



Brennan Center for Justice at NYU School of Law

Public Funding Systems Remain Constitutional in Light of Recent Supreme Court Decision in *Davis v. FEC*

What: On June 26, 2008, the Supreme Court struck down the so-called federal Millionaire's Amendment in the case of *Davis v. Federal Election Commission*, 554 U. S. ___, 2008 WL 2520527 (2008). Since that decision, some are using it to question the viability of voluntary systems for public funding of elections.

Legal analysis suggesting that the *Davis* decision invalidated public funding systems is wrong. In fact, triggered matching funds remain constitutional after the *Davis* decision.

The Court in *Davis* did not review the issue of public funding. Instead, in that case, the Court analyzed the constitutionality of the federal "Millionaire's Amendment," which relaxed contribution limits under certain conditions for only one candidate in a race. Importantly, the Court concluded that there was an "asymmetrical" burden on speech because, under that Amendment, candidates in the same election had to follow two different sets of rules on contributions (one set for the "Millionaire," and another, less restrictive, for the non-"Millionaire"). The Court also held that there was no compelling state interest in maintaining the Amendment, as its relaxation of limits on one candidate would not prevent corruption or the appearance of corruption.

Public funding is different and remains constitutional. In the case of voluntary public funding systems, participating candidates accept far more significant constraints than those on non-participating candidates as a condition of receiving public funds. For example, participants must collect qualifying contributions under strict limits and must agree to abide by spending limits. Even if participating candidates are provided with some increment of matching funds to maintain their viability in the face of high-spending opposition, this additional money, as in New Jersey and elsewhere, is capped at pre-determined levels in order to assure their reasonableness in light of the public fisc.

Public funding reduces corruption. Courts have repeatedly held, including the Supreme Court in the landmark case of *Buckley v. Valeo*, which directly reviewed the constitutionality of presidential public funding, that public funding serves compelling state interests, including reducing corruption or the appearance of corruption. The Court in *Davis* also cited to *Buckley* in reaffirming the permissibility of public financing:

In *Buckley*, we held that Congress "may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations" even though we found an independent limit on overall campaign expenditures to be unconstitutional. 424 U.S., at 57, n. 65; see *id.*, at 54–58.

In *Buckley*, the Supreme Court found that public funding systems serve many critical compelling interests in a vital democracy. The *Buckley* Court dismissed claims that the presidential public financing program violated the First Amendment: writing public funding was "**a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge discussion and participation in the electoral process, goals vital to a self-governing people.**"

And the Court noted that public funding systems **strengthen core First Amendment values:**

"[T]he central purpose of the Speech and Press Clauses was to assure a society in which "uninhibited, robust, and wide-open" public debate concerning matters of public interest would thrive, for only in such society can a healthy representative democracy flourish. Legislation to enhance these First Amendment values is the rule, not the exception."