111TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 111–691
Part 1

FAIR ELECTIONS NOW ACT

DECEMBER 21, 2010.—Ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 6116]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 6116) to reform the financing of House elections, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

H.R. 6116, the Fair Elections Now Act ("FENA"), is a new and innovative approach to the problem of large donor and special interest money in American elections. It combines what works in our current campaign finance system—small donations made by individuals—with matching public funds to ensure competitive campaigns. No candidate would be forced to participate. However, in states which have similar models of financing, large bipartisan majorities of Democrats and Republicans in the state legislatures have participated in the system and endorsed the results.

Why should Congress address campaign financing now? The 2010 election cycle saw an explosion in the cost of financing Congressional campaigns. House candidates had to spend more to get their messages heard and had to invest even more time trying to raise enough money to compete, and the problem keeps getting worse. In every election during this decade, candidates for Congress have raised more money from big donors and political committees and less money from small individual donors giving $200

or less. Voters and candidates suffer from this pay-to-play system. With the average cost of winning a House seat ballooning to roughly $1.5 million, well-qualified Americans from many walks of life, including firefighters, nurses, teachers, and others, are prevented from running for Congress because of the prohibitive costs of seeking office.

Public opinion polls confirm that our current fundraising system fosters the appearance of a corrupt political system, leading our nation's voters to believe that political contributions buy political favors, eroding trust in our national government: [1]

- A Greenberg-McKinnon national survey from February 2010 found that 79% believed that Members of Congress are "controlled" by those who fund their campaigns as opposed to just 18% who thought voters were in charge.[2]
- A compilation of 19 swing district Survey USA polls in March 2010 showed that voters across the board think that Members of Congress listen to donors more than to them by an 87% to 12% margin (and by a 90% to 8% margin amongst independents).[3]
- A Rasmussen national survey in August 2010 found that 70% of voters believe that "most Members of Congress [are] willing to sell their vote for either cash or a campaign contribution." [4]

How FENA Works

The goal of H.R. 6116 is to empower small donors by putting elections back in the hands of everyday Americans. FENA utilizes a voluntary system that would allow candidates for the U.S. House of Representatives to run for office on a blend of small donor contributions and limited public funds. The system is designed so that only candidates who can prove a broad base of grassroots support in their own home states will be able to qualify for public financing. Candidates qualify by raising a certain number of "qualifying contributions" of $100 or less from at least 1,500 donors in their home state, along with signed statements from those contributors saying that they support the candidates' receiving public funds. It is the voters in the candidates' own districts who can approve or reject the financing.

After qualifying, participating candidates receive a base grant of Fair Elections funds for the primary and general election, based on a formula that permits any participating candidate to be competitive. The total primary and general election grants would be equal to 80% of the average spending of a winning campaign over the past two cycles; 40% of that amount would be disbursed for the primary election, and 60% for the general election. Candidates can continue raising unlimited small contributions from individuals from their home state, which will be matched 4-to-1 with Fair Elections funds up to a cap of twice the initial grant amount. H.R. 6116 thus ensures that participating candidates are able to run competitive races even if they face a well-financed opponent. Candidates may also continue to raise small (less than $100) contributions from individuals beyond the cap.

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[1] Susan Liss and Monica Youn, "*Fair Elections—A Win for Democracy,*" BRENNAN CENTER FOR JUSTICE, 3 (Sept. 22, 2010).
[2] *Id.*
[3] *Id.*
[4] *Id.*

More than 90% of House Members in the 2008 elections would have received more in Fair Elections funds than what they raised privately, thus allowing Members to spend more time doing their jobs—meeting with their constituents and working on legislation—instead of spending time fundraising on taxpayers' time. H.R. 6116 will further improve transparency in our elections by requiring that all contributions to participating candidates be reported to, and audited by, the Federal Election Commission. Voters will be reassured that their Member of Congress is supported by them and their neighbors, and not by anonymous, secretive organizations misrepresenting their interests in a particular race.

Unlike some state public financing proposals, H.R. 6116 would not require participating candidates to limit their spending, provided that their campaigns spent no funds beyond the grant allocation amount and small dollar contributions (e.g., $100 or less). To further equalize the playing field between special interests and individuals, H.R. 6116 would also limit party coordinated expenditures, joint fundraising, and leadership political action committee (PAC) activities.

Funding for the program would be obtained from a variety of sources: portions from the sale of the spectrum auction, voluntary contributions, a portion of civil penalties levied by the Federal Election Commission for violations of the Federal Election Campaign Act of 1971, unspent and refunded deposits from participating candidates, investment returns, and any amounts appropriated. The Federal Communications Commission's (FCC) authority to conduct broadcast spectrum auctions is scheduled to expire in 2012, and if renewed, would likely prompt another round of spectrum auctions thereafter. Just 10% of the revenue generated through the auctions of unused broadcast spectrum (which has generated $19 billion in past auctions) would be enough to fully fund Fair Elections for at least four election cycles at no cost to the U.S. taxpayer. Moreover, investing in Fair Elections is a responsible investment in good and efficient government. The estimated cost for Fair Elections works out to approximately $4 per voting-age American per year, and is about 1125th of 1% of our federal budget.

The Need for Campaign Reform

A thriving democracy requires robust competition for public office. Yet in most congressional races, the first test to political office is winning the "money primary"—how much early cash can a candidate raise in order to prove to the public that he or she is a serious contender, giving enormous power to those wealthy donors who can afford to give a candidate enormous financial backing—often in hundreds of thousands of dollars. By contrast, H.R. 6116 encourages and enables a variety of highly qualified candidates to run, ensuring that voters have a meaningful choice in leadership and that having deep pockets is not a precondition to seeking public office.

H.R. 6116 promotes good government by strengthening public accountability. Candidates would be accountable to the voters of their districts, not large campaign contributors. An elected official whose campaign financing stems from a wide range of small donors feels less pressure to serve the interests of one powerful donor. By reducing the influence that large campaign contributions and special

interest lobbyists have, elected representatives will have the independence they need to evaluate policy and programs on merit and public interest alone.[5]

H.R. 6116 also promotes reform by encouraging political speech. Under the Fair Elections Program, qualified candidates have the funding they need to make their voices heard. Consistent with the First Amendment to the Constitution, H.R. 6116 respects the right of independent groups to enter the political debate, while encouraging a diverse platform of political speech. In addition, all participating candidates must commit to appearances in several public debates throughout the election cycle. Candidates who accept public financing thus must accept responsibility to communicate directly to the public.

Public financing of elections has worked with great success at the state level. In the three states with laws similar to H.R. 6116—Arizona, Connecticut, and Maine—voters and candidates alike give the system high marks.[6] The Election Commission in Maine surveys its participating candidates after every election cycle, and candidates overwhelmingly support the program—95 percent said they were satisfied with the 2008 Clean Elections Program, and 97 percent said they would definitely use the program again, citing their satisfaction with being able to concentrate on voters and issues without being obligated to others.[7] Opponents of H.R. 6116 have raised the specter that public financing of elections will give rise to "fringe" candidates outside the political mainstream, but in the various states who have public financing there is no evidence that this is occurring.

Existing state public financing programs are also viable, competitive and non-partisan. Hundreds of legislators, state-wide officials and judges have been elected over the past decades in states using a "fair elections" system. Candidates who have used state citizen-funded election programs now hold 85 percent of the seats in the Maine legislature, 78 percent of the seats in the Connecticut General Assembly, 54 percent of the seats in the Arizona State Legislature and 80 percent of statewide elected offices in Arizona.[8] Citizen-funded elections can and do work.

Our democracy is strengthened when Americans are actively engaged in our political system. Rather than rely on a tiny fraction of wealthy Americans to fund our elections, the Fair Elections Now Act encourages democracy through citizen-driven campaigns and rewards broad grassroots support by leveraging small donor contributions with matching funds.

The Fair Elections Now Act is Constitutional

For more than 30 years, federal appellate courts—including the Supreme Court—have consistently affirmed the constitutionality

[5] See *A Look at H.R. 1826 and the Public Financing of Congressional Campaigns: Hearing on H.R. 1826 Before the Comm. on House Admin.,* 111th Cong. 74 (2009) (statement of Hannah Pingree, Speaker, Maine House of Representatives) ("[Maine's] public financing system . . . allows us to pass bold and bi-partisan legislation that is demanded by the public, even when the industry forcefully objects.").

[6] See *A Look at H.R. 1826 and the Public Financing of Congressional Campaigns: Hearing on H.R. 1826 Before the Comm. on House Admin.,* 111th Cong. 74, 28–288 (2009) (statement of Arn Pearson, Vice President for Programs, Common Cause); *see also* Lake Research Partners Polling, September 2010 (finding that the Fair Elections Now Act is supported by 65% of voters in battleground congressional districts, with wide support across party lines).

[7] See *id* at 287.

[8] See *id* at 286.

of—and even praised—voluntary public financing programs for enhancing the exercise of First Amendment freedoms. The U.S. Supreme Court first affirmed the constitutionality of public financing programs in *Buckley v. Valeo,* noting that a public financing system aims, "not to abridge, restrict, or censor speech, but to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people."[9] The Supreme Court went on to note that:

> . . . the central purpose of the Speech and Press Clause 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 a society can a healthy representative democracy flourish. Legislation to enhance these First Amendment values is the rule, not the exception. Our statute books are replete with laws providing financial assistance to the exercise of free speech.[10]

In addition to encouraging "uninhibited, robust and wide-open public debate", the Fair Elections Now Act will also constitutionally protect the integrity of our democratic system. Instead of relying on the deep pockets of special interests to fund federal elections, the Act will enable congressional candidates to run viable campaigns that rely on small donations from individuals and grassroots support. A Fair Elections system would allow House candidates to spend more time in their districts, speaking directly with their constituents; making them more accountable and accessible to the voters they represent. In this way, the Fair Elections Now Act serves key anti-corruption interests, combating "both the actual corruption threatened by large financial contributions and the erosion of public confidence in the electoral process through the appearance of corruption." *McConnell v. FEC,* 540 U.S. 93, 136 (2003). The public is thus benefited in a very concrete manner: "[b]ecause the electoral process is the very 'means through which a free society democratically translates political speech into concrete government action,' . . . measures aimed at protecting the integrity of the process . . . tangibly benefit public participation in political debate." *McConnell,* 50 U.S. at 137.

Most recently, the Supreme Court has reaffirmed Buckley's support of voluntary public financing in elections for President. In 2008, the Court reaffirmed 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 specific expenditure limitations . . .'" *Davis v. FEC,* 128 S. Ct. 2759, 2772 (2008) (quoting *Buckley*).

At the state level, public financing is available for candidates in North Carolina, New Mexico, Florida, Minnesota, Connecticut, Maine and Arizona, and these programs have withstood legal challenge and have proved to be politically popular with voters. Several states with public financing programs have recently seen legal challenges to their programs regarding the constitutionality of "trigger fund" provisions in their laws.[11] Trigger funds are addi-

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

[10] *Buckley,* 424, at 93 n. 127. (internal citations omitted).

[11] *Scott v. Roberts,* 612 F.3d 1279 (11th Cir. 2010) (granting preliminary injunction halting Florida from disbursing trigger funds to publicly-funded candidate in Republican primary for

Continued

tional public grants made available to a publicly-funded candidate facing massive spending from either a privately-funded opponent or from an independent spender. While the constitutionality of trigger funds is presently before the Supreme Court,[12] the Fair Elections Now Act does not have any trigger fund provisions. Participating candidates retain the ability to receive small donor contributions throughout the election cycle, even above and beyond those that are matched by public funds.

Accordingly, H.R. 6116, the Fair Elections Now Act, is on sound constitutional footing. It furthers First Amendment values by directly enlarging public discussion, preventing corruption and its appearance, providing House candidates an alternative to special interest money, and encouraging candidates to reach out to a broader grassroots network of constituents.[13]

SECTION-BY-SECTION SUMMARY

Sec. 1—Short title & table of contents

The short title is the "Fair Elections Now Act" (FENA).

Sec. 2—Findings and declarations

TITLE I—FAIR ELECTIONS FINANCING OF HOUSE ELECTION CAMPAIGNS

SECTION 101: BENEFITS AND ELIGIBILITY REQUIREMENTS FOR HOUSE CANDIDATES

The Federal Election Campaign Act of 1971 (215 U.S.C. 431 et seq.) is amended by adding a new title at the end of the Act as described below:

Title V—Fair Elections Financing of House Election Campaigns

SUBTITLE A—BENEFITS

Section 501—Benefits for Participating Candidates

This bill provides qualified participating House candidates with payments consisting of allocations from the Fair Elections Fund to match certain small dollar contributions to be used only for authorized election expenditures.

Section 502—Allocations from the Fund

For primary elections, participants would receive a grant based on 40% of average spending by all winning House candidates based on the past two election cycles. An allocation of 25% would also be

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governor); *Green Party of Connecticut,* 616 F.3d 213 (2d Cir. 2010) (upholding majority of Connecticut's Clean Elections Program but striking down trigger funds provisions); *see also Davis v. FEC,* 128 S. Ct. 2759 (2008) (striking down the 'Millionaires' Amendment' to the Bipartisan Campaign Reform Act, a law that raised a candidate's contribution limits when a self-funded opponent went over a threshold amount); *Day v. Holahan,* 34 F.3d 1356, 1359 (8th Cir. 1994) (enjoining trigger provision of Minnesota's campaign finance statute).

[12] By contrast to the previously cited cases, the Ninth Circuit has upheld Arizona's voluntary public financing program, which contains a matching funds provision for participating candidates who were being outspent by nonparticipating opponents and independent expenders opposing them. *See McComish v. Bennett,* 605 F.3d 720 (9th Cir. 2010). The Supreme Court granted cert on November 29, 2010.

[13] See Susan Liss and Monica Youn, *"Fair Elections: A Constitutional Safe Harbor,"* Brennan Center (September 15, 2010).

available for a primary runoff election, general runoff election, uncontested election and/or recount.

For the general election, candidates would receive a grant based on 60% of average spending by all winning House candidates based on the past two election cycles. The base amount is equal to 80% of the national average disbursements of winning candidates for the office of Representative.

The Federal Election Commission ("Commission") is directed to make allocations to candidates within 48 hours after being certified as a Fair Elections candidate.

Section 503—Matching Payments for Certain Small Dollar Contributions

The Commission will pay participating candidates 400% of the qualified small dollar contributions from in-State residents. The Commission will match up to 200% of the grant amounts the candidate received. Matching funds will be disbursed within two business days after the Commission receives the report showing the list of the small dollar contributions to be matched.

Participating candidates must file reports of the receipt of qualified small dollar contributions which state: (1) the amount of the contributions, the name, address, and occupation of donors; or (2) such information as the Commission regulations may prescribe. Reports shall be filed: (1) once every month until 90 days before the date of the election; (2) once a week until 21 days before the election; and (3) once every day thereafter until the election.

The Commission must provide a written explanation for any denial of a payment under this section, and shall provide the applicant with the opportunity for review and reconsideration within five business days of such denial.

SUBTITLE B—ELIGIBILITY AND CERTIFICATION

Sec. 511—Eligibility

A candidate is eligible to be certified as a participating candidate if the candidate: (1) files a statement of intent to seek certification as a participating candidate with the Commission; (2) meets the 8 qualifying requirements of section 512; and (3) files an affidavit during the qualifying period, signed by the candidate and the treasurer of the candidate's campaign, affirming the candidate's eligibility.

A participating candidate must comply with the State law for qualifying to be on the ballot for the primary or general election, and must fulfill the qualifying requirements to participate in the program within the Fair Elections qualifying period.

The "Fair Elections qualifying period" refers to the 120-day period which begins on the date the candidate files a statement of intent under section 511(a)(1). This period may not continue after 60 days before the date of the primary election, or the date prescribed by State law as the last day to qualify for a position on the general election ballot in states without a primary election.

Sec. 512—Qualifying Requirements

In order to qualify, a candidate must receive a small dollar contribution from 1,500 individuals resident in the State, or 0.25% of

the voting age population of the State, whichever is less. The minimum total amount of small dollar contributions must be $50,000, and must be obtained in the 180 day qualifying period.

Qualifying contributions shall be accompanied by a signed statement containing the contributor's name, in-State address and an oath declaring that the contributor understands the purpose of the contribution is to support the candidate's ability to qualify for Fair Elections financing. This statement must confirm the contribution is being made in the donor's name, from the donor's account, the donor has made the contribution willingly, and has not received anything of value in return. The Commission shall establish procedures for auditing and verifying contributions. No person may be paid a commission on a per qualifying contribution basis for collecting qualifying contributions.

Sec. 513—Certification

The Commission will verify qualifying contributions and notify the candidate of certification status within 5 days of filing the required reports. Candidates certified as participants with respect to the first election of the election cycle, shall be deemed by the Commission to be certified as a participating candidate with respect to all subsequent elections of the election cycle.

Certification may be withdrawn by the Commission if a candidate fails to qualify to appear on the ballot at any time after the date of certification, or otherwise fails to comply with regulatory requirements prescribed by the Commission.

If certification is revoked by the Commission, candidates are required to repay the amount of the benefits they received, plus interest, back to the Fund.

SUBTITLE C—REQUIREMENTS FOR CANDIDATES CERTIFIED AS PARTICIPATING CANDIDATES

Sec. 521—Contribution, Expenditure, and Fundraising Requirements

Certified participating candidates shall accept no contributions from any source other than the qualifying contributions described in section 512, qualified small dollar contributions described in section 503, allocations under section 502, and payments under section 503. Unlimited spending and fundraising from small dollar contributions remains permissible throughout the entire cycle.

A political committee of a participating candidate may accept contributions other than qualifying contributions from any person if the aggregate amount of the contributions from such person for any election during the election cycle does not exceed $100 and no portion of such contributions is disbursed in connection with the campaign of the participating candidate.

Except where provided, certified participating candidates shall make no expenditures from any other amounts than the qualifying contributions described previously in section 521.

No expenditures shall be made from personal funds or the funds of any immediate family member of the candidate (other than funds received through qualified small dollar contributions and qualifying contributions).

A candidate who has accepted unqualified contributions is not in violation if the contribution is returned to the contributor, submitted to the Commission for deposit in the Fair Elections Fund, or spent permissibly.

Candidates that have made prohibited expenditures prior to the date the candidate files a statement of intent are not in violation if the expenditures are less than 20% of the amount of the initial allocation to a candidate.

Unexpended contributions received by the candidate, or the authorized committee of the candidate, may be retained only if the candidate places the funds in escrow and refrains from raising additional funds for that account during the election cycle in which a candidate is a participating candidate.

Contributions received and expenditures made by the candidate prior to the effective date of this title shall not constitute a violation. Payments made by a political party in coordination with a participating candidate shall not be treated as contributions to or as expenditures made by the participating candidate.

Sec. 522—Debate Requirement

Certified candidates must participate in at least one public debate before the primary election with other participating candidates and other willing candidates from the same party seeking the same nomination. For the general election, certified candidates must participate in two public debates with other participating candidates and other willing candidates seeking the same office.

Sec. 523—Remitting Unspent Funds After Election

Within 60 days of the last election the participating candidates are involved in, candidates shall return the balance of the funds in the campaign account, or the sum of the allocations they received from the grants and matching funds, whichever is less.

If there are outstanding bills that need to be paid after the 60-day deadline, the candidate can temporarily retain that amount to pay the remaining bills, but must return to the Commission any remaining balance within 120 days of the election.

SUBTITLE D—ADMINISTRATIVE PROVISIONS

Sec. 531—Fair Elections Fund

The "Fair Elections Fund" shall consist of six funding sources: Appropriated amounts; voluntary contributions; transfers from payment of civil penalties imposed for violations of the Federal Campaign Act of 1971; proceeds from recovered spectrum auctions; deposits made into the Fund under section 521(a)(3), section 523, and section 534; and investment returns from interest and proceeds from the sale or redemption of any obligations held by the Fund.

Sec. 532—Fair Elections Oversight Board

The "Fair Elections Oversight Board" shall be established within the Federal Election Commission.

The Board will be made up of five members appointed by the President. Two will be appointed after consultation with the Majority Leader of the House of Representatives, two will be appointed after consultation with the Minority Leader of the House of Rep-

resentatives, and one will be appointed with the recommendation of the already appointed four Board members.

Members of the Board must be appointed no later than 60 days after the enactment of this Act for a five year term. If there is a vacancy on the Board, the position will be filled within 30 days, and the individual appointed will only serve the remainder of the unexpired five year term.

The Board will review the Fair Elections financing system and conduct a comprehensive review of the program to determine if adjustments should be made to the maximum dollar amount of qualified small dollar contributions, maximum and minimum dollar amounts for contributions, as well as the number and value of qualifying contributions a candidate is required to obtain to be certified as a participating candidate, and may adjust the number and dollar amount of the qualifying contributions and qualified small dollar contributions.

The Board may hold hearings, take testimony, and receive such evidence it deems advisable to carry out this Act. Three members of the Board shall constitute a quorum for voting purposes, but a quorum is not required for members to meet and hold hearings.

By March 30, 2011, and every two years thereafter, the Board shall submit to the Committee on House Administration of the U.S. House of Representatives, a report documenting, evaluating, and making recommendations relating to administrative implementation and enforcement of the provisions of this title.

Sec. 533—Administration by Commission

The Commission shall prescribe regulations to carry out the purposes of this title, including regulations for verifying valid contributions, monitoring and enforcing limits on qualified small dollar contributions, enforcing the limits on personal funds, and monitoring the use of allocations from the Fair Elections Fund.

Sec. 534—Violations and Penalties

The Commission shall assess civil penalties against candidates that violate contribution, expenditure, and fundraising requirements that are not more than three times the amount of the contribution or expenditure. If the Commission determines a benefit was improperly used, or a candidate violated the dates for remission of funds, the candidate will be notified and shall pay the amount of the benefits used plus interest.

Sec. 535—Election Cycle Defined

The term 'election cycle' refers to the period beginning on the day after the date of the most recent general election, or if the general election resulted in a runoff election, the date of the runoff election and ending on the date of the next general election.

SECTION 102—TRANSFER OF PORTION OF CIVIL MONEY PENALTIES INTO FAIR ELECTIONS FUND

Any penalties levied against participants in the Fair Elections Now Act shall be transferred to the Fair Elections Fund in an amount equal to 50 percent of such payment.

SECTION 103—PROHIBITING USE OF CONTRIBUTIONS BY PARTICIPATING CANDIDATES FOR PURPOSES OTHER THAN CAMPAIGN FOR ELECTION

A certified participating candidate cannot spend any contribution accepted under title V for any unauthorized expenditures in connection with the candidate's campaign for office.

SECTION 104—PROHIBITION ON JOINT FUNDRAISING COMMITTEES

No authorized committee of a candidate may establish a joint fundraising committee with a political committee other than an authorized committee of a candidate.

SECTION 105—LIMITATION ON COORDINATED EXPENDITURES BY POLITICAL PARTY COMMITTEES WITH PARTICIPATING CANDIDATES

Certified candidates are permitted to coordinate party expenditures as long as the allocations do not exceed 10% of the allocation for the general election.

SECTION 106—DEPOSIT OF PROCEEDS FROM RECOVERED SPECTRUM AUCTIONS

The Communications Act of 1934 is amended by depositing 90% of the proceeds from spectrum auctions into the existing fund and 10% into the Fair Elections Fund.

TITLE II—RESPONSIBILITIES OF THE FEDERAL ELECTION COMMISSION

SECTION 201—PETITION FOR CERTIORARI

Expands Commission's authority to initiate, defend, or appeal proceedings before the Supreme Court on certiorari.

SECTION 202—FILING BY ALL CANDIDATES WITH COMMISSION

All designations, statements, and reports to be filed under this Act shall be filed with the Commission.

SECTION 203—ELECTRONIC FILING OF FEC REPORTS

Participating candidates are required to maintain and file designations, statements, and reports in electronic form accessible by computers.

TITLE III—MISCELLANEOUS PROVISIONS

SECTION 301—SEVERABILITY

If any provision of this Act or amendments in this Act is held to be unconstitutional, the remainder of this Act and provisions shall not be affected by the holding.

SECTION 302—EFFECTIVE DATE

Except as otherwise provided, this Act shall take effect on January 1, 2011.

COMMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On March 31, 2009, Rep. Larson of Connecticut and numerous cosponsors introduced H.R. 1826, the Fair Elections Now Act, which was referred to the Committee on House Administration, with an additional referral to the Committee on Energy and Commerce. The bill was the subject of a full House Administration Committee hearing on July 30, 2009.

HEARINGS

On July 30, 2009, the Committee on House Administration held a hearing entitled, "A Look at H.R. 1826 and the Public Financing of Congressional Campaigns." The following Members were present at the hearing: Chairman Robert A. Brady, Representative Zoe Lofgren, Representative Michael Capuano, Representative Susan Davis, Representative Artur Davis, Ranking Minority Member Daniel E. Lungren, and Representative Gregg Harper.

Witnesses

1. The Honorable John Larson—U.S. Representative (CT–1)
2. The Honorable Chellie Pingree—U.S. Representative (ME–1)
3. The Honorable Walter Jones—U.S. Representative (NC–3)
4. Ms. Hannah Pingree—Speaker of the Maine House of Representatives
5. Mr. Jeffrey Garfield—Executive Director & General Counsel, Connecticut State Elections Enforcement
6. Mr. Bradley Smith—Professor of Law, Capital University School of Law
7. Mr. John Samples—Director, Center for Representative Government, CATO Institute
8. Mr. Arn Pearson—Vice President for Programs, Common Cause

MARKUP

In preparation for a Committee markup, H.R. 6116, a modified version of H.R. 1826, was introduced on September 14, 2010, by Rep. Larson, with Reps. Capuano, Cooper, Doyle, Edwards of Maryland, Heinrich, Holt, Jones, Nadler, Pingree, Platts, and Polis as original cosponsors, which was referred to the Committee on House Administration, with an additional referral to the Committee on Energy and Commerce.

On September 23, 2010, the Committee on House Administration met to mark up H.R. 6116. During the markup, the Committee rejected, by a vote of 2–6, a Lungren amendment which would have deprived the Fair Elections Fund of revenues in any fiscal year in which there was a Federal budget deficit, or in any fiscal year in which the total amount of all Fair Elections Fund payments exceeded the estimated Federal budget surplus for such fiscal year,

by requiring that all Fund amounts be deposited in the general fund of the Treasury and used for deficit reduction. The Committee then ordered H.R. 6116 reported favorably to the House, without amendment, by voice vote, a quorum being present.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each recorded vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report.

The Committee conducted one roll call vote during consideration of H.R. 6116. It considered and rejected an amendment offered by Rep. Lungren which would have deprived the Fund of revenues in any fiscal year in which there was a Federal budget deficit, or in any fiscal year in which the total amount of all Fair Elections Fund payments exceeded the estimated Federal budget surplus for such fiscal year, by requiring that all Fund amounts be deposited in the general fund of the Treasury and used for deficit reduction. The amendment was not agreed to by a record vote of 2 ayes to 6 noes.

Member	Ayes	Noes	Present
Rep. Lofgren	—	X	—
Rep. Capuano	—	X	—
Rep. Gonzalez	—	X	—
Rep. Davis (CA)	—	X	—
Rep. Davis (AL)	—	X	—
Rep. Lungren	X	—	—
Rep. McCarthy	—	—	—
Rep. Harper	X	—	—
Rep. Brady	—	X	—
TOTAL	2	6	—

CONSTITUTIONAL AUTHORITY

Clause 3(d)(1) of House rule XIII requires each committee report on a public bill or joint resolution to include a statement citing the specific constitutional powers granted to Congress on which the Committee relies to enact the measure under consideration. The Committee states that Article I, section 4, clause 1 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Clause 3(c)(3) of House rule XIII requires the report of a committee on a measure which has been approved by the committee to include a cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act, if timely submitted. The Committee requested, but the Director did not submit, an estimate.

FEDERAL MANDATES

Section 423 of the CBA requires a committee report on any public bill or joint resolution that includes a federal mandate to include

specific information about such mandates. The Committee states that H.R. 6116 includes no federal mandates.

PREEMPTION CLARIFICATION

Section 423 of the CBA requires a committee report on any public bill or joint resolution to include a committee statement on the extent to which the measure is intended to preempt state or local law. The Committee states that H.R. 6116 is not intended to preempt any state or local law.

OVERSIGHT FINDINGS

Clause 3(c)(1) of rule XIII requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of House rule X. The oversight findings are contained in the descriptive portions of the report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Clause 3(c)(4) of House rule XIII requires committee reports to include a statement of general performance goals and objectives. H.R. 6116 will enhance the transparency and integrity of the Federal election process. Members of Congress would find their ability to focus on their job performance improved due to the reduced dependence on seeking campaign contributions from large donors.

CONGRESSIONAL EARMARKS

Clause 9 of House rule XXI requires committee reports on public bills and resolutions to contain an identification of congressional "earmarks," limited tax benefits, limited tariff benefits, and the names of requesting Members. The bill contains no such items.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL ELECTION CAMPAIGN ACT OF 1971

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TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

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ORGANIZATION OF POLITICAL COMMITTEES

SEC. 302. (a) * * *

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(e)(1) * * *

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(6) No authorized committee of a candidate may establish a joint fundraising committee with a political committee other than an authorized committee of a candidate.

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[(g)(1) Designations, statements, and reports required to be filed under this Act by a candidate for the office of Senator, by the principal campaign committee of such candidate, and by the Republican and Democratic Senatorial Campaign Committees shall be filed with the Secretary of the Senate, who shall receive such designations, statements, and reports, as custodian for the Commission.

[(2) The Secretary of the Senate shall forward a copy of any designation, statement, or report filed with the Secretary under this subsection to the Commission as soon as possible (but no later than 2 working days) after receiving such designation, statement, or report.

[(3) All designations, statements, and reports required to be filed under this Act, except designations, statements, and reports filed in accordance with paragraph (1), shall be filed with the Commission.

[(4) The Secretary of the Senate shall make the designations, statements, and reports received under this subsection available for public inspection and copying in the same manner as the Commission under section 311(a)(4), and shall preserve such designations, statements, and reports in the same manner as the Commission under section 311(a)(5).]

(g) FILING WITH THE COMMISSION.—All designations, statements, and reports required to be filed under this Act shall be filed with the Commission.

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REPORTS

SEC. 304. (a)(1) * * *

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(11)(A) The Commission shall promulgate a regulation under which a person required to file a designation, statement, or report [under this Act—

[(i) is required to maintain and file a designation, statement, or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission; and

[(ii) may maintain and file a designation, statement, or report in electronic form or an alternative form if not required to do so under the regulation promulgated under clause (i).] *under this Act shall be required to maintain and file such designation, statement, or report in electronic form accessible by computers.*

(B) The Commission shall make a designation, statement, report, or notification that is filed with the Commission under this Act available for inspection by the public in the offices of the Commission and accessible to the public on the Internet not later than [48 hours (or not later than 24 hours in the case of a designation,

statement, report, or notification filed electronically)] *24 hours* after receipt by the Commission.

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[(D) As used in this paragraph, the term "report" means, with respect to the Commission, a report, designation, or statement required by this Act to be filed with the Commission.]

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POWERS OF THE COMMISSION

SEC. 307. (a) The Commission has the power—

(1) * * *

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(6) to initiate (through civil actions for injunctive, declaratory, or other appropriate relief), defend (in the case of any civil action brought under section 309(a)(8) of this Act) or appeal *(including a proceeding before the Supreme Court on certiorari)* any civil action in the name of the Commission to enforce the provisions of this Act and chapter 95 and chapter 96 of the Internal Revenue Code of 1954, through its general counsel;

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ENFORCEMENT

SEC. 309. (a)(1) * * *

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(13) Upon receipt in the General Fund of the Treasury of any payment attributable to a civil money penalty imposed under this subsection, there shall be transferred to the Fair Elections Fund established under section 531 an amount equal to 50 percent of the amount of such payment.

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SEC. 313. USE OF CONTRIBUTED AMOUNTS FOR CERTAIN PURPOSES.

(a) * * *

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(d) RESTRICTIONS ON PERMITTED USES OF FUNDS BY CANDIDATES RECEIVING FAIR ELECTIONS FINANCING.—Notwithstanding paragraphs (2), (3), or (4) of subsection (a), if a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress is certified as a participating candidate under title V with respect to the election, any contribution which the candidate is permitted to accept under such title may be used only for authorized expenditures in connection with the candidate's campaign for such office.

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LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

SEC. 315. (a) * * *

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(d)(1) * * *

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(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress who is certified as a participating candidate under title V, the lesser of—

(i) 10 percent of the allocation that the participating candidate is eligible to receive for the general election under section 502(a); or

(ii) the amount which would (but for this subparagraph) apply with respect to such candidate under subparagraph (B);

[(A)**]** *(B)* in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative *who is not certified as a participating candidate under title V*, the greater of—

(i) * * *

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[(B)**]** *(C)* in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State *who is not certified as a participating candidate under title V*, $10,000.

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TITLE V—FAIR ELECTIONS FINANCING OF HOUSE ELECTION CAMPAIGNS

Subtitle A—Benefits

SEC. 501. BENEFITS FOR PARTICIPATING CANDIDATES.

(a) IN GENERAL.—If a candidate for election to the office of Representative in, or Delegate or Resident Commissioner to, the Congress is a participating candidate under this title with respect to an election for such office, the candidate shall be entitled to payments under this title, to be used only for authorized expenditures in connection with the election.

(b) TYPES OF PAYMENTS.—The payments to which a participating candidate is entitled under this section consist of—

(1) allocations from the Fair Elections Fund, as provided in section 502; and

(2) payments from the Fair Elections Fund to match certain small dollar contributions, as provided in section 503.

SEC. 502. ALLOCATIONS FROM THE FUND.

(a) AMOUNT OF ALLOCATIONS.—

(1) PRIMARY ELECTION ALLOCATION; INITIAL ALLOCATION.—Except as provided in paragraph (6), the Commission shall make

an allocation from the Fair Elections Fund established under section 531 to a candidate who is certified as a participating candidate with respect to a primary election in an amount equal to 40 percent of the base amount.

(2) PRIMARY RUNOFF ELECTION ALLOCATION.—The Commission shall make an allocation from the Fund to a candidate who is certified as a participating candidate with respect to a primary runoff election in an amount equal to 25 percent of the amount the participating candidate was eligible to receive under this section for the primary election.

(3) GENERAL ELECTION ALLOCATION.—Except as provided in paragraph (6), the Commission shall make an allocation from the Fund to a candidate who is certified as a participating candidate with respect to a general election in an amount equal to 60 percent of the base amount.

(4) GENERAL RUNOFF ELECTION ALLOCATION.—The Commission shall make an allocation from the Fund to a candidate who is certified as a participating candidate with respect to a general runoff election in an amount equal to 25 percent of the base amount.

(5) RECOUNT ALLOCATION.—If the appropriate State or local election official conducts a recount of an election, the Commission shall make an allocation from the Fund to a participating candidate for expenses relating to the recount in an amount equal to 25 percent of the amount the participating candidate was eligible to receive under this section for the election involved.

(6) UNCONTESTED ELECTIONS.—

(A) IN GENERAL.—In the case of a primary or general election that is an uncontested election, the Commission shall make an allocation from the Fund to a participating candidate for such election in an amount equal to 25 percent of the allocation for that election with respect to such candidate.

(B) UNCONTESTED ELECTION DEFINED.—For purposes of this subparagraph, an election is uncontested if not more than 1 candidate has campaign funds (including payments from the Fund) in an amount equal to or greater than 10 percent of the allocation a candidate would be entitled to receive under this section for that election (determined without regard to this paragraph).

(b) BASE AMOUNT.—The base amount is an amount equal to 80 percent of the national average disbursements of the cycle by winning candidates for the office of Representative in, or Delegate or Resident Commissioner to, the Congress in the last 2 election cycles.

(c) TIMING; METHOD OF PAYMENT.—

(1) TIMING.—The Commission shall make the allocations required under subsection (a) to a participating candidate—

(A) in the case of amounts provided under subsection (a)(1), not later than 48 hours after the date on which such candidate is certified as a participating candidate under section 513;

(B) in the case of a general election, not later than 48 hours after—

(i) the date of the certification of the results of the primary election or the primary runoff election; or

(ii) in any case in which there is no primary election, the date the candidate qualifies to be placed on the ballot;

(C) in the case of a primary runoff election or a general runoff election, not later than 48 hours after the certification of the results of the primary election or the general election, as the case may be; and

(D) in the case of a recount allocation, not later than 48 hours after the appropriate State or local election official orders the holding of the recount.

(2) METHOD OF PAYMENT.—The Commission shall distribute funds available to participating candidates under this section through the use of an electronic funds exchange or a debit card.

SEC. 503. MATCHING PAYMENTS FOR CERTAIN SMALL DOLLAR CONTRIBUTIONS.

(a) IN GENERAL.—The Commission shall pay to each participating candidate an amount equal to 400 percent of the amount of qualified small dollar contributions received by the candidate from individuals who are residents of the State in which such participating candidate is seeking election.

(b) LIMITATION.—The maximum payment under this section shall be the greater of—

(1) 200 percent of the allocation under paragraphs (1) through (4) of section 502(a) for that election with respect to such candidate; or

(2) the percentage of the allocation determined by the Commission under section 532(c)(2).

(c) TIME OF PAYMENT.—The Commission shall make payments under this section not later than 2 business days after the receipt of a report made under subsection (d).

(d) REPORTS.—

(1) IN GENERAL.—Each participating candidate shall file reports of receipts of qualified small dollar contributions at such times and in such manner as the Commission may by regulations prescribe.

(2) CONTENTS OF REPORTS.—Each report under this subsection shall disclose—

(A) the amount of each qualified small dollar contribution received by the candidate;

(B) the amount of each qualified small dollar contribution received by the candidate from a resident of the State in which the candidate is seeking election; and

(C) the name, address, and occupation of each individual who made a qualified small dollar contribution to the candidate.

(3) FREQUENCY OF REPORTS.—Reports under this subsection shall be made no more frequently than—

(A) once every month until the date that is 90 days before the date of the election;

(B) once every week after the period described in subparagraph (A) and until the date that is 21 days before the election; and

(C) once every day after the period described in subparagraph (B).

(4) LIMITATION ON REGULATIONS.—The Commission may not prescribe any regulations with respect to reporting under this subsection with respect to any election after the date that is 180 days before the date of such election.

(e) APPEALS.—The Commission shall provide a written explanation with respect to any denial of any payment under this section and shall provide for the opportunity for review and reconsideration within 5 business days of such denial.

(f) QUALIFIED SMALL DOLLAR CONTRIBUTION DEFINED.—The term "qualified small dollar contribution" means, with respect to a participating candidate, any contribution (or a series of contributions)—

(1) which is not a qualifying contribution (or does not include a qualifying contribution);

(2) which is made by an individual who is not prohibited from making a contribution under this Act; and

(3) the aggregate amount of which does not exceed the greater of—

(A) $100 per election; or

(B) the amount determined by the Fair Elections Oversight Board under section 532(c)(2).

Subtitle B—Eligibility and Certification

SEC. 511. ELIGIBILITY.

(a) IN GENERAL.—A candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress is eligible to be certified as a participating candidate under this title with respect to an election if the candidate meets the following requirements:

(1) During the election cycle for the office involved, the candidate files with the Commission a statement of intent to seek certification as a participating candidate.

(2) The candidate meets the qualifying requirements of section 512.

(3) Not later than the last day of the Fair Elections qualifying period, the candidate files with the Commission an affidavit signed by the candidate and the treasurer of the candidate's principal campaign committee declaring that the candidate—

(A) has complied and, if certified, will comply with the contribution and expenditure requirements of section 521;

(B) if certified, will comply with the debate requirements of section 522;

(C) if certified, will run only as a participating candidate for all elections for the office that such candidate is seeking during the election cycle; and

(D) has either qualified or will take steps to qualify under State law to be on the ballot.

(b) GENERAL ELECTION.—Notwithstanding subsection (a), a candidate shall not be eligible to receive an allocation from the Fund for a general election or a general runoff election unless the candidate's party nominated the candidate to be placed on the ballot

for the general election or the candidate is otherwise qualified to be on the ballot under State law.

(c) FAIR ELECTIONS QUALIFYING PERIOD DEFINED.—The term "Fair Elections qualifying period" means, with respect to any candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, the 120-day period (during the election cycle for such office) which begins on the date on which the candidate files a statement of intent under section 511(a)(1), except that such period may not continue after the date that is 60 days before—

(1) the date of the primary election; or

(2) in the case of a State that does not hold a primary election, the date prescribed by State law as the last day to qualify for a position on the general election ballot.

SEC. 512. QUALIFYING REQUIREMENTS.

(a) RECEIPT OF QUALIFYING CONTRIBUTIONS.—A candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress meets the requirement of this section if, during the Fair Elections qualifying period described in section 511(c), the candidate obtains—

(1) a single qualifying contribution from a number of individuals equal to or greater than the lesser of—

(A) .25% of the voting age population of the State involved (as reported in the most recent decennial census), or

(B) 1,500; and

(2) a total dollar amount of qualifying contributions equal to or greater than $50,000.

(b) REQUIREMENTS RELATING TO RECEIPT OF QUALIFYING CONTRIBUTION.—Each qualifying contribution—

(1) may be made by means of a personal check, money order, debit card, credit card, or electronic payment account;

(2) shall be accompanied by a signed statement containing—

(A) the contributor's name and the contributor's address in the State in which the primary residence of the contributor is located;

(B) an oath declaring that the contributor—

(i) understands that the purpose of the qualifying contribution is to show support for the candidate so that the candidate may qualify for Fair Elections financing;

(ii) is making the contribution in his or her own name and from his or her own funds;

(iii) has made the contribution willingly; and

(iv) has not received any thing of value in return for the contribution; and

(3) shall be acknowledged by a receipt that is sent to the contributor with a copy kept by the candidate for the Commission and a copy kept by the candidate for the election authorities in the State with respect to which the candidate is seeking election.

(c) VERIFICATION OF QUALIFYING CONTRIBUTIONS.—The Commission shall establish procedures for the auditing and verification of qualifying contributions to ensure that such contributions meet the requirements of this section.

(d) PROHIBITING PAYMENT ON COMMISSION BASIS OF INDIVIDUALS COLLECTING QUALIFYING CONTRIBUTIONS.—No person may be paid

a commission on a per qualifying contribution basis for collecting qualifying contributions.

(e) QUALIFYING CONTRIBUTION DEFINED.—In this section, the term "qualifying contribution" means, with respect to a candidate, a contribution that—

(1) is in an amount that is—

(A) not less than the greater of $5 or the amount determined by the Commission under section 532(c)(2), and

(B) not more than the greater of $100 or the amount determined by the Commission under section 532(c)(2);

(2) is made by an individual—

(A) who has a primary residence in the State in which such Candidate is seeking election, and

(B) who is not otherwise prohibited from making a contribution under this Act;

(3) is made during the Fair Elections qualifying period described in section 511(c); and

(4) meets the requirements of subsection (b).

SEC. 513. CERTIFICATION.

(a) DEADLINE AND NOTIFICATION.—

(1) IN GENERAL.—Not later than 5 days after a candidate files an affidavit under section 511(a)(3), the Commission shall—

(A) determine whether or not the candidate meets the requirements for certification as a participating candidate;

(B) if the Commission determines that the candidate meets such requirements, certify the candidate as a participating candidate; and

(C) notify the candidate of the Commission's determination.

(2) DEEMED CERTIFICATION FOR ALL ELECTIONS IN ELECTION CYCLE.—If the Commission certifies a candidate as a participating candidate with respect to the first election of the election cycle involved, the Commissioner shall be deemed to have certified the candidate as a participating candidate with respect to all subsequent elections of the election cycle.

(b) REVOCATION OF CERTIFICATION.—

(1) IN GENERAL.—The Commission may revoke a certification under subsection (a) if—

(A) a candidate fails to qualify to appear on the ballot at any time after the date of certification (other than a candidate certified as a participating candidate with respect to a primary election who fails to qualify to appear on the ballot for a subsequent election in that election cycle); or

(B) a candidate otherwise fails to comply with the requirements of this title, including any regulatory requirements prescribed by the Commission.

(2) REPAYMENT OF BENEFITS.—If certification is revoked under paragraph (1), the candidate shall repay to the Fair Elections Fund established under section 531 an amount equal to the value of benefits received under this title with respect to the election cycle involved plus interest (at a rate determined by the Commission) on any such amount received.

(c) PARTICIPATING CANDIDATE DEFINED.—In this title, a "participating candidate" means a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress who is

certified under this section as eligible to receive benefits under this title.

Subtitle C—Requirements for Candidates Certified as Participating Candidates

SEC. 521. CONTRIBUTION, EXPENDITURE, AND FUNDRAISING REQUIREMENTS.

(a) CONTRIBUTIONS.—

(1) PERMITTED SOURCES OF CONTRIBUTIONS.—Except as provided in subsection (c), a candidate who is certified as a participating candidate with respect to an election shall, with respect to all elections occurring during the election cycle for the office involved, accept no contributions from any source (including an unexpended contribution received by the candidate with respect to a previous election or a contribution made by any political committee or multicandidate committee) other than—

(A) qualifying contributions described in section 512;

(B) qualified small dollar contributions described in section 503;

(C) allocations under section 502; and

(D) payments under section 503.

(2) CONTRIBUTIONS FOR LEADERSHIP AND RELATED PACS.—A political committee of a participating candidate which is not an authorized committee of such candidate may accept contributions other than contributions described in paragraph (1) from any person if—

(A) the aggregate amount of the contributions from such person for any election during the election cycle does not exceed $100; and

(B) no portion of such contributions is disbursed in connection with the campaign of the participating candidate.

(b) EXPENDITURES.—

(1) PERMITTED SOURCES FOR EXPENDITURES.—Except as provided in subsection (c), a candidate who is certified as a participating candidate with respect to an election shall, with respect to all elections occurring during the election cycle for the office involved—

(A) make no expenditures from any amounts other than—

(i) qualifying contributions described in section 512;

(ii) qualified small dollar contributions described in section 503;

(iii) allocations under section 502; and

(iv) payments under section 503; and

(B) make no expenditures from personal funds or the funds of any immediate family member of the candidate (other than funds received through qualified small dollar contributions and qualifying contributions).

(2) IMMEDIATE FAMILY MEMBER DEFINED.—In paragraph (1)(B), the term "immediate family" means, with respect to a candidate—

(A) the candidate's spouse;

(B) a child, stepchild, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate or the candidate's spouse; and

(C) the spouse of any person described in subparagraph (B).

(c) EXCEPTIONS.—

(1) EXCEPTION FOR CONTRIBUTIONS RECEIVED PRIOR TO FILING OF STATEMENT OF INTENT.—A candidate who has accepted contributions that are not qualified small dollar contributions, qualifying contributions, or contributions described in paragraph (a)(2) prior to the date the candidate files a statement of intent under section 511(a)(1) is not in violation of subsection (a), but only if all such contributions are—

(A) returned to the contributor;

(B) submitted to the Commission for deposit in the Fair Elections Fund established under section 531; or

(C) spent in accordance with paragraph (2).

(2) EXCEPTION FOR EXPENDITURES MADE PRIOR TO FILING OF STATEMENT OF INTENT.—If a candidate has made expenditures prior to the date the candidate files a statement of intent under section 511(a)(1) that the candidate is prohibited from making under subsection (b), the candidate is not in violation of such subsection if the aggregate amount of the prohibited expenditures is less than 20 percent of the amount of an initial allocation to a candidate under section 502(a)(1).

(3) EXCEPTION FOR CAMPAIGN SURPLUSES FROM A PREVIOUS ELECTION.—Notwithstanding paragraph (1), unexpended contributions received by the candidate or the an authorized committee of the candidate with respect to a previous election may be retained, but only if the candidate places the funds in escrow and refrains from raising additional funds for or spending funds from that account during the election cycle in which a candidate is a participating candidate.

(4) EXCEPTION FOR CONTRIBUTIONS RECEIVED BEFORE THE EFFECTIVE DATE OF THIS TITLE.—Contributions received and expenditures made by the candidate or an authorized committee of the candidate prior to the effective date of this title shall not constitute a violation of subsection (a) or (b). Unexpended contributions shall be treated the same as campaign surpluses under paragraph (3), and expenditures made shall count against the limit in paragraph (2).

(d) SPECIAL RULE FOR COORDINATED PARTY EXPENDITURES.—For purposes of this section, a payment made by a political party in coordination with a participating candidate shall not be treated as a contribution to or as an expenditure made by the participating candidate.

SEC. 522. DEBATE REQUIREMENT.

A candidate who is certified as a participating candidate with respect to an election shall, during the election cycle for the office involved, participate in at least—

(1) 1 public debate before the primary election with other participating candidates and other willing candidates from the same party and seeking the same nomination as such candidate; and

(2) 2 public debates before the general election with other participating candidates and other willing candidates seeking the same office as such candidate.

SEC. 523. REMITTING UNSPENT FUNDS AFTER ELECTION.

(a) IN GENERAL.—Not later than the date that is 60 days after the last election for which a candidate certified as a participating candidate qualifies to be on the ballot during the election cycle involved, such participating candidate shall remit to the Commission for deposit in the Fair Elections Fund established under section 531 an amount equal to the lesser of—

(1) the amount of money in the candidate's campaign account; or

(2) the sum of the allocations received by the candidate under section 502 and the payments received by the candidate under section 503.

(b) EXCEPTION FOR EXPENDITURES INCURRED BUT NOT PAID AS OF DATE OF REMITTANCE.—

(1) IN GENERAL.—Subject to subsection (a), a candidate may withhold from the amount required to be remitted under paragraph (1) of such subsection the amount of any authorized expenditures which were incurred in connection with the candidate's campaign but which remain unpaid as of the deadline applicable to the candidate under such subsection, except that any amount withheld pursuant to this paragraph shall be remitted to the Commission not later than 120 days after the date of the election to which such subsection applies.

(2) DOCUMENTATION REQUIRED.—A candidate may withhold an amount of an expenditure pursuant to paragraph (1) only if the candidate submits documentation of the expenditure and the amount to the Commission not later than the deadline applicable to the candidate under subsection (a).

Subtitle D—Administrative Provisions

SEC. 531. FAIR ELECTIONS FUND.

(a) ESTABLISHMENT.—There is established in the Treasury a fund to be known as the "Fair Elections Fund".

(b) AMOUNTS HELD BY FUND.—The Fund shall consist of the following amounts:

(1) APPROPRIATED AMOUNTS.—Amounts appropriated to the Fund, including trust fund amounts appropriated pursuant to applicable provisions of the Internal Revenue Code of 1986.

(2) VOLUNTARY CONTRIBUTIONS.—Voluntary contributions to the Fund.

(3) TRANSFERS RESULTING FROM PAYMENT OF CIVIL PENALTIES.—Amounts transferred into the Fund pursuant to section 309(a)(13).

(4) PROCEEDS FROM RECOVERED SPECTRUM AUCTIONS.—Amounts deposited pursuant to section 309(j)(8)(E)(ii)(II) of the Communications Act of 1934.

(5) OTHER DEPOSITS.—Amounts deposited into the Fund under—

(A) section 521(a)(3) (relating to exceptions to contribution requirements);

(B) section 523 (relating to remittance of allocations from the Fund);

(C) section 534 (relating to violations); and

(D) any other section of this Act.

(6) INVESTMENT RETURNS.—Interest on, and the proceeds from, the sale or redemption of, any obligations held by the Fund under subsection (c).

(c) INVESTMENT.—The Commission shall invest portions of the Fund in obligations of the United States in the same manner as provided under section 9602(b) of the Internal Revenue Code of 1986.

(d) USE OF FUND.—

(1) IN GENERAL.—The sums in the Fund shall be used to provide benefits to participating candidates as provided in subtitle A.

(2) INSUFFICIENT AMOUNTS.—Under regulations established by the Commission, rules similar to the rules of section 9006(c) of the Internal Revenue Code of 1986 shall apply.

SEC. 532. FAIR ELECTIONS OVERSIGHT BOARD.

(a) ESTABLISHMENT.—There is established within the Federal Election Commission an entity to be known as the "Fair Elections Oversight Board".

(b) STRUCTURE AND MEMBERSHIP.—

(1) IN GENERAL.—The Board shall be composed of 5 members appointed by the President, of whom—

(A) 2 shall be appointed after consultation with the Majority Leader of the House of Representatives;

(B) 2 shall be appointed after consultation with the Minority Leader of the House of Representatives; and

(C) 1 shall be appointed upon the recommendation of the members appointed under subparagraphs (A) and (B).

(2) QUALIFICATIONS.—

(A) IN GENERAL.—The members shall be individuals who are nonpartisan and, by reason of their education, experience, and attainments, exceptionally qualified to perform the duties of members of the Board.

(B) PROHIBITION.—No member of the Board may be—

(i) an employee of the Federal government;

(ii) a registered lobbyist or an individual who was a registered lobbyist at any time during the 2-year period preceding appointment to the Board; or

(iii) an officer or employee of a political party or political campaign.

(3) DATE.—Members of the Board shall be appointed not later than 60 days after the date of the enactment of this Act.

(4) TERMS.—A member of the Board shall be appointed for a term of 5 years.

(5) VACANCIES.—A vacancy on the Board shall be filled not later than 30 calendar days after the date on which the Board is given notice of the vacancy, in the same manner as the original appointment. The individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

(6) CHAIRPERSON.—The Board shall designate a Chairperson from among the members of the Board.

(c) DUTIES AND POWERS.—

(1) ADMINISTRATION.—The Board shall have such duties and powers as the Commission may prescribe, including the power to administer the provisions of this title.

(2) REVIEW OF FAIR ELECTIONS FINANCING.—

(A) IN GENERAL.—After each regularly scheduled general election for Federal office, the Board shall conduct a comprehensive review of the Fair Elections financing program under this title, including—

(i) the maximum dollar amount of qualified small dollar contributions under section 503(f);

(ii) the maximum and minimum dollar amounts for qualifying contributions under section 512(d);

(iii) the number and value of qualifying contributions a candidate is required to obtain under section 512(a) to be eligible for certification as a participating candidate;

(iv) the amount of allocations that candidates may receive under section 502;

(v) the maximum amount of payments a candidate may receive under section 503;

(vi) the overall satisfaction of participating candidates and the American public with the program; and

(vii) such other matters relating to financing of House of Representatives campaigns as the Board determines are appropriate.

(B) CRITERIA FOR REVIEW.—In conducting the review under subparagraph (A), the Board shall consider the following:

(i) QUALIFYING CONTRIBUTIONS AND QUALIFIED SMALL DOLLAR CONTRIBUTIONS.—The Board shall consider whether the number and dollar amount of qualifying contributions required and maximum dollar amount for such qualifying contributions and qualified small dollar contributions strikes a balance regarding the importance of voter involvement, the need to assure adequate incentives for participating, and fiscal responsibility, taking into consideration the number of primary and general election participating candidates, the electoral performance of those candidates, program cost, and any other information the Board determines is appropriate.

(ii) REVIEW OF PROGRAM BENEFITS.—The Board shall consider whether the totality of the amount of funds allowed to be raised by participating candidates (including through qualifying contributions and small dollar contributions), allocations under section 502, and payments under section 503 are sufficient for voters in each State to learn about the candidates to cast an informed vote, taking into account the historic amount of spending by winning candidates, media costs, primary election dates, and any other information the Board determines is appropriate.

(C) ADJUSTMENT OF AMOUNTS.—

(i) IN GENERAL.—Based on the review conducted under subparagraph (A), the Board shall provide for the adjustments of the following amounts:

(I) the maximum dollar amount of qualified small dollar contributions under section 503(f);

(II) the maximum and minimum dollar amounts for qualifying contributions under section 512(d);

(III) the number and value of qualifying contributions a candidate is required to obtain under section 512(a) to be eligible for certification as a participating candidate;

(IV) the base amount for candidates under section 502(b); and

(V) the maximum amount of matching contributions a candidate may receive under section 503(b).

(ii) REGULATIONS.—The Commission shall promulgate regulations providing for the adjustments made by the Board under clause (i).

(D) REPORT.—Not later than March 30 following any general election for Federal office, the Board shall submit a report to Congress on the review conducted under paragraph (1). Such report shall contain a detailed statement of the findings, conclusions, and recommendations of the Board based on such review.

(d) MEETINGS AND HEARINGS.—

(1) MEETINGS.—The Board may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board considers advisable to carry out the purposes of this Act.

(2) QUORUM.—Three members of the Board shall constitute a quorum for purposes of voting, but a quorum is not required for members to meet and hold hearings.

(e) REPORTS.—Not later than March 30, 2011, and every 2 years thereafter, the Board shall submit to the Committee on House Administration of the House of Representatives a report documenting, evaluating, and making recommendations relating to the administrative implementation and enforcement of the provisions of this title.

(f) ADMINISTRATION.—

(1) COMPENSATION OF MEMBERS.—

(A) IN GENERAL.—Each member, other than the Chairperson, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(B) CHAIRPERSON.—The Chairperson shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay prescribed for level III of the Executive Schedule under section 5314 of title 5, United States Code.

(2) PERSONNEL.—

(A) DIRECTOR.—The Board shall have a staff headed by an Executive Director. The Executive Director shall be paid at a rate equivalent to a rate established for the Senior Executive Service under section 5382 of title 5, United States Code.

(B) STAFF APPOINTMENT.—With the approval of the Chairperson, the Executive Director may appoint such personnel as the Executive Director and the Board determines to be appropriate.

(C) EXPERTS AND CONSULTANTS.—With the approval of the Chairperson, the Executive Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(D) DETAIL OF GOVERNMENT EMPLOYEES.—Upon the request of the Chairperson, the head of any Federal agency may detail, without reimbursement, any of the personnel of such agency to the Board to assist in carrying out the duties of the Board. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(E) OTHER RESOURCES.—The Board shall have reasonable access to materials, resources, statistical data, and other information from the Library of Congress and other agencies of the executive and legislative branches of the Federal Government. The Chairperson of the Board shall make requests for such access in writing when necessary.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out the purposes of this subtitle.

SEC. 533. ADMINISTRATION BY COMMISSION.

The Commission shall prescribe regulations to carry out the purposes of this title, including regulations—

(1) to establish procedures for—

(A) verifying the amount of valid qualifying contributions with respect to a candidate;

(B) effectively and efficiently monitoring and enforcing the limits on the raising of qualified small dollar contributions;

(C) effectively and efficiently monitoring and enforcing the limits on the use of personal funds by participating candidates; and

(D) monitoring the use of allocations from the Fair Elections Fund established under section 531 and matching contributions under this title through audits of not fewer than 1/3 of all participating candidates or other mechanisms; and

(2) regarding the conduct of debates in a manner consistent with the best practices of States that provide public financing for elections.

SEC. 534. VIOLATIONS AND PENALTIES.

(a) CIVIL PENALTY FOR VIOLATION OF CONTRIBUTION AND EXPENDITURE REQUIREMENTS.—If a candidate who has been certified as a participating candidate accepts a contribution or makes an expenditure that is prohibited under section 521, the Commission shall assess a civil penalty against the candidate in an amount that is not more than 3 times the amount of the contribution or expenditure. Any amounts collected under this subsection shall be deposited into the Fair Elections Fund established under section 531.

(b) REPAYMENT FOR IMPROPER USE OF FAIR ELECTIONS FUND.—

(1) IN GENERAL.—If the Commission determines that any benefit made available to a participating candidate was not used as provided for in this title or that a participating candidate has violated any of the dates for remission of funds contained in this title, the Commission shall so notify the candidate and the candidate shall pay to the Fund an amount equal to—

(A) the amount of benefits so used or not remitted, as appropriate; and

(B) interest on any such amounts (at a rate determined by the Commission).

(2) OTHER ACTION NOT PRECLUDED.—Any action by the Commission in accordance with this subsection shall not preclude enforcement proceedings by the Commission in accordance with section 309(a), including a referral by the Commission to the Attorney General in the case of an apparent knowing and willful violation of this title.

SEC. 535. ELECTION CYCLE DEFINED.

In this title, the term "election cycle" means, with respect to an election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, the period beginning on the day after the date of the most recent general election for that office (or, if the general election resulted in a runoff election, the date of the runoff election) and ending on the date of the next general election for that office (or, if the general election resulted in a runoff election, the date of the runoff election).

COMMUNICATIONS ACT OF 1934

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TITLE III—SPECIAL PROVISIONS RELATING TO RADIO

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PART I—GENERAL PROVISIONS

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SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.

(a) * * *

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(j) USE OF COMPETITIVE BIDDING.—

(1) * * *

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(8) TREATMENT OF REVENUES.—

(A) * * *

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(E) TRANSFER OF RECEIPTS.—

(i) * * *

(ii) PROCEEDS FOR FUNDS.—Notwithstanding subparagraph (A), the proceeds (including deposits and

upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum shall be [deposited in] *deposited as follows:*

(I) 90 percent of such proceeds deposited in the Digital Television Transition and Public Safety Fund.

(II) 10 percent of such proceeds deposited in the Fair Elections Fund established under section 531 of the Federal Election Campaign Act of 1971.

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MINORITY VIEWS

At a time when taxpayers want less spending by the government, it seems inconceivable that the majority would seek to advance a bill to spend some $1 billion per year to subsidize politicians' campaigns. Yet that is precisely what is happening. H.R. 6116 would take money from taxpayers to spare people running for Congress from the burden of having to seek voluntary donations. This is wrong as a matter of fiscal responsibility, as a matter of policy, and because of the consequences it would have for our political system.

According to available estimates, H.R. 6116 would cost approximately $1 billion per year. Because this money would have to be borrowed, the actual cost to taxpayers of current and future generations would be even higher. Proponents of the bill seek to mislead the public by claiming that its costs would not fall on taxpayers. For example, in a press release dated September 23, 2010, Common Cause stated that H.R. 6116 "would not cost taxpayers a dime." An editorial memo by Fair Elections Now dated September 16, 2010 claims that H.R. 6116 "is not funded with taxpayer dollars."

Claims that this bill will not cost taxpayers any money are false and clearly intended to hide the truth. The bill includes six funding sources in section 101 (proposed new section 531 of the Federal Election Campaign Act). Three of them are trivial: investment returns, "other deposits," and claiming 50 percent of civil fines imposed by the Federal Election Commission (these fines have averaged just over $2 million a year over the last 15 years, so they would contribute $1 million of the $1 billion annual cost of the bill).

The fourth source is voluntary contributions. The American people already have rejected the idea of contributing to taxpayer-financed elections; only 7.3 percent gave voluntarily to the presidential financing system last year, down from a peak of 28.7 percent in 1980. The fifth source of funding is the allocation of 10% of the proceeds of a spectrum auction. However, the auction identified in the bill has already taken place and all proceeds already have been distributed. This provision, therefore is worth exactly zero. Even if the provision referred to future auctions, it is false to claim that funding the bill from spectrum proceeds means the bill comes at no cost to taxpayers. The money diverted to finance political campaigns would otherwise have been used for other government programs which now must be paid for with additional taxpayer funds. Increasing the overall cost of government with a program that tries to hide the cost is a clear attempt to conceal important facts from taxpayers.

The final source of funds, and the only one that would provide meaningful funds to support H.R. 6116's programs, is the first one listed in the bill: appropriated funds. That is, funds allocated by Congress and paid for with tax revenues and borrowed funds. The

bill's supporters want to conceal it, but the simple truth is that is how this bill would be paid for.

One of the most common points raised during debate on this bill was that Members of Congress find raising money unpleasant and difficult. Even opponents of H.R. 6116 agreed on this point. However, the fact that Members do not like raising money is not a reason to require taxpayers to relieve them of the burden. When an individual chooses to run for elective office, he or she takes on the responsibilities of that choice—including finding supporters who will contribute their time and money to promote the person's candidacy.

When taxpayer financing of political campaigns was put directly to the people of California for a decision via Proposition 15, they rejected it by over 750,000 votes, a margin of 15 percent. Supporters of the bill cite the examples of the Maine and Arizona government financing systems, but a recent report by the Government Accountability Office found there was no evidence those systems met any of their stated goals.

This bill, then, would cost taxpayers $1 billion per year for something they have shown clearly they do not want. And if state-level experiments are any guide it also would not accomplish anything other than making the funding for elections subject to the whims of Congress. The reasons to oppose the bill do not stop there.

A system of taxpayer financing for elections tempts candidates who could not otherwise garner financial support to run for office to rely on the taxpayers to underwrite their campaigns. The result can be candidates who are well outside the mainstream of political discussion using taxpayer money to espouse their fringe views. For example, Lyndon LaRouche ran for president on several occasions using money from the presidential government financing system, and even once conducted a campaign while imprisoned. In a time of deep budget deficits and ongoing pressure to reduce federal spending, we cannot and should not require American taxpayers to finance candidates whose views prevent them from finding support on their own.

Finally, the bill is likely to have the consequence—unintended, we hope—of encouraging candidates in both parties to be more and more inflammatory in conducting their campaigns. The bill is clearly designed to drive candidates toward seeking large numbers of small contributions, and supporters describe this as a desirable goal. Yet a recent news report described the effect of widespread small-donor fundraising on the Internet in terms best summed up by one consultant quoted in the story: it "is designed to reward outrageous and uncivil behavior" ("Bomb-throwers bring in big bucks," *Politico,* Oct. 21, 2010). For all of these reasons, we strongly oppose H.R. 6116.

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