



1411 K Street NW, Suite 1400
Washington, DC 20005
tel: 202-736-2200 fax: 202-736-2222

**Public Hearing Before the Philadelphia City Council
Committee on Law & Government, Resolution 160851**

Statement of Catherine Hinckley Kelley
State & Local Reform Program Director

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Thank you for the invitation to appear before the Committee on Law & Government. On behalf of the Campaign Legal Center,¹ I am pleased to be here today to discuss the importance of public financing as an option for campaign finance reform. The City Council has undertaken its consideration of public financing at a critical time. We are less than a week away from Election Day and the conclusion of a presidential race that began well over 18 months ago. In total, an estimated \$6.6 billion dollars will be spent on this election, \$86.5 million more than was spent in 2012.² Much of the election coverage has focused on how much money has been raised in support of each candidate and from whom. Perhaps the most startling aspect of this \$6.6 billion is the amount of money that comes from a small handful of the wealthiest Americans: nearly 12 percent of all of the money raised so far comes from just 100 families.³

The vast amounts of money being raised—including multimillion dollar checks from individuals to super PACs and other political entities—can leave many Americans feeling excluded from the political process. Public funding offers an alternative. Public funding elevates the voices of all citizens in the political process, not just those who can write large checks. There are many important and effective reforms the City Council could consider, however, the Campaign Legal Center believes that public funding is a particularly promising reform option. Public funding programs can reorient our elections by facilitating the dialogue between voters and our elected officials and increase participation in the electoral process, as the Supreme Court said about these programs more than 40 years ago, “goals vital to a self-governing people.”⁴

¹ The Campaign Legal Center is a nonprofit, nonpartisan organization that works to enact, implement and defend effective campaign finance, lobbying and ethics laws. It was created to represent the public perspective in administrative and legal proceedings and to protect the integrity of government and the ability of all Americans to participate in the electoral process.

² Center for Responsive Politics, *Total cost of 2016 election could reach \$6.6 billion, CRP predicts* (Oct. 25, 2016) available at <http://www.opensecrets.org/news/2016/10/total-cost-of-2016-election-could-reach-6-6-billion-crp-predicts/>.

³ *Id.*

⁴ *Buckley v. Valeo*, 424 U.S. 1, 93 (1976).

I. Background on Public Financing

The concept of public financing is not new. The first public financing bill was introduced in Congress in 1904. In his 1907 State of the Union Address, President Theodore Roosevelt remarked “The need for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and legitimate expenses of each of the great national parties, an appropriation ample enough to meet the necessity for thorough organization and machinery, which requires a large expenditure of money. Then the stipulation should be made that no party receiving campaign funds from the Treasury should accept more than a fixed amount from any individual subscriber or donor; and the necessary publicity for receipts and expenditures could without difficulty be provided.”⁵ The concept of public funding addresses the problems that have arisen since the Gilded Age and continue to be a focus of money in politics reform efforts, “secrecy, corporate money, and undue influence.”⁶

The nation’s first public financing programs were enacted in 1974, in the aftermath of the Watergate Scandal. Elected officials and citizens sought a way to restore the electorate’s faith in our democratic process. In that year, the presidential public financing system in its current form was enacted as part of the 1974 Federal Election Campaign Act (FECA), Congress’s overhaul of the nation’s campaign finance laws, and Maryland, Minnesota and New Jersey enacted public funding programs for state elected offices. For nearly 30 years, the presidential public financing system was a highly successful program with virtually every major party candidate using public funds from 1976 (the first presidential election in which the program was in place) through 2004. The presidential system is a hybrid of two approaches to public funding. Candidates can opt to raise “matching funds” to finance their primary election campaigns, contributions up to \$250 dollars are matched one-to-one with public funds, and eligible candidates can receive a “lump sum” grant to finance their general election campaign. Candidates receiving the general election funding must agree to forgo private fundraising and to comply with spending limits and other restrictions.

Although the presidential public funding program worked well for many years, Congress failed to provide the program with the legislative maintenance necessary to keep it up-to-date with current campaign practices and funding requirements.⁷ Since the early 2000s, candidates have been opting to raise private funds rather than participate in the public funding system. In 2000, George W. Bush became the first major party candidate to turn down public funding in the primaries and in 2008, Barack Obama became the first major party candidate to turn down public funding in the general election.

Despite the decline of the presidential system, public financing at the state and local level has become an increasingly popular reform option. Since the first public financing programs were enacted in 1974, 13 states and 18 municipalities have adopted some form of public financing.⁸

⁵ Theodore Roosevelt, President of the United States, Seventh Annual Message (Dec. 3, 1907).

⁶ Robert E. Mutch, *BUYING THE VOTE: A HISTORY OF CAMPAIGN FINANCE REFORM* 168 (2014).

⁷ For an in-depth history of the presidential public financing system, how the system operates and the atrophy of the system due to congressional neglect, see Anthony Corrado, *Public Funding of Presidential Campaigns*, in *THE NEW CAMPAIGN FINANCE SOURCEBOOK* 180 (Anthony Corrado, Thomas Mann, Daniel Ortiz, Trevor Potter eds., 2005).

⁸ For a list of all jurisdictions with public funding systems, please see Appendix A.

Two more states, South Dakota and Washington, the City of Berkeley and Howard County, Maryland will decide next week on Election Day whether they too will enact public financing programs in their communities.

Although the concept of public financing is well established, it remains an innovative and ambitious approach to campaign finance reform. Public funding is intended to address a number of the problems, the goals of these systems include making it possible for a more diverse pool of candidates to run for office, increasing candidates' engagement with a more diverse pool of constituents, increasing the number of people contributing to campaigns, increasing candidates' reliance on small dollar contributors to fund their campaigns and increasing citizen participation in the electoral process more broadly.⁹

Finally, it is important to be clear about one thing—the goal of public financing is not to get money out of politics. It costs money to run campaigns and we are living in the post-*Citizens United* world of unlimited independent spending. The concept of public funding recognizes that contributing to campaigns is an important means of civic engagement that often leads to other forms of participation and engagement, like volunteering for campaigns and voting. Public financing simply provides candidates with a choice. They can continue to raise large contributions from a smaller number of large donors, or, with a well-designed public financing system, they can opt to run a competitive race funded by small dollar contributions and bolstered by public funds.

II. Constitutionality of Public Financing

The U.S. Supreme Court has addressed public financing in two opinions, both of which broadly upheld the concept. In *Buckley v. Valeo*, the Supreme Court's decision addressing the constitutionality of the FECA provisions, the Court unequivocally confirmed the constitutionality of public financing and endorsed the presidential public financing system as a speech-enhancing alternative to a system of potentially-corrupting privately-funded campaigns. "[Public financing does] not abridge restrict, or censor speech, but rather [it uses] public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people. Thus, [public financing] furthers, not abridges, pertinent First Amendment values."¹⁰ Moreover, *Buckley* stands for the proposition that public financing serves the compelling governmental interest in preventing the political corruption often endemic to elections that rely on private financing.¹¹

Although states and localities have broad leeway to design public financing programs that best fit the needs of their communities, the Supreme Court has imposed two overarching limits on public financing programs. First, public funding programs must be voluntary. Candidates cannot be coerced into public funding but must have the choice to opt to privately finance their campaign if they so choose. This is because public funding programs often require candidates to abide by

⁹ Michael J. Malbin, *Citizen Funding for Elections: What do we know? What are the effects? What are the options?* 2, Campaign Finance Institute (2015), available at http://www.cfinst.org/pdf/books-reports/CFI_CitizenFundingforElections.pdf.

¹⁰ *Buckley*, 424 U.S. at 92-93.

¹¹ *Id.* at 96.

rules that would be unconstitutional (according to current campaign finance jurisprudence) if unilaterally imposed by the government. In *Buckley*, the Court struck down the FECA's expenditure limits as it applied to independent expenditures and a candidate's expenditure of their own funds to finance their election as a burden on the First Amendment right to free speech.¹² In the same decision, however, the Court upheld the presidential public financing system's spending limit, emphasizing the voluntary nature of public financing and the "agreement" by the candidate to abide by certain limitations.¹³

The second limit, which is really a corollary of the first, is that nonparticipating candidates cannot be in any way penalized or disadvantaged by the decision not to participate in public financing. In *Arizona Free Enterprise v. Bennett*, plaintiffs challenged the "trigger provisions" of the Arizona Cleans Elections Act.¹⁴ The trigger provisions provided participating candidates with additional public funds in the event that they faced expenditures beyond a certain threshold by a privately-financed opponent or outside group. In a departure from *Buckley*, which upheld the presidential public financing program as furthering First Amendment values, the Supreme Court held that the trigger provisions violated the First Amendment rights of non-participating candidates and independent spenders. The *Arizona Free Enterprise* decision affected only one aspect of some public financing programs. The many programs that do not include trigger provisions were unaffected by this decision. Despite the new restriction imposed by this decision, localities considering public financing still have broad discretion to design a program to accommodate the needs of their communities.

III. Types of Public Financing¹⁵

There are several types of public funding programs, ranging from so-called "Clean Elections" programs that provide qualified candidates with total public funds, to those that simply provide tax deductions for small political contributions. Systems that provide full citizen funding are intended to reduce the opportunity for corruption while freeing politicians from the fundraising race. Programs that provide citizens with public money then match some multiple of the small contributions multiply the impact of these small donations. Tax deduction and tax credit programs provide an incentive for those capable of making small contributions, and are intended to limit the influence of large contributions while encouraging and empowering the average citizen to make a donation to the candidates of their choice. Programs that provide funding directly to participating candidates (e.g., Clean Elections, matching funds and vouchers) can also require participating candidates to agree to abide by certain conditions, such as limits on how

¹² *Id.* at 54-59.

¹³ "Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specific expenditure limitations." *Buckley*, 424 U.S. at 57 n. 65. *See also Republican Nat'l Comm. v. FEC*, 487 F. Supp. 280 (S.D.N.Y. 1980), *aff'd* 445 U.S. 955 (1980) (rejecting the claim that the presidential system violated the First Amendment by conditioning eligibility for public funds upon candidate's compliance with expenditure limits).

¹⁴ 564 U.S. 721 (2011).

¹⁵ The information in this section is also covered in the *Blueprints for Democracy: Actionable Reforms to solve Our Governing Crisis*, a report produced by the Campaign Legal Center and Issue One in 2015. The complete report includes discussions of other campaign finance reform options, including disclosure, anti-coordination laws and lobbying reform. The complete report is *available here* http://www.campaignlegalcenter.org/sites/default/files/IO_BlueprintsForDemocracy_FINAL.PDF.

much they can spend on their campaign and/or contribution limits that are lower than those imposed on nonparticipating candidates. The following is a brief description of the various approaches to public financing.

a. Clean Elections (Full Public Funding)

A flat grant is provided to fully fund a qualifying candidate who voluntarily participates in the program. The candidate will generally be required to demonstrate sufficient support to receive funding, such as by raising a threshold amount of small (e.g., \$5) contributions. The candidate may also have to agree to certain conditions, including not raising private contributions other than any amount needed to qualify, limiting the amount he or she spends to the amount of the grant, participating in candidate debates and an audit of campaign spending. Full public financing enjoyed the greatest popularity as a policy option in the 1990s and 2000s. Many of the full public financing systems included trigger provisions similar to the ones described for the Arizona system. Since the Supreme Court struck down trigger provisions, many full public financing jurisdictions with trigger provisions require amendments to accommodate this change in the legal landscape.

b. Matching Public Funds

The government matches small private contributions that a candidate raises. Depending on the jurisdiction, contributions up to a set amount may be matched dollar for dollar or at some multiple. New York City currently offers the highest match rate for small dollar contributions, as candidates receive six dollars in public money for every private dollar contributed. Generally, there is a limit on the size of the contribution that will be matched (e.g., \$100). Some systems require the participating candidate to agree to certain conditions which may include lower contribution limits than apply to nonparticipating candidates, overall limits on what the campaign can spend, participation in candidate debates or an audit of campaign spending.

c. Vouchers

The government provides citizens or registered voters with vouchers that they can, in turn, use to make political contributions to candidates of their choice. Candidates can then redeem vouchers for campaign funds. This system does not require the contributor to use his or her own funds and then obtain a reimbursement and, therefore, can allow economically disadvantaged people to make small contributions to campaigns. Participating candidates may have to agree to certain conditions. Seattle voters passed the nation's first voucher system in November 2015.

d. Refunds

Individuals can make small contributions up to a certain amount and then apply for a refund from the government, which may be made immediately upon application (as is the case with Minnesota's rebate system). This system requires the individual to initially make the contribution, but does provide him or her with a reimbursement.

e. Tax Deductions and Tax Credits

Contributors may deduct from the taxes they owe, or receive a tax credit for, their political contributions up to a set amount. Tax deductions and tax credits provide a delayed benefit to the contributor that they receive when they pay their taxes. Additionally, the contributor must have taxable income for the deduction to apply.

f. Hybrid Systems

Any two or more of the above systems can be combined. For example, the presidential public financing system combines a matching funds system for small contributions in the primary, with a full grant to fund general election candidates.

IV. Key Elements of Public Financing Systems

With more than 40 years of public financing in U.S. elections, the Council has the benefit of being able to pull from the experiences of other jurisdiction as it considers public financing for Philadelphia. There are several key elements that we recommend including in any public funding system:

- Required small dollar fundraising to establish eligibility for the program: The program should require participating candidates to demonstrate significant public support by collecting contributions from a designated number of city residents.
- Limit the amount a participating candidate can spend on the campaign: Public funding programs are intended to reduce the burdens of fundraising on candidates. One way to do this is to limit the amount candidates can spend in an election, including limits on a candidate's use of personal wealth.
- Lower limits on contributions to the campaign: In order to reduce the importance of large contributions in an election, many public funding programs include a lower contribution limit for participating candidates. The lower contribution limit is offset by public funds to ensure candidates have enough money to run competitive campaigns.
- Prohibition on participating candidates soliciting soft money (unregulated) contributions: Without such a ban, a candidate would be able to solicit unlimited amounts of money to a super PAC or other entity supporting their candidacy. A candidate's involvement in soliciting unlimited contributions from potentially undisclosed sources would seriously undermine a public funding program.
- Limits on how candidates can spend public funds: Clear guidance on appropriate uses of public funds are crucial to the integrity of the system and the public's faith that public funds are being appropriately used by candidates. These provisions should include a personal use prohibition.

- Audit or review of campaign spending to ensure public funds are not misspent: Another important factor in ensuring the public's confidence in public funding systems is careful administration and timely enforcement for violations of the law. Administrators need the authority and resources to do this important work.
- Mandatory system for review and maintenance of the program: One reason New York City's public funding program has been successful for so long is that the New York City Campaign Finance Board, the agency responsible for administering the law, is also charged with conducting a review of the system after each election cycle. The system has received the maintenance and fine-tuning necessary to keep it up to date.
- Special reporting requirements to provide greater transparency: Reporting requirements and disclosure are important parts of any campaign finance system. With public funding systems, however, good recordkeeping and disclosure are crucial to ensuring candidates are raising and spending money in a manner that is consistent with the requirements of the program.
- Candidate agreement to participate in debates: One goal of public funding programs is to increase candidate's engagement with the electorate. Debates are one way to do this.

V. Conclusion

Public financing is an important reform option that can address many of the problems facing our campaign finance system. Public financing seeks to engage more, small dollar contributors in the funding of campaigns and ultimately engage more people in the democratic process. We urge the City Council to move forward with its consideration of this important reform and adopt public financing for the City of Philadelphia. The Campaign Legal Center is happy to offer our experience and expertise in this process. Thank you for the opportunity to submit this statement and to appear before this committee.

Appendix A: Jurisdictions with Public Financing

<p style="text-align: center;">Matching Grants</p> <p>States</p> <ul style="list-style-type: none"> • Florida, 1986 • New Jersey, 1974 • Rhode Island, 1988 <p>Localities</p> <ul style="list-style-type: none"> • Boulder, Colorado, 2000 • Long Beach, California, 1995 • Los Angeles, California, 1990 • Montgomery County, Maryland, 2014 • New York, New York, 1988 • Oakland, California, 1999 • Richmond, California, 2003 • Sacramento, California, 2003 • San Francisco, California, 2000 • Tucson, Arizona, 1985 	<p style="text-align: center;">Lump Sum Grants</p> <p>States</p> <ul style="list-style-type: none"> • Arizona, 1998 • Connecticut, 2006 • Hawaii, 1979 • Maine, 1996 • Massachusetts, 2003 • Minnesota, 1974 • New Mexico, 2003 • Vermont, 1994 <p>Localities</p> <ul style="list-style-type: none"> • Albuquerque, New Mexico, 2005 • Austin, Texas, 1992 • Chapel Hill, North Carolina, 2008 • Miami-Dade County, Florida, 2001 • Santa Fe, New Mexico, 1987 • Suffolk County, New York, 1998
<p style="text-align: center;">Mixed Systems</p> <p>National</p> <ul style="list-style-type: none"> • U.S. Federal (Presidential), 1974 <p>States</p> <ul style="list-style-type: none"> • Maryland, 1974 • Michigan, 1976 <p>Localities</p> <ul style="list-style-type: none"> • New Haven, Connecticut, 2006 	<p style="text-align: center;">Rebates and Tax Incentives</p> <p>States</p> <ul style="list-style-type: none"> • Arkansas, 1996 • Minnesota, 1992 • Montana, 1979 • Ohio, 1995 • Oregon, 1969 • Virginia, 2000
<p style="text-align: center;">Voucher Programs</p> <p>Localities</p> <ul style="list-style-type: none"> • Seattle, Washington, 2015 	

Information courtesy of the Campaign Finance Institute, available at http://www.cfinst.org/pdf/books-reports/CFI_CitizenFundingforElections.pdf.