

February 13, 2019

The Honorable Zoe Lofgren Chairperson Committee on House Administration United States House of Representatives

The Honorable Rodney Davis Ranking Member Committee on House Administration United States House of Representatives

Statement for the Record in Support of H.R. 1

Dear Chairperson Lofgren and Ranking Member Davis:

The Campaign Legal Center ("CLC") respectfully submits this statement to the Committee in support of H.R. 1, the For the People Act of 2019. CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening democracy across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every citizen's right to participate in the democratic process.

H.R. 1 is a landmark reform bill designed to address the most pressing challenges to our democracy: the influence of money in politics, the erosion of ethical norms, threats to voting rights, and extreme partisan gerrymandering. CLC strongly supports H.R. 1 and this comprehensive effort to make our democracy more accessible, transparent, and responsive to the citizens of our great nation.

In particular, this statement will focus on the small-dollar campaign financing provisions of the bill. As the funding of federal elections has become increasingly dominated by a small and wealthy segment of the U.S. populace,¹

During the 2016 elections, half of all campaign contributions given to federal candidates came from just 15,810 individuals. By comparison, in 2000, nearly 74,000

small-dollar financing can reorient the focus of campaigns and amplify the voices of ordinary Americans in our electoral process. By introducing small-dollar matching for campaign contributions given by individuals, H.R. 1 would broaden public engagement in our democracy and enhance the ability of all citizens to participate meaningfully in congressional and presidential election campaigns.

This statement begins with a summary of H.R. 1's proposal for small-dollar financing in congressional and presidential campaigns. Next, we discuss courts' public financing jurisprudence. In the final section, we highlight empirical and academic research supporting the positive effects of public election financing in states and cities around the country. To provide the Committee with additional information about the development of public financing around the country, we have included as an attachment CLC's recently published report, *Buying Back Democracy: The Evolution of Public Financing in U.S. Elections*.

I. Overview of Small-Dollar Financing in H.R. 1

H.R. 1 would establish a small-dollar matching program for congressional candidates who voluntarily agree to participate in, and qualify for, the program. Under H.R. 1, a participating candidate would be eligible for 6:1 public-to-private matching funds for each "qualified small dollar contribution" of \$200 or less received from an individual. The bill would cap the total amount of matching funds available to each candidate in an election cycle at competitive levels, based on successful campaigns' spending in recent congressional elections. To qualify for small-dollar matching, candidates would have to demonstrate significant public support for their candidacies by collecting at least \$50,000 in qualified small dollar contributions from a minimum of 1,000 individuals during the qualifying period. In exchange for small-dollar matching, candidates also would have to agree to special limits on contributions, restrictions on their use of personal funds for campaign purposes, and other requirements throughout the campaign.

For presidential elections, H.R. 1 would overhaul the current presidential public funding program by providing small-dollar matching during the primaries as well as in the general election campaign. Similar to H.R. 1's small-dollar matching for congressional candidates, the bill would provide participating candidates with 6:1 matching funds for each qualified small dollar contribution of \$200 or less received from an individual donor. Furthermore, H.R. 1 would remedy factors that

funds donated to super PACs since 2010. Michelle Ye Hee Lee, Eleven Donors have plowed \$1

billion into super PACs since they were created, WASH. POST (Oct. 26, 2018), <a href="https://www.washingtonpost.com/politics/eleven-donors-plowed-1-billion-into-super-pacs-plowed-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-into-super-pacs-plowed-1-billion-i

since-2010/2018/10/26/31a07510-d70a-11e8-aeb7-

ddcad4a0a54e_story.html?utm_term=.5bde16e73470.

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individuals provided half of the contributions made to federal candidates. NATHANIEL PERSILY ET AL., BIPARTISAN POL'Y CTR., CAMPAIGN FINANCE IN THE UNITED STATES: ASSESSING AN ERA OF FUNDAMENTAL CHANGE 22 (2018), https://bipartisanpolicy.org/wp-content/uploads/2018/01/BPC-Democracy-Campaign-Finance-in-the-United-States.pdf. According to the Washington Post, 11 wealthy individuals—including casino magnate Sheldon Adelson and former hedge-fund manager Tom Steyer—collectively contributed over \$1 billion to super PACs between 2010 and 2018, accounting for more than 20% of the total

have contributed to declining participation in the current presidential public financing system over recent elections, including eliminating the program's expenditure limitations and releasing public funds earlier for candidates' use in the primaries.

Additionally, H.R. 1 would establish the My Voice Voucher Pilot Program for operation in three states over two election cycles. This innovative, provisional program would offer a \$25 voucher to each eligible voter in participating states to allocate, in \$5 increments, to qualified congressional candidates of their choosing. Like small-dollar matching, the pilot program presents a meaningful opportunity to involve more Americans in the campaign process and, if successful, could be implemented nationally.

II. Public Financing Jurisprudence

For over forty years, courts have recognized that public financing of elections promotes core principles of our democratic system. In *Buckley v. Valeo*, the U.S. Supreme Court upheld public financing as a constitutional means "to reduce the deleterious influence of large contributions on our political process" and "to facilitate communication by candidates with the electorate." The Court expressly recognized public financing's consistency with the First Amendment, describing the presidential public funding program as "a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, *goals vital to a self-governing people*." Since *Buckley*, federal and state courts have continued to affirm the constitutionality of public financing as a tool to prevent political corruption and to strengthen citizen engagement in elections.

In 2011, the Supreme Court again endorsed the constitutionality of public financing of elections, even as it held that "trigger" provisions giving publicly financed candidates additional funds in direct response to opponents' spending or

incumbent candidates").

² 424 U.S. 1, 91 (1976) (per curiam).

³ Id. at 92-93 (emphasis added).

See, e.g., Republican Nat'l Comm. v. Fed. Election Comm'n, 487 F. Supp. 280, 284 (S.D.N.Y. 1980) ("If the candidate chooses to accept public financing he or she 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."), aff'd., 445 U.S. 955 (1980); Vote Choice, Inc. v. DiStefano, 4 F.3d 26, 39 (1st Cir. 1993) (validating government interest in public financing "because such programs . . . tend to combat corruption"); 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" and diminishes "time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues and campaigning"); 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"); Ognibene v. Parkes, 671 F.3d 174, 193 (2d Cir. 2011) (explaining that public financing system "encourages small, individual contributions, and is consistent with [an] interest in discouraging entrenchment of

independent expenditures were impermissible. Despite invalidating the trigger mechanism in Arizona's Citizens' Clean Elections Act, the Court reiterated that "governments may engage in public financing of election campaigns and that doing so can further significant government interest[s], such as the state interest in preventing corruption."6 Thus, while it foreclosed the release of public funds in direct response to private campaign spending, the Court did not "call into question the wisdom of public financing as a means of funding political candidacy" or the constitutionality of these laws in general.⁷

III. Effects of Public Financing in State & Local Elections

In addition to judicial recognition of public financing's benefits to democracy, the experiences of numerous states and cities around the country demonstrate that public financing reduces opportunities for political corruption, increases electoral competition by encouraging more people to seek public office, and augments political participation among the electorate at large. Today, over three dozen states, counties, and municipalities have enacted some variety of public election financing for candidates and, in a few locales, political parties. In 2018 alone, three major cities— Baltimore, Denver, and Washington, D.C.—approved legislation creating new public financing programs for local candidates.9

The structure and design of existing state and local programs vary considerably, ranging from Seattle's Democracy Voucher Program to full grant systems in Arizona, Connecticut, and elsewhere. While there is wide variety among public financing systems now in effect, these programs generally share the common objectives of decreasing candidates' dependence on large contributions, boosting electoral competition, and expanding citizens' engagement in the electoral process. The effectiveness of public financing in advancing these critical aims is borne out in a substantial body of research assessing existing public financing systems.

a. Reducing Opportunities for Corruption

A central feature of many public financing systems, including small-dollar matching under H.R. 1, is candidates' voluntary acceptance of lower contribution limits and other restrictions on funding. By design, these controls lessen candidates' reliance on large contributions, diminishing both the opportunity for corruption and the appearance that elected officials are beholden to major campaign donors.

⁵ Ariz. Free Enterprise Club's Freedom PAC v. Bennett, 546 U.S. 721 (2011).

⁶ *Id.* at 754 (quotations and citations omitted).

⁷

See Attachment A, CATHERINE HINCKLEY KELLEY & AUSTIN GRAHAM, CAMPAIGN LEGAL CTR., BUYING BACK DEMOCRACY: THE EVOLUTION OF PUBLIC FINANCING IN U.S. ELECTIONS 19-26 (2018).

See Austin Graham, A Year in Review: How Cities and Counties Took On Money in Politics in 2018, CAMPAIGN LEGAL CTR. (Dec. 20, 2018), https://campaignlegal.org/update/year-review-how-cities-and-counties-took-money-politics-2018.

In 1988, New York City established a matching funds program for city candidates, initially providing a 1:1 public-to-private dollar match for city residents' contributions of up to \$1,000; for the 2001 city election, New York City increased the program's matching rate to 4:1 for residents' contributions of \$250 or less. ¹⁰ Analysis of New York City's matching funds program found that the city's implementation of multiple matching funds, in 2001, significantly increased both the total number of small contributors, measured as individual donors of \$250 or less, to city candidates, as well as the proportional importance of these small contributors to competitive city council candidates participating in the matching funds program. ¹¹ These effects were consistent across challengers, incumbents, and open-seat candidates. ¹²

A review of Seattle's municipal election data similarly supports that the city's implementation of the Democracy Voucher Program, in 2017, reduced the importance of large donors in local campaigns. An academic study of contributions made in Seattle's 2013 election, prior to the city's enactment of public financing, determined that "high-dollar donors" of \$500 or more provided nearly 40% of city council candidates' total campaign funding in 2013, even as these donors comprised only 9% of the overall donor pool in city council races. In Seattle's mayoral election in 2013, the impact of high-dollar donors was even more pronounced, with mayoral candidates raising, on average, 55% of their campaign funds from contributors of \$500 or more.

By comparison, Seattle candidates who participated in the Democracy Voucher Program, in 2017, were far less dependent on "high-dollar donors"; as a condition of program participation, candidates were subject to a \$250 limit on monetary contributions. In lieu of high-dollar donations, participating candidates collectively raised 82% of their total campaign funds in contributions of \$199 or less. Moreover, vouchers supplanted other contributions as program participants' principal source of funding in 2017. Over the course of a single election, Democracy Vouchers markedly reduced the primacy of large contributions in Seattle elections—validating the anti-corruption interests the program was intended to serve.

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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, 5 (2012), http://www.cfinst.org/pdf/state/NYC-as-a-Model ELJ As-Published March2012.pdf.

¹¹ Id. at 9-10.

Id.

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).

¹⁴ Id. at 18.

 $^{^{15}}$ Seattle Ethics & Elections Comm'n ("SEEC"), Democracy Voucher Program Biennial Report 2017, at 18 (2018),

 $[\]underline{https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final\%}\\ \underline{20-\%20Biennial\%20report\%20-\%2003_15_2018.pdf}.$

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 Feb. 12, 2019).

Id.

b. Increasing Measures of Electoral Competition

Empirical analyses similarly show that public financing emboldens more citizens to run for office and improves measures of electoral competitiveness. Upon taking effect in 2000, the Maine Clean Elections Act immediately increased the number of effective candidates and decreased margins of victory in state senate elections in 2000 and 2002, as compared to state elections in 1994, 1996, and 1998, in districts where a non-incumbent candidate accepted public funding. 18 Connecticut reported a similar uptick in competitiveness after introducing public financing for legislative candidates: the number of unopposed legislative races declined considerably after the initial rollout of the Citizens' Election Program, from 53 unopposed elections in 2008 to 32 in 2010.¹⁹ The drop in uncontested elections was consistent with an overall increase in the number of candidates running for the Connecticut General Assembly in 2010, many of whom cited the availability of public financing as a factor in their decision to seek public office.²⁰

A broader assessment of legislative elections in the states similarly identified a correlation between the availability of public financing and heightened competition in elections. According to an analysis of monetary competiveness in 47 states' elections between 2013 and 2014, only 18% of legislative races were competitive over that timeframe.²¹ However, a substantially higher percent of races—41%—were monetarily competitive in the five states with public financing available to legislative candidates.²² Further, three of the five most monetarily competitive states had established public financing for legislative candidates, while none of the five least monetarily competitive states offered public funds to candidates.²³

c. Expanding Citizen Participation in Elections

Perhaps most promisingly, empirical evidence indicates that small-dollar public financing fosters political engagement among a broader and more demographically representative portion of the electorate. By providing candidates with a direct incentive to maximize outreach to every eligible voter as a potential source of matchable contributions, small-dollar matching can galvanize campaigns'

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/%7Eneilm/The%20Impact%20of%20Public%20Financing%20on%20 Electoral%20Competition.pdf.

CONN. STATE ELECTIONS ENFORCEMENT COMM'N, CITIZENS' ELECTION PROGRAM 2010: A NOVEL SYSTEM WITH EXTRAORDINARY RESULTS 6 (2011),

http://www.ct.gov/seec/lib/seec/publications/2010 citizens election program report final.pdf. *Id*. at 6-7.

²¹ Zach Holden, 2013 and 2014: Monetary Competiveness in State Legislative Races, NAT'L INST. ON MONEY IN POL. (Mar. 9, 2016),

https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetarycompetitiveness-in-state-legislative-races#ftnref_4_link.

²³ Id. tbls.3 & 4. Among the five states with the most monetarily competitive elections, Connecticut, Maine, and Minnesota offer public financing to legislative candidates. Id.

engagement of the electorate at large. For example, a study of New York City's matching funds program found that 89% of the city's census-block groups had at least one resident who gave a small-dollar contribution of \$175 or less to a city candidate in the 2009 municipal election. ²⁴ By way of comparison, individual contributions of \$175 or less to candidates for the New York State Assembly, which are ineligible for matching funds, came from residents of only 30% of New York City census-block groups in 2010. ²⁵

Moreover, the same study determined census-block groups with at least one small donor of \$175 or less to a New York City candidate were statistically less affluent and more diverse than census-block groups with at least one large donor of \$1,000 or more, suggesting small-dollar matching helped to cultivate political participation among groups that are historically underrepresented in the campaign finance system. ²⁶ A separate analysis of New York City elections concluded that more than half of the individuals who made a campaign contribution during the 2013 city elections were first-time contributors, and 76% of these first-time donors made a small contribution of \$175 or less. ²⁷ Simply put, small-dollar matching incorporates more people into the democratic process.

Vouchers likewise stimulate political engagement. In Seattle's 2017 election, the first following the city's enactment of the Democracy Voucher Program, local participation in the city's campaign finance system reached historic levels. According to analysis of Seattle's election data, a total of 20,727 Seattle residents assigned Democracy Vouchers to city candidates in 2017.²⁸ Altogether, over 25,000 Seattleites provided vouchers or monetary contributions, or both, to city candidates in 2017—more than a 300% increase over the number of local campaign donors in 2013.²⁹ The swell in local participation facilitated by the Democracy Voucher Program was a citywide phenomenon, with residents of each of the city's council districts giving vouchers to candidates in 2017.³⁰

ELISABETH GENN ET AL., BRENNAN CTR. FOR JUST., DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS 10 (2012),

http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

 $[\]underline{https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.$

Id.

Id. at 14. See also ADAM LIOZ, DEMOS, STACKED DECK: HOW THE RACIAL BIAS IN OUR BIG MONEY POLITICAL SYSTEM UNDERMINES OUR DEMOCRACY AND OUR ECONOMY (2015), https://www.demos.org/sites/default/files/publications/StackedDeck2_1.pdf.

N.Y.C. CAMPAIGN FIN. BD., BY THE PEOPLE: THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM IN THE 2013 ELECTIONS 41 (2014),

https://www.nyccfb.info/sites/default/files/pressfiles/2013 PER.pdf.

JENNIFER HEERWIG & BRIAN MCCABE, UNIV. OF WASH. CTR. FOR STUDIES IN DEMOGRAPHY & ECOLOGY, EXPANDING PARTICIPATION IN MUNICIPAL ELECTIONS: ASSESSING THE IMPACT OF SEATTLE'S DEMOCRACY VOUCHER PROGRAM (2018).

Id

SEEC, supra note 15, at 16.

Beyond increasing the absolute number of local campaign contributors, the Democracy Voucher Program helped to diversify Seattle's donor pool. According to the University of Washington's Center for Studies in Demography & Ecology ("CSDE"), voucher donors were more socioeconomically representative of Seattle's population than monetary contributors, and Seattle residents with an annual income of \$50,000 or less made up a larger percentage of the voucher-donor population compared to the pool of monetary contributors. TSDE also found that voucher donors were more likely than monetary contributors to reside in low-income neighborhoods. Additionally, certain minority communities, including Asians and Hispanics, donated at higher rates through the voucher program than as monetary contributors.

Furthermore, the CSDE analysis revealed that Seattle residents who gave vouchers to city campaigns were substantially more likely to vote on Election Day than residents who did not use their vouchers. Almost 90% of voucher donors voted in 2017, while only 43% of Seattle residents who did not use their vouchers cast a vote that year. Importantly, the amplified voter turnout was consistent even after controlling for residents' voting history; among city residents who 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. These findings strongly suggest that participation in the Democracy Voucher Program prompted greater engagement in the city's electoral process more broadly.

As the findings from New York and Seattle demonstrate, public financing of elections can bring new and diverse donors into the campaign fold. Based on evidence from jurisdictions with public financing systems, it is reasonable to expect that H.R.1's small-dollar matching system, along with the pilot program for vouchers, would have a transformative effect on citizen participation in federal elections.

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HEERWIG & MCCABE, supra note 28, fig.8.

³² *Id.* fig.9.

³³ *Id.* fig.7.

Id. fig.10. Evidence from other jurisdictions also indicates that public financing can reduce voter "roll-off," the phenomenon of voters abstaining from voting in down-ballot races on Election Day. See MICHAEL G. MILLER, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 77 (2013) (finding voter roll-off decreases about 20% in Connecticut elections with a publicly financed candidate).

³⁵ HEERWIG & McCABE, supra note 28, fig.10.

IV. Conclusion

In conclusion, we respectfully urge the Committee to support small-dollar financing in H.R. 1. We appreciate the opportunity to submit this statement in support of this important legislation.

Respectfully submitted,

/s/ Catherine Hinckley Kelley Director of Policy & State Programs

/s/ Austin Graham Legal Counsel

Attachment A



Buying Back Democracy: The Evolution of Public Financing in U.S. Elections

By Catherine Hinckley Kelley & Austin Graham

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I. Executive Summary: Why Public Financing?

The vast amount of money in our elections has left many Americans feeling excluded from the political process. Increasing reliance of candidates on super PACs, secretive "outside" spending, and big donations from a small segment of the public undermines the U.S. Constitution's promise of democratic self-governance, which is premised on widespread participation by all citizens in our elections. As special interests and big donors have come to dominate the funding of U.S. elections, recent polling reveals a growing distrust among Americans of government institutions and, to a degree, democracy itself.

Public financing offers a powerful antidote to these concerns, providing another path to elected office. While there are many important and effective reforms jurisdictions may pursue to make campaigns more transparent and responsive to voters, public financing is a particularly promising way to amplify the voices of all citizens. Public funding programs can reorient our elections by reducing opportunities for corruption, encouraging new and diverse candidates to seek public office, and broadening political participation among the public at large. A well-designed program can create an incentive for candidates to fundraise and connect with the people they seek to represent—including people of modest means. And this translates to a donor base that looks more like the fabric of the community, rather than a handful of wealthy elites.

Public financing has been an important part of our campaign finance system for more than forty years, most notably with the presidential public financing program on the federal level. Although Congress has allowed this once successful program to wither, public financing programs across the country offer a real-world example of what our elections could look like. Since its enactment in the 1980s, New York City's matching funds program has enjoyed consistently high rates of candidate participation and has become a model for election reform advocates around the country. The program has been credited with encouraging local campaigns to reach out to a broader population of donors, with studies showing that small donors to New York City candidates come from a much more diverse range of neighborhoods than the city's donors to State Assembly candidates.³ Likewise, Seattle's groundbreaking Democracy Voucher Program, approved by the city's voters in 2015, precipitated a record number of city residents contributing to local candidates over the course of a single election cycle.⁴

¹ In 2016, half of all campaign contributions to federal candidates came from only 15,810 individuals. By comparison, in 2000, 73,926 individuals accounted for half of all donations. See Nathaniel Persily, Robert F. Bauer, and Benjamin L. Ginsberg, Bipartisan Policy Ctr., Campaign Finance in the United States: Assessing an Era of Fundamental Change 22 (Jan. 2018), https://bipartisanpolicy.org/wp-content/uploads/2018/01/BPC-Democracy-Campaign-Finance-in-the-United-States.pdf.

2 Public Trust in Government 1958-2017, Pew Research Center (Dec. 14, 2017), http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017/; Jeffrey Jones et al., How Americans Perceive Government in 2017, Gallup (Nov. 1, 2017), https://news.gallup.com/opinion/polling-matters/221171/americans-perceive-government-2017.aspx.

3 See Elisabeth Genn et. al., Brennan Ctr. for Justice & Campaign Fin. Inst., Donor Diversity Through Public Matching Funds 10 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

4 See Seattle Ethics & Elections Comm'n, Democracy Voucher Program Biennial Report 2017 22 (2018), https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%203_15_2018.pdf.

The experiences of these cities substantiate that public financing programs have the potential both to safeguard the integrity of our democratic institutions and to engage more people—with diverse backgrounds and varied experiences—in our elections. The success of these programs has sparked renewed interest in public financing. In the past three years, six jurisdictions have enacted new programs as lawmakers and concerned citizens across the country have recognized that public financing is one effective path to repairing our broken campaign finance system.

This report begins with an overview of the history of public financing in U.S. elections, focusing on Watergate and the enactment of public funding for presidential elections. Part III highlights the U.S. Supreme Court's public financing jurisprudence and examines trends in the development of public funding laws across the country. Part IV proceeds to detail the different types of public financing systems in existence today, and Part V concludes with recommendations to ensure the success of public financing going forward.

Through this report, we hope to aid democracy advocates, lawmakers, and voters as they seek to build a small-dollar democracy. The funding of elections is an important means of engagement in our democratic process. Public financing can help to make this form of engagement more inclusive and representative of our nation as a whole.

II. The Origins of Public Financing

The American public has long expressed concerns about the outsized role of money in politics and its capacity to distort the democratic process.⁵ Public funding, as an alternative to privately funded campaigns, addresses many of the problems that have undermined democracy since the Gilded Age and continue to be a focus of money-in-politics reform efforts: "secrecy, corporate money, and undue influence."

Representative William Bourke Cockran of New York introduced the nation's first public financing bill in December 1904, arguing that, through the public funding of elections, "it might be possible for the government of the United States to do away with any excuse for soliciting large subscriptions of money." President Theodore Roosevelt shared this belief, and, three years later, advocated for "an appropriation for the proper and legitimate expenses of each of the great national parties." While both proposals proved unsuccessful, politicians continued to press for public financing of elections over the next fifty years.

In 1966, Congress enacted the first law authorizing public funding for presidential candidates and political parties. However, legislation passed the following year halted the program before it could

⁵ ROBERT E. MUTCH, CAMPAIGNS, CONGRESS, AND COURTS: THE MAKING OF FEDERAL CAMPAIGN FINANCE LAW XVII (1988).

⁶ ROBERT E. MUTCH, BUYING THE VOTE: A HISTORY OF CAMPAIGN FINANCE REFORM 168 (2014).

⁷ Id. at 35 (quoting Contributions to Political Committees in Presidential and Other Campaigns: Hearing Before the H. Comm. on Election of President, Vice-President, and Reps., 59th Cong. 41 (Mar. 12, 1906)).

⁸ Id. at 36 (quoting 59 Cong. Rec. 78 (Dec. 3, 1907)).

⁹ R. SAM GARRETT, CONG. RESEARCH SERVICE, PUBLIC FINANCING OF PRESIDENTIAL CAMPAIGNS: OVERVIEW AND ANALYSIS 4 (Jan. 29, 2014).

take effect.¹⁰ Congress acted again in 1971, when public pressure led to the enactment of the Federal Election Campaign Act ("FECA").¹¹ Like the 1966 legislation before it, though, the original FECA lacked teeth. Candidates and parties flouted the new law, which did little to control presidential election spending or to mitigate the corrupting influence of private money in politics.¹² Watergate changed all of that.

A. Watergate and the 1974 FECA Amendments

"The modern history of American campaign finance law began in the early morning of darkness of June 17, 1972," when five men broke into the Democratic National Committee headquarters at the Watergate Hotel, launching a series of events that would topple a presidency. Over the course of the next two years, investigators exposed the extensive corruption of President Nixon's Committee to Reelect the President, which, in 1972 alone, took in \$850,000 in illegal corporate campaign contributions and spent \$67 million, much of which it failed to disclose. Here was no denying that the "reprehensible, clandestine political acts connected with Watergate were financed and made possible by an excess of campaign donations, many of them secretly and illicitly obtained."

Public outrage over the depths of deviance in the national campaign finance system spurred reform.¹⁶ On August 8, 1974, the day before Nixon resigned the presidency, the U.S. House of Representatives passed sweeping amendments to FECA.¹⁷ Two months later, the Senate approved those amendments, and President Ford signed them into law.¹⁸

The 1974 FECA amendments overhauled the federal campaign finance system and established the structure for presidential public financing that remains in place today. This public financing program represented a powerful tool to combat corruption and expand small donor participation in presidential campaigns.¹⁹

¹⁰ Id.

¹¹ Anthony J. Gaughan, The Forty-Year War on Money in Politics: Watergate, FECA, and the Future of Campaign Finance Reform, 77 Ohio St. L.J.791, 798 (2016).

¹² Presidential campaign spending rose from \$44 million in 1968 to \$103 million in 1972. And, in the five weeks before FECA's effective date, President Nixon raised \$11.4 million in secret contributions. *Id.* at 799.

¹³ *Id.* at 793. 14 *Id.* at 795.

^{15 120} Cong. Rec. 9270 (1974) (statement of Sen. John J. Williams).

¹⁶ See 120 Cong. Rec. 8209 (statement of Sen. Ted Kennedy) (asserting that campaign finance reform was "the most positive contribution Congress can make to end the crisis over Watergate and restore the people's shattered confidence in the integrity of their Government."); see also Frank J. Sorauf, Inside Campaign Finance: MYTHS & ReallTies, 2, 7-8 (1992) (noting that campaign reform measures in 1974 were "the immediate consequence of Watergate and the misdeeds of Richard Nixon's Committee to Reelect the President.").

¹⁷ Gaughan, *supra* note 11, at 801-802.

¹⁸ Id.

¹⁹ See 120 Cong. Rec. 8209 (statement of Sen. Ted Kennedy) ("[P]ublic financing of elections is the answer to many of the deepest problems facing the Nation, especially the lack of responsiveness of government to the people. Only when all the people pay for elections will all the people be truly represented in their government. At a single stroke, we can drive the money lenders out of the temple of politics. We can end the corrosive and corrupting influence of private money in public life. Once and for all, we can take elections off the auction block, and make elected officials what they ought to be—servants of all the people instead of slaves to a specific few. . . Through public financing, we can guarantee that the political influence of any citizen is measured only by his voice and vote, not by the thickness of his pocketbook.").

B. The Presidential Public Financing Program

The 1974 FECA amendments established voluntary public funding for three phases of a presidential campaign: the primaries, the party nominating conventions, and the general election. The program is funded entirely through a voluntary checkoff option on the individual federal income tax form, whereby individual taxpayers can designate \$3, or \$6 on a joint return, to the Presidential Election Campaign Fund ("PECF").²⁰ If candidates choose to accept public funds from the PECF, they are subject to the same financial disclosure requirements applicable to other federal candidates.²¹

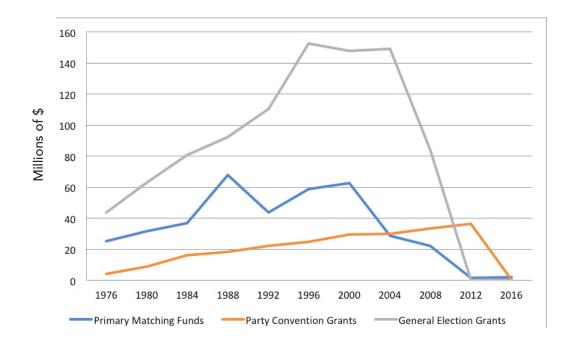


FIGURE 1: PRESIDENTIAL ELECTION PUBLIC FUNDS DISBURSED OVER TIME

1. Primary Election Matching Funds

To become eligible for public funding in the primaries, presidential candidates must raise more than \$5,000 from residents of twenty or more states, for a total of at least \$100,000;²² only the first \$250 of a resident's contribution is counted toward the \$5,000 threshold in each state.²³ If candidates satisfy these fundraising requirements, they are qualified to receive matching funds on a dollar-for-dollar basis for the first \$250 contributed by each individual donor.²⁴ For example, if an individual donates \$250

²⁰ The original terms of the program allowed individuals to designate \$1 to the PECF, or \$2 if filing jointly. In 1993, Congress increased the amount to \$3 for an individual and \$6 for a joint filer. See Anthony Corrado, Public Funding of Presidential Campaigns, in The New Campaign Finance Sourcebook 180, 182 (Thomas E. Mann, Daniel R. Ortiz, and Trevor Potter, eds., 2005).

²¹ Id.

^{22 26} U.S.C. § 9033(b)(2).

²³ Id. at § 9033(b)(4).

²⁴ *Id.* at § 9034(a). Contributions from PACs or other political committees are not eligible for matching funds. See Corrado, supra note 20, at 185.

to a presidential candidate during the primary stage, the candidate will receive an additional \$250 in public funds, raising the contribution's total value to \$500. However, if an individual contributes \$1,000 to a candidate, the candidate still will only receive \$250 in matching funds, for a total of \$1,250.

In exchange for public matching funds, presidential candidates must agree to limit their campaign spending for primary elections in three ways. First, candidates must not spend more than \$50,000 in personal funds on their primary campaigns.²⁵ Second, candidates must limit their aggregate campaign expenditures during the primaries.²⁶ In 2016, the aggregate spending limit for presidential candidates, as indexed for inflation, was \$48.07 million.²⁷ Lastly, candidates must limit their campaign spending in each state to the greater of \$200,000, indexed for inflation, or an amount equal to \$0.16 multiplied by the voting age population in the state.²⁸ In 2016, per-state expenditure limits in the presidential primaries ranged from \$961,400 in Wyoming to \$24,092,100 in California.²⁹

2. Nominating Conventions Grants

Under the 1974 FECA amendments, national party committees were eligible to receive a lump-sum grant of public funds to cover the expense of their presidential nominating conventions.³⁰ Parties that accepted the grants were not allowed to spend more than the grant amount for convention expenses. Under the FECA amendments, each of the two major parties could qualify for grants of \$4 million,³¹ indexed for inflation.³² With inflation adjustments, by 2012, the Democratic and Republican parties each qualified for grants of \$18.2 million.³³

Minor parties³⁴ were also eligible to receive grants, in smaller amounts, for their nominating conventions. The amount of a minor party's grant was based on the ratio of popular votes received by the party's candidate for president in the preceding election compared to the average number of popular votes received by the major parties' presidential candidates in the same election.³⁵ A new political party was able to receive a nominating convention grant, retroactively, if the party's presidential candidate received at least 5 percent of the popular vote in the general election.³⁶

Both major parties accepted grants for their nominating conventions in every presidential election between 1976 and 2012. However, in 2014, President Obama and the 113th Congress repealed public funding for nominating conventions.³⁷

^{25 26} U.S.C. § 9035(a).

^{26 52} U.S.C. § 30116(b)(1)(A).

²⁷ Fed. Election Comm'n, *Public Funding of Presidential Elections*, https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/ (last visited September 21, 2018).

^{28 52} U.S.C. § 30116(b)(1)(A).

²⁹ FEC, supra note 27.

³⁰ See 26 U.S.C. § 9008(b).

³¹ In 1974, the amount was set at \$2 million, but that base amount was increased to \$3 million in 1979 and \$4 million in 1984. See Corrado, supra note 20, at 190-91.

^{32 26} U.S.C. § 9008(b)(1).

³³ Garrett, supra note 9, at 7.

³⁴ Defined as "a political party whose candidate for the office of President in the preceding presidential election received. . 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office." 26 U.S.C. § 9002(7).

^{35 26} U.S.C. § 9008(b)(2).

³⁶ A third party received convention funding only once, in 2000, when the Reform Party qualified for \$2.5 million based on Ross Perot's performance in the 1996 election. Corrado, *supra* note 20, at 191.

³⁷ See P.L. 113-94 (H.R. 2019); see also 26 U.S.C. § 9008(i).

3. General Election Grants

In the general election, a presidential candidate may accept public funding even if the candidate did not receive matching funds during the primaries. In exchange for the grant, a candidate must agree to forego all private contributions³⁸ and not to expend more than \$50,000 in personal funds for the general election.³⁹

Under the FECA amendments, major party candidates are automatically qualified for lump-sum grants, which are indexed for inflation.⁴⁰ In 1976, the Republican and Democratic presidential nominees were eligible for grants of \$21.8 million each.⁴¹ By 2008,⁴² the grant amount was adjusted to \$84.1 million per candidate,⁴³ and, for 2016, the grant amount reached \$96.1 million.⁴⁴ Minor party candidates⁴⁵ may also receive partial grants for the general election if the party's candidate earned at least 5 percent of the popular vote at the preceding presidential election,⁴⁶ and the grant amount is based on the ratio of the party's popular vote in the preceding presidential election compared to the average vote of the two major party candidates in that election.⁴⁷ Similarly, a new political party's candidate can become eligible for a partial, retroactive grant if the candidate received at least 5 percent of the popular vote at the general election.

For nearly thirty years, the presidential public financing system was an unqualified success, with every major party nominee accepting public funds in the general election from 1976 through 2004.⁴⁸ In that time span, presidential candidates and national party committees collectively received over \$1.3 billion in public funds.⁴⁹ However, Congress has made few updates to the presidential financing system since the 1974 FECA amendments, and the program's viability has gradually declined.⁵⁰

By the mid-1990s, the percentage of taxpayers making checkoff designations for the PECF had fallen below 15 percent.⁵¹ As a consequence, funding shortfalls occurred in 1996 and 2000, and the FEC was forced to delay payments to candidates in the primaries until the PECF was determined to

³⁸ *Id.* at § 9003(b)(1). This restriction does not apply to minor party candidates, who may raise private contributions to make up the difference between the partial grant they receive and the sum available to publicly funded major party candidates. *Id.* at § 9003(c)(1).

³⁹ Id. at § 9004(d).

⁴⁰ Id. at § 9004(a)(1).

⁴¹ FEC, supra note 27.

^{42 2008} was the last year that a major party candidate—Republican-nominee John McCain—accepted a general election grant. For more information about candidate participation in the presidential public financing system, see the "Trends Over Time" section below. See Garret, supra note 9, at 6.

⁴³ Id.

⁴⁴ Id.

⁴⁵ See FEC, supra note 27.

^{46 26} U.S.C. § 9003(c).

⁴⁷ See 26 U.S.C. § 9004(a)(2). To qualify for public funding, a minor party candidate must also be certified to appear on the general election ballot in ten or more states. Corrado, *supra* note 20, at 194.

⁴⁸ Fed. Election Comm'n, *Public funds received by candidates 1976-present*, https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/. For a discussion of the declining use of the presidential public financing system, see Part V ("Looking Forward: The Future of Public Financing") below.

⁴⁹ Corrado, supra note 20, at 182.

⁵⁰ See Garrett, supra note 9, at 5 ("Congress most recently altered the program in 1993, when it tripled the checkoff designation from \$1 to \$3 for individuals and from \$2 to \$6 for married couples filing jointly."). 51 *Id.* at 9-10.

be solvent.⁵² The shortfalls were largely attributable to the funding structure of the program, which indexes disbursements to candidates for inflation but has no corresponding increase for the amount of taxpayer checkoffs.⁵³

Most crucially, congressional failure to upgrade the presidential funding program after the 1974 FECA amendments has rendered the system obsolete, as "[t]oday's campaign process is dramatically different than it was in 1974."⁵⁴ In particular, the financial demands and front-loaded primary process⁵⁵ of 21st-century presidential campaigns are not compatible with the program's design—especially its expenditure limits.⁵⁶ Likewise, the unprecedented surge of independent campaign spending, precipitated by the Supreme Court's 2010 decision in *Citizens United*, has further discouraged participation in the program. Presidential candidates now must try to keep pace not only with their opponents' fundraising but also with deep-pocketed outside groups capable of spending unlimited sums to influence federal elections; accordingly, the prevalence of independent spending in contemporary elections has reduced presidential candidates' willingness to agree to the spending restrictions imposed by the program.⁵⁷

Consequently, the presidential system is no longer a viable funding option for candidates. In 2000, President Bush became the first major party candidate to decline public funds in the primary elections, and President Obama was the first to decline any public funding for either the primaries or general election in 2008. Since John McCain's acceptance of public funds in the 2008 general election, no major party nominee has opted into the public finance program for a presidential race. Since John McCain's acceptance of public funds in the 2008 general election, no major party nominee has opted into the public finance program for a presidential race.

III. The Rise of Public Financing

A. Judicial Approval of Public Financing

After its enactment, the presidential public financing system soon faced legal challenge. In its 1976 landmark decision, *Buckley v. Valeo*, the United States Supreme Court upheld the presidential program as a constitutional means "to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising." The Court expressly rejected the assertion that public financing violates the First Amendment, explaining that public financing "is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion

⁵² Public Citizen, Fixing the Voluntary Tax Checkoff Program to Fund the Presidential Elections, https://www.citizen.org/fixing-voluntary-tax-checkoff-programto-fund-presidential-elections.

⁵³ James Sample, The Last Rites of Public Campaign Financing?, 92 Neb. L. Rev. 349, 375 (2013).

⁵⁴ Id. at 376.

⁵⁵ Over the last two decades, states have increasingly scheduled the dates of their presidential primaries and caucuses earlier in the election year. As a result, presidential candidates must initiate fundraising earlier and solicit money for a more prolonged period to remain financially competitive. See Matthew T. Sanderson, Two Birds, One Stone: Reversing "Frontloading" by Fixing the Presidential Public Funding System, 25 J. L. & Pol. 279, 285 (2009).

⁵⁶ In 2012, major party nominees were eligible for a general election grant of approximately \$91 million; by comparison, Barack Obama raised over \$150 million in private contributions in September 2012 alone. Sample, *supra* note 54, at 376-77. 57 *Id.* at 378-79.

⁵⁸ Garrett, supra note 9, at 1, 12.

⁵⁹ Id. at 12.

^{60 424} U.S. 1, 91 (1976) (per curiam).

and participation in the electoral process, goals vital to a self-governing people."61 The Court had little difficulty concluding that these aims were "sufficiently important" to uphold the presidential system.62

Since *Buckley*, courts have consistently reaffirmed the constitutionality of public financing laws and recognized that they advance important governmental interests in preventing political corruption and enhancing political participation.⁶³ Moreover, the voluntary nature of candidates' participation in public financing programs has offset any First Amendment burden imposed by the laws.⁶⁴

In 2011, the Supreme Court again endorsed the overall constitutionality of public financing, even as it held that "trigger" provisions giving publicly financed candidates additional funds in direct response to campaign spending by non-participating candidates or independent expenditures impermissibly burdened political speech. ⁶⁵ Despite invalidating the trigger mechanism in Arizona's Citizens' Clean Elections Act, the Court reaffirmed that "governments may engage in public financing of election campaigns and that doing so can further significant government interest[s], such as the state interest in preventing corruption." ⁶⁶ Thus, even as it foreclosed the release of public funds in response to private campaign spending, the Court did not "call into question the wisdom of public financing as a means of funding political candidacy" or discredit the constitutionality of these laws in general. ⁶⁷

B. The Expansion of Public Financing in the States

Judicial approval of public financing paved the way for the expansion of public financing programs at the state and local levels.⁶⁸ In the wake of Watergate and *Buckley*, state legislatures were the primary champions and innovators of public financing. This represented a continuation of an existing trend, as several states had already experimented with public financing before the enactment of the presidential system under the 1974 FECA amendments.⁶⁹ In total, states established seven of the first eight public financing programs in existence.

State efforts continued over the next two decades. Between 1974 and 1998, over a dozen states adopted public financing programs, most of which were enacted through legislative action. Citizen-

⁶¹ Id. at 92-93.

⁶² Id. at 95-96.

⁶³ See, e.g., Republican Nat'l Comm. v. Fed. Election Comm'n, 487 F. Supp. 280, 284 (S.D.N.Y. 1980) ("If the candidate chooses to accept public financing he or she 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."), aff'd., 445 U.S. 955 (1980); Vote Choice, Inc. v. DiStefano, 4 F.3d 26, 39 (1st Cir. 1993) (validating state's interest in public financing "because such programs... tend to combat corruption"); 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" and diminishes "time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues and campaigning"); 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"); Ognibene v. Parkes, 671 F.3d 174, 193 (2d Cir. 2011) (explaining that public financing system "encourages small, individual contributions, and is consistent with [an] interest in discouraging entrenchment of incumbent candidates").

⁶⁴ Id. at 284-85.

⁶⁵ Ariz. Free Enterprise Club's Freedom PAC v. Bennett, 564 U.S. 721 (2011).

⁶⁶ Id. at 754 (quotations and citations omitted).

⁶⁷ See id. at 753.

⁶⁸ To date, over 35 jurisdictions have adopted some form of public financing.

⁶⁹ For example, Oregon created a tax credit for individuals' contributions to political campaigns in 1969. See Oregon Rev. Stat. § 316.102. Additionally, Colorado attempted to establish public funding for political parties in 1909, though the law was invalidated by the state's supreme court the following year. Benjamin T. Brickner & Naomi Mueller, Eagleton Inst. of Politics, Rutgers Univ., Clean Elections: Public Financing in Six States, including New Jersey's Pilot Projects 13 (2008).

driven initiatives were the exception rather than the rule, in part because only a limited number of jurisdictions allowed for lawmaking outside of the legislative process.

C. A Shift Towards Local Enactment and Ballot Initiatives

Gradually, local enactment of public financing, in cities and counties around the country, has eclipsed adoption at the state level. To Since 1999, only four states have established public financing programs compared to ten cities and four counties. Indeed, six localities have approved new public financing programs since 2015: Berkeley, CA; Howard County, MD; Portland, OR; Seattle, WA; Suffolk County, NY; and Washington, D.C. To State of Public Financing and Washington, D.C. To State of Public Financing and Public Financing programs since 2015: Berkeley, CA; Howard County, MD; Portland, OR; Seattle, WA; Suffolk County, NY; and Washington, D.C.

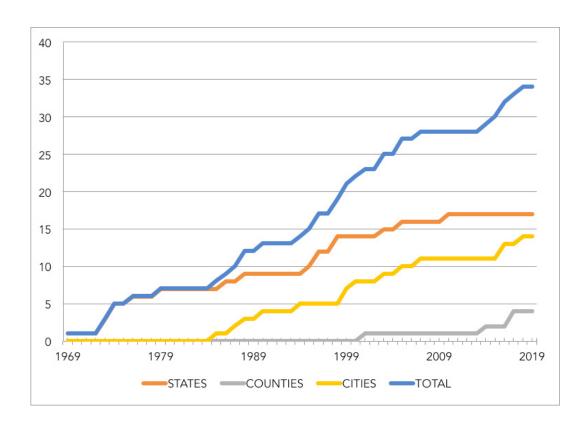


FIGURE 2: NUMBER OF PROGRAMS OVER TIME

⁷⁰ Often, cities and counties with public financing programs for local elections are located within states that have public financing for statewide or legislative offices. For example, Maryland has offered public funds to gubernatorial candidates since 1974; subsequently, two of Maryland's most populous counties, Montgomery County and Howard County, have enacted public financing programs for local office. See Md. Code Ann. Elec. Law §§ 15-101–15-111; Montgomery Cty., Md., Code §§ 16-18–16-28; Howard Cty., Md., Code §§ 10.300–10.311.

⁷¹ This shift in innovation, from the state to the local level, reflects a broader trend in American policymaking. Today, cities and counties largely drive policy innovation; municipal governments are at the forefront of experimentation with new models of good governance. See generally Bruce Katz & Jeremy Nowak, The New Localism: How Cities Can Thrive in the Age of Populism (2017). See also id. at 2 ("Today, progress is evident among vanguard cities and metropolitan regions that are inventing new models of growth, governance, and finance. These novel and distinctive models focus intentionally and purposefully on inclusive and sustainable outcomes as measures of market success.").

As local enactment of public financing has accelerated, an increasing number of programs are being created through citizen-led ballot initiatives. Since the mid-1990s, almost an equal number of public financing programs have been established by ballot initiatives as by legislatures. Nonetheless, roughly two-thirds of existing public financing laws were enacted through the legislative process, while around a third were approved through direct democracy.

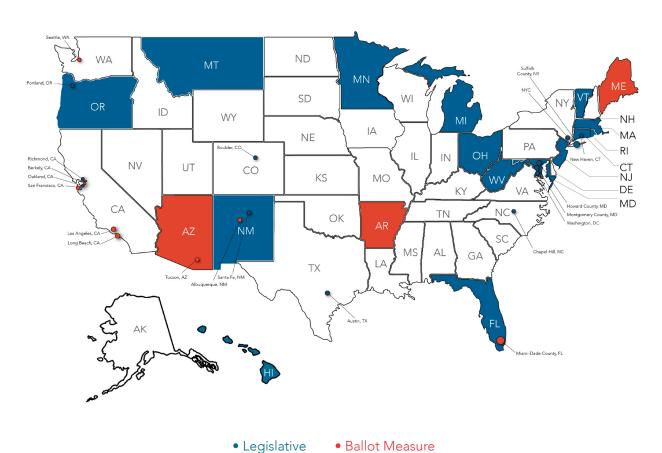
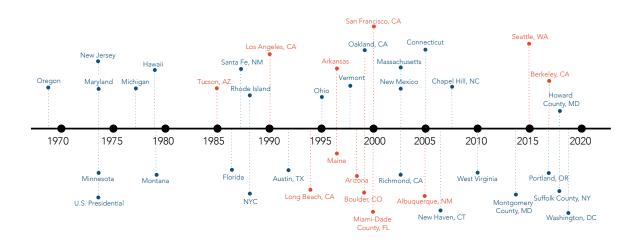


FIGURE 3: MEANS OF ENACTMENT

FIGURE 4: MEANS OF ENACTMENT OVER TIME



Legislature or City Council
 Ballot Measure

Finally, the motivations behind public financing laws have evolved over time. The creation of many of the earliest programs was spurred by nationwide anxiety over political corruption following the revelations of Watergate; in more recent years, reform often has come as a response to more localized issues. Amidst concerns that Seattle elections were dominated by a few wealthy contributors, over 60 percent of Seattle's voters approved the Democracy Voucher Program, in 2015, as a way to invigorate broader local engagement in campaigns and to encourage fresh faces to run for office. The Increasingly, support for public financing is based not just in concerns over corruption, but in evidence that these programs can expand political participation and change how candidates interact with voters.

⁷² Bob Young, *Democracy vouchers win in Seattle; first in country*, SEATTLE TIMES (Nov. 3, 2015), https://www.seattletimes.com/seattle-news/politics/democracy-vouchers/.

IV. The Mechanics of Public Financing: Variations in Program Types

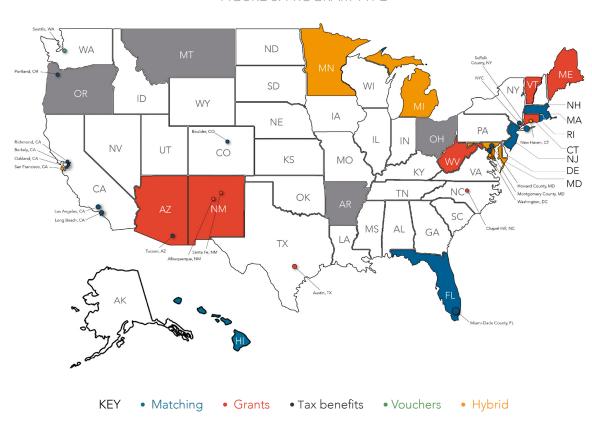


FIGURE 5: PROGRAM TYPE

As the total number of public financing programs has grown, the programs also have diversified in form. There are multiple types of programs in existence today, ranging from "Clean Elections" grant programs to tax benefit systems. With the exception of tax benefit systems, all public financing programs share a basic, three-part framework: qualification requirements, funding, and conditions of program participation.

Qualification. In this stage, candidates seeking public financing must satisfy a number of requirements in order to become eligible for funds. Often, candidates must demonstrate a threshold level of popular support by raising a certain amount of qualifying contributions before they will be able to collect public funds. In New York City, for instance, a city council candidate must raise at least \$5,000 of "matchable contributions," in amounts between \$10 and \$175, from at least 75 residents of the relevant council district to qualify for public funding ⁷³ In addition, some programs

⁷³ N.Y.C. Admin. Code § 3.703(2)(a).

only provide public funds to candidates in a contested election.⁷⁴ Lastly, prior to the dispersal of public funds, election administrators typically must certify that a candidate has, in fact, satisfied the qualification requirements by reviewing the candidate's filings for sufficiency.

Funding. After satisfying qualifying requirements, candidates will receive public funds in various forms—grants, matching funds, or vouchers—depending on the program. As detailed in the following sections, different types of programs furnish public funds to candidates through varying methods and at different points throughout the campaign.

Conditions. Once candidates have decided to participate in a public financing program, they are obligated to adhere to certain conditions attached to the disbursement of public funds. These conditions often include specific limits on contributions to a participating candidate, caps on total expenditures by a participating candidate, and requirements to return unused campaign funds after the election. Additionally, publicly financed candidates are often subject to mandatory audits to ensure accountability in the use of program funds.⁷⁵

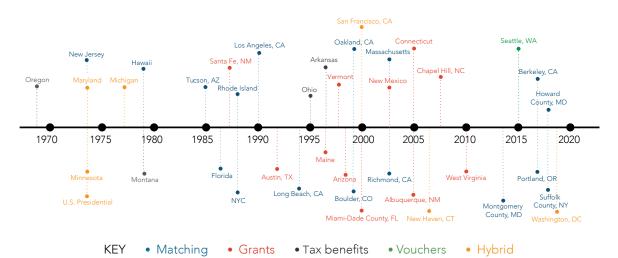


FIGURE 6: PROGRAM TYPE ENACTMENT OVER TIME

⁷⁴ See S.F. Campaign & Governmental Conduct Code §§ 1.140(b)(3),(c)(3); N.Y.C. Admin. Code § 3-703(5). Other jurisdictions give partial public funding to unopposed candidates. For example, Santa Fe provides a candidate in an uncontested election with 10 percent of the grant amount available to candidates in a contested race. Santa Fe, N.M., Mun. Code § 9-3.10(A)(4).

⁷⁵ See, e.g., N.Y.C. Admin. Code § 3-710.

A. Grants

Grant programs provide qualifying candidates with lump-sum payments of public funds to finance their campaigns. The grant amount can be either for the full or partial cost of a campaign, depending on the program. In full grant systems, also called "Clean Elections" programs, participating candidates may only make campaign expenditures with public funds and may not raise private contributions after receipt of the grant; Arizona and Connecticut, among other jurisdictions, have full grant programs available for statewide and legislative candidates. In partial grant systems, participating candidates also receive lump-sum payments of public funds but may also raise some private contributions to use in conjunction with their grant funds.⁷⁶

Grant programs largely relieve participating candidates from the pressures of fundraising during the campaign. However, grant programs require periodic maintenance by legislative and regulatory bodies to ensure their viability and attractiveness to candidates amidst the constantly rising costs of modern campaigns.⁷⁷ The popularity of grant programs has declined in recent years, as the growing amount of independent spending in elections has lessened candidates' willingness to limit their private fundraising activity.⁷⁸

B. Matching Funds

In matching funds programs, a jurisdiction will match certain private contributions received by a participating candidate with public funds at a set rate. Depending on the jurisdiction, private contributions are matched either dollar for dollar or at some multiple of private-to-public dollars. Generally, these programs limit the size of contributions eligible for a match (e.g., \$250 or less) and will not match contributions from certain sources (e.g., government contractors).

Until the late 1990s, the match ratios in these programs were typically set at one-to-one, with a handful of programs offering a two-to-one match in public-to-private dollars. More recently, however, some localities have opted for larger match rates, such as four-to-one or six-to-one public-to-private dollar ratios.

New York City initially implemented its matching funds program, in 1988, using a match rate of one-to-one. In 1998, the city raised the rate to four-to-one, and, in 2007, the city again increased it to six-to-one. The city again increased it to six-to-one. The city again increased its matching funds rate from one-to-one to a multiple match. Many of the recently enacted programs—including Berkeley, CA; Howard County, MD; and Montgomery County, MD—have similarly opted for a multiple match.

⁷⁶ See Mass. Gen. Laws ch. 55C ("Limited Public Financing of Campaigns for Statewide Elective Office").

⁷⁷ This point is discussed in greater detail in Part V.

⁷⁸ Moreover, many of these programs included trigger provisions like the Arizona provision held unconstitutional by the Supreme Court in 2011. See, e.g., Albuquerque, N.M., Charter art. XVI, § 16. Thus, these programs need updating in order to provide candidates with sufficient flexibility and a way to raise additional funds when faced with a high-spending opponent or substantial independent expenditures.

⁷⁹ For example, New York City will match a \$175 campaign donation from a city resident with \$1,050 in public funds (6 x \$175 = \$1,050), raising the donation's total value to \$1,225 after the match. N.Y.C. Admin. Code § 3-705(2)(a); N.Y.C. Campaign Fin. Bd., *History of the CFB* (2018), https://www.nyccfb.info/about/history/.

80 See Los Angeles Mun. Code § 49.7.27.

Matching funds programs still require candidates to fundraise from private sources, but that burden—and the dependence on big donors—is substantially reduced. Moreover, the quantity of public funds available to a participating candidate in a matching funds system is linked to the degree of public support for the candidate throughout the campaign.

C. Vouchers

Vouchers are a novel and innovative public funding method, with Seattle being the first and only U.S. jurisdiction using a voucher program today. Under a voucher system, a jurisdiction provides eligible citizens with a credit of public funds (i.e., "vouchers") to assign to participating candidates of their choosing. In Seattle, city residents receive four \$25 vouchers, worth \$100 in total, each election year. Seattle residents may assign their vouchers to different candidates, or donate them all to the same campaign. Once residents have assigned vouchers to a participating candidate, the candidate can redeem them with the city for public funds to use in their campaign.

A distinctive feature of vouchers is their capacity to promote broad electoral participation by citizens, irrespective of their financial circumstances. As with matching funds, voucher systems still obligate participating candidates to fundraise, but the candidates need only ask for vouchers, rather than private dollars, which eases the toll of fundraising for both candidates and individual contributors.

D. Tax Benefits

Tax benefit systems differ qualitatively from other methods of public financing. Unlike systems that award public funds to qualifying candidates in exchange for special limits on their campaign activities, tax benefit systems simply provide incentives for citizens to make private donations. In these programs, individuals who contribute to candidates or political parties are eligible for a rebate or tax credit, which is typically capped by statute, upon filing their state income taxes.⁸²

Similar to other public financing models, tax benefit systems encourage constituents' participation in the electoral process. However, these programs give less direct support to candidates and do little to alleviate campaigns' reliance on large, private contributions.

E. Hybrid Systems

Generally, any of the preceding types of public financing can be combined into a hybrid system. The presidential public financing system is the most prominent example of a hybrid system, offering participating candidates matching funds during the primaries and lump-sum grants for the general election. Several states likewise utilize hybrid systems of public financing in gubernatorial elections. Washington, D.C.'s recently enacted program is also a hybrid: Beginning in 2020, participating candidates will receive a lump-sum payment upon qualification followed by a five-to-one match for contributions from D.C. residents. 44

⁸¹ Seattle Mun. Code § 2.04.620.

⁸² See, e.g., Ark. Code § 7-6-222 (offering credit up to \$50 on an individual's tax return, or \$100 if joint filing, for contributions to state candidates, political action committees, or political parties).

⁸³ See Md. Code Ann. Elec. Law §§ 15-101-15-111; Mich. Comp. Laws §§ 169.261-169.267.

⁸⁴ D.C. Code § 1-1163 Part C-i.

V. Looking Forward: The Future of Public Financing

Public financing, in its myriad forms, can fundamentally reorient the focus of election campaigns by encouraging new and diverse voices to enter the political fold and reducing the predominance of moneyed interests in modern elections.⁸⁵ However, the appeal of public financing depends on understanding that it is not a silver bullet for all of our democracy's ailments, and these programs are most effective when combined with other structural changes to the campaign process, including greater disclosure and more robust enforcement.

A successful public financing program must be tailored to the locality or state enacting it, and should be complemented by additional reforms that encourage transparency and accountability in the political system. While each jurisdiction must decide which mechanism of public funding is right for its community, a few principles underlie all successful public financing programs.

Maintaining a Viable Program. One critical element of an effective public financing program is its adaptability to changes in election practices. In response to evolving standards in campaigning, lawmakers and regulators must update public financing programs to provide candidates with competitive levels of funding, which encourages participation in the program.

When public funding programs become outmoded, candidate participation declines. The presidential public funding program presents a regrettable illustration of candidate drop-off in a neglected public financing system. ⁸⁶ On the other hand, jurisdictions that have made necessary amendments to their programs have maintained high rates of participation. As discussed in Part IV, New York City has periodically increased the match rate available in its public funding program. Between 2001 and 2013, local candidate participation in the city's program was over 91 percent for the primaries and 69 percent in general elections. ⁸⁷ Amidst the impressive rates of participation, New York City has experienced positive effects within the larger electoral process, including greater participation by small donors who reflect the city's diverse demographics. ⁸⁸ All jurisdictions with public financing should track systematic measurements of participation in their public financing programs in order to gauge a program's viability over time and identify potential weaknesses.

Innovation. Relatedly, lawmakers should embrace innovations within public financing and tailor programs to best fit the needs of their communities. In 2017, Seattle held its first election under the Democracy Voucher Program. Early analyses demonstrate

⁸⁵ For more information on the salutary effects of public financing, see Campaign Legal Center, Fact Sheet: Public Financing in Elections, July 27, 2017, https://campaignlegal.org/document/fact-sheet-public-financing-elections.
86 See supra Part II(B)(3).

⁸⁷ N.Y.C. Campaign Fin. Bd., 2013 Post Election Report 46 (2013), https://www.nyccfb.info/sites/default/files/pressfiles/2013_PER.pdf.

⁸⁸ ELISABETH GENN ET. AL., BRENNAN CTR. FOR JUSTICE & CAMPAIGN FIN. INST., DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS 10 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

that the 2017 donor base in Seattle campaigns was larger and more diverse than in previous elections.⁸⁹ In addition, Seattle residents' participation in the Democracy Voucher Program corresponded with improved voter turnout: Nearly 90 percent of city residents who used their vouchers voted in 2017 compared to only 43 percent of those who did not use their vouchers.⁹⁰

Secure Funding. Another essential element of success for any public financing program is a dependable source of funding. It may seem self-evident, but program administration will suffer and an otherwise well-designed program will become obsolete without sufficient and consistent funds. When possible, codifying a guarantee of funding within the public financing law is one of the best ways to secure financial viability. Moreover, if a program relies upon taxpayer designations for funding, lawmakers should take into account the declining rates of taxpayer participation for both federal and state public finance programs and consider more secure alternatives.

Outreach & Education. A key factor in the implementation of a new public financing program is informing both potential candidates and voters about the program's existence. By offering the public an opportunity to learn about the benefits of public financing, outreach and education efforts help to ensure high rates of participation among candidates as well as community support for the program. After Seattle voters approved the Democracy Voucher Program, the Seattle Ethics and Elections Commission partnered with local groups in conducting a multifaceted outreach campaign that included multi-language focus groups and the targeted distribution of information to minority communities around the city. This outreach helped to drive the record level of local participation in city campaigns in 2017. Additionally, effective outreach and education to candidates can help alleviate concerns about a new program.

Recordkeeping & Auditing. Public finance programs help to ensure transparency and accountability when they entail detailed recordkeeping requirements both for candidates and election administrators. On the candidate side, recordkeeping helps to assure compliance and boosts transparency. For administrators, recordkeeping aids audit and enforcement efforts. Moreover, administrative oversight is essential to maintain a program's integrity, detect any attempts to defraud the program, and preserve the public's confidence in public financing.

Understanding the Objectives. Finally, it is important to stress that the goal of public financing is not to get money out of politics. Political campaigns cost money, and we are living in the post-*Citizens United* universe of unlimited independent spending. Public financing simply provides candidates with a choice: They can continue to

⁸⁹ Jennifer Heerwig & Brian McCabe, Ctr. for Studies in Demography & Ecology, Univ. of Wash., Expanding Participation in Municipal Elections: Assessing the Impact of Seattle's Democracy Voucher Program (2018), https://www.jenheerwig.com/uploads/1/3/2/1/13210230/mccabe_heerwig_seattle_voucher_4.03.pdf. 90 *Id.*

⁹¹ See Seattle Ethics & Elections Comm'n, Democracy Voucher Program Biennial Report 2017 22 (2018), https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%2003_15_2018.pdf.

raise large, private contributions from a small number of big donors, or, through a well-designed system of public financing, they can opt to run a competitive race funded by small-dollar contributions and bolstered by public funds. The concept of public funding further recognizes that citizens' involvement in campaigns is an important means of civic engagement that often precipitates other forms of political participation, like volunteering for campaigns and voting. It is critical that lawmakers understand what public financing can—and cannot—achieve when formulating a program.

Public financing offers a versatile and powerful tool for cities, counties, and states seeking to improve the integrity and accessibility of elections. When public financing systems are well structured and updated as necessary, these programs have proven to be a viable method to advance the U.S. Constitution's promise of democratic self-governance.

VI. Public Financing Program Summaries

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	Program ⁹⁵ provides	Governor; Attorney	number and	

^{92 26} U.S.C. Subtitle H.

⁹³ Ariz. Rev. Stat. tit. 16, ch. 6, art. 2.

⁹⁴ Ark. Code Ann. § 7-6-222.

⁹⁵ Conn. Gen. Stat. tit. 9, ch. 157.

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⁹⁶ Fla. Stat. tit. IX, ch. 106.

⁹⁷ Haw. Rev. Stat. tit. 2, ch. 11, pt. XIII-J.

⁹⁸ Me. Rev. Stat. tit. 21-A, ch. 14.

⁹⁹ Md. Elec. Law Title. 15.

¹⁰⁰ Mass. Gen. Laws ch. 55C.

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¹⁰¹ Mich. Comp. Laws ch. 169.

¹⁰² Minn. Stat. ch. 10A.

¹⁰³ Mont. Code. Ann. § 15-30-2131(1)(d).

¹⁰⁴ N.J. Stat. tit. 19, ch. 44A.

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¹⁰⁵ N.M. Stat. Ann. ch. 1, art. 19A.

¹⁰⁶ Ohio Rev. Code § 5747.29.

¹⁰⁷ Oregon Rev. Stat. § 316.102.

¹⁰⁸ R.I. Gen. Laws tit. 17, ch. 25.

¹⁰⁹ Vt. Stat. Ann. tit. 17, ch. 17, subch. 5.

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¹¹⁰ D.C. Mun. Code tit. 1, ch. 11A, subch. III, part C-i.

¹¹¹ W.V. Code. ch. 3, art. 12.

¹¹² Albuquerque, N.M., City Charter art. XVI.

¹¹³ Austin, Tex., Code tit. 2, ch. 2.2, art. 7.

¹¹⁴ Berkeley, Cal., Mun. tit. 2, ch. 2.12, art. 8.

¹¹⁵ Boulder, Colo.., Mun. Code tit. 13, ch. 2.

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¹¹⁶ Chapel Hill, N.C., Code ch. 2, art. V.

¹¹⁷ Howard County, Md., Code tit. 10, subtit. 3.

¹¹⁸ Long Beach, Cal., Mun. Code tit. 2, ch. 2.01, div. IV.

¹¹⁹ Los Angeles Mun. Code ch. IV, art. 9.7.

¹²⁰ Miami-Dade County Code § 12-22.

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P අසුල්ස්ත් ආල්සින් දිය. අයුල්ස්ත් ආල්සින් දිය	Portition of Generated Action with the property of the control of	MMayor; CGamisissiener; Adustitor.	Candidates nusust rareis numiniumm number emand this satisfications of committies is a committee of committee in the committee in the committee is a committee in the committee in the committee is a committee in the committee in	Spanendinarlimit. Pulsiklifufutskapap
riðirhorðið, C£liðlifarðiðirðæeted	Ri हो प्लेमकारा की White is ipal C देखरों के 'pravaides	MMAYOCIPITE CAMMICIL.	obboose appragate	Pullalkiniterseebib.

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¹²¹ Montgomery County, Md., Code ch. 16, art. IV.

¹²² New Haven, Conn., Code tit. III, ch. 2, art. XI.

¹²³ New York City Admin. Code tit. 3, ch. 7.

¹²⁴ Oakland, Cal., Mun. Code tit. 3., ch. 3.13.

¹²⁵ Portland, Or., City Code tit. 2, ch. 2.16.

¹²⁶ Richmond, Cal., Mun. Code art. II, ch. 2.43.

Jurisdiction; year	Summary	Office Eligible	Qualification	Program
o f enactment. Jurisdiction; year	Summary	Office Eligible	Criteria Qualification	Conditions Program
of enactment.	Summary matching funds in		Qualification one other candidate Criteria for the same office.	Conditions
	\$5,000 increments.		for the same office.	
2003. San Francisco, California; enacted	San Francisco San Francisco San Francisco San Francisco Governmental	Mayor; Board of	one other candidate Candidates must for the same office. raise minimum raise minimum number and	limit may be
San Francisco,	San Francisco	Mayor; Board of	Candidates must	Spending limit; increased on the limit may be basis of opponent increased on the spending of
California; enacted	Campaign and Conduct Code	Supervisors.	raise minimum threshold amount	limit may be
2000.	Governmental	'	number and of contributions	increased on the
	Governmental provides partial Conduct Code ¹²⁷ grants, and		threshold amount	basis of opponent
	grants, and		threshold amount from city residents. of contributions	basis of opponent independent
	provides partial matching funds at			spending or expenditures.
	grants, and tered rates for		from city residents.	independent
	matching funds at contributions from			expenditures. Public funds cap.
	l tiered rates for dity residents.			
Santa Fe, New	contributions from	Mayor;	Candidates must	Public funds cap. Spending limit.
•	city residents.	1. 1. 1		spending illine.
Mexico; enacted 1989 nta Fe, New	city residents. Campaign Finance Santa Fe Public Code provides	Gity Council; Mayor;	raise minimum Candidates must number of \$5	Spending limit.
Mexico; enacted	Campaign Finance	Mayor: Municipal Judge. City Council;		'
1987.	ful grants to Code ¹²⁸ provides participating	Municipal Judge.	raise minimum contributions from number of \$5	
1707.	participating	Wallicipal saage.	number of \$5 registered voters in	
	full grants to candidates.		registered voters in contributions from city.	
Seattle,	participating Seattle Democracy	Mayor; City Council;	registered voters in Candidates must	Spending limit;
Washington;	Voucher Program 129	Gity Attorney.	raise minimum	limit may be
Seattle enacted 2015.	Seattle Democracy provides city Voucher Program ¹²⁹ residents with \$100	Mayor; City Council	; number of tes must	Spending limit:
Washington;	Voucher Program 129	City Attorney.	raise minimum contributions of at	removed of the same limit may be basis of opponent removed on the spending or basis of opponent independent
enacted 2015.	provides city		number of least \$10 from city	removed on the
	residents with \$100		contributions of at residents.	basis of opponent
	in vouchers to		least \$10 from city	spending or expenditures.
	in vouchers to participating contribute to candidates.		residents.	expenditures. independent
	candidates. participating		100.001.101	·
Suffolk County, New	candidates. Suffolk County Fair	County Executive;	Candidates must	Debates. Spending limit
York: enacted 2017.	H	County Legislator.	raise minimum	Spending limit. Debates.
Suffolk County, Nev	Suffell County Fair Fund provides Lections Matching Lections Matching Fund provides Fund provides for contributions	County Executive;	Candidates must	Spending limit. Public funds cap.
York; enacted 2017.	Lections Matchina	County Legislator.	raise minimum threshold amount	rubiic funds cap.
, , , , , , , , , , , , , , , , , , , ,	4:1 matching tunds	311 19 13 1111	threshold amount	Public funds cap.
	for contributions		number and of contributions	Tublic fullus cap.
	4:1 matching funds		threshold amount	
	for contributions residents.		of contributions	
Tucson, Arizona;	from county Tucson's public residents.	Mayor; City Council.	from individuals. Candidates must	Spending limit.
en <u>a</u> cted 1985.			raise a minimum	
Tucson, Arizona;	Tucson s public program provides	Mayor; City Council	. Candidates must number of	Spending limit.
enacted 1985.	1: financing		raise a minimum contributions of \$10	
	1:1 matching funds for contributions 1:1 matching funds from 1ndividuals	; [number of ar less from city	
	1.1 matching funds		contributions of \$10 residents.	
	for contributions		or less from city	
	from individuals.		residents.	
	om marriadalo.		. 551461165.	
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¹²⁷ S.F. Campaign & Governmental Conduct Code art. I, ch. 1.

¹²⁸ Santa Fe, N.M., Mun. Code ch. IX, § 9-3.

¹²⁹ Seattle Mun. Code tit. 2, ch. 2.04, subtitle VIII.

¹³⁰ Suffolk County, N.Y., Charter art. XLII.

¹³¹ Tucson, Ariz. Charter Ch. XVI, subch. B.



ABOUT CAMPAIGN LEGAL CENTER

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization based in Washington, D.C. Through litigation, policy analysis, and public education, CLC works to protect and strengthen the U.S. democratic process across all levels of government. CLC is adamantly nonpartisan, holding candidates and government officials accountable regardless of political affiliation.

CLC was founded in 2002 and is a recipient of the prestigious MacArthur Award for Creative and Effective Institutions. Its work today is more critical than ever as it fights the current threats to our democracy in the areas of campaign finance, voting rights, redistricting, and ethics. Most recently, CLC argued *Gill v. Whitford*, the groundbreaking Supreme Court case seeking to end extreme partisan gerrymandering. In addition, CLC plays a leading watchdog role on ethics issues, providing expert analysis and helping journalists uncover ethical violations, and participates in legal proceedings across the country to defend the right to vote.