
FIRST AMENDMENT — CAMPAIGN CONTRIBUTIONS — WASHINGTON STATE SUPREME COURT HOLDS “DEMOCRACY VOUCHER” PROGRAM CONSTITUTIONAL. — *Elster v. City of Seattle*, 444 P.3d 590 (Wash. 2019).

As the federal government removes immigrants’ access to services and protections,¹ municipalities have taken the lead in seeking to increase protections for the rights of these immigrants,² including access to democratic participation.³ Municipalities including, most notably, Chicago and San Francisco have extended various levels of voting rights to noncitizens, while Boston has considered a similar measure.⁴ Seattle’s Democracy Voucher Program, which allows adult Seattle residents who are U.S. citizens or lawful permanent residents to donate to candidates for local office with publicly funded vouchers, fits within this broader trend.⁵ Recently, in *Elster v. City of Seattle*,⁶ the Washington Supreme Court upheld the constitutionality of the program over a challenge by two Seattle property owners who argued the program violated their First Amendment rights as a “compelled subsidy of political speech.”⁷ The court’s decision not only left the door open to programs for expanding civic engagement and encouraging political speech from immigrants, but also implicitly endorsed a more community-oriented vision of democracy, providing a further example of the power of local governments

¹ See, e.g., SARAH PIERCE & ANDREW SELEE, MIGRATION POL’Y INST., IMMIGRATION UNDER TRUMP: A REVIEW OF POLICY SHIFTS IN THE YEAR SINCE THE ELECTION 3–6, 8 (Dec. 2017), <https://www.migrationpolicy.org/research/immigration-under-trump-review-policy-shifts> [https://perma.cc/5HG9-BMLX] (noting in particular President Trump’s Muslim ban, his decision to cancel the Deferred Action for Childhood Arrivals program and end Temporary Protected Status for a number of countries, and declines in admissions of refugees).

² Consider, for example, the rise of sanctuary cities. See Karla Mari McKanders, *Immigration to Blue Cities in Red States: The Battleground Between Sanctuary and Exclusion*, 21 U. PA. J. CONST. L. 1051, 1056–57 (2019); Dakota Smith et al., *California Hits Back as Trump Threatens to “Dump” Immigrants in “Sanctuary Cities,”* L.A. TIMES (Apr. 16, 2019, 5:00 AM), <https://www.latimes.com/local/lanow/la-me-in-california-sanctuary-city-trump-democrats-20190416-story.html> [https://perma.cc/LT26-WW7T].

³ See Rachel M. Cohen, *Letting Noncitizens Vote in the Trump Era*, THE NATION (Nov. 1, 2018), <https://www.thenation.com/article/noncitizen-voting-trump> [https://perma.cc/DNR9-DABV].

⁴ See *id.*; Jamie Halper, *Council Considers Allowing Noncitizens to Vote in Municipal Elections*, BOSTON GLOBE (July 10, 2018, 3:11 PM), <https://www.bostonglobe.com/metro/2018/07/10/council-considers-considers-allowing-non-citizens-vote-municipal-elections/ofHkNr1isFSzjOk3dEVUql/story.html> [https://perma.cc/Y5SX-6WHT]. Cambridge and three other cities in Massachusetts have passed measures to allow noncitizens to vote, but they have not gone into effect because they require state approval. See *id.*

⁵ See SEATTLE, WASH., MUNICIPAL CODE §§ 2.04.600–606 (2019), https://library.municode.com/wa/seattle/codes/municipal_code?n-deId=TIT2EL_CH2.04ELCACO_SUBCHAPTER_VIIIHOELSE [https://perma.cc/KAQ9-6UPW].

⁶ 444 P.3d 590 (Wash. 2019).

⁷ *Elster v. City of Seattle*, No. 17-2-16501-8, 2017 WL 11407502, at *1 (Wash. Super. Ct. Nov. 2, 2017); see *Elster*, 444 P.3d at 592.

to give noncitizens the political voice they often lack at the federal level.

In 2015, Seattle voters passed an initiative to raise property taxes to fund a program that periodically distributes “Democracy Vouchers,” totaling \$100 each, to Seattle residents.⁸ All Seattle residents who are U.S. citizens or permanent residents⁹ can obtain vouchers and assign them to eligible campaigns.¹⁰ The vouchers may then be redeemed by qualifying candidates for mayor, city attorney, or city council.¹¹ To qualify, candidates must collect a minimum number of campaign contributions, agree to participate in six public debates, and commit to individual contribution and total spending limits.¹² The program is funded through a small increase in local property taxes.¹³

Plaintiffs Mark Elster and Sarah Pynchon owned property in Seattle that had been taxed in order to fund the Democracy Voucher Program.¹⁴ The two filed suit in King County Superior Court in June of 2017 under 42 U.S.C. § 1983, challenging the program’s constitutionality on First Amendment grounds.¹⁵ Rather than answering their complaint, the City responded with a motion to dismiss.¹⁶

The King County Superior Court granted the city’s motion to dismiss.¹⁷ Judge Andrus found that the program did implicate the First Amendment by “conditioning property owners’ rights . . . on the payment of a tax used to support speech [they] may find objectionable.”¹⁸ However, adopting the city’s position, she analogized the program to the Federal Election Campaign Act’s¹⁹ Presidential Election Campaign Fund, which the U.S. Supreme Court concluded was constitutionally

⁸ See *Elster*, 2017 WL 11407502, at *1.

⁹ See § 2.04.620(B) (allowing participation by those “eligible under federal law to donate to a political campaign”). This includes lawful permanent residents, or “green card holders,” but excludes undocumented immigrants and lawful immigrants without green cards, such as people on employment-based visas, student visas, and investor visas or other conditional resident visas. See 52 U.S.C. § 30121(b) (2012).

¹⁰ §§ 2.04.620, .630(A). The vouchers can be assigned online, mailed back to government administrators, or given directly to qualifying local campaigns. See § 2.04.624(A).

¹¹ §§ 2.04.620, .630(A).

¹² See §§ 2.04.630(B)–(C), .634; see also *Elster*, 2017 WL 11407502, at *1 (identifying same conditions under the earlier version of the program’s rules). Minimum campaign contributions range from \$150 to \$600, see § 2.04.630(C), and campaign spending limits range from \$150,000 to \$800,000 depending on the office, see § 2.04.634.

¹³ *Elster*, 2017 WL 11407502, at *1. According to the city, the tax “costs the average homeowner about \$8.00 per year.” *Democracy Voucher Program: About the Program*, SEATTLE.GOV, <http://www.seattle.gov/democracyvoucher/about-the-program> [<https://perma.cc/W6AU-HQNV>].

¹⁴ *Elster*, 2017 WL 11407502, at *1. Elster had received but had not used the vouchers, while Pynchon was not a Seattle resident and was therefore not eligible to receive vouchers. *Id.*

¹⁵ *Id.*; *Elster*, 444 P.3d at 592.

¹⁶ *Elster*, 444 P.3d at 592.

¹⁷ *Elster*, 2017 WL 11407502, at *1.

¹⁸ *Id.* at *3.

¹⁹ 52 U.S.C. § 30121 (2012).

valid in *Buckley v. Valeo*,²⁰ as it “use[d] public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.”²¹ Judge Andrus found that the voucher program promoted the same goals, which were “reasonable justification” for its existence.²² The plaintiffs argued the plan was not viewpoint neutral because it allocated “voucher funds through the majoritarian preferences of Seattle residents.”²³ Judge Andrus rejected this claim, reasoning instead that “[a]ny voter can assign a \$25 voucher to any eligible candidate, even if that candidate’s viewpoint is unpopular with the majority.”²⁴ Further, as residents could assign the vouchers to any candidate regardless of their political leanings, she found the program viewpoint neutral, rendering it constitutional.²⁵ The plaintiffs appealed.²⁶

The Washington Supreme Court affirmed. Writing for the unanimous nine-justice panel, Justice González²⁷ first reaffirmed the purpose of the First Amendment as ensuring “a society in which uninhibited, robust, and wide-open public debate concerning matters of public interest [can] thrive.”²⁸ He then turned to the government’s power to tax, which he characterized as a fundamental sovereign right.²⁹

Considering the standard of scrutiny, Justice González explained that because of the government’s broad power to tax, if the program did not burden fundamental rights, it would enjoy the presumption of constitutionality and the government would need only show that the tax “rationally relate[d] to a legitimate government interest.”³⁰ The court declined to apply strict scrutiny, characterizing the program as viewpoint neutral and finding it did not burden freedom of speech.³¹ In making this determination, it observed that the fact “[t]hat some candidates will

²⁰ 424 U.S. 1 (1976).

²¹ *Elster*, 2017 WL 11407502, at *2 (emphasis omitted) (quoting *Buckley*, 424 U.S. at 92–93). The Presidential Election Campaign Fund was financed by general tax revenues and allocated money to presidential election campaigns and nominating conventions, with the amount of money a candidate received dependent “on whether the candidate belonged to a major or minor political party.” *Id.* (citing *Buckley*, 424 U.S. at 86–87).

²² *Id.* at *4.

²³ *Id.* at *3 (quoting Response to Defendant’s Motion to Dismiss at 21, *Elster*, 2017 WL 11407502 (No. 17-2-16501-8)).

²⁴ *Id.* at *4.

²⁵ *Id.*

²⁶ *Elster*, 444 P.3d at 592.

²⁷ Justice González was joined by Chief Justice Fairhurst and Justices Johnson, Madsen, Owens, Stephens, Wiggins, Gordon McCloud, and Yu.

²⁸ *Elster*, 444 P.3d at 592 (internal quotation marks omitted) (quoting *Buckley v. Valeo*, 424 U.S. 1, 93 n.127 (1976)).

²⁹ *Id.* He noted that this was a case of first impression, as “[m]ost related cases have addressed challenges to the public financing systems themselves, not the potential injury to the taxpayers funding those systems.” *Id.* at 593.

³⁰ *Id.* at 593; *see id.* at 592–93.

³¹ *Id.* at 593–94.

receive more vouchers reflects the inherently majoritarian nature of democracy and elections, not the city's intent to subvert minority views.³² Justice González distinguished the case at hand from *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*,³³ in which the U.S. Supreme Court struck down an Arizona public financing system that provided candidates who opted in with initial public funds and additional funds to match those of their privately financed opponents.³⁴ The *Elster* court distinguished *Bennett* on the basis that “[t]he Arizona system operated in a way that *burdened* the speech of both privately financed candidates and groups independently advocating for those candidates,” while the voucher program increased speech.³⁵

The court then held that the program survived rational basis scrutiny.³⁶ It echoed the superior court in tying the government's “legitimate interest in its public financing of elections,”³⁷ established in *Buckley*, to the voucher program's intent to “giv[e] more people an opportunity to have their voices heard in democracy.”³⁸ Justice González also discussed the First Amendment's relation to “associational freedoms”³⁹ to distinguish the voucher program from *Janus v. AFSCME, Council 31*.⁴⁰ *Janus* involved a mandatory fee from public sector employees to fund collective bargaining processes, which the Court found unconstitutional because it individually associated plaintiffs with a political message against their will.⁴¹ Unlike the mandatory union fee, Justice González reasoned, the Democracy Voucher tax would not serve to publicly associate the plaintiffs with any particular message conveyed by the program.⁴² He therefore affirmed the superior court's ruling, finding that rather than “alter[ing], abridg[ing], restrict[ing], censor[ing], or burden[ing] speech,” the program related to the legitimate government interest of expanding democracy.⁴³

Both the superior and the supreme courts cited *Buckley* for its proposition that to “facilitate and enlarge public discussion and participation in the electoral process” is a legitimate goal for a program using public

³² *Id.* at 594.

³³ 564 U.S. 721 (2011).

³⁴ See *Elster*, 444 P.3d at 593; see also *Bennett*, 564 U.S. at 728–30.

³⁵ *Elster*, 444 P.3d at 593 (emphasis added); see *id.* at 593–94.

³⁶ See *id.* at 595.

³⁷ *Id.*

³⁸ *Id.* (quoting SEATTLE, WASH., MUNICIPAL CODE § 2.04.600 (2019), https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT2EL_CH2.04ELCACO_SUBCHAPTER_VIIIHOELSE [https://perma.cc/KAQ9-6UPW]).

³⁹ *Id.* at 594 (quoting *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2466, 2468 (2018)).

⁴⁰ 138 S. Ct. 2448; see *Elster*, 444 P.3d at 594–95.

⁴¹ See *Janus*, 138 S. Ct. at 2459–61; *Elster*, 444 P.3d at 594.

⁴² *Elster*, 444 P.3d at 594.

⁴³ *Id.* at 595.

funds.⁴⁴ Neither explicitly addressed the fact that Seattle's program is open to noncitizens. But by endorsing this use of public funds to promote speech from permanent residents as well as citizens, the court in *Elster* recognized the legitimate value of noncitizens' civic engagement. In an era in which state and local governments are increasingly taking initiative to define their own political communities, *Elster* affirms a more inclusive vision of political community. This case may thus contribute another wedge opening the door to noncitizen civic engagement and improving American democracy.

By including immigrant permanent residents in its Democracy Voucher Program, Seattle takes an implicit stance in the larger debate of how society should delineate the boundaries of its political community.⁴⁵ How to identify, define, and delineate political community are questions that philosophers, academics, and policymakers have grappled with for centuries, if not millennia.⁴⁶ And indeed, the question of who may speak and contribute to this public debate is fundamental.

Some argue that we should strive to create a global political community in the name of justice.⁴⁷ In practice, however, states have broad discretion to limit the scope of their own political communities.⁴⁸ The United States Congress maintains discretionary "plenary power" to regulate immigration and exclude immigrants from entering the country,

⁴⁴ *Id.* at 593 (quoting *Buckley v. Valeo*, 424 U.S. 1, 92–93 (1976)); *Elster v. City of Seattle*, No. 17-2-16501-8, 2017 WL 11407502, at *2 (Wash. Super. Ct. Nov. 2, 2017) (emphasis omitted) (same).

⁴⁵ While the law is not settled, the court likely had the constitutional option to uphold the program only as to citizens and to exclude lawful permanent residents, making its decision not to do so significant. Cf. *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (holding that the government may "selectively fund a program to encourage certain activities it believes to be in the public interest, without at the same time funding an alternative program which seeks to deal with the problem in another way," because a "legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right") (quoting *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 549 (1983)); see also *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012) (affirming the constitutionality of prohibiting immigrants other than permanent residents from contributing to campaigns). *But see Graham v. Richardson*, 403 U.S. 365, 376 (1971) (striking down a state's decision to exclude immigrants from welfare benefits under equal protection principles).

⁴⁶ Compare JEAN-JACQUES ROUSSEAU, *That Sovereignty Is Inalienable*, in THE SOCIAL CONTRACT AND DISCOURSES 22, 22 (G.D.H. Cole trans., J.M. Dent & Sons Ltd. 1923) (1762) (arguing a political community should be made up of those that share the same interests), and MICHAEL WALZER, SPHERES OF JUSTICE 5, 61–62 (1983) (arguing that excluding outsiders is crucial for the maintenance of a domestic political community), with Joseph H. Carens, *Aliens and Citizens: The Case for Open Borders*, 49 REV. POL. 251 (1987), and Pratheepan Gulasekaram, *Sub-National Immigration Regulation and the Pursuit of Cultural Cohesion*, 77 U. CIN. L. REV. 1441, 1442 (2009) ("[S]ub-national immigration regulation is neither the only, nor most effective, method for promoting community cohesion and stability.").

⁴⁷ See, e.g., AYELET SHACHAR, THE BIRTHRIGHT LOTTERY: CITIZENSHIP AND GLOBAL INEQUALITY 5 (2009).

⁴⁸ See James A. Goldston, *Holes in the Rights Framework: Racial Discrimination, Citizenship, and the Rights of Noncitizens*, 20 ETHICS & INT'L AFF. 321, 323 (2006) ("[D]etermining membership in a territorially circumscribed political community remains one of the core attributes of state sovereignty.").

“beyond constitutional norms and judicial review.”⁴⁹ This “plenary power” logic has also been extended to allow governments to discriminate against noncitizens for the purpose of defining a political community.⁵⁰ As a result, bans on noncitizen contributions to political candidates and parties,⁵¹ and on noncitizens pursuing careers as public school teachers, state troopers, and probation officers, have all been upheld by the Supreme Court.⁵² And the Department of Justice has interpreted the Court’s jurisprudence to mean that undocumented immigrants have no right to challenge First Amendment violations at all.⁵³

At the same time, however, municipalities are increasingly attempting to define their own local political communities for themselves.⁵⁴ And in the realm of political speech and engagement, there are few constitutional limits on what municipalities can grant to immigrants⁵⁵ — the U.S. Constitution contains no absolute restriction on noncitizen voting,

⁴⁹ Frank H. Wu, *The Limits of Borders: A Moderate Proposal for Immigration Reform*, 7 STAN. L. & POL’Y REV. 35, 43 (1996).

⁵⁰ Much importance is placed on local ties. Cf. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990) (upholding constitutional rights for immigrants “when they have come within the territory of the United States and developed substantial connections with this country”).

⁵¹ See *Bluman v. FEC*, 800 F. Supp. 2d 281, 283 (D.D.C. 2011), *aff’d*, 565 U.S. 1104 (2012).

⁵² See Linda S. Bosniak, *Membership, Equality, and the Difference that Alienage Makes*, 69 N.Y.U. L. REV. 1047, 1064–65 (1994) (first citing *Ambach v. Norwick*, 441 U.S. 68, 72–81 (1979); then citing *Foley v. Connelie*, 435 U.S. 291, 297–300 (1978); and then citing *Cabell v. Chavez-Salido*, 454 U.S. 432, 444–47 (1982)).

⁵³ Federal Defendants’ Memorandum in Opposition to Plaintiffs’ Motion for Temporary Restraining Order & Preliminary Injunction at 11–13, *Pineda Cruz v. Thompson*, No. 15-CV-326, 2015 WL 3922298 (W.D. Tex. 2015) (citing *Verdugo-Urquidez*, 494 U.S. at 265, to argue that nonresident immigrants cannot challenge First Amendment violations). Note that permanent residents have a unique status within this framework, such that they are generally seen as part of the political community, even if not full members. See *Bluman*, 800 F. Supp. 2d at 291 (“Lawful permanent residents have a long-term stake in the flourishing of American society, whereas temporary resident foreign citizens by definition have only a short-term interest in the national community.”).

⁵⁴ See, e.g., Pratheepan Gulasekaram et al., *Anti-Sanctuary and Immigration Localism*, 119 COLUM. L. REV. 837, 882 (2019) (warning that “[l]ocal discretion might lead to the proliferation of anti-sanctuary cities”); Toni M. Massaro & Shefali Milczarek-Desai, *Constitutional Cities: Sanctuary Jurisdictions, Local Voice, and Individual Liberty*, 50 COLUM. HUM. RTS. L. REV. 1, 53 (2018); McKanders, *supra* note 2, at 1059 (“Like most sanctuary policies, the underlying premise of [Nashville’s proposed] ordinance was to encourage ‘cooperation of immigrant residents, and trust between communities and public agencies, [which] is critical to fulfilling the mission and duties of the city.’” (quoting Nashville, Tenn., Ordinance No. BL2017-739, § 11.34.020 (introduced June 6, 2017, and withdrawn July 6, 2017), https://www.nashville.gov/mc/ordinances/term_2015_2019/bl2017-739.htm [<https://perma.cc/9EYC-9TLR>])); Azadeh Shahshahani & Amy Pont, *Sanctuary Policies: Local Resistance in the Face of State Anti-Sanctuary Legislation*, 21 CUNY L. REV. 225, 229 (2018). Of course, there is still much debate about the extent to which local governments have power to overcome or avoid preemption by federal laws and executive actions. See Maria Marulanda, Note, *Preemption, Patchwork Immigration Laws, and the Potential for Brown Sundown Towns*, 79 FORDHAM L. REV. 321, 321 (2010) (noting a recent “proliferation of immigration-related ordinances at the state and local level” and considering the difficulties posed by federal preemption of these laws).

⁵⁵ Cf. David M. Howard, Note, *Potential Citizens’ Rights: The Case for Permanent Resident Voting*, 95 TEX. L. REV. 1393, 1404 (2017) (“[T]here is no direct relationship between citizenship and the First Amendment.”).

and while the Federal Election Campaign Act prohibits foreign nationals from contributing to any federal, state, or local election, there is an exception carved out for lawful permanent residents.⁵⁶

To the extent that such localization can strengthen immigrant rights, this trend should be seen as good for democracy from the perspective of citizens, as well as noncitizens, for a number of reasons. First, the de jure status of immigrants should reflect their de facto contributions to U.S. communities. Immigrants are essential to the U.S. labor force,⁵⁷ and they both engage with and are affected by U.S. politics as stakeholders. They make lives in the United States and send their children to American schools.⁵⁸ This logic rings even more true when viewed at a local level, where the topics of discussion are “police protection and crime and parks and potholes and schools.”⁵⁹ Second, greater inclusion of immigrants furthers the ultimate purposes of the First Amendment. The First Amendment is not only about the right to speak; it also implicates the right to listen.⁶⁰ Professor Michael Kagan argues, for example, that American voters should have the right to hear immigrants speak from their own experiences to inform collective decisions about immigration policy.⁶¹ Along a similar line of logic, Professor James Gardner counters traditional anti-immigrant sentiment by arguing that underinclusion of members in a political community is just as worrisome as overinclusion.⁶² The *Elster* court’s emphasis on promoting “uninhib-

⁵⁶ 52 U.S.C. § 30121(b)(2) (2012).

⁵⁷ See HARRY J. HOLZER, MIGRATION POL’Y INST., IMMIGRATION AND THE U.S. LABOR MARKET: A LOOK AHEAD 1 (Aug. 2019), <https://www.migrationpolicy.org/research/immigration-us-labor-market-look-ahead> [https://perma.cc/RGP8-Z36F] (finding immigrants could significantly mitigate the undesirable economic outcomes projected ahead in the U.S. economy); Daniel Correa, Note, *Reciprocity Interest in Political Affiliation: Redefining the Political Community to Attain Just Principles in Immigration Reform*, 14 HARV. LATINO L. REV. 67, 70–73 (2011) (noting the United States’ practice of invoking “political community” to exclude people of color and immigrants from political rights, even while fully availing itself of their labor (first citing *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); and then citing *Ping v. United States*, 130 U.S. 581 (1889))).

⁵⁸ Cf. Adam B. Cox, *Citizenship, Standing, and Immigration Law*, 92 CALIF. L. REV. 373, 391 (2004) (“Immigration law regularly injures citizens by expelling or excluding people with whom citizens wish to associate.”).

⁵⁹ Sarah Stuteville, *Should Seattle Give Noncitizens the Vote?*, SEATTLE GLOBALIST (Sept. 18, 2015), <https://www.seattleglobalist.com/2015/09/18/noncitizens-vote-elections-frustrated-voting-rights-seattle/41565> [https://perma.cc/C8F6-DARD] (quoting former Seattle Mayor Mike McGinn).

⁶⁰ See Michael Kagan, *When Immigrants Speak: The Precarious Status of Non-Citizen Speech Under the First Amendment*, 57 B.C. L. REV. 1237, 1276 (2016).

⁶¹ *Id.*; cf. Cox, *supra* note 58, at 402 (highlighting “the real possibility that immigration laws can inflict expressive injuries on citizens qua citizens, and that it is wrong to think that existing members of the national community cannot be constitutionally injured by government policies that regulate admission to that community”).

⁶² James A. Gardner, *Federalism and Subnational Political Community*, 127 HARV. L. REV. F. 153, 154 (2014) (“[T]he kind of power wielded by governments should not be entrusted to an incomplete community. To do so is . . . to hand over the levers of power to a ‘faction,’ an outcome that

ited, robust, and wide-open' public debate" makes clear that this concern should be central to any understanding of the First Amendment.⁶³

The Democracy Voucher Program and the decision upholding it reflect these concerns by explicitly valuing (at a rate of \$100 per person) civic engagement from citizens and permanent residents.⁶⁴ The program has made a splash nationwide for its innovative and inclusive principles.⁶⁵ And indeed, Seattle's investment has resulted in a return in the form of increased political speech: although the majority of the vouchers distributed in the first year of the program were not returned, the vouchers tripled the number of contributors to municipal election campaigns,⁶⁶ and promise to increase participation even more as time goes on.⁶⁷ This increase means a political community that is more invested in its government, whose voice has been heard more clearly, and whose representatives will more accurately reflect its political preferences.

much of the institutional architecture of the U.S. Constitution is meant to prevent." (quoting THE FEDERALIST NO. 10 (James Madison))).

⁶³ *Elster*, 444 P.3d at 592 (quoting *Buckley v. Valeo*, 424 U.S. 1, 93 n.127 (1976)).

⁶⁴ In the future, perhaps undocumented immigrants will also be included in the program. This development would represent a significant step forward in our conception of political community.

⁶⁵ See, e.g., David Gutman, *Presidential Hopeful Kirsten Gillibrand Wants to Take Seattle's Public Campaign Finance System Nationwide*, SEATTLE TIMES (May 17, 2019), <https://www.seattletimes.com/seattle-news/politics/presidential-hopeful-kirsten-gillibrand-wants-to-take-seattles-public-campaign-finance-system-nationwide/> [https://perma.cc/6MK4-5B6B]; Sarah Kliff, *Seattle's Radical Plan to Fight Big Money in Politics*, VOX (Nov. 5, 2018), <https://www.vox.com/2018/11/5/17058970/seattle-democracy-vouchers> [https://perma.cc/YQV6-TURD].

⁶⁶ In 2017, 10,297 residents made a traditional cash contribution to a local election, while 20,727 (about four percent of those who received them) returned their vouchers. By contrast, in 2013 only 8234 residents contributed to municipal elections. JENNIFER HEERWIG & BRIAN J. McCABE, UNIV. OF WASH. CTR. FOR STUD. IN DEMOGRAPHY AND ECOLOGY, EXPANDING PARTICIPATION IN MUNICIPAL ELECTIONS: ASSESSING THE IMPACT OF SEATTLE'S DEMOCRACY VOUCHER PROGRAM (Apr. 2018), <https://csde.washington.edu/wp-content/uploads/2018/04/Seattle-Voucher-4.03.pdf> [https://perma.cc/WN6E-S2K8]. However, the program has not yet been as successful as some had hoped in recruiting permanent resident participation. Hayat Norimine, *Nonvoters Aren't Participating in the Democracy Voucher Program*, SEATTLE MET (Dec. 5, 2017), <https://www.seattlemet.com/articles/2017/12/5/non-voters-aren-t-participating-in-the-democracy-voucher-program> [https://perma.cc/PZ8N-T4ZT]. Nevertheless, the program is young, and participation may increase gradually as residents become more familiar with it.

⁶⁷ See Margaret Morales, *Seattle's Democracy Vouchers: Already Sparking a Lively Election Season*, SIGHTLINE INST. (Apr. 23, 2019), <https://www.sightline.org/2019/04/23/seattles-democracy-voucher-program-is-already-sparking-a-lively-election-season> [https://perma.cc/ABX5-H4U2] (finding that by April of 2019, 11,000 residents had already returned 43,000 vouchers, compared to just under 14,000 vouchers by the same time in the 2017 cycle).