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Legitimacy Matters: The Case for Public Financing in Prosecutor Elections

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Fair Punishment Project

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Legitimacy Matters: The Case for Public Financing in Prosecutor Elections

Rory Fleming*

Table of Contents

I. Introduction.....	2
II. Studying the Progressive Prosecutor Elections (2015–2019) .	10
A. Study One: Fundraising Disparities Between Progressive Challengers and Incumbents in Prosecutor Elections	14
1. Primary Determinative Elections	16
2. General Determinative Elections.....	18
3. Nonpartisan Elections.....	21
B. Study Two: Cost-Per-Vote Analysis of Soros-Affiliated PAC Expenditures in Prosecutor Elections	22
1. Primary Determinative Elections	24
2. General Determinative Elections.....	27
3. Nonpartisan Elections.....	29
III. Analyzing the Role of Soros-Affiliated PAC Expenditures in Prosecutor Elections.....	31

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IV. Crisis of Legitimacy: How Soros Turned Prosecutorial Reform Efforts into A Shell Game.....	40
A. Progressive Prosecutors Demonized as Anti-Law Enforcement, Despite Not Changing That Much.....	45
B. Bad Prosecutors Get to Blame Soros, and not Misconduct and Overreach, for their Electoral Losses	49
C. Districts with More Pro-Reform Voters Are Often Not the Ones with More Progressive Prosecutors	51
V. A Real Solution: Public Financing in Prosecutorial Elections.....	57
A. How Would Public Financing Work?.....	58
B. What Would the Likely Outcome Be?.....	64
C. What Are the Obstacles?	67
VI. Conclusion.....	70

I. Introduction

During Senator Kamala Harris’s 2020 bid for President, *The Intercept* published an article scrutinizing Harris’s first campaign for San Francisco District Attorney in 2003.¹ The author charged that Harris was a tough-on-crime alternative to then-DA Terence Hallinan, who has been heralded as America’s original progressive elected prosecutor.² Hallinan, who served from 1996 to 2003,³ called drug use and sex work public health issues, while refusing

1. See Lee Fang, *In Her First Race, Kamala Harris Campaigned As Tough On Crime — And Unseated The Country’s Most Progressive Prosecutor*, THE INTERCEPT (Feb. 7, 2019, 1:45 PM), <https://theintercept.com/2019/02/07/kamala-harris-san-francisco-district-attorney-crime/> (last visited Sept. 28, 2020) (“Harris’s first campaign reflected familiar tactics in an era of booming mass incarceration.”) [perma.cc/5X7A-A2XD].

2. See *id.* (recognizing Terence Hallinan as one of the only prosecutors in America not to embrace harsh criminal justice policies during the 1990s).

3. See *Remembering Terence Hallinan ’64, “Outspoken and Fierce” in Pursuing Justice*, U.C. HASTINGS L. (Jan. 18, 2020), <https://www.uchastings.edu/2020/01/18/remembering-terence-hallinan-64-outspoken-and-fierce-in-pursuing-justice/> (last visited Sept. 28, 2020) [hereinafter *Remembering Terence Hallinan*] (“In 1995 [Terence Hallinan] was elected District Attorney, serving from 1996 to 2003.”) [perma.cc/35PZ-BACR].

to seek the death penalty in capital cases.⁴ He also fired fourteen veteran prosecutors immediately upon taking office.⁵

To those familiar with the contemporary “progressive prosecutor” movement, these moves echo new luminaries like Philadelphia District Attorney Larry Krasner or Suffolk County (Boston) District Attorney Rachael Rollins.⁶ But there are crucial differences.⁷ While Hallinan attracted the ire of the San Francisco Police Department and the local police union, he also was not maligned as “dangerous” by an incumbent United States Attorney General.⁸ Relatedly, Hallinan was not elected in large part due to outsized independent expenditures from a single billionaire, George Soros.⁹

Soros, a Hungarian-American financier who funds left-leaning philanthropy projects worldwide, first became interested in American prosecutor elections as a way to mitigate mass incarceration in 2004, when he contributed \$80,000 to the Working Families Party to help elect Albany County, New York, District Attorney David Soares.¹⁰ Soares’s opponent, then-DA Paul Clyne,

4. *See id.* (“He refused to seek the death penalty in capital cases, was a strong advocate for decriminalizing prostitution and supported the use of medical marijuana.”).

5. *See id.* (describing his tenure as tempestuous due to immediately firing fourteen prosecutors and often being at odds with the police union).

6. *See* Samantha Michaels, *Attorney General William Barr Slams Progressive Prosecutors as “Dangerous,”* MOTHER JONES (Aug. 12, 2019), <https://www.motherjones.com/politics/2019/08/attorney-general-william-barr-slams-progressive-prosecutors-as-dangerous/> (last visited Sept. 28, 2020) (listing Krasner and Rollins as examples of progressive attorneys who both promised to reduce mass incarceration and confront racial disparities in the system) [perma.cc/D93B-EUNM].

7. *See Remembering Terence Hallinan, supra* note 3 (commemorating Hallinan as a pioneer of progressive prosecution decades before the current movement).

8. *See id.* (“He was often at odds with the city’s police union and the department itself.”); *see also* Michaels, *supra* note 6 (describing Attorney General William Barr’s 2019 speech to law enforcement which condemned the surge in progressive-minded district attorneys).

9. *See* Fang, *supra* note 1 (“In the end, Harris built a campaign war chest of over \$600,000—twice the amount raised by Hallinan.”).

10. *See* Al Baker, *Democratic Stronghold Jolted in Albany*, N.Y. TIMES (Sept. 22, 2004), <https://www.nytimes.com/2004/09/16/nyregion/democratic-stronghold-jolted-in-albany.html> (last visited Sept. 28, 2020) (“[A] foundation chaired by the billionaire philanthropist George Soros, recently sent at least \$80,000 in campaign contributions to the Working Families Party.”) [perma.cc/6N2X-8DL4].

came under fire for supporting the draconian Rockefeller drug sentencing laws of the time.¹¹ It was not until eleven years later that Soros returned his attention to DA races, backing Scott Colom over the incumbent Lowndes County, Mississippi, District Attorney, Forrest Allgood.¹² Allgood had repeatedly obtained wrongful convictions as a result of using discredited forensic experts and committing prosecutorial misconduct.¹³ Colom, a young African-American attorney, campaigned on a message of “Tough, Smart, Fair.”¹⁴ That same year, Soros also supported former Louisiana Court of Appeals Judge James Stewart over Dhu Thompson,¹⁵ an assistant prosecutor who worked under DA Dale Cox. Cox gained considerable infamy for his overzealous pursuit of the death penalty.¹⁶ Colom and Stewart were victorious, but only

11. See Andrew Cockburn, *Power Of Attorney*, HARPER’S MAG. (Oct. 2019), <https://harpers.org/archive/2019/10/power-of-attorney-progressive-prosecutors/> (last visited Sept. 28, 2020) (“[Soares’] campaign had one central theme: ‘Paul Clyne supports the Rockefeller drug laws.’”) [perma.cc/TT4T-R6PH].

12. See Nick Tabor, *What If Prosecutors Wanted to Keep People Out of Prison?*, N.Y. MAG. (Mar. 27, 2018), <https://nymag.com/intelligencer/2018/03/what-if-prosecutors-wanted-to-keep-people-out-of-prison.html> (last visited Sept. 28, 2020) (detailing Colom’s successful election as a progressive DA and describing that Colom was one of Soros’s first test cases in his strategic backing of progressive prosecutor campaigns) [perma.cc/4Q6D-RMT5].

13. See Radley Balko, *Election results: One of America’s Worst Prosecutors Lost Last Night, but One of Its Worst Attorneys General Won*, WASH. POST (Nov. 4, 2015, 1:18 PM), <https://www.washingtonpost.com/news/the-watch/wp/2015/11/04/election-results-one-of-americas-worst-prosecutors-lost-last-night-but-one-of-its-worst-attorneys-general-won/> (last visited Sept. 28, 2020) (celebrating the defeat of Allgood and listing examples of how his misconduct led to multiple convictions) [perma.cc/JT93-M885].

14. See Tabor, *supra* note 12 (“[Colom] promised to lock fewer people up, stop treating drug addiction as a crime, and expand rehab services.”).

15. See Alexandria Burris, *Stewart Wins Caddo DA Race*, SHREVEPORT TIMES (Nov. 22, 2015, 6:19 PM), <https://www.shreveporttimes.com/story/news/election/2015/11/21/caddo-da-election-runoff-results/75899240/> (last visited Sept. 28, 2020) (“Soros gave hundreds of thousands [of dollars] to the Louisiana Safety and Justice PAC in Bossier City which produced videos supporting Stewart.”) [perma.cc/7ZG7-9SFL].

16. See Campbell Robertson, *The Prosecutor Who Says Louisiana Should Kill More People*, N.Y. TIMES (July 7, 2015), <https://www.nytimes.com/2015/07/08/us/louisiana-prosecutor-becomes-blunt-spokesman-for-death-penalty.html> (last visited Sept. 28, 2020) (“Cox has readily accepted invitations from reporters to explain whether he really meant what he said to The Shreveport Times in March: that capital punishment is primarily and rightly about revenge and that the state needs to ‘kill more people.’ Yes, [Cox]

after benefitting from hundreds of thousands of dollars in Soros-affiliated PAC money.¹⁷

Under current campaign finance law, Soros was within his legal rights to contribute large amounts of money to help these candidates.¹⁸ But the appearance that Soros is “buying” District Attorney seats has created an unprecedented amount of backlash, detracting from progressive prosecutors’ ability to focus on enacting a bold policy agenda.¹⁹ On the other hand, Soros’s new foray into prosecutor races since 2015 has created a burgeoning progressive prosecutor movement.²⁰ Elected prosecutors serving major population centers now vow to not prosecute lists of nonviolent, low-level offenses on a categorical basis.²¹ Despite

really meant it.”) [perma.cc/R9VZ-8AHQ].

17. See Burris, *supra* note 15 (noting that Stewart denied receiving money from the super PAC, but that Soros’ total contributions to the super PAC were \$916,000).

18. See Jane Mayer, *The Money Man*, NEW YORKER (Oct. 18, 2004), <https://www.newyorker.com/magazine/2004/10/18/the-money-man> (last visited Sept. 29, 2020) (“Under the new campaign finance law, supporters could no longer give unlimited funds directly to the Democratic Party—but according to the consultants’ interpretation of the law they could funnel private contributions into allied ‘independent’ groups.”) [perma.cc/8AXN-92JB].

19. See Scott Bland, *George Soros’ Quiet Overhaul of the U.S. Justice System*, POLITICO (Aug. 30, 2016, 5:25 AM), <https://www.politico.com/story/2016/08/george-soros-criminal-justice-reform-227519> (last visited Sept. 29, 2020) (explaining that the outside influence of Soros’ contributions on elections has angered the opponents) [perma.cc/X938-R6QA].

20. See Maurice Chammah, *New Strategy for Justice Reform: Vote Out The DA*, THE MARSHALL PROJECT (Oct. 18, 2016), <https://www.themarshallproject.org/2016/10/18/new-strategy-for-justice-reform-vote-out-the-da> (last visited Sept. 29, 2020) (“[Kim] Ogg and [Jake] Lilly’s campaigns received support from political action committees linked to billionaire George Soros, who in the past two years has [supported justice reform] by financing prosecutor candidates who promise treatment for drug offenders and the reduction of racial disparities in sentencing.”) [perma.cc/Y6Y6-3U4L].

21. See, e.g., Allan Smith, *Progressive DAs are Shaking Up the Criminal Justice System. Pro-police Groups aren’t Happy*, NBC NEWS (Aug. 19, 2019, 4:47 AM), <https://www.nbcnews.com/politics/justice-department/these-reform-prosecutors-are-shaking-system-pro-police-groups-aren-n1033286> (last visited Sept. 29, 2020) (discussing different reformist DAs’ general push to lower prosecutions of nonviolent, non-serious crimes) [perma.cc/6WXV-WVEH]; see also Daniel A. Medina, *The Progressive Prosecutors Blazing a New Path for the US Justice System*, GUARDIAN (July 23, 2019), <https://www.theguardian.com/us-news/2019/jul/23/us-justice-system-progressive-prosecutors-mass-incarceration-death-penalty> (last visited Sept. 29, 2020) (noting the progressive prosecutors of major cities and their goals toward major reform and moving away from “tough-

limitations on their powers, these new head local prosecutors are witnessing results in terms of decreasing jail populations and prison admissions.²² Today, over 20 million Americans are kept safe by a top local prosecutor with at least a progressive reputation.²³

Buzz about the new “progressive prosecutor” is now ubiquitous, generating countless news stories,²⁴ national conferences,²⁵ career advice,²⁶ and top-tier conservative outrage.²⁷ While academics and scholars debate as to what the moniker

on-crime” prosecution) [perma.cc/89BR-5AK7].

22. See Michaels, *supra* note 6 (“[A] 10-year study by the Brennan Center for Justice in 2016 found that 27 of 28 states that decreased their prison populations over the previous decade, often by reforming sentencing practices, saw crime drop.”).

23. See *infra* Part 0 (providing details on the counties with progressive elected prosecutors. Over twenty million people live in just Cook County, Illinois; Harris County, Texas; Dallas County, Texas; Bexar County, Texas; Orange County, Florida; Philadelphia, Pennsylvania; Hillsborough County, Florida; Fairfax County, Virginia; and Contra Costa County, California); see also U.S. CENSUS BUREAU, COUNTY POPULATION TOTALS: 2010-2019.

24. See Chammah, *supra* note 20 (noting the tension in DA elections, but that the new competitiveness shows voters are beginning to care about the DA’s role in the criminal justice system); Smith, *supra* note 21 (explaining the DA’s ability to influence the criminal justice system from within the system); Medina, *supra* note 21 (discussing how progressive prosecutors are reshaping the criminal justice system).

25. See *Progressive Prosecution and the Carceral State*, AM. CONST. SOC’Y (Feb. 7, 2020), <https://www.acslaw.org/event/progressive-prosecution-and-the-carceral-state/> (last visited Sept. 29, 2020) (notifying members that U.C. Hastings Law School hosted a symposium on progressive prosecutors) [perma.cc/2EGV-BADC].

26. See *DA Careers Panel: “21st Century Prosecutors: What Does It Mean for Prosecutors to be Progressive?”*, U.C. BERKELEY L. (Nov. 14, 2019), <https://www.law.berkeley.edu/event/cdo-fair-just-prosecution-progressive-da-panel-info-session/> (last visited Sept. 29, 2020) (announcing an informational panel of elected DAs promoting fairer and more equitable justice systems and speaking to students at U.C. Berkeley Law) [perma.cc/PLJ5-QBG2].

27. See Zack Budryk, *Barr Predicts Progressive Prosecutors Will Lead to More Crime, More Victims*, THE HILL (Aug. 12, 2019), <https://thehill.com/homenews/administration/457120-barr-predicts-progressive-prosecutors-will-lead-to-more-crime-more> (last visited Sept. 29, 2020) (explaining that U.S. Attorney General Bill Barr said that progressive prosecutors are dangerous in a speech to the Fraternal Order of Police) [perma.cc/SZ4D-MYB9].

means,²⁸ whether it should exist,²⁹ and who qualifies for it,³⁰ superstars like R&B singer John Legend³¹ and NBA basketball legend Shaquille O’Neal³² are offering endorsements in these historically noncompetitive local elections. Former President Barack Obama implicitly endorsed the movement as a whole when he favorably cited two new progressive top prosecutors, Suffolk County (Boston) District Attorney Rachael Rollins and Philadelphia District Attorney Larry Krasner, in a speech.³³

28. See Benjamin Levin, *Imagining the Progressive Prosecutor*, 105 MINN. L. REV. (forthcoming 2020) (manuscript at 15) (“Whatever one’s view on the accuracy or utility of the progressive prosecutor brand/mantle/moniker, using ‘progressive prosecutor’ to describe any liberal Democrat who prosecutes strikes me as a big mistake.”).

29. See Jeffrey Bellin, *The Power of Prosecutors*, 93 N.Y.U. L. REV. 171, 173 (2019) (arguing that reformers focus on prosecutors to the detriment of more influential stakeholders, such as legislators, judges, and police); see also *The Paradox of “Progressive Prosecution”*, 132 HARV. L. REV. 748, 759 (2018) (“[T]weaking the criminal legal system by introducing nontraditional prosecution methods ignores the fundamental truth that this system was never intended to keep marginalized people safe. Counteracting the harms of an inherently punitive institution requires transformative reforms. Progressive prosecution is best thought of, instead, as a ‘reformist reform.’”).

30. See Josie Duffy Rice, *Cyrus Vance and the Myth of the Progressive Prosecutor*, N.Y. TIMES (Oct. 16, 2018), <https://www.nytimes.com/2017/10/16/opinion/cy-vance-progressive-prosecutor.html> (last visited Sept. 29, 2020) (pointing out Leon Cannizzaro, Cyrus Vance, Jr., and Jackie Lacey as DAs hiding behind a progressive prosecutor title when they are actually promoting harsh practices) [perma.cc/9DMA-WRQR]; see also Josie Duffy Rice, *A “Reformer” Who Reformed Nothing*, SLATE (Mar. 23, 2017), <https://slate.com/news-and-politics/2017/03/goodbye-to-philadelphia-da-seth-williams-a-reformer-who-reformed-nothing.html> (last visited Sept. 29, 2020) (criticizing the record of former Philadelphia District Attorney Seth Williams, who originally ran as a progressive prosecutor) [perma.cc/3LNE-26X4].

31. See Gene Maddaus, *John Legend Rallies Behind L.A. District Attorney Candidate George Gascón*, VARIETY (Jan. 23, 2020), <https://variety.com/2020/politics/news/john-legend-rallies-behind-l-a-district-attorney-candidate-george-gascon-1203477609/> (last visited Sept. 29, 2020) (noting John Legend’s continual support for criminal justice reform and endorsements of progressive prosecutors) [perma.cc/677C-Y5MV].

32. See Shaquille O’Neal (@Shaq), TWITTER (Mar. 2, 2016, 8:06 PM), <https://twitter.com/SHAQ/status/705197606067167232> (last visited Sept. 29, 2020) (writing “Vote Aramis Ayala for Florida State Attorney August 30, 2016[.] Donate at <http://AramisAyala.com> and yes she is #SUPERQUALIFIED for the job”) [perma.cc/ST2Z-X4AD].

33. See Jennifer Gonnerman, *Larry Krasner’s Campaign To End Mass Incarceration*, NEW YORKER (Oct. 22, 2018), <https://www.newyorker.com/magazine/2018/10/29/larry-krasners-campaign-to->

Indeed, over the last few years, dozens of ambitious public defenders and civil rights attorneys have run for District Attorney, with many of them enjoying once surprising victories.³⁴

Unfortunately, few progressives have publicly scrutinized core truths of how the modern progressive prosecutor movement functionally operates.³⁵ Many of the progressive prosecutor candidates who won elections were not underdogs at all, but instead made viable by a single billionaire's Super PAC money in liberal urban districts.³⁶ Meanwhile, unsuccessful progressive candidates for prosecutor seats usually receive no aid or a limited amount.³⁷

While the news media has run dozens of stories about Soros's apparent outsized influence on modern prosecutor elections,³⁸

end-mass-incarceration (last visited Sept. 29, 2020) (quoting President Obama, "If you are really concerned about how the criminal-justice system treats African-Americans, the best way to protest is to vote. Do what they just did in Philadelphia and Boston and elect state attorneys and district attorneys who are looking at issues in a new light") [perma.cc/UT9T-3WQK].

34. See Bridget Read, *Tiffany Cabán May Have Conceded, But She Still Changed Everything*, THE CUT (Aug. 7, 2019), <https://www.thecut.com/2019/08/tiffany-cabn-conceded-but-she-still-changed-everything.html> (last visited Sept. 29, 2020) (noting that, although the radically progressive Tiffany Cabán lost to the less progressive Melinda Katz, Cabán's nearly-successful election will prompt more "decarceral DAs" to attempt the direct leap from public defender to DA like her) [perma.cc/QHQ7-H9JX].

35. See *infra* Part II (analyzing the impact of Soros PAC funding through funding disparity data and CPV data in progressive prosecutor elections).

36. See *infra* Part II (determining that Soros's PAC funding, which usually constitute 50% or more of a candidate's campaign, has a major impact on their election); see also Robert J. Smith & Whitney Tymas, *Election Night Saw Victories in Local Criminal-Justice Reform—This Should Be the Beginning*, NATION (Nov. 12, 2016), <https://www.thenation.com/article/archive/election-night-saw-victories-in-local-criminal-justice-reform-this-should-be-the-beginning/> (last visited Sept. 29, 2020) (explaining where reformers won in 2016, and how the big wins occurred in major liberal cities like Tampa, Chicago, and Denver) [perma.cc/WZ2U-DE86].

37. See *infra* Part I.A.1 (illustrating that in eleven primary determinative elections, all four of the progressive candidates who received Soros PAC funding beat their more conservative incumbent, and only two out of six progressive candidates who did not receive Soros PAC funding successfully beat their more conservative incumbent).

38. See Bland, *supra* note 19 (noting George Soros's less standard strategy of campaign contributions in district attorney campaigns, rather than presidential or congressional campaigns); see also Jimmie E. Gates, *Billionaire Money Used in Dem Races*, CLARION LEDGER (Oct. 15, 2015), <https://www.clarionledger.com/story/news/2015/10/15/billionaire-money-used-da>

there has never been a thorough study on the phenomenon until now.³⁹ Part I of this Article will present the results of two interlinked studies on candidate campaign finance in every election with a progressive prosecutor candidate from 2015 through 2019. The first study examines campaign funding disparities between incumbent prosecutors and progressive challengers, while the second examines the differentials using the Cost Per Vote (CPV) metric. Part II will discuss the major findings of the two studies, such as how progressive challengers in Democratic primaries seem to only win when a sufficient amount of Soros PAC money is granted, and how higher CPV values translate to greater tensions between local prosecutor offices and their communities. Part III traces how the Soros-reliant funding model for progressive prosecutors has created an unprecedented crisis of prosecutorial legitimacy in many major urban counties. Part IV presents public funding for prosecutor selections as one solution that can balance the desirability of competitiveness in prosecutor elections with the need to curb the backlash against prosecutors working to end mass incarceration. V concludes.

aces/73994362/ (last visited Sept. 29, 2020) (focusing on Soros's financial contributions to the District Attorney campaigns of Scott Colom and Robert Schuler Smith) [perma.cc/JUC3-B8YF]; *see also* HENNEPIN CNTY. ELECTIONS DIV., CAMPAIGN FIN. REP. OF RECEIPTS & EXPENDITURES (2020), <http://www16.co.hennepin.mn.us/cfrs/getReport.pdf?seq=2&ids=499> (showing that in the 2018 Hennepin County, Minnesota prosecutor race, a county of over one million people where Soros did not invest in the prosecutor race, both the incumbent and challenger raised between \$100,000 and \$200,000) [perma.cc/23BG-EE69]; *see also* HENNEPIN CNTY. ELECTIONS DIV., CAMPAIGN FIN. REP. OF RECEIPTS & EXPENDITURES (2020), <http://www16.co.hennepin.mn.us/cfrs/getReport.pdf?seq=2&ids=993> (showing that in the 2018 Hennepin County, Minnesota prosecutor race, a county of over one million people where Soros did not invest in the prosecutor race, both the incumbent and challenger raised between \$100,000 and \$200,000) [perma.cc/Y3NB-7YM7]; *see also* STATE OF HAW. CAMPAIGN SPENDING COMM'N, CONTRIBUTIONS (MORE THAN \$100) BY SOURCE, *2016 Election CC and NCC Data* (2016), <https://ags.hawaii.gov/campaign/files/2017/01/2016HonoluluProsecutingAttorney.pdf> (showing that Honolulu Prosecutor Keith Kaneshiro raised just over \$100,000 in his competitive 2016 re-election bid against his opponent who raised \$0) [perma.cc/56PK-Z43Q].

39. *See infra* Part I.A (noting the existing literature regarding the strong incumbent advantage within prosecutorial elections and this study's analysis of the funding disparities caused by Soros's contributions and the proposed impact of those contributions).

II. Studying the Progressive Prosecutor Elections (2015–2019)

In the first step of the two studies below, the author collected campaign finance records for both the incumbent (when applicable) and progressive challenger. The elections chosen for the studies were selected based on whether a candidate ran on ending mass incarceration, or, in the alternative, ran as a moderate reformer against a tough-on-crime prosecutor with a notable record of prosecutorial misconduct or overreach.⁴⁰ The first study demonstrates the impact of Soros PAC involvement on races with an incumbent running for re-election.⁴¹ The second study switches focus to a Cost Per Vote (CPV) analysis.⁴² Soros PAC money is technically classified as an independent expenditure, but the investments only benefitted one candidate per race.⁴³ For purposes of illustration, Soros PAC expenditures have been added to campaign contributions sums.

The following figures divide the results based on three categories: Primary determinative, general determinative, and nonpartisan.⁴⁴ Primary determinative elections are ones where

40. See, e.g., Burris, *supra* note 15 (explaining the campaign of James Stewart in Shreveport, Louisiana running against tough-on-crime prosecutor Dhu Thompson); see also Tabor, *supra* note 12 (noting Scott Colom’s campaign as a progressive prosecutor against Forrest Allgood).

41. See *infra* Part I.A (surveying data regarding the funding and election outcomes from races involving progressive candidates running against conservative incumbents).

42. See *infra* Part I.B (surveying the impact of big-money expenditures on elections through CPV analysis, a sort of per capita value for campaign finance).

43. See Tabor, *supra* note 12 (“Campaign-finance law forbid direct contact between candidates and independent funders.”); see also *Super PAC*, BALLOTPEDIA, https://ballotpedia.org/Super_PAC (last visited Sept. 11, 2020) (stating that, although Super PACs may spend an unlimited amount on a single election, they cannot contribute money directly to campaigns, but can spend the money independently to campaign for or against another party) [perma.cc/S5GF-U3K4].

44. See *infra* Part I.A.1 (surveying the funding disparities in primary determinative elections with progressive prosecutor candidates); *infra* Part I.A.2 (surveying the funding disparities in general determinative elections with progressive prosecutor candidates); *infra* Part I.A.3 (surveying the funding disparities in nonpartisan elections with progressive prosecutor candidates); *infra* Part I.B.1 (calculating the cost per vote for primary-determinative elections with progressive prosecutor candidates); *infra* Part I.B.2 (calculating the cost per vote for general determinative elections with progressive prosecutor candidates); *infra* Part I.B.1 (calculating cost per vote for nonpartisan elections with

there is no opposing candidate in the general election, as well as where the partisan tilt is so extreme that the primary election is almost guaranteed to determine the ultimate result.⁴⁵ In contrast, general determinative elections fall under neither category.⁴⁶ Nonpartisan elections occur in states with officially nonpartisan District Attorney races.⁴⁷

All primary determinative races involved primaries where a progressive challenged an incumbent who was a more conservative Democrat.⁴⁸ In races where there were several candidates running as reformers, the one with the most progressive platform was chosen.⁴⁹ Platforms were analyzed for which candidate's promises would, if successfully enacted, limit the reach and potency of the

progressive prosecutor candidates).

45. See *infra* Part I.A.1 (showing that Soros PAC funding was strongly influential in primary determinative elections); *infra* Part I.B.1 (calculating the cost per vote for primary-determinative elections with progressive prosecutor candidates and determining that higher CPV values appear to be nearly determinative).

46. See *infra* Part I.A.2 (showing that, in general determinative elections, Soros PAC funding was less determinative of the election's outcome than in the primary determinative elections); *infra* Part I.B.2 (noting the lower CPV values than the primary determinative elections and the lower impact of CPV on the elections).

47. See *infra* Part I.A.3 (revealing the unanimous losses for progressive candidates, despite any Soros funding in nonpartisan DA races); *infra* Part I.B.3 (revealing the lowest average CPV value and the unanimous loss among Soros-backed progressive candidates, except one incumbent candidate); see also U.N.C. SCH. OF L., PROSECUTORS & POLICY PROJECT: NATIONAL STUDY OF PROSECUTOR ELECTIONS 22, 26, 53, 152, 183, 227, 251 (2020), <https://law.unc.edu/wp-content/uploads/2020/01/National-Study-Prosecutor-Elections-2020.pdf> (listing nonpartisan DA elections in multiple counties in Arkansas, California, Minnesota, North Dakota, Oregon, and counties in Hawaii and Montana having the choice of nonpartisan elections) [perma.cc/R5GL-CSU9].

48. See *infra* Part I.A.1 (noting Kim Foxx's 2016 victory over incumbent Anita Alvarez, an example of a progressive who challenged a more conservative Democrat incumbent); see also Matt Daniels, *The Kim Foxx Effect: How Prosecutions Have Changed in Cook County*, MARSHALL PROJECT (Sept. 24, 2019, 6:00 AM) <https://www.themarshallproject.org/2019/10/24/the-kim-foxx-effect-how-prosecutions-have-changed-in-cook-county> (last visited Sept. 29, 2020) ("In 2016, Kim Foxx unseated an incumbent in Cook County, Illinois, vowing to transform the nation's second-largest local prosecutor's office and to bring more accountability to shootings by police while also reducing unnecessary prosecutions for low-level, non-violent crimes.") [perma.cc/77F6-BZS7].

49. See *infra* Part I.B.1 (including the CPV for Tiffany Cabán's Soros backed campaign); see also Read, *supra* note 34 (recognizing that, although Katz is considered a progressive prosecutor, Cabán was the more progressive candidate).

criminal justice system by reducing the amount of charges or harshness of punishments requested or both.⁵⁰ For example, Rachael Rollins was chosen in Suffolk County (Boston), Massachusetts over other candidates advocating an end to mass incarceration, since Rollins also promised to decline to prosecute fifteen specific offenses, something the others were unwilling to do.⁵¹

Some elections were close calls for or against inclusion. For instance, many criminal justice reformers consider Brooklyn DA Eric Gonzalez a “progressive prosecutor,” and he has bolstered such claims after being elected to his first full term.⁵² But unlike Gonzalez, 2017 candidate Marc Fliedner promised the decriminalization of prostitution, as well other low-level offenses.⁵³ In contrast, Gonzalez failed to live up to promises to not prosecute minor marijuana offenses.⁵⁴ As another example, Boulder County,

50. See *id.* (noting that, although Katz was running as a progressive prosecutor promising to enact reforms, Cabán’s campaign embraced decriminalization of sex work and implementing harm-reduction sites for drug users); see also Daniels, *supra* note 48 (explaining part of Kim Foxx’s campaign to effectively eliminate thousands of felony charges by prosecuting shoplifting charges under \$1,000 as misdemeanors and her campaign to end the frivolous prosecution of non-violent drug offenses).

51. See Daniel Nichanian, *Rachael Rollins Announces New DA Policies in Boston*, APPEAL (Mar. 28, 2019), <https://theappeal.org/politicalreport/rachael-rollins-announces-new-prosecutorial-policies-in-boston/> (last visited Sept. 29, 2020) (“Rollins made a much-publicized campaign commitment to adopt a default policy of declining to prosecute 15 offenses, such as drug possession, trespassing, or driving with a suspended license.”) [perma.cc/MTD7-TW8C].

52. See *Justice 2020: An Action Plan for Brooklyn*, BROOKLYN DIST. ATT’Y’S OFF. (2019), <http://www.brooklynda.org/wp-content/uploads/2019/03/Justice2020-Report.pdf> (outlining the vision and goals of the Brooklyn District Attorney’s Office) [perma.cc/3A6B-77GK].

53. See *Candidates Guide for Brooklyn District Attorney*, FAITH IN N.Y.C 4 (2017), https://faithinnewyork.org/uploads/2017/08/FiNY_CandidateGuide_BKDA_v2.pdf (stating that his campaign has listed specific offenses that are inappropriate for criminal processing, “sex-work” related offenses being one of them) [perma.cc/5GCG-SQS6].

54. See Beth Fertig & Jenny Ye, *Brooklyn DA’s Pledge to Reduce Marijuana Prosecutions Makes Little Difference*, WNYC (Sep. 7, 2017), <https://www.wnyc.org/story/despite-das-change-marijuana-policy-brooklyn-defendants-still-come-court/> (last visited Sept. 29, 2020) (“Using data from the state’s Division of Criminal Justice Services, WNYC found the Brooklyn DA was only slightly less likely to prosecute people for marijuana possession”) [perma.cc/K5UG-5SRB].

Colorado, DA Michael Dougherty sometimes joins reformist calls to action from progressive prosecutors,⁵⁵ but his predecessor Stan Garnett was equally progressive.⁵⁶ Hence, Dougherty was excluded. Some Republican elected prosecutors are arguably reformers, such as State Attorney Melissa Nelson in Duval County (Jacksonville), Florida,⁵⁷ Utah County (Provo), Utah Attorney David Leavitt,⁵⁸ and San Joaquin County District Attorney Toni Verber Salazar.⁵⁹ However, the vast majority of progressive

55. See Madeline St. Amour, *Michael Dougherty Secures Place as Boulder County DA with Democratic Primary Win*, BOULDER DAILY CAMERA (June 26, 2018), <https://www.dailycamera.com/2018/06/26/michael-dougherty-secures-place-as-boulder-county-da-with-democratic-primary-win/> (last visited Aug. 25, 2020) (stating that almost immediately, Michael Dougherty was bringing progressive reforms to the office) [perma.cc/4VQP-QT45].

56. See, e.g., Joel Warner, *Does Boulder DA Stan Garnett Want To Legalize Pot?*, WESTWORD (Sept. 23, 2009), <https://www.westword.com/news/does-boulder-da-stan-garnett-want-to-legalize-pot-5828413> (last visited Aug. 25, 2020) (stating that Garnett was committed to progressive causes) [perma.cc/6C6P-G35L].

57. See Scott Shackford, *This Florida Prosecutor Campaigned On Reform and Fairness. Now She's Ratcheting Up The Drug War*, REASON (May 24, 2017), <https://reason.com/2017/05/24/this-florida-prosecutor-campaigned-on-re/> (last visited Aug. 26, 2020) (highlighting that, despite a mixed record, Nelson did defeat Angela Corey, who became known as America's "cruellest prosecutor" due to her at-any-cost approach to the death penalty and charging kids as young as 12 years old as adults) [perma.cc/AN62-HLN4]; see also Jessica Pishko, *Is Angela Corey the Cruellest Prosecutor in America?*, THE NATION (Aug. 16, 2016), <https://www.thenation.com/article/archive/is-angela-corey-the-cruellest-prosecutor-in-america/> (last visited Aug. 26, 2020) (demonstrating high-profile cases in which Corey over-charged defendants resulting in unfair mandatory minimums or, as in the case of Trayvon Martin, no conviction) [perma.cc/A5NW-KYPR].

58. See Connor Richards, *'A System That Dramatically Needs Reform': In 2nd Year, Utah County Attorney Wants To Rethink Criminal Justice*, DAILY HERALD (Jan. 11, 2020), https://www.heraldextra.com/news/local/govt-and-politics/a-system-that-dramatically-needs-reform-in-2nd-year-utah-county-attorney-wants-to-rethink/article_5e9b42dc-540f-5dd6-a7a7-ee363cdd9382.html (last visited Aug. 26, 2020) (stating that, after entering office in 2019, Leavitt's main goal was to reform the criminal justice system in Utah County by focusing less on drug offenses and more on white-collar crimes) [perma.cc/4TRN-7AVE].

59. See Evan Sernoffsky, *Central California DA Quits State Association Over Its Opposition To Criminal Justice Reforms*, S.F. CHRON. (Jan. 16, 2020, 7:58 PM), <https://www.sfchronicle.com/crime/article/Central-California-DA-quits-state-association-14981879.php> (stating that Toni Verber Salazar quit the state association due to its opposition to reforming the criminal justice system) [perma.cc/J9H6-XA2G].

prosecutors are registered Democrats.⁶⁰ The small number of Republican reformers have been excluded from this study.⁶¹

A. Study One: Fundraising Disparities Between Progressive Challengers and Incumbents in Prosecutor Elections

Scholars have acknowledged the power of incumbency for top elected prosecutors, which seems even more powerful than incumbency advantage for other elected officials.⁶² This study examines the funding disparities that resulted from Soros PAC involvement in prosecutor elections from 2015 to 2019.⁶³

For this study, progressive incumbents who entered office without Soros PAC assistance but later received Soros PAC support in a re-election bid were excluded from the first study, but included in the second study. Elections with an open seat were excluded in the first study, but introduced in the second study. Interim DAs who ran on tough-on-crime platforms were treated as incumbents, since scholars noting prosecutorial incumbency advantage in the past did not consider incumbency advantage for progressive elected prosecutors.⁶⁴ Where two progressive prosecutor candidates ran at different stages of the election cycle (primary versus general), the latter candidate in time was selected for this study.⁶⁵

60. See FAITH IN N.Y.C., *supra* note 53, at 1 (highlighting all of the candidates are running on the Democratic platform).

61. See *infra* Part I.0 (highlighting that with regards to Study One, data from Republican reformers has been excluded from the analysis).

62. See U.N.C. SCH. OF L., *supra* note 47, at 6 (graphing the data that in smaller communities, incumbents are only challenged 22% of the time).

63. See *infra* Part I.0 (stating what the study is going to examine in the article).

64. See U.N.C. SCH. OF L., *supra* note 47, at 9, 22, 26, 53, 152, 183, 227, 251 (noting that prosecutorial incumbent advantage did not consider incumbency advantage for progressive prosecutors).

65. In Allegheny County (Pittsburgh), Pennsylvania, Turahn Jenkins ran against incumbent DA Steve Zappala in the Democratic primary, but lost the primary after his anti-LGBTQ comments were revealed. Julian Routh, *LGBTQ Community Criticizes Allegheny County DA Candidate Turahn Jenkins*, PITTSBURGH POST-GAZETTE (Jul. 9, 2018), <https://www.post-gazette.com/news/crime-courts/2018/07/09/LGBTQ-community-criticizes-Allegheny-County-DA-candidate-Turahn-Jenkins->

In order to compare candidates from the same starting point, the figures below are based on contributions all candidates received from the beginning of the calendar year to the date of the election.⁶⁶ In some cases, but not all, incumbents were able to carry over significant amounts of money from prior election cycles.⁶⁷ Loans were likewise not included in these fundraising figures.⁶⁸ In a small number of elections, campaign finance documents are no longer available online, so the study relied on news stories from local newspapers of record.⁶⁹

pittsburgh/stories/201807090083 (last visited Sept. 30, 2020) [perma.cc/PRR6-HFA5]. Then, Lisa Middleman ran as a nominal independent on a progressive platform against Zappala, who ran on a combined Democratic-Republican ticket. Andrew Seidman, *Insurgent Candidates Across Pennsylvania Are Rattling Establishment Democrats*, PHILA. INQUIRER (Nov. 3, 2019), <https://www.inquirer.com/news/pennsylvania-elections-2019-progressive-candidates-lisa-middleman-stephen-zappala-20191103.html> (last visited Sept. 30, 2020) [perma.cc/6FEN-487W].

66. See *infra* Part I.0 (explaining the choice of candidates included in the study).

67. See *Search Contributions and Expenditures*, OFF. OF CAMPAIGN AND POL. FIN., <https://www.ocpf.us/Reports/SearchItems> (last visited Aug. 28, 2020) (illustrating in the 2018 primary election for Middlesex County, Massachusetts, District Attorney, incumbent DA Marian Ryan reported only \$160,319.53) [perma.cc/U825-N6T7]; but see, Michael Jonas, *In Middlesex DA's race, a progressive face-off*, COMMONWEALTH (Aug. 3, 2018), <https://commonwealthmagazine.org/criminal-justice/in-middlesex-das-race-a-progressive-face-off/> (last visited Sept. 30, 2020) (stating that on the other hand, it was reported that Ryan had \$412,000 on hand, seemingly the result of this phenomenon) [perma.cc/NDT8-D5XJ].

68. See *infra* Part I.A.0 (showing factors in primary determinative elections).

69. See Jonas, *supra* note 67 (detailing how much DA Marian Ryan fundraised); see also Lovett, *infra* note 71 (detailing how much Marc Flidner's campaign garnered).

1. Primary Determinative Elections

Year	County	Population	Incumbent	Incumbent Contributions	Challenger	Challenger Contributions	Soros PAC Funding	Soros PAC %	Challenger Outcome
2016	Cook County, IL	5,231,000	Anita Alvarez	\$533,862.44 ⁷⁰	Kim Foxx	\$1,041,000.00	\$333,000	32%	Win
2017	Brooklyn, NY	2,600,000	Eric Gonzalez	\$2,139,545.17	Marc Fliedner	\$130,788.00 ⁷¹	\$0	0%	Lose
2018	Clark County, NV	2,231,647	Steve Wolfson	\$304,791.49	Robert Langford	\$63,465.23	\$0	0%	Lose
2018	Bexar County, TX	1,990,000	Nico LaHood	\$416,296.00	Joe Gonzalez	\$1,361,376.51	\$1,000,000	73.5%	Win
2016	Orange-Osceola County, FL	1,661,990	Jeff Ashton	\$113,848.00	Aramis Ayala	\$1,450,863.50	\$1,400,000	96.5%	Win
2018	Middlesex County, MA	1,614,714	Marian Ryan	\$160,319.53	Donna Patalano	\$135,621.00	\$0	0%	Lose
2019	Allegheny County, PA	1,220,656	Steve Zappala	\$225,000.00	Lisa Middleman	\$288,000.00	\$0	0%	Lose
2019	Fairfax County, VA	1,150,795	Ray Morrogh	\$238,532.05	Steve Descano	\$623,356.23	\$459,212.37	73.7%	Win
2018	St. Louis County, MO	997,000	Bob McCulloch	\$754,610.57	Wesley Bell	\$124,319.18	\$0	0%	Win

70. See *Friends of Anita Alvarez D-2 Quarterly Report*, ILL. ST. B.D OF ELECTIONS, <https://www.elections.il.gov/CampaignDisclosure/D2Quarterly.aspx?id=ysV78arqnYq8VhCDmX%2fKmg%3d%3d> (last visited Aug. 28, 2020) (stating that Anita Alvarez had nearly \$700,000 on hand from earlier campaigns, so she technically had more means for her run than Kim Foxx, but not extravagantly so) [perma.cc/5RLT-9YMN].

71. See Kenneth Lovett, *Manhattan DA Cy Vance's Challenger Marc Fliedner Also Has History Accepting Donations from Lawyers*, DAILY NEWS, (Oct. 25, 2017, 4:01 AM), <https://www.nydailynews.com/news/politics/cy-vance-rival-marc-fliedner-history-accepting-funds-article-1.3586158> (demonstrating Marc Fliedner's fundraising total for the cycle as it was not present on the New York State Board of Elections) [perma.cc/72BC-NRP4].

2018	Durham County, NC	316,979	Roger Echols	\$23,497.57	Satana Deberry	\$73,077.60	\$0	0%	Win
2019	Arlington-Falls Church, VA	249,843	Theo Stamos	\$170,763.19	Parisa Tafti-Dehghani	\$814,182.61	\$618,091.38	75.9%	Win

Figure 1.1: Primary Determinative Elections with Progressive Prosecutor Candidates.⁷²

Here, the raw monetary figures show the large degree to which progressive beneficiaries from 2015 to 2019 often financially eclipsed their more conservative incumbents. When calculated as part of the progressive candidates’ campaign coffers, Soros PAC expenditures consistently made up over 50% of the candidate funding.⁷³ In several cases, that figure sailed to over 90%.⁷⁴

The 2016 Orange-Osceola County State Attorney election between progressive challenger Aramis Ayala and incumbent Jeff Ashton is illustrative.⁷⁵ If Ayala never benefited from the Soros PAC money, then she would have raised just over \$50,000.⁷⁶ In contrast, Ashton raised \$113,848, over twice as much.⁷⁷ But after benefitting from a Soros-affiliated PAC’s independent expenditure, State Attorney Ashton effectively raised only 10% of what Ayala did.⁷⁸ Ayala won this primary election against Ashton with 57% of

72. Sources for all six figures in this article include official campaign finance disclosures from the candidates, electoral results in each election from respective Board of Elections websites, newspaper articles in the LexisNexis and Westlaw databases and on Google News, and U.S. Census data. Districts are listed by population in descending order. In cases where the campaign finance reports are now unavailable online, the author used local newspapers of record to discern the figures. *Supra* Figure 1.1; *infra* Figures 1.2–2.3.

73. *See supra* Figure 1.1 (showing how much Soros funded PACs contributed to particular candidates).

74. *See id.* (showing the cases where Soros funded PACs contributed over 90% of the total funds available to the candidate).

75. *See id.* (pointing to the figures of candidates Aramis Ayala and Jeff Ashton).

76. *See id.* (asserting that the contributions of Soros-funded PACs significantly helped Aramis Ayala).

77. *See id.* (highlighting the amount that Jeff Ashton raised).

78. *See id.* (comparing the figures raised by Jeff Ashton and Aramis Ayala).

the vote, thus becoming the Orlando, Florida metro area's top prosecutor.⁷⁹

On the other hand, the sheer amount of money a handful of major urban county incumbents raised is staggering.⁸⁰ Brooklyn DA Eric Gonzalez raised a tremendous \$2,139,545.17 to challenger Marc Fliedner's \$130,788.00.⁸¹ Gonzalez also enjoyed incumbency advantage, having been appointed as the successor to the well-liked and respected former DA Ken Thompson.⁸²

2. General Determinative Elections

Year	Jurisdiction	Population	Incumbent	Incumbent Contributions	Challenger	Challenger Contributions	Soros PAC Funding	Soros PAC%	Challenger Outcome
2016	Harris County, TX	4,617,000	Devon Anderson	\$430,905.00	Kim Ogg	\$2,577,696.27	\$1,400,000	54.3%	Win
2016	Maricopa County, AZ	4,223,000	Bill Montgomery	\$363,502.30	Diego Rodriguez	\$1,426,596.55	\$1,400,000	98.1%	Lose
2018	Dallas County, TX	2,637,772	Faith Johnson	\$587,508.54	John Creuzot	\$310,970.94	\$236,000	N/A	Win

79. See Deirdra Funcheon, *With Challengers in The Wings, Florida Prosecutor Who Stood Against Death Penalty Won't Seek Reelection*, POLITICO (May 28, 2019), <https://www.politico.com/states/florida/story/2019/05/28/with-challengers-in-the-wings-florida-prosecutor-who-stood-against-death-penalty-wont-see-reelection-1030026> (last visited Aug. 29, 2020) (stating that even after reports discovered Ayala's husband served seven years in prison, she was able to place a positive spin on that fact and won 57% of the vote in the Democratic primary) [perma.cc/B427-RSUH].

80. See *supra* Figure 1.1 (highlighting how much money was raised by major urban county incumbents).

81. See *id.* (comparing the amount raised by Eric Gonzalez and Marc Fliedner, respectively).

82. See Alan Feuer, *Ken Thompson, Brooklyn District Attorney, Dies After Disclosing Cancer*, N.Y. TIMES (Oct. 9, 2016), <https://www.nytimes.com/2016/10/10/nyregion/ken-thompson-brooklyns-first-black-district-attorney-dies-at-50.html> (last visited Sept. 30, 2020) (stating that, after Mr. Thompson's death, Governor Cuomo would now have to name a replacement as Mr. Thompson would have been facing re-election) [perma.cc/JS4R-L69N].

2018	Tarrant County, TX	2,080,000	Sharen Wilson	\$93,230.00	Albert Roberts	N/A	\$0	0%	Lose
2016	Hillsborough County, FL	1,382,000	Mark Ober	\$173,822.12	Andrew Warren	\$145,692.65	\$0	0%	Win
2016	Franklin County, OH	1,270,000	Ron O'Brien	\$468,590.00	Zach Klein	\$164,270.00	\$0	0%	Lose
2019	Monroe County, NY	742,436	Sandra Doorley	\$174,936.33	Shani Curry Mitchell	\$974,936.33	\$800,000	82.1%	Lose
2018	Tulsa County, OK	648,360	Steve Kunzweiler	\$69,954.00	Jenny Proehl-Day	\$20,178.00	\$0	0%	Lose
2016	First Judicial District, CO	576,839	Pete Weir	\$77,000	Jack Lilly	\$1,157,133.56	\$1,100,000	95.1%	Lose
2019	Delaware County, PA	563,487	Katayoun Copeland	N/A	Jack Stollsteimer	\$211,008.83	\$100,000	47.4%	Win
2016	Nueces County, TX	361,529	Mark Skurka	\$19,082.00	Mark Gonzalez	\$7,711.00	\$0	0%	Win
2019	Dutchess County, NY	295,568	William Grady	\$55,445.00	Richard Berube	\$67,112.00	\$0	0%	Lose
2019	Cumberland County, PA	251,423	Skip Ebert	\$0.00 ⁸³	Sean Quinlan	\$10,227.14	\$0	0%	Lose
2018	6th Pros. Dist., ME	149,356	Jonathan Liberman	\$8,242.48	Natasha Irving	\$65,678.00	\$0	0%	Win

83. See *Ebert, Skip-2019 30-Day Post Primary Report*, CUMBERLAND COUNTY, PA., https://records.ccpa.net/weblink_public/9/doc/1209766/Page1.aspx (last visited Aug. 29, 2020) (confirming all information is according to records available at the Cumberland County, Pennsylvania, Bureau of Elections) [perma.cc/F46E-9NSU].

2015	16th Judicial Circuit, MS ⁸⁴	140,601	Forrest Allgood	\$49,106.00	Scott Colom	\$545,716.00	\$400,000	73.3%	Win
2018	Payne/County, OK	129,331	Laura A. Thomas	\$51,873.00	Cory Williams	\$42,492.12	\$0	0%	Lose
2019	Albemarle County, VA	107,788	Robert Tracci	\$144,911.00	Jim Hingeley	\$266,000.19	\$0	0%	Win

Figure 1.2: General Determinative Elections with Progressive Prosecutor Candidates.

For general determinative elections between 2015 and 2019 with Soros-affiliated PAC involvement, a similar pattern emerges, though incumbents in these races generally raised more money than in primary determinative elections.⁸⁵ In some elections without Soros involvement, like the Franklin County (Columbus), Ohio Prosecutor race in 2016, the incumbent received more than three times the total campaign contributions of the progressive challenger. In other elections in this category, like the 2016 Hillsborough County (Tampa), Florida State Attorney race between progressive candidate Andrew Warren and conservative, tough-on-crime incumbent Mark Ober,⁸⁶ there was only a slight funding disparity tilting in favor of the incumbent.⁸⁷ Unlike the progressive candidate in Columbus, Ohio, Warren was able to defeat Ober, despite not receiving support from a Soros-affiliated

84. See Jimmie E. Gates, *Scott Colom Ousts Longtime DA Forrest Allgood*, CLARION LEDGER (Nov. 6, 2015, 3:08 PM), <https://www.clarionledger.com/story/news/2015/11/06/colom-ousted-da-forrest-allgood/75220072/> (last visited Aug. 29, 2020) (confirming Scott Colom beat incumbent opponent Forrest Allgood to claim his prosecutorial seat) [perma.cc/YZV5-7KBU].

85. Compare *supra* Figure 1.2 (listing the total funding incumbents individually raised), with *supra* Figure 1.1 (detailing funding incumbents raised in primary-determinative elections).

86. See Maurice Chammah, *New Strategy for Justice Reform: Vote Out the DA*, THE MARSHALL PROJECT (Oct. 18, 2016, 10:00 PM), <https://www.themarshallproject.org/2016/10/18/new-strategy-for-justice-reform-vote-out-the-da> (last visited Aug. 29, 2020) (stating attorney Mark Ober faced competition for his DA seat for the first time since 2004) [perma.cc/R8QZ-423C].

87. See *supra* Figure 1.2 (detailing the campaign contributions between incumbent Mark Ober and challenger Andrew Warren.).

PAC. Overall, when comparing these elections to those effectively decided in Democratic primaries, Soros-affiliated PAC support money appears to be less determinative of outcome.⁸⁸

3. Nonpartisan Elections

Year	Jurisdiction	Population	Incumbent	Incumbent Contributions	Challenger	Challenger Contributions	Soros PAC Funding	Soros PAC%	Challenger Outcome
2018	San Diego County, CA	3,302,883	Summer Stephan	\$485,488.00	Genevieve Jones-Wright	\$1,705,799.00	\$1,500,000	87.9%	Lose
2018	Alameda County, CA	1,666,753	Nancy O'Malley	\$50,500.00	Pamela Price	\$841,611.18	\$550,000	65.4%	Lose
2018	Sacramento County, CA	1,540,975	Anne Marie Schubert	\$666,136.49	Noah Phillips	\$632,022.32	\$400,000	63.3%	Lose
2018	Hennepin County, MN	1,260,000	Michael O. Freeman	\$144,660.50	Mark Haase	\$108,456.45	\$0	0%	Lose
2018	Yolo County, CA	220,408	Jeff Reisig	\$98,631.96	Dean Johannson	\$59,428.30	\$0	0%	Lose

Figure 1.3: Nonpartisan Elections with Progressive Prosecutor Candidates.

Four California races and one Minnesota race, all nonpartisan, resulted in unanimous failure by progressive candidates.⁸⁹ In the elections with Soros-affiliated PAC involvement, the expenditures effectively constituted over 50% of the funding for three of the progressive candidates.⁹⁰ The Soros PAC expenditure only leveled the financial playing field in the Sacramento race.⁹¹ In the San Diego County and Alameda County

88. See *id.* (noting that, out of the six campaigns that received Soros-affiliated PAC support, only 3 were won).

89. See *supra* Figure 1.3 (demonstrating the loss of every challenger for the prosecutor seat).

90. See *id.* (demonstrating the over-50% contributions by the Soros PAC).

91. See *id.* (demonstrating a 63% contribution from the Soros PAC).

racers, the Soros PAC expenditures created large financial advantages over the incumbents.⁹²

B. Study Two: Cost-Per-Vote Analysis of Soros-Affiliated PAC Expenditures in Prosecutor Elections

Cost Per Vote (CPV) is used extensively in political science and economics research to approximate the impact of big-money expenditures on elections.⁹³ As Judge Ralph K. Winter, Jr. on the U.S. Court of Appeals for the Second Circuit discussed in his dissenting opinion in *Landell v. Sorrell*,⁹⁴ CPV was also one of the data points in the agreed upon findings of fact before the Supreme Court in its seminal campaign finance decision, *Buckley v. Valeo*.⁹⁵

In *Buckley*, the Supreme Court struck down independent expenditure ceilings as violating the First Amendment, concluding that “virtually every means” of effective communication requires money.⁹⁶ In doing so, the Court applied strict scrutiny, meaning the caps had to be “narrowly tailored to serve a compelling state interest.”⁹⁷ However, the Court upheld direct contribution ceilings, ruling that their effect was to “require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political

92. See *id.* (demonstrating the over-50% contribution from the Soros PAC).

93. See John Hudak & Grace Wallack, *How Much Did Your Vote Cost? Spending Per Voter in the 2014 Senate Races*, BROOKINGS INST. (Nov. 7, 2014), <https://www.brookings.edu/blog/fixgov/2014/11/07/how-much-did-your-vote-cost-spending-per-voter-in-the-2014-senate-races/> (last visited Aug. 29, 2020) (“[A] more useful metric for understanding the magnitude of campaign activity is spending per vote”) [perma.cc/3VMG-AM37].

94. See *Landell v. Sorrell*, 382 F.3d 91, 149 (2d Cir. 2004) (Winter, J., dissenting) (dissenting from the majority holding with regards to Act 64’s limits on expenditures by candidates).

95. See *Buckley v. Valeo*, 424 U.S. 1, 23 (1976) (holding that the government cannot limit campaign expenditures by candidates for electoral office).

96. See *id.* at 19 (analyzing that, by restricting the amount of money a person or group can spend on political communication, it reduces the number of issues that can be discussed and thus, the concept of placing a ceiling on expenditure was struck down).

97. Eugene Volokh, *Freedom of Speech, Permissible Tailoring, and Transcending Strict Scrutiny*, 144 U. PA. L. REV. 2417, 2418 (1997).

expression.”⁹⁸ The *Buckley* line of cases later led to the much criticized campaign finance decision in *Citizens United v. Federal Elections Commission*.⁹⁹

CPV values are calculated in a straightforward fashion: by taking the dollar amount of the donation amount, then dividing it by the number of votes the beneficiary received.¹⁰⁰ For example, in the 2019 Queens DA race, insurgent progressive Tiffany Cabán received \$70,000 from a Soros-affiliated Super PAC.¹⁰¹ Meanwhile, the New York City Board of Elections documents filed for this race show that Cabán received 34,860 votes.¹⁰² As such, the Soros-affiliated PAC can be said to have spent approximately \$2.01 for every vote entered for Cabán.¹⁰³

CPV is an important measure in the context of prosecutor elections because it indirectly takes into account a district’s population size.¹⁰⁴ That means it is akin to a per capita value for

98. *Buckley*, 424 U.S. at 22.

99. See *Citizens United v. F.E.C.*, 558 U.S. 310, 311 (2010) (holding in part that the government may not, under the First Amendment, suppress political speech on the basis of a speaker’s corporate identity); see also Jessica A. Levinson, *The Original Sin of Campaign Finance Law: Why Buckley v. Valeo is Wrong*, 47 U. RICH. L. REV. 881, 882–83 (2013) (arguing the Supreme Court erred when it concluded spending money was essentially the equivalent of speaking and therefore entitled to the same level of First Amendment protection).

100. See Brian Palmer, *How Much Does it Cost to Buy a Vote?*, SLATE (Oct. 27, 2010, 5:49 PM), <https://slate.com/news-and-politics/2010/10/how-much-does-it-cost-to-buy-a-vote.html> (last visited Aug. 30, 2020) (“In the contested 2008 House races, the average winner spent 1.3 million and received about 185,000 votes, for a total cost of about \$7 per vote.”) [perma.cc/6Y22-R3MG].

101. See David Brand, *Mega-donors Contribute More than \$500k in Last Days of Queens DA Primary Race*, DAILY EAGLE (June 23, 2019), <https://queenseagle.com/all/katz-caban-lasak-queens-da-cash-campaign-finance> (last visited Aug. 29, 2020) (stating that the Working Families Party, which worked on behalf of Tiffany Cabán, received \$70,000 from the Justice and Public Safety PAC) [perma.cc/8QTN-NAFS].

102. See Nolan Hicks, *Melinda Katz Declared Recount Winner as Queens DA Fight Heads to Court*, N.Y. POST (July 29, 2019, 3:11 PM), <https://nypost.com/2019/07/29/melinda-katz-declared-recount-winner-as-queens-da-fight-heads-to-court/> (last visited Aug. 29, 2020) (confirming Tiffany Cabán received 34,860 votes) [perma.cc/A2AM-FZJK].

103. See Palmer, *supra* note 100 (laying out how much a PAC affiliated with George Soros spent per vote during the particular election where Cabán was running).

104. See Matt Lackey & Matt Singer, *Why the Cost-Per-Vote Formula Needs to Change*, CAMPAIGNS & ELECTIONS (Dec. 17, 2018), <https://www.campaignsandelections.com/campaign-insider/why-the-cost-per->

campaign finance. Without CPV, one might see that Diego Rodriguez, the progressive Democratic challenger to then-Maricopa County (Arizona) Attorney Bill Montgomery, enjoyed the boon of \$1,400,000 from a Soros-affiliated PAC, then wonder how he could have possibly lost.¹⁰⁵ But it is more understandable when considering that this amount translated to just over two dollars per vote.¹⁰⁶

1. Primary Determinative Elections

<i>Year</i>	<i>County</i>	<i>Population</i>	<i>Candidate</i>	<i>Orientation</i>	<i>Soros PAC Investment</i>	<i>Soros CPV</i>	<i>Outcome</i>
2016	Cook County, IL	5,231,000	Kim Foxx	Challenger	Yes	\$0.54	Win
2017	Brooklyn, NY	2,600,000	Marc Fliedner	Challenger	No	\$0.00	Lose
2019	Queens, NY	2,278,906	Tiffany Cabán	Open Seat	Yes	\$2.01	Lose
2018	Clark County, NV	2,231,647	Robert Langford	Challenger	No	\$0.00	Lose
2018	Bexar County, TX	1,990,000	Joe Gonzales	Challenger	Yes	\$3.18	Win

vote-formula-needs-to-change (last visited Sept. 20, 2020) (“When evaluating the true cost of an election, it’s important to recognize where there’s more bang for the buck.”) [perma.cc/LG25-XE37].

105. See Jacques Billeaud, *George Soros Sinks \$9.6 Million in Law Enforcement Races*, DAILY HERALD (Nov. 7, 2016, 4:47 PM), <https://www.dailyherald.com/article/20161107/news/311079816> (last visited Sept. 20, 2020) (“Another Soros-funded group has been running ads attacking Maricopa County Attorney Bill Montgomery, whose campaign against little-known Democrat Diego Rodriguez was regarded as sleeper race until the billionaire put \$1.3 million into the race against the incumbent.”) [perma.cc/9USQ-WQPX].

106. See Palmer, *supra* note 100 (stating that successful candidates spend between \$5-\$75 per vote).

2016	Orange-Osceola County, FL	1,661,990	Aramis Ayala	Challenger	Yes	\$38.59	Win
2018	Middlesex County, MA	1,614,714	Donna Patalano	Challenger	No	\$0.00	Lose
2017	Philadelphia, PA	1,581,000	Larry Krasner	Open Seat	Yes	\$33.00	Win
2016	Hillsborough County, FL	1,382,000	Andrew Warren	Challenger	No	\$0.00	Win
2019	Allegheny County, PA	1,220,656	Lisa Middleman	Challenger	No	\$0.00	Lose
2019	Fairfax County, VA	1,150,795	Steve Descano	Challenger	Yes	\$11.11	Win
2018	St. Louis County, MO	997,000	Wesley Bell	Challenger	No	\$0.00	Win
2018	Suffolk County, MA	758,556	Rachael Rollins	Open Seat	No	\$0.00	Win
2016	Denver, CO	680,000	Beth McCann	Open Seat	No	\$0.00	Win
2016	Bernalillo County, NM	675,588	Raúl Torrez	Open Seat	Yes	\$2.46	Win
2018	Durham County, NC	316,979	Satana Deberry	Challenger	No	\$0.00	Win
2016	St. Louis (City), MO	316,000	Kimberly Gardner	Open Seat	Yes	\$9.72	Win
2018	Cumberland County, ME	292,500	Jon Gale	Open Seat	No	\$0.00	Lose

2019	Arlington-Falls Church, VA	249,893	Parisa Tafti-Deghani	Challenger	Yes	\$39.28	Win
2019	Hinds County, MS	237,085	Jody Owens	Challenger	No	\$0.00	Win
2018	Berkshire, MA	131,219	Andrea Harrington	Open Seat	No	\$0.00	Win

Figure 2.1: Primary Determinative Elections with Progressive Prosecutor Candidates (CPV).

Here, a Soros-affiliated PAC made an expenditure in favor of a candidate in ten of these races.¹⁰⁷ Nine of the ten progressive candidates were victorious.¹⁰⁸ The single candidate who received Soros backing but still lost was Queens District Attorney candidate Tiffany Cabán.¹⁰⁹ However, Cabán received only \$2.01 per vote, one of the lowest CPV values in the primary determinative category.¹¹⁰ The other nine candidates benefitted from Soros-affiliated PAC expenditures constituting an average of \$15.54 per vote.¹¹¹

107. See Scott Bland, *George Soros' Quiet Overhaul of the U.S. Justice System*, POLITICO (Aug. 30, 2016, 5:25 AM), <https://www.politico.com/story/2016/08/george-soros-criminal-justice-reform-227519> (last visited Sept. 20, 2020) (“The billionaire financier has channeled more than \$3 million into seven local district-attorney campaigns in six states over the past year. . . .”) [perma.cc/E4WC-NDB5].

108. See *id.* (stating that Raul Torrez’s opponent dropped out due to “the potentially exorbitant cost of opposing the Soros-backed candidate in the general election”).

109. See *Primary Election District Attorney Queens County Democratic Party*, N.Y. BD. OF ELECTIONS (June 15, 2019), https://www.vote.nyc.ny.us/downloads/pdf/election_results/2019/20190625Primary%20Election/Queens%20District%20Attorney%20Queens.pdf (last visited Sept. 20, 2020) (describing Cabán’s election results) [perma.cc/6CFT-B3QS].

110. See Palmer, *supra* note 100 and accompanying text (discussing votes gathered by Cabán).

111. See *id.* (same).

2. General-Determinative Elections

<i>Year</i>	<i>Jurisdiction</i>	<i>Population</i>	<i>Candidate</i>	<i>Orientation</i>	<i>Soros PAC Investment</i>	<i>Soros CPV</i>	<i>Outcome</i>
2016	Harris County, TX	4,617,000	Kim Ogg	Challenger	Yes	\$2.01	Win
2016	Maricopa County, AZ	4,233,000	Diego Rodriguez	Challenger	Yes	\$2.08	Lose
2016	Dallas County, TX	2,637,772	John Creuzot	Challenger	Yes	\$0.56	Win
2018	Tarrant County, TX	2,080,000	Albert Roberts	Challenger	No	\$0.00	Lose
2016	Hillsborough County, FL	1,382,000	Andrew Warren	Challenger	No	\$0.00	Win
2016	Franklin County, OH	1,270,000	Zack Klein	Challenger	No	\$0.00	Lose
2018	Fort Bend County, TX	788,000	Brian Middleton	Challenger	No	\$0.00	Win
2019	Monroe County, NY	742,426	Shani Curry Mitchell	Challenger	Yes	\$10.49	Lose
2018	Tulsa County, OK	648,360	Jenny Proehl-Day	Challenger	No	\$0.00	Lose
2016	First Judicial District, CO	576,839	Jake Lilly	Challenger	Yes	\$8.15	Lose
2019	Delaware County, PA	563,487	Jack Stollsteimer	Challenger	Yes	\$1.19	Win
2019	Lancaster County, PA	550,000	Hobie Crystle	Challenger	No	\$0.00	Lose
2019	Loudoun County, VA	406,850	Buta Biberaj	Challenger	Yes	\$12.28	Win
2016	Nueces County, TX	361,529	Mark Gonzalez	Challenger	No	\$0.00	Win
2019	Chesterfield County, VA	349,000	Scott Miles	Incumbent	No	\$0.00	Lose

2019	Dutchess County, NY	295,568	Rich Berube	Challenger	No	\$0.00	Lose
2015	Caddo Parish, LA	251,577	James Stewart	Challenger	Yes	\$27.54	Win
2019	Cumberland County, PA	251,423	Sean Quinlan	Challenger	No	\$0.00	Lose
2019	Ulster County, NY	179,417	David Clegg	Open Seat	No	\$0.00	Win
2018	6th Prosecutorial Dist., ME	149,356	Natasha Irving	Open Seat	No	\$0.00	Win
2015	16th Judicial Circuit, MS	140,601	Scott Colom	Challenger	Yes	\$15.73	Win
2018	Payne/Logan County, OK	129,331	Cory Williams	Challenger	No	\$0.00	Lose
2019	Albemarle County, VA	107,788	Jim Hingeley	Challenger	No	\$0.00	Win
2017	Portsmouth, VA	95,500	Stephanie Morales	Incumbent	Yes	\$4.66	Win

Figure 2.2: General-Determinative Elections with Progressive Prosecutor Candidates (CPV).

In this category, a Soros-affiliated PAC invested in ten of the progressive prosecutor candidates.¹¹² Seven of those ten candidates won, while six other candidates were victorious without the aid of a Soros-affiliated PAC.¹¹³ The average CPV value observed here, \$8.45, is significantly less than the average CPV value for the

112. See Jesse McKinley, *Soros Adds Intrigue and \$800,000 to D.A. Race, Backing Progressive*, N.Y. TIMES (Nov. 4, 2019), <https://nytimes.com/2019/11/04/nyregion/soros-election-da.html> (last updated Nov. 6, 2019) (last visited Sept. 20, 2020) (“Shani Curry Mitchell, a progressive newcomer who has drawn the attention and backing from the billionaire George Soros . . .”) [perma.cc/RZH2-BV2J].

113. See, e.g., Janelle Irwin Taylor, *Hillsborough State Attorney Andrew Warren Banks Over \$200K in Total Fundraising*, FLA. POLITICS (June 10, 2019), <https://floridapolitics.com/archives/298414-andrew-warren-state-attorney-candidates> (last visited Sept. 20, 2020) (“Warren has received strong bi-partisan support for his re-election, including from some top names in Tampa liberal circles and prominent Republicans.”) [perma.cc/962B-4Q2Y].

primary-determinative races in the same time period (\$14.19).¹¹⁴ When excluding the 2015 races, the first two modern prosecutor elections with Soros involvement, the average CPV for these elections drops to only \$5.18.¹¹⁵ The Soros-affiliated PAC money appears to have less impact overall in this category, which could be due to the lower CPV value or the partisan tilt in many of these jurisdictions overall.

3. Nonpartisan Elections

<i>Year</i>	<i>Jurisdiction</i>	<i>Population</i>	<i>Candidate</i>	<i>Orientation</i>	<i>Soros PAC Involvement</i>	<i>Soros CPV</i>	<i>Outcome</i>
2018	San Diego County, CA	3,302,833	Geneviève Jones-Wright	Challenger	Yes	\$6.58	Lose
2018	Alameda County, CA	1,666,753	Pamela Price	Challenger	Yes	\$4.48	Lose
2018	Sacramento County, CA	1,540,975	Noah Phillips	Challenger	Yes	\$3.82	Lose
2018	Hennepin County, MN	1,260,000	Mark Haase	Challenger	No	\$0.00	Lose
2018	Contra Costa County, CA	1,150,000	Diana Becton	Incumbent	Yes	\$1.35	Win
2018	San Francisco, CA	883,305	Chesa Boudin	Open Seat	No	\$0.00	Win
2018	Washington County, OR	597,695	Max Wall	Open Seat	Yes	\$13.74	Lose
2018	Marin County, CA	259,666	Anna Pletcher	Challenger	No	\$0.00	Lose

114. See Palmer, *supra* note 100 (discussing the cost per vote in races with progressive prosecutors).

115. See *id.* (same).

2018	Yolo County, CA	220,408	Dean Johansson	Challenger	No	\$0.00	Lose
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Figure 2.3: Nonpartisan Elections with Progressive Prosecutor Candidates (CPV).

Most of the elections in this category occurred in counties that lean Democratic, often heavily.¹¹⁶ Despite this, both reform-minded incumbents and progressives running against more conservative candidates in open-seat races fared poorly overall.¹¹⁷ The one Soros-backed candidate in this category who was victorious was an incumbent.¹¹⁸ Incumbent Contra Costa County, California, District Attorney Diana Becton kept her seat, but barely, despite a Soros-affiliated PAC's independent expenditure.¹¹⁹ Between the five candidates that Soros-affiliated PACs supported, the average CPV was \$6.00.¹²⁰

116. See Andrew Briz, Tyler Fisher, Beatrice Jin, Jon McClure & Lily Mihalik, *California Governor Election Results 2018*, POLITICO (Aug. 31, 2018, 10:14 AM), <https://www.politico.com/election-results/2018/california/governor/> (last visited Sept. 20, 2020) (showing a win for Gavin Newsom) [perma.cc/T8AH-A7LX]; see also Andrew Briz et al., *Oregon Governor Election Results 2018*, POLITICO (Aug. 31, 2018, 10:14 AM), <https://www.politico.com/election-results/2018/oregon/governor/> (last visited Sept. 20, 2020) (showing a win for Kate Brown) [perma.cc/U2PV-LVWU].

117. See Don Thompson, *Soros-Backed California County Prosecutors Fail in 3 Races*, ASSOCIATED PRESS (June 7, 2018), <https://apnews.com/46b1c59775d04d37b82c03a9294ae640/Soros-backed-California-county-prosecutors-fail-in-3-races> (last visited Sept. 20, 2020) (“Three California county district attorneys will keep their seats despite a well-financed national effort to elect reform-minded candidates sympathetic to reducing mass incarceration and prosecuting shootings by police.”) [perma.cc/J9BY-PCAU].

118. See *Soros-Backed Challengers Largely Fail to Unseat California Prosecutors*, CBS NEWS (June 8, 2018, 12:45 PM), <https://www.cbsnews.com/news/soros-backed-challengers-largely-fail-to-unseat-california-prosecutors/> (last visited Sept. 20, 2020) (“Diana Becton . . . was just shy of the majority of votes in Tuesday’s election that she needed to retain the office outright.”) [perma.cc/W4CV-SZPZ].

119. *Id.*

120. Palmer, *supra* note 100.

*III. Analyzing the Role of Soros-Affiliated PAC Expenditures in
Prosecutor Elections*

Based on these results, it is undeniable that Soros-affiliated PAC expenditures, which usually constitute 50% or more of the funds assisting the candidate, have a huge impact on prosecutor elections.¹²¹ This in and of itself should not come as a big surprise, since prosecutor elections are some of the lowest-interest, lowest-information electoral contests in American politics.¹²² Very few people know who their current elected prosecutor is, or what he or she stands for.¹²³ Meanwhile, when a brutal rape or homicide occurs, the District Attorney is usually one of the first officials to hold a press conference.¹²⁴ For most people, the DA is then associated with genuine public safety, not the swell of nonviolent, low-level offenses that constitute the vast majority of an urban DA's prosecution load.¹²⁵

121. See Don Thompson, *Big-Money Soros Contributions Change Prosecutor Campaigns*, ASSOCIATED PRESS (May 15, 2018), <https://apnews.com/0aa7d76876c24be7a8a9d4cab737342b/Big-money-Soros-contributions-change-prosecutor-campaigns> (last visited Sept. 20, 2020) (“George Soros has plunked \$1.5 million into several California district attorney campaigns . . . to influence the nation’s criminal justice system.”) [perma.cc/JVL8-6X96].

122. See Samantha Ketterer, *Experts Say Kim Ogg Has Edge in DA’s Race, Even with Pressure from the Left*, HOUS. CHRON. (Feb. 14, 2020, 9:53 PM), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Experts-say-Kim-Ogg-has-edge-in-DA-s-race-even-15061463.php> (last visited Sept. 20, 2020) (“Harris County District Attorney Kim Ogg still holds the edge in the upcoming Democratic primary, political watchdogs say, despite several opponents’ attacks on her leadership style and record on reform.”) [perma.cc/JT5F-KV9A].

123. See, e.g., Thompson, *supra* note 121 (“District attorneys’ races are . . . not very interesting and not hotly contested . . . Mr. Soros has lightened that up.”).

124. See, e.g., Press Release, Kimberly Edds, Joseph James DeAngelo Jr. Sentenced to 11 Consecutive Life Terms Without the Possibility of Parole for 13 Murders, and an Additional Consecutive Life Term for 13 Kidnappings (Aug. 21, 2020), <https://www.peopleversusjosephdeangelopressmaterials.com/wp-content/uploads/2020/08/Sentencing-Joint-PRESS-RELEASE-8.20.20-FINAL.pdf> (last visited Sept. 20, 2020 (discussing the sentencing of a serial rapist) [perma.cc/ML28-W4FF].

125. See Nadia Hamdan, *A Former Public Defender Hopes to Unseat Top Prosecutor in Travis County District Attorney Race*, KUT (July 6, 2020), <https://www.kut.org/post/former-public-defender-hopes-unseat-top-prosecutor-travis-county-district-attorney-race> (last visited Sept. 20, 2020) (explaining that the Travis County District Attorney Office is largely responsible for prosecuting misdemeanor crimes) [perma.cc/XEQ5-ZNYK].

The first study's results are relatively straightforward. When Soros PACs get involved in prosecutor races, many incumbents are essentially noncompetitive in terms of monetary support.¹²⁶ This may effectively neutralize incumbency advantage in these races, but the results are not clear enough to speculate on the subject.¹²⁷ Complicating factors exist, one of the most important being that many incumbents in highly populous urban districts are able to raise enough funds to be on equal (or still more advantageous) footing with a Soros-backed candidate.¹²⁸ Cook County, which includes Chicago, provides an illustrative example.¹²⁹

The second study's results are much more surprising. In Democratic primary determinative elections, Soros PAC-affiliated expenditures, especially ones with higher Cost Per Vote values, appear to be nearly determinative of the outcome, though victories for progressives without Soros backing in some smaller counties indicates this is a mainly urban trend.¹³⁰ Out of the nine candidates Soros supported in this category, the only one to lose was 2019 Queens, New York, District Attorney candidate Tiffany Cabán.¹³¹ Out of all of the progressive candidates studied, Cabán,

126. See Bland, *supra* note 107 (explaining the overwhelming nature of the financial support).

127. See *id.* (“Soros . . . funded one of several groups that helped Kim Foxx defeat incumbent state’s attorney Anita Alvarez in a high-profile primary campaign . . .”).

128. See Paige St. John & Abbie Vansickle, *Here’s Why George Soros, Liberal Groups Are Spending Big to Help Decide Who’s Your Next D.A.*, L.A. TIMES (May 23, 2018, 7:00 AM), <https://www.latimes.com/local/california/la-me-prosecutor-campaign-20180523-story.html> (last visited Sept. 20, 2020) (“Each candidate is backed by about \$1.1 million. Schubert . . . draws most of her contributions from line-level prosecutors, the business community, and police unions. Half of Phillips’ money is from Soros.”) [perma.cc/3DDG-3KVJ].

129. See Shelby Bremer, *Foxx Wins Democratic Race for Cook County State’s Attorney After Conway Concedes*, NBC CHI. (Mar. 17, 2020, 11:27 PM), <https://www.nbcchicago.com/news/local/chicago-politics/3-democrats-challenge-foxx-for-cook-county-states-attorney/2238006> (last visited Sept. 20, 2020) (“Cook County State’s Attorney Kim Foxx is poised to win a second term in November after clinching the Democratic nomination over three challengers Tuesday.”) [perma.cc/7HQR-6C7V].

130. See Derek Thompson, *How Democrats Conquered the City*, THE ATLANTIC (Sept. 13, 2019), <https://www.theatlantic.com/ideas/archive/2019/09/brief-history-how-democrats-conquered-city/597955> (last visited Sept. 20, 2020) (explaining how Democratic Party ideals are associated with population density) [perma.cc/56B7-32GS].

131. See Alex Taylor & Kenneth Gregor, *AOC-Backed Candidate Tiffany*

then a 31-year-old public defender, benefitted from the greatest groundswell of grassroots public support.¹³² She also received national-facing media coverage for her bold campaign,¹³³ despite running the most radical District Attorney campaign in history.¹³⁴ But Cabán benefitted from a comparatively paltry \$70,000 in Soros-affiliated independent expenditure money, instead largely relying on small contributions from individual donors who gave an average of \$31.¹³⁵ Ultimately, Cabán raised approximately \$527,000 during the primary,¹³⁶ which is significant in many districts but not a New York City borough.¹³⁷ Melinda Katz, the

Cabán Concedes Defeat in Queens DA Race, N.Y. POST (August 6, 2019, 10:12 PM), <https://nypost.com/2019/06/25/aoc-backed-candidate-tiffany-caban-declares-victory-in-tightly-contested-queens-da-race/> (last visited Sept. 20, 2020) (explaining that Cabán conceded defeat once Katz led by 60 votes) [perma.cc/D92V-23JH].

132. See Chantal Da Silva, *Tiffany Cabán: 31-Year-Old Queer Latina Public Defender, Backed by AOC, Set to Make History in Queens District Attorney Election*, NEWSWEEK (June 26, 2019, 10:13 AM), <https://www.newsweek.com/tiffany-caban-queens-district-attorney-1445994> (last visited Sept. 20, 2020) (explaining that during the victory party, Cabán acknowledged her successful grassroots movement, in spite of others' doubts) [perma.cc/PMP2-XLGW].

133. See, e.g., German Lopez, *Tiffany Cabán's Potential Win In The Queens District Attorney Race Is a Huge Deal*, VOX (June 26, 2019, 1:30 PM), <https://www.vox.com/policy-and-politics/2019/6/26/18759289/tiffany-caban-queens-new-york-district-attorney-prosecutor> (last updated July 5, 2019) (last visited Sept. 20, 2020) ("Cabán's candidacy drew national attention, receiving endorsements from high-profile Democrats like Sen. Bernie Sanders, Sen. Elizabeth Warren, and New York Rep. Alexandria Ocasio-Cortez.") [perma.cc/D4FU-EPQP].

134. See Taylor & Gregor, *supra* note 131 (describing Cabán's platform as boldly focusing on decarceration).

135. See Juan Manuel Benitez, *Tiffany Cabán Raises Over \$233,000 in Last Three Weeks for Queens DA Race*, SPECTRUM NEWS (June 17, 2019, 11:05 PM), <https://www.nyl.com/nyc/all-boroughs/news/2019/06/18/tiffany-cab-n-raises-over-233-000-in-last-three-weeks-for-queens-da-race> (last visited Sept. 20, 2020) ("We have the most Queens residents making individual donations in this race, far above what anybody else in this race is doing.") [perma.cc/CH6A-AQBG].

136. See *Cabán for Queens*, N.Y. STATE BD. OF ELECTIONS, <https://www.elections.ny.gov/ContributionSearchA.html> (last visited Sept. 20, 2020) (showing a list of contributors and the corresponding donations) [perma.cc/Y4YJ-8VBB].

137. See Vivian Wang, *The Shocking Final Count: What Happened in the Queens District Attorney Race*, N.Y. TIMES (July 4, 2019), <https://www.nytimes.com/2019/07/04/nyregion/katz-caban-recount-queens-da.html> (last visited Sept. 20, 2020) ("Much of Ms. Cabán's support, by contrast,

establishment-backed victor of the 2019 Queens DA election, raised \$1,618,246.53.¹³⁸ Despite Katz’s effectively benefitting from a nearly threefold funding disparity, Cabán only lost by 55 votes after a contentious recount.¹³⁹ If Cabán received the \$39.28 per vote in Soros-affiliated PAC money that Parisa Tafti-Dehghani benefitted from in Arlington, Virginia that same year, the electoral outcome in Queens might have been very different.¹⁴⁰

Perhaps even more intriguing, the progressive prosecutors whose changes caused the most controversy benefitted from Soros-affiliated PAC expenditures with a much higher CPV value than average.¹⁴¹ For example, the second- and third-highest CPV values are found in the Philadelphia and Orlando elections.¹⁴² Philadelphia DA Larry Krasner and Orange-Osceola County State Attorney Aramis Ayala have the second and third highest CPV values, respectively, and they are two of the most controversial elected prosecutors of the new progressive wave.¹⁴³ In

came from just two Assembly districts, in gentrifying parts of Queens.”) [perma.cc/5NTH-JA5H].

138. *See id.* (“Ms. Cabán, a first-time candidate and former public defender who had pledged to decriminalize sex work and not to prosecute low-level crimes, lost by just 55 votes.”).

139. *Id.*

140. *See* Nicholas F. Benton, *Dehghani-Tafti Wins Commonwealth’s Attorney Upset, Saslaw Edges Taeb*, FALLS CHURCH NEWS–PRESS (June 12, 2019, 9:09 PM), <https://fcnp.com/2019/06/12/dehghani-tafti-wins-commonwealths-attorney-upset-saslaw-edges-taeb/> (last visited Sept. 20, 2020) (stating that Tafti-Dehghani received 14,828 votes to win, but she also received nearly \$600,000 in Soros PAC money) [perma.cc/3NXP-4DRW].

141. *See* *Lawrence Krasner*, *BALLOTPEDIA*, https://ballotpedia.org/Lawrence_Krasner (last visited Oct. 1, 2020) (explaining that Lawrence Krasner defeated Beth Grossman) [perma.cc/29MJ-ERHP]; *see also* *Aramis Ayala*, *BALLOTPEDIA*, https://ballotpedia.org/Aramis_Ayala (last visited Sept. 20, 2020) (explaining that Aramis Ayala won) [perma.cc/QR45-YJWE].

142. *See, e.g.*, Scott Powers, *George Soros-Related PAC Spending Big to Elect Aramis Ayala As State Attorney*, FLA. POLITICS (Aug. 10, 2016), <https://floridapolitics.com/archives/218832-george-soros-related-pac-spending-big-elect-aramis-ayala-state-attorney> (last visited Sept. 20, 2020) (“George Soros has spent hundreds of thousands of dollars on television commercials and other advertising to get Aramis Ayala elected state attorney in the Orlando-based 9th Judicial Circuit.”) [perma.cc/J8QM-54ZH].

143. *See* Kristen Johansen, *DA Krasner Rejects Any Notion His Policies Contribute Philly’s Gun Violence Spike*, MSN (Aug. 12, 2020), <https://www.msn.com/en-us/news/crime/da-krasner-rejects-any-notion-his-policies-contribute-philly-s-gun-violence-spike/ar-BB17SsMX> (last visited Sept.

Philadelphia, DA Krasner and U.S. Attorney Bill McSwain have an openly caustic relationship,¹⁴⁴ and Pennsylvania Attorney General Josh Shapiro has actually encouraged the city's paper of record to paint Krasner in a negative light.¹⁴⁵ In Orlando, Ayala's decision to announce that she would never seek the death penalty while in office launched a statewide political firestorm that ended in a Florida Supreme Court decision curtailing prosecutorial discretion.¹⁴⁶ Hence, it is reasonable to conclude that the more divergent from the legal and cultural status quo a progressive candidate is, the more drastic the advantage in campaign financing must be for the progressive candidate to win.

Across the studies, the Soros-affiliated PAC money appears to have less impact in general elections.¹⁴⁷ Yet, less punitive prosecutor candidates who might not have been competitive otherwise received a fighting chance in conservative districts.¹⁴⁸

20, 2020) (explaining that the public questions whether Krasner is contributing to lawlessness in Philadelphia) [perma.cc/S7RV-WHA6].

144. See Alex Yablon, *Larry Krasner's Lonely Radical Crusade To Solve America's Gun Problem*, THE TRACE (Jan. 29, 2020, 12:19 PM), <https://www.thetrace.org/2020/01/larry-krasner-gun-violence-reform-philadelphia-district-attorney/> (last visited Sept. 20, 2020) (explaining how U.S. Attorney McSwain blamed a mass shooting of police officers on District Attorney Krasner rather than the shooter, who was an informant for the U.S. Attorney's office) [perma.cc/A5QW-GZMR].

145. See Akela Lacy, *Pennsylvania Attorney General's Staff Pushed Philadelphia Inquirer To Be More Critical of Larry Krasner: Emails*, THE INTERCEPT (Oct. 8, 2019, 10:18 AM), <https://theintercept.com/2019/10/08/josh-shapiro-philadelphia-inquirer-larry-krasner-josh-shapiro/> (last visited Sept. 20, 2020) (stating that General Attorney Shapiro asked a newspaper to publish that District Attorney Krasner's polices increased crime) [perma.cc/Q33W-L7SS].

146. See Kristen M. Clark, *Florida Supreme Court Backs Gov. Scott in Orlando Death-Penalty Dispute*, MIA. HERALD (Aug. 31, 2017, 6:28 PM), <https://www.miamiherald.com/news/politics-government/state-politics/article170451127.html> (last visited Sept. 20, 2020) (explaining how Governor Scott refused to return cases to Ayala unless she recanted her announcement) [perma.cc/4LPF-879D].

147. See Ashley Balcerzak, *How Democrats Use Dark Money — And Win Elections*, NBC NEWS (Feb. 20, 2018 5:25 AM), <https://www.nbcnews.com/politics/congress/how-democrats-use-dark-money-win-elections-n849391> (last visited Sept. 20, 2020) (explaining that Super PACs help candidates win in general elections) [perma.cc/YAJ8-6W8Z].

148. See, e.g., Jacques Billeaud, *Soros Recently Gave \$2 Million to Group Opposing Joe Arpaio*, ASSOCIATED PRESS (Nov. 4, 2016), <https://apnews.com/article/fca41bd9f44904b3e04820959298b3> (last visited Oct. 1, 2020) (“Soros also is the sole contributor to another Arizona political group

One of these districts was Maricopa County, Arizona.¹⁴⁹ In 2016, when Democrat Diego Rodriguez ran against Republican Bill Montgomery for the Maricopa County Attorney seat, Maricopa County was still seen as one of the last remaining urban stronghold districts for Republicans.¹⁵⁰ Candidate Rodriguez was barely able to raise any money on his own.¹⁵¹ While the Soros-affiliated PAC investment of \$1,400,000 in favor of Rodriguez seems large, it only translated to \$2.08 a vote due to the county's similarly massive population size.¹⁵² This indicates that, for progressive candidates to remain competitive in at least some more conservative districts, all that is required is a proportional, but not lopsided, financing boost.¹⁵³

Note, however, that competitive does not mean victorious.¹⁵⁴ In 2016, Democratic candidate Jake Lilly attempted a challenge against Pete Weir, the incumbent Republican District Attorney in a midsized judicial district outside of Denver, Colorado.¹⁵⁵ Weir

that's opposing the re-election of Maricopa County Attorney Bill Montgomery.") [perma.cc/U48D-JBAH].

149. *Id.*

150. See Brahm Resnik, *Maricopa Co. Gave Trump the Most Votes of Any County in the US*, KPNX (Nov. 16 2020 7:53 AM), <https://www.12news.com/article/news/politics/maricopa-co-gave-trump-the-most-votes-of-any-county-in-the-us/75-352417239> (last visited Sept. 20, 2020) (explaining how President Trump received the largest vote totals in Maricopa County) [perma.cc/SK75-CC4Z].

151. See Jacques Billeaud, *Group Linked to Soros Opposes Phoenix Prosecutor's Campaign*, AZCENTRAL (Oct. 15, 2016, 2:02 PM), <https://www.azcentral.com/story/news/politics/arizona/2016/10/15/group-linked-soros-phoenix-prosecutors-campaign/92156474/> (last visited Sept. 20, 2020) ("The latest campaign finance reports show Rodriguez has raised \$13,000 over the course of the campaign, compared to \$300,000 brought in by Montgomery.") [perma.cc/KY3C-Y5YL].

152. See *Diego Rodriguez*, BALLOTPEDIA, https://ballotpedia.org/Diego_Rodriguez_ (last visited Sept. 20, 2020) (showing 671,618 votes for Rodriguez in the 2016 Maricopa County Attorney election) [perma.cc/LD3D-NKNM].

153. See *supra* Figure 1.2 (illustrating financing numbers and outcomes by progressive candidates).

154. See *supra* Figure 1.2 (displaying a variety of outcomes).

155. Kate McKee Simmons, *Jake Lilly on Criminal Justice Reform and His Run for District Attorney*, WESTWORD (Oct. 20, 2016), <https://www.westword.com/marijuana/jake-lilly-on-criminal-justice-reform-and-his-run-for-district-attorney-8406739> (last visited Sept. 20, 2020) [perma.cc/Z4DS-G6EQ].

raised about \$77,000 compared to Lilly's roughly \$57,000—at least, before the inclusion of the Soros-affiliated PAC expenditure.¹⁵⁶ DA Weir kept his seat with 53.5% of the vote,¹⁵⁷ a considerable victory despite a mammoth \$1.1 million spent by Soros in favor of Lilly.¹⁵⁸ Likewise, in the 2019 Monroe County (Rochester), New York District Attorney election, progressive candidate Shani Curry Mitchell received more than 85% of her direct or indirect contributions from the New York Justice and Public Safety PAC, amounting to \$800,000.¹⁵⁹ Doorley, the Republican incumbent, still obtained 56% of the vote,¹⁶⁰ despite only raising \$174,936.33, a record of prosecutorial misconduct problems,¹⁶¹ and failed attempts to prosecute a man for a triple homicide.¹⁶² Potential reasons why range from the incumbent's prominence in their communities to racial demographics to a lack of interest in criminal justice reform in these districts.

The nonpartisan elections from 2015 to 2019 are the hardest to account for.¹⁶³ Despite these contests omitting partisan affiliation from the ballots, these elections near-universally occurred in very liberal districts.¹⁶⁴ Most of the counties were located in California, where the ACLU had released a report and

156. *Supra* Figure 1.2.

157. *Colorado 1st District Attorney Results: Pete Weir Wins*, N.Y. TIMES (Aug. 1, 2017), <https://www.nytimes.com/elections/2016/results/colorado-district-attorney-district-1> (last visited Sept. 20, 2020) [perma.cc/PJB8-88KX].

158. *See supra* Figure 1.2.

159. Jesse McKinley, *Soros Adds Intrigue and \$800,000 to D.A. Race, Backing Progressive*, N.Y. TIMES (Nov. 4, 2019), <https://www.nytimes.com/2019/11/04/nyregion/soros-election-da.html> (last visited Sept. 20, 2020) [perma.cc/R69U-39YW].

160. Gary Craig, *Incumbent Monroe County District Attorney Sandra Doorley Handily Wins Third Election*, DEMOCRAT & CHRON. (Nov. 5, 2019), <https://www.democratandchronicle.com/story/news/2019/11/05/sandra-doorley-shani-mitchell-monroe-county-district-attorney-election/4171094002/> (last visited Sept. 20, 2020) [perma.cc/DUY8-QHQJ].

161. *See People v. Jurs*, 29 N.Y.S. 3d 88, 89 (N.Y. Cty. Ct. 2015) (holding that prosecutorial misconduct prejudiced the defendant's right to a fair trial).

162. *See Judge Tosses Out NY Man's Conviction in Triple Homicide*, ASSOCIATED PRESS (Dec. 9, 2016), <https://apnews.com/article/7e5ad0db93074084ac815a93bf2e12d6> (last visited Oct. 1, 2020) (explaining that the triple homicide conviction was set aside) [perma.cc/MX9T-U2KM].

163. *See supra* Figure 2.3 (illustrating progressive candidates' information).

164. *See id.* (listing competitions in democratic-leaning districts).

voter education tool showing that county voters often supported recent criminal justice ballot initiatives where the incumbent District Attorney did not.¹⁶⁵ But California has a complex relationship with criminal justice reform. In *Brown v. Plata*,¹⁶⁶ the Supreme Court upheld a special federal district court panel's order to release California prisoners to fix the state's prison overcrowding crisis.¹⁶⁷ The retributive victims' rights movement,¹⁶⁸ which prioritizes maximum retribution over restitution and victim services, has strong roots in California.¹⁶⁹

When delving further into the California District Attorney elections studied, more questions than answers are found. In Sacramento County, the "progressive" challenger was caught in a racist email scandal.¹⁷⁰ San Diego County had long been a Republican-dominated district, indicating that the competitiveness of a progressive Democrat would be slim, even with a fundraising advantage.¹⁷¹ But then-interim San Diego

165. See *How Do DAs Serve Their Community?*, ACLU, <https://meetyourda.org> (last visited Aug. 2020) ("In the past four years, California voters have overwhelmingly supported safe and sensible justice reforms — but most DAs have gone against this tide of change.") [perma.cc/5U2B-TGS7].

166. *Brown v. Plata*, 563 U.S. 493, 502 (2011) (holding that the release of prisoners to meet population limits is proper and necessary).

167. See *id.* at 527–28 (noting that the finding of the three-judge district court panel that no other relief would redress the Eighth Amendment violation was supported by clear and convincing evidence).

168. See Jill Lepore, *The Rise of the Victims'-Rights Movement*, NEW YORKER (May 21, 2018), <https://www.newyorker.com/magazine/2018/05/21/the-rise-of-the-victims-rights-movement> (last visited Oct. 1, 2020) ("The victims'-rights movement, which began decades ago, has lately reached new heights."). [perma.cc/2XKM-9YX9].

169. See *A 12-Year-Old Girl Is Kidnapped, Leading To California's "Three Strikes" Law*, HISTORY CHANNEL (Nov. 13, 2009), <https://www.history.com/this-day-in-history/a-12-year-old-girl-is-kidnapped> (last visited Aug. 30, 2020) (explaining how Polly Klaas's tragic murder led to her father becoming an outspoken pro-death penalty advocate) [perma.cc/2MNV-D4KT].

170. See Darrell Smith & Marcos Bretón, *DA Candidate Phillips Called Sexist, Racist Email 'Work Appropriate ... Appropriate Anywhere'*, SACRAMENTO BEE (May 22, 2018), <https://www.sacbee.com/latest-news/article211628909.html> (last visited Aug. 30, 2020) (stating that Phillips found an email "detailing what men can expect sexually by the third date with women of various ethnic groups was appropriate fodder to send to his nephew's workplace email") [perma.cc/2WPB-9WPA].

171. See Dana Littlefield, *DA Dumanis looks back on 14 years in office, prepares to step down*, SAN DIEGO UNION-TRIBUNE (July 17, 2017), <https://webcache.googleusercontent.com/search?q=cache:vMoBEaAR6bUJ:https://>

County DA Summer Stephan, a registered Republican in 2018, largely campaigned on her track record as a staunch advocate against sex trafficking.¹⁷² In Alameda County, progressive candidate Pamela Price lost with 40% of the vote against incumbent Alameda County (Oakland) DA Nancy O'Malley.¹⁷³ Alameda County is one of the most liberal counties in the nation.¹⁷⁴ But while Alameda County DA Nancy O'Malley is relatively unresponsive of criminal justice reform, she has also been praised for ending a pre-existing office culture that purportedly enabled male prosecutors to drink over lunch then sexually harass female employees.¹⁷⁵ These factors make it difficult to understand whether the San Diego and Oakland elections are voter referenda against criminal justice reform itself.

Additionally, California has well-funded law enforcement PACs that are able to bolster more conservative candidates, including incumbents.¹⁷⁶ For example, Summer Stephan in San Diego received \$251,200 from a PAC set up by the county's deputy district attorneys and \$100,000 from the California Correctional

[//www.sandiegouniontribune.com/news/courts/sd-me-bonnie-dumanis-20170702-story.html+&cd=3&hl=en&ct=clnk&gl=us](http://www.sandiegouniontribune.com/news/courts/sd-me-bonnie-dumanis-20170702-story.html+&cd=3&hl=en&ct=clnk&gl=us) (last visited Sept. 20, 2020) (indicating that Bonnie Dumanis, a Republican, held the position of District Attorney in San Diego County from 2003-2017) [perma.cc/62U3-JUNZ].

172. See Shawn VanDiver, *This Democrat's Case for Summer Stephan*, HUFFINGTON POST (June 30, 2016), https://www.huffpost.com/entry/the-democrats-case-for-summer-stephan_b_59556feae4b0c85b96c66050 (last visited Aug. 30, 2020) (discussing Stephan's work aiding victims of human trafficking) [perma.cc/B2J3-EQ88].

173. Pamela Price, BALLOTPEDIA, https://ballotpedia.org/Pamela_Price (last visited Aug. 30, 2020) [perma.cc/H9UY-3JCX].

174. See Alameda, California, BESTPLACES, <https://www.bestplaces.net/voting/city/california/alameda> (last visited Aug. 30, 2020) ("Alameda County, CA is Strongly liberal. In Alameda County, CA 78.1% of the people voted Democrat in the last presidential election, 14.5% voted Republican, and the remaining 7.4% voted Independent.") [perma.cc/Y7T2-EF37].

175. See Ariel Brownell Lee, *Show Up, Make Your Voice Heard*, CONTRA COSTA CNTY. BAR ASS'N (Mar. 2018), <https://www.cccba.org/article/show-up-make-your-voice-heard/> (last visited Aug. 30, 2020) (explaining how O'Malley ended a culture of office drinking and workplace sexual harassment in the Alameda County DA office) [perma.cc/4YH9-FS6B].

176. See *Political Action Committee (PAC Plus)*, L.A. CNTY. PRO. PEACE OFFICERS ASSOC., <https://ppoa.com/members/political-action-committee-pac-plus-2/> (last visited Aug. 30, 2020) (showing some of California's extensive PACs that are used to back conservative prosecutors) [perma.cc/32ED-4L38].

Peace Officers Association PAC.¹⁷⁷ A slew of law enforcement PACs up and down the west coast raised at least \$180,000 to try to ensure progressive deputy public defender Chesa Boudin lost the open San Francisco DA seat to his more conservative opponent, career prosecutor Suzy Loftus.¹⁷⁸ In addition, actual CPV values of the Soros expenditures in the California races were low compared to Soros expenditures in cities like Philadelphia and Orlando.¹⁷⁹

IV. Crisis of Legitimacy: How Soros Turned Prosecutorial Reform Efforts into A Shell Game

George Soros is perhaps the most influential person in determining contemporary prosecutor election outcomes.¹⁸⁰ No one else has both the desire to reform American prosecutorial practices and the millions of dollars to spend to make the amount of progress seen in just a handful of years.¹⁸¹ Indeed, the positive impact Soros's investments have had on criminal justice reform via prosecutor elections cannot be understated. Progressive candidates for top prosecutor are now promising to not prosecute entire categories of low-level crime on the campaign trail, and, once in office, they are working to fulfill those promises.¹⁸² In Harris

177. Leonardo Castañeda, *Outside Money Supporting DA Candidate Jones-Wright Tops \$1.5 Million*, INEWSOURCE (May 25, 2018), <https://timesofsandiego.com/politics/2018/05/25/outside-money-supporting-da-candidate-jones-wright-tops-1-5-million/> (last visited Aug. 30, 2020) [perma.cc/52L9-QR3A].

178. Nigel Jaquiss, *The Portland Police Association Joined Other Police Unions in Opposing Reform Candidate in San Francisco District Attorney's Race*, WILLAMETTE WEEK (Nov. 11, 2019), <https://www.wweek.com/news/2019/11/11/the-portland-police-association-joined-other-police-unions-in-opposing-reform-candidate-in-san-francisco-district-attorneys-race/> (last visited Aug. 30, 2020) [perma.cc/Q85V-ZWGL].

179. See *supra* Figure 2.1 (showing CPV values in California counties, Philadelphia, and Orlando).

180. See *supra* Figures 1.1, 1.2, 1.3, 2.1, 2.2, 2.3.

181. See Scott Bland, *George Soros Quiet Overhaul of the U.S. Justice System*, POLITICO (Aug. 30, 2016), <https://www.politico.com/story/2016/08/george-soros-criminal-justice-reform-227519> (last visited Aug. 30, 2020) (demonstrating Soros investments and mission) [perma.cc/6JH9-5US5].

182. See Kyle Jaeger, *Los Angeles Prosecutor Candidates Back Drug Decriminalization at Debate*, WEEDMAPS (Dec. 19, 2019), <https://www.marijuanamoment.net/los-angeles-prosecutor-candidates-back-drug-decriminalization-at-debate> (last visited Sept. 2020) (discussing prosecutor

County (Houston), Texas, District Attorney Kim Ogg’s move to no longer prosecute marijuana possession cases involving fewer than four ounces of the substance¹⁸³ seemingly inspired many of Texas’s largest DA offices to follow suit.¹⁸⁴ Dozens of elected local prosecutors are also signing amicus briefs in support of ending cash bail,¹⁸⁵ as well as even more controversial innovations, such as safe injection sites for people who use injectable opioids like heroin.¹⁸⁶ Even lengthy prison terms for violent crimes has been questioned by some of the new progressive prosecutors,¹⁸⁷ though

promises to cease prosecuting low-level marijuana crimes) [perma.cc/3R4F-HY7B].

183. See Brian Rogers, *New Policy to Decriminalize Marijuana in Harris County Will Save Time, Money, DA’s Office Says*, HOUS. CHRON. (Feb. 16, 2017), <https://www.chron.com/news/houston-texas/article/New-policy-to-decriminalize-marijuana-in-Harris-10935947.php> (last visited Aug. 30, 2020) (stating new policy that “misdemeanor offenders with less than four ounces of marijuana will not be arrested, ticketed or required to appear in court if they agree to take a four-hour drug education class”) [perma.cc/U5VK-PGCJ].

184. Juan A. Lozano, *DAs In Four Texas Counties Say They’ll No Longer Prosecute Misdemeanor Marijuana Cases*, KUT (July 3, 2019), <https://www.kut.org/post/das-four-texas-counties-say-theyll-no-longer-prosecute-misdemeanor-marijuana-cases> (last visited Sept. 9, 2020) (stating that a number of Texas counties will no longer prosecute certain low-level marijuana offenses) [perma.cc/VKC3-DWAM].

185. Brief for Current and Former District, State, and Prosecuting Attorneys et al. as Amici Curiae Supporting Plaintiff-Appellee, *Booth v. Galveston Cty.*, No. 19-40785, 2020 WL 957050, at *1 (5th Cir., 2020) (stating that the Amici Curiae were comprised of “current and former elected prosecutors . . . and current and former State Attorneys General in 44 jurisdictions in 26 states and the District of Columbia across the United States”).

186. See Brief for Current and Former Prosecutors et al. as Amici Curiae Opposing Plaintiff-Counterclaim Defendant, *United States v. Safehouse* at 11, 408 F. Supp. 3d 583 (E.D. Pa. 2019) (No. 2:19-cv-00519-GAM) (discussing the various benefits of safe injection sites).

187. See Maura Ewing, *America’s Leading Reform-Minded District Attorney Has Taken His Most Radical Step Yet*, SLATE (Dec. 4, 2018), <https://slate.com/news-and-politics/2018/12/philadelphia-district-attorney-larry-krasner-criminal-justice-reform.html> (last visited Sept. 9, 2020) (“According to a recent Philadelphia Inquirer analysis, in six cases that were initially filed as ‘murder generally’ Krasner sought third-degree or involuntary manslaughter charges rather than the first or second-degree murder charges that would have been the norm under his predecessors.”) [perma.cc/EH7W-KJV5].

action has been focused on ending juvenile life without parole sentences¹⁸⁸ or not seeking the death penalty.¹⁸⁹

But this swift progress has come at a reputational cost. The American public does not like the perception that people are buying their elections.¹⁹⁰ And the fact that George Soros is the single major donor has led to smart, measured prosecutors getting thrust into the vicious partisan crosshairs of influential right-wing politicians and pundits.¹⁹¹ The news media largely controls popular narratives surrounding mass incarceration and its opponents.¹⁹² Just as public opinion about an individual elected prosecutor often turns on one high-profile case, many people's opinions on the new progressive prosecutors boil down to their personal feelings about Soros.¹⁹³ Those feelings are often inflammatory and negative, despite progressive prosecutors' attempts to shrink governmental

188. See Samantha Melamed, *Why Philly DA Krasner Could Let 180+ Juvenile Lifers Out of Prison Early*, PHILA. INQUIRER (Feb. 22, 2018), <https://www.inquirer.com/philly/news/pennsylvania/philadelphia/philly-da-larry-krasner-juvenile-lifers-supreme-court-resentencing-pennsylvania-20180223.html> (last visited Sept. 9, 2020) (discussing ending life in prison without parole for juveniles) [perma.cc/6GVY-65Z9].

189. See Kyle Clark, *New DA McCann Says Denver is Done with the Death Penalty*, 9NEWS (Jan. 10, 2017), <https://www.9news.com/article/news/local/next/new-da-mccann-says-denver-is-done-with-the-death-penalty/384633301> (last visited Aug. 30, 2020) (discussing Denver's District Attorney's position of no longer seeking the death penalty) [perma.cc/C6Y2-29WV].

190. See Bradley Jones, *Most Americans Want To Limit Campaign Spending, Say Big Donors Have Greater Political Influence*, PEW RESEARCH CENTER (May 8, 2018), <https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/> (last visited Aug. 30, 2020) (explaining polling results that shows 77% of Americans agree "there should be limits on the amount of money individuals and organizations" can spend on political campaigns) [perma.cc/9P7V-HYJM].

191. See Matt Clibanoff, *After Philly Shooting, Trump U.S. Attorney Releases Scathing Statement on 'Soros-Funded' Prosecutor Who He's Blamed for Uptick in Violence*, LAW AND CRIME (Aug. 15, 2019), <https://lawandcrime.com/high-profile/after-philly-shooting-trump-u-s-attorney-says-soros-funded-prosecutors-responsible-for-uptick-in-violence/> (last visited Aug. 30, 2020) (demonstrating how progressive prosecutors are coming under attack by right-wing politicians) [perma.cc/Z7TX-LQJW].

192. See Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397, 397 (2006) (discussing the effects of media coverage on public opinion).

193. See *id.* at 475–76 (arguing that American media and culture combine to influence a largely punitive criminal justice system).

involvement in people's lives having a lot of ideological perks to offer conservatives.¹⁹⁴

For example, when a Soros-affiliated PAC made large independent expenditures to support Arlington County, Virginia, Commonwealth's Attorney Parisa Tafti-Dehghani and Fairfax County Commonwealth's Attorney Steve Descano, a *Washington Times* editorial columnist claimed that it was part of Soros's quest to "destroy America."¹⁹⁵ Yet, the most clear-cut policy change either candidate advocated was the non-prosecution of low-level marijuana possession offenses.¹⁹⁶ A Gallup poll published during that election cycle showed that 51% of Republicans support *legalizing*, and not just decriminalizing, marijuana.¹⁹⁷ In comparison, the conservative editorial board of the *New York Post* expressed that former Brooklyn DA Ken Thompson was making an irresponsible decision when he announced he would not prosecute marijuana possession offenses, but it did not claim he was a part of a conspiracy to obliterate the United States.¹⁹⁸

194. See Arthur Rizer & Alyse Ullery, *What Conservatives Should Like About Larry Krasner's Criminal Justice Ideals*, PHILA. INQUIRER (Feb. 20, 2018), <https://www.inquirer.com/philly/opinion/commentary/larry-krasner-philadelphia-district-attorney-20180220.html> (last visited Aug. 30, 2020) (noting that conservatives should be in line with Krasner's ideas because "these are many of the same reforms that conservatives have been encouraging in communities nationwide to promote a limited government, personal freedom, and a fiscally responsible approach to our justice system") [perma.cc/FD3J-6DPJ].

195. Cheryl K. Chumley, *George Soros, 89, Is Still On A Quest To Destroy America*, WASH. TIMES (Jan. 25, 2020), <https://www.washingtontimes.com/news/2020/jan/25/george-soros-89-still-quest-destroy-america/> (last visited Aug. 30, 2020) [perma.cc/BTZ2-JTLN].

196. Parisa Dehghani-Tafti (@Parisa4justice), TWITTER (May 1, 2019, 4:37 PM), <https://twitter.com/parisa4justice/status/1123688031540711429> ("I'm running for Commonwealth's Attorney because it's time we end mass incarceration, stop prosecuting low-level marijuana offenses, and ensure no one is above the law.") [perma.cc/V57G-SSTH]; see also Doug Mataconis, *Prosecutors In Two Virginia Counties Will Stop Prosecution Of Some Marijuana Cases*, OUTSIDE THE BELTWAY (Jan. 4, 2020), <https://www.outsidethebeltway.com/prosecutors-in-two-virginia-counties-will-stop-prosecution-of-some-marijuana-case/> (last visited Aug. 30, 2020) (noting that both district attorneys will no longer prosecute low-level marijuana possession offenses) [perma.cc/Y9QU-GLWB].

197. Jeffrey M. Jones, *U.S. Support For Legal Marijuana Steady In Last Year*, GALLUP (Oct. 23, 2019), <https://news.gallup.com/poll/267698/support-legal-marijuana-steady-past-year.aspx> (last visited Aug. 30, 2020) [perma.cc/Q9M9-XZHP].

198. See Editorial Board, *Brooklyn Goes To Pot*, N.Y. POST (July 9, 2014),

This is not the only reasonable concern with Soros's massively disproportional independent expenditures. Since the Soros PAC-affiliated expenditures are regularly called an attack on law enforcement, other local law enforcement partners in counties with progressive prosecutors tend to shy further away from, rather than embrace, less draconian criminal justice policies.¹⁹⁹ A lack of cooperation and coordination between local law enforcement partners could cause a spike in homicides and other serious crime, which then can be blamed on progressive prosecutors, regardless of those prosecutors' efforts in forging a working relationship.²⁰⁰ Furthermore, when notoriously problematic prosecutors lose elections, they can credibly claim that it is due to Soros, rather than voters' reaction to their harmful practices.²⁰¹ And due to the cryptic pattern by which Soros helps prosecutor candidates opposing these prosecutors, incumbent prosecutors have no consistent electoral deterrent from behaving badly.²⁰²

<https://nypost.com/2014/07/09/brooklyn-goes-to-pot/> (last visited Aug. 30, 2020) (“[I]t’s dangerous for a prosecutor to announce publicly that certain lawbreakers have nothing to fear from arrest.”) [perma.cc/U7S6-68S2].

199. See Marco della Cava, *New, More Progressive Prosecutors are Angering Police, Who Warn Approach Will Lead to Chaos*, USA TODAY (Feb. 8, 2020, 11:26 AM), <https://www.usatoday.com/story/news/nation/2020/02/08/criminal-justice-police-progressive-prosecutors-battle-over-reform/4660796002/> (last visited Oct. 2, 2020) (discussing how recently elected progressive prosecutors are aggravating relationships with local police departments with soft-on-crime tactics) [perma.cc/WW77-C3HX].

200. See Mark Berman, *These Prosecutors Won Office Vowing to Fight the System. Now, the System is Fighting Back*, WASH. POST (Nov. 9, 2019, 5:52 PM), https://www.washingtonpost.com/national/these-prosecutors-won-office-vowing-to-fight-the-system-now-the-system-is-fighting-back/2019/11/05/20d863f6-afc1-11e9-a0c9-6d2d7818f3da_story.html (last visited Oct. 2, 2020) (discussing how in Philadelphia, U.S. attorney McSwain, blamed the district attorney Krasner for the increase in homicides in the city) [perma.cc/AW8J-QF4M].

201. See David Weigel, *Down the Ballot, Liberal Reformers Take Over the Criminal Justice System*, WASH. POST (Sept. 5, 2018, 6:17 PM), <https://www.washingtonpost.com/politics/2018/09/05/down-ballot-liberal-reformers-take-over-criminal-justice-system/> (last visited Oct. 2, 2020) (discussing how Soros-backed candidates ran successful campaigns in districts with accusations of outsiders trying to interfere in local elections) [perma.cc/Q6SW-HVVU].

202. See Zusha Elinson & Joe Palazzolo, *Billionaire Soros Funds Local Prosecutor Races*, WALL ST. J. (Nov. 3, 2016, 1:28 PM), <https://www.wsj.com/articles/billionaire-soros-funds-local-prosecutor-races-1478194109> (last visited Oct. 2, 2020) (detailing the seemingly random donations to select District Attorney elections across the country) [perma.cc/PYF6-G436].

*A. Progressive Prosecutors Demonized as Anti-Law Enforcement,
Despite Not Changing That Much*

In an unprecedented assault on local law enforcement leaders, U.S. Attorney General Bill Barr scorched progressive prosecutors in an August 2019 speech given to the Fraternal Order of Police, the country's largest police union.²⁰³ AG Barr's speech alternated between the arguably truthful ("Frequently, these candidates ambush an incumbent D.A. in the primary with misleading campaigns and large infusions of money from outside groups.")²⁰⁴ to the wildly inaccurate ("[W]hen they do deign to charge a criminal suspect, they are frequently seeking sentences that are pathetically lenient.")²⁰⁵ Barr also said these "anti-law enforcement D.A.s" tend to "emerge in jurisdictions where the election is largely determined by the primary," which is accurate.²⁰⁶

In sum, Barr claimed, "these cities are headed back to the days of revolving door justice. The results will be predictable. More crime, more victims."²⁰⁷ That is despite how some progressive prosecutors are protecting victims' interests even better than their so-called "tough-on-crime" predecessors.²⁰⁸ For example, many

203. Attorney General, William P. Barr, Remarks at the Grand Lodge Fraternal Order of Police's 64th National Biennial Conference (Aug. 12, 2019) [hereinafter *Barr*] (transcript available at <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-remarks-grand-lodge-fraternal-order-polices-64th>) [perma.cc/EVQ4-G4MT].

204. *Id.*; Scott Bland, *George Soros' Quiet Overhaul of the U.S. Justice System*, POLITICO (Aug. 30, 2016, 5:25 AM), <https://www.politico.com/story/2016/08/george-soros-criminal-justice-reform-227519> (last visited Sept. 11, 2020) (explaining that, in 2016, Soros had funneled more than \$3 million into seven local District Attorney campaigns in six states) [perma.cc/BR3K-WFED].

205. *Barr*, *supra* note 203; see Budryk, *supra* note 27 (discussing Barr's disgust over prosecutors refusing to prosecute various theft or drug cases and, when they do, the leniency of the charges).

206. *Barr*, *supra* note 203; see Bland, *supra* note 204 (discussing how Soros-funded candidate Torrez won his district attorney primary, after which his opponent dropped out of the general election citing the exorbitant cost of opposing him).

207. See Budryk, *supra* note 27 (quoting Barr in his speech regarding his stance on the progressive movement in district attorney's offices).

208. See Ben Austen, *In Philadelphia, a Progressive D.A. Tests the Power—and Learns the Limits—of His Office*, N.Y. TIMES (Oct. 30, 2018),

progressive prosecutors advocate for testing every single rape kit, not just the ones where prosecutors have already decided to try the cases.²⁰⁹

In his published retort, Fordham Law Professor John Pfaff noted that it is too early to know the ultimate results of the new progressive prosecutors on crime rates, but it is encouraging that “violent crime fell by over 5% in Philadelphia during District Attorney Larry Krasner’s first year on the job, and by 4% during Kim Foxx’s first two years in Chicago.”²¹⁰ Even so, the impact of a speech like this goes a long way in shaping how laypeople understand the relationship between law enforcement agencies.²¹¹

However, savvy political consultants had seized upon the opportunity to paint progressive prosecutors as dangerous radicals before the Trump administration did.²¹² Veteran Republican political consultant James Cabel Roe, who worked for San Diego County DA Summer Stephan’s campaign in 2018, wrote an article explaining that Stephan’s entire campaign strategy was built

<https://www.nytimes.com/2018/10/30/magazine/larry-krasner-philadelphia-district-attorney-progressive.html> (last visited Aug. 30, 2020) (discussing progressive Philadelphia DA Krasner appointing a crime victim as supervisor of victims services and her starting of a new, rapid-response program) [perma.cc/JC39-QWDA].

209. See Julian Mark, *Sex-Crime Prosecution Emerges as Major Focus of SF District Attorney Race*, MISSION LOCAL (June 18, 2019), <https://missionlocal.org/2019/06/sex-crime-prosecution-emerges-as-major-focus-of-district-attorney-race/> (last visited Aug. 26, 2020) (detailing San Francisco District Attorney candidate Chesa Boudin’s pledges to improve the current system) [perma.cc/4P6P-NF2R].

210. See John Pfaff, *A No-Holds-Barred Assault on Prosecutors*, THE APPEAL (Aug. 13, 2019), <https://theappeal.org/bill-barr-prosecutors/> (last visited Aug. 27, 2020) (quoting Pfaff’s report on crime rates regarding new progressive prosecutors) [perma.cc/2V9F-UUUT].

211. See Allan Smith, *These Prosecutors Want Radical Criminal Justice Change. Barr is Fighting to Stop Them*, NBC NEWS (Feb. 17, 2020, 8:07 PM), <https://www.nbcnews.com/politics/justice-department/these-prosecutors-want-radical-criminal-justice-change-barr-fighting-stop-n1126986> (last visited Aug. 30, 2020) (discussing how reform-minded prosecutors felt the need to craft a response to Barr’s attack regarding their policies) [perma.cc/7P7F-Y6N3].

212. See Jason Cabel Roe, *How to Combat a Deluge of Outside Spending Down-Ballot*, CAMPAIGNS & ELECTIONS (June 27, 2018), <https://www.campaignsandelections.com/campaign-insider/how-to-combat-a-deluge-of-outside-spending-down-ballot> (last visited Aug. 26, 2020) (explaining the so-called negative impact Soros funding has on District Attorney races) [perma.cc/YR65-XN28].

around ruining progressive candidate Geneviève Jones-Wright's reputation by demonizing Soros.²¹³ Indeed, the Stephan campaign posted ThreatToSanDiego.com immediately after Soros placed \$1.5 million into the California Safety & Justice PAC, but before the money was spent assisting specific candidates.²¹⁴ This website claimed that Jones-Wright was a Soros-controlled candidate who would “end enforcement of sex crimes” and would “let human traffickers, pimps, and pedophiles recruit online.”²¹⁵ The latter attacks appear to have been levied due to Jones-Wright attempting to clarify the differences between sex work and sex trafficking.²¹⁶ Cabel Roe noted that February 2018 polling showed “40 percent of San Diego voters knew who Soros was and 25 percent of those voters had a negative impression.”²¹⁷ District Attorney Stephan won with 62.7% of the vote.²¹⁸

Mark Jones, a professor of political science at Rice University, called anti-Soros sentiment “what you would expect” after large expenditures.²¹⁹ In the context of the 2018 Bexar County (San Antonio), Texas District Attorney race, Professor Jones actually labeled Soros's involvement a weak spot for the progressive candidate, Joe Gonzales, and said, “Effectively trying to highlight

213. See *id.* (detailing methods used to promote a District Attorney candidate in an election against Soros contributions).

214. See *id.* (describing the Threat to San Diego website and their calls).

215. *San Diego Public Safety is Under Attack*, THREAT TO SAN DIEGO <https://web.archive.org/web/20180505060629/https://www.threattosandiego.com/> (last visited Apr. 26, 2020) [perma.cc/C596-FSJK].

216. See Seth Hall, *Morning Report: District Attorney Candidates Clash Over Sex Workers*, VOICE OF SAN DIEGO (Apr. 13, 2018), <https://www.voiceofsandiego.org/topics/news/morning-report-district-attorney-candidates-clash-over-sex-workers/> (last visited Aug. 26, 2020) (referencing Facebook post in which Jones-Wright argued morality cannot be legislated) [perma.cc/C6EQ-MWNN].

217. Cabel Roe, *supra* note 212.

218. *Summer Stephan*, BALLOTPEDIA, https://ballotpedia.org/Summer_Stephan (last visited Aug. 26, 2020) [perma.cc/KUH2-BG4S].

219. See Jasper Scherer, *LaHood's Inflammatory Ad Push Highlights Ideological Differences with Gonzales*, SAN ANTONIO EXPRESS-NEWS (Mar. 3, 2018), <https://www.expressnews.com/news/local/politics/article/LaHood-s-inflammatory-ad-push-highlights-12726246.php>. (last visited Aug. 27, 2020) (discussing the unsurprising animosity in advertisements regarding Soros after his last-minute disclosure of substantial campaign contributions) [perma.cc/7K6R-82W8].

the fact that, ‘My opponent’s campaign has been bought and paid for by this globalist George Soros,’ who for many in the center and the right is the liberal globalist boogeyman,” was a smart strategy for targeted incumbents.²²⁰

Despite the partisan hysterics about progressive prosecutors being “anarchists”²²¹ or “radicals,”²²² these prosecutors are actually less revolutionary than one might expect.²²³ That makes it difficult to imagine ever addressing America’s bloated violent crime sentencing, which is the very problem that created mass incarceration.²²⁴ For example, Philadelphia District Attorney Larry Krasner’s most nontraditional rhetoric is perhaps on drug policy, but drug charges only decreased by approximately 5% in his first two years as District Attorney.²²⁵ Krasner promised to not seek the death penalty, but he violated this promise within nineteen months of his first term.²²⁶ Krasner has recommended

220. See *id.* (proposing that Soros’s contributions threw Gonzales’s campaign in a negative light and therefore were helpful to LaHood).

221. See Trevor Loudon, *Why Communists and Socialists are Electing District Attorneys Across the Nation*, EPOCH TIMES (Dec. 31, 2019), https://www.theepochtimes.com/why-communists-and-socialists-are-electing-district-attorneys-across-the-nation_3188576.html (last updated Jan. 7, 2020) (quoting former New York City Mayor Rudy Giuliani as stating that Soros is electing “anarchist” District Attorneys) [perma.cc/4ZFN-7SF9].

222. See Ken Pittman, *Suffolk County DA Rollins Sides with Antifa Over Cops*, 1420 WBSM (Sept. 5, 2019), <https://wbsm.com/suffolk-county-da-rollins-sides-with-antifa-over-cops-opinion/> (last visited Aug. 27, 2020) (referring to Boston District Attorney Rollins’ office as “radicalized”) [perma.cc/8VKK-SC95].

223. See Pfaff, *supra* note 210 (discussing how only one prosecutor openly refused to prosecute “broad swathes” of cases).

224. See James Cullen, *The History of Mass Incarceration*, BRENNAN CTR. FOR JUST. (July 20, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/history-mass-incarceration> (last visited Aug. 30, 2020) (discussing how the push for increasingly punitive policies skyrocketed the prison population) [perma.cc/P4ZE-A8LN].

225. See *Public Data Dashboard*, PHILA. DIST. ATT’Y OFF. https://data.philadao.com/Charge_Report.html (last visited on Aug. 27, 2020) (utilizing charts supplied by the Philadelphia District Attorney’s office regarding percentages of the types of crimes charged) [perma.cc/6NAZ-F754].

226. See Abraham Gutman, *‘Never’ Death Penalty Is What Got Larry Krasner Elected. Now, That Campaign Promise is Broken*, PHILA. INQUIRER (June 25, 2018, 5:46 PM), <https://www.inquirer.com/philly/opinion/commentary/da-larry-krasner-death-penalty-promise-reneged-20180625.html> (discussing a scenario in which Krasner used the death penalty as a tool to obtain plea deals) [perma.cc/FFB5-74MF].

proportional sentences for former “juvenile lifers,” but if he was harsher during the resentencing process, judges could very well have ignored his recommendations like the judges did in Oakland County, Michigan, a more conservative county than Philadelphia.²²⁷

B. Bad Prosecutors Get to Blame Soros, and not Misconduct and Overreach, for their Electoral Losses

After former Orlando State Attorney Jeff Ashton lost his re-election bid to Aramis Ayala in 2016, he was quick to claim that Soros ousted him, not the voters.²²⁸ “Any political system where you can do your best and do a great job and someone can come around with a million dollars and take your job away, that is not a system I ever want to be a part of again,” Ashton said on a local ABC affiliate.²²⁹

Ashton was not a notoriously unethical or overzealous prosecutor, though he was not without his controversies, either.²³⁰ As an Assistant State Attorney, he was the trial prosecutor who failed to obtain a conviction for Casey Anthony, who was accused of murdering her toddler.²³¹ Ashton also gave a deputy prosecutor, Ken Lewis, a second chance after making racist comments on

227. See Aileen Wingblad, *A Killer's Second Chance: Oakland County Whittling Away At Cases Of Juveniles Sentenced To Life In Prison*, OAKLAND PRESS (Dec. 23, 2019), https://www.theoaklandpress.com/news/copscourts/a-killer-s-secondchance-oakland-county-whittling-away-at/article_6439de54-20f5-11ea-a162-43b513aae931.html (last visited Aug. 30, 2020) (following the stories of “juvenile lifers” and the impact of resentencing) [perma.cc/H89B-P9DH].

228. See *I'll Never Seek Public Office Again,' Says State Attorney Jeff Ashton*, WFTV9 (Dec. 20, 2016, 6:51 PM), <https://www.wftv.com/news/9-investigates/ill-never-see-public-office-again-says-state-attorney-jeff-ashton/477603137/> (last visited Aug. 27, 2020) (saying that all that is necessary to win a campaign is a million dollars and a lie) [perma.cc/83T4-94HH].

229. *Id.*

230. See *id.* (detailing excessive force investigations in which Ashton did not charge police officers as well as his admitted use of adult website Ashley Madison as a way to set up a discreet affair).

231. See Rene Stutzman, *Ashton: Casey Anthony Interview Is Same Old, Same Old*, ORLANDO SENTINEL (Mar. 7, 2017, 11:25 AM), <https://www.orlandosentinel.com/news/casey-anthony/os-casey-anthony-speaks-reaction-20170307-story.html> (detailing Ashton's thoughts on the Casey Anthony trial) [perma.cc/2LD8-DG59].

Facebook.²³² That led to then-Assistant State Attorney Lewis calling downtown Orlando “a melting pot of 3rd world miscreants and ghetto thugs” that “should be leveled” to the ground, immediately after the Pulse nightclub shooting.²³³

However, Ashton’s comments emerged from a playbook that quickly developed once Soros started spending money to influence prosecutor elections.²³⁴ After his loss in Mississippi during the 2015 election cycle, District Attorney Forrest Allgood was asked if the Soros money backing progressive challenger Scott Colom had an impact.²³⁵ Allgood said, “Of course it did,” and elaborated that

He (Colom) won because he was able to mount a, what I believe was, misleading, negative campaign. He saturated the media with ads claiming wrongful prosecutions, etc. I did not have the money to buy the time to respond. He had ads on in the World Series. You know what that costs? I couldn't compete.²³⁶

Allgood had become notorious for prosecutorial misconduct and using faulty forensic science to obtain wrongful convictions.²³⁷

After Nico LaHood lost his District Attorney seat in Bexar County (San Antonio), Texas, LaHood claimed that, “The influence, obviously, of \$1 million in New York money was too much for us to overcome.”²³⁸ But LaHood also karate-chopped a

232. See *Jeff Ashton Explains Reasons For Internal Investigation Into Ken Lewis*, WESH (May 29, 2014, 11:56 PM), <https://www.wesh.com/article/jeff-ashton-explains-reasons-for-internal-investigation-into-ken-lewis/3817175> (last visited Aug. 28, 2020) (discussing reassigning of Lewis and mandatory sensitivity training after he used the term “crack hoe” in a Mother’s Day Facebook post) [perma.cc/8N3F-YJDJ].

233. See Summer Knowles, *Prosecutor Fired Over Facebook Post Sounds Off On Twitter*, WESH (June 24, 2016, 7:43 AM), <https://www.wesh.com/article/prosecutor-fired-over-facebook-post-sounds-off-on-twitter/4450412> (last visited Aug. 28, 2020) (quoting Lewis’s Facebook post published at 9:40 a.m. on the morning of the shooting) [perma.cc/VE56-5Y7C].

234. See Gates, *supra* note 84 (discussing Mississippi District Attorney race in which incumbent Allgood was ousted and the impact of Soros funding to his challenger).

235. See *id.* (referencing an interview conducted after Allgood lost the election to Soros-backed Colom).

236. *Id.*

237. See Balko, *supra* note 13 (discussing Allgood’s prosecution record and alleged fraudulent bite mark analysis).

238. Jasper Scherer, *Inside The Ground Game and Soros Effect That Took Down Nico...*, SAN ANTONIO EXPRESS-NEWS (Mar. 22, 2018), <https://www.expressnews.com/news/local/politics/article/Inside-the-ground->

table when declaring at a City Council meeting that he would never support marijuana legalization,²³⁹ threatened a defense attorney who said he was going to report LaHood's misconduct,²⁴⁰ and made bigoted remarks about Muslims.²⁴¹ But blaming the loss of an election on Soros permits problematic prosecutors to undercut the narrative that voters issued a signal that prosecutorial misconduct or overzealousness is not to be tolerated.²⁴²

*C. Districts with More Pro-Reform Voters Are Often Not the Ones
with More Progressive Prosecutors*

Since state bars virtually never discipline prosecutors,²⁴³ and the scope of problematic conduct that is actionable by state bars is limited—"overzealous" is not grounds for a bar complaint, even if it is troubling²⁴⁴—local prosecutors are only truly accountable at

game-and-Soros-effect-that-took-12770212.php (last visited Dec. 8, 2020) [perma.cc/86BK-EL4V].

239. See Brian Chasnoff, *LaHood Cut Out City Officials On Diversity Program*, SAN ANTONIO EXPRESS-NEWS (Feb. 26, 2018, 7:59 PM), https://www.expressnews.com/news/news_columnists/brian_chasnoff/article/LaHood-cut-out-city-officials-on-diversion-program-12710760.php (last visited Oct. 2, 2020) (quoting Jorge Estevez, former communications manager for Councilwoman Shirley Gonzales, on LaHood's action at a City Hall meeting) [perma.cc/84B7-Y6TP].

240. See Jessica Brand, *When Prosecutors Bully*, SLATE (Aug. 4, 2017, 9:07 AM), <https://slate.com/news-and-politics/2017/08/when-prosecutors-bully.html> (last visited Oct. 2, 2020) (discussing LaHood's threats to shut down opposing counsel's practice after they moved for a mistrial) [perma.cc/A35Q-TML8].

241. See Jay Michaelson, *Texas's Anti-Islam, Anti-Vaccine, Born-Again Christian Candidate Is A Democrat*, DAILY BEAST (Feb. 15, 2018, 5:21 AM), <https://www.thedailybeast.com/texas-anti-islam-anti-vaccine-born-again-christian-candidate-is-a-democrat> (last visited Aug. 30, 2020) (discussing a radio interview in which LaHood shared his views regarding Islam) [perma.cc/QXA6-E3A4].

242. See Scherer, *supra* note 238 (discussing LaHood's anger over Soros pushing unknown agendas and creating salacious attack ads rather than focusing on his own campaign issues).

243. See Parker Yesko, *Why Don't Prosecutors Get Disciplined?*, APM REPORTS (Sep. 18, 2018), <https://www.apmreports.org/story/2018/09/18/why-dont-prosecutors-get-disciplined> (discussing questionnaire results in which only three states responded that complaints or investigations against prosecutors were tracked) [perma.cc/ZP8X-7SHC].

244. See Robert Smith, *The Personality Driven Death Penalty*, AM. CONST.

the ballot box.²⁴⁵ But Soros's outsized influence has created a seemingly random mechanism for accountability.²⁴⁶ Under the status quo of prosecutorial campaign financing, community support for ethical prosecution practices and criminal justice reform barely matters.²⁴⁷

Robert Langford, a defense attorney in Las Vegas, is one attorney who knows all of this well.²⁴⁸ Langford's campaign website from 2018 is still available through Wayback Machine,²⁴⁹ a service that saves screen captures of websites then stores them in case of deletion.²⁵⁰ Langford was the progressive candidate for District Attorney in Clark County, Nevada, which includes Las Vegas, has approximately two million residents,²⁵¹ and is consistently one of the most active death penalty counties in the

SOC'Y (June 30, 2016), <https://www.acslaw.org/expertforum/the-personality-driven-death-penalty> (discussing study that found the application of the death penalty is a personality-driven feature of the prosecutor in the geographic area) [perma.cc/SJ8F-TP8C].

245. *See id.* (detailing select prosecutors seeking the death penalty at disproportionate rates and the common trait of other misconduct many of them have).

246. *See* Elinson & Palazzolo, *supra* note 202 (showing the broad scope that Soros funding reaches regarding geographic areas and candidates).

247. *See* Riley Snyder, *On the Record: The Policy Positions of Democratic Clark County District Attorney Candidate Rob Langford*, NEV. INDEP. (May 28, 2018, 2:00 AM), <https://thenevadaindependent.com/article/on-the-record-the-policy-positions-of-democratic-clark-county-district-attorney-candidate-rob-langford> (last visited Aug. 30, 2020) (discussing how endorsements and subsequent funding impact a race, especially in how to reach out to voters) [perma.cc/AQK6-JDPD].

248. *See id.* (detailing Langford's position on several hot campaign topics, such as marijuana convictions and the death penalty, during his run for District Attorney).

249. ROBERT LANGFORD FOR DIST. ATTY, <https://web.archive.org/web/20190508130128/http://langfordforda.com/> (last visited on Aug. 30, 2020) (showing Langford's campaign website for the June 2018 election and the stances he took on issues) [perma.cc/8BNM-L98W].

250. Rachele Hampton, *The Internet Archive Started an 'Emergency' Online Library. Authors are Furious*, SLATE (Apr. 1, 2020), <https://slate.com/culture/2020/04/internet-archive-national-emergency-library-controversy.html> (last visited Oct. 2, 2020) [perma.cc/7MFZ-9K7B].

251. *See QuickFacts: Clark County, Nev.*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/clarkcountynevada> (last visited Aug. 25, 2020) (estimating the population of Clark County to be 2,266,715 on July 1, 2019) [perma.cc/HVA9-HPHT].

nation.²⁵² Wolfson received negative publicity on the national stage for blocking the exoneration of Fred Steese, a man who was not even located in the state when the murder he was convicted of occurred.²⁵³ Wolfson previously demanded Steese enter an *Alford* plea to a murder count, in exchange for his release from prison.²⁵⁴

The first plank of Langford's progressive campaign platform was "End Mass Incarceration."²⁵⁵ The first line of text underneath that is "While other district attorney's offices typically prosecute 50 to 60% of cases forwarded by the police, in Clark County the DA's office prosecutes 89% of them."²⁵⁶ As Langford's campaign site states, this "contributes to Nevada's high incarceration rate," since the vast majority of people in the state live in Clark County.²⁵⁷ While Langford did not promise to outright never seek death sentences, he heavily implied he would seek significantly fewer than incumbent DA Steve Wolfson.²⁵⁸

252. See Joe Schoenmann, *Defense Attorney Seeks DA's Job*, NEV. PUB. RADIO (June 4, 2018), <https://knpr.org/knpr/2018-06/defense-attorney-seeks-das-job> ("Clark County is the second in the nation for death penalty case.") [perma.cc/39YG-J2C2].

253. See Megan Rose, *Kafka in Vegas: A Murdered Circus Star, A Dubious Confession, and America's Prosecutorial Misconduct Epidemic*, VANITY FAIR (May 26, 2017), <https://www.vanityfair.com/news/2017/05/kafka-in-vegas-murder> (last visited Oct. 2, 2020) ("But because the prosecutors were already convinced that Steese had committed the murder, to them the alibi must simply be wrong.") [perma.cc/7V2X-XHVF].

254. See *Fred Steese: Other Clark County Exonerations*, NAT'L REGISTRY OF EXONERATIONS (Dec. 1, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5236> (last visited Oct. 2, 2020) ("Steese was charged with first-degree murder, illegal use of a weapon, burglary, and grand larceny.") [perma.cc/2QJ6-K8GP].

255. Langford, *supra* note 249.

256. *Id.*

257. NEV. AGING AND DISABILITY SERV. DIV. APPENDIX B: NEV. GEOGRAPHIC AND DEMOGRAPHIC DATA (Apr. 27, 2020), <http://adsd.nv.gov/uploadedFiles/adsdnvgov/content/About/Reports2/StatePlan/AppendixBNevadaGeographicandDemographicData.pdf>. (last visited Nov. 12, 2020) [perma.cc/YD4H-S9UU]. Compare U.S. CENSUS BUREAU, *supra* note 251 (estimating the population of Clark County to be 2,266,715), with *QuickFacts: Clark County, Nev.*, *supra* note 251 (estimating the population of Nevada to be 3,080,156).

258. See Riley Snyder, *On the Record: The Policy Positions of Democratic Clark County District Attorney Candidate Rob Langford*, THE NEV. INDEP. (May 28, 2018), <https://thenevadaindependent.com/article/on-the-record-the-policy-positions-of-democratic-clark-county-district-attorney-candidate-rob-langford>. (last visited Aug. 25, 2020) ("Although he is not outright opposed to the death

But Langford was only able to raise \$63,465.23 by the end of his 2018 run.²⁵⁹ During the same period, incumbent DA Wolfson raised \$304,791.49, almost five times as much as Langford, and he actually spent close to \$883,000 that year.²⁶⁰ Wolfson also enjoyed the free publicity of *Las Vegas Law*, a reality TV show based on his job that one magazine called “*COPS* for the lawyer set.”²⁶¹ The largest newspaper in the metro area also endorsed Wolfson over Langford.²⁶² Despite all of this, Langford, who entered the race right before the filing deadline, managed to get 44% of the vote in the 2018 Democratic primary.²⁶³ Shockingly, in comparison to other 2018 races, Langford did better than every progressive prosecutor candidate in California except Diana Becton in Contra Costa County, even in counties with similar local politics.²⁶⁴

penalty, Langford criticized the current district attorney’s office for how it approaches death penalty cases.”) [perma.cc/JR8D-BXRX].

259. *Contributions and Expenses: Robert Langford*, STATE OF NEV. (Jan. 9, 2019), <https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/ViewCCEReport.aspx?syn=jSR30N4LZczfnpW0EQSjnA%253d%253d> (last visited Oct. 2, 2020) [perma.cc/94ET-G7HK].

260. *Contributions and Expenses: Steven B. Wolfson*, STATE OF NEV. (Nov. 2, 2018), <https://www.nvsos.gov/SOSCandidateServices/AnonymousAccess/ViewCCEReport.aspx?syn=qtQsgDVxx6H%252fL9EIat8FrQ%253d%253d> (last visited Oct. 2, 2020) [perma.cc/98ZH-LT8R].

261. *Meet the Prosecutor Turned Reality TV Star Who Runs One of the Worst Offices in America*, APPEAL (Dec. 1, 2017), <https://theappeal.org/lassos-and-legal-pads-the-cowboy-culture-of-the-clark-county-nevada-das-office-38218bf6e783/> (last visited Aug. 25, 2020) [perma.cc/55K4-JDZA].

262. *See Editorial: The Race for Clark County District Attorney*, LAS VEGAS REV. J. (MAY 22, 2018, 9:00 PM), <https://www.reviewjournal.com/opinion/editorials/editorial-the-race-for-clark-county-district-attorney/> (last visited on Aug. 25, 2020) (“The Review-Journal recommends a vote for Steve Wolfson in the district attorney race.”) [perma.cc/A396-E6NT].

263. Rachel Crosby, *Wolfson Beats Langford to Retain Clark County DA Seat*, LAS VEGAS REV. J. (June 12, 2018), <https://www.reviewjournal.com/news/politics-and-government/clark-county/wolfson-beats-langford-to-retain-clark-county-da-seat/> (last visited Nov. 12, 2020) [perma.cc/9D96-934F].

264. *See Nevada Results*, N.Y. TIMES (Aug. 1, 2017, 11:22 AM), <https://www.nytimes.com/elections/2016/results/nevada> (stating 52.4% of Clark County, Nevada voters voted for Hilary Clinton in the 2016 Presidential race) [perma.cc/5UGM-B52A]; *Nevada Governor Election Results 2018*, POLITICO (Apr. 27, 2018), <https://www.politico.com/election-results/2018/nevada/governor/> (last visited Nov. 12, 2020) [perma.cc/FW6Q-C2HV].

Elsewhere, Donna Patalano, who now works as the General Counsel in the Suffolk County (Boston) DA's office,²⁶⁵ attempted to unseat Middlesex County, Massachusetts, DA Marian Ryan in 2018.²⁶⁶ DA Ryan portrayed herself as a "progressive" prosecutor, touting her support of a recent criminal justice bill package and a limited restorative justice bill.²⁶⁷ But Ryan also prosecuted kids as young as fifteen years old as adults²⁶⁸ and fought to keep some convictions tainted by the state's massive drug lab scandal.²⁶⁹ Ryan also was accused of bullying the county's chief medical examiner into changing his conclusion in a "shaken baby" homicide case²⁷⁰ and obtained a wrongful conviction for a woman in a similar case.²⁷¹ Ryan's deputies illegally withheld exculpatory evidence

265. See Renee Algarin, *Single Justice Issues Ruling Vacating Conviction*, SUFFOLK CNTY. DIST. ATT'Y'S OFF. (Jan. 28, 2020), <https://www.suffolkdistrictattorney.com/press-releases/items/osman-bilal> (last visited Oct. 2, 2020) (thanking Donna Patalano for her work as General Counsel) [perma.cc/E7JZ-VYBM].

266. See Alana Melanson, *DA Candidate Patalano Calls For Transparency, Accountability*, ASSOCIATED PRESS (Apr. 30, 2018), <https://apnews.com/1f17816efdeb4a6e83899dc5ba675d64> (last visited Sept 12, 2020) (explaining how Patalano sought to unseat District Attorney Ryan by criticizing her record on transparency and accountability) [perma.cc/8YRE-DNMF].

267. See Maria Cramer, *Two Women, Both Self-Described Progressives, Vie to be Middlesex's Top Prosecutor*, BOS. GLOBE (Sept. 1, 2018), <https://www.bostonglobe.com/metro/2018/09/01/two-women-both-self-described-progressives-vie-middlesex-top-prosecutor/C5BmKUzMyi5zZL8rwyUc8M/story.html> (last visited Aug. 25, 2020) (explaining how DA Ryan refused to sign a letter opposing the criminal justice bill package, while also helping write sections of the bill on restorative justice) [perma.cc/Y6D2-66KG].

268. See Lisa Redmond, *4 Teens Charged in City Murder*, LOWELL SUN (Jan. 31, 2008), <https://www.lowellsun.com/2008/01/31/4-teens-charged-in-city-murder/> (last visited Aug. 25, 2020) (charging three juveniles as adults in an armed robbery and murder case) [perma.cc/M6JA-ZBTX].

269. See *DA to Retry Just Nine Cases from Dookhan Drug-Lab Scandal*, LOWELL SUN (Apr. 19, 2017), <https://www.lowellsun.com/2017/04/19/da-to-retry-just-nine-cases-from-dookhan-drug-lab-scandal/> (last visited Aug. 25, 2020) (explaining that DA Ryan decided to retry nine cases that had used the tainted evidence from the drug lab scandal) [perma.cc/9LTL-JQXU].

270. See *DA Marian Ryan Denies Claim She Bullied Medical Examiner*, CBS BOS. (Oct. 13, 2015), <https://boston.cbslocal.com/2015/10/13/marian-ryan-medical-examiner/> (last visited Aug. 25, 2020) ("[T]hose charges were dropped after defense experts found a genetic defect could have caused the baby's death.") [perma.cc/MY9K-DPR3].

271. See Hannah Parry, *Irish Nanny Wrongly Jailed for Two Years After*

from the defense in both cases.²⁷² Despite challenger Donna Patalano's strong professional credentials for the position,²⁷³ bold policy platform,²⁷⁴ and endorsement from the metro area's most prominent newspaper,²⁷⁵ she still only received approximately 47% of the vote to DA Ryan's 53%.²⁷⁶

Being Accused of Killing Baby in Her Care Prepares to Sue Doctor Who Said She Was a Murderer, DAILY MAIL (Jan. 17, 2016), <https://www.dailymail.co.uk/news/article-3403643/Irish-nanny-accused-killing-baby-care-three-years-ago-prepares-sue-doctor-said-murderer.html> (last visited Aug. 25, 2020) ("A nanny who was wrongly jailed for two years after being accused of killing a baby is to sue the doctor who branded her a murderer.") [perma.cc/NXB8-YLNW].

272. See Radley Balko, *Middlesex County, Mass. Prosecutor Withheld Exculpatory Evidence in Two 'Shaken Baby' Cases*, WASH. POST (Oct. 20, 2015), <https://www.washingtonpost.com/news/the-watch/wp/2015/10/20/middlesex-county-mass-prosecutors-withheld-exculpatory-evidence-in-two-shaken-baby-cases/> (last visited Oct. 2, 2020) ("The best prosecutors would have shared that information right after the first phone call. But, prosecutors on the McCarthy case kept it to themselves.") [perma.cc/9KT4-XYBU].

273. See Joe Dwinell, *Suffolk DA-Elect Rachell Rollins Announces Transition Team Members*, BOS. HERALD (Dec. 7, 2018), <https://www.bostonherald.com/2018/12/06/1432847/> (last visited Aug. 25, 2020) ("In 2015, the SJC appointed her chair of the Board of Bar Overseers, the agency responsible for the discipline of state's 60,000 active attorneys.") [perma.cc/TBB3-UWK6].

274. See *DA Candidate from Winchester: Patalano Has New Plan for Young Offenders*, DAILY TIMES CHRON. (Apr. 3, 2018), http://homenewshere.com/daily_times_chronicle/news/winchester/article_241ec15c-3751-11e8-b757-ab1b82dd2aa6.html (last visited Aug. 25, 2020) ("The proposed Juvenile & Emerging Adult Bureau will bring together social workers, victim witness advocates, and assistant district attorneys in specialized units.") [perma.cc/S2MY-D3YD].

275. See Editorial Board, *Endorsement: Rachel Rollins and Donna Patalano Would Lead on Criminal Justice Reform*, BOS. GLOBE (Oct. 28, 2018), <https://www.bostonglobe.com/opinion/editorials/2018/08/28/endorsement-rachael-rollins-and-donna-patalano-would-lead-criminal-justice-reform/o2CSNqoqyy3FCoO6GD56Zl/story.html> (last visited Aug. 25, 2020) (endorsing Donna Patalano for district attorney) [perma.cc/KW64-4JTY].

276. WBUR Newsroom, *Middlesex County DA Ryan Fend Off Democratic Primary Challenge*, WBUR (Sep. 5, 2018), <https://www.wbur.org/news/2018/09/05/middlesex-ryan-patalano-results> (last visited Aug. 25, 2020) [perma.cc/6TMR-ML44].

V. A Real Solution: Public Financing in Prosecutorial Elections

This author does not argue that progressive prosecutors should be seen as illegitimate, only that they sometimes are. The progressive prosecutor wave—financially enabled by George Soros—has created a precedent for prosecutors opposing mass incarceration and has accelerated the pace of criminal justice reforms.²⁷⁷ This is desirable, because the United States continues to be the most incarcerated country on the planet on a per capita basis.²⁷⁸ The incarceration per capita could be reduced significantly through a number of structural changes that would not have a significant impact on crime rates.²⁷⁹ However, Soros’s undeserved negative reputation amongst vast swaths of the American public casts a dark shadow over these candidates once elected.²⁸⁰ When progressive prosecutors once aided by Soros-affiliated PAC money make smart, tempered decisions on criminal justice reform, political fires linked to Soros-related fearmongering are soon to follow.²⁸¹

277. See Daniel A Medina, *The Progressive Prosecutors Blazing a New Path for the US Justice System*, THE GUARDIAN (July 19, 2019), <https://www.theguardian.com/us-news/2019/jul/23/us-justice-system-progressive-prosecutors-mass-incarceration-death-penalty> (last visited Aug. 25, 2020) (“These candidates have bucked a decades-long ‘tough-on-crime’ trend adopted by both major parties, in favor of fundamental reforms to criminal justice.”) [perma.cc/9ZDE-QQBP].

278. See Michelle Ye Hee Lee, *Yes, U.S. Locks People up at a Higher Rate than Any Other Country*, WASH. POST (July 7, 2015), <https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/> (last visited Aug. 25, 2020) (“[T]he United States had the highest prison population rate in the world, at 716 per 100,000 people.”) [perma.cc/YAZ8-7JY8]

279. See Lauren Carroll, *How the War on Drugs Affected Incarceration Rates*, POLITIFACT (July 10, 2016), <https://www.politifact.com/factchecks/2016/jul/10/cory-booker/how-war-drugs-affected-incarceration-rates/> (last visited Aug. 25, 2020) (“In 1980, about 41,000 people were incarcerated for drug crimes, according to the Sentencing Project. In 2014, that number was about 488,400 — a 1,000 percent increase.”) [perma.cc/NT4S-6XYZ].

280. See Paige St. John & Abbie VanSickle, *Here’s why George Soros, Liberal Groups are Spending Big to Help Decide Who’s Your Next D.A.*, L.A. TIMES (May 23, 2018), <https://www.latimes.com/local/california/la-me-prosecutor-campaign-20180523-story.html> (last visited Aug. 25, 2020) (“The grenades her campaign launches are aimed at Soros as much as at her opponent.”) [perma.cc/43M5-LZAJ].

281. See *id.* (“When Soros’ first TV ads hit San Diego airwaves, Stephan’s

There is a middle route that can allow progressive candidates to be competitive in a fashion that tracks the extent of local support: Small-donor public financing, a system in which the state government runs a match program to amplify the effect to individual small donations.²⁸²

A. How Would Public Financing Work?

Public funding for elections in the United States today is not commonplace, but it does exist.²⁸³ Twelve states already provide for the public financing of Governor and Lieutenant Governor elections.²⁸⁴ New Mexico and Virginia provide public funding for state supreme court seats.²⁸⁵ More on point, five states—Arizona, Connecticut, Hawaii, Maine, and Minnesota—provide a level of public funding for state legislative races.²⁸⁶ While state legislators

campaign released ThreatToSanDiego.com, a website declaring public safety under attack. It carries a picture of Soros superimposed over masked, black-clad street demonstrators.”).

282. See *Public Campaign Financing*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/issues/reform-money-politics/public-campaign-financing> (last visited on Apr. 27, 2020) (“Small donor public financing incentivizes candidates to seek out many supporters, not just a few big donors.”) [perma.cc/P2HU-9W53].

283. See *id.* (“New York City’s multiple match system, in which a \$50 donation generates a total of \$350 for the candidate, has helped reduce the influence of special interests and empower average voters, and the idea is gaining traction across the country.”).

284. See *id.* (“These states include Arizona, Connecticut, Florida, Hawaii, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Rhode Island, New Mexico, and West Virginia.”).

285. See Cara Bayles, *What the Loss of Public Funds Means for Would-Be Judges*, LAW 360 (Nov. 6, 2019), <https://www.law360.com/articles/1215788/what-the-loss-of-public-funds-means-for-would-be-judges> (last visited Aug. 25, 2020) (“Justice Bacon, who was appointed to the bench last year, is publicly financing her 2020 bid to keep her seat.”) [perma.cc/AGC6-DVKA].

286. See *Public Financing of Campaigns: Overview*, NCSL (Feb. 8, 2019), <https://www.ncsl.org/research/elections-and-campaigns/public-financing-of-campaigns-overview.aspx> (last visited Apr. 27, 2020) (“The two main types of programs states offer for public financing of elections are the clean elections programs offered in states such as Maine and Arizona, and programs that provide a candidate with matching funds for each qualifying contribution they receive.”) [https://perma.cc/A9LX-Z6RC].

are statewide rather than local officials, they still are elected by local constituencies, just like elected county prosecutors.²⁸⁷

In Vermont, candidates for both Governor and Lieutenant Governor are eligible for a public funding option.²⁸⁸ Gubernatorial candidates can receive up to \$150,000 in the primary election and \$450,000 in the general election.²⁸⁹ Candidates for Lieutenant Governor are eligible to receive \$50,000 in the primary election and \$150,000 in the general election.²⁹⁰ Recognizing the advantage that incumbents usually enjoy, the law also provides 85% less funding for incumbents.²⁹¹ A candidate becomes ineligible if she receives more than \$2,000 in outside campaign contributions, announces her campaign before February 15 on an election year, or she is running uncontested.²⁹²

Small-donor public financing is an even more appealing option than lump-sum contributions.²⁹³ This model was originally proposed by the Brennan Center for Justice at New York University School of Law as a counter to the Supreme Court's decision in *Citizens United*,²⁹⁴ which "gave the green light to

287. See Justin Levitt & Erika Wood, *A Citizen's Guide to Redistricting*, BRENNAN CTR. FOR JUST. 11 (2010) <https://www.brennancenter.org/sites/default/files/legacy/CGR%20Reprint%20Single%20Page.pdf>. (noting the similarities in elections) [perma.cc/K428-9JVQ].

288. See 17 VT. STAT. ANN. § 2985 (2013) (stating a candidate for the office of Governor or Lieutenant Governor can seek a campaign finance grant).

289. *Id.* § 2985(b).

290. *Id.* § 2985(b)(2).

291. *Id.* § 2985(b)(3).

292. See *id.* § 2983(a) (finding a person ineligible for campaign finance grants if they become a candidate before February 15 of an election year, accept contributions more than \$2,000 dollars or make expenditures of more than \$2,000 dollars).

293. See Doug Chakva, *The Case for Small Donor Public Financing in New York State*, BRENNAN CTR. FOR JUST. (Feb. 26, 2019), <https://www.brennancenter.org/our-work/policy-solutions/case-small-donor-public-financing-new-york> (last visited Aug. 25, 2020) ("It would free legislators to better represent their constituents. It would bolster the diversity of donors, officeholders, and candidates. It would curb corruption.") [perma.cc/3BP5-Q2YA].

294. See *Citizens United v. F.E.C.*, 558 U.S. 310, 319, 365 (2010) (prohibiting the government from suppressing free speech on the basis of corporate identity and allowing independent expenditures for electioneering communication).

unlimited special interest spending.”²⁹⁵ Recommended legislation to enact small-donor public financing has six major components.²⁹⁶

First, when a candidate for state office (which includes elected local prosecutors) receives a small contribution by an in-state resident, an in-kind contribution from a public fund would contribute a matched donation.²⁹⁷ The Brennan Center recommends a six-fold public contribution, so a \$10 donation would be accompanied by an extra \$60 public donation, increasing the donation’s value to \$70.²⁹⁸ Second, the funds would only be available for candidates who reach a certain numerical threshold of small donors who are constituents.²⁹⁹ Third, it is recommended that such legislation reduce individual contribution limits to “focus[] fundraising on everyday constituents and voters rather than deep-pocketed donors,” though the Brennan Center made this recommendation in New York context and it could be less applicable to many states.³⁰⁰ Fourth, such legislation would place a cap on public funds a candidate could get within one cycle, since the purpose is to ensure a competitiveness floor, not to give as many funds as an individual candidate could possibly want.³⁰¹ Fifth, this legislation should require transparency by “requir[ing] public disclosure by participating candidates of fundraising and spending and enforce compliance rules effectively.”³⁰² Lastly, the legislation would have to require an adequate, reliable funding source, such as the gas taxes many states have to help maintain

295. Chakya, *supra* note 293.

296. *See id.* (listing a 6-to-1 match of small donations, qualifying thresholds, reduced contribution limits, caps on public funds, transparency and oversight and adequate and reliable funding as major components of the legislation).

297. *See id.* (matching any contribution by an in-state resident by six times using money from a public fund).

298. *See id.* (“A contribution of \$10 would then be worth \$70.”).

299. *See id.* (making candidates show a reasonable level of support in their campaign before they become eligible for public funding).

300. *See id.* (noting that, while New York’s contribution limits are larger than most states, reducing that limit would still foster voter participation by the everyday constituent, instead of just the extremely rich).

301. *See id.* (capping the public funds at a certain number, but still allowing the candidate to raise private funds and spend without limits).

302. *See id.* at 45.

public highways.³⁰³ Such a tax could be measured in cents per sale to be effective.³⁰⁴

This system of public financing would be especially palpable in the prosecution context.³⁰⁵ Rather than prosecutors' electability being determined by one or two cases that dominated a news cycle, individuals who have personally dealt with these offices can signal their approval or disapproval of their treatment in a meaningful fashion.³⁰⁶ Prosecutors announce themselves as "the people" in the courtroom, which in fact encompasses crime survivors, perpetrators, and everyone else in their jurisdiction.³⁰⁷ Many crime survivors who think the incumbent administration has gracefully and compassionately handled their cases might only be able to donate small amounts without being financially overburdened.³⁰⁸ The opposite is also true, and victims who have been mistreated or

303. See Tom Barton, *This Is Why You'll Be Paying More For Gas In SC On July 4*, THE STATE (June 26, 2019, 7:00 AM), <https://www.thestate.com/news/politics-government/article231381058.html> (last visited Oct. 3, 2020) (explaining South Carolina's increase in gas tax to fund new road construction) [perma.cc/3669-RSV8].

304. See "New Gas Tax Trust Fund, S.C.," S.C. DEP'T OF TRANSP., <https://www.scdot.org/inside/new-gastax-trustfund.aspx> (last updated Sept. 1, 2020) (last visited Sept. 7, 2020) (explaining the state's gas tax increase to be 12 cents which will be slowly implemented starting with a 2 cents per gallon increase) [perma.cc/BY65-UNYS].

305. See Chakya, *supra* note 293 (explaining how state elections would be benefitted by adopting New York City's longtime model of small donor campaign financing).

306. See *id.* (describing how a "small donor public financing system can lead to candidates engaging more of their constituents when fundraising, and voters responding by adding their voices with small donations.").

307. See Danielle Silva, *McGregor Scott Gets Hammered at UC Hastings Symposium After Claims Progressive Prosecutors Lead to Higher Homicide Rates*, THE DAVIS VANGUARD (Feb. 8, 2020), <https://www.davisvanguard.org/2020/02/mcgregor-scott-gets-hammered-after-claims-progressive-prosecutors-lead-to-higher-homicide-rates-at-uc-hastings-symposium/> (last visited Aug. 29, 2020) (arguing over the prosecution and defense's role within a community, further noting the prosecutor is meant to protect the community, and the community is made up of criminal defendants) [perma.cc/ALL3-WGZW].

308. See *Neighborhoods and Violent Crime*, DEP'T OF HOUSING AND URBAN DEV. (2016), <https://www.huduser.gov/portal/periodicals/em/summer16/highlight2.html> (last visited Aug. 29, 2020) (explaining that numerous studies show that neighborhoods with higher poverty rates tend to have higher rates of violent crime) [perma.cc/MEK3-5VN4].

ignored can donate small amounts to opponents knowing that their input matters.³⁰⁹ Likewise, people who push for criminal justice reform are often people who have had firsthand or secondhand exposure to the criminal justice system, which is often linked to poverty.³¹⁰ Their voices too would be meaningfully heard under this form of financing.³¹¹

State legislatures ideally would accompany any legislation with provisions to excise inappropriate influences on these races that unethically benefit incumbents.³¹² Line prosecutors in a jurisdiction are permitted to donate to their current boss, which has led many District Attorneys to coerce their staff to donate or commit taxpayer-paid work hours to their campaigns.³¹³ District Attorneys have also taken donations from private defense

309. Currently, beyond campaign donations, the main way crime survivors are heard is through speaking out. But many survivors do not want to do this due to the risk of being traumatized or facing retraumatization through potential victim blaming, public disbelief, or harassment. In the few instances where survivors have spoken out against DAs, it has not led to a change in prosecutorial guard. *Rape Victim Speaks Out About 2000 Untested Rape Kits*, WMC 5 (Aug. 20, 2013, 5:54 PM), <https://www.wmcactionnews5.com/story/23197587/rape-victim-speaks-out-about-2000-untested-rape-kits/> (last visited Aug. 29, 2020) [perma.cc/6LTR-QFBD]. The DA criticized in this case, Amy Weirich, was re-elected after the story broke, see *Amy Weirich*, MEM. CITY MAG. (Aug. 5, 2019), <https://memphismagazine.com/whos-who/amy-weirich/> (last visited Aug. 29, 2020) [perma.cc/55FZ-34G3].

310. See Kristin Turney & Sara Wakefield, *Criminal Justice Contact and Inequality*, 5 RUSSEL SAGE FOUND. J. OF THE SOC. SCI. 1, 2, 81, (2019) (evaluating the vast consequences of sustained forms of criminal justice contact, and the correlation between poor communities and criminal justice contact).

311. See Chakya, *supra* note 293 (noting how adopting small donor financing would allow candidates to focus on their constituents concerns instead of being on the call with big donors).

312. See Robert Gavin, *30 DA Staffers Give to Soares' Campaign*, TIMES UNION (June 9, 2020), <https://www.timesunion.com/news/article/More-than-two-dozen-DA-staffers-give-to-Soares-15325495.php> (last visited Sept. 12, 2020) (noting that, under NY law, public officials cannot use public resources or pressure their employees to contribute, but, despite this current law, DA Soares's 32 ADA's and their spouses have contributed over \$5,000 to his re-election) [perma.cc/SV84-SB97].

313. See Don DeBenedictis, *Prosecutor Accuses OC District Attorney Of Retaliation*, COURTHOUSE NEWS SERV., (Sept. 15, 2017), <https://www.courthousenews.com/prosecutor-accuses-oc-district-attorney-retaliation/> (discussing a devout district attorney's contributions to a judge's campaign and the harm done to those in the prosecutor's office who did not contribute to the campaign) [perma.cc/LK4J-GL3E].

attorneys representing high-profile, despised clients.³¹⁴ Manhattan District Attorney Cyrus Vance, Jr. faced intense scrutiny after an expose revealed that he took a campaign donation from a lawyer who was representing Harvey Weinstein on the rape allegations against him at the pre-indictment stage.³¹⁵ Vance soon after failed to indict Weinstein,³¹⁶ though he later ended up prosecuting the disgraced former film director after the #MeToo movement gained national and international prominence.³¹⁷ These practices should be banned, but bills that would have done so have stalled.³¹⁸

314. See Laura Nahmias & Bill Mahoney, *Fundraising Anomaly Allows Vance, DAs To Raise Cash From Criminal Defense Lawyers*, POLITICO (Oct. 16, 2017, 5:13 AM), <https://www.politico.com/states/new-york/city-hall/story/2017/10/15/fundraising-loophole-allows-vance-das-to-raise-cash-from-criminal-defense-lawyers-115063> (last visited Aug. 29, 2020) (unveiling that a substantial portion of District Attorney Vance’s campaign donations came from criminal defense lawyers) [perma.cc/8HLQ-YBS5].

315. See Jan Ransom, *Weinstein Was Convicted. Can D.A. Vance Now Win Over His Critics?*, N.Y. TIMES (Feb. 26, 2020), <https://www.nytimes.com/2020/02/26/nyregion/cyrus-vance-harvey-weinstein-verdict.html> (last visited Aug. 29, 2020) (explaining how there were protests claiming that Mr. Vance’s name was “irreparably tarnished,” and that women on city council were charging that he had failed victims of sexual assault and should resign) [perma.cc/S6A3-HWX4]; see also Andrea Bernstein, Jesse Elsinger, Justin Elliott & Iyla Marritz, *How Ivanka Trump and Donald Trump, Jr. Avoided A Criminal Indictment*, NEW YORKER (Oct. 4, 2017), <https://www.newyorker.com/news/news-desk/how-ivanka-trump-and-donald-trump-jr-avoided-a-criminal-indictment> (last visited Oct. 3, 2020) (describing how Vance dropped the case against the Trumps after a large donation by their attorney) [perma.cc/6MN8-RYRU].

316. See Jeannie Suk Gersen, *Why Didn’t the Manhattan D.A. Cyrus Vance Prosecute the Trumps or Harvey Weinstein?*, NEW YORKER (Oct. 13, 2017), <https://www.newyorker.com/news/news-desk/why-didnt-manhattan-da-cyrus-vance-prosecute-the-trumps-or-harvey-weinstein> (last visited Sept. 12, 2020) (explaining how Vance’s D.A. office declared that “a criminal charge is not supported” with the current evidence against Weinstein, even though there was a recording showing Weinstein acknowledging that he had inappropriately touched the complainant) [perma.cc/VW8H-2PW6].

317. See Ransom, *supra* note 315 (noting that the conviction was a victory for Mr. Vance, but has not fully erased the previous failing of his office to indict Mr. Weinstein earlier). Jan Ransom, *Weinstein Was Convicted. Can D.A. Vance Now Win Over His Critics?*, N.Y. TIMES (Feb. 26, 2020), <https://www.nytimes.com/2020/02/26/nyregion/cyrus-vance-harvey-weinstein-verdict.html>. (last visited Oct. 3, 2020) [perma.cc/9MNF-HWJJ].

318. See Samar Khurshid, *Legislators Pursue Campaign Finance Reform For District Attorneys*, GOTHAM GAZETTE (Feb. 13, 2019), <https://www.gothamgazette.com/state/8278-legislators-pursue-campaign->

B. What Would the Likely Outcome Be?

Reexamining the studies in Part One, candidates like Robert Langford in Clark County (Las Vegas), Nevada would experience a likely boon, considering Langford obtained 44% of the vote³¹⁹ despite being out-fundraised several times.³²⁰ It is also quite possible that Tiffany Cabán, once seen as the next progressive superstar in U.S. politics,³²¹ would have become the Queens District Attorney instead of the current incumbent, Melinda Katz.³²² Cabán was out-raised almost threefold, but only lost by fifty five votes on a recount.³²³ Cabán promised to be the most progressive DA of all time,³²⁴ while Katz quickly folded on the few

finance-reform-for-district-attorneys (last visited Oct. 3, 2020) (noting that, after Vance’s scandal, New York State Senator Liz Krueger and Assembly member Dan Quart pursued legislation to enact stringent restrictions on who can contribute, and how much, to candidates running for District Attorney) [perma.cc/7J89-RTTL].

319. See Rachel Crosby, *Wolfson Beats Langford to Retain Clark County DA Seat*, LAS VEGAS REV. J. (June 12, 2018, 8:08 PM), <https://www.reviewjournal.com/news/politics-and-government/clark-county/wolfson-beats-langford-to-retain-clark-county-da-seat/> (last visited Aug. 29, 2020) (noting that Wolfson defeated Langford in the primary vote by capturing only 56% of the vote, and how no counter-party challenger meant he kept his seat) [perma.cc/5EBY-73HP].

320. See Mike Shoro & Rachel Crosby, *Wolfson Beats Langford to Retain Clark County DA Spends Big to Defend Seat Against Challenger*, LAS VEGAS REV. J. (June 12, 2018, 7:42 PM), <https://www.reviewjournal.com/news/politics-and-government/clark-county/wolfson-beats-langford-to-retain-clark-county-da-spending-big-to-defend-seat-against-challenger/> (last visited Oct. 3, 2020) (stating that Wolfson has spent almost double the money this election that he did during his last election, and that Langford has spent much less) [perma.cc/9WMY-T97P].

321. See Jeffery C. Mays & Jan Ransom, *Why Tiffany Cabán May Be More Significant to Progressives Than Ocasio-Cortez*, N.Y. TIMES (June 26, 2019), <https://www.nytimes.com/2019/06/26/nyregion/tiffany-caban-queens-da-democrats.html> (last visited Aug. 29, 2020) (emphasizing the turnout and financial backing for Ms. Cabán’s first primary run for District Attorney by comparing her performance to that of Ms. Ocasio-Cortez’s Congressional district victory) [perma.cc/765X-4E5B].

322. Wang, *supra* note 137.

323. *Id.*

324. See Oren Schweitzer, *Tiffany Caban, a Socialist in the District Attorney’s Office*, JACOBIN (June 2019), <https://jacobinmag.com/2019/06/tiffany-caban-socialist-district-attorney-queens-election> (last visited Oct. 3, 2020) (noting Cabán stating “[W]e built a campaign to decriminalize poverty, to end mass incarceration [*sic*], to protect our immigrant communities”) [perma.cc/52ZP-7SMP].

reform-minded promises she made on the campaign trail.³²⁵ Someone like Marc Fliedner, veteran line prosecutor who ran against Brooklyn DA Gonzalez as a progressive alternative, would have been able to fairly compete against an extremely well-funded incumbent.³²⁶

On the other hand, there are other races where victors might not have gotten elected in the first place.³²⁷ Orlando State Attorney Aramis Ayala's announcement to never seek the death penalty generated important national debate on the death penalty,³²⁸ but at a devastating cost: Florida prosecutors' independence.³²⁹ Ayala

325. See Max Parrott, *Bail Reform Controversy Marks Katz's First Week in District Attorney's Office*, QNS (Jan. 8, 2020 10:45 AM), <https://qns.com/story/2020/01/08/bail-reform-controversy-marks-katzs-first-week-in-district-attorneys-office/> (last visited Oct. 3, 2020) (showing that Katz asked for cash bail on her first day, when she had promised to end the practice completely) [perma.cc/PC7T-84BW].

326. See Jasper Craven, *How Voting Flaws Protect the Manhattan DA Who Didn't Prosecute Harvey Weinstein*, VICE (October 27, 2017 3:00 PM), https://www.vice.com/en_us/article/ne3za8/how-voting-flaws-protect-the-manhattan-da-who-didnt-prosecute-harvey-weinstein (last visited Aug. 29, 2020) (emphasizing Marc Fliedner's shoestring budget and small ad hoc staff in his second campaign against District Attorney Vance after having lost to District Attorney Gonzales) [perma.cc/6HNB-6UEL].

327. See Kadia Goba, *DA's Money Race: Gonzalez Leads The Pack with Swern and Dwimoh Far Behind*, KINGS CNTY. POL.'S (July 25, 2017), <https://www.kingscountypolitics.com/das-money-race-gonzalez-leads-pack-swern-dwimoh-far-behind/> (last visited Aug. 29, 2017) (showing that Ama Dwimoh, another candidate in the race against incumbent DA Gonzalez, was third in terms of largest campaign budgets, but still hundreds of thousands of dollars behind DA Gonzalez's \$1.2 million budget) [perma.cc/YRC7-WZWP]; see also Brian Whitton & Jenny Ye, *2017 NYC Primary Results*, WNYC (Sept. 12, 2017), <https://www.wnyc.org/story/2017-primary-elections-results/> (last visited Aug. 30, 2020) (noting how Ama Dwimoh, despite her financial backing, only gained 7.2% of the vote in the Brooklyn DA primary race of 2017) [perma.cc/3UUP-GJHD].

328. See Mike Schneider, *Anti-Death Penalty Prosecutor Proud to Challenge Status Quo*, ABC NEWS (May 29, 2019 3:34 PM), <https://abcnews.go.com/US/wireStory/anti-death-penalty-prosecutor-proud-challenge-status-quo-63350212> (last visited Aug. 30, 2020) (explaining how the Florida Supreme Court upheld Florida Governor Scott's removal of Ayala as prosecutor in murder cases because of her official stance to not seek the death penalty) [perma.cc/FQW4-MNRB].

329. After *Ayala v. Scott*, it is clear that any Florida prosecutor who makes a public statement hinting at the categorical removal of a tool given to her by the legislature can be subject to removal from cases or even from office. See *Ayala v. Scott*, 224 So. 3d 755, 757–58 (Fla. 2017) (establishing Ayala's blanket refusal to seek the death penalty not as an abuse of her prosecutorial discretion, but instead

effectively outraised incumbent Jeff Ashton by over ten times, but Ashton still obtained about 43% of the vote.³³⁰ There is little evidence that a critical mass of local residents were clamoring for criminal justice reform or death penalty abolition.³³¹ Similarly, Contra Costa County, California, District Attorney Diana Becton would potentially have lost her re-election bid in 2018.³³² Contextually, this would not be surprising, since Becton, a progressive Democrat, was selected as an interim by the County Board of Supervisors to replace Mark Peterson, an outgoing conservative Republican.³³³ While county voters favor the Democratic Party,³³⁴ it was still a drastic change in guard for a

as a misunderstanding of Florida law).

330. See Elyssa Cherney, *Aramis Ayala Upset Jeff Ashton for State Attorney*, ORLANDO SENTINEL (Aug. 31, 2016, 6:41 AM), <https://www.orlandosentinel.com/politics/os-primary-state-attorney-judges-20160829-story.html> (last visited Aug. 29, 2020) (showing how Ayala's campaign had raised \$975,000 compared to Ashton's \$122,445) [perma.cc/D6H6-GVQ9].

331. For instance, there is no evidence of a large, intersectional grassroots activist coalition in Orlando in 2016 like the one that sprung up in Queens, New York demanding a new, progressive DA in 2019. See Bill Parry, *Grassroots Groups Launch New Queens DA Accountability Coalition and Release Demands*, QNS (Jan. 21, 2019, 3:30 PM), <https://qns.com/story/2019/01/21/grassroots-groups-launch-new-queens-da-accountability-coalition-and-release-demands/> (last visited Aug. 29, 2020) (explaining the demands of a large group of advocates and organizers from the five boroughs who formed the Queens for DA Accountability Coalition seeking "de-carceration" and other radical reforms in Queens) [perma.cc/W9DA-FP8J].

332. See *Big-money Soros Contributions Change Prosecutor Campaigns*, CBS8 (May 15, 2018, 10:14 AM), <https://www.cbs8.com/article/news/big-money-soros-contributions-change-prosecutor-campaigns/509-bba5457a-3ad5-43ec-8391-604bddadd12d> (last visited Aug. 29, 2020) (explaining how billionaire George Soros's large contributions to prosecutorial campaigns changed the outcome of many campaigns, including Becton's, supporting reform-minded candidates) [perma.cc/6EXM-9DR8].

333. See John Geluardi, *Conservative Progress*, EAST BAY EXPRESS (Jan. 30, 2013), <https://www.eastbayexpress.com/oakland/conservative-progress/Content?oid=3449030> (last visited Oct. 16, 2020) (showing that Peterson's initial victory for the seat was surprising because the DA's office had typically been controlled by a political machine of high-power attorneys that had previously defeated all challengers) [perma.cc/UX5M-MADV].

334. See *Voter Statistics*, CONTRA COSTA CNTY. ELECTIONS, <https://www.cocovote.us/> (last visited Sept. 12, 2020) (calculating 357,902 Democratic voters and 130,455 Republican voters as of September 12, 2020) [perma.cc/X2S6-UZMY].

large prosecutor's office representing a large shift in local law enforcement practices.³³⁵

It must be noted that there is a tragic element to the above. Ayala and Becton are both Black women, as is Kim Foxx, who relied on \$2 million in Soros PAC money for her re-election in 2020.³³⁶ Just over 1% of DAs are Black women, and they are constantly under siege by the press, the general public, and law enforcement partners.³³⁷ Clearly, this discrimination is a distressing problem, and one without an easy solution.³³⁸

C. What Are the Obstacles?

Public financing has become a partisan issue in some states and in Congress, with Republican officials fighting to end or prevent the system.³³⁹ Until relatively recently, Wisconsin publicly

335. See Janis Hashe, *Diana Becton Shakes Up the DA's Office*, OAKLAND MAG. (July 8, 2019), <http://www.oaklandmagazine.com/July-2019/Diana-Becton-Shakes-Up-the-DAs-Office/> (last visited Aug. 30, 2020) (explaining the multiple newsworthy initiatives Becton implemented in her first months as Contra Costa's first woman and first African-American District Attorney) [perma.cc/2EBW-G4FX].

336. See Rachel Hinton, *Another Billionaire Weighs In On State's Attorney's Race: George Soros Gives \$2M To Group Backing Foxx*, CHI. SUN-TIMES (Feb. 20, 2020, 5:19 PM), <https://chicago.suntimes.com/politics/2020/2/20/21146269/george-soros-kim-foxx-bill-conway-states-attorney> (last visited Aug. 30, 2020) (noting one of Foxx's main challengers in her primary race for reelection was gathering large funds from his billionaire father and that Soros's contributions are given to strong Democratic, liberal candidates) [perma.cc/FU25-YLV3].

337. See Eli Hager & Nicole Lewis, *Facing Intimidation, Black Women Prosecutors Says: 'Enough,'* THE MARSHALL PROJECT (Jan. 16, 2020, 2:00 PM), <https://www.themarshallproject.org/2020/01/16/facing-intimidation-black-women-prosecutors-say-enough> (last visited Aug. 30, 2020) (explaining the opposition which Black women prosecutors endure by providing examples, including stories of Ayala and Foxx as well as others) [perma.cc/GG7G-CGMV].

338. See *id.* (reporting on how Circuit Attorney Kimberly Gardner filed a federal lawsuit against her entire city leadership looking for recourse in the law by citing a rarely-used law from just after the Civil War).

339. See Akela Lacy, *In Democrats' First Bill, There's a Quiet Push to Make Public Campaign Finance a Reality*, THE INTERCEPT (Dec. 2, 2018, 8:23 AM), <https://theintercept.com/2018/12/02/public-campaign-finance-hr1/> (last visited Aug. 30, 2020) (explaining how the House included a section devoted to public financing of Congressional campaigns in their first bill proposed in 2019, and how some states have already implemented their own iterations) [perma.cc/2FVY-KFXH].

funded elections, at least to a degree.³⁴⁰ Originally, Wisconsin taxpayers were asked to donate \$1 to the Wisconsin Election Campaign Fund and Democracy Trust Fund.³⁴¹ Later, the amount was increased to \$3, after the state opted to extend the public financing option for judicial candidates for the Wisconsin Supreme Court.³⁴² However, then-Governor Scott Walker signed a budget bill in 2011 that eliminated this form of campaign financing.³⁴³

However, Republican opposition to public financing legislation would likely be muted in today's prosecutorial elections context.³⁴⁴ In the current system, more conservative elected prosecutors, especially those who are nominal Democrats in heavily Democratic districts, are highly vulnerable to what has been construed in popular culture as buyouts by George Soros.³⁴⁵ Even those who did not face defeat might support such a transition, given their recent

340. See Bill Lueders, *Campaign Financing Dead in Wisconsin*, WIS. WATCH (June 30, 2011), <https://www.wisconsinwatch.org/2011/06/campaign-financing-dead-in-wisconsin/> (last visited Aug. 30, 2020) (describing how Wisconsin was one of the first states to institute a public financing system in 1978, and now is one of the first to abolish the system because of disagreement on whether the fund is beneficial) [perma.cc/7CN3-BGAY].

341. See *id.* (explaining that Wisconsin taxpayers were asked on the state's income tax form whether to designate \$1 to the Wisconsin Election Campaign Fund and Democracy Trust Fund).

342. See *id.* (noting that the increase to \$3 did not decrease the amount of their tax refund or increase their tax obligation).

343. See *id.* (stating that Gov. Scott Walker initially proposed to change how the state's public financing system was funded in his biennial budget, but after the Joint Finance Committee's discussions, Walker ended up signing a bill that effectively ended the old system instead).

344. See Reihan Salam, *Campaign-Finance Reform Can Save the GOP*, ATLANTIC (May 27, 2018), https://www.theatlantic.com/ideas/archive/2018/05/campaign-finance-reform-can-save-the-gop/561143/?gclid=EAIaIQobChMI-cDCn4Dk6wIVQfSzCh3X9gHIEAMYASAAEgKGzFD_BwE (last visited Sept. 12, 2020) (explaining how, in the 2018 midterms, dozens of House Republicans were behind their Democratic challengers in fundraising totals and Democratic Senate incumbents were outraising their GOP opponents in pro-Trump states, leading to some conservative populists and nationalists believing campaign finance reform may be indispensable) [perma.cc/754T-VG4Z].

345. See *Big-money Soros Contributions Change Prosecutor Campaigns*, *supra* note 332 (explaining that Soros has spent millions of dollars to democratically influence the nation's criminal justice system by financing candidates who support his views and are seeking higher profile statewide offices).

experiences with re-election campaigns.³⁴⁶ In Orlando, Aramis Ayala's predecessor Jeff Ashton was faced with attack ads that many felt came close to outwardly declaring Ashton a racist.³⁴⁷ Alameda County, California includes the city of Oakland, where residents of color have a historically fraught relationship with the police.³⁴⁸ To address this, high-profile activists of color had recently mounted a collaborative effort with police to improve relations, so law enforcement could successfully solve more homicides and help to discourage violence in their communities.³⁴⁹ O'Malley's office cooperated with this violence prevention strategy.³⁵⁰ And yet, attack mailers from the California Justice and Public Safety PAC, which was funded by Soros, read: "Six dead at the hands of police. Zero independent investigations by DA Nancy O'Malley."³⁵¹ The

346. See Hager & Lewis, *supra* note 337 (emphasizing the virulent opposition that Black women face in their role as prosecutors).

347. See Deirdra Funcheon, *With Challengers in the Wings, Florida Prosecutor Who Stood Against Death Penalty Won't Seek Reelection*, POLITICO (May 28, 2019, 4:51 PM), <https://www.politico.com/states/florida/story/2019/05/28/with-challengers-in-the-wings-florida-prosecutor-who-stood-against-death-penalty-wont-see-reelection-1030026> (last visited Aug. 30, 2020) (quoting local prosecutor and Orlando prosecutor candidate Ryan Williams as stating "[A] wave of mailers came too, painting Ashton as racist . . .") [perma.cc/V7AS-NBJP]; see also Scott Powers, *Jeff Ashton: Aramis Ayala May Not Have Legal Grounds to Ban Death Penalty*, FLA. POLITICS (Mar. 16, 2017), <https://floridapolitics.com/archives/234075-jeff-ashton-aramis-ayala-may-not-legal-grounds-ban-death-penalty> (last visited Aug. 30, 2020) (claiming that "Soros ran a surprise, ugly, third-party, \$1.4 million advertising campaign on Ayala's behalf against Ashton, going so far as to accuse him of racist policies") [perma.cc/AUB4-BUDM].

348. See Scott C. Johnson, *How a Dirty Police Force Gets Clean*, POLITICO (Mar./Apr. 2015), <https://www.politico.com/magazine/story/2015/03/oakland-police-reform-115552> (last visited Aug. 30, 2020) (elaborating on the history of aggressive police force tactics from 2001 to 2011 which resulted in Oakland paying about \$57 million for claims, lawsuits, and settlements involving alleged misconduct by the police) [perma.cc/XXX3-H9N3].

349. See Mike McLively & Brittany Nieto, *A Case Study on Hope: Lessons from Oakland's Remarkable Reduction in Gun Violence*, GIFFORDS L. CTR. (Apr. 2019), <https://policingequity.org/images/pdfs-doc/reports/A-Case-Study-in-Hope.pdf> (last visited Aug. 30, 2020) (highlighting the success Oakland has had through coordination by seeing an almost 50% drop in homicides from 2011 to 2017) [perma.cc/U5A7-4Z9N].

350. See *id.* (explaining how the District Attorney's office participated in weekly shooting reviews with multiple other partners in the initiative).

351. See Angela Ruggiero, *Alameda County DA Likely To Keep Seat As Top Prosecutor After Smear Campaigns*, E. BAY TIMES (June 6, 2018, 5:11 PM), <https://www.eastbaytimes.com/2018/06/06/alameda-county-da-likely-to-keep->

flier included a design with six tombstones and the dead victims' names.³⁵²

VI. Conclusion

Money matters. Given the empirical data presented above, it is fair to draw the assumption that a progressive prosecutor candidate's viability depends much more on whether one or two billionaires support the candidate, especially George Soros. The Soros effect is undeniable for progressive DA candidates running in Democratic primaries, where it seems to be almost determinative for either victory or defeat. For criminal justice reformers interested in "progressive prosecution" as a way to end mass incarceration, it is crucial that this is acknowledged rather than suppressed. The better option is moving toward a model of public financing for prosecutorial elections. This would ensure that non-wealthy individual voters' voices matter, and that progressive prosecutors who are elected do not chafe their communities to the point of impeding long-term criminal justice reform progress.

seat-as-top-prosecutor-after-smear-campaigns/ (last updated June 7, 2018 5:36 AM) (last visited Aug. 30, 2020) (explaining that both candidate's campaigns were using PAC money to run controversial and negative campaigns) [perma.cc/X4JP-4KE4].

352. See *id.* (expressing concerns that this type of negative messaging using PAC money is normalized now and contributes to lower voter turnout).