



September 18, 2019

Public Campaign Financing Commission
New York
Via Electronic Mail (submissions@campaignfinancereform.ny.gov)

Re: Statement in Support of Creating a Small Donor Public Financing System for New York State Elections

Dear Members of the Commission,

The Campaign Legal Center (CLC) respectfully submits this statement in support of the creation of a small donor public financing system in New York. To assist the Commission in its important work of developing the details of the new system, this statement highlights two administrative pieces that are essential to an effective program. First, education about the program for both candidates and the general public is key to ensuring high participation in the program. Second, mechanisms for maintaining the integrity of the program, from auditing and reviewing the program to regular updates, are essential to the program's viability. To provide the Commission with additional information about the development of public financing programs, we have included as an attachment CLC's report, *Buying Back Democracy: The Evolution of Public Financing in U.S. Elections*.

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.

As the first statewide program to be created since Connecticut enacted a public financing system in 2005, the State of New York and the Commission are establishing a new program at critical time in our democracy. The vast amounts of money spent in our elections leave many Americans feeling excluded from the political process. Increasing reliance on super PACs, secretive "outside" spending, and big donations from wealthy individuals undermines the U.S. Constitution's

promise of democratic self-governance.¹ As special interests and big donors 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.²

Public financing offers a powerful antidote to these concerns, providing another path to elected office. 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. Facilitating dialogue between voters and elected officials and increasing participation in the electoral process are “goals vital to a self-governing people.”³

I. Outreach and education are key components in the successful implementation of new public financing programs.

The creation of a new public financing program represents a significant change in any campaign finance system. With any such change, there will inevitably be bumps in the road as candidates and voters familiarize themselves with the new system. The Commission must ensure that outreach and education are built into the program to help ensure that candidates and voters are aware of the new system and how it works. Seattle’s public financing program, enacted in 2015, requires that “the Commission shall inform the public about democracy vouchers and the Program.”⁴ The requirements include publishing guidebooks, brochures, and other documents, with translations into numerous languages.⁵ New York City provides training for candidates on compliance, reporting software, and post-election audits.⁶ In Arizona, participants in the state’s Clean Elections program are required to attend a training workshop that helps participating candidates understand the program.⁷

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 POL’Y 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 1958-2019*, PEW RESEARCH CENTER (Apr. 11, 2019), <https://www.people-press.org/2019/04/11/public-trust-in-government-1958-2019/>; Jeffrey Jones et al., *How Americans Perceive Government in 2017*, GALLUP (Nov. 1, 2017), <https://news.gallup.com/opinion/polling-matters/221171/american’s-perceive-government-2017.aspx>.

³ *Buckley v. Valeo*, 242 U.S. 1, 93 (1976).

⁴ Seattle Mun. Code § 2.04.690(C).

⁵ *Id.*

⁶ N.Y.C. CAMPAIGN FIN. BD., *Trainings*, <https://www.nyccfb.info/candidate-services/trainings/> (last visited Sept. 17, 2019).

⁷ CITIZENS CLEAN ELECTIONS COMMISSION, *Candidate Training*, <https://www.azcanelections.gov/run-for-office/candidate-training> (last visited Sept. 17, 2019).

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 widespread 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 targeted distribution of information to minority communities around the city.⁸ This outreach helped to drive to record levels the local participation in city campaigns in 2017, resulting in a donor base that was larger and more diverse than in previous elections.⁹ Additionally, effective outreach to and education for candidates will increase candidates' understanding of the program and help encourage participation in the program.

II. Requirements for regular audits, reviews, and updates to a public financing program help maintain its integrity and maintain the public's confidence.

Maintaining confidence in a public campaign financing program is essential to its long-term viability. The Commission should strive to include administrative requirements that reinforce the principles of transparency, accountability, and responsiveness that keep a program viable for both candidates and the public.

a. Recordkeeping and auditing requirements are fundamental to promoting transparency and accountability in elections.

The Commission can instill the principles of transparency and accountability in the system by requiring detailed recordkeeping for both candidates and administrators. Using these principles to build administrative oversight in the system is essential to maintaining the integrity of a public campaign financing program. On the candidate side, recordkeeping helps assure compliance and boosts transparency. For administrators, recordkeeping aids audit and enforcement efforts. These requirements will help to detect any attempts to defraud the program, ensure responsible stewardship of public dollars, and preserve the public's confidence in public financing.

These recordkeeping and auditing requirements are standard in public financing programs across the country. In Rhode Island, the public financing provisions require the Board of Elections to publish a summary of the campaign

⁸ 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-%202003_15_2018.pdf.

⁹ JENNIFER HEERWIG & BRIAN MCCABE, CTR. FOR STUDIES IN DEMOGRAPHY & ECOLOGY, UNIV. OF WASH., EXPANDING 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.

finance reports filed by candidates participating in the public funding program following an election.¹⁰ The Board is also empowered to adopt auditing procedures to make sure the public financing program is operating properly.¹¹ The Minnesota Campaign Finance Board is required to provide a manual that sets forth recommended forms of bookkeeping and reporting.¹² Each fiscal year, the Board is also required to report to the legislature, governor, and the public, among other information, any money it has disbursed.¹³

b. Requiring regular updates to the program ensures that it continues to meet the electoral needs of both the public and participating candidates.

The Commission should build adaptability into the public campaign financing program to ensure it responds to changes in the electoral practices. Lawmakers and regulators must update public financing programs to provide candidates with competitive levels of funding, encouraging participation in the program.

When public funding programs become outmoded, candidate participation declines. The presidential public funding program, enacted in 1974, presents a regrettable illustration of candidate drop-off in a neglected public financing system.¹⁴ On the other hand, jurisdictions that have made necessary amendments to their programs have maintained high rates of participation. New York City has periodically increased the match rate available in its public financing program; between 2001 and 2013, local candidate participation in the city's program was over 91 percent for primaries and 69 percent in general elections.¹⁵ Amidst the impressive rates of candidate 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.¹⁶ The Commission can respond to changing electoral conditions by tracking systemic measurements of the program in order to gauge its viability over time and identify potential weaknesses.

¹⁰ 17 R.I. Gen. Laws § 17-25-27.

¹¹ 17 R.I. Gen. Laws § 17-25-28.

¹² Minn. Stat. § 10A.02(8)(c).

¹³ Minn. Stat. § 10A.02(8)(a); *see generally*, *Public subsidy of state election campaigns*, MINNESOTA CAMPAIGN FINANCE AND PUBLIC DISCLOSURE BOARD, <https://cfb.mn.gov/citizen-resources/board-programs/public-subsidy-of-campaigns/historical-use-of-public-subsidy-program/> (last visited Sept. 17, 2019).

¹⁴ *See* Attachment, CATHERINE H. KELLEY & AUSTIN GRAHAM, CAMPAIGN LEGAL CTR., *BUYING BACK DEMOCRACY: THE EVOLUTION OF PUBLIC FINANCING IN U.S. ELECTIONS 6* (2018), https://campaignlegal.org/sites/default/files/2018-10/2018-Building-Small-Dollar-Democracy_FINAL.pdf.

¹⁵ N.Y.C. CAMPAIGN FIN. BD., 2013 POST ELECTION REPORT 46 (2013), https://www.nycfb.info/sites/default/files/pressfiles/2013_PER.pdf.

¹⁶ 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.

III. Conclusion

The Campaign Legal Center supports the creation of a small donor public financing system in New York. We respectfully urge the Commission to build into the new public campaign financing system important administrative features, including public education, recordkeeping, and regular updates that will ensure the system's integrity. Thank you for the opportunity to submit this statement. We would be happy to provide additional information or answer any questions the Commission may have.

Respectfully submitted,

/s/

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/s/

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Attachment



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

By Catherine Hinckley Kelley & Austin Graham



OCTOBER 2018

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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.¹ 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.²

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-%202003_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.”⁶

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.”⁷ 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.”⁸ 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.⁹ 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.¹³ 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.¹⁴ There 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.”¹⁵

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 & REALITIES*, 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.

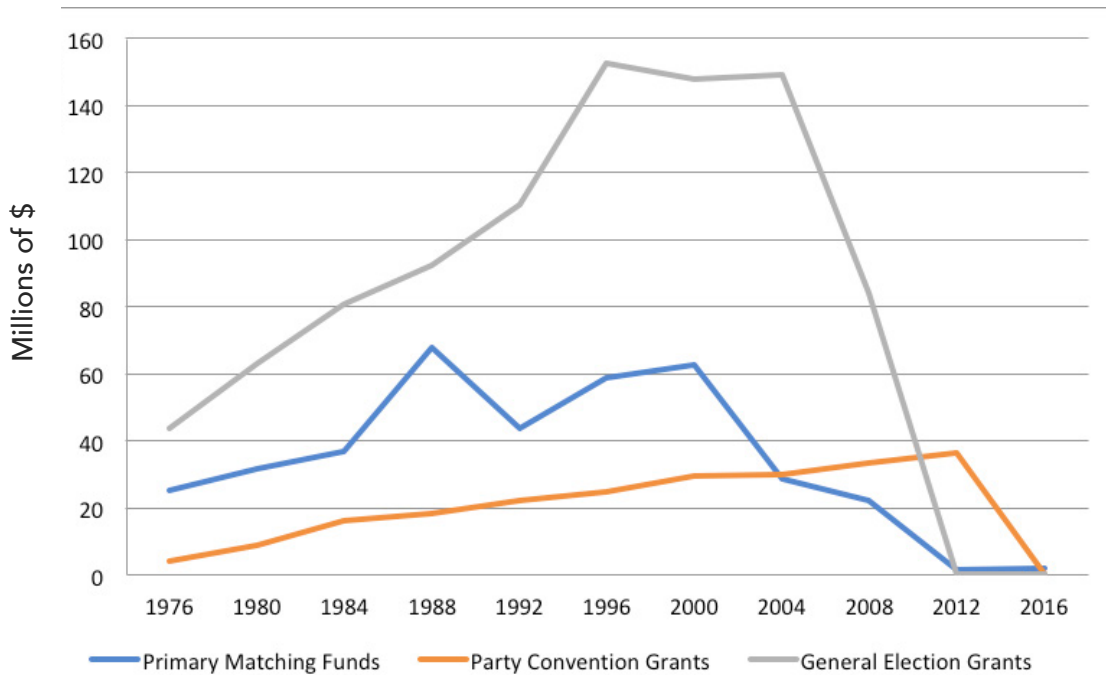
¹⁸ *Id.*

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 2008.⁵⁸ 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.⁵⁹

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.”⁶⁰ 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-program-to-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.

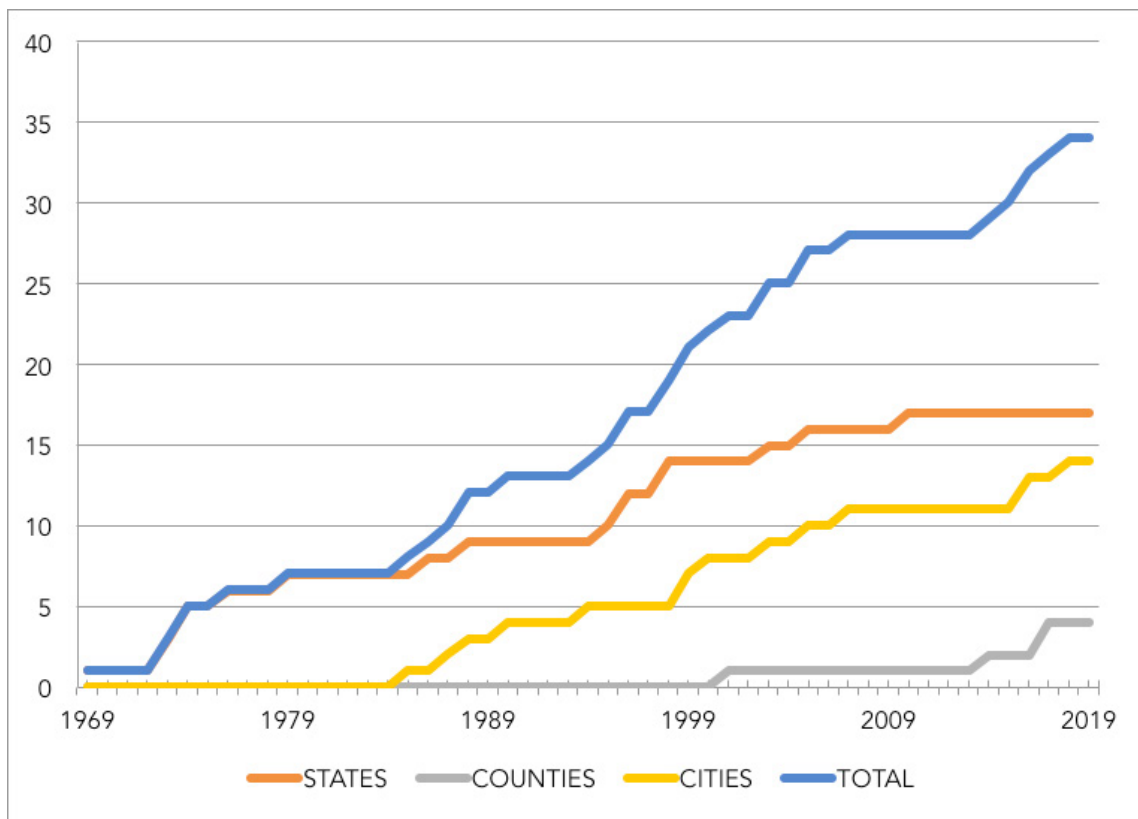
69 For example, Oregon created a tax credit for individuals’ contributions to political campaigns in 1969. See Oregon Rev. Stat. § 316.102. Additionally, Colorado attempted to establish public funding for political parties in 1909, though the law was invalidated by the state’s supreme court the following 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.⁷⁰ 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.⁷¹

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

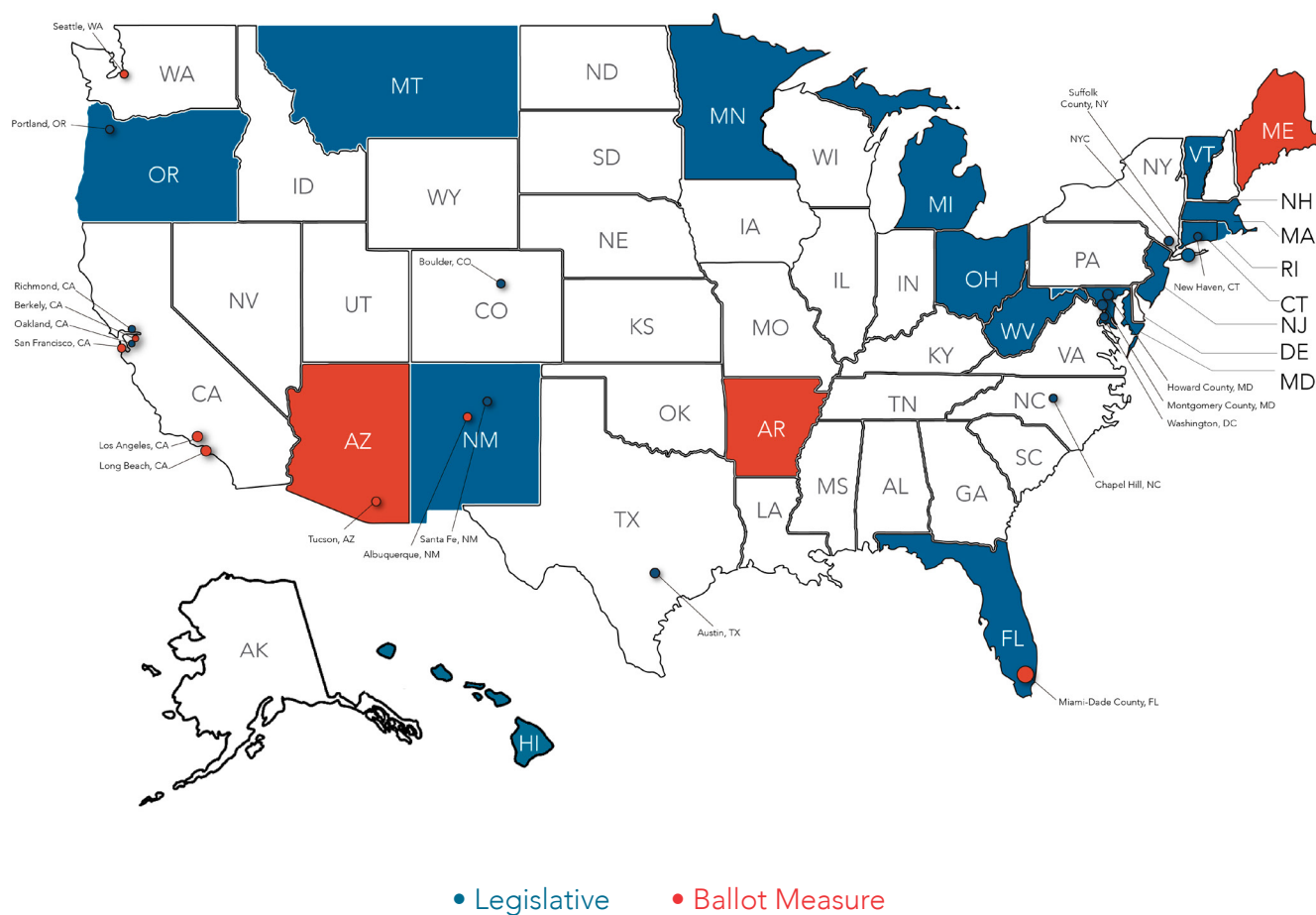
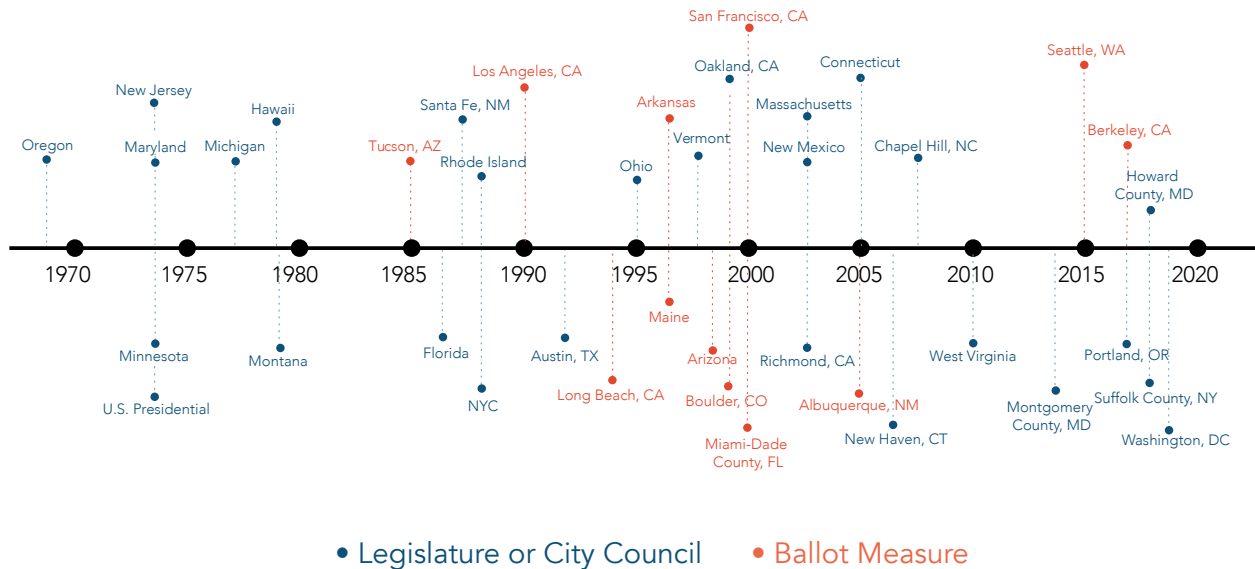


FIGURE 4: MEANS OF ENACTMENT OVER TIME

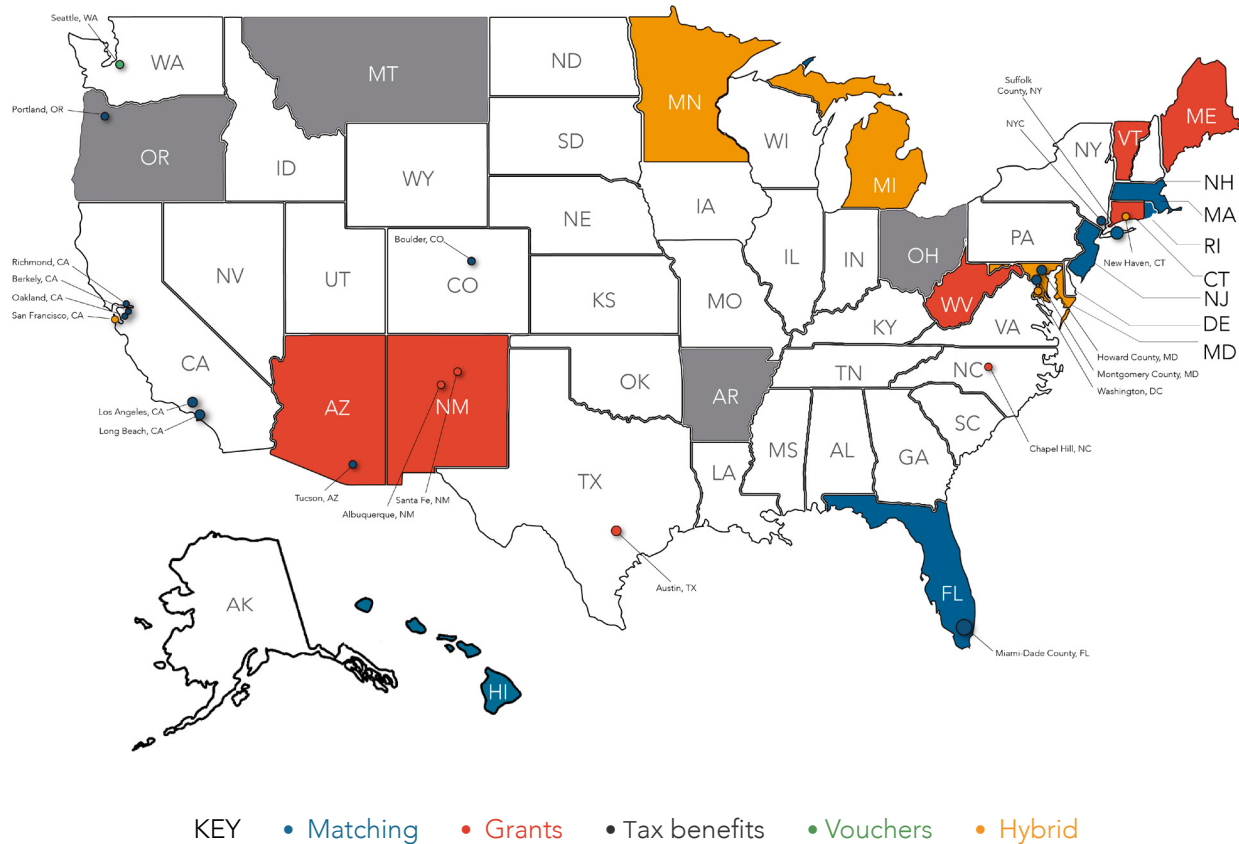


Finally, the motivations behind public financing laws have evolved over time. The creation of many of the earliest programs was spurred by nationwide anxiety over political corruption following the revelations of Watergate; in more recent years, reform often has come as a response to more localized issues. 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.⁷² 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).

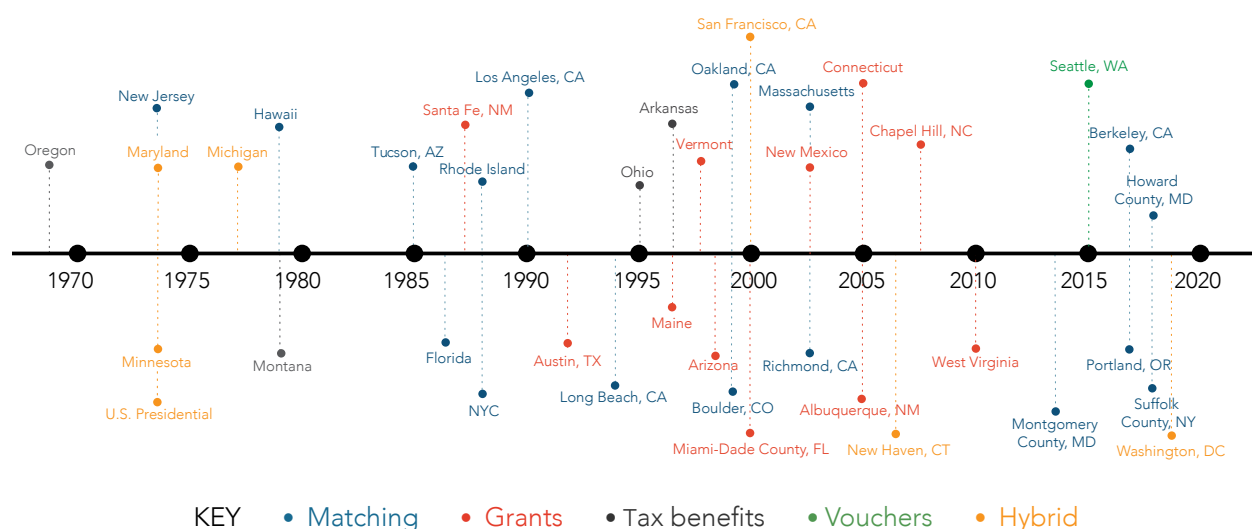


only provide public funds to candidates in a contested election.⁷⁴ Lastly, prior to the dispersal of public funds, election administrators typically must certify that a candidate has, in fact, satisfied the qualification requirements by reviewing the candidate's filings for sufficiency.

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.⁷⁹ Other jurisdictions have followed suit. In 2013, Los Angeles increased its matching funds rate from one-to-one to a multiple match.⁸⁰ 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 ($6 \times \$175 = \$1,050$), 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.nycffb.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.⁸¹ 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.⁸³ 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.⁸⁴

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.nycffb.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.⁹¹ 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-%202003_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

Federal

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
U.S. presidential elections; enacted 1974.	Presidential public funding program ⁹² provides 1:1 matching funds up to \$250 for contributions from individuals during primaries, and full grants in general election to participating candidates.	President.	For primaries, candidates must raise threshold amount of at least \$5,000 in at least 20 states from contributions of \$250 or less from individuals. For general election, major party nominees are automatically eligible.	Spending limits; in primaries, there are per-state limits and aggregate limit.

States & Washington, D.C.

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
Arizona; enacted 1998.	Arizona Citizens Clean Elections Act ⁹³ provides full grants to participating candidates.	Governor; Legislature; Mine Inspector; Treasurer; Superintendent of Public Instruction; Corporation Commission; Secretary of State; Attorney General.	Candidates must collect a minimum number of qualifying contributions of \$5.	Spending limit.
Arkansas; enacted 1996.	Arkansas Code ⁹⁴ provides a tax credit up to \$50, or \$100 for joint return, for contributions made to a candidate, political action committee, or political party.	Not applicable.	Not applicable.	Not applicable.
Connecticut; enacted 2005.	Connecticut Citizens' Election Program ⁹⁵ provides	Governor; Lieutenant Governor; Attorney	Candidates must raise minimum number and	Spending limit.

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.

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
	full grants to participating candidates in primary and general elections.	General; State Comptroller; State Treasurer; Secretary of State; General Assembly.	threshold amount of contributions from state residents or district residents (legislative).	
Florida; enacted 1986.	Florida Election Campaign Financing Act ⁹⁶ provides matching funds at tiered rates for contributions from state residents.	Governor; Lieutenant Governor; Attorney General; Chief Financial Officer; Commissioner of Agriculture.	Candidates must raise threshold amount of contributions from state residents.	Spending limit.
Hawaii; enacted 1979.	Hawaii ⁹⁷ provides 1:1 matching funds for contributions up to \$100 from state residents.	Governor; Lieutenant Governor; County Mayor; County Prosecutor; State Legislature; Office of Hawaiian Affairs.	Candidates must raise a threshold amount of contributions from state residents.	Spending limit. Public funds cap.
Maine; enacted 1996.	Maine Clean Election Act ⁹⁸ provides full grants to participating candidates.	Governor; Legislature.	Candidates must raise a minimum number of contributions from registered voters in state.	Spending limit.
Maryland; enacted 1974.	Maryland Public Financing Act ⁹⁹ provides 1:1 matching funds in primaries, and full grants in general election.	Governor.	Candidates must raise threshold amount of contributions from state residents.	Spending limit.
Massachusetts; enacted 2003.	Massachusetts public financing program ¹⁰⁰ provides 1:1 matching funds for contributions up to \$250 from individuals.	Governor; Lt. Governor; Attorney General; Secretary of Commonwealth; Treasurer and Receiver General; Auditor.	Candidates must raise threshold amount of contributions from individuals.	Spending limit. Public funds cap.

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.

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
Michigan; enacted 1976.	Michigan Campaign Finance Act ¹⁰¹ provides candidates with 2:1 matching funds in primary, and choice of 1:1 matching funds or partial grant in general election.	Governor.	For primary funding, candidates must raise threshold amount of contributions from state residents. For general election funding, major party candidate is automatically eligible for partial grant; matching funds available if candidate raises threshold amount of contributions from state residents.	Spending limit. Public funds cap.
Minnesota; enacted 1974.	Minnesota Public Subsidy Program ¹⁰² provides partial grants to candidates in general election, and offers refunds up to \$50, or \$100 if joint filers, to state residents who make political contributions.	Governor; Lieutenant Governor; Attorney General; Secretary of State; State Auditor; Legislature.	Candidates must raise threshold amount of contributions from state residents.	Spending limit.
Montana; enacted 1979.	Montana Code ¹⁰³ provides itemized tax deduction of \$100, or \$200 for joint return, for political contributions made by state residents.	Not applicable.	Not applicable.	Not applicable.
New Jersey; enacted 1974.	New Jersey's public financing program ¹⁰⁴ provides 2:1 matching funds for a contribution up to \$1,500.	Governor.	Candidates must raise a threshold amount of \$430,000.	Spending limit. Public funds cap. Debates.

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.

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
New Mexico; enacted 2003.	New Mexico Voter Action Act ¹⁰⁵ provides full grants to participating candidates.	New Mexico Supreme Court; Court of Appeals; Public Regulation Commission	Candidates must raise a minimum number of \$5 contributions from registered voters in the state, or registered voters in district (Public Regulation Commission).	Spending limit.
Ohio; enacted 1995.	Ohio Code ¹⁰⁶ provides tax credit up to \$50, or \$100 for joint return, for contributions to statewide and legislative candidates.	Not applicable.	Not applicable.	Not applicable.
Oregon; enacted 1969.	Oregon tax law ¹⁰⁷ provides tax credit up to \$50, or \$100 for joint return, for contributions to political parties or federal, state, or local candidates.	Not applicable.	Not applicable.	Not applicable.
Rhode Island; enacted 1988.	Rhode Island's public financing program ¹⁰⁸ provides matching funds at tiered rates for participating candidates.	Governor; Lieutenant Governor; Secretary of State; Attorney General; General Treasurer.	Candidates must raise minimum number and threshold amount of contributions.	Spending limit. Public funds cap.
Vermont; enacted 1997.	Vermont Public Financing Option ¹⁰⁹ provides full grants to participating candidates.	Governor; Lt. Governor.	Candidates must raise a minimum number and threshold amount of contributions of \$50 or less from	Spending limit.

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.

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
			registered voters in state.	
Washington, District of Columbia; enacted 2018.	D.C. Fair Elections Program ¹¹⁰ provides partial grants, and 5:1 matching funds for contributions from city residents.	Mayor; Attorney General; District Council; and State Board of Education.	Candidates must raise a minimum number and threshold amount of threshold of contributions from city residents.	Public funds cap. Debates.
West Virginia; enacted 2010.	West Virginia Public Campaign Financing Fund ¹¹¹ provides full grants to participating candidates.	West Virginia Supreme Court of Appeals.	Candidates must raise threshold amount of contributions from registered voters in state.	Spending limit.

Cities and Counties

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
Albuquerque, New Mexico; enacted 2005.	Albuquerque Open and Ethical Elections Code ¹¹² provides full grants to participating candidates.	Mayor; City Council.	Candidates must collect minimum number of qualifying contributions of \$5 from registered voters in city.	Spending limit.
Austin, Texas; enacted 1992.	Austin Fair Campaign Finance Fund ¹¹³ provides partial grants to participating candidates in runoff election.	Mayor; City Council.	Candidates must sign campaign contract.	Spending limit. Debates.
Berkeley, California; enacted 2016.	Berkeley Fair Elections Act ¹¹⁴ provides 6:1 matching funds for contributions from city residents.	Mayor; City Council.	Candidate must raise a minimum number and threshold amount of contributions from city residents.	Spending limit. Public funds cap.
Boulder, Colorado; enacted 2000.	Boulder public financing system ¹¹⁵ provides 1:1	City Council.	Candidates must raise a minimum number and	Spending limit. Public funds cap.

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.

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
	matching funds for contributions of \$100 or less.		threshold amount of contributions from individual donors.	
Chapel Hill, North Carolina; enacted 2008.	Chapel Hill Voter-Owned Elections Program ¹¹⁶ provides full grants to participating candidates.	Mayor; Town Council.	Candidates must raise minimum number and threshold amount of contributions from registered voters in Chapel Hill.	Spending limit.
Howard County, Maryland; enacted 2017.	Howard County Citizens' Election Fund ¹¹⁷ provides matching funds at tiered rates for contributions from county residents.	County Executive; County Council.	Candidates must raise minimum number and threshold amount of contributions from county residents.	Spending limit. Public funds cap.
Long Beach, California; enacted in 1994.	Long Beach Campaign Reform Act ¹¹⁸ provides matching funds at 1:2 public-to-private dollar rate.	Mayor; City Council; City Attorney; City Auditor; City Prosecutor.	Candidates must raise threshold amount of contributions.	Spending limit. Public funds cap.
Los Angeles, California; enacted 1990.	Los Angeles Municipal Code ¹¹⁹ provides matching funds at separate rates for primary and general elections.	Mayor; City Council; City Attorney; Controller.	Candidates must raise minimum number and threshold amount of contributions from city residents, or district residents (city council).	Spending limit; limit may be removed on the basis of opponent spending or independent expenditures. Public funds cap.
Miami-Dade, FL; enacted 2000.	Miami-Dade County's Election Campaign Financing Trust Fund ¹²⁰ provides partial grants to qualifying candidates.	Mayor; Board of County Commissioners.	Candidates must raise minimum number and threshold amount of contributions from registered voters in Miami-Dade County.	Spending limit.

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.

Jurisdiction; year of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
Montgomery County, Maryland; enacted 2014.	Montgomery County Code ¹²¹ provides matching funds at tiered rates for contributions from county residents.	County Executive; County Council.	Candidates must raise minimum number and threshold amount of contributions from county residents.	Public funds cap.
New Haven, Connecticut; enacted 2006.	New Haven Democracy Fund ¹²² provides partial grants, and matching funds at tiered rates for contributions from registered voters in city.	Mayor.	Candidates must raise minimum number of contributions from registered voters in city.	Spending limit; limit may be removed or increased on basis of opponent spending. Public funds cap.
New York City, New York; enacted 1988.	New York City Matching Funds Program ¹²³ provides participating candidates with 6:1 matching funds for contributions from city residents.	Mayor; City Council; Comptroller; Public Advocate; Borough President.	Candidates must collect a minimum number and threshold amount of contributions from city residents.	Spending limit. Public funds cap. Debates.
Oakland, California; enacted 1999.	Oakland Limited Public Financing Act ¹²⁴ provides 1:1 matching funds for contributions from city residents and business.	City Council.	Candidates must raise a threshold amount of contributions from city residents and business, and make a threshold amount of expenditures.	Spending limit. Public funds cap.
Portland, Oregon; enacted 2016.	Portland Open and Accountable Elections Program ¹²⁵ provides 6:1 matching funds for contributions from city residents.	Mayor; Commissioner; Auditor.	Candidates must raise minimum number and threshold amount of contributions from city residents.	Spending limit. Public funds cap.
Richmond, California; enacted	Richmond Municipal Code ¹²⁶ provides	Mayor; City Council.	Candidates must be opposed by at least	Public funds cap.

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 of enactment.	Summary	Office Eligible	Qualification Criteria	Program Conditions
2003.	matching funds in \$5,000 increments.		one other candidate for the same office.	
San Francisco, California; enacted 2000.	San Francisco Campaign and Governmental Conduct Code ¹²⁷ provides partial grants, and matching funds at tiered rates for contributions from city residents.	Mayor; Board of Supervisors.	Candidates must raise minimum number and threshold amount of contributions from city residents.	Spending limit; limit may be increased on the basis of opponent spending or independent expenditures. Public funds cap.
Santa Fe, New Mexico; enacted 1987.	Santa Fe Public Campaign Finance Code ¹²⁸ provides full grants to participating candidates.	Mayor; City Council; Municipal Judge.	Candidates must raise minimum number of \$5 contributions from registered voters in city.	Spending limit.
Seattle, Washington; enacted 2015.	Seattle Democracy Voucher Program ¹²⁹ provides city residents with \$100 in vouchers to contribute to participating candidates.	Mayor; City Council; City Attorney.	Candidates must raise minimum number of contributions of at least \$10 from city residents.	Spending limit; limit may be removed on the basis of opponent spending or independent expenditures. Debates.
Suffolk County, New York; enacted 2017.	Suffolk County Fair Elections Matching Fund ¹³⁰ provides 4:1 matching funds for contributions from county residents.	County Executive; County Legislator.	Candidates must raise minimum number and threshold amount of contributions from individuals.	Spending limit. Public funds cap.
Tucson, Arizona; enacted 1985.	Tucson's public financing program ¹³¹ provides 1:1 matching funds for contributions from individuals.	Mayor; City Council.	Candidates must raise a minimum number of contributions of \$10 or less from city residents.	Spending limit.

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.