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**Submitted to the Prince George's County Council
Re: CB-4-2018**

March 8, 2018

The Brennan Center for Justice at NYU School of Law appreciates the opportunity to testify in support of establishing a Fair Election Fund in Prince George's County to provide public campaign financing. The bill's small donor matching system has the power to strengthen democracy and increase the fairness of elections in Prince George's County.

Public financing systems across the country have demonstrated that they can fundamentally change the nature of democracy by acting as a counterweight to the power of wealth to influence the government. The success of New York City's matching funds program has been widely recognized. Other large cities, like Los Angeles and San Francisco, have likewise implemented public financing programs. And closer to home, Montgomery and Howard counties have recently followed suit with their own small donor matching programs. These systems allow small donors—of all parties and all ideologies—to play a positive role in politics.²

This testimony first outlines the key components of a strong small donor matching program and the benefits of such a program. It then highlights the strengths of the current small donor matching bill before the Council, as well as offering additional suggestions for strengthening the bill.

Components of a Strong Matching Funds Program

Public financing systems can take several forms, including small donor matching, vouchers, tax credits and rebates, and block grants, or some combination thereof.³ Although the

¹ The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The opinions expressed in this testimony are only those of the Brennan Center and do not necessarily reflect the opinions of NYU School of Law.

² ADAM SKAGGS & FRED WERTHEIMER, EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS 1, (2012), http://www.brennancenter.org/sites/default/files/legacy/publications/Small_donor_report_FINAL.pdf.

³ This testimony will focus on matching programs, with particular attention to New York City's matching funds program. If requested, we will provide further information about other programs, such as Seattle's voucher program and the block grant systems that exist in states including Connecticut, Maine, and Arizona.

Brennan Center supports other types of public financing systems, we are particularly enthusiastic about well-structured matching programs, which have a decades-long proven record of increasing the influence and participation of a more diverse group of citizens.

Although each jurisdiction's requirements may be slightly different, there are certain general components that create a strong foundation for a successful program. Perhaps most importantly, the system needs to be funded properly. Candidates will not opt into the program if they do not believe they will receive funding sufficient to run a competitive campaign. Therefore, an adequate and reliable funding stream is critical to the success of any system. To ensure that frivolous candidates do not waste these public funds, however, participating candidates should be required to satisfy qualification criteria stringent enough that trivial candidates cannot easily enter the system and drain public resources, but not so strenuous as to discourage legitimate candidates from participating. Most jurisdictions, including New York City, have two primary qualification criteria: (1) acquiring a certain number of small qualifying contributions, and (2) aggregating a requisite dollar amount of contributions.⁴ For example, candidates for New York City Council must collect five thousand dollars in matchable contributions comprised of sums of up to \$175 per contributor, including at least 75 matchable contributions of \$10 or more from residents of the district in which the seat is to be filled.⁵ Unopposed candidates should not be eligible to receive matching funds.

Strong models amplify small contributions (usually under \$200) with a multiple match, increasing both the incentive to give and the effect of the contribution. To further empower constituents, only contributions from residents of the jurisdiction should be matched.⁶ This requirement incentivizes candidates to seek contributions from potential constituents, strengthening their ties to the community and making them more responsive to local concerns.⁷ Bills should also include provisions to ensure that candidates receive their matching funds quickly.

Participating candidates should be subject to lower contribution limits, and there should be a cap on the amount of public funds available to each candidate.⁸ A public financing program need not—and should not—aim to ensure that a publicly financed candidate will be able to spend as much as his or her opponent. Rather, the goal of the program should be to ensure that viable candidates are able to get their messages out and run competitive races. Some systems, like New York City's, also provide expenditure limits for participating candidates.⁹ However, in light of the unlimited outside spending permitted by *Citizens United*, some jurisdictions may find it preferable to omit an expenditure limit so that publicly financed candidates do not fear running

⁴ See N.Y.C. ADMIN. CODE § 3-703(2)(a) (outlining threshold number of donations and aggregate amounts by office).

⁵ N.Y.C. ADMIN. CODE § 3-703(2)(a)(iv).

⁶ SKAGGS & WERTHEIMER, *supra* note 2, at 16-17.

⁷ See ELIZABETH GENN, ET AL., DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS 4 (2012), https://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

⁸ SKAGGS & WERTHEIMER, *supra* note 2, at 2, 17-18.

⁹ See N.Y.C. ADMIN. CODE § 3-706(1)(a) (specifying expenditure limits for various public offices).

out of funds. Nevertheless, we recommend that any contributions received after a candidate reaches his or her funding cap be subject to the program’s contribution limits and overall rules.¹⁰

These programs should be administered and enforced by a strong, nonpartisan, and independent body. Such a body fosters confidence that the public financing system is being put to good use and that the election laws are followed and enforced. The enforcement body’s responsibilities should include determining whether qualification criteria have been satisfied, distributing public funds, conducting candidate debates, and enforcing the campaign finance law. The body should have the power to, among other things, audit candidates, bring enforcement actions, promulgate regulations, and render advisory opinions.

The Benefits of Small Donor Match Systems

Increasing campaign costs have led many elected officials to rely on big-money donations to fund their campaigns. This can turn voters off and lead to cynicism about how our politics work. An October 2017 Washington Post-University of Maryland poll found that 96% of Americans placed either “some” or “a lot” of blame on money in politics for dysfunction in the United States political system, and 94% of Americans similarly blamed wealthy political donors for causing political dysfunction.¹¹ Public financing is a key way to restore balance to our politics. Below, I discuss the general benefits that small donor matching systems can produce, including reducing barriers to participation, fostering greater connections between candidates and average constituents, and promoting diverse constituents to become politically engaged.

Public financing is good for candidates and voters alike. The expense of running for office can discourage the best and brightest candidates from entering public life if they lack personal resources or the support of large donors. By reducing financial barriers, public financing helps to encourage all qualified candidates to compete. In addition, small donor matching funds help bring donors into the political process who are traditionally less likely to be active, and who are too often ignored by traditionally funded candidates.¹² For example, when Brooklyn Borough President Eric Adams ran for his seat under New York City’s public financing system, he reported to the Brennan Center that, “I have a large number of first-time donors, and those first-time donors have also turned into first-time participants in the process[.]”¹³ Financial involvement in elections can also lead to additional forms of engagement, like volunteering for campaigns and canvassing voters.¹⁴

Public financing programs can also promote interactions between candidates and the diverse constituents they seek to represent. Elected officials who have used public financing have explained that such systems made elections more accessible, fair, and constituent-

¹⁰ See SKAGGS & WERTHEIMER, *supra* note 2, at 18.

¹¹ John Wagner & Scott Clement, *‘It’s just messed up’: Most think political divisions as bad as Vietnam era, new poll shows*, WASH. POST, Oct. 28, 2017 https://www.washingtonpost.com/graphics/2017/national/democracy-poll/?utm_term=.e25faf2ddce0.

¹² See SKAGGS & WERTHEIMER, *supra* note 2, at 15.

¹³ GENN ET AL., *supra* note 7, at 16.

¹⁴ SKAGGS & WERTHEIMER, *supra* note 2, at 1.

oriented.¹⁵ Councilor Joseph M. Maestas of Santa Fe, New Mexico observed that “[n]ot having to spend time dialing for dollars allowed me to really spend time knocking on doors instead. The bottom line is that public financing is really freeing.”¹⁶ And once elected, publicly financed candidates are accountable to the many individual donors who have supported them, rather than a wealthy few. As Richmond, California councilmember and public financing recipient Jovanka Beckles explained, “When you take the money from the public, you are beholden to the public only, and not any other corporate interest. That has really made a difference and helped the voters come to a place where they can say that they trust me.”¹⁷

Public financing has also been shown to increase the racial, economic, and gender diversity of both those running for office and those contributing to the races.¹⁸ By focusing on grassroots support from ordinary constituents, public financing encourages more citizens, particularly those from historically disenfranchised communities, to participate in politics.¹⁹ Studies of existing public financing systems show an increase in participation among low-income and racial minority communities.²⁰

The Long History and Success of the New York City Matching Program

These benefits have been underscored in the success of New York City’s public financing program, which has been in place for nearly thirty years and has been studied extensively.²¹ New York City uses a 6:1 match ratio on all contributions of \$175 or less.²² Thus, for example, a \$10 donation is matched by \$60 from the city. During the 2017 election cycle, 82% of city candidates participated in the program,²³ and 46% of spending reported by candidates came from public matching funds.²⁴

New Yorkers who contribute to city candidates are much more racially and economically diverse than donors to candidates for non-publicly financed candidates for the New York State

¹⁵ DENORA GETACHEW & AVA MEHTA, BREAKING DOWN BARRIERS: THE FACES OF SMALL DONOR PUBLIC FINANCING 3 (2016), https://www.brennancenter.org/sites/default/files/publications/Faces_of_Public_Financing.pdf.

¹⁶ *Id.* at 22.

¹⁷ *Id.* at 17.

¹⁸ GENN ET AL., *supra* note 7, at 4-5; *see also* BRENNAN CTR. FOR JUSTICE & DEMOS, A CIVIL RIGHTS PERSPECTIVE ON MONEY IN POLITICS 4 (June 9, 2016), <https://www.brennancenter.org/analysis/civil-rights-perspective-money-politics>.

¹⁹ *See* GENN ET AL., *supra* note 7, at 16-22; BRENT FERGUSON, STATE OPTIONS FOR REFORM 1 (2015), https://www.brennancenter.org/sites/default/files/publications/State_Options_for_Reform_FINAL.pdf.

²⁰ *See* GENN ET AL., *supra* note 7, at 16-22; FERGUSON, *supra* note 19, at 1; MICHAEL J. MALBIN ET AL., SMALL DONORS, BIG DEMOCRACY: NEW YORK CITY’S MATCHING FUNDS AS A MODEL FOR THE NATION AND STATES, 11 Elec. L.J. 13 (2012).

²¹ *See* New York City, N.Y., Local Law No. 8 of 1988, § 1; *see also, e.g.*, ANGELA MIGALLY & SUSAN LISS, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 3 (2010), <https://www.brennancenter.org/sites/default/files/legacy/Small%20Donor%20Matching%20Funds-The%20NYC%20Election%20Experience.pdf> (describing history of New York City Campaign Finance Act).

²² N.Y.C. ADMIN. CODE § 3-705(2)(a); *see also* N.Y.C. Campaign Fin. Bd., *How It Works*, <https://www.nyccfb.info/program/how-it-works>.

²³ N.Y.C. CAMPAIGN FIN. BD., *82 Percent of City Candidates Join Public Matching Funds Program*, (June 20, 2017) <https://www.nyccfb.info/media/press-releases/82-percent-of-city-candidates-join-public-matching-funds-program/>.

²⁴ N.Y.C. CAMPAIGN FIN. BD., *Introduction to the CFB’s 2017 Post-Election Hearing* (Jan. 29, 2018), <https://www.nyccfb.info/media/blog/introduction-to-the-cfb-s-2017-post-election-hearing/>.

legislature.²⁵ The neighborhoods where small donors in New York City elections reside are more representative of the city as a whole, and have lower incomes, higher poverty rates, and higher concentrations of minority residents than the neighborhoods where donors to state candidates reside.²⁶ Donors to New York City Council candidates came from neighborhoods with a combined 54 percent non-white population, as opposed to 39 percent for State Assembly candidates also representing New York City.²⁷

These results were all the more striking when we examined discrete low-income communities and communities of color. We found that there was far greater small donor participation from these communities in City Council contests (with public financing) than in New York State Assembly contests (with only private funding) covering the same neighborhoods.²⁸ In the predominately African American neighborhood of Bedford-Stuyvesant, Brooklyn, for example, only about 331 donors gave small donations of \$175 or less to Assembly candidates in 2010.²⁹ In contrast, an estimated 7,987 small donors from the same neighborhood donated to City Council candidates in the 2009 race.³⁰ Put differently, *twenty-four times* as many small donors gave to City Council as to Assembly candidates from the same neighborhoods.³¹ In the City Council races, the \$637,000 in private funds from these small donors amplified to approximately \$2.5 million—nearly 11 percent of the combined money that City Council candidates raised in 2009.³² In Manhattan’s Chinatown, with high concentrations of Asian residents and residents living in poverty, over twenty-three times as many small donors gave to the City Council races as candidates running for State Assembly.³³ When public funds were included, the neighborhood’s residents were responsible for \$407,000 of the Council candidates’ funds.³⁴ And in predominately Latino neighborhoods in the Bronx and Upper Manhattan, which also include a large number of residents living in poverty, 7,480 small donors contributed to City Council candidates, about twelve times the number of small donors to candidates for the State Assembly.³⁵

By applying incentives like those that exist under New York City’s program, a small donor match program in Prince George’s County can change how candidates campaign and how voters participate. Candidates funded by many small donors are encouraged to reach out to their constituents, rather than to dial for dollars. This empowers those who are too often let out of the political process. As New York City Public Advocate Letitia James put it: “The public financing system in New York City gave me the opportunity to compete and succeed, allowing me to

²⁵ GENN ET AL., *supra* note 7, at 14-22; SKAGGS & WERTHEIMER, *supra* note 2, at 15.

²⁶ GENN ET AL., *supra* note 7, at 4; SKAGGS & WERTHEIMER, *supra* note 2, at 15.

²⁷ GENN ET AL., *supra* note 7, at 14.

²⁸ *Id.* at 16.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at 18.

³³ *Id.*

³⁴ *Id.* at 20.

³⁵ *Id.*

represent individuals whose voices are historically ignored.”³⁶ The same is possible in Prince George’s County.

Comments on CB-4-2018

The bill before the Council features the key components necessary for a strong public financing system. Among its most important features, the bill empowers small donors by matching small contributions of up to \$150 with a tiered ratio. This structure provides the highest match ratio for the smallest donations, increasing their efficacy and encouraging candidates to reach out to a greater number of small donors. Donations of up to \$25 will be matched at a ratio of 7:1.³⁷ Larger qualifying contributions still receive a multiple match, with a 7:1 match ratio for the first \$25, a 5:1 match ratio for the next \$50, and a 2:1 match ratio for the last \$75 up to the contribution limit.³⁸ By amplifying the impact of the smallest donations, the tiered matching structure can encourage candidates to continuously broaden their base among the smallest donors in the county. Both Howard and Montgomery Counties have implemented public financing systems featuring tiered match ratios.³⁹

The bill also provides for multiple sources of funding, including revenue from the County’s fees and charges, as well as money appropriated to the Fund.⁴⁰ The bill’s qualification thresholds, which vary by office, will help ensure that frivolous candidates do not drain these resources.⁴¹ We note that arriving at a proper qualification threshold is a complex task. The Council’s ultimate decision should be based not only on models from other jurisdictions, but on typical fundraising and donation practices within the county. To ensure that the levels specified in the bill are appropriate, it might be helpful to analyze the last several elections to determine how many top-finishing candidates would have qualified under the proposed thresholds.⁴² The bill’s provisions directing the Fair Election Fund Commission to review the qualification thresholds after each election, and to make recommendations based on its review, allow these thresholds to be fine-tuned.⁴³

To further protect public finances, only qualifying contributions made by county residents are matched.⁴⁴ This requirement reinforces candidates’ dependence on the communities they serve, rather than donors from outside the jurisdiction.⁴⁵ The bill also prohibits participants from receiving private contributions from any group or organization, including political action committees, corporations, labor organizations, or state or local central

³⁶ GETACHEW & MEHTA, *supra* note 15, at 7.

³⁷ CB-4-2018 §§ 10-322(d)(1)(A), 10-322(d)(2)(A).

³⁸ *Id.* §§ 10-322(d)(1)(A)-(C), 10-322(d)(2)(A)-(C).

³⁹ HOWARD CTY. CODE § 10.306(d); MONTGOMERY CTY. CODE ART. IV, § 16-23(a).

⁴⁰ CB-4-2018 § 10-318(b).

⁴¹ *Id.* § 10-320(b).

⁴² Of course, candidates will change their fundraising strategies to comply with the requirements of the program. Just because some victorious candidates would not have qualified does not necessarily mean that a threshold is too high. As noted above, this is just one of several factors that the Council should consider.

⁴³ *See* CB-4-2018 §§ 10-322(j)(1)(ii); 10-322(j)(3)(i).

⁴⁴ *Id.* § 10-317(a)(16)(A).

⁴⁵ *See* SKAGGS & WERTHEIMER, *supra* note 2, at 17.

committees of political parties.⁴⁶ This provision fortifies the bill's goal for participating candidates to rely principally on small donations from individuals. It also addresses the threat of pay-to-play corruption, a key goal of any reasonable public financing regime.

These features provide an excellent start. To make this bill even stronger, the Brennan Center offers several additional suggestions:

- The bill currently states that a determination shall be made the first Tuesday in August preceding an election as to whether an election is contested.⁴⁷ Our understanding is that Prince George's County holds its primary elections in late June. Thus, it appears that a determination would have to be made almost a year in advance of the primary—and before the candidate filing deadline to run in the race—as to whether a race is contested. Rather than take what currently appears to be a one-size-fits-all approach for primaries and general elections, the Council may choose to specify two separate dates for (1) determining whether a primary is contested and (2) determining whether the general election is contested. To arrive at a reasonable date, the Council should take into account the deadlines for candidates to file for candidacy, as well as the dates of the contests themselves. A date that is too early could pose a problem for candidates who want to receive public financing but do not have an opponent until after the deadline, but a date that is too close to the election may not allow sufficient time for candidates to campaign and receive matching funds.
- The bill also provides that, if the Director of Finance determines that the total amount available for distribution in the Fund is insufficient to meet the allocations specified in the bill, the Director shall reduce each public contribution by the same percentage.⁴⁸ You may choose to provide a deadline by which the Director must make this determination, so that candidates are able to make a fully informed choice as to the financing mechanism that works best for them. For example, Montgomery County's public financing law directs the Director to do so on or before July 1 of the year preceding the primary election.⁴⁹ The Council may choose a different date depending on various key deadlines, such as the deadline to file for candidacy and the deadline for certification to participate in the public financing program.
- We read the bill to cap the outlay of public matching funds at a fixed amount, but to allow candidates to continue to collect unlimited small contributions of up to \$150 in their citizen funded campaign accounts and to make expenditures from those accounts. If this was the drafters' intention, we recommend adding a sentence to the bill to explicitly clarify that, notwithstanding the limits on

⁴⁶ CB-4-2018 § 10-325(a).

⁴⁷ *Id.* § 10-322(a)(3).

⁴⁸ *Id.* § 10-322(f).

⁴⁹ MONTGOMERY CTY. CODE § 16-23(d).

matchable contributions, participating candidates may continue to raise and spend funds within the rules of the program.

- We recommend including a requirement that participating candidates take part in a public debate hosted by a neutral entity. Cities including New York City and San Francisco, and states including New Jersey, impose such a requirement on candidates who participate in their small donor matching programs.⁵⁰ This is a low-cost addition that the public will likely view positively. Nonparticipating candidates should be invited, but not compelled, to join the debates.

The Brennan Center encourages the Prince George's County Council to continue its efforts to strengthen democracy locally by enacting the small-donor public financing system provided for by CB-4-2018. We applaud the sponsoring Councilmembers for taking this important step and would be happy to be of further assistance.

Respectfully submitted,



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⁵⁰ N.J. ADMIN. CODE § 19:25-15.17(a)(1) (candidates for Governor or Lieutenant Governor seeking to qualify for receipt of public matching funds must file a statement of agreement to participate in two interactive debates (in the case of a candidate for Governor) or one debate (in the case of a candidate for Lieutenant Governor)); N.Y.C. ADMIN. CODE §3-709.5 (1)(a) (requiring participating public financing candidates to take part in either of the two pre-election debates, or both); SAN FRANCISCO CAMPAIGN & GOV'TAL CONDUCT CODE § 1.140(a)(2)(F) ("To be eligible to receive public financing of campaign expenses under this Chapter, a candidate must . . . agree to participate in at least three debates with the candidate's opponents.").