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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

MARK ELSTER and SARAH PYNCHON,

Plaintiffs,

vs.

THE CITY OF SEATTLE,

Defendant.

No. 17-2-16501-8 SEA

[PROPOSED] *AMICUS CURIAE* BRIEF OF
COMMON CAUSE AND CAMPAIGN
LEGAL CENTER IN SUPPORT OF
DEFENDANT’S RULE 12(b)(6) MOTION
TO DISMISS

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1 to decades of Supreme Court case law, not to mention the sound policy judgment of almost two-
2 thirds of Seattle voters. Their Complaint must be dismissed.

3 **STATEMENT OF INTEREST OF *AMICI CURIAE***

4 *Amici* Common Cause and Campaign Legal Center (“CLC”) have a longstanding,
5 demonstrated interest in the design, enactment, and implementation of programs for the public
6 financing of political campaigns. This brief covers topics of particular concern to *amici*: it reviews
7 both the case law and academic research to demonstrate that the public financing of elections
8 advances important constitutional goals of preventing political corruption, enlarging the pool of
9 candidates for city offices, and fostering officeholder accountability and responsiveness.

10 Common Cause is a nonpartisan grassroots organization dedicated to upholding the core
11 values of American democracy. It works to create open, honest, and accountable government that
12 serves the public interest; to promote equal rights, opportunity, and representation for all. Decl. of
13 Paul S. Ryan ¶ 4. Common Cause Vice President for Policy & Litigation, Paul S. Ryan, consulted
14 in the drafting of I-122, and Common Cause engaged in digital grassroots organizing and letter
15 campaigns to support the initiative. *Id.* ¶¶ 6-8. Additionally, Common Cause has advocated for the
16 adoption of public financing programs through its near-50 year history, including, over the past
17 two years, spearheading successful campaigns for the adoption of public financing systems in
18 Berkeley, CA and Howard County, MD. *Id.* ¶ 10.

19 CLC is a nonprofit, nonpartisan organization that represents the public interest in
20 administrative and legal proceedings to promote the enforcement of government ethics, campaign
21 finance, and election laws. Decl. of Lawrence M. Noble ¶ 4. CLC has participated in numerous
22 cases addressing state and federal campaign finance issues, and also works directly with state and
23 municipal lawmakers and administrators, as well as other local stakeholders, to draft and review

1 campaign finance legislation and administrative guidance. *Id.* ¶¶ 5-7. In Seattle, CLC consulted
2 with local stakeholders in the drafting of I-122 and continues to assist in the implementation of the
3 law. *Id.*

4 As nonprofit organizations that regularly represent the public interest in litigation and
5 policymaking, *amici* have a unique perspective and substantial experience and expertise with the
6 issues raised in this case.

7 ARGUMENT

8 **I. The Democracy Voucher Program Imposes No Cognizable Burden On Plaintiffs’ First 9 Amendment Rights.**

10 In *Buckley*, the Supreme Court unequivocally affirmed the constitutionality of public
11 campaign financing. Nevertheless, plaintiffs contend that the Democracy Voucher Program
12 violates their First Amendment rights by compelling them to subsidize political speech with which
13 they disagree, and “disfavor[ing] minority viewpoints” because vouchers are allocated at the
14 discretion of individual voters and funded through a generally applicable property tax.

15 Those arguments are incompatible with *Buckley*, which made clear that the First
16 Amendment is not offended by public financing programs like Seattle’s that provide taxpayer-
17 funded subsidies to political campaigns on viewpoint-neutral terms. Like the presidential public
18 funding program upheld in *Buckley*, democracy vouchers provide a subsidy to participating
19 candidates but in no way restrict the speech of non-participating candidates or their supporters.

20 **A. The First Amendment does not bar Seattle from using local tax revenues to extend 21 non-discriminatory subsidies to local electoral campaigns.**

22 The Democracy Voucher Program does not amount to “compelled speech” simply because
23 it is funded with a generally applicable property tax. Nor does it make any difference,
constitutionally speaking, that the Program distributes public campaign funds through a voucher

1 system rather than in direct payments from the City. Indeed, the Supreme Court considered the
2 reverse of this argument in *Buckley*, where it rejected a claim that “Congress [was] required to
3 permit taxpayers to designate particular candidates or parties as recipients of their money.” 424
4 U.S. at 91. Instead, the Court held that the system of appropriating taxpayer money to the program
5 was “like any other appropriation from the general revenue.” *Id.* Since the provision fell into the
6 familiar category of appropriations, taxpayers could not raise a First Amendment issue simply by
7 complaining that some of their money was being used to support messages they disliked. After all,
8 “every appropriation made by Congress uses public money in a manner to which some taxpayers
9 object.” *Id.* at 92. The Court went on to endorse the public financing system as “a congressional
10 effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and
11 enlarge public discussion and participation in the electoral process, goals vital to a self-governing
12 people.” *Id.* at 92-93.

13 More recently, in *May v. McNally*, 55 P.3d 768 (Ariz. 2002) (en banc), the Arizona
14 Supreme Court applied *Buckley* to uphold provisions of the state’s public financing law, which
15 was funded in part through a mandatory 10% surcharge on civil and criminal fines. The plaintiff
16 resisted paying the surcharge on a parking ticket, asserting a First Amendment right not to
17 subsidize political campaigns he did not support. *Id.* at 770. In ruling for the state, the court relied
18 on *Buckley* for “the proposition that the public financing of political candidates, in and of itself,
19 does not violate the First Amendment, even though the funding may be used to further speech to
20 which the contributor objects.” *Id.* at 771. The court distinguished a series of post-*Buckley* cases,
21 starting with *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), that struck down compelled
22 subsidies for speech. Unlike the policies challenged in those cases, the Arizona program was not
23

1 “viewpoint driven” and surcharge payers were not compelled to be associated with “any specific
2 message, position, or viewpoint.” 55 P.3d at 772.

3 The subsidies attached to democracy vouchers are likewise allocated on viewpoint-neutral
4 terms. Plaintiffs attempt to argue otherwise, claiming that because the program is structured around
5 vouchers assigned at the discretion of individual voters, it “disfavors minority viewpoints” at the
6 expense of viewpoints espoused by more popular candidates. Compl. ¶ 29. In other words, because
7 “[c]andidates who enjoy the most support among residents will receive more voucher funds than
8 candidates with less support,” *id.* ¶ 32, Seattle’s program supposedly “differs from a neutral public
9 funding scheme in which candidates all receive an equal allotment of public funds,” *id.* ¶ 33.

10 But there is no constitutional requirement that a public financing program guarantee an
11 “equal allotment of public funds” to all candidates. Indeed, if there were, it would offend the many
12 public funding schemes in which the amount of public funding received by participating candidates
13 is based at least in part on the amount of eligible matching contributions they raise. New York
14 City’s system, for instance, matches eligible contributions from city residents to participating
15 candidates at a 6-to-1 rate. *See infra* Part III. Under a matching-funds model—as under the
16 Democracy Voucher Program—participating candidates “who enjoy the most support” will
17 receive more matching funds than “less popular candidates.” But no court has agreed that this
18 structure unconstitutionally discriminates against minority viewpoints.

19 Likewise unavailing is the plaintiffs’ claim that the Program violates the First Amendment
20 by “funnel[ing] money in a partisan manner” and subjecting plaintiffs to “the whim of majoritarian
21 interests.” Compl. ¶¶ 51, 55. Under Seattle’s system, all candidates are free to compete for every
22 voucher by appealing to the voucher-holder—ensuring that public money is used not to equalize
23 but to “enlarge public discussion and participation in the electoral process.” *Buckley*, 424 U.S. at

1 92-93 (emphasis added). Plaintiffs’ argument, taken to its logical end, would render many other
2 aspects of election funding constitutionally suspect, because the allotment of taxpayer dollars to
3 pay for ballot printing, poll worker salaries, or other routine election expenses is also likely
4 “unequal” between candidates given that more ballots are cast and counted for more popular
5 candidates.

6 *Buckley* notably rejected an argument that the federal program impermissibly discriminated
7 against non-major-party candidates because funding levels differed depending on whether a party
8 was a “major,” “minor,” or “new” party, as determined by proportions of the vote garnered in a
9 previous election. *Id.* at 87. The Court did not ignore that major-party and minor-party candidates
10 were being treated differently, but stressed that “[t]he Constitution does not require the
11 Government to ‘finance the efforts of every nascent political group’ merely because Congress
12 chose to finance the efforts of the major parties.” *Id.* at 98 (citation omitted). The asymmetry was
13 justified by “Congress’ interest in not funding hopeless candidacies” and “the important public
14 interest against providing artificial incentives to ‘splintered parties and unrestrained
15 factionalism.’” *Id.* at 96 (citations omitted). Furthermore, the challengers had “made no showing
16 that the election funding plan disadvantages nonmajor parties by operating to reduce their strength
17 below that attained without any public financing.” *Id.* at 98-99.

18 Similarly, the Supreme Court summarily affirmed a decision upholding a Minnesota check-
19 off system in which a taxpayer could direct the state to allocate part of her tax burden *to a specific*
20 *party*, so that the amount of each party’s funding depended partly on how many taxpayers chose
21 to support it. The challengers complained that this scheme resulted in asymmetrical funding, but a
22 three-judge district court ruled that, under *Buckley*, “[i]t is clear that a party or candidate’s
23 demonstrated public support may properly be considered in the distribution of public campaign

1 funds,” and the legislature was owed deference for its decision. *Bang v. Chase*, 442 F. Supp. 758,
2 766 (D. Minn. 1977) (three-judge court), *aff’d sub nom. Bang v. Noreen*, 436 U.S. 941 (1978).

3 Plaintiffs’ attempt to relitigate *Buckley* cannot succeed. If Seattle’s system is not viewpoint-
4 neutral, neither was the presidential public financing system upheld by the Supreme Court in
5 *Buckley*. If, as the plaintiffs contend, the Program is viewpoint-discriminatory because the amount
6 of public funding each candidate receives will depend on how many voucher-holders decide to
7 support that candidate, the programs upheld in *Buckley* and *Bang* would appear to be viewpoint-
8 discriminatory for the same reason. That is not how the Supreme Court saw it, then or since. *See*,
9 *e.g.*, *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 241 (2000) (Souter, J.,
10 concurring) (characterizing public financing system upheld in *Buckley* as “a congressional
11 program providing viewpoint neutral subsidies to all Presidential candidates”).

12 **B. The Democracy Voucher Program’s funding mechanism does not unconstitutionally**
13 **discriminate against property owners.**

14 Seattle’s program is funded through a small tax levy on local property owners. Plaintiffs
15 argue that this funding mechanism—which “costs the average homeowner about \$11.50 per
16 year”¹—discriminates against property owners as a class. But a property tax is precisely the kind
17 of generally applicable tax on which governments routinely rely to fund their activities, and is
18 readily distinguishable from the type of targeted assessment that has raised First Amendment
19 concerns in other contexts.

20 The Supreme Court has explained that “First Amendment values are at serious risk if the
21 government can compel *a particular citizen, or a discrete group of citizens*, to pay special subsidies
22 for speech on the side that it favors.” *United States v. United Foods, Inc.*, 533 U.S. 405, 411 (2001)

23 _____
¹ See <http://www.seattle.gov/democracvoucher/about-the-program>.

1 (emphasis added). Thus, for example, the government could not force mushroom producers to
2 subsidize generic mushroom advertising whose message they did not support, *id.* at 408-09, 416,
3 and personal assistants who worked as “quasi-public employees” could not be forced to pay agency
4 fees to subsidize the speech of a labor union they did not wish to join, *Harris v. Quinn*, 134 S. Ct.
5 2618, 2638 (2014). In the absence of such a narrowly targeted tax or fee, government can use its
6 money to subsidize speech on a viewpoint-neutral basis without First Amendment issue. *Regan v.*
7 *Taxation With Representation of Wash.*, 461 U.S. 540, 548-49 (1983).

8 In *May*, the Arizona Supreme Court found that the surcharge on civil and criminal penalties
9 fell on the general-taxation side of the line and was not a constitutionally problematic “special
10 tax.” The court rejected the view that the surcharge did not “apply to all Arizonans”:

11 It does; any person who pays a civil or criminal fine is subject to pay the surcharge.
12 Just as any person choosing to purchase a new car or other non-exempt good must
13 pay a tax, any person found to have parked illegally or committed a crime will face
14 the surcharge. No narrow, discrete group of taxpayers is at issue in the case before
15 us, nor are the fine payers exercising a First Amendment right.

16 55 P.3d at 774. The court also distinguished cases involving fees that directly burdened First
17 Amendment activity, including *Butterworth v. Republican Party of Florida*, 604 So.2d 477, 478
18 (Fla. 1992) (invalidating 1.5% assessment on certain contributions to political parties used to fund
19 Florida public campaign financing system because it directly burdened political contributions),
20 and *Vermont Society of Association Executives v. Milne*, 779 A.2d 20, 21 (Vt. 2001) (holding that
21 a tax on lobbyists used to fund political campaigns violated the lobbyists’ First Amendment rights).

22 The Program’s funding mechanism is analogous to the general surcharge upheld in *May*.
23 A property tax, like the surcharge, does not single out a “narrow, discrete group of taxpayers” but
generally applies to “any person” who engages in the taxable conduct (here, buying and holding
real property). A holding that a property-tax-funded subsidy infringes the expressive rights of

1 property owners would lead to significant upheaval in other areas of municipal finance. Local
2 public schools, for example, rely heavily on property taxes. Certainly, school districts provide
3 subsidies and platforms for speech that some property owners find objectionable, but that alone
4 does not establish a First Amendment violation. *See, e.g., Abood*, 431 U.S. at 259 n.13 (Powell, J.,
5 concurring) (“Clearly, a local school board does not need to demonstrate a compelling state interest
6 every time it spends a taxpayer’s money in ways the taxpayer finds abhorrent.”). Nor is owning
7 property *itself* an expressive activity, which suffices to distinguish the Florida and Vermont cases,
8 where the state was imposing a financial burden on the direct exercise of First Amendment rights.

9 **II. Public Campaign Financing Programs Like Seattle’s Strengthen Democracy And**
10 **Advance First Amendment Values.**

11 The compelling interests advanced by public financing systems like Seattle’s are well
12 established, in jurisprudence and in scholarship. *See, e.g., Buckley*, 424 U.S. at 96. The Democracy
13 Voucher Program does not impose any cognizable burden on plaintiffs’ First Amendment rights,
14 *supra* Part I, but even if it did, any burdens are easily outweighed by the important interests it
15 advances.

16 **A. Longstanding judicial precedent makes clear that public financing of campaigns**
17 **promotes vital constitutional and policy interests.**

18 When the Supreme Court upheld the presidential public financing system in *Buckley*, it
19 affirmed that public financing works generally “to reduce the deleterious influence of large
20 contributions on our political process.” *Id.* at 91. First and perhaps foremost, therefore, public
21 financing prevents the corruption often endemic to privately financed elections and diminishes
22 candidates’ reliance on large donations and special interest money: “It cannot be gainsaid that
23 public financing as a means of eliminating the improper influence of large private contributions
further a significant governmental interest.” *Id.* at 96. The *Buckley* Court also noted that public

1 financing “facilitat[es] and enlarg[es] public discussion and participation in the electoral process”
2 and “reliev[es] major-party Presidential candidates from the rigors of soliciting private
3 contributions.” *Id.* at 92-93, 96. The Court had no trouble concluding that these interests were
4 “sufficiently important” to support public financing. *Id.* at 95-96.

5 A few years later, a three-judge federal district court revisited *Buckley*, ultimately rejecting
6 a claim that the presidential system violated the First Amendment rights of either candidates or
7 their supporters by conditioning eligibility for public funds upon compliance with expenditure
8 limits. *Republican Nat’l Comm. v. FEC*, 487 F. Supp. 280, 283-84 (S.D.N.Y.) (“*RNC*”), *aff’d*, 445
9 U.S. 955 (1980). Any burden that may be imposed by the system, the court emphasized, was
10 outweighed by the countervailing benefits identified in *Buckley*—*i.e.*, “reduc[ing] the deleterious
11 influence of large contributions,” “facilitat[ing] communication” with voters, and “free[ing]
12 candidates from the rigors of fundraising.” *Id.* at 285 (quoting *Buckley*, 424 U.S. at 91). The court
13 also highlighted the program’s powerful anticorruption effects: “If the candidate chooses to accept
14 public financing he or she is beholden unto no person and, if elected, should feel no post-election
15 obligation toward any contributor of the type that might have existed as a result of a privately
16 financed campaign.” *Id.* at 284. The Supreme Court summarily affirmed. 445 U.S. 955.

17 In the decades since *Buckley* and *RNC*, courts have continued to approve public financing
18 as an effective method of campaign reform.² For example, numerous courts have accepted that
19 public financing lessens the influence and importance of large contributions, particularly those
20 from lobbyists and special interests. *See, e.g., Green Party of Conn. v. Garfield*, 616 F.3d 213, 230

21
22 ² More recently, the Supreme Court—even as it deemed the First Amendment injury worked
23 by certain “trigger” provisions contained in some programs too severe to pass constitutional
muster—reaffirmed its longstanding recognition that public financing serves valuable interests.
Ariz. Free Enterprise Club’s Freedom Club PAC v. Bennett, 564 U.S. 721, 752 (2011).

1 (2d Cir. 2010) (finding Connecticut program worked to “eliminate improper influence on elected
2 officials”); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1553 (8th Cir. 1996) (recognizing public
3 financing reduces the “possibility for corruption that may arise from large campaign contributions”
4 and diminishes “time candidates spend raising campaign contributions, thereby increasing the time
5 available for discussion of the issues and campaigning”); *Vote Choice, Inc. v. DiStefano*, 4 F.3d
6 26, 39 (1st Cir. 1993) (validating state’s interest in public financing “because such programs . . .
7 tend to combat corruption”).

8 Similarly, public financing has been found to increase electoral competitiveness and reduce
9 the advantages of incumbency. For example, the Second Circuit upheld provisions of New York
10 City’s public funds matching system, which “matches” eligible contributions from city residents
11 to participating candidates, but excludes contributions from individuals doing business with the
12 city, including lobbyists, from the public funds match. *Ognibene v. Parkes*, 671 F.3d 174,179-81
13 (2d Cir. 2011). The court—noting that the system both “encourages small, individual
14 contributions, and is consistent with [an] interest in discouraging entrenchment of incumbent
15 candidates,” *id.* at 193—upheld the restrictions, recognizing that they were intended “to avoid
16 stacking the deck in favor of incumbents.” *Id.* at 192. Other decisions have highlighted similarly
17 beneficial impacts on competitiveness. *See, e.g., Green Party*, 616 F.3d at 237 (acknowledging
18 that “minor-party candidates as a whole, many of them running in safe districts, appear to have
19 done better” following Connecticut’s enactment of public financing); *Rosenstiel*, 101 F.3d at 1557
20 (noting that any incumbent who accepts public financing “is bound by the State’s expenditure
21 limits and his alleged advantage in fundraising capacity is diminished significantly”).

22 Finally, lower courts have also found that public financing encourages engagement
23 between candidates and voters, because such programs “facilitate communication by candidates

1 with the electorate.” *DiStefano*, 4 F.3d at 39 (quoting *Buckley*, 424 U.S. at 91); *see also, e.g.,*
2 *Corren v. Sorrell*, 167 F. Supp. 3d 647, 659 (D. Vt. 2016) (“Vermont’s public financing system
3 allows candidates to communicate freely with, and receive meaningful assistance from, their
4 supporters.”), *appeal docketed sub nom. Corren v. Donovan*, No. 17-1343 (2d Cir. Apr. 28, 2017).

5 **B. There is a large body of scholarly research demonstrating the salutary effects of**
6 **public financing.**

7 The government interests recognized by the courts are borne out in a large body of
8 academic research studying existing public financing programs. Both empirical and academic
9 analyses have shown that public financing advances the important state interests that Seattle’s
10 seeks to achieve: diminishing the potential for political corruption by lessening candidates’
11 reliance on large private contributions; fostering political engagement within the electorate; and
12 enabling more people to seek public office, which in turn boosts electoral competitiveness. *See,*
13 *e.g.,* Seattle Mun. Code (“SMC”) § 2.04.600(a) (declaring interest in “giving more people an
14 opportunity to have their voices heard in our democracy” and “expand[ing] the pool of candidates
15 for city offices [] to safeguard the people’s control of the elections process in Seattle”).

16 Public financing offers an alternative to the private donor model of campaign financing
17 and can help to alleviate the potentially “deleterious influence” of money in our democracy. A
18 defining feature of many public finance programs, including Seattle’s, is candidates’ voluntary
19 acceptance of lower contribution limits and expenditure ceilings in exchange for a jurisdiction’s
20 provision of public funds. *See* Michael J. Malbin, Campaign Finance Inst. (“CFI”), Citizen
21 Funding for Elections 5 tbl.1 (2015), [http://www.cfinst.org/pdf/books-reports/CFI_Citizen](http://www.cfinst.org/pdf/books-reports/CFI_Citizen_FundingforElections.pdf)
22 [FundingforElections.pdf](http://www.cfinst.org/pdf/books-reports/CFI_Citizen_FundingforElections.pdf). By design, these controls reduce the need for candidates to solicit large
23 contributions from private sources, diminishing both the opportunity for actual corruption as well
as the impression that elected officials are beholden to major contributors. Findings from

1 jurisdictions with public financing illustrate that these programs do, in fact, curtail the primacy of
2 large contributions in elections while amplifying the significance of individual voters within the
3 campaign process.

4 After Connecticut introduced public financing for statewide election campaigns in 2010,
5 the prominence of small-dollar individual contributions increased dramatically in those races. In
6 2006, prior to the enactment of public financing, successful statewide candidates raised about eight
7 percent of their total campaign funds in contributions between \$5 and \$100 from individuals;
8 instead, candidates mostly funded their campaigns through large donations from non-individuals
9 and special interests—including lobbyists and state contractors. Conn. State Elections
10 Enforcement Comm’n, *Citizens’ Election Program 2010: A Novel System with Extraordinary*
11 *Results* 8-12 (2011), http://www.ct.gov/seec/lib/seec/publications/2010_citizens_election_
12 [program_report_final.pdf](http://www.ct.gov/seec/lib/seec/publications/2010_citizens_election_). After the program took effect, every successful statewide candidate
13 opted to participate. *Id.* at 8. In accordance with the program’s strictures, these candidates raised a
14 full 100% of their campaign contributions from individuals in amounts between \$5 and \$100. *Id.*

15 Individual donors also played a greater role in Connecticut legislative races (relative to
16 non-individual contributors like PACs) following the introduction of public financing. Individuals
17 provided 97% of all contributions received by candidates for the state legislature in the 2010
18 elections, compared to only 49% of all contributions received by legislative candidates in the 2006
19 elections. *Id.* at 4-5.

20 Analysis of New York City’s public financing program similarly found that the city’s
21 implementation of multiple-matching public funds in 2001 resulted in a significant increase both
22 in the number of small contributors, measured as individual donors of \$250 or less, and in the
23 proportional importance of small contributors to competitive city council candidates participating

1 in the program. Michael J. Malbin et al., *Small Donors, Big Democracy: New York City's Matching*
2 *Funds as a Model for the Nation and States*, 11 Election L. J. 3, 9-10 (2012), [http://www.cfinst.](http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf)
3 [org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf](http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf). These positive effects were
4 consistent across challengers, incumbents, and open-seat candidates. *Id.*

5 Besides curbing candidates' reliance on large private contributions, research indicates that
6 public financing promotes political engagement among a more demographically representative
7 segment of the electorate. A study of the New York City program found that 89% of the city's
8 census-block groups had at least one small donor of \$175 or less to a city candidate in the 2009
9 municipal elections. Elisabeth Genn et al., Brennan Ctr. for Justice, *Donor Diversity Through*
10 *Public Matching Funds* 10 (2012), [https://www.brennancenter.org/sites/default/files/legacy/](https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF)
11 [publications/DonorDiversityReport_WEB.PDF](https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF). By comparison, individual contributions of \$175
12 or less to candidates for the New York State Assembly, which are not matched with public funds,
13 came from only 30% of New York City's census-block groups in 2010. *Id.*

14 Moreover, the same study determined census-block groups with at least one small donor
15 to a city candidate were statistically less affluent and more racially diverse than census-block
16 groups with at least one large donor (individuals giving \$1,000 or more), suggesting that the
17 matching program spurred a broader swath of the city populace to participate in the campaign
18 process. *Id.* at 14. A separate analysis revealed that more than half of the individuals who made a
19 contribution during the 2013 city elections were first-time contributors, 76% of whom made a
20 small contribution of \$175 or less. New York City Campaign Finance Bd., *By the People: The*
21 *New York City Campaign Finance Program in the 2013 Elections* 41 (2014), [http://www.nycffb.](http://www.nycffb.info/PDF/per/2013_PER/2013_PER.pdf)
22 [info/PDF/per/2013_PER/2013_PER.pdf](http://www.nycffb.info/PDF/per/2013_PER/2013_PER.pdf).

1 These figures collectively establish that existing public financing programs have succeeded
2 in bringing new and diverse voices into the political fold, so it would be reasonable to anticipate a
3 comparable swell in citizen participation in Seattle. Because democracy vouchers are available to
4 any Seattle resident eligible to make a campaign contribution, the number of individuals giving
5 contributions, in the form of voucher assignments, could increase dramatically—and early results
6 indeed show encouraging levels of citizen participation.³ Given what is known about programs in
7 other locales, many of those contributing vouchers are likely to be first-time donors representing
8 diverse segments of the city population.

9 In addition to more citizen engagement, public financing encourages participating
10 candidates to conduct more meaningful voter outreach. A 2008 survey of state legislative
11 candidates found that candidates accepting full public funding devoted significantly more time to
12 non-fundraising interaction with the public, such as face-to-face canvassing and related “field”
13 activities to mobilize voters, than did candidates who did not accept public financing. Michael G.
14 Miller, *Subsidizing Democracy: How Public Funding Changes Elections and How It Can Work in*
15 *the Future* 56-62 (2013). In the aggregate, a review of the survey results determined that legislative
16 candidates accepting full public funding reported spending about 11.5% more time per week on
17 direct voter outreach than privately financed candidates. *Id.* at 61.

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20 ³ Seattle residents have allocated over 27,000 democracy vouchers worth nearly \$700,000
21 to city candidates since January 2017. See Seattle Ethics & Elections Commission (“SEEC”),
22 *Democracy Voucher Program: Program Data*, [https://www.seattle.gov/democracypoucher/](https://www.seattle.gov/democracypoucher/program-data)
23 [program-data](https://www.seattle.gov/democracypoucher/program-data). According to figures in SEEC’s interactive database, 9,495 contributors have given
to a candidate for City Council Position 8 so far in the 2017 election, compared to the 3,005 total
contributors in 2015 for the same seat. See SEEC, *Charts*, [http://web6.seattle.gov/ethics/elections/](http://web6.seattle.gov/ethics/elections/charts.aspx)
[charts.aspx](http://web6.seattle.gov/ethics/elections/charts.aspx). The number of Seattle residents *assigning* vouchers to candidates is likely to increase
even more as the general election approaches.

1 The increased interaction between candidates and voters facilitated through public
2 financing can augment voters' confidence that they have sufficient information to select the
3 candidate best able to serve their interests, especially in low-visibility state and local races. The
4 improved familiarity with candidates may even prompt some voters to cast a vote in a race from
5 which they might otherwise abstain. An examination of state legislative races determined that voter
6 roll-off—the phenomenon in which voters do not cast a vote for all elections on a ballot—
7 decreased by around 20% in elections contested by at least one publicly funded candidate. *Id.* at
8 76-77. This suggests that publicly financed candidates' concentration on direct outreach may
9 increase the number of votes cast in their race.

10 Democracy vouchers give city candidates a direct incentive to reach out to as many city
11 residents as possible to collect vouchers, so the Program is oriented towards engagement. Based
12 on findings from other jurisdictions, it is reasonable to predict that the program will enhance
13 overall political engagement in Seattle.

14 Public financing programs address another common ailment in American elections: a lack
15 of competition. Analyses show that these systems increase certain measures of electoral
16 competitiveness and may weaken incumbents' advantage over challengers.⁴ After taking effect in
17 2000, the Maine Clean Elections Act immediately increased the number of candidates and
18 decreased the margin of victory in state senate elections in 2000 and 2002—compared to 1994
19 through 1998—in districts where a candidate accepted public funding. Neil Malhotra, *The Impact*

21 ⁴ An integral component of incumbents' electoral advantage is financial. PACs and access-
22 motivated interest groups, such as highly regulated industries, are more likely to contribute to
23 incumbent candidates than challengers. See Alexander Fournaies & Andrew B. Hall, *The*
Financial Incumbency Advantage: Causes & Consequences, 76 J. Pol. 711 (2014); Michael
Barber, *Donation Motivations: Testing Theories of Access & Ideology*, 69 Pol. Res. Q. 148 (2016).

1 *of Public Financing of Electoral Competition: Evidence from Arizona and Maine*, 8 State Pol. &
2 Pol'y Q. 263, 275-77 (2008), [https://web.stanford.edu/~neilm/The%20Impact%20of%20](https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf)
3 [Public%20Financing%20on%20Electoral%20Competition.pdf](https://web.stanford.edu/~neilm/The%20Impact%20of%20Public%20Financing%20on%20Electoral%20Competition.pdf). A separate study of Maine
4 elections following its adoption of public financing concluded that, through 2004, “electoral
5 competitiveness” had improved, as measured by percentage of incumbents facing major-party
6 opposition, percentage of incumbents winning with less than 60% of the vote, and incumbent re-
7 election rate. Kenneth R. Mayer et al., *Do Public Funding Programs Enhance Electoral*
8 *Competition?*, in *The Marketplace of Democracy: Electoral Competition & American Politics* 245,
9 247-49 (Michael P. McDonald & John Samples eds., 2006).

10 Connecticut reported a similar uptick in electoral competition after public funding for
11 legislative elections was introduced in 2008: the number of unopposed legislative races dropped
12 considerably after the program’s rollout, from 53 unopposed elections in 2008 to 32 in 2010.
13 *Citizens’ Election Program 2010, supra*, at 6. This jump in contested elections was consistent with
14 an overall increase in the number of legislative candidates in 2010, many of whom cited the
15 availability of public funds as a factor in their decision to run for office. *Id.* at 6-7. Furthermore,
16 the availability of public funds for legislative candidates in 2008 and 2010 correlated with a general
17 decline in candidates’ margins of victory in “competitive” races. *Id.* at 7-8.

18 Broader studies show comparable escalation in electoral competitiveness in states offering
19 public financing. In 2016, the National Institute for Money in State Politics (“NIMSP”) issued a
20 report on monetary competitiveness in state legislative races in 2013 and 2014. Zac Holden, *2013*
21 *and 2014: Monetary Competitiveness in State Legislative Races*, NIMSP (Mar. 9, 2016), [https://](https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races)
22 [www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-](https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races)
23 [in-state-legislative-races](https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races). Under the report’s methodology, a race was deemed monetarily

1 competitive if the race’s top fundraiser raised no more than twice the amount of the next-highest
2 fundraiser. *Id.* Analyzing data from 47 states, NIMSP found that only 18% of legislative races
3 nationally were monetarily competitive during the 2013 and 2014 elections. *Id.* tbl.1.

4 However, the percentage of monetarily competitive elections was considerably higher in
5 the five states offering public financing for legislative candidates: an average of 41% of legislative
6 races in states with public financing programs were monetarily competitive in 2014. *Id.*
7 (calculation from Table 2). Moreover, three of the five *most* monetarily competitive states had
8 enacted public financing for legislative candidates, while none of the five *least* monetarily
9 competitive states offered candidates any public funds. *Id.* tbls.3 & 4. The report also concluded
10 that public financing increased the number of contested legislative races. In states with public
11 financing for legislative elections, 87% of legislative seats were contested, compared to only 61%
12 of legislative seats contested in states without public financing programs. *Id.*

13 These findings about electoral competitiveness point to a substantial likelihood that the
14 Democracy Voucher Program will fulfill an express aim of I-122: “expand[ing] the pool of
15 candidates for city office.” SMC § 2.04.600(a).

16 **III. If Accepted, Plaintiffs’ Legal Arguments Would Undermine Effective Public**
17 **Financing Programs Across The Country.**

18 There is a diversity of public funding models in jurisdictions across the country. Flexibility
19 in the design and implementation of public campaign financing programs is key to their success,
20 and for that reason, states and localities have generally been afforded substantial latitude in their
21 efforts to craft campaign finance laws to meet local needs. Plaintiffs’ legal arguments, if accepted,
22 would cast doubt on the constitutionality of those efforts.

23 After *Buckley* broadly endorsed the constitutionality of public financing, numerous public
funding programs were enacted at the state and local levels. Today, nineteen states provide some

1 form of public subsidy in connection to state electoral campaigns. *See* Malbin, *Citizen Funding*,
2 *supra*, tpls.1 & 2. In addition, at least nineteen local jurisdictions other than Seattle, including New
3 York City and Los Angeles, have enacted some form of public campaign financing. *Id.*; *see also*
4 Andrew Michaels, *Howard County Council passes small dollar donor finance system to begin in*
5 *2022 election cycle*, Baltimore Sun (June 6, 2017), [http://www.baltimoresun.com/news/maryland/](http://www.baltimoresun.com/news/maryland/howard/columbia/ph-ho-cf-council-campaign-funding-0608-20170606-story.html)
6 [howard/columbia/ph-ho-cf-council-campaign-funding-0608-20170606-story.html](http://www.baltimoresun.com/news/maryland/howard/columbia/ph-ho-cf-council-campaign-funding-0608-20170606-story.html); Tom Lochner,
7 *Most Berkeley ballot measures pass*, East Bay Times (Nov. 16, 2016), [https://www.eastbaytimes.](https://www.eastbaytimes.com/2016/11/15/berkeley-most-ballot-measures-pass)
8 [com/2016/11/15/berkeley-most-ballot-measures-pass](https://www.eastbaytimes.com/2016/11/15/berkeley-most-ballot-measures-pass). As these programs have proliferated,
9 jurisdictions have embraced varying models for providing public subsidies to electoral campaigns,
10 ranging from state refunds for individuals who make political contributions to participating
11 candidates,⁵ to full public financing for state political and judicial campaigns.

12 The particulars of these programs vary by jurisdiction, but all systems essentially
13 supplement or replace privately raised donations with public funds for participating candidates in
14 order to conduct their campaigns. In exchange, a participating candidate typically must adhere to
15 special fundraising rules, such as lower contribution limits and caps on total campaign spending.

16 One model of public financing—the “Clean Elections” system in place in Arizona,
17 Connecticut, Maine and Vermont⁶ —provides each participating candidate a lump-sum grant to
18 cover the full cost of the campaign. In return, the candidate’s campaign must be funded exclusively
19 with public funds. Another popular model involves a jurisdiction “matching” certain private
20 contributions received by a participating candidate with public funds. Unlike the “Clean Elections”

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22 ⁵ *E.g.*, Minn. Stat. §§ 10A.322; 290.06 subd. 23.

23 ⁶ *See* Ariz. Rev. Stat. Ann. §§ 16-940 to -961; Conn. Gen. Stat. §§ 9-700 to -759; Me. Rev. Stat. Ann. tit. 21-A, §§ 1121 to 1128; Vt. Stat. Ann. tit. 17, §§ 2981 to 2986; *see also* Albuquerque, N.M. Charter, art. XVI.

1 system, candidates accepting matching funds still raise private donations; however, the city or state
2 will amplify the value of small contributions from residents of the jurisdiction with public funds
3 at a set rate. New York City has administered a matching funds program for municipal candidates
4 since 1988. Malbin, *Small Donors, supra*, at 5-7. Under the program, the city matches each
5 qualified contribution that a participating candidate receives from a city resident at a six-to-one
6 rate up to \$175.⁷ The program has achieved impressive results, with consistently high candidate
7 participation and electoral competition, and serves as a prime example of the democratic benefits
8 possible under a well-administered public funding program. *See supra* Part II.B.

9 Democracy vouchers are a creative new approach to the same fundamental concerns that
10 motivated all of these programs. Seattle's voucher system is, in some respects, the first of its kind;
11 in others, it is indistinguishable from the federal scheme upheld in *Buckley*. This form of local
12 innovation has been integral to the development of vibrant and effective public financing regimes
13 in jurisdictions nationwide. Accepting the plaintiffs' arguments here would threaten that
14 innovation, undermining existing programs and disrupting future reform efforts.

15 CONCLUSION

16 For the foregoing reasons, *amici* Campaign Legal Center and Common Cause respectfully
17 ask that the City's Motion to Dismiss be granted.

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23 ⁷ For example, the city would match a \$175 contribution with \$1,050 in public funds, making
the contribution's total value \$1,225 after the match. *See* N.Y.C. Admin. Code § 3-705(2)(a).

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Dated: September 20, 2017

1 **CERTIFICATE OF COMPLIANCE**

2 I certify that this Motion to Dismiss contains 5,972 words in compliance with the Local
3 Civil Rules of the King County Superior Court as amended September 1, 2016.

4 DATED this 20th day of September, 2017.

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1 **CERTIFICATE OF SERVICE**

2 This certifies that a true and correct copy of the *Amicus Curiae* Brief In Support of
3 Defendant’s Rule 12(b)(6) Motion, attached to the Unopposed Motion of Common Cause and
4 Campaign Legal Center For Leave To File *Amicus Curiae* Brief , was filed with the King County
5 Superior Court e-Filing System which will effect service on all counsel of record as noted below:

<p>6 <i>Attorneys for Plaintiffs:</i></p> <p>7 Ethan W. Blevins 8 Wencong Fa 9 PACIFIC LEGAL FOUNDATION 10 10940 33rd Place NE, Suite 210 11 Bellevue, WA 98004 12 (425) 576-0484 / (916) 419-7111</p>	<p>By E-mail/King County Superior Court E-Service Filing Notification:</p> <p>EBlevins@pacificlegal.org WFa@pacificlegal.org</p>
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16 DATED this 20th Day of September, 2017.

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