BRENNAN CENTER FOR JUSTICE

Understanding H.R.1's Public Financing Provisions

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September 20, 2019

One of the signature provisions in H.R.1, the For the People Act of 2019, is small donor public financing. The small donor provisions of H.R.1 would use public funds to amplify small private contributions to participating federal candidates. Small donor public financing is an antidote to big money politics, and the single most effective way to respond to *Citizens United* and other court cases that have swept aside campaign finance safeguards. Small donor public financing would free members of Congress to spend less time dialing for dollars and more time connecting with voters. It would help curb corruption and bolster flagging confidence in our democracy. And it would bolster the diversity of donors, officeholders, and candidates. H.R.1's small donor provisions represent exactly the sort of transformative change that voters demanded in 2018 and which Congress promised to deliver.

The cost of these provisions would be modest. Based on CBO cost estimates, it would amount to 0.01 percent of the overall federal budget over ten years.[1] Moreover, they are self-funding. **H.R.1 does not use any taxpayer revenue to fund public financing**.

Even if that were not the case, H.R.1's small donor provisions would be a good deal for taxpayers. Simply put, political campaigns cost money, which has to come from somewhere. When campaigns are funded primarily by wealthy donors and special interests, they naturally expect something in return – namely, the chance to shape government policy to suit their own interests and preferences, even when they are at odds with those of most other Americans. The reality, or even the perception, that campaign donors call the shots on major policy decisions is deeply corrosive to our democracy.

For only a modest investment, we can have a different system, one that would reinforce the primacy of voters. In the long run, this will benefit all Americans.

The Problem: America's Unrepresentative Campaign Finance System

America's system of privately financed campaigns gives a small minority of wealthy donors and special interests unparalleled clout. Super PACs, political committees that can raise and spend unlimited funds thanks to *Citizens United*, have raised $4.9 billion to spend influencing elections.[2] Roughly a fifth of that total has come from just eleven people.[3] Dark money groups that keep their donors secret, but which we know are funded by many of the same donors who back super PACs, have spent more than $1 billion more.[4] Overall, donors who gave more than $200 in federal races make up less than 0.5 percent of the population.[5] And while the number of small individual donors (who gave $200 or less) has increased in recent years, they still account for less than 20 percent of the total amount of money.[6] In the two most recent midterm elections, the top 100 super PAC donors gave almost as much as all the millions of small donors combined.[7]

The outsized role of large campaign donors forces candidates to spend inordinate time focused on their concerns. One party fundraising presentation from several years ago suggested that new representatives spend four hours a day soliciting large contributions.[8] As Senator Chris Murphy of Connecticut noted of the hours he spent calling donors, “I talked a lot more about carried interest inside of that call room than I did at the supermarket. [Wealthy donors] have fundamentally different problems than other people . . . And so you’re hearing a lot about problems that bankers have and not a lot of problems that people who work in the mill in Thomaston, Conn., have.”[9]

Unsurprisingly given this dynamic, researchers find that government policy is much more responsive to the preferences of the wealthy and business interest groups than those of average citizens.[10] For example, the last Congress prioritized repealing the Affordable Care Act and passing an unfunded $1.5 trillion tax cut which heavily favored large corporations and the wealthy. Both proposals were unpopular with the public at large but seen as key priorities for wealthy donors.[11] The tax bill in particular made it over the finish line in part because of explicit warnings that “financial contributions will stop” if it failed to pass.[12] These are far from the only examples of government policy aligning more with the preferences of the donor class than with those of most other Americans.[13]

The clout donors wield in our political system has contributed to a sense of powerlessness on the part of millions of everyday Americans. Overwhelming majorities tell pollsters that corruption is widespread in the federal government,[14] that they believe people who give a lot of money to elected officials have more influence than others,[15] that money has too much influence in political campaigns,[16] and that they blame money in politics and wealthy donors for dysfunction is the U.S. political system.[17]

The central role of wealthy private donors poses special challenges for communities of color. At the highest contribution levels, the donor class has long been overwhelmingly white (and disproportionately male).[18] One consequence is that policies that would disproportionally benefit people of color, such as raising the minimum wage, tend to be much more popular with ordinary people than with influential political donors.[19] The cost of campaigns is also a barrier to people of color running for office, especially women.[20] In 2018 black women running for Congress raised only a third of what other female candidates received from large donors.[21] Facing these structural barriers, potential candidates often decline to run at all – as one operative notes, “Especially for black women, raising money is oftentimes a major deterrent to why they don’t get into politics or run for election.”[22]

The Solution: Small Donor Public Financing

Small donor public financing, as included in H.R.1, offers a proven solution to these problems. The core provisions in H.R.1’s program would match small donations (up to $200) to participating congressional candidates at a 6-1 ratio. For example, a $200 donation to a candidate would attract $1200 in matching public funds, for a total contribution of $1400. Participation would be voluntary. Candidates would opt in by raising enough small initial donations to qualify, and would be subject to certain conditions, including somewhat lower contribution limits and strict anti-fraud safeguards.

Small donor matching has a proven track record. In 1971, Congress introduced a small donor match for presidential primary campaigns, which was used by almost every major presidential candidate between 1976 and 2008.[23] Thanks to the presidential public financing system (which H.R.1 would reinvigorate), in 1984 Ronald Reagan was able to win reelection in a landslide without holding a single fundraiser.[24] Two years later, the bipartisan Commission on National Elections concluded that: "Public financing of presidential elections has clearly proved its worth in opening up the process, reducing the influence of individuals and groups, and virtually ending corruption in presidential election finance."[25]

Donor matching has also found success at the state level, where it has been adopted in a wide variety of jurisdictions.[26] The system that has been studied the most is that of New York City, which has existed since the 1980s and matches donations of up to $175.[27] The vast majority of city candidates participate.[28] The system has both increased candidates' reliance on small donors and brought many more of them into the political process, over time leading to "a substantial increase" in the average number of donors from whom candidates raise money.[29]

Users of the New York City system and independent studies confirm that its chief impact is to enable candidates to shift their focus from deep-pocketed donors to constituents.[30] According to New York State Attorney General Letitia James, who came up through city politics to become the first woman and first African-American elected state attorney general, small donor public financing freed her "from the stranglehold of…big donors demanding meetings and policy changes. Every New Yorker know[s] they can come to my door and their voices will be heard."[31] Republican councilmember Eric Ulrich likewise observes that "[t]he matching funds program has allowed for the voice of small donors and regular people to have a greater say in outcomes… That has helped to transform how we represent our constituents."[32]

In fact, for candidates participating in New York City's program, constituents often *are* their donors. Candidates who participate in New York City's program raise 30 percent more of their funds from in-district donors than do other candidates running in those areas.[33] Participating candidates also rely on a much more diverse donor base. One Brennan Center study found that they raised money from 90 percent of the city's census blocks, as compared to roughly 30 percent for state legislative candidates running in the same areas.[34] Other small donor public financing programs have been found to have similar benefits.[35]

In short, by increasing the value of modest contributions, small donor public financing allows candidates to run viable campaigns while keeping their focus where it belongs: on the communities they represent. There is no better way to respond to the excesses of the post-*Citizens United* era. No other provisions in H.R.1 are more crucial.

A Needed Investment

The main attack on these provisions is that they would waste taxpayer dollars,[36] but that criticism cannot be squared with reality. In fact, the cost is exceptionally modest. The CBO has estimated that over the first ten years of its existence, H.R.1's small donor matching program would cost roughly $475 million per year.[37] As a point of comparison, President Trump's budget proposal for FY2020 (*a single year*), was *10,000 times* this amount at $4.75 *trillion,* and as is so often the case, appears to have been heavily influenced by big-spending industries and other interests that stand to gain at the expense of many ordinary taxpayers.[38]

In any event, H.R.1 does not spend any taxpayer funds on public financing. Rather, it imposes a 2.75 percent surcharge on certain criminal fines and civil and administrative penalties collected by the federal government, primarily from corporate defendants and their executive officers. Importantly, noncorporate individuals obliged to pay a criminal fine or civil penalty are not subject to the surcharge, except for a very narrow category of wealthy individuals who commit tax fraud and are in the highest tax bracket.[39]

Examples of the types of fines to which a surcharge would be added include:

- In 2019, Facebook was ordered to pay approximately $5 billion to the federal government for mishandling users' personal information. Under H.R.1, this fine would provide around $137.5 million for the small donor matching program.[40]

- In 2018, Royal Bank of Scotland paid $4.9 billion to the federal government for misleading investors about mortgage-backed securities before the financial crisis.[41] Under H.R.1, this fine would provide $135 million for the small donor matching program.

- In 2017, Volkswagen paid a $4.3 billion fine to the federal government for cheating on diesel emission tests.[42] Under H.R.1, this fine would provide $118 million for the small donor matching program.

- In 2016, BP paid a $5.5 billion penalty to the federal government under the Clean Water Act to cover damages from the Deepwater Horizon spill.[43] Under H.R.1, this fine would provide $151 million for the small donor matching program.

- In 2015, BNP Paribas paid $8.9 billion to the federal government for violating U.S. sanctions against Iran, Cuba, and Sudan.[44] Under H.R.1, this fine would provide $245 million for the small donor matching program.

Even the CBO's highly conservative model estimates that surcharges like these would raise over $1.73 billion in net revenue in the first ten years – more than enough money to support donor matching to participating congressional candidates over that timeframe.[45] Moreover, it is likely that the model significantly underestimates how much the surcharge would raise.[46] And even if revenue somehow does fail to meet demand for donor-matched funds, H.R.1 specifies that no taxpayer money will be used to make up the shortfall. Instead, the donor matching amount is reduced to accommodate available funds, and taxpayers are again left off the hook.

Ultimately, no matter how H.R.1's small donor provisions are paid for, there is little doubt they will be a good deal for the American people. As one scholar notes, "there are no free lunches."[47] When wealthy donors and special interests fund our campaigns, they expect something in return. Taxpayers are too often the ones left to pay the real bill. Take one recent example: the unpopular donor-driven $1.5 trillion tax overhaul from the last Congress. Most of its benefits have gone to the top one tenth of one percent of Americans, even as it has increased the deficit by over $1 trillion over ten years.[48] The donors who threatened to cut off their campaign spending unless this bill passed have enjoyed an excellent return on their investment. We need a system that will create greater incentives to spread such benefits to all Americans.

H.R.1's public finance reforms represent the best hope for bringing such a change about. Regardless of how they are funded, the investment is worth it.

This paper is available online here: https://www.brennancenter.org/analysis/Understanding-HR1-Public-Financing

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ENDNOTES

[1] This figure estimates the cost of 10 years of expenditures, rather than the 10 years covered in the CBO's projection (which only includes 5 years of expenditures). For the years not covered by the CBO's projections, we assumed costs would continue to increase compared to the previous year (adjusting for whether the previous year was an election year) at the same rate as the CBO expects for the years in their projection. Congressional Budget Office, *H.R. 1, For the People Act of 2019, as reported by the House Committee on Rules on March 5, 2019: Estimated Effects on Direct Spending and Revenues*, Mar. 7, 2019, https://www.cbo.gov/system/files/2019-03/hr1_DirectSpendingandRevenues.pdf; Kimberly Amadeo, "US Federal Budget Breakdown," *The Balance*, Jun. 25, 2019, https://www.thebalance.com/u-s-federal-budget-breakdown-3305789.
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legislature passed a statewide EITC, a minimum wage increase, and a statewide paid sick days policy. These policies enjoyed broad and bipartisan public support among voters but had been opposed by wealthy interests who made large contributions to politicians under the previous campaign finance regime. *See* Adam Lioz, *Stacked Deck: How the Racial Bias in Our Big Money Political System Undermines Our Democracy and Our Economy*, Demos, 2015, 66–69, *available at* https://www.demos.org/sites/default/files/publications/StackedDeck2_1.pdf.

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[45] *See* Congressional Budget Office, *H.R. 1, For the People Act of 2019*. For the first 10 years of operation (2020-2029), the CBO estimates that H.R.1 will produce $1.73 billion in net revenue and that small donor matching for Congressional elections will cost $1.55 billion.
[46] We suspect the CBO substantially underestimates the amount of revenue that would be raised by H.R.1. For the first 5 years of collecting revenue, the CBO estimates that the surcharge will raise between $144 million and $196 million per year. This would represent a total amount of surcharge-eligible fines of between $5.24 billion and $7.13 billion per year. As documented above, in recent history the federal government normally comes close to matching that total with just 1 fine a year. A search of violations finds 11 fines of more than $4 billion have been paid in the since 2015 (not including the Facebook fine mentioned above). Good Jobs First, "Violation Tracker," accessed Sept. 16, 2019, https://violationtracker.goodjobsfirst.org/prog.php?parent=&major_industry_sum=&primary_offense_sum=&agency_sum=&hq_id_sum=&company_op=starts&company=&major_industry%5B%5D=&case_category=&all_offense%5B%5D=&penalty_op=%3E&penalty=4000000000&govt_level=federal&agency_code%5B%5D=&pen_year%5B%5D=2019&pen_year%5B%5D=2018&pen_year%5B%5D=2017&pen_year%5B%5D=2016&pen_year%5B%5D=2015&pres_term=&free_text=&case_type=&ownership%5B%5D=&hq_id=&naics%5B%5D=&state=&city=.
This includes several fines related to the 2007-2008 financial crisis. While that was in some respects a unique event, modern American history includes many other examples of billion-dollar fines and penalties. In 2017, for example, federal agencies imposed over $10 billion in penalties on corporate violators (which was actually a massive decrease compared to the previous year). *Corporate Impunity: "Tough on Crime" Trump Is Weak on Corporate Crime and Wrongdoing*, Public Citizen, 2018, 3, *available at* https://www.citizen.org/wp-content/uploads/migration/corporate-enforcement-public-citizen-report-july-2018.pdf.

[47] Lee Drutman, “Democrats’ small-donor campaign finance proposal is a great deal for taxpayers,” *Vox*, Jan. 14, 2019, https://www.vox.com/polyarchy/2019/1/14/18182579/democrats-hr1-donor-campaign-finance-proposal-taxpayers.

[48] Weiner, “The Tax Overhaul is Proof”; Dylan Matthews, “The Republican tax bill got worse: now the top 1% gets 83% of the gains,” Vox, Dec. 18, 2017, https://www.vox.com/policy-and-politics/2017/12/18/16791174/republican-tax-bill-congress-conference-tax-policy-center; Urban Institute & Brookings Institution, “How did the TCJA affect the federal budget outlook?,” accessed Sept. 16, 2019, https://www.taxpolicycenter.org/briefing-book/how-did-tcja-affect-federal-budget-outlook.