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**Testimony of Brent Ferguson
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Submitted to the Howard County Council
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The Brennan Center for Justice at NYU School of Law appreciates the opportunity to discuss the benefits of public financing with the Council today. Experience in New York City, Connecticut, and other states and localities across the nation show that public financing can truly change the nature of democracy: it can reduce candidates' reliance on large donors, allow a more diverse set of candidates to run for office, and encourage those who do not traditionally donate to candidates to get more involved in elections. To achieve these goals, we recommend creation of a matching program similar to those adopted in Montgomery County and New York City.

Basics and goals of public financing

The term "public financing" encompasses all methods of providing government funding to assist candidates with campaign costs, helping them avoid reliance on large private contributions. Public financing has been provided in myriad ways, such as by providing free television air time, or by providing large block grants to candidates who participate. Earlier this year, the Brennan Center released a report containing interviews with 20 elected officials who have used public financing. Those officials explained that such systems "reduce the influence of big money in politics by making elections more accessible, fair, and constituent-oriented."¹

The Brennan Center recommends that Howard County adopt a matching program, though we would also provide support for creation of alternative public financing systems.² Importantly, matching programs are the only systems that have proven over time to meaningfully reduce the influence of large donors and encourage more citizens to participate in the election process.

¹ Brennan Center for Justice, *Breaking Down Barriers: The Faces of Small Donor Public Financing* 3 (DeNora Getachew & Ava Mehta, eds.) (2016), available at https://www.brennancenter.org/sites/default/files/publications/Faces_of_Public_Financing.pdf.

² This testimony will focus on matching programs such as those adopted in New York City and Montgomery County. If requested, we will provide further information about voucher programs (recently adopted in Seattle and South Dakota), and block grant systems that exist in Connecticut, Maine, and Arizona.

The specific rules of matching programs should be drafted with the following program goals in mind:

- Reduce corruption and its appearance by encouraging candidates to fund their elections principally through small contributions and public money.
- Allow a broader set of candidates to run by encouraging the candidacy of those who lack personal wealth or a network of wealthy friends and acquaintances.
- Encourage greater election participation by citizens who are unlikely to donate money in a system dominated by large contributions.

Prominent matching programs and results

New York City's matching program is often cited as an example of a successful system,³ and several other cities, like Los Angeles and San Francisco, have adopted similar laws. Importantly, most candidates in New York City elections participate in the system,⁴ which is necessary for any program hoping to fundamentally change the nature of campaigns and democracy. The program has helped candidates rely on small contributions and public money: In 2013, the median contribution size for participating City Council incumbents was \$100, while the median for participating challengers was \$50.⁵ Incumbents relied on public money for 44% of their campaign spending, and challengers used public money for 71% of their spending.⁶

The law has also succeeded in attracting small donations from a larger and more diverse group of citizens. In 2012, the Brennan Center and the Campaign Finance Institute studied the New York City matching program, finding that “[s]mall donors to 2009 City Council candidates came from a much broader array of city neighborhoods than” small donors to state legislative candidates (who do not run under a public financing system).⁷ Candidates told researchers that the “system gives them an incentive to reach out to their own constituents rather than focusing all their attention on wealthy out-of-district donors.”⁸

Important decisions about matching programs

Matching programs can certainly have a transformative effect, but only if they are structured properly to account for political realities. This section briefly addresses some of the most important decisions the Council will need to make when drafting its public financing ordinance. This list is not exhaustive, and the Brennan Center is willing to provide further guidance on additional issues.

³ See, e.g., Michael J. Malbin et al., *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11 ELECTION L.J. 3 (2012), available at http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf.

⁴ In the city's most recent elections, 92% of primary election candidates participated and 72% of general election candidates participated. N.Y.C. Campaign Fin. Bd., *2013 Post-Election Report* 45 (2014), available at http://www.nycfb.info/PDF/per/2013_PER/2013_PER.pdf.

⁵ *Id.* at 49.

⁶ *Id.*

⁷ Elisabeth Genn, Michael J. Malbin, Sundeep Iyer, & Brendan Glavin, BRENNAN CTR FOR JUSTICE & CAMPAIGN FIN. INST., *Donor Diversity Through Public Matching Funds* 4 (2012), available at http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

⁸ *Id.*

Match ratio and matchable contribution amount

Matching programs provide candidates with public money to match every small donation they receive, preferably at a ratio that allows candidates to rely principally on small contributions. For example, New York City uses a 6:1 match ratio on all contributions of \$175 or less, so a \$100 donation from a constituent is matched by \$600 from the city. Montgomery County has adopted a tiered matching program, which for county executive uses a 6:1 ratio for the first \$50 of each qualifying contribution, a 4:1 ratio for the second \$50, and a 2:1 ratio for any amount between \$100 and \$150.

Empirical study has demonstrated that it is important to provide a multiple match in order to allow candidates to compete with privately-financed candidates while raising mostly small contributions. Thus, it is preferable to apply a high match ratio to small contributions instead of a lower match ratio to small and medium contributions. For example, New York City's program began in 1988 with a 1:1 match on contributions up to \$1,000, yet its success was limited until it later adopted a multiple match.⁹ Los Angeles' system has seen less reliance on small donors than New York City, even with a new tiered matching program that includes a 2:1 match for primary elections and a 4:1 match for general elections.¹⁰ For this reason, we recommend a high match ratio to ensure participating candidates can be competitive while relying on small contributions.

Contribution limits

It will be important for the Council to determine the contribution limits that should apply to participating candidates. Some programs, like New York City's, apply the same contribution limits to participating and nonparticipating candidates.¹¹ Others, like Montgomery County, do not allow candidates to raise contributions that exceed the maximum matchable donation (an amount usually between \$100 and \$250). The Council will also need to decide whether to ban or strictly limit contributions from non-individuals like corporations, unions, parties, lobbyists, and PACs. If small donations are allowed from such groups, we recommend stipulating that such donations cannot be matched.¹²

In making these decisions, the Council should seek to balance two goals: (1) ensuring that most participating candidates rely principally on small donations from individuals, and (2) encouraging candidates to participate. If contribution limits are too low, candidates may decline to participate because of a concern that fundraising cannot keep up with privately-financed candidates. If they are too high, program participation may be higher, but participating candidates may continue to focus on large donations, defeating the purpose of the program. The

⁹ Michael J. Malbin & Michael Parrot, *Would Revising Los Angeles' Campaign Matching Fund System Make a Difference?* at 7, THE CAMPAIGN FINANCE INST. (Sept. 7, 2016), http://www.cfinst.org/pdf/books-reports/LosAngeles_PublicFundingReport_2016.pdf.

¹⁰ *Id.* at 5.

¹¹ Contribution limits for New York City candidates range from \$4,950 (for mayor and other city-wide offices) to \$2,750 (for city council candidates).

¹² In New York City, lobbyists and government contractors may not contribute more than \$400 to any candidate, and their contributions are not matched. See N.Y.C. Campaign Fin. Bd., *Doing Business FAQs*, <http://www.nyccfb.info/candidate-services/doing-business-faqs>.

final decision should be based largely on typical fundraising patterns and capabilities for Howard County candidates.

Qualification thresholds

It is also vital to set candidate qualification thresholds at an appropriate level. In New York City, City Council candidates must raise at least \$5,000 in small contributions from at least 75 district residents to qualify (with the average population in each district at about 160,000). In Montgomery County, district councilmembers must raise at least 125 small contributions aggregating to at least \$10,000 (the average district population is about 200,000).

Ideally, all serious candidates will be able to qualify for the program, but candidates without a realistic chance of victory will not. It may be impossible to find a perfect balance, but the thresholds should seek to ensure broad access to the program without wasting public money. Again, the Council's decision should be based not only on models from other jurisdictions, but on typical fundraising and donation practices within the county. It may be helpful to analyze the last several elections to determine how many victorious candidates would have qualified under any proposed threshold.¹³ If permissible under state law, the ordinance could allow the Citizens' Election Fund Commission to alter the qualification thresholds (to a limited degree) every election cycle based on the data from the previous cycle.

Program requirements and other logistics

Any public financing system will need clear rules for participating candidates that advance the program's goals while encouraging participation. The following proposals should be considered to ensure that the program runs smoothly and fairly:

- A requirement that participating candidates spend only money raised under program rules (but that gives the candidate the option to refund large contributions if she decides to participate at a later date).
- A clear process and timeframe for choosing to participate and for certification of the candidate's participation by the Commission.
- An allowance for retroactive matching of small contributions for candidates that begin fundraising before joining the program.
- A clear and quick process for submitting matchable donations and receiving funding, especially for contributions close to the election.
- A fair, fast, and transparent appeal and challenge process for candidates who disagree with a Commission decision.

* * *

We encourage the Council to continue its efforts to improve the county's elections and democracy, and would be happy to provide any further assistance.

¹³ Certainly, candidates will change their fundraising practices to meet the requirements of the program. So the fact that some victorious candidates would not have qualified does not necessarily mean that a proposed threshold is too high.