

First, #CripTheVote, Now #CripCandidates?: Social Security Disability Benefits and Their Impact on Political Candidates with Disabilities

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“We need diversity in elected office from the municipalities and school boards all the way up to the White House. We must look like our nation. When entire groups of people are left out of the halls of leadership, often times you overlook issues that are important.”

—SENATOR TAMMY DUCKWORTH,
First disabled woman¹ elected to Congress²

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¹ This Note uses identity-first language (e.g., “disabled people”) and person-first language (e.g., “people with disabilities”) interchangeably, similar to leading disability advocates. See *RELEASE: CAP Launches Disability Justice Initiative*, CTR. FOR AM. PROGRESS (July 25, 2018), <https://www.americanprogress.org/press/release-cap-launches-disability-justice-initiative/> [<https://perma.cc/J34K-AHFG>] (demonstrating the Center for American Progress, as the “first national think tank to host a dedicated disability project,” exclusively using person-first language in a press release); *Alleviating Food Insecurity in the Disabled Community*, CTR. FOR AM. PROGRESS (Dec. 21, 2021), <https://www.americanprogress.org/article/alleviating-food-insecurity-in-the-disabled-community/> [<https://perma.cc/58SA-W2J3>] (demonstrating the Center using a mixture of person-first and identity-first language). As the Center for American Progress acknowledges, “[t]he disability community is rapidly evolving to using identity-first language in place of person-first language. This is because it views disability as being a core component of identity, much like race and gender. Some members of the community, such as people with intellectual and developmental disabilities, prefer person-first language.” Lily Roberts, Mia Ives-Rublee & Rose Khattar, *COVID-19 Likely Resulted in 1.2 Million More Disabled People by the End of 2021—Workplaces and Policy Will Need to Adapt*, CTR. FOR AM. PROGRESS (Feb. 9, 2022), <https://www.americanprogress.org/article/covid-19-likely-resulted-in-1-2-million-more-disabled-people-by-the-end-of-2021-workplaces-and-policy-will-need-to-adapt/> [<https://perma.cc/X8FW-V6G2>].

² Abigail Abrams, *People with Disabilities Face Challenges Campaigning for Office. This Group Wants to Change That*, TIME (June 11, 2019, 9:03 PM), <https://time.com/5604185/disabled-candidates-training/> [<https://perma.cc/BR9Z-XZ53>].

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Introduction

According to the Centers for Disease Control and Prevention (CDC), “[1] in 4 U.S. adults – 61 million Americans – have a disability that impacts major life activities.”³ “At some point in their lives, most people will either have a disability or know someone who has [] one.”⁴ Although the disability community is the largest minority in the U.S.,⁵ disabled voters are often not included in conversations about “minority voters.”⁶ Still, people with disabilities have increasingly engaged in politics in recent years, as

³ CDC: *1 in 4 US Adults Live with a Disability*, CTRS FOR DISEASE CONTROL & PREVENTION (Aug. 16, 2018, 1:00 PM), <https://www.cdc.gov/media/releases/2018/p0816-disability.html> [<https://perma.cc/4ZYA-BXZW>].

⁴ *Id.* (quoting Coleen Boyle, who is the director of the CDC’s National Center on Birth Defects and Developmental Disabilities).

⁵ See Abigail Abrams, ‘*Our Lives Are at Stake.*’ *How Donald Trump Inadvertently Sparked a New Disability Rights Movement*, TIME (Feb. 26, 2018, 11:44 AM), <https://time.com/5168472/disability-activism-trump/> [<https://perma.cc/5K8P-XF9K>] (explaining that there are nearly fifty-seven million Americans with a disability in 2018, making the disability community the largest minority group—and arguably one of the most powerful electorates).

⁶ Traditional conversations of “minority voters” focus on voters of color, as opposed to other marginalized groups of voters, such as voters with disabilities, unhoused voters, elderly voters, or incarcerated voters. See, e.g., Sarina Vij, *Why Minority Voters Have a Lower Voter Turnout: An Analysis of Current Restrictions*, 45 HUM. RTS. MAG., June 2020 (focusing only on ethnic and racial minority populations as restricted voters); Annika Kim Constantino, *Gerrymandering Could Limit Minority Voters’ Power Even Though Census Shows Population Gains*, CNBC (Aug. 13, 2021, 8:21 PM), <https://www.cnbc.com/2021/08/13/gerrymandering-could-limit-minority-voters-power-even-after-census-gains.html> [<https://perma.cc/DRP8-N49P>] (discussing the sidelining of voters of color after the reapportionment of congressional districts).

evidenced by the #CripTheVote movement.⁷ The #CripTheVote movement is a nonpartisan effort launched in 2016 by disability rights advocates Gregg Beratan, Andrew Pulrang, and Alice Wong to encourage candidates to listen to the disability community⁸ and to serve as an online space to activate and engage disabled people on policies and practices important to the disability community.⁹ A renewed sense of pride among the disability community has resulted in the use of the term “crip” in this instance as “a conscious act of empowerment through ‘reclaiming’ a former slur as a badge of pride.”¹⁰

This increased political engagement and pride has increased voter turnout, despite the difficulties these voters face at the ballot box.¹¹ When reviewing electoral participation in the 2020 presidential election, one study in partnership with the U.S. Election Assistance Commission found that voter turnout among people with disabilities increased by 5.9 percentage points between 2016 to 2020—an increase that occurred across all disability types and demographic categories, including gender, race, ethnicity, age, and region.¹² This increase was also higher than the 5.3 percent increase among voters without disabilities.¹³ Further, the turnout gap in a presidential election between people with and without disabilities decreased .6 percentage

⁷ See Sarah Kim, *Crip the Vote Hashtag Brings Attention to People with Disabilities*, TEEN VOGUE (Oct. 27, 2016), <https://www.teenvogue.com/story/crip-the-vote-hashtag-persons-with-disabilities-election-campaign> [<https://perma.cc/3PZ7-GVXL>] (reporting that the #CripTheVote Campaign is electorally bringing people with disabilities together).

⁸ Caitlin Gibson, *The 2016 Conversation Has Ignored Disabled People. Now, They Want to Be Heard.*, WASH. POST (Feb. 10, 2016, 7:00 AM), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2016/02/10/the-2016-conversation-has-ignored-disabled-people-now-they-want-to-be-heard/> [<https://perma.cc/K6ZR-S59Y>].

⁹ *Why We Use “#CripTheVote”*, #CRIPTHEVOTE (Mar. 27, 2018), <https://cripthevote.blogspot.com/2018/03/why-we-use-cripthevote.html> [<https://perma.cc/FP5T-LL59>].

¹⁰ *Id.*

¹¹ Although voting difficulties among people with disabilities declined markedly from 2012 to 2020, about one in nine voters with disabilities still encountered difficulties voting in 2020, which is double the rate of people without disabilities and most common among people with vision and cognitive impairments. LISA SCHUR & DOUGLAS KRUSE, *DISABILITY AND VOTING ACCESSIBILITY IN THE 2020 ELECTIONS: FINAL REPORT ON SURVEY RESULTS SUBMITTED TO THE ELECTION ASSISTANCE COMMISSION* 1 (2021), https://www.eac.gov/sites/default/files/voters/Disability_and_voting_accessibility_in_the_2020_elections_final_report_on_survey_results.pdf [<https://perma.cc/6S8K-BXGV>].

¹² LISA SCHUR & DOUGLAS KRUSE, *FACT SHEET: DISABILITY AND VOTER TURNOUT IN THE 2020 ELECTIONS* 1 (2021), https://smlr.rutgers.edu/sites/default/files/Documents/Centers/Program_Disability_Research/FactSheet_Disability_Voter_Turnout_2020.pdf [<https://perma.cc/ZL5G-KL2E>].

¹³ *Id.*

points.¹⁴ The study also revealed that employed people with disabilities are just as likely to vote as employed people without disabilities.¹⁵

Even though people with disabilities are becoming increasingly politically active,¹⁶ barriers continue to prevent many from running for office themselves. This Note argues one of these barriers includes how disabled people—an estimated twelve million people¹⁷—receive Social Security benefits. This Note reviews the scarcity of disabled political candidates and describes how Social Security benefits prevent people from running for office. Then, this Note evaluates potential arguments for litigation that a disability rights group could initiate. Finally, it concludes with an exploration of potential legislative changes.

I. The Shortage of Disabled Candidates and Why It Matters

Even though one in four U.S. adults have a disability,¹⁸ only twelve percent of elected officials in local government, 6.9 percent in state government, and 6.3 percent in Congress have a disability.¹⁹ This underrepresentation means that the disability community has fewer advocates who are from their community and can directly make policy changes to uplift it.

Because of this deficit, disability is too often left out of both campaign platforms and subsequent policy changes. For example, candidates often run on job creation and other employment matters as a campaign priority;²⁰ however, employment for people with disabilities should be, but often is not, included as a substantial part of non-disabled candidates' platforms. By leaving out disability issues, politicians inadvertently exacerbate the employment barriers already experienced by disabled people, resulting in

¹⁴ *Id.* (explaining that the turnout gap between disabled voters and voters without a disability was 6.3 in 2016 and 5.7 in 2020).

¹⁵ *Id.* (indicating that “employment helps bring people with disabilities into mainstream political life”).

¹⁶ *See id.* (describing the increased voter turnout of people with disabilities in the 2020 election).

¹⁷ *Disabled Beneficiaries Receiving Social Security, SSI, or Both*, SOC. SEC. ADMIN., https://www.ssa.gov/policy/docs/statcomps/di_asr/2020/sect05.html#:~:text=In%20December%202020%2C%20about%2012.0,on%20the%20basis%20of%20disability [https://perma.cc/N2JL-4235].

¹⁸ CTRS FOR DISEASE CONTROL & PREVENTION, *supra* note 3.

¹⁹ Stephanie Lai, *People with Disabilities Are Increasing Their Ranks in Elected Office. But They're Still Underrepresented.*, PHILA. INQUIRER (Oct. 20, 2019, 5:00 AM), <https://www.inquirer.com/news/elected-officials-disabilities-tina-tartaglione-rutgers-local-state-federal-20191019.html> [https://perma.cc/3HEC-M5AF].

²⁰ Adam Davidson, *Can Anyone Really Create Jobs?*, N.Y. TIMES MAG. (Nov. 3, 2011), <https://www.nytimes.com/2011/11/06/magazine/job-creation-campaign-promises.html> [https://perma.cc/832C-UFDG].

higher levels of unemployment.²¹ According to the Bureau of Labor Statistics (BLS), “[t]he unemployment rate for those with a disability [is] about twice as high as the rate for those without a disability” at 7.6 percent as compared to 5.1 percent in 2023.²² The BLS categorizes people as unemployed if they “did not have a job, were available to work, and were actively looking for a job in the 4 weeks preceding the survey.”²³ Because the BLS excludes those individuals who are not available to work or are not actively looking for a job for any reason, the unemployment rate for disabled persons would be higher if the statistic accounted for disabled people not actively looking for a job.²⁴ Indeed, about eight out of ten people with disabilities are not considered a part of the labor force in 2022, compared to three out of ten people without a disability.²⁵ Although this disparity partly reflects the higher amount of older people in the unemployed, disabled population,²⁶ persons with a disability overall are more likely to be out of the labor force than those with no disability across all age groups.²⁷

In addition to employment disparities, people with disabilities face many barriers to socio-economic inclusion that federal programs are designed to mitigate.²⁸ As beneficiaries of many of these programs, disabled people are uniquely positioned to understand how to improve them. As Brooke Ellison, who has quadriplegia and was a candidate for the New York Senate, argues:

While it is troubling enough that our legislators do not look like the general population, this is exacerbated by the fact that people

²¹ See Mia Ives-Rublee, Rose Khattar & Lily Roberts, *Removing Obstacles for Disabled Workers Would Strengthen the U.S. Labor Market*, CTR. FOR AM. PROGRESS (May 24, 2022), <https://www.americanprogress.org/article/removing-obstacles-for-disabled-workers-would-strengthen-the-u-s-labor-market/> [<https://perma.cc/48GH-8S79>] (indicating that despite all of the economic interventions during the COVID-19 pandemic, the federal government must provide more governmental support in order to alleviate disparities in the labor market between people with and without disabilities).

²² *Persons with a Disability: Labor Force Characteristics Summary*, U.S. BUREAU LAB. STAT. (Feb. 23, 2022), <https://www.bls.gov/news.release/disabl.nr0.htm> [<https://perma.cc/FG3A-YTB7>] (clarifying that the unemployment rate for people with disabilities in 2022 was 10.1 percent).

²³ *Id.*

²⁴ *Id.* (inferring from the statistics of disabled people out of the labor force that the unemployment would be higher if it accounted for their disabilities preventing them from having or looking for a job).

²⁵ *Id.*

²⁶ See *id.* (“In part, this reflects the older age profile of persons with a disability; persons age 65 and over are much less likely to participate in the labor force than younger age groups. Across all age groups, however, persons with a disability were more likely to be out of the labor force than those with no disability.”).

²⁷ *Id.*

²⁸ See, e.g., *Benefits for People with Disabilities*, SOC. SEC. ADMIN., <https://www.ssa.gov/disability/> [<https://perma.cc/JF6V-RK5G>] (describing the differences between Social Security Disability Insurance and Supplemental Security Income as programs that provide assistance to disabled people of a lower socio-economic status).

with disabilities are far more marginally affected by the results of policy measures. Critical and hotly-contested issues like cuts to Social Security Disability Insurance and Supplemental Security Income, cuts to Medicaid, cuts to Medicare, the elimination of independent living programs, cuts to Centers for Excellence and Developmental Disabilities, the growth of a National Paid Family Medical Leave Plan, funding for Individuals with Disabilities Education Act, support for Supplemental Nutrition Assistance Program—these are not mere political arguments for people with disabilities, but matters of life and death. The disability rights movement began with the rallying cry, “nothing about us, without us,” which implies that decisions regarding the lives and welfare of people with disabilities should not be made without the consultation of disabled people themselves. What more influential position than legislators to contribute to these conversations?²⁹

Many barriers dissuade politically engaged, disabled people from running for and winning an elected office.³⁰ A study investigating voter impressions of disabled candidates revealed that voters have a negative bias, regardless of the type of disability the candidate has.³¹ In fact, twenty percent of voters are likely to discriminate against a candidate who has used a wheelchair since birth to even higher rates of bias.³² Additionally, “over 70 [percent] of voters are less likely to vote for someone with bipolar disorder, 55 [percent] for a [candidate] with depression, and 50 [percent] for a candidate with HIV.”³³ Furthermore, electability informs voter decisions.³⁴ “[T]here [] comes a point when a voter looks at a ballot paper and says[,] ‘I’d like to vote for this candidate but they are not going to win because I know my neighbors won’t vote for them,’” which “perpetuates a self-fulfilling prophecy.”³⁵ Voters’ impressions on electability convince disabled people to not become

²⁹ Brooke Ellison, *The Inaccessible Office: The Missing Disabled Voice in Politics*, HILL (Sept. 14, 2018, 10:55 AM), <https://thehill.com/blogs/congress-blog/civil-rights/406686-the-inaccessible-office-the-missing-disabled-voice-in/> [https://perma.cc/97P8-DDWC].

³⁰ See, e.g., Elizabeth Evans & Stefanie Reher, *Disability and Political Representation: Analyzing the Obstacles to Elected Office in the UK*, INT’L POL. SCI. REV. 3 (2020) (finding in studies involving U.K. disabled voters that the following barriers prevented them from running for office: inaccessibility of the built environment and written materials, participation in events and door-knocking, lack of financial resources, and a scarcity of support through sign language interpreters, specialized equipment and careers).

³¹ Gus Alexiou, *Why 2021 Has to See More Disabled Candidates Running for Public Office*, FORBES (Dec. 20, 2020, 5:01 AM), <https://www.forbes.com/sites/gusalexiou/2020/12/20/why-2021-has-to-see-more-disabled-candidates-running-for-public-office/?sh=2f8c721f6809> [https://perma.cc/HY7X-4MDH].

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* (quoting the researcher of the study, Andrew Reynolds).

candidates altogether, because they “think they will lose . . . [P]olitical parties don’t put them up because they think the same. Donors are suspicious that disabled candidates aren’t competitive, so they are also less likely to give money,”³⁶ even though political spending strongly correlates to candidate success.³⁷ These messages were reinforced when disabled people, for example, heard the public speculate³⁸ “baselessly about Hillary Clinton’s health or tried to diagnose [Donald] Trump with psychological disorders.”³⁹ This messaging was particularly harmful to disabled people who were “tied for better or worse to those candidates.”⁴⁰

II. Social Security Benefits

A. *History of the Social Security Act’s Disability Benefits*

In 1935, President Franklin D. Roosevelt signed the Social Security Act (SSA) into law, which provided benefits to retired workers who were ages sixty-five and older.⁴¹ President Dwight Eisenhower expanded the SSA in 1954 by initiating the Social Security Disability Insurance (SSDI) program and providing cash benefits to people with disabilities starting in 1956.⁴² Congress further broadened the program, expanding who could qualify for benefits.⁴³ Despite increasing the number of those potentially eligible for benefits, in 1980 Congress limited the amount of benefits that could be

³⁶ *Id.*

³⁷ See Maggie Koerth, *How Money Affects Elections*, FIVETHIRTYEIGHT (Sept. 10, 2018, 5:56 AM), <https://fivethirtyeight.com/features/money-and-elections-a-complicated-love-story/> [https://perma.cc/3BUX-Y82H] (“The candidate who spends the most money usually wins . . . For House seats, more than 90 percent of candidates who spend the most win. . . . Money is certainly strongly associated with political success. But, ‘I think where you have to change your thinking is that money causes winning,’ said Richard Lau, professor of political science at Rutgers. ‘I think it’s more that winning attracts money.’”).

³⁸ See, e.g., Michelle Arrouas, *GOP: Hillary Clinton’s Health and Age Are ‘Fair Game’*, TIME (May 19, 2014, 5:30 AM), <https://time.com/104373/gop-hillary-clintons-health-and-age-is-fair-game/> [https://perma.cc/BQZ2-PDQ3] (demonstrating that the Republican Party thought Hillary Clinton’s age and health were “fair game” and that Clinton should be “thick-skinned enough” to handle “these kinds of attacks”); see also Maeve Reston, Scott Clement & Emily Guskin, *Biden’s Mental Sharpness and Physical Health Doubted, Post-ABC Poll Shows*, WASH. POST (May 7, 2023, 12:00 AM), <https://www.washingtonpost.com/politics/2023/05/07/biden-mental-sharpness-physical-health-poll/> [https://perma.cc/J4PE-YA7G] (reporting that at eighty-years-old, Joe Biden’s mental sharpness and physical health is questioned by six out of ten Americans).

³⁹ Abrams, *supra* note 2.

⁴⁰ *Id.* (quoting Sarah Blahovec, the Disability Vote Organizer at National Council on Independent Living).

⁴¹ OFF. OF RET. & DISABILITY POL’Y, SOC. SEC. ADMIN., NO. 13-11826, ANNUAL STATISTICAL REPORT ON THE SOCIAL SECURITY DISABILITY INSURANCE PROGRAM, 2020, at 1 (2021), https://www.ssa.gov/policy/docs/statcomps/di_asr/2020/di_asr20.pdf [https://perma.cc/KT5U-TMAL] [hereinafter REPORT ON THE SSDI PROGRAM].

⁴² *Id.*

⁴³ *Id.*

provided and established a periodic review to ensure continuing disability—both aimed at tightening the program.⁴⁴ In response to concerns about these changes, Congress again amended the SSA in 1982 to protect people’s benefits during the review process.⁴⁵ People appealing decisions on the cessation of their disability claim could “elect to have benefits and Medicare coverage continued pending review by an administrative law judge, and have an opportunity for a face-to-face evidentiary hearing at the reconsideration level of appeal.”⁴⁶

Congress continued to tweak Social Security benefits from 1984 through 1998, until President Clinton signed the Ticket to Work and Work Incentives Improvement Act into law in 1999.⁴⁷ The Act attempted to improve disability program’s work incentives by prohibiting the Social Security Administration from initiating continuing disability reviews while beneficiaries are using a voucher that can obtain vocational rehabilitation services, employment services, and other employment support services.⁴⁸ Despite these increased incentives to return to work, benefits can still be revoked if a person returns to work or participates in a rigorous new activity because the individual can be declared as no longer disabled under the SSA.⁴⁹

Perhaps the most pertinent aspect of the SSA that may interfere with a disabled candidate’s ability to run for office is the definition of “disability.” The SSA provides the following definitions:

(A) Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) In the case of an individual who has attained the age of 55 and is blind (within the meaning of blindness as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity and over a substantial period of time.⁵⁰

An overinclusive interpretation of “substantial gainful activity” could mean that people who are unable to work but can contribute to their

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 2.

⁴⁸ *Id.*

⁴⁹ *Elevate Blog: Can You Run for Office if You’re on Social Security?* ADVOC. MONITOR (Mar. 1, 2021), <https://advocacymonitor.com/elevate-blog-can-you-run-for-office-if-youre-on-social-security/> [https://perma.cc/D7VS-5FYC].

⁵⁰ 42 U.S.C. § 423(d)(1) (2020); REPORT ON THE SSDI PROGRAM, *supra* note 41, at 2.

community in some way, such as through an elected office, would be precluded from contributing without risking their SSDI benefits.

B. How Social Security Benefits Prevent Disabled People from Running for Office

The Social Security benefits program hinders campaign accessibility for prospective disabled candidates. In 2019, the National Council on Independent Living launched the nonpartisan Elevate Campaign Training program as the first national campaign training for people with disabilities.⁵¹ Through this program, prospective candidates openly express that the Social Security Administration has deterred their candidacy.⁵² The organization’s Civic Engagement and Voting Rights Director at the time, Sarah Blahovec, shared on Twitter that “the absolute worst part of [her job] is having to deliver the news to a disabled person on SSDI that they can’t run for office (usually an unpaid local office) without losing their benefits. Today it was to a disabled veteran. #CripTheVote.”⁵³ Further, she explained that this prohibition “includes positions that involve only a few hours a month, far from a 40-hour work week.”⁵⁴

Disabled candidates who are Social Security beneficiaries can lose their benefits even if they lose their election, because whether their activity is “substantial” and “gainful” is not predicated on the outcome of their election. Blahovec wrote, “Last month I fielded a call about a cancer patient who ran for his local city council. He lost his benefits. And the Social Security Administration doesn’t even tell people they will penalize them for running for office.”⁵⁵ This expansive interpretation of “substantial gainful activity” as applied to campaign activity is problematic because many disability beneficiaries financially depend on those benefits. Yet the Social Security Administration may not be the only agency withholding benefits from disabled candidates because similar withholdings may also exist in other federal programs, such as Veteran Affairs disability compensation.⁵⁶

⁵¹ *Elevate: Campaign Training for People with Disabilities*, NAT’L COUNCIL FOR INDEP. LIVING, <https://ncil.org/elevate/> [<https://perma.cc/7BVZ-WTKZ>].

⁵² See Sarah Blahovec (@Sblahov), TWITTER (Apr. 14, 2022, 11:38 PM), <https://twitter.com/Sblahov/status/1514644173189754880> [<https://perma.cc/FWN3-Y6WD>] (explaining her experiences assisting disabled candidates and their problems with having their SSDI benefits revoked).

⁵³ *Id.*

⁵⁴ Sarah Blahovec (@Sblahov), TWITTER (Apr. 14, 2022, 11:40 PM), <https://twitter.com/Sblahov/status/1514644690045489162> [<https://perma.cc/FWN3-Y6WD>].

⁵⁵ Sarah Blahovec (@Sblahov), TWITTER (Apr. 14, 2022, 11:41 PM), <https://twitter.com/Sblahov/status/1514644978970071040> [<https://perma.cc/FWN3-Y6WD>].

⁵⁶ See Sarah Blahovec (@Sblahov), TWITTER (Apr. 14, 2022, 11:57 PM), <https://twitter.com/Sblahov/status/1514649081406177282> [<https://perma.cc/FWN3-Y6WD>] (“Also, I still need to reach out to the VA to see if they penalize people for running for office. I

Why should someone who is disabled and unable to work risk losing their benefits if they run for office, especially if they are running for meaningful local positions that may be less competitive, unpaid, and not a significant time commitment? Such offices can greatly impact disabled communities and are important steppingstones for upward mobility in a political career. For example, Aaron Kaufman, who has cerebral palsy and uses a walker, was appointed to the Maryland House of Delegates after first serving since 2010 as an elected official in his county's Democratic Central Committee, a volunteer position.⁵⁷ This appointment opportunity arose when a last-minute vacancy opened in his district after the incumbent state legislator decided to run for another office minutes before the filing deadline.⁵⁸ He was nominated to replace the incumbent on the ballot.⁵⁹ Kaufman, who is the first member of Maryland General Assembly to have a physical disability,⁶⁰ recognized the importance of his twelve years of volunteering that helped him develop critical relationships to achieve his party's appointment in a state where more than a quarter of all sitting state legislators were appointed, rather than elected.⁶¹ This ability to build sustainable relationships will continue to help him as a legislator.⁶² Because Kaufman was employed as a political organizer before his appointment, Kaufman did not have Social Security benefits.⁶³ But what if he relied on Social Security benefits? He would have had to decide between putting his name on the ballot for a noncompetitive election and risk losing his benefits, or not running at all. Competitive elections make the risk of losing benefits a more dangerous gamble.

don't have an answer on that, but most of the disabled vets I've talked to receive both VA and SSDI and can't lose either.”).

⁵⁷ *Official 2014 Gubernatorial Primary Election Results for Montgomery County, MD*. ST. BD. OF ELECTIONS (July 16, 2014, 11:13 AM), https://elections.maryland.gov/elections/2014/results/primary/gen_results_2014_1_by_county_160.html [https://perma.cc/9LXF-3UZL]; see also *Aaron Kaufman*, RESPECTABILITY, <https://www.respectability.org/trainers/aaron-kaufman/> [https://perma.cc/R456-F6GA].

⁵⁸ *Id.*

⁵⁹ Danielle E. Gaines, *Montgomery Democratic Central Committee's Pick for District 18 Ballot Vacancy Is Aaron Kaufman*, MD. MATTERS (Apr. 20, 2022), <https://www.marylandmatters.org/2022/04/20/montgomery-democratic-central-committees-pick-for-district-18-ballot-vacancy-is-aaron-kaufman/> [https://perma.cc/3ZMY-QDDZ].

⁶⁰ Dan Schere, *Democratic Central Committee Chooses Member Aaron Kaufman to Fill District 18 Vacancy on Primary Ballot*, MoCo 360 (Apr. 20, 2022, 8:06 AM), <https://moco360.media/2022/04/20/democratic-central-committee-chooses-aaron-kaufman-to-fill-district-18-vacancy-on-primary-ballot/> [https://perma.cc/M3F9-MPEG].

⁶¹ Gaines, *supra* note 59 (“My mentor [former state legislator] Sheila Hixson said that what mattered most in Annapolis was relationships. And I already have deep relationships with many members of the General Assembly.”).

⁶² *Id.*

⁶³ See Schere, *supra* note 60 (reporting that Kaufman was employed by the Jewish Federations of North America as a senior legislative associate).

This risk is one that many people with disabilities are unwilling to take. When asked if campaigning is a “substantial gainful activity”⁶⁴ and if running for office can affect a person’s Supplemental Security Income (SSI) payments or Social Security Disability (DIB) benefits,⁶⁵ the Social Security Administration responded that “determinations are necessarily fact-specific and must be performed on a case-by-case basis. . . . Holding an elected office, even if part-time or unpaid, is work that the beneficiary should report,” which would potentially “initiate a review to evaluate whether the beneficiary continues to be disabled under the Social Security Act.”⁶⁶ As a result, a disabled person who is unable to work but seeks to get involved in their community by running for an uncompetitive office involving periodic, unpaid meetings could get their benefits pulled by the SSA. “Regardless of earnings, a beneficiary’s demonstrated ability to work, or perform activities similar to work, may show that the beneficiary no longer meets [the Social Security Administration’s] standard for disability.”⁶⁷ As Sarah Blahovec explains:

It really is a case-by-case decision by [the Social Security Administration], but can be broken down into two main issues. First, [it] will evaluate your campaign activities as potentially being a sign of improvement in their disability and ability to work. For someone to run for office if they are receiving SSI or SSDI, they don’t know whether [the Social Security Administration] will see this activity as a sign of medical improvement, and therefore have to decide whether it is worth the risk to run for elected office. In many cases, people decide that this is too big of a risk to take. Second, political activity is seen as substantial gainful activity.⁶⁸

The Social Security Administration’s case-by-case approach and blanket view of political activity as substantial gainful activity are two roadblocks for members of an important underrepresented community who would otherwise have a path to elected office and increased political representation.

III. Evaluating the Legal Arguments: Is there a Right to Candidacy?

If a disability rights group were to try to challenge the Social Security Administration’s cessation of benefits for political candidates because political activity is seen as substantial gainful activity, the group would likely face an uphill battle. This is the case even if advocates attempt to connect the

⁶⁴ Sarah Blahovec (@Sblahov), Twitter (Apr. 14, 2022, 11:55 PM), <https://twitter.com/Sblahov/status/1514648472892452864> [<https://perma.cc/FWN3-Y6WD>].

⁶⁵ ADVOC. MONITOR, *supra* note 49.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ E-mail from Sarah Blahovec, Voting and Civil Engagement Director, National Council on Independent Living (Apr. 21, 2022, 12:13 PM) (on file with author).

right to candidacy to the right to vote and freedom to associate, and even if they compare the Social Security policy to impermissible filing fees and property requirements in an Equal Protection analysis.

A. *Linking Candidacy to the Right to Vote and Freedom to Associate*

While some courts have explicitly rejected the right to run for office as a fundamental right,⁶⁹ others have found that such a right exists in the United States⁷⁰ and internationally.⁷¹ Some state courts and academics have even considered whether a state constitution guarantees a right to run for office.⁷²

⁶⁹ See *Stiles v. Blunt*, 912 F.2d 260, 265 (8th Cir. 1990) (“[T]he right to run for public office, unlike the right to vote, is not a fundamental right.”); *Speer v. City of Oregon*, 847 F.2d 310, 312 (6th Cir. 1988) (“The right to vote generally compels much stricter scrutiny as a fundamental right than does the right to offer one’s self as a candidate for public office.”); *Clements v. Fashing*, 457 U.S. 957, 963 (1982) (“Far from recognizing candidacy as a ‘fundamental right,’ we have held that the existence of barriers to a candidate’s access to the ballot ‘does not of itself compel close scrutiny.’”); *Briggs v. Merit Sys. Prot. Bd.*, 331 F.3d 1307, 1312 (Fed. Cir. 2003) (“[T]he government responds that the Hatch Act does not prohibit Briggs from speaking on political matters; it only prohibits him from being a partisan candidate, and, unlike free speech, there is no fundamental right to be a political candidate.”); *Alexander v. Merit Sys. Prot. Bd.*, 165 F.3d 474, 484 (6th Cir. 1999) (“[T]he Supreme Court has never recognized a fundamental right to express one’s political views by becoming a candidate for office.”); *Newcomb v. Brennan*, 558 F.2d 825, 828 (7th Cir. 1977) (“[Three Supreme Court decisions] indicate that plaintiff’s interest in seeking office, by itself, is not entitled to constitutional protection.”); *Bart v. Telford*, 677 F.2d 622, 624 (7th Cir. 1982) (“The First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either.”).

⁷⁰ See *Mancuso v. Taft*, 476 F.2d 187, 196 (1st Cir. 1973) (“[W]e hold that candidacy is both a protected First Amendment right and a fundamental interest.”); *Becton v. Thomas*, 48 F. Supp. 2d 747, 758 (W.D. Tenn. 1999) (“The freedom to run for political office is sufficiently akin to . . . a liberty interest protected by the Due Process Clause. American history has clearly demonstrated that a political career, no matter how short-lived, is one of this country’s ‘common occupations of life.’”).

⁷¹ See Human Rights Comm., *Bwalya v. Zambia*, Comm. No. 314/1988, U.N. Doc. A/48/40 (Vol. II), at 52–56 (July 14, 1993) (reflecting the right to run for office); *Aliyev v. Azerbaijan*, App. No. 18705/06, P75 (Eur. Ct. H.R., Apr. 8, 2010) (finding a violation of Article 3 of Protocol 1 to the European Convention in 1952 when domestic courts failed to adequately protect the applicant-candidate’s right to run for legislative office and appeal irregularities in the results and conduct of the election); *Podkolzina v. Latvia*, 2002-II Eur. Ct. H.R. 443, 460–61 (finding a violation of Article 3 when a Russian-speaking candidate in Latvia could not run for office because she did not pass an examination testing her proficiency in the Latvian language); Yuri Mantilla, *The Language of International Human Rights Law as a Foundation for the Prevention, and Peaceful Resolution of Ethnic, and Political Conflicts in Bolivia*, 32 PACE INT’L L. REV. 171, 234 (2020) (discussing statements by Secretary General Almagro of the Organization of American States in support of Evo Morales’s reelection efforts in Bolivia and in recognition of the existence of a human right to run for office indefinitely).

⁷² Jeffrey Mongiello, *Fusion Voting and the New Jersey Constitution: A Reaction to New Jersey’s Partisan Political Culture*, 41 SETON HALL L. REV. 1111, 1140 (2011) (arguing that the New Jersey Constitution does not protect the right to run for office as a derivative right to vote); Katherine E. Schuelke, *A Call for Reform of New York State’s Ballot Access Laws*, 64 N.Y.U.L. REV. 182, 227 (1989) (“The Pennsylvania courts, for example, are guided by the precept that ‘[t]he Election Code must be liberally construed so as not to deprive an individual of his right to run for office, or the voters of their right to elect a candidate of their choice.’ Consequently, the

Short of recognizing the right to run for office as a fundamental right, the U.S. Supreme Court has linked the right to be a candidate with the right to vote.⁷³ Similarly, candidacy and voting rights are sometimes closely linked.⁷⁴ Indeed, when adjudicating restrictions on candidacy, the U.S. Supreme Court compared the right to candidacy with the right to vote.⁷⁵ In his concurrence in *Lubin v. Panish*,⁷⁶ Justice William Douglas expressed that “[v]oting is clearly a fundamental right. But the right to vote would be empty if the State could arbitrarily deny the right to stand for election.”⁷⁷ Additionally, states cannot place an extra qualification on congressional candidacy, thereby impermissibly restricting the field of candidates when “election to the National Legislature should be open to all people of merit,” an idea which is essential for the “foundation for the Constitutional structure.”⁷⁸

In the landmark election law case *Anderson v. Celebrezze*,⁷⁹ Justice Stevens, writing for the majority, took a slightly different approach, in which he highlighted voters’ rights to choose the candidate in question rather than the candidate’s rights himself.⁸⁰ “[O]ur primary concern is not the interest of [the] candidate[, John] Anderson, but rather, the interests of the voters who chose to associate together to express their support for Anderson’s candidacy and the views he espoused.”⁸¹ Under this approach, a disability rights

Pennsylvania courts routinely allow candidates to amend particular types of errors in their nomination petitions.”).

⁷³ *Bullock v. Carter*, 405 U.S. 134, 143 (1972) (“[T]he rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.”).

⁷⁴ See Andrea Steinacker, *The Prisoner’s Campaign: Felony Disenfranchisement Laws and the Right to Hold Public Office*, 2003 B.Y.U.L. REV. 801, 807 (2003) (explaining that the restoration of the right to run for office is often contingent on restoration of the right to vote).

⁷⁵ See James A. Gardner, *The Illiberalization of American Election Law: A Study in Democratic Deconsolidation*, 90 FORDHAM L. REV. 423, 455 (2021) (“When these laws preclude, or place large obstacles in the path of, the candidacy of those who wish to run for elective office, we might expect a commitment to an individual rights approach to produce a constitutionally grounded right to run for office. Yet the Court has consistently refused to admit the existence of such a right. Instead, the Court has adjudicated challenges to restrictions on candidacy indirectly, by treating laws restricting candidacy as though they were laws restricting the right to vote.”).

⁷⁶ 415 U.S. 709 (1974).

⁷⁷ *Id.* at 721–22 (Douglas, J., concurring).

⁷⁸ *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 819 (1995). See also Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 370 (1991) (proposing that state-imposed term limits on federal elected offices may be unconstitutional after weighing burdens on incumbents); Bart M. Davis, *Idaho’s Messy History with Term Limits: A Modest Response*, 52 IDAHO L. REV. 463, 487 (2016) (“Term limits restrict the right to run for office. In Idaho, the law was not a complete ban, but severely inhibited access—leaving a write-in campaign as the only remaining option.”).

⁷⁹ 460 U.S. 780, 806 (1983).

⁸⁰ *Id.* at 806.

⁸¹ *Id.*

organization could argue that the Social Security policy deprives the electoral interests of disabled voters who may choose to associate together through their support of a disabled candidate relying on benefits. Similar to how a “court must balance the right of the party to define itself [ideologically] against the individual’s right to run for office or vote for the candidate of their choice” in a First Amendment analysis of primary ballot access requirements,⁸² a court considering a challenge on the Social Security policy would balance the government’s interest in safeguarding the integrity of the Social Security benefits program⁸³ against the disabled individual’s right to run for office or the right for others to vote for the disabled candidate of their choice.⁸⁴

B. Comparing the Policy to Filing Fees and Property Requirements (Equal Protection)

The disabled person’s decision to forgo disability benefits or run for office is closely aligned to over a century of election law policies stripping marginalized people of income or requiring property in order to participate in an election. Disability rights advocates may assert challenges to these Social Security policies under the Fourteenth Amendment’s Equal Protection Clause, similar to those lines of cases considering wealth-based requirements to vote. Courts can consider these challenges by either treating the forfeiture of Social Security benefits as poll taxes, a wealth-based requirement, or exorbitant filing fees.

The forfeiture of benefits in order to run for office are analogous to impermissibly high filing fees or other impermissible property requirements. Filing fees were challenged when first introduced in the early twentieth

⁸² Nathaniel Persily, *Candidates v. Parties: The Constitutional Constraints on Primary Ballot Access Laws*, 89 GEO. L.J. 2181, 2199 (2001) (discussing these competing interests in the several cases brought by David Duke in an effort to get onto the 1992 Republican presidential primary ballot).

⁸³ See Nancy Altman, ‘Program Integrity’ Is an Orwellian Attack on Social Security Beneficiaries, HILL (July 6, 2021, 9:00 AM), <https://thehill.com/blogs/congress-blog/politics/561599-program-integrity-is-an-orwellian-attack-on-social-security/> [<https://perma.cc/SDS6-QGJT>].

⁸⁴ This Note acknowledges that the *Anderson* test is traditionally used to evaluate election laws and policies. See *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (“A court considering a challenge to a state election law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interest put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’”). However, laws and policies can have impacts on election processes, which make those laws and policies prime for election law analyses. This Note proposes an *Anderson* analysis to the extent that the policies impacting Social Security benefits adversely impacts the electoral rights of disabled voters, and it suggests that courts should evaluate those policies to that extent.

century.⁸⁵ For example, the North Dakota Supreme Court invalidated filing fees as impermissible property qualifications.⁸⁶ Similarly, the Illinois Supreme Court struck down its filing fees because it found that these fees discriminated between candidates who can pay and candidates who cannot.⁸⁷

Despite these state court decisions, poll taxes were not outlawed until fifty years later after the adoption of the Twenty-Fourth Amendment in 1964, which banned poll taxes in federal elections,⁸⁸ and the U.S. Supreme Court's 1966 decision in *Harper v. Virginia State Board of Elections*,⁸⁹ which held that poll taxes in state elections violated the Equal Protection Clause.⁹⁰ While a disability rights group could argue that forfeiting benefits is akin to paying a tax, a court may point out the difference between paying a mandatory fee to exercise a fundamental right and voluntarily electing to engage in an activity that results in losing optional benefits.

Another argument is that the Social Security policy effectively requires disability beneficiaries to forgo their benefits as property or other wealth if they choose to run for office. In 1969, the U.S. Supreme Court ruled in *Kramer v. Union Free School District No. 15*⁹¹ that a New York school board election law requiring voters to either have children in the schools or possess taxable real property violated the Equal Protection Clause.⁹² This comparison may be more similar to the disabled candidate's situation than the poll-tax comparison above. However, the connection is still tenuous: a court may take

⁸⁵ Mark R. Brown, *Ballot Fees as Impermissible Qualifications for Federal Office*, 54 AM. U.L. REV. 1283, 1301 (2005) (arguing that filling fees in North Dakota, Illinois, Tennessee, South Dakota, Indiana, and Nebraska were often invalidated under challenges under *Lochner*-esque reasoning prohibiting restraints on the liberty of contracting).

⁸⁶ See *Johnson v. Grand Forks Cnty.*, 113 N.W. 1071, 1073–74 (N.D. 1907) (concluding that because voters could not be required to pay any money to vote, candidates could not be required to pay any money to run for office).

⁸⁷ See *People ex rel. Breckton v. Bd. of Election Comm'rs of Chi.*, 77 N.E. 321, 324 (Ill. 1906) (“[T]here can be no discrimination between candidates based upon the ground that one has money to pay for the privilege of being a candidate and chooses to pay, and another has not the means, or is unwilling to buy the privilege.”).

⁸⁸ U.S. CONST. amend XIV, § 1 (“The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay a poll tax or other tax.”).

⁸⁹ 838 U.S. 663 (1966).

⁹⁰ *Id.* at 668 (“The principle that denies the State the right to dilute a citizen's vote on account of his economic status or other such factors by analogy bars a system which excludes those unable to pay a fee to vote or who fail to pay. . . . [T]he interest of the State, when it comes to vote, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process.”).

⁹¹ 395 U.S. 621 (1969).

⁹² *Id.* at 632–33 (holding that the state statute impermissibly discriminated against voters by “selectively distributing the franchise” to only parents and people who owned property without a sufficiently tailored reason for the exclusion).

issue with the difference between eligibility to vote and eligibility to place one's name on the ballot.

The loss of disability benefits can also be equated to a large ballot fee, which serves as a financial barrier too high for disabled persons to run for office. The U.S. Supreme Court in *Bullock v. Carter*⁹³ struck down high ballot fees in Texas as a violation of the Equal Protection Clause.⁹⁴ However, today, states commonly charge candidates up to one percent of an office's annual salary and often require "some form of non-monetary ballot access," such as a signature gathering alternative.⁹⁵ Alternatives to filing fees do exist in some states.⁹⁶ For example, Delaware incorporated disability benefits into its mechanism for determining whether a candidate qualifies for collecting signatures as an alternative to paying a filing fee for getting onto the ballot.⁹⁷ A candidate running for office in Delaware must "receiv[e] benefits under the Supplemental Security Income Program for Aged, Blind and Disabled under Subchapter XVI of Chapter 7 of Title 42 of the United States Code" or have a State Election Commissioner determine that the candidate meets the federal "income and resources tests for such benefits under 42 U.S.C. § 1382(a), as applied to Delaware residents."⁹⁸

Ultimately, the impact of the Social Security Administration's case-by-case evaluation of eligibility to include minimal political activity as "substantial gainful activity" is likely not as strong or straightforward as the impact of poll taxes for voters, property requirements for voters, or exorbitant filing fees for candidates. Such a tenuous comparison may not lend itself to a successful litigation strategy. Striving to achieve the desired policy change through legislation, on the other hand, may prove more successful.

IV. Achieving Change through Legislation

The fact that the current Social Security policy is effectively disincentivizing disabled people from participating in their community through meaningful leadership and political representation should be concerning. In order to achieve a democratic republic, the electoral system

⁹³ 405 U.S. 134 (1972).

⁹⁴ *Id.* at 145–46 ("There is no escape from the conclusion that the imposition of filing fees ranging from as high as \$8,900 to limit the number of candidates entering the primaries. . . . If the Texas fee requirement is intended to regulate the ballot by weeding out spurious candidates, it is extraordinarily ill-fitted to that goal.").

⁹⁵ See Brown, *supra* note 85, at 1312 (However, *Bullock* . . . [has] not been interpreted to preclude states from charging *substantial* fees . . . Lower courts, moreover, have not read *Bullock* . . . to require non-monetary alternative access for *all* candidates. . . . [A]ny waiver or exception will do under the First and Fourteenth Amendment, even if the alternative is legally or realistically impossible for most candidates.").

⁹⁶ *Id.* (listing Delaware as a state with a sustained non-monetary alternative and filing fees).

⁹⁷ DEL. CODE tit. 15, 3103(e) (2015).

⁹⁸ *Id.*

must provide its most marginalized populations with sufficient social safety nets and guarantee them political agency so that they have the ability to organize and lead movements for collective liberation.⁹⁹ The Social Security Administration’s current case-by-case approach leaves disabled would-be candidates guessing whether they will lose their benefits if they run for office, resulting in fewer disabled people choosing to run for office. An alternative, more straightforward approach would be to clearly demarcate what constitutes “substantial gainful activity.” This demarcation would allow disabled people to make a confident choice about whether they can financially run for office. Beneficiaries would not be left without the means to support themselves if they decide to run for a local elected office, which can amount to a volunteer, part-time position and is incomparable to full-time, paid work.

Such a change may be most feasibly actualized through legislation.¹⁰⁰ Sarah Blahovec recently shared that her main concern is that “legislation like this won’t be able to pass Congress at this time.”¹⁰¹ In 2022, a bill was introduced to achieve the very aims of this Note by excluding any earned income and work performed by a candidate from consideration of eligibility for Social Security benefits.¹⁰² Although the bill has not moved forward in Congress, its lack of immediate success does not mean that legislative action cannot be successful in the future.

In future efforts, perhaps U.S. Representative Jamie Raskin can serve as a partner to pass such legislation, since he understands the need to have diversity of all kinds in the political process.¹⁰³ For instance, Representative Raskin wrote:

But intertwined with the right to vote is the right to run for office as a candidate and, at least theoretically, to serve as a representative. Indeed, the right to vote and the right to run imply

⁹⁹ See PEOPLE & PLANET, INTRODUCTION TO COLLECTIVE LIBERATION 3 (2019), <https://peopleandplanet.org/system/files/resources/Collective%20Liberation%20Guide%20for%20upload.pdf> [<https://perma.cc/WL3Q-RBFR>] (“Collective liberation means recognizing that all of our struggles are intimately connected, and that we must work together to create the kind of world we know is possible.”).

¹⁰⁰ Sarah Blahovec (@Sblahov), Twitter (Apr. 14, 2022, 11:43 PM), <https://twitter.com/Sblahov/status/1514645472446664714> [<https://perma.cc/FWN3-Y6WD>] (“I’ve talked to lawyers about this and they didn’t see a path forward for litigation. The only hope is legislation. I do know some members of Congress are considering introducing legislation to address this and other issues with social security.”).

¹⁰¹ Sarah Blahovec (@Sblahov), Twitter (Apr. 14, 2022, 11:43 PM), <https://twitter.com/Sblahov/status/1514645473264644099> [<https://perma.cc/FWN3-Y6WD>].

¹⁰² Removing Access Barriers to Running for Elected Office for People with Disabilities Act, S. 4597, 117th Cong. (2022).

¹⁰³ See, e.g., Jamin B. Raskin, *Is This America? The District of Columbia and the Right to Vote*, 34 HARV. C.R.-C.L. L. REV. 39, 56 (1999) (arguing for the congressional representation of D.C. citizens).

one another since the “fundamental principle of our representative democracy” embodied in the Constitution is that “the people should choose whom they please to govern them.” A law that gave women or racial minorities the right to vote but denied them the right to run for office would violate both their right to participate fully and the right of the voters to choose them as representatives.¹⁰⁴

While Representative Raskin argued for electoral diversity in the context of political representation for citizens of Washington, D.C., the comparison is clear. If citizens of D.C. “cannot be confined to the role of consenting spectators in other people’s political and governmental process” and “have the right to become active agents in shaping national public discourse and debate, a right that includes the possibility of running for Congress,”¹⁰⁵ then there is no true representative democracy. The same holds true for people with disabilities. This Note’s proposed Social Security policy change would benefit disabled people who are economically disadvantaged and cannot risk losing their benefits, which follows from another point by Representative Raskin:

In a democracy in which every citizen had a decent income and there were no extremes of wealth—a society in which the electorate was not divided along lines of wealth and class— . . . the right to run for office would be a meaningful one for all citizens, since presumably everyone would have sufficient means of personal support while running for office given the relative affluence of our society. . . . [D]onations would be more a function of the *desire*, rather than the *capacity*, to give, and campaign treasuries would roughly reflect a candidate’s actual popularity in the electorate.¹⁰⁶

Representative Raskin, or any other member of Congress, could find bipartisan support on a benefits reform agenda. The political leaders mentioned in this Note—Presidents Franklin D. Roosevelt and Dwight Eisenhower—were from different parties but were committed to enacting and expanding Social Security benefits. Later, the landmark Americans with Disabilities Act (1990) was heralded as “a model for bipartisanship” during George H.W. Bush’s administration.¹⁰⁷ Current members of the U.S. House

¹⁰⁴ *Id.* at 56. Raskin continued in his argument for D.C. statehood: “The citizens of the District cannot be confined to the role of consenting spectators in other people’s political and governmental process. They have the right to become active agents in shaping national public discourse and debate, a right that includes the possibility of running for Congress and serving.” *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Jamin Raskin & John Bonifaz, *The Constitutional Imperative and Practical Superiority of Democratically Financed Elections*, 94 COLUM. L. REV. 1160, 1170–71 (1994).

¹⁰⁷ Robert L. Burgdorf Jr., *Why I Wrote the Americans with Disabilities Act*, WASH. POST (July 24, 2015, 6:00 AM), <https://www.washingtonpost.com/posteverything/wp/2015/07/24/why-the-americans-with-disabilities-act-mattered/> [https://perma.cc/7XDZ-QNVZ].

of Representatives and Senate who are disabled themselves may want to lead this issue, including Democratic Representative Bonnie Coleman Watson of New York and Representative Donald Payne, Jr. of New Jersey, and Republicans Representative Dan Crenshaw of Texas, Representative Brian Mast of Florida, and Representative Jim Baird of Indiana.¹⁰⁸ Senator Robert Casey of Pennsylvania has already taken the lead on this effort by sponsoring Senate Bill 4597, with Senator Tammy Duckworth of Illinois and nine other Democrats co-sponsoring the legislation.¹⁰⁹

After—or perhaps in conjunction with—the preceding analysis, legislators should consider making similar changes to other benefit programs as well. After a low-income single mother relying on benefits won a school board seat in New Hampshire—a position paying \$4,000 annually—she found out from her case manager that the \$4,000 was enough to put her over the income limit to lose both her childcare scholarship and housing voucher the moment she accepted the position.¹¹⁰ Her childcare expenses would have increased from \$20 to \$275 per week, and the cost of her housing would have increased from \$760 to \$1,875 per month;¹¹¹ she reflected: “I realized I wasn’t going to survive, I would’ve had an eviction notice.”¹¹² She looked into waiving the salary but was advised against it, as she could have appeared to be engaging in welfare fraud.¹¹³ As a result, she quit her full-time job to maintain her housing and childcare support to serve in the position, living off of a lower-paying internship and reapplying for welfare benefits.¹¹⁴ As a new schoolboard member, she is considering running for her state legislature to reform the barriers that she feels keeps families in poverty; her financial struggles have motivated her even more to create change.¹¹⁵ Podcast host Katherine Goldstein, who interviewed the mother, concluded that “[o]ur system punishes you basically for taking on something new and earning more money.”¹¹⁶ “I keep thinking, ‘[w]hat could [this mother] accomplish and help

¹⁰⁸ *Candidates with Disabilities Running for Elected Office in 2022*, NAT’L COUNCIL ON INDEP. LIVING, <https://ncil.org/candidates/> [<https://perma.cc/UB6K-J4M9>].

¹⁰⁹ S. 4597, 117th Cong. (2022) (listing the following additional co-sponsors: Senators Amy Klobuchar of Minnesota, Cory Booker of New Jersey, Alex Padilla of California, Richard Blumenthal of Connecticut, Sheldon Whitehouse of Rhode Island, Ron Wyden of Oregon, Mazie Hirono of Hawai’i, Patrick Leahy of Vermont, and Edward Markey of Massachusetts).

¹¹⁰ *The Check’s Not in the Mail*, DOUBLE SHIFT, at 34:39–35:15 (Jan. 26, 2022), <https://www.thedoubleshift.com/the-checks-not-in-the-mail/> [<https://perma.cc/7YGD-U5D3>].

¹¹¹ *Id.* at 35:18–35:33.

¹¹² *Id.* at 35:34–35:46.

¹¹³ *Id.* at 36:21–36:31.

¹¹⁴ *Id.* at 36:40–37:01.

¹¹⁵ *Id.* at 39:36–39:59.

¹¹⁶ *Id.* at 38:31–3:39.

the world with if she didn't have to spend so much energy jumping through all these hoops?"¹¹⁷

Conclusion

Despite the Social Security benefits barrier, disabled people are increasingly running for office and inspiring others to do so. "More people with disabilities have been running for office ever since passage of the Americans with Disabilities Act in 1990," especially military veterans, Native Americans, and young people.¹¹⁸ "These are people who've grown up with [Americans with Disabilities Act] regulations and education laws in place. . . . While the stigma is still there, it's less than what it used to be."¹¹⁹ This has a snowballing effect, as disabled people who see others with disabilities running for office realize or imagine that they, too, may be able to run for office.¹²⁰

As more disabled candidates run for office, more candidates can raise awareness of and champion how disability issues affect their own lives. For instance, Olivia Babis, a disabled Florida State Senate candidate in 2018, announced that she planned "to fight for better supports and services for people with disabilities" if elected.¹²¹ In another part of the country, former South Dakota Senate Minority Leader Billie Sutton, who is paralyzed, is inspiring the next generation of disabled candidates; even though he narrowly lost his race for Governor in 2018, he reflected "I know I'm ready and able to take on the issues South Dakota faces, not in spite of my life-altering accident and disability, but, in part, because of it. The challenges I've overcome in my life have prepared me to lead with a unique determination and unmatched ability to listen and understand the struggles people face."¹²² These challenges should not include our Social Security benefits program, which keeps low-income people with disabilities out of the halls of leadership.

¹¹⁷ *Id.* at 41:46–41:55.

¹¹⁸ Lai, *supra* note 19 (quoting Lisa Schur of Rutgers University).

¹¹⁹ *Id.*

¹²⁰ *Id.* ("Lauren Alden, an organizer for Liberty Resources, a Philadelphia-based group that advocates for the disabled, said that 'voters really like to see themselves in candidates. And the fact that we're seeing more folks with disabilities running, it's emboldened a lot of people to run and be a part of the decision-making process.'").

¹²¹ Robyn Powell, *People with Disabilities Are 'Severely Underrepresented in Elected Office.'* *These Candidates Hope to Change That.*, REWIRE NEWS GRP. (May 31, 2018, 2:56 PM), <https://rewirenewsgroup.com/article/2018/05/31/people-disabilities-severely-underrepresented-elected-office-candidates-hope-change/> [<https://perma.cc/LB2Q-6Z3F>].

¹²² *Id.*