Legitimacy Matters: The Case for Public Financing in Prosecutor Elections

Rory Fleming
Fair Punishment Project

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Legitimacy Matters: The Case for Public Financing in Prosecutor Elections

Rory Fleming*

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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. 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. Hallinan, who served from 1996 to 2003, called drug use and sex work public health issues, while refusing

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

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

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. But there are crucial differences. 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. Relatedly, Hallinan was not elected in large part due to outsized independent expenditures from a single billionaire, George Soros.

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. Soares’s opponent, then-DA Paul Clyne,
came under fire for supporting the draconian Rockefeller drug sentencing laws of the time.\(^1\) 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.\(^2\) Allgood had repeatedly obtained wrongful convictions as a result of using discredited forensic experts and committing prosecutorial misconduct.\(^3\) Colom, a young African-American attorney, campaigned on a message of “Tough, Smart, Fair.”\(^4\) That same year, Soros also supported former Louisiana Court of Appeals Judge James Stewart over Dhu Thompson,\(^5\) an assistant prosecutor who worked under DA Dale Cox. Cox gained considerable infamy for his overzealous pursuit of the death penalty.\(^6\) Colom and Stewart were victorious, but only

---


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


after benefitting from hundreds of thousands of dollars in Soros-affiliated PAC money.\textsuperscript{17}

Under current campaign finance law, Soros was within his legal rights to contribute large amounts of money to help these candidates.\textsuperscript{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.\textsuperscript{19} On the other hand, Soros’s new foray into prosecutor races since 2015 has created a burgeoning progressive prosecutor movement.\textsuperscript{20} Elected prosecutors serving major population centers now vow to not prosecute lists of nonviolent, low-level offenses on a categorical basis.\textsuperscript{21} Despite

\begin{itemize}
\item \textsuperscript{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).
\item \textsuperscript{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].
\item \textsuperscript{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].
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
means, whether it should exist, and who qualifies for it. Superstars like R&B singer John Legend and NBA basketball legend Shaquille O’Neal 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.

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.’”).


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.\textsuperscript{34}

Unfortunately, few progressives have publicly scrutinized core truths of how the modern progressive prosecutor movement functionally operates.\textsuperscript{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.\textsuperscript{36} Meanwhile, unsuccessful progressive candidates for prosecutor seats usually receive no aid or a limited amount.\textsuperscript{37}

While the news media has run dozens of stories about Soros’s apparent outsized influence on modern prosecutor elections,\textsuperscript{38}

\begin{itemize}
\item \textsuperscript{34} See Bridget Read, Tiffany Cabán May Have Conceded, But She Still Changed Everything, \textsc{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].
\item \textsuperscript{35} See \textit{infra} Part II (analyzing the impact of Soros PAC funding through funding disparity data and CPV data in progressive prosecutor elections).
\item \textsuperscript{36} See \textit{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, \textit{Election Night Saw Victories in Local Criminal-Justice Reform—This Should Be the Beginning}, \textsc{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].
\item \textsuperscript{37} See \textit{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).
\item \textsuperscript{38} See Bland, \textit{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, \textit{Billionaire Money Used in Dem Races}, \textsc{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.\textsuperscript{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.

\textsuperscript{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).

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. The first study demonstrates the impact of Soros PAC involvement on races with an incumbent running for re-election. The second study switches focus to a Cost Per Vote (CPV) analysis. Soros PAC money is technically classified as an independent expenditure, but the investments only benefitted one candidate per race. 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. Primary determinative elections are ones where...
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. In contrast, general determinative elections fall under neither category.

Nonpartisan elections occur in states with officially nonpartisan District Attorney races.

All primary determinative races involved primaries where a progressive challenged an incumbent who was a more conservative Democrat. In races where there were several candidates running as reformers, the one with the most progressive platform was chosen. 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).


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. 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.

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. But unlike Gonzalez, 2017 candidate Marc Fliedner promised the decriminalization of prostitution, as well other low-level offenses. In contrast, Gonzalez failed to live up to promises to not prosecute minor marijuana offenses. As another example, Boulder County,

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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].


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, but his predecessor Stan Garnett was equally progressive. Hence, Dougherty was excluded. Some Republican elected prosecutors are arguably reformers, such as State Attorney Melissa Nelson in Duval County (Jacksonville), Florida, Utah County (Provo), Utah Attorney David Leavitt, and San Joaquin County District Attorney Toni Verber Salazar. However, the vast majority of progressive


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 “cruelest 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 Cruelest 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 overcharged defendants resulting in unfair mandatory minimums or, as in the case of Trayvon Martin, no conviction) [perma.cc/A5NW-KYPR].


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

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. This study examines the funding disparities that resulted from Soros PAC involvement in prosecutor elections from 2015 to 2019.

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. 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.

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.postgazette.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. In some cases, but not all, incumbents were able to carry over significant amounts of money from prior election cycles. Loans were likewise not included in these fundraising figures. 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.

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 Fliedner’s campaign garnered).
1. Primary Determinative Elections

<table>
<thead>
<tr>
<th>Year</th>
<th>County</th>
<th>Population</th>
<th>Incumbent</th>
<th>Incumbent Contributions</th>
<th>Challenger</th>
<th>Challenger Contributions</th>
<th>Soros PAC Funding</th>
<th>Soros PAC %</th>
<th>Challenger Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>Cook County, IL</td>
<td>5,231,000</td>
<td>Anita Alvarez</td>
<td>$533,862.44</td>
<td>Kim Foxx</td>
<td>$1,041,000.00</td>
<td>$333,000</td>
<td>32%</td>
<td>Win</td>
</tr>
<tr>
<td>2017</td>
<td>Brooklyn, NY</td>
<td>2,600,000</td>
<td>Eric Gonzalez</td>
<td>$2,139,545.17</td>
<td>Marc Fliedner</td>
<td>$330,788.00</td>
<td>$0</td>
<td>0%</td>
<td>Lose</td>
</tr>
<tr>
<td>2018</td>
<td>Clark County, NV</td>
<td>2,233,647</td>
<td>Steve Wolfson</td>
<td>$304,791.49</td>
<td>Robert Langford</td>
<td>$63,465.23</td>
<td>$0</td>
<td>0%</td>
<td>Lose</td>
</tr>
<tr>
<td>2017</td>
<td>Bexar County, TX</td>
<td>1,990,000</td>
<td>Nico LaHood</td>
<td>$416,296.00</td>
<td>Joe Gonzalez</td>
<td>$1,361,376.51</td>
<td>$1,000,000</td>
<td>73.5%</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Orange-Osceola County, FL</td>
<td>1,661,990</td>
<td>Jeff Ashton</td>
<td>$113,848.00</td>
<td>Aramis Ayala</td>
<td>$1,450,863.50</td>
<td>$1,400,000</td>
<td>96.5%</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>Middlesex County, MA</td>
<td>1,614,714</td>
<td>Marian Ryan</td>
<td>$160,319.53</td>
<td>Donna Patalano</td>
<td>$135,621.00</td>
<td>$0</td>
<td>0%</td>
<td>Lose</td>
</tr>
<tr>
<td>2019</td>
<td>Allegheny County, PA</td>
<td>1,229,656</td>
<td>Steve Zappala</td>
<td>$225,000.00</td>
<td>Lisa Middleman</td>
<td>$288,000.00</td>
<td>$0</td>
<td>0%</td>
<td>Lose</td>
</tr>
<tr>
<td>2019</td>
<td>Fairfax County, VA</td>
<td>1,150,795</td>
<td>Ray Morrogh</td>
<td>$238,532.05</td>
<td>Steve Descano</td>
<td>$623,356.23</td>
<td>$459,212.37</td>
<td>73.7%</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>St. Louis County, MO</td>
<td>997,000</td>
<td>Bob McCulloch</td>
<td>$754,610.57</td>
<td>Wesley Bell</td>
<td>$124,319.18</td>
<td>$0</td>
<td>0%</td>
<td>Win</td>
</tr>
</tbody>
</table>

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].
Figure 1.1: Primary Determinative Elections with Progressive Prosecutor Candidates.\textsuperscript{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.\textsuperscript{73} In several cases, that figure sailed to over 90\%.\textsuperscript{74}

The 2016 Orange-Osceola County State Attorney election between progressive challenger Aramis Ayala and incumbent Jeff Ashton is illustrative.\textsuperscript{75} If Ayala never benefited from the Soros PAC money, then she would have raised just over $50,000.\textsuperscript{76} In contrast, Ashton raised $113,848, over twice as much.\textsuperscript{77} But after benefitting from a Soros-affiliated PAC’s independent expenditure, State Attorney Ashton effectively raised only 10\% of what Ayala did.\textsuperscript{78} Ayala won this primary election against Ashton with 57\% of

<table>
<thead>
<tr>
<th>Year</th>
<th>County</th>
<th>Population</th>
<th>Candidate A</th>
<th>Funds Raised</th>
<th>Candidate B</th>
<th>Funds Raised</th>
<th>Winner</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>Durham, NC</td>
<td>316,979</td>
<td>Roger Edols</td>
<td>$23,497.57</td>
<td>Satana Deberry</td>
<td>$73,077.60</td>
<td>Win</td>
</tr>
<tr>
<td>2019</td>
<td>Arlington, VA</td>
<td>249,843</td>
<td>Theo Stamos</td>
<td>$170,763.19</td>
<td>Parisa Tafti-Dehghani</td>
<td>$814,182.61</td>
<td>75.9%</td>
</tr>
</tbody>
</table>

\textsuperscript{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. \textit{Supra} Figure 1.1; \textit{infra} Figures 1.2–2.3.

\textsuperscript{73} See \textit{supra} Figure 1.1 (showing how much Soros funded PACs contributed to particular candidates).

\textsuperscript{74} See \textit{id.} (showing the cases where Soros funded PACs contributed over 90\% of the total funds available to the candidate).

\textsuperscript{75} See \textit{id.} (pointing to the figures of candidates Aramis Ayala and Jeff Ashton).

\textsuperscript{76} See \textit{id.} (asserting that the contributions of Soros-funded PACs significantly helped Aramis Ayala).

\textsuperscript{77} See \textit{id.} (highlighting the amount that Jeff Ashton raised).

\textsuperscript{78} See \textit{id.} (comparing the figures raised by Jeff Ashton and Aramis Ayala).
the vote, thus becoming the Orlando, Florida metro area’s top prosecutor.\textsuperscript{79}

On the other hand, the sheer amount of money a handful of major urban county incumbents raised is staggering.\textsuperscript{80} Brooklyn DA Eric Gonzalez raised a tremendous $2,139,545.17 to challenger Marc Fliedner’s $130,788.00.\textsuperscript{81} Gonzalez also enjoyed incumbency advantage, having been appointed as the successor to the well-liked and respected former DA Ken Thompson.\textsuperscript{82}

2. General Determinative Elections

<table>
<thead>
<tr>
<th>Year</th>
<th>Jurisdiction</th>
<th>Population</th>
<th>Incumbent</th>
<th>Incumbent Contributions</th>
<th>Challenger</th>
<th>Challenger Contributions</th>
<th>Soros PAC Funding</th>
<th>Soros PAC%</th>
<th>Challenger Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>Harris County, TX</td>
<td>4,617,000</td>
<td>Devon Anderson</td>
<td>$430,905.00</td>
<td>Kim Ogg</td>
<td>$2,577,696.27</td>
<td>$1,400,000</td>
<td>54.3%</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Maricopa County, AZ</td>
<td>4,223,000</td>
<td>Bill Montgomery</td>
<td>$363,502.30</td>
<td>Diego Rodriguez</td>
<td>$1,426,596.55</td>
<td>$1,400,000</td>
<td>98.1%</td>
<td>Lose</td>
</tr>
<tr>
<td>2018</td>
<td>Dallas County, TX</td>
<td>2,637,772</td>
<td>Faith Johnson</td>
<td>$587,508.54</td>
<td>John Creuzot</td>
<td>$10,970.94</td>
<td>$236,000</td>
<td>N/A</td>
<td>Win</td>
</tr>
</tbody>
</table>

\textsuperscript{79} See Deirdra Funcheon, \textit{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-seek-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].

\textsuperscript{80} See \textit{supra} Figure 1.1 (highlighting how much money was raised by major urban county incumbents).

\textsuperscript{81} See \textit{id.} (comparing the amount raised by Eric Gonzalez and Marc Fliedner, respectively).

\textsuperscript{82} See Alan Feuer, \textit{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].
<table>
<thead>
<tr>
<th>Year</th>
<th>County, State</th>
<th>Number</th>
<th>Candidate 1</th>
<th>$Amount 1</th>
<th>Candidate 2</th>
<th>$Amount 2</th>
<th>Outcome</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>Tarrant, TX</td>
<td>2,080,000</td>
<td>Sharon Wilson</td>
<td>$93,230.00</td>
<td>Albert Roberts</td>
<td>N/A</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>2016</td>
<td>Hillsborough, FL</td>
<td>1,382,000</td>
<td>Mark Ober</td>
<td>$173,822.12</td>
<td>Andrew Warren</td>
<td>$145,692.55</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>2016</td>
<td>Franklin, OH</td>
<td>1,270,000</td>
<td>Ron O'Brien</td>
<td>$468,590.00</td>
<td>Zach Klein</td>
<td>$164,270.00</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>2019</td>
<td>Monroe, NY</td>
<td>742,436</td>
<td>Sandra Doorley</td>
<td>$174,936.33</td>
<td>Shani Curry Mitchell</td>
<td>$974,936.33</td>
<td>$800,000</td>
<td>82.1%</td>
</tr>
<tr>
<td>2018</td>
<td>Tulsa, OK</td>
<td>648,360</td>
<td>Steve Kanzewiler</td>
<td>$69,954.00</td>
<td>Jenny Proehl-Day</td>
<td>$20,178.00</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>2016</td>
<td>First Judicial District, CO</td>
<td>576,839</td>
<td>Pete Weir</td>
<td>$77,000</td>
<td>Jack Lilly</td>
<td>$1,157,133.56</td>
<td>$1,100,000</td>
<td>95.1%</td>
</tr>
<tr>
<td>2019</td>
<td>Delaware, PA</td>
<td>563,487</td>
<td>Katayoun Copeland</td>
<td>N/A</td>
<td>Jack Stedleiner</td>
<td>$211,008.83</td>
<td>$100,000</td>
<td>47.4%</td>
</tr>
<tr>
<td>2016</td>
<td>Nueces, TX</td>
<td>361,529</td>
<td>Mark Skurka</td>
<td>$19,082.00</td>
<td>Mark Gonzalez</td>
<td>$7,711.00</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>2019</td>
<td>Dutchess, NY</td>
<td>295,568</td>
<td>William Grady</td>
<td>$55,445.00</td>
<td>Richard Berube</td>
<td>$67,112.00</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>2019</td>
<td>Cumberland, PA</td>
<td>251,423</td>
<td>Skip Ebert</td>
<td>$0.00 83</td>
<td>Sean Quinlan</td>
<td>$10,227.14</td>
<td>$0</td>
<td>0%</td>
</tr>
<tr>
<td>2018</td>
<td>6th Pros. Dist., ME</td>
<td>149,356</td>
<td>Jonathan Liberman</td>
<td>$8,242.48</td>
<td>Natasha Irving</td>
<td>$65,678.00</td>
<td>$0</td>
<td>0%</td>
</tr>
</tbody>
</table>

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].
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. 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, there was only a slight funding disparity tilting in favor of the incumbent. Unlike the progressive candidate in Columbus, Ohio, Warren was able to defeat Ober, despite not receiving support from a Soros-affiliated PAC.

<table>
<thead>
<tr>
<th>Year</th>
<th>Circuit</th>
<th>Candidate 1</th>
<th>Funding 1</th>
<th>Candidate 2</th>
<th>Funding 2</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>16th Judicial Circuit, MS</td>
<td>Forrest Allgood</td>
<td>$49,106.00</td>
<td>Scott Colom</td>
<td>$545,716.00</td>
<td>$400,000</td>
</tr>
<tr>
<td>2018</td>
<td>Payne/County, OK</td>
<td>Laura A. Thomas</td>
<td>$31,873.00</td>
<td>Cory Williams</td>
<td>$42,492.12</td>
<td>$0</td>
</tr>
<tr>
<td>2019</td>
<td>Albemarle County, VA</td>
<td>Robert Tracci</td>
<td>$144,911.00</td>
<td>Jim Hingeley</td>
<td>$266,000.19</td>
<td>$0</td>
</tr>
</tbody>
</table>

Figure 1.2: General Determinative Elections with Progressive Prosecutor Candidates.


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).


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

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.\textsuperscript{88}

3. Nonpartisan Elections

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

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.\textsuperscript{89} In the elections with Soros-affiliated PAC involvement, the expenditures effectively constituted over 50% of the funding for three of the progressive candidates.\textsuperscript{90} The Soros PAC expenditure only leveled the financial playing field in the Sacramento race.\textsuperscript{91} In the San Diego County and Alameda County

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

\textsuperscript{89} See supra Figure 1.3 (demonstrating the loss of every challenger for the prosecutor seat).

\textsuperscript{90} See id. (demonstrating the over-50% contributions by the Soros PAC).

\textsuperscript{91} See id. (demonstrating a 63% contribution from the Soros PAC).
races, the Soros PAC expenditures created large financial advantages over the incumbents.  

### 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. 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*, 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*.

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. In doing so, the Court applied strict scrutiny, meaning the caps had to be “narrowly tailored to serve a compelling state interest.” 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

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


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).

expression." 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).


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].


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).

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. But it is more understandable when considering that this amount translated to just over two dollars per vote.

1. Primary Determinative Elections

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

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).
<table>
<thead>
<tr>
<th>Year</th>
<th>County</th>
<th>Population</th>
<th>Challenger</th>
<th>Open Seat</th>
<th>Winner</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>Orange-Osceola County, FL</td>
<td>1,661,990</td>
<td>Aramis Ayala</td>
<td>Yes</td>
<td>$38.59</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>Middlesex County, MA</td>
<td>1,614,714</td>
<td>Donna Patalano</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2017</td>
<td>Philadelphia, PA</td>
<td>1,581,000</td>
<td>Larry Krasner</td>
<td>Yes</td>
<td>$33.00</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Hillsborough County, FL</td>
<td>1,382,000</td>
<td>Andrew Warren</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2019</td>
<td>Allegheny County, PA</td>
<td>1,220,656</td>
<td>Lisa Middleman</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2019</td>
<td>Fairfax County, VA</td>
<td>1,150,795</td>
<td>Steve Descano</td>
<td>Yes</td>
<td>$11.11</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>St. Louis County, MO</td>
<td>997,000</td>
<td>Wesley Bell</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>Suffolk County, MA</td>
<td>758,556</td>
<td>Rachael Rollins</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Denver, CO</td>
<td>680,000</td>
<td>Beth McCann</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Bernalillo County, NM</td>
<td>675,588</td>
<td>Raúl Torrez</td>
<td>Yes</td>
<td>$2.46</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>Durham County, NC</td>
<td>316,979</td>
<td>Satana Deberry</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>St. Louis (City), MO</td>
<td>316,000</td>
<td>Kimberly Gardner</td>
<td>Yes</td>
<td>$9.72</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>Cumberland County, ME</td>
<td>292,500</td>
<td>Jon Gale</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
</tbody>
</table>
Here, a Soros-affiliated PAC made an expenditure in favor of a candidate in ten of these races.\textsuperscript{107} Nine of the ten progressive candidates were victorious.\textsuperscript{108} The single candidate who received Soros backing but still lost was Queens District Attorney candidate Tiffany Cabán.\textsuperscript{109} However, Cabán received only $2.01 per vote, one of the lowest CPV values in the primary determinative category.\textsuperscript{110} The other nine candidates benefitted from Soros-affiliated PAC expenditures constituting an average of $15.54 per vote.\textsuperscript{111}

\begin{table}
\begin{tabular}{|l|l|l|l|l|l|l|l|}
\hline
Year & Location & Vote Count & Candidate & Type & Result & CPV & Outcome \\
\hline
2019 & Arlington-Falls Church, VA & 249,893 & Parisa Tafti-Deghani & Challenger & Yes & $39.28 & Win \\
\hline
2019 & Hinds County, MS & 237,085 & Jody Owens & Challenger & No & $0.00 & Win \\
\hline
2018 & Berkshire, MA & 131,219 & Andrea Harrington & Open Seat & No & $0.00 & Win \\
\hline
\end{tabular}
\end{table}

\textbf{Figure 2.1:} Primary Determinative Elections with Progressive Prosecutor Candidates (CPV).


\textsuperscript{108} See \textit{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”).


\textsuperscript{110} See Palmer, \textit{supra} note 100 and accompanying text (discussing votes gathered by Cabán).

\textsuperscript{111} See \textit{id.} (same).
### General-Determinative Elections

<table>
<thead>
<tr>
<th>Year</th>
<th>Jurisdiction</th>
<th>Population</th>
<th>Candidate</th>
<th>Orientation</th>
<th>Soros PAC Investment</th>
<th>Soros CPV</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>Harris County, TX</td>
<td>4,617,000</td>
<td>Kim Ogg</td>
<td>Challenger</td>
<td>Yes</td>
<td>$2.01</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Maricopa County, AZ</td>
<td>4,233,000</td>
<td>Diego Rodriguez</td>
<td>Challenger</td>
<td>Yes</td>
<td>$2.08</td>
<td>Lose</td>
</tr>
<tr>
<td>2016</td>
<td>Dallas County, TX</td>
<td>2,637,772</td>
<td>John Creuzot</td>
<td>Challenger</td>
<td>Yes</td>
<td>$0.56</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Tarrant County, TX</td>
<td>2,080,000</td>
<td>Albert Roberts</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2016</td>
<td>Hillsborough County, FL</td>
<td>1,382,000</td>
<td>Andrew Warren</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Franklin County, OH</td>
<td>1,270,000</td>
<td>Zack Klein</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2018</td>
<td>Fort Bend County, TX</td>
<td>788,000</td>
<td>Brian Middleton</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2019</td>
<td>Monroe County, NY</td>
<td>742,426</td>
<td>Shani Curry Mitchell</td>
<td>Challenger</td>
<td>Yes</td>
<td>$10.49</td>
<td>Lose</td>
</tr>
<tr>
<td>2018</td>
<td>Tulsa County, OK</td>
<td>648,360</td>
<td>Jenny Proehl-Day</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2016</td>
<td>First Judicial District, CO</td>
<td>576,839</td>
<td>Jake Lilly</td>
<td>Challenger</td>
<td>Yes</td>
<td>$8.15</td>
<td>Lose</td>
</tr>
<tr>
<td>2019</td>
<td>Delaware County, PA</td>
<td>563,487</td>
<td>Jack Stollsteimer</td>
<td>Challenger</td>
<td>Yes</td>
<td>$1.19</td>
<td>Win</td>
</tr>
<tr>
<td>2019</td>
<td>Lancaster County, PA</td>
<td>550,000</td>
<td>Hobie Crystle</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2019</td>
<td>Loudoun County, VA</td>
<td>406,850</td>
<td>Buta Biberaj</td>
<td>Challenger</td>
<td>Yes</td>
<td>$12.28</td>
<td>Win</td>
</tr>
<tr>
<td>2016</td>
<td>Nueces County, TX</td>
<td>361,529</td>
<td>Mark Gonzalez</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2019</td>
<td>Chesterfield County, VA</td>
<td>349,000</td>
<td>Scott Miles</td>
<td>Incumbent</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>Year</td>
<td>County</td>
<td>Population</td>
<td>Candidate</td>
<td>Role</td>
<td>Fundraising</td>
<td>Outcome</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>-------------------</td>
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<td>-------------------------</td>
<td>---------------</td>
<td>-------------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td>Dutchess County, NY</td>
<td>295,568</td>
<td>Rich Berube</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2015</td>
<td>Caddo Parish, LA</td>
<td>251,577</td>
<td>James Stewart</td>
<td>Challenger</td>
<td>Yes</td>
<td>$27.54</td>
<td>Win</td>
</tr>
<tr>
<td>2019</td>
<td>Cumberland County, PA</td>
<td>251,423</td>
<td>Sean Quinlan</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2019</td>
<td>Ulster County, NY</td>
<td>179,417</td>
<td>David Clegg</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>6th Prosecutorial Dist., ME</td>
<td>149,356</td>
<td>Natasha Irving</td>
<td>Open Seat</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2015</td>
<td>16th Judicial Circuit, MS</td>
<td>140,601</td>
<td>Scott Colom</td>
<td>Challenger</td>
<td>Yes</td>
<td>$15.73</td>
<td>Win</td>
</tr>
<tr>
<td>2018</td>
<td>Payne/Logan County, OK</td>
<td>129,331</td>
<td>Cory Williams</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Lose</td>
</tr>
<tr>
<td>2019</td>
<td>Albemarle County, VA</td>
<td>107,788</td>
<td>Jim Hingeley</td>
<td>Challenger</td>
<td>No</td>
<td>$0.00</td>
<td>Win</td>
</tr>
<tr>
<td>2017</td>
<td>Portsmouth, VA</td>
<td>95,500</td>
<td>Stephanie Morales</td>
<td>Incumbent</td>
<td>Yes</td>
<td>$4.66</td>
<td>Win</td>
</tr>
</tbody>
</table>

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

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primary-determinative races in the same time period ($14.19).\textsuperscript{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.\textsuperscript{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

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

\textsuperscript{114} See Palmer, supra note 100 (discussing the cost per vote in races with progressive prosecutors).
\textsuperscript{115} See id. (same).
Most of the elections in this category occurred in counties that lean Democratic, often heavily.\textsuperscript{116} Despite this, both reform-minded incumbents and progressives running against more conservative candidates in open-seat races fared poorly overall.\textsuperscript{117} The one Soros-backed candidate in this category who was victorious was an incumbent.\textsuperscript{118} Incumbent Contra Costa County, California, District Attorney Diana Becton kept her seat, but barely, despite a Soros-affiliated PAC’s independent expenditure.\textsuperscript{119} Between the five candidates that Soros-affiliated PACs supported, the average CPV was $6.00.\textsuperscript{120}

\begin{center}
\begin{tabular}{|c|c|c|c|c|c|}
\hline
2018 & Yolo County, CA & 220,408 & Dean Johansson & Challenger & No & $0.00 & Lose \\
\hline
\end{tabular}
\end{center}

Figure 2.3: Nonpartisan Elections with Progressive Prosecutor Candidates (CPV).


117. See Don Thompson, \textit{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 \textit{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-SZIP].

119. \textit{Id.}

120. Palmer, \textit{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.\textsuperscript{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.\textsuperscript{122} Very few people know who their current elected prosecutor is, or what he or she stands for.\textsuperscript{123} Meanwhile, when a brutal rape or homicide occurs, the District Attorney is usually one of the first officials to hold a press conference.\textsuperscript{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.\textsuperscript{125}

\begin{itemize}
\item \textsuperscript{121} See Don Thompson, \textit{Big–Money Soros Contributions Change Prosecutor Campaigns}, \textit{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].
\item \textsuperscript{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.”).
\item \textsuperscript{125} See Nadia Hamdan, \textit{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].
\end{itemize}
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. This may effectively neutralize incumbency advantage in these races, but the results are not clear enough to speculate on the subject. 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. Cook County, which includes Chicago, provides an illustrative example.

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. 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. 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 . . . .”).


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.\(^\text{132}\) She also received national-facing media coverage for her bold campaign,\(^\text{133}\) despite running the most radical District Attorney campaign in history.\(^\text{134}\) 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.\(^\text{135}\) Ultimately, Cabán raised approximately $527,000 during the primary,\(^\text{136}\) which is significant in many districts but not a New York City borough.\(^\text{137}\) Melinda Katz, the
establishment-backed victor of the 2019 Queens DA election, raised $1,618,246.53.\textsuperscript{138} Despite Katz's effectively benefitting from a nearly threefold funding disparity, Cabán only lost by 55 votes after a contentious recount.\textsuperscript{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.\textsuperscript{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.\textsuperscript{141} For example, the second- and third-highest CPV values are found in the Philadelphia and Orlando elections.\textsuperscript{142} Philadelphia DA Larry Krasner and Orange-Orange 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.\textsuperscript{143} In came from just two Assembly districts, in gentrifying parts of Queens.”)

\textsuperscript{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.”).

\textsuperscript{139} Id.

\textsuperscript{140} See Nicholas F. Benton, Dehghani-Tafti Wins Commonwealth’s Attorney Upset, 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].


Philadelphia, DA Krasner and U.S. Attorney Bill McSwain have an openly caustic relationship, and Pennsylvania Attorney General Josh Shapiro has actually encouraged the city’s paper of record to paint Krasner in a negative light. 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. 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. Yet, less punitive prosecutor candidates who might not have been competitive otherwise received a fighting chance in conservative districts.

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


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/fca41bd9ae9f44904b3e04820959298b3 (last visited Oct. 1, 2020) (“Soros also is the sole contributor to another Arizona political group
One of these districts was Maricopa County, Arizona. 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. Candidate Rodriguez was barely able to raise any money on his own. 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. 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.

Note, however, that competitive does not mean victorious. 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. Weir that’s opposing the re-election of Maricopa County Attorney Bill Montgomery.


150. 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 supra Figure 1.2 (displaying a variety of outcomes).

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).

raised about $77,000 compared to Lilly’s roughly $57,000—at least, before the inclusion of the Soros-affiliated PAC expenditure. DA Weir kept his seat with 53.5% of the vote, a considerable victory despite a mammoth $1.1 million spent by Soros in favor of Lilly. 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. Doorley, the Republican incumbent, still obtained 56% of the vote despite only raising $174,936.33, a record of prosecutorial misconduct problems and failed attempts to prosecute a man for a triple homicide. 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. Despite these contests omitting partisan affiliation from the ballots, these elections near-universally occurred in very liberal districts. Most of the counties were located in California, where the ACLU had released a report and

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156. Supra Figure 1.2.
158. See supra Figure 1.2.
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/7e5ad0db93074084ac815a93b2e12d6 (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. But California has a complex relationship with criminal justice reform. In Brown v. Plata, the Supreme Court upheld a special federal district court panel’s order to release California prisoners to fix the state’s prison overcrowding crisis. The retributive victims’ rights movement, which prioritizes maximum retribution over restitution and victim services, has strong roots in California.

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. 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. But then-interim San Diego

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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].


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).


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. In Alameda County, progressive candidate Pamela Price lost with 40% of the vote against incumbent Alameda County (Oakland) DA Nancy O’Malley. Alameda County is one of the most liberal counties in the nation. But while Alameda County DA Nancy O’Malley is relatively unsupportive 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. 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. 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
Peace Officers Association PAC. 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. 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.

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. 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. 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. In Harris


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.


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


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].


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 sentences or not seeking the death penalty.

But this swift progress has come at a reputational cost. The American public does not like the perception that people are buying their elections. 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. The news media largely controls popular narratives surrounding mass incarceration and its opponents. 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. Those feelings are often inflammatory and negative, despite progressive prosecutors’ attempts to shrink governmental


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].


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.\textsuperscript{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 \textit{Washington Times} editorial columnist claimed that it was part of Soros’s quest to “destroy America.”\textsuperscript{195} Yet, the most clear-cut policy change either candidate advocated was the non-prosecution of low-level marijuana possession offenses.\textsuperscript{196} A Gallup poll published during that election cycle showed that 51\% of Republicans support \textit{legalizing}, and not just \textit{decriminalizing}, marijuana.\textsuperscript{197} In comparison, the conservative editorial board of the \textit{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.\textsuperscript{198}

\begin{flushleft}
\textsuperscript{194} See Arthur Rizer \& Alyse Ullery, \textit{What Conservatives Should Like About Larry Krasner’s Criminal Justice Ideals}, \textit{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”) [\texttt{perma.cc/FD3J-6DPJ}].


\textsuperscript{196} Parisa Dehghani-Tafti (@Parisa4justice), \textsc{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.”) [\texttt{perma.cc/V57G-SSTH}]; see also Doug Mataconis, \textit{Prosecutors In Two Virginia Counties Will Stop Prosecution Of Some Marijuana Cases}, \textsc{Outside The Beltway} (Jan. 4, 2020), https://www.outsidethebeltway.com/prosecutors-in-two-virginia-counties-will-stop-prosecution-of-some-marijuana-cases/ (last visited Aug. 30, 2020) (noting that both district attorneys will no longer prosecute low-level marijuana possession offenses) [\texttt{perma.cc/Y9QU-GLWB}].


\textsuperscript{198} See Editorial Board, \textit{Brooklyn Goes To Pot}, \textit{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. 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. 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. 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.

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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. 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.”) to the wildly inaccurate (“[W]hen they do deign to charge a criminal suspect, they are frequently seeking sentences that are pathetically lenient.”). 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.

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.” That is despite how some progressive prosecutors are protecting victims’ interests even better than their so-called “tough-on-crime” predecessors. For example, many


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).

progressive prosecutors advocate for testing every single rape kit, not just the ones where prosecutors have already decided to try the cases.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{211}

However, savvy political consultants had seized upon the opportunity to paint progressive prosecutors as dangerous radicals before the Trump administration did.\textsuperscript{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

\begin{itemize}
\item \textsuperscript{211} See Allan Smith, \textit{These Prosecutors Want Radical Criminal Justice Change. Barr is Fighting to Stop Them}, \textit{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].
\end{itemize}
around ruining progressive candidate Geneviéve 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).
217. Cabel Roe, supra note 212.
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.  

Despite the partisan hysterics about progressive prosecutors being “anarchists” or “radicals,” these prosecutors are actually less revolutionary than one might expect. That makes it difficult to imagine ever addressing America’s bloated violent crime sentencing, which is the very problem that created mass incarceration. 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. Krasner promised to not seek the death penalty, but he violated this promise within nineteen months of his first term. Krasner has recommended

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


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].  


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


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).

Facebook. 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.

However, Ashton’s comments emerged from a playbook that quickly developed once Soros started spending money to influence prosecutor elections. 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. Allgood said, “Of course it did,” and elaborated that Allgood had become notorious for prosecutorial misconduct and using faulty forensic science to obtain wrongful convictions. 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.”

But LaHood also karate-chopped a
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 troubling\(^ {244}\)—local prosecutors are only truly accountable at...
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.co/SJSF-TPSC].

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).


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).


nation. 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. Wolfson previously demanded Steese enter an Alford plea to a murder count, in exchange for his release from prison.

The first plank of Langford’s progressive campaign platform was “End Mass Incarceration.” 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.” 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. While Langford did not promise to outright never seek death sentences, he heavily implied he would seek significantly fewer than incumbent DA Steve Wolfson.


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].


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://adad.nv.gov/uploadedFiles/adadnvgov/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).

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.\(^{264}\)


Elsewhere, Donna Patalano, who now works as the General Counsel in the Suffolk County (Boston) DA’s office, attempted to unseat Middlesex County, Massachusetts, DA Marian Ryan in 2018. DA Ryan portrayed herself as a “progressive” prosecutor, touting her support of a recent criminal justice bill package and a limited restorative justice bill. But Ryan also prosecuted kids as young as fifteen years old as adults and fought to keep some convictions tainted by the state’s massive drug lab scandal. Ryan was accused of bullying the county’s chief medical examiner into changing his conclusion in a “shaken baby” homicide case and obtained a wrongful conviction for a woman in a similar case. Ryan’s deputies illegally withheld exculpatory evidence.


266. See Alana Melanson, DA Candidate Patalano Calls For Transparency, Accountability, Associated Press (Apr. 30, 2018), https://apnews.com/1f17816edfde4a6e83899d5c5baa675d64 (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].


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

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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/TBB3UWK6].


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


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) (“The United States had the highest prison population rate in the world, at 716 per 100,000 people.”) [perma.cc/YAZ8-7JYS].

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].


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."


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.”).


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.\textsuperscript{287}

In Vermont, candidates for both Governor and Lieutenant Governor are eligible for a public funding option.\textsuperscript{288} Gubernatorial candidates can receive up to $150,000 in the primary election and $450,000 in the general election.\textsuperscript{289} Candidates for Lieutenant Governor are eligible to receive $50,000 in the primary election and $150,000 in the general election.\textsuperscript{290} Recognizing the advantage that incumbents usually enjoy, the law also provides 85\% less funding for incumbents.\textsuperscript{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.\textsuperscript{292}

Small-donor public financing is an even more appealing option than lump-sum contributions.\textsuperscript{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 \textit{Citizens United},\textsuperscript{294} which “gave the green light to

\begin{footnotesize}
\begin{enumerate}
\item See 17 VT. STAT. ANN. § 2985 (2013) (stating a candidate for the office of Governor or Lieutenant Governor can seek a campaign finance grant).
\item \textit{Id.} § 2985(b).
\item \textit{Id.} § 2985(b)(2).
\item \textit{Id.} § 2985(b)(3).
\item See \textit{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).
\end{enumerate}
\end{footnotesize}
unlimited special interest spending.”

Recommended legislation to enact small-donor public financing has six major components. 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. 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. Second, the funds would only be available for candidates who reach a certain numerical threshold of small donors who are constituents. 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. 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. Fifth, this legislation should require transparency by “requir[ing] public disclosure by participating candidates of fundraising and spending and enforce compliance rules effectively.” 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. Such a tax could be measured in cents per sale to be effective.

This system of public financing would be especially palpable in the prosecution context. 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. Prosecutors announce themselves as “the people” in the courtroom, which in fact encompasses crime survivors, perpetrators, and everyone else in their jurisdiction. 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. The opposite is also true, and victims who have been mistreated or


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, DEPT 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

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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/55FZ-34G3].

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].
LEGITIMACY MATTERS


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 vote despite being out-fundraised several times. It is also quite possible that Tiffany Cabán, once seen as the next progressive superstar in U.S. politics, would have become the Queens District Attorney instead of the current incumbent, Melinda Katz. Cabán was outraised almost threefold, but only lost by fifty five votes on a recount. Cabán promised to be the most progressive DA of all time, 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].


322. Wang, supra note 137.

323. Id.

reform-minded promises she made on the campaign trail.\textsuperscript{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.\textsuperscript{326}

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

\begin{itemize}
  \item \textsuperscript{325}See Max Parrott, \textit{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].
  \item \textsuperscript{326}See Jasper Craven, \textit{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 Gonzalez) [perma.cc/6HNB-6UEL].
  \item \textsuperscript{327}See Kadia Goba, \textit{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].
  \item \textsuperscript{328}See Mike Schneider, \textit{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-statusquo-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].
  \item \textsuperscript{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. There is little evidence that a critical mass of local residents were clamoring for criminal justice reform or death penalty abolition. Similarly, Contra Costa County, California, District Attorney Diana Becton would potentially have lost her re-election bid in 2018. 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. While county voters favor the Democratic Party, it was still a drastic change in guard for a

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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].


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].

large prosecutor’s office representing a large shift in local law enforcement practices.\textsuperscript{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.\textsuperscript{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.\textsuperscript{337} Clearly, this discrimination is a distressing problem, and one without an easy solution.\textsuperscript{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.\textsuperscript{339} Until relatively recently, Wisconsin publicly


\textsuperscript{336} See Rachel Hinton, \textit{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].

\textsuperscript{337} See Eli Hager & Nicole Lewis, \textit{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].

\textsuperscript{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).

\textsuperscript{339} See Akela Lacy, \textit{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. Originally, Wisconsin taxpayers were asked to donate $1 to the Wisconsin Election Campaign Fund and Democracy Trust Fund. 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. However, then-Governor Scott Walker signed a budget bill in 2011 that eliminated this form of campaign financing.

However, Republican opposition to public financing legislation would likely be muted in today’s prosecutorial elections context. 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. 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-cDCn4Dk6wIVQISzCh3X9gHIEAMYASAAEgKGzfD_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. In Orlando, Aramis Ayala's predecessor Jeff Ashton was faced with attack ads that many felt came close to outwardly declaring Ashton a racist. Alameda County, California includes the city of Oakland, where residents of color have a historically fraught relationship with the police. 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. O'Malley's office cooperated with this violence prevention strategy. 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."
flier included a design with six tombstones and the dead victims’ names.\textsuperscript{352}

\textit{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.

\footnote{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].}

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