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DIVISION I, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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MARK ELSTER and SARAH PYNCHON,

*Plaintiffs/Appellants,*

vs.

THE CITY OF SEATTLE,

*Defendant/Respondent.*

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**AMICUS CURIAE BRIEF OF CAMPAIGN LEGAL CENTER,  
COMMON CAUSE, AND THE BRENNAN CENTER FOR  
JUSTICE IN SUPPORT OF RESPONDENT**

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## INTRODUCTION

In this case, two individual taxpayers (“Elster”) are challenging Seattle’s Democracy Voucher Program (“Program”)—which was approved overwhelmingly by City voters in 2015 as part of Initiative 122 (“I-122”)—on constitutional grounds indistinguishable from those rejected by the U.S. Supreme Court when it upheld the presidential public financing system in *Buckley v. Valeo*, 424 U.S. 1 (1976). Even though public campaign funding programs may support messages “to which some taxpayers object,” *id.* at 91-92, that alone, contrary to the claims here, does not create a cognizable burden on the taxpayers’ First Amendment rights.

The trial court adhered to this precedent and dismissed Elster’s challenge, finding that the Program was viewpoint-neutral and that any First Amendment burden it created was outweighed by the City’s interest in achieving “goals vital to a self-governing people,” *id.* at 93, such as “increas[ing] [ ] voter participation.” Slip op. 7.

While *amici* agree with this result, we believe the trial court’s review of the Program, and its application of heightened scrutiny, was more stringent than the relevant case law requires. The court’s assumption that the Program imposes *any* material First Amendment burden on taxpayers is difficult to square with *Buckley*’s finding that public financing “further[s], not abridges, pertinent First Amendment values.” 424 U.S. at 93. As *Buckley*

made clear, such programs *enhance* speech by “facilitat[ing] and enlarg[ing] public discussion and participation in the electoral process.” *Id.* at 92-93.

But even if a viewpoint-neutral public financing program is properly subject to heightened First Amendment review, such programs have been routinely upheld on grounds that they reduce corruption, boost citizen participation in elections, and reduce the burdens of private fundraising. As this brief will outline, the advancement of these important interests by public financing is not merely theoretical, but rather evidenced by a robust body of academic literature examining the operation of these programs.

Elster’s First Amendment claims run counter to decades of Supreme Court case law, the sound policy judgment of almost two-thirds of Seattle voters, and the weight of empirical research. They should be rejected here.

#### **STATEMENT OF THE CASE**

*Amici* concur with and adopt the City’s statement of the case.

#### **STATEMENT OF INTEREST OF *AMICI CURIAE***

Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy, and has advocated for the adoption of public financing programs throughout its near-50 year history. The Campaign Legal Center is a nonpartisan organization that works to promote the development and implementation of strong campaign

finance laws, and has participated in numerous cases to defend those laws in court. The Brennan Center for Justice at NYU School of Law<sup>1</sup> is a nonpartisan think tank and public interest law institute that seeks to improve systems of democracy and justice, including through vigorous advocacy for, and litigation in defense of, innovative public financing programs.

As described in the Motion for Leave to File *Amicus Curiae* Brief, which *amici* here incorporate by reference, all three *amici* groups also participated or consulted in the development of I-122. As organizations that represent the public interest in litigation and policymaking concerning public financing laws, *amici* have a unique perspective, and substantial expertise with the issues raised in this case.

## ARGUMENT

### **I. The First Amendment Does Not Bar Seattle from Using City Tax Revenues to Extend Non-Discriminatory Campaign Subsidies.**

Elster contends that Seattle's Program violates his First Amendment rights by compelling him "to *sponsor* the personal campaign contributions of those with opposing political views." Reply at 7 (emphasis added). But the Program in no way attributes any particular campaign message to any particular taxpayer: vouchers are funded through a neutral, generally applicable property tax and allocated at the discretion of individual voters.

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<sup>1</sup> This brief does not purport to convey the position, if any, of the NYU School of Law.

According to Elster, however, the Program is “*directly* viewpoint-based by design because it allots public funds according to the partisan views of voucher recipients.” *Id.* at 10. Those arguments were already rejected in *Buckley*, and should be rejected here as well.

As *Buckley* made clear, the First Amendment is not offended by programs that provide taxpayer-funded subsidies to candidate campaigns based on neutral, non-discriminatory criteria, such as their level of support from voters. Such programs do not seek “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.” 424 U.S. at 92-93. Taxpayers could not raise a First Amendment issue simply by complaining that some of their money was being allocated by the presidential public financing system to support messages they disliked; after all, “every appropriation made by Congress uses public money in a manner to which some taxpayers object.” *Id.* at 92.

More recently, in *May v. McNally*, 55 P.3d 768 (Ariz. 2002) (en banc), the Arizona Supreme Court applied *Buckley* to uphold provisions of the state’s public financing law, which was funded in part through a mandatory 10% surcharge on civil and criminal fines. The court relied on *Buckley* for “the proposition that the public financing of political candidates, in and of itself, does not violate the First Amendment, even

though the funding may be used to further speech to which the contributor objects.” *Id.* at 771. Arizona’s law did not compel surcharge payers to associate with “any specific message, position, or viewpoint,” and thus was not “viewpoint driven.” *Id.* at 772.

The subsidies attached to democracy vouchers are likewise allocated on neutral terms and do not compel taxpayers to “sponsor” any specific viewpoint. Elster, however, claims that because the program is structured around vouchers assigned at the discretion of individual voters it necessarily “skews speech subsidies toward majoritarian preferences,” Opening Br. at 22, “on the dime of those who oppose that speech.” Reply at 8. But there is no constitutional requirement that a public financing program guarantee an “equal allotment of public funds,” Compl. ¶ 33, to all candidates.<sup>2</sup>

If there were such a requirement, it would invalidate the many public funding schemes in which the amount of funding received by participating candidates is based on the amount of eligible matching contributions they raise. New York City’s system, for instance, matches eligible contributions to participating candidates at a 6-to-1 rate. Under a matching-funds

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<sup>2</sup> *Buckley* rejected the argument that the federal program discriminated against non-major-party candidates because funding levels differed depending on whether a party was a “major,” “minor,” or “new” party. 424 U.S. at 87. The Court later summarily affirmed a decision upholding a Minnesota system in which a taxpayer could direct the state to allocate part of her tax burden to a specific party, which was challenged on the ground that it resulted in asymmetrical funding. *Bang v. Chase*, 442 F. Supp. 758, 766 (D. Minn. 1977), *aff’d sub nom. Bang v. Noreen*, 436 U.S. 941 (1978).

model—as under Seattle’s Program—participating candidates “who enjoy the most support” will receive more matching funds than less popular candidates. But no court has agreed that this structure unconstitutionally discriminates against minority viewpoints.

In any event, Elster’s complaint that the Program reinforces “majoritarian preferences” is based on the fallacy that the majority’s preferences are somehow static and immovable. But the whole point of Seattle’s system is to enable diverse candidates of all viewpoints to compete for vouchers and thereby finance their campaigns for office—and thus *any* candidate is potentially the “majority’s choice,” whether in terms of political fundraising or electoral outcome. This is precisely the sort of effort to “*enlarge* public discussion and participation in the electoral process” that the Supreme Court endorsed in *Buckley*. 424 U.S. at 92-93 (emphasis added); *see also Stromberg v. California*, 283 U.S. 359, 369 (1931) (“The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people . . . , an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.”). It is intended to foster, not dampen, the robust debate that can alter majoritarian preferences and introduce new ideas. Taxpayers, including Elster, hardly suffer injury from this surge in First Amendment activity—they benefit from it.

Elster’s attempt to relitigate *Buckley* cannot succeed. If Seattle’s system is not viewpoint-neutral, neither was the presidential public financing system upheld in *Buckley*. As the presidential system “furthers” “First Amendment values,” 424 U.S. at 93, so too does Seattle’s.

**II. Public Campaign Financing Programs Like Seattle’s Strengthen Democracy and Advance First Amendment Values.**

The compelling interests advanced by public financing are well established, both in jurisprudence and in scholarship. Therefore, even *if* Seattle’s Program were found to impose a cognizable burden on Elster’s First Amendment rights—which it does not—any possible burden is easily outweighed by the important interests advanced by the Program.

**A. Longstanding precedent confirms that public campaign financing promotes vital constitutional and policy interests.**

First and perhaps foremost, public financing prevents the corruption endemic to privately financed elections and “eliminate[s] the improper influence of large private contributions.” *Buckley*, 424 U.S. at 96. *Buckley* also found that public financing “facilitat[es] and enlarg[es] public discussion and participation in the electoral process,” *id.* at 92-93, and relieves participants “from the rigors of soliciting private contributions,” *id.* at 96. The Supreme Court had no trouble concluding that these interests were “sufficiently important” to support public financing. *Id.* at 95.

A few years later, a three-judge federal district court revisited *Buckley*, rejecting a claim that the presidential system violated the First Amendment by conditioning eligibility for public funds upon candidates' compliance with spending limits. *Repub. Nat'l Comm. v. FEC*, 487 F. Supp. 280, 283-84 (S.D.N.Y.) (“*RNC*”), *aff'd*, 445 U.S. 955 (1980). Any burden that the system may impose, the court emphasized, was outweighed by the countervailing benefits identified in *Buckley*. *Id.* at 285. And it stressed that the program served powerful anticorruption interests: a publicly financed candidate “is beholden unto no person and, if elected, should feel no post-election obligation toward any contributor of the type that might have existed as a result of a privately financed campaign.” *Id.* at 284. The Supreme Court summarily affirmed. 445 U.S. 955.

In the decades since *Buckley* and *RNC*, courts have continued to approve public financing. Numerous decisions have found that public financing lessens the sway of large contributions, particularly from lobbyists and special interests. *See, e.g., Green Party of Conn. v. Garfield*, 616 F.3d 213, 230 (2d Cir. 2010) (finding Connecticut program worked to “eliminate improper influence on elected officials”); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996) (recognizing public financing reduces the “possibility for corruption that may arise from large

campaign contributions”); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 39 (1st Cir. 1993) (noting public financing “tend[s] to combat corruption”).

Public financing has also been found to strengthen democratic self-government by, for instance, “facilitat[ing] communication by candidates with the electorate.” *DiStefano*, 4 F.3d at 39; *see also, e.g., Rosenstiel*, 101 F.3d at 1553 (noting that public financing diminishes the “time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues”).

Courts have also found that public financing increases electoral competitiveness and reduces the advantages of incumbency. For example, the Second Circuit upheld provisions of New York City’s system, which matches eligible contributions from city residents to participating candidates, but excludes contributions from individuals doing business with the city from the public funds match. *Ognibene v. Parkes*, 671 F.3d 174, 179-81 (2d Cir. 2011). The court noted that the system both “encourages small, individual contributions, and is consistent with [an] interest in discouraging entrenchment of incumbent candidates.” *Id.* at 193. Other decisions have highlighted similarly beneficial impacts on competitiveness. *See, e.g., Green Party*, 616 F.3d at 237; *Rosenstiel*, 101 F.3d at 1557.

In short, numerous courts have found that public financing, far from unlawfully burdening First Amendment rights, actually enhances the system of self-government that the First Amendment was meant to protect.

**B. Scholarly research demonstrates the salutary effects of public financing in Seattle and beyond.**

The government interests recognized by the courts are borne out in recent analyses of Seattle’s 2017 municipal elections, as well as in a large body of existing research evaluating other public financing programs. This literature has shown that public financing advances the important state interests that Seattle’s Program seeks to achieve: diminishing the potential for political corruption by lessening candidates’ reliance on large private contributions; fostering political engagement within the electorate; and enabling more people to seek public office, which in turn boosts electoral competitiveness. *See* Seattle Mun. Code (“SMC”) § 2.04.600(a) (declaring interest in “giving more people an opportunity to have their voices heard in our democracy” and “expand[ing] the pool of candidates for city offices [] to safeguard the people’s control of the elections process”).

*1. Reducing reliance on private donors*

A defining feature of many public finance programs, including Seattle’s, is candidates’ voluntary acceptance of expenditure ceilings and lower contribution limits in exchange for public funds. By design, these controls reduce the need for candidates to solicit large contributions from

private sources, diminishing both the opportunity for actual corruption and the appearance that elected officials are beholden to major contributors. Findings from the 2017 election illustrate that the Program has, in fact, curtailed the primacy of large contributions in Seattle elections while amplifying the significance of individual voters in the campaign process.

Prior to the Program’s introduction, a small number of big donors disproportionately funded Seattle campaigns. A recent study of the 2013 municipal election, the last election before Seattle voters approved I-122, found that “high-dollar donors” of \$500 or more accounted for nearly 40% of city council candidates’ total campaign funding during the 2013 election, despite comprising only 9% of the overall donor pool in council races.<sup>3</sup> Mayoral candidates relied even more on high-dollar donors in 2013, raising, on average, 55% of their campaign funds from that group.<sup>4</sup> The prominence of large donors in municipal campaigns—in which few citizens give *any* contributions—“exacerbat[es] concerns about the responsiveness of elected officials to the demands of high-dollar contributors.”<sup>5</sup>

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<sup>3</sup> Jennifer Heerwig & Brian McCabe, *High-Dollar Donors and Donor-Rich Neighborhoods: Representational Distortion in Financing a Municipal Election in Seattle*, *Urban Aff. Rev.* 1, 16, 23 (2017).

<sup>4</sup> *Id.* at 18.

<sup>5</sup> *Id.* at 7. Only 1.49% of Seattle’s voting-age population made a political contribution in the 2013 municipal elections. *Id.* at 11.

In 2017, candidates participating in the Program were far less dependent on large donors. As a condition of participation, they were subject to a \$250 limit on cash contributions from any donor, rather than the general \$500 limit.<sup>6</sup> In lieu of collecting high-dollar donations, candidates collectively raised 82% of their total campaign funds in contributions of \$199 or less. Moreover, voucher donors supplanted cash contributors as their primary source of funding.<sup>7</sup> Over the course of a single election, the Program markedly reduced the primacy of large contributions—validating the anti-corruption interests it was designed to serve.

Other jurisdictions experienced comparable effects. After Connecticut introduced public financing for statewide election campaigns in 2010, the prominence of small-dollar individual contributions increased dramatically in those races. In 2006, prior to the program’s enactment, successful statewide candidates raised only about 8% of their total funds in individual contributions under \$100; campaigns were mostly funded through large donations from non-individuals and special interests,

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<sup>6</sup> Seattle Ethics & Elections Comm’n (“SEEC”), *Democracy Voucher Program Biennial Report 2017*, at 18 (2018), [https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%202003\\_15\\_2018.pdf](https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%202003_15_2018.pdf).

<sup>7</sup> SEEC Chart of 2017 City Elections Contributors, sortable by size and type, <http://web6.seattle.gov/ethics/elections/charts.aspx?cycle=2017&n1=contributions&n2=size&n3=groupings&n4=allcategories&n5=allcandidates&n6=number#aChartTop> (last visited June 1, 2018).

including lobbyists and state contractors.<sup>8</sup> After the program took effect, every successful statewide candidate opted to participate. In accordance with the program's strictures, these candidates raised *all* of their campaign contributions from individuals in amounts between \$5 and \$100.<sup>9</sup>

Analysis of New York City's program similarly found that the city's implementation of multiple matching public funds in 2001 significantly increased both the number of small contributors, measured as individual donors of \$250 or less, and the proportional importance of small contributors to competitive city council candidates participating in the program.<sup>10</sup> These positive effects were consistent across challengers, incumbents, and open-seat candidates.

## *2. Diversifying and enlarging the donor pool*

In addition to curbing candidates' reliance on large private contributions, the Program also promoted political engagement among a larger and more demographically representative segment of Seattle's electorate. According to one analysis of Seattle election data, a total of 20,727 city residents returned vouchers last year, as local participation in

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<sup>8</sup> Conn. State Elections Enforcement Comm'n, *Citizens' Election Program 2010: A Novel System with Extraordinary Results* 8-12 (2011), [http://www.ct.gov/seec/lib/seec/publications/2010\\_citizens\\_election\\_program\\_report\\_final.pdf](http://www.ct.gov/seec/lib/seec/publications/2010_citizens_election_program_report_final.pdf).

<sup>9</sup> *Id.* at 8.

<sup>10</sup> See Michael J. Malbin *et al.*, *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11 *Election L.J.* 3, 9-10 (2012), [http://www.cfinst.org/pdf/state/NYC-as-a-Model\\_ELJ\\_As-Published\\_March2012.pdf](http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf).

Seattle’s campaign finance system reached a historic high.<sup>11</sup> Altogether, over 25,000 Seattle residents provided vouchers or cash contributions, or both, to city candidates in 2017—more than a **300%** increase in local donors compared to 2013, when 8,234 Seattleites made contributions.<sup>12</sup> The 2017 surge in donor participation was a citywide phenomenon, with residents of all seven council districts using the vouchers.<sup>13</sup>

Beyond increasing the absolute number of city residents who contributed, the Program helped to diversify Seattle’s donors. The University of Washington’s Center for Studies in Demography & Ecology (“CSDE”) found that voucher donors were more socioeconomically representative of Seattle’s electorate than cash contributors. City residents with an annual income of \$50,000 or less made up a larger percentage of the voucher-donor population (29.99%) compared to the pool of cash contributors (25.21%).<sup>14</sup> Voucher donors were also more likely than cash contributors to reside in low-income neighborhoods, and about 13% of them lived in Seattle’s poorest quintile of neighborhoods.<sup>15</sup> Certain minority

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<sup>11</sup> Jennifer Heerwig & Brian McCabe, *Expanding Participation in Municipal Elections: Assessing the Impact of Seattle’s Democracy Voucher Program*, CSDE (2018).

<sup>12</sup> *Id.*; see also Every Voice Ctr., *First Look: Seattle’s Democracy Voucher Program 3* (2017); SEEC Chart, *supra* note 7 (tallying total contributors to all 2017 candidates at 33,574).

<sup>13</sup> SEEC Report, *supra* note 6, at 16.

<sup>14</sup> Heerwig & McCabe, *Expanding Participation*, *supra* note 11 (fig. 8).

<sup>15</sup> *Id.* (fig. 9).

communities—including Asians and Hispanics—also donated at higher rates through the Program than as cash contributors.<sup>16</sup>

The CSDE analysis also revealed that Seattle residents who returned vouchers were substantially more likely to vote on Election Day than residents who did not use their vouchers. Almost 90% of all voucher donors voted in 2017, while only 43% of residents who did not use their vouchers cast a vote last year. Importantly, the amplified voter turnout was consistent even after controlling for voting history; among city residents who had voted in less than half of the prior elections in which they were eligible, voucher donors were four times more likely to vote than city residents who did not return their vouchers.<sup>17</sup> These findings strongly suggest that Program participation spurred heightened political engagement among Seattle voters in the city’s electoral process.

Elsewhere, public financing has also worked to expand political participation among the local population. A study of New York City’s program found that 89% of the city’s census-block groups had at least one small donor of \$175 or less to a city candidate in the 2009 municipal

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<sup>16</sup> *Id.* (fig. 7).

<sup>17</sup> *Id.* (figs. 7 & 10). Evidence from other jurisdictions also indicates that citizen funding reduces “roll-offs,” the phenomenon of voters abstaining from down-ballot races and voting in the higher visibility elections. See Michael G. Miller, *Subsidizing Democracy: How Public Funding Changes Elections and How It Can Work in the Future* 77 (2013) (roll-offs decreased about 20% in Connecticut races with a citizen funding participant).

elections. By comparison, individual contributions of \$175 or less to candidates for the State Assembly, which are not matched with public funds, came from only 30% of New York City's census-block groups in 2010.<sup>18</sup> The same study determined that census-block groups with at least one small donor to a city candidate were statistically less affluent and more racially diverse than census-block groups with at least one large donor (individuals giving \$1,000 or more), suggesting that the matching program spurred a broader swath of the city populace to participate in the campaign process.<sup>19</sup> A separate analysis revealed that more than half of the individuals who made a contribution during the 2013 city elections were first-time contributors, 76% of whom made a small contribution of \$175 or less.<sup>20</sup>

As New York's experience demonstrates, longstanding public financing programs continue to bring new and diverse voices into the political fold. Seattle is therefore likely to build on the impressive levels of local engagement in 2017 as more residents learn about opportunities to contribute vouchers and the SEEC hones its administration of the Program.

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<sup>18</sup> Elisabeth Genn *et al.*, Brennan Ctr. for Justice, *Donor Diversity Through Public Matching Funds* 10 (2012), [https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport WEB.PDF](https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF).

<sup>19</sup> *Id.* at 14.

<sup>20</sup> N.Y.C. Campaign Fin. Bd., *By the People: The New York City Campaign Finance Program in the 2013 Elections* 41 (2014), [http://www.nyccfb.info/PDF/per/2013\\_PER/2013\\_PER.pdf](http://www.nyccfb.info/PDF/per/2013_PER/2013_PER.pdf).

In addition to more citizen engagement, public financing encourages participating candidates to conduct more meaningful voter outreach. Seattle’s Program offers candidates a direct incentive to interact with as many city residents as possible to collect vouchers. During the 2017 election, local campaigns collected 20% of vouchers directly from city residents, which indicates candidates and their staff were personally interacting with prospective voters.<sup>21</sup> Going beyond Seattle’s borders, a broader survey of legislative candidates found that those accepting full public funding devoted significantly more time to non-fundraising interaction with the public, such as face-to-face canvassing and related “field” activities to mobilize voters, than did candidates who did not accept public financing.<sup>22</sup> The survey determined that legislative candidates accepting full public funding reported spending about 11.5% more time per week on direct voter outreach than privately financed candidates.<sup>23</sup>

### *3. Increasing the pool of candidates and electoral competition*

Analyses show that public financing systems increase measures of electoral competitiveness and may weaken incumbents’ advantage over challengers. After taking effect in 2000, the Maine Clean Elections Act immediately increased the effective number of candidates and decreased the

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<sup>21</sup> SEEC Report, *supra* note 6, at 15.

<sup>22</sup> See Miller, *supra* note 17, at 56-62.

<sup>23</sup> *Id.* at 61.

margin of victory in state senate elections in 2000 and 2002 (compared to 1994, 1996, and 1998) in districts where a non-incumbent candidate accepted public funding.<sup>24</sup> A separate study of Maine elections following its adoption of public financing likewise concluded that “electoral competitiveness” had improved, as measured by the percentage of incumbents who (1) faced major-party opposition; (2) won with less than 60% of the vote; and (3) ran for and were re-elected to office.<sup>25</sup>

Connecticut reported a similar uptick in competitiveness after public funding for legislative elections was introduced: the number of unopposed legislative races dropped considerably after the program’s rollout, from 53 unopposed elections in 2008 to 32 in 2010.<sup>26</sup> This jump in contested elections was consistent with an overall increase in the number of legislative candidates in 2010, many of whom cited the availability of public funds as a factor in their decision to run for office. Furthermore, the availability of public funds for legislative candidates in 2008 and 2010 correlated with a general decline in candidates’ margins of victory in “competitive” races.<sup>27</sup>

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<sup>24</sup> See Neil Malhotra, *The Impact of Public Financing on Electoral Competition: Evidence from Arizona and Maine*, 8 State Pol. & Pol’y Q. 263, 275-77 (2008), <https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf>.

<sup>25</sup> Kenneth R. Mayer *et al.*, *Do Public Funding Programs Enhance Electoral Competition?*, in *The Marketplace of Democracy: Electoral Competition & American Politics* 245, 247-49, 255-56 (Michael P. McDonald & John Samples eds., 2006).

<sup>26</sup> *Citizens’ Election Program 2010*, *supra* note 8, at 6.

<sup>27</sup> See *id.* at 6-8.

Broader studies also show a correlation between competitiveness and the availability of public financing. According to an analysis of monetary competitiveness in 2013 and 2014 state elections, only 18% of legislative races were competitive over that period (based on data from 47 states).<sup>28</sup> But a much higher proportion of races (41%) were monetarily competitive in the five states offering public financing for legislative candidates. Three of the five *most* monetarily competitive states had enacted public financing for legislative candidates, while none of the five *least* monetarily competitive states offered candidates any public funds.<sup>29</sup>

Results from Seattle’s 2017 election suggest that democracy vouchers enabled more individuals to seek office and produced more competitive candidates—thereby fulfilling one of I-122’s express aims: “expand[ing] the pool of candidates for city office.” SMC § 2.04.600(a).<sup>30</sup>

In 2017, there were seventeen candidates who pledged to participate in the Program, thirteen of whom appeared on the primary ballot.<sup>31</sup> Five of

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<sup>28</sup> Zach Holden, *2013 and 2014: Monetary Competitiveness in State Legislative Races*, Nat’l Inst. on Money in Pol. (2016), <https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races>.

<sup>29</sup> *Id.* tbls.3 & 4.

<sup>30</sup> Twenty-two candidates ran for Council Positions 8 and 9 last year, more than twice the number of candidates who sought those seats in 2015. *Compare* SEEC Chart of All Campaigns in 2015, <http://web6.seattle.gov/ethics/elections/campaigns.aspx?cycle=2015> and SEEC Chart of All Campaigns in 2017, <http://web6.seattle.gov/ethics/elections/campaigns.aspx?cycle=2017>.

<sup>31</sup> SEEC Report, *supra* note 6, at 19-20.

the six who qualified for voucher funds, including two political newcomers, advanced to the general election, and publicly funded candidates ultimately won all three elections in which vouchers were available.<sup>32</sup>

### CONCLUSION

For the above stated reasons, *Amici* respectfully urge affirmance of the Superior Court's decision.

Respectfully submitted this 1st day of June, 2018,

/s/ Walter M. Smith

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<sup>32</sup> See *id.* at 20.

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