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Local Government Officials and General Government**

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The Brennan Center for Justice at New York University School of Law appreciates the opportunity to testify in support of funding for the State Board of Elections (“SBOE”) in the FY 2021-22 budget to begin the crucial work of building New York’s new small donor public financing program. For more than two decades, the Brennan Center’s nonpartisan experts have helped design and implement similar campaign finance reforms in states and cities across the country and at the federal level.

New York’s new state program, if well implemented, will be a historic step toward achieving a more inclusive and participatory democracy and will offer the nation’s most powerful response to *Citizens United*. As this state faces some of its toughest challenges yet, it has never been more urgent to commit to amplifying the voices of all New Yorkers in their political process. The small donor public financing program this Legislature approved last year promises to do just that.

Already implementation of the program is many months behind. But there is time to catch up. We commend this body’s leaders for appointing members to the new Public Campaign Finance Board (“PCFB”) to advance the process. We are pleased that the executive budget proposal includes the SBOE’s well-documented needs. We urge the Legislature to cement this commitment in your own budget responses and ultimately in the final budget, to ensure that New Yorkers receive the quality small donor public financing program that they deserve.

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

I. Meeting the Moment with Historic Democracy Reform

Last year’s federal elections showed that the need to strengthen and protect our democracy is urgent. At the same time, the inequalities laid bare by the ongoing pandemic have made clear the need to boost the voices of Americans in greatest need. From record turnout in the 2020 elections to nationwide protests for racial justice, Americans are showing that they are motivated to participate and want a real say in the decisions that affect their lives. We need to provide alternatives in our political process that respond to that civic desire.

New York is leading the way on reforming our democracy. Last year, our state’s elected leaders responded to the health and political crises of 2020 by enacting policies essential to bringing more of its people into the political process. In addition to enacting automatic voter registration, which could enroll more than 1 million more New Yorkers, you passed the nation’s boldest public financing program since *Citizens United*, giving more New Yorkers a greater voice.²

This reform has the potential to strengthen public trust in Albany and engage countless more New Yorkers in civic life. If implemented properly, the program’s innovations will have a “dramatic impact on the sources of election money in New York State elections,” according to the nonpartisan Campaign Finance Institute.³ If candidates had been able to access the program in the 2018 cycle, nearly 75% of Assembly fundraising and more than 50% of Senate fundraising could have come from small donors.⁴

The program includes time-tested solutions from existing programs, but also offers innovations that could prove a model for other states and cities across the country. Like other effective public financing programs, it considerably lowers contribution limits and boosts the value of small contributions from regular New Yorkers by providing a multiple match to candidates who choose to participate.⁵

² See Brigid Bergin, “NY’S Automatic Voter Registration Law Hailed As ‘Profound Reform’ To Elections,” *Gothamist*, December 22, 2020, <https://gothamist.com/news/nys-automatic-voter-registration-law-ailed-profound-reform-elections>; Michael J. Malbin and Brendan Glavin, *Small Donor Public Finance in New York State: Major Innovations – With a Catch*, The Campaign Finance Institute, January 15, 2020, 1, 3, http://cfinst.org/pdf/state/ny/Small-Donor-Public-Finance-in-NY_Jan2020.pdf; Hazel Millard and Joanna Zdanys, “Public Campaign Financing Is a Bright Spot in the Shadow of Citizens United,” Brennan Center for Justice, January 30, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/public-campaign-financing-bright-spot-shadow-citizens-united>.

³ Malbin and Glavin, *Small Donor Public Finance*, 1.

⁴ *Id.* 21-22.

⁵ 2020 N.Y. Sess. Laws Ch. 58 (S. 7508-B/A. 9508-B), Part ZZZ, § 3 (amending N.Y. Elec. Law § 14-114) (contribution limits); *id.* § 4 (adding N.Y. Elec. Law § 14-205(2)) (multiple match) [hereinafter “Part ZZZ”].

Innovative features of the new program include a sliding-scale match that offers the highest match to the smallest contributions.⁶ Other features also specifically benefit lower-income New Yorkers.⁷ The program strengthens the connection between candidates and their constituents while also enabling strong candidates to raise competitive sums. These innovations could inspire progressive reform elsewhere.

Indeed, New York's is the most prominent model in a growing national movement to boost the voices of more Americans through public financing. In the last decade, over a dozen localities have adopted their own versions, with signs of early success from the first cycles of those that already have been implemented.⁸ Public financing is also a key component of a federal reform package currently before Congress.⁹

But New York's program will only realize its promise if the SBOE receives the resources it needs for the program to succeed. Public and candidate trust in the system are essential to the success of any public financing program. That trust can be secured only by effectively preparing the administrative and regulatory infrastructure of the program, so that it gives candidates the support they need to participate and compete, operates with clear and transparent rules to guide campaigns and safeguard public funds, and gives voters confidence that the system is working as it is supposed to. Building a strong foundation now is worth the modest investment needed to set the program up for success as it launches and grows.

II. Funding Must Begin Now

It is important to clarify the start date of the public financing program, to underscore why funding is so urgent. Though the first elections under the new program will be in 2024, the program launches on November 9 of next year — that is, candidates are able to begin

⁶ Under the new program, in-district contributions will be matched up to \$250 according to a tier of ratios: the first \$50 will be matched \$12-to-\$1; the next \$100 will be matched \$9-to-\$1, and the last \$100 will be matched \$8-to-\$1. Part ZZZ, § 4 (adding N.Y. Elec. Law § 14-205(2)(b)).

⁷ *Id.* (adding N.Y. Elec. Law § 14-203(2)(c)).

⁸ Millard and Zdanys, "Public Campaign Financing Is a Bright Spot in the Shadow of Citizens United."

⁹ The For the People Act proposes a \$6-to-\$1 match on donations of \$200 or less in presidential and congressional races. For the People Act of 2021, H.R. 1, 117th Cong. Title V, Subtitle B, Part 2 (2021) (public financing for congressional races); *id.* Title V, Subtitle C (presidential public financing). The Senate has announced that the For the People Act will be the first piece of legislation it introduces this session, designated as S. 1. Jordain Carney, "Senate Democrats make democracy reform first bill of new majority," *The Hill*, January 19, 2021, <https://thehill.com/homenews/senate/534776-senate-democrats-make-democracy-reform-first-bill-of-new-majority>. A Brennan Center analysis of House fundraising shows that under H.R. 1's multiple match provisions, almost all House candidates would be able to raise as much or more money than under the status quo, all while relying almost entirely on small donations. Ian Vandewalker and Kevin Morris, "The Reform Law Needed to Counter Citizens United: H.R. 1," Brennan Center for Justice, January 21, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/reform-law-needed-counter-citizens-united-hr-1>.

raising matchable contributions to qualify for the program then.¹⁰ That means that a great deal of work must be done now to prepare, design, develop and purchase new technology and test the program's unique features.

Our national work on public financing tells us that there is no time to spare. It took Connecticut two years to ready its own, much simpler system, which required hiring new technology staff and engaging outside contractors to meet its deadline. Having lost months of work already, the SBOE has an even shorter runway to flesh out the rules of the program and begin translating each requirement and threshold of the law into a functional and easy-to-use system.

The SBOE's budgetary needs include new staff to implement and administer the program. Just one example of essential new work: staff support is necessary to enable the PCFB to create a new body of rules and regulations, from the criteria candidates must meet to receive a full allotment of funds to how the PCFB will handle minor routine violations – by July 1, 2021.¹¹ In addition, they will need to prepare guidance for candidates and informational materials for the public.¹² An investment now will help the PCFB and its staff to develop an efficient, cost-effective program.

Work must also begin on adapting the SBOE's existing financial disclosure software to the needs of the new program.¹³ These updates will be critical to ensure that the program is user-friendly and that compliance is effective while not overly burdening candidates. The work needed to build out and fine-tune the technological infrastructure is a vital component of the program's implementation timeline.¹⁴ Funding must begin now to support this work.

Adding to the urgency of beginning now, the PCFB will need time to test, recalibrate, and re-test the system and ensure that corresponding educational materials for candidates are prepared before candidates begin applying for and receiving matching funds.¹⁵ We have seen painfully prominent examples of the risks of rushing the rollout of complex systems important to the public, from the shaky start of HealthCare.gov in 2013 to the flawed

¹⁰ Part ZZZ, § 12.

¹¹ *Id.* § 4 (adding N.Y. Elec. Law § 14-207(1), (4)).

¹² *Id.* (adding N.Y. Elec. Law § 14-207(3)).

¹³ Robert A. Brehm and Todd Valentine, New York State Board of Elections, Testimony at the Joint Legislative Public Protection Budget Hearing, February 12, 2020, https://www.nysenate.gov/sites/default/files/9_new_york_state_board_of_elections_-_director_robert_brehm_and_director_todd_valentine_.pdf.

¹⁴ *See id.*

¹⁵ *Id.* (the program's functional software must be "carefully assessed, functionally tested and modified as needed before final roll out").

Iowa caucus app last year.¹⁶ Failure to leave time to troubleshoot and cure inevitable problems will do damage to public confidence in the program that could take far more time and resources to restore in the long run. Investing the modest amounts required now to construct this program prudently and efficiently will save time, money, and public faith down the road.

III. Automatic Voter Registration

New York’s enactment of automatic voter registration builds on the historic strides that the state has made in the last several years to strengthen our democracy. The Brennan Center applauds the Legislature for shepherding this transformative reform into law. By automatically signing up eligible citizens to vote unless they decline and electronically transferring that information to election officials, New York stands to see a substantial increase in registered voters, thereby reducing a major barrier to the franchise.¹⁷ We urge the Legislature to ensure that the SBOE has the resources it needs to implement this reform and perform its other important work.

The Brennan Center urges the Legislature to safeguard its historic achievement by providing startup funding for public financing now. Delaying will only breed cynicism and allow critics of reform to chalk it up to business as usual in Albany. Acting now to support this long-awaited program will shore up public faith and show that New York’s leaders take this reform seriously. We are ready to be of service throughout the implementation process to ensure that the program’s inaugural run lives up to its promise of transforming New York’s elections and providing a model of reform for the nation.

¹⁶ Wyatt Andrews and Anna Werner, “Healthcare.gov plagued by crashes on 1st day,” *CBS News*, October 1, 2013, <https://www.cbsnews.com/news/healthcaregov-plagued-by-crashes-on-1st-day/>; Amy Goldstein, “HHS failed to heed many warnings that HealthCare.gov was in trouble,” *Washington Post*, February 23, 2016, https://www.washingtonpost.com/national/health-science/hhs-failed-to-heed-many-warnings-that-healthcaregov-was-in-trouble/2016/02/22/dd344e7c-d67e-11e5-9823-02b905009f99_story.html; Nick Corasaniti, Sheera Frenkel and Nicole Perlroth, “App Used to Tabulate Votes Is Said to Have Been Inadequately Tested,” *New York Times*, February 3, 2020, <https://www.nytimes.com/2020/02/03/us/politics/iowa-caucus-app.html>.

¹⁷ Kevin Morris and Peter Dunphy, “AVR Impact on State Voter Registration,” Brennan Center for Justice, April 11, 2019, <https://www.brennancenter.org/publication/avr-impact-state-voter-registration>. Increases in the number of registrants range from 9 to 94 percent, and these registration increases are found in big and small states, as well as states with different partisan makeups.