Written Testimony of

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I. INTRODUCTION

Thank you, Chairperson Lofgren, Ranking Member Davis, and all members of the Committee, for the opportunity to testify in support of H.R. 1, the For the People Act—the boldest and most comprehensive proposal to strengthen our democracy since the aftermath of Watergate.

My name is Chiraag Bains, and I am Director of Legal Strategies for Dēmos. Dēmos is a public policy and advocacy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Our name—meaning "the people"—is the root word of democracy, and it reminds us that, in America, the true source of our greatness is the diversity of our people.

We at Dēmos stand in strong support of the For the People Act, a visionary bill that can transform our democracy by addressing the deep political, racial, and economic inequalities that hold us back.

The bill would strengthen voting rights by expanding access to the polls, modernizing voter registration, requiring independent redistricting, and protecting voters from aggressive purging—including by correcting the Supreme Court's wrongheaded 5-4 decision in Dēmos' case against Ohio's use-it-or-lose-it system, *Husted v. A. Philip Randolph Institute*. It would commit to restoring the full protections of the Voting Rights Act, the evisceration of which in *Shelby v. Holder* has unleashed restrictive voting laws across the country, and make findings related to

structural democracy reforms like DC statehood and voting rights in the territories. The legislation would also curtail the corrupting role of big money in politics, which drowns out the voices of everyday people, and promote more equitable ways to finance federal campaigns. It incorporates the Government By the People Act, which Dēmos has long supported and which would amplify the voices of small-dollar donors and allow more candidates of color and low-income candidates to run on the issues that matter to their constituents. And the bill would put new ethics restrictions in place for federal officials at a time when we badly need them.

It is fitting that the For the People Act address both voting rights and the role of big money in politics in the same legislative package, because they are truly two sides of the same coin. Whether Americans of all races are fighting for access to the ballot box or to curb the outsized influence of a tiny slice of wealthy donors over who runs for office and who wins elections, the fight is essentially to become a full member of society with an equal say over the decisions that affect our lives.

Voter suppression—sometimes through blatantly racist maneuvers, sometimes through sophisticated, ostensibly race-neutral tactics—poses an existential threat to our democracy. We must put a stop to these practices and protect the fundamental right to vote. The vote lacks its full meaning, however, if voters cannot cast their ballots for candidates who reflect the priorities of everyday Americans. For generations, communities of color and working-class people have gone unseen by politicians who court rich individual donors and corporate interests. The high cost of running for office has also been a barrier to entry for candidates of color, resulting in a political class that is disproportionately white. Moreover, the combination of voter suppression and big money in politics has serious racial equity consequences. The problems that are most pressing for people of color—economic inequality, education disparities, police abuse, to name a few—are sidelined, neglected, and in some cases, made worse.

In short, our democracy faces substantial and complicated challenges. It will take a big legislative package to address them. H.R. 1, the For the People Act, has the range and depth to help us build the truly inclusive democracy that Americans deserve.

I. VOTING RIGHTS

A. Voting rights are under attack, and we must fully restore the Voting Rights Act.

When it passed the Voting Rights Act (VRA) in 1965, Congress took a major step toward fulfilling the promise of the Fifteenth Amendment that no citizen would be denied the right to vote "on account of race, color, or previous condition of servitude."[1] The centerpiece of the Act was a provision requiring certain states and other jurisdictions to get approval from the federal government before making any changes to their voting practices and procedures. This "preclearance" protection applied to jurisdictions with a history of voting discrimination and helped to protect the right to vote for marginalized populations. Five years ago, in *Shelby County v. Holder*, the Supreme Court struck down the formula used to determine what jurisdictions were subject to preclearance, declaring that "[o]ur country has changed" and voting discrimination was no longer a major concern. In a 5-4 decision split along ideological lines, the Court stripped

[1] U.S. Const. amend. XV.

voters in nine states and dozens of counties and municipalities of the protection Congress had put in place.[2]

Since *Shelby County*, at least 23 states have implemented new restrictions on voting, including onerous ID measures, cuts to early voting, and polling place closures.[3] By 2018, 34 states had some form of voter ID law on their books; 17 of those requested photo IDs,[4] to which roughly 11 percent of the American population does not have access.[5] That 11 percent is disproportionately comprised of voters of color, seniors, or low-income citizens.

We know these restrictive laws keep voters of color from full participation in our democracy. Recent survey research shows that black and Latino voters are three times as likely as white voters to encounter hurdles when trying to vote. They are more likely to be unable to take time off from work to go to the polls, be told that they do not have a proper form of ID, discover that their name is not on the list of registered voters, and be harassed or bothered at the polls.[6]

The following cases studies provide evidence that voter suppression is on the rise:

North Carolina

North Carolina's photo ID law—passed as part of a larger package slashing strong elections reforms, including early voting and same-day registration, immediately after the Supreme Court decided *Shelby County*—had both the intent and effect of disenfranchising black voters. Court documents showed that legislators had requested from county officials information as to which demographic groups had access to which IDs, and that only those IDs whites had greater access to made it into the list of approved forms of voter ID. As the Fourth Circuit Court of Appeals

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[2] *Shelby County v. Holder*, 570 U.S. 529 (2013).

[3] Eric Badner, *Discriminatory Voter Laws Have Surged in Last 5 Years, Federal Commission Finds*, CNN POLITICS, September 12, 2018, available at https://www.cnn.com/2018/09/12/politics/voting-rights-federal-commission-election/index.html.

[4] National Conference of State Legislatures, *Voter Identification Requirements – Voter ID Laws*, available at http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx. Of the 17 states requesting photo ID to vote, 7 of those have strict requirements, meaning that, unless a voter produces ID at the polls or at an elections office within a prescribed period of time post-election, that vote will not be counted. Additionally, one of the biggest problems with voter photo ID laws is that, even if they are not strict, they often produce much confusion. For example, even though Texas's strict voter photo ID law was not in place for the 2016 or 2018 elections, many would-be voters reported confusion as to what documentation they needed to vote. Many stayed home. Poll workers too were confused about the requirements, leading to long lines and disenfranchisement. *See* Jessica Huseman, *Texas Voter ID Law Led to Fears and Failures in 2016 Election*, PROPUBLICA, May 2, 2017, available at https://www.propublica.org/article/texas-voter-id-law-led-to-fears-and-failures-in-2016-election.

[5] *See* Keesha Gaskins and Sundeep Iyer, *The Challenge of Obtaining Voter Identification*, Brennan Center for Justice (July 18, 2012), available at https://www.brennancenter.org/publication/challenge-obtaining-voter-identification; Sari Horwitz, *Getting a Photo ID So You Can Vote Is Easy. Unless You're Poor, Black, Latino or Elderly*, WASH. POST, May 23, 2016, available at https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html?utm_term=.9911008ca3b1.

[6] Alex Vandermaas-Peeler et al., *American Democracy in Crisis: The Challenges of Voter Knowledge, Participation, and Polarization*, PUBIC RELIGION RESEARCH INSTITUTE (July 17, 2018), https://www.prri.org/research/American-democracy-in-crisis-voters-midterms-trump-election-2018/.

noted, legislators there "target[ed] African-Americans with almost surgical precision."[7] Because the full protections of the VRA haven't yet been restored, North Carolina attempted once again to create the electorate of its choosing through a new photo ID law that it passed in the lame-duck period after the 2018 election. Restoration of the VRA could have prevented this.

Texas

On the same day the U.S. Supreme Court eviscerated protections for voters of color in *Shelby v. Holder*, the Texas legislature introduced the country's most antagonistic ID bill against black and brown voters, demanding as a prerequisite to voting one of several photo IDs that hundreds of thousands of Texas voters lack. The Fifth Circuit upheld the lower court's finding that the law—which permitted a voter to cast a ballot after showing a gun permit but not a state university-issued ID—had a discriminatory effect on voters of color. Rather than scrap the law altogether, Texas legislators reworked the legislation to keep many provisions in place, which the appellate court upheld for the 2018 election.

Georgia

Many have called Georgia "ground zero" for vote suppression, and with good reason. For years, former State Secretary Brian Kemp, now Governor, targeted for removal from voter registration rolls individuals who had missed just a couple of federal elections. As a result, hundreds of thousands of legitimate voters have been cut from the rolls and, unless they re-registered, were precluded from voting in 2018. Right before the midterm, moreover, the Secretary of State's office placed 53,000 voter registration applications—70 percent of which belonged to black voters—in "pending" status. Georgia's "Exact Match" law, which requires information from voter registration applications to match up exactly with other state agency records, enabled elections officials to avoid processing records with even slight mis-matches (such as the omission of a hyphen).[8] More often than not, county and agency error is to blame for the mismatches.[9] Had it not been for a successful lawsuit filed by advocacy groups,[10] tens of thousands of Georgians would have lost their right to vote in the 2018 midterm elections. Litigation helps restore rights on a case-by-case basis, but comprehensive reform, as provided for in the For the People Act, would prevent much of this illegal behavior from occurring in the first place.

Because of these ongoing attempts to suppress the vote, particularly for voters of color, Dēmos calls for full restoration of the Voting Rights Act's protections, and we applaud H.R. 1's inclusion of Subtitle A in Title II reaffirming Congress's commitment to restore the Voting Rights Act.

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[7] Adam Liptak and Michael Wines, *The Challenge of Obtaining Voter Identification*, N.Y. TIMES, May 15, 2017, available at https://www.nytimes.com/2017/05/15/us/politics/voter-id-laws-supreme-court-north-carolina.html

[8] Miriam Valverde, *Georgia's "Exact Match" Law and the Abrams-Kemp Governor's Election, Explained*, VOX (Oct. 19, 2018), available at https://www.politifact.com/georgia/article/2018/oct/19/georgias-exact-match-law-and-its-impact-voters-gov/.

[9] *Id.*

[10] *See* Complaint, *Ga. Coalition for the People's Agenda v. Kemp*, available at https://lawyerscommittee.org/wp-content/uploads/2018/10/Georgia-exact-match-complaint-.pdf.

B. Voter purges and intimidation are, increasingly, used as suppressive tactics against voters of color.

1. Voter purges

Over the past several years, handfuls of states have made voter registration—already a burdensome requirement—even more restrictive. Examples from Dēmos' litigation in Ohio, Indiana, and Texas show how purges exclude voters of color from the political process.

Ohio

Last year, the U.S. Supreme Court considered *Husted v. A. Philip Randolph Institute*, a case challenging Ohio's practice of using non-voting to initiate a voter purge process. Overturning the Sixth Circuit's decision, the Court held that practices like Ohio's do not violate the National Voter Registration Act's (NVRA) prohibition on roll-maintenance programs or activities that "result in the removal of the name of any person" from the registration rolls "by reason of the person's failure to vote."[11]

Members of Congress made clear during Supreme Court briefing that Section 8 of the NVRA was designed to prevent purge practices like Ohio's.[12] H.R. 1 would amend Section 8 of the NVRA to address the *Husted* decision and prohibit states from initiating a purge procedure based on non-voting—a metric that simply does not reliably indicate that a voter has moved, and the use of which disproportionately targets, removes, and disenfranchises traditionally marginalized persons from the registration rolls.

As numerous amici in *Husted* explained, barriers to voting such as transportation issues, inflexible work schedules, care-giving responsibilities, illnesses, inaccessible polling locations, and language access problems can disproportionately prevent persons of color, housing-insecure individuals, persons with disabilities, low-income individuals, older voters, and persons with limited English proficiency from making it to the polls to vote.[13] Using a person's failure to vote to initiate a removal process will therefore disproportionately target such groups and result in their subsequent removal from the registration rolls. This was borne out in an analysis of the number of infrequent voters purged in Hamilton County, Ohio from 2012 through 2015, which found that "African-American-majority neighborhoods in downtown Cincinnati had 10 percent

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[11] *Husted v. A. Philip Randolph Institute*, 138 S. Ct. 1833, 1841-46 (2018); *see also* 52 U.S.C. § 20507(b)(2).
[12] Brief of Certain Members of the Congressional Black Caucus as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017).
[13] *See generally, e.g.*, Brief of *Amici Curiae* National Association for the Advancement of Colored People and the Ohio State Conference of the NAACP in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017) ("NAACP Br."); Brief of National Disability Rights Network, Disability Rights Ohio, AARP, AFL-CIO, SEIU, Democracy Initiative, National Coalition for the Homeless, Columbus Coalition for the Homeless, and Miami Valley Voter Protection Coalition as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017); Brief of Asian Americans Advancing Justice I AAJC, National Association of Latino Elected and Appointed Officials Education Fund, LatinoJustice PRLDEF, and Seventeen Other Organizations as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980 (U.S. Supreme Court Sept. 22, 2017); *see also* Brief of Current and Former Ohio Elections Officials as *Amici Curiae* in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980, at 5-6 (U.S. Supreme Court Sept. 22, 2017) ("Election Official Br.").

of their voters removed due to inactivity, compared to only four percent of voters in a suburban, majority-white neighborhood."[14]

Indiana

In 2017, Indiana adopted a law requiring elections officials to purge voters on Crosscheck's list of "Potential Double Registrants" without first notifying them or offering a chance to correct or verify Crosscheck's information. Crosscheck, the brainchild of former Kansas Secretary of State Kris Kobach, purports to identify people who register and vote in multiple states. But its formula for matching voter registration records across more than half the states is fundamentally flawed, resulting in millions of people being falsely flagged as double registrants. According to a 2008 study,[15] finding different people with identical first names, last names, and date of birth—the only criteria Crosscheck uses to flag duplicate registrations, even when other information conflicts—is surprisingly common. What is not surprising is that Crosscheck is wrong an estimated 99 percent of the time.[16] Once voters have been flagged under this flawed formula, they are then subjected to scrutiny and can be purged from the voter rolls.

In a major win for Indiana voters, U.S. District Judge Tanya Walton Pratt granted Dēmos' motion for a preliminary injunction in *Common Cause v. Lawson* and blocked the law. Had it gone into effect, though, many voters would not have learned they'd been purged until they showed up at the polls. But voters in Ohio don't have the same protection as Hoosiers do. And the problem with the Supreme Court's holding in *Husted* is that now any state can adopt these sorts of practices, without strong legislation prohibiting them.

Texas

Just last week, Dēmos and its partners filed a lawsuit and an emergency motion to stop Texas from discriminating against voters of color and purging naturalized citizens who are eligible to vote from the voter rolls. David Whitley, Texas's Secretary of State, recently made highly publicized accusations that 95,000 non-citizens may be registered to vote and that 58,000 may have actually voted in the state's elections, based on DMV records. That claim is false. It is based on data the state knows is flawed, and it ignores the reality that many people who were lawfully in the country when they applied for a driver's license or state ID, years ago, have now become naturalized citizens—entitled to full voting rights under our Constitution.

That did not stop Texas Attorney General Ken Paxton from issuing a reckless "VOTER FRAUD ALERT" and President Donald Trump tweeting about voter fraud and calling it "just the tip of the iceberg." Moreover, the Secretary has encouraged county election officials to send notices to these individuals and, if they don't respond with documentary proof of citizenship within 30 days, purge them from the voting rolls.

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[14] NAACP Br., *supra* note 13, at 18 (referencing Andy Sullivan & Grant Smith, *Use it or Lose it: Occasional Ohio Voters May Be Shut Out in November*, Reuters (June 2, 2016), http://www.reuters.com/article/us-usa-votingrightsohio-insight/use-it-or-lose-it-occasional-ohio-voters-may-be-shut-outin-november-idUSKCN0YO19D).
[15] Michael P. McDonald and Justin Levitt, *Seeing Double Voting: An Extension of the Birthday Problem*, 7 ELECTION L.J. 111 (2008), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=997888.
[16] Sharad Goel et al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections* (Oct. 24, 2017), available at https://scholar.harvard.edu/files/morse/files/1p1v.pdf.

These heedless accusations have left thousands of naturalized citizens outraged and fearful that their hard-won right to vote is in jeopardy. Nivien Saleh, a Harris County voter and one of our clients, gained her citizenship in January 2018, after living lawfully in the U.S. under a student visa and then an H1B visa since 1997. In a declaration filed with the court, Ms. Saleh describes her experience voting for the first time in the March 2018 Texas primaries as "the culmination of many years of hard work" and "an experience I will always remember." Finding herself wrongly accused of unlawfully registering to vote has left Ms. Saleh "apprehensive, insulted and angry." She explains, "I have worked hard to be a productive, law-abiding citizen," and says that the Secretary's false accusation "disturbs me deeply."

Attempts to purge eligible voters from the rolls—as we've seen recently in Ohio, Indiana, and Texas—undo the work that goes into registering eligible citizens. Numerous states have noted that "voter inactivity is a poor measure to identify ineligible voters" and that "[t]here is no pressing need for States to target nonvoters," as much more credible evidence exists to determine if a voter has become ineligible.[17] Amending Section 8 of the NVRA to prevent states from using non-voting alone to initiate removal procedures would uphold the NVRA's expressed purposes of increasing the number of citizens registered to vote, increasing participation, and "ensure that accurate and current voter registration rolls are maintained."[18] It would also help prevent qualified voters from being removed from the registration rolls and becoming disenfranchised.

If Congress is committed to voter registration reform, then it must also preserve those registrations through protections against aggressive attempts to remove them from the rolls. H.R. 1 takes a holistic approach to registration and appropriately includes Title I, Subtitle A, Part 4 on conditions for removal on the basis of interstate cross-checks and Title II, Subtitle F with a section on saving voters from purging.

2. Intimidation at the polling place

In our 2012 report *Bullies at the Ballot Box,*[19] Dēmos and Common Cause highlighted the impact that illegal interference and intimidation can have on eligible voters at the polls. Organizers affiliated with True the Vote, for example, have claimed that their goal is to train one million poll watchers to challenge and confront other Americans as they go to the polls. They say they want to make the experience of voting "like driving and seeing the police following

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[17] Brief for the States of New York, California, Connecticut, Delaware, Hawai'i, Illinois, Iowa, Kentucky, Maryland, New Mexico, Oregon, and Washington, and the District of Columbia, as *Amici* Curiae in Support of Respondents, *Husted v. A. Philip Randolph Institute*, Case No. 16-980, at 11-12 (U.S. Supreme Court Sept. 22, 2017); *see also* Election Official Br., *supra* note 13, at 2 ("Ohio elections officials implement other mechanisms that do in fact protect against ineligible voters staying on the rolls, while at the same time ensuring that eligible voters remain registered. And, if the State wanted to further increase the accuracy of the voting rolls, there are other more targeted measures that could be adopted without disenfranchising duly registered Ohioans. By contrast, abstaining from casting a ballot has nothing to do with an Ohio voter's eligibility to vote."); *see also id.* at 9-11 (discussing other methods of roll maintenance that are already, and could be, used).

[18] 52 U.S.C. § 20501(b)(1)-(2), (4).

[19] LIZ KENNEDY ET AL., DĒMOS & COMMON CAUSE, BULLIES AT THE BALLOT BOX (2012), available at https://www.demos.org/sites/default/files/publications/BulliesAtTheBallotBox-Final.pdf. .

you."[20] There is a real danger that voters will face overzealous volunteers who take the law into their own hands to target voters they deem suspect.

Even in states with clear legal boundaries for challengers and poll watchers, too often these boundaries are crossed. Laws intended to ensure voting integrity are instead used to make it harder for eligible citizens to vote—particularly those in communities of color. Moreover, the laws of many states fall short when it comes to preventing improper voter caging and challenges. This should concern anyone who wants a fair election with a legitimate result that reflects the choices of all eligible Americans. There is no place for bullies at the ballot box, and government has a responsibility to protect voters from illegal interference and intimidation.

Clear rules can help prevent interference with voter rights. That's why Subtitles C and D from Title I of H.R. 1 on preventing caging and voter intimidation are key provisions for the improvement and safeguarding of our elections.

C. Registration continues to be a barrier to participation.

Registration is still the number-one barrier to participation in our democracy. Fifty to 60 million eligible voters, disproportionately people of color, remain unregistered. Dēmos has worked for years to enforce the National Voter Registration Act of 1993 to ensure that every eligible American, when conducting a transaction at a motor vehicle office or public assistance agency, gets the opportunity to register to vote. We estimate that our NVRA compliance work across nearly two dozen states has resulted in more than 3 million new voter registration applications being submitted through public assistance agencies under Section 7 of the NVRA alone.[21]

Millions of United States citizens find elections more accessible because of the NVRA, but significant hurdles remain. In the November 2016 general election, nearly 1 in 5 (18 percent) people who were eligible but did not vote cited registration issues as their main reason for not casting a ballot.[22] We are proud of the work we have done to ensure compliance with the NVRA, but we know that states can and should do much more when it comes to registering eligible voters.

That's why we have conducted research on and advocated for reforms such as same-day registration (SDR) and automatic voter registration (AVR), both of which increase registration rates and boost participation—particularly among voters of color and youth. SDR increases turnout by upwards of 10 percentage points,[23] and AVR is expected to increase participation

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[20] *Id.* at 1.

[21] LAURA WILLIAMSON, PAMELA CATALDO & BRENDA WRIGHT, DĒMOS, TOWARD A MORE REPRESENTATIVE ELECTORATE: THE PROGRESS AND POTENTIAL OF VOTER REGISTRATION THROUGH PUBLIC ASSISTANCE AGENCIES (2018), available at https://www.Dēmos.org/publication/toward-more-representative-electorate-progress-and-potential-voter-registration-through-.

[22] CENSUS BUREAU, CURRENT POPULATION SURVEY, NOVEMBER 2016 VOTING AND REGISTRATION SUPPLEMENT. Reasons cited for not voting include "did not meet registration deadlines," "did not know where or how to register," and "did not meet residency requirements/did not live here long enough."

[23] Dēmos, *Same Day Registration*, https://www.Dēmos.org/sites/default/files/publications/Sdr-Factsheet-Final_1.pdf.

significantly as well. Due to the efforts of Demos and other advocates, 17 states and the District of Columbia now have SDR.

While some states have moved to restrict access to the ballot box, others are taking appropriate steps to adopt measures like online, same-day, and automatic voter registration. Yet more can and should be done to ensure that all Americans, no matter where they live, have access to the kinds of registration reform that H.R. 1 addresses.

With voter registration modernization—including online, automatic, and same-day voter registration, as required by H.R. 1's Title I, Subtitle A—low-income voters of color will be brought into the system and will have greater access to the ballot. This package of reforms has the potential to shrink and perhaps even eliminate the great registration divide between low- and high-income Americans.

D. The exclusion of over 5 million individuals through felony disenfranchisement laws perpetuates a legacy of racial bias.

Felony disenfranchisement laws in the United States have troubling race and class dimensions that cannot be reconciled with our shared present-day values of equal citizenship and equal dignity. Scholar Ward Elliott has observed that the spread of disenfranchisement laws may have been a response to the abolition of property-holding requirements, which "had served a number of indispensable functions, such as holding down the voting strength of free blacks, women, infants, criminals, mental incompetents, unpropertied immigrants, and transients."[24] After Reconstruction, states in the South began to tailor their disenfranchisement laws to cover crimes for which black citizens were most frequently prosecuted, "as part of a larger effort to disfranchise African American voters and to restore the Democratic Party to political dominance."[25] Over time, states stopped distinguishing between kinds of crimes, instead imposing blanket disenfranchisement for all felony convictions.

Although states have repudiated discriminatory barriers to voting such as poll taxes and literacy tests, criminal disenfranchisement laws have persisted. And they continue to have a disproportionate racial impact due to the pervasive racial bias in the criminal justice system. As we noted in a letter that Dēmos and 19 other national organizations wrote in support of a New Mexico bill to end felony disenfranchisement,[26] African Americans and Latinos make up 32 percent of the U.S. population but in 2015 comprised 56 percent of all incarcerated persons in the country.[27] This is because individuals of color are prosecuted and sentenced at much higher rates than whites for comparable behavior. For example, in a national survey on drug use, it was reported that "African Americans and whites use drugs at similar rates, but the imprisonment rate

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[24] WARD E.Y. ELLIOTT, THE RISE OF GUARDIAN DEMOCRACY 43 (1974).
[25] Pippa Holloway, *"A Chicken-Stealer Shall Lose His Vote": Disenfranchisement for Larceny in the South*, 1874-1890, 75 J. S. HIST. 931, 931 (2009).
[26] *See* Dēmos, Letter of Support for HB 57 to End Felony Disenfranchisement in New Mexico (Jan. 28, 2019), available at https://www.Dēmos.org/sites/default/files/publications/National%20Org%20Letter%20to%20NMHJC%20on%20HB57%2020190128.pdf.
[27] NAACP, Criminal Justice Fact Sheet, available at https://www.naacp.org/criminal-justice-fact-sheet/.

of African Americans for drug charges is almost *six times that of whites*."[28] African Americans "represent 12.5 percent of illicit drug users, but 29 percent of those arrested for drug offense and 33 percent of those incarcerated in state facilities for drug offenses."[29]

Because people of color are policed, prosecuted, convicted, and incarcerated for crimes at disproportionately higher rates than whites, they lose their right to vote at disproportionately higher rates too. As a result, the electorate is disproportionately white. Communities of color experience reduced political power and the underrepresentation of their interests in government. Ending felony disenfranchisement, therefore, would help restore equality and equity to the democratic process. It would also aid with reentry and promote public safety.[30]

As such, we applaud the inclusion of Title I, Subtitle E, the Democracy Restoration Act, in the For the People Act.[31]

II. MONEY IN POLITICS

The struggle for fair and equal access to the ballot continues, and our nation has taken some tragic steps backwards in recent years. But even when we win full and equal voting rights, our work will not be complete. As Dēmos has explained elsewhere,[32] there is another substantial barrier to fair and equal representation for people of color as well as working-class Americans of all races: the role of big money in determining who runs for office, who wins elections, and what issues are prioritized in Washington, D.C. and state capitals. Overcoming the barrier of big money to equal representation is part of the unfinished business of the civil rights struggle.

Now the biggest barrier to people of color (as well as all low-income Americans) is not the all-white primary[33] but rather the "wealth primary,"[34] through which the wealthy, white donor class filters the candidate pool before anyone has the chance to cast a single vote. These wealthy donors act as gatekeepers up and down the ballot. The biggest spenders do not always win their races, but raising millions, tens of millions, or even hundreds of millions of dollars is currently a prerequisite to compete for federal office. If you want to run for president these days, you need a billionaire or two willing to fund a Super PAC dedicated to your cause. If you want to run for Congress, you typically need hundreds of people willing and able to write $2,000 or $5,000

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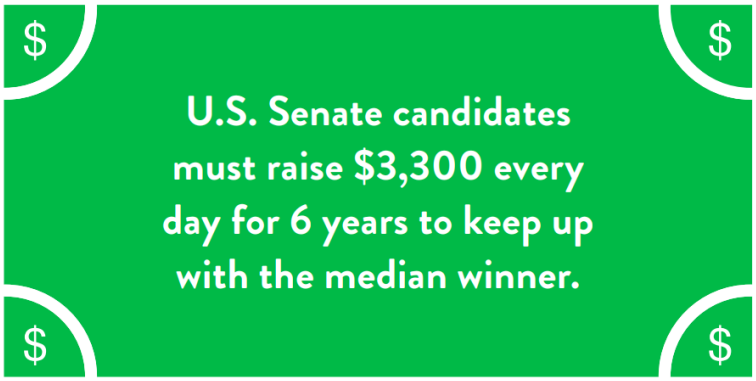
[28] *Id.* (emphasis added).
[29] *Id.*
[30] Cristopher Uggen & Jeff Manza, *Voting and Subsequent Crime and Arrest: Evidence from a Community Sample*, 36 COLUM. HUM. RTS. L. REV. 193, 197 (2004-2005).
[31] *See also* ALEX EWALD, DĒMOS, PUNISHING AT THE POLLS (2003), available at https://www.demos.org/sites/default/files/publications/FD_-_Punishing_at_the_Polls.pdf.
[32] *See* DAVID CALLAHAN & J. MIJIN CHA, DĒMOS, STACKED DECK: HOW THE DOMINANCE OF POLITICS BY THE AFFLUENT & BUSINESS UNDERMINES ECONOMIC MOBILITY IN AMERICA 5 (2013) ("STACKED DECK I"), available at http://www.Dēmos.org/sites/default/files/imce/StackedDeck_1.pdf; ADAM LIOZ, DĒMOS, STACKED DECK: HOW THE RACIAL BIAS IN OUR BIG MONEY POLITICAL SYSTEM UNDERMINES OUR DEMOCRACY AND OUR ECONOMY (2015) ("STACKED DECK II"), available at http://www.Dēmos.org/sites/default/files/publications/StackedDeck2_1.pdf. This testimony draws upon original research presented in these two reports.
[33] *Smith v. Allwright*, 321 U.S. 649 (1944).
[34] *See* Jamin Raskin & John Bonifaz, *Equal Protection and the Wealth Primary*, 111 YALE L. & POL. REV. 273 (1993), available at https://digitalcommons.law.yale.edu/ylpr/vol11/iss2/3/.

checks. To match the average 2014 U.S. Senate winner, you would need to raise $3,300 every single day for six years.[35]

Figure 1.



Source: Demos & U.S. PIRG analysis of FEC data

While occasionally candidates with broad national appeal are able to raise tens of millions of dollars from a broad network of online small donors, the vast majority rely on large donors to reach the threshold amount they need to compete. One study of 2014 competitive congressional races found, for example, that "[o]nly two of 50 candidates in these competitive races raised less than 70 percent of their individual funds from large donors, while seven relied on big donors for more than 95 percent of their individual contributions."[36]

The role of big money in restricting alternatives is one big reason why more than 90 percent of elected officials are white, only two percent of members of Congress have ever had working-class backgrounds, and tens of millions of Americans choose to stay home each Election Day.

Over more than two centuries of Court cases and constitutional amendments, the American people have decided that access to the ballot should not depend upon race, geography or wealth. In a democracy, the size of your wallet isn't supposed to determine the strength of your voice. Under "one person, one vote," each American must have an equal say over the decisions that affect our lives.

Unfortunately, rich and powerful corporations have far greater say than the rest of us. They use their wealth to amplify their own voices and drown out those of middle- and working-class Americans. This donor class is overwhelming wealthy, white, and male—deeply unrepresentative of the United States in 2019—and it tends to support the election of disproportionately wealthy, white, and male public officials. At the same time, these donor-gatekeepers' interests diverge sharply from those of everyday people, particularly people of color, and yet they routinely win out in the arenas of legislative debate. In short, our big-money

[35] ADAM LIOZ & KAREN SHANTON, THE MONEY CHASE: MOVING FROM BIG MONEY DOMINANCE IN THE 2014 MIDTERMS TO A SMALL DONOR DEMOCRACY (2015), available at https://www.demos.org/publication/money-chase-moving-big-money-dominance-2014-midterms-small-donor-democracy.
[36] *Id.* at 1.

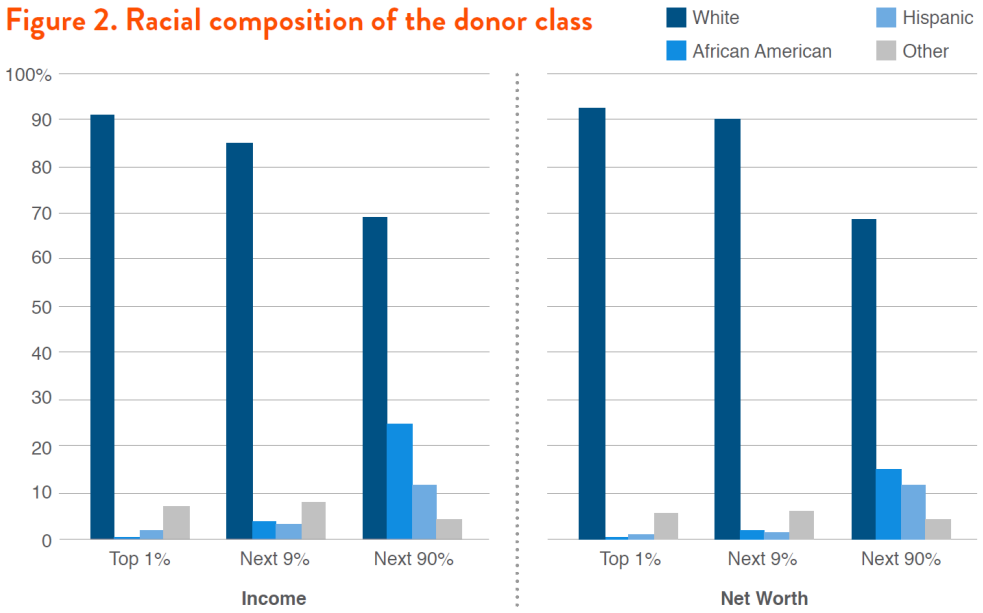
political system actively undermines racial equity and gives us public policy out of step with the needs and preferences of the American public.

The For the People Act would help curb the influence of big money in our elections and advance racial equity. Particularly through the small-donor match and democracy voucher pilot program in Title V of the bill, the Act would lower barriers to entry for candidates of color, amplify the influence of people of color and low-income individuals so that they can be heard alongside those of special interests, and promote more equitable public policy.

A. The donor class is overwhelmingly white, rich, and male.

A history of racial subordination and ongoing racial discrimination has compounded to produce a striking racial wealth gap in America. The Forbes 400 billionaires have as much wealth as the entire black population and a quarter of the Latino population combined. The median white household owns $140,500 in wealth, compared to just $3,400 for black households and $6,300 for Latino households.[37] Put another way, the top 1 percent are more than 90 percent white; the top 10 percent are 85-90 percent white.[38] These are the groups that dominate political giving in America.[39]

Figure 2. Racial composition of the donor class



Source: Lisa Keister, The One Percent, 40 Ann. R. of Sociology 347 (2014)

[37] Chuck Collins, *New Study Shows Wealth Inequality Hits Communities of Color Hardest*, YES! (Jan. 29, 2019), https://www.yesmagazine.org/new-economy/new-study-shows-wealth-inequality-hits-communities-of-color-hardest-20190129.

[38] LIOZ, STACKED DECK II, *supra* note 32, at 4.

[39] Both 2016 presidential candidates relied on the very wealthy. Millionaires make up 3 percent of the adult population, but 42 percent of the money Hillary Clinton raised and 27 percent of the money Donald Trump raised came from millionaires. A third of money raised by both candidates came from Americans with a net worth between $300,000 and $1,000,000. SEAN MCELWEE, BRIAN SCHAFFNER & JESSE RHODES, DĒMOS, WHOSE VOICE, WHOSE CHOICE? 1-2 (2016), available at https://www.Dēmos.org/sites/default/files/publications/Whose%20Voice%20Whose%20Choice_2.pdf.

Just 25 people pumped more than $600 million into the 2016 elections through political action committees, Super PACs, and direct contributions to candidates and parties.[40] Less than 1 percent of the population provides the majority of the funds that determine who runs for office, who wins elections, and what issues get attention from our elected officials.[41]

Election donors, and especially the mega-donors driving campaigns, are overwhelming white. Ninety-two percent of federal election donors in 2014 and 91 percent of donors in 2012 were white. The numbers are even more skewed among large donors. Ninety-four percent of those giving more than $5,000 in 2014 and 93 percent in 2012 were white. Men make up slightly less than half of the population, but comprised 63 percent of federal election donors in 2012 and 66 percent of donors in 2014. The pool of donors who give more than $1,000 has less gender diversity, with men making up 65 percent of donors giving more than $5,000.[42]

B. Our big-money political system is a barrier to entry for candidates of color.

By comparison to white Americans, people of color lack access to networks of wealthy friends, associates, and business interests, making it difficult for them to raise the funds needed to be viable candidates. And when candidates of color do run, they raise less money than their white counterparts. A study of more than 3,000 candidates running in more than 2,000 state legislative races in 2006 found that adjusting for factors such as incumbency, partisanship, and district income, "non-white candidates raise an average of 47 percent less compared to white candidates when all other mitigating factors are controlled."[43] In the South, candidates of color raised nearly 64 percent less than white candidates.[44] Other studies show that business interests across a host of fields—manufacturing, retail, finance, insurance, real estate, and energy—give more to white candidates.[45] White candidates are also far more likely to be in a position to self-fund their campaigns.[46]

The candidate with the most money does not always win—just an overwhelming majority of the time. In a typical cycle, 90 percent or more of candidates who raise the most money prevail.[47] In this way, our big-money political system disproportionately excludes people of color from

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[40] "Top Individual Contributors: All Federal Contributors," CENTER FOR RESPONSIVE POLITICS, available at https://www.opensecrets.org/overview/topindivs.php.
[41] "Donor Demographics," CENTER FOR RESPONSIVE POLITICS, available at https://www.opensecrets.org/overview/donordemographics.php.
[42] MCELWEE, SCHAFFNER & RHODES, WHOSE VOICE, WHOSE CHOICE?, at 10-18.
[43] Laura Merrifield Albright, *Not Simply Black and White: The Relationship between Race/Ethnicity and Campaign Finance in State Legislative Elections* (Aug. 4, 2014), available at http://ssrn.com/abstract=2475889.
[44] *Id.*
[45] LIOZ, STACKED DECK II, *supra* note 32, at 29.
[46] *Id.*
[47] More than 90% of the biggest campaign fundraisers and spenders routinely win elected office. Money does not always win the day, but raising more money certainly gives a candidate a better chance to win. *See* Center for Responsive Politics, *Money Wins Presidency and 9 of 10 Congressional Races in Priciest U.S. Election Ever* (Nov. 5, 2008), http://www.opensecrets.org/news/2008/11/money-wins-white-house-and/; Wesley Lowery, *91% of the time the better financed candidate wins. Don't act surprised*, Washington Post (April 4, 2014).

serving in elected office. It should be no surprise, then, that 90 percent of Americans' elected officials are white, even though 37 percent of us are people of color.[48]

C. The wealthy, white donor class sets the agenda in Washington and state capitals across the country.

The wealthy, white donor class has markedly different policy preferences from the general public, and particularly from people of color. For example, on economic policy, polls show that people of color support the role of government in reducing inequality at significantly higher rates (67 percent) than do whites (53 percent) and those earning at least $100,000 (53 percent).[49] People of color are also much more likely to list job creation as a priority over holding down the deficit, whereas whites and the wealthy are more likely to say the opposite:

Figure 3. Views on government policy to reduce the wealth gap by race and income *Do you think the federal government should or should not pursue policies that try to reduce the gap between wealthy and less well-off Americans?*

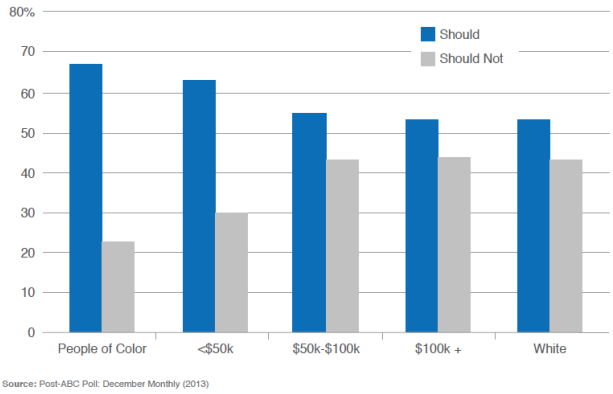
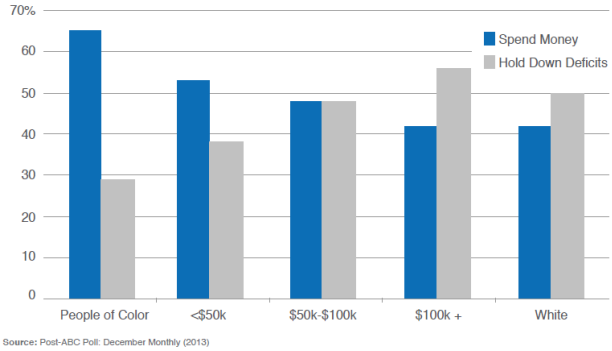


Figure 4. Views on creating jobs versus holding down deficit by race and income *Which is more important, spending money to create jobs or holding down the federal budget deficit?*



The preference gap plays out on issues beyond the economy, and in some cases touches directly upon issues of racial equity. For example, a majority of whites believe that "blacks and other minorities receive equal treatment as whites in the criminal justice system" as do half of those making more than $100,000 per year.[50] Yet only 41 percent of those making less than $50,000 believe this, and only 26 percent of people of color.[51] And, when asked what is most important to help them achieve the American dream, wealthy and white respondents listed lower taxes as their first priority, whereas people of color listed access to an affordable college education as their top choice.[52]

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[48] LIOZ, STACKED DECK II, *supra* note 32, at 25.
[49] *Id.* at 15.
[50] *July 2013 Washington Post-ABC News Poll – National Politics, Trayvon Martin, Health Care*, WASH. POST (July 26, 2013), http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2013/07/22/National-Politics/Polling/question_11458.xml?uuid=xlqfYvLnEeKEZFflevhikA#.
[51] *Id.*
[52] *Post-Miller Center Poll: American Dream and Financial Security*, WASH. POST (Nov. 25, 2013), http://www.washingtonpost.com/page/2010-2019/WashingtonPost/2013/09/28/National-Politics/Polling/question_11899.xml?uuid=zM932CiSEeOKs7WqzJ4RZQ.

The clear differential in policy preferences between the wealthiest Americans and people of color on critical issues means that when Congress focuses on the priorities and preferences of the wealthy, it enacts policies that cater far more to the interests of white households and ignores the priorities of the diverse and vibrant communities of color throughout the United States.

Not only that, studies show that the government is sharply more responsive to the preferences of the wealthy than to those of the average voter. Princeton political scientist Martin Gilens's groundbreaking work has shown that when the preferences of the top 10 percent of income earners diverge from the rest of us, that 10 percent trumps the 90 percent.[53] Another scholar, Larry Bartels, found that "the preferences of people in the bottom third of the income distribution have no apparent impact on the behavior of their elected officials."[54]

D. Our big-money political system has resulted in social and economic policy that is contrary to the interests of people of color.

Because of the overwhelming influence of money in elections—with wealthy candidates running to represent wealthy people's wants—the interests of everyday Americans, including people of color and low-income individuals, get overlooked or quashed. To take just two examples:

Minimum wage. The federal minimum wage has stagnated for years. It has held steady at $7.25 since 2009 and has been dropping in value due to inflation and rising costs. As Pew Research found, "today's real average wage (that is, the wage after accounting for inflation) has about the same purchasing power it did 40 years ago. And what wage gains there have been have mostly flowed to the highest-paid tier of workers."[55] Recent polling, though, indicates that Americans on both sides of the aisle—74 percent (including 58 percent of Republicans)—favor raising the minimum wage.[56] Support is especially robust among people of color, but a living wage is not a priority for affluent individuals, with only 40 percent supporting a minimum wage that ensures a family with a full-time worker will not live in poverty.[57]

The Subprime Lending Crisis and Recovery. Deregulation of large financial institutions led to the subprime housing crisis, which caused borrowers of color to lose between $164 billion and $213 billion from 2000 to 2008—the largest loss of wealth for communities of color in American history.[58] Following the financial crisis, the federal government bailed out large banks rather than homeowners who found themselves underwater because of the deceptive and aggressive marketing practices of lenders. Lobbyists for the banking industry successfully eliminated a key provision from the Helping Families Save Their Homes Act of 2009 that would have allowed

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[53] MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA 234 (2014).
[54] LARRY BARTELS, UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE 285 (2008).
[55] Drew DeSilver, *For Most U.S. Workers, Real Wages Have Barely Budged in Decades*, PEW RESEARCH, Aug. 7, 2018, available at http://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/
[56] Niv Elis, *Poll: Bipartisan Majority Supports Raising Minimum Wage*, THE HILL (June 1, 2017), available at https://thehill.com/homenews/335837-poll-bipartisan-majority-supports-raising-minimum-wage.
[57] LIOZ, STACKED DECK II, *supra* note 32, at 61.
[58] Paul Taylor et. al, *Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics*, PEW RESEARCH CENTER (2011), http://ehub29.webhostinghub.com/~busine87/assignments/business_statistics_-_wealt.pdf.

bankruptcy judges to write down mortgages on a primary residence to the current fair market value of the property.[59] The banks won this and other victories despite the desire of vast majorities of Americans for greater regulation.[60]

E. The For the People Act would help curb the racially exclusionary nature of our big-money political system by amplifying the voices of everyday Americans.

Congress has repeatedly recognized and attempted to rein in the influence of powerful monied interests in elections. Time and again, however, the Supreme Court has invalidated common-sense protections under the First Amendment, on the misguided theory that all money is speech and that the government's only legitimate interest in regulating campaign finance is to combat the reality or appearance of quid pro quo bribery. The Supreme Court has struck down:

- Limits on how much personal wealth candidates can spend on their own campaigns[61]
- Limits on total candidate spending[62]
- Limits on contributions to or spending by individuals or groups supposedly not connected to candidates' campaigns[63]
- Limits on contributions to ballot initiatives[64]
- Bans on corporate spending on ballot initiatives[65]
- Strict contribution limits set at levels that average Americans can afford to give[66]
- Bans on direct spending through so-called "independent expenditures" by corporations and unions to influence candidate elections[67]
- Limits on the total amount one wealthy donor can contribute to candidates, parties, and political committees.[68]

The result is that millionaires, billionaires, and corporations can use their wealth to amplify their voices and drown out the voices of average Americans. This allows them to translate their economic might into political power, distorting our democracy and making a mockery of the one person, one vote principle. And because people understand this, rulings like *Citizens United* have reduced the public's confidence in our system and the people who serve within it. In fact, 85

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[59] Arianna Huffington, *Lobbyists on a Roll: Gutting Reform on Banking, Energy, and Health Care*, HUFFINGTON POST (June 25, 2009), http://www.huffingtonpost.com/arianna-huffington/lobbyists-on-a-roll-gutti_b_220521.html; Alex Ulam, *Why a Mortgage Cramdown Bill Is Still the Best Bet to Save the Economy*, THE NATION (Oct. 20, 2011), http://www.thenation.com/article/164096/why-mortgage-cramdown-bill-still-best-bet-save-economy#.

[60] Jim Lardner, *Americans Agree on Regulating Wall Street*, U.S. NEWS (Sept. 16, 2013), available at https://www.usnews.com/opinion/blogs/economic-intelligence/2013/09/16/poll-shows-americans-want-more-wall-street-regulation-five-years-after-the-financial-crisis ("Regulating financial services and products is seen as either 'important' or 'very important' by more than 90 percent of voters….").

[61] *Buckley v. Valeo*, 424 U.S. 1, 53 (1976).

[62] *Id.* at 55-56; *Randall v. Sorrell*, 548 U.S. 230, 240-46 (2006).

[63] *Buckley*, 424 U.S. at 43-51.

[64] *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 296-99 (1981).

[65] *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 790-95 (1979).

[66] *Randall*, 548 U.S. at 248-53.

[67] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010); s*ee also SpeechNow.org v. Fed. Elec. Comm'n*, 599 F.3d 686 (D.C. Cir. 2010), cert. denied, *Keating v. Federal Election Comm'n*, 131 S. Ct. 553 (2010) (striking down limits on contributions to groups that make independent expenditures to influence elections).

[68] *McCutcheon et al. v. Fed. Election Comm'n*, 572 U.S. 185 (2014).

percent of Americans think we need to "fundamentally change" or "completely rebuild" our system for funding campaigns.[69]

A promising and constitutional means of fundamentally changing our system exists: public funding of public election campaigns (often referred to as "public financing" for short). Public financing amplifies the voices of ordinary Americans, including people of color, so that elected officials listen to and work for all of their constituents, not just the privileged few.

The For the People Act contains two public financing programs for candidates for the presidency or Congress: (1) a six-to-one match on small dollar donations, up to $200, for candidates who raise 1,000 such contributions or $50,000 in such contributions, and (2) a pilot program of "My Voice" vouchers that would provide eligible voters with $25 to contribute to congressional candidates. These programs have the potential to curb candidates' reliance on big money, enable more candidates of color to run for office, and avert the corruption and policy distortion that results from our current campaign finance system.

While large donors are overwhelmingly white, there appears to be significant racial diversity among small donors. Research on New York City's small-donor match program, which provides a six-to-one match on donations up to $175, shows that donors giving $10 or less live in neighborhoods that are more racially diverse than the city as a whole. These donors live in neighborhoods where people of color comprise 62 percent of the population, versus 56 percent of the population of the city overall.[70] A similar analysis concluded that small contributors come from a much more diverse range of neighborhoods than large donors and "there can be little doubt that bringing more small donors into the system in New York City equates to a greater diversity in neighborhood experience in the donor pool."[71] In Arizona, meanwhile, the state's public financing system more than tripled the number of contributors to gubernatorial campaigns between 1998 and 2002 and increased the economic, racial, and geographic diversity of contributors.[72] Candidates participating in Arizona's "clean elections" system raised twice the proportion of their contributions from heavily Latino zip codes than did privately-funded candidates.[73]

Public financing programs can also produce policy outcomes that better reflect the public's preferences, including priorities for communities of color that otherwise would go unrealized.

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[69] Nicholas Confessore and Megan Thee-Brenan, *Poll Shows Americans Favor an Overhaul of Campaign Financing*, N.Y. TIMES (June 2, 2015), https://www.nytimes.com/2015/06/03/us/politics/poll-shows-americans-favor-overhaul-of-campaign-financing.html?_r=1.

[70] Public Campaign preliminary analysis of donor demographics and small donor impact in New York City elections conducted in the spring of 2013, using contribution data from 2009 and American Community Survey 2007-2013 five-year averages.

[71] Michael J. Malbin et al., *Small Donors, Big Democracy: New York City's Matching Funds As A Model for the Nation and States*, 11 ELECTION L.J. 3, 13 (2012).

[72] CLEAN ELECTIONS INSTITUTE, RECLAIMING DEMOCRACY IN ARIZONA: HOW CLEAN ELECTIONS HAS EXPANDED THE UNIVERSE OF CAMPAIGN CONTRIBUTORS 3 (2004), available at http://www.followthemoney.org/assets/press/Reports/200409301.pdf.

[73] Nancy Watzman, *All Over the Map: Small Donors Bring Diversity to Arizona's Elections*, PUBLIC CAMPAIGN 1-2 (2008), available at http://www.washclean.org/Library/AOTM_AZ08_Rpt.pdf.

Connecticut is a case in point.[74] A paid sick leave proposal was bottled up in the Connecticut legislature until the state passed a "fair elections" system that enabled candidates to run for office without depending upon wealthy donors and special interests. Following this change, Connecticut became the first state in the nation to guarantee paid sick leave.[75] Because the public financing programs in H.R. 1 could have similar salutary racial justice impacts, Dēmos strongly supports these provisions.

III. CONCLUSION

Not since the aftermath of the Watergate scandal has Congress introduced so bold a proposal to enhance our democracy. The For the People Act would make voting more accessible and combat voter suppression efforts, blunt the distorting influence of big money in politics, and advance racial equity. For too long, our system of government has catered to special interests at the expense of the working families and to the detriment of communities of color. Dēmos strongly supports the For the People Act and looks forward to seeing it signed into law.

[74] J. MIJIN CHA & MILES RAPOPORT, DĒMOS, FRESH START: THE IMPACT OF PUBLIC CAMPAIGN FINANCING IN CONNECTICUT (2013), available at https://www.demos.org/sites/default/files/publications/FreshStart_PublicFinancingCT_0.pdf.

[75] Chad Garland, *Gov. Jerry Brown Signs Bill to Require Paid Sick Leave*, L.A. TIMES (Sept. 10, 2014), http://www.latimes.com/business/la-fi-brown-paid-sick-leave-20140911-story.html.