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Corporations "PAC" a Punch: Corporate Involvement's Influence in Elections and a Proposal for Public Campaign Financing in Ohio

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CORPORATIONS “PAC” A PUNCH: CORPORATE INVOLVEMENT’S INFLUENCE IN ELECTIONS AND A PROPOSAL FOR PUBLIC CAMPAIGN FINANCING IN OHIO

TAYLOR HAGEN*

ABSTRACT

In 2010, the United States Supreme Court in a 5-4 decision ruled that limiting corporate spending in elections violates the First Amendment right to free speech. With this decision, the Supreme Court overturned election spending restrictions that dated back more than a century. Before *Citizens United v. FEC* was decided, the Court had previously held that these restrictions were permissible because there is a governmental interest in preventing election and campaign corruption. Now, corporations may expend unlimited funds for outside election spending, to super PACs, and may even establish their own PACs. Increased corporate involvement in elections has deteriorated American democracy and has led to diminished confidence in the electoral process. Many states have responded to the *Citizens United* decision by implementing public financing options for state elections. This Note proposes that Ohio should create a public financing option for state elections to combat corruption stemming from corporate influence on elections.

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* J.D. expected, Cleveland-Marshall College of Law, May 2021. In loving memory of my father, who never doubted that I would do all of this and beyond. I will always carry your wit, compassion, and hard work with me in everything that I do.

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I. INTRODUCTION

Stephen Colbert stated it best: “[*Citizens United*] said that corporations are people and people have free speech. Therefore, money is speech and corporations can give unlimited money to political issues.”¹ Comedians and other prominent public figures took advantage of the turbulence of the 2016 election, emphasizing the irrationality of so many campaign and election laws and making a “joke of democracy.”² They’re not alone. At least 6 in 10 Democrats, Republicans, and Independents agree that “money in politics” deserves a lot of the blame for political dysfunction in the United States.³ In 2016 alone, 1,800 corporate PACs contributed over \$380 million to campaigns across the country.⁴ This is just one example of why campaign finance laws need reform.

In 2010, the Supreme Court of the United States decided in *Citizens United v. FEC* that placing limits on independent expenditures by corporations was unconstitutional because the expenditures constitute an exercise of free speech that may not be

¹ *The Colbert Report: Colbert Super PAC – Trevor Potter* (Comedy Central television broadcast Apr. 14, 2011), <http://www.cc.com/video-clips/yzb7q2/the-colbert-report-colbert-super-pac---trevor-potter>. In an episode of *The Colbert Report*, Stephen Colbert and his attorney gave viewers a satirical crash course on how *Citizens United v. FEC* changed the system in regard to corporate spending on political campaigns. See *Cory Booker Says No to Corporate PAC Money*, NOW THIS (Aug. 1, 2018), <https://nowthisnews.com/videos/politics/cory-booker-says-no-to-corporate-pac-money>.

² Tony Burman, *Burman: Campaign Funding in the U.S. Makes a Joke of Democracy*, THE STAR (Dec. 7, 2011), https://www.thestar.com/news/world/2011/12/17/burman_campaign_funding_in_us_makes_a_joke_of_democracy.html; see also Ryan J. Reilly, *Colbert’s Super PAC Not Actually Called Colbert Super PAC*, TALKING POINTS MEMO (July 1, 2011), <https://talkingpointsmemo.com/muckraker/colbert-s-super-pac-not-actually-called-colbert-super-pac>.

³ John Wagner & Scott Clement, *‘It’s Just Messed up’: Most Think Political Divisions as Bad as Vietnam Era*, WASH. POST (Oct. 28, 2017), <https://www.washingtonpost.com/graphics/2017/national/democracy-poll/>.

⁴ *Cory Booker Says No to Corporate PAC Money*, *supra* note 1.

restricted.⁵ Although there are still limits on how much a corporation can contribute directly to a campaign or candidate, they may now spend unlimited funds independently supporting the campaign, or on the campaign’s behalf.⁶ Since this decision, many states have responded by enacting public financing systems and spending limits for state elections to promote “clean elections.”⁷ While most states place strict limits on the ways in which corporations may contribute to campaigns,⁸ under *Citizens United*, the government cannot place limits on individual corporate expenditures as the Supreme Court held that it constitutes a restriction on free speech.⁹ Accordingly, this Note proposes a public campaign financing program for state elections in Ohio that will decrease political corruption stemming from corporate donors and will promote more policy-focused campaigning by candidates and confident voting by citizens.

Ohio’s current campaign financing laws promulgate the domination of the two-party system, harm our democracy, and need reform. In Ohio, a corporation cannot contribute to a political party, a candidate, or a political action committee¹⁰ (“PAC”); however, a corporation can establish its own PAC and use funds from employees, officers, shareholders, or other members tied to the corporation to contribute to or

⁵ *Citizens United v. FEC*, 558 U.S. 310, 365 (2010).

⁶ Andrew Prokop, *The Citizens United area of money in politics, explained*, VOX (July 15, 2015) <https://www.vox.com/2015/2/9/18088962/super-pacs-and-dark-money>.

⁷ *Public Financing of Campaigns*, BALLOTEDIA, https://ballotpedia.org/Public_financing_of_campaigns (last visited Feb. 22, 2021).

⁸ *Id.*; OHIO SEC’Y OF STATE, OHIO CAMPAIGN FINANCE HANDBOOK, CH. 9: BUSINESS AND LABOR ORGANIZATIONS 9-3 (2013), <https://www.sos.state.oh.us/globalassets/candidates/cfguide/chapters/chapter9.pdf>.

⁹ *Citizens United*, 558 U.S. at 365; “Expenditure” is defined as a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a federal election. A written agreement to make an expenditure is also considered an expenditure. 11 C.F.R. §§ 100.111, 100.112 (2021).

¹⁰ The Federal Election Commission defines a political action committee (PAC) as “a popular term for a political committee that is neither a party committee nor an authorized committee of a candidate.” Curt Gresseth, *What are the Rules for Political Third-party Ads?*, KSLNEWSRADIO, (Oct. 8, 2020, 2:58 PM), <https://kslnewsradio.com/1934741/what-are-the-rules-for-political-third-party-ads/>. A super PAC is defined as “[A] political committee[] that make[s] only independent expenditures. . . . [A super PAC] may solicit and accept unlimited contributions from individuals, corporations, labor organizations and other political committees. [It] may not accept contributions from foreign nationals, federal contractors, national banks or federally chartered corporations.” *Contributions to Super PACs and Hybrid PACs*, FED. ELECTION COMM’N, <https://www.fec.gov/help-candidates-and-committees/taking-receipts-pac/contributions-to-super-pacs-and-hybrid-pacs/#:~:text=Political%20committees%20that%20make%20only,organizations%20and%20o ther%20political%20committees> (last visited Nov. 1, 2020).

expend on the candidates of their choosing.¹¹ Ohio also allows non-Ohio PACs to be formed, where non-Ohio PACs wishing to receive contributions or make expenditures to influence state or local elections in Ohio can come in and do so.¹² The public campaign finance system that this Note proposes would encourage more transparent¹³ campaigns that can focus less on gaining financial support and more on gaining voter support for their candidate's policy stances.¹⁴

This Note proposes an optional public funding system for statewide candidates that requires candidates to establish voter support by gathering small donations from average citizens rather than fundraising by catering to special interests. The proposal sets out two options for the state regarding how the funds will be raised to fund the campaigns. One option is through a state tax return check box allocating a small amount of taxes paid to the state into the public funding program. The other proposed option is to implement a small surcharge on all civil and criminal court fines throughout the state to deposit into the fund. In accordance with the public funds, the state may have to impose limits on the participating candidates as to the amount of outside donations they may receive and, specifically, the state will restrict where the outside money comes from – thus, the candidates will make a promise to not accept donations from corporations, PACs, or any special interest groups. Campaigning without seeking large contributions¹⁵ or expenditures¹⁶ from outside sources will “ensure that no particular donor has an outsized influence on the outcome of any election”¹⁷ and that voters are more informed of the candidates' platform rather than the businesses and corporations that are influencing them. To accompany the proposed public financing program, this Note also proposes a voter education program to promote educated participation in the political process.¹⁸

Part II of this Note begins by giving a background of Ohio's current laws governing campaign financing and how corporations may and may not make individual expenditures and contributions to campaigns. Also, in Part II, this Note will discuss the decision in *Citizens United* and critique and explain how the Court's

¹¹ OHIO SEC'Y OF STATE, OHIO CAMPAIGN FINANCE HANDBOOK, CH. 6: POLITICAL ACTION COMMITTEES 6-4 (2013), <https://www.sos.state.oh.us/globalassets/candidates/cfguide/chapters/chapter6.pdf>.

¹² *Id.*

¹³ Elizabeth Pollman, *Reconceiving Corporate Personhood*, 2011 UTAH L. REV. 1629, 1631 (2011).

¹⁴ *Campaign Finance Reform*, ACLU, <https://www.aclu.org/issues/free-speech/campaign-finance-reform> (last visited Oct. 13, 2020).

¹⁵ See *infra* note 19.

¹⁶ See *infra* note 28.

¹⁷ *Public Financing of Campaigns: Overview*, NAT'L CONF. OF STATE LEGIS. (Feb. 8, 2019), <http://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx>.

¹⁸ *Voter Education*, CITIZENS CLEAN ELECTIONS COMM'N (2017), <https://www.azcleelections.gov/voter-education>.

decision weakens our democracy. Part III first examines the negative impacts that corporate contributions and expenditures have on campaigns and elections and, specifically, why it creates less policy-focused campaigning and voting by candidates and citizens. Part III will also consider the First Amendment right to free speech issues that arise as a result of attempting to limit corporate involvement with campaigns. Part IV of this Note will then turn to consider public financing programs and policies that other states have in place as well as how and why they were implemented. Part IV will then propose a public campaign financing system for Ohio. Incorporating aspects of other states’ public financing systems, this Note proposes a system that will encourage candidates to engage with voters and reduce the influence of corporate special interests on elections.

II. BACKGROUND ON EXISTING CAMPAIGN FINANCE LAW

A. *Ohio Statutory Law and Federal Case Law Surrounding Campaign Financing*

Ohio law purports to prohibit corporate contributions¹⁹ to a “candidate for . . . public office, a political action committee including a political action committee of the corporation or labor organization, a legislative campaign fund, or any organization that supports or opposes any such candidate, or for any partisan political purpose,” as stated in Ohio Revised Code section 3599.03.²⁰ However, Ohio Revised Code section 3517.082 states:

Any corporation, any nonprofit corporation, or any labor organization may establish, administer, and solicit contributions . . . to either or both of the following: (1) A political action committee of the corporation or labor organization with respect to state and local elections; (2) A separate segregated fund pursuant to the Federal Election Campaign Act.²¹

Under these statutes, corporations may not be allowed to directly contribute to a candidate, but they are able to establish entirely new PACs with monies solicited from employees, officers, and shareholders, and the corporations themselves may pay the administrative expenses for its affiliated PAC.²² Consequently, Ohio Revised Code section 3517.082 creates a roundabout way for corporations to contribute to their preferred political party without violating Ohio Revised Code section 3599.03.

Reinstating the Ohio Political Party Fund is one feasible step that Ohio could take to reform its campaign finance laws. Although the Fund is beyond the scope of this

¹⁹ 11 C.F.R. §§ 100.52, 100.54 (2020) (defining a political contribution as “[a] gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office” or “the payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose”).

²⁰ OHIO REV. CODE ANN. § 3599.03 (LexisNexis 2020).

²¹ OHIO REV. CODE ANN. § 3517.082 (LexisNexis 2020).

²² BOLDER ADVOCACY, OHIO CAMPAIGN FINANCE AND BALLOT MEASURE GUIDE 3 (2019), <https://bolderadvocacy.org/wp-content/uploads/2018/06/Ohio-Campaign-Finance-Final-7.11.19.pdf>.

Note, it is worth mentioning to provide an example of where Ohio has been and where we can go moving forward. Before October of 2019, Ohio had a fund that provided political parties with monies that could be used to finance administrative costs, get out the vote activities, and voter registration. Effective October 17, 2019, the 133rd Ohio General Assembly repealed Ohio Revised Code sections 3517.16 and 3517.17, the state statutes that regulated the Ohio Political Party Fund.²³ This fund was not a source of public financing for campaigning; it was reserved for assisting with administrative costs and voter registrations that were not associated with any particular political party or candidate.²⁴ It was funded by taxpayers checking a box on their tax returns that would indicate that they wanted one dollar of their paid taxes to go into the fund.²⁵ However, the repeal of sections 3517.16 and 3517.17 entails dissolving the fund in the coming years.²⁶

Although corporations may not directly contribute to a political campaign,²⁷ independent expenditures²⁸ made by corporations are not subject to the same limits as contributions²⁹ because the Supreme Court has held that limiting independent expenditures is a violation of individuals' – as well as corporations' – right to free speech.³⁰ In *Citizens United v. FEC*³¹ the United States Supreme Court held that the First Amendment right to free speech applies equally to corporations as it does to individual persons³² and thus the government cannot “limit corporate independent

²³ H.B. 166, 133d Gen. Assemb. (Ohio 2019).

²⁴ *Doing Your Taxes?*, OHIO DEMOCRATIC CNTY. CHAIRS ASSOC., <https://www.ohiodcca.org/wp-content/uploads/2014/04/Explanation-of-Fund.pdf> (last visited Nov. 1, 2020).

²⁵ *Id.*

²⁶ H.B. 166, 133d Gen. Assemb. (Ohio 2019). It is unclear where the moneys remaining in the fund will go, but it is indicated at the end of the statute that the moneys will be “distributed by the Commissioner, and by the treasurers of the state executive committees of the major political parties.” OHIO REV. CODE ANN. § 3517.17 (repealed 2019).

²⁷ OHIO REV. CODE ANN. § 3599.03 (LexisNexis 2020).

²⁸ *Understanding Independent Expenditures*, FED. ELECTIONS COMM'N, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/understanding-independent-expenditures/> (last visited Oct. 29, 2020) (“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 his or her authorized committees or agents, or a political party committee or its agents.”).

²⁹ BOLDER ADVOCACY, *supra* note 22, at 6.

³⁰ *Citizens United v. FEC*, 558 U.S. 310, 311 (2010).

³¹ *Id.* at 429.

³² *Id.*; see *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 767 (1978); Aaron Harmon, *Hillary: The Movie Corporate Free Speech or Campaign Finance Corruption*, 4 DUKE J. CONST. L. & PUB. POL'Y SIDEBAR 331, 338 (2009).

expenditures.”³³ In doing so, the Court struck down a precedential case, *Austin v. Michigan State Chamber of Commerce*, that upheld a Michigan statute prohibiting corporations from using corporate treasury funds for independent expenditures in support of or in opposition to any candidate in elections for state office.³⁴ In *Austin*, the Court found that the Michigan statute passed the strict scrutiny test,³⁵ and therefore did not violate the First Amendment because it was supported by a compelling state interest: preventing corruption.³⁶ The dissent by Justice Stevens in *Citizens United* discussed some of the implications that would follow from the decision. Justice Stevens stated that corporations would be allowed to spend as much money as they wish on advertisements for or against candidates which “dramatically enhances the role of corporations . . . and the narrow interests they represent . . . in determining who will hold public office.”³⁷

The statutory law and case law surrounding the issues of campaign financing and where financing can come from is problematic. Current campaign finance law is harmful to the democratic institution of our country and individual states as they facilitate outside influence over elections, diminishing the public’s voice and trust in the electoral process.

B. *Reactions to Big Money in Politics and Efforts to Weaken Its Influence*

Large sums of money that are poured into independent expenditures and PACs for candidates are hard to ignore, causing candidates to potentially lose sight of their constituents’ concerns, shifting their focus to wealthy political supporters.³⁸ Special interests that are promoted by corporate involvement in campaigns “put more emphasis on a narrow set of issues tailored to their select group”³⁹ that inevitably pull more weight with candidates than their constituents’ concerns. Congress and the Supreme Court have historically attempted to combat corruption associated with

³³ *Citizens United*, 558 U.S. at 365. The Court also overruled *McConnell v. FEC* which had upheld section 203 of the Bipartisan Campaign Reform Act that placed restrictions on independent corporate expenditures. *Id.* at 365–66.

³⁴ *Id.* at 312.

³⁵ *Strict Scrutiny*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/strict_scrutiny (last visited Nov. 11, 2020) (“Strict scrutiny is a form of judicial review that courts use to determine the constitutionality of certain laws. Strict scrutiny is often used by courts when a plaintiff sues the government for discrimination. To pass strict scrutiny, the legislature must have passed the law to further a ‘compelling governmental interest,’ and must have narrowly tailored the law to achieve that interest.”).

³⁶ *Austin v. Mich. State Chamber of Com.*, 494 U.S. 652, 659 (1990).

³⁷ *Citizens United*, 558 U.S. at 412 (Stevens, J., dissenting).

³⁸ SUZANNE NOVAK ET AL., BRENNAN CENTER FOR JUSTICE REPORT: CAMPAIGN FINANCE IN OHIO 8 (2007).

³⁹ Ray LaRaja & Brian F. Schaffner, *Want to Reform Campaign Finance and Reduce Corruption? Here’s How.*, WASH. POST (Oct. 26, 2015), <https://www.washingtonpost.com/news/monkey-cage/wp/2015/10/26/want-to-reform-campaign-finance-and-reduce-corruption-heres-how/>.

corporate contributions to campaigns⁴⁰ but their efforts have done little to solve voters' dissatisfaction with corporate money in politics.⁴¹

Voters have persistently opposed the power of corporations in elections.⁴² In a 2018 study, Americans “overwhelmingly” supported imposing limits on campaign spending, and most reported that they believed new regulations could reduce the influence of money in politics.⁴³ The study also showed widespread agreement that sources of large contributions and expenditures should “not have more political influence than others.”⁴⁴ In light of the more recent opposition to corporate money influencing elections, many Democratic Presidential candidates have announced that they will not be accepting money from corporate PACs.⁴⁵ In fact, nearly all of the candidates suggest that they want to overturn *Citizens United* entirely⁴⁶ and many would like to impose expansions of public financing for presidential candidates.⁴⁷

In 2019, the House of Representatives passed the For the People Act which aims to limit the influence of big money in politics, introduce a public financing system for congressional campaigns, and expand voter rights.⁴⁸ The bill is extremely comprehensive and addresses hot button issues from the 2020 election such as election security and integrity, voter registration, polling access, and redistricting.⁴⁹ It also addresses issues discussed herein such as campaign spending and expanding

⁴⁰ For example, the Federal Campaign Election Act of 1971 and the Bipartisan Campaign Reform Act. Adam Fremeth et al., *Spillovers from Regulating Corporate Campaign Contributions*, CATO INST. (June 12, 2019), <https://www.cato.org/publications/research-briefs-economic-policy/spillovers-regulating-corporate-campaign-contributions/>.

⁴¹ *Id.*

⁴² Alex Kotch, *The Verdict Is In: Rejecting Corporate Cash Wins Elections*, SLUDGE (Nov. 15, 2018, 5:48 PM), <https://readsludge.com/2018/11/15/rejecting-corporate-pacs-wins-elections-verdict/>.

⁴³ 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/>.

⁴⁴ *Id.*

⁴⁵ Alex Kotch, *Where the 2020 Candidates Stand on Campaign Finance*, SLUDGE (Apr. 1, 2019, 12:33 PM), <https://readsludge.com/2019/04/01/where-the-2020-candidates-stand-on-campaign-finance/>.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ For the People Act, H.R. 1, 116th Cong. (2019); Lauren Gambino, *Democrats target big money in politics with ethics reform package*, THE GUARDIAN (Mar. 8, 2019, 10:17 AM), <https://www.theguardian.com/us-news/2019/mar/08/democrats-hr-1-for-the-people-elections-ethics-reform-tax-returns>.

⁴⁹ Gambino, *supra* note 48.

disclosure rules for election spending.⁵⁰ This was the first piece of major legislation that the new House of Representatives offered in 2019.⁵¹ The Speaker of the House, Nancy Pelosi, commented on the Act, emphasizing the reason behind proposing such a major bill: “It’s about confidence. It’s about ending skepticism. This is about honoring our democracy.”⁵² After the polarizing 2020 election and the shift of power in the Senate, Majority Leader Chuck Schumer (at the time of this writing) is prioritizing the For the People Act for Senate consideration.⁵³ Before the 2020 election, there was little hope that the legislation would pass the Senate, but Senate Democrats are now in a position to quickly pass and institute the reforms.

C. Public Campaign Financing Programs in Other States

In attempts to create more honest and policy-focused campaigning, fourteen states have introduced public financing options for candidates⁵⁴ to replace private special interest contributions.⁵⁵ There are a few different approaches that states have taken in order to clean up the way that campaigns are conducted. One is the “Clean Elections” program,⁵⁶ in which candidates are encouraged to collect small donations from a specified number of individuals to show that the candidate has enough public support to warrant public funding for their campaign.⁵⁷ When the candidates meet the amount specified by the state, they will receive a sum of public money “equal to the expenditure limit” set for the election.⁵⁸ States implement different methods for how these public funds are collected to be made available for candidates: Arizona’s program is funded “through a 10 percent surcharge on all civil penalties and criminal fees, civil penalties paid by the candidates, and the qualifying contributions the candidate raised.”⁵⁹ Another program that some states have in place is the matching

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Alyce McFadden, *Democrats prioritize campaign finance overhaul with ‘For the People Act’*, OPEN SECRETS CTR. FOR RESPONSIVE POL. (Jan. 21, 2021) <https://www.opensecrets.org/news/2021/01/for-the-people-act-democrats/>.

⁵⁴ *Public Financing of Campaigns*, *supra* note 7, at 1.

⁵⁵ *Id.*

⁵⁶ *Id.* Clean elections program is currently only offered in Arizona, Connecticut and Maine.

⁵⁷ *Id.*

⁵⁸ *Public Financing of Campaigns: Overview*, *supra* note 17. (“As an example of a clean elections program, a candidate for state office in Arizona must raise \$5 contributions from at least 200 people in order to qualify for the program. In return, the state provides the candidate with public money in an amount equal to the expenditure limit. In the 2014 election, the expenditure limit for gubernatorial candidates was \$1,130,424, and the limit for legislative positions was \$22,880.”).

⁵⁹ *Id.*

funds program that provides matching funds for a candidate up to a certain limit.⁶⁰ Hawaii uses this program and it is funded through a tax return checkbox wherein citizens check whether they would like a percentage of their taxes to go toward the state election fund.⁶¹

New York enacted a public financing program in April 2020.⁶² In a policy analysis of New York’s donor matching campaign program,⁶³ analysts discovered many positives to implementing the program in the state. First, lowering contribution limits and enacting the matching funds system would “substantially increase the importance of small donors to candidates across the board” while at the same time lessening their dependence on large donors.⁶⁴ Second, essentially all candidates would be “better off financially” under the new system.⁶⁵ And, arguably most importantly for voters, the cost would be modest – “less than one penny” per day per citizen of the state over the course of four years.⁶⁶ Overall, this policy analysis showed support for the program (then proposal) by drawing attention to the many benefits for candidates and voters under a publicly funded campaign system.

Maryland takes yet another approach to public campaign financing. First, the state only provides public campaign funds to candidates for governor and lieutenant governor.⁶⁷ The candidates must raise “seed money” similar to Arizona; however, their eligibility is measured by a percentage of the maximum campaign expenditure limit.⁶⁸ The participating candidate must raise an amount equal to 10% of the

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² BRENNAN CTR. FOR JUST., GUIDE: NEW YORK STATE’S NEW SMALL DONOR PUBLIC FINANCING PROGRAM 1 (2020), https://www.brennancenter.org/sites/default/files/2020-12/12.18.20%20NYPF%20explainer%20FINAL_0.pdf.

⁶³ Michael J. Malbin & Brendan Glavin, *Small-Donor Matching Funds for New York State Elections – A Policy Analysis of the Potential Impact and Cost*, CAMPAIGN FIN. INST. (Feb. 11, 2019), <https://www.followthemoney.org/research/institute-reports/cfi-small-donor-matching-funds-for-new-york-state-elections-a-policy-analysis-of-the-potential-impact-and-cost>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Campaign Finance*, MARYLAND.GOV, https://elections.maryland.gov/campaign_finance/index.html (last visited Nov. 11, 2020).

⁶⁸ *Campaign Finance—Public Funding*, MARYLAND.GOV, https://elections.maryland.gov/campaign_finance/public_funding.html (last visited Nov. 11, 2020). The expenditure limit for candidates is calculated as 30¢ per capita, or 30¢ multiplied by the entire state population as of the first day of the election year. For example, in Ohio, the expenditure limit for candidates would be the population (11,689,100) multiplied by 30¢ (0.3), equaling an expenditure limit of \$3,506,730. *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/OH> (last visited Feb. 22, 2021) (estimating Ohio’s population as of July 2019).

maximum campaign expenditure limit.⁶⁹ Further, the threshold limit to qualify for the funds must be received from individuals and each donation may not exceed \$250.⁷⁰ Maryland’s program serves as another type of framework that Ohio can employ for publicly financing candidates.

III. WHY CORPORATE INVOLVEMENT IN CAMPAIGNS IS DETRIMENTAL TO OUR
DEMOCRACY AND THE FIRST AMENDMENT ISSUES THAT ARISE IN LIMITING
CORPORATE “POLITICAL SPEECH”

A. *Widespread Consensus Exists That Corporate Money in Campaigns is
Detrimental*

In a 2016 article by the *American Prospect* on big money in politics, author Eliza Newlin Carney stated: “The further down the ballot big money migrates, the more impact it exerts.”⁷¹ In other words, big checks written to candidates for state elections will have more of an effect on their campaign than big checks written to presidential candidates.⁷² Big money not only advances the candidate on their path to being elected but also advances those writing the checks or making the expenditures to be successful in “win[ning] the tax breaks, contracts, and policies they seek.”⁷³ Thus, large corporate PAC donors are given a more influential role in elections and policy making.

Bipartisan agreements seek to limit the influence of those who make large contributions and expenditures to political campaigns, as compared to regular voters.⁷⁴ The 2020 Democratic presidential candidates debated this topic extensively.⁷⁵ Although the candidates’ main focus was at the federal election level, it is worth looking at their plans for federal election reform and how they could be applied at the state level. Most of the candidates expressed intent to “reduce the influence of corporate money in federal elections,” and Elizabeth Warren and Joe Biden both proposed a flat out ban on corporate PACs giving to campaigns and party conventions.⁷⁶ Senator Warren also wanted to implement a public matching funds program for small donors, while Bernie Sanders would set up a mandatory public finance system for national party conventions.⁷⁷ Sanders even promised to support an

⁶⁹ *Campaign Finance—Public Finding*, *supra* note 68.

⁷⁰ *Id.*

⁷¹ Eliza Newlin Carney, *Does Big Money Still Matter? You Bet It Does*, AM. PROSPECT (Feb. 4, 2016), <https://prospect.org/power/big-money-still-matter-bet/>.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Jones, *supra* note 43.

⁷⁵ Karl Evers-Hillstrom & Yue Stella Yu, *Leading 2020 Democrats Want to Get Money Out of Politics – Here’s How They Plan to Do it*, OPENSECRETS.ORG: THE CTR. FOR RESPONSIVE POL. (Oct. 15, 2019), <https://www.opensecrets.org/news/2019/10/2020-democrats-want-to-get-money-out-of-politics/>.

⁷⁶ *Id.*

⁷⁷ *Id.*

amendment to the Constitution stating that “money is not speech.”⁷⁸ Most of the proposed reforms from Democratic candidates are complete overhauls of the current system and regulations in place, and will be difficult to implement on the federal level, but widespread agreement exists that corporate monetary influence does not belong in our elections.

The ever-growing influence of corporate money in campaigns has shifted candidates’ focus from their personal policy ideas to a political message that “enhance[s] the ability . . . to raise campaign funds.”⁷⁹ In the 2018 Ohio gubernatorial election, super PACs on both sides spent millions of dollars on television commercials and mailers to influence the outcome of the election.⁸⁰ Multiple corporate PACs contributed to both party’s campaign.⁸¹ Some of the corporations who established PACs that contributed to or made expenditures for campaigns included FirstEnergy, Nationwide Insurance, Pfizer (a pharmaceutical company), many large law firms, multiple banking institutions, and countless other large corporate entities.⁸² It can be rationally concluded that the impact of large corporations’ political speech has more of an effect on voters in state elections than in federal elections, as voters are likely to be more easily influenced by advertising and other big money intrigues in state elections,⁸³ which is why the issue should be addressed at the state level first.

As early as the beginning of the twentieth century, American citizens recognized the role that big businesses had in the outcome of elections and the policies that would

⁷⁸ *Id.*

⁷⁹ LAWRENCE LESSIG, *REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS – AND A PLAN TO STOP IT* 96 (2011); see also Anthony J. Gaughan, *Our Campaign Finance Frankenstein*, U.S. NEWS (Oct. 30, 2015), <https://www.usnews.com/opinion/articles/2015/10/30/blame-the-supreme-court-for-americas-campaign-finance-frankenstein>.

⁸⁰ Randy Ludlow, *Outside Groups Pouring Millions to Influence Ohio Governor’s Race*, COLUMBUS DISPATCH (Oct. 15, 2018), <https://www.dispatch.com/news/20181015/outside-groups-pouring-in-millions-to-influence-ohio-governors-race>. Mailers include anything from letters to postcards and pamphlets sent in the mail for campaigning purposes. *Id.*

⁸¹ See General Transaction Search, OHIO SEC’Y OF STATE, <https://www6.ohiosos.gov/ords/f?p=CFDISCLOSURE:1:2431547572500::NO:::> (enter “DeWine” or “Cordray” in search field; then enter “01/01/2017” as the start date; then enter “01/01/2019” as the end date; then choose “expenditures” from the category list and run the report); see also Jessie Balmert, *Ohio Governor’s Race: Who is Bankrolling DeWine and Cordray’s Campaigns?*, CINCINNATI ENQUIRER <https://www.cincinnati.com/story/news/politics/elections/2018/09/26/ohio-governors-race-who-bankrolling-dewine-and-cordrays-campaigns/1378973002/> (last updated Sept. 26, 2018); Jenny Applegate, *Here are the Central Ohioans Who Donated the Most to Mike DeWine in 2018 (Countdown)*, COLUMBUS BUS. FIRST (Nov. 8, 2018), <https://www.bizjournals.com/columbus/news/2018/11/08/here-are-the-central-ohioans-who-donated-the-most.html> (detailing other wealthy donors that contributed to both campaigns).

⁸² See General Transaction Search, *supra* note 81.

⁸³ Matt Bai, *How Much Has Citizens United Changed the Political Game?*, N.Y. TIMES MAG. (July 17, 2012), <https://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html>.

be put in place by elected officials.⁸⁴ It is apparent now that most Americans, regardless of party affiliation, believe that money has too great of an influence on the outcomes of elections.⁸⁵ In a poll by the Center for Public Integrity in early 2019, it was shown that 85% of those polled believed that elected officials “do favors for big campaign donors.”⁸⁶ In another study, 77% of the public said that there should be limits on the amount of money individuals and organizations can spend on campaigns.⁸⁷ Yet another poll demonstrated that 75% of voters indicated that “ending the culture of corruption” was very important in deciding how to vote.⁸⁸ Voters are not ignorant of the influence that big corporate donors have on candidates. In 2018, forty-four congressional candidates made the pledge to not accept corporate PAC money and won their elections.⁸⁹ Voters have drawn a connection between those candidates who do not accept money from corporate PACs and those who are not obliged to accommodate corporate special interests.⁹⁰ The *Citizens United* decision only intensified the political corruption that corporate money facilitates.⁹¹

B. Corporations’ Political Speech Should be Restricted Based on Their Corporate Identity

“Congress shall make no law . . . abridging the freedom of speech, or of the press.”⁹² The Court in *Citizens United*, in holding that campaign finance laws could not limit corporate expenditures under the First Amendment, reasoned that the “Government cannot restrict political speech based on the speaker’s corporate

⁸⁴ MICHAEL G. MILLER, *SUBSIDIZING DEMOCRACY* 14 (2013).

⁸⁵ Wagner & Clement, *supra* note 3, at 10; see also *Center for Public Integrity/IPSOS Poll: How Should Presidential Campaigns be Regulated?*, CTR. FOR PUB. INTEGRITY (Feb. 18, 2019) [hereinafter *Center for Public Integrity/IPSOS Poll*], <https://publicintegrity.org/federal-politics/elections/center-for-public-integrity-ipsos-poll-elections-2019/>.

⁸⁶ *Center for Public Integrity/IPSOS Poll*, *supra* note 85.

⁸⁷ Jones, *supra* note 43.

⁸⁸ *First Agenda Item for Congressional Majority: Ending the Culture of Corruption in Washington*, GREENBERG QUINLAN ROSNER RSCH. 2 (Nov. 19, 2018), <https://endcitizensunited.org/wp-content/uploads/2019/01/ECU-Post-Elect-Public-Memo-FINAL-112018.pdf>.

⁸⁹ *End Citizens United*, GREENBERG QUINLAN ROSNER RSCH. (Oct. 3, 2019), <https://endcitizensunited.org/wp-content/uploads/2019/10/ECU-Message-Guidance-for-Reformers-at-Risk.pdf>.

⁹⁰ *Id.*

⁹¹ *Taking on Money in Politics Can Help You Win*, END CITIZENS UNITED (July 20, 2017), <https://endcitizensunited.org/wp-content/uploads/2016/04/ECU-Polling-Memo-July.pdf>.

⁹² U.S. CONST. amend. I.

identity.”⁹³ However, as Justice Stevens explained in his dissent, the Court had previously held in multiple contexts that speech could be regulated due to the speaker’s identity when such restrictions are justified by a legitimate governmental interest.⁹⁴ Justice Stevens analogizes to other instances where the government has restricted speech based on identity: students, prisoners, members of the Armed Forces, and its own employees.⁹⁵

The majority in *Citizens United* strays from precedent in the regulation of speech in the corporate context.⁹⁶ However, they fail to adequately support their conclusion that the precedent was “sure error”⁹⁷ and that “corporate identity demands the same treatment as individual identity.”⁹⁸ The Court completely denies the existence of a compelling government interest in limiting corporate political speech and applies strict scrutiny in a very indirect manner.⁹⁹

The significant question, therefore, is why should corporations be afforded the same freedom of political speech rights as individual human beings? The recognition of corporations as legal persons has been established to give corporations the ability to make enforceable contracts and to sue and be sued.¹⁰⁰ One common notion to affording corporations the rights of individual persons is to protect the individuals behind them.¹⁰¹ This theory hardly applies to the situation at hand. On the contrary, corporations that establish their own PACs promote political speech without the approval of the individuals behind them – which can be harmful to the individuals who do not agree with the special interests that are being supported.

A textbook example of the negative effects of corporate political involvement on employees and shareholders comes from a Minnesota grocery store, Natural Foods, that donated to a super PAC called Minnesota Business First.¹⁰² The grocery store had

⁹³ *Citizens United v. FEC*, 558 U.S. 310, 346 (2010) (citing *Bellotti*’s decision reaffirming that the government could not restrict corporate speech because it is a First Amendment principle).

⁹⁴ *Id.* at 420 (Stevens, J., dissenting).

⁹⁵ *Id.*

⁹⁶ Justice Stevens discusses how “legislatures are entitled to decide ‘that the special characteristics of the corporate structure require particularly careful regulation’ in an electoral context.” *Id.* at 423 (quoting *Fed. Election Comm’n v. Nat’l Right to Work Comm.*, 459 U.S. 197, 209–10 (1982)).

⁹⁷ *Id.* at 362 (majority opinion).

⁹⁸ *Id.* at 425 (Stevens, J., dissenting).

⁹⁹ *Id.* at 340–50 (majority opinion).

¹⁰⁰ David Kairys, *Money Isn’t Speech and Corporations Aren’t People*, SLATE (Jan. 22, 2010), <https://slate.com/news-and-politics/2010/01/the-misguided-theories-behind-citizens-united-v-fec.html>.

¹⁰¹ Pollman, *supra* note 13, at 1647.

¹⁰² Brian K. Richter, *Case Study: Do Business and Politics Mix?*, HARV. BUS. REV. (Nov. 2014), <https://hbr.org/2014/11/do-business-and-politics-mix>.

donated to this specific super PAC because it planned to fund ads for candidates that had strong pro-business platforms that would be beneficial to Natural Foods.¹⁰³ However, one of the candidates that the PAC spent money supporting ended up taking a strong stance against same-sex marriage¹⁰⁴ which outraged employees and customers alike.¹⁰⁵ This is just one example of corporate political involvement negatively affecting employees, shareholders, and even customers. In turn, this notion that giving corporations individual rights is to protect the individuals behind them is inapplicable here and, in fact, is the antithesis of the point at issue. The foremost reason for giving corporations individual human rights is to impose criminal liability on a corporation to protect innocent employees and shareholders.¹⁰⁶ But it does not further any protections here to protect corporations' freedom of speech in the realm of campaign contributions and expenditures. Thus, there seems to be a basis for overturning *Citizens United*, as preserving democracy and election integrity is quite a compelling interest.¹⁰⁷

If corporations are considered persons with individual First Amendment rights to free political speech, we must then ask whether money can be considered speech. In *Buckley v. Valeo*, the Supreme Court found that money constitutes speech and, therefore, most limits on campaign expenditures (and some contribution limits) are unconstitutional because it limits the "quantity of expression."¹⁰⁸ The *Buckley* Court equated spending money on modes of speech (leaflets, ads, printing paper, etc.) with the speech itself.¹⁰⁹ Granted, donating or spending money to support the speech of another (i.e., a political candidate) does deserve some protection, but money itself does not align with the other widely-recognized forms of expression, such as blogs, the media, or books.¹¹⁰ Further, the Court has never before raised issues with placing limits on quantities of other types of speech, such as the limit on a number of picketers

¹⁰³ *Id.*

¹⁰⁴ This occurred before the Supreme Court legalized same sex marriage.

¹⁰⁵ Ritcher, *supra* note 102.

¹⁰⁶ See *N.Y. Cent. & Hudson River R.R. v. United States*, 212 U.S. 481, 492 (1909).

¹⁰⁷ See generally *Austin v. Mich. State Chamber of Com.*, 494 U.S. 652 (1990); John Aram, *Reassessing Corporate Social Responsibility*, COMMON DREAMS (Oct. 30, 2019), <https://www.commondreams.org/views/2019/10/30/reassessing-corporate-social-responsibility>.

¹⁰⁸ *Buckley v. Valeo*, 424 U.S. 1, 19 (1976); Kairys, *supra* note 100.

¹⁰⁹ *Buckley*, 424 U.S. at 19. The Court elaborated: "This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech." *Id.*

¹¹⁰ Kairys, *supra* note 100.

at a rally.¹¹¹ Moreover, the Court has limited First Amendment expression before when a group of Hare Krishna leafleters were asking for donations at an airport.¹¹² In that case, the Court held under a reasonableness review that the restriction on this type of speech was reasonable because it was “disruptive” and “an inconvenience” to others.¹¹³ The Court did not make any reference to the “money as speech” theory that the majority hangs their hat on in *Buckley* and *Citizens United*.¹¹⁴ It is difficult to reconcile the two cases here. On one hand, in the Hare Krishna case, asking for money to support the group’s leafleting endeavors did not trigger the Court to consider whether money is speech, and only a reasonableness standard was applied to the restriction of such.¹¹⁵ However, in *Citizens United*, restrictions giving or expending money to support another’s speech was reviewed under a messy version of strict scrutiny.¹¹⁶ It should be apparent to even the layperson that the government’s interest in preserving the integrity of the electoral system is much more compelling than preventing “disruption” or “inconvenience” in an airport.¹¹⁷ Even before *Citizens United* was decided, many states, counties, and municipalities had already been proactive in their initiative to get big money out of politics.¹¹⁸ However, with the advent of *Citizens United*, more states have implemented a multitude of systems and practices to preserve their state democracy from the threat of corporate and big money.¹¹⁹ Ohio can follow in their footsteps to encourage our state’s politicians to refuse big money and gain back the voters’ trust.

IV. A MOVE TOWARD PUBLICLY FINANCED CAMPAIGNS IN OHIO

Even if *Citizens United* is not overturned, Ohio can take a step in the right direction by reforming its current campaign financing laws and implementing a publicly financed campaign option for candidates. As previously mentioned, the 133rd Ohio General Assembly recently repealed section 3517.16 of the Ohio Revised Code and will dissolve the Ohio Political Party Fund in the coming years.¹²⁰ The Ohio Political Party Fund was established to support public financing of Ohio political parties –

¹¹¹ *Id.*

¹¹² *Int’l Soc’y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 674 (1992).

¹¹³ *Id.* at 684–85; Kairys, *supra* note 100.

¹¹⁴ Compare *Int’l Soc’y for Krishna Consciousness, Inc.*, 505 U.S. at 674, with *Buckley*, 424 U.S. at 19, and *Citizens United v. FEC*, 558 U.S. 310, 336–41 (2010).

¹¹⁵ *Int’l Soc’y for Krishna Consciousness, Inc.*, 505 U.S. at 684–85.

¹¹⁶ *Citizens United*, 558 U.S. at 310.

¹¹⁷ *Int’l Soc’y for Krishna Consciousness, Inc.*, 505 U.S. at 672.

¹¹⁸ PUBLIC FUNDING FOR ELECTORAL CAMPAIGNS: HOW 27 STATES, COUNTIES, AND MUNICIPALITIES EMPOWER SMALL DONORS AND CURB THE POWER OF BIG MONEY IN POLITICS (Demos, 2017).

¹¹⁹ *Public financing of campaigns*, *supra* note 7.

¹²⁰ H.B. 166, 133d Gen. Assemb. (Ohio 2019).

money from the fund was to be put toward “administrative costs associated with party headquarters and party fundraising drives, organization of voter registration and get-out-the-vote campaigns not related to any particular candidate or election.”¹²¹ The use and availability of monies from the fund had been declining for years due to citizens neglecting to check the box on their tax returns to fund the account.¹²² Although this fund was not to finance the campaigns of individual candidates, it provided a starting point for a public financing system – something that this Note proposes based on the various systems in place in other states, which are discussed more fully below.

Arizona has enacted a Clean Elections Commission that encourages state candidates to forgo special interests.¹²³ Once a candidate applies and is accepted as a participating candidate in the Clean Funding program, the candidate must raise a minimum number of \$5 contributions from their constituents within a certain period of time.¹²⁴ After the period for collecting contributions is over, the candidate must then apply for the funding through the Secretary of State’s office by sending in another application, including the documentation of all of the \$5 contributions.¹²⁵ The Clean Elections Commission expressly prohibits “[c]ontributions from political action committees (PACs), businesses, corporations, political parties, and labor unions,” but allows limited contributions from individuals.¹²⁶ Maryland employs a similar approach, requiring participating candidates to collect donations from voters.¹²⁷ However, Maryland allows individual donations of up to \$250.¹²⁸ The reason for the higher donation amount is likely due to the fact that instead of meeting a certain number of donations, Maryland requires candidates to meet a certain dollar amount equal to 10% of the state’s overall campaign expenditure limit.¹²⁹

New York State has enacted a small-donor matching fund system for state elections that is modeled after the one New York City already has in place.¹³⁰ The system also aims to reduce the state’s high contribution limits in order to tackle corruption and candidates’ dependence on large donors.¹³¹ New York’s system differs

¹²¹ *Ohio Form It-1040 Instructions*, E-SMART TAX, <https://www.esmarttax.com/tax-forms/ohio-form-it-1040-instructions/> (last visited Oct. 29, 2020).

¹²² PAUL SRACIC & WILLIAM BINNING, *OHIO GOVERNMENT AND POLITICS* 139 (2015).

¹²³ *How Clean Funding Works*, CITIZENS CLEAN ELECTION COMM’N, <https://www.azcleanelections.gov/run-for-office/how-clean-funding-works> (last visited Oct. 26, 2020).

¹²⁴ *Id.* (documenting the donations is required to submit to the Secretary of State).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Campaign Finance—Public Finding*, *supra* note 68.

¹²⁸ *Id.*

¹²⁹ *Id.*; *see supra* notes 58–61 and accompanying text.

¹³⁰ Malbin & Glavin, *supra* note 63; BRENNAN CTR. FOR JUST., *supra* note 62.

¹³¹ BRENNAN CTR. FOR JUST., *supra* note 62.

from Arizona's Clean Elections Program in several respects.¹³² Beginning in November of 2022, candidates who enroll in the program will receive \$6 from the public funding for every \$1 they raise on their own.¹³³ It will also require candidates to meet certain qualifications before being eligible, similar to those in Arizona's program.¹³⁴ The system imposes caps on the amount of public funding a candidate is able to receive, but does not place spending caps on the individual candidates.¹³⁵ New York's small-donor matching system is designed to make small campaign donors the most prominent in state elections, giving voters rather than corporations the influence that a democratic society should have.¹³⁶

Implementing a system like Arizona's Clean Elections Program or New York's donor-matching system would be a step in the right direction for Ohio. Corporations' ability to contribute unlimited funds to super PACs in conjunction with Ohio's above average contribution limits¹³⁷ make the state prone to corruption by special interest influence. In a 2015 study, Ohio's political financing integrity was rated at a "D+" mainly due to the laws and effectiveness of the in-practice regulation regarding outside spending in campaigns.¹³⁸ A public financing reform will cut the ties between campaigning politicians and corporate special interests, promoting transparency and attentiveness to voters.¹³⁹ Even in the face of *Citizens United* proliferating campaigns funded by special interest groups and corporations, all of the abovementioned public funding systems are viable options for Ohio.

Public financing programs do not come without backlash, be it from citizens, states, or political entities. Before Arizona's current version of the Clean Elections Program, the Supreme Court struck down a section of the program which provided

¹³² *How Clean Funding Works*, *supra* note 123.

¹³³ Malbin & Glavin, *supra* note 63 (noting that this matching would be limited to the first \$175 per donor); BRENNAN CTR. FOR JUST., *supra* note 62.

¹³⁴ BRENNAN CTR. FOR JUST., *supra* note 62; *How Clean Funding Works*, *supra* note 123. In New York, the qualifications include that candidates "must raise a minimum amount of money from at least a minimum number of donors. For statewide candidates these donors must be residents of New York. For legislative candidates, qualifying donors must live in the district the candidate is seeking to represent." Malbin & Glavin, *supra* note 63. The qualification requirements vary by office. *Id.*

¹³⁵ Malbin & Glavin, *supra* note 63.

¹³⁶ *Id.*

¹³⁷ *State-by-state comparison of campaign finance requirements*, BALLOTPEdia, https://ballotpedia.org/State-by-state_comparison_of_campaign_finance_requirements (last visited Oct. 27, 2020).

¹³⁸ Darrel Rowland, *Ohio Gets D+ Grade in 2015 State Integrity Investigation*, CTR. FOR PUB. INTEGRITY (Nov. 9, 2015), <https://publicintegrity.org/federal-politics/state-politics/state-integrity-investigation/ohio-gets-d-grade-in-2015-state-integrity-investigation/>.

¹³⁹ See MILLER, *supra* note 84, at 50; Andrew Gounardes, *Public Financing Now: The State Must Democratize Our Election Financing*, N.Y. DAILY NEWS (Oct. 27, 2019), <https://www.nydailynews.com/opinion/ny-oped-public-financing-now-20191027-6llevgrj1bb6pee4eg3xwb3ea-story.html>.

additional funding to publicly financed candidates who were up against “big-spending opponents.”¹⁴⁰ The Court found that this specific part of the program that would match dollars spent by privately funded candidates “substantially burdens” political speech for the privately funded candidate.¹⁴¹ The Court reasoned that the matching funds program discouraged political speech and spending money by the privately funded candidates because doing so could trigger the fund matching to the publicly funded candidate.¹⁴² Justice Kagan in her dissent explained how this program does not restrict speech, but subsidizes it.¹⁴³ She developed her argument by reasoning that the statute does not tell candidates how much they can spend, it does not tell candidates when they can spend it, and it does not tell candidates what they can and cannot spend it on.¹⁴⁴ Justice Kagan’s argument is further bolstered by her reference to the Court’s precedent of distinguishing between speech restrictions and speech subsidies.¹⁴⁵ There are many positive outcomes of public financing systems and many political scholars have found that the subsidies actually encourage and enhance the “opportunity for free political discussion to the end that government may be responsive to the will of the people.”¹⁴⁶

In his study on state public campaign financing systems, Michael G. Miller, a political science professor at Barnard College, found that candidates who participate in public funding are much more likely to personally interact with voters on a weekly basis.¹⁴⁷ He found that the time candidates would usually spend on raising money is reinvested in interacting with their constituents and voter engagement.¹⁴⁸ Public funding also gives those who would otherwise be unable to run for office due to

¹⁴⁰ *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 729 (2011); Robert Barnes, *Supreme Court Strikes Arizona’s ‘Matching Funds’ for Publicly Funded Campaigns*, WASH. POST (June 27, 2011), https://www.washingtonpost.com/politics/supreme-court-strikes-arizona-system-of-matching-funds-to-publicly-financed-candidates/2011/06/26/AG92xenH_story.html.

¹⁴¹ *Ariz. Free Enter. Club’s Freedom Club PAC*, 564 U.S. at 726. Under this program, when “the amount of money a privately financed candidate receives in contributions, combined with the expenditures of independent groups made in support of the privately financed candidate or in opposition to a publicly financed candidate, exceed the general election allotment of state funds to the publicly financed candidate” the matching of funds to the publicly financed candidate is triggered. *Id.* at 729.

¹⁴² *Id.* at 746–48.

¹⁴³ *Id.* at 763 (Kagan, J., dissenting).

¹⁴⁴ *Id.* at 763–64.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 757 (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964)).

¹⁴⁷ MILLER, *supra* note 84, at 46–52; see Andrew Prokop, *After Arizona Passed Public Financing, Politicians Spent More Time with Voters*, VOX (Apr. 4, 2015), <https://www.vox.com/2014/8/13/5996291/arizona-campaign-finance-system-explained>.

¹⁴⁸ MILLER, *supra* note 84, at 46–52.

financial concerns a chance to run a serious campaign.¹⁴⁹ It is also worth noting that public financing systems are “leveling the playing field” for challengers of incumbents who are usually ahead of the game on fundraising.¹⁵⁰

It sounds too good to be true, right? Unfortunately, even with a public financing system in place, candidates cannot be mandated to utilize it.¹⁵¹ Thus, some candidates will still be receiving corporate and super PAC money and be manipulated by special interests. However, it is a good foundational approach for the state to implement a public financing system now.

A. A Public Financing Proposal for Ohio Elections

With a system akin to Arizona’s instituted in Ohio, voters can and will be more inclined to participate in campaigns. The financing system would have to be optional because of the Supreme Court’s decision in *Buckley v. Valeo*, finding that states may not mandate a candidate to participate in a publicly financed campaign.¹⁵² However, with the increasing frustration of citizens with money in campaigns,¹⁵³ candidates should be more inclined to consider participating in public financing as a display of their commitment to voters.¹⁵⁴

Like Arizona, the public funding system in Ohio would be comprised of a system wherein candidates¹⁵⁵ would be required to collect a certain number of small donations (around \$5–\$10) from registered voters.¹⁵⁶ The candidates would then be permitted to apply for the public funds.¹⁵⁷ Requiring candidates to collect small donations from their constituents is just one avenue that encourages them to interact more with voters. In a campaign for Arizona Superintendent of Public Instruction, Kathy Hoffman, running as a clean elections candidate, outraised her opponent 2:1 and won the

¹⁴⁹ *Id.* at 81.

¹⁵⁰ *Id.* at 83 (quoting a Republican legislator who opposed Clean Elections: “[Clean Elections] certainly levels [the playing field] more than it would have been without it—I think wrongly, but it does level it more.”).

¹⁵¹ See *Public Financing of Campaigns: Overview*, *supra* note 17. See generally *Ariz. Free Enter. Club’s Freedom Club PAC*, 564 U.S. at 728.

¹⁵² *Public Financing of Campaigns: Overview*, *supra* note 17.

¹⁵³ Kotch, *supra* note 42; Kotch, *supra* note 45.

¹⁵⁴ This can even be observed at the presidential level. Bernie Sanders’s presidential campaign raised more than \$34.5 million in the last three months of 2019, which was the strongest fourth quarter of all the Democratic candidates. His team reported that 99.9% of the contributors had not even donated the maximum amount allowed by law. There is little doubt that his success in fundraising from small donors can be attributed to Sanders’s campaign promise to not accept money from corporate PACs or billionaires. Holly Otterbein, *Sanders Delivers Blowout Fundraising Number*, POLITICO (Jan. 2, 2020), <https://www.politico.com/news/2020/01/02/bernie-sanders-fundraising-millions-092446>.

¹⁵⁵ This would likely be most effective at the gubernatorial level to begin with.

¹⁵⁶ *How Clean Funding Works*, *supra* note 123.

¹⁵⁷ *Id.*

election.¹⁵⁸ Despite her opponent being a well-established politician with an extensive donor list, Hoffman came out on top.¹⁵⁹ Hoffman entered the race without the political credibility that her opponent had already established, and without the expansive funds that her opponent had access to. The clean elections commission gave her the opportunity to have a fighting chance that she otherwise would not have had. Under the clean elections program, Hoffman was not allowed to accept any donations from PACs, corporations, or special interest groups,¹⁶⁰ demonstrating that PAC and corporate money is not necessary for running a successful campaign with the support of public financing.

The next issue to be addressed is how the money that funds the public financing program will be raised. Several promising options exist in this connection. For one, Ohio could reinstate the checkoff box on all tax returns for taxpayers to indicate that they want a portion of their taxes to go into this fund.¹⁶¹ The money diverted from the state taxes would go directly into a fund that is specifically for candidates who apply for the public funding. Before the Ohio Political Party Fund was repealed, fewer and fewer taxpayers were checking the box to donate to it.¹⁶² This may have been due to their lack of knowledge about where the money would be going; some taxpayers may have also thought that they would be charged an additional fee if they checked the box.¹⁶³ One way to rectify this issue and make the tax return check box a more viable option is to create television and/or online ad campaigns promoting the check box on state tax returns. Providing more information about how the money is collected and used and encouraging citizens to allocate taxes they have already paid to public financing will make citizens more likely to take advantage of that option.

¹⁵⁸ *Kathy Hoffman*, WIKIPEDIA, https://en.wikipedia.org/wiki/Kathy_Hoffman, (last visited Oct. 27, 2020); Dustin Gardiner & Rob O'Dell, *Republicans Have Cash Edge in Expensive Campaigns for Arizona's Statewide Offices*, AZCENTRAL.COM: THE REPUBLIC (Oct. 18, 2018), <https://www.azcentral.com/story/news/politics/elections/2018/10/18/arizona-elections-2018-campaign-finance-reports-show-gop-advantage/1655158002/>.

¹⁵⁹ *Kathy Hoffman*, *supra* note 158.

¹⁶⁰ *Kathy Hoffman, Give Nontraditional Oregon Candidates a Chance to Run for State Office and Win*, STATESMAN J. (June 14, 2019), <https://www.statesmanjournal.com/story/opinion/2019/06/14/pass-small-donor-elections-program-oregon-legislature/1385998001/>. In this opinion article, Hoffman communicated her support for a proposed public finance system in Oregon by illustrating the success she experienced under Arizona's program. *Id.*

¹⁶¹ *See supra* note 25 and accompanying text.

¹⁶² SRACIC & BINNING, *supra* note 122, at 139.

¹⁶³ *See Peter Overby, You Didn't Check the 'Presidential Election Campaign' Box on Your Taxes Did You?*, NPR (Apr. 15, 2020, 10:03 AM), <https://www.npr.org/sections/itsallpolitics/2015/04/15/399699566/you-didnt-check-the-presidential-election-campaign-box-on-your-taxes-did-you>.

Another way to fund the system is to take a small percentage of all civil and criminal fines and penalties paid to the state and deposit it into the public fund.¹⁶⁴ Appropriating a small percentage of civil and criminal fines to the public financing fund would eliminate the wariness and uncertainty that taxpayers experience in checking that box. This approach would guarantee that there would always be monies flowing into the fund as court fines are consistently paid throughout the state. This provision of Arizona's Clean Elections Commission was immediately challenged by the Institute for Justice in *May v. McNally*, claiming that imposing surcharges on civil and criminal fees compelled individuals to pay for the political speech of others.¹⁶⁵ The Institute further argued that the surcharge is "[A]n unconstitutional 'special tax' requiring strict scrutiny because 'it is imposed on less than the whole' population of Arizona citizens and burdens the First Amendment rights of a narrowly defined group of taxpayers."¹⁶⁶ The Supreme Court of Arizona rejected this argument.¹⁶⁷ The court explained that the surcharge *does* apply to all Arizonans: every citizen is subject to paying court fines for whatever reason, so every citizen is subject to the surcharge.¹⁶⁸ The court further rationalized their decision with the conclusion that the surcharge does not burden the exercise of a First Amendment right because "there is no expressive content inherent in paying a traffic fine."¹⁶⁹ And, finally, the court concluded that "the safeguard of viewpoint neutrality in the allocation of funds suffices to mitigate any First Amendment concerns."¹⁷⁰ The *May* case sets a precedent that would allow Ohio to implement this approach for funding the public finance reform without encountering any First Amendment problems.

In accordance with other states' public financing systems,¹⁷¹ Ohio may have to impose expenditure limits for participants. The spending limits would have to be adjusted for the respective public office for which the candidate is running. To serve as an example of how states cap spending limits for candidates, we can look to the most expensive statewide electoral race in nearly every state – governor. Two main approaches to the spending limits exist: capping the amount of public funds that the candidate may receive¹⁷² and capping the amount that a candidate can spend overall.¹⁷³

¹⁶⁴ *Public Financing of Campaigns: Overview*, *supra* note 17 (observing that Arizona implements a 10% surcharge).

¹⁶⁵ *May v. McNally*, 203 Ariz. 425, 427 (2002); *Arizona Campaign Finance (First Challenge)*, INST. FOR JUST. (Jan. 1, 2020), <https://ij.org/case/lavis-v-bayless/>.

¹⁶⁶ *May*, 203 Ariz. at 431.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Public Financing of Campaigns*, *supra* note 7.

¹⁷² *See Malbin & Glavin*, *supra* note 63.

¹⁷³ *See Public Financing of Campaigns: Overview*, *supra* note 17.

It seems unrealistic to disallow candidates from using their own accounts or those monies donated outside of the public funds allotted to them. Thus, capping the amount of public funds that a candidate may receive appears to be the most rational approach. The proposal in place for New York would impose maximum limits on the amount of public money any one candidate can receive.¹⁷⁴ It would give gubernatorial candidates a public funding limit of \$18 million from the donor-matching program¹⁷⁵ – this sounds extreme. However, New York state has nearly 8 million more citizens than the state of Ohio.¹⁷⁶ The population of the state is something that would need to be taken into account when determining a maximum figure for public funding. One way to determine the maximum spending limits is to use the equation that Maryland uses in its public campaign financing system.¹⁷⁷ As discussed before, Maryland adjusts the campaign expenditure limit based on the current state population.¹⁷⁸ Currently, the limit is determined as 30¢ per state citizen.¹⁷⁹ Ohio can take a similar approach in determining a maximum campaign expenditure limit for participating candidates.

The candidates participating in this program would make a promise not to accept any money from any PACs. Some of the states that currently have public funding programs institute this requirement for participants.¹⁸⁰ Arizona’s Clean Elections Commission requires participating candidates to make a promise to not accept “contributions from PACs, labor unions, corporations, or political parties.”¹⁸¹ Some state restrictions are broader, indicating that participants may not receive any funding at all from outside the public funds.¹⁸² A promise to not accept any PAC money would be the best requirement for participants because it gets at the heart of the problem with special interest influence. Voters find the “No Corporate PAC” pledge admirable, which would give candidates a leg-up on their competitors.¹⁸³ Refusing PAC money

¹⁷⁴ Malbin & Glavin, *supra* note 63 (“The caps ranged from \$350,000 for the Assembly (primary and general election combined) and \$750,000 for the state Senate to \$18 million for governor.”).

¹⁷⁵ *Id.*

¹⁷⁶ *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/NY,OH/PST045218> (last visited Feb. 22, 2021) (showing Ohio’s 2019 population at about 11.7 million and New York’s 2019 population at about 19.5 million).

¹⁷⁷ *Campaign Finance—Public Finding*, *supra* note 68.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* The 30¢ figure is adjusted annually based on the consumer price index. *Id.*

¹⁸⁰ *State Public Financing Options 2015-2016 Election Cycle*, NAT’L CONF. OF STATE LEG. (2015), <http://www.ncsl.org/Portals/1/Documents/Elections/StatePublicFinancingOptionsChart2015.pdf>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *End Citizens United*, *supra* note 89.

and other big money will allow candidates to focus their time on policies that they truly believe in and which reflect their constituents' concerns.

In accordance with the goal of the campaign finance reform – to encourage more interaction and transparency with voters – a voter education program that informs registered voters on current issues, candidate policies, and voting options is crucial. Ohio currently has the OhioVOTES program under the Coalition of Homelessness and Housing in Ohio (“COHHIO”) that focuses on promoting voter engagement in low-income communities.¹⁸⁴ OhioVOTES is a good foundational initiative for a more extensive voter education program for all – especially young voters.

Arizona's Clean Elections Commission includes a nonpartisan voter education program that promotes participation in the political process.¹⁸⁵ The efforts by the program in Arizona are more pervasive throughout the entire state, across all socio-economic statuses and communities, as opposed to Ohio's focus on low-income areas.¹⁸⁶ Arizona's program created a website and corresponding app that provides voting information, hosts candidate debates with meet and greets for voters to ask questions, and mails voter information guides to every household with a registered voter.¹⁸⁷ Likewise, engaging young voters would be a key goal in a voter education program. The U.S. House of Representatives has already proposed a younger voter registration age on the federal level in the For the People Act,¹⁸⁸ so engaging young voters is already on the country's radar. Creating a high school program or having guest speakers going to schools to inform students on their forthcoming right to vote is imperative as the younger generation is becoming more influential in elections. A program like this implemented in Ohio in conjunction with reforming the campaign financing structure will benefit the political process on both the candidate's and the voter's end. The two programs combined will create transparency in campaigns and generate more informed voters for an all-around more effective electoral process and a more diverse voter turnout.

The voter education program could easily be funded by simply reinstating the Ohio Political Party Fund that was recently repealed.¹⁸⁹ The Ohio Political Party Fund was primarily used for administrative costs for major political parties as well as voter

¹⁸⁴ *About*, COAL. ON HOMELESSNESS & HOUS. IN OHIO, <https://cohhio.org/about/> (last visited Jan. 12, 2021). The OhioVOTES program is a voter initiative program to build civic engagement in low-income communities. *OhioVotes*, COAL. ON HOMELESSNESS & HOUS. IN OHIO, <https://cohhio.org/advocacy/ohio-votes/> (last visited Jan. 12, 2021).

¹⁸⁵ *Voter Education*, *supra* note 18.

¹⁸⁶ *Id.*; *OhioVotes*, *supra* note 184.

¹⁸⁷ *Voter Education*, *supra* note 18.

¹⁸⁸ For the People Act, H.R. 1, 116th Cong. (2019) (“A State may not refuse to accept or process an individual's application to register to vote in elections for Federal office on the grounds that the individual is under 18 years of age at the time the individual submits the application, so long as the individual is at least 16 years of age at such time.”).

¹⁸⁹ H.B. 166, 133d Gen. Assemb. (Ohio 2019).

registration efforts.¹⁹⁰ Reinstating the fund and using a portion of the money that is procured from the tax return check box is one way that the state could fund a new voter education program to complement the new public campaign financing system.

Taking a stance against corporate money in politics is becoming increasingly popular among members of Congress and presidential candidates.¹⁹¹ However, issues may exist with making the pledge a requirement under a public financing system and with the public financing in general. Critics of a public financing system may argue that citizens should not have to pay for the campaigns of candidates they do not support¹⁹² or that candidates will still need outside money to sufficiently compete with privately funded candidates. There are answers to these arguments. First, citizens who pay their taxes are likely already paying for many state and federal actions and policies with which they do not agree – about 55% of Ohio's state budget comes from state taxes, which may fund anything from Medicaid and unemployment to paying local governments.¹⁹³ Further, under the proposition that Ohio use a portion of civil and criminal fines and fees to fund the system, citizens will not be paying any more than necessary for the system. Second, money outside of the public funds may not be necessary for all for most candidates. In the analysis of the New York proposal examined earlier,¹⁹⁴ the authors discovered that, more often than not, the candidates in the 2018 election would have been better off financially if they had opted into public funding.¹⁹⁵ In addition, the evidence shows that most candidates who forgo corporate special interests gain more support with voters,¹⁹⁶ so the financial aspect may not be as great of a worry as some may think, especially at the state level.

Tackling corruption of money in politics is the major objective of public funding systems, but eliminating PACs in elections has more positive externalities than just that. It can be inferred that a more publicly engaged candidate can make voter turnout

¹⁹⁰ *Ohio I-File Tax Return Report Year 2001*, OHIO DEP'T OF TAX'N, <https://www.tax.state.oh.us/email/IFileHelp/help/2001/1040politicalparty.html> (last visited Oct 29, 2020).

¹⁹¹ See generally Eliza Newlin Carney, "No Corporate PAC" Pledges Go Beyond Cheap Promises, AM. PROSPECT (May 3, 2018), <https://prospect.org/power/no-corporate-pac-pledges-go-beyond-cheap-promises/>.

¹⁹² *Answering the Critics*, DEMOCRACY MATTERS, <http://www.democracymatters.org/what-you-need-to-know-about-money-in-politics-2/overview/answering-the-critics/> (last visited Oct. 29, 2020).

¹⁹³ *Ohio budget 101; A basic overview*, POL'Y MATTERS OHIO (Dec. 16, 2016) [https://www.policymattersohio.org/research-policy/quality-ohio/revenue-budget/budget-policy/ohio-budget-101-a-basic-overview#:~:text=General%20Revenue%20Funds%20make%20up,the%20budget%20\(%2435%20billion\)](https://www.policymattersohio.org/research-policy/quality-ohio/revenue-budget/budget-policy/ohio-budget-101-a-basic-overview#:~:text=General%20Revenue%20Funds%20make%20up,the%20budget%20(%2435%20billion).).

¹⁹⁴ See *supra* notes 130–136 and accompanying text.

¹⁹⁵ Malbin & Glavin, *supra* note 63.

¹⁹⁶ See MILLER, *supra* note 84, at 48; LESSIG, *supra* note 79.

increase.¹⁹⁷ It can heighten voters' confidence in their preferred candidate because they have more of the information they need to cast an educated vote, rather than having their facts convoluted with special interest influence.¹⁹⁸ It leads to more transparent candidates who are not beholden to special interest contributions and expenditures. It has been shown to create more competitive elections and decrease the regularity of races with unopposed incumbents.¹⁹⁹ It is evident that the benefits of an optional public financing system for state elections outweigh the detriments in many aspects and, therefore, Ohio has ample motive to begin exploring the options in the realm of public financing.

V. CONCLUSION

Drawing on the relevant constitutional and social considerations, this Note demonstrates that corporations should not be afforded the same rights as individuals when it comes to political speech and influencing elections. Instead, corporations' political speech should be restricted in this realm due to their corporate identity and the adverse effects that their involvement in the political sphere creates. Thus, *Citizens United* should be overturned to promote a more honest and transparent political structure in the United States. However, even if *Citizens United* is not overturned in the near future, Ohio can make a move toward getting corporations and special interests out of our state elections.

This Note proposes a public financing system for campaigns for statewide offices in Ohio. Ohio should implement a public campaign financing system that encourages candidates to engage themselves with the public rather than catering to special interests for fundraising. The state may fund the system in multiple ways, from a tax return check box to surcharges on criminal and civil court fees, which will be disbursed to candidates via a small donor-matching structure. To ensure a "clean" campaign, free from outside money influence, the participating candidates will pledge to decline any money from PACs. In conjunction with the public financing system, the state should also put forth a concerted effort to educate young voters and encourage them to perform their civic duty and participate in the political process. A public financing system for state election campaigns in Ohio that diminishes corporate involvement and influence in elections is a large step in the right direction for campaign finance reform in the state.

¹⁹⁷ See MILLER, *supra* note 84, at 64.

¹⁹⁸ See *id.* at 65.

¹⁹⁹ Mimi Murray Digby Marziani & Adam Skaggs, *More than Combating Corruption: The Other Benefits of Public Financing*, BRENNAN CTR. FOR JUST. (Oct. 7, 2011), <https://www.brennancenter.org/our-work/research-reports/more-combating-corruption-other-benefits-public-financing>.