

Committee on Government Operations, Rules, and Claims
Cambridge City Council
795 Massachusetts Avenue
Cambridge, Massachusetts 02139

January 29, 2015

Dear Chairman Toomey and Councilors Cheung, Mazen, McGovern, and Simmons:

Thank you for the opportunity to provide some information regarding potential policy options to explore for municipal public campaign financing.

I. Reasons for public financing

Campaign finance reforms, generally speaking, can address several problems.

The first issue is *equality*. Based on data from the 2013 Cambridge election available from the state Office of Campaign and Political Finance, the average amount raised in 2013 by successful city council candidates was about \$35,000, and while there are certainly outliers, it would be rare for a credible first-time campaign to be mounted for less than \$15,000.¹ Under the present privately-financed system, candidates generally rely on donors who can give \$200 or more—and, increasingly, on donors who can give *substantially* more. Of the amount raised in 2013, about 69% came from donations of \$200 or more, and nearly 40% came from funders giving the legal maximum \$500 donation. By contrast, contributions below \$25 were extremely rare. While perhaps this reflects citizens who care especially about Cambridge politics, it also reflects citizens who *have* an extra \$200 to give to city council candidates.

This means that a candidate who might appeal to a large number of *voters*, but whose connections are mostly among (and, perhaps, whose positions mostly appeal to) lower-income residents, will have a much more difficult time raising enough funds to mount a credible campaign. In essence, a candidate must *first* gain the approval of a sufficient number of wealthy donors to raise enough funds to mount a serious campaign, and *then* may compete in the general election. This “wealth primary” does not simply exclude *candidates*; it excludes *voters*. Lower-income voters simply have less opportunity to elect candidates of their choice; by the time they get to the polls in November, the choices have already been

¹ These numbers are drawn from two different analyses that report numbers slightly differently, but with the same general themes. See Prof. Robert Winters, Cambridge Civic Journal, “2013 Cambridge City Council Campaign Finance Receipts (Jan 1, 2013 through July 31, 2014)” (Aug. 16, 2014), at <http://cambridgecivic.com/?p=3065>; Marc Levy, Cambridge Day, “How much did it cost to get each vote?” (Nov. 12, 2013), at <http://www.cambridgeday.com/?p=27256>.

narrowed down for them by three (and soon, four) digit donors.² In fact, much of this winnowing of candidates is done by donors who do not even vote in the city; in the crucial three months before the election, only 34 out of 127, or 27%, of maximum \$500 donations were made by Cambridge residents. In some ways, this mutes the benefits of the city's famous choice voting system.

A second issue is *influence*, or its appearance. While *quid pro quo* corruption (outright bribery, trading donations for votes) does not appear to be a problem in Cambridge, some citizens might believe that large donors, especially those who represent business concerns with projects before the city council, might have more influence or access than ordinary residents.³ Even if this perception is untrue in a particular case, the perception itself is damaging because it reduces confidence in government. For example, when a citizen learns that a city councilor who voted for a zoning exemption for a real estate developer has received thousands of dollars in contributions from a real estate developer and that developer's family members, the citizen is likely to believe that the councilor was at least subtly influenced—by the hope of receiving further contributions, and perhaps by the personal relationship the councilor may have formed with the developer (who, as noted, probably does not live in Cambridge). This contributes to a lack of confidence in “clean” responsive government, even without any actual bribery.

Public financing of elections can help alleviate both problems, by enabling candidates to compete effectively without needing financial assistance from large-money donors.

II. Models of public financing

There are, broadly speaking, two general approaches to public campaign financing: public funding (including full public funding, matching funds, and free media), and citizen funding (including rebates and vouchers). All these models have advantages and disadvantages, and several have been tried in various cities with varying degrees of success. This overview serves only as a brief introduction.

A. Public funding

Under a public funding program, the money goes from a public campaign fund directly to the campaign's account. Candidates—who voluntarily choose to participate in such systems—must first qualify by collecting an initial amount from individual donors, often

² See generally Adam Lioz, Demos, *Stacked Deck: How the Bias in our Big Money Political System Undermines Racial Equality* (Dec. 11, 2014), at <http://www.demos.org/publication/stacked-deck-how-bias-our-big-money-political-system-undermines-racial-equity>; John C. Bonifaz, WGBH, *Frontline*, The Constitution and Campaign Finance: A Legal Movement for Change, at <http://www.pbs.org/wgbh/pages/frontline/shows/scandal/readings/bonifaz.html>.

³ We are unaware of Cambridge-specific survey results, but a 2011 nationwide poll by Global Strategy Group found that 71 percent of Republicans and 81 percent of Democrats believed that “money buys results in Congress.” Lawrence Lessig, *Republic, Lost* 88 (2011). Even if the reported perception for Cambridge City Council were only half as high as for Congress, and even if it were completely untrue, it would still represent a serious loss of public confidence in democratic government.

with a minimum *number* of donors, to prove a baseline of grassroots support. Once the candidate qualifies, she receives a grant from a public campaign fund, either in a fixed amount, or matching funds based on individual donations, up to a certain limit. Participants in these programs must agree to overall maximum contribution and spending limits.

1. Full public funding

A city using *full* public funding is Albuquerque, New Mexico, which adopted its Open and Ethical Elections program by referendum with 69% in favor.⁴ Albuquerque is about five times the size of Cambridge and has a 9-member city council divided into districts.⁵ The ordinance specifies that the city direct one-tenth of 1% of its general fund to public campaign funding.⁶ The total amount budgeted in 2011, for example, was \$421,000.⁷

After a preliminary period during which city council candidates can initially raise “seed money” of up to \$100 per donor (\$500 from the candidate herself) and with an overall maximum of \$0.10 per voter in the district, candidates shift to qualifying for the program by collecting individual \$5 contributions from 1% of the voters registered in the district. Once a candidate has qualified, she receives a grant from the fund of \$1 per voter, minus the amount of seed money and qualifying contributions already collected. As a condition of participating in the program, the candidate must agree not to spend more on the campaign than the amount of the grant, accept any more private contributions, or spend any of her own money on the campaign. In other words, everyone who qualifies receives and spends the same budget, based on the number of voters in the district. The plan target is \$1 per voter; distributions are reduced equally if the fund (calculated as 0.1% of the general fund) cannot supply this amount, either because of revenue shortfall or an unexpectedly large number of qualifying candidates. In fact, over the 2007 and 2009 elections, the city actually only expended 76% of the total available.⁸

In addition to the general advantages of public financing, full public funding under the Albuquerque model offers some additional advantages. First, candidates do not have to spend much time fundraising; once they have qualified, they are done fundraising for that election cycle. Second, since they all have the same budget, no one has a money advantage. As a result, campaign efforts focus on campaigning close to the people in meetings and debates, without any appeals to special interests.⁹

⁴ Albuquerque’s campaign finance rules are found in Article XVI of the Charter of the City of Albuquerque, at http://www.cabq.gov/council/documents/charter-review-task-force/city_charter.pdf. See also Molly Milligan, Ctr. for Governmental Studies, *Public Campaign Financing in Albuquerque: Citizens Win with Clean Money Elections* (Feb. 2011), at <http://policyarchive.org/collections/cgs/index?section=5&id=96100>.

⁵ See http://en.wikipedia.org/wiki/Albuquerque,_New_Mexico.

⁶ *Public Campaign Financing in Albuquerque* at 10 n.17.

⁷ *Id.*

⁸ *Id.* at 1.

⁹ See *id.* at 1-2.

A review of the public financing system after a three-way 2009 mayoral race concluded:

The election successfully met the goals set five years earlier by Albuquerque citizens when they voted overwhelmingly for Open and Ethical Elections: to avoid real or apparent corruption from large contributions; to strengthen public confidence in governmental and election processes; to give candidates adequate funding to run competitive campaigns; to increase the accountability of elected officials to constituents, not contributors; and to insure a fair, responsible and ethical municipal election process.¹⁰

2. Matching funds

The other flavor of direct public funding is a matching funds system, in which individual donors' small contributions are matched by the city at a specified ratio.¹¹

For example, in Tucson, Arizona, also about five times the size of Cambridge, a city council candidate must first qualify by receiving 200 contributions of \$10 or more from individual Tucson residents. After that, she can receive matching funds from the city, which are matched at a 1:1 ratio for every dollar received from an individual Tucson resident, up to a maximum of \$57,000. The spending limit is \$114,000, i.e., double the original \$57,000.¹²

New York City's program, in place since 1988, currently uses a 6:1 matching ratio for contributions from individual NYC residents of up to \$175.¹³ Thus, a \$20 contribution is worth \$140 to the campaign, because it receives \$120 in matching funds from the city. The result has been what the New York City Campaign Finance Board called the most wide-

¹⁰ *Id.* at 2.

¹¹ The matching funds described here should not be confused with *opponent-matching* funds of the type involved in Arizona's and Maine's state clean elections statutes. Those were designed to address the scenario of Candidate X, publicly financed and operating under fundraising and spending restrictions of the public financing program, is opposed by Candidate Y, who is not participating in public financing and is able to outraise and outspend the standard public financing allotment. Under current Supreme Court precedent, a public campaign financing system cannot provide Candidate X with extra funds in this scenario. See *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011).

¹² See City of Tucson, Campaign Fin. Admin. Rules & Regulations, at http://www4.tucsonaz.gov/files/clerks/Rules_Regs_2014.pdf (Oct. 2014); City of Tucson, *City of Tucson's Public Matching Funds Program: An Introduction for Candidates* (Jan. 2013), at http://www.tucsonaz.gov/files/clerks/2013_Public_Matching_Funds_Pamphlet.pdf.

¹³ See generally Brennan Ctr. For Justice, *Small Donor Matching Funds: The NYC Election Experience* (2010), at http://brennan.3cdn.net/8116be236784cc923f_iam6benvw.pdf.

open elections in the city's history, in which more than 90 percent of the total money raised in campaigns came from individual donors, and even small donors became critical.¹⁴

3. Non-cash resources

Many jurisdictions offer non-cash resources, of which the most important may be free media. While in larger cities this is often a matter of video via local public television or community access stations,¹⁵ the discussion at the committee meeting indicated that a major cost of campaigns in Cambridge is direct mail. Without disbursing one cent to candidates, the city could provide a form of public financing through subsidizing this process.

For example, the city could establish a program by which candidates qualify by collecting initial small contributions from a large number of contributors, then agreeing to limit overall spending. The city could then provide a bulk direct mailing in the fall (or two such mailings), in which every qualifying candidate can provide one double-sided piece of paper of a specified size and weight. The city could even contract with a printer to reproduce camera-ready copy for qualifying candidates, taking advantage of discounted bulk rates.

B. Citizen funding

“Citizen funding” describes models that aim to empower citizens more directly as contributors. Besides building engagement, these approaches are designed to inject a substantial amount of small-donor money into elections to offset privately-financed big spenders. There are two major approaches to citizen funding: rebates and vouchers.

1. Rebates

Under rebate programs, the government does not give any money to candidates. Instead, it gives money to the *voters*. An early rebate program was implemented by Minnesota in 1992. Minnesota's Political Contribution Refund gives a rebate of up to \$50 rebate to any Minnesota resident who contributes to a participating candidate in a state-wide race.¹⁶ Participating candidates must agree to spending limits specified in the law.¹⁷

¹⁴ Matt Flegenheimer, “Small Donations Fueled ‘Most Wide-Open’ Mayoral Race Last Year, Board Says,” N.Y. Times (Sept. 1, 2014), at <http://www.nytimes.com/2014/09/02/nyregion/small-donations-fueled-most-wide-open-mayoral-race-last-year-board-says.html>; N.Y. City Campaign Fin. Bd., *By the People: The New York City Campaign Finance Program in the 2013 Elections*, at <http://www.nycfb.info/press/news/per-2013.htm>.

¹⁵ See Steven M. Levin, Ctr. for Governmental Studies, *Keeping it Clean: Public Financing in American Elections* 28, 68-69, at http://users.polisci.wisc.edu/kmayer/466/Keeping_It_Clean.pdf.

¹⁶ See Minn. Campaign Fin. & Pub. Disclosure Bd., “Political Contribution Refund,” at <http://www.cfboard.state.mn.us/publicsubsidy/conrefund.htm>; Minn. Stat. ch. 10A, § 10A.322, available at <https://www.revisor.mn.gov/statutes/?id=10A.322>.

¹⁷ See Minn. Stat. ch. 10A, § 10A.25, available at <https://www.revisor.mn.gov/statutes/?id=10A.25>.

As a result, while funding the program has sometimes been a challenge, “[c]onsistently, Minnesota stands out as having a different mix of campaign donors from those of almost all other states.”¹⁸ For example, a survey of various states showed that state-wide, donors who gave \$100 or less to any one state-wide candidate accounted for:

- Less than 10% of the private contributions to candidates in 20 states;
- Between 10% and 20% in 12 states;
- Between 20% and 36% in 3 states; and
- 45% in Minnesota.¹⁹

Moreover, in a survey of Minnesota candidates, 81% of incumbents and 88% of non-incumbents reported that the Political Contribution Refund motivated them to ask less affluent people for contributions.²⁰ Evidence indicates that “the program was not simply subsidizing contributions that would have been given anyway. It was bringing not only new money but new people, less affluent people, into the system.”²¹

The apparent first entrant into *municipal*-level rebates is a brand-new program established by Tallahassee, Florida, by a ballot measure that was organized by Represent.US and which passed with 67% of the vote.²² In Tallahassee, which is a little more than 1½ times the size of Cambridge,²³ residents who contribute to city candidates will receive a rebate from the city, up to \$25 total per voter. Put another way, any voter in Tallahassee can make up to \$25 in contributions at no cost to herself. This expands the contribution base by allowing people who currently don’t have an extra \$25 to give that amount, and by people who can already give that, to give more.²⁴

2. Vouchers

A variation on the refund idea is a *voucher*. This idea, floated in different forms by Yale Law School Professors Bruce Ackerman and Ian Ayres, and by Harvard Law School Professor Lawrence Lessig, addresses the fact that for many people, paying \$25 to a candidate *now*, even if they know they’re going to get it back later, is a financial hardship, because they need that money right away.²⁵ This type of program gives each voter a “democracy voucher” that

¹⁸ Campaign Fin. Inst., http://www.cfinst.org/press/PReleases/09-07-08/CFI_s_Comments_on_Minnesota_s_50_Political_Contribution_Refunds.aspx.

¹⁹ *Id.*

²⁰ Michael J. Malbin, “Rethinking the Campaign Finance Agenda,” 6 *The Forum* 1, at 12 tbl. 1 (2008), available at http://www.cfinst.org/books_reports/Participation/Malbin_Rethinking.pdf.

²¹ *Id.* at 14.

²² See Paul Blumenthal, *Tallahassee Voters Said No To Big Money, Corruption In City Politics*, Huffington Post (Nov. 4, 2014), at <http://huff.to/1tG9Qql>.

²³ See http://en.wikipedia.org/wiki/Tallahassee_Florida.

²⁴ See Referendum Amending City of Tallahassee Charter, http://citizensforethicsreform.org/wp-content/uploads/2014/06/CfER_Petition.pdf.

²⁵ See Dylan Matthews, “Can vouchers fix campaign finance?”, *Wash. Post* (July 22, 2012), at <http://wapo.st/SZ440f>.

represents a certain amount of money (e.g., \$25), which can be sent to campaigns as donations, and which campaigns can then convert to money. Depending on the specific proposal, participating campaigns either agree “to maintaining donor anonymity to avoid influence peddling (in Ackerman and Ayres’s system)” or to only accept small donations (in Lessig’s system).²⁶ Again, this model puts control of the money in the hands of voters, not the government. Importantly, it means that even a poor resident who has literally no money to spare up-front can participate in the system, and make a difference.

III. Next steps

The committee resolved that the City Manager “identify an organization or organizations to study and present options to the City Council regarding possibilities for publicly funded municipal elections that takes into account issues unique to Cambridge.”

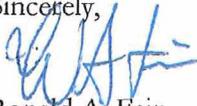
Represent Boston, an all-volunteer local chapter of the non-partisan, non-profit national organization Represent.US, is eager to provide research and recommendations for publicly funded municipal election models and other equal access campaign solutions best suited to Cambridge’s unique needs.

In addition to a leadership team composed primarily of Cambridge residents, Represent Boston has substantial connections to the city through both work and residence; including working relationships with local legal and policy experts at Harvard Law School, Harvard Kennedy School of Government, and MIT Sloan School of Management. Furthermore, Represent Boston is closely associated with multiple leading national organizations advocating equal access campaign initiatives, including both its parent organization Represent.US, and Free Speech For People, a non-profit public interest organization.

As the city manager takes steps in identifying organizations to study and present election reform solutions, Represent Boston offers its assistance at no cost and looks forward to working with the City of Cambridge to find models best suited to the unique needs of this city. Free Speech For People will be available in a supporting role regarding legal questions as needed during the policy development process, and would also be available to assist in the city’s legal defense in the unlikely event of a court challenge to a public financing program.

Thank you for your consideration and, on behalf of both Represent Boston and Free Speech For People, we look forward to working with you on this important issue.

Sincerely,



Ronald A. Fein
Legal Director
Free Speech For People

²⁶ *Id.*