

No. 96660-5

SUPREME COURT OF THE STATE OF WASHINGTON

MARK ELSTER and SARAH PYNCHON,

Plaintiffs/Appellants,

vs.

THE CITY OF SEATTLE, a Washington municipal corporation,

Defendant/Respondent,

**AMICUS CURIAE BRIEF OF WASHINGTON CAN!, ASIAN
COUNSELING AND REFERRAL SERVICE, EVERY VOICE, FUSE, LGBTQ
ALLYSHIP, ONEAMERICA, WASHINGTON DEMOCRACY HUB,
WASHPIRG, AND WIN WIN NETWORK**

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I STATEMENT OF INTEREST

This brief is filed on behalf of *amici curiae* Washington CAN!, Asian Counseling and Referral Service, Every Voice, Fuse, LGBTQ Allyship, OneAmerica, the Washington Democracy Hub, the Washington Public Interest Research Group (“WashPIRG”), and Win Win Network. *Amici* collectively represent more than 20,000 Seattleites, and were among the community-based coalition and national advocacy organizations that developed and helped pass the Honest Elections Seattle Initiative I-122 (“Initiative” or “I-122”), including the challenged Democracy Voucher program. *Amici* are groups committed to strengthening democracy and representation and/or groups whose members are served by the Democracy Voucher program.

II INTRODUCTION AND SUMMARY OF ARGUMENT

The Democracy Voucher program (“the program”) serves important First Amendment interests in strengthening local democracy in Seattle by combating both actual and perceived corruption in Seattle politics; increasing access to public expression and expanding public debate; and advancing the compelling interest in promoting democratic self-government. The Democracy Voucher program is a homerun for both democracy and the First Amendment: it gives more people a political voice

and encourages more people to run for office while silencing no one. For all these reasons, the decision below must be affirmed.

III ARGUMENT

A. Seattle’s Democracy Voucher Program Reduces Corruption and a Valid Perception of Corruption.

The Supreme Court has long held that a “primary interest” served by campaign finance rules is “the prevention of corruption and the appearance of corruption.” *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). In *Buckley*, the Court upheld a presidential public financing program, determining that it served an interest in eliminating improper influence itself. *See id.* at 96. At the same time, the *Buckley* Court explained that “[o]f almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.” *Id.* at 27.

In the period leading up to enactment of the Democracy Voucher program, Seattleites perceived corruption in their local government, which undermined their confidence in the local system of representation. Polling from 2015 showed that more than one-third of Seattleites believed that “corruption is a problem in Seattle politics” and nearly two-thirds felt that “lobbyists and big money interests in Seattle have a stronger voice in local

government than ordinary people.” See Greenberg Quinlan Rosner Research, *Honest Elections Seattle: Frequency Questionnaire* (Aug. 27-Sept. 1, 2015), App. at 73-74.

Hard data fuels the rational perception that dollars donated to candidates are translated into policy outcomes. At the national level, affluent individuals are as much as 100 times more likely to donate to political campaigns than the public at large.¹ These donors have substantially different policy preferences than Americans as a whole – and their preferences are vastly more likely to be reflected in actual policy outcomes.² In fact, when the policy preferences of the wealthiest 10 percent of Americans conflict with those of the rest, the 10 percent regularly trumps the 90 percent.³

In light of these realities, the public overwhelmingly believes that candidates who win public office sometimes “promote policies that directly

¹ A 2013 survey of wealthy Americans revealed that 68 percent of wealthy respondents had made political contributions in the previous 12 months. Benjamin I. Page et al., *Democracy and the Policy Preferences of Wealthy Americans*, 11 Perspectives on Politics 51, 53-54 and table 2 (2013). This contrasts with just 0.52 percent of the adult population that made a disclosable contribution in the 2016 election cycle. See *Donor Demographics*, Center for Responsive Politics (last visited May. 23, 2018).

² See generally David Callahan & J. Mijin Cha, *Stacked Deck: How the Dominance of Politics by the Affluent and Business Undermines Economic Mobility in America*, Dēmos (2013); Sean McElwee, *Whose Voice, Whose Choice?, The Distorting Influence Of The Political Donor Class In Our Big-Money Elections*, Demos (2016).

³ See Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America*, 101 (2012); *id.* at 234 (concluding that “patterns of responsiveness...often correspond more closely to a plutocracy than to a democracy.”).

help the people and groups who donated money to their campaigns,” and more than half (55%) of people across the country think this happens “most of the time.” *Americans’ Views on Money in Politics*, The New York Times & CBS News Poll (June 2, 2015), <https://nyti.ms/2J1iH1q>.

The dominance of Seattle’s own elite donor class similarly has fueled a local perception of corruption. Before I-122’s enactment, individuals could give up to \$700 to each City candidate, an amount well beyond the means of the many Seattleites whose disposable income could never allow for such political donations. *See* I-122 Section 5. In the August 2015 primary, more than half of the \$2.5 million received by all local candidates came from a small group of donors who gave an aggregate of \$500 or more. *See* Bruce Speight, *The Outsized Influence of Big Money in Seattle Elections How Honest Elections Seattle Can Empower Regular Voters*, Wash. PIRG (2015), App. at 57-58. These large political donations shape Seattle candidate priorities. City Council candidate Laura Gonzalez, who spent approximately 14 hours per week dialing for dollars, explained in 2015: “If I didn’t have to spend a significant amount of time fundraising I would be able to spend much more time in the field having that direct voter contact, which ultimately makes you a better policy maker.” *See* Paul Blumenthal, *Seattle Could Create an Entirely New Way to Fund Elections*, Huffington Post (Oct. 1, 2015),

https://www.huffingtonpost.com/entry/honest-elections-seattle_us_560d4018e4b0af3706dfaf02.

Against this backdrop, the Democracy Voucher program combats actual corruption, SMC 2.04.620, subd. a, by substantially broadening the base of contributors City candidates can depend upon to fund their campaigns, thereby reducing their reliance on large donors and the associated likelihood of *quid pro quo* arrangements.⁴ The program combats Seattleites’ reasonable perception that dollars from an elite donor class are being traded for policy outcomes “in a regime of large individual financial contributions,” *Buckley* at 27. As Seattle resident, Washington CAN! member, and long-time activist Roi-Martin Brown explained, the Vouchers’ “monetary amount may be small by today’s political standards, but I believe the Vouchers allow more voters to participate and counter other professional lobbying efforts to some degree.” Roi-Martin Brown, *Democracy Vouchers Are Crucial for Communities of Color*, Washington CAN! (Sept. 18, 2017), <https://www.washingtoncan.org/civic-engagement-stories/2017/democracy-vouchers-are-crucial-for-communities-of-color>.

⁴ As explained more fully below, the Voucher program helped generate a record number of contributors to eligible Seattle candidates in its first cycle in use. *First Look: Seattle's Democracy Voucher Program: Reducing the Power of Big Money and Expanding Political Participation*, Every Voice & Win Win (Nov. 15, 2017), App. at 63.

B. The Democracy Voucher Program Increases Access to Political Expression and Expands the Public Debate.

Governments such as Seattle plainly have an important interest in expanding access to participation in the political marketplace through voluntary public financing programs that lead to *more* political participation, *without restricting* the voice of others. *See Buckley*, 424 U.S. at 92-93 (explaining the at-issue public financing program was an “effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people”); *Texas v. Johnson*, 491 U.S. 397, 420 (1989) (citing *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring)). This interest is supported by the legal principle that the political views of individuals who lack economic resources are no less meritorious or important than those of wealthy individuals. *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966) (explaining, in striking down poll tax, “[w]ealth, like race, creed, or color is not germane to one’s ability to participate intelligently in the electoral process.”); *The Federalist No. 39* (James Madison), 1788 WL 453 at *1 (Westlaw ed. 2017). First Amendment and democratic interests are served when individuals, regardless of wealth, are able to fully engage in

the political marketplace of ideas through measures that address existing wealth-based barriers to participation.

1. The program reduces wealth-based barriers to participating in electoral campaigns as a contributor.

Democracy Vouchers allow individuals who are otherwise excluded from privately-financed campaign finance systems to participate as campaign donors. Many Seattleites, including members of Washington CAN! and other *amici* organizations, do not experience actual freedom to participate in the political marketplace of ideas as contributors because they lack disposable private funds—even though their comparative lack of wealth clearly does not reflect a comparative lack of political worth.⁵ Financial barriers hinder participation by these Seattleites and people of color, homeless people, incarcerated people and people recently released from incarceration. *See* Brown, *supra*.

National and local research demonstrates that private political donors are both wealthier and whiter than the population as a whole; but small donor empowerment programs counter such trends and advance racial equity. *See* Adam Lioz, *Stacked Deck: How the Racial Bias in our Big Money Political System Undermines Our Democracy and Our Economy*,

⁵ As of July 2016, an estimated 13 percent of Seattle residents lived in poverty. *See Quick Facts: Seattle, Washington*, U.S. Census Bureau (last visited May 29, 2018), <https://www.census.gov/quickfacts/fact/table/seattlecitywashington,US/PST045216>.

Dēmos, 20-23 (2014). *See also, generally,* Alan Durning, *Who Funds Seattle Campaigns?*, Sightline Institute (July 2015), App. at 1 (finding the neighborhoods that gave the most money to Seattle candidates in 2013 were disproportionately wealthy and white, with high percentages of waterfront and view homes).

By providing vouchers for campaign contributions to all eligible residents, Seattle’s program goes further than programs that match small, private contributions with public money—thus requiring individuals to utilize disposable income in order to take advantage of the program—to truly provide people of *all* economic backgrounds and races the opportunity to participate in the political marketplace. As first-time contributor, affordable housing advocate, and Washington CAN! member Susan Russell explained:

Being homeless feels like getting erased. The Democracy Voucher program made me feel like becoming visible in our local democracy. . . I got to donate to a candidate who made clear my voice mattered. It was huge. When you have nothing, the vouchers made me feel like I had value within a community. It gave me the opportunity to make a decision and contribution . . .

Susan Russell, *Democracy Vouchers Gave This Seattle Resident a Voice*, Washington CAN! (March 12, 2018), <https://www.washingtoncan.org/civic-engagement-stories/2018/3/12/democracy-vouchers-gave-this-seattle-resident-a-voice>. *See also* Gina Owens, *Democracy Vouchers Fight*

Corruption in Elections, Seattle Patch (Sept. 8, 2017) (detailing another low-income, first-time contributor's experience), <https://patch.com/washington/seattle/democracy-vouchers-fight-corruption-elections>; Josh Cohen, *'Democracy vouchers' aim to amplify low-income voices, to conservative ire*, The Guardian (July 7, 2017) (detailing how homeless individuals amplified their collective political voice by aggregating their Democracy Vouchers).

Since implementation, the Democracy Voucher program has already brought a substantial number of new small donors into Seattle's political process. A November 2017 report by Every Voice Center & Win Win Network found that in the first election in which the program was operational (2017) at least 25,000 Seattleites made candidate contributions—about three times as many residents as contributed to candidates in 2013. *First Look: Seattle's Democracy Voucher Program: Reducing the Power of Big Money and Expanding Political Participation*, Every Voice & Win Win (Nov. 15, 2017), App. at 63. An estimated 84% of all Seattle donors in 2017 were first-time donors. *Id.* And the people brought into the process through Democracy Vouchers were more reflective of Seattle's population as a whole in terms of age, race, gender, wealth, and neighborhood than individuals who donated to mayoral candidates (who were not eligible to receive voucher contributions in 2017). *Id.* at 3-5. An

additional study identified “a modest increase in the percentage of people of color in the voucher pool compared to donors in the 2017 cycle” and concluded that “voucher users are substantially more representative of the population than citizens who made cash contributions” by wealth and geography. Brian McCabe & Jennifer Heerwig, *Diversifying the Donor Pool: Did Seattle’s Democracy Vouchers Program Reshape Participation in Municipal Campaign Finance?*, SocArXiv 15, 19 (May 16, 2018), App. at 42, 46.⁶

2. The program reduces wealth-based barriers to running for office and increases the pool of Seattle candidates.

In addition to expanding and diversifying the people contributing to Seattle campaigns, the Democracy Voucher program also expands the political debate by increasing the pool of candidates adding their expression to the political marketplace. Seattle Municipal Code (“SMC”) 2.04.600, subd. a (describing program’s purpose of “expand[ing] the pool of

⁶ The Seattle Ethics and Elections Commission’s own commissioned report did not identify similar diversity benefits in examining neighborhood characteristics of voucher users. *Seattle Democracy Voucher Program Evaluation*, City of Seattle Ethics and Elections Commission 28 (April 25, 2018). This report, however, used data from two dissimilar election cycles (2015 and 2017) rather than comparing cash donors and vouchers users in the same cycle as did the two reports cited above. In addition, the *First Look* report examined racial and income group representation based upon relative contribution share as opposed to donor counts and found that the Democracy Voucher Program increased the share of contributions coming from low income residents and people of color—arguably the most important measure of relative influence over local election finance.

candidates for city offices”). Our Constitution’s democratic values are undermined when candidates are shut out of the political marketplace based on their lack of economic resources. *See Bullock v. Carter*, 405 U.S. 134, 142-44, 145-46 (1972); *Lubin v. Panish*, 415 U.S. 709, 716-718 (1974) (noting, in Equal Protection analysis, the value of “continued availability of political opportunity” for candidates, and a “tradition . . . of hospitality toward all candidates without regard to their economic status.”). As such, the public’s interest in opening electoral debates to candidates who might otherwise be excluded from the political marketplace because of their lack of economic resources is significant, and remains as important today as when *Buckley* was decided. To this day, privately-funded, big-money-driven campaign finance systems filter out candidates who are not wealthy and lack access to wealthy donor networks. *See generally* Adam Lioz & Karen Shanton, *The Money Chase: Moving from Big Money Dominance in the 2014 Midterms to a Small Donor Democracy*, Dēmos (2014).

Further, the candidates filtered out in this way are disproportionately candidates of color. State-created barriers to participation in our democracy and economy—from slavery to Jim Crow and beyond—have “carrie[d] over into staggering wealth gaps between white people and people of color today, making it more difficult for people of color to make their voices heard in a system that runs on private wealth. Candidates of color are thus

less likely to run for office in the first place, and raise less money when they do.” Heather C. McGhee, *Foreword: New Approaches for Regulating Money in Politics*, 16 *Election Law Journal* 1, 5 (2017), (footnotes omitted).⁷ In a 2014 survey, 66 percent of people of color “agreed that lack of access to donors is an important reason preventing people of color from being represented in elected office.” Lioz, *Stacked Deck*, *supra*, at 27.

Public financing programs such as Seattle’s expand the electoral debate by facilitating more diverse candidates’ campaigns for office. *See, Public Financing in California: A Model Law for the 21st Century*, Center for Government Studies 11-12 (2011) ; *see generally* DeNora Getachew & Ava Mehta, *Breaking Down Barriers: The Faces of Small Donor Public Financing*, The Brennan Center For Justice 2-3 (2016). The Democracy Voucher program is already expanding the public debate around Seattle elections by breaking down wealth-based barriers to running for office. ChrisTiana ObeySumner ran for City Council Position 8 in 2017, and

⁷ *See also* Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, Pew Research Center (Dec. 12, 2014) (finding thirteen-fold and ten-fold gaps between median white household wealth and black and Latino median household wealth, respectively); Lioz, *Stacked Deck*, *supra*, at 28 (citation omitted) (explaining that a study of more than 3,000 candidates for state legislative races in 2006, the most recently available data, showed that candidates of color raised 47 percent less money than white candidates, after adjusting for factors such as incumbency, partisanship, and district income).

explained how integral the Democracy Voucher program was in their decision to run for office:

If we didn't have Democracy Vouchers in place, it would be unaffordable for me to run. But Democracy Vouchers present an opportunity for someone like me to run. I come from intersectionality of identities not typically represented as fiscal supporters of politicians: working poor, Caribbean black, latino, with Western-prescribed mental health eccentricities. . . I have so much I can contribute to the [political] process. I have supporters, experience working on a city commission, unique ideas to bring to the table. . . What I don't have is affluence or affluent friends. But, just because I'm not affluent and don't hang out with affluent people, doesn't mean I shouldn't be part of this process.

See ChrisTiana ObeySumner, *Democracy Vouchers Inspired This Seattle Resident to Consider Running for Office*, Washington CAN! (March 16, 2018), <https://www.washingtoncan.org/civic-engagement-stories/2018/3/16/democracy-vouchers-inspired-this-seattle-resident-to-consider-running-for-office> . ObeySumner was in fact one of four women or non-binary individuals and four people of color who ran in Position 8 in 2017, a sharp increase in candidate diversity from prior election cycles—providing some anecdotal evidence that the Voucher program can help diversify the candidate pool. *Seattle Democracy Voucher Program Evaluation, supra*, n.5 at 17-18.

Making elections more inclusive of candidates like ObeySumner, in turn, creates opportunities for political expression by new candidates'

supporters, including supporters from historically marginalized communities. *See Bullock*, 405 U.S. at 143-44 (finding the exclusionary ballot access fee’s effect on voters “neither incidental or remote.”); *Lubin*, 415 U.S. at 716 (explaining that hindrance of candidates’ political opportunity is “intertwined with the rights of voters,” for “voters can assert their preferences only through candidates or parties or both”). This idea was crystallized by Gwendolyn Patton, a Civil Rights-era activist who observed, “People here were murdered trying to get the right to vote, but what good is it if there’s no one to vote for?” Ari Berman, *How the Money Primary is Undermining Voting Rights*, *The Nation* (May 19, 2015).

C. The Democracy Voucher Program Advances the Compelling First Amendment Interest of Democratic Self-Government.

“The First Amendment reflects ‘a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.’” *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (citing *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)). Supreme Court precedent spanning decades and ideologies consistently explains that the public marketplace of ideas protected by the First Amendment does not exist in a vacuum, but rather is in service of our system of democratic self-government. *See, e.g., id.* (citation omitted) (“[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.”);

Knox v. Serv. Emps. Int’l Union, Local 1000, 132 S. Ct. 2277, 2288 (2012) (“[O]ur cases have often noted the close connection between our Nation’s commitment to self-government and the rights protected by the First Amendment.”); *Buckley*, 424 U.S. at 14 (citation omitted) (noting that a “major purpose. . . was to protect the free discussion of governmental affairs”). Speech in a competitive political marketplace of ideas serves and protects our capacity to govern ourselves and hold elected officials accountable. *See Williams v. Rhodes*, 393 U.S. 23, 32 (1968); *Citizens United v. Fed’l Election Comm’n*, 558 U.S. 310, 339 (2010) (“Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. . . The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”).

In campaign finance, promoting democratic self-government is a compelling interest. *See Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (3-judge court), *aff’d mem.*, 565 U.S. 1104 (2012). The Voucher program advances this interest in two critical ways—by enabling candidates to run for office without relying on non-constituents, and by helping translate majority preferences into public policy.

The Constitution is built on the assumption that “local situation[s]” shape people’s ideological priorities and perspectives. *See The Federalist*

No. 10 (James Madison), 1787 WL 338 at *4. Just as state governments are “more sensitive to the diverse needs” of their populations than the federal government, *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991), city officials are meant to be even more locally attuned. And just as effective state government benefits from “distinct and discernable lines of political accountability . . . between the citizens and the States,” *United States v. Lopez*, 514 U.S. 549, 576 (1995) (Kennedy, J., concurring), so too municipal government benefits from distinct lines of political accountability to the people of that city.

Historically, Seattle candidates have relied on donors in affluent suburbs (often with less diverse populations than Seattle), such as Bellevue, and other states, such as California, for 20-35% of campaign funds.⁸ Just as individuals’ policies and preferences are often shaped by economic status, *see supra* note 2, and race, *see Lioz, Stacked Deck, supra*, at 15-18, they are often shaped by where people live. *See* David Fontana, *The Geography of Campaign Finance Law*, 90 S. Cal. L. Rev. 1247 (2017). People who do not live in the City, but engage with it primarily as commuting workers, amenity visitors, or absentee property owners, will naturally have different priorities

⁸ For explanation of the data, methodology, and analysis in this section, including a comparison to non-Voucher races, *see* Ron Fein, *The Impact of Seattle’s Democracy Voucher Program on Candidates’ Ability to Rely on Constituents for Fundraising*, Free Speech For People (2017), App. at 86.

than people who live in the City. Consequently, candidate reliance on non-constituent funders can undermine democratic self-government. *See* Fontana, *supra*. Conversely, promoting increased reliance on constituents helps strengthen democratic self-government.

Seattle’s 2017 general election city council candidates, all of whom participated in the Voucher program, raised much more of their funds from constituents than candidates for those seats (in some cases the same person) had raised just two years earlier:

Table 1: Percent of funds raised from Seattle residents in positions 8 and 9⁹

	2015		2017	
Position 8	Burgess, Timothy (i)	83%	Mosqueda, Teresa (p)	88%
	Grant, Jonathan	65%	Grant, Jonathan (p)	96%
Position 9	González, M. Lorena	65%	González, M. Lorena (i) (p)	95%
	Bradburd, William	82%	Murakami, Pat (p)	98%

In total, the percentage of funds raised from Seattle residents in these races went from 76% in 2015 to 93% in 2017. In contrast, candidates who did not use vouchers—because they chose not to participate in the program,

⁹ Positions 8 and 9 are elected at-large, i.e., citywide. The first listed candidate in each cell is the victor. (i) indicates the incumbent, if any. (p) indicates that the candidate participated in the Voucher program.

or ran in the non-voucher-eligible mayoral race—relied more on non-constituent donors, at rates similar to past elections. By facilitating candidates’ reliance on actual constituents, the Democracy Voucher program promotes democratic self-government.

The compelling interest of democratic self-government can only be realized, however, when ideas with the greatest public support are translated into government action—most often through effective representation and occasionally by the people directly through ballot initiatives or referenda; this is what it means to be governed by majority rule.¹⁰ Indeed some correlation between the exercise of state power and popular support is integral to the very nature of our Republic. *See, e.g.*, The Federalist No. 39, *supra* at *1 (James Madison) (defining a Republican form of government as one “which derives all its powers directly or indirectly from the great body of the people. . . It is ESSENTIAL to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it. . . .”); Guy-Uriel E. Charles, *Constitutional Pluralism and Democratic Politics: Reflections on the Interpretive Approach of Baker v. Carr*, 80 N.C. L. Rev. 1103, 1146 (2002) (footnotes omitted) (explaining, “[b]y almost all conceptions of democracy,

¹⁰ Majority rule is not an absolute in a democracy—protection for minority rights is essential. *See United States v. Carolene Products Co.*, 304 U.S. 144, 152 at n. 4 (1938). It is nonetheless a default condition to be pursued absent a compelling countervailing value.

any polity that fancies itself democratic must at least be responsive to majoritarian interests, commonly referred to as majority rule. . . [Madison] understood that a democratic polity’s legitimacy depended upon some form of majoritarian influence.”). While it is true that the First Amendment is counter-majoritarian to the extent it protects individual rights to express unpopular opinions, *e.g.*, *Johnson*, 491 U.S. at 414, the Amendment cannot be read to uproot our entire system of majoritarian republicanism so integral to its very purpose. The First Amendment’s democracy-strengthening objective is embodied not just in its Free Speech protections, but throughout the entire Amendment, which contains six guarantees that reflect a “rigorous chronological narrative of free citizens governing themselves in an ideal democracy.” *See* Burt Neuborne, *Madison’s Music: On Reading The First Amendment* 11-12 (2015).

Hence, the fact that Voucher holders direct how public funds are distributed to participating candidates *serves* – not contravenes – the First Amendment and its self-government purpose.¹¹ Appellants’ allegation that

¹¹ This also serves the City’s important interest in directing public funds to candidates with popular support. The *Buckley* Court upheld the presidential public financing program’s qualifying threshold for minor parties, noting that “Congress’ interest in not funding hopeless candidacies with large sums of public money . . . necessarily justifies the withholding of public assistance from candidates without significant public support.” *Buckley*, 424 U.S. at 96. This same interest underlies qualifying thresholds in grant-based public financing systems. *See, e.g., Green Party of Conn. v. Garfield*, 616 F.3d 213, 233-34 (2d Cir. 2010) (citing *Buckley*, 424 U.S. at 96, 103-04). The Voucher program serves this same purpose in a more targeted manner. The qualifying thresholds establish a floor of public support below which a candidacy cannot access public funds. SMC 2.04.630,

the funding mechanism unconstitutionally discriminates against minority viewpoints because participating candidates receive “unequal distribution of voucher funds based on voter preferences,” Compl. ¶¶ 51, 34, turns the First Amendment’s essential democracy-enhancing purpose on its head. In reality, helping ideas with widespread public support compete effectively with ideas that happen to have the backing of (a relatively few) wealthy donors serves the First Amendment itself by advancing democratic self-government. That candidates with more popular support will generally receive more public funds serves to align public policy outcomes with public support.

IV CONCLUSION

For the foregoing reasons, the decision below must be **AFFIRMED**.

Respectfully submitted March 22nd, 2019.

subd. c. But the funding distribution mechanism also serves to direct more public funds to candidates who are backed by more Seattleites, thereby spending less public resources on candidates with less popular support and therefore less chance of being elected.

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