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Reforming Campaign Finance Reform: The Future of Public Financing

Richard Briffault*

I. INTRODUCTION

In his Seventh Annual Message to Congress on December 3, 1907, President Theodore Roosevelt proposed what he acknowledged was a “very radical measure”: public funding of election campaigns. Roosevelt had previously urged a federal campaign disclosure law and restrictions on corporate contributions, and Congress had adopted a corporate contribution ban earlier that year. But Roosevelt warned that disclosure and contribution limits alone would not be enough to truly reform campaign finance. “[L]aws of this kind,” that is, regulations of private campaign money, “from their very nature are difficult of enforcement,” Roosevelt observed. They posed the “danger” they would be “obeyed only by the honest, and disobeyed by the unscrupulous, so as to act only as a penalty upon honest men.” “Moreover,” he continued, “no such law would hamper an unscrupulous man of unlimited means from buying his own way into office.” Public financing would solve the problem of evasion and directly address the power of the wealthy. “The need for collecting large campaign funds would vanish,” Roosevelt predicted, “if Congress provided an appropriation for the proper and legitimate expenses” of political campaigns.¹

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¹ Theodore Roosevelt, Seventh Annual Message to Congress, Dec. 3, 1907, www.theamericanpresidency.us/1907.htm. Another powerful early call for the public financing of election campaigns came from Simeon Baldwin, governor of Connecticut and a founder of the American Bar Association, who emphasized the egalitarian value of public funding in opening public office to all regardless of wealth: “The cost of the struggle falls upon the man seeking the nomination ... The obvious tendency of this is to shut out the poor man, unless he puts himself under what they would be apt to consider implied obligations to those who supply him the necessary funds.” Simeon E. Baldwin, *State Assumption of Nomination and Election Expenses*, 23 YALE L.J. 158, 159 (1913). “We do not want a property qualification for every public office, either directly or indirectly.” *Id.* at 163.

Roosevelt acknowledged “it will take some time for people so to familiarize themselves with such a proposal as to be willing to consider its adoption.”² He was certainly right about that. The first bill proposing public funding of federal elections was not introduced into Congress until a half-century after his Seventh Annual Message.³ It took another decade for Congress to take the idea seriously,⁴ and public funding at the federal level became a reality only in 1974,⁵ and even then only for the presidential election. In recent years, however, the presidential public funding system, which played a significant role in financing presidential elections in the last quarter of the twentieth century, has effectively collapsed. No significant presidential candidate in either major party accepted public funding in the 2012 or 2016 presidential elections.⁶

Public funding has made greater headway at the state and local level. At least three dozen states, counties, and cities currently provide some financial support for candidates for state or local office and, in a few jurisdictions, political parties.⁷ In the last few years, candidates taking public funding won

² Roosevelt, Seventh Annual Message, *supra* note 1.

³ See S.3242, Feb. 20, 1956, 84th Cong., 2d Sess.; “Federal Campaign Contributions to Relieve Officeholders of Private Obligations,” 102 CONG. REC. 2854–2855 (statement of Senator Richard Neuberger (D.-Ore.) (Feb. 20, 1956)).

⁴ See Presidential Election Campaign Fund Act of 1966, Pub. L. No. 89–809, 80 Stat. 1587–90 (1966). This measure—known as the Long Act after its principal sponsor, Senator Russell Long (D.-La.)—would have given each of the major parties \$1 times one-half the total of the two-party vote in the preceding presidential election, minus \$5 million. In 1964, the Democratic and Republican nominees together received 70.3 million votes. Half of that, multiplied by \$1, would be \$35.15 million, minus \$5 million, would have been a little over \$30 million for each party for the 1968 election. The Long Act was undone the following year, however, when Congress amended the law to provide that funds could be appropriated and disbursed to the political parties “only after the adoption by law of guidelines governing their distribution.” Pub. L. No. 90–26, “An act to restore the investment credit and the allowance of accelerated depreciation in the case of certain real property,” § 5, 81 Stat. 58 (1967). This effectively tabled the Long Act as no such guidelines were ever adopted.

⁵ Congress initially revived the Presidential Election Campaign Fund that had been created by the Long Act (see *supra* note 4) in 1971, only this time, it provided that payments would be made directly to presidential candidates, rather than to their parties as the 1966 law had provided. However, in a compromise with President Nixon necessary to secure the measure’s enactment, its effective date was deferred until the 1976 election. Revenue Act of 1971, Pub. L. No. 92–178. Before it could take effect, the measure was significantly revamped in 1974 to provide more money to candidates, and to provide public funding for the presidential primaries and the presidential nominating conventions.

⁶ In 2016, Democratic aspirant Martin O’Malley qualified for primary matching funds and received a little over \$1 million dollars, accounting for roughly 17% of his total funding, but he suspended his campaign after the Iowa caucus vote on February 1, 2016. Green Party candidate Jill Stein also qualified for primary matching funds and received approximately \$465,000 prior to her formal nomination as the Green Party’s nominee for President.

⁷ See Michael J. Malbin, *Citizen Funding for Elections* 5–6, 9 (Campaign Finance Inst., 2015).

races for governor in Hawaii⁸ and Maryland;⁹ Arizona, Connecticut, and Maine implemented extensive “clean elections” programs for statewide and state legislative candidates;¹⁰ Minnesota restored a longstanding program of rebating public funds for small donations;¹¹ New York City, Los Angeles, and other large cities adopted and expanded programs that match small private donations to candidates for municipal office with public dollars;¹² Montgomery County, Maryland, enacted public funding for county elections;¹³ and Seattle, Washington, and South Dakota voters approved “voucher” programs under which residents will be able to give public funds directly to the candidates of their choice.¹⁴ To be sure, even at the state level public funding has suffered setbacks, with repeals of programs in North Carolina,¹⁵ Wisconsin,¹⁶ and Portland, Oregon,¹⁷ and the South Dakota voucher program was undone by

⁸ Democrat David A. Ige received \$105,164 in public funds in 2014, which accounted for roughly 5% of his total \$2.03 million in expenditures. State of Hawaii, Campaign Spending Commission, Public Funds Disbursed in 2014, <http://ags.hawaii.gov/campaign/statistics/public-funds-disbursed/public-funds-disbursed-in-2014/>. Ige defeated both the incumbent Democratic governor in the primary and a Republican and other opponents in the general election.

⁹ In 2014, Republican Larry Hogan became the first candidate for governor of Maryland to run and win with public funds. He received a public grant of \$2.6 million. The state Republican Party was allowed to spend an additional \$1.8 million to support him. He prevailed even though he was outspent by his Democratic opponent, and the state Democratic Party spent \$7 million against him. See Matthew Cella & Kellan Howell, *Larry Hogan Gets Unprecedented Win in Governor's Race on Public Financing*, WASH. TIMES (Nov. 5, 2014), www.washingtontimes.com/news/2014/nov/5/larry-hogan-vows-a-bipartisan-administration-in-mar/.

¹⁰ Nat'l Conf. of State Legislatures, Overview of State Laws on Public Financing, Clean Elections Programs, www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx.

¹¹ See Malbin, *supra* note 7, at 7.

¹² *Id.* at 5.

¹³ See Bill Turque, *Montgomery Council Approves Plan for Public Finance of Local Campaigns*, WASH. POST (Sept. 30, 2014).

¹⁴ See Bob Young, *'Democracy Vouchers' Win in Seattle; First in Country*, SEATTLE TIMES (Nov. 3, 2015), www.seattletimes.com/seattle-news/politics/democracy-vouchers/; Paul Blumenthal, *Voters Back Landmark Campaign Finance Reform in South Dakota*, HUFF. POST (Nov. 9, 2016), www.huffingtonpost.com/entry/2016-campaign-finance-reform_us_581d0d85e4b0e80b02ca2f31. But see Gregory Krieg, *South Dakota GOP Uses 'Emergency' Rules to Repeal Anti-Corruption Law*, CNN (Feb. 2, 2017), www.cnn.com/2017/02/02/politics/south-dakota-corruption-bill-republican-repeal/index.html.

¹⁵ See Adam Smith, *North Carolina Legislature Repeals Popular 'Voter Owned Elections' Program*, HUFF. POST. (July 26, 2013), www.huffingtonpost.com/adam-smith/nc-campaign-finance_b_3660472.html.

¹⁶ See Bill Lueders, *Campaign Financing Dead in Wisconsin*, WISCONSIN WATCH (June 30, 2011), <http://wisconsinwatch.org/2011/06/campaign-financing-dead-in-wisconsin/>.

¹⁷ See Paul A. Diller, *The Brief History of Voter-Owned Elections in Portland Oregon: If Public Financing Can't Make it There, Can it Make it Anywhere?*, 49 WILLAMETTE L. REV. 637 (2013).

the state legislature before it could take effect.¹⁸ But overall developments at the state and local levels indicate public funding has become increasingly central to campaign finance reform.

At a time of considerable Supreme Court hostility to restrictions on private campaign money, public funding provides a clearly constitutional alternative. By subsidizing candidate spending rather than limiting it—although nearly all public funding programs require participants to abide by some limits—public funding is consistent with the Court’s First Amendment framework for evaluating campaign finance laws.

Public funding addresses many of the traditional goals of campaign finance reform. By offsetting the financial role of large donors and interest groups, public financing can constrain inequality of influence within the election and, potentially, reduce the influence of large donors over government decision-making. By making it easier for challengers and political newcomers to raise money, public subsidies may make elections more competitive and diversify the pool of candidates. By reducing the need to engage in fundraising, public financing can free candidates and officeholders to focus more on meeting with voters and studying the issues, thus improving both the conduct of campaigns and the quality of governance. Some forms of public financing are geared particularly to promoting the engagement of small donors and low- and middle-income citizens in the political process, with potential benefits for expanding political participation that go beyond campaign financing.

To be sure, the key verb in the last paragraph is “may.” In theory, public funding could have a lot of benefits, but it is uncertain whether and to what extent public funding in practice accomplishes these goals. That may be because the most significant public funding programs—in terms of the number of offices covered and the amount of funding providing—are few in number and relatively new in operation and so have not generated enough data to support clear conclusions. Moreover, the effects of public funding may be difficult to disentangle from other campaign finance developments, particularly the upsurge in outside money.

This chapter examines the place of public funding in democratic elections. The next Part explores the various forms of public funding and some common themes that cut across all public funding programs. Part III considers the constitutional framework that supports but also constrains public funding. Part IV reviews some of the evidence concerning public funding’s effects on elections and governance. Part V concludes with an assessment of the future of public funding.

¹⁸ See Krieg, *supra* note 14.

II. PUBLIC FUNDING: THEMES AND VARIATIONS

Public funding is a capacious concept. It could mean any use of public funds to cover or reduce the campaign costs of candidates or political parties. If a government were to assume responsibility for registering voters or to mandate that broadcasters provide candidates or parties with free airtime that could be considered public funding. But in contemporary American campaign finance parlance, public funding refers to the provision of government funds to candidates, parties, or voters for defined election-related purposes. Even when so limited, public funding programs exhibit considerable variation. Each jurisdiction that has adopted public funding has had to consider and make decisions concerning who should be eligible to receive public funds; how much public funding should be provided; what portion of campaign costs should public funds cover; and what conditions should apply to public funding recipients. No two programs answer these questions in exactly the same way, and the permutations among different programs are substantial, but a few generalizations are possible.

A. Types of Public Funding Programs

Broadly speaking, there are five types of public funding, although some jurisdictions further complicate the picture by combining elements of different types into distinctive, eclectic hybrids.

1. **FULL GOVERNMENT FUNDING.** Full government funding of a candidate's election campaign is probably what most people think of when they hear the term public funding. In a full funding program, the government provides a qualifying candidate with a grant intended to cover all of the candidate's campaign costs. Once the candidate agrees to take the public grant, he or she generally cannot raise additional private funds or spend more on the campaign than the government grant. The presidential general election public funding program is one example of full funding. Once the candidate opts to take the grant, the candidate's general election spending is limited to that grant. The grant was set at \$20 million in 1974 for major party nominees with an inflation adjustment that brought it to \$96.14 million for the 2016 general election.¹⁹ The paltry amount of the grant in light of current presidential campaign costs may

¹⁹ A publicly funded presidential candidate may create a General Election Legal & Accounting Compliance (GELAC) Fund, and accept private contributions to the Fund which are used to cover the legal and accounting costs of complying with the rules governing public funding. In addition, the candidate's political party may engage in a limited amount of coordinated spending with the candidate.

explain why major party general election presidential candidates no longer take public funding.

State “clean money” or “clean elections” programs are also examples of full funding. Candidates qualify by raising a threshold number of small contributions. Each qualifying candidate then receives a lump-sum grant, with the amount depending on the office sought. Other than some privately raised “seed money” used to cover the expense of obtaining the qualifying donations, the public grant is intended to finance the full costs of the candidate’s campaign. Candidates are required to accept a spending limit and the public grant is equal to that limit.²⁰

By replacing private contributions with a large, lump-sum grant, full public funding probably comes the closest in theory to the reform goals of equalizing influence in the financing of campaigns, reducing the burdens of fundraising, and freeing government decision-making from the influence of campaign donors. But full public funding is “full” only for candidates who choose to accept it. Candidates cannot be forced to take public funding, and the decision of one candidate to take public funds cannot bind other campaign participants. Opposing candidates remain free to rely on private contributions or their personal wealth, and political parties and politically active groups and individuals are free to engage in unlimited independent spending that supports or opposes publicly funded candidates. Private money remains an appreciable part of the system.

2. **MATCHING FUNDS.** In this second model, the government matches small private donations to qualifying candidates up to some aggregate level. The candidate qualifies by raising a threshold number of small donations and by agreeing to certain restrictions and conditions. The presidential primary public funding program is a matching grant program. To qualify a candidate must raise at least \$5,000 from donors in each of 20 states; thereafter the government will match the first \$250 of each contribution with an equal amount of public funds, up to half the spending limit for the primary campaign (which is half the spending limit of the general election campaign). The public-to-private match ratio need not be limited to 1-to-1. New York City provides a \$6 public grant for every private dollar for the first \$175 of qualified contributions from individual city residents; this is the most generous match ratio in the country. The total amount of small-donor matching funds provided is typically capped at either a specific level or by a spending limit for participating candidates.

Matching programs assume some private donations, so they are less fully equalizing, even in theory, than full funding, and also assume continued candidate fundraising. On the other hand, matching funds programs, especially those

²⁰ For a list of jurisdictions providing full public funding, see Malbin, *supra* note 7, at 7.

with a multiple match ratio, can provide candidates with a powerful incentive to reach out to small donors, thereby potentially broadening and diversifying the donor pool. If full public funding scores higher on equalization, matching funds have the potential to be more effective in expanding political participation.

3. **PARTIAL GRANTS.** Some programs are relatively modest in scope and simply offer qualifying candidates limited lump-sum grants. These are not intended to replace private funds and, because the size of the grant is not a match for small donations, they do not offer the same small-donor fundraising incentive as matching funds. The Hawaii program, for example, offers gubernatorial candidates a grant equal to 10 percent of the total campaign spending limits set by the state for candidates who take the grant, and a grant equal to 15 percent of the spending limits set by the state for publicly funded legislative candidates.²¹ Other programs are more generous and may provide a grant up to half the spending limit.²² These programs can provide a welcome boost to candidates who may initially have difficulty raising private funds but are unlikely to have transformative effects on elections or governance.

4. **REBATES AND TAX INCENTIVES.** Lump-sum grants pay public funds to candidates. Six states have taken a different approach, offering residents incentives to make small private donations to candidates. In five states, the incentive operates through the tax system, with the donor receiving a credit or deduction for a contribution to a candidate, or, in some states, to a political party or political committee. The incentives vary but are typically on the order of \$50 dollars per tax filer (or \$100 for a joint return). For a dozen years until repealed in 1986, federal law also offered tax incentives to small donors.²³ As with matching funds, tax breaks for small donations give candidates an incentive to solicit donations more broadly. The most successful of these programs has been Minnesota's, which gives donors an immediate cash rebate for donations of up to \$50 per year, without requiring the donor to seek a credit or incentive through filing a state income tax return.²⁴

5. **VOUCHERS.** With tax incentives (other than the Minnesota rebate, which is linked to a grant of public funds), the donors get to decide which candidates benefit from the incentive. But the donor has to provide the money upfront

²¹ HAW. REV. STAT. § 11-425.

²² See Malbin, *supra* note 7, at 7.

²³ See generally David H. Gans, *Tax Credit for \$200 in Political Giving Could Encourage Small Donors*, L.A. TIMES (Apr. 13, 2015), www.latimes.com/opinion/op-ed/la-oe-gans-campaign-finance-tax-credit-20150114-story.html.

²⁴ See generally Malbin, *supra* note 7, at 8-9.

and get the tax benefit later, which may limit who can participate. Moreover, incentives that work through the tax system provide a greater benefit to those with tax liabilities that can be reduced by a credit or deduction.²⁵ Voucher plans address these concerns. In a voucher program, the government issues eligible residents or voters vouchers worth a certain amount, which the recipients can give to candidates. The candidates, in turn, can redeem the vouchers with the government of the relevant jurisdiction for money to be used to pay for campaign expenses.²⁶ Like tax incentives, vouchers would enable the voters to decide who receives public support and how much, but, by giving every voter some public money for use in campaigns, vouchers are more egalitarian. In November 2015, Seattle became the first American jurisdiction to adopt a voucher plan, which was first used in Seattle's 2017 municipal elections. Four \$25 "democracy vouchers" were sent to all eligible residents. The vouchers were transferrable to any "qualifying candidate" who agreed to accepted a spending limit and to limit the dollar value of donations he or she accepts from any private donors.²⁷ In November 2016, South Dakota voters approved Initiated Measure 22, which would have provided registered voters two \$50 "democracy credits" to give to candidates who agreed to limit the use of their personal wealth and the size of the private contributions they receive; however, the South Dakota legislature subsequently repealed the plan.²⁸

²⁵ To address the concern that tax credits disproportionately benefit the affluent, Oregon in 2014 amended its program to provide that its tax credit can be used only by those with an income below \$100,000. See *id.* Of course, that may reduce the usefulness of the program to candidates.

²⁶ See, e.g., BRUCE ACKERMAN & IAN AYRES, *VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE* (2002).

²⁷ See Seattle Democracy Voucher Program, www.seattle.gov/democracvoucher. A qualifying candidate would also have to obtain a threshold number of ten-dollar contributions from adult residents of Seattle, agree to participate in debates, and agree to refrain from soliciting funds for an independent expenditure committee during the same election cycle. In 2017, candidates for three offices up for election—two at-large city council seats and city attorney—were eligible to participate in the voucher program. Although the office of mayor was also up for election, the voter initiative had specifically provided that in order to allow the accumulation of program funds, mayoral candidates would be unable to participate in the program in 2017. See Ron Fein, *The Impact of Seattle's Voucher Program on Candidates' Ability to Rely on Constituents for Fundraising*, FREE SPEECH FOR PEOPLE ISSUE REPORT 2018-01 (May 2018), https://freespeechforpeople.org/wp-content/uploads/2018/05/FSFP-Issue-Report-2018_1.pdf.

²⁸ See S.D. Att'y Gen. Statement on Initiated Measure (Sept. 25, 2015), https://sdsos.gov/elections-voting/assets/2016_IM_CampFinLobbyingLaws.pdf.

B. Common Themes

Although public funding programs have taken a range of forms, they exhibit a number of common themes.

1. **SPENDING LIMITS.** With a single exception, all of the programs that give public funds directly to candidates require that a candidate must agree to a spending limit to qualify for funds.²⁹ The Minnesota rebate plan and the Seattle voucher plan also require participating candidates to accept a spending limit.³⁰ A spending limit is inherent in a full public funding program. If the public grant is intended to fully replace private funds, then the amount of the grant automatically becomes a spending limit. This requirement no doubt reflects the egalitarian impetus that generally drives public funding, as spending limits tend to equalize candidate resources. Spending limits, however, are not logically entailed in other forms of public funding, which all assume that participating candidates will raise and spend some privately provided funds. And with public funding necessarily optional, a spending limit may discourage participation by candidates who fear a high-spending, privately funded opponent whom the limit may prevent them from matching. A number of jurisdictions sought to address this problem by giving publicly funded candidates additional funds—a solution that, as we will see in the next Part, the Supreme Court ultimately rejected.

2. **OTHER CONDITIONS.** Some jurisdictions impose additional requirements on candidates who take public funding. The most common are that candidates agree to participate in debates, that private contributions to the candidate in a partial public funding scheme are capped at a level lower than that for non-publicly funded candidates, and that the candidate limit or refrain from accepting donations from certain otherwise legal sources, such as political action committees or the candidate's own personal funds.³¹ As with the spending limit, public funds are used as a carrot to induce other election reform goals.

3. **CANDIDATE FOCUS.** Public funding in the United States is largely focused on payments to candidates, not parties. This distinguishes American programs from other public funding programs around the world, which usually provide funds or in-kind benefits to political parties. The American approach is

²⁹ The sole exception is the matching grant program for candidates for municipal office in Richmond, California. See Malbin, *supra* note 7, at 5.

³⁰ See *id.* at 9; Seattle Democracy Voucher Program, *supra* note 27.

³¹ See Malbin, *supra* note 7, at 5–6.

consistent with the candidate-centered nature of our election campaigns. It also reflects the fact that internal party elections—that is, party primaries—play a major role in selecting party nominees. Any public funding program for primaries would have to provide money to candidates, not parties.

There have been some efforts to give parties public financial support. The federal presidential public funding program originally provided grants to cover the costs of the national party nominating conventions. Over time, private funds raised by the convention city “host committees” overshadowed the public grant and in 2014 Congress repealed convention public funding³² and replaced it with an amendment to the Federal Election Campaign Act allowing very large private donations to special accounts created by the parties to fund the conventions.³³ Some state tax-benefit programs and Minnesota’s rebate provide some very modest funding for political parties. No state provides flat grants or matching funds to the parties.³⁴

III. THE CONSTITUTIONAL FRAMEWORK

The Supreme Court has considered constitutional questions concerning public funding four times. In *Buckley v. Valeo*, the Court held that public financing of campaigns falls within Congress’s power under the General Welfare Clause.³⁵ The Court determined that public funding advances three general welfare goals: reducing “the deleterious influence of large contributions on our political process,” “facilitat[ing] communication by candidates with the electorate,” and “free[ing] candidates from the rigors of fundraising.”³⁶ The Court went on to find that “public financing as a means of eliminating the improper influence of large private contributions furthers a significant government interest.”³⁷ The Court summarily rejected the argument that giving

³² Pub. L. No. 113–94 (Apr. 3, 2014).

³³ The continuing resolution omnibus budget legislation passed at the end of 2014 allowed individuals to donate up to triple the ordinary contribution limit on donations to national party committees to special accounts dedicated to funding the presidential nominating conventions, election recounts and other legal proceedings, and the national party headquarters buildings. See, e.g., Matea Gold, *Spending Deal Would Allow Wealthy Donors to Dramatically Increase Giving to National Parties*, WASH. POST (Dec. 9, 2014). As a result, in 2016 individuals could donate \$100,200 to each of these accounts, in addition to the \$33,400 annual donation permitted to the party committee itself. See *Quick Answers to General Questions*, FEDERAL ELECTION COMMISSION, www.fec.gov/ans/answers_general.shtml#How_much_can_I_contribute.

³⁴ Malbin, *supra* note 7, at 5.

³⁵ 424 U.S. 1, 90–91 (1976).

³⁶ *Id.* at 91.

³⁷ *Id.* at 96.

public money to candidates and parties violates the First Amendment “by analogy” to the ban on the establishment of religion.³⁸ So, too, it dismissed the argument that public funding would “lead to governmental control of the internal affairs of political parties, and thus to a significant loss of political freedom.”³⁹ The Court found that public funding does “not abridge, restrict or censor speech” but instead “facilitate[s] and enlarge[s] public discussion and participation in the electoral process, goals vital to a self-governing people.”⁴⁰

Buckley upheld specific components of the presidential public funding program, including the candidate spending limit and the statutory formulas for determining which candidates are eligible to receive public funds and how much they can receive. Although the Court had determined that limits on how much candidates or independent groups can spend are unconstitutional, it easily upheld spending limits as a condition for public funding, finding them to be voluntarily accepted by the candidate rather than imposed by the government.⁴¹ The Court also found that different-sized grants could be provided to the nominees of major and minor parties and that eligibility for public funds could be conditioned on some showing of political viability or past electoral success. In the Court’s words, Congress need not “fund[] hopeless candidacies with large sums of public money” or provide assistance to “candidates without significant public support.”⁴²

The Court went on to consider two more public funding cases in the decade immediately after *Buckley*. In *Republican National Committee (RNC) v. Federal Election Commission*,⁴³ the Court summarily affirmed a three-judge court decision rejecting the claim that in practice—as evidenced by the significant participation in the presidential public funding program in the 1976 election—candidates were coerced into accepting public funds. In so doing, the Court also sustained the provision of the public funding law limiting coordinated spending by a political party whose candidate accepted public funds.⁴⁴ Five years later, in *Federal Election Commission v. National Conservative Political Action Committee (NCPAC)*,⁴⁵ the Court invalidated the provision of the presidential public funding law that limited independent expenditures in support of or opposition to a publicly funded candidate to

³⁸ *Id.* at 92.

³⁹ *Id.* at 93 n. 126.

⁴⁰ *Id.* at 92–93.

⁴¹ *Id.* at 57 n. 65.

⁴² *Id.* at 96.

⁴³ 445 U.S. 955 (1980).

⁴⁴ *Id.* (*aff'g* Republican Nat'l Comm. v. FEC, 487 F. Supp. 280, 283 (S.D.N.Y. 1980)).

⁴⁵ 470 U.S. 480 (1985).

\$1,000. The Court simply reiterated its *Buckley* stance that independent spending poses no danger of corruption and thus cannot be limited.⁴⁶ It did not treat as relevant the fact that the candidate targeted by the spending had taken public funds and was thus subject to a spending limit.

The Court's most recent public funding case, the 2011 decision in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*⁴⁷ (hereinafter "*Arizona Free Enterprise*"), emerged out of the efforts of a number of states to address the dilemma posed by NCPAC and the constitutional protection of campaign spending generally. Candidates are naturally reluctant to accept public funding if the limits that come with it will restrict their ability to respond to high-spending opponents and hostile independent groups. From their perspective public funding with a spending limit can operate as a form of unilateral disarmament. Candidates expecting to be in hotly contested races who also have the capacity to raise sufficient private funds are more likely to forego public funds with the attendant spending limit, so that in major contests public funding becomes an option only for weaker candidates who are less likely to have a real chance to win. The problem could be addressed by a very large public grant, but that raises the prospect of wasteful allocations of tax dollars in less hotly contested, low-cost races. As one scholar has noted, "it is exceedingly difficult to get the level of public subsidy right."⁴⁸

To address this problem, starting in the 1990s, some state and local governments included so-called "trigger" provisions—or "fair fight" or "rescue" funds—in their public funding laws. These provided that if spending by a privately funded candidate (or, in some states, spending by a privately funded candidate together with spending by an independent committee opposed to the publicly funded candidate) exceeds a certain level, such as the level of the public funding spending limit, something happens. In a few states, the spending limit was raised, so that the publicly funded candidate could collect and spend additional private funds. More commonly, the jurisdiction would provide the publicly funded candidate with additional public funds up to a new, higher ceiling.⁴⁹ In Arizona, if a privately funded candidate spent above the public funding spending level, all publicly funded opponents of that candidate were entitled to receive an additional amount equal to the privately funded candidate's excess spending, all the way up to three times the original public

⁴⁶ *Id.* at 490–500.

⁴⁷ 564 U.S. 721 (2011).

⁴⁸ Stephen Ansolabehere, *Arizona Free Enterprise v. Bennett and the Problem of Campaign Finance*, 39 SUP. CT. REV. 53–54 (2011).

⁴⁹ See ROBERT M. STERN, *Public Financing in the Municipalities and States*, in PUBLIC FINANCING IN AMERICAN ELECTIONS 103–5 (state chart 4) (Costas Panagopoulos ed., 2011).

funding level (minus 6 percent to account for the privately funded candidate's fundraising costs). Independent spending against a publicly funded candidate or in favor of a privately funded candidate was also counted in determining the additional funds a publicly funded candidate could receive.⁵⁰

Prior to 2010, all but one of the lower federal courts that heard challenges to state trigger laws sustained the trigger mechanism, finding it advanced First Amendment values by increasing, not limiting, campaign speech and was justified by the governmental interest in making public funding an effective program attractive to all candidates. In *Arizona Free Enterprise*, however, a five-justice majority of the Supreme Court rejected this analysis and ruled trigger funds unconstitutional. In an opinion by Chief Justice John Roberts, the Court found that supplemental public funds burden the speech of the candidate or independent committee whose spending triggered the additional public payment. As a result, the trigger fund mechanism was treated like a spending limit and subjected to strict judicial scrutiny, which it was unable to withstand. Trigger funds could not be saved by the governmental interests in preventing corruption and its appearance as there was nothing corrupting about the spending of privately funded candidates or independent committees. The Court acknowledged that trigger funds "indirectly serve" the anti-corruption interest by encouraging candidates to take public financing instead of relying on private contributions, but it deemed the connection to preventing corruption too attenuated to justify the burden on spending by privately funded, non-participating candidates and independent committees.⁵¹ To be sure, *Arizona Free Enterprise* reiterated *Buckley's* statement that "governments 'may engage in public financing of election campaigns' and that doing so can further significant governmental interest[s]." ⁵² But the case dealt a blow to the viability of public funding programs, particularly to the "clean elections" or full funding model.

Immediately after *Arizona Free Enterprise*, courts invalidated the trigger provisions in Maine's clean money law and West Virginia's pilot program for judicial elections.⁵³ The Nebraska Supreme Court struck down that state's public funding law because it concluded that the trigger mechanism was not severable from the rest of the law.⁵⁴ Trigger fund mechanisms in the Connecticut and Florida public funding laws had already been invalidated while *Arizona Free*

⁵⁰ But independent expenditures for a participating candidate were not used to reduce the candidate's entitlement to extra funds.

⁵¹ 564 U.S. at 752–53.

⁵² *Id.* at 754 (citing and quoting *Buckley v. Valeo*, 424 U.S. at 57 n. 65, 92–93, 96).

⁵³ See Richard Briffault, *The Future of Public Funding*, 49 WILLAMETTE L. REV. 521, 535 (2013).

⁵⁴ See *State ex rel. Bruning v. Gale*, 817 N.W.2d 768, 784 (Neb. 2012).

Enterprise was pending before the high court. The decision also led to sharp drops in candidate participation in both the Arizona and Maine clean elections systems, although Connecticut's program so far has weathered the storm, perhaps because the Nutmeg State provides its candidates with relatively large basic grants and because after *Arizona Free Enterprise* the state significantly eased its restrictions on political party participation in races with publicly funded candidates.⁵⁵ In 2015, Maine responded to *Arizona Free Enterprise* by enabling candidates to raise additional amounts of small contributions which would qualify them for additional clean money grants.⁵⁶

Arizona Free Enterprise left one important constitutional issue unaddressed. The Arizona law invalidated in that case both lifted the spending limit for publicly funded candidates and also provided them with additional funds. This leaves open the possibility for a public funding program to address high levels of private spending by simply lifting the spending limit from the publicly funded candidate without providing her with more public funds. To be sure, lifting the spending limit would be a response to spending and so arguably a "penalty" for the other spender, but the Court in *Arizona Free Enterprise* seemed particularly exercised by the provision of additional public funds.⁵⁷

IV. THE PUBLIC FUNDING DEBATE: ARGUMENTS AND EVIDENCE

Arguments for public funding have focused on its ability to: (i) make elections more competitive by making it easier for candidates who would otherwise have difficulty raising money to compete; (ii) improve the quality of campaigns by reducing the need for candidates to engage in fundraising, thereby allowing them to spend more time with voters; (iii) increase political participation by bringing more citizens into the financing process; (iv) promote greater equality in the financing of campaigns, and thus equalize voter influence on election outcomes; and (v) change policy outcomes by reducing the post-election influence of large donors.⁵⁸ Critics of public funding have expressed concerns that public funding is a waste of taxpayer dollars,

⁵⁵ See Public Campaign, *Small Donor Solutions for Big Money: The 2014 Elections and Beyond* (Jan. 13, 2015), <http://everyvoice.org/wp-content/uploads/2015/04/2014SmallDonorReportJan13.pdf>.

⁵⁶ See Kevin Miller, *Mainers Approve Clean Election Expansion and \$100 Million in Bond Issues*, PORTLAND PRESS HERALD (Nov. 3, 2015), www.pressherald.com/2015/11/03/mainers-approve-clean-elections-measure-and-two-bond-issues/.

⁵⁷ 564 U.S. at 737 ("Here the benefit to the publicly financed candidate is the direct and automatic release of public money.").

⁵⁸ See generally Malbin, *supra* note 7; Kenneth R. Mayer, *Public Election Funding: An Assessment of What We Would Like to Know*, 11 THE FORUM 365 (2013).

provides an opportunity for government to manipulate election outcomes, and promotes political polarization.⁵⁹

A. Arguments for Public Funding

1. COMPETITION. The strongest evidence concerning the impact of public funding—based primarily on studies of the Arizona, Connecticut, and Maine clean elections programs and New York City’s matching funds system—is that it has had a positive impact on electoral competitiveness. Specifically, it reduces the number of uncontested elections and tends to narrow incumbents’ margins of victory. There is also some evidence that it results in a greater diversity of candidates, especially in lower-level races.⁶⁰ However, there is little evidence that it has reduced the incumbent reelection rate.⁶¹ Skeptics suggest that this is because public funding is more likely to be taken up by long-shot challengers, not “quality” candidates, so that there will be more challengers but not many more challenger victories.⁶² But surely more contested elections, more close races, and fewer landslide reelections help keep incumbents accountable to their constituents.

2. CAMPAIGNING. Some studies have found that public funding, particularly the “clean elections” model, reduces the time and effort candidates need to devote to fundraising and enables them to focus more on direct interactions with voters.⁶³ In his study of the Arizona Clean Elections program, Matthew Miller suggested this also had an impact on voter participation, particularly in lower-profile

⁵⁹ See, e.g., WELFARE FOR POLITICIANS? TAXPAYER FINANCING OF CAMPAIGNS 7 (John Samples ed., Cato Inst., 2005); RAYMOND J. LA RAJA & BRIAN F. SCHAFFNER, CAMPAIGN FINANCE AND POLITICAL POLARIZATION: WHEN PURISTS PREVAIL 139–40 (2015) (contending that clean elections and matching funds programs exacerbate political polarization).

⁶⁰ See, e.g., Mayer, *supra* note 58, at 371; but cf. Malbin, *supra* note 7, at 17–18 (research on this point is inconclusive).

⁶¹ See, e.g., Malbin, *supra* note 7, at 15–17; MICHAEL G. MILLER, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 85–87 (2014); Mayer, *supra* note 58, at 370–74; U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-10-390, REPORT TO THE SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT, COMMITTEE ON APPROPRIATIONS, U.S. SENATE, CAMPAIGN FINANCE REFORM: EXPERIENCES OF TWO STATES THAT OFFERED FULL PUBLIC FUNDING FOR POLITICAL CANDIDATES 35–48 (2010) [hereinafter GAO REPORT].

⁶² See, e.g., Raymond J. La Raja & David L. Wiltse, *Money That Draws No Interest: Public Financing of Legislative Elections and Candidate Emergence*, 14 ELECTION L.J. 392 (2015).

⁶³ See, e.g., Miller, *supra* note 61, at 64–79; Mayer, *supra* note 58, at 379; Peter L. Francia & Paul S. Herrinson, *The Impact of Public Finance Laws on Fundraising in State Legislative Elections*, 31 AM. POL. RES. 520 (2003).

contests. He found that the clean elections system was associated with less “roll off”—that is, the tendency of voters to turn out to vote in the elections at the top of the ballot but then not bother to vote in down-ballot races. He surmised that by spending less time on fundraising and more time with the voters, candidates for lower-level positions made voters more aware of those contests, more informed about the candidates, and thus more willing to vote.⁶⁴ On the other hand, Michael Malbin has argued that the effects of public funding on how campaigns are conducted is less clear, and may reflect differences among political communities.⁶⁵ Moreover, in matching fund jurisdictions, fundraising and voter contact may be combined, especially in smaller legislative districts, with candidates simultaneously seeking matchable donations and votes. There may be just as much fundraising as in privately funded elections, but relatively less “dialing for dollars” with potential large donors and more street-level activity that combines fundraising and campaigning.

3. PARTICIPATION. There is evidence that small-donor match and tax credit and rebate programs that make small private donations more valuable to candidates broaden participation in the campaign finance system. New York City greatly increased the number and significance of small donors in its elections, with the number of small donors in City Council races more than doubling when the City went from a 1-to-1 to a 4-to-1 match (the subsequent shift to a 6-to-1 match had less impact).⁶⁶ In recent City Council races, roughly one-third of all private funds came from small donors, and roughly three-fifths of campaign funds consisted of small donations combined with the public match. As Malbin has explained, “[b]y multiplying the contribution’s value, the matching program gives the candidate a stronger motive to devote the time and money needed to find these new donors.”⁶⁷ Properly designed tax credit and rebate schemes have also increased the number of small donors,⁶⁸ although public education, outreach, and other program design features have been critical in determining the extent to which these programs are used.⁶⁹

As the discussion of the impact of public subsidies on fundraising indicated, these programs can affect other forms of political participation. Small donor fundraising today may be based less on direct mail and more on social media

⁶⁴ See Miller, *supra* note 61, at 71–79.

⁶⁵ Malbin, *supra* note 7, at 18–19.

⁶⁶ *Id.* at 20–21.

⁶⁷ *Id.* at 21.

⁶⁸ *Id.* at 22–23.

⁶⁹ See, e.g., Graham P. Ramsden & Patrick D. Donnay, *The Impact of Minnesota’s Political Contributions Refund Program on Small-Donor Behavior in State House Races*, 33 STATE & LOCAL GOV’T REV. 32 (2001).

and peer-to-peer networks, which can combine fundraising with other forms of political engagement. As Malbin has pointed out, “[s]urvey research makes it clear that giving a small contribution and volunteering are strongly associated with each other.”⁷⁰ Although there is little hard evidence that small-donor funding has increased other forms of political participation, Malbin urges that, “[a]necdotally, there is good reason to believe that a small contribution can be a gateway toward activism for many donors.”⁷¹

4. **EQUALIZING FINANCE.** By replacing private contributions with public funds, full funding programs necessarily reduce the role of large donors in financing elections. Properly designed small-donor match programs can promote political equality within the campaign finance system, too. A study conducted by the Campaign Finance Institute found that under New York City’s 6-to-1 small-donor matching system, in the municipal elections of 2009, the combination of small donations and public matching accounted for 64 percent of the campaign funds of City Council candidates. Moreover, the small-donor match resulted in an enlarged donor pool that is roughly representative of New York City’s population as a whole. In 2009, donors who gave \$250 or less came from 89 percent of the city’s census blocks. These small donors lived in neighborhoods where the average income, poverty level, racial composition, and education level were comparable to the city as a whole. By contrast, small donors provided hardly any of the funds for candidates in the privately funded elections for the New York State Assembly, even though City Council districts in New York City and State Assembly districts in New York City are of similar size and have similar constituencies.⁷²

5. **IMPACT ON PUBLIC POLICY.** There is no proof that public financing has affected public policy in the jurisdictions that have adopted it. To be sure, there have been anecdotal arguments that clean elections laws in Maine and Connecticut led to the enactment of prescription drug price control and a bottle deposit reform law, respectively, in those states. A range of other reform measures in Connecticut—including college tuition assistance for undocumented immigrants, a transgender rights bill, and a paid sick leave mandate—have also been attributed to the clean elections program.⁷³ But the connection between public funding and the enactment of specific reforms have also been

⁷⁰ Malbin, *supra* note 7, at 27.

⁷¹ *Id.*

⁷² *Id.* at 23–25.

⁷³ Mayer, *supra* note 58, at 375. See also *Our Voices, Our Democracy: Victories Since Citizens United and the Road Ahead: Empowering Voters Over Wealthy Special Interests* 15–17 (Feb. 2016), www.citizen.org/documents/our-voice-our-democracy-report-february-2016.pdf.

challenged,⁷⁴ and it is inevitably difficult to determine whether an electoral reform has affected public policy or whether other underlying political forces were responsible for both. As Kenneth Mayer has explained, significant policy changes “involve a complex amalgam of factors: policy streams, issue entrepreneurs, diffusion, interest groups and lobbying, mobilization, public opinion, path dependency, institutional capacity, bureaucratic politics... Campaign contributions may play a role in this process, but are likely (at most) only one piece of a much more complicated puzzle.”⁷⁵ Moreover, the effects of public funding may be offset by the role of private funding, particularly independent spending by interest groups, even in elections in which a significant percentage of the winning candidates have taken public funds. We do not have, and, under present constitutional doctrine, cannot have, truly fully public-funded elections. Thus, the impact of public funding on public policy and governance is bound to be limited.

B. Arguments against Public Funding

The older arguments against public funding were that it was unnecessary—given that there is no problem with privately funded elections—and therefore a waste of taxpayer dollars, and that it would lead to an “extreme, intrusive, and dangerous” government manipulation of our elections.⁷⁶ The argument that privately funded elections are just fine is essentially normative and turns on the degree of satisfaction, or the lack of it, with traditional private financing. There is, however, no evidence that public funding, where it exists, has interfered with the electoral process. Public funding may not have always helped challengers to be more competitive with incumbents, but it certainly has not advantaged incumbents over challengers.⁷⁷

More recently, critics have suggested that public financing contributes to political polarization.⁷⁸ The argument has two strands. First, studies have found that campaign donors are more politically polarized than other voters. To the extent that some public funding programs—small-donor matches,

⁷⁴ Mayer, *supra* note 58, at 375–77.

⁷⁵ *Id.* at 377.

⁷⁶ See, e.g., WELFARE FOR POLITICIANS? TAXPAYER FINANCING OF CAMPAIGNS, *supra* note 59, at 7.

⁷⁷ Malbin, *supra* note 7, at 16; KENNETH R. MAYER, TIMOTHY WERNER & AMANDA WILLIAMS, *Do Public Funding Programs Enhance Electoral Competition?*, in *THE MARKETPLACE OF DEMOCRACY: ELECTORAL COMPETITION AND AMERICAN POLITICS* (Michael P. McDonald & John Samples eds., 2006).

⁷⁸ See, e.g., La Raja & Schaffner, *supra* note 59, at 139–40.

rebates and tax credits, and vouchers—bring more but not all voters into the campaign finance system, it may be that more polarized voters utilize these programs. Second, one goal of public funding is to offset the impact of traditional interest group money. Interest groups tend to be more focused on obtaining access to elected officials than on candidate ideology. By reducing the role of relatively moderate, non-polarized interest group donors, public funding could result in increased political polarization.⁷⁹

At this point, however, there is little hard evidence that public funding contributes to polarization. Seth Masket and Michael Miller found no “substantively large or statistically significant” difference in the roll call voting behavior of clean-money funded state legislators, compared with their private-money funded counterparts, in Arizona or Maine during the decade after the clean elections programs were implemented in these states.⁸⁰ Moreover, as Michael Malbin has pointed out, although the top recipients of small donor contributions in Congressional races tend to be more ideologically extreme candidates, many other leading recipients of small donations are more mainstream. In privately funded elections, small donors may be more likely to hold politically extreme views than non-donors, but they tend to be less extreme than large donors.⁸¹ And the increased polarization within Congress has occurred entirely without public funding. The forces driving polarization may be affected by the campaign finance system but they appear to reflect far broader political dynamics.

In short, if the case for public funding is somewhat weaker and more speculative than its advocates assume, the case against it appears to be weaker still.

V. LOOKING FORWARD: THE FUTURE OF PUBLIC FUNDING

A. *Rethinking Public Funding’s Goals*

Although public funding in practice may not have accomplished, and may not be able to accomplish, all that its proponents have urged in theory, it still promises to make the financing of our election campaigns more consistent with our democratic ideals. Public financing appears to promote more contested elections and, when adequately funded and supported by appropriate regulation, can increase political participation and reduce the share of

⁷⁹ See, e.g., Andrew B. Hall, *How the Public Funding of Elections Increases Candidate Polarization* (Aug. 13, 2014) (unpublished working paper).

⁸⁰ See Seth E. Masket & Michael G. Miller, *Does Public Election Funding Create More Extreme Legislators? Evidence from Arizona and Maine*, 15 ST. POL. & POL’Y Q. 24 (2015).

⁸¹ See Malbin, *supra* note 7, at 26.

funding provided by large donors. Going forward, however, we need to focus more precisely on what public funding can achieve as that will determine what kind of public funding system ought to be adopted.

The initial impetus for public funding, as reflected in the general election presidential program, was egalitarian. Public funding was meant to eliminate the role of private wealth in funding elections and to equalize the resources available to the major competitors. But the experience of the last four decades suggests that under our current constitutional regime these goals are impossible to accomplish. As long as candidates are free to decline public funding and to raise and spend unlimited amounts of private funds, and as long as outside groups are free to devote unlimited amounts in independent expenditures to support or oppose publicly funded candidates, private money will continue to play a substantial role, and the resources available to candidates will be unequal.

To be sure, if a future Supreme Court were to overturn *Arizona Free Enterprise*, the availability of trigger funds could go far to making public funding more attractive and to offset the role of private wealth. But even before *Arizona Free Enterprise* no jurisdiction that made trigger funds available committed to fully matching private spending. Much more drastic changes to campaign finance doctrine—such as approval of very low limits on private contributions and on independent spending, or requiring candidates to take public funding if it is made available—would be necessary to achieve the goals of complete equality of candidate resources and fully decoupling the campaign finance system from private wealth. Even then, it seems likely that private spending on the periphery of the campaign system—particularly spending on political issues with electoral implications—would challenge the possibility of a fully public-funded system. And such a system would require vigorous implementation and enforcement by a powerful campaign finance agency, which would be difficult to create.

Thus, in the near-term at least, public funding should focus on goals that seem more capable of realization: lowering barriers to entry and aiding challengers; redirecting fundraising efforts away from large donors and special interests to ordinary voters; enlarging and diversifying the donor pool so that it is more representative of the entire political community; and using the campaign finance system to stimulate political participation.

B. System Design

This suggests some form of small-donor-targeted public funding—either small-donor match, tax credits and rebates, or vouchers. New York City's 6-to-1 match system highlights the potential of small-donor match programs to play a major role in financing campaigns. To date, usage of tax credit and rebate

programs has been quite modest, suggesting that these programs on their own are unlikely to generate much in campaign funds. The voucher model is only just being tried and so little is known about how it works in practice. There is, for example, considerable uncertainty about how many voters would use their vouchers. In the 2017 Seattle municipal election only about 15 percent of vouchers were actually used, but that election involved only city council seats and the city attorney position; participation might be higher for higher profile offices like mayor.⁸² Vouchers may also favor candidates who are better known at the start of the campaign, and thus will have a head start on persuading voters to give them their vouchers.⁸³ But credits, rebates, or vouchers aimed at increasing voter participation in the campaign finance process could be part of a broader hybrid system that also includes a mix of flat grants and matching funds. Credits or rebates could be used to stimulate small donations generally. A candidate who obtains a threshold number of small donations could be given a foundation grant that could enable her to compete at a basic level. In a low-cost or not-too-competitive jurisdiction, that might be enough to fully fund her campaign. Beyond that, candidates could be eligible for matching funds at a multiple ratio. In higher cost or more competitive races, this would enable them to rely on public funds and would also give them an incentive to pursue small donations.

C. Limiting Limits

Public funding programs should stop requiring spending limits. They do not work. They are counterproductive. And they are not needed in a public funding system focused on increasing competition and political participation and decreasing the role of special interest money.

Spending limits do not work because they do not apply—and under current law cannot be applied—to privately funded candidates and independent spenders. So long as some campaign participants can engage in unlimited spending the goals of spending limits—including equalization of spending by competitors and holding down the cost of campaigns—cannot be achieved. Spending limits are counterproductive because they can discourage the most competitive candidates in the most contested races from taking public funding. And they really do not make sense in a public funding program focused on

⁸² See SEATTLE ETHICS & ELECTIONS COMMISSION, DEMOCRACY VOUCHER PROGRAM BIENNIAL REPORT 2017, at 5 (2017) (vouchers were mailed to 540,000 residents, but only 80,000 were processed), www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%2003_15_2018.pdf.

⁸³ See MARK SCHMITT, BRENNAN CENTER FOR JUSTICE, POLITICAL OPPORTUNITY: A NEW FRAMEWORK FOR DEMOCRATIC REFORM 10 (2015).

increasing competition and expanding participation by small donors. Rather, the public funding system could continue to match small donations, albeit probably at a lower ratio when the candidate's war chest grows beyond a certain level or outpaces the opposition by a certain amount. At some point, the jurisdiction might choose to stop matching but let the candidate continue to raise and spend money subject to contribution limits.

As previously noted, a number of partial public funding systems impose other restrictions on participating candidates, such as on the size and source of contributions. It is not clear if this makes sense. To be sure, a jurisdiction can and should limit which donations are matchable (or eligible for rebates and credits). Presumably, it can limit the matches it makes to relatively small sums donated by individuals (not organizations) who are residents of the jurisdiction. This would strengthen the tie between the candidate's voting constituency and her financial constituency. But some public funding programs also impose tighter limits on non-matchable contributions than apply to privately funded candidates. Such an approach would advance the goals of reducing the influence of large donors and interest groups over candidates, but could come at the price of making public funding less attractive to more serious candidates. Moreover, it is not clear what is gained by such a requirement. After all, even a partially public-funded candidate is necessarily less dependent on large private donors. If the standard donation cap is adequate to address the corruptive danger of private contributions to non-publicly funded candidates, it is hard to see why candidates who are less likely to be corrupted by private donations should be subject to a lower donation cap or special restrictions on the sources of funds. To be sure, if legal doctrine changes and restrictions may be imposed on donations to and spending by independent groups or on the candidate's use of his or her personal wealth, then public funding might become more generally attractive. In that scenario, there would be less concern over more restrictive contribution rules discouraging candidates from taking public funds. However, in that alternative constitutional universe it might make more sense to apply more restrictive rules to all candidates, not just those taking public funds.

D. Political Parties

In other countries, public funds are more likely to be provided to political parties than to candidates.⁸⁴ In our candidate-centered system, most public funds should go to candidates, but there is some argument for providing at least some public support to parties. Academic research has shown that

⁸⁴ See Institute for Democracy and Electoral Assistance (IDEA), Political Finance Database, Are There Provisions for Direct Public Funding for Political Parties?, www.idea.int/data-tools/question-view/548.

political parties tend to channel money to the most competitive races,⁸⁵ and party organizations have long played an important role in engaging volunteers and mobilizing voters at the grass-roots level. In other words, providing public support to political parties would be fully consistent with the competition- and participation-promoting goals of public funding. Public funding would be particularly valuable for party building, organizational maintenance, and policy development functions in the months and years between elections. Moreover, political parties play a key role in organizing legislatures and developing and implementing public policy. Reducing the dependence of political parties on large donors could have broader benefits for governance.

Although parties could be supported by flat grants or matching funds programs, party assistance seems to be a particularly appropriate goal for tax-benefit and voucher plans.⁸⁶ Tax benefits could be made available in all years, not just election years. Permitting vouchers to be given to parties would make it easier for voters not certain of which candidate to support financially to use their vouchers: They could simply give their voucher to their party. Parties could then serve as agents of the voters by deploying the vouchers in the most contested races. Reliance on tax benefits and vouchers would also reduce the role of the government in deciding which parties are eligible for public support and how much public support any party can receive.

VI. CONCLUSION

Public funding surely has a central place in any system of democratic elections. It is the best, if not the only, way to reduce the dependence of candidates and parties on wealthy donors and special interest money. Public funding also makes it easier for challengers and political newcomers to compete, and it stimulates broader voter engagement with the electoral process. It is, of course, not a panacea and should not be oversold. Particularly in the current legal environment, there are constraints on what it can accomplish, and, accordingly, the design of public funding programs should probably reflect greater attention to its potential to increase competition and participation rather than a more thorough-going equalization of the system. Of course, if campaign finance doctrine were to give greater weight to equality, public funding could be able to accomplish far more. As with other electoral reforms, the success of public funding will turn on the specific details of the program and its fit with the surrounding political and legal environment.

⁸⁵ See, e.g., La Raja & Schaffner, *supra* note 59, at 67, 84.

⁸⁶ Accord, *id.* at 139–40.