

Components of an Effective Public Financing Law

Since the Supreme Court's 2010 decision in *Citizens United* unleashed unlimited political spending, there's been a tidal wave of money from a small number of large donors. In the 2016 election cycle, which cost just under \$6.5 billion, just 0.01 percent of the U.S. adult population gave over \$2.3 billion (35 percent of the total).¹ And the top 0.01 percent of *donors* — a group of fewer than 200 people — gave almost \$1 billion (15 percent of the total).²

It's unsurprising, then, that 96 percent of Americans blame money in politics for creating dysfunction in the political system, according to an October 2017 Washington Post-University of Maryland poll.³ That same poll revealed that 94 percent of Americans blamed wealthy political donors for political dysfunction.⁴ Public financing is a key reform for restoring balance in politics and making it possible for everyone to have a voice.

Public financing is good for candidates and voters alike. The expense of running for office can discourage talented and promising candidates from entering public life if they lack personal resources or the support of large donors. By reducing financial barriers, public financing helps to encourage all qualified candidates to compete. It also helps to ensure that citizens receive the best possible representation. By lessening the need to court special interests, public financing programs can promote interaction between candidates and the diverse constituents they seek to represent — which makes politics work better for everyone. And once elected, publicly financed candidates are accountable to the many individual donors who have supported them, rather than a wealthy few. As Richmond, California councilmember and public financing recipient Jovanka Beckles observed in a 2016 interview with the Brennan Center, “When you take money from the public, you are beholden to the public only, and not any other corporate interest.”⁵

Public financing increases the racial, economic, and gender diversity of those running for office *and* those contributing to the races.⁶ By focusing on grassroots support from ordinary constituents, public financing encourages more citizens, particularly those from historically disenfranchised communities, to participate in politics.⁷ Studies of existing public financing systems show increased participation among low-income and racial minority communities.⁸

The Brennan Center has long advocated for programs that provide a multiplied match for small donations, which have an extensive and successful history of increasing participation of small donors and the diversity of candidates in jurisdictions like New York City. A good public financing system can take a number of other forms, including vouchers, tax credits and rebates, and block grants, or some combination of all three.

1 Niv M. Sultan, *Election 2016: Trump's free media helped keep cost down, but fewer donors provided more of the cash*, Ctr. For Responsive Politics, <https://www.opensecrets.org/news/2017/04/election-2016-trump-fewer-donors-provided-more-of-the-cash/> (last accessed Apr. 3, 2018).

2 *See id.*

3 John Wagner & Scott Clement, *'It's just messed up': Most think political divisions as bad as Vietnam era, new poll shows*, Wash. Post (Oct. 28, 2017), https://www.washingtonpost.com/graphics/2017/national/democracy-poll/?utm_term=.e25faf2ddce0.

4 *See id.*

5 DeNora Getachew & Ava Mehta, *Breaking Down Barriers: the Faces of Small Donor Public Financing* 17 (2016), https://www.brennancenter.org/sites/default/files/publications/Faces_of_Public_Financing.pdf.

6 Elizabeth Genn et al., *Donor Diversity Through Public Matching Funds* 4-5 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

7 *Id.* at 16-22; *see* Brent Ferguson, *State Options for Reform* 1 (2015), https://www.brennancenter.org/sites/default/files/publications/State_Options_for_Reform_FINAL.pdf.

8 *See* Genn et al., *supra* note 6, at 16-22; Ferguson, *supra* note 7, at 1; Michael J. Malbin et al., *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11 Elec. L.J. 3, 13 (2012).

Small Donor Matching

Small donor matching systems empower average citizens by elevating the importance of small donations.⁹ These systems have been implemented with success in several major U.S. cities, including New York City, Los Angeles, and San Francisco,¹⁰ and have allowed small donors — of both major parties and all ideologies — to play a significant role in politics.¹¹

The concept behind small donor matching systems is simple: small donations from individuals, usually under about \$200, are matched by public money.¹² Funding may come from a variety of sources, including appropriations from state or local budgets. An analysis of a proposed statewide public financing system in New York State estimated it would cost approximately two dollars per New Yorker to implement.¹³ The most successful systems also employ a multiple match ratio, thereby amplifying the impact of a single small donation.¹⁴ For example, under a 5:1 ratio, a \$10 contribution from a constituent would be matched with \$50 in public funds for the candidate. The systems are voluntary for candidates, who typically agree to certain conditions, such as lower contribution limits.¹⁵

Small donor systems offer concrete benefits for both candidates and voters. When public funds are made available, candidates rely far more heavily on small donations than candidates who rely on traditional fundraising and big donors.¹⁶ With an alternative source of funds, candidates who don't necessarily have connections to big donors are more likely to enter electoral contests, increasing the overall competitiveness of elections and diversifying the candidate pool.¹⁷ From the voter perspective, the match encourages more small donors to give, knowing their contribution is more valuable to a candidate.¹⁸ And even such small-scale financial involvement in elections serves as a gateway to other ways of engaging in the political process.¹⁹ Studies have shown that small donors are more likely to volunteer for campaigns, canvass voters, and pass out campaign literature.²⁰

The success of New York City's small donor matching system illustrates the benefits that these systems offer. During the 2017 election cycle, 82 percent of New York City candidates participated in the matching funds program.²¹ The program has helped candidates rely on small contributions and public money: in 2013, the median contribution size for participating city council incumbents was \$100, while the median for participating challengers was \$50.²²

New Yorkers who contribute to city candidates are much more racially and economically diverse than donors to non-publicly-financed candidates for state legislature.²³ In fact, the neighborhoods where small donors in New York City elections reside are more representative of the city as a whole than the neighborhoods where donors to state candidates live.²⁴ Elections are transformed when small donors' voices are amplified.

9 Adam Skaggs & Fred Wertheimer, Empowering Small Donors in Federal Elections 1 (2012), http://www.brennancenter.org/sites/default/files/legacy/publications/Small_donor_report_FINAL.pdf.

10 Ferguson, *supra* note 7, at 1; Testimony of Ian Vandewalker, Senior Counsel, Brennan Ctr. for Justice, to the Council of the District of Columbia (June 29, 2017), available at https://www.brennancenter.org/sites/default/files/analysis/BC%20testimony_DC%20B22-0192%20Fair%20Elections%20Act.pdf.

11 Skaggs & Wertheimer, *supra* note 9, at 1.

12 Ferguson, *supra* note 7, at 1.

13 See Ian Vandewalker, *The Truth About the Cost of Public Campaign Funding*, Brennan Center for Justice (May 7, 2013), <http://www.brennancenter.org/analysis/truth-about-cost-public-campaign-funding>.

14 Ferguson, *supra* note 7, at 1.

15 *Id.*

16 Skaggs & Wertheimer, *supra* note 9, at 14.

17 Getachew & Mehta, *supra* note 5, at 2.

18 Skaggs & Wertheimer, *supra* note 9, at 1.

19 *Id.*

20 *Id.*

21 N.Y.C. Campaign Fin. Bd., *82 Percent of City Candidates Join Public Matching Funds Program* (June 20, 2017), <https://www.nycffb.info/media/press-releases/82-percent-of-city-candidates-join-public-matching-funds-program/>.

22 N.Y.C. Campaign Fin. Bd., *2013 Post-Election Report* 49 (2014), http://www.nycffb.info/PDF/per/2013_PER/2013_PER.pdf.

23 Ferguson, *supra* note 7, at 1; Skaggs & Wertheimer, *supra* note 9, at 15.

24 Ferguson, *supra* note 7, at 1; Skaggs & Wertheimer, *supra* note 9, at 15.

Vouchers

Another option for reform is a voucher system, in which citizens receive vouchers they can use to direct public funds to the candidates they favor.²⁵ Rather than seek big-money donations from a select few donors, politicians instead have the incentive to focus on encouraging many potential small donors to use their vouchers.²⁶ The City of Seattle pioneered this kind of system. Under its “Democracy Voucher” program, each voter receives four \$25 vouchers.²⁷ The program has diversified the campaign donor pool to better reflect the demographics of Seattle residents, and lower-income residents are making first-time donations, according to public voter participation statistics.²⁸

Rebates and Tax Credits

Rebates and tax credits also make donations more attractive for small donors, if only indirectly.²⁹ States such as Minnesota, Virginia, and Oregon have offered small contributors a rebate or tax credit, usually with a \$50 cap.³⁰ Tallahassee has implemented a similar reform.³¹ Although participation in these programs has not been high enough to fundamentally change privately funded elections, they’ve increased political participation and lowered barriers to running for office. They also enjoy broad bipartisan support, with groups from both major parties backing tax credits.³²

Block Grants

Some states, including Maine, Connecticut, and Arizona, have taken a different approach by providing block grants of public money to qualifying candidates through “clean elections” laws.³³ Under these programs, a candidate must collect small contributions (generally around five dollars) from a sufficiently large number of individuals to demonstrate that he or she has enough public support to get a public grant.³⁴ It is worth noting that, in 2011, the Supreme Court invalidated certain aspects of Arizona’s law, which provided extra public money when a candidate faced a particularly high-spending opponent.³⁵ In the wake of that decision, states have made an effort to strengthen their clean elections laws, including a 2015 citizen initiative in Maine to improve its existing law.

As noted above, different types of public financing can be combined to provide for a comprehensive system of financing elections. Below, we detail the most critical components of one type of reform, a small donor matching bill. The specifics will vary by jurisdiction. Contact the Brennan Center to discuss the best way to implement these suggestions in your jurisdiction.

1. **Provide for an adequate and reliable funding stream.** A strong public financing program should identify its funding source. New York City’s law, for example, has established a special fund — the New York City

25 Ferguson, *supra* note 7, at 2.

26 *Id.*

27 Seattle Mun. Code § 2.04.620(b) (2015).

28 Gene Falk, *Do Seattle’s democracy vouchers work? New analysis says yes*, The Seattle Times (Oct. 15, 2017), <https://www.seattletimes.com/seattle-news/data/do-seattles-democracy-vouchers-work-new-analysis-says-yes/>.

29 Ferguson, *supra* note 7, at 2.

30 Ferguson, *supra* note 7, at 2; M.S.A. § 290.06(23) (2018); VA Code Ann. § 58.1-339.6 (2016) (providing 50% tax credit for first \$50); Or. Rev. Stat. § 316.102 (2015); *see also* Minn. Dep’t of Revenue, *Political Contribution Refund*, http://www.revenue.state.mn.us/individuals/individ_income/Pages/wn-PoliticalContributionRefund2017.aspx (last accessed Apr. 3, 2018).

31 Lawrence Norden & Douglas Keith, *Small Donor Tax Credits: A New Model 2* (2017), <https://www.brennancenter.org/publication/small-donor-tax-credits-new-model>.

32 *Id.* at 1.

33 Ferguson, *supra* note 7, at 2; A.R.S. §§ 16-946, 16-951 (establishing Arizona block grant system); Conn. Gen. Stat. Ann. § 9-702 (2011) (establishing Connecticut’s Citizens’ Election Program); 21-A M.R.S.A. §§ 1121- 1128 (establishing Maine Clean Election Fund and outlining terms of participation).

34 *See, e.g.*, A.R.S. §§ 16-946; 16-951 (outlining qualifying contribution requirement and funding amounts).

35 *Arizona Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 753 (2011) (finding that block grant system’s matching funds provision did not survive First Amendment scrutiny).

Campaign Finance Fund — to pay for its system.³⁶ The Fund is financed through general appropriations from the City Council budget.³⁷

2. **Have a qualifying threshold.** Candidates participating in a small donor matching program should demonstrate they have a minimum threshold level of support. This prevents frivolous or uncompetitive candidates from draining public resources unnecessarily. Legislation should include both a qualifying threshold *amount* of funds and a threshold *number of donors* in the jurisdiction or district to ensure that the candidate is supported by a sufficiently large number of contributors providing reasonably small sums.³⁸ Contact the Brennan Center to discuss strategies for assessing an appropriate threshold.
3. **Make small contributions up to a certain amount matchable.** Under New York City’s campaign finance law, contributions of up to \$175 are eligible for matching.³⁹ Other jurisdictions can adjust as appropriate.
4. **Implement a multiple match ratio.** A sufficiently large ratio amplifies the effect of small donations. Strong legislation would propose a match ratio of at least 4:1. New York City’s 6:1 ratio allows candidates to receive up to \$1,050 from the City per contribution.⁴⁰
5. **Limit matchable contributions to “natural persons” living within the jurisdiction.** The geographic limitation helps to curb out-of-jurisdiction contributions. The “natural persons” requirement prevents the system from subsidizing special interest group money. Both requirements reinforce the focus on the interests of local constituents.
6. **Reduce contribution limits for participating candidates.** In return for receiving public matching funds, participating candidates should have stricter contribution limits than traditionally funded candidates. This restriction would encourage publicly funded candidates to focus their fundraising efforts on a large number of voters, including those of modest means.
7. **Only give public funds to candidates with an actual opponent.** This protects the system from a drain on resources where a candidate is likely to prevail anyway.
8. **Cap the amount of public funding that a candidate can receive at a reasonable amount, but impose no limits on how much they can raise or spend.** Even after receiving the maximum public funds, candidates should be able to raise and spend additional funds privately, subject to the contribution limits that apply to participating candidates. The absence of an overall spending limit will prevent serious candidates from declining to enter the public financing system out of fear that they would be unable to run a competitive campaign.

36 N.Y.C. Admin. Code § 3-709.

37 *Id.*; see also N.Y.C., N.Y. Local Law No. 8 (1988). Other jurisdictions have used different strategies to fund their public financing programs. Some states, as well as the federal government, have used tax check-offs to allow taxpayers to direct a portion of their taxes to candidates or political parties. See, e.g., M.S.A. § 10A.31 (allowing Minnesota residents to designate on tax return that \$5 be paid from general fund to state elections campaign account); Norden & Keith, *supra* note 31, at 7 (describing tax form check-off for funding presidential public financing program). We note, however, that participation in check-off programs alone does not always provide sufficient funding. See *Public financing of elections a state budget casualty*, Wisconsin State Journal (July 4, 2011), http://host.madison.com/wsj/news/local/govt-and-politics/elections/public-financing-of-elections-a-state-budget-casualty/article_3dfcc38a-a63f-11e0-ad5d-001cc4c03286.html (observing decline in participation in voluntary check-off to fund elections). North Carolina used surcharges on attorney dues to the state bar, in combination with a tax check-off, to fund its now-defunct public financing program for statewide judicial candidates. Alicia Bannon, *Public Financing Helps Keep Special Interests Out of N.C. Courts*, Brennan Center for Justice (Apr. 2, 2013), <https://www.brennancenter.org/analysis/public-financing-helps-keep-special-interests-out-nc-courts>. Seattle’s Democracy Voucher program is funded through a property tax on business, commercial, and residential properties, and costs the average homeowner approximately \$11.50 per year. *Democracy Voucher Program: About the Program*, <http://www.seattle.gov/democracymatcher/about-the-program> (last accessed Apr. 23, 2018).

38 Skaggs & Wertheimer, *supra* note 9, at 2; see also N.Y.C. Admin. Code § 3-703(2) (setting eligibility thresholds for public financing).

39 See N.Y.C. Admin. Code § 3-705(2)(a) (providing six dollars in public funds for each dollar contributed, up to \$1,050).

40 See *id.*

9. **Require participating candidates to take part in a public debate hosted by a neutral entity.** Cities including New York City and San Francisco, and states including New Jersey, impose such a requirement on candidates who participate in their small donor matching programs.⁴¹ Nonparticipating candidates should be invited, but not compelled, to join the debates.
10. **Provide for effective disclosure and enforcement.** Mechanisms for transparency and accountability will ensure that the program is efficiently administered and will guard against fraud. A sound system would require regular reports of small donations to ensure compliance with the prerequisites to receive matching funds. A governmental board or commission should oversee and administer the program. The board or commission should have audit authority and be tasked with detecting violations of the campaign finance law.

For More Information on Public Financing

BRENNAN CTR. FOR JUSTICE & DEMOS, A CIVIL RIGHTS PERSPECTIVE ON MONEY IN POLITICS (2016), <https://www.brennancenter.org/analysis/civil-rights-perspective-money-politics>

BRENT FERGUSON, STATE OPTIONS FOR REFORM (2015), <https://www.brennancenter.org/publication/state-options-reform>

ELISABETH GENN, MICHAEL J. MALBIN, SUNDEEP IYER, & BRENDAN GLAVIN, BRENNAN CTR. FOR JUSTICE & CAMPAIGN FIN. INST., DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS (2012), http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF

DENORA GETACHEW & AVA MEHTA, BREAKING DOWN BARRIERS: THE FACES OF SMALL DONOR PUBLIC FINANCING (2016), https://www.brennancenter.org/sites/default/files/publications/Faces_of_Public_Financing.pdf

ANGELA MIGALLY & SUSAN LISS, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE (2010), <https://www.brennancenter.org/sites/default/files/legacy/Small%20Donor%20Matching%20Funds-The%20NYC%20Election%20Experience.pdf>

LAWRENCE NORDEN & DOUGLAS KEITH, SMALL DONOR TAX CREDITS: A NEW MODEL (2017), <https://www.brennancenter.org/publication/small-donor-tax-credits-new-model>

ADAM SKAGGS & FRED WERTHEIMER, EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS (2012), http://www.brennancenter.org/sites/default/files/legacy/publications/Small_donor_report_FINAL.pdf

Ian Vandewalker & Brent Ferguson, *Small Donors can Outweigh Wealthy Few* (Dec. 13, 2013) <https://www.brennancenter.org/analysis/small-donors-can-outweigh-wealthy-few>

⁴¹ N.J. Admin. Code § 19:25-15.17(a)(1) (candidates for Governor or Lieutenant Governor seeking to qualify for receipt of public matching funds must file a statement of agreement to participate in two interactive debates (in the case of a candidate for Governor) or one debate (in the case of a candidate for Lieutenant Governor)); N.Y.C. Admin. Code § 3-709.5(1)(a) (requiring participating public financing candidates to take part in either of the two pre-election debates, or both); S.F. Campaign & Gov'tal Conduct Code § 1.140(a)(2)(F) ("To be eligible to receive public financing of campaign expenses under this Chapter, a candidate must . . . agree to participate in at least three debates with the candidate's opponents.").