

Fair Elections and Free Speech: A Response

MYTH: PUBLIC FINANCING OF ELECTIONS INFRINGES UPON THE FIRST AMENDMENT

Some critics of Public Financing of Elections argue that public financing of elections, by restricting contributions made to participating candidates, restricts the speech of citizens who support that candidate and would

normally “speak” through large monetary contributions to that candidate. They argue that the first amendment protects the right to free speech and that campaign contributions are one form of that speech.

REALITY: PUBLIC FINANCING OF ELECTIONS ENABLES EQUALITY OF SPEECH

The fundamental issue of this argument is that political contributions constitute speech. While it is true that donations are but one of many ways to demonstrate support for a candidate and “speak” for their cause, the disproportionate abilities of different people to contribute constitutes an inequality of the ability to speak. This inequality, we believe, inherently opposes the values laid out in the Fourteenth Amendment, which states that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

Public financing actually enriches political

speech and debate by allowing typically underrepresented constituent groups to have a say in the policies and outcomes in their government; it corrects for the inequality in ability to contribute, and it, therefore, corrects for the unequal ability to speak in the political forum.

This system allows people to use speak using their wealth if they wish to do so, but it also allows their less wealthy opponents to respond in kind.

THE COURT’S OPINION

The Supreme Court, in its 1976 decision *Buckley v. Valeo*, did uphold the assertion that political contributions constitute speech. However, it wrote that voluntary campaign finance reform measures do not, in fact, violate the First Amendment because candidates are not forced to participate. So, the majority opinion in that case stated that public financing of elections is entirely constitutional as long as the system is voluntary, which the Rhode Island Public Financing of Elections Act is.

Furthermore, the decision, which concerned the presidential partial-financing system, was “a congressional effort, not to abridge restrict, or censor speech, but rather to use public money to facilitate and enlarge public

discussion and participation in the electoral process, goals vital to a self-governing people.”¹

In *Daggett v. Commission on Governmental Ethics*, the First Circuit Appellate Court upheld the constitutionality of the Maine public financing system, arguing that “the public funding system in no way limits the quantity of speech one can engage in or the amount of money one can spend engaging political speech, nor does it threaten censure or penalty for such expenditures.”²

Notes:

¹ *Buckley v. Valeo*, 424 U.S. 1, 92–93 (1976).

² *Daggett v. Commission on Governmental Ethics and Election Practices*, 205 F.3d 445 (1st Cir 2005)

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