

## NOTE

# AMPLIFYING THE SMALL DONOR THROUGH FEDERALIZED PUBLIC FINANCING INFRASTRUCTURE

*Federico Giustini\**

*The Supreme Court in 1976 struck down mandating public financing of election campaigns from the Federal Election Campaign Act of 1971, starting the slow decay of America's current dilapidated election public financing infrastructure. Public financing of a major party nomination ended in 2012 when no major contender accepted public funding in the primary phase. Politicians are flushed with corporate and special interest campaign financing with no incentive to seek regular small donor voters, leaving voters to be disillusioned with the electoral process. This Note argues public financing must be rebuilt to fix America's low voter turnout and make politicians accountable to their constituents. I argue a public financing infrastructure centered on small donor matching and voucher/tax credit programs amplifies the small donor and reconnects voters with their political representatives. Without overhauls to America's public financing infrastructure, the corporate and special interest funding forces will continue to be a corruptive feature in our political elections and America's representative democracy will not live up to its promise of representing the people's interests. This Note will discuss federalized public financing solutions of small donor matching and voucher/tax credit programs aimed to reengage people with the political process, incentivizing politicians to cease relying on special interest campaign funding. Ultimately, I argue that campaign financing is in an unsustainable state and a reimaged public financing infrastructure can push politicians to represent ordinary voters and address historically low voter turnout. A federalized public financing infrastructure should be the catalyst to revitalize American democracy to live up to its ideal of representing the people.*

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\* B.S., Fordham University, Gabelli School of Business; J.D., Cornell Law School, 2021. Thank you to Professor Leslie K. Danks Burke for helping develop the topic of my Note and reviewing the initial drafts.

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## INTRODUCTION

The United States’ deteriorating election public financing infrastructure exemplifies former President Ronald Reagan’s conservative ideology of “starving the beast.”<sup>1</sup> In 1974, the presidential public funding law was enacted to combat “the deleterious influence of large contributions,”<sup>2</sup> and the Supreme Court’s decision in *Buckley v. Valeo* quickly weakened the law.<sup>3</sup> The most recent Supreme Court case, *Arizona Free Enterprise v. Bennett*,<sup>4</sup> further weakened the public financing infrastructure by eliminating the “affirmative” mechanism in trigger-matching funds, which made public financing politically and fiscally viable.<sup>5</sup> Moreover, the 2012 presidential election marked the first time that neither major party presidential candidate accepted public funding in the general election and the first time that no major contender for a major party nomination accepted public funding in the primary phase.<sup>6</sup>

<sup>1</sup> *Starve-the-beast*, BALLOTPEdia, <https://ballotpedia.org/Starve-the-beast>.

<sup>2</sup> *Buckley v. Valeo*, 424 U.S. 1, 90–91 (1976).

<sup>3</sup> See Richard Briffault, *The Future of Public Funding*, 49 WILLAMETTE L. REV. 521, 521 (2013). Under *Buckley*, one candidate taking public funding does not prohibit other candidates from using private funds because public financing is not a method to eliminate the influence of large private contributions. See *Buckley*, 424 U.S. at 96.

<sup>4</sup> 562 U.S. 1282.

<sup>5</sup> See James Sample, *The Last Rites of Public Campaign Financing*, 92 NEB. L. REV. 349, 351 (2013).

<sup>6</sup> See Briffault, *supra* note 3.

Public financing infrastructure's purpose needs to be rebuilt to maximize the number of individuals playing a role in promoting politicians.<sup>7</sup> The average American voter feels disconnected from the political process pushing them to not participate at all. Public financing should enable all voters to have a role in their democracy. Additionally, public financing makes elected officials more accountable to the people they represent.<sup>8</sup> More accountable politicians represent their constituents more effectively and create a relationship between voters and their representatives. A reimagined public financing infrastructure should lessen the potential of special interests drowning out ordinary voters.<sup>9</sup> Voters will not have a bigger role in their democracy, until special interests' influence in our politics is lessened. Moreover, through their support for a politician, public campaign financing needs to give relatively powerless members of the public the opportunity to advance a political agenda that serves their own interests.<sup>10</sup> America's deteriorated public financing infrastructure does little to reinforce accountability to citizens who elected officials represent. Rather, the failing public financing infrastructure allows big-donor financing to inhibit accountability to a broad base of voters influencing voters to not participate in politics.<sup>11</sup> A federalized public financing infrastructure that amplifies the small donor combats against special interest politics and drives voter turnout.

Currently, politicians do not opt in to publicly fund their campaigns to avoid the mandated campaign expenditure limit and avail their campaigns to the near unlimited funding from political action committees ("PACs") and corporations.<sup>12</sup> Politicians see the American public financing infrastructure as a "disaster" and not a viable system to compete in elections.<sup>13</sup> The present public financing infrastructure is not fulfilling its purpose of inhibiting politicians to take special interest and corporate money, and its purpose needs be reimagined for the public financing infrastructure to be effective again.

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<sup>7</sup> See Molly J. Walker Wilson, *The New Role of the Small Donor in Political Campaigns and the Demise of Public Funding*, 25 J.L. & POL. 257, 272 (2009).

<sup>8</sup> See Alex Tausanovitch, *The Small-Donor Antidote to Big-Donor Politics*, CTR. FOR AM. PROGRESS (June 11, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/06/11/451787/small-donor-antidote-big-donor-politics/>.

<sup>9</sup> See Wilson, *supra* note 7.

<sup>10</sup> See *id.*

<sup>11</sup> See Tausanovitch, *supra* note 8.

<sup>12</sup> See *id.* See also *Presidential Spending Limits for 2020*, <https://www.fec.gov/help-candidates-and-committees/understanding-public-funding-presidential-elections/presidential-spending-limits-2020/>.

<sup>13</sup> See Kathy Kiely, *Public Campaign Funding is so Broken that Candidates Turned Down \$292 Million in Free Money*, WASH. POST (Feb. 9, 2016), <https://www.washingtonpost.com/posteverything/wp/2016/02/09/public-campaign-funding-is-so-broken-that-candidates-turned-down-292-million-in-free-money/>.

Some politicians are responding to voters' view of a corruption-filled political financing system by pledging to not accept corporate PAC money and instead relying on small donor funding.<sup>14</sup> In 2016, Bernie Sanders, a 2016 and 2020 Democratic primary competitor, opted out of corporate PAC donations.<sup>15</sup> In 2020, the pledge to reject donations from corporate PACs and rely on small donor funding was nearly universal within the Democratic field competing in the Democratic Primary.<sup>16</sup> In addition, the "No PAC Caucus" popularized rejecting PAC money.<sup>17</sup> Clearly, the movement that has become more prominent in recent political discourse is to denounce corporate PAC money and rely on an expanding pool of small donors to help make up the funding difference.<sup>18</sup> Moreover, the movement can continue to grow, influencing voters to only accept candidates who rely on funding from small donors, since voters cynically believe that big money donors and corporations have an outsized influence on elections.<sup>19</sup> Voters view politicians funded by small donors favorably due to the appearance of corruptive special interests not influencing the politician's campaign.<sup>20</sup> A politician, without the influence of special interest funding, becomes a mouthpiece for their supporters, rather than serving as a spokesperson for special interest groups.<sup>21</sup> Small donor funded politicians resonate with a substantial number of voters, and the growing movement can push voters to have a more favorable opinion of the political process that leads to greater participation in elections.

The proportion of Americans that vote and participate in elections has decreased dramatically over the past several decades.<sup>22</sup> Even though the 2020 Presidential election saw a higher percentage of Americans who voted than in any other election in 120 years, approximately 79.4 million Americans who were eligible to vote did not cast ballots, and in 2018,

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<sup>14</sup> See Elaine Godfrey, *Why So Many Democratic Candidates Are Dissing Corporate PACs*, ATLANTIC (Aug. 23, 2018), <https://www.theatlantic.com/politics/archive/2018/08/why-so-many-democratic-candidates-are-ditching-corporate-pacs/568267/>.

<sup>15</sup> See Averil Harper, *2020 Candidates Back Away from Big Money, Focus on Small-Dollar Donors*, ABC NEWS (May 5, 2019), <https://abcnews.go.com/Politics/2020-candidates-back-big-money-focus-small-dollar/story?id=62768128>; Fredreka Schouten, *Democrats are Rejecting Corporate PACs. Here's What That Means*, CNN POL. (Feb. 12, 2019), <https://www.cnn.com/2019/02/12/politics/rejecting-corporate-pac-money>.

<sup>16</sup> See *id.*

<sup>17</sup> See Harper, *supra* note 15.

<sup>18</sup> See Godfrey, *supra* note 14.

<sup>19</sup> See Keya Vakil, *The 'No Corporate PAC Money' Movement is Growing. It Could Help Democrats Flip the Senate*, COURIER (May 12, 2020), <https://couriernewsroom.com/2020/05/06/the-no-corporate-pac-money-movement-is-growing-it-could-help-democrats-flip-the-senate/>.

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

<sup>21</sup> See Wilson, *supra* note 7.

<sup>22</sup> See DANIEL STEVEN ROBERTS, *WHY WE DON'T VOTE: LOW VOTER TURNOUT IN U.S. PRESIDENTIAL TURNOUT 1* (2009).

120 million voting-eligible Americans did not participate in the midterm election.<sup>23</sup> Compared to other democracies, U.S. elections are rated the worst among all Western democracies, with one of the lowest voter turnout rates.<sup>24</sup> Therefore, the public financing infrastructure must be designed to not only further incentivize politicians to rely on small donor funding, but also provide the necessary tools to drive voter turnout.<sup>25</sup> Ultimately, a federalized public financing infrastructure pushes big-money donors and corporations interests out of American politics and increases voter turnout.

To protect free speech associated with political contributions, multiple Supreme Court rulings pushed public financing advocates to shift their goals away from completely eliminating big, private money from politics.<sup>26</sup> Advocates of publicly financed elections hope to impose limits on the scope of campaign funding while increasing voter involvement.<sup>27</sup> Accordingly, a robust public financing infrastructure needs to spur politicians to favor small donor contributions over special interest money.<sup>28</sup> Thus, a public financing infrastructure centered on small donor matching and voucher/tax credit programs can drive voter enfranchisement and further push politicians to rely on small donor funding.<sup>29</sup> A federalized public financing infrastructure that amplifies the small donor incentivizes politicians to connect with small donor voters in order to receive both their funding and votes.<sup>30</sup> Ultimately, federalized public financing will create an influx of small donors that have a voucher/tax credit in their pockets, an influx of contributions multiplied by a matching program, and an influx of voters pushed to turn out on election day.

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<sup>23</sup> See Hauwa Ahmed, *How the Biden Administration Can Tackle America's Voter Turnout Problem*, CTR. FOR AM. PROGRESS (Mar. 16, 2021), <https://www.americanprogress.org/issues/democracy/reports/2021/03/16/497200/biden-administration-can-tackle-americas-voter-turnout-problem/>.

<sup>24</sup> See Pippa Norria, *American Elections Ranked Worst Among Western Democracies. Here's Why.*, CONVERSATION (Mar. 22, 2016), <https://theconversation.com/american-elections-ranked-worst-among-western-democracies-heres-why-56485>.

<sup>25</sup> See Danielle Root & Liz Kennedy, *Increasing Voter Participation in America*, CTR. FOR AM. PROGRESS (July 11, 2018), <https://www.americanprogress.org/issues/democracy/reports/2018/07/11/453319/increasing-voter-participation-america/>.

<sup>26</sup> See Alan Greenblatt, *The New Strategy for Limiting Money's Role in Elections*, GOVERNING (Aug. 23, 2017), <https://www.governing.com/archive/gov-public-finance-campaigns-elections.html>; Stephen Ansolabehere, *Arizona Free Enterprise v Bennett and the Problem of Campaign Finance*, 2011 SUP. CT. REV. 39, 52, 79 (2012).

<sup>27</sup> See *id.*

<sup>28</sup> See Chisun Lee, *Small Donor Public Financing Could Advance Race and Gender Equity in Congress*, BRENNAN CTR. FOR JUST. (Oct. 15, 2020), <https://www.brennancenter.org/our-work/research-reports/small-donor-public-financing-could-advance-race-and-gender-equity>.

<sup>29</sup> See *id.*

<sup>30</sup> See Jon Schwarz, *The "For The People Act" Would Make the U.S. a Democracy*, INTERCEPT (Feb. 14, 2021), <https://theintercept.com/2021/02/14/democracy-voting-campaign-finance-hr1/>.

In this Note, I establish the U.S.'s public financing infrastructure is failing to bring out a sufficient number of voters for a healthy democracy to thrive and sustain itself. I distinguish that a reimagined public financing infrastructure will push politicians to be accountable to their constituents and increase the historically low voter turnout. Ultimately, I conclude federalized public financing solutions will overhaul public financing and connect small donors with politicians competing for their votes revitalizing the American electorate. Part I will detail the depressed American voter turnout problem and provide reasons for the low voter turnout among the American electorate. Part II will describe the current limitations of America's public financing infrastructure. Part III will further explain the movement of politicians relying on small donors to fund their campaigns and the growing political liability associated with taking corporate PAC money. Part IV will argue that a federal public financing infrastructure centered on small donor matching and voucher/tax credit programs will continue to push the movement of politicians relying on small donor funding and grow the American electorate through increased voter participation and turnout.

## I. DORMANT VOTER TURNOUT

### A. *Calculating Voter Turnout*

Voter turnout is the total number of people who voted in a given election.<sup>31</sup> The simplest way of determining voter turnout is to count the total number of votes cast, but there is no self-contained comparison to the number of people that choose not to vote.<sup>32</sup> One variation in calculating voter turnout is to divide the total number of votes cast by the total number of registered voters yielding a percentage of registered voters who actually chose to vote.<sup>33</sup> However, this variation may include ballots that were found invalid.<sup>34</sup> The United States Census Bureau uses another method to determine voter turnout through dividing the number of votes cast by the voting age population ("VAP").<sup>35</sup> The reliance on VAP takes into account noncitizens, convicted felons,<sup>36</sup> and incarcerated individuals, which accounts for 10% of Americans who would be included in the VAP, but are ineligible to vote.<sup>37</sup> As a result, the VAP method can artificially deflate voter turnout numbers.<sup>38</sup> To remedy the inherent issues of

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<sup>31</sup> See ROBERTS, *supra* note 22, at 3.

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

<sup>33</sup> See *id.*

<sup>34</sup> See *id.* at 3–4.

<sup>35</sup> See *id.*

<sup>36</sup> Some states do let convicted felons vote.

<sup>37</sup> See ROBERTS, *supra* note 22, at 4.

<sup>38</sup> See *id.*

the VAP method, the voter eligible population (“VEP”) utilizes the VAP calculations and then subtracts an estimate of the amount of people ineligible to vote.<sup>39</sup> The VEP is then divided by the number of people who actually vote in order to arrive to a voter turnout percentage.<sup>40</sup>

### B. American Turnout of Voting-Age Population

Voter participation in the United States peaks during Presidential elections, with a voter turnout between 55% and 60%.<sup>41</sup> The turnout rate decreases during non-Presidential years and in primary races.<sup>42</sup> Local elections have even lower participation rates.<sup>43</sup> Voter turnout rates have fluctuated throughout America’s history due to who is granted the right to vote, whether those people are able to vote, and voters’ perception of an election’s stakes.<sup>44</sup> The 2020 Presidential election saw the biggest turnout rate in over a century, with voter turnout at 66.8%.<sup>45</sup>

In 2016, Belgium had 87% voter turnout in its most recent election, followed by Turkey at 84%, and Sweden at 82%.<sup>46</sup> However, Belgium and Turkey instituted compulsory voting, and the U.S. is unlikely to embrace a similar policy.<sup>47</sup>

The United States is ranked 26th among Organization for Economic Co-Operation and Development (“OECD”)<sup>48</sup> countries in electoral participation.<sup>49</sup> OECD countries experience an average turnout of about 70%.<sup>50</sup> Additionally, the percentage of the voting-age population that is registered to vote is much lower in the U.S. than other OECD coun-

<sup>39</sup> See *id.*

<sup>40</sup> See *id.* at 5.

<sup>41</sup> See Becky Little, *These US Elections Saw the Highest Voter Turnout Rates*, A&E TELEVISION NETWORKS (Nov. 3, 2020), <https://www.history.com/news/voter-turnout-presidential-elections>.

<sup>42</sup> See Michael D. Regan, *Why is Voter Turnout So Low in the U.S.?*, NEWS HOUR PRODUCTIONS (Nov. 6, 2016), <https://www.pbs.org/newshour/politics/voter-turnout-united-states>.

<sup>43</sup> See Nicco Mele & Robert Pozen, *These Simple Fixes could boost Voter Turnout in a Major Way*, CABLES NEWS NETWORK (Sept. 23, 2019), <https://www.cnn.com/2019/09/23/opinions/simple-fixes-boost-voter-turnout-mele-pozen>.

<sup>44</sup> See Little, *supra* note 41.

<sup>45</sup> See *Voter Turnout*, FAIRVOTE, [https://www.fairvote.org/voter\\_turnout#voter\\_turnout\\_101](https://www.fairvote.org/voter_turnout#voter_turnout_101). The 2020 General Election saw a 66.8% voter turnout. See Michael P. McDonald, *2020 November General Election Turnout Rates*, U.S. ELECTIONS PROJECT (Dec. 7, 2020), <http://www.electproject.org/2020g>.

<sup>46</sup> See Regan, *supra* note 42.

<sup>47</sup> See *id.*

<sup>48</sup> An international organization made up of thirty-eight democracies in Europe, North America, the Pacific Rim, and Latin America established in 1961. The Organization for Economic Co-Operation and Development (“OECD”) account for 63% of global GDP. *Organization for Economic Co-operation and Development (OECD)*, OFF. OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/wto-multilateral-affairs/oecd>.

<sup>49</sup> See Mele & Pozen, *supra* note 43.

<sup>50</sup> See *Voter Turnout*, *supra* note 45.

tries.<sup>51</sup> Around 64% of the U.S. voting-age population was registered in 2016, whereas 92% was registered in the United Kingdom, 93% in Canada, 94% in Sweden, and 99% in Slovakia.<sup>52</sup>

### C. *Reasons for Low Voter Turnout*

Electoral competitiveness, election type, voting laws, and demographics influence voter turnout levels.<sup>53</sup> For example, 69% of voters in the ten most competitive states cast a ballot in 2020, compared to the national average of 66%.<sup>54</sup> Primary elections, off-year elections for state legislators, and local elections tend to have the lowest turnout.<sup>55</sup> Voter registration laws, voter identification laws, early voting, and polling place accessibility influence voter turnout.<sup>56</sup> Moreover, voters tend to be older, wealthier, more educated, and whiter than the population at large.<sup>57</sup> Ultimately, none of the mentioned factors is wholly responsible for the low American turnout.<sup>58</sup>

Restrictive voting laws have barred millions of eligible voters from participating in America's political decision-making process.<sup>59</sup> The restrictive voting laws are legalized barriers in the registration and voting process that either prevent would-be voters or alienate potential voters, discouraging them from participating in the political process.<sup>60</sup> Voter participation also depends on the state where one votes, as fewer Americans vote in states with less competitive electoral races.<sup>61</sup> Gerrymandering reduces the number of competitive races, which pushes potential voters to not participate.<sup>62</sup> Accordingly, the Republican Party in the South dominates in many of the states with the lowest turnouts and where restrictive laws can limit participation.<sup>63</sup> However, the red state versus blue state distinction is not so clear cut; both Hawaii and New York, predominantly blue states, are in the bottom 20% of states based on voter turnout.<sup>64</sup>

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<sup>51</sup> See Drew Desilver, *In Past Elections, U.S. Trailed Most Developed Countries in Voter*, PEW RSCH. CTR. (Nov. 3, 2020), <https://www.pewresearch.org/fact-tank/2020/11/03/in-past-elections-u-s-trailed-most-developed-countries-in-voter-turnout/>.

<sup>52</sup> The share of the voting-age population that is registered to vote for the other OECD countries was current as of the years between 2018-2020. *See id.*

<sup>53</sup> *See Voter Turnout*, *supra* note 45.

<sup>54</sup> *See id.*

<sup>55</sup> *See id.*

<sup>56</sup> *See id.*

<sup>57</sup> *See* ROBERTS, *supra* note 22, at 20; *Voter Turnout*, *supra* note 45.

<sup>58</sup> *See* Regan, *supra* note 42.

<sup>59</sup> *See id.*

<sup>60</sup> *See* Root & Kennedy, *supra* note 25.

<sup>61</sup> *See* Regan, *supra* note 42.

<sup>62</sup> *See id.*

<sup>63</sup> *See id.*

<sup>64</sup> *See id.*



One set of restrictive voting laws is ex-offender disenfranchisement laws that have barred six million American citizens from voting.<sup>65</sup> Another category revolves around voting purges, which have been upheld by the Supreme Court.<sup>66</sup> Accordingly, four million more people were purged between 2014 and 2016 than in the equivalent period between 2006 and 2008.<sup>67</sup> Moreover, communities of color, young people, and low-income Americans have been disproportionately burdened by registration barriers, inflexible voting hours, and polling place closures.<sup>68</sup> For example, complex and unclear voter registration rules often confuse young people.<sup>69</sup> Specifically, in 2016, the gap between white and Black voting rates narrowed, but white Americans' turnout rate was still 20% higher than Asian or Hispanic turnout.<sup>70</sup> In addition, voters age 65 and older still turn out at a 30% higher rate than 18 to 24-year-olds.<sup>71</sup> Moreover, only 25% of Americans between ages 18 and 30 vote in most elections.<sup>72</sup>

Historically, voting turnout has been lower among relatively lower income people and less educated people.<sup>73</sup> During the 2016 Presidential election, 50% of eligible voters in households earning less than \$50,000 per year cast a ballot, compared to 69% with incomes higher than \$50,000 per year.<sup>74</sup> In addition, the turnout rate among those earning

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<sup>65</sup> See Root & Kennedy, *supra* note 25.

<sup>66</sup> Nina Totenberg, *Supreme Court Upholds Controversial Ohio Voter-Purge Law*, NPR (June 11, 2018), <https://www.npr.org/2018/06/11/618870982/supreme-court-upholds-controversial-ohio-voter-purge-law> (The Supreme Court upheld a law to remove voters from registration rolls if they do not return a mailed address confirmation form, and do not vote for another four years, or two federal election cycles). Voting purges are a “process of cleaning up voter rolls by deleting names from registration lists.” If done irresponsibly, the process can remove eligible voters off the roll en masse, sometimes with little notice. *Voting Purges*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/issues/ensure-every-american-can-vote/vote-suppression/voter-purges>.

<sup>67</sup> See Asma Khalid et al., *On the Sidelines of Democracy: Exploring Why So Many Americans Don't Vote*, NAT'L PUB. RADIO (Sept. 10, 2018), <https://www.npr.org/2018/09/10/645223716/on-the-sidelines-of-democracy-exploring-why-so-many-americans-dont-vote>.

<sup>68</sup> See Root & Kennedy, *supra* note 25.

<sup>69</sup> See John Holbein, *Why so Few Young Americans Vote*, CONVERSATION (Mar. 11, 2020), <https://theconversation.com/why-so-few-young-americans-vote-132649>.

<sup>70</sup> See Kelly Born, *Increasing Voter Turnout: What, If Anything, Can Be Done?*, STAN. SOC. INNOVATION REV. (Apr. 25, 2016), [https://ssir.org/articles/entry/increasing\\_voter\\_turnout\\_what\\_if\\_anything\\_can\\_be\\_done](https://ssir.org/articles/entry/increasing_voter_turnout_what_if_anything_can_be_done).

<sup>71</sup> See *id.*

<sup>72</sup> See Mele & Pozen, *supra* note 43.

<sup>73</sup> See Adele Oltman, *Why Voter Turnout is so Low in the United States*, JACOBIN (Oct. 7, 2019), <https://www.jacobinmag.com/2019/10/voter-turnout-disenfranchisement-suppression-alexander-keyssar>.

<sup>74</sup> See *What Affects Voter Turnout Rates*, FAIRVOTE, [https://www.fairvote.org/what\\_affects\\_voter\\_turnout\\_rates](https://www.fairvote.org/what_affects_voter_turnout_rates).

\$100,000 to \$150,000 per year remained 30% to 50% higher than the rate among eligible voters earning less than \$20,000.<sup>75</sup>

## II. CURRENT LIMITATIONS OF AMERICA'S PUBLIC FINANCING INFRASTRUCTURE

### A. Buckley v. Valeo

The Supreme Court decision in *Buckley v. Valeo* was influential in making public financing of elections the least-used method of regulating election campaign financing.<sup>76</sup> *Buckley* struck down the Federal Election Commission ("FEC") mandating public financing of an entire election campaign.<sup>77</sup> Additionally, one candidate opting in to public funding cannot impact whether other candidates can use private funds.<sup>78</sup> Moreover, the Court ruled that Congress could impose campaign spending limits in exchange for a candidate voluntarily accepting public financing.<sup>79</sup>

In *Buckley*, Congress was within its granted power of regulating presidential elections and primaries to reform the electoral process through public financing of presidential elections.<sup>80</sup> Congress legislated to reduce the deleterious influence of large contributions on America's political process, facilitate communication by candidates with the electorate, and free candidates from the rigors of fundraising.<sup>81</sup> Public money funding political parties and candidates to facilitate and enlarge public participation in the electoral process furthers, not restricts, the First Amendment.<sup>82</sup> Ultimately, *Buckley* recognized that "[C]ongress may engage in [optional] public financing of election campaigns and condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limits."<sup>83</sup>

*Buckley* also held that the contested public financing scheme did not invidiously discriminate against non-major parties or their candidates.<sup>84</sup> Presumably, a lack of public support creates difficulty for any minor-party candidates to wage effective campaigns and to raise private contributions.<sup>85</sup> The Court endorsed Congress to condition funds to parties and

<sup>75</sup> See Born, *supra* note 70.

<sup>76</sup> See Brian Cruikshank, *Public Financing of Campaigns: Overview*, NAT'L CONF. OF ST. LEGISLATURES (Feb. 8, 2019), <https://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx>

<sup>77</sup> See Briffault, *supra* note 3, at 528.

<sup>78</sup> See *id.*

<sup>79</sup> See *Campaign Finance Reform – Buckley v. Valeo*, INST. FOR LOCAL SELF-RELIANCE, <https://ilsr.org/rule/campaign/2187-2/>.

<sup>80</sup> See *Buckley v. Valeo*, 424 U.S. 1, 34 (1976).

<sup>81</sup> See *id.*

<sup>82</sup> See *id.* at 35.

<sup>83</sup> See *id.* at 57 n.65.

<sup>84</sup> See *id.* at 33.

<sup>85</sup> See *id.* at 94–95 & 94 n.128.

candidates by looking at their public support to avoid frivolous candidates, splintered parties, and unrestrained factionalism.<sup>86</sup>

### B. *Disadvantages of Public Financing*

States are barred from requiring candidates to solely use public financing programs, and private fundraising's financial advantages pushes candidates to not opt in to restrictive public financing programs.<sup>87</sup> Candidates who choose to receive public funds often must agree to accept only small donor private contributions, limit campaign expenditures, and participate in public debates.<sup>88</sup> The ever-changing demands of the campaign process make opting in to public campaign financing an impediment to run a successful election campaign.<sup>89</sup> Moreover, the fact that candidates are free to choose whether or not to accept public funding inherently shows that they will only do so if they anticipate that the amount they would receive through public funding will exceed what they potentially could raise with private financing.<sup>90</sup> As a result, candidates are not incentivized to solely rely on public campaign financing because candidates' campaigns can avail themselves to funding from individuals, PACs, unions, political parties, and corporations if they choose to not opt in.<sup>91</sup>

The presidential campaign financing system has remained largely untouched since its inception in 1974.<sup>92</sup> However, the modern campaign process is dramatically different than it was in 1974 due to the sheer amount of money being pumped into and out of the campaigns.<sup>93</sup> Former President George W. Bush began the exodus from the public finance system in 2000 with the refusal to take matching funds for primaries and caucuses.<sup>94</sup> In 2008, Barack Obama became the first presidential candidate to decline public financing in the general election.<sup>95</sup> Even Bernie Sanders, who pledged to not take PAC or corporate money in 2016, had no intention to opt in to public financing.<sup>96</sup> The sheer cost of campaigning for federal office has rendered America's current public financing infrastructure obsolete.<sup>97</sup> Whether it is a local congressional race, a state-

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<sup>86</sup> See *id.* at 96–98, 101.

<sup>87</sup> See Cruikshank, *supra* note 76.

<sup>88</sup> See *Public Financing of Elections*, CAMPAIGN LEGAL CTR., <https://campaignlegal.org/democracy/inclusion/public-financing-elections>.

<sup>89</sup> See Sample, *supra* note 5, at 373.

<sup>90</sup> See Wilson, *supra* note 7, at 259.

<sup>91</sup> See Cruikshank, *supra* note 76.

<sup>92</sup> See Sample, *supra* note 5, at 376.

<sup>93</sup> See *id.*

<sup>94</sup> See Kiely, *supra* note 13.

<sup>95</sup> See *id.*

<sup>96</sup> See *id.*

<sup>97</sup> See Sample, *supra* note 5, at 378.

wide senate race, or the presidential race, the cost of campaigning for federal office has exploded.<sup>98</sup>

The Supreme Court in *Citizens United v. FEC* helped push election cycles to its current obscene spending heights.<sup>99</sup> The decision severely weakened many pieces of federal regulations on campaign finance.<sup>100</sup> *Citizens United* led to independent spending becoming a powerful financing tool for election campaigns because the Court allowed independent groups to spend unlimited amounts in any race.<sup>101</sup> Accordingly, the decision led to the innovation of Super PACs spending unlimited amounts on political advertisements.<sup>102</sup> Moreover, the Court allowing well-funded independent groups to fund electoral races and candidates pressured campaigns to raise as much money as possible and inevitably not rely on the antiquated public financing infrastructure.<sup>103</sup> By considering corporations to have speech rights, the Court opened the proverbial floodgates for any outside group to have an oversized influence on political campaigns, and politicians increasingly pushed their focus away from small dollar funding ever since.<sup>104</sup> Ultimately, *Citizens United* has made it nearly impossible to enact major change in campaign financing.<sup>105</sup>

### III. THE GROWING INFLUENCE OF THE SMALL DONOR

#### A. *President Obama's Small Donor Election Campaign*

In the run-up to the 2008 presidential election, Barack Obama focused on receiving small-donor contributions, and small donors responded in record numbers.<sup>106</sup> The campaign was the first to raise substantial sums from record numbers of small donors.<sup>107</sup> By the end of the 2008 presidential election, Barack Obama's campaign raised nearly \$1 billion for his campaign and other election-related efforts.<sup>108</sup> At the time, the stunning total set a dramatically higher bar for future presidential campaigns, radically changing the financial definition of a serious bid for the highest office in the U.S.<sup>109</sup> Part of the radical change in Obama's campaign funding strategy was that he was the first presidential

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<sup>98</sup> See *id.*

<sup>99</sup> See *id.*; *Citizens United v. FEC*, 558 U.S. 310 (2010).

<sup>100</sup> See NICHOLAS MEIXSELL, PUBLIC FINANCING OF ELECTIONS IN THE STATES 21 (2019).

<sup>101</sup> See *Citizens United*, 558 U.S. at 372.

<sup>102</sup> See MEIXSELL, *supra* note 100, at 22.

<sup>103</sup> See Sample, *supra* note 5, at 378–79.

<sup>104</sup> See MEIXSELL, *supra* note 100, at 21.

<sup>105</sup> See *id.* at 22.

<sup>106</sup> See Wilson, *supra* note 7, at 257.

<sup>107</sup> See *id.*

<sup>108</sup> See John McCormick & Mike Dorning, *Barack Obama Campaign Raised Nearly \$1 Billion, Shattering Records*, CHICAGO TRIBUNE (Dec. 5, 2008), <https://www.chicagotribune.com/chi-obama-moneydec05-story.html>.

<sup>109</sup> See *id.*

candidate to opt out of the public financing system for the general election.<sup>110</sup>

As part of the campaign's funding effort, the campaign had 1.5 million individual campaign contributors that totaled \$226 million, which was a donor base larger than the one the Democratic National Committee had for the 2000 election.<sup>111</sup> In interviews with Obama's small donors, the donors felt they had taken ownership and believed they helped set Obama free from the influences of big-money corporations and special interests.<sup>112</sup> In addition, at least 20% of Obama's donors never had contributed to any candidate before.<sup>113</sup>

During Obama's announcement of his decision to not opt in to the public financing system, he asserted that contributions from small donors represented the new way of conducting politics—free from the influence of special interests.<sup>114</sup> Part of the new way of doing politics was an increase in voting among African Americans, Hispanics, and young people, who historically have low turnout during election day.<sup>115</sup> Obama's focus on cultivating a relationship with his small donors helped him identify as an advocate for traditionally powerless members of society.<sup>116</sup> Obama's focus on small donors was rewarded with unprecedented voter involvement in his campaign through the number of volunteers donating time to the campaign and the aforementioned numbers of small donors.<sup>117</sup> A top Obama strategist argued that the campaign has “more than realized the objective of public financing [by giving] the American people a voice in our political process.”<sup>118</sup> Ultimately, an important outcome of the Obama campaign was the empowerment of the small donor to play an active role in the political process.<sup>119</sup>

## B. 2020 Democratic Primary

As the primary was beginning, several 2020 Democratic Primary candidates agreed to not accept money from corporate PACs.<sup>120</sup> In 2020,

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<sup>110</sup> See Wilson, *supra* note 7, at 257.

<sup>111</sup> See *Obama's Army of Small Donors*, POLITICO (May 9, 2008), <https://www.politico.com/story/2008/05/obamas-army-of-small-donors-010223>.

<sup>112</sup> See *id.*

<sup>113</sup> See *id.*

<sup>114</sup> See Wilson, *supra* note 7, at 265.

<sup>115</sup> See *id.* at 267.

<sup>116</sup> See *id.*

<sup>117</sup> See *id.* at 268.

<sup>118</sup> *Id.* (quoting Mike Brzezinski & Joe Scarborough, *MSNBC Special* (MSNBC Television Broadcast Oct. 20, 2008)).

<sup>119</sup> See *id.* at 271.

<sup>120</sup> See Peter Oberby, *Democratic Presidential Candidates Say 'No' to Corporate PAC Money*, NAT'L POWER RADIO (Feb. 1, 2019), <https://www.npr.org/2019/02/01/690618851/democratic-presidential-candidates-say-no-to-corporate-pac-money>.

the “purity test” for Democrats was to pledge to not accept corporate PAC money.<sup>121</sup> At one point, twenty-four Democratic presidential campaigns declined contributions from corporate PACs.<sup>122</sup> A handful of them even committed to foregoing funding from Super PACs of any kind.<sup>123</sup> Clearly, Democratic candidates’ pledges were demonstrative commitments to inhibit money buying access in politics, which became severely more pronounced after *Citizens United*.<sup>124</sup> The growing coalition was politicians dissatisfied with politics as usual with a willingness to harness small donor energy.<sup>125</sup>

However, politicians were not incentivized enough by the growing movement to rely on small donor funding because candidates’ pledges to not take certain PAC money had loopholes, and candidates still solicited donations from wealthy donors.<sup>126</sup> Ahead of Super Tuesday, Senator Elizabeth Warren walked back on her pledge to not accept contributions from Super PACs.<sup>127</sup> Around the same time period, three Super PACs spent over \$18 million to support candidates who had previously derided Super PAC funding.<sup>128</sup> By the start of the early primaries, four democratic candidates benefitted from Super PAC advertising.<sup>129</sup> The notable shift from candidates to denounce PAC money to accept the previously denounced money showed how money in elections is an arms race, and the political funding system needed reforms that exceed voluntary pledges.<sup>130</sup> To some degree, by the start of voting in the Democratic Primary, the ones who argued that the candidates’ no-corporate-PAC pledge was largely a rebranding effort were vindicated.<sup>131</sup> However, despite the lack of mechanisms to enforce any campaign trail promises, voluntary campaign finance pledges showed that politicians were pressured to rethink how they fund their campaigns, and the pledges are an

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<sup>121</sup> See Godfrey, *supra* note 14.

<sup>122</sup> See Dylan Scott, *2020 Democrats’ Campaign Finance Pledges, Explained*, VOX (Feb. 20, 2020), <https://www.vox.com/policy-and-politics/2019/6/24/18656919/2020-democratic-presidential-candidates-campaign-donations-finance-pledges>.

<sup>123</sup> See *id.*

<sup>124</sup> See *id.*

<sup>125</sup> See Lee Fang, *These House Democrats Pledged Not to Take Corporate Cash — But They’re Using a Loophole to Do It Anyway*, INTERCEPT (Apr. 13, 2019), <https://theintercept.com/2019/04/13/democrats-corporate-pac-money/>.

<sup>126</sup> See Scott, *supra* note 122.

<sup>127</sup> See J.C. Pan, *Democrats Can’t Quit Their Addiction to Big-Money Donors*, NEW REPUBLIC (June 30, 2020), <https://newrepublic.com/article/158330/democrats-cant-quit-addiction-big-money-donors>.

<sup>128</sup> See Brendan Fischer, *The ‘No Super PAC’ Oath is Dead*, HILL (Mar. 06, 2020), <https://thehill.com/opinion/campaign/486281-the-no-super-pac-oath-is-dead?r=1>.

<sup>129</sup> See Ilma Hasan, *Majority of Top 2020 Democrats Backed by Outside Groups as Early Primaries Near*, OPENSECRETS.ORG (Jan. 29, 2020), <https://www.opensecrets.org/news/2020/01/2020-dems-backed-by-outside-groups/>.

<sup>130</sup> See Fischer, *supra* note 128.

<sup>131</sup> See Fang, *supra* note 125.

important step to a reimagined public financing infrastructure that bolsters an alternative funding source—small dollar contributions.<sup>132</sup> Candidates that walked back on their pledges found that there was not enough small donor funding to fuel their presidential campaigns illuminating the potential for public financing to increase the presence of a broad base of small donors for politicians to compete over.<sup>133</sup> Ultimately, the Democratic field’s renunciation of certain streams of special interest funding indicated that special interest political funding has become a legitimate political liability, and small donor funding’s viability needs to be strengthened by a robust public financing infrastructure.<sup>134</sup>

### C. *Bipartisan Support against PAC and Corporate Funding of Political Campaigns*

Polling shows that both Republican and Democratic voters support campaign finance reform.<sup>135</sup> 94% of Americans believe wealthy political donors are a major driver of political dysfunction and over 75% of Americans listed “reducing the influence of special interests and corruption in Washington” as a top issue that determined their vote in the 2018 midterms.<sup>136</sup> A poll in 2018 found that 85% of Americans believed that special interests controlled the government for the benefit of themselves and their friends with 74% of the public who believed that it is very important that major political donors not have more influence than voters.<sup>137</sup> Similarly, a 2019 poll showed a majority of voters rate “corruption in the political system” as the most serious problem facing the U.S.<sup>138</sup> Moreover, a 2019 poll showed that voters wanted the FEC to take a more active role in enforcing campaign finance laws and supported increased transparency in election-related contributions in order to protect the voters’ voices.<sup>139</sup> Another poll found around 85% of Americans

<sup>132</sup> See Ansolabehere, *supra* note 26, at 54.

<sup>133</sup> See Fischer, *supra* note 128.

<sup>134</sup> See Scott, *supra* note 122.

<sup>135</sup> See Julia Manchester, *Pollster Says Campaign Finance Reform is a Bipartisan Issue*, HILL (Feb. 21, 2019), <https://thehill.com/hilltv/what-americas-thinking/430985-pollster-says-campaign-finance-reform-is-a-bipartisan-issue>.

<sup>136</sup> Adam Eichen, *Bernie Sanders’s “Democracy Vouchers” Proposal Can Help Democratize Our Broken Campaign Finance System*, JACOBIN (Feb. 10, 2020), <https://jacobinmag.com/2020/02/bernie-sanderss-democracy-vouchers-campaign-finance-system>.

<sup>137</sup> See Tausanovitch, *supra* note 8; Bradley Jones, *Most Americans Want to Limit Campaign Spending, Say Big Donors have Greater Political Influence*, PEW RES. CTR. (May 8, 2018), <https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>.

<sup>138</sup> See Sheely Edwards, *Bipartisan Poll Finds Voters Want Stronger Enforcement of Campaign Finance Laws, Increased Transparency in Elections*, CAMPAIGN LEGAL CTR. (Nov. 18, 2019), <https://campaignlegal.org/update/bipartisan-poll-finds-voters-want-stronger-enforcement-campaign-finance-laws-increased>.

<sup>139</sup> See *id.*

thought the campaign finance systems needed “fundamental changes” or must be “completely rebuilt.”<sup>140</sup> Even 54% of Republican voters believed that new laws should be written to limit the influence of money in politics.<sup>141</sup>

Relative to the reception of a public financing infrastructure that bolsters small donor contributions, a 2018 poll found that those who contributed money to a political candidate were more likely than those who have not made a recent contribution to say that their representative in Congress would help them if they had a problem.<sup>142</sup> These contributors also were more likely to say ordinary citizens can do a lot to influence the government in Washington if they are willing to make the effort.<sup>143</sup> Among those who did not make a recent political contribution, about 50% believed there is a lot ordinary citizens can do to influence the government compared to 66% of contributors who believed there is a lot ordinary citizens can do to make a difference.<sup>144</sup> Moreover, around 53% of contributors to a political candidate believed their representative would help if he or her contacted said representative.<sup>145</sup> Evidently, public financing that grows the small donor base can influence voters to feel consequential in the political process—even push them to believe that their concerns are more represented. On Congress’s efforts on political financing reform, a growing bipartisan ReFormers Caucus backed a limited, but laudable, federal tax rebate for small donors.<sup>146</sup> Additionally, a proposal for a robust small donor matching funds program for congressional candidates attracted 160 co-sponsors, which was more than 80% of House Democrats.<sup>147</sup> Taken together, political financing reform’s level of support from Congress and voters has not been this widespread since the Bipartisan Campaign Reform Act of 2002.<sup>148</sup>

#### IV. GROWING THE AMERICAN ELECTORATE WITH A FEDERAL PUBLIC FINANCING INFRASTRUCTURE

During the 1907 State of the Union Address, President Theodore Roosevelt stated, “[t]he need[s] for collecting large campaign funds would vanish if Congress provided an appropriation for the proper and

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<sup>140</sup> Thomas Latkowski, *Democracy Vouchers*, DEMOCRACY POL’Y NETWORK, <https://democracypolicy.network/agenda/open-country/open-government/democracy-vouchers>.

<sup>141</sup> See Jones, *supra* note 137.

<sup>142</sup> See *id.*

<sup>143</sup> See *id.*

<sup>144</sup> See *id.*

<sup>145</sup> See *id.*

<sup>146</sup> See Tausanovitch, *supra* note 8.

<sup>147</sup> See *id.*

<sup>148</sup> See *id.*



legitimate expenses of each of the great national parties.”<sup>149</sup> He believed that a federal public financing infrastructure would ensure that no particular group of donors would have an outsized influence on American elections.<sup>150</sup> A public financing infrastructure should aim to fulfill the core ideals of increasing the percentage of election financing made by small donor contributions, maintain high and sustained rates of candidate participation, and drive voter turnout and participation.<sup>151</sup> A well-designed public financing infrastructure centered on small donor matching and voucher/tax credit programs incentivizes candidates to fundraise and connect with the people they aim to represent.<sup>152</sup> The outcome builds a diversified donor base that looks more like the fabric of the community, rather than a handful of wealthy contributors.<sup>153</sup> Even advocates of publicly financed campaigns promote the use of small donor matching and voucher programs because they see these programs as a way to circumvent court cases that support Super PACs and corporations controlling political campaigns’ funding.<sup>154</sup>

The breakthroughs in small donor fundraising that have occurred in presidential and primary campaigns demonstrate greatly the importance of increasing the role of small dollar contributions through federalized programs of small donor matching and voucher/tax credit programs.<sup>155</sup> These federalized programs engages citizens as an alternative source of funding for political campaigns, rather than campaigns relying on influence-seeking, special interest donors.<sup>156</sup> Congress is the most appropriate body to institute a revamped federal public financing infrastructure around the two main programs due to their oversight power appropriation on federal elections.<sup>157</sup>

### A. *Small Donor Matching*

Small donor matching increases the importance of small donations and provides an additional incentive for a broader base of voters to par-

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<sup>149</sup> See Cruikshank, *supra* note 76.

<sup>150</sup> See *id.*

<sup>151</sup> See *Designing Public Financing Systems to Advance Equity and Independent Political Power*, DEMOS 1, 1–2 (2016), <https://www.demos.org/sites/default/files/publications/Public%20Financing.pdf> [hereinafter *Designing Public Financing Systems*].

<sup>152</sup> See *Public Financing of Elections*, *supra* note 88.

<sup>153</sup> See *id.*

<sup>154</sup> See Greenblatt, *supra* note 26; Ansolabehere, *supra* note 26, at 54.

<sup>155</sup> See Adam Skaggs, *Empowering Small Donors in Federal Elections*, BRENNAN CTR. FOR JUST. (Aug. 22, 2012), <https://www.brennancenter.org/our-work/policy-solutions/empowering-small-donors-federal-elections>.

<sup>156</sup> See Ansolabehere, *supra* note 26, at 54.

<sup>157</sup> See Adam Skaggs & Fred Wertheimer, *Empowering Small Donors in Federal Elections*, BRENNAN CTR. FOR JUST. (Aug. 22, 2012), <https://www.brennancenter.org/our-work/policy-solutions/empowering-small-donors-federal-elections>.

ticipate and turnout in elections.<sup>158</sup> Even a small financial involvement in elections serves as a gateway to other forms of engagement in the political process, such as voter turnout.<sup>159</sup> Matching fund programs match small contributions to qualifying candidates with public funds according to a specified set.<sup>160</sup> For example, a \$50 small donor contribution can actually be worth \$350 or more to a participating candidate.<sup>161</sup> Under this system, candidates raise small donor funds, constituents control the allocation of public funding with their own contributions, and candidates with more grassroots support will raise more campaign funds than their rivals.<sup>162</sup> Candidates should need to qualify for small donor matching by showing a threshold of support and then accept a spending limit for their campaigns.<sup>163</sup> The matching programs would be voluntary and politicians would make the political calculus on whether to choose to forgo public funds and continue to finance their campaigns in the traditional manner.<sup>164</sup> The ultimate goal of matching programs would be to amplify the voices of small donors; candidates would be incentivized to seek these small dollar donations from a broad base of constituents because participating in small donor matching resonates with voters.<sup>165</sup> Small donor matching aids in alleviating politicians' reliance on large donors because it promotes the small donor funding strategy by increasing the number of small donors.<sup>166</sup> Ultimately, it would become a political liability for a candidate to not opt into funding their campaign through small donors with this revamped infrastructure.

A weakness of matching programs is that, to participate effectively, voters still need disposable income.<sup>167</sup> The voucher/tax credit programs that would be part of an improved public financing infrastructure helps address the disposable income shortfall. Additionally, matching programs still require candidates to fundraise from private sources.<sup>168</sup> However, electoral corporate PAC and large donor funding is becoming a political liability incentivizing politicians to not be dependent on big donors and to seek small donor contributors, which would be multiplied by public matching programs.<sup>169</sup> Candidates with broad-based support can

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<sup>158</sup> See Ansolabehere, *supra* note 26, at 77.

<sup>159</sup> See Skaggs, *supra* note 155, at 1.

<sup>160</sup> See *Public Financing of Elections*, *supra* note 88.

<sup>161</sup> See *Designing Public Financing*, *supra* note 151, at 5.

<sup>162</sup> See *id.*

<sup>163</sup> See *id.*

<sup>164</sup> See Skaggs, *supra* note 155.

<sup>165</sup> See *Designing Public Financing Systems*, *supra* note 151, at 5.

<sup>166</sup> See Sample, *supra* note 5, at 398.

<sup>167</sup> See *Designing Public Financing Systems*, *supra* note 151, at 5.

<sup>168</sup> See *Public Financing of Elections*, *supra* note 88.

<sup>169</sup> See Godfrey, *supra* note 14.

run a campaign fueled by public financing that amplifies the small donor without the need to chase big donors.<sup>170</sup>

New York City and Washington, DC have robust municipal programs with a 6:1 and 5:1 match ratio, respectively.<sup>171</sup> In 2020, more than double the number of donors participated in the Washington, DC election for a seat on the Council, and corporate contributions continued an eight-year decline.<sup>172</sup> 76% of donors participating in the DC matching program were new donors who never previously contributed to a political candidate.<sup>173</sup> The participating candidates also relied more on small-donors to fund their campaigns.<sup>174</sup> Importantly, the number of candidates running for elected office increased, which shows prospective candidates were more engaged and viewed the election as a more fair shot for elected office.<sup>175</sup> New York's program diversified the donor base for city races and, in 2016, nearly all the candidates participated in the program during primary elections for the prior two election cycles.<sup>176</sup> The small donor matching program in New York increased the number of small donor contributors and the contributions became more viable to support legitimate political campaigns.<sup>177</sup> Since the implementation of the matching program, New York City has seen increased participation by voters in the political process.<sup>178</sup>

### B. Voucher/Tax Credit Programs

Voucher/tax credit programs put money in a potential voter's pocket to encourage them to participate in the political process—hopefully by turning out to vote.<sup>179</sup> Voucher programs provide a coupon to individuals to donate to a specific candidate who can then redeem the voucher for

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<sup>170</sup> See *Public Financing of Elections*, *supra* note 88.

<sup>171</sup> Sundee Iyer et. al., *Donor Diversity Through Public Matching Funds*, BRENNAN CTR. FOR JUST. (May 12, 2012), <https://www.brennancenter.org/our-work/research-reports/donor-diversity-through-public-matching-funds>.

<sup>172</sup> See Brian McCabe & Kenan Dogan, *The Fair Elections Program is Reshaping the Campaign Finance System in DC, Increasing Candidate and New Donor Participation*, MCCOURT SCH. OF PUB. POL'Y (Sept. 19, 2021), <https://mccourt.georgetown.edu/news/dc-fair-elections-program/>; Martin Austermuhle, *More People Ran For Office Because Of D.C.'s New Public Financing Program*, NAT'L PUB. RADIO (Aug. 3, 2021), <https://www.npr.org/local/305/2021/08/03/1024212187/more-people-ran-for-office-because-of-d-c-s-new-public-financing-program>.

<sup>173</sup> See McCabe & Dogan, *supra* note 172.

<sup>174</sup> See *id.*

<sup>175</sup> See Austermuhle, *supra* note 172.

<sup>176</sup> See Ciara Torres-Spelliscy, *A Win for Public Financing at the Supreme Court*, BRENNAN CTR. FOR JUST. (May 15, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/win-public-financing-supreme-court>; *Designing Public Financing Systems*, *supra* note 151, at 6.

<sup>177</sup> See Sample, *supra* note 5, at 398–99.

<sup>178</sup> See *Public Financing of Elections*, *supra* note 88.

<sup>179</sup> See Latkowski, *supra* note 140.

campaign funds.<sup>180</sup> Vouchers fight big money politics by increasing the viability of small donor campaigns.<sup>181</sup> An effective voucher program would not require candidates to accept a campaign spending limit to receive vouchers.<sup>182</sup> The voucher program complements the small donor matching program's benefits because small donors would control where the public funding is directed to incentivize candidates to reach out to a new base of contributors and engage with voters who are typically forgotten in the current political process.<sup>183</sup> Voucher programs help democratize the campaign finance process by allowing small donors to participate more in funding political campaigns and empower candidates to not rely on special interest funding.<sup>184</sup> Accordingly, a study found voucher program users were substantially more likely to vote even after accounting for previous political engagement.<sup>185</sup> Ultimately, voucher programs, complemented by a small donor matching program, limit campaign spending to focus on small donors and turnout people to vote, since voters would be more engaged in the political process.

Seattle, Washington was the testing ground for the first voucher program starting in 2017.<sup>186</sup> The program provided each voter registered in the city with four \$25 vouchers to support their preferred candidates and eligible contributors, who were not registered, were able to apply for vouchers as well.<sup>187</sup> Candidates qualified to use the vouchers after proving they had contributions of \$10 from at least 150 voters.<sup>188</sup> In the first year of the program, the number of donors tripled and almost 90% of voucher users were first time local election contributors.<sup>189</sup> The donors were more representative in terms of race, income, and age.<sup>190</sup> Additionally, after the first election with Seattle's voucher program, voter turnout increased for the primary election to 40.5% in 2017 from 30.4% in 2015, and 35% in 2013.<sup>191</sup> One contributor, through the voucher program, who had never donated to a campaign before was quoted saying "[b]eing able to contribute to a campaign like that was really awesome . . . like Bill

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<sup>180</sup> See *Designing Public Financing Systems*, *supra* note 151, at 7.

<sup>181</sup> See Sarah Kliff, *Seattle's Radical Plan to Fight Big Money in Politics*, *Vox* (Nov. 5, 2018), <https://www.vox.com/2018/11/5/17058970/seattle-democracy-vouchers>.

<sup>182</sup> See *Designing Public Financing Systems*, *supra* note 151, at 7.

<sup>183</sup> See *id.*

<sup>184</sup> See Latkowski, *supra* note 140.

<sup>185</sup> See TIMOTHY DUONG & HELEN GRIECO, *PUBLIC FINANCING OF CAMPAIGNS: PEOPLE-POWERED ELECTIONS 3* (2018).

<sup>186</sup> See *Designing Public Financing Systems*, *supra* note 151, at 7.

<sup>187</sup> See *id.*

<sup>188</sup> See LILY GOODSPEED, *EVALUATING SEATTLE'S DEMOCRACY VOUCHER PROGRAM 4* (2020).

<sup>189</sup> See Eichen, *supra* note 136.

<sup>190</sup> See Latkowski, *supra* note 140.

<sup>191</sup> See DUONG & GRIECO, *supra* note 185; Latkowski, *supra* note 140.

Gates!”<sup>192</sup> As of 2021, Seattle is headed into its third election cycle with the voucher program.<sup>193</sup> Importantly, the Supreme Court did not take up the case challenging the constitutionality of Seattle’s voucher system, which means the program is safe for the foreseeable future and gives the green light for the program to be replicated on a wider basis.<sup>194</sup>

Tax credit programs would allow those who file tax returns to claim a full or partial credit for small dollar contributions made during the filing year to candidates.<sup>195</sup> The tax credit could be refundable or not.<sup>196</sup> Research on tax credit and refund programs suggest that full tax credits that are refundable and solicited by candidates are more successful at amplifying small donors.<sup>197</sup> Minnesota used a tax refund program in which contributors applied for a refund immediately without waiting until filing a tax return.<sup>198</sup> The program performed better than tax credits and came closer to eliminating a lack of disposable income as the primary factor that drives whether a small donor contributes to a campaign,<sup>199</sup> which is key to complementing a small donor matching program within a robust public financing infrastructure. Moreover, evidence suggested that vouchers performed even better than tax credits and refund programs to boost voter participation and to diversify the small donor contributor base.<sup>200</sup>

## CONCLUSION

In the summer of 2010, President Barack Obama laid out the stakes of a Senate vote on proposed legislation to undo part of the damage from *Citizens United* by claiming “a vote to oppose these reforms is nothing less than a vote to allow corporate and special interest takeovers of our elections. . . [and] [i]t is precisely what led a Republican President named Theodore Roosevelt to tackle this issue a century ago.”<sup>201</sup> Obama laying out the stakes of legislation to reform campaign financing was

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<sup>192</sup> Kliff, *supra* note 181.

<sup>193</sup> See David Moore, *Democrats’ Public Financing Proposal Could Give Small Donors More Influence*, SLUDGE (Apr. 2, 2021), <https://readsludge.com/2021/04/02/democrats-public-financing-proposal-could-give-small-donors-more-influence/>.

<sup>194</sup> See Jason Harrow & Nick Nyhart, *Supreme Court Right to Uphold Seattle Democracy Vouchers*, HILL (Apr. 3, 2020), <https://thehill.com/blogs/congress-blog/judicial/491115-supreme-court-right-to-uphold-seattle-democracy-vouchers?rl=1>; Gene Johnson, *Justice Decline Challenge to Seattle ‘Democracy Vouchers’*, ASSOCIATED PRESS (Mar. 30, 2020), <https://apnews.com/article/dc7e0d6de131703dcb0a2ad161c8bc1d>.

<sup>195</sup> See *Designing Public Financing Systems*, *supra* note 151, at 7.

<sup>196</sup> See *id.*

<sup>197</sup> See *id.* at 7–8.

<sup>198</sup> See *id.* at 7.

<sup>199</sup> See *id.* at 8.

<sup>200</sup> See *id.*

<sup>201</sup> Jesse Lee, *President Obama on Citizens United: “Imagine the Power This Will Give Special Interests Over Politicians”* (July 26, 2010), <https://obamawhitehouse.archives.gov/>

fitting, since his 2008 campaign was based on voters being heard by politicians.<sup>202</sup> Obama's voters partly constituted small donors who donated in small increments to support "an honest, decent man[.]"<sup>203</sup> Unsurprisingly, the legislation championed by Obama was defeated in the Senate, adding on to the continued lack of comprehensive federal reform of campaign financing.<sup>204</sup> Evidently, Congress passing a federalized public financing infrastructure that addresses the current realities of unlimited independent political spending, hostile courts, Supreme Court precedent, and political resistance to overhaul the campaign financing system will surely be an uphill battle.<sup>205</sup>

A decade after Obama failed to pass meaningful campaign finance reform, Bernie Sanders's own small-donor juggernauts transformed the 74-year-old candidate from a fringe figure in Democratic politics to a legitimate contender for the party's presidential nomination in two presidential cycles.<sup>206</sup> A common rallying cry in Sanders' rallies was the candidate asking the raucous crowds what the average contribution was, and the crowd, almost without fail, responding "[t]wenty-seven dollars!"<sup>207</sup> In 2016, Sanders pointed out his "campaign's financial support com[ing] from more than 1 million Americans who have made more than 3.7 million individual contributions. . . [was] more individual contributions than any candidate in the history of the United States up until this point in an election," even greater than Obama's campaigns.<sup>208</sup> The fundraising surge was dubbed as "a political revolution"<sup>209</sup> that highlights how a functioning democracy requires the consistent engagement of ordinary people through their vote and political contributions. Campaign finance reform advocates need to learn from the Obama and Sanders campaigns and push for a revamped public financing infrastructure that counters the corruptive influence of special interest dollars and advances a continued revolution of voter turnout in the political process.

Federalized public financing infrastructure makes all the difference in the age of unlimited Super PAC and corporate money. Widespread

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blog/2010/07/26/president-obama-citizens-united-imagine-power-will-give-special-interests-over-polit.

<sup>202</sup> See *Obama's Army of Small Donors*, *supra* note 111.

<sup>203</sup> *Id.*

<sup>204</sup> See David Welna, *Senate Republicans block Campaign Finance Bill*, NAT'L PUB. RADIO (July 27, 2010), <https://www.npr.org/templates/story/story.php?storyId=128804239>.

<sup>205</sup> See Laura Temme, *What Does the Future Hold For a Federal Voting Rights Bill*, FINDLAW (Jan. 28, 2022), <https://www.findlaw.com/legalblogs/courtside/what-does-the-future-hold-for-a-federal-voting-rights-bill/>.

<sup>206</sup> See Kenneth P. Vogel, *How Bernie Built a Fundraising Juggernaut*, POLITICO (Feb. 10, 2016), <https://www.politico.com/story/2016/02/bernie-sanders-fundraising-219112>.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.*

federal adoption of small donor matching initiatives and voucher/tax credit programs are an effective approach to counter the corrosive impact that corruptive political funding elements have had on American politics because it alters the dynamic that has created a small number of large donors to have an increasingly oversized voice at the expense of small dollar voters.<sup>210</sup> Admittedly, a re-imagined public financing infrastructure does not remove all private money out of the campaign financing system.<sup>211</sup> Rather, public financing incentivizes candidates to fund their campaigns with small donor contributions and continues to make Super PAC and corporate money a political liability.

Without a federalized public financing infrastructure centered on small donor matching and vouchers/tax credits (and thereby strengthening the viability of small donors) the alternative funding approach is insufficient to counteract the influence of corruptive political funding forces. Through amplifying the role of small donors, a robust public financing infrastructure incentivizes candidates to run effective campaigns that focus on a broad base of voters they supposedly represent. Public financing will push politicians to lean into small donors financed through the federalized programs, rather than through the typical PAC and corporation routes.

In the 2020 presidential election, one in which then-Democratic presidential candidate Joe Biden called “the most important election in our lifetime,” money from small donors made up 22% of all fundraising, which was a 15% increase from 2016.<sup>212</sup> The opportunity exists for politicians funded with a broad base of small donors to rise to prominence. While the old funding approach’s increased political liability caused politicians who forgo public financing to falter, the increase in voter turnout fueled by the federalized public financing infrastructure further pushes politicians to rely on small donor contributions. The heart of federal public financing needs to deepen American democracy by helping make the campaign for donations more closely resemble the campaign for votes—which will happen by democratizing the political funding process. Ultimately, a federalized public financing infrastructure that amplifies the small donor is the most effective method to respond to the excesses of the post-*Citizens United* era.

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<sup>210</sup> See Tausanovitch, *supra* note 8.

<sup>211</sup> See *id.*

<sup>212</sup> Ollie Gratzinger, *Small Donors Give Big Money in 2020 Election Cycle*, OPEN-SECRETS (Oct. 30, 2020), <https://www.opensecrets.org/news/2020/10/small-donors-give-big-2020-thanks-to-technology/>.

