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SMALL DONOR TAX CREDITS:
A NEW MODEL

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I. INTRODUCTION

Americans agree that the campaign finance system is broken. The vast majority of Americans, whether liberal or conservative, Democrat or Republican, believe that the campaign finance system needs “fundamental changes,” or that it should be “completely rebuilt.”¹

A primary concern for many is that the system is out of balance, with big money having far too much influence over policy, drowning out the voices of ordinary voters.² At the same time, Americans have expressed concerns that the dominance of a tiny minority of donors limits voter choice by making it less likely that candidates without access to those donors can “gain voter attention” and run competitively.³

These concerns reflect actual changes in campaign fundraising in recent years. The share of donations coming from small donors is shrinking, while the amount coming from a relative handful of megadonors is increasing exponentially. In 1994, small donors gave three times as much to federal candidates, parties and political committees as donors contributing more than \$10,000, but by 2014, those large donors gave more than all small donors combined.⁴ In 2016, the top 100 individual super PAC donors spent nearly \$800 million, or 11 percent of all federal election spending.⁵ That’s more than double the level they gave in 2012, and a modern day record.⁶

An equally dramatic trend exists at the state level as well. In 2016, states including North Carolina, California, and Wisconsin saw record amounts of spending on state races by so called “independent” groups.⁷ The biggest outside spenders in those states were primarily funded by five- six- and seven-figure contributions and received essentially none of their funding from small donors.⁸ Meanwhile, direct contributions by small donors to candidates have not kept pace with the growth in outside spending — over the previous several election cycles the share of direct contributions to candidates from small donors in those states remained almost constant.⁹

Several commentators have convincingly argued that the reliance on such a small group of donors has had a real impact on how members of Congress do their jobs, with one noting that candidates must spend “countless hours raising money by courting a limited number of individuals, instead of meeting voters, engaging opponents, debating or voting on legislation.”¹⁰

The Brennan Center has long argued that any effort at comprehensive campaign finance reform should have three primary goals: (1) increasing and diversifying participation in the electoral process, by having a greater pool of Americans provide campaign contributions; (2) encouraging candidates and parties to focus more on connecting with prospective voters, by having them spend more time, including when fundraising, with those voters; and (3) reducing barriers to entry that discourage everyday Americans without access to big donors from running for office.

Our preferred solution for these goals has been a small donor matching system. Under this system, public matching funds amplify small donations, so long as the candidate agrees to strict fundraising limits. There is substantial evidence from New York City and elsewhere that a small donor matching system can make significant progress in achieving those goals.¹¹

But, in recent years, some advocates have promoted additional and alternative reforms to reach these goals. A tax credit for political contributions has been popular, particularly with groups skeptical of other campaign finance reforms. Take Back Our Republic, a conservative group focused on campaign finance reform, has proposed a \$100 tax credit for political contributions, and in 2013, Representative Tom Petri (R-WI) proposed a \$200 tax credit or \$600 tax deduction. More traditional advocates for campaign finance reform such as Represent Us, an advocacy group, and Representative John Sarbanes (D-MD) have put forth tax credit proposals as well.¹²

In fact, the idea of a tax credit to encourage political participation is nothing new. Between 1972 and 1986, millions of Americans claimed a federal tax credit to subsidize hundreds of millions of dollars of contributions.¹³ And over the last few decades, several states have allowed their residents to do the same.

Similar ideas to return tax dollars to individuals that support local political candidates have also had success at the ballot box. In the last two years, voters in Seattle approved a program which allows residents to make small political donations using tax dollars, and voters in Tallahassee passed a program that refunds small donations.¹⁴

It is time to revive a system of tax incentives for small political donations. But it is not enough to merely adopt a system that existed more than three decades ago. Congress and the states designed their programs before the internet revolutionized giving by small donors. The Brennan Center proposes a tax credit structure that would use modern technology, including the internet, to make it easier and faster for both voters and candidates to benefit from the credit. The old federal tax credit could take many months to claim, something that many believe limited its appeal, making it less likely to bring in new donors. With 21st century technology, we can make claiming (or, in the case of candidates asking for) the credit almost as easy as sending a text.

We also offer ideas to address new realities; increasingly, thanks to Supreme Court decisions like *Citizens United*, political spending is coming from outside groups and donors who are not subject to the same disclosure regime as candidates and parties. We suggest structuring the tax credit in a way that will encourage voters to give to the candidates and parties that directly represent them, and encourage candidates and parties to raise money from the constituents they are elected to represent.

If constructed in the right way, tax credits can help fundamentally change the way campaigns in the United States raise money, and get us closer to our three stated goals of reform. A successful program will turn average constituents from merely voters to be courted at the late stages of an election into potential financial backers who can form the foundation of a candidacy. It will bring traditionally less-active people into the political process, and it will lower the barriers to running for office for average Americans who lack access to big donors.

A tax credit system for the 21st century, whether at the local, state, or federal level, would contain the following elements:

1. Tax credits would be easy and inexpensive to claim: Individuals should be able to claim the credit either online or by giving their tax information directly to the candidate or political party they wish to support.
2. To strengthen parties and to ensure that candidates' funding comes from their constituents, taxpayers should be eligible to receive two distinct credits. One would be for contributions to candidates from their state. The second would be for contributions to political parties. At the federal level, the Brennan Center suggests a \$50 credit for each contribution per election cycle.
3. Tax credits should have enough value that candidates will actively solicit them: In addition to being easy to use, taxpayers should be allowed to "bank" their credits for use in the next election cycle. This will increase their value over time and should increase the likelihood that candidates will actively pursue contributions from new donors.
4. Jurisdictions should pair tax credits with other reforms that further increase the voice of small donors: This could mean a system for matching small contributions beyond those eligible for the tax credit, or subjecting candidates who agree to receive tax credit contributions to reasonable limits on large donations or spending.

II. THE RISE AND FALL OF FEDERAL TAX INCENTIVES

From the first income tax in 1861, lawmakers have used the tax system to encourage and discourage certain behavior.¹⁵ And for more than 60 years there have been proposals — some enacted, some not — to use the tax code to encourage small political contributions.

Members of Congress introduced the first bills using the tax code to reward political contributions in 1955. One proposal allowed for a \$100 tax deduction (equivalent to \$900 today) for contributions to federal candidates. A backer of the legislation noted it “would indeed broaden the base of political finance, since it would encourage the average person to contribute.”¹⁶

But it would take 16 years, until 1971, for a tax incentive plan to become law, passed with a supermajority in the Senate and signed by President Richard Nixon.¹⁷ Taxpayers could then claim a 50 percent tax credit for donations to federal, state, and local candidates, political parties, or committees up to \$12.50 or \$25 for a married couple filing jointly (worth about \$150 today).¹⁸ Alternatively, a taxpayer could get a 100 percent tax deduction for the first \$50 of contributions.¹⁹ Congress doubled these values in 1974, and then doubled the value of the credit again in 1978 while repealing the deduction option.²⁰ By 1979, individuals could claim a credit worth up to \$50 and married couples could claim up to \$100 if they contributed \$200 (worth about \$300 today).²¹

To a degree however, the system was problematic. Small donors could only claim the credit if they had tax liability, and they only received a credit for half of their donation.²² Moreover, small donors had to wait to receive the benefit, because they could only claim the credit through the standard annual income tax filing process.

Nevertheless, the credit was reasonably popular during its 15-year lifespan. In its first year, 1972, 2.3 percent of tax returns claimed the credit and another 1.2 percent claimed the deduction.²³ Participation grew steadily and reached its peak during the 1980 presidential election when 5.8 percent of tax filers claimed the credit.²⁴ These claims amounted to \$269 million, which means that the credit subsidized more than \$500 million in contributions (worth about \$1.5 billion today).²⁵ But the system of credits and deductions ended in 1986, a casualty of a tax simplification bill that consolidated rates and eliminated many deductions.²⁶

Use of the Federal Political Contribution Tax Credit²⁷

Year	Number of tax returns claiming the credit	Percent of tax returns claiming the credit
1972	1,749,000	2.3%
1973	1,126,000	1.4%
1974	1,374,700	1.6%
1975	1,571,300	1.9%
1976	2,341,500	2.8%
1977	2,602,400	3.0%
1978	3,560,400	4.0%
1979	4,069,200	4.4%
1980	5,419,200	5.8%
1981	5,207,400	5.5%
1982	5,243,600	5.5%
1983	4,966,800	5.2%
1984	3,764,100	3.8%
1985	4,290,400	4.2%
1986	4,604,600	4.5%

III. STATE TAX POLICIES

After the demise of the federal program, five states — Arkansas, Minnesota, Montana, Ohio, and Virginia — adopted similar programs, and Oregon maintained a preexisting one, though the systems themselves vary widely. In four states, a taxpayer can receive up to \$50 for contributing up to \$50. In Oregon, this includes contributions to federal, state and local candidates, political parties and PACs. In Minnesota, only contributions to state candidates and parties are eligible. In Ohio, contributions to state and local candidates are eligible, while in Arkansas the tax credit applies to contributions to state candidates, political parties and PACs. Under Virginia’s less generous program, a taxpayer could receive up to \$25 for contributing \$50 to state and local candidates. Montana, allows for a tax deduction of up to \$100 for contributing \$100 to federal, state and local candidates, political parties, and PACs.

Recent State Political Contribution Incentives

Program	Eligible contributions	Incentive
Oregon ²⁸	Federal/state/ local candidates, parties and PACs	100% tax credit for first \$50
Minnesota ^{29*}	State political parties and candidates	100% refund for first \$50
Ohio ³⁰	State/local candidates	100% tax credit for first \$50
Virginia ^{31**}	State/local candidates	50% tax credit for first \$50
Arkansas ³²	State candidates, parties and PACs	100% tax credit for first \$50
Montana ³³	Federal/state/ local candidates, parties, and PACs	100% tax deduction up to \$100

*Minnesota temporarily suspended its refund program in 2015³⁴

**Virginia discontinued its tax credit in 2017³⁵

When structured correctly, these programs appear to create incentives for candidates to spend more time appealing to small donors. For instance, in a 2006 survey, 86 percent of state legislative candidates in Minnesota and 60 percent of candidates in Ohio “asked for contributions from less affluent people” because of each state’s system of tax incentives.³⁶

Moreover, there is evidence to suggest that these incentives bring in contributions from a broader population than normally contributes to political campaigns. In Ohio, for example, filers using the state’s political donation tax credit are more representative of the public than donors generally are. In 2006, 85 percent of Ohioans had incomes of less than \$75,000 a year, while, according to a study by the Campaign Finance Institute of six states, including Ohio, only 26 percent of campaign donors did.³⁷ Of those donors claiming the political contribution tax credit, however, 63 percent had incomes of less than \$75,000.³⁸ Persons claiming the political contribution credit were significantly more representative of the general public than other donors. And in Minnesota, 66 percent of candidates surveyed said that the Political Contribution Refund program brought in new donors that would not have given otherwise.³⁹

While there is some evidence that these programs expand the donor pool and change the way that candidates run their campaigns, there is also evidence that these effects are small. Participation in these programs is low — often less than two percent. And it is not clear whether or not they all affect donor behavior. A 2002 Ohio survey found that only eight percent of donors said the state’s tax credit influenced their decision to donate.⁴⁰

IV. FEATURES OF A 21ST CENTURY TAX SYSTEM

While the data is limited, and the contours of each state's program vary, they provide some lessons in crafting an optimal system for using the tax code to encourage the solicitation and giving of small donations from a broader slice of the electorate. A 21st century system should have the following features:

Tax Credits Should Be Easy and Inexpensive to Use

A system which requires taxpayers to wait until their annual filing for credit or reimbursement places unnecessary obstacles in the way of widespread participation.

Minnesota's Political Contribution Refund (PCR) program is a good illustration of how reducing the cost and difficulty of using a refund or credit can increase its use. In Minnesota, when a donor makes a contribution to a candidate or political party, the recipient gives the donor a receipt. The donor then fills out a simple form, attaches the receipt, and submits it to the Minnesota Department of Revenue.⁴¹ Within six weeks the donor receives a refund of up to \$50.⁴²

Since its beginnings nearly 25 years ago, Minnesota's program has had among the highest rates of participation. In 2006, a gubernatorial election year, more than 100,000 people claimed refunds, equal to approximately four percent of Minnesota's individual income tax returns for that year and worth a total of \$6.2 million.⁴³ Due to alleged budget constraints, Minnesota suspended the program in 2010.⁴⁴ The state revived the program in time for the 2014 gubernatorial election, and paid out \$3 million to 45,000 donors.⁴⁵

Even with this downturn, participation rates in Minnesota are significantly higher than in states where it is more cumbersome to garner equally valuable refunds. Arkansas' political contribution tax credit is also worth \$50, and unlike Minnesota, it even applies to PAC donations. But donors can only claim the Arkansas credit on their annual tax forms. In 2014, the most recent gubernatorial election year, only 0.8 percent of Arkansas filers claimed the credit.⁴⁶

The cost to the donor matters as well. Virginia's credit was worth only 50 percent of a donation up to \$50, which means that it costs donors money to claim that tax credit. So it is probably no coincidence that Virginia had the lowest participation rate of any state.⁴⁷ Ohio's credit is identical to Virginia's except that it is worth 100 percent of the contribution. Notably, it has a participation rate double that of Virginia's.⁴⁸ Montana's system also offers evidence that participation decreases when a program only partially reimburses contributions. Montana is the only state that employs a tax deduction rather than a credit, which means that small donors cannot recoup the full amount of their contribution. In the 2012 cycle, less than 2 percent of filers claimed the deduction.⁴⁹

Proposal:

A new system for contribution tax credits can make it easier to take advantage of the credit through the use of modern technology. The Brennan Center proposes two methods that could take advantage of web-based technology to make the entire process faster, simpler and less expensive for citizens. First, a user should be able to go to an online portal, select the eligible candidate or party that they would like to contribute to, provide all necessary information, and have the value of their credit transferred to that candidate or party.

Arizona already uses an online portal for candidates trying to qualify for its public financing program. To participate, candidates must collect a set number of \$5 contributions from voters in their district. Through Arizona's E-Qual site, voters log in, see a list of participating candidates running for offices in their districts, and make \$5 contributions to candidates of their choice.⁵⁰

Second, donors should have the option of providing the eligible candidate or party with a signed document that includes relevant donor information, so that the candidate or party themselves can request the funds from the agency administering the program. Donors in Minnesota must fill out a form like this to receive a refund, but there is no value in placing the burden on the individual rather than the candidate.

Neither of these systems requires the donor to take money out of his or her own pocket. Rather than give the refund to the donor, the government can provide it directly to the candidate or party that the donor wishes to support. If a candidate withdraws from the program and returns all disbursed funds, the administrators should automatically notify donors that they are once again eligible to make a credited contribution.

In addition to increasing participation, we believe that this design will spur political giving by individuals who do not normally make political contributions. In 2006, when Minnesota's PCR program saw its greatest participation, voting-age Minnesotans generally were more than twice as likely as adults in other states to contribute to candidates for state office.⁵¹ This suggests the convenience of the PCR program expands the population of donors to include those that do not commonly make political contributions. The Brennan Center believes that, by using technology to make a credit even simpler and quicker to use for small donors, the population of contributors will further expand.

Tax Credits Should Be Available to Support Parties and Not Just Candidates

There is evidence that allowing small donors to give to political entities aside from candidates increases the use of tax credits. Under Oregon's political contribution tax credit – the only incentive program that predates the federal credit – individuals may claim the credit for contributions to federal, state, and local candidates, as well as for PAC contributions. The credit is worth 100 percent of the first \$50 of contributions,⁵² and for the last seven tax years, an average of 6.2 percent of filers claimed the credit – the most of any state.⁵³ In 2008 and 2012, the last two presidential election years for which data is available, 7.8 and 7.0 percent of tax filers claimed the credit.⁵⁴ In Minnesota, where contributions to both candidates and parties are eligible for refunds, 60 percent of refunded contributions go to state and local political parties rather than candidates.⁵⁵

There is great value in facilitating small donor contributions to political parties as well. Political parties influence who runs for office, set policy agendas, and wield significant power in government.⁵⁶ Fostering greater reliance on small donors can make political parties more responsive to average Americans when they carry out these responsibilities. Moreover, because political parties need to have broad public appeal to have long-term success, they provide an important counterweight to narrower and more short-sighted interest groups.⁵⁷ Well-funded parties that are also more responsive to ordinary citizens will strengthen democracy.⁵⁸

Proposal:

To encourage contributions to candidates and parties, we propose a system in which individuals would be eligible for two tax credits in each election cycle. One credit would be available for contributions to candidates from the same state as the donor, and the other for contributions to political parties.

To create additional incentives for parties to solicit small contributors, credit-eligible donations should not count against the federal limits on coordinated expenditures between a candidate and a party.⁵⁹ The concern that coordinated expenditures may be a vehicle for circumvention of other

contribution limits is not present when the contributions funding the expenditures are sufficiently small as to qualify for a tax credit.

It is Necessary to Create Greater Public Awareness of Tax Credits

Donors must know that a credit or refund exists in order to take advantage of it, and candidates and parties must know to incorporate it into their fundraising appeals. A 2002 Ohio survey found that only 27 percent of the public knew about the state's donation tax credit.⁶⁰ In the years preceding the survey, just 0.5 percent of Ohio tax filers claimed the credit annually.⁶¹ In Arkansas, even some candidates running for office were not aware of that state's tax credit, and in the most recent statewide election less than one percent of filers took advantage of it.⁶²

Evidence suggests that even a marginal increase in awareness of tax incentives can have an outsize effect. In the 2002 Ohio survey, just four percent of Ohioans said they had made a political contribution. Yet, another 4.7 percent said they very likely would have made a donation if they had known about the credit.⁶³ This suggests that increased awareness could double the donor pool in Ohio. Moreover, according to the Ohio survey, the demographics of an expanded donor pool would more closely mirror Ohio's general population when it comes to age, income, gender, race, and education.⁶⁴ Another instructive example comes from the federal presidential public financing system. At first, the Internal Revenue Service (IRS) required taxpayers to participate via a difficult-to-find form. After the IRS placed a check-off box on the first page of the standard income tax form, participation jumped from 3 percent of taxpayers to 15 percent.⁶⁵

Proposal:

State and local governments that provide tax credits for campaign donations should develop campaigns to draw attention to them. However, awareness of the credit is more likely to increase if candidates and parties publicize it in the process of seeking small contributions. Studies in Ohio and Virginia found that nonpartisan awareness campaigns that inform voters of the credit will, at best, lead to a marginal increase in use of the credit.⁶⁶ But, in Oregon and Minnesota — the states with the greatest participation in their contribution incentive programs — outreach by recipients themselves does appear to significantly increase giving.⁶⁷

The more credits are worth, the more likely candidates and parties will work to publicize and collect them. One way to increase the potential value of credits without increasing the annual amount offered to individuals is to allow donors to “bank” their credits, and use them in subsequent election cycles. For instance, if a small donor has an unused tax credit of \$50 in 2018 and a new \$50 in 2020 the donor could simply assign \$100 to a candidate or a party in 2020. This aggregation should encourage campaigns to reach out to individuals who are not normally politically engaged. As years pass, those individuals will be able to make larger contributions without incurring any additional cost. If people who do not normally participate are more likely to allow the credits to accumulate, then it should be increasingly worthwhile for candidates and parties to reach out to these individuals. The ability of residents to use prior years' credits may initially present difficulties to states in predicting the budgetary cost of a tax credit, but states can guard against these budget risks through close tracking of use of the credit in its early years and possibly by capping the amount the state will disburse under the credit in any year.⁶⁸ A cap should be high enough to allow for wide participation in most years while avoiding the cost of unforeseen increases.

To further encourage outreach to new communities, jurisdictions may want to consider allowing individuals without income tax liability to be able to claim the tax credits. The Earned Income Tax Credit and the Additional Child Tax Credit are two popular federal tax credits that are refundable, meaning they are available to the 45 percent of households that do not have federal income tax

liability — households which are disproportionately made up of women, children, and single parents.⁶⁹ While only 55 percent of households pay federal income tax, 90 percent contribute to the federal Treasury through taxes on common goods such as gasoline.⁷⁰

At the state level, delinking the credit from income tax may be particularly important. Seven states have no state income tax.⁷¹ Several of those states raise additional revenue through higher-than-average sales and property taxes, as well as taxes on specific goods or activities unique to the state like natural resource extraction.⁷² These payments are just as worthy of reimbursement as income tax payments.

Finally, candidate contributions should only be eligible for the credit if the donor is registered to vote in the same state as the candidate. Candidates that want to get the most benefit out of these subsidized contributions will have to reach out to a greater number of constituents and persons in neighboring districts for support. Currently, members of Congress raise large portions of their funds from donors far removed from their constituencies. In 2016, House members raised an average of only 34 percent of their money within their districts and at least fifteen members of the House and Senate raised the majority from out-of-state donors.⁷³

Pair Tax Credit With a Public Financing System

Perhaps the best way to leverage small donor incentives is to make it an element of a public financing system. In Minnesota, for instance, candidates have to agree to several requirements before their donors can be part of the reimbursement program. This creates a powerful lure for candidates to abide by rules on spending limits and requirements for a minimum number of small contributors as prerequisites to participate in the state's public financing program.⁷⁴

The spending limits make small contributions a viable option for funding a competitive campaign. Provided that a candidate can reasonably expect small contributions to help him or her reach the spending cap, there is less reason for candidates to pursue larger contributions.⁷⁵

Similarly, low contribution limits likely increase use of refundable contributions by increasing the relative value of small refund-eligible contributions. Put simply, if a candidate can only raise money \$100 at a time, then spending time pursuing a small contribution makes more sense than if they can raise money \$1,000 at a time.

This may explain why Minnesota's program saw decreased use in 2014. Prior to that election the legislature doubled its contribution limits for state candidates.⁷⁶ The share of contributions coming from small donors that year plummeted,⁷⁷ and the number of people claiming refunds was half of the record highs seen in 2006.⁷⁸ It appears that candidates may make less of an effort to pursue small, refund-eligible contributions in a world with higher donation limits.⁷⁹

Proposal:

The \$50 contributions encouraged by the tax credit suggested in this paper are small in the context of today's political campaigns. Only if combined with additional reforms will such a tax credit dramatically change how candidates and parties finance their campaigns.

Small donor matching funds are another way to further amplify the voice of ordinary Americans.⁸⁰ If a donor makes contributions through this tax credit system, they should have additional small contributions matched with public funds. Congressman Sarbanes' bill already combines a tax credit with small donor matching funds for federal candidates.⁸¹ Legislation introduced in Missouri would have created a similar combination of incentives. There, Senate Bill 756 would have established six-to-one matching for small dollar contributions up to \$25 and would have created a \$25 refundable tax credit for contributions that qualified for matching funds.⁸²

V. A NOTE ON COST

This program would of course cost money to fund, but the amount is relatively small and the impact could be substantial. When the American Enterprise Institute proposed a \$200 tax credit for federal political contributions last decade, they estimated that, with a participation rate of 3 percent, the program would cost \$1 billion in 2006. At that cost, AEI called a tax credit a “cost-effective and sound method for encouraging average Americans to participate in the political process.”⁸³

Using an analysis similar to AEI’s, we have estimated how much this program would cost if it were in place today in two states that currently have a form of political contribution tax credit, Oregon and Ohio.

We first assume that roughly eight percent of adult residents will use their credits every election cycle. This participation rate of eight percent approximates the peak participation rate of 7.8 percent that Oregon’s tax credit saw in 2008, and is significantly higher than any other state tax credit has thus far achieved. Our assumption of higher participation rates is based on the fact that the technology and procedures in this proposal should make the credit much more attractive to potential donors.

We also assume that the design of this system will result in donors giving somewhere between half and the full value of both of their \$50 credits each cycle. AEI found that donors claiming traditional political contribution tax credits claimed only 64 percent of the credits’ value on average.⁸⁴

Based on these assumptions, this program would cost approximately \$13 million and \$26 million per two-year election cycle in Oregon and between \$36 million and \$72 million in Ohio, or between about \$3 and \$6 per resident in both states.⁸⁵ By way of comparison, in the 2016 Oregon Governor’s race, candidates received \$9.4 million in contributions, and in the 2014 Ohio Governor’s race, candidates received a total of \$26 million in total.⁸⁶

At the federal level, such a program would cost between \$460 and \$920 million per two-year cycle, or between \$1 and \$3 per American.⁸⁷ In a single election cycle, that would approximate the \$679 million all outside groups — including both super PACs and dark money groups — spent on congressional races in 2016.⁸⁸ It is no exaggeration to say it could radically alter the balance of power in campaign fundraising.

VI. CONCLUSION

In recent years, Americans of all political persuasions have expressed disgust about the state of the country's broken campaign finance system. Even so, the debate around reform has become increasingly stale and partisan. Using tax credits to increase participation beyond megadonors, and encourage candidates to reach out to small donors, is one of the few ideas that may break this logjam, and appeal to legislators and party leaders on both sides of the aisle.

This paper offers suggestions for how to design a system that is consistent with values long espoused by the Brennan Center: (1) increasing and diversifying participation in the electoral process by having a greater pool of Americans providing campaign contributions; (2) encouraging candidates and parties to focus more on connecting with a larger number of prospective voters by having them spend more time fundraising from those voters; and (3) reducing barriers to entry that discourage everyday Americans without access to big donors from running for office.

The proposals in this paper are not meant to be a one-size fits all solution. Partisans of various stripes are likely to agree with some suggestions more than others. And even where all agree on the goals, adoption of tax credits at the state and federal levels will necessarily differ from one jurisdiction to the next depending on the relevant laws regulating the administration of tax incentives, which will necessarily impact the ultimate design of any system.

Nevertheless, we are hopeful that the suggestions in this paper can be a starting point for bipartisan efforts to reform federal and state campaign finance laws.

ENDNOTES

- ¹ *Americans' Views on Money in Politics*, N.Y. TIMES, June 2, 2015, <http://www.nytimes.com/interactive/2015/06/02/us/politics/money-in-politics-poll.html>.
- ² BRENNAN CTR. FOR JUSTICE, NATIONAL SURVEY: SUPER PACS, CORRUPTION, AND DEMOCRACY (2012), <http://www.brennancenter.org/analysis/national-survey-super-pacs-corruption-and-democracy>.
- ³ Press Release, Monmouth Univ. Poll, National: Many Feel Loose Finance Rules Help Unqualified Candidates (July 22, 2015), <http://www.monmouth.edu/assets/0/32212254770/32212254991/32212254992/32212254994/32212254995/30064771087/e3cdeb-f1-0f07-4e8d-92f2-fdcd3b9b3986.pdf>.
- ⁴ Based on an analysis of FEC data on file with authors.
- ⁵ *2016 Top Donors to Outside Spending Groups*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/outsidespending/summ.php?cycle=2016&disp=D&type=V&superonly=S> (last visited May 8, 2017); *Cost of Election*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/overview/cost.php> (last visited May 8, 2017).
- ⁶ *2012 Top Donors to Outside Spending Groups*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/outsidespending/summ.php?cycle=2012&disp=D&type=V&superonly=S> (last visited May 8, 2017); *Cost of Election*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/overview/cost.php> (last visited May 8, 2017).
- ⁷ See Alex Kotch, *Report: North Carolina's 2016 state elections smashed outside spending records*, FACING SOUTH (Feb. 22, 2017), <https://www.facingsouth.org/2017/02/report-north-carolinas-2016-state-elections-smashed-outside-spending-records>; Matt Rothschild, *Special Interests Spend \$9 Million on Legislative Races*, URBAN MILWAUKEE (Nov. 23, 2016, 10:56 AM), <http://urbanmilwaukee.com/2016/11/23/campaign-cash-special-interests-spend-9-million-on-legislative-races/>; Christine Mai-Duc, *Longer terms for California's Legislature mean a flood of cash from interest groups trying to sway the balance their way*, L.A. TIMES, Nov. 1, 2016, <http://www.latimes.com/politics/la-pol-ca-term-limits-independent-expenditures-snap-20161101-story.html>.
- ⁸ Based on a review of data from the top two outside spending groups in each of these three states as compiled by the National Institute on Money in State Politics. NAT'L INST. ON MONEY IN STATE POL., <https://www.followthemoney.org/> (last visited May 8, 2017) (under "independent spending," select "2016" and the relevant state; on the next page select "spender" to view the groups responsible for the most outside spending in 2016). Super PACs spending on national elections also receive an insignificant portion of their funds from small donors – often less than one percent. See IAN VANDEWALKER, BRENNAN CTR. FOR JUSTICE, ELECTION SPENDING IN 2014: OUTSIDE SPENDING IN SENATE RACES SINCE *CITIZENS UNITED* 7-8, <https://www.brennancenter.org/sites/default/files/publications/Outside%20Spending%20Since%20Citizens%20United.pdf>; IAN VANDEWALKER, BRENNAN CTR. FOR JUSTICE, ELECTION SPENDING 2016: JUST THREE INTERESTS DOMINATE, SHADOW PARTIES CONTINUE TO RISE 5-6, <http://www.brennancenter.org/publication/election-2016-spending-analysis-just-three-interests-dominate-shadow-parties>.
- ⁹ *Compare Campaign Fin. Inst., Sources of Funds in 2010 State Legislative and Gubernatorial Elections* (on file with authors), with *Campaign Fin. Inst., Sources of Funds in 2012 State Legislative and Gubernatorial Elections* (Oct. 30, 2014), http://www.cfinst.org/pdf/state/tables/States_12_table2.pdf, and *Campaign Fin. Inst., Sources of Funds in 2014 State Legislative and Gubernatorial Elections* (Dec. 18, 2015), http://www.cfinst.org/pdf/state/tables/States_14_table2.pdf. While this analysis shows that Wisconsin saw an uptick in the role of small donors in 2012, the share of small donors during the two most recent gubernatorial elections was effectively unchanged, from 34 percent of direct contributions in 2010 to 31 percent in 2014.
- ¹⁰ Mark C. Alexander, *Let Them Do Their Jobs: The Compelling Government Interest in Protecting the Time of Candidates and Elected Officials*, 37 LOY. U. CHI. L.J. 669, 671, 676 (2006); see also Steve Israel, *Confessions of a Congressman*, N.Y. TIMES, Jan. 8, 2016, http://www.nytimes.com/2016/01/09/opinion/steve-israel-confessions-of-a-congressman.html?_r=0; Peter L. Francia & Paul S. Herrnson, *The Impact of Public Finance Laws on Fundraising in State Legislative Elections*, 31 AM. POL. RES. 520, 531 (2003).
- ¹¹ ELISABETH GENNET AL., BRENNAN CTR. FOR JUSTICE & CAMPAIGN FIN. INST., *DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS* (2012), http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.
- ¹² See, e.g., TAKE BACK OUR REPUBLIC, EDUCATIONAL PAPERS, <http://takeback.org/educational-papers/> (last visited May 8, 2017); REPRESENT.US, AMERICAN ANTI-CORRUPTION ACT, <http://anticorruptionact.org/> (last visited May 8, 2017); Government By The People Act of 2014, H.R. 20, 113th Cong. (2014); Citizen Involvement in Campaigns Act of 2013, H.R. 3586, 113th Cong. (2013).
- ¹³ See *infra* Part II; see also THOMAS CMAR, U.S. PIRG, *TOWARD A SMALL DONOR DEMOCRACY* 4 (2004), http://www.uspirg.org/sites/pirg/files/reports/Toward_A_Small_Donor_Democracy_USPIRG.pdf.
- ¹⁴ Bob Young, *Democracy Vouchers Win in Seattle: First in Country*, SEATTLE TIMES, Nov. 4, 2015, <http://www.seattletimes.com/seattle-news/politics/democracy-vouchers/>; Avram Billig, *The Campaign Finance Wins Nobody is Talking About*, BRENNAN CTR. FOR JUSTICE (Nov. 12, 2014), <https://www.brennancenter.org/blog/campaign-finance-wins-nobody-talking-about>.
- ¹⁵ For instance, that first bill taxed ordinary income at three percent, but taxed investment income at 1.5 percent. See Sheldon D. Pollack, *The First National Income Tax, 1861-1872*, 67 TAX LAWYER 311, 320 (2014).
- ¹⁶ CMAR, *supra* note 13, at 13.
- ¹⁷ *Id.* at 14.

¹⁸ *Id.* at 4.

¹⁹ *Id.*

²⁰ JOSEPH E. CANTOR & JOSEPH B. GORMAN, CONG. RESEARCH SERV., NO. 84-107, PUBLIC FINANCING OF CONGRESSIONAL ELECTIONS: LEGISLATIVE PROPOSALS AND ACTIVITY IN THE TWENTIETH CENTURY 280-81 (1984).

²¹ JOSEPH E. CANTOR, CONG. RESEARCH SERV., NO. 93-932, CAMPAIGN FINANCING IN FEDERAL ELECTIONS: A GUIDE TO THE LAW AND ITS OPERATION 29 (1993).

²² Revenue Act of 1971, Pub. L. No. 92-178, § 701, 85 Stat. 497, 560 (1971) (“the credit...shall not exceed the amount of the tax imposed by this chapter for the taxable year...”).

²³ JOSEPH E. CANTOR, CONG. RESEARCH SERV., NO. 93-932, CAMPAIGN FINANCING IN FEDERAL ELECTIONS: A GUIDE TO THE LAW AND ITS OPERATION 29 (1993).

²⁴ *Id.*

²⁵ *Id.* Since donors received a tax credit worth 50 percent of their contribution, they would have had to contribute at least \$538 million in order to receive \$269 million in tax credits.

²⁶ CMAR, *supra* note 13, at 17.

²⁷ *Id.* The IRS did not provide data on use of the tax deduction in some years it was available, so that cannot be compared over time. *Id.* The tax deduction was not available after 1978. *Id.*

²⁸ OR. REV. STAT. § 316.102 (2015). As of 2014, in an effort to ensure that the programs was not unnecessarily subsidizing political contributions by the wealthy, Oregon’s credit is only available to individuals making less than \$100,000 a year or couples making \$200,000. *Id.*

²⁹ MINN. STAT. § 290.06(23) (2016).

³⁰ OHIO REV. CODE ANN. § 5747.29 (West 2015).

³¹ VA. CODE ANN. § 58.1-339.6 (2016).

³² ARK. CODE ANN. §7-6-222 (2017).

³³ MONT. CODE ANN. §15-30-2131(d) (2015) (pegging Montana’s tax deduction to the federal tax deduction for political contributions available in 1978. *See e.g.* 26 U.S.C.A. § 218, I.R.C. § 218, Pub. L. No. 93-625, § 12(b)(1), 88 Stat. 2108, 2120.) *See also* MONT. DEP’T OF REVENUE, SCHEDULE III – MONTANA ITEMIZED DEDUCTIONS (2016),

https://revenue.mt.gov/Portals/9/individuals/forms/Schedule_III_2016.pdf (no. 27).

³⁴ *Political Contribution Refund*, MINN. CAMPAIGN FIN. & PUB. DISCLOSURE BOARD, <http://www.cfboard.state.mn.us/publicsubsidy/conrefund.htm> (last visited May 8, 2017).

³⁵ VA. CODE ANN. § 58.1-339.6 (2016).

³⁶ Michael J. Malbin, *Rethinking the Campaign Finance Agenda*, 6 FORUM, no. 1, 2008, at 12.

³⁷ *Id.* at 13; OHIO DEP’T OF TAX’N, 2006 DETAILED INCOME DATA (2008),

http://www.tax.ohio.gov/tax_analysis/tax_data_series/individual_income/unpublished/it_06.aspx (last visited May 8, 2017) (Table 23).

³⁸ OHIO DEP’T OF TAX’N, *supra* note 37.

³⁹ Press Release, Campaign Fin. Inst., Minnesota’s \$50 Political Contribution Refunds Ended on July 1 (July 8, 2009), http://www.cfinst.org/pdf/state/20090708_MN_refund_w-Charts.pdf.

⁴⁰ Robert G. Boatright & Michael J. Malbin, *Political Contribution Tax Credits and Citizen Participation*, 33 AM. POL. RES. 787, 812 (2005).

⁴¹ MINN. DEP’T OF REVENUE, 2015 FORM PCR, POLITICAL CONTRIBUTION REFUND APPLICATION, http://www.revenue.state.mn.us/Forms_and_Instructions/pcr_15.pdf (last visited May 8, 2017).

⁴² Graham P. Ramsden & Patrick D. Donnay, *The Impact of Minnesota’s Political Contribution Refund Program on Small-Donor Behavior in State House Races*, 33 ST. & LOC. GOV’T REV. 32, 34 (2001). *See also* Press Release, Campaign Fin. Inst., *supra* note 39.

⁴³ MINN. CAMPAIGN FIN. & PUB. DISCLOSURE BOARD, *Participation in Political Contribution Refund Program*,

<http://www.cfboard.state.mn.us/campfin/pcrprog.html> (last visited May 8, 2017) (select both the Candidate and Political Party files for 2006); MINN. DEP’T OF REVENUE, TAX YEAR OVERVIEW 2006,

http://www.revenue.state.mn.us/research_stats/Inc%20Income%20Tax%20Statistics%20Sample/06_income_sample.pdf (last visited May 8, 2017).

⁴⁴ MINN. CAMPAIGN FIN. & PUB. DISCLOSURE BOARD, *Public Financing Direct Payments and Political Contribution Refunds*, <http://www.cfboard.state.mn.us/publicsubsidy/historicpayments.pdf> (last visited May 8, 2017).

⁴⁵ In 2014, 45,000 individuals claimed refunds worth \$3 million. MINN. CAMPAIGN FIN. & PUB. DISCLOSURE BOARD, *supra* note 43 (select both the Candidate and Political Party files for 2014 and sum up the two grand totals).

⁴⁶ E-mail from John Theis, Assistant Revenue Commissioner, Ark. Dep’t of Fin. & Admin., to Douglas Keith, Katz Fellow, Brennan Ctr. for Justice (April 1, 2016, 10:53 EST) (on file with authors).

⁴⁷ In 2013, the year of the last gubernatorial election in Virginia, 0.5% of tax payers claimed the credit. VA. DEP’T OF TAX’N, ANNUAL REPORT FISCAL YEAR 2013, 26, https://www.tax.virginia.gov/sites/default/files/inline-files/Annual_Report_FY2013.pdf.

⁴⁸ In 2014, the year of the last gubernatorial election in Ohio, 1.1% of tax filers claimed Ohio’s political contribution tax credit. OHIO DEP’T OF TAX’N, 2014 DETAILED INCOME DATA,

http://www.tax.ohio.gov/tax_analysis/tax_data_series/individual_income/publications_tds_individual/IT_14.aspx (last visited May 8, 2017) (select Table 23).

⁴⁹ MONT. DEP'T OF REVENUE, INDIVIDUAL AND CORPORATE INCOME TAX BIENNIAL REPORT 52, 58 (2014), https://revenue.mt.gov/Portals/9/publications/biennial_reports/2012-2014/BiennialReport14-IndividualCorporate.pdf.

⁵⁰ See ARIZ. CITIZENS CLEAN ELECTIONS COMMISSION, E-QUAL 3 (2013), <http://www.azcleelections.gov/CmsItem/File/35>.

⁵¹ In 2006, 4.11 percent of the Minnesota's voting-age population contributed to state candidates for elected office. That was more than twice the national average of 1.57 percent of a state's voting-age population. Press Release, Campaign Fin. Inst., Vermont and Rhode Island Had the Highest Percentages of Adults Contributing in 2010 and 2006 State Elections (Dec. 20, 2012), http://cfinst.org/Press/PReleases/12-12-20/VT_and_RI_Had_the_Highest_Percentages_of_Adults_Contributing_in_2010_and_2006_State_Elections_NY_UT_CA_and_FL_the_Lowest.aspx.

⁵² And the first \$100 by joint filers. OR. REV. STAT. § 316.102 (2015).

⁵³ 2008: 7.8%; 2009: 5.9%; 2010: 6.3%; 2011: 5.8%; 2012: 7.0%; 2013: 5.5%; 2014: 4.9%. See *Oregon Personal Income Tax Reports and Statistics*, OR. DEP'T OF REVENUE, <http://www.oregon.gov/DOR/programs/gov-research/Pages/research-personal.aspx> (last visited May 8, 2017) (select by year of interest).

⁵⁴ OR. DEP'T OF REVENUE, OREGON PERSONAL INCOME TAX STATISTICS 29 (2014), http://www.oregon.gov/DOR/programs/gov-research/Documents/2012-personal-income-tax-statistics_101-406_2014.pdf.

⁵⁵ See MINN. CAMPAIGN FIN. & PUB. DISCLOSURE BOARD, *supra* note 44. See also MINN. CAMPAIGN FIN. & PUB. DISCLOSURE BOARD, *supra* note 43 (detailed data from 2006, the high water mark for the PCR).

⁵⁶ See IAN VANDEWALKER & DANIEL WEINER, BRENNAN CTR. FOR JUSTICE, STRONGER PARTIES FOR A STRONGER DEMOCRACY (2015), <https://www.brennancenter.org/publication/stronger-parties-stronger-democracy-rethinking-reforming>.

⁵⁷ *Id.* at 3-5.

⁵⁸ *Id.* at 3.

⁵⁹ 52 U.S.C. § 30116(d) (2014).

⁶⁰ Boatright & Malbin, *supra* note 40, at 797.

⁶¹ DAVID ROSENBERG, BROADENING THE BASE: THE CASE FOR A NEW FEDERAL TAX CREDIT FOR POLITICAL CONTRIBUTIONS 48 (2002).

⁶² *Id.* at 15; see also e-mail from John Theis to Douglas Keith, *supra* note 46.

⁶³ Boatright & Malbin, *supra* note 40, at 798.

⁶⁴ Boatright & Malbin, *supra* note 40, at 800.

⁶⁵ *Fixing the Voluntary Tax Checkoff Program to Fund the Presidential Elections*, PUBLIC CITIZEN, <https://www.citizen.org/fixing-voluntary-tax-checkoff-program-to-fund-presidential-elections> (last visited May 8, 2017).

⁶⁶ Robert G. Boatright et al., *Does Publicizing a Tax Credit for Political Contributions Increase Its Use?*, 34 AM. POL. RES. 563 (2006); Michael Schwam-Bair et al., *Do Public Matching Funds and Tax Credits Encourage Political Contributions? Evidence from Three Field Experiments Using Nonpartisan Messages*, 15 ELECTION L.J. 129 (2016).

⁶⁷ One study found that in Oregon, PACs, which regularly include information about the tax credit in their requests for funds, have claimed a majority of credited-contributions in the past. See ROSENBERG, *supra* note 61, at 29-32. In Minnesota, where sixty percent of refunded contributions go to state and local political parties, and the Republican Party receives more of those contributions than all other parties, Republicans attributed this success to active promotion of the refund program. See MINN. CAMPAIGN FIN. & PUB. DISCLOSURE BOARD, *supra* note 44; ROSENBERG, *supra* note 61, at 41-42.

⁶⁸ PEW CHARITABLE TRUSTS, REDUCING BUDGET RISKS 12 (2015), http://www.pewtrusts.org/~media/assets/2015/11/cost-predictability_artfinal.pdf.

⁶⁹ See Robertson C. Williams, *New Estimates of How Many Households Pay No Federal Income Tax*, TAX POL'Y CTR. (Oct. 6, 2015), <http://www.taxpolicycenter.org/taxvox/new-estimates-how-many-households-pay-no-federal-income-tax>; Scott A. Hodge, *Number of Americans Outside the Income Tax System Continues to Grow*, TAX FOUND. (June 9, 2005), <http://taxfoundation.org/article/number-americans-outside-income-tax-system-continues-grow>; Lily L. Batchelder et al., *Efficiency and Tax Incentives: The Case for Refundable Tax Credits*, 59 STAN. L. REV. 23, 54 (2006).

⁷⁰ LAWRENCE LESSIG, REPUBLIC, LOST 265 (2011); Robertson C. Williams, *And Now for the Movie: Fewer Americans Pay No Federal Income Tax*, TAX POL'Y CTR. (Aug. 29, 2013), <http://www.taxpolicycenter.org/taxvox/and-now-movie-fewer-americans-pay-no-federal-income-tax>.

⁷¹ Alex Raut, *States Without Income Taxes Rely on Varying Forms of Revenue*, TAX FOUND. (Apr. 26, 2012), <https://taxfoundation.org/states-without-income-taxes-rely-varying-forms-revenue/>. Note that New Hampshire and Tennessee also do not tax traditional income, but do tax income from interest and dividends. *Id.*

⁷² See *id.*; Aman Batheja, *The Joys of No Income Tax, The Agonies of Other Kinds*, N.Y. TIMES, May 24, 2013, <http://www.nytimes.com/2013/05/24/us/in-texas-the-joys-of-no-income-tax-the-agonies-of-the-other-kinds.html>.

⁷³ *In-District vs. Out-of-District*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/overview/district.php?cycle=2016&display=T> (last visited May 8, 2017); *Top In-State vs. Out-of-State*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/overview/instvsout.php> (last visited May 8, 2017).

⁷⁴ MINN. STAT. § 10A.323 (2013). After Minnesota's 1998 gubernatorial election, one political insider also noted that the PCR itself induced the three candidates to participate in public financing. COGEL Annual Conference Report, Peter S. Wattson, *How Minnesota's Campaign Finance Law Helped Elect a Third-Party Governor 10-11* (Dec. 8, 1999), <http://www.senate.leg.state.mn.us/departments/scr/treatise/cogel-jesse.pdf>.

⁷⁵ Spending limits need not be uniform for all candidates. To further incentivize pursuit of small donors, a program can also increase the spending limits for candidates that collect large quantities of credit-eligible contributions. Recent changes to Maine's public financing program, for example, provide candidates with supplemental disbursements if they collect more small contributions than is required for participation in the program. ME. STAT. tit. 21-A, § 1125(8-E) (2016).

⁷⁶ 2014 Minn. Laws ch. 265 § 2.

⁷⁷ Compare Campaign Fin. Inst., Sources of Funds in 2012 State Legislative and Gubernatorial Elections (Oct. 30, 2014), http://www.cfinst.org/pdf/state/tables/States_12_table2.pdf, with Campaign Fin. Inst., Sources of Funds in 2014 State Legislative and Gubernatorial Elections (Dec. 18, 2015), http://www.cfinst.org/pdf/state/tables/States_14_table2.pdf.

⁷⁸ See *supra* Part IV for comparison of participation in Minnesota's Political Contribution Refund program in 2006 with that in 2014, decreasing from about 100,000 to 45,000.

⁷⁹ Minnesota again suspended the program for the 2016 election, so there will be another opportunity to see whether loss of the PCR changes donor or candidate behavior. MINN. DEP'T OF REVENUE, *supra* note 34.

⁸⁰ ADAM SKAGGS & FRED WERTHEIMER, BRENNAN CTR. FOR JUSTICE & DEMOCRACY 21, EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS 21 (2012), <http://www.brennancenter.org/publication/empowering-small-donors-federal-elections>.

⁸¹ Government By The People Act of 2014, H.R. 20, 113th Cong. (2014).

⁸² S.B. 756, 98th Gen. Assemb., Reg. Sess. (Mo. 2016). While a bill that combines a tax credit with small donor matching funds has not yet been reintroduced in Missouri, pending legislation would create a \$100 tax credit for contributions to county political parties, state legislative candidates and statewide candidates. S.B. 1, 99th Gen. Assemb., Reg. Sess. (Mo. 2017).

⁸³ Rosenberg, *supra* note 61, at 20.

⁸⁴ *Id.* at 66.

⁸⁵ Oregon's estimated total population is 4,093,465 and 78.6 percent of the population is over 18. Ohio's estimated total population is 11,614,373 and 77.4 percent of the population is over 18. *Quick Facts Ohio & Oregon*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/AGE135215/39,41> (last visited May 8, 2017).

⁸⁶ *Election Overview: Oregon, 2016*, NAT'L INST. ON MONEY IN STATE POL., <http://www.followthemoney.org/election-overview?s=OR&y=2016> (last visited May 8, 2017); *Election Overview: Ohio, 2014*, NAT'L INST. ON MONEY IN STATE POL., <http://www.followthemoney.org/election-overview?s=OH&y=2014> (last visited May 8, 2017).

⁸⁷ The United States' estimated total population is 323,127,513. *Quick Facts United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/table/AGE135215/00> (last visited May 8, 2017).

⁸⁸ *2016 Outside Spending, by Race*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/outsidespending/summ.php?cycle=2016&disp=R&pty=N&type=A> (last visited May 8, 2017).

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