NAVIGATING CAMPAIGN FINANCE REFORM THROUGH PUBLICLY FUNDED ELECTIONS ON THE LOCAL LEVEL

Emily Bernstein†

TABLE OF CONTENTS

† Submissions Editor, *Cardozo Law Review*, Volume 45; J.D. Candidate (June 2024), Benjamin N. Cardozo School of Law. I would like to thank Professor Kate Shaw for her guidance throughout the writing process. I would also like to extend my thanks to everyone on *Cardozo Law Review* who helped prepare this Note for publication. Finally, I would like to thank my loved ones, especially Megan, whose support means everything.

INTRODUCTION

Despite the Constitution's silence on the issue of campaign finance, the Supreme Court has had a considerable hand in shaping the campaign finance regulatory structure of the United States.[1] There are countless criticisms of the campaign finance system the Court has constructed. On the one hand, some scholars stipulate that, though they are critical of the system, it is an intelligible "product" of the Constitution.[2] On the other hand, others argue that the "vision of democracy" portrayed in money-in-politics decisions is not faithful to the Constitution.[3]

Those who believe the regulatory system is a proper reflection of the Constitution argue that the system the Court's interpretation of the Constitution has created is inadequate because constitutional law is not equipped to build a structure to regulate speech and campaign money.[4] This argument notes that rather than building a functional system, the Constitution is limited to merely regulating the conditions in which the structure is built.[5] These scholars categorize this result as "perverse as public policy, and deeply unsatisfying from the standpoint of democratic theory."[6]

Scholars who believe the regulatory system is a poor reflection of the Constitution advance the idea that campaign finance schemes are not

---

1 *See* Governor Janet Napolitano, Money and Politics: The Good, the Bad, and the Ugly, Address at the Brennan Center's Living Constitution Lecture (Apr. 10, 2008), https://www.brennancenter.org/our-work/research-reports/money-and-politics-good-bad-and-ugly [https://perma.cc/8ABM-HVPA]; *see also infra* Part II.

2 Justin Levitt, *Electoral Integrity: The Confidence Game*, 89 N.Y.U. L. REV. ONLINE 70, 85 (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2502655 [https://perma.cc/T5PL-SB4K].

3 Deborah Hellman & David Schultz, *Foreword: Special Issue on Campaign Finance*, 164 U. PA. L. REV. ONLINE 207, 208–09 (2016).

4 Levitt, *supra* note 2, at 85.

5 *Id.* at 86.

6 *Id.*

necessarily something the Court and the Constitution *cannot* regulate well, they are just something the Court and the Constitution *have not* regulated well.[7] This view aligns with Justice Kagan's dissent in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*.[8] There, Kagan expresses concern that public financing schemes that best benefit anti-corruption interests "clash[] with our Constitution," at least given the way campaign finance jurisprudence has developed.[9]

Though scholars criticize different aspects of the relationship between the Court, the Constitution, and campaign finance regulations, there is a convergence of thought: the Court has done a poor job developing campaign finance jurisprudence. It is important to note that these criticisms are not just about the campaign finance system the Court has created, but also about how both the system and the Court handle attempts at reform.[10] In confronting these reforms, the Court has consistently taken the opportunity to narrow a state's interest in campaign finance reform.[11] Some critics have gone so far as to argue that the ad hoc manner in which the Court renders campaign finance decisions indicates a lack of understanding about how American democracy operates.[12]

Public opinion overwhelmingly favors campaign finance reform.[13] Seventy-seven percent of Americans believe there should be limits on how much individuals and groups spend on campaigns, and sixty-five percent believe new laws should be written to reduce the role of money

---

7 *See* Hellman & Schultz, *supra* note 3, at 208–09.

8 564 U.S. 721, 756–57 (2011) (Kagan, J., dissenting).

9 *Id.* at 755–57. Here, Justice Kagan advanced a hypothetical where two states recognize corruption and thus enact public financing measures. The first state enacts measures that do not work because candidates, concerned that relying on public funds will not make them competitive in a race, do not participate in the public funding scheme. Recognizing the failure, the second state enacts additional measures to ensure candidates actually use the public financing scheme. Justice Kagan claimed the Court as it stands would strike down the second:

> "A person familiar with our country's core values—our devotion to democratic self-governance, as well as to 'uninhibited, robust, and wide-open' debate[]'—might expect this Court to celebrate, or at least not to interfere with, the second State's success. But today, the majority holds that the second State's system—the system that produces honest government, working on behalf of all the people—clashes with our Constitution."

Id. (citation omitted) (quoting N.Y. Times Co. v. Sullivan, 376 U.S. 254, 270 (1964)).

10 David Schultz, *The Case for a Democratic Theory of American Election Law*, 164 U. PA. L. REV. ONLINE 259, 260–61 (2016).

11 *See generally infra* Section II.B.1.

12 Schultz, *supra* note 10, at 261.

13 Bradley Jones, *Most Americans Want to Limit Campaign Spending, Say Big Donors Have Greater Political Influence*, PEW RSCH. CTR. (May 8, 2018), https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence [https://perma.cc/XNA6-Z9LQ].

in politics.[14] A prodigious barrier to campaign finance reform is its constitutional liability.[15] For example, reform efforts that focus on limiting expenditures have had an "almost unbroken streak" of losses in the courts.[16] The strain between what the Supreme Court finds constitutionally permissible and what makes a comprehensive regulatory structure is at the crux of good-government campaign finance regulation.

The culmination of these criticisms and real-life reform efforts is the question of whether constitutional law is the appropriate tool for optimizing the campaign finance regulatory system.[17] As regulations that attempt to reform campaign finance have been construed as "constitutionally suspect," the question of whether lawmakers should be granted leeway to work outside of the confines of the Constitution to regulate conditions has developed.[18] In a similar vein, other scholars have gone so far as to suggest dejudicializing campaign finance, but are explicit in not going so far as to deconstitutionalize it.[19] Others have made calls to circumvent the Supreme Court altogether and enact reform, not through legislation, but through Congress's internal ethics codes.[20]

Outside of these creative but improbable solutions, many localities and states have attempted to level the playing field and incentivize various public financing options.[21] When one conceptualizes campaign finance law as a web made up of statutes and court decisions, these state and local programs can be conceived as existing within the gaps of that web.[22] Many states and localities use some form of public funding as a prophylactic to corruption.[23] This Note will focus on one of the largest and most successful programs: New York City's matching funds system. In the face of an extremely public suicide by a municipal employee and mounting evidence of widespread corruption,[24] New York City implemented

---

14 *Id.*

15 Samuel Issacharoff, *The Supreme Court, 2009 Term—Comment: On Political Corruption*, 124 HARV. L. REV. 118, 119 (2010).

16 *Id.*

17 *See id.*

18 Douglas M. Spencer & Alexander G. Theodoridis, *"Appearance of Corruption": Linking Public Opinion and Campaign Finance Reform*, 19 ELECTION L.J. 510, 514 (2020).

19 Richard Briffault, *On Dejudicializing American Campaign Finance Law*, 27 GA. ST. U. L. REV. 887, 929 (2011).

20 Eugene D. Mazo, *The Disappearance of Corruption and the New Path Forward in Campaign Finance*, DUKE J. CONST. L. & PUB. POL'Y 259, 262 (2014).

21 *See infra* Section I.C (discussing campaign finance reforms put forth by various localities and states in the last decade).

22 As this Note will discuss in detail, many public funding schemes rely on unconstitutional campaign expenditures made constitutional by a footnote in *Buckley v. Valeo*. 424 U.S. 1, 57 n.65 (1976) (per curiam).

23 *See infra* Section I.C.

24 *See infra* Section I.D.1.

massive campaign finance reforms in the form of a public matching program in 1989.[25] Three election cycles later, Nicole Gordon, the Executive Director of the New York City Campaign Finance Board (CFB) from 1988 to 2006, deemed the program a success, but remained concerned that the reforms would prove fragile in the long run.[26] The continued success of the program did not appear inevitable—in the late 1990s, Gordon expressed concern that the success would fade with both board appointees who were not committed to the purposes of the law and a potential lack of "constant reinforcement through legislative change."[27] She suggested the continued success of the program rested on "the good faith of many players in the political scene."[28]

Twenty-five years since Gordon's comments, the New York City public funding system remains vulnerable, especially in the face of continuous assaults on campaign finance regulation.[29] The crux of the New York City Matching Funds Program—expenditure limits—is in undeniable tension with the Supreme Court's canonical campaign finance decision *Buckley v. Valeo*.[30] Gordon's comments were made

---

25 N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE: CAMPAIGN FINANCE REFORM IN NEW YORK CITY ix (1990) [hereinafter N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE], https://www.nyccfb.info/PDF/news_media/reports/1989_PER_executive_summary.pdf [https://perma.cc/5DHZ-GG2H] ("The 1989 New York City elections were notable for an extraordinary political experiment: the first test of the most ambitious campaign finance program ever attempted in a municipality in the United States.").

26 Nicole A. Gordon, *The New York City Model: Essentials for Effective Campaign Finance Regulation*, 6 J. L. & POL'Y 79, 90 (1997).

27 *Id.* As of the 2021 election cycle, the New York City CFB continues to make recommendations to the structure of the public funding system in its post-election reports. *See* N.Y.C. CAMPAIGN FIN. BD., AN ELECTION INTERRUPTED… AN ELECTION TRANSFORMED: THE CAMPAIGN FINANCE PROGRAM AND THE 2001 NEW YORK CITY ELECTIONS 143–63 (2002), https://www.nyccfb.info/PDF/news_media/reports/2001_PER.pdf [https://perma.cc/52EK-ZYSP]; N.Y.C. CAMPAIGN FIN. BD., PUBLIC DOLLARS FOR THE PUBLIC GOOD: A REPORT ON THE 2005 ELECTIONS 117–41 (2006), https://www.nyccfb.info/PDF/news_media/reports/2005_PER.pdf [https://perma.cc/D768-JEKW]; N.Y.C. CAMPAIGN FIN. BD., NEW YORKERS MAKE THEIR VOICES HEARD: A REPORT ON THE 2009 ELECTIONS 179–201 (2010) [hereinafter 2009 REPORT], https://www.nyccfb.info/PDF/news_media/reports/2009_PER.pdf [https://perma.cc/A4Q9-LJHM]; N.Y.C. CAMPAIGN FIN. BD., BY THE PEOPLE: THE N.Y.C. CAMPAIGN FINANCE PROGRAM IN THE 2013 ELECTIONS 119–30 (2014) [hereinafter 2013 REPORT], https://www.nyccfb.info/sites/default/files/pressfiles/2013_PER.pdf [https://perma.cc/G4AR-ALBB]; N.Y.C. CAMPAIGN FIN. BD., KEEPING DEMOCRACY STRONG: NEW YORK CITY'S CAMPAIGN FINANCE PROGRAM IN THE 2017 CITYWIDE ELECTIONS 119–31 (2018) [hereinafter 2017 REPORT], https://www.nyccfb.info/pdf/2017_Post-Election_Report_2.pdf [https://perma.cc/3F8Y-7LAM]; N.Y.C. CAMPAIGN FIN. BD., 2021 POST-ELECTION REPORT: NEW YORK CITY'S CAMPAIGN FINANCE PROGRAM IN THE 2021 CITYWIDE ELECTIONS 109–24 (2022), http://www.nyccfb.info/PDF/2021_Post-Election_Report.pdf [https://perma.cc/QW2M-Y86C].

28 Gordon, *supra* note 26, at 90.

29 *See infra* Section II.B.2.

30 *See infra* Sections I.A.2, I.D.

before a series of cases continued the gutting of campaign finance, including *Citizens United v. FEC*,[31] *Davis v. FEC*,[32] and *Bennett*.[33] New York City's program has survived those changes, but the continued success of public funding schemes remain precarious.[34] The underpinnings of her anxieties about the continuing success of the New York City system are echoed in the scholarly criticisms of the Court and Justice Kagan's analysis of constitutional limitations on creating a functional campaign finance system.[35]

New York City's program, like many good-government initiatives meant to serve as a counterbalance to the Supreme Court's campaign finance jurisprudence, exists within the gaps of what is permissible.[36] By instituting a program that is in direct conflict with Supreme Court jurisprudence, a certain level of democratic experimentation that has led to the rise and endurance of the program.[37] The New York City CFB has been clear and consistent that the underpinning of the entire scheme is the concern that money in politics is a corrupting influence.[38] The CFB relies on that ethos to maximize the limits they impose, going against almost every rule *Buckley* has put in place.[39] As governments enact policies with stricter limits to curb the appearance of corruption, the Supreme Court has proceeded in the complete opposite direction.[40] This has resulted in, and will continue to result in, challenges to reform efforts.[41] Public financing, which the Court held permissible in *Buckley*, is one of the only remaining pathways to reform that can survive constitutional scrutiny.[42]

Part I of this Note will provide background on political spending today, how states and municipalities attempt to curb that spending, and the origins and building blocks of both the federal regulatory system and

---

31 558 U.S. 310 (2010).

32 554 U.S. 724 (2008).

33 564 U.S. 721 (2011).

34 *See id.* at 756–57 (Kagan, J., dissenting).

35 *Id.* at 756–81; *see also* Levitt, *supra* note 2, at 85.

36 *See* Buckley v. Valeo, 424 U.S. 1, 57 n.65 (1976) (per curiam); Amy Loprest & Bethany Perskie, *Empowering Small Donors: New York City's Multiple Match Public Financing as a Model for a Post*-Citizens United *World*, 40 FORDHAM URB. L.J. 639, 650 (2016).

37 *See* Jeffrey D. Friedlander, Stephen E. Louis & Laurence D. Laufer, *The New York City Campaign Finance Act*, 16 HOFSTRA L. REV. 345 (1988) (discussing conditional spending limits as a cornerstone of the program); *cf. Buckley*, 424 U.S. at 143 (declaring limitations on campaign expenditures, independent expenditures, and expenditures by a candidate from personal funds "constitutionally infirm").

38 *See generally* Friedlander, Louis & Laufer, *supra* note 37, at 348.

39 N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE, *supra* note 25, at ix.

40 *See infra* Section II.A.

41 *See infra* Section II.B.

42 *Buckley*, 424 U.S. at 57 n.65.

the New York City matching funds system. Part II will provide analysis on the Supreme Court cases that have narrowed corruption interests so intensely post-*Buckley* and analyze how these narrowing interests have affected campaign finance jurisprudence and public funding. Part III will propose public funding of elections—using New York City as a case study—as a blueprint for how to enact reform that will survive constitutional challenges.

I. BACKGROUND

A. *Federal Regulatory Structure*

1. Origins of Campaign Finance Regulations

Though not defined in such a distinct way until *Buckley*, enacting campaign finance regulations as a direct response to corruption and the perception of corruption[43] dates back as early as the mid to late nineteenth century.[44] Both the Naval Appropriations Act of 1867 and the Pendleton Civil Service Reform Act (1883) were meant to sever the political contribution-to-cronyism pipeline.[45] Campaign finance regulations as a response to corruption picked up in earnest in the early twentieth century, when an investigation into ties between insurance companies and Wall Street inadvertently uncovered a series of corporate contributions to multiple campaigns from 1896 to 1904, including Theodore Roosevelt's 1904 presidential campaign.[46] The investigation ignited nationwide concern and scrutiny—the *New York Times* ran an article titled *The Campaign Fund Scandal* and called on Congress to reintroduce campaign finance legislation by printing "a deterrent, an

---

43 Although corruption has resulted in campaign finance reform, that is not always the case. *See* Douglas M. Spencer & Alexander G. Theodoridis, *"Appearance of Corruption": Linking Public Opinion and Campaign Finance Reform*, 19 ELECTION L. J. 510, 515 (2020) ("[A]n individual's trust in government does not correlate with changes to campaign finance regulations where that individual lives."). Regardless, one can trace the origin of many campaign finance regulations to the public perception of corruption. *See* Jaime Fuller, *From George Washington to Shaun McCutcheon: A Brief-ish History of Campaign Finance Reform*, WASH. POST (Apr. 3, 2014, 9:23 PM) https://www.washingtonpost.com/news/the-fix/wp/2014/04/03/a-history-of-campaign-finance-reform-from-george-washington-to-shaun-mccutcheon [https://perma.cc/MJ6J-88S2].

44 *See* FED. ELECTION COMM'N, THE FIRST 10 YEARS: 1975–1985, at 1 (1985), https://www.fec.gov/resources/cms-content/documents/firsttenyearsreport.pdf [https://perma.cc/YB84-M5NG]; Fuller, *supra* note 43.

45 Fuller, *supra* note 43; *see* Naval Appropriations Act of 1867, ch. 172, § 3, 14 Stat. 489, 492; Pendleton Civil Service Reform Act, ch. 27, 22 Stat. 403 (1883).

46 *The Campaign Fund Scandal*, N.Y. TIMES, Sept. 17, 1905, at 8.

actual prohibition . . . to shut off the corrupting stream that flows from corporation treasuries."[47] This outrage resulted in the Tillman Act of 1907, a comprehensive federal effort to regulate campaign finance in U.S. elections.[48]

Though these initial reforms were largely considered useless, as they were typically ignored due to the lack of an enforcement framework, they exemplify how campaign finance regulations have consistently served as a direct response to corruption.[49] This call-and-response culminated in the regulatory response to Watergate.[50] Though 1971 saw a consolidation of earlier reform efforts in the Federal Election Campaign Act (FECA),[51] it was not until 1974, in the wake of the Watergate scandal and the serious financial abuses it uncovered, that Congress amended FECA.[52] It is in these amendments, and the creation of the Federal Election Commission (FEC), where the bones of our current campaign finance regulatory scheme can be seen.[53]

2. Building the Federal Regulatory Structure

The roots of the current regulatory structure are in the 1974 amendments to FECA, but those laws passed by Congress have been transformed, and ultimately narrowed, by the Supreme Court.[54] Two years later, in *Buckley*, the Supreme Court upheld the constitutionality of contribution limits, disclosure and record-keeping provisions, and a public financing option for presidential candidates.[55] While the Supreme

---

47 *Id.*

48 Tillman Act of 1907, ch. 420, 34 Stat. 864.

49 *See* FED. ELECTION COMM'N, *supra* note 44, at 1 ("The campaign finance provisions of all of these laws were largely ignored, however, because none provided an institutional framework to administer their provisions effectively.").

50 *See* Anthony J. Gaughan, *The Forty-Year War on Money in Politics: Watergate, FECA, and the Future of Campaign Finance Reform*, 77 OHIO ST. L.J. 791, 791 (2017) ("In 1974, public outcry over the Watergate scandal prompted Congress to enact sweeping amendments to the Federal Election Campaign Act (FECA)."); *Watergate: The Scandal That Brought Down Richard Nixon*, WATERGATE.INFO, https://watergate.info [https://perma.cc/6V9H-NVJW] ("Watergate had profound consequences in the United States. . . . For example, the aftermath of Watergate ushered in changes in campaign finance reform . . . .").

51 Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (current version at 52 U.S.C. §§ 30101–46).

52 *Mission and History*, FED. ELECTION COMM'N, https://www.fec.gov/about/mission-and-history [https://perma.cc/E8CD-WAPG].

53 *See id.*

54 *See generally infra* Section II.B.1 (discussing the federal regulatory structure post-*Buckley*, specifically the narrowing of anti-corruption interests in the wake of *Buckley*).

55 Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam).

Court held contribution limits constitutional, they declared limitations on expenditures by candidates and their committees unconstitutional, except for in the case of publicly funded presidential candidates.[56] *Buckley* also invalidated limits on independent spending and the amount a candidate can spend using personal funds.[57] The distinction between contributions and expenditures is rooted in the difference in calculus the Court took when weighing First Amendment free speech interests against a state's interest in preventing corruption.[58]

Congress responded with additional amendments to help the FEC comport with the ruling in *Buckley*.[59] Then, in 2002, Congress passed the Bipartisan Campaign Reform Act (BCRA).[60] The BCRA restricted unlimited donations to party organizations, also known as "soft money."[61] The Act saw a slew of lawsuits that culminated, at the time, in *McConnell v. FEC*—a consolidated twelve lawsuits involving more than eighty plaintiffs.[62] In a 5-4 decision, most of the BCRA was upheld.[63] The challenges did not end there—the lawsuits continued, and in 2008, the Supreme Court struck down a provision of the BCRA known as the Millionaires' Amendment.[64] The Millionaires' Amendment triggered increased contribution limits for candidates running against self-funders who spent over a certain amount of their own wealth.[65] The Supreme Court held that the Millionaires' Amendment unconstitutionally violated self-financed candidates' First Amendment rights.[66]

Two years later, the Supreme Court issued the landmark decision *Citizens United*, which struck down the BCRA's restrictions on independent expenditures from corporate treasuries as a violation of the First Amendment.[67] This decision allowed for the advent of super PACs,

---

56 *Id.* at 57 n.65.

57 *Id.* at 58–59.

58 *See* discussion *infra* Section II.A.

59 R. SAM GARRETT, CONG. RSCH. SERV., R41542, THE STATE OF CAMPAIGN FINANCE POLICY: RECENT DEVELOPMENTS AND ISSUES FOR CONGRESS 3–4 (2017), https://crsreports.congress.gov/product/pdf/R/R41542 [https://perma.cc/DW75-QANN].

60 Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (codified as amended in scattered sections of 18, 36, 47, and 52 U.S.C.).

61 52 U.S.C. § 30125; *Soft Money Backgrounder*, OPENSECRETS, https://www.opensecrets.org/political-parties/soft-money-backgrounder [https://perma.cc/FK9S-Q4N3] ("Unlimited, unregulated 'soft money' contributions to the national parties were not publicly disclosed until the 1991–92 election cycle, and were banned by the Bipartisan Campaign Finance Reform Act following the 2002 elections.")

62 McConnell v. FEC, 540 U.S. 93 (2003).

63 *Id.* at 224.

64 Davis v. FEC, 554 U.S. 724, 740 (2008).

65 *Id.* at 738.

66 *Id.* at 739–40.

67 Citizens United v. FEC, 558 U.S. 310, 372 (2010).

a type of political action committee[68] that immeasurably changed the political landscape.[69] Super PACs raise unlimited amounts of money from both corporations and individuals and spend that money to advocate for or against a political candidate.[70] Though the amount a super PAC can spend is unlimited, super PACs cannot, in theory, coordinate with candidates directly—though campaigns have been known to skirt this line.[71]

B. *How Political Spending Is Perceived Today*

Campaign spending, or expenditures, can be separated largely into three subsets: money a candidate's campaign spends on behalf of that candidate, money a super PAC or dark money group spends, and money a PAC spends.[72] Though these subsets are distinct to a degree, the

---

68 A political action committee (PAC), or nonconnected committee, is defined by the FEC as "any committee which conducts activities in connection with an election, but which is not a party committee, an authorized committee of any candidate for federal election, or a separate segregated fund." 11 C.F.R. § 106.6(a) (2023). The FEC further defines super PACs as "committees that may receive unlimited contributions from individuals, corporations, labor unions and other political action committees for the purpose of financing independent expenditures and other independent political activity." *Types of Nonconnected PACs*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/registering-pac/types-nonconnected-pacs [https://perma.cc/C4ZF-39D7].

69 *See* discussion *infra* Section I.B.2.

70 *Super PACs*, OPENSECRETS, https://www.opensecrets.org/political-action-committees-pacs/super-pacs/2022 [https://perma.cc/G35Y-R26S].

71 Although beyond the scope of this Note, there have been reports about "redboxing," a term used to describe the red boxes that campaigns put around certain portions of their candidates' bios and websites to note what the campaigns believe a super PAC should highlight. This behavior has been found in both Democratic and Republican campaigns. *See* Shane Goldmacher, *The Little Red Boxes Making a Mockery of Campaign Finance Laws*, N.Y. TIMES (May 16, 2022), https://www.nytimes.com/2022/05/16/us/politics/red-boxes-campaign-finance-democrats.html [https://perma.cc/XT4G-H2GP].

72 *Browse Data*, FED. ELECTION COMM'N, https://www.fec.gov/data/browse-data/?tab=spending [https://perma.cc/624E-6XMC]; *see also Making Disbursements*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/making-disbursements [https://perma.cc/V2DZ-5F6A] ("By definition, the *Federal Election Campaign Act* allows campaign funds to be used for purposes in connection with the campaign to influence the federal election of the candidate."); *Making Disbursements as a PAC*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/making-disbursements-pac [https://perma.cc/8GY5-LWQB] ("A nonconnected committee may expend its funds for any lawful purpose consistent with the Act and Commission regulations."); *Understanding Independent Expenditures*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/understanding-independent-expenditures [https://perma.cc/3U3B-5376] ("An independent expenditure is an expenditure for a communication that expressly advocates the election or defeat of a clearly identified candidate and which is not made in coordination with any candidate or their campaign or political party. Independent expenditures

deregulation of campaign finance has led to unprecedented fundraising and spending on all levels, as well as a network of dark money groups bankrolled by billionaires propping up the system.

1. Campaign Spending

The escalating cost of political campaigns and the fundraising necessary to foot the bill has inflamed the campaign finance debate.[73] The 2016 federal election cycle saw record-breaking spending.[74] The 2020 federal election cycle more than doubled 2016's record-breaking spending levels with a price tag of $14.4 billion.[75] Record-breaking spending was not limited to presidential candidates—nine of the ten most costly Senate races so far were in 2020.[76] The total cost of the 2022 elections—both federal and state combined—nearly exceeded $17 billion.[77]

Record-breaking spending, of course, means record-breaking fundraising.[78] In 2022, the individual contribution limit was $2,900, which increased to $3,300 the following year.[79] President Biden's campaign "became the first in history to raise over one billion dollars."[80] Additionally, the proportion of Americans who made political contributions over $200 to federal candidates more than doubled from 0.7% in 2016 to 1.8% in 2020.[81]

---

are not subject to any amount limitations but may be subject to reporting requirements."); *What Is a PAC?*, OPENSECRETS, https://www.opensecrets.org/political-action-committees-pacs/what-is-a-pac [https://perma.cc/973W-VRM5] (explaining the difference between a PAC and a super PAC).

73 *See* Jones, *supra* note 13.

74 Karl Evers-Hillstrom, *Most Expensive Ever: 2020 Election Cost $14.4 Billion*, OPENSECRETS (Feb. 11, 2021, 1:14 PM), https://www.opensecrets.org/news/2021/02/2020-cycle-cost-14p4-billion-doubling-16 [https://perma.cc/9XLU-QYJM].

75 *Id.*

76 *Id.*

77 Morning Edition, *Candidates and Political Action Committees Spent Nearly $17 Billion on Midterms*, NPR (Nov. 10, 2022, 5:03 AM), https://www.npr.org/2022/11/10/1135718986/candidates-and-political-action-committees-spent-nearly-17-billion-on-midterms [https://perma.cc/7B8Z-VGQA].

78 *See* Evers-Hillstrom, *supra* note 74.

79 Paul Stoetzer, *Contribution Limits for 2021–2022*, FED. ELECTION COMM'N (Feb. 2, 2021), https://www.fec.gov/updates/contribution-limits-2021-2022 [https://perma.cc/X7FD-4YLY]; Paul Stoetzer, *Contribution Limits for 2023–2024*, FED. ELECTION COMM'N (Feb. 2, 2023), https://www.fec.gov/updates/contribution-limits-for-2023-2024 [https://perma.cc/8NVR-T6GA].

80 Evers-Hillstrom, *supra* note 74.

81 *Id.* As for contributions of all sizes, "[t]he share of Americans who . . . donated to [candidates] . . . has doubled . . . from 6% in 1992 to 12% in 2016." Adam Hughes, *5 Facts About U.S. Political Donations*, PEW RSCH. CTR. (May 17, 2017), https://www.pewresearch.org/short-reads/2017/05/17/5-facts-about-u-s-political-donations [https://perma.cc/D6XU-HTUW].

2. Super PAC and Dark Money Spending

While candidates rake in donations from individuals who adhere to contribution limits, super PACs raise unlimited amounts of money from individuals, corporations, and unions.[82] Super PACs and so-called dark money groups have ballooned in the wake of *Citizens United*.[83] Super PACs differ from regular PACs because PACs have contribution limits and cannot take contributions from corporations or labor unions.[84] While super PACs are considered outside spenders, interest groups, candidates, and political parties may open and operate their own PACs.[85] An additional difference is that super PACs are required to be uncoordinated, meaning super PACs, or independent expenditures, are not only prohibited from coordinating with campaigns when it comes to expenditures, but are also prohibited from donating directly to political candidates.[86]

Nonprofits and shell companies are permitted to donate unlimited amounts of money to super PACs.[87] So, while super PACs are legally required to disclose their donors, many groups use dark money outlets to obfuscate that information from the public.[88] In addition to donating directly to super PACs, nonprofits and tax-exempt groups that are not technically political organizations and are categorized as 501(c)s are authorized to engage in varying levels of political activity without disclosing their donors.[89] Examples of groups that fall under this umbrella

---

82 *See Political Action Committees (PACs)*, FED. ELECTION COMM'N, https://www.fec.gov/press/resources-journalists/political-action-committees-pacs [https://perma.cc/2VMD-2C3B].

83 Ian Vandewalker, *Since Citizens United, a Decade of Super PACS*, BRENNAN CTR. FOR JUST, https://www.brennancenter.org/our-work/analysis-opinion/citizens-united-decade-super-pacs [https://perma.cc/R68U-NQWDR68U-NQWD].

84 *Political Action Committees (PACs)*, *supra* note 82 ("Super PACs (independent expenditure only political committees) are committees that may receive unlimited contributions from individuals, corporations, labor unions and other PACs for the purpose of financing independent expenditures and other independent political activity."); *Who Can and Can't Contribute to a Nonconnected PAC*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/taking-receipts-pac/who-can-and-cant-contribute-nonconnected-pac/#:~:text=The%20Act%20prohibits%20corporations%20and,incorporate%20only%20for%20liability%20purposes. [https://perma.cc/XNB6-HHP3] ("Who can't contribute to a traditional nonconnected PAC[?] Corporations and labor organizations[.]").

85 *Political Action Committees (PACs)*, *supra* note 82.

86 *Id.*; *Super PACs*, *supra* note 70 ("Unlike traditional PACs, super PACs are prohibited from donating money directly to political candidates, and their spending must not be coordinated with that of the candidates they benefit.").

87 *Dark Money Basics*, OPENSECRETS, https://www.opensecrets.org/dark-money/basics [https://perma.cc/M3JK-EKBM].

88 *Id.*

89 *Id.*

include the National Rifle Association, Planned Parenthood, the AFL-CIO, and the National Association of Realtors.[90] As of November 2022, super PACs had raised over two billion dollars.[91] The impact super PACs and dark money groups have had on democracy, and the ways in which they have changed the political landscape, cannot be understated.[92] The astonishing scope and impact has been documented and reported on across industries.[93]

3. Candidates and PACs

When a candidate operates a PAC, it is usually known as a Leadership PAC.[94] On the federal level, political leaders and members of Congress establish these PACs to support other candidates.[95] Nonfederal candidates also open PACs with similar goals.[96] In 2018, over ninety percent of senators and two-thirds of House members had leadership PACs.[97] These PACs are normalized, but it is not difficult to see how another avenue for a candidate or elected official to raise money on top of the contribution limits imposed on their own campaign can be perceived as nefarious. Consider the two instances below.

---

90 *Id.*

91 *Id.*

92 *See generally* JANE MAYER, DARK MONEY: THE HIDDEN HISTORY OF THE BILLIONAIRES BEHIND THE RISE OF THE RADICAL RIGHT (2016) (discussing how a network of millionaires and billionaires created an array of organizations to ultimately control the courts, statehouses, Congress, and eventually the presidency, all while writing off their donations as tax-deductible).

93 *See generally id.*; Emily Birnbaum, *Big Tech Divided and Conquered to Block Key Bipartisan Bills*, BLOOMBERG (Dec. 20, 2022, 12:00 PM), https://www.bloomberg.com/news/articles/2022-12-20/big-tech-divided-and-conquered-to-block-key-bipartisan-bills [https://perma.cc/GQD4-DP3S] (discussing "big tech" as an industry using contributions to effect positive legislation for their industry); Dominic Rushe, *FTX Billionaire Sam Bankman-Fried Funneled Dark Money to Republicans*, THE GUARDIAN (Dec. 13, 2022, 8:34 AM), https://www.theguardian.com/technology/2022/nov/30/ftx-billionaire-sam-bankman-fried-dark-money-republicans [https://perma.cc/UCY8-4DNQ] (discussing a contributor using dark money to donate to Republicans in secret while donating to Democrats publicly).

94 The FEC defines a Leadership PAC as "a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding a federal office." *Leadership PACs and Sponsors Description*, FED. ELECTION COMM'N, https://www.fec.gov/campaign-finance-data/leadership-pacs-and-sponsors-description [https://perma.cc/NUS7-BR7T].

95 *Id.*

96 *See id.*

97 Marian Currinder, Opinion, *Leadership PACs Are a Campaign-Finance Scandal*, WASH. POST (Sept. 25, 2018, 10:35 AM), https://www.washingtonpost.com/outlook/2018/09/25/leadership-pacs-are-campaign-finance-scandal [https://perma.cc/JPV9-FP8R].

In 2015, Washington, D.C.'s Mayor Muriel Bowser was forced to shut down her PAC.[98] Many donors to the PAC either did business with D.C. or had the hopes of doing business with D.C.[99] In a quote from the *Washington Post*, one anonymous donor discussed their initial reluctance to contribute, but concluded that "[i]f you want to continue to have good favor with the mayor, it is something you do."[100] Another donor told the *Washington Post* that he said no because the donations seemed like a "bad idea" that could backfire.[101] In New York City, then-Mayor Bill de Blasio opened a PAC and a 501(c)(4) at different points in time.[102] An analysis by *Politico* showed "that a majority of the donors to the nonprofit had business before or labor contracts with City Hall, or were trying to secure approval for a project when they contributed."[103] At one point, de Blasio had two separate grand juries convening simultaneously, one state and one federal, regarding his fundraising.[104] Jona Rechnitz, who was convicted for a bribery scheme with the New York City Police Department, testified that he facilitated a straw donation scheme[105] on behalf of de Blasio.[106] Though heavily scrutinized, de Blasio

98 Editorial, *D.C. Mayor's Allies Wisely Shut Down FreshPAC*, WASH. POST (Nov. 10, 2015, 9:37 PM), https://www.washingtonpost.com/opinions/closing-the-door-on-freshpac/2015/11/10/875daf08-8727-11e5-9a07-453018f9a0ec_story.html [https://perma.cc/9Y5G-ZRKB].

99 *Id.*

100 *Id.*

101 *Id.*

102 Laura Nahmias, *Campaign for One New York, Disbanded and Under Investigation, Raised Money Through February*, POLITICO (July 15, 2016, 5:39 PM), https://www.politico.com/states/new-york/city-hall/story/2016/07/campaign-for-one-new-york-raised-from-real-estate-through-february-this-year-103899 [https://perma.cc/2CAL-SY5F]; Yoav Gonen & Greg B. Smith, *PAC-Man de Blasio Gobbles Up Donations from People with City Business*, THE CITY (Apr. 26, 2019, 4:10 AM), https://www.thecity.nyc/special-report/2019/4/26/21211117/pac-man-de-blasio-gobbles-up-donations-from-people-with-city-business [https://perma.cc/9W98-6DJ2].

103 Nahmias, *supra* note 102.

104 William K. Rashbaum, *Grand Juries Said to Hear Testimony on Inquiries into de Blasio Fund-Raising*, N.Y. TIMES (Dec. 16, 2016), https://www.nytimes.com/2016/12/15/nyregion/bill-de-blasio-investigation.html [https://perma.cc/Y2L8-BNRX].

105 Straw donations are contributions in the name of another and are prohibited by 52 U.S.C. § 30122. In the context of public matching funds schemes, "so-called straw donors . . . [are] people whose contributions are reimbursed by others . . . to raise money and use some of it to obtain city matching funds." Benjamin Weiser, *Two Former Liu Associates Are Found Guilty in Campaign-Finance Scheme*, N.Y. TIMES (May 2, 2023), https://www.nytimes.com/2013/05/03/nyregion/former-liu-associates-convicted-in-fund-raising-case.html [https://perma.cc/E4MN-GA25].

106 Laura Nahmias, *Rechnitz Takes the Stand (Again) Describing Straw Donations to de Blasio*, POLITICO (Nov. 26, 2018, 8:14 PM), https://www.politico.com/states/new-york/city-hall/story/2018/11/26/rechnitz-takes-the-stand-again-describing-straw-donations-to-de-blasio-709965 [https://perma.cc/J7V4-4S5V].

did not face criminal charges on either grand jury investigation.[107] These examples show that the motives of a candidate or elected official are inconsequential, and regardless of those intentions, increased opportunities for money in politics frequently look like corruption or the appearance of corruption.

Independent expenditures and PACs—whether they are super PACs, directly affiliated with candidates, or affiliated with a union—are avenues used to increase the role of money in politics. And while candidates and campaigns are held to expenditure limits should they choose to participate in public financing schemes like New York City's,[108] public financing schemes cannot regulate PACs.[109] These independent expenditures cannot be regulated in the same way because the Supreme Court has found that quid pro quo cannot occur in cases where there is no coordination, and the absence of coordination is a cornerstone of an independent expenditure.[110] So, no coordination, no quid pro quo, no anti-corruption interest.[111]

C. *Local Attempts at Curbing Political Spending*

As a response to devolving regulation and subsequent unfettered spending, various national and local organizations have cropped up advocating for campaign finance reform and ridding the influence of money in politics.[112] Many public funding programs already exist, like

---

107 Grace Rauh, *Mayor Will Not Face Criminal Charges in Fundraising Probes, Prosecutors Say*, SPECTRUM NEWS NY1 (Mar. 17, 2017, 1:11 AM), https://ny1.com/nyc/all-boroughs/news/2017/03/16/mayor-fundraising-probe-latest- [https://perma.cc/L7WS-HKT2].

108 *See infra* Section I.D.

109 *See* SpeechNow.org v. FEC, 599 F.3d 686, 692–93 (D.C. Cir. 2010) (citing *Citizens United*'s holding that the government does not have an anti-corruption interest in limiting expenditures).

110 Buckley v. Valeo, 424 U.S. 1, 47 (1976) (per curiam) ("The absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate."); *see also* Issacharoff, *supra* note 15, 122–26.

111 *See* sources cited *supra* note 110.

112 *See, e.g.*, Press Release, N.Y.C. Bar Ass'n, Legal and Good Government Groups Call for Reform of Campaign Finance Oversight' (Mar. 17, 2022), https://s3.amazonaws.com/documents.nycbar.org/files/BOE_ElectionEnforcement_PressRelease_22.3.17.pdf [https://perma.cc/XH8R-KBJJ]. For a sampling of these good-government groups, see *Reform Money in Politics*, BRENNAN CTR. FOR JUST., https://www.brennancenter.org/issues/reform-money-politics [https://perma.cc/7J44-DUYM]; *Campaign Finance*, COMMON CAUSE, https://www.commoncause.org/our-work/money-influence/campaign-finance [https://perma.cc/33V3-WJVJ]; *Campaign Finance Reform*, CITIZENS UNION, https://citizensunion.org/portfolio-item/campaign-finance-reform [https://perma.cc/9RA5-JT9A]; and *Money in Politics*, LEAGUE OF WOMEN VOTERS, https://www.lwv.org/voting-rights/money-politics [https://perma.cc/Z8DM-JLRU]. Ironically, some of these groups are super PACs themselves. *See, e.g.*, Derek Willis,

New York City's Matching Funds Program.[113] Another highly successful avenue for public funding has been democracy vouchers, implemented in Seattle.[114] And, as the state of campaign finance regulation grows bleaker, voters in states, cities, and localities have adopted new campaign-finance approaches through ballot measures and initiatives.

In 2016, California passed Proposition 59, a non–legally binding advisory question urging California's elected officials to use their authority to overturn *Citizens United* and other similar judicial precedents through a constitutional amendment or other means.[115] Also in 2016, Washington State voters passed an initiative urging the state's congressional delegation to propose a federal constitutional amendment to "reserve[] constitutional rights for people and not corporations."[116] That same year, Washington State narrowly rejected an initiative that was intended to both support a public financing system using democracy credits and revise the existing campaign finance laws.[117] After South Dakota voters approved a ballot initiative for "a publicly funded campaign finance program [and] . . . ethics commission" in 2016, the

---

Lawrence Lessig Starts a Super PAC, N.Y. TIMES: THE UPSHOT (May 1, 2014), https://www.nytimes.com/2014/05/02/upshot/lawrence-lessig-starts-a-super-pac.html [https://perma.cc/YQZ9-YRHX] (discussing the advent of Mayday PAC); Simone Pathé, *Campaign Finance Reform PAC Wants to Be a Player in 2016*, ROLL CALL (Aug. 13, 2015, 5:00 AM), https://rollcall.com/2015/08/13/campaign-finance-reform-pac-wants-to-be-a-player-in-2016-2 [https://perma.cc/JD7D-NLSX] (discussing the advent of End Citizens United PAC).

113 *See infra* Section I.D.

114 The democracy vouchers program in Seattle is newer than the New York City Matching Funds Program, having been implemented in 2017. A novel concept at the time of implementation, voters under the program "receive 4 twenty-five-dollar vouchers to allocate to candidates running for local offices. Voters may send their vouchers to any qualified candidate running in an eligible city election. Candidates qualify for the program by collecting qualifying signatures and low-dollar donations from Seattle residents." JENNIFER A. HEERWIG & BRIAN J. MCCABE, GEORGETOWN UNIV., BROADENING DONOR PARTICIPATION IN LOCAL ELECTIONS 1 (2022), https://mccourt.georgetown.edu/wp-content/uploads/2022/08/Broadening-Donor-Participation-in-Local-Elections_Report_2022.pdf [https://perma.cc/HWC5-6TZR]. Heerwig and McCabe's 2022 analysis found "that the democracy voucher program does appear to be living up to its name—that is, it's helping to democratize political giving in Seattle by diversifying the donor pool to better reflect the city's population." Gene Balk, *Data Shows How Well Seattle's Democracy Voucher Program Is Working*, SEATTLE TIMES (Sept. 2, 2022, 6:00 AM), https://www.seattletimes.com/seattle-news/data/data-shows-how-well-seattles-democracy-voucher-program-is-working [https://perma.cc/332Y-BYWR].

115 Overturn Citizens United Act, ch. 20, 2016 Cal. Stat. 102.

116 *Washington Advisory Question about the Rights of Corporations and Money as Free Speech, Initiative 735 (2016)*, BALLOTPEDIA, https://ballotpedia.org/Washington_Advisory_Question_about_the_Rights_of_Corporations_and_Money_as_Free_Speech,_Initiative_735_ (2016) [https://perma.cc/CX87-ESAD]; *see also* Government of, by, and for the People Act, ch. 1, 2017 Wash. Sess. Laws 1.

117 Initiative Measure No. 1464 (Wash. 2016), https://www2.sos.wa.gov/_assets/elections/initiatives/finaltext_997.pdf [https://perma.cc/E45P-EZUV].

South Dakota legislature declared a legislative emergency and produced a bill to repeal the ballot initiative.[118] The Governor of South Dakota signed the bill repealing the measure in 2017, thereby mooting the ballot initiative.[119]

Even more recently, in 2022, Arizona overwhelmingly voted in favor of stricter disclosure laws for the original donors when persons or entities make an independent expenditure of a certain dollar amount.[120] Also in 2022, Oakland, California voters passed a measure to create a Democracy Dollars program, which sends twenty-five dollar vouchers to all eligible voters in the municipality to spend on a "local . . . candidate[] of their choice."[121] Looking forward, 2024 ballots may include an initiative in Massachusetts to limit contributions to independent expenditures and an initiative in Oregon to "enact various campaign finance limits and regulations."[122] When looking at these efforts to regulate money in politics via ballot initiatives, we might question whose freedom of speech is genuinely affected by campaign finance regulations.

D. *New York City's Matching Funds Program*

1. Origins of the New York City Campaign Finance Program

Much like the federal regulatory scheme, New York City created a public financing option as a direct response to corruption.[123] As such, the

---

118 South Dakota Government Accountability and Anti-Corruption Act, ch. 222, 2017 S.D. Sess. Laws 523.

119 Act of Feb. 2, 2017, ch. 72, 2017 S.D. Sess. Laws 185.

120 Voters' Right to Know Act, 2022 Ariz. Legis. Serv. 211 (West) (codified as amended at ARIZ. REV. STAT. ANN. § 16-971, to -979 (2023)). Proposition 211 has been challenged in court and at least one challenge has been dismissed. Kiera Riley, *Judge Dismisses Groups' Challenge to Prop. 211*, ARIZ. CAPITOL TIMES (June 22, 2023), https://azcapitoltimes.com/news/2023/06/22/judge-dismisses-groups-challenge-to-prop-211 [https://perma.cc/9KWN-DUTL].

121 *Oakland Voters Overwhelmingly Approve Measure W*, CAL. COMMON CAUSE, https://www.commoncause.org/california/press-release/oakland-voters-overwhelmingly-approve-measure-w [https://perma.cc/Y86G-LSA8].

122 *See Massachusetts Limit Campaign Contributions to Independent Expenditure Committees Initiative (2024)*, BALLOTPEDIA, https://ballotpedia.org/Massachusetts_Limit_Campaign_Contributions_to_Independent_Expenditure_Committees_Initiative_(2024) [https://perma.cc/3JM5-NRHC] (explaining the potential ballot measure in Massachusetts); Jennifer Smith, *SJC Hears Challenge of Healey Ballot Question Rejection*, COMMONWEALTH MAGAZINE (Feb. 6, 2023), https://commonwealthmagazine.org/politics/sjc-hears-challenge-of-healy-ballot-question-rejection [https://perma.cc/G8X9-QBK8] (explaining whether the 2024 ballot initiative will be on the ballot is up in the air); *Oregon Campaign Finance Regulations Initiative* (2024), BALLOTPEDIA, https://ballotpedia.org/Oregon_Campaign_Finance_Regulations_Initiative_(2024) [https://perma.cc/FB75-36UB] (explaining the potential ballot measure in Oregon).

123 N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE, *supra* note 25, at ix.

program aims to create stricter campaign finance regulations than those that exist federally.[124] In the late eighties, a confluence of events in New York City gave rise to what was deemed to be the "most ambitious campaign finance reform program ever attempted in a municipality in the United States."[125] A primary factor was the political climate—Mayor Ed Koch's administration faced a number of ethics scandals throughout the eighties.[126] One of the most cataclysmic events was the suicide of Queens Borough President and Queens County Democratic Party leader Donald Manes.[127] Manes was under federal investigation and rumors of an imminent indictment for his "involvement in an extortion ring at the City's Parking Violations Bureau" abounded.[128] As the news of Manes's suicide hit newsstands, the Koch administration was well on its way to racking up an impressive list of convicted employees—eventually, sixteen hundred city workers were charged with corruption.[129]

Mayor Koch's 1988 Campaign Finance Act, and subsequent voter referendum, was a direct response to a corruption epidemic.[130] In addition to the political climate, the City Charter Revision Commission directly cited both the ballooning costs of campaigns and poor voter turnout as reasons behind the creation of the New York City CFB and the matching funds system.[131] These issues from 1988 persist today.[132] The first post-election report reflected on the successes of the program, where it fell short, and the realization of how profoundly the program shifted the campaign finance culture—the report also recognized that this seismic shift may have gone unappreciated by the legislature when they enacted these reforms.[133]

---

124 *Id.*

125 *Id.*

126 Gordon, *supra* note 26, at 80–81.

127 Victoria Irwin, *Weight of Scandal Prevents Mayor Koch from Forging Ahead. Investigation Likely to Focus on Bronx after Manes Suicide*, CHRISTIAN SCI. MONITOR (Mar. 17, 1986), https://www.csmonitor.com/1986/0317/amanes.html [https://perma.cc/KZ9N-PFJJ].

128 *Id.*

129 Joyce Purnick, *Storm Around Koch*, N.Y. TIMES (Jan. 25, 1986), https://www.nytimes.com/1986/01/25/nyregion/storm-around-koch.html [https://perma.cc/8DUE-ZP2T].

130 *See* Gordon, *supra* note 26 at 80–81; *see also* N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE, *supra* note 25, at ix.

131 1 N.Y.C CHARTER REVISION COMM'N, REP. OF THE N.Y.C. CHARTER REVISION COMM'N DEC. 1986–NOV. 1988, at 42 (1989), https://www.nyc.gov/assets/charter/downloads/pdf/1986-1988_final_report.pdf [https://perma.cc/6RL6-MUUN].

132 *See infra* Section I.D.3.

133 N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE, *supra* note 25, at ix–x.

2. Mechanics of the New York City Campaign Finance System

New York City's Matching Funds Program is controlled, monitored, and regulated by the CFB. Any candidate running for municipal office may join the program.[134] "Municipal office" includes anyone running for the offices of New York City Mayor, Comptroller, Public Advocate, Borough President, and City Council.[135] The program does not cover any statewide or federal offices.[136] A mainstay of the program is expenditure limits.[137]

There are various measures a candidate must take to enjoy the benefits of the program. First, a candidate must actively opt in to the program to demonstrate that they are taking the program seriously and are a viable candidate.[138] Once opted in, a candidate must also certify an agreement that they will comply with the requirements, be on the ballot, have opposition on the ballot, and submit a personal financial disclosure with the Conflicts of Interest Board.[139] In addition to demonstrating a serious interest in the program, a candidate must also prove their candidacy is viable by meeting a two-part fundraising threshold.[140] How a candidate spends their public funds is strictly regulated, and any unspent public funds must be returned to the CFB.[141] After an election, the CFB audits every campaign that received public funds, and each campaign must provide a thorough accounting of how the public funds were spent.[142]

In keeping with the ethos of the program, the CFB notes that candidates who opt in to the program and seek public funds are agreeing to abide by spending limits to ensure money will not decide an election between participating candidates.[143] The spending limit varies by office sought and there is a cap on the amount of public funds available to each

---

134 *How It Works*, N.Y.C. CAMPAIGN FIN. BD., https://www.nyccfb.info/program/how-it-works [https://perma.cc/YTF4-QUHJ].

135 *Id.*

136 *Id.*

137 *See generally* Friedlander, Louis & Laufer, *supra* note 37, 351–53 (discussing conditional spending limits as a cornerstone of the program).

138 *How It Works*, *supra* note 134; Loprest & Perskie, *supra* note 36, at 646–47.

139 *How It Works*, *supra* note 134 (explaining the general rules of the Matching Funds Program).

140 The two-part threshold is comprised of a minimum amount of funds that need to be raised and a minimum number of contributions. The thresholds are different for each office depending on a number of factors. *Limits & Thresholds*, N.Y.C. CAMPAIGN FIN. BD., https://www.nyccfb.info/candidate-services/limits-thresholds/2023 [https://perma.cc/WKT4-AQUW] (click "Thresholds").

141 *How It Works*, *supra* note 134.

142 *Id.*

143 *Id.*

candidate.[144] The CFB will, however, lift the cap in the form of an "expenditure limit relief" for candidates running against a high-spending candidate who is a nonparticipant.[145] The relief depends on how much the opponent has spent.[146] The spending limit is completely lifted for the participating candidates if their nonparticipant opponent raises or spends more than three times the spending limit.[147]

Beyond the program, the CFB sets forth regulations for all campaigns.[148] Contribution limits set by the CFB apply to all candidates and campaigns regardless of whether they are participants of the Matching Funds Program.[149] The Campaign Finance Act "requires that contribution and expenditure limits be adjusted every four years based on changes in the Consumer Price Index."[150] Contributions from corporations, LLCs, and partnerships are prohibited, as well as contributions from any political committees not registered with the CFB for that election cycle.[151] There are additional contribution limits for those who do business with or are registered lobbyists with the City.[152] These individuals are placed on a public database.[153] Reflecting the spirit of the program, contributions from these individuals are further regulated to "reduce the potential for, and appearance of, 'pay-to-play' corruption."[154] A contributor who does business with the City is limited in their donation amount regardless of whether the candidate participates in the Matching Funds Program, but if a candidate does participate in the program, this contribution is not matchable.[155]

---

144 *Id.*

145 N.Y.C. CAMPAIGN FIN. BD., CAMPAIGN FINANCE HANDBOOK: 2023 AND 2025 ELECTION CYCLE 45 (2022), https://www.nyccfb.info/PDF/candidate_services/2023-2025_Campaign_Finance_Handbook.pdf [https://perma.cc/YZM8-YYQM].

146 *Id.* ("If a non-participant raises or spends more than half the applicable spending limit, the spending limit for all participants in that race will be increased by 50%.").

147 *Id.*

148 *Id.* at vi ("The [Campaign Finance] Act requires *all* candidates running for mayor, public advocate, comptroller, borough president, and City Council member in New York City to register their campaigns with the CFB and provide comprehensive disclosure, on a regular schedule, about the money they raise and spend. The Act sets contribution limits and restrictions, which are enforced by the CFB." (emphasis added)).

149 *Limits and Thresholds*, *supra* note 140.

150 *Id.*

151 *Id.*

152 *Doing Business FAQs*, N.Y.C. CAMPAIGN FIN. BD., https://www.nyccfb.info/candidate-services/doing-business-faqs [https://perma.cc/Q8TX-KJEM].

153 *Id.*; *see also* discussion *infra* Section I.D.3.

154 *Doing Business FAQs*, *supra* note 152.

155 *Id.*

3. NYC CFB: Changes Throughout the Years

As mandated by the City Charter, the CFB is responsible for publishing a post-mortem report for each election cycle.[156] These reports are responsible for promulgating legislative recommendations to maintain and strengthen the program.[157] For example, in 2007, Local Law No. 34 codified several recommendations from the 2006 post-election report.[158] These changes included an update in the matching fund ratio from 4:1 (for contributions up to $250) to 6:1 (up to $175) as "an attempt to encourage smaller donations."[159] This law created the Doing Business Database, which is now integral to the CFB's goal of combating the appearance of corruption, but took nearly a decade to be proposed and implemented.[160] The Doing Business Database demonstrates the importance of the CFB's goals to constantly revise and improve the program.[161]

While many recommendations make it into the final law, there are times where the board makes recommendations that are not adopted by the City Council.[162] In the case of Local Law No. 34, the council chose not to adopt the recommendation of lower contribution limits.[163]

Another large expansion of the program was born out of legislative recommendations from the 2017 post-election report.[164] Many of these recommendations were a result of several investigations that evoked the appearance of corruption during the 2013 municipal elections.[165] As a

---

156 N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE, *supra* note 25, at ix.

157 *Id.*

158 Sue Ellen Dodell, *Council Revises New York City Campaign Finance Act*, 13 CITYLAW 97, 97, 99 (2007).

159 *Id.* at 97.

160 *Id.* at 99. *Compare* 1 N.Y.C CHARTER REVISION COMM'N, REP. OF THE N.Y.C. CHARTER REVISION COMM'N DEC. 1986–NOV. 1988, at 42 (1989), https://www.nyc.gov/assets/charter/downloads/pdf/1986-1988_final_report.pdf [https://perma.cc/6RL6-MUUN], *with* N.Y.C., N.Y., Local Law No. 34 (July 3, 2007) (showing the time between the Charter Revision and the implementation of the Doing Business Database was nearly a decade).

161 *See* N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE, *supra* note 25, at ix.

162 *See* Dodell, *supra* note 158, at 100.

163 *Id.* at 100–01. In addition to the Doing Business Database, a new requirement was also implemented to extend a ban on corporate contributions for Transition and Inauguration Entities, which are transition committees set up by winning candidates to pay for the cost of transition or inaugural costs. The CFB also extended the ban on corporate contributions to include partnerships and LLCs but did not include labor unions. A final important piece of this law was that it reflected the board's recommendation to limit expenditures that may be exempt from the spending limits to both further level the playing field and simplify compliance, so as to discourage hiding expenses in an exempt category. *Id.* at 99.

164 2017 REPORT, *supra* note 27, at 119–31.

165 *Id.* at 119.

response, everyone from the Mayor to city council members to civic groups argued for expanding the program to enable candidates to more effectively rely on matching funds to run their entire campaign.[166] The idea reflected here—that the more a candidate relies on public funds, the less they rely on large-dollar donors—follows the original ethos and intention of the program. The CFB presented these changes as a "vision for the Program's next decade and beyond."[167] The recommendations included a lower contribution limit, an increase in the matching formula as well as an increase to the amount of public funds a candidate may receive, decreasing the matching funds thresholds for citywide candidates, and lowering the minimum threshold contribution for matching funds to five dollars.[168]

In 2018, New York City voters overwhelmingly voted to pass a ballot proposal that reflected the above recommendations.[169] Local Law No. 1 of 2019 adapted this new campaign finance regime to the City Charter.[170] Local Law No. 128 of 2019 established a full public match, where participating candidates could reach their expenditure limit solely through matchable public funds.[171]

Like the Doing Business Database, these recommendations and updates reflect the predictions made by originators of the program: that additions, tweaks, and adjustments are necessary for a successful program.[172] These recommendations and updates also reflect New York City rules getting stricter to achieve the goal of combating corruption and the appearance of corruption[173] As New York City's regulations have gotten stricter, we have seen federal jurisprudence continue to narrow anti-corruption as an interest.[174]

The Matching Funds Program has become a fundamental and central component to New York City elections. In 2021, the last major citywide election, a cycle where many of the elections were decided in competitive primary elections, 94% of primary candidates opted into the

166 *Id.* at 119–20.

167 *Id.* at 120.

168 *Id.*

169 *See New York Election Results*, N.Y. TIMES (May 15, 2019, 2:11 PM), https://www.nytimes.com/interactive/2018/11/06/us/elections/results-new-york-elections.html [https://web.archive.org/web/20230616194755/https://www.nytimes.com/interactive/2018/11/06/us/elections/results-new-york-elections.html] (referring to Ballot Measures, Question 1, Campaign Finance, with 80.3% voting yes).

170 N.Y.C., N.Y., Local Law No. 1 (Jan. 2, 2019).

171 N.Y.C., N.Y., Local Law No. 128 (July 18, 2019).

172 *See supra* Section I.D.

173 *See* N.Y.C. CAMPAIGN FIN. BD., DOLLARS AND DISCLOSURE, *supra* note 25, at ix.

174 *See infra* Section II.B.2.

matching funds program.[175] Additionally, 84.6% of primary contributions were made as "small contributions."[176]

II. ANALYSIS

A. Buckley *and Its Legacy*

The previous discussion of cases and legislation is important to understanding how the regulatory framework of campaign finance in the United States has developed to its present state.[177] *Buckley* not only created the current framework, but continues to have lasting impacts on campaign finance jurisprudence.[178] *Buckley* drew a distinction between campaign contributions and expenditures—in a post-*Buckley* world, contribution limits are constitutional and expenditure limits are unconstitutional.[179] This disparate treatment was a result of varied levels of scrutiny.[180] Limits on expenditures received a "tough strict scrutiny review" and contributions received a "lesser 'exacting scrutiny,'" a review that exists almost solely for campaign finance cases.[181]

1. *Buckley* and Contribution Limits

In upholding contribution limits as constitutional, the Supreme Court rejected the argument that contribution limits, writ large, were a restriction on First Amendment rights.[182] The Court acknowledged and recognized the argument that FECA's "primary purpose [was] to limit the actuality and appearance of corruption."[183] In that acknowledgement, the Court concluded that contributions may be used to secure a political quid pro quo, and both quid pro quos and the appearance of quid pro quos undermine the "integrity" of the system.[184] The Court further connected the appearance of corruption with actual corruption by citing the "deeply

175 *See infra* Section II.B.2.

176 *See infra* Section II.B.2.

177 *See supra* Section I.A for discussion of the current regulatory structure.

178 *See* Hellman & Schultz, *supra* note 3.

179 Buckley v. Valeo, 424 U.S. 1, 58 (1976) (per curiam).

180 *See* RICHARD L. HASEN, PLUTOCRATS UNITED: CAMPAIGN MONEY, THE SUPREME COURT, AND THE DISTORTION OF AMERICAN ELECTIONS 23 (2016).

181 *Id.* (quoting *Buckley*, 424 U.S. at 44).

182 *Buckley*, 424 U.S. at 26.

183 *Id.*

184 *Id.* at 26–27.

disturbing examples surfacing after the 1972 election [that] demonstrate[d] that the problem is not an illusory one."[185] *Buckley* ultimately found that the interests of curbing corruption and the appearance of corruption were sufficient to justify the "limited effect upon First Amendment freedoms caused by" a contribution limit.[186]

2. *Buckley* and Expenditure Limits

The Supreme Court, however, did not find the state's interest in preventing corruption and the appearance of corruption an adequate justification for expenditure limits.[187] In contrast to contribution limits, the Court found limiting expenditures too burdensome on one's "core First Amendment expression."[188] The Court connected the allowance of contribution limits to curtailing the "major evil associated with rapidly increasing campaign expenditures," as they believed large amounts of campaign spending were due to "candidate dependence on large contributions."[189] The logic was, since campaign spending is tied to contribution sizes and contribution sizes are constitutionally limited, consequently, campaign spending would be sure to go down.[190] Exploding campaign spending proved this assumption false fairly quickly.[191]

Additionally, the *Buckley* Court was unconcerned with unmitigated spending as they considered any "undue pressures" this spending places on the electorate to be "cleansed by the competitive wash of the electoral process."[192] Like many of the assumptions made by the Court in *Buckley* and *Citizens United* about the impact of unlimited spending, this assumption proved false—programs that limit expenditures, like New York City's, have been shown to allow for more competitive races.[193]

---

185 *Id.* at 27.

186 *Id.* at 29.

187 *Id.* at 45–48.

188 *Id.* at 48. Limitations on expenditures from personal or family resources was struck down using the same logic. *Id.* at 51–52.

189 *Id.* at 55.

190 *Id.*

191 Thirty years later, Justices Stevens and O'Connor acknowledged this fact when they wrote, "Money, like water, will always find an outlet." McConnell v. FEC, 540 U.S. 93, 224 (2003).

192 Issacharoff, *supra* note 15, at 133–34.

193 *Impact of Public Funds*, N.Y.C. CAMPAIGN FIN. BD., https://www.nyccfb.info/program/impact-of-public-funds [https://perma.cc/9K4R-R9KS] ("Case studies from the 2013 elections show that public funds have a significant impact on making races more competitive."); *see also* Martin Rather, Opinion, *Public Matching Funds, A Crucial Campaign Lifeline, Are on the Way*, GOTHAM GAZETTE (Dec. 10, 2020), https://www.gothamgazette.com/130-opinion/9969-public-matching-funds-campaign-lifeline-nyc [https://perma.cc/7NN6-7ECT]; Ese Olumhense, *How*

3. *Buckley* and Public Financing of Campaigns

Buckley left a loophole regarding expenditure limits in a footnote: Congress is permitted to engage in public financing schemes that "may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations."[194] Public financing for federal elections has not taken off, but New York City's scheme, like many public financing schemes, relies on this footnote to function.[195] Conditional spending limits are a cornerstone of the New York City system.[196] *Buckley* labels expenditure limits unconstitutional, yet slips permissibility into a footnote under the guise of conditionality.[197] And so, the appearance of corruption, or actual corruption, is not enough of a state interest to overcome one's First Amendment rights inherent in unlimited campaign spending, but it is enough to predicate an entire campaign financing scheme where expenditure limits are a core principle.[198] Three architects of the New York City Campaign Finance Act expressed the importance of expenditure limits as a necessity of the program when they said:

> "[S]imply reducing contribution limits is considered . . . an inadequate solution. Lower limits may constrain a candidate's ability to raise money and . . . advantage . . . candidates who are wealthy and . . . well connected with professional fundraisers or the party apparatus. . . ." Therefore, "it is appropriate that public financing of political campaigns accompany limitations on . . . contributions . . . ."[199]

The CFB justifies expenditure limits as a prophylactic to corruption, or the appearance of corruption, and *Buckley* allows for that because it is a public program—however, *Buckley* does not give the same deference to expenditure limits in any other instance.[200] That the decision in *Buckley* stands for the prohibition of a foundational aspect of New York City's public funding system, yet allows for it under certain circumstances in a

---

Small-Dollar Public Financing Helped NYC Elect Its Most Diverse City Council Ever, CITY LIMITS (Nov. 16, 2021), https://citylimits.org/2021/11/16/how-small-dollar-public-financing-helped-nyc-elect-its-most-diverse-city-council-ever [https://perma.cc/U5XU-XSLT].

194 *Buckley*, 424 U.S. at 57 n.65.

195 *See* Loprest & Perskie, *supra* note 36, at 650.

196 *See generally* Friedlander, Louis & Laufer, *supra* note 37.

197 *Buckley*, 424 U.S. at 57 n.65.

198 *See generally* Friedlander, Louis & Laufer, *supra* note 37.

199 *Id.* at 349.

200 *See generally id.*; *Buckley*, 424 U.S. at 57.

single footnote, is paradoxical.[201] And, as New York City continues to rely on that footnote to ensure the constitutionality of its program,[202] the corruption interests in *Buckley* have considerably narrowed.[203]

B. *Defining Anti-Corruption Interests and the Narrowing of Anti-Corruption Interests*

Almost fifty years later, the legacy of *Buckley*'s "anti-corruption" framework is twofold. First, the framework has driven most money-in-politics decisions for the last five decades.[204] These decisions[205] have consistently undercut common-sense policy reforms.[206] The framework has also introduced and perpetuated a great deal of tension in campaign finance jurisprudence. The tension exists between behavior the First Amendment allows and the behavior the state's interest in the "appearance of corruption" can limit. Much has been written and discussed regarding this tension and the incongruous logic of differentiating expenditures and contributions, the subsequent explosion of money in politics, and the continued lack of effort by the courts to fix the *Buckley* framework.[207] Plainly, the *Buckley* framework makes little logical sense and not only has perpetuated and encouraged a lack of campaign finance reform, but also actively works against attempts at reform—as the definition of corruption narrows, so does the state's anti-corruption interest in reform.

1. Defining Anti-Corruption Interests

Buckley provided a very narrow answer to what interests could justify restrictions or prohibitions on campaign finance—corruption or the appearance thereof—but it did not provide a precise definition of

---

201 There has been criticism that footnote 65 is a victim of the unconstitutional conditions doctrine, or "the principle that the government may not deny a benefit on the basis of an unconstitutional condition." Grant Davis-Denny, Comment, *Coercion in Campaign Finance Reform: A Closer Look at Footnote 65 of* Buckley v. Valeo, 50 UCLA L. REV. 205, 216 (2002). This was not at issue in *Buckley* and "is not as coherent or omnipotent as footnote 65's critics contend." *Id.* at 219.

202 *See generally* Loprest & Perskie, *supra* note 36, at 650 (discussing *Buckley*'s allowance for expenditure limits in the matching funds system).

203 *See infra* Section II.B.3.

204 Hellman & Schultz, *supra* note 3, at 208.

205 *See infra* Section II.B.2.

206 Hellman & Schultz, *supra* note 3, at 208–09.

207 Issacharoff, *supra* note 15, at 119–20.

corruption nor instruction on how to evaluate its appearance.[208] At the time of the decision, the *Buckley* Court treated corruption as something like bribery.[209] *Buckley* was the Court's first time stating that the appearance of corruption, and not just outright corruption, could be perceived as enough of a state interest to justify the infringement of a First Amendment right.[210] In fact, campaign finance jurisprudence is the one area of constitutional law where both the "reality and appearance[]" of something "stand on an equal footing."[211] Any outrage one may feel on behalf of any perceived infringement of rights is complicated by the competing notion many reformers have that money is not speech.[212] That said, taking money as speech, this is certainly an idiosyncratic position the Supreme Court has taken. Some scholars have suggested the addition of appearance is simply a fallback the Court used in the case that a state cannot prove corruption.[213] Whatever the intention behind the inclusion of appearance, this interest only goes so far as to be compelling enough for a state to establish contribution limits and not expenditure limits.[214] Further, this interest has been severely changed and narrowed, reflecting the composition of the Court itself, and resulting in "doctrinal incoherence."[215]

2. Narrowing Anti-Corruption Interests Post-*Buckley*

The Supreme Court has not announced any formal test to establish what is considered enough to prove a state or municipality is protecting against corruption or the appearance of corruption.[216] Not only is there no test, but the Supreme Court continues to collapse criminal bribery and corruption—which it has defined more and more narrowly, until corruption has become essentially synonymous with bribery.[217] This confluence remains and has been criticized as "problematically

---

208 *See* Joshua S. Sellers, *Contributions, Bribes, and the Convergence of Political and Criminal Corruption*, 45 FLA. ST. U. L. REV. 657, 674 (2018); Briffault, *supra* note 19, at 890.

209 *See* Mazo, *supra* note 20, at 266.

210 *See* Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. PA. L. REV. 119, 124–25 (2004).

211 *Id.* at 125.

212 Scholars have labeled this interest an "irrational fear," not real or significant, and "a guess as to speech's bad consequences." *Id.* at 124–25.

213 *See id.* at 121.

214 *See* Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam).

215 Mazo, *supra* note 20, at 269.

216 *See id.*

217 *See* Sellers, *supra* note 208, at 657.

oversimplif[ying] the concept of corruption."[218] Without a test for when anti-corruption interests are enough to justify a governmental interest, those interests have been narrowed significantly since *Buckley*—and, as discussed below, this narrowing of corruption interests is lethal for traditional reform efforts that come in the form of stricter limits.

In *Randall v. Sorrell*, Vermont's Act 64, the strictest campaign finance law in the United States at the time, was litigated.[219] The Act imposed mandatory expenditure limits on nonfederal candidates and contribution limits[220] on individuals, PACs, and political parties.[221] On appeal, the Second Circuit upheld the contribution limits but did not reach a conclusion on the expenditure limits.[222] The Second Circuit held that Vermont's interest in preventing the reality and appearance of corruption was constitutionally compelling, but remanded the case to the district court for additional fact-finding to complete the narrow tailoring inquiry.[223] The Supreme Court took up the issue before it could be remanded.[224]

The respondents asked the Supreme Court to find the expenditure limits constitutional under *Buckley*, or if it could not do that, overrule *Buckley* altogether.[225] The Court did neither.[226] Instead, the Court held that the expenditure limits at issue were not substantially different from those at issue in *Buckley* and Vermont's justification for imposing these

---

218 *Id.* at 661; *see also* Harry Siegel, Opinion, *Why Bribery Is No Longer a Crime for the Bribed*, N.Y. DAILY NEWS (Dec. 10, 2022), https://www.nydailynews.com/opinion/ny-oped-why-bribery-is-no-longer-a-crime-for-the-bribed-20221210-a5hfuu7mvjgutkczyfcd6ewuzm-story.html [https://perma.cc/VM2F-VLNR] ("Manhattan Federal Judge J. Paul Oekten[] [ruled] . . . that 'proof of an express promise is necessary when the payments are made in the form of campaign contributions.' What an awfully fancy way to say pols are free now to use public money to reward their donors . . . so long as they're not stupid and sloppy enough to explicitly declare 'I am paying you off with government money in exchange for the money you put into my political operation.'" (quoting United States v. Benjamin, No. 21-CR-706, 2022 WL 17417038, at *13 (S.D.N.Y. Dec. 5, 2022))); Jacob Eisler, McDonnell *and Anti-Corruption's Last Stand*, 50 U.C. DAVIS L. REV. 1619, 1637 (2017) ("The Court consistently hands down judgments that narrow the scope of anti-corruption legislation and raise standards for corruption prosecutions. This imposes a high bar upon the legislature in drafting anti-corruption legislation and upon prosecutors when bringing anti-corruption suits.").

219 548 U.S. 230 (2006).

220 For the purpose of contribution limits, national, state, and local affiliates of one party were considered affiliated and limits were imposed in the aggregate. *Id.* at 238–39.

221 *Id.* at 236.

222 Landell v. Sorrell, 382 F.3d 91, 148 (2d Cir. 2004), *rev'd sub nom.* Randall v. Sorrell, 548 U.S. 230 (2006).

223 *Id.* at 149.

224 *Randall*, 548 U.S. 230.

225 Brief for the Intervenors-Defendants-Appellants-Cross-Appellees at 55, *Landell*, 382 F.3d 91 (No. 00-9159), 2000 WL 33994516.

226 *Randall*, 548 U.S. 230, 244–45.

limits did not differ from Congress's rationale.[227] Ruling expenditure limits unconstitutional was in line with precedent, but the Court's reasoning on contribution limits was a clear narrowing of the corruption interest. Relying on *Buckley*, the Court went further than *Buckley* on contribution limits by declaring that the contribution limits in question were so severe they violated the First Amendment.[228] Here, the *Buckley* logic—that a state's interest in preventing corruption is strong enough to counter First Amendment interests, at least for contribution limits—was narrowed.

The Court in *Buckley* understood a line in the sand existed for constitutionally permissible contribution limits, but stipulated that "a court has no scalpel to probe" to determine what an appropriate ceiling is for a contribution limit.[229] *Randall* defined this nebulous ceiling for the first time thirty years later as a "lower bound."[230] The *Randall* Court began fleshing out a definition of a lower bound when it said contribution limits may be too low, as they were here, because they had the potential to be harmful to the electoral process and "reduce[] democratic accountability."[231] After reiterating that a state's interest in preventing corruption is not an absolute defense to all contribution limits, the Court considered whether the contribution limits were closely drawn to Vermont's interest.[232] Upon further examination, the Court deemed the Act was not closely drawn to meet its objectives.[233] In going from an undefined ceiling to a definitive lower bound, the Court is seen narrowing anti-corruption as an interest.

While *Randall* significantly narrowed corruption interests, it was by no means a decisive decision.[234] *Randall* was comprised of "six different opinions" and "a three-way split."[235] On one end of the spectrum, Justice Stevens called for the overturning of *Buckley*.[236] Justices Souter and

---

227 *Id.* Though it is now widely understood that expenditure limits are, for the most part, unconstitutional, *Buckley* did leave a sliver of light that perhaps some form of expenditure limits could survive constitutional scrutiny should that case be distinguishable from *Buckley*. *Randall* made it clear that distinguishing a case from *Buckley* would be extremely difficult and nearly impossible. *Id.*

228 *Id.* at 262.

229 Buckley v. Valeo, 424 U.S. 1, 30 (1976) (per curiam) (citation omitted).

230 *Randall*, 548 U.S. at 248–50.

231 *Id.* at 248–49.

232 *Id.* at 249, 261–62.

233 *Id.* at 261–62.

234 *See* Memorandum from Brenda Wright, Nat'l Voting Rts. Inst., to Interested Persons, Analysis of Supreme Court Decision in *Randall v. Sorrell* (June 29, 2006), https://www.demos.org/sites/default/files/publications/supreme_court_analysis_randall_v_sorrell_070506_revised.pdf [https://perma.cc/TU69-7AU8].

235 *Id.* at 1.

236 *Randall*, 548 U.S. at 274 (Stevens, J., dissenting).

Ginsburg believed that *Buckley* did not outright preclude expenditure limitations and Vermont's strong justifications for these limits could have satisfied constitutional scrutiny and allowed the trial court to uphold them.[237] On the opposite end of the spectrum, Justices Scalia and Thomas stood strong in their view that the First Amendment should prohibit all limits on contributions and spending.[238] They also called for overturning *Buckley*, but only the portion that allowed contribution limits.[239] Thus, what we are left with is something in the middle, a decision that is rooted in stare decisis and a five-factor test.[240] *Randall* exemplifies how the controlling decisions that make up campaign finance jurisprudence are born out of a fractured Court.

Twelve years after *Randall* struck down Vermont's contribution limits, the Supreme Court "str[uck] down a federal contribution limit for the first time."[241] In a 5-4 decision, *McCutcheon v. FEC* further narrowed corruption to the definition of quid pro quo or "a direct exchange of an official act for money."[242] In his dissent, Justice Breyer asserted that *McCutcheon* was overruling *Buckley* using faulty legal analysis.[243] He said the plurality could only claim that "large aggregate contributions do not 'give rise' to 'corruption' . . . because [it] defines 'corruption' too narrowly."[244] The narrowing of corruption resulted from the plurality not only reserving the definition of quid pro quo to exclusively mean "no more than 'a direct exchange of an official act for money'—an act akin to bribery," but also specifically excluding any "efforts to 'garner "influence over or access to" elected officials or political parties.'"[245] Justice Breyer thought this definition of corruption was inconsistent with prior case law.[246] Despite Justice Breyer's criticism, the plurality's narrowed definition of corruption persists.

In his concurrence, Justice Thomas acknowledged how far the Court had strayed from *Buckley* and called for the elimination of all contribution limits, stating that "[i]n sum, what remains of *Buckley* is a rule without a rationale. Contributions and expenditures are simply 'two sides of the same First Amendment coin,' and our efforts to distinguish

---

237 *Id.* at 281–82 (Souter, J., dissenting).

238 *Id.* at 265–66 (Thomas, J., concurring).

239 *Id.* at 255–67.

240 *See* Memorandum from Brenda Wright, *supra* note 234, at 1.

241 *Supreme Court's* McCutcheon *Decision Is a Blow Against Average Voters*, BRENNAN CTR. FOR JUST. (Apr. 2, 2014), https://www.brennancenter.org/our-work/analysis-opinion/supreme-courts-mccutcheon-decision-blow-against-average-voters [https://perma.cc/EQW3-J2VG].

242 572 U.S. 185, 192 (2014).

243 *Id.* at 232–34 (Breyer, J., dissenting).

244 *Id.* at 235.

245 *Id.* (emphasis omitted) (quoting *id.* at 192, 208 (majority opinion)).

246 *Id.*

the two have produced mere 'word games' rather than any cognizable principle of constitutional law."[247] Justice Thomas is certainly correct that the Court has muddied the waters, but he came to the wrong conclusion. The tenuous distinction between contributions and expenditures is indeed a farce, but the opposite is true—a state's interest in corruption and the appearance of corruption should extend to expenditures as well as contributions.

In the wake of Justice Thomas's concurrence, it has become clear that the constitutionality of contribution limits is in jeopardy.[248] Though per-candidate contribution limits endured, that endurance "is a fig leaf when someone can write a check for millions to be used as party bosses see fit. Either way, it will not be long before the constitutionality of that limit, too, comes before the court."[249]

3. Corruption and Public Financing

Buckley conceived a state's anti-corruption interests as an adequate justification for limiting contributions, and, in some cases, expenditures.[250] *Buckley*'s progeny significantly narrowed that corruption interest and tolled the death knell on anti-corruption as a justification for expenditure limits.[251] Absent a constitutional amendment or a complete change of course by the Supreme Court, public financing of campaigns is the only alternative to *Buckley*'s hardline stance on expenditure limitations.[252] There is no federal public funding scheme for Congress, and presidential public funding is all but dead.[253] Congress's attempts at passing campaign finance legislation, especially with regards

---

247 *Id.* at 231–32 (Thomas, J., concurring) (quoting Buckley v. Valeo, 424 U.S. 1, 241, 244 (1976) (Burger, C.J., concurring in part and dissenting in part) (per curiam)).

248 Editorial, *The Court Follows the Money,* N.Y. TIMES (Apr. 2, 2014), https://www.nytimes.com/2014/04/03/opinion/the-court-follows-the-money.html [https://perma.cc/4DEX-72SB].

249 *Id.*

250 *Buckley*, 424 U.S. at 57 n.65.

251 *See* Hellman & Schultz, *supra* note 3 at 208–09 ("[T]he Justices have relied on *Buckley* to take a slew of common-sense policy reforms off the table, such as limiting how much individuals and candidates can spend on elections . . . . The Roberts Court has used *Buckley*'s narrow conception of corruption to invalidate practically all of the campaign finance regulations that have come before it." (first citing Randall v. Sorrell, 548 U.S. 230, 248–53 (2006) (plurality opinion); and then citing Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290, 296–99 (1981))).

252 Buckley v. Valeo, 424 U.S. 1, 57 n.65 (1976) (per curiam).

253 Kathy Kiely, *Public Campaign Funding Is So Broken That Candidates Turned Down $292 Million in Free Money,* WASH. POST (Feb. 9, 2016), https://www.washingtonpost.com/posteverything/wp/2016/02/09/public-campaign-funding-is-so-broken-that-candidates-turned-down-292-million-in-free-money [https://perma.cc/ZFZ8-RSP3].

to public financing, are almost always unsuccessful.[254] The lack of federal programs has left reform up to states and localities, which have created a patchwork of public financing programs.[255] Narrowing anti-corruption interests have put these public financing schemes in a precarious position, yet they remain, for the most part, intact and functional.[256]

Bennett is one of the most recent cases the Supreme Court has taken up regarding public funding schemes.[257] Arizona implemented a public financing scheme where participants who opted into the program and adhered to certain restrictions, including expenditure limits, received matching funds.[258] This scheme, challenged in *Bennett*, granted additional matching funds if a candidate's opponent was both privately financed and spent a certain amount of money over a threshold.[259] The dollars that counted towards the trigger threshold for additional matching funds included private donations, money from the candidate themselves, and dollars spent by independent groups to support the privately financed candidate.[260] Once those funds were triggered, the publicly funded candidate received about a dollar for every dollar over the threshold the privately financed candidate spent.[261]

Bennett overturned the Ninth Circuit's ruling and struck down this trigger provision.[262] Here, the Court said the appearance of corruption was not enough to overcome the burden on protected political speech.[263] In striking down the scheme in Arizona, the Supreme Court gave "no attention to the 'appearance of corruption' . . . as . . . distinct from the [actual] corruption interest[s]."[264] Though the slim majority in *Bennett*

---

254 Jimmy Cloutier, *Democrats' Election Reform Bill Failed in the Senate. What's Next for Campaign Finance Reform?*, OPENSECRETS (Jan. 27, 2022, 2:46 PM), https://www.opensecrets.org/news/2022/01/election-bill-failed-what-next-campaign-finance-reform [https://perma.cc/9JUK-A3CY].

255 *See* discussion *supra* Section I.C on these efforts.

256 As examples, consider the success of the New York City Matching Funds Program in addition to that of Seattle's voucher program.

257 The lessons of *Bennett* are not entirely realized through an analysis of the opinion, because it was decided three years prior to *McCutcheon*, which further narrowed corruption interests. Nonetheless, even reading *Bennett* on its own is a good representation of the Court's continued narrowing of corruption as an interest regarding public funding schemes. Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721 (2011).

258 *Id.* at 727–28.

259 *Id.* at 729.

260 *Id.*

261 *Id.* at 728.

262 *Id.* at 754–55.

263 *Id.*

264 Christopher Robertson, D. Alex Winkelman, Kelly Bergstrand & Darren Modzelewski, *The Appearance and the Reality of Quid Pro Quo Corruption: An Empirical Investigation*, 8 J. LEGAL ANALYSIS 375, 415 (2016).

reiterated that public financing is an acceptable vehicle to combat corruption, this opinion still signifies the narrowing of corruption interests with regard to public funding schemes.

The Court declared the Arizona statute unconstitutionally burdensome because it would "plainly force[]" a privately funded candidate to spend more money to match the extra funds in pursuit of "exercis[ing] his First Amendment right to spend funds on behalf of his candidacy."[265] The question lurking in the background of the majority's logic and explicitly mentioned in Justice Kagan's dissent is: Why allow public funding at all?[266] As the Supreme Court minimizes a state's interest in preventing corruption and the appearance of corruption to justify public funding, the defense of a public funding scheme becomes more precarious.[267]

A year after *Bennett*, the Supreme Court chose to not hear *Ognibene v. Parkes*, a case out of the Second Circuit.[268] The denial of certiorari allowed New York City's program to stand in the face of various challenges.[269] The Second Circuit upheld the CFB's expenditure relief provision because it believed the CFB's scheme, unlike Arizona's scheme, did not force nonparticipating candidates to make a choice of refraining from speech.[270] The *Ognibene* majority used this distinction to carve out an allowance for New York City's scheme, which can be read to limit the narrowing of corruption as an interest from *Bennett*.[271] The distinction the Second Circuit drew on is the narrow tailoring of New York City's scheme.[272] The concurrence agreed that New York City's program is narrowly tailored, but "part[ed] ways" with the majority where the majority concludes undue influence qualifies as a form of corruption.[273] These two cases, so close together both temporally and factually, illustrate that what counts as "narrowly tailored" regarding anti-corruption interests is not definitive.[274] The unstable framework provided by the

---

265 *Bennett*, 564 U.S. at 737.

266 *Id.* at 755–85 (Kagan, J., dissenting).

267 *See id.*

268 Ognibene v. Parkes, 671 F.3d 174 (2d Cir. 2011), *cert. denied*, 567 U.S. 935 (2012).

269 *Id.* A fundamental difference between Arizona and New York City's systems is that participating candidates in Arizona "receive all . . . campaign funds from the public financing system," but in New York City, "participating candidates must gather private support" to access additional public funding. 2009 REPORT, *supra* note 27, at 194.

270 2013 REPORT, *supra* note 27, at 108–14 (discussing and quoting *Ognibene* in light of *Bennett*).

271 *Ognibene*, 671 F.3d 174, 194.

272 *Id.*; *see also* 2013 REPORT, *supra* note 27, at 108–14.

273 *Ognibene*, 671 F.3d at 204 (Livingston, J., concurring in part and concurring in the judgment).

274 *Id.*

courts means that any program is playing a guessing game when tailoring its interests. The one-two punch of the *Bennett* decision and the Court not granting certiorari in *Ognibene* has broad implications for future litigation and constitutional interpretations of public funding schemes.

A few years after *Bennett* and *Ognibene*, the Supreme Court decided *McCutcheon*.[275] In the decades since *Buckley*, critics of contribution limits have argued that strict scrutiny should apply to contribution limits and the appearance of corruption and that the strict scrutiny standard for contribution limits implies lax or no contribution limits.[276] Now, in a post-*McCutcheon* world, as corruption interests have been narrowed, those same critics argue that *Ognibene* would have come out the opposite way.[277] There is nothing to suggest these critics are correct in that assumption, but it highlights the peril of campaign finance jurisprudence.

III. PROPOSAL

If the goal of campaign finance reform is to get money out of politics, or at least minimize the impact fundraising has on the electoral process, new regulations in the form of expenditure limits and other avenues like stricter disclosure requirements are impermissible under *Buckley*.[278] Or, at least, what would be permissible lacks teeth. Many ideas have been proposed as vehicles for broad campaign finance reform. One argument is that money is not free speech and thus should not be regulated under the First Amendment; in other words, overturn *Buckley*.[279] Another proposal suggests leaving the bifurcated scrutiny in place but argues that the Court should broaden the definition of corruption beyond quid pro quo and allow for additional anti-corruption interests.[280]

Reformers have also looked elsewhere in the Constitution, like the Equal Protection Clause and the Guarantee Clause, to regulate campaign finance.[281] Concluding that the corruption paradigm has "outlived its usefulness" due to inconsistent application, and that reform is bound to be struck down by the Court, another suggestion has been to allow

---

275 572 U.S. 185 (2014).

276 *See generally* James Bopp, Jr., *Constitutional Limits on Campaign Contribution Limits*, 11 REGENT U. L. REV. 235 (1999).

277 James Bopp, Jr., Randy Elf & Anita Y. Milanovich, *Contribution Limits After* McCutcheon v. FEC, 49 VAL. U. L. REV. 361, 392–95 (2015).

278 *See generally* Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam).

279 *See generally* J. Skelly Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*, 82 COLUM. L. REV. 609 (1982).

280 *See* ZEPHYR TEACHOUT, CORRUPTION IN AMERICA: FROM BENJAMIN FRANKLIN'S SNUFF BOX TO CITIZENS UNITED 276–93 (2014).

281 *See* Sellers, *supra* note 208, at 704–06.

Congress to regulate campaign finance through its internal ethics rules.[282] Conversations on how to expand a state's interest or finding alternatives in the Constitution fall flat when the Court has done—and continues to do—everything in its power to limit the already singular and narrow interest of anti-corruption.

One of the last plausible means of reform is something that already exists: the caveat in *Buckley* for public financing of campaigns.[283] An issue with this avenue of reform is that public financing does not exist on a federal level outside of the mostly forgotten program for presidential candidates, and what exists on local levels is still subject to constitutional challenges.[284] Considering this fact, one may be tempted to call for a revival of what exists of presidential public financing and the creation of a framework for other federally elected positions. Absent a constitutional amendment, which has been proposed and is anticipated to fail in a similar fashion as most recent campaign finance legislation like the Disclose Act, such lofty goals seem impossible.[285] Any paradigm-shifting reform on the federal level faces nearly insurmountable hurdles, namely political resistance, judicial roadblocks by way of precedent, and of course, a lack of will by the Court.

As long as campaigns can spend indiscriminately and anti-corruption interests continue to narrow, reform on any level, especially a systematic level, is completely out of reach. Because the largest barriers to reform are constitutional barriers,[286] the most compelling answer to the campaign finance issue is dejudicializing campaign finance.[287] Recognizing that political decisions should be left to politically accountable branches of government, the main proposal for dejudicializing campaign finance reform still posits that campaign finance should not be "deconstitutionalized" and offers a new model and framework for courts to shape the "outer bounds."[288] Compelling the current Supreme Court to adopt and adhere to an updated balancing test or loosening the reins on campaign finance seems unlikely. So, rather than proposing a new model and framework for courts, this proposal builds on the notion that experimentation at the local and state levels can be incredibly valuable and dispositive of real reform.

---

282 *See* Mazo, *supra* note 20, at 259, 262.

283 *Buckley*, 424 U.S. at 57 n.65.

284 *See* Kiely, *supra* note 253; Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721, 756 (2011) (Kagan, J., dissenting).

285 H.J. Res. 80, 117th Cong. (2022).

286 *See* Issacharoff, *supra* note 15.

287 *See* Briffault, *supra* note 19.

288 *Id.* at 929–33.

Current campaign finance jurisprudence reflects a Court increasingly resistant to reform. While there are many valuable proposals that focus on the issue—like the ones discussed above—it could be additionally helpful to focus on moving the needle at the state and local level through public financing. Public financing is the singular method that allows for exceptions like expenditure limits.[289] Though not necessarily extrajudicial because of footnote 65 in *Buckley*, New York City's divergence from the no-expenditure-limit principle is notable and facially inconsistent with the rest of *Buckley*.[290] New York City's public funding scheme is seemingly allowed to exist by a different set of constitutional rules. Democratic experimentation around campaign finance regulation on the local level has been some of the only meaningful reform. The danger in the narrowing of corruption interests, even in public funding schemes, is the closing of a window for such reform.

Due to its nimble and constantly adaptive nature, New York City's system has remained, for the most part, unscathed and constitutional.[291] Since the newly implemented New York State program is modeled after the City's system, it should remain equally unscathed. New York State's program is poised to be the largest and most expensive taxpayer-funded campaign program in the country, potentially inviting closer scrutiny.[292] New York State's enactment of this major public funding scheme as a corollary to New York City's system is emblematic of the idea that if a system works, it will be further adopted. Public funding schemes are only useful if candidates utilize them, and candidates will only utilize them if they can be competitive in a race against someone able to spend unlimited funds. New York City's primaries have seen a ninety percent opt-in rate,[293] making the system extremely effective at leveling the playing field.[294]

Public funding programs on the local and state level are not being put forth as a panacea or silver bullet for campaign finance reform; rather, they are existing mechanisms that allow for reform in the most extrajudicial manner possible. Considering the judicial roadblocks to reform, state and local level reforms are being put forth as options to explore in a more serious and coordinated way than they have historically

---

289 Buckley v. Valeo, 424 U.S. 1, 57 n.65 (1976) (per curiam).

290 *Id.*

291 *See generally* Loprest & Perskie, *supra* note 36 (discussing the success of the program).

292 Nick Reisman, *New York's Public Campaign Financing System Takes Shape*, SPECTRUM NEWS 1 (Nov. 15, 2022, 2:23 PM), https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/11/15/new-york-s-public-campaign-financing-system-takes-shape [https://perma.cc/28NP-ZUGL].

293 *Impact of Public Funds*, *supra* note 193.

294 *Id.*

been treated. Public funding is not an incorruptible means of conducting a campaign finance program either, but, if created and maintained correctly, it is a system well positioned to respond to corruption.[295]

Two additional issues that affect every single attempt at campaign finance reform, especially those efforts that touch expenditure limits, are independent expenditures and super PACs. Independent expenditures are mentioned hand in hand with reform because, no matter how many restrictions are placed on campaigns and candidates, there are always outside spenders that cannot be regulated.[296] Any reform that does not touch independent spenders will make only a dent in the needed reforms, but that is no reason not to try for any degree of reform. One last danger of relying on states and localities to create these programs is that some states may never see reform, or that some localities' reform efforts may be quashed by an activist legislature.[297] Uneven application is a disadvantage of a piecemeal approach, but this proposal is not meant to solve the entire puzzle; it is meant to offer a helpful solution to the confusing and limiting campaign finance jurisprudence.

---

295 *See generally* Weiser, *supra* note 105 (discussing the consequences for a campaign that engaged in a straw donation scheme under the New York City Matching Funds Program); 2017 REPORT, *supra* note 27, at 119–31 (2018) (discussing changes to the program as a response to corruption and perceptions of corruption). More recently, the CFB showed, with the 2023 elections, that the CFB is poised to effectively respond to issues of enforcement ranging from fining campaigns for things like accepting prohibited donations to cooperating with the Manhattan District Attorney to secure indictments for straw donations. *See* Katie Honan, *Eric Adams' Transition Fined Nearly $20k by Campaign Finance Board*, THE CITY (May 15, 2023), https://www.thecity.nyc/politics/2023/5/15/23724431/nyc-mayor-adams-transition-fined-cfb [https://perma.cc/5WA5-THRH] ("The five-member board voted to approve $19,600 in fines for three violations, finding that the account for Adams transition and inauguration committee accepted prohibited donations, failed to respond or responded late to requests for information or documentation, and failed to properly wind down 'transition and inauguration expense' activities."); Ariama C. Long, *DA Bragg Indicts 6 People in Major Finance Fraud Tied to Mayor Adams' Campaign*, N.Y. AMSTERDAM NEWS (July 13, 2023), https://amsterdamnews.com/news/2023/07/13/da-alvin-bragg-to-indict-finaice-fraud-adam-campaign [https://perma.cc/9EYQ-69RH] (quoting the CFB press secretary as saying that "[this] announcement is a reminder that rigorous audit and oversight processes like we have in New York City safeguard the integrity of our local democracy by helping ensure that criminal schemes like the one alleged today are uncovered.").

296 *See* Citizens United v. FEC, 558 U.S. 310 (2010); *see also* Nick Reisman, *Advocates Fear Super PAC Spending Could Undermine Public Financing of Campaigns*, SPECTRUM NEWS 1 (Nov. 10, 2022, 7:30 PM), https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/11/10/advocates-fear-super-pac-spending-could-undermine-public-financing-of-campaigns [https://perma.cc/L9PJ-6JC4] ("The next election cycle in New York will have a system of publicly financed campaigns. Maximum donations given directly to a candidate's campaign will be smaller, and matched with government money drawn from the states unclaimed money fund, controlled by the state comptroller. But [John] Kaehny [of Reinvent Albany] fears that reform will be crowded out by super PAC spending. 'They will start giving in the tens of millions of dollars as opposed to hundreds of thousands of dollars,' Kaehny said, 'which is what we saw.'").

297 *See supra* notes 118–19 and accompanying text.

CONCLUSION

The way in which the Supreme Court has wielded the Constitution to regulate campaign finance has resulted in a confusing jurisprudence, namely a different scrutiny standard for campaign contributions and expenditures.[298] The anti-corruption framework the Court relies on to permit limits has been narrowed considerably to the point where any new regulation dies at inception. Any reform efforts to modify this anti-corruption framework must contend with an anti–campaign finance reform Court, thus likely dying at inception. New York City, one of many cities and states, has had a successful and narrowly tailored public funding scheme with a ninety percent opt-in rate for primary election candidates.[299] New York City's system demonstrates a path to dejudicialize campaign finance reform by looking at semi-extrajudicial options like public financing schemes. Public financing schemes are only effective if they are utilized, and they do come up against some of the same criticisms other avenues of reform come up against, but they are a viable option that circumvents many of the constitutional roadblocks the Court utilizes to quash reform efforts.

298 Buckley v. Valeo, 424 U.S. 1, 44 (1976) (per curiam).

299 *Impact of Public Funds*, *supra* note 193.