



January 16, 2024

The Honorable James Gray, Chairman
Senate Election Law and Municipal Affairs Committee
General Court of New Hampshire

The Honorable Keith Murphy, Vice Chairman
Senate Election Law and Municipal Affairs Committee
General Court of New Hampshire

RE: Statement in Support of SB 445

Dear Chairman Gray, Vice Chairman Murphy, and Members of the Committee,

Campaign Legal Center (“CLC”) respectfully submits this statement in support of the adoption of a public financing program for New Hampshire elections.

CLC is an 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 American’s right to participate in the democratic process.

CLC is a longtime proponent of public financing for campaigns in state and local elections, and we commend the Committee for considering Senate Bill 445, a bill to establish a new public financing program for New Hampshire Executive Council elections. Adopting a public financing program provides an opportunity to broaden public engagement in democracy and amplify the voices of regular New Hampshire residents in the electoral process. Public financing programs that empower people to make contributions to candidates they support enhance the ability of voters to meaningfully participate in election campaigns.

This statement begins with a summary of the proposed Voter-Owned Elections Program in SB 445. Next, we highlight empirical and academic research demonstrating how public financing of elections can help increase political participation, broaden the pool of candidates who seek public office, and reduce political corruption. We then discuss courts’ long-standing approval of public financing as a tool to strengthen participation in elections and prevent corruption. Finally, we provide recommendations for strengthening the bill.

I. The Proposed Voter-Owned Elections Program

Senate Bill 445 would create New Hampshire's first public financing program, providing New Hampshire residents with publicly funded certificates, which they may use to support Executive Council candidates of their choice.

Under the proposal, eligible New Hampshire voters would receive four certificates from the Voter-Owned Elections Commission ("Commission") worth \$25 each. A voter may assign one or more certificates to a participating candidate for election to the New Hampshire Executive Council, and the candidate may then redeem certificates assigned to them for those funds. A voter may assign a certificate by giving it to a candidate or a candidate's representative, submitting the certificate to the Commission by mail or in person, or assigning the certificate through a secure online system developed by the Commission.

To qualify for participation in the Voter-Owned Elections Program ("Program"), a candidate must agree to specific conditions, including limiting the candidate's use of personal funds and accepting only limited private contributions. Further, a candidate must demonstrate viable public support by collecting a minimum of 500 qualifying contributions from registered New Hampshire voters. Once qualified, participating candidates may receive up to \$84,000 in public funds from voter certificates during the election cycle. Additionally, a participating candidate who qualifies for the general election is eligible for a \$60,000 grant from the Commission. The Program also provides additional safeguards for public funds: To conserve public resources, the grant provided to a participating candidate in an uncontested general election is reduced to \$10,000, and a participating candidate is required to return all unspent public funds to the Commission.

Under the proposal, the Commission administers the Program, including certifying candidates for participation, processing voter certificates, administering the Voter-Owned Elections Fund, providing training and public education materials, developing rules and guidance for the Program, and providing regular reviews of the Program and audits of participating candidates. The Commission is also empowered to adopt rules to ensure the Program is operated efficiently, fairly, and transparently, as well as make recommendations to the legislature for improving the Program. The Commission enforces the Program's requirements, including through proceedings to determine violations and levy penalties.

II. Benefits of Public Financing in State & Local Elections

By adopting SB 445, New Hampshire would join over three dozen states, counties, and municipalities that have enacted some type of public election financing for candidates, and the number continues to grow.¹ In 2020, Washington, DC successfully implemented its

¹ See CATHERINE HINCKLEY KELLEY & AUSTIN GRAHAM, CAMPAIGN LEGAL CTR., BUYING BACK DEMOCRACY: THE EVOLUTION OF PUBLIC FINANCING IN U.S. ELECTIONS 19-26 (2018), https://campaignlegal.org/sites/default/files/2018-10/2018-Building-Small-Dollar-Democracy_FINAL.pdf.

new public financing program;² and in April 2023, Denver, Colorado held its first election under the city’s new small-dollar donor matching program.³ Following the success of Seattle’s Democracy Voucher Program, Oakland, California adopted a similar system to be implemented for the city’s 2026 elections.⁴ Just this year, New York is holding its first legislative elections under the state’s new small-dollar donor matching program.⁵ The experiences of states and cities around the country demonstrate that public financing augments political participation among the electorate at large, increases electoral competition by encouraging more people to seek public office, and reduces opportunities for political corruption.

While the structure and design of existing programs vary considerably—ranging from Seattle’s Democracy Voucher Program to full grant systems in Maine and Arizona—these programs generally share the common objectives of expanding citizens’ engagement in the electoral process, boosting electoral competition, and decreasing candidates’ dependence on large contributions. 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. Expanding Citizen Participation in Elections

Empirical evidence indicates that 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 eligible residents as a potential source of meaningful contributions, voucher programs and small-dollar donor matching programs can galvanize campaigns’ engagement of the electorate at large.

Following Seattle’s enactment of its Democracy Voucher Program, local participation in the city’s campaign finance system reached historic levels in the 2017 and 2019 election cycles. According to an analysis of Seattle’s election data, a total of 38,297 Seattle residents assigned Democracy Vouchers to city candidates in 2019, nearly doubling the 20,727 Seattle residents who assigned vouchers in the city’s 2017 election.⁶ The use of vouchers, alone, represented a nearly three-fold increase over the number of contributors in Seattle elections

² CATHERINE HINCKLEY KELLEY ET AL., CAMPAIGN LEGAL CTR., DEMOCRATIZING THE DISTRICT: D.C.’S FAIR ELECTIONS PROGRAM IN 2020, 11 (2021), https://campaignlegal.org/sites/default/files/2021-10/CLC_DemocratizingTheDistrict%20%281%29.pdf [hereinafter DEMOCRATIZING THE DISTRICT].

³ See Joel Rubino, *Public funds are helping draw a stampede of Denver mayoral candidates*, DENVER POST (Dec. 2, 2022), <https://www.denverpost.com/2022/12/02/denver-mayor-candidate-field-tied-to-fair-elections-fund-matching-dollars>.

⁴ Eli Wolfe, *Oakland’s Democracy Dollars delayed, but not dead*, OAKLANDSIDE (July 26, 2023), <https://oaklandside.org/2023/07/26/oakland-democracy-dollars-delayed-until-2026-election-campaign-finance/>.

⁵ Rebecca Lewis, *Incumbents are the first to sign up for fledgling state campaign finance program*, CITY & STATE (Sept. 28, 2023), <https://www.cityandstateny.com/policy/2023/09/incumbents-are-first-sign-fledgling-state-campaign-finance-program/390760/>.

⁶ JENNIFER HEERWIG & BRIAN MCCABE, MCCOURT SCH. OF PUB. POL’Y, GEORGETOWN UNIV., BUILDING A MORE DIVERSE DONOR COALITION 2 & n.5 (2020), <https://georgetown.app.box.com/s/r2skgxfnc230ukkb3dfqgm4576phzabd> [hereinafter DIVERSE DONOR COALITION].

from before the Democracy Voucher Program was implemented.⁷ 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 2017,⁸ 2019,⁹ and 2021.¹⁰

Beyond increasing the absolute number of local campaign contributors, the Democracy Voucher Program helped to diversify Seattle’s donor pool. According to an analysis of Seattle’s 2017 elections, voucher donors were more socioeconomically representative of Seattle’s electorate than monetary contributors, and voucher donors were more likely than monetary contributors to reside in low-income neighborhoods.¹¹ Additionally, people of color comprised a greater proportion of voucher donors as compared to monetary contributors, and voucher donors closely resembled the demographics of voters in Seattle’s 2017 elections.¹² In a subsequent study of Seattle’s 2019 elections, the use of vouchers continued to increase across all income groups and all racial groups.¹³

Recent analyses also strongly suggest that the Democracy Voucher Program increases political participation beyond simply financing campaigns. A recent study showed that the Program led to a 9% increase in voter turnout over the course of Seattle’s last three election cycles.¹⁴ This significant finding builds on previous studies suggesting similar impacts on voter participation. The University of Washington’s Center for Studies in Demography & Ecology analysis revealed that Seattle residents who gave vouchers to city campaigns in 2017 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.¹⁵ Importantly,

⁷ Jennifer Heerwig & Brian McCabe, *Diversifying the Donor Pool: How Did Seattle’s Democracy Voucher Program Reshape Participation in Municipal Campaign Finance?*, 18 ELECTION L.J. 323, 331 & n.15 (2019) (comparing 2017 voucher users to 2013 cash contributors).

⁸ SEATTLE ETHICS & ELECTIONS COMM’N, DEMOCRACY VOUCHER PROGRAM BIENNIAL REPORT 2017, at 16 (2018),

https://www.seattle.gov/documents/Departments/EthicsElections/DemocracyVoucher/Biennial%20Reports/Final%20-%20Biennial%20report%20-%202003_15_2018%280%29.pdf.

⁹ SEATTLE ETHICS & ELECTIONS COMM’N, DEMOCRACY VOUCHER PROGRAM BIENNIAL REPORT 2019, at 16 (2019),

https://www.seattle.gov/documents/Departments/EthicsElections/DemocracyVoucher/Outreach%20Fund/2019_Biennial_Report.pdf.

¹⁰ See SEATTLE ETHICS & ELECTIONS COMM’N, DEMOCRACY VOUCHER PROGRAM BIENNIAL REPORT 2021, at 12 (2021),

https://www.seattle.gov/documents/Departments/EthicsElections/DemocracyVoucher/Biennial%20Reports/2021_Biennial_Report_FINAL.pdf.

¹¹ Heerwig & McCabe, *Diversifying the Donor Pool*, *supra* note 6, at 332-33.

¹² *Id.*

¹³ DIVERSE DONOR COALITION, *supra* note 5, figs.2 & 3.

¹⁴ Sarah Papich, *Do Democracy Vouchers help democracy?*, CONTEMPORARY ECON. POL’Y, at 2 (2023), <https://doi.org/10.1111/coep.12625>.

¹⁵ 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, fig.10 (2018),

https://www.jenheerwig.com/uploads/1/3/2/1/13210230/mccabe_heerwig_seattle_voucher_4.03.pdf.

Evidence from other jurisdictions also indicates that public financing can reduce voter “roll-off,” the

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.¹⁶ These findings strongly suggest that participation in the Democracy Voucher Program prompted greater engagement in the city's electoral process more broadly.

Small dollar matching programs have long shown similar effects on participation. 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.¹⁷ By way of comparison, individual contributions of \$175 or less to candidates for the New York State Assembly, which had not been eligible for matching funds,¹⁸ came from residents of only 30% of New York City census-block groups in 2010.¹⁹

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.²⁰ 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.²¹

As the findings from Seattle and New York City demonstrate, public financing of elections can bring new and diverse donors into the campaign fold. Further, these experiences demonstrate that creating a public financing system that responds to emerging campaign practices can both maintain the viability of the system and encourage more citizens to participate in our democracy. Evidence from jurisdictions with public financing

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).

¹⁶ HEERWIG & MCCABE, *EXPANDING PARTICIPATION*, *supra* note 14, fig.10.

¹⁷ 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.

¹⁸ The State of New York recently adopted a matching funds program for state offices that is now in place for its 2024 elections. Rebekah F. Ward, *New matching funds for state elections touted at New York City launch event*, TIMES UNION (Dec. 1, 2022), <https://www.timesunion.com/news/article/Public-campaign-finance-launches-in-New-York-17623982.php>.

¹⁹ *Id.*

²⁰ *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.

²¹ 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.

systems thus suggests that a new public financing program in New Hampshire could have a transformative effect on citizen participation in the state's elections.

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. Candidates regularly cite the availability of public funding as a crucial factor in giving them the opportunity to enter elections and run competitive campaigns.²² A recent analysis of Seattle's Democracy Voucher Program specifically found "an 86% increase in the number of candidates per race" following the implementation of the program.²³

By reducing barriers to entry, public financing also increases opportunities for candidates from underrepresented groups or who lack access to deep-pocketed networks to run for office: Four years after Connecticut implemented a state program in 2008, representation in the state legislature grew for women and reached its highest levels for Latino representation.²⁴ Similarly, the number of Native American and Latino candidates nearly tripled after Arizona implemented its Clean Elections program.²⁵

Upon taking effect in 2000, the Maine Clean Elections Act immediately increased the number of competitive 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.²⁶ 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 2010.²⁷ The drop in uncontested elections was consistent with an overall increase in the

²² See, e.g., NIRALI VYAS ET AL., BRENNAN CTR. FOR JUSTICE, SMALL DONOR PUBLIC FINANCING COULD ADVANCE RACE AND GENDER EQUITY IN CONGRESS, 10 (2020), https://www.brennancenter.org/sites/default/files/2020-10/FINAL%20-%20SDPF%20Could%20Advance%20Race%20and%20Gender%20Equity%20in%20Congress_10.15.2020_10AM_v2_0.pdf; see also DEMOCRATIZING THE DISTRICT, *supra* note 2, at 14.

²³ See, e.g., Alan Griffith & Thomas Noonan, *The effects of public campaign funding: Evidence from Seattle's Democracy Voucher program*, 211 J. PUB. ECON. 104676, at 2 (2022), <https://drive.google.com/file/d/15CO4PkM0iU2wxocmkqEGBi3JSIZhrleg/view?usp=sharing>.

²⁴ J. MIJIN CHA & MILES RAPAPORT, DEMOS, FRESH START: THE IMPACT OF PUBLIC CAMPAIGN FINANCING IN CONNECTICUT, 13 (2013), <https://www.Demos.org/research/fresh-start-impact-public-campaign-financing-connecticut>.

²⁵ STEVEN M. LEVIN, CTR. FOR GOVERNMENTAL STUDIES, KEEPING IT CLEAN: PUBLIC FINANCING IN AMERICAN ELECTIONS, 7 (2006), <https://www.policyarchive.org/handle/10207/4523/>.

²⁶ Neil Malhotra, *The Impact of Public Financing on Electoral Competition: Evidence from Arizona and Maine*, 8 STATE POL. & POL'Y Q. 263, 275-77 (2008), <https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf>.

²⁷ CONN. STATE ELECTIONS ENFORCEMENT COMM'N, CITIZENS' ELECTION PROGRAM 2010: A NOVEL SYSTEM WITH EXTRAORDINARY RESULTS 6 (2011), https://seec.ct.gov/Portal/data/Publications/Reports/2010_citizens_election_program_report_final.pdf.

number of candidates running for the Connecticut General Assembly in 2010, many of whom cited the availability of public financing as a factor in deciding to seek public office.²⁸

A broader assessment of state legislative elections similarly identified a correlation between the availability of public financing and heightened competition in elections. According to an analysis of monetary competitiveness in 47 states' elections between 2013 and 2014, only 18% of legislative races were competitive over that timeframe.²⁹ However, a substantially higher percent of races—41%—were monetarily competitive in the five states with public financing available to legislative candidates.³⁰ 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.³¹

c. Reducing Opportunities for Corruption

A central goal of public financing systems is to reduce opportunities for corruption by enabling candidates to run competitive campaigns and win elected office without having to depend on large contributions. By increasing candidates' ability to rely on small contributions and public funds, these systems reduce the opportunity for corruption and the appearance that elected officials are beholden to major campaign donors.

A review of Seattle's municipal election data demonstrates its Democracy Voucher Program has 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.³² In Seattle's 2013 mayoral election, 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.³³

By comparison, Seattle candidates who participated in the Democracy Voucher Program in 2017, 2019, and 2021 were far less dependent on high-dollar donors.³⁴ As a condition of program participation, candidates were subject to a \$250 limit on monetary

²⁸ *Id.* at 6-7; see also BETH A. ROTMAN & LISA NIGHTINGALE, COMMON CAUSE, AMPLIFYING SMALL-DOLLAR DONORS IN THE CITIZENS UNITED ERA, 11 (2020), https://www.commoncause.org/wp-content/uploads/2020/09/CT_SmallDonorDollar_Report_WEB.pdf.

²⁹ Zach Holden, *2013 and 2014: Monetary Competitiveness in State Legislative Races*, NAT'L INST. ON MONEY IN POL. (Mar. 9, 2016), https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races#ftnref_4_link.

³⁰ *Id.* tbl.2.

³¹ *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.*

³² 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).

³³ *Id.* at 18.

³⁴ See Alan Griffith & Thomas Noonan, *supra* note 22.

contributions.³⁵ In lieu of high-dollar donations, candidates in the 2017 city elections collectively raised 82% of their contributions from donors who gave \$199 or less.³⁶ Importantly, Seattle's subsequent election cycles demonstrated that the 2017 elections were not an outlier: In 2019 and in 2021, candidates in Seattle elections collected 90% of their contributions from donors who gave \$199 or less.³⁷ Democracy Vouchers in Seattle markedly reduced the primacy of large contributions in Seattle elections—validating the anti-corruption interests that program was intended to serve.

Small dollar matching programs have similarly reduced candidates' reliance on large donations. An analysis of New York City's long-running matching funds program found that the city's implementation of multiple matching funds in 2001, providing at the time a 4:1 match for residents' contributions of \$250 or less, significantly increased both the total number of small dollar contributors to city candidates, as well as the proportional importance of these small dollar contributors to competitive city council candidates participating in the matching funds program.³⁸ These effects were consistent across challengers, incumbents, and open-seat candidates.³⁹

More recently, in Washington, DC, the size of the average donation to city council candidates fell by about 50% after the city implemented its small dollar matching program in 2020.⁴⁰ In that election, candidates who participated in the program received 76% of their contributions from small dollar donors who lived in the District; candidates who did not participate in the program relied more heavily on large donations, receiving only 27% of their contributions in small donations from DC residents.⁴¹

³⁵ SEATTLE ETHICS & ELECTIONS COMM'N, DEMOCRACY VOUCHER PROGRAM BIENNIAL REPORT 2017, at 18 (2018),

https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%202003_15_2018.pdf.

³⁶ 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 Jan. 15, 2024).

³⁷ SEEC Chart of 2019 City Elections Contributors, sortable by size and type,

<http://web6.seattle.gov/ethics/elections/charts.aspx?cycle=2019&n1=contributions&n2=size&n3=groupings&n4=allcategories&n5=allcandidates&n6=number#aChartTop> (last visited Jan. 16, 2024);

SEEC Chart of 2021 City Elections Contributors, sortable by size and type,

<http://web6.seattle.gov/ethics/elections/charts.aspx?cycle=2021&n1=contributions&n2=size&n3=groupings&n4=allcategories&n5=allcandidates&n6=number#aChartTop> (last visited Jan. 15, 2024).

³⁸ Michael J. Malbin et al., *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11 ELECTION L.J. 3, 9-10 (2012) http://www.cfinst.org/pdf/state/nyc-as-a-model_elj_as-published_march2012.pdf.

³⁹ *Id.*

⁴⁰ KENAN DOGAN & BRIAN J. MCCABE, MCCOURT SCH. OF PUB. POL'Y, GEORGETOWN UNIV., *Expanding Donor Participation in the District: An Analysis of the Fair Elections Program in Washington, DC*, 1 (2021) https://mccourt.georgetown.edu/wp-content/uploads/2022/02/DC_Fair_Elections_Report_Sept2021_ACCESSIBLE.pdf.

⁴¹ DEMOCRATIZING THE DISTRICT, *supra* note 2, at 11.

III. Public financing promotes First Amendment interests by facilitating participation in the electoral process and preventing corruption.

Courts have long 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,” “to facilitate communication by candidates with the electorate,” and “to free candidates from the rigors of fundraising.”⁴² The Court expressly recognized that public financing is consistent 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.*”⁴³

Since *Buckley*, federal and state courts have continued to affirm the democratic value of public financing as a tool to prevent political corruption and to strengthen citizen engagement in elections.⁴⁴ Indeed, the Supreme Court of Washington upheld the Democracy Voucher Program as “directly” supporting the City of Seattle’s interest in giving “more people the opportunity to have their voices heard in democracy.”⁴⁵

In 2011, the Supreme Court again affirmed the constitutionality and affirmative values of public financing, even as it invalidated Arizona’s “trigger” provisions that gave publicly funded candidates additional public funds in direct response to opponents’ spending or independent expenditures.⁴⁶ In *Arizona Free Enterprise Club’s Freedom PAC v. Bennett*, the Court reiterated that “governments may engage in public financing of election campaigns and that doing so can further significant government interests, such as the state interest in preventing corruption.”⁴⁷ Thus, while it foreclosed the release of public funds in *direct response* to private campaign spending, the Court declined to “call into question the wisdom of public financing as a means of funding political candidacy” or the constitutionality of these laws in general.⁴⁸

⁴² 424 U.S. 1, 91 (1976) (per curiam).

⁴³ *Id.* at 92-93 (emphasis added).

⁴⁴ 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 incumbent candidates”).

⁴⁵ *Elster v. City of Seattle*, 444 P.3d 590, 595 (Wash. 2019).

⁴⁶ *Ariz. Free Enterprise Club’s Freedom PAC v. Bennett*, 564 U.S. 721 (2011).

⁴⁷ *Id.* at 754 (internal quotation marks, brackets, and citation omitted).

⁴⁸ *Id.* at 753.

IV. Recommendations

CLC recommends the following amendments to strengthen SB 445. We would be happy to work with the Committee to develop amendments to implement these recommendations.

- 1. Ensure the Program receives consistent funding.** Providing consistent funding assures that participating candidates and voters can rely on the availability of public funds for participation in the Program. Under the bill, the Voter-Owned Elections Fund is funded by voluntary donations, fines assessed for campaign finance violations, interest generated by the Fund, unspent monies returned to the Fund, and other sources to be identified by the Commission. To ensure the Fund has sustainable and sufficient funding, the Committee should consider providing a consistent funding source, such as a minimum appropriation from state revenues. For example, the Maine Clean Election Fund receives funds from state tax revenues, in addition to donations, fines, and other sources.⁴⁹
- 2. Provide additional criteria for determining whether an election is “contested.”** Providing full public funding only to participating candidates who face competitive elections conserves public money and program resources. Under the bill, a participating candidate receives the maximum public grant of funds in a general election only if two or more candidates have each made over \$10,000 in expenditures in the election. The Committee should consider expanding the circumstances under which an election is considered “contested” to include elections in which a participating candidate’s opponent has also qualified for public funding. Like spending thresholds, qualifying for public funds is a clear indication of an opponent’s competitiveness, which should therefore trigger full public funding to all participating candidates in an election.⁵⁰
- 3. Require publicly funded candidates to participate in public debates.** The Committee should consider requiring participating candidates, as a condition of the Program, to participate in public, nonpartisan candidate debates or forums. Public debates provide an opportunity to increase candidate engagement with the electorate—a critical objective for public financing programs.⁵¹

V. Conclusion

Senate Bill 445 would implement a public financing program for the New Hampshire Executive Council for the purpose of accomplishing the important goals described above. CLC strongly supports establishing a public financing program for New Hampshire elections and would welcome the opportunity to work with the Committee to strengthen the bill and ensure the Voter-Owned Elections Program is successful.

⁴⁹ Me. Stat. tit. 21-A, § 1124(2).

⁵⁰ See, e.g., N.Y. Comp. Codes R. & Regs. tit. 9, § 6221.21(g)(7); see also S.F. Campaign & Gov’t Conduct Code § 1.140(c)(3).

⁵¹ See, e.g., N.Y. Elec. Law § 14-211. See also Denv., Colo., Mun. Code § 15-54(e)(1).

Respectfully submitted,

/s/

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