds its program from a portion of personalized license tag fees. IND. CODE § 9-7-5.5-1 to 10 (Supp. 1986).

\textsuperscript{100} Originally, Speaker Thompson contemplated a specific funding source other than general revenue, but then realized that targeting a source would probably generate additional opposition to the bill, and if the bill failed to pass, the targeted funding source could then be otherwise used. He also believes government—in particular, state government in Florida—ought to maintain as large a general revenue pool as possible, and let all the varying services of state government compete for their portion of it. Targeting would have contradicted this rule of thumb. "We stayed pretty pure with it by going this route. Let it compete! If the public, through its policymakers, thinks it's a worthwhile program, then it will continue." Interview with Speaker Thompson (June 17, 1986) (tape on file, Florida State University Law Review).
The FECFA requires the legislature to appropriate monies to the trust fund each year that a general election for the affected offices is held.\textsuperscript{101} Facing a potential fiscal impact of over $10 million in a general election year, the legislature has the option of easing the impact by appropriating smaller amounts more often, perhaps annually. In fact, the legislature appropriated $3 million to the trust fund for fiscal year 1986-87.\textsuperscript{102}

The FECFA provided two other secondary funding sources for the trust fund. Fines levied by the Elections Commission, which would otherwise be deposited into the General Revenue Fund, are to be deposited into the trust fund.\textsuperscript{103} Also, all surplus campaign funds, including nonpublic funds, of a candidate who has received public funding are to be returned for deposit into the trust fund.\textsuperscript{104} These sources are not expected to generate substantial amounts.

III. Future Considerations

The FECFA will require close monitoring of election campaigns. Moreover, several aspects of the legislation may need to be reviewed after the public financing system has been tried.

A. Independent Expenditures

When the United States Supreme Court ruled in \textit{Buckley v. Valeo}\textsuperscript{105} that candidates' expenditures could not be limited, some groups viewed the decision as an invitation to increase independent spending in presidential elections, despite the $1,000 limit placed on such spending by federal law.\textsuperscript{106} In \textit{Federal Elections Commission v. National Conservative Political Action Committee},\textsuperscript{107} the Supreme Court declared the $1,000 limitation unconstitutional, thus throwing open the doors to virtually unlimited independent spending in presidential elections. That decision has caused some advocates of public financing to reconsider their position.\textsuperscript{108}

\textsuperscript{101} Ch. 86-276, § 1, 1986 Fla. Laws 2030 (to be codified at FLA. STAT. § 106.32).
\textsuperscript{102} Ch. 86-167, § 1, 1986 Fla. Laws 1062 (line item 1634A).
\textsuperscript{103} Ch. 86-276, § 4, 1986 Fla. Laws 2030, 2032 (amending FLA. STAT. § 106.265(3),(4) (1985)).
\textsuperscript{104} Id. § 2, 1986 Fla. Laws 2030, 2032 (amending FLA. STAT. § 106.141(7) (1985)).
\textsuperscript{105} 424 U.S. 1 (1976); see supra note 21 and accompanying text.
\textsuperscript{106} 26 U.S.C §§ 9001, 9012(f) (1982).
\textsuperscript{107} 105 S. Ct. 1459 (1985).
\textsuperscript{108} See Moore & La Belle, supra note 8, at 879.
Among those reconsidering support for public financing is former Representative Tom Moore, who suggests focusing on the definition of "independent expenditure" and the question of who must assume the burden of proving lack of control or coordination or consultation with a candidate. Moore's approach is to shift the burden of proof in two instances to the person or committee making the alleged independent expenditure: when the person or committee has "actively campaigned" for a candidate, and when the person or committee has made a direct contribution to a candidate, which, when added to the amount of the independent expenditure, exceeds the direct contribution limit. Either situation would create a rebuttable presumption that the expenditure was not independent and require the contributor to prove independence. Senator Joe Gersten offered an amendment proposing this concept during consideration of Senate Bill 669 by the Senate Judiciary-Civil Committee. Although the amendment was adopted by the Senate Judiciary-Civil Committee, it was not added to House Bill 1194 nor contained in the FECFA as passed by the legislature.

Independent spending by PACs and individuals has become significant at the federal level, especially in presidential elections, where they can evade spending limits imposed on candidates accepting public funding. Although a similar situation could de-

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110. Moore & La Belle, supra note 8, at 884-90. The authors use the generic term "indirect expenditure" as opposed to the statutory term "independent expenditure," and define the former to include the latter. They lament that Florida law only regulates independent expenditures which by definition are "not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee." Fla. Stat. § 106.011(5) (1985). Further, there is a "perceived need for regulation and control of all indirect expenditures, especially coordinated ones." Moore & LaBelle, supra note 8, at 890 (footnote omitted).

The problem with this analysis is that it calls for the regulation of that which is illegal. Fla. Stat. § 106.021(3) (1985) prohibits any expenditure, except an independent expenditure, from being made "directly or indirectly . . . except through the duly appointed campaign treasurer of the candidate or political committee."

112. Fla. S. Comm. on Jud’y-Civ., tape recording of proceedings (May 1, 1986) (on file with committee) (amendment A to SB 669).
113. According to the Federal Elections Commission, independent spending in the 1984 presidential campaign was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Reagan</th>
<th>Mondale</th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>$15,830,043</td>
<td>$803,923</td>
</tr>
<tr>
<td>Against</td>
<td>343,835</td>
<td>445,240</td>
</tr>
</tbody>
</table>

velop at the state level, there is no evidence to indicate that independent spending is threatening the efficacy of state campaign financing programs. Although Florida has had no spending cap, the state limits the amount anyone may contribute to a candidate in a statewide election to $3,000 per election. Yet, in 1982 there were no reported independent expenditures on behalf of statewide candidates. Moore believes that the amendment on independent contributions is a critical provision for a public financing program. Although it is an area the legislature should watch closely, an amendment may not be as critical as he believes.

B. Funding Source

By using general revenue appropriations, the FECFA risks charges that it creates a mandatory tax to fund political campaigns. Of course, FECFA is no more mandatory than any other program funded from the discretionary pool of general revenue dollars. Though there are other funding alternatives only one was mentioned during debate—the removal of the sales tax exemption on advertising. Removing the sales tax exemption on advertising would generate almost $52 million annually. This is obviously much more than is needed to fund FECFA.

Under another measure enacted by the legislature in 1986, most of the sales tax exemptions will be repealed July 1, 1987, unless they are reinstated by the legislature. That process may yield additional sources for general revenue or the legislature could

117. Funds generated from the following sources would be:

<table>
<thead>
<tr>
<th>Source</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Newspapers</td>
<td>$16,500,000</td>
</tr>
<tr>
<td>Periodicals</td>
<td>2,200,000</td>
</tr>
<tr>
<td>Radio</td>
<td>8,100,000</td>
</tr>
<tr>
<td>Television</td>
<td>23,800,000</td>
</tr>
<tr>
<td>Other</td>
<td>1,200,000</td>
</tr>
<tr>
<td>Total</td>
<td>51,800,000</td>
</tr>
</tbody>
</table>

Fla. H.R. Comm. on Fin. & Tax., HB 1307 (1986) Staff Analysis (n.d.).
118. Although there was no serious effort to expand the program to include legislative and judicial races, there were suggestions that those races could be included in the future if public funding is successful. No estimates have been made of the cost of such an expansion, but it would certainly be less than the $200 million which the sales tax on advertising would generate over a four-year period.
119. Ch. 86-166, 1986 Fla. Laws 816.
earmark some of that revenue for the Election Campaign Financing Trust Fund. Ultimately, whether any specific source is earmarked will depend largely on how popular public financing proves with candidates and the public in 1990.

C. Spending Limits

Spending limits must be set at a level which will maintain an incentive for candidates to participate in public financing—high enough to allow a candidate to conduct a credible and effective campaign. The cost of campaigning probably will continue to increase; even with a cost of living adjustment as a feature of the FECFA, spending limits could fall to an unreasonable level. Without periodic adjustment, the spending limits could become so unrealistic that the FECFA would be ignored by candidates. To ensure the viability of the FECFA, the spending limits should be reviewed before each general election approaches.

IV. Conclusion

The FECFA was the Florida Legislature’s first real effort in over six years to address public financing of elections. It was premised on the perception that persons of average economic means, even with a reasonable amount of political support, cannot afford to run for statewide office. If this perception is accurate, only individuals of great personal wealth or those sponsored by large special interest contributors may attain the highest levels of state policymaking. This prospect would create doubt with the general public that the best interests of the state are being served.

The FECFA is a modest proposal, providing only partial funding of statewide campaigns, at the option of the candidate, with a limit on total campaign spending. It places Florida in the growing number of jurisdictions offering public funds to candidates for public office. Florida, however, is the only state using general revenue to fund the program. The FECFA attempts to offer enough incentive to be practical and popular but to provide enough controls to be prudent.

Senator Mann began his presentation to the Senate Judiciary-Civil Committee in support of the FECFA with a quote from Abraham Lincoln, "If destruction be our lot, it will surely come from

120. Ch. 86-276, § 1, 1986 Fla. Laws 2030 (to be codified at Fla. Stat. § 106.34(3)).
within."'' Another Republican, Senator Barry Goldwater, might agree. He was quoted as having characterized the current state of campaigning as "a crisis of liberty."''

Unlimited campaign spending eats at the heart of the democratic process. It feeds the growth of special interest groups created solely to channel money into political campaigns. It creates an impression that every candidate is bought and owned by the biggest givers. And it causes elected officials to devote more time to raising money than to their public duties.

The Florida Legislature has addressed this crisis; the success of the new legislation will be determined in future elections.

121. Fla. S. Comm. on Jud'y-Civ., tape recording of proceedings (May 1, 1986) (on file with committee).
122. U.S. Senate Hearings, supra note 3, at 49 (remarks of Fred Wertheimer).
123. Id. (quoting Sen. Goldwater).