

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

MARK ELSTER and SARAH PYNCHON,

Plaintiffs,

vs.

THE CITY OF SEATTLE,

Defendant.

No. 17-2-16501-8 SEA

MOTION FOR LEAVE TO FILE AN
AMICUS CURIAE BRIEF OF
WASHINGTON CAN!, APACEVOTES,
EVERY VOICE, FIX DEMOCRACY
FIRST, FUSE, LGBTQ ALLYSHIP,
ONEAMERICA, REPRESENT.US
WASHINGTON DEMOCRACY
HUB, WASHPIRG, AND WIN WIN
NETWORK

I. RELIEF REQUESTED

Pursuant to Civil Rule 7(b), Washington CAN!, APACEvotes, Every Voice, Fix
Democracy First, Fuse, LGBTQ Allyship, OneAmerica, Represent.Us, the Washington
Democracy Hub, the Washington Public Interest Research Group (“WashPIRG”) and Win Win
Network (collectively “amici curiae”) respectfully request leave to file a brief as amici curiae in
the above-referenced case. It is within the discretion of the Court to allow amicus participation in
Superior Court if it may be helpful to the Court. *Parsons v. Dep’t of Soc. & Health Servs.*, 118
P.3d 930, 934 (Wash. Ct. App. 2005) (explaining, “[n]o specific rule permits amicus
participation in the trial court, but neither is there any rule prohibiting it. We can see no reason a
trial judge should not have discretion to permit such participation if it may be helpful to the

1 court.”). Undersigned counsel consulted with the parties’ counsel before filing this motion, and
2 both parties consent to the filing of this motion.

3 II. STATEMENT OF FACTS

4 The Democracy Voucher program (“the program”) was passed by a super-majority of
5 Seattle voters as part of Initiative I-122 (“I-122”), which has now been codified in Title 2 of the
6 Seattle Municipal Code (“SMC”) entitled Honest Elections Seattle. *See* City of Seattle’s 12(b)(6)
7 Motion to Dismiss (“MTD”) at 3; City’s Apps. C & D; SMC 2.04.600—690 (2017). The
8 program was designed “to expand the pool of candidates for city offices and to safeguard the
9 people’s control of the elections process of Seattle[,]” SMC 2.04.600(a), “to ensure the people of
10 Seattle have an equal opportunity participate in political campaigns and be heard by candidates,
11 to strengthen democracy. . . and prevent corruption.” SMC2.04.620(a). The program distributes
12 \$100 in Democracy Vouchers to residents of the City of Seattle (“the City”) who are eligible to
13 make political contributions. SMC 2.04.620(b). Voucher recipients may assign their vouchers in
14 increments of \$25 to candidates who have opted to participate in the program by agreeing to
15 raise more of their campaign funds from small-dollar sources. *See id.* at subs. (b)-(e), SMC
16 2.04.630. Accordingly, the more popular support a participating candidate has among voucher
17 recipients, the more public funds she is likely to receive. Initiative I-122 made numerous changes
18 to Seattle’s campaign finance rules, including, for instance, reducing maximum contributions
19 from \$700 to \$500. *See* SMC 2.04.370; I-122 Section 5. The Democracy Voucher program is the
20 only portion of I-122 that Plaintiffs challenge. *See* Compl. The program is funded in part by a
21 limited and insignificant tax on real property that was approved by Seattle voters pursuant to
22 RCW 84.55.050. *See* I-122 Section 2.

1 instrumental in the passage of permissive legislation in 2008 that laid the ground work for public
2 funding of elections at all levels of government in Washington. Seattle’s Democracy Voucher
3 Program for city races is integral to its mission.

4 Fuse is a statewide progressive advocacy organization that works to create change online,
5 on the ground, and on issues that matter most. Fuse has a following in Seattle of nearly 23,000
6 via email and 7,000 on social media, including hundreds of donors and activists who join offline
7 events each year. Fuse was on the I-122 steering committee and helped collect signatures, raise
8 money, and recruit volunteers to phone-bank and canvass to support I-122. Fuse has long
9 advocated getting big money out of politics in order to empower ordinary people- including its
10 members- in politics. Democracy Vouchers are a key tool to achieve that goal.

11 LGBTQ Allyship (“Allyship”) is an LGBTQ advocacy, community organizing and
12 education nonprofit that also develops grassroots leadership in solidarity with other marginalized
13 communities. Its mission is to build power among LGBTQ communities and allies in
14 Washington State to work towards social, economic, racial, and gender justice. Allyship has
15 2500 members / constituents in Seattle. Allyship educated its base through social media and
16 community organizing to advocate for the passage of I-122. Democracy Vouchers affect
17 Allyship’s mission and members by ensuring LGBTQ marginalized individuals have access to
18 vote for someone from their community who truly represents them.

19 OneAmerica is a statewide immigrant and refugee organizing, advocacy and civic
20 engagement organization based in Seattle. OneAmerica’s mission is to advance democracy and
21 justice by building power within immigrant and refugee communities with key

1 allies. OneAmerica has 3,000 members and/or supporters in the City of Seattle. OneAmerica
2 conducted non-partisan civic engagement activities to advocate for the passage of I-122.
3 Democracy Vouchers advance OneAmerica's mission and members by allowing immigrant and
4 refugee communities in Seattle greater access to the democratic process.

5 Represent.Us is a non-partisan organization with more than 45 chapters nationwide that
6 unites Americans across the political spectrum to reduce the undue influence of large special
7 interest money in our political system and restore power to the American voters. Represent.Us
8 has about 6,400 members in Seattle. It believes that Seattle's Democracy Voucher program is a
9 constitutional and essential innovation to ensure that all Seattle voters have a voice in a political
10 process meant to serve them first and foremost.

11 The Washington Democracy Hub's mission is to advance a long-term strategic agenda
12 for democratic reform through stakeholder engagement and policy research, particularly on the
13 issues of campaign finance reform, fair courts, and elections administration. When low-income
14 people donate to candidates, their interest and participation in the democratic process increases.
15 As such, the Hub is a strong proponent of the Seattle Voucher program as it helps low-income
16 communities compete with their wealthier counterparts.

17 The Washington Public Interest Research Group (WashPIRG) is a citizen-funded,
18 nonprofit, nonpartisan grassroots consumer group. On behalf of its thousands of members in
19 Seattle and across the state, WashPIRG stands up to powerful interests threatening our health and
20 safety, our financial security or our right to fully participate in our democratic society. PIRGs
21 across the country have worked to support programs that empower small donors in dozens of

1 states and cities. WashPIRG supported Honest Elections Seattle by gathering signatures to
2 qualify the initiative, building support among the public, and mobilizing voters for passage.

3 Win Win Network (“Win/Win”) envisions a new political landscape that inspires people;
4 where individuals are engaged because they see themselves and their values reflected across our
5 democracy. Win/Win focuses on big picture opportunities to collaborate across organizational
6 silos on shared goals that will address systemic disparities, increase community power, and
7 advance wins that truly impact people’s lives. Seattle’s Democracy Voucher program helps reach
8 this vision by allowing everyday people to have a powerful voice in local elections.

9 In sum, amici curiae were all closely involved in formulating or advocating the passage
10 of I-122, including the Democracy Voucher program. Amici curiae have unique knowledge
11 about how the program directly affects their individual constituents residing in Seattle, by:
12 allowing them to participate in the political process in a way that many otherwise could not,
13 thereby facilitating the exercise of members’ First Amendment rights; expanding the pool of
14 candidates for Seattle elections that their members can vote for; and reducing a corrosive
15 perception of local corruption that affects their members and other Seattle community members.
16 Plaintiffs’ challenge threatens to undermine all these important public interests. The
17 accompanying brief draws on research familiar to amici curiae due to their experience. Amici
18 curiae thus have familiarity with the issues that is not likely held by the parties in this case.

19 **IV. STATEMENT OF ISSUES**
20 **AND REASONS FOR ADDITIONAL ARGUMENT**

21 The proposed brief of amici curiae addresses the following issues:

- 1 A. Does the Democracy Voucher program serve important public interests in
2 strengthening democracy? **YES.**
- 3 B. Does the Democracy Voucher program’s majoritarian, donor-driven funding
4 mechanism contravene the First Amendment? **NO.**
- 5 C. Assuming Plaintiffs’ First Amendment rights are implicated, are those rights worthy
6 of strict scrutiny protection? **NO.**

7 The City of Seattle has convincingly argued that the program does not implicate any First
8 Amendment interests whatsoever. *See generally* MTD. Yet, amici curiae believe that additional
9 argument is needed to demonstrate why, even if the First Amendment does apply, Plaintiffs’
10 fundamentally misguided interpretation of the First Amendment does not. Amici curiae’s
11 proposed brief demonstrates that important, democracy-strengthening public interests are served
12 by the Democracy Voucher program; details how the program’s funding mechanism advances
13 rather than contravenes the First Amendment by advancing democratic self-government; and
14 discusses why the program is plainly properly tailored.

15 **V. EVIDENCE AND AUTHORITY RELIED UPON**

16 Amici curiae rely on Plaintiffs’ Complaint, with its attachment, and the City of Seattle’s
17 12(b)(6) Motion to Dismiss, with its appendices subject to judicial notice. Amici curiae submit
18 with their Motion a proposed Order allowing amici curiae to file the brief; the proposed Amicus
19 Curiae Brief; and Appendices of cited authorities. *See* Apps. 1 & 2. It is within the discretion of
20 the Court to allow amicus participation in Superior Court if it may be helpful to the Court. *See*
21 *Parsons*, 118 P.3d at 934.

1 **VI. CONCLUSION**

2 For the foregoing reasons, Washington CAN!, APACEvotes, Every Voice, Fix
3 Democracy First, Fuse, LGBTQ Allyship, OneAmerica, Represent.Us, Washington Democracy
4 Hub, WashPIRG, and Win Win Network request that this Court grant their motion for leave to
5 file the accompanying brief as amici curiae.

6 **CERTIFICATE OF COMPLIANCE**

7 I certify that this Motion for Leave to File an Amicus Curiae Brief contains 1757 words
8 in compliance with Local Civil Rules of the King County Superior Court as amended September
9 1, 2017. The accompanying Amicus Curiae Brief contains 6158 words.

10 Respectfully submitted September 19, 2017.

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CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the Motion for Leave to File an Amicus Curiae Brief, Proposed Order granting the requested relief, and proposed Amicus Curiae brief was served on all counsel of record as noted below:

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DATED this 19th day of September, 2017.

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PROPOSED ORDER GRANTING MOTION FOR
LEAVE TO FILE AN AMICUS CURIAE BRIEF OF
WASHINGTON CAN!, APACEVOTES,
EVERY VOICE, FIX DEMOCRACY FIRST, FUSE,
LGBTQ ALLYSHIP, ONEAMERICA,
REPRESENT.US, WASHINGTON DEMOCRACY
HUB, WASHPIRG, AND WIN WIN NETWORK

Washington CAN!, APACEvotes, Every Voice, Fix Democracy First, Fuse, LGBTQ Allyship, OneAmerica, Represent.Us, the Washington Democracy Hub, the Washington Public Interest Research Group (“WashPIRG”) and Win Win Network have filed a Motion for Leave to File an Amicus Curiae Brief in support of the City’s 12(b)(6) Motion to Dismiss.

IT IS HEREBY ORDERED that this Court GRANTS the motion of Washington CAN!, APACEvotes, Every Voice, Fix Democracy First, Fuse, LGBTQ Allyship, OneAmerica, Represent.Us, Washington Democracy Hub, WashPIRG and Win Win Network to file the brief accompanying their motion as amici curiae.

DATED this __ day of _____, 2017.

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Hon. Beth M. Andrus
King County Superior Court

Respectfully submitted September 19, 2017.

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C. The Democracy Voucher program strengthens democracy by
reducing a valid perception of corruption..... 7

D. The program’s donor-directed distribution of funds ensures
that candidates without significant public support
do not receive large sums of public financing 10

II. Plaintiffs’ attack on the program’s majoritarian, donor-directed funding mechanism
turns a central purpose of the First Amendment on its head..... 11

A. The program’s donor-directed mechanism of distributing funds to
participating candidates serves, rather than contravenes a central purpose of
our First Amendment: advancing democratic self-government..... 11

B. The program’s donor-directed mechanism for distributing public funds does
not amount to unconstitutional viewpoint discrimination 15

III. Strict scrutiny review of the Democracy Voucher program is inappropriate, and the
program easily survives any other standard of review..... 16

A. The program’s alleged burdens on Plaintiffs’ free speech rights do not come
close to meriting strict scrutiny review..... 16

B. The Democracy Voucher program is properly tailored because it imposes
an insubstantial burden in service of important public interests..... 17

Conclusion..... 19

1 **STATEMENT OF INTEREST**

2 This brief is filed on behalf of *amici curiae* Washington CAN!, APACEvotes, Every
3 Voice, Fix Democracy First, Fuse, LGBTQ Allyship, OneAmerica, Represent.Us, the
4 Washington Democracy Hub, the Washington Public Interest Research Group (“WashPIRG”),
5 and Win Win Network. *Amici* collectively represent more than 20,000 Seattleites. *Amici* were
6 among the community-based coalition and national advocacy organizations that developed and
7 helped pass the Honest Elections Seattle Initiative I-122 (“Initiative” or “I-122”), including the
8 challenged Democracy Voucher program. I-122 Sections 1-2, City’s Motion to Dismiss
9 (“MTD”) App. C. *Amici* are groups committed to strengthening democracy and representation
10 and/or groups whose members are served by the Democracy Voucher program.

11 **INTRODUCTION AND SUMMARY OF ARGUMENT**

12 As *amici* demonstrate in Part I, the Democracy Voucher program (“the program”) serves
13 the City’s important interests in strengthening local democracy in Seattle by reducing wealth-
14 based barriers to participation in electoral campaigns and reducing a legitimate perception of
15 corruption. These democracy-strengthening interests are not only consistent with the First
16 Amendment, but actually advance the First Amendment’s central aim of protecting our
17 republican system of democratic self-government. Part II responds to Plaintiff’s fundamentally
18 misguided argument that the program’s small-donor-driven mechanism for distributing funds to
19 participating candidates violates the First Amendment because it is majoritarian. *See infra* Part
20 II(A). The donor-driven distribution of funds does not amount to unconstitutional viewpoint
21 discrimination, since unequal funding allotments are traceable not to decisions by the City, but to
22 determinations of Seattleites engaged with the political marketplace of ideas. *See infra* Part II(B).
23 Part III demonstrates that strict scrutiny review of the program is inappropriate, and that the

1 program is closely drawn and hence easily survives any other standard of review. For all these
2 reasons, the City’s motion to dismiss must be granted.

3 ARGUMENT

4 I. THE DEMOCRACY VOUCHER PROGRAM SERVES IMPORTANT 5 PUBLIC INTERESTS IN STRENGTHENING DEMOCRACY IN SEATTLE.

6 7 A. The Democracy Voucher program increases political participation by reducing 8 wealth-based barriers to contributing to electoral campaigns. 9

10 In our majoritarian democracy the political views of individuals who lack economic
11 resources are no less meritorious or important than those of wealthy individuals. *See Harper v.*
12 *Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966) (explaining, in striking down poll tax,
13 “[w]ealth, like race, creed, or color is not germane to one’s ability to participate intelligently in
14 the electoral process.”); *The Federalist No. 39* (James Madison), 1788 WL 453 at *1 (Westlaw
15 ed. 2017). Democracy generally, and First Amendment interests specifically, are served when
16 these individuals are able to fully engage in the political marketplace of ideas through measures
17 that address existing wealth-based barriers to participation.

18 The Supreme Court has hence looked favorably upon public financing programs and
19 other measures that seek to *add more* speech to the public marketplace of ideas without
20 restricting contributions or spending by others, since these measures *advance*, rather than violate
21 First Amendment principles. *See Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976) (explaining the at-
22 issue public financing program was an “. . . effort, not to abridge, restrict, or censor speech, but
23 rather to use public money to facilitate and enlarge public discussion and participation in the
24 electoral process, goals vital to a self-governing people”); MTD at 8; *Texas v. Johnson*, 491 U.S.
25 397, 420 (1989) (citing *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J.,
26 concurring)). In other words, even if the First Amendment does not necessarily *require*

1 jurisdictions to provide public funding for election campaigns, governments clearly have an
2 important interest in reducing wealth-based barriers to participating in the political marketplace
3 through public financing programs that ultimately lead to *more*, not less, political participation.

4 Seattle’s Democracy Voucher program addresses a problem inherent in any privately-
5 financed campaign finance system: many people, including members of Washington CAN!,
6 LGBTQ Allyship, OneAmerica, Represent.Us, and WashPIRG, do not experience the actual,
7 lived freedom to participate in the political marketplace of ideas as contributors because they
8 lack disposable private funds, even though their comparative lack of wealth does not reflect their
9 comparative lack of political worth. For instance, as of July 2016, an estimated 13.5 percent of
10 Seattle residents lived in poverty. *See Quick Facts: Seattle, Washington*, U.S. Census Bureau,
11 App. 2 at 406 & available [here](#) (last visited Sept. 16, 2017). Financial barriers hinder
12 participation by people of color, homeless people, incarcerated people and people recently
13 released from incarceration. *See Roi-Martin Brown, Democracy Vouchers Are Crucial for*
14 *Communities of Color*, Seattle Patch (Sept. 15, 2017), App. 2 at 21 & available [here](#). Research
15 demonstrates that donors are not only wealthier than average, but also disproportionately white;
16 and that measures to empower small donors to participate advance racial equity *See Adam Lioz,*
17 *Stacked Deck: How the Racial Bias in our Big Money Political System Undermines Our*
18 *Democracy and Our Economy*, Dēmos, 20-23 (2014), App. 2 at 282 & available [here](#). *See also,*
19 *generally, Alan Durning, Who Funds Seattle Campaigns?*, Sightline Institute (July 2015), App. 2
20 at 165 & available [here](#) (finding the neighborhoods that gave the most money to Seattle
21 candidates in 2013 were disproportionately wealthy and white).

1 The Democracy Voucher program affords Seattleites of all economic backgrounds and
2 races an opportunity to participate in the political marketplace. As first-time contributor and
3 Washington CAN! member Gina Owens describes:

4 . . . I realize that I can participate in a way I've never done before because of Seattle's
5 new Democracy Voucher program. Taking big money out of politics, where even low-
6 income people like myself can contribute to candidates, is why I supported passing
7 Honest Elections and why I still support the voucher program.

8 Gina Owens, *Democracy Vouchers Fight Corruption in Elections*, Seattle Patch (Sept. 8, 2017),
9 App. 2 at 381 & available [here](#). Thanks to the program, Ms. Owens and many similarly-situated
10 Seattle residents have participated in the public debate about Seattle elections in ways they
11 previously could not. For instance, in the first election under the program, homeless
12 individuals—many of whom lack private resources needed for basic survival, let alone for
13 making political contributions—participated as political contributors, and amplified their
14 collective political voice by aggregating their democracy vouchers. *See* Josh Cohen, *'Democracy*
15 *vouchers' aim to amplify low-income voices, to conservative ire*, The Guardian (July 7, 2017),
16 App. 2 at 108 & available [here](#). This furthers both the democracy-strengthening objective of the
17 First Amendment, and the City's related interest in fostering political participation by Seattleites
18 who would otherwise be shut out of the debate due to their lack of economic resources.

19 **B. The program serves an important interest in expanding the public debate by**
20 **reducing wealth-based barriers to running for office, thereby increasing the pool of**
21 **candidates for Seattle elections.**

22
23 In addition to expanding opportunities for non-wealthy individuals to engage as political
24 donors, Seattle's program seeks to expand the political debate by increasing the pool of
25 candidates, who, in turn, add their expression to the political marketplace. Seattle Municipal
26 Code ("SMC") 2.04.600, subd. a (describing program's purpose of "expand[ing] the pool of

1 candidates for city offices”). The public’s interest in opening up electoral debates to candidates
2 who might otherwise be excluded for wealth-related reasons is significant, and is distinct from an
3 interest in enhancing some people’s political voices by *restricting* the relative voices of others.¹
4 Public financing programs that level up without chilling anyone’s expression are plainly
5 consistent with the First Amendment. *See generally* MTD at 7-8; *Buckley*, 424 U.S. at 92-93.

6 Increasing candidate access to the political marketplace remains as important today as
7 when *Buckley* was decided. Our nation’s democratic values are undermined when candidates are
8 shut out of the political marketplace on the basis of their wealth. *See Bullock v. Carter*, 405 U.S.
9 134, 142-44, 145-46 (1972); *Lubin v. Panish*, 415 U.S. 709, 716-718 (1974) (noting, in Equal
10 Protection analysis, the value of “continued availability of political opportunity” for candidates,
11 and a “tradition . . . of hospitality toward all candidates without regard to their economic
12 status.”). Privately-funded, big-money-driven campaign finance systems do just this by filtering
13 out candidates who are not wealthy and lack access to wealthy donor networks. *See generally*
14 Adam Lioz & Karen Shanton, *The Money Chase: Moving from Big Money Dominance in the*
15 *2014 Midterms to a Small Donor Democracy*, Dēmos (2014), App. 2 at 253 & available [here](#).
16 Candidates filtered out in this way are disproportionately candidates of color. As one
17 commentator has synthesized:

18 A history of state-sponsored oppression carries over into staggering wealth gaps between
19 white people and people of color today, making it more difficult for people of color to

¹ As the City points out, this case is *not* about restricting individuals from making independent expenditures. MTD at 2. It is not about matching or combating independent spending, which was at issue in *Arizona Free Ent. Club’s Freedom PAC v. Bennett*; in that case, the Court struck down a provision under which private spending—by privately-financed candidates and private individuals—triggered disbursement of public funds to particular, publicly-financed candidates opposed by the private spenders. 564 U.S. 721, 727-28 (2011). The Court held the allocation mechanism penalized political expression of independent spenders and privately-financed candidates since their choice to make private expenditures fueled not just their own political expression, but also that of particular publicly-financed candidates they opposed. *See id.* at 737-39. In contrast, Plaintiffs do not allege their independent expenditures are chilled by the program, *see generally* Compl.; and their payment of the challenged tax does not, as the City points out, “directly fund any candidate with whom the disagree.” MTD at 14.

1 make their voices heard in a system that runs on private wealth. Candidates of color are
2 thus less likely to run for office in the first place, and raise less money when they do.

3
4 Heather C. McGhee, *Foreword: New Approaches for Regulating Money in Politics*, 16 Election
5 Law Journal 1, 5 (2017), App. 2 at 373 (footnotes omitted).² Indeed, a study of more than 3,000
6 candidates running in more than 2,000 state legislative races in 2006—the most recently
7 available data—showed that candidates of color raised 47 percent less money than white
8 candidates, after adjusting for factors such as incumbency, partisanship, and district income. *See*
9 Lioz, *Stacked Deck*, *supra*, at 28 (citation omitted). In a 2014 survey, “66 percent of . . . people
10 of color agreed that lack of access to donors is an important reason preventing people of color
11 from being represented in elected office.” *Id.* at 27 (citation omitted). It is therefore not
12 surprising that more diverse candidates run for office under public financing systems. *See, e.g.*,
13 Ctr. for Gov’t Studies, *Public Financing in California: A Model Law for the 21st Century* 11-12
14 (2011), App. 2 at 112 & available [here](#); *see generally* DeNora Getachew & Ava Mehta, *Breaking*
15 *Down Barriers: The Faces of Small Donor Public Financing*, The Brennan Center For Justice 2-
16 3 (2016), App. 2 at 195 & available [here](#). Public financing programs that increase candidate
17 access not only advance First Amendment interests, but racial equity interests as well.

18 Breaking down wealth-related barriers to candidate participation also creates
19 opportunities for political expression by those candidates’ supporters, including supporters from
20 communities that have been historically marginalized by wealth-related barriers. *See Bullock*,
21 405 U.S. at 143-44 (finding the exclusionary ballot access fee’s effect on voters “neither
22 incidental or remote.”); *Lubin*, 415 U.S. at 716 (explaining that hindrance of candidates’ political

² *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), App. 2 at 250 & available [here](#) (using Survey of Consumer Finances data, finding that the median white household held \$141,900 of wealth, compared to just \$11,000 held by the median black household, a 13x gap; and just \$13,700 held by the median Latino household, a 10x gap).

1 opportunity is “intertwined with the rights of voters,” for “voters can assert their preferences
2 only through candidates or parties or both”).³

3 In sum, the program serves Seattle’s important interest in expanding the pool of
4 candidates that Seattle voters can choose from—without chilling anyone’s free expression.

5 **C. The Democracy Voucher program strengthens democracy by reducing a valid**
6 **perception of corruption.**

7
8 The Supreme Court has long held that a “primary interest” served by campaign finance
9 rules is “the prevention of corruption and the appearance of corruption[.]” *Buckley*, 424 U.S. at
10 25. “Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of
11 the appearance of corruption stemming from public awareness of the opportunities for abuse
12 inherent in a regime of large individual financial contributions.” *Id.* at 27. *Buckley* held the at-
13 issue public financing program served an interest in eliminating improper influence itself. *See id.*
14 at 96. Courts have also upheld public financing measures as serving an important interest in
15 preventing perceived corruption. *E.g., Gable v. Patton*, 142 F.3d 940, 948 (6th Cir. 1998).

16 Seattleites have perceived corruption in their local government, which undermines their
17 confidence in the local system of representation. Polling from 2015 shows that more than one-
18 third of Seattleites believe that “corruption is a problem in Seattle politics” and nearly two-thirds
19 feel that “lobbyists and big money interests in Seattle have a stronger voice in local government
20 than ordinary people.” *See* Greenberg Quinlan Rosner Research *Honest Elections Seattle:*
21 *Frequency Questionnaire 4-5* (Aug. 27-Sept. 1, 2015), App. 2 at 234. This perception of

³ 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?” *See* Ari Berman, *How the Money Primary is Undermining Voting Rights*, *The Nation* (May 19, 2015), App. 2 at 5 & available [here](#). Washington CAN! member Gina Owens similarly explains: “[The Democracy Voucher program] gives me the opportunity to contribute and support people that represent my voice while others can support candidates that have their interests at heart.” Owens, *supra*.

1 corruption is not unwarranted. That dollars are being exchanged for political actions is not far-
2 fetched when politicians are highly responsive to a wealthy donor class who can afford to
3 contribute substantial amounts, but much less so to those who are able to make only small
4 contributions, or none at all.

5 This is precisely what is happening at the national level. Affluent individuals are far more
6 likely to donate to political campaigns than the public at large. A 2013 survey of wealthy
7 Americans revealed that 68 percent of wealthy respondents had made political contributions in
8 the previous 12 months. Benjamin I. Page et al., *Democracy and the Policy Preferences of*
9 *Wealthy Americans*, 11 *Persp. on Pol.* 51, 53-54 & tbl. 2 (2013), App. 2 at 383 & available [here](#).
10 This contrasts with just 0.68 percent of the adult population that made a disclosable contribution
11 in the 2016 election cycle. See *Donor Demographics*, Center for Responsive Politics, App. 2 at
12 161 & available [here](#) (last visited Sept. 16, 2017). These donors have substantially different
13 policy preferences than Americans as a whole—and their policy preferences are vastly more
14 likely to be mirrored in actual policy outcomes. See generally David Callahan & J. Mijin Cha,
15 *Stacked Deck: How the Dominance of Politics by the Affluent and Business Undermines*
16 *Economic Mobility in America*, Dēmos (2013), App. 2 at 23 & available [here](#). In fact, when the
17 policy preferences of the wealthiest 10 percent of Americans conflict with those of the other 90
18 percent, the 10 percent trumps the 90 percent, with “the starkest difference in responsiveness to
19 the affluent and the middle class occur[ing] on economic policy.” Martin Gilens, *Affluence and*
20 *Influence: Economic Inequality and Political Power in America* 101 (2012), App. 2 at 230. A
21 Princeton political scientist concluded that “under most circumstances, the preferences of the
22 vast majority of Americans appear to have essentially no impact on which policies the
23 government does or doesn’t adopt[,]” and that “patterns of responsiveness...often correspond

1 more closely to a plutocracy than to a democracy.” *Id.* at 1, 234. As a result, eight-five percent of
2 the public thinks that sometimes “candidates who win public office promote policies that directly
3 help the people and groups who donated money to their campaigns,” and more than half (55%)
4 of people across the country think it happens “most of the time.” *Americans’ Views on Money in*
5 *Politics*, The New York Times & CBS News Poll (June 2, 2015), App. 2 at 3 & available [here](#).
6 In sum, data fuels a rational perception that dollars are translated into policy outcomes.

7 The dominance of Seattle’s own elite donor class likewise fuels the local perception of
8 corruption. Before I-122’s enactment, individuals could give up to \$700 to each City candidate,
9 an amount well beyond the means of many Seattleites. *See* I-122 Section 5, MTD App. C. In the
10 August 2015 primary, more than half of the \$2.5 million received by all local candidates came
11 from a small group of donors who gave an aggregate of \$500 or more. *See* Bruce Speight, *The*
12 *Outsized Influence of Big Money in Seattle Elections How Honest Elections Seattle Can*
13 *Empower Regular Voters* 1-2 (Wash. PIRG, 2015), App. 2 at 409 & available [here](#). Large
14 political donations shape Seattle candidate priorities. As City Council candidate Laura Gonzalez,
15 who spent approximately 14 hours per week dialing for dollars, synthesized in 2015: “If I didn’t
16 have to spend a significant amount of time fundraising I would be able to spend much more time
17 in the field having that direct voter contact, which ultimately makes you a better policy maker.”
18 *See* Paul Blumenthal, *Seattle Could Create an Entirely New Way to Fund Elections*, Huffington
19 Post (Oct. 1, 2015), App. 2 at 18 & available [here](#). Against this backdrop, Seattleites’
20 perceptions of corruption are hardly far-fetched.

21 The program was designed to prevent corruption, SMC 2.04.620, subd. a, and also serves
22 to reduce a legitimate perception of corruption in Seattle. As explained by Seattle resident Mr.
23 Roi-Martin Brown, a Washington CAN! member and long-time civil rights activist:

1 The [Vouchers'] monetary amount may be small by today's political standards, but I
2 believe the Vouchers allow more voters to participate and counter other professional
3 lobbying efforts to some degree. . . the Vouchers give voters like me, who don't have a
4 PAC or support from an organization back[ed] by corporate money, an opportunity to
5 support candidates whom I trust.

6 Brown, *supra*. By empowering individuals of all economic backgrounds to participate in
7 electoral campaigns, the program helps to combat a reasonable public perception that dollars
8 from an elite donor class are being traded for policy outcomes.

9 **D. The program's donor-directed distribution of funds ensures that candidates**
10 **without significant public support do not receive large sums of public financing.**

11 Finally, the Democracy Voucher program serves the City's important interest in directing
12 public funds to candidates with popular support. This interest has also been recognized since
13 *Buckley*, when the Court upheld the presidential public financing program's qualifying threshold
14 for minor parties, noting that "Congress' interest in not funding hopeless candidacies with large
15 sums of public money . . . necessarily justifies the withholding of public assistance from
16 candidates without significant public support." *Buckley*, 424 U.S. at 96.⁴

17
18 Seattle's program serves this same purpose in a more targeted manner. The qualifying
19 thresholds establish a floor of public support below which a candidacy cannot access public
20 funds. SMC 2.04.630, subd. c. But the funding distribution mechanism also serves to direct more
21 public funds to candidates who are backed by more Seattleites, thereby spending less public
22 resources on candidates with less popular support and therefore less chance of being elected.

23 //

⁴ This same interest underlies basic qualifying thresholds in grant-based public financing schemes. *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, to conclude a public financing system may "condition public funds on a showing of 'significant' public support. . ." and that "there is a range of permissible qualification criteria, and although a public financing system must be tailored to avoid an unfair or unnecessary burden on the political opportunity of a party or candidate, a court must defer to a legislature's choice of criteria so long as those criteria are drawn from the permissible range.").

1 **II. PLAINTIFFS’ ATTACK ON THE PROGRAM’S MAJORITARIAN, DONOR-**
2 **DIRECTED FUNDING MECHANISM TURNS A CENTRAL PURPOSE OF**
3 **THE FIRST AMENDMENT ON ITS HEAD.**
4

5 **A. The program’s donor-directed mechanism of distributing funds to participating**
6 **candidates serves, rather than contravenes, a central purpose of our First**
7 **Amendment: advancing democratic self-government.**

8 Plaintiffs allege the program unconstitutionally discriminates against minority viewpoints
9 by “distributing. . . funds at the whim of majoritarian interests,” since participating candidates
10 receive “unequal distribution of voucher funds based on voter preferences[.]” Compl. ¶¶ 51, 34.
11 Plaintiffs turn the First Amendment’s essential democracy-enhancing purpose on its head. “The
12 First Amendment reflects ‘a profound national commitment to the principle that debate on public
13 issues should be uninhibited, robust, and wide-open.’” *Snyder v. Phelps*, 562 U.S. 443, 452
14 (2011) (citing *New York Times v. Sullivan*, 376 U.S. 254, 270 (1964)). The public marketplace of
15 ideas protected by the First Amendment does not exist in a vacuum, but rather is in service of our
16 system of democratic self-government. *See, e.g., id.* (citation omitted) (explaining “speech
17 concerning public affairs is more than self-expression; it is the essence of self-government.”);
18 *Knox v. Serv. Emps. Int’l Union, Local 1000*, 132 S. Ct. 2277, 2288 (2012) (stating, “our cases
19 have often noted the close connection between our Nation’s commitment to self-government and
20 the rights protected by the First Amendment.”); *Buckley*, 424 U.S. at 14 (citation omitted)
21 (noting a “major purpose. . . was to protect the free discussion of governmental affairs”). Speech
22 in a competitive political marketplace of ideas serves and protects our capacity to govern
23 ourselves and hold elected officials accountable. *See Williams v. Rhodes*, 393 U.S. 23, 32 (1968);
24 *Citizens United v. Fed’l Election Comm’n*, 558 U.S. 310, 339 (2010) (stating, “[s]peech is an
25 essential mechanism of democracy, for it is the means to hold officials accountable to the people.

1 . . The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is
2 a precondition to enlightened self-government and a necessary means to protect it.”).

3 Similarly foundational in a democracy is that there is no inherent correlation between a
4 speaker’s wealth or poverty and the importance of her political views. As the Court has
5 recognized in the context of ballot access and voting rights, the happenstance of a person’s
6 economic circumstance says nothing about the popular support behind her ideas, nor their
7 objective truth. *See Bullock*, 405 U.S. at 143–44, 146; *Harper*, 383 U.S. at 668. Instead, a
8 democratic republic such as ours generally seeks to translate into government action those ideas
9 with majoritarian support. Integral to the very nature of our Republic is some correlation
10 between the exercise of state power and popular support. Democratic self-government can only
11 be realized when ideas with the greatest public support are translated into government action—
12 most often through effective representation and occasionally by the people directly through
13 ballot initiatives or referenda; this is what it means to be governed by majority rule.⁵ *See, e.g.,*
14 *The Federalist* No. 39, *supra* at *1 (James Madison) (defining a Republican form of government
15 as one “. . . which derives all its powers directly or indirectly from the great body of the people. .
16 . It is ESSENTIAL to such a government that it be derived from the great body of the society,
17 not from an inconsiderable proportion, or a favored class of it. . .”); Guy-Uriel E. Charles,
18 *Constitutional Pluralism and Democratic Politics: Reflections on the Interpretive Approach of*
19 *Baker v. Carr*, 80 N.C. L. Rev. 1103, 1146 (2002), App. 2 at 65 (footnotes omitted) (explaining,
20 “[b]y almost all conceptions of democracy, any polity that fancies itself democratic must at least
21 be responsive to majoritarian interests, commonly referred to as majority rule. . . [Madison]

⁵ 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.

1 understood that a democratic polity's legitimacy depended upon some form of majoritarian
2 influence.”). It is true that the First Amendment is counter-majoritarian to the extent it protects
3 individual rights to express unpopular opinions, *e.g.*, *Johnson*, 491 U.S. at 414, yet it cannot be
4 read to uproot our entire system of majoritarian republicanism so integral to the Amendment’s
5 purpose. The First Amendment’s democracy-strengthening objective is embodied not just in its
6 Free Speech protections, but throughout the entire Amendment, which contains six guarantees
7 that reflect a “rigorous chronological narrative of free citizens governing themselves in an ideal
8 democracy.” *See* Burt Neuborne, *Madison’s Music: On Reading The First Amendment* 11-12
9 (2015), App. 2 at 376.

10 The Supreme Court’s campaign finance cases, while consistently striking limits on
11 political spending, do not in fact reject these foundational principles. The Court has suggested
12 that, generally, the more money someone spends on independent expenditures, the more political
13 speech she has engaged in, *see Buckley*, 424 U.S. at 19. And the Court has speculated that higher
14 contributions may reflect greater intensity of support. *See id.* at 21.⁶ Yet the Court has never
15 suggested that the speech of the wealthy is inherently more meritorious or more politically
16 important than anyone else’s, nor could it; to do so would run counter to our very system of
17 democratic self-government, and to the premise that speech should not be favored or disfavored
18 on the basis of the speaker’s identity or viewpoint. *See, e.g., Citizens United*, 558 U.S. at 340;⁷

⁶ The Supreme Court is almost certainly incorrect about this. As Judge Guido Calabresi observed in a 2005 opinion, “given the unequal distribution of wealth, money does not measure intensity of desire equally for rich and poor. In other words, and crucially, a large contribution by a person of great means may influence an election enormously, and yet may represent a far lesser intensity of desire than a pittance given by a poor person. . . .”). *Landell v. Sorrell*, 406 F.3d 159, 161 (2d Cir. 2005) (Calabresi, J., concurring in denial of rehearing *en banc*). However, this is of no consequence here since the present case does not involve any attempt to limit the spending of the wealthy.

⁷ The *Citizens United* Court took this legitimate point about speaker identity to an illogical conclusion in collapsing the very real distinctions between corporate and human “speakers.” For this and other reasons, *amici* do not endorse the Court’s ruling in *Citizens United*.

1 *Johnson*, 491 U.S. at 414. Further, the Court has suggested that the amount of money raised or
2 spent in a political campaign *should* at least loosely reflect the level of public support, and has
3 looked favorably upon measures that aggregate, and thereby amplify, the political voices of
4 individuals of modest economic means. *See Fed'l Election Comm'n v. Mass. Citizens for Life,*
5 *Inc.*, 479 U.S. 238, 258 (1986) (observing, “[r]elative availability of funds is after all a rough
6 barometer of public support.”), *Buckley*, 424 U.S. at 56 (footnote omitted) (assuming, “the
7 financial resources available to a candidate’s campaign...will normally vary with the size and
8 intensity of the candidate’s support.”); *see also Fed'l Election Comm'n v. Nat'l Conservative*
9 *Pol. Action Comm'n*, 470 U.S. 480, 494 (1985) (citation omitted) (explaining that PACs “are
10 mechanisms by which large numbers of individuals of modest means can join together in
11 organizations which serve to ‘amplif[y] the voice of their adherents.’”).⁸

12 Plaintiffs’ assertion that the voluntary program is unconstitutional because it helps ideas
13 with widespread public support compete effectively with ideas that happen to have the backing
14 of (a relatively few) wealthy donors is simply absurd, and runs contrary to the core purpose of
15 the First Amendment in our Republic. The donor-directed nature of Seattle’s voucher program
16 serves the Amendment itself because it serves democratic self-government. As detailed above in
17 Part I(A), the Democracy Voucher program affords Seattle residents of all backgrounds an
18 opportunity to participate, which helps realize the First Amendment’s promise of a competitive
19 political marketplace of ideas. Furthermore, that candidates with more popular support will
20 generally receive more public funds serves to align public policy outcomes with public support.

⁸ To be clear, *amici* do not endorse the holdings of these cases, in large part because against a backdrop of severe economic inequality a system without limits on what the wealthy can contribute or spend on elections does not actually translate into a situation in which “the financial resources available to a candidate’s campaign...will normally vary with the size and intensity of the candidate’s support.” *Buckley*, 424 U.S. at 56. Nonetheless the Court’s aspiration for a correlation between resources and public support is a valid interpretation of the purpose of the First Amendment; and any disagreement regarding the ultimate holdings is immaterial in the present case since no limits on political spending are at issue.

1 And, as detailed below, the program accomplishes these ends while engaging in no viewpoint
2 discrimination and restricting no speech.

3 **B. The program’s donor-directed mechanism for distributing public funds does not**
4 **amount to unconstitutional viewpoint discrimination.**

5
6 Plaintiffs’ argument that the Democracy Voucher program’s mechanism for distributing
7 public funds constitutes unconstitutional viewpoint discrimination lacks merit. Most important,
8 unequal public funding allotments received by candidates—including Plaintiffs’ candidates of
9 choice—are not traceable to the *City’s* behavior at all, but rather to candidates’ own choices
10 regarding participation and determinations of self-governing Seattleites interacting with the
11 political marketplace of ideas. *See* SMC 2.04.620, subds. d-e; 2.04.630. The more support a
12 participating candidate has, the more Democracy Voucher assignments she is likely to receive—
13 regardless of a candidate’s viewpoints and irrespective of any opinion City officials may hold
14 about a candidate’s (or taxpayer’s) party, position, or message. *See* MTD at 16-17. The City does
15 not treat participants differently based on its views about the truth or desirability of a candidate’s
16 ideas, which is the evil at the heart of the First Amendment jurisprudence on viewpoint
17 discrimination. *E.g., Johnson*, 491 U.S. at 414 (citations omitted).

18 The program’s people-powered mechanism for funding candidate speech is far *more*
19 consistent with the First Amendment’s self-government objective than candidate speech funded
20 by private wealth that is not reflective of popular support, because it enhances robust discussion
21 of diverse viewpoints, which is then translated by self-governing Seattleites into government
22 action through majority rule. *See* Part II(A), *supra*. In sum, rather than constituting viewpoint
23 discrimination, the program’s funding mechanism serves the First Amendment’s core purpose:

1 enhancing self-government through robust discussion of ideas and viewpoints, translated into
2 government action through majority rule.

3 **III. STRICT SCRUTINY REVIEW OF THE DEMOCRACY VOUCHER**
4 **PROGRAM IS INAPPROPRIATE, AND THE PROGRAM EASILY**
5 **SURVIVES ANY OTHER STANDARD OF REVIEW.**
6

7 **A. The program’s alleged burdens on Plaintiffs’ free speech rights do not come close**
8 **to meriting strict scrutiny review.**

9 Plaintiffs’ argue that the program violates their fundamental First Amendment right not to
10 subsidize expression with which they disagree, and that this right warrants strict scrutiny
11 protection. Compl. ¶ 50. This argument is absurd on its face. The highest level of constitutional
12 protection, strict scrutiny review is reserved for burdens on our most “core” constitutional rights;
13 burdens on activities that are “closer to the edges than to the core of First Amendment
14 expression” receive less-than-strict scrutiny. *See Fed’l Election Comm’n v. Beaumont*, 539 U.S.
15 146, 161-62 (2003) (citations omitted), *Thompson v. Dauphinais*, 217 F. Supp. 3d 1023, 1036
16 (D. Aka. 2017), *appeal docketed*, No. 17-35019 (9th Cir. Jan.10, 2017) (applying *Beaumont* on
17 this point; concluding Alaska’s nonresident aggregate contribution limit is not subject to strict
18 scrutiny). As the City explains, the burden that Plaintiffs allege— payment of a uniformly-
19 applicable property tax— does not implicate Plaintiffs’ First Amendment expression or
20 association at all. MTD at 6, 11.⁹ Even assuming Plaintiffs have alleged some First Amendment
21 interests, these interests are not so “core” to First Amendment expression or association as to as
22 to merit a higher level of constitutional protection than the right to make political contributions

⁹ The First Amendment does not contain “a general immunity from taxation for any speech related activity that a taxpayer opposes[.]” MTD at 11, and “Plaintiffs are not required to support any specific candidate or be associated with any message or candidate they agree or disagree with.” MTD at 6.

1 or the right to vote, both of which have been afforded less-than-strict scrutiny protection.¹⁰ For
2 the foregoing reasons, application of strict scrutiny review in the instant case is plainly
3 inappropriate. In fact, the burdens alleged do not even warrant the intermediate scrutiny
4 protection afforded to base contribution limits. As the following subpart describes, however, the
5 program easily survives even intermediate scrutiny review.

6 **B. The Democracy Voucher program is properly tailored because it imposes an**
7 **insubstantial burden in service of important public interests.**
8

9 Though the First Amendment interests implicated by the program are not substantial
10 enough to merit the intermediate scrutiny afforded to contribution limits, the program easily
11 survives this standard of review, or anything less than strict scrutiny review.¹¹ A campaign
12 finance measure survives intermediate First Amendment scrutiny if it is “closely drawn” to serve
13 “sufficiently important” government interests. *See Nixon*, 528 U.S. at 387-88. As demonstrated
14 herein, the Democracy Voucher program serves important, democracy-strengthening interests
15 that are at the heart of our First Amendment freedoms by reducing wealth-based barriers to
16 participation in the political marketplace of ideas and reducing a valid perception of corruption in
17 Seattle. *See supra* Part I. The fact that a super-majority of Seattle residents chose to tax
18 themselves to serve these interests highlights their importance. *See* MTD App. D; I-122 Section
19 2 (citing RCW 84.55.050), MTD App. C.

¹⁰ *See, e.g., Nixon v. Shrink Missouri Gov’t PAC*, 528 U.S. 377, 387-88 (2000) (subjecting contribution limits to a “closely drawn” standard of review); *Anderson v. Celebrezze*, 460 U.S. 780, 788-89 (1983) (suggesting not every burden on the right to vote is subject to strict scrutiny or to any litmus test; instead, a balancing test is often employed). Here *amici* do not endorse the notion that the right to contribute money to a political campaign should be protected at a higher level of constitutional scrutiny than the right to vote; but simply emphasize that even restrictions on the acts of making political contributions and voting, which are both much closer to core rights than the non-payment of the challenged property tax, have been subjected to less-than-strict scrutiny.

¹¹ *Amici* do not suggest that the program would fail strict scrutiny review; but rather do not address this question because it is so far-fetched.

1 The Democracy Voucher program is also plainly “closely drawn” to advance those
2 interests. In considering whether a contribution limit is properly drawn under this standard, the
3 Supreme Court has stated that the limit cannot be so “radical in effect as to render political
4 association ineffective, drive the sound of a candidate’s voice below the level of notice, or render
5 contributions pointless.” *Nixon*, 528 U.S. at 397. Here, the challenged program is not so radical
6 as to render Plaintiffs’ political association or expression ineffective. On the contrary, the burden
7 on Plaintiffs is insubstantial.¹² Moreover, numerous avenues remain open for the Plaintiffs to
8 associate with or express support for the candidates of their choice, including candidates who are
9 unpopular or choose not to participate in the voucher system. Plaintiffs remain free to engage in
10 unlimited and unmatched independent expenditures in favor of their preferred candidates, unlike
11 in *Bennett*.¹³ They may aggregate expenditures with like-minded individuals to amplify their
12 voices. They may also continue to make private contributions to their preferred candidates. *See*
13 SMC 2.04.370, 2.04.630, subd. b. Plaintiffs also remain free to give voice to their objections
14 about the Democracy Voucher program in real time, on the air, or online.

15 Nor does the Democracy Voucher program threaten to drive any candidate’s voice below
16 the level of notice. Like other public financing programs, the Democracy Voucher program only
17 increases candidate choice. *See Republican Nat’l C’ee v. Fed’l Election Comm’n*, 487 F. Supp.
18 280, 284 (S.D.N.Y. 1985), *aff’d without opinion*, 470 U.S. 480 (1985). Candidates can choose
19 the manner of campaigning that is most suitable for their own particular needs: be it by

¹² The total revenue that may be collected from the challenged tax is capped at roughly 2.5 cents per \$1,000 of assessed value. *See* I-122 Section 2, MTD App. C. For an owner of a piece of real property worth \$1,000,000, this suggests that only \$25 could be levied toward the at-issue tax. This amount of 2.5 cents per \$1,000 of assessed value constitutes less than 1% of the maximum amount of regular property taxes that could be levied by the City in 2016 (\$3.60 per \$1,000 of assessed value). *See id.*

¹³ *See supra* n. 1 & accompanying text.

1 complying with voluntary limits and receiving voucher funds, or by opting out of the program.
2 *See id.* The program hence survives intermediate scrutiny as a matter of law.

3 **CONCLUSION**

4 For the foregoing reasons, the City's motion to dismiss must be granted.

5 Respectfully submitted September 19, 2017.

6
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