Date: April 8, 2019

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy Analyst
Brian Cox, Policy Analyst
Tyler Field, Information Systems Analyst

Re: **AGENDA ITEM 4 – Public Financing Program Review - Phase II Findings and Recommendations**

Summary This report presents Staff's findings and recommendations for the second Phase of the Commission's review of the City's public campaign financing program.

Action Requested That the Commission discuss Staff's recommendations and provide guidance as to recommendations the Commission wishes to see in ordinance form for consideration at a future meeting.

This report contains Staff's initial findings and recommendations for the second phase of the Commission's review of the City's public campaign financing program (the "program"). Section I provides a general overview of the Commission's program review process. Section II describes Staff's goals and methodology for the second phase of the review. Section III presents the initial findings and recommendations following Staff's review. The report addresses each recommendation separately and explains the findings that support the recommendation. All of Staff's recommendations are summarized in a list at the end of Section III.

I. Overview of the Ethics Commission's Program Review

At its June 2018 meeting, the Commission identified a review of the City's public financing program as its top policy priority. Since June, the Policy Division has been engaged in substantively reviewing the program. The purpose of the program review was to analyze how well the program is accomplishing its goals and to identify ways in which the program could be updated to better accomplish those goals.

Staff approached the review process in two phases. The first phase of the review addressed procedural aspects of the program and sought to identify ways to increase participation rates and improve program outcomes without changing the program's basic features. In October 2018, Staff presented the Commission with its findings and recommendations following this first phase of the review.[1] At the Commission's regularly scheduled November 2018 meeting, Staff presented a set of draft regulations to implement certain of these recommendations. The Commission approved the regulations, which are now in effect.[2] At the Commission's regularly scheduled December 2018 meeting, Staff presented a draft ordinance to implement additional Staff recommendations. The Commission approved an amended version of this ordinance at its regularly scheduled February 2019 meeting. This ordinance is currently pending before the Board of Supervisors and is sponsored by Supervisor Gordon Mar.[3] Additionally, as part of the first phase of the review, Staff reviewed the written materials made available to candidates to help them understand the program's requirements. Staff is currently involved in finalizing changes to these guides and will be publishing the updated versions to the Commission's website soon for use by candidates in the November 2019 election. Finally, Staff also reviewed the administrative processes involved with reviewing qualifying requests and matching requests submitted by candidates to ensure that these processes properly vet contributions submitted in accordance with applicable laws.

The second phase of the review, which is the main topic of this report, also aims to strengthen the program by analyzing how well the program is accomplishing its goals and recommending improvements. However, while the first phase focused on more procedural aspects of the program, the second phase is focused on the program's core public financing features. These include how much money candidates can receive under the program, how the money is allocated to candidates, and the requirements for qualifying for the program. Section II describes Staff's analysis and presents recommendations for improving the program in these areas.

At the April meeting, Staff seeks feedback on the recommendations with the goal of presenting a draft ordinance to the Commission at its regularly scheduled May meeting for action by the Commission at that time.

II. Methodology for Phase II of the Program Review

The second phase of the program review examined many of the basic features of the program to determine whether they are best serving the program's goals. The basic premise of public financing is to provide candidates who can demonstrate community support with a sufficient financial platform to run a competitive campaign. By providing this option to candidates, public financing serves many important public policy objectives. These include reducing time candidates spend fundraising, increasing candidates' direct engagement with voters on important issues, incentivizing candidates to limit their expenditures, and providing greater opportunity for more candidates to run competitive campaigns. Public financing can also have policy benefits that extend beyond the candidates running in a race. The availability of contribution matching can encourage more residents to become politically active by contributing to their chosen candidates. Public financing can also help to improve the public's trust in government by reducing the overall percentage of a candidate's funds that come from private contributors and thereby reducing the appearance of corruption or the potential for corruption.

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[1] Report available at https://sfethics.org/wp-content/uploads/2018/10/2018.10.19-Agenda-Item-4-Public-Financing-Review-Project-FINAL-1.pdf.

[2] Regulations available at https://sfethics.org/ethics/2011/06/-regulations-to-campaign-finance-reform-ordinance-san-francisco-campaign-and-governmental-conduct-co.html.

[3] File No. 190287, available at https://sfgov.legistar.com/Legislation.aspx.

To determine how well the program's current features are serving these public policy objectives, Staff solicited feedback from former candidates, consultants, and treasurers, performed analysis of available data about the Program, researched approaches taken in other jurisdictions with public financing programs, and engaged with community stakeholders. Each of these types of research is described below.

Staff engaged directly with former candidates and their staff to obtain qualitative information about candidates' experiences with the program. Outcomes on certain of the program's goals cannot be directly measured through available campaign finance data; goals such as reducing candidates' time spent fundraising and increasing their engagement with voters are better assessed by contacting candidates directly. Staff conducted interviews with several candidates who ran in the 2016 and 2018 elections, as well as campaign consultants and treasurers to such candidates.

The data analyzed by Staff was comprised primarily of campaign finance data reported by committees that were active in the 2016 and 2018 elections. Staff also included elections data from the Department of Elections and information about the Election Campaign Fund from the Office of the Controller.

To provide a broader context for the findings and recommendations in this report, Staff also surveyed public financing programs in other jurisdictions, and details about those programs are provided where relevant.

Staff also engaged community stakeholders through written comment (see Attachment 1) and two interested persons meetings held on March 4th and 8th. Input was received from campaign treasurers, campaign managers, leading nongovernmental organizations, and other interested members of the public.

The following section provides specific findings reached through this research and presents legislative recommendations for addressing those findings.

III. Findings and Recommendations

This section provides Staff's findings and recommendations for potential legislative improvements to the Program. The section presents each recommendation separately and describes the findings that support the recommendation. At the end of this section, the recommendations are enumerated in a single list to facilitate Commission discussion.

A. Increase the Initial Grant and Match Up to $100 of a Contribution at a Six-to-One Ratio

Under current program rules candidates seek to qualify for public financing by submitting a list of contributions on a qualifying request and must demonstrate having received a specific total amount from a minimum number of City residents.[4] Contributions of any amount up to the lawful $500 limit may

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[4] *See* Campaign & Gov. Conduct Code § 1.140(b)(2). Non-incumbent supervisorial candidates must raise $10,000 from at least 100 separate contributors, and incumbents must raise $15,000 from at least 150 City residents. Non-incumbent mayoral candidates must raise $50,000 from 500 City residents, and incumbents must raise $75,000 from 750 City residents.

be listed on a qualifying request, but, for purposes of determining a whether a candidate has reached the minimum threshold, only up to $100 of a listed contribution can be counted.[5] To reach the required $10,000 threshold for qualification, a non-incumbent supervisorial candidate must demonstrate having received contributions from at least one-hundred separate contributors. To reach the required $50,000 threshold, non-incumbent mayoral candidates must demonstrate contributions from at least five-hundred separate contributors.[6] Once candidates are certified as eligible to receive public financing, they receive an initial grant of public funds. Supervisorial candidates receive $20,000, and mayoral candidates receive $100,000.

The policy basis for counting only the first $100 of a contribution for qualification purposes is that candidates should have to demonstrate a broad base of community support to qualify for the program. If candidates could use the full $500 of a maximum-sized contribution in order to qualify, they could qualify for the program with dramatically fewer demonstrated supporters; non-incumbent supervisorial candidates, for example, would only need to demonstrate having received $500 contributions from twenty individuals. This number of supporters is insufficient to demonstrate a broad base of community support.

After a candidate is certified as eligible for the program and receives the initial grant of public funds, the program will then match *any* portion of a contribution received from a City resident, up to the full $500 of a maximum contribution.[7] These contributions are matched at a two-to-one rate, meaning that, for example, $1,000 of public funds is distributed for a $500 contribution that is approved through the program for matching.

To strengthen the program, Staff recommends three changes to the way public funds are distributed under the program. First, Staff recommends that the initial grants be increased to $60,000 for supervisorial candidates and $300,000 for mayoral candidates. Second, Staff recommends that the program match only up to $100 per contributor during the matching phase. Third, Staff recommends that public funds be distributed at a six-to-one ratio, rather than the current two-to-one ratio. These recommendations are summarized in Table 1, which also summarizes the corresponding provisions of existing law.

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[5] *See* Campaign & Gov. Conduct Code § 1.104 (defining *qualifying contribution* as contributions between $10 and $100). Additionally, only contributions from individuals, and not entities, may be counted.

[6] Qualification requirements are different for incumbents. Incumbent mayoral candidates must demonstrate $75,000 contributions from a minimum of seven-hundred fifty separate contributors. Incumbent supervisorial candidates must demonstrate $15,000 contributions from a minimum of one-hundred fifty separate contributors. *Id. at* § 1.140(b)–(c).

[7] This includes additional money received from a contributor whose $100 was already counted on a candidate's qualifying request. For example, if a contributor gives $500 to a candidate, the candidate may count $100 of the contribution toward her qualification. After the candidate is certified as eligible for the program, she can list the contributor on a subsequent matching request and have the remaining $400 of the contribution matched. However, a candidate cannot request matching of any funds that were already counted on a qualifying request.

Table 1 – Current Law and Staff Proposals

	Current Law	Staff Proposal
Qualification Requirement	$10,000/$15,000 (Supervisor Non-Incumbent/Incumbent) $50,000/$75,000 (Mayor Non-Incumbent/Incumbent)	$10,000/$15,000 (Supervisor Non-Incumbent/Incumbent) $50,000/$75,000 (Mayor Non-Incumbent/Incumbent)
Initial Grant	$20,000 (Supervisor) $100,000 (Mayor)	**$60,000** (Supervisor) **$300,000** (Mayor)
Matching Phase	2:1 (with small 1:1 phase)	**6:1**
Matchable Portion of Contribution	$500	**$100**

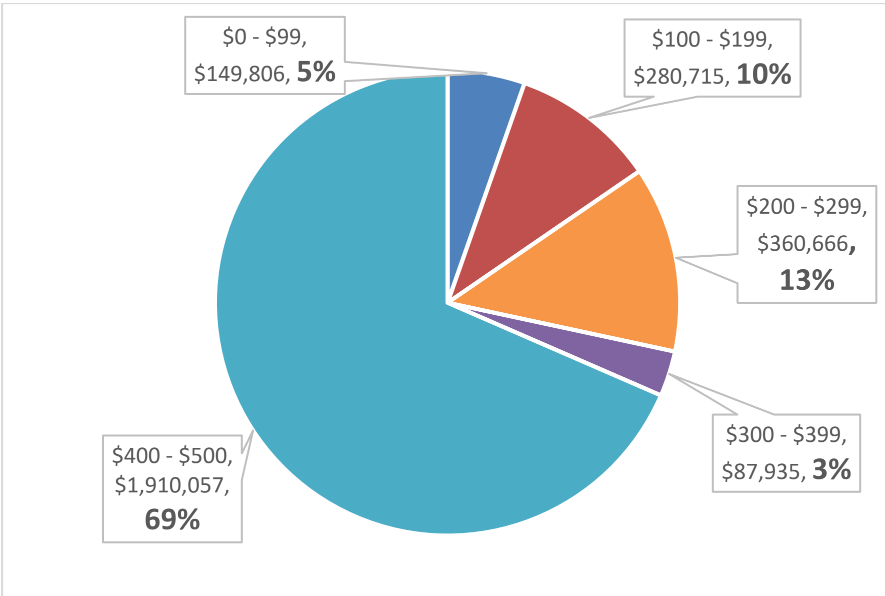
The current program can be described as a two-to-one matching program that will match up to $500 of an eligible contribution. Staff is recommending a six-to-one matching program that will match up to $100 of an eligible contribution. For example, if a candidate submitted a $50 contribution, that contribution could be matched with $300 in public funds. A $100 contribution could be matched with $600 in public funds. Any contribution above $100 similarly would be matched with $600 of public funds, since only the first $100 could be matched.

This change to the program would help to serve several policy objectives better than under the existing model. For one, the proposed matching model would give candidates an incentive to pursue a greater number of contributions of any size, rather than simply pursuing a high aggregate total of funds raised (typically by targeting large contributions). This would support the program's objectives by encouraging candidates to continue to demonstrate a broad and growing base of community support throughout the election. It would also encourage residents, including those who cannot give more than $100 to a political candidate, to engage with and contribute to candidates, since their contributions would have a greater value.

In recent elections, candidates received the majority of money from contributors who gave between $400 and $500. For example, in the 2018 supervisorial elections, sixty-nine percent of the money received by all candidates was received from contributors who gave $400 or more, and eighty-five percent was received from contributors who gave $200 or more. As Chart 1 indicates, these candidates relied heavily on larger contributions to fund their campaigns. This includes candidates who participated in the program.[8]

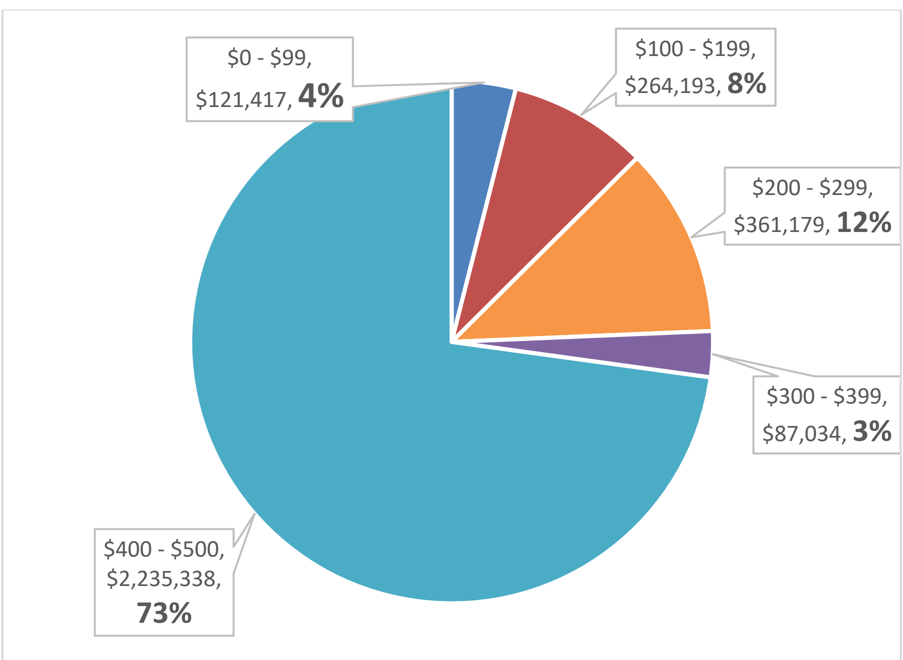
[8] This data only includes contributions up to the $500 limit. Candidates are permitted to contribute any amount to their own committees, and these amounts are excluded from this data.

Chart 1 - Distribution of Individual Contributions ($) to BOS Candidates, 2018 Elections



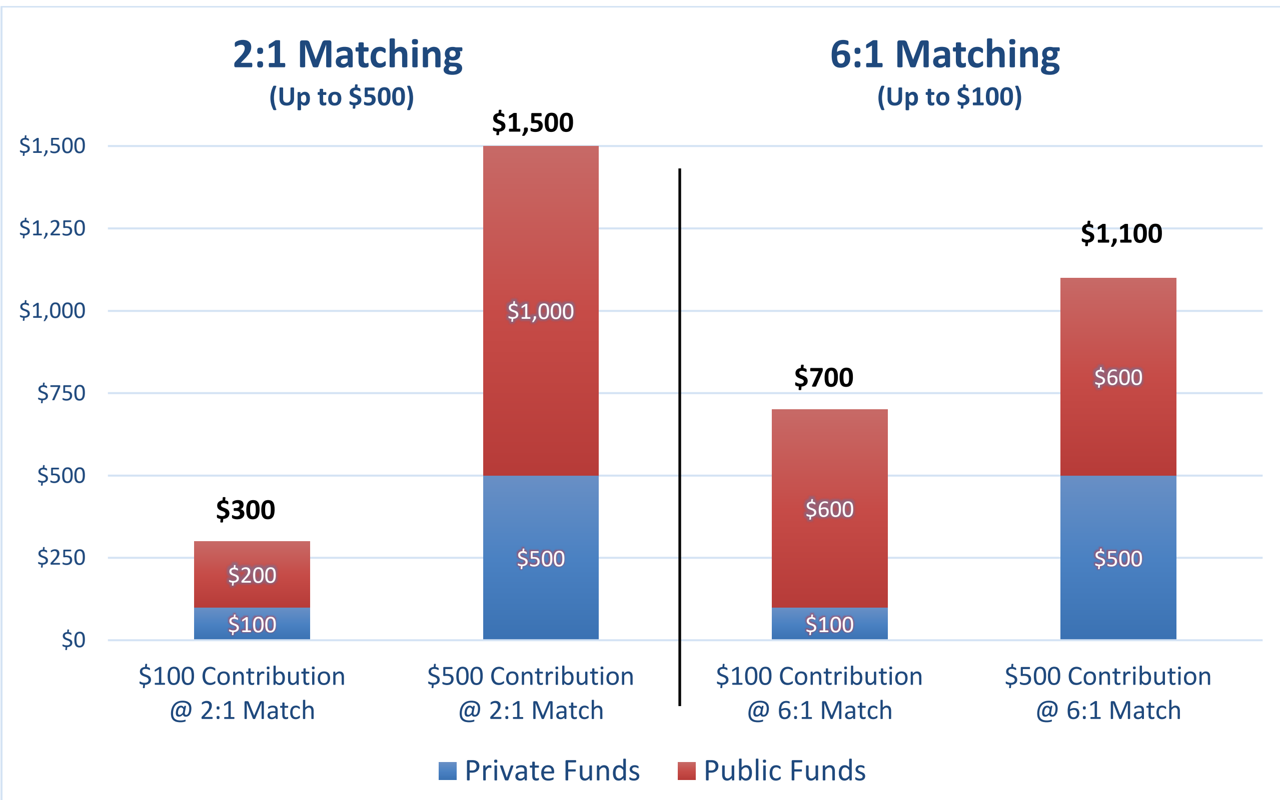
This same pattern was slightly more pronounced in the 2018 mayoral election. As shown in Chart 2, Seventy-three percent of candidates' funds were received from contributors who gave at least $400, and eighty-eight percent of candidates' funds were received from contributors who gave at least $200.

Chart 2 - Distribution of Individual Contributions ($) to Mayoral Candidates, 2018 Election



As discussed, the program will currently match the full amount of any contribution, up to the $500 contribution limit. This appears to serve as an incentivize for publicly financed candidates to pursue the largest contributions possible because a large contribution will always have a greater relative value than a smaller contribution, even after both are matched. For example, if one contributor contributes $100 and another contributes $500, the second contribution is five times larger than the first. If both contributions are approved through the program to be matched, the first contribution is matched with $200 of public funds and results in a total of $300 for the candidate to spend. The second contribution is matched with $1,000 in public funds and results in a total of $1,500 for the candidate to spend. The value that the candidate obtains from the larger contribution, $1,500, is still five times larger than the value of the smaller contribution, $300. This can be seen in Chart 3 under the "2:1 Matching" section. It appears the system may therefore incentivize the collection of large contributions because they will always maintain a higher relative value, even after matching.[9] Candidates are therefore encouraged to pursue a high total dollar amount of contributions, rather than focus on engaging larger numbers of contributors and broadening their community support amongst a greater number of residents.

Chart 3 – Comparison of Effects of 2:1 Matching (Up to $500) and 6:1 Matching (Up to $100)



[9] While the campaign strategies of candidates vary based on a number of factors, participating candidates would always appear to have an incentive to choose to submit larger contributions over smaller contributions. This is because the administrative costs involved in submitting a $100 contribution and a $500 contribution are equal: the time required to collect, vet, and submit contributions does not differ by contribution amount.

On the other hand, if the program were to match only the first $100 of a contribution and to match it at a six-to-one ratio, the relative difference between a $100 contribution and a $500 contribution would be less dramatic. As Chart 3 illustrates, a $100 contribution would be matched with $600 in public funds and would result in $700 for the candidate to spend, and a $500 contribution would be matched with $600 in public funds and would result in $1,000 for a candidate to spend. The value that a candidate obtains from a $500 contribution would thus be 157 percent that of a $100 contribution, rather than 500 percent as under the current rules.

By giving smaller contributions a larger potential value to candidates, a six-to-one matching model capped at $100 would give candidates a greater incentive to engage with a larger and more diverse set of residents, including those who choose, or can afford, to contribute only $100 to a political candidate. When residents are unable to contribute $500 to a political candidate, a program that better leverages smaller contributions to enhance their value to candidates is worth close examination. Further, it is likely that many City residents cannot afford to contribute more than $100 to a political candidate. A recent report issued by the Federal Reserve indicated that four in ten adults in households across the United States would not be able to cover an unexpected expense of $400 or more without borrowing money or selling something.[10] Issues like the affordability of San Francisco housing could make this dynamic even more acute locally. For example, one report found that just fifteen percent of San Franciscans could afford a median-priced home.[11] Another recent report by the U.S. Department of Housing defined a family of four as "low income" if it makes less than $117,400 annually.[12] A higher matching ratio, capped at $100, would serve to enhance the value of even very small contributions to candidates, making the impact of those contributions more meaningful in City campaigns. This would serve the policy objective of allowing candidates to focus less on high-dollar fundraising events and more on broad-based voter engagement.

As noted above, Staff recommends increasing the initial grant. The new amount of the grant proposed essentially reflects the same six-to-one public-to-private rate that Staff recommends for the matching phase. At this new initial grant level, supervisorial candidates would receive $60,000 upon qualification, which is six times as much as a non-incumbent candidate must raise in order to receive the grant ($10,000). Likewise, mayoral candidates would receive $300,000, which is six times what a non-incumbent must raise to receive the grant ($50,000).[13] During the review process, Staff heard from candidates and their staff that the funds allocated to candidates under the program should be distributed earlier during the campaign to allow candidates to spend the money to set up basic campaign infrastructure, such as rented space, additional staff members, and phone lines. By allowing candidates determined to be eligible for the program to receive an initial grant that is three times larger than under current rules, the program would provide a potential boost to qualified committees earlier in

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[10] U.S. Fed. Res. Sys., Report on the Economic Well-Being of U.S. Households in 2017 – May 2018, *available at* https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.
[11] Cal. Ass'n. of Realtors, 4th Quarter Housing Affordability, *available at* https://www.car.org/aboutus/mediacenter/newsreleases/2019releases/4qtr2018housingaffordability.
[12] Annie Sciacca, *The Eye-Popping Definition of What is "Low Income" in the Bay Area Increases Again*, THE MERCURY NEWS, June 25, 2018, *available at* https://www.mercurynews.com/2018/06/25/the-eye-popping-definition-of-what-is-low-income-in-the-bay-area-increases-again/.
[13] As discussed above, incumbent candidates must raise more in order to become eligible for the program and receive the initial grant ($15,000 for supervisorial candidates and $75,000 for mayoral candidates). For incumbent candidates, the initial grant would be four times the amount that the candidates must raise to become eligible for the program.

the campaign cycle. This furthers the program's goal of providing a sufficient financial platform for candidates to run competitive campaigns.

Additionally, during the review, candidates and their staff reflected on the how six-to-one match for contributions capped at $100 would have affected their campaigns. Many candidates observed that a higher match ratio combined with matching public funds capped at or near $100 would further the important public funding goal of empowering grass roots supporters and smaller contributions for all candidates. Moreover, some candidates shared that many San Francisco residents cannot afford to give more than $100 to a political campaign. To those candidates, the number of supporters should speak louder than the amount the supports can give. Increasing the impact that a $100 contribution, then, incentivizes candidates to reach a broader audience instead of focusing first or exclusively on contributors able to afford a $500.

An additional policy benefit of this proposed approach is that, by bringing small and large contributions closer together in terms of how much value they confer to candidates, a higher matching ratio capped at $100 could reduce the concern that candidates are influenced by the size of an individual's contribution. If all contributions conferred a more similar end value to candidates, there would be less reason to believe that there is a nexus between the size of a contribution and its influence over elected officials. This, in turn, could serve to improve the public's trust in the integrity of local government, one of the program's policy objectives.

Additionally, the $100 cap and higher matching ratio could serve to encourage more contributors to engage with local candidates and make political contributions. Staff research found that, compared to the number of residents who cast votes in City elections, a relatively small number of City residents make contributions to mayoral and supervisorial candidates. In the June 2018 election, 250,868[14] voters cast ballots in the mayoral election. However, roughly one-tenth, or about 25,600,[15] City residents made political contributions to one of the mayoral candidates. The same disparity occurred in each of the 2018 supervisorial elections, as shown in Table 2. These figures suggest that far fewer people engage with candidates through contributing financially to support their campaigns than compared to the number of people who ultimately vote in an election. This phenomenon frustrates the goal of increasing the public's engagement in local campaigns and trust in local government. If small contributions had a larger value in and impact on candidates' campaigns, this could encourage more residents to engage with a candidate by contributing where they otherwise might not.

[14] S.F. DEPT. OF ELECTIONS, Consolidated Statewide Primary Election Summary Report (June 5, 2018), *available at* https://sfelections.org/results/20180605/data/20180627/summary.pdf.

[15] The figure one-tenth is an approximation since the actual number of San Francisco residents who contributed was at least 25,611. This number, though impossible to determine because of unitemized contributions, is likely higher since Staff took the most conservative approach to estimating the number of contributors from the unitemized contributions.

Table 2 – 2018 Supervisorial Elections – Voters and Contributors[16]

District	Registered Voters in District	Votes Cast in District	San Francisco Contributors	Contributors as % of Total Votes Cast
District 2	50,382	39,906	2,454	6.1%
District 4	42,900	31,412	1,365	4.3%
District 6	42,996	28,872	2,368	8.2%
District 8[17]	57,781	48,049	1,900	4.0%
District 10	41,296	26,257	1,766	6.7%

Finally, Staff's proposed matching model would likely result in some participants receiving more public funds overall. This would be the case even if the maximum amount of funds that a candidate can receive is not increased (as discussed below in section III.B). Some candidates, but not all, receive the maximum amount of funding available to a single candidate. This amount is capped by statute at $155,000 for supervisorial candidates ($152,500 for incumbents) and $975,000 for mayoral candidates ($962,500 for the incumbent). In 2016, two of eleven publicly financed supervisorial candidates (eighteen percent) "maxed out" by receiving the maximum amount of public financing. In 2018, four of eleven publicly financed supervisorial candidates (thirty-six percent) and two of three mayoral candidates (sixty-six percent) maxed out.

However, for recent candidates who did not receive the maximum amount allowed by law, the matching model proposed here would likely have resulted in more public funds being distributed to those candidates. This is because, although matching would only be applied to up to $100 of a contribution, the ratio would be three times the current ratio. This more generous matching rate would likely cause more candidates to receive greater amounts of public financing.

Raising the matching ratio to six-to-one and limiting matching to the first $100 of a contribution would make the program similar to public financing programs in certain other jurisdictions that are utilizing a six-to-one or higher matching rate. Notable examples include Los Angeles, CA; Berkeley, CA; Portland, OR; and New York, NY.[18] Though each jurisdiction differs slightly, these programs, like Staff's proposals, seek to empower smaller contributions by limiting how much money received from a given contributor can be matched. For example, the New York City public financing program, the longest-running program in the country, matches up to $175 from any single contributor, even though the contribution limit is

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[16] The number of San Francisco contributors displayed in the table is an estimate based on committees' financial disclosures. The precise number of contributors is not ascertainable because candidates can list contributions of less than $100 as "unitemized contributions" and are not required to state the number of contributors or the amounts contributed. As such, Staff has taken the total value of unitemized contributions for each District race and divided the total by $99 to estimate the minimum number of contributors. Since some contributors may have given less than $99, this would mean that there were actually more unitemized contributors than reflected in the table. However, because unitemized contributions make up a relatively small percentage of the overall funds raised by candidates, the estimates contained in Table 1 are likely close approximations of the true number of contributors.

[17] Numbers are based on the June 6, 2018 District 8 election.

[18] CATHERINE HINCKLEY KELLEY & AUSTIN GRAHAM, CAMPAIGN LEGAL CENTER, BUYING BACK DEMOCRACY: THE EVOLUTION OF PUBLIC FINANCING IN U.S. ELECTIONS 23–25 (2018).

much higher.[19] New York City's program has been shown to increase the number of contributors overall, as well as the number of small donors, while supporting candidates with substantial grassroots support but little access to large donors.[20] Perhaps recognizing the importance of heightening the impact of smaller contributions, New York Governor Andrew Cuomo has proposed a state-wide public financing program that would match small donations at six-to-one because "there is currently no incentive for candidates to focus on ordinary donors" and because large donors "drown out the voices of ordinary people."[21] These developments suggest that other jurisdictions across the country are employing higher matching ratios for similar reasons and are having some level of measurable success.

B. <u>Increase the Maximum Amount of Public Financing Available to Each Candidate</u>

Under current program rules, publicly financed candidates are limited to the amounts of public financing shown in Table 3. The amounts differ slightly between incumbent and non-incumbent candidates.

Table 3 – Maximum Per-Candidate Funding Levels

Office	Incumbent	Non-Incumbent
Mayor	$962,500	$975,000
Supervisor	$152,500	$155,000

To determine whether these maximum funding levels provide candidates with sufficient resources to run competitive campaigns, Staff analyzed spending by candidates in recent elections and compared this to the amount of funding that candidates may receive under the program. Table 4 shows the average amount spent by winning candidates in each election since 2011. Similarly, Table 5 shows the average amount spent by any candidate who received at least 10 percent of the vote.

Table 4 - Average Spent to Win Election

Race	2011	2012	2014	2015	2016	2018	Cumulative Average
BOS		$217, 607	$355,530	$594,826	$296,722	$376,051	$316,482
Mayor	$1,888,968			$1,523,602		$2,290,896	$1,901,155

[19] NEW YORK CITY CAMPAIGN FINANCE BOARD, KEEPING DEMOCRACY STRONG: NEW YORK CITY'S CAMPAIGN FINANCE PROGRAM IN THE 2017 CITYWIDE ELECTIONS 3, 122 (2017). New York City currently matches contributions for mayoral and City Council races at 8:1 up to $250 for mayoral races and $175 for City Council races.

[20] ANGELA MIGALLY & SUSAN LISS, BRENNAN CENTER FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 9 (2010); see also *New York City's Matching Funds Program*, BLUEPRINTS FOR DEMOCRACY, http://www.blueprintsfordemocracy.org/model-matching-funds-program (last visited April 3, 2019) (noting that voters who contributed were far more likely to vote in those elections than voters who did not make a contribution).

[21] Governor Cuomo Announces Proposals to Lower Campaign Contributions and Implement Public Financing Included in 2019 Executive Budget (Jan. 16, 2019) (available at (https://www.governor.ny.gov/news/governor-cuomo-announces-proposals-lower-campaign-contributions-and-implement-public-financing).

Table 5 - Average Spent by Candidates with Minimum 10% of Total Votes

Race	2011	2012	2014	2015	2016	2018	Cumulative Average
BOS		$181,799	$76,689	$480,791	$164,970	$356,421	$251,611
# of Candidates with 10% of Votes		15	10	2	18	15	
Mayor	$1,367,470			$517,610		$1,850,682	$1,245,254
# of Candidates with 10% of Votes	3			3		3	

Table 4 show that winning supervisorial candidates spent an average of roughly $376,000 in the 2018 elections and $297,000 in the 2016 elections. Looking more broadly at supervisorial candidates who received at least ten percent of the total votes in the race, Table 5 shows that candidates spent on average roughly $356,000 in the 2018 election and $165,000 in the 2016 election. For mayoral candidates, the successful candidate in 2018 spent $2,290,896 in 2018 and $1,888,968 in 2011.[22] Mayoral candidates who received at least ten percent of the vote spent on average roughly $1,851,000 in 2018 and $1,367,000 in 2011.

In light of this data, the maximum amount of public financing that candidates can receive under the program should be increased to better empower participating candidates to launch competitive campaigns. Even if a candidate receives the maximum amount of funding available under the program, and when this amount is added to the amount of private contributions that the candidate must raise in order to access the public funds, this sum is significantly less than the average spending of successful candidates. This means that in order to win an election, publicly financed candidates must raise additional amounts of private contributions to supplement their committees' total funds. This need to engage in additional fundraising in order to be competitive indicates that additional funding through the program could give candidates a stronger platform to lead competitive campaigns. It also indicates that the extent to which participating candidates are being freed up from the need to fundraise is likely not as great as it could be if candidates had access to a greater pool of public funds.

Staff contacted several former candidates to solicit their feedback on how and to what extent the program helped them run a competitive campaign. While candidates nearly universally relayed that the availability of public financing significantly influenced their decision to run and gave them a platform to run a competitive campaign, many lamented the time spent fundraising instead of engaging with voters. Many expressed the belief that the need to fundraise did not diminish as Election Day drew near but rather increased, citing the need to maintain a reserve to respond to independent expenditures.

Additionally, Staff heard from several candidates who received the maximum amount of funding available under the program that if they had been able to earn more public funding, they would have been able to engage in new and different forms of campaigning. With these additional public funds, candidates conveyed that they would have increased voter engagement by supplementing or replacing

[22] The 2015 race for mayor was neither financially nor electorally competitive. Incumbent Mayor Ed Lee won with fifty-five percent of the votes cast in Round 1. Similarly, Mayor Ed Lee raised approximately $1.5 million, while the second highest amount raised by a candidate was only $32,236. Thus, the more competitive 2011 mayor's race is a better point of comparison.

part-time volunteer staff with paid professional staff, by conducting new forms of outreach through TV ads or targeted mailers, and by engaging in more direct outreach to voters.

Based on past fundraising by candidates, enabling candidates to receive more funds under the program will certainly increase the overall amount of funds distributed to candidates each election. It is important to examine the capacity of the current program's funding to support this increase. The Election Campaign Fund (ECF), which is the fund from which all public financing distributions are made, is funded with an annual appropriation based on the current population of the City. Staff offers two potential alternatives for increasing the maximum amount of funding a candidate can receive: one that is likely within the current guaranteed funding levels of the ECF (Alternative 1), and one that would have a greater impact on campaigns but that would likely exceed the guaranteed funding levels (Alternative 2). Those alternatives are shown in the following table.

Table 6 – Two Alternatives for Higher Maximum Per-Candidate Funding Levels

Office	Alternative 1	Alternative 2
Board of Supervisors	$210,000	$270,000
Mayor	$1,200,000	$1,500,000

Staff used qualifying requests, matching requests, and campaign finance disclosures filed by publicly financed candidates from the 2018 elections to estimate how much money those candidates would have received under the system proposed by Staff.[23] These estimates are based on a six-to-one matching ratio that matches up to $100 received from any City resident. Staff constructed separate estimates based on the maximum per-candidate funding levels shown as Alternative 1 and Alternative 2 in Table 6. Table 7 below shows average distributions of public funds per candidate. It shows what the average distributions actually were in the 2018 elections and what they likely would have been under Staff's proposals. If the 2018 elections were roughly representative of future elections, these numbers can serve as estimates of what future candidates would receive under Staff's proposals.

[23] The data for Table 7 is derived from contributions approved on Qualifying Requests, Matching Requests, and 460 data for contributions from San Francisco residents. Unitemized contributions, which are contributions under $100 for which committees are not required to disclose individual contributors' names and addresses, are not considered since the number, name, and residence of the contributors is unknown. Excluding unitemized contributions lowers the estimates of how much a candidate might be eligible to receive under the program. However, the estimate includes *all* contributors listing San Francisco as their residence, and typically committees fail to provide proof of residency for some contributors and therefore cannot use those contributions for purposes of the program. Thus, including all contributions that apparently originated from City residents is overinclusive and inflates the estimates. Given that these two variables exert opposite pressures on the estimates, Staff believes that the effects roughly cancel out and that the estimates are fair approximations of what candidates would likely receive under the proposal.

Table 7 - Per-Candidate Public Financing Distribution in 2018 Election (Actual and Estimated)

	Board of Supervisors	Mayor
Actual	$137,588	$885,920
$210k/$1.2MM	$193,921	$1,177,955
$270k/$1.5MM	$232,103	$1,377,955

Table 7 shows that if matching were done at a six-to-one ratio and maximum funding levels were increased from $155,000 to $210,000 (supervisorial non-incumbents) and from $975,000 to $1.2 million (non-incumbent mayoral candidates), candidates would, on average, receive more public financing. Supervisorial candidates would on average receive roughly an additional $56,000, or forty-one percent, and mayoral candidates would on average receive roughly an additional $292,000, or thirty-three percent. If maximum funding levels were instead set at $270,000 and $1.5 million, candidates would receive roughly sixty-nine percent (supervisorial) or fifty-six percent (mayoral) more funding. Staff believes that either alternative would strengthen the program by giving participating candidates more resources to lead a competitive campaign.

To better understand whether the Election Campaign Fund can support the funding increases described above, Staff modeled the expected cost of future elections and compared that to the ECF's funding levels that are set by statute. The City must appropriate $2.75 per resident into the ECF each year. The City's population is currently about 880,000, which yields an annual appropriation of approximately $2,420,000.[24] Both supervisorial and mayoral elections occur on a four-year election cycle because those offices have four-year terms. Thus, in any four-year period the regular election for the office of mayor and the regular elections for each of the eleven supervisorial seats will be held. Since ECF funds not used in one year roll over to the next year (up to a maximum of $7 million), it is possible to analyze the ECF's expected budget over a four-year election cycle.[25]

During a four-year period, the annual $2.42 million appropriation would deposit roughly $9.7 million into the ECF. If public financing distributions are to remain within the ECF's statutory appropriation, the expected cost of one mayoral election and eleven supervisorial elections must be less than this amount. Table 8 below shows the estimates of how much public financing candidates would likely qualify to receive under the two alternative recommendations. The estimates for the even-numbered supervisorial district candidates and mayoral candidates are based on the per-candidate distribution estimates for the 2018 elections shown in Table 7 above. The estimates for odd-numbered supervisorial district candidates are derived from the 2018 even-numbered district figures and are scaled up from five seats to six. The figures shown in the "Election Cycle" column is the total of the estimate for all eleven supervisorial elections plus the mayoral election. This grand total represents the estimated cost to fund the program over one four-year election cycle.

[24] Should the ECF have insufficient funds in case of a special election, the City will appropriate additional funds to ensure that least $8.00 per resident for a mayoral election and $0.25 per resident for each vacant Board of Supervisor seat is available in the ECF. Campaign & Gov. Conduct Code § 1.138. However, any unused funds appropriated under section 1.138 must be returned to the General Fund. Thus, these funds need not be factored into this estimate, which is only for regular elections.

[25] *Id. at* § 1.138(b)(1).

Table 8 - Total Distributions to All Publicly Financed Candidates in 2018 Election (Actual and Estimated)

	Board of Supervisors (Districts 2, 4, 6, 8, & 10)	Board of Supervisors (Districts 1, 3, 5, 7, 9, & 11)	Mayor	Cost Over One Election Cycle
Actual	$1,513,465	$1,816,158	$2,657,759	$5,987,382
$210k/$1.2MM	$2,133,136	$2,559,764	$3,533,864	$8,226,764
$270k/$1.5MM	$2,553,136	$3,063,764	$4,133,864	$9,750,764

Table 8 shows that the current cost of the program is roughly $6 million, well below the $9.7 million four-year budget of the ECF. This is consistent with the recent history of the program, in which distributions have been less than appropriations, leading to yearly rollover and a surplus in the ECF. If matching were increased to six-to-one and maximum funding levels were increased to $210,000 and $1.2 million (for supervisorial and mayoral candidates, respectively), the estimated cost for a four-year election cycle would be approximately $8.2 million. This is likely within the ECF's four-year appropriation, but it is important to note that while the appropriation may increase slightly as population increases, the estimated cost is more prone to error and to yearly fluctuations. Leaving some estimated surplus is necessary if the cost is reasonably expected to remain within the ECF's guaranteed appropriation. Additionally, the Code allows for Ethics Staff to use up to fifteen percent of the ECF to pay for administration of the program, which can involve independent audits of candidates' finances. Thus, Staff estimates that maximum funding levels of $210,000 (supervisorial candidates) and $1.2 million (mayoral candidates) are the highest that can safely be afforded under the fund's guaranteed annual appropriations.

As shown in Table 8, if maximum funding levels were increased to $270,000 and $1.5 million, the likely distributions over one election cycle would be $9.75 million. This estimate is beyond the fund's $9.7 million appropriations over four years, even without factoring in error and the potential for administrative costs. However, because past elections have not consumed the full $2.42 million annual appropriation, funds have typically rolled over from year to year. Currently, the fund's balance is $4,950,555, which is approximately $2.5 million more than the amount of the annual appropriation. This means that, if maximum funding levels were put in place that were expected to exceed the annual appropriation, the fund's current surplus could fund the program for some period. However, after a number of elections, the surplus would eventually be exhausted and the program's balance would be insufficient to cover the cost of the program.

Even if the fund's surplus were exhausted, it may be possible to support a revised program that costs more than the annual appropriation. The ECF is guaranteed a $2.42 million annual appropriation, but, in addition, the Board of Supervisors and the mayor could approve a supplemental appropriation to address a shortfall in the fund. Section 1.154 allows the Commission to request additional funding for the ECF if its balance falls below a certain amount: $7.50 per resident before a mayoral election, or below $1.50 per resident before a supervisorial election.[26] Although this supplemental funding is not guaranteed, the Commission could choose to approve higher maximum funding levels and to request additional funds if distributions outpace appropriations. This step could be necessary in the future if the

[26] *Id. at* § 1.154(b).

funding levels in Alternative 2 were enacted.

As a potential aid in securing additional funding if the fund's balance were too low, Staff recommends that the Commission approve new language making the additional appropriation part of the ECF's guaranteed funding, rather than an optional supplemental appropriation. Although budget process is controlled by the Charter and the Board of Supervisors cannot be compelled by statute to appropriate funds for any program, this change to the Code would at least signal that the additional funding is an integral and necessary part of the program that can be depended upon for planning purposes. If the ECF were in fact brought up to $7.50 before every mayoral election, that would bring the balance to roughly $6.6 million. This would help ensure that higher per-candidate funding levels would not exhaust the fund.

Staff recommends that the Commission increase the per-candidate funding levels by approving either Alternative 1 or Alternative 2. Although Alternative 2 is preferable in terms of the level of resources it would provide to candidates, its fiscal feasibility is less certain.

C. Increase the Initial Spending Limits

Under current law, publicly financed supervisorial candidates must agree to limit their expenditures to $250,000, and mayoral candidates to $1,475,000.[27] Although these amounts are typically increased by the Commission based on financial activity in elections, these initial levels represent an important marker of what a candidate should be limited to while still being able to lead a competitive campaign. As shown in Table 4 above, successful candidates in recent elections have almost universally spent in excess of this amount. The winning candidate in the 2018 mayoral election spent roughly $2.3 million, while the winning candidate in the 2011 election spent roughly $1.9 million. The average spending of a successful supervisorial candidate was approximately $376,000 in 2018 and $297,000 in 2016. These figures indicate that the current initial spending limits (IECs) are out of synch with the realities of local campaigning. Adjusting initial spending levels to better match the realities of campaigns can serve to encourage participation in the program, which further empowers residents and actual voters to become more involved and similarly incentivizes candidates to reach out to more residents.

The last time that the initial IEC for supervisorial candidates was increased was 2012[28], and for mayoral candidates it was 2009.[29] If publicly financed candidates are required to restrict their spending to levels that are low relative to the amount of money currently spent by competitive candidates, that restriction could hamper participants' ability to run a viable campaign. This outcome would weaken the program's effectiveness and has the potential to suppress participation in the program. Feedback from candidates echoes this sentiment.

To address these findings, Staff recommends that the initial spending limits be updated to better reflect the current electoral environment in the City. Staff recommends that the initial IEC for supervisorial

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[27] *Id. at* § 1.140(b)(4), (c)(4).
[28] San Francisco, Cal., Ordinance 64-12 (May 20, 2012), available at https://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances12/o0064-12.pdf.
[29] San Francisco, Cal., Ordinance 234-09 (Nov. 20, 2009), available at https://sfgov.legistar.com/View.ashx?M=F&ID=860772&GUID=70289EC6-A85B-4592-891E-1A92C75F62F3.

candidates be changed to $350,000 and $1.7 million for mayoral candidates.

D. Allow Publicly Financed Candidates to Receive the Initial Grant at an Earlier Date

Under current law, no distribution of public funds may be made prior to the 142nd day before the election.[30] This rule was created to prevent candidates from receiving public funds and subsequently deciding not to seriously run for office after a new competitor enters the race. To avoid this series of events, the code was amended to delay any distributions under the program until after the candidate nomination period closes. The consequence of this rule is that even if a candidate submits a qualifying request earlier in the year and the request is approved, the candidate must wait to receive the initial grant until the 142nd day before the election. For a November election, that date falls in early June. This aspect of the program likely harms grassroots candidates by preventing them from accessing funds under the program until five months before the election. Competitive candidates typically begin their campaigns much earlier, but funds awarded through the program are not available until midway through the year.

To increase the impact that the funds awarded to candidates can have, Staff recommends moving up the earliest date on which candidates can receive the initial grant while still maintaining the 142nd day before the election as the earliest date on which candidates can receive funds distributed for a matching request. Staff recommends the 284th day before the election as the first day on which initial grants may be distributed. This approach would allow candidates to receive the initial grant in late January and to begin receiving matching funds in early June. Staff heard from some candidates and campaign staff that the earlier availability of even limited funds under the program would have allowed them to expand their campaigns more quickly and be more competitive in the election. The risk of some candidates giving up on the election and wasting the initial grant is small in comparison to the benefit that would be derived from allowing all candidates to access the initial grant at an earlier time.

E. Harmonize the Qualification Period for Mayoral and Supervisorial Candidates

Candidates can only qualify for public financing by raising contributions from City residents within a certain time period. For mayoral candidates, those contributions must be received *by* the 70th day before the election, meaning that contributions received on the 70th day before the election may be counted.[31] However, supervisorial candidates must receive qualifying contributions *before* the 70th day before the election, meaning that contributions received on the 70th day before the election may not be counted.[32] There is no apparent reason for the discrepancy, and it has been a source of confusion in the program in prior elections.

Staff recommends that the discrepancy be eliminated by aligning the dates for both mayoral and supervisorial candidates to allowing both types of candidates to use contributions received on the 70th day before the election to be counted for purposes of qualification. This change would reduce the compliance burden on candidates by simplifying the qualification requirements and could potentially help supervisorial candidates by marginally expanding the window for qualification fundraising.

[30] Campaign & Gov. Conduct Code § 1.144(b).
[31] *Id. at* § 1.140(c)(2).
[32] *Id. at* § 1.140(b)(2).

F. List of All Legislative Recommendations

Staff's recommendations for changes to the program are summarized below:

1. **Provide public funding only for the first $100 from any contributor; matched at a six-to-one ratio.**

2. **Increase the initial grant to $60,000 (supervisorial) and $300,000 (mayoral).**

3. **Increase the maximum funding a candidate can receive.**

    a. **Alternative 1: $210,000 (supervisorial) and $1.2 million (mayoral)**

    b. **Alternative 2: $270,000 (supervisorial) and $1.5 million (mayoral)**

4. **Amend the ECF appropriation language to make minimum-balance funding mandatory**

5. **Increase the initial IECs to $350,000 (supervisorial) and $1.7 million (mayoral)**

6. **Allow initial grants to be distributed on the 284th day before the election; retain the 142nd day before the election as the earliest date on which matching funds can be distributed.**

7. **Align the qualification fundraising period for supervisorial candidates with that of mayoral candidates by including the 70th day before the election.**

G. Program Features that Should Not be Changed at Present

Staff does not recommend changing features of the program beyond those listed above.

For example, Staff does not recommend that qualification requirements be changed. After reviewing qualifying requests and approval rates, speaking with candidates about the qualification process, and analyzing the ECF's capacity to support additional candidates, Staff finds that the existing requirements strike an appropriate balance between the program's accessibility and rigor. The qualification requirements must be high enough that only candidates who can demonstrate a strong basis of community support are allowed to participate. On the other hand, the requirements should not be so stringent that a reasonable number of candidates cannot participate.

In theory, lowering the total amount of contributions that candidates must receive in order to become eligible for public financing might allow more candidates to participate and could thus increase the program's impact by making it available to more individuals. However, this change would likely foreclose the higher matching ratio and increased funding levels recommended in sections III.A and III.B. Instead, Staff finds that increasing the program's impact for candidates who are already eligible would have more value than expanding the program's current benefits to a greater number of candidates. Conversely, Staff does not believe that the qualification requirements should be made more stringent if more funds were to be made available to candidates. This would have the potential of excluding candidates who would otherwise qualify under the existing requirements. Lower participation rates would not strengthen the program or improve its policy outcomes.

Likewise, Staff does not recommend changing the program's basic model. The current model is an initial grant, followed by matching funds. During Staff's community engagement process, some stakeholders recommended that the model be changed to a democracy voucher system similar to what is in place in the City of Seattle. Under this model, residents receive vouchers from the city that they can give to a candidate who is participating the program. The candidates then redeem the vouchers with the city and receive public funds in exchange. Seattle will undergo its second election with democracy vouchers this year, and Staff believes that more data about the program's performance is needed before it can be properly evaluated for potential implementation in San Francisco. Staff finds that the changes recommended above, such as the six-to-one matching ratio and lower $100 matchable portion of each contribution, are approaches currently being taken in other jurisdictions that would be much more feasible to implement at this moment. Staff will, however, continue to monitor the performance of the Seattle program.

ATTACHMENT 1

CLC
ADVANCING DEMOCRACY THROUGH LAW

March 5, 2019

Submitted electronically to ethics.commission@sfgov.org

Chair Daina Chiu
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Substantive Review of San Francisco's Public Financing Program

Dear Chair Chiu and Members of the Commission:

The Campaign Legal Center ("CLC") respectfully submits these written comments to the San Francisco Ethics Commission ("Commission") regarding its substantive review of the city's public financing program. These comments focus on the aspects of the program covered in the Commission's public meetings on Monday, March 4, and Friday, March 8.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening campaign finance, ethics, and lobbying laws across all levels of government. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, as well as in numerous other federal and state court cases. Our work promotes every voter's right to participate in the democratic process and to know the true sources of money spent to influence elections.

We support the Commission's review of San Francisco's public financing program, and applaud the Commission for making this review a top priority. The vast amounts of money being raised to fund elections has left many Americans feeling excluded from the democratic process, and campaign contributions in U.S. elections increasingly come from a small pool of wealthy donors.[1] Effective public financing programs thus can amplify the voices of all citizens—not just those who

[1] In 2016, half of all campaign contributions to federal candidates came from only 15,810 individuals. By comparison, in 2000, 73,926 individuals accounted for half of all contributions in federal elections. *See* NATHANIEL PERSILY, ROBERT F. BAUER, & BENJAMIN L. GINSBURG, BIPARTISAN POLICY CTR., CAMPAIGN FINANCE IN THE UNITED STATES: ASSESSING AN ERA OF FUNDAMENTAL CHANGE 22 (Jan. 2018), https://bipartisanpolicy.org/wp-content/uploads/2018/01/BPC-Democracy-Campaign-Finance-in-the-United-States.pdf.

can afford to write large checks—and broaden political participation among the public at large.

The effectiveness of a public financing program, however, largely depends on keeping the program up-to-date with evolving campaign practices. For example, New York City's matching funds program has been updated continually since it was enacted more than thirty years ago. New York City's commitment to maintenance of its program has, in large part, contributed to the program's longevity as a viable option for competitive city candidates. In contrast, Congress's failure to update the presidential public financing system has allowed that program to wither to the point where it is no longer an appealing alternative for major party candidates.[2] Accordingly, periodic reviews and updates of San Francisco's public financing program will help to maintain the program's popularity and to ensure it advances its legislative goals.

In these comments, we have included various recommendations that would help the Commission advance the objectives of the city's public financing program, including increasing "the opportunity to participate in elective and governmental processes."[3] Part I covers the program's qualification requirements, and describes several ways the Commission could amend these qualification procedures. Part II discusses the program's funding of participating candidates, and recommends increasing the matching funds rate available under the program. To provide the Commission with additional information about the development of public financing in jurisdictions around the country, we also have included, as an attachment, CLC's recently published report, *Buying Back Democracy: The Evolution of Public Financing in U.S. Elections*.

I. Candidate Qualification Requirements

To receive public funding in San Francisco, candidates must satisfy qualification criteria specified in the Campaign Finance Reform Ordinance, including a two-part fundraising threshold.[4] The fundraising threshold requires candidates to raise both a minimum *amount* and *number* of "qualifying contributions," in amounts between $10 and $100, from San Francisco residents.[5] The requisite amount and number of qualifying contributions vary for mayoral and supervisorial candidates, as well as for incumbents and non-incumbents. Additionally, candidates are only eligible to receive public funds if they face at least

[2] For an in-depth history of the presidential public financing system, *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).

[3] *See* S.F. Campaign & Governmental Conduct Code § 1.100(b)("It is the purpose and intent of the People of the City and County of San Francisco in enacting this Chapter to . . . [e]nsure that all individuals and interest groups in our city have the opportunity to participate in elective and governmental processes . . . [h]elp restore public trust in governmental and electoral institutions").

[4] S.F. Campaign & Governmental Conduct Code § 1.140.

[5] *Id.*; *see also id.* § 1.104 ("'Qualifying contribution' shall mean a contribution of not less than $10 and not more than $100 that is made by an individual who is a resident of San Francisco and that complies with all requirements of this Chapter.").

one opponent in the race who has either established eligibility for public financing, or received contributions or made expenditures above certain amounts.[6]

Non-incumbent mayoral candidates must collect at least $50,000 in qualifying contributions from a minimum of 500 San Francisco residents, while an incumbent mayor must raise a minimum of $75,000 from no fewer than 750 city residents.[7] In elections for the Board of Supervisors, non-incumbent candidates must receive at least $10,000 in qualifying contributions from a minimum of 100 city residents; incumbent members of the Board of Supervisors must raise a minimum of $15,000 in qualifying contributions from at least 150 city residents.[8] All candidates must demonstrate that they have satisfied the fundraising threshold and other qualification requirements by submitting a Qualifying Request, along with supporting documentation, to the Ethics Commission no later than 70 days prior to the election.[9]

San Francisco's fundraising requirements are comparable to qualification criteria for public financing in similarly sized jurisdictions. For instance, Seattle's Democracy Voucher Program requires mayoral candidates to collect "qualifying contributions" of at least $10 from a minimum of 600 city residents; city council candidates, other than those seeking an at-large position, must receive qualifying contributions of at least $10 from 150 Seattle residents.[10] In Washington, D.C., the recently enacted Fair Elections Program will require mayoral candidates to receive at least $40,000 in "qualified small-dollar contributions" from a minimum of 1,000 city residents, and city council candidates for a ward seat will have to raise no less than $5,000 in "qualified small-dollar contributions" from at least 150 city residents in order to receive certification for public funds.[11] Under D.C.'s new program, candidates must submit the required number and amount of "qualified small-dollar contributions" no later than 90 days before the date of the primary or general election, as applicable.[12]

The Commission should consider making several changes to the qualification process to advance the public financing program's objectives. First, the Commission should assess whether to require candidates for the Board of Supervisors to raise a certain number of their qualifying contributions from residents of the particular district that they seek to represent. Currently, a number of jurisdictions obligate city council candidates to collect qualifying contributions from residents of the relevant council district in order to gain eligibility for public funds.[13] Seattle's Democracy Voucher Program, for instance, requires city council candidates seeking a district

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[6] *Id.* §§1.140(b)(3), (c)(3).
[7] *Id.* § 1.140(c)(2).
[8] *Id.* § 1.140(b)(2).
[9] *Id.* §§ 1.140(b)(2), (c)(2).
[10] Seattle Mun. Code § 2.04.630(C) (as amended by 2018 Ordinance No. 125611).
[11] D.C. Law 22-94, § 332c(a)(1), 65 D.C. Reg. 2847 (May 25, 2018).
[12] *Id.* § 2(47B); D.C. Code §§ 1.1001.08(i)(1), (j)(1).
[13] *See, e.g.*, Seattle Mun. Code § 2.04.630(C) (as amended by 2018 Ordinance No 125611); N.Y.C. Admin. Code § 3-703(2)(a); L.A. Mun. Code; Albuquerque, N.M., Charter art. XVI, § 5(B).

position to collect at least 75 of their 150 qualifying contributions from residents of that district.[14] In New York City, city council candidate also must raise at least 75 qualifying contributions from within the relevant council district to qualify for public funding.[15]

The intent behind a residency requirement for donors of qualifying contributions is to encourage candidates to focus their time and effort on engaging prospective constituents during the formative stages of a campaign. At least one study has shown that residency requirements do, in fact, promote more involvement among publicly financed candidates' potential constituents. Analysis of public financing systems in New York City and Los Angeles found that residency requirements for qualifying contributions correlated with significant increases in both the percentage of constituents who were "small donors" of $250 or less as well as the percentage of constituents among all donors to city council candidates eligible for public funds.[16]

Another potential amendment to consider for San Francisco's program is eliminating the prerequisite that candidates must face an electoral opponent, who in turn must surpass certain fundraising thresholds, in order to receive public funding.[17] While limiting disbursement of public funds to candidates in a contested election helps to conserve resources, there are countervailing reasons for allowing candidates who are unopposed or facing an underfunded opponent to receive public funds.

Public financing regimes, especially matching funds programs like San Francisco's, can promote political engagement even in the context of an uncontested election. These programs are structured to incentivize campaigns' outreach to voters irrespective of whether an election is contested. Moreover, the availability of public funds offers candidates an alternative to relying on large, private donations to fund their campaigns.

For these reasons, Washington, D.C.'s new Fair Elections Program will permit candidates who qualify for public funds to receive matching funds even if they are running unopposed. Like San Francisco's program, Washington, D.C.'s public financing ordinance will provide participating candidates in a *contested* election with both an initial payment and matching funds for certain contributions received from city residents.[18] Although the D.C. program will not furnish an initial payment to participating candidates in an *uncontested* election, it will continue to offer matching funds for any "qualified small-dollar contribution" raised by

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[14] Seattle Mun. Code § 2.04.630(C) (as amended by 2018 Ordinance No 125611).
[15] N.Y.C. Admin. Code § 3-703(2)(a)(iv).
[16] Michael J. Malbin & Michael Parrott, *Small Donor Empowerment Depends on the Details: Comparing Matching Fund Programs in New York and Los Angeles*, 15 FORUM 219, 234 (July 2017), https://www.degruyter.com/downloadpdf/j/for.2017.15.issue-2/for-2017-0015/for-2017-0015.pdf.
[17] S.F. Campaign & Governmental Conduct Code §§ 1.142(b)(3), (c)(3).
[18] D.C. Law 22-94, § 332d(b)(1).

participating candidates running unopposed.[19] This design helps to balance the District's need to conserve resources with the program's goal of promoting political engagement. The Commission should consider adopting a similar option for San Francisco's program to incentivize candidates' outreach to small-dollar contributors in all elections.

II. Funding for Participating Candidates & Increasing Matching Rate to Enhance Participation among City Residents

To broaden public participation in San Francisco's elections, we recommend that the Commission consider increasing the rate of matching funds provided to participating candidates. Currently, San Francisco's program offers partial public funding to candidates for mayor and the Board of Supervisors. The program can be described as a hybrid public financing system, providing both grants ("initial payments") and matching funds payments to participating candidates.[20] Once a candidate is certified for public funding by the Commission's Executive Director, the candidate will receive an initial payment from the Election Campaign Fund. The amount of the initial payment differs for mayoral candidates and supervisorial candidates.[21] After certification, candidates are also able to collect matching payments, at tiered rates, for "matching contributions" up to $500 made by city residents.[22] A two-to-one match rate applies to matching contributions received up to certain thresholds, and a one-to-one rate is used after a candidate has surpassed these thresholds.[23]

A substantial body of research demonstrates that New York City's high rate of public-to-private dollar matching has substantially boosted local participation in its municipal campaigns.[24] One analysis of New York City's program found that the city's implementation of multiple matching public funds, in 2001, resulted in significant increases both in the number of individuals donors of $250 or less and in the proportional significance of these donors to competitive city council candidates in the program.[25] These findings were consistent across challengers, incumbents, and

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[19] *Id.*
[20] S.F. Campaign & Governmental Conduct Code § 1.144(b).
[21] Mayoral candidates receive an initial payment of $100,000, while candidates for the Board of Supervisor are eligible for a $20,000 initial payment. *Id.* §§ 1.144 (c)(1), (d)(1).
[22] *Id.* §§ 1.144 (c)(2)-(3), (d)(2)-(3).
[23] A candidate for mayor will receive a 2:1 public-to-private funds match for the first $425,000 in matching contributions made to the campaign. Non-incumbent mayoral candidates are subsequently eligible for a 1:1 public-to-private funds match for the next $25,000 of qualified contributions, and an incumbent mayor will receive a 1:1 match for the next $12,500 raised. *Id.* § 1.144 (c)(2)-(3). In elections for the Board of Supervisors, certified candidates are eligible for a 2:1 public-to-private funds match for the first $50,000 raised in matching contributions. Non-incumbents will then receive a 1:1 match for the next $35,000 in matching contribution that they collect, and incumbents on the Board of Supervisors are eligible for a 1:1 match on the next $32,500 in matching contributions. *Id.* § 1.144(d)(2)-(3).
[24] N.Y.C. Admin. Code § 3-705(2)(a).
[25] Michael J. Malbin et al., *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11 ELECTION L.J. 3, 9-10 (2012), http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf.

open-seat candidates.[26] Another study of New York City's program found that the city's decision to increase its match rate from four-to-one to six-to-one further invigorated participation by "small donors" of $250 or less.[27] Likewise, this study demonstrated that New York City's implementation of a six-to-one match rate, in 2013, resulted in candidates raising a higher portion of their total campaign funds from small donors of $250 or less.[28]

Research also indicates that New York City's matching funds program has bolstered participation in local campaigns among a larger and more demographically diverse segment of the city's population. A statistical evaluation of donors to New York City campaigns found that 89% of the city's census-block groups had at least one resident who donated $175 or less to a city candidate during the 2009 municipal elections.[29] By comparison, in 2010, only 30% of New York City's census-block groups contained at least one individual donor of $175 or less to candidates for the New York State Assembly, who are not eligible for matching funds.[30] This study also determined that census-block groups with at least one small donor of $175 or less to a city candidate were statistically less affluent and more racially diverse than census-block groups with at least one "large donor," defined as an individual contributor of $1,000 or more, indicating that the matching funds program has encouraged participation among politically underrepresented groups.[31]

Building on the success of the city's program, over 80% of New York City voters approved a set of charter amendments, in November 2018, intended to further enhance local participation in city campaigns.[32] Beginning in 2021, participating candidates will be eligible to receive matching funds at an eight-to-one rate for contributions received from New York City residents.[33] The amendments also will increase the maximum amount of public funding available to city candidates in the program. While political and fiscal dynamics vary among cities, the findings from New York City demonstrate that a high match rate for small, individual contributions can augment local participation in elections. During its review, the Ethics Commission should evaluate whether a heightened match rate in San Francisco's program would be a feasible means of bolstering political engagement in the city.

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[26] *Id.*
[27] Malbin & Parrott, *supra* note 16, at 232.
[28] *Id.*
[29] ELISABETH GENN ET AL., BRENNAN CTR. FOR JUSTICE, DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS 10 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.
[30] *Id.*
[31] *Id.* at 14.
[32] *New York Election Results*, N.Y. TIMES, Jan. 28, 2019, https://www.nytimes.com/interactive/2018/11/06/us/elections/results-new-york-elections.html.
[33] *Proposal 1: Campaign Finance*, N.Y.C. Campaign Fin. Bd., https://www.nyccfb.info/nyc-votes/vgwelcome/state-general-2018/ballot-proposals/proposal-1/?languageType=English.

III. Conclusion

CLC hopes the Commission will consider our recommendations as part of its review of San Francisco's public financing program. We appreciate the opportunity to submit these comments, and we would be happy to answer questions or provide additional information to assist the Commission's review.

Respectfully submitted,

/s/

Catherine Hinckley Kelley
Director, Policy & State Programs

/s/

Austin Graham
Legal Counsel

Attachment A.

CLC

ADVANCING DEMOCRACY THROUGH LAW

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

By Catherine Hinckley Kelley & Austin Graham

OCTOBER 2018

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I. Executive Summary: Why Public Financing?

The vast amount of money in our elections has left many Americans feeling excluded from the political process. Increasing reliance of candidates on super PACs, secretive "outside" spending, and big donations from a small segment of the public undermines the U.S. Constitution's promise of democratic self-governance, which is premised on widespread participation by all citizens in our elections.[1] As special interests and big donors have come to dominate the funding of U.S. elections, recent polling reveals a growing distrust among Americans of government institutions and, to a degree, democracy itself.[2]

Public financing offers a powerful antidote to these concerns, providing another path to elected office. While there are many important and effective reforms jurisdictions may pursue to make campaigns more transparent and responsive to voters, public financing is a particularly promising way to amplify the voices of all citizens. Public funding programs can reorient our elections by reducing opportunities for corruption, encouraging new and diverse candidates to seek public office, and broadening political participation among the public at large. A well-designed program can create an incentive for candidates to fundraise and connect with the people they seek to represent—including people of modest means. And this translates to a donor base that looks more like the fabric of the community, rather than a handful of wealthy elites.

Public financing has been an important part of our campaign finance system for more than forty years, most notably with the presidential public financing program on the federal level. Although Congress has allowed this once successful program to wither, public financing programs across the country offer a real-world example of what our elections could look like. Since its enactment in the 1980s, New York City's matching funds program has enjoyed consistently high rates of candidate participation and has become a model for election reform advocates around the country. The program has been credited with encouraging local campaigns to reach out to a broader population of donors, with studies showing that small donors to New York City candidates come from a much more diverse range of neighborhoods than the city's donors to State Assembly candidates.[3] Likewise, Seattle's groundbreaking Democracy Voucher Program, approved by the city's voters in 2015, precipitated a record number of city residents contributing to local candidates over the course of a single election cycle.[4]

1 In 2016, half of all campaign contributions to federal candidates came from only 15,810 individuals. By comparison, in 2000, 73,926 individuals accounted for half of all donations. *See* Nathaniel Persily, Robert F. Bauer, and Benjamin L. Ginsberg, Bipartisan Policy Ctr., Campaign Finance in the United States: Assessing an Era of Fundamental Change 22 (Jan. 2018), https://bipartisanpolicy.org/wp-content/uploads/2018/01/BPC-Democracy-Campaign-Finance-in-the-United-States.pdf.
2 *Public Trust in Government 1958-2017*, Pew Research Center (Dec. 14, 2017), http://www.people-press.org/2017/12/14/public-trust-in-government-1958-2017/; Jeffrey Jones et al., *How Americans Perceive Government in 2017*, Gallup (Nov. 1, 2017), https://news.gallup.com/opinion/polling-matters/221171/americans-perceive-government-2017.aspx.
3 *See* Elisabeth Genn et. al., Brennan Ctr. for Justice & Campaign Fin. Inst., Donor Diversity Through Public Matching Funds 10 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.
4 *See* Seattle Ethics & Elections Comm'n, Democracy Voucher Program Biennial Report 2017 22 (2018), https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%2003_15_2018.pdf.

The experiences of these cities substantiate that public financing programs have the potential both to safeguard the integrity of our democratic institutions and to engage more people—with diverse backgrounds and varied experiences—in our elections. The success of these programs has sparked renewed interest in public financing. In the past three years, six jurisdictions have enacted new programs as lawmakers and concerned citizens across the country have recognized that public financing is one effective path to repairing our broken campaign finance system.

This report begins with an overview of the history of public financing in U.S. elections, focusing on Watergate and the enactment of public funding for presidential elections. Part III highlights the U.S. Supreme Court's public financing jurisprudence and examines trends in the development of public funding laws across the country. Part IV proceeds to detail the different types of public financing systems in existence today, and Part V concludes with recommendations to ensure the success of public financing going forward.

Through this report, we hope to aid democracy advocates, lawmakers, and voters as they seek to build a small-dollar democracy. The funding of elections is an important means of engagement in our democratic process. Public financing can help to make this form of engagement more inclusive and representative of our nation as a whole.

II. The Origins of Public Financing

The American public has long expressed concerns about the outsized role of money in politics and its capacity to distort the democratic process.[5] Public funding, as an alternative to privately funded campaigns, addresses many of the problems that have undermined democracy since the Gilded Age and continue to be a focus of money-in-politics reform efforts: "secrecy, corporate money, and undue influence."[6]

Representative William Bourke Cockran of New York introduced the nation's first public financing bill in December 1904, arguing that, through the public funding of elections, "it might be possible for the government of the United States to do away with any excuse for soliciting large subscriptions of money."[7] President Theodore Roosevelt shared this belief, and, three years later, advocated for "an appropriation for the proper and legitimate expenses of each of the great national parties."[8] While both proposals proved unsuccessful, politicians continued to press for public financing of elections over the next fifty years.

In 1966, Congress enacted the first law authorizing public funding for presidential candidates and political parties.[9] However, legislation passed the following year halted the program before it could

5 Robert E. Mutch, Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law xvii (1988).
6 Robert E. Mutch, Buying the Vote: A History of Campaign Finance Reform 168 (2014).
7 *Id.* at 35 (quoting *Contributions to Political Committees in Presidential and Other Campaigns: Hearing Before the H. Comm. on Election of President, Vice-President, and Reps.*, 59th Cong. 41 (Mar. 12, 1906)).
8 *Id.* at 36 (quoting 59 Cong. Rec. 78 (Dec. 3, 1907)).
9 R. Sam Garrett, Cong. Research Service, Public Financing of Presidential Campaigns: Overview and Analysis 4 (Jan. 29, 2014).

take effect.[10] Congress acted again in 1971, when public pressure led to the enactment of the Federal Election Campaign Act ("FECA").[11] Like the 1966 legislation before it, though, the original FECA lacked teeth. Candidates and parties flouted the new law, which did little to control presidential election spending or to mitigate the corrupting influence of private money in politics.[12] Watergate changed all of that.

A. Watergate and the 1974 FECA Amendments

"The modern history of American campaign finance law began in the early morning of darkness of June 17, 1972," when five men broke into the Democratic National Committee headquarters at the Watergate Hotel, launching a series of events that would topple a presidency.[13] Over the course of the next two years, investigators exposed the extensive corruption of President Nixon's Committee to Reelect the President, which, in 1972 alone, took in $850,000 in illegal corporate campaign contributions and spent $67 million, much of which it failed to disclose.[14] There was no denying that the "reprehensible, clandestine political acts connected with Watergate were financed and made possible by an excess of campaign donations, many of them secretly and illicitly obtained."[15]

Public outrage over the depths of deviance in the national campaign finance system spurred reform.[16] On August 8, 1974, the day before Nixon resigned the presidency, the U.S. House of Representatives passed sweeping amendments to FECA.[17] Two months later, the Senate approved those amendments, and President Ford signed them into law.[18]

The 1974 FECA amendments overhauled the federal campaign finance system and established the structure for presidential public financing that remains in place today. This public financing program represented a powerful tool to combat corruption and expand small donor participation in presidential campaigns.[19]

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10 *Id.*

11 Anthony J. Gaughan, *The Forty-Year War on Money in Politics: Watergate, FECA, and the Future of Campaign Finance Reform*, 77 Ohio St. L.J.791, 798 (2016).

12 Presidential campaign spending rose from $44 million in 1968 to $103 million in 1972. And, in the five weeks before FECA's effective date, President Nixon raised $11.4 million in secret contributions. *Id.* at 799.

13 *Id.* at 793.

14 *Id.* at 795.

15 120 Cong. Rec. 9270 (1974) (statement of Sen. John J. Williams).

16 *See* 120 Cong. Rec. 8209 (statement of Sen. Ted Kennedy) (asserting that campaign finance reform was "the most positive contribution Congress can make to end the crisis over Watergate and restore the people's shattered confidence in the integrity of their Government."); *see also* Frank J. Sorauf, Inside Campaign Finance: Myths & Realities, 2, 7-8 (1992) (noting that campaign reform measures in 1974 were "the immediate consequence of Watergate and the misdeeds of Richard Nixon's Committee to Reelect the President.").

17 Gaughan, *supra* note 11, at 801-802.

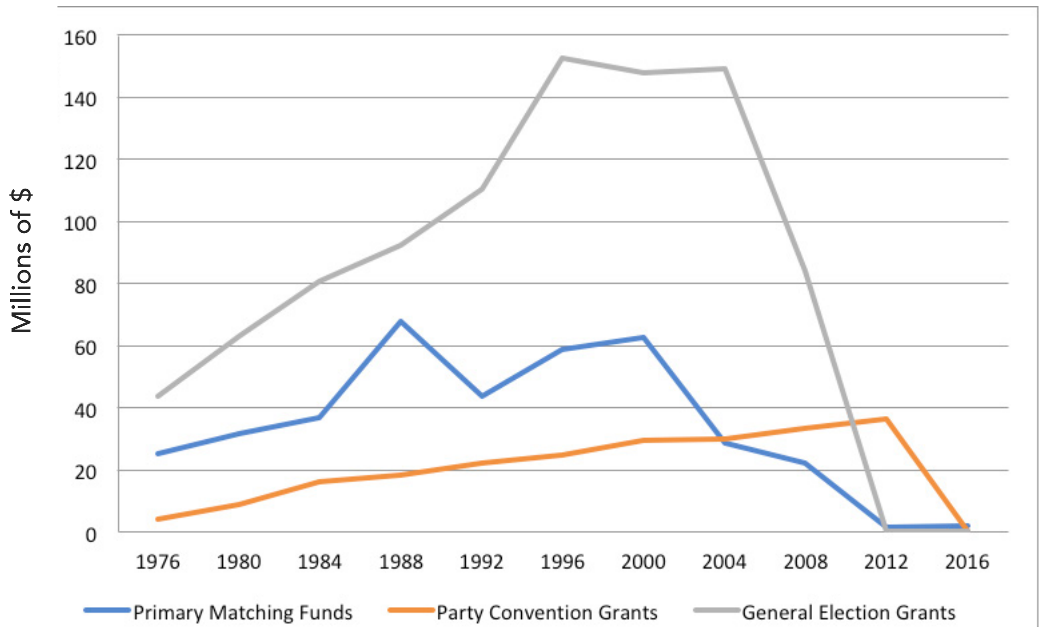
18 *Id.*

19 *See* 120 Cong. Rec. 8209 (statement of Sen. Ted Kennedy) ("[P]ublic financing of elections is the answer to many of the deepest problems facing the Nation, especially the lack of responsiveness of government to the people. Only when all the people pay for elections will all the people be truly represented in their government. At a single stroke, we can drive the money lenders out of the temple of politics. We can end the corrosive and corrupting influence of private money in public life. Once and for all, we can take elections off the auction block, and make elected officials what they ought to be—servants of all the people instead of slaves to a specific few. . . Through public financing, we can guarantee that the political influence of any citizen is measured only by his voice and vote, not by the thickness of his pocketbook.").

B. The Presidential Public Financing Program

The 1974 FECA amendments established voluntary public funding for three phases of a presidential campaign: the primaries, the party nominating conventions, and the general election. The program is funded entirely through a voluntary checkoff option on the individual federal income tax form, whereby individual taxpayers can designate $3, or $6 on a joint return, to the Presidential Election Campaign Fund ("PECF").[20] If candidates choose to accept public funds from the PECF, they are subject to the same financial disclosure requirements applicable to other federal candidates.[21]

FIGURE 1: PRESIDENTIAL ELECTION PUBLIC FUNDS DISBURSED OVER TIME



1. Primary Election Matching Funds

To become eligible for public funding in the primaries, presidential candidates must raise more than $5,000 from residents of twenty or more states, for a total of at least $100,000;[22] only the first $250 of a resident's contribution is counted toward the $5,000 threshold in each state.[23] If candidates satisfy these fundraising requirements, they are qualified to receive matching funds on a dollar-for-dollar basis for the first $250 contributed by each individual donor.[24] For example, if an individual donates $250

20 The original terms of the program allowed individuals to designate $1 to the PECF, or $2 if filing jointly. In 1993, Congress increased the amount to $3 for an individual and $6 for a joint filer. *See* Anthony Corrado, *Public Funding of Presidential Campaigns*, in The New Campaign Finance Sourcebook 180, 182 (Thomas E. Mann, Daniel R. Ortiz, and Trevor Potter, eds., 2005).

21 *Id.*

22 26 U.S.C. § 9033(b)(2).

23 *Id.* at § 9033(b)(4).

24 *Id.* at § 9034(a). Contributions from PACs or other political committees are not eligible for matching funds. *See* Corrado, *supra* note 20, at 185.

to a presidential candidate during the primary stage, the candidate will receive an additional $250 in public funds, raising the contribution's total value to $500. However, if an individual contributes $1,000 to a candidate, the candidate still will only receive $250 in matching funds, for a total of $1,250.

In exchange for public matching funds, presidential candidates must agree to limit their campaign spending for primary elections in three ways. First, candidates must not spend more than $50,000 in personal funds on their primary campaigns.[25] Second, candidates must limit their aggregate campaign expenditures during the primaries.[26] In 2016, the aggregate spending limit for presidential candidates, as indexed for inflation, was $48.07 million.[27] Lastly, candidates must limit their campaign spending in each state to the greater of $200,000, indexed for inflation, or an amount equal to $0.16 multiplied by the voting age population in the state.[28] In 2016, per-state expenditure limits in the presidential primaries ranged from $961,400 in Wyoming to $24,092,100 in California.[29]

2. Nominating Conventions Grants

Under the 1974 FECA amendments, national party committees were eligible to receive a lump-sum grant of public funds to cover the expense of their presidential nominating conventions.[30] Parties that accepted the grants were not allowed to spend more than the grant amount for convention expenses. Under the FECA amendments, each of the two major parties could qualify for grants of $4 million,[31] indexed for inflation.[32] With inflation adjustments, by 2012, the Democratic and Republican parties each qualified for grants of $18.2 million.[33]

Minor parties[34] were also eligible to receive grants, in smaller amounts, for their nominating conventions. The amount of a minor party's grant was based on the ratio of popular votes received by the party's candidate for president in the preceding election compared to the average number of popular votes received by the major parties' presidential candidates in the same election.[35] A new political party was able to receive a nominating convention grant, retroactively, if the party's presidential candidate received at least 5 percent of the popular vote in the general election.[36]

Both major parties accepted grants for their nominating conventions in every presidential election between 1976 and 2012. However, in 2014, President Obama and the 113th Congress repealed public funding for nominating conventions.[37]

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25 26 U.S.C. § 9035(a).

26 52 U.S.C. § 30116(b)(1)(A).

27 Fed. Election Comm'n, *Public Funding of Presidential Elections*, https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/ (last visited September 21, 2018).

28 52 U.S.C. § 30116(b)(1)(A).

29 FEC, *supra* note 27.

30 *See* 26 U.S.C. § 9008(b).

31 In 1974, the amount was set at $2 million, but that base amount was increased to $3 million in 1979 and $4 million in 1984. *See* Corrado, *supra* note 20, at 190-91.

32 26 U.S.C. § 9008(b)(1).

33 Garrett, *supra* note 9, at 7.

34 Defined as "a political party whose candidate for the office of President in the preceding presidential election received. . . 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office." 26 U.S.C. § 9002(7).

35 26 U.S.C. § 9008(b)(2).

36 A third party received convention funding only once, in 2000, when the Reform Party qualified for $2.5 million based on Ross Perot's performance in the 1996 election. Corrado, *supra* note 20, at 191.

37 *See* P.L. 113-94 (H.R. 2019); *see also* 26 U.S.C. § 9008(i).

3. General Election Grants

In the general election, a presidential candidate may accept public funding even if the candidate did not receive matching funds during the primaries. In exchange for the grant, a candidate must agree to forego all private contributions[38] and not to expend more than $50,000 in personal funds for the general election.[39]

Under the FECA amendments, major party candidates are automatically qualified for lump-sum grants, which are indexed for inflation.[40] In 1976, the Republican and Democratic presidential nominees were eligible for grants of $21.8 million each.[41] By 2008,[42] the grant amount was adjusted to $84.1 million per candidate,[43] and, for 2016, the grant amount reached $96.1 million.[44] Minor party candidates[45] may also receive partial grants for the general election if the party's candidate earned at least 5 percent of the popular vote at the preceding presidential election,[46] and the grant amount is based on the ratio of the party's popular vote in the preceding presidential election compared to the average vote of the two major party candidates in that election.[47] Similarly, a new political party's candidate can become eligible for a partial, retroactive grant if the candidate received at least 5 percent of the popular vote at the general election.

For nearly thirty years, the presidential public financing system was an unqualified success, with every major party nominee accepting public funds in the general election from 1976 through 2004.[48] In that time span, presidential candidates and national party committees collectively received over $1.3 billion in public funds.[49] However, Congress has made few updates to the presidential financing system since the 1974 FECA amendments, and the program's viability has gradually declined.[50]

By the mid-1990s, the percentage of taxpayers making checkoff designations for the PECF had fallen below 15 percent.[51] As a consequence, funding shortfalls occurred in 1996 and 2000, and the FEC was forced to delay payments to candidates in the primaries until the PECF was determined to

38 *Id.* at § 9003(b)(1). This restriction does not apply to minor party candidates, who may raise private contributions to make up the difference between the partial grant they receive and the sum available to publicly funded major party candidates. *Id.* at § 9003(c)(1).
39 *Id.* at § 9004(d).
40 *Id.* at § 9004(a)(1).
41 FEC, *supra* note 27.
42 2008 was the last year that a major party candidate—Republican-nominee John McCain—accepted a general election grant. For more information about candidate participation in the presidential public financing system, see the "Trends Over Time" section below. *See* Garret, *supra* note 9, at 6.
43 *Id.*
44 *Id.*
45 *See* FEC, *supra* note 27.
46 26 U.S.C. § 9003(c).
47 *See* 26 U.S.C. § 9004(a)(2). To qualify for public funding, a minor party candidate must also be certified to appear on the general election ballot in ten or more states. Corrado, *supra* note 20, at 194.
48 Fed. Election Comm'n, *Public funds received by candidates 1976-present*, https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/. For a discussion of the declining use of the presidential public financing system, see Part V ("Looking Forward: The Future of Public Financing") below.
49 Corrado, *supra* note 20, at 182.
50 *See* Garrett, *supra* note 9, at 5 ("Congress most recently altered the program in 1993, when it tripled the checkoff designation from $1 to $3 for individuals and from $2 to $6 for married couples filing jointly.").
51 *Id.* at 9-10.

be solvent.[52] The shortfalls were largely attributable to the funding structure of the program, which indexes disbursements to candidates for inflation but has no corresponding increase for the amount of taxpayer checkoffs.[53]

Most crucially, congressional failure to upgrade the presidential funding program after the 1974 FECA amendments has rendered the system obsolete, as "[t]oday's campaign process is dramatically different than it was in 1974."[54] In particular, the financial demands and front-loaded primary process[55] of 21st-century presidential campaigns are not compatible with the program's design—especially its expenditure limits.[56] Likewise, the unprecedented surge of independent campaign spending, precipitated by the Supreme Court's 2010 decision in *Citizens United*, has further discouraged participation in the program. Presidential candidates now must try to keep pace not only with their opponents' fundraising but also with deep-pocketed outside groups capable of spending unlimited sums to influence federal elections; accordingly, the prevalence of independent spending in contemporary elections has reduced presidential candidates' willingness to agree to the spending restrictions imposed by the program.[57]

Consequently, the presidential system is no longer a viable funding option for candidates. In 2000, President Bush became the first major party candidate to decline public funds in the primary elections, and President Obama was the first to decline any public funding for either the primaries or general election in 2008.[58] Since John McCain's acceptance of public funds in the 2008 general election, no major party nominee has opted into the public finance program for a presidential race.[59]

III. The Rise of Public Financing

A. Judicial Approval of Public Financing

After its enactment, the presidential public financing system soon faced legal challenge. In its 1976 landmark decision, *Buckley v. Valeo*, the United States Supreme Court upheld the presidential program as a constitutional means "to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising."[60] The Court expressly rejected the assertion that public financing violates the First Amendment, explaining that public financing "is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion

52 Public Citizen, Fixing the Voluntary Tax Checkoff Program to Fund the Presidential Elections, https://www.citizen.org/fixing-voluntary-tax-checkoff-programto-fund-presidential-elections.
53 James Sample, *The Last Rites of Public Campaign Financing?*, 92 Neb. L. Rev. 349, 375 (2013).
54 *Id.* at 376.
55 Over the last two decades, states have increasingly scheduled the dates of their presidential primaries and caucuses earlier in the election year. As a result, presidential candidates must initiate fundraising earlier and solicit money for a more prolonged period to remain financially competitive. *See* Matthew T. Sanderson, *Two Birds, One Stone: Reversing "Frontloading" by Fixing the Presidential Public Funding System*, 25 J. L. & Pol. 279, 285 (2009).
56 In 2012, major party nominees were eligible for a general election grant of approximately $91 million; by comparison, Barack Obama raised over $150 million in private contributions in September 2012 alone. Sample, *supra* note 54, at 376-77.
57 *Id.* at 378-79.
58 Garrett, *supra* note 9, at 1, 12.
59 *Id.* at 12.
60 424 U.S. 1, 91 (1976) (per curiam).

and participation in the electoral process, goals vital to a self-governing people."[61] The Court had little difficulty concluding that these aims were "sufficiently important" to uphold the presidential system.[62]

Since *Buckley*, courts have consistently reaffirmed the constitutionality of public financing laws and recognized that they advance important governmental interests in preventing political corruption and enhancing political participation.[63] Moreover, the voluntary nature of candidates' participation in public financing programs has offset any First Amendment burden imposed by the laws.[64]

In 2011, the Supreme Court again endorsed the overall constitutionality of public financing, even as it held that "trigger" provisions giving publicly financed candidates additional funds in direct response to campaign spending by non-participating candidates or independent expenditures impermissibly burdened political speech.[65] Despite invalidating the trigger mechanism in Arizona's Citizens' Clean Elections Act, the Court reaffirmed that "governments may engage in public financing of election campaigns and that doing so can further significant government interest[s], such as the state interest in preventing corruption."[66] Thus, even as it foreclosed the release of public funds in response to private campaign spending, the Court did not "call into question the wisdom of public financing as a means of funding political candidacy" or discredit the constitutionality of these laws in general.[67]

B. The Expansion of Public Financing in the States

Judicial approval of public financing paved the way for the expansion of public financing programs at the state and local levels.[68] In the wake of Watergate and *Buckley*, state legislatures were the primary champions and innovators of public financing. This represented a continuation of an existing trend, as several states had already experimented with public financing before the enactment of the presidential system under the 1974 FECA amendments.[69] In total, states established seven of the first eight public financing programs in existence.

State efforts continued over the next two decades. Between 1974 and 1998, over a dozen states adopted public financing programs, most of which were enacted through legislative action. Citizen-

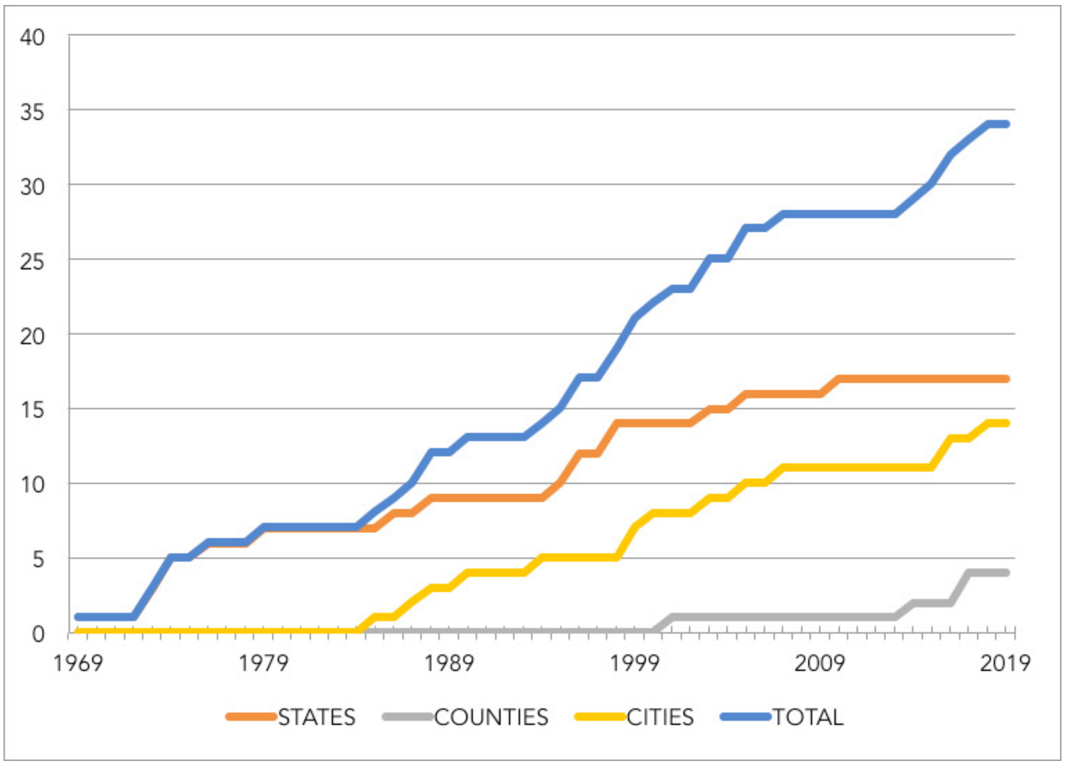
61 *Id.* at 92-93.
62 *Id.* at 95-96.
63 *See, e.g.*, Republican Nat'l Comm. v. Fed. Election Comm'n, 487 F. Supp. 280, 284 (S.D.N.Y. 1980) ("If the candidate chooses to accept public financing he or she is beholden unto no person and, if elected, should feel no post-election obligation toward any contributor of the type that might have existed as a result of a privately financed campaign."), *aff'd.*, 445 U.S. 955 (1980); Vote Choice, Inc. v. DiStefano, 4 F.3d 26, 39 (1st Cir. 1993) (validating state's interest in public financing "because such programs… tend to combat corruption"); Rosenstiel v. Rodriguez, 101 F.3d 1544, 1553 (8th Cir. 1996) (recognizing public financing reduces the "possibility for corruption that may arise from large campaign contributions" and diminishes "time candidates spend raising campaign contributions, thereby increasing the time available for discussion of the issues and campaigning"); Green Party of Conn. v. Garfield, 616 F.3d 213, 230 (2d Cir. 2010) (finding Connecticut program worked to "eliminate improper influence on elected officials"); Ognibene v. Parkes, 671 F.3d 174, 193 (2d Cir. 2011) (explaining that public financing system "encourages small, individual contributions, and is consistent with [an] interest in discouraging entrenchment of incumbent candidates").
64 *Id.* at 284-85.
65 Ariz. Free Enterprise Club's Freedom PAC v. Bennett, 564 U.S. 721 (2011).
66 *Id.* at 754 (quotations and citations omitted).
67 *See id.* at 753.
68 To date, over 35 jurisdictions have adopted some form of public financing.
69 For example, Oregon created a tax credit for individuals' contributions to political campaigns in 1969. *See* Oregon Rev. Stat. § 316.102. Additionally, Colorado attempted to establish public funding for political parties in 1909, though the law was invalidated by the state's supreme court the following year. Benjamin T. Brickner & Naomi Mueller, Eagleton Inst. of Politics, Rutgers Univ., Clean Elections: Public Financing in Six States, including New Jersey's Pilot Projects 13 (2008).

driven initiatives were the exception rather than the rule, in part because only a limited number of jurisdictions allowed for lawmaking outside of the legislative process.

C. A Shift Towards Local Enactment and Ballot Initiatives

Gradually, local enactment of public financing, in cities and counties around the country, has eclipsed adoption at the state level.[70] Since 1999, only four states have established public financing programs compared to ten cities and four counties. Indeed, six localities have approved new public financing programs since 2015: Berkeley, CA; Howard County, MD; Portland, OR; Seattle, WA; Suffolk County, NY; and Washington, D.C.[71]

FIGURE 2: NUMBER OF PROGRAMS OVER TIME



70 Often, cities and counties with public financing programs for local elections are located within states that have public financing for statewide or legislative offices. For example, Maryland has offered public funds to gubernatorial candidates since 1974; subsequently, two of Maryland's most populous counties, Montgomery County and Howard County, have enacted public financing programs for local office. *See* Md. Code Ann. Elec. Law §§ 15-101–15-111; Montgomery Cty., Md., Code §§ 16-18–16-28; Howard Cty., Md., Code §§ 10.300–10.311.

71 This shift in innovation, from the state to the local level, reflects a broader trend in American policymaking. Today, cities and counties largely drive policy innovation; municipal governments are at the forefront of experimentation with new models of good governance. *See generally* Bruce Katz & Jeremy Nowak, The New Localism: How Cities Can Thrive in the Age of Populism (2017). *See also id.* at 2 ("Today, progress is evident among vanguard cities and metropolitan regions that are inventing new models of growth, governance, and finance. These novel and distinctive models focus intentionally and purposefully on inclusive and sustainable outcomes as measures of market success.").

As local enactment of public financing has accelerated, an increasing number of programs are being created through citizen-led ballot initiatives. Since the mid-1990s, almost an equal number of public financing programs have been established by ballot initiatives as by legislatures. Nonetheless, roughly two-thirds of existing public financing laws were enacted through the legislative process, while around a third were approved through direct democracy.

FIGURE 3: MEANS OF ENACTMENT

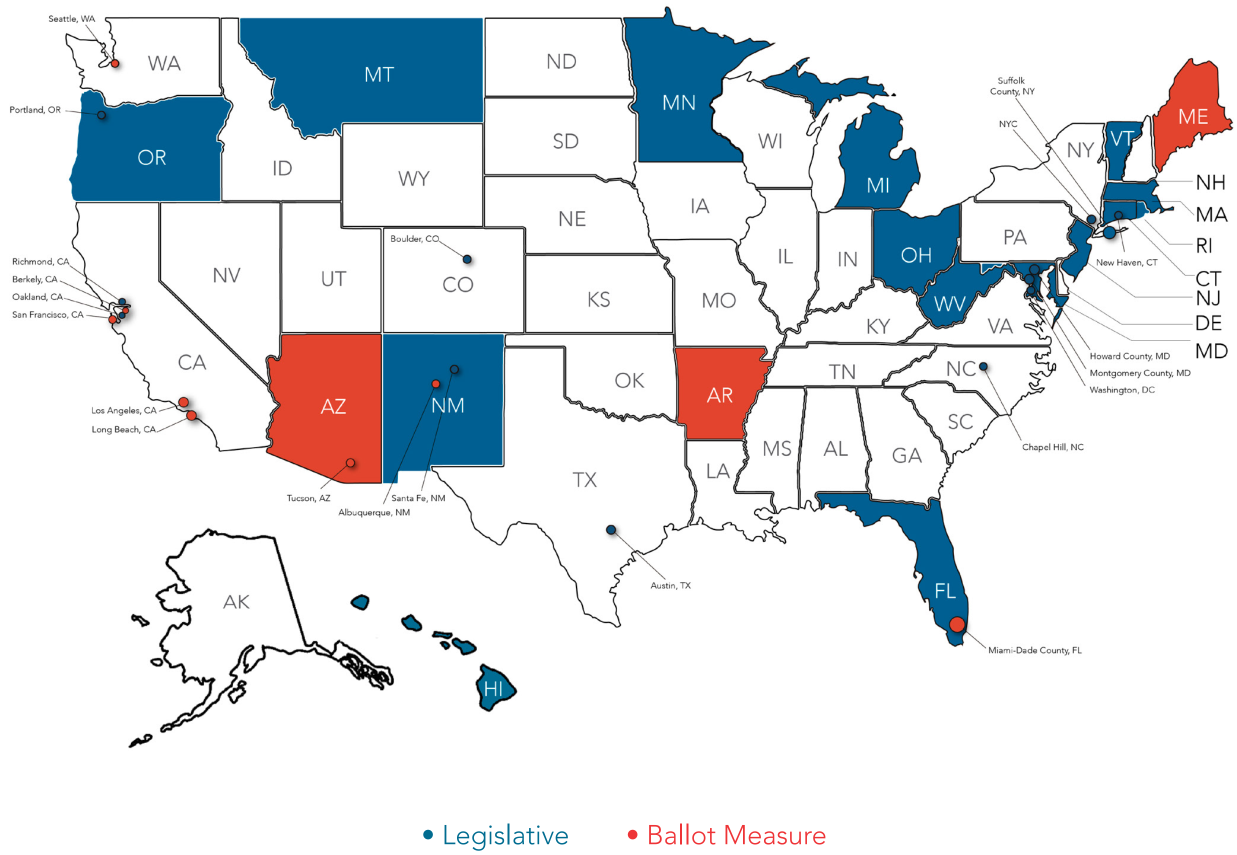
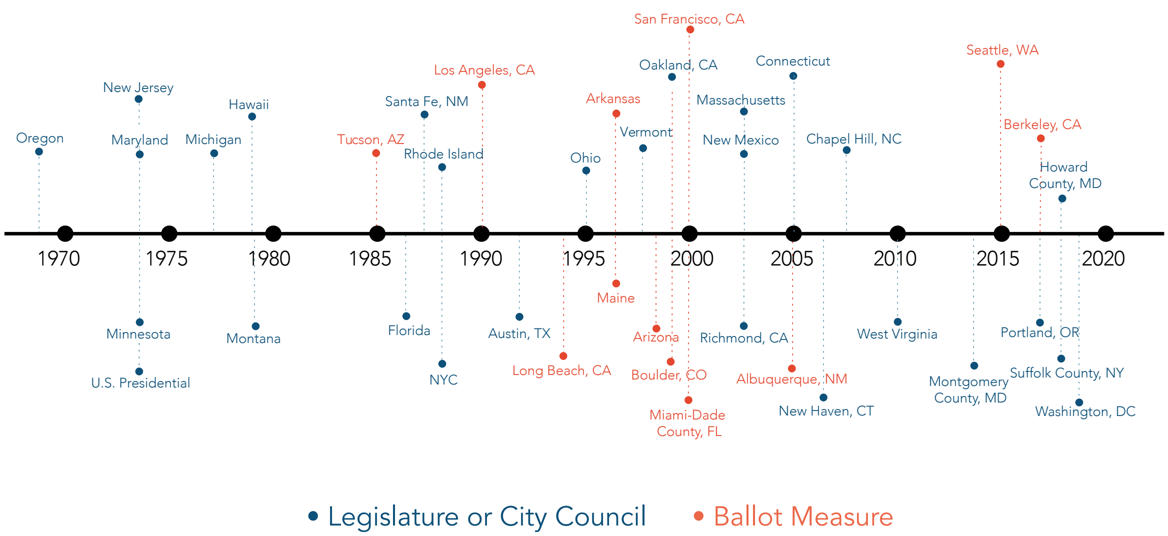


FIGURE 4: MEANS OF ENACTMENT OVER TIME

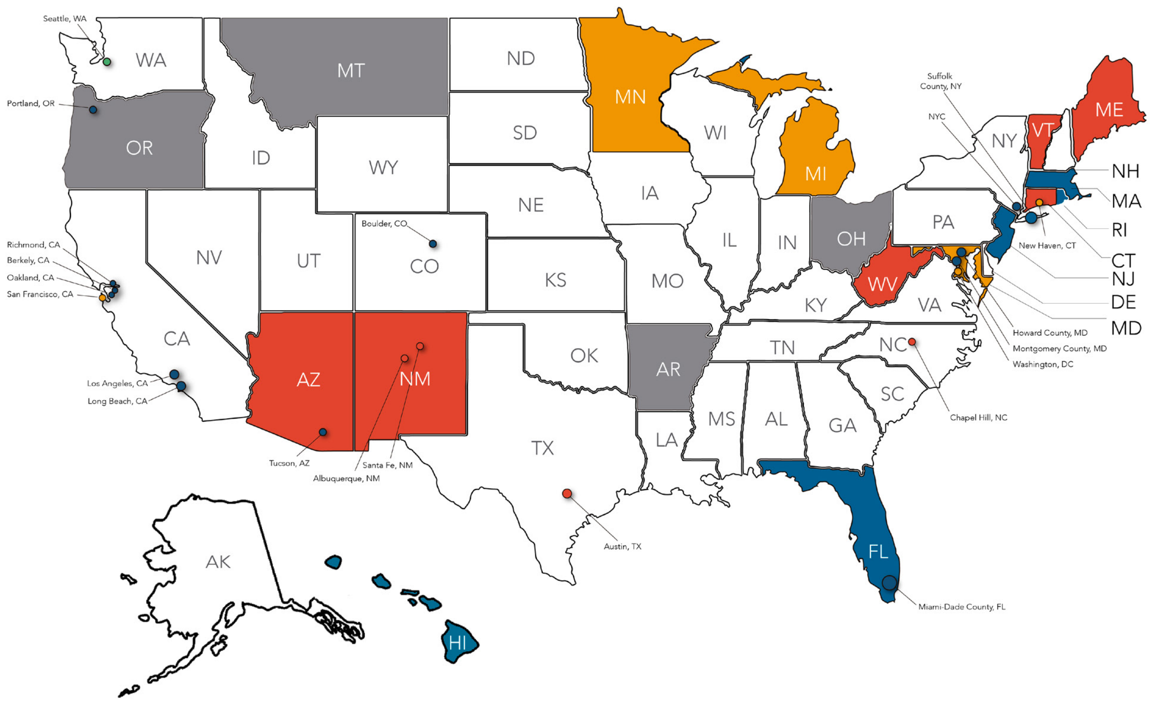


Finally, the motivations behind public financing laws have evolved over time. The creation of many of the earliest programs was spurred by nationwide anxiety over political corruption following the revelations of Watergate; in more recent years, reform often has come as a response to more localized issues. Amidst concerns that Seattle elections were dominated by a few wealthy contributors, over 60 percent of Seattle's voters approved the Democracy Voucher Program, in 2015, as a way to invigorate broader local engagement in campaigns and to encourage fresh faces to run for office.[72] Increasingly, support for public financing is based not just in concerns over corruption, but in evidence that these programs can expand political participation and change how candidates interact with voters.

72 Bob Young, *Democracy vouchers win in Seattle; first in country,* Seattle Times (Nov. 3, 2015), https://www.seattletimes.com/seattle-news/politics/democracy-vouchers/.

IV. The Mechanics of Public Financing: Variations in Program Types

FIGURE 5: PROGRAM TYPE

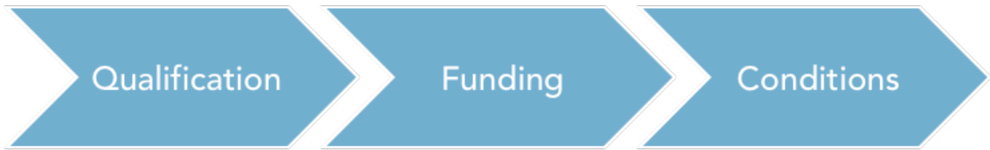


KEY • Matching • Grants • Tax benefits • Vouchers • Hybrid

As the total number of public financing programs has grown, the programs also have diversified in form. There are multiple types of programs in existence today, ranging from "Clean Elections" grant programs to tax benefit systems. With the exception of tax benefit systems, all public financing programs share a basic, three-part framework: qualification requirements, funding, and conditions of program participation.

> ***Qualification.*** In this stage, candidates seeking public financing must satisfy a number of requirements in order to become eligible for funds. Often, candidates must demonstrate a threshold level of popular support by raising a certain amount of qualifying contributions before they will be able to collect public funds. In New York City, for instance, a city council candidate must raise at least $5,000 of "matchable contributions," in amounts between $10 and $175, from at least 75 residents of the relevant council district to qualify for public funding.[73] In addition, some programs

73 N.Y.C. Admin. Code § 3.703(2)(a).

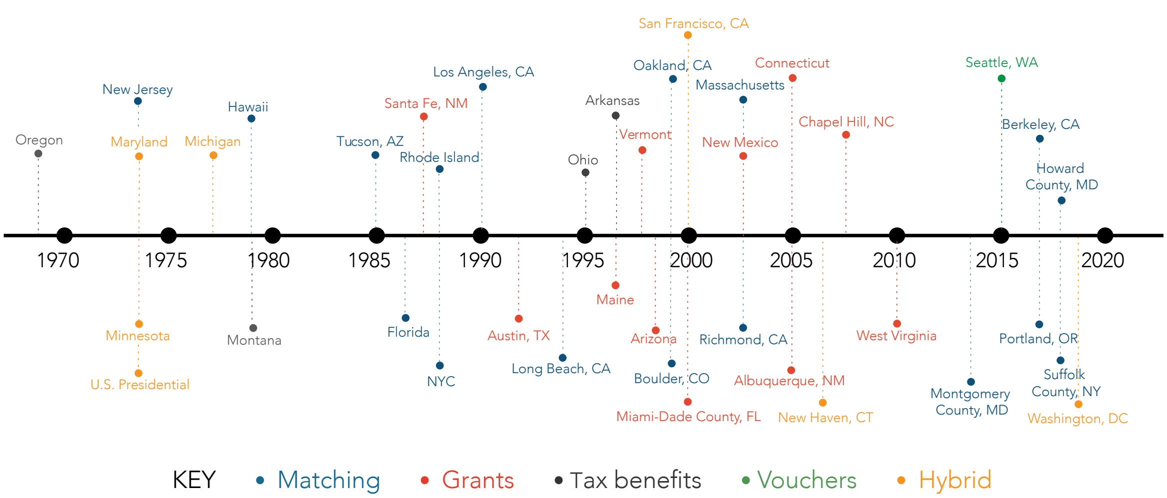


only provide public funds to candidates in a contested election.[74] Lastly, prior to the dispersal of public funds, election administrators typically must certify that a candidate has, in fact, satisfied the qualification requirements by reviewing the candidate's filings for sufficiency.

Funding. After satisfying qualifying requirements, candidates will receive public funds in various forms—grants, matching funds, or vouchers—depending on the program. As detailed in the following sections, different types of programs furnish public funds to candidates through varying methods and at different points throughout the campaign.

Conditions. Once candidates have decided to participate in a public financing program, they are obligated to adhere to certain conditions attached to the disbursement of public funds. These conditions often include specific limits on contributions to a participating candidate, caps on total expenditures by a participating candidate, and requirements to return unused campaign funds after the election. Additionally, publicly financed candidates are often subject to mandatory audits to ensure accountability in the use of program funds.[75]

FIGURE 6: PROGRAM TYPE ENACTMENT OVER TIME



74 *See* S.F. Campaign & Governmental Conduct Code §§ 1.140(b)(3),(c)(3); N.Y.C. Admin. Code § 3-703(5). Other jurisdictions give partial public funding to unopposed candidates. For example, Santa Fe provides a candidate in an uncontested election with 10 percent of the grant amount available to candidates in a contested race. Santa Fe, N.M., Mun. Code § 9-3.10(A)(4).
75 *See, e.g.*, N.Y.C. Admin. Code § 3-710.

A. Grants

Grant programs provide qualifying candidates with lump-sum payments of public funds to finance their campaigns. The grant amount can be either for the full or partial cost of a campaign, depending on the program. In full grant systems, also called "Clean Elections" programs, participating candidates may only make campaign expenditures with public funds and may not raise private contributions after receipt of the grant; Arizona and Connecticut, among other jurisdictions, have full grant programs available for statewide and legislative candidates. In partial grant systems, participating candidates also receive lump-sum payments of public funds but may also raise some private contributions to use in conjunction with their grant funds.[76]

Grant programs largely relieve participating candidates from the pressures of fundraising during the campaign. However, grant programs require periodic maintenance by legislative and regulatory bodies to ensure their viability and attractiveness to candidates amidst the constantly rising costs of modern campaigns.[77] The popularity of grant programs has declined in recent years, as the growing amount of independent spending in elections has lessened candidates' willingness to limit their private fundraising activity.[78]

B. Matching Funds

In matching funds programs, a jurisdiction will match certain private contributions received by a participating candidate with public funds at a set rate. Depending on the jurisdiction, private contributions are matched either dollar for dollar or at some multiple of private-to-public dollars. Generally, these programs limit the size of contributions eligible for a match (e.g., $250 or less) and will not match contributions from certain sources (e.g., government contractors).

Until the late 1990s, the match ratios in these programs were typically set at one-to-one, with a handful of programs offering a two-to-one match in public-to-private dollars. More recently, however, some localities have opted for larger match rates, such as four-to-one or six-to-one public-to-private dollar ratios.

New York City initially implemented its matching funds program, in 1988, using a match rate of one-to-one. In 1998, the city raised the rate to four-to-one, and, in 2007, the city again increased it to six-to-one.[79] Other jurisdictions have followed suit. In 2013, Los Angeles increased its matching funds rate from one-to-one to a multiple match.[80] Many of the recently enacted programs—including Berkeley, CA; Howard County, MD; and Montgomery County, MD—have similarly opted for a multiple match.

76 *See* Mass. Gen. Laws ch. 55C ("Limited Public Financing of Campaigns for Statewide Elective Office").
77 This point is discussed in greater detail in Part V.
78 Moreover, many of these programs included trigger provisions like the Arizona provision held unconstitutional by the Supreme Court in 2011. *See, e.g.*, Albuquerque, N.M., Charter art. XVI, § 16. Thus, these programs need updating in order to provide candidates with sufficient flexibility and a way to raise additional funds when faced with a high-spending opponent or substantial independent expenditures.
79 For example, New York City will match a $175 campaign donation from a city resident with $1,050 in public funds (6 x $175 = $1,050), raising the donation's total value to $1,225 after the match. N.Y.C. Admin. Code § 3-705(2)(a); N.Y.C. Campaign Fin. Bd., *History of the CFB* (2018), https://www.nyccfb.info/about/history/.
80 *See* Los Angeles Mun. Code § 49.7.27.

Matching funds programs still require candidates to fundraise from private sources, but that burden—and the dependence on big donors—is substantially reduced. Moreover, the quantity of public funds available to a participating candidate in a matching funds system is linked to the degree of public support for the candidate throughout the campaign.

C. Vouchers

Vouchers are a novel and innovative public funding method, with Seattle being the first and only U.S. jurisdiction using a voucher program today. Under a voucher system, a jurisdiction provides eligible citizens with a credit of public funds (i.e., "vouchers") to assign to participating candidates of their choosing. In Seattle, city residents receive four $25 vouchers, worth $100 in total, each election year. Seattle residents may assign their vouchers to different candidates, or donate them all to the same campaign.[81] Once residents have assigned vouchers to a participating candidate, the candidate can redeem them with the city for public funds to use in their campaign.

A distinctive feature of vouchers is their capacity to promote broad electoral participation by citizens, irrespective of their financial circumstances. As with matching funds, voucher systems still obligate participating candidates to fundraise, but the candidates need only ask for vouchers, rather than private dollars, which eases the toll of fundraising for both candidates and individual contributors.

D. Tax Benefits

Tax benefit systems differ qualitatively from other methods of public financing. Unlike systems that award public funds to qualifying candidates in exchange for special limits on their campaign activities, tax benefit systems simply provide incentives for citizens to make private donations. In these programs, individuals who contribute to candidates or political parties are eligible for a rebate or tax credit, which is typically capped by statute, upon filing their state income taxes.[82]

Similar to other public financing models, tax benefit systems encourage constituents' participation in the electoral process. However, these programs give less direct support to candidates and do little to alleviate campaigns' reliance on large, private contributions.

E. Hybrid Systems

Generally, any of the preceding types of public financing can be combined into a hybrid system. The presidential public financing system is the most prominent example of a hybrid system, offering participating candidates matching funds during the primaries and lump-sum grants for the general election. Several states likewise utilize hybrid systems of public financing in gubernatorial elections.[83] Washington, D.C.'s recently enacted program is also a hybrid: Beginning in 2020, participating candidates will receive a lump-sum payment upon qualification followed by a five-to-one match for contributions from D.C. residents.[84]

81 Seattle Mun. Code § 2.04.620.

82 *See, e.g.*, Ark. Code § 7-6-222 (offering credit up to $50 on an individual's tax return, or $100 if joint filing, for contributions to state candidates, political action committees, or political parties).

83 *See* Md. Code Ann. Elec. Law §§ 15-101–15-111; Mich. Comp. Laws §§ 169.261–169.267.

84 D.C. Code § 1-1163 Part C-i.

V. Looking Forward: The Future of Public Financing

Public financing, in its myriad forms, can fundamentally reorient the focus of election campaigns by encouraging new and diverse voices to enter the political fold and reducing the predominance of moneyed interests in modern elections.[85] However, the appeal of public financing depends on understanding that it is not a silver bullet for all of our democracy's ailments, and these programs are most effective when combined with other structural changes to the campaign process, including greater disclosure and more robust enforcement.

A successful public financing program must be tailored to the locality or state enacting it, and should be complemented by additional reforms that encourage transparency and accountability in the political system. While each jurisdiction must decide which mechanism of public funding is right for its community, a few principles underlie all successful public financing programs.

> ***Maintaining a Viable Program.*** One critical element of an effective public financing program is its adaptability to changes in election practices. In response to evolving standards in campaigning, lawmakers and regulators must update public financing programs to provide candidates with competitive levels of funding, which encourages participation in the program.
>
> When public funding programs become outmoded, candidate participation declines. The presidential public funding program presents a regrettable illustration of candidate drop-off in a neglected public financing system.[86] On the other hand, jurisdictions that have made necessary amendments to their programs have maintained high rates of participation. As discussed in Part IV, New York City has periodically increased the match rate available in its public funding program. Between 2001 and 2013, local candidate participation in the city's program was over 91 percent for the primaries and 69 percent in general elections.[87] Amidst the impressive rates of participation, New York City has experienced positive effects within the larger electoral process, including greater participation by small donors who reflect the city's diverse demographics.[88] All jurisdictions with public financing should track systematic measurements of participation in their public financing programs in order to gauge a program's viability over time and identify potential weaknesses.
>
> ***Innovation.*** Relatedly, lawmakers should embrace innovations within public financing and tailor programs to best fit the needs of their communities. In 2017, Seattle held its first election under the Democracy Voucher Program. Early analyses demonstrate

85 For more information on the salutary effects of public financing, see Campaign Legal Center, *Fact Sheet: Public Financing in Elections*, July 27, 2017, https://campaignlegal.org/document/fact-sheet-public-financing-elections.
86 *See supra* Part II(B)(3).
87 N.Y.C. Campaign Fin. Bd., 2013 Post Election Report 46 (2013), https://www.nyccfb.info/sites/default/files/pressfiles/2013_PER.pdf.
88 Elisabeth Genn et. al., Brennan Ctr. for Justice & Campaign Fin. Inst., Donor Diversity Through Public Matching Funds 10 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

that the 2017 donor base in Seattle campaigns was larger and more diverse than in previous elections.[89] In addition, Seattle residents' participation in the Democracy Voucher Program corresponded with improved voter turnout: Nearly 90 percent of city residents who used their vouchers voted in 2017 compared to only 43 percent of those who did not use their vouchers.[90]

Secure Funding. Another essential element of success for any public financing program is a dependable source of funding. It may seem self-evident, but program administration will suffer and an otherwise well-designed program will become obsolete without sufficient and consistent funds. When possible, codifying a guarantee of funding within the public financing law is one of the best ways to secure financial viability. Moreover, if a program relies upon taxpayer designations for funding, lawmakers should take into account the declining rates of taxpayer participation for both federal and state public finance programs and consider more secure alternatives.

Outreach & Education. A key factor in the implementation of a new public financing program is informing both potential candidates and voters about the program's existence. By offering the public an opportunity to learn about the benefits of public financing, outreach and education efforts help to ensure high rates of participation among candidates as well as community support for the program. After Seattle voters approved the Democracy Voucher Program, the Seattle Ethics and Elections Commission partnered with local groups in conducting a multifaceted outreach campaign that included multi-language focus groups and the targeted distribution of information to minority communities around the city.[91] This outreach helped to drive the record level of local participation in city campaigns in 2017. Additionally, effective outreach and education to candidates can help alleviate concerns about a new program.

Recordkeeping & Auditing. Public finance programs help to ensure transparency and accountability when they entail detailed recordkeeping requirements both for candidates and election administrators. On the candidate side, recordkeeping helps to assure compliance and boosts transparency. For administrators, recordkeeping aids audit and enforcement efforts. Moreover, administrative oversight is essential to maintain a program's integrity, detect any attempts to defraud the program, and preserve the public's confidence in public financing.

Understanding the Objectives. Finally, it is important to stress that the goal of public financing is not to get money out of politics. Political campaigns cost money, and we are living in the post-*Citizens United* universe of unlimited independent spending. Public financing simply provides candidates with a choice: They can continue to

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89 Jennifer Heerwig & Brian McCabe, Ctr. for Studies in Demography & Ecology, Univ. of Wash., Expanding Participation in Municipal Elections: Assessing the Impact of Seattle's Democracy Voucher Program (2018), https://www.jenheerwig.com/uploads/1/3/2/1/13210230/mccabe_heerwig_seattle_voucher_4.03.pdf.

90 *Id.*

91 *See* Seattle Ethics & Elections Comm'n, Democracy Voucher Program Biennial Report 2017 22 (2018), https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%2003_15_2018.pdf.

raise large, private contributions from a small number of big donors, or, through a well-designed system of public financing, they can opt to run a competitive race funded by small-dollar contributions and bolstered by public funds. The concept of public funding further recognizes that citizens' involvement in campaigns is an important means of civic engagement that often precipitates other forms of political participation, like volunteering for campaigns and voting. It is critical that lawmakers understand what public financing can—and cannot—achieve when formulating a program.

Public financing offers a versatile and powerful tool for cities, counties, and states seeking to improve the integrity and accessibility of elections. When public financing systems are well structured and updated as necessary, these programs have proven to be a viable method to advance the U.S. Constitution's promise of democratic self-governance.

VI. Public Financing Program Summaries

Federal

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

States & Washington, D.C.

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

92 26 U.S.C. Subtitle H.

93 Ariz. Rev. Stat. tit. 16, ch. 6, art. 2.

94 Ark. Code Ann. § 7-6-222.

95 Conn. Gen. Stat. tit. 9, ch. 157.

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

96 Fla. Stat. tit. IX, ch. 106.
97 Haw. Rev. Stat. tit. 2, ch. 11, pt. XIII-J.
98 Me. Rev. Stat. tit. 21-A, ch. 14.
99 Md. Elec. Law Title. 15.
100 Mass. Gen. Laws ch. 55C.

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

101 Mich. Comp. Laws ch. 169.
102 Minn. Stat. ch. 10A.
103 Mont. Code. Ann. § 15-30-2131(1)(d).
104 N.J. Stat. tit. 19, ch. 44A.

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

105 N.M. Stat. Ann. ch. 1, art. 19A.
106 Ohio Rev. Code § 5747.29.
107 Oregon Rev. Stat. § 316.102.
108 R.I. Gen. Laws tit. 17, ch. 25.
109 Vt. Stat. Ann. tit. 17, ch. 17, subch. 5.

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

Cities and Counties

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

110 D.C. Mun. Code tit. 1, ch. 11A, subch. III, part C-i.
111 W.V. Code. ch. 3, art. 12.
112 Albuquerque, N.M., City Charter art. XVI.
113 Austin, Tex., Code tit. 2, ch. 2.2, art. 7.
114 Berkeley, Cal., Mun. tit. 2, ch. 2.12, art. 8.
115 Boulder, Colo.., Mun. Code tit. 13, ch. 2.

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

116 Chapel Hill, N.C., Code ch. 2, art. V.
117 Howard County, Md., Code tit. 10, subtit. 3.
118 Long Beach, Cal., Mun. Code tit. 2, ch. 2.01, div. IV.
119 Los Angeles Mun. Code ch. IV, art. 9.7.
120 Miami-Dade County Code § 12-22.

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

121 Montgomery County, Md., Code ch. 16, art. IV.
122 New Haven, Conn., Code tit. III, ch. 2, art. XI.
123 New York City Admin. Code tit. 3, ch. 7.
124 Oakland, Cal., Mun. Code tit. 3., ch. 3.13.
125 Portland, Or., City Code tit. 2, ch. 2.16.
126 Richmond, Cal., Mun. Code art. II, ch. 2.43.

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

127 S.F. Campaign & Governmental Conduct Code art. I, ch. 1.
128 Santa Fe, N.M., Mun. Code ch. IX, § 9-3.
129 Seattle Mun. Code tit. 2, ch. 2.04, subtitle VIII.
130 Suffolk County, N.Y., Charter art. XLII.
131 Tucson, Ariz. Charter Ch. XVI, subch. B.

CLC

ADVANCING DEMOCRACY THROUGH LAW

ABOUT CAMPAIGN LEGAL CENTER

Campaign Legal Center (CLC) is a nonpartisan, nonprofit organization based in Washington, D.C. Through litigation, policy analysis, and public education, CLC works to protect and strengthen the U.S. democratic process across all levels of government. CLC is adamantly nonpartisan, holding candidates and government officials accountable regardless of political affiliation.

CLC was founded in 2002 and is a recipient of the prestigious MacArthur Award for Creative and Effective Institutions. Its work today is more critical than ever as it fights the current threats to our democracy in the areas of campaign finance, voting rights, redistricting, and ethics. Most recently, CLC argued *Gill v. Whitford*, the groundbreaking Supreme Court case seeking to end extreme partisan gerrymandering. In addition, CLC plays a leading watchdog role on ethics issues, providing expert analysis and helping journalists uncover ethical violations, and participates in legal proceedings across the country to defend the right to vote.