

TO: New York Public Campaign Financing Commission
FROM: The Brennan Center for Justice
DATE: October 13, 2019
RE: Responses to important legal and policy questions raised in hearings.

We provide the following information to help you create a small donor public financing program that meets the three goals provided in the statute creating this Commission:

- 1) Incentivize candidates to solicit small contributions;
- 2) Reduce pressure on candidates to spend time raising large contributions;
- 3) Encourage qualified candidates to run for office.¹

The Brennan Center has played a lead role in helping to design, implement, and/or defend in court numerous public financing programs across the country over many years. The legislative language we previously provided you, and the information we provide today and in the future, reflect the expertise we have built in this work.

In this memo we will address the following questions:

- [1\)](#) Does this Commission have the legal authority to set lower contribution limits for candidates who do not participate in public financing, and should it?
- [2\)](#) What should the contribution limits be for participating and non-participating candidates?
- [3\)](#) Why should New York adopt the multiple match model rather than another model of public financing?
- [4\)](#) What should be the threshold criteria (number of donors, total amount raised) for candidates to qualify to participate in the public financing program? And should the criteria be lower for lower-income districts?
- [5\)](#) How much of a match should candidates receive for small donations?
- [6\)](#) Would a uniform multiple match public financing program benefit New Yorkers even in low-income communities? And should the size of the match differ according to district income?
- [7\)](#) What is the maximum in public funds (a.k.a., the “match cap”) a candidate should be able to receive?
- [8\)](#) If matching funds are capped, how will publicly-financed candidates respond to unlimited independent expenditure groups?
- [9\)](#) Should New York provide small donor public financing for primary as well as general elections?
- [10\)](#) How much would a small donor public financing program for New York cost?
- [11\)](#) What are the key criteria for an oversight body that will administer public financing well?

¹ FY 2020 Budget Art. VII Revenue Bill, S.1509C/A.2009C, Part XXX, § 1(a) (N.Y. 2019).

1) Does this Commission have the legal authority to set lower contribution limits for candidates who do not participate in public financing, and should it?

Yes and yes. We agree with the analysis of Professor Briffault, in his September 27th statement to you, concluding that this Commission has the legal authority to reduce contribution limits for candidates who do not participate in public financing. He explains that this Commission's grant of authority under the statute creating it is far broader than that given in the statute creating the 2018 Committee on Legislative and Executive Compensation.

What's more, leaving the current very high limits in place for non-participating candidates, while lowering limits for only publicly-financed candidates, would undermine all three of this Commission's statutory goals. First, as Professor Briffault writes, this scenario could discourage candidates from opting into public financing for fear of having to compete with big donor-financed opponents, thereby undermining the goal of incentivizing candidates to solicit small contributions. Second, the continued availability of huge donations under the law could make candidates feel compelled to keep seeking them, thereby undermining the goal of reducing pressure on candidates to raise large contributions. And finally, potential candidates who would need to rely on small donor public financing may choose not to run if faced with opponents who can still raise very large private donations. This Commission not only can, but must, set lower contribution limits for all candidates including those who do not participate in public financing, in order to fulfill its statutory mandate.

2) What should the contribution limits be for participating and non-participating candidates?

This Commission should reduce contribution limits for candidates who choose to participate in public financing and for candidates who do not. New York currently allows the highest limit for statewide office (\$69,700 per cycle) out of all states that have limits, the second highest for state Senate (\$19,300 per cycle), and fifth highest for state Assembly (\$9,400 per cycle).² New York's limits are higher than those of other populous states that see costly campaigns, including California, Illinois, and Florida. (It is worth noting that the approximate number of voters per state senate district in New York is 312,550 voters, in Florida 470,000 voters, and in California 931,000 voters.) The limit for all federal candidates is \$5,600 per cycle (\$2,800 per election).³

² Eleven states do not limit individual contributions to candidates: Alabama, Indiana, Iowa, Mississippi, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virginia. In a few states, certain conditions trigger different rules about limits. See "State Limits on Contributions to Candidates 2019-2020 Election Cycle," National Conference of State Legislatures, accessed October 2, 2019, <http://www.ncsl.org/Portals/1/Documents/Elections/Contribution-Limits-to-Candidates-2019-2020.pdf?ver=2019-10-02-132802-117>.

³ "Contribution limits," Federal Election Commission, accessed October 3, 2019, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/>.

Our recommended legislation sets contribution limits that are considerably lower than current levels but still fall in the higher range of all states (see Table 1, on the next page). *We would support lowering limits for all candidates still further.* We recommend somewhat lower limits for candidates who participate in small donor public financing, as they would receive the benefit of public matching funds. This is how the newest version of the public financing system in New York City will work.

It is critical not to create too great a difference between the participating candidates' limit and the non-participating candidates' limit. If non-participants may raise much bigger contributions than participants, candidates will be disincentivized from opting into public financing for fear of putting themselves at a significant disadvantage. As Professor Briffault explains, and we agree, that scenario would run counter to the Commission's statutory goals of incentivizing candidates to seek small donations and reducing pressure on them to seek large donations. Our recommended limits ensure that the individual contribution limit for a participating candidate is lower but not too much lower than for a non-participating candidate.

The limits in the draft legislation we provided you, in Table 1, mirror past proposals by the Governor and legislative leaders. We urge you to consider even lower limits for legislative contests in particular, as long as candidates can raise enough money to compete and the difference between participating and non-participating limits is relatively small. We suggest this because, the lower the limits, the more valuable small donations are likely to be relative to maximum donations, and the more likely candidates will be incentivized to seek small contributions and consider participating in the program.

TABLE 1: Recommended Contribution Limits for Participating & Non-participating Candidates

Office	Current Limits ⁴	Participating (Recommended)	Non-participating (Recommended)
Statewide	\$69,700/cycle (\$7,500 - \$22,600 primary; \$47,100 general)	\$12,000/cycle (\$6,000 primary; \$6,000 general)	\$16,000/cycle (\$8,000 primary; \$8,000 general)
Senate	\$19,300/cycle (\$7,500 primary; \$11,800 general)	\$8,000/cycle (\$4,000 primary; \$4,000 general)	\$12,000/cycle (\$6,000 primary; \$6,000 general)
Assembly	\$9,400/cycle (\$4,700 primary; \$4,700 general)	\$4,000/cycle (\$2,000 primary; \$2,000 general)	\$7,000/cycle (\$3,500 primary; \$3,500 general)

To design a public financing system that meets this Commission’s goals, you must set contribution limits and other rules at appropriate levels. In our research documenting the New York City public financing system’s success increasing the importance of small donors (and in-district donors) compared to state elections, we have noted the stark differences between the two jurisdictions when it comes to key factors such as contribution limits.⁵

3) Why should New York adopt the multiple match model rather than another model of public financing?

The multiple match model — where donors see their modest contributions multiplied by public funds, for candidates who qualify — is the best approach for New York. Though other models of public financing have merit, multiple match provides the most campaign flexibility for candidates, is cost-efficient, and incentivizes continuous outreach by candidates to regular constituents.

Campaign flexibility for candidates - The multiple match model ensures that candidates who need to are able to keep raising money to compete, in publicly-matched small donations and — if they hit the maximum public funds available — in unmatched donations. (We do not recommend imposing aggregate fundraising or spending limits on participating candidates. See Question 8, discussing independent spending.) A sufficiently high match ratio will make small

⁴ “Contribution Limits,” New York State Board of Elections, accessed October 13, 2019, <https://www.elections.ny.gov/CFContributionLimits.html>.

⁵ Nirali Vyas, Chisun Lee, & Joanna Zdanys, *The Constituent-Engagement Effect of Small Donor Public Financing: A Statistical Comparison of City Council (2017) and State Assembly (2018) Fundraising in New York City*, September 11, 2019, 3, https://www.brennancenter.org/sites/default/files/2019-09/Report_Constituent-Engagement%20Effect_.pdf.

donations valuable enough that candidates who are able to attract a lot of supporters can substantially fuel their campaigns with small donors.

Cost-efficient - At the same time, candidates who are not facing stiff competition will not need to keep raising matchable contributions, saving the state money. Consider that, in the most recent election cycle in New York City, only 22% (47 out of 218) of candidates participating in public financing received the maximum allotment of public matching funds. Those 47 candidates were all running for City Council, where the matching funds cap per participating candidate was \$100,100 per election (\$200,200 per cycle).

Candidates should not be permitted to use public funds to amass a war chest for the future, so there is no incentive besides immediate campaign needs to keep seeking matching funds. Some candidates simply will not have enough public appeal to raise many contributions that the state will need to match. Unlike in a “clean elections” system that provides a single grant amount to all candidates who qualify, the multiple match model responds to the level of popular support of each candidate. The cost-efficient virtue of the matching funds model is that candidates need to keep earning every dollar of public financing by raising matchable contributions. Those who lack appeal will not get the public dollars.

Incentivizes continuous outreach by candidates to constituents – Because candidates need to keep raising matchable contributions in order to keep receiving public funds, the multiple match model is also best for constituents. It incentivizes continuous candidate outreach to community members and gets more regular New Yorkers involved in this critical aspect of the political process. Consider that the donor pool for the median publicly-financed City Council candidate in 2017 was 45% in-district donors, while for the median State Assembly candidate in 2018 in the same neighborhoods the donor pool was only 17% in-district donors.⁶

4) What should be the threshold criteria (number of donors, total amount raised) for candidates to qualify to participate in the public financing program? And should the criteria be lower for lower-income districts?

Qualifying Thresholds, Generally

The test to qualify for public funds should require candidates to demonstrate a reasonable level of popular support but not set such a high bar that only already well-resourced candidates are likely to meet it. Contrary to one common assumption, setting high thresholds is not critical to containing costs in the multiple match model. This is because participating candidates must earn every dollar of public matching funds they receive by finding New Yorkers who want to

⁶ *Id.* at 6.

give them a matchable contribution. Non-serious candidates will not be able to raise much in matchable contributions.

Candidates should have to demonstrate (1) a minimum number of small donor supporters and (2) a minimum amount of total fundraising ability to be able to qualify for public funds. For legislative candidates, it makes sense to require that the minimum number of supporters come from in-district. But candidates should not have to meet the minimum amount of funds raised entirely in-district or entirely in small-dollar increments, unless the minimum dollar amounts are quite low. Even well-established candidates could have difficulty raising high qualifying dollar amounts entirely in-district and entirely in small amounts.

The levels we recommend for the two qualifying criteria (people and money) in the draft legislation we provided (see Table 2, below) derive primarily from the Campaign Finance Institute’s February 2019 analysis based on state candidates’ fundraising records in 2018.⁷ That analysis shows a majority of 2018 state candidates would have been able to qualify by September 1 of the election year under our recommended criteria. We urge this Commission to request and consider updated projections by Professor Malbin of CFI as you determine appropriate qualifying thresholds.

TABLE 2. Recommended Qualifying Thresholds

Office	Qualifying Threshold
Governor	\$400,000 in matchable contributions, including at least 2,000 individual contributions of up to \$200 per contributor.
Lt. Governor, Attorney General, Comptroller	\$100,000 in matchable contributions, including at least 500 individual contributions of up to \$200 per contributor.
Senate	\$10,000 in matchable contributions, including at least 150 individual contributions of up to \$200 per contributor, from residents of the district in which the seat is to be filled.
Assembly	\$5,000 in matchable contributions, including at least 75 individual contributions of up to \$200 per contributor, from residents of the district in which the seat is to be filled.

⁷ Michael Malbin and Brendan Glavin, *Small-Donor Matching Funds for New York State Elections: A Policy Analysis of the Potential Impact and Cost*, February 11, 2019, http://www.cfinst.org/pdf/State/NY/Policy-Analysis_Public-Financing-in-NY-State_Feb2019_wAppendix.pdf.

Whether to Vary Qualifying Thresholds by District Income

It is critical that candidates in lower-income districts are not specially disadvantaged in qualifying for the public financing program. One common assumption is that lower-income legislative offices therefore need lower qualifying thresholds. We do not oppose varying qualifying thresholds by district income, but have some concern about adopting a differential approach that is untested and potentially difficult to administer. And New York City's longtime "one size fits all" model shows it is entirely possible to apply the same thresholds across all districts and see robust candidate participation in low-income districts. The state's lowest-income legislative districts according to census data are in New York City.

The City system applies the same qualifying thresholds to all Council districts: \$5,000 in small donations *from any City resident*, and contributions from at least 75 in-district donors (similar to the Brennan Center's recommended thresholds for Assembly). In 2017 candidates for City Council qualified for public financing in all but four of the 51 districts (Districts 15, 16, 33, and 37).⁸ In two of those four districts, the incumbent candidate raised more than \$100,000, many multiples of the qualifying threshold, indicating that they simply chose not to participate in public financing. The 2017 cycle saw robust candidate participation in some of the city's least affluent districts.⁹ In 2013 candidates qualified for public financing in every City Council district.

Given New York City's track record of enabling candidates to qualify across all districts under a uniform approach, we urge this Commission to request and carefully consider data-based projections of qualifying results in assessing whether a differential district-income based approach is necessary.

5) How much of a match should candidates receive for small donations?

We recommend at least a \$6-to-\$1 match on up to \$200 (or similar small amount) of a contribution from a New York state resident to all qualifying candidates. Contributions to legislative candidates could be matched at a higher ratio, \$8-to-\$1 or greater, if they came from a resident of the relevant legislative district. A higher match for in-district donors gives candidates a greater incentive to seek small donations from future constituents, strengthening ties between elected officials and regular New Yorkers.

But it is critical not to match *only* in-district donations to legislative candidates, as doing so would greatly reduce candidates' incentives to seek out small donations. If out-of-district

⁸ Excluding candidates who raised less than \$3,000, 87 percent of candidates who opted in qualified in 2013, and 88 percent qualified in 2017.

⁹ In 2017, many districts with low-income communities saw several candidates qualify for public funds, including District 9 (including Central Harlem) with four qualified candidates, District 17 (covering much of the South Bronx) with three, and District 41 (including Bedford-Stuyvesant and Brownsville) with eight. We excluded from both the 2013 and 2017 analyses candidates who raised less than \$3,000 overall.

donations were not matched, candidates would sensibly seek larger rather than small donations outside of their districts. This scenario would undermine this Commission’s goals of “incentivizing candidates to solicit small contributions [and] reducing the pressure on candidates to spend inordinate amounts of time raising large contributions....”¹⁰

Data from New York City’s public financing program enable us to project what would happen if the City stopped matching out-of-district donations for legislative candidates. The City’s longtime program provides a multiple match on small donations that any qualified candidate raises from any resident of the City. The program has been remarkably effective at incentivizing candidates to seek small donations and reducing pressure on them to raise large donations. It appeals to candidates, because it enables them to rely on small donations but still raise enough to run serious campaigns.

If the City were to restrict matching for legislative candidates to only in-district donations, the portion those candidates raised in small donations would significantly shrink while the portion they raised in large donations would expand (see Table 3, below). In the 2017 election 70% of all City Council candidates participated in the public financing program. Small donations (\$175 or less) constituted 54% of all money these candidates raised. In the 2018 State Assembly election, by contrast, only 7% of all money raised by New York City-based candidates consisted of small donations.

TABLE 3: Effect on 2017 Participating City Council Candidates’ Fundraising if NYC Public Financing Program Matched only In-District Donors

	<u>Actual 2017 fundraising: \$6-to-\$1 match on up to \$175 from any NYC resident</u>	<u>Scenario 1: \$6-to-\$1 match on in-district contributions only; assume out-of-district donors contribute the individual limit (\$2,750)</u>	<u>Scenario 2: \$6-to-\$1 match on in-district contributions only; assume out-of-district donors contribute half of individual limit (\$1,375)</u>
In-district donation share of total individual contributions	39%	10%	18%
Small donation share of total individual contributions	54%	6%	10%

¹⁰ FY 2020 Budget Art. VII Revenue Bill, S.1509C/A.2009C, Part XXX, § 1(a).

The publicly-financed City Council candidates were able to raise nearly 40% of their money from in-district donors, but also raised matchable small contributions from outside their districts to raise the sums they needed. When out-of-district matching is eliminated, the small-donation share of total fundraising by City Council participants falls to very low levels comparable to New York City-based State Assembly candidates' small-donation share in 2018, 7%.

6) Would a uniform multiple match public financing program benefit New Yorkers even in low-income communities? And should the size of the match differ according to district income?

There is ample evidence that, even with a uniform match of \$6-to-\$1, small donor public financing would benefit New Yorkers regardless of the income level of their district. We do not oppose the idea of offering higher matches for in-district donations to legislative candidates based on district income, but have concerns about adopting an untested model. We urge this Commission to consider data-based projections of the effects of a differential approach and ensure that its final legislation establish a baseline match of at least \$6-to-\$1 for all offices (with variations pegged to the uniform baseline match, if that is your choice).

Benefit: brings more low-income and diverse donors into the political process – Our research on the New York City system shows that its uniform multiple match has achieved benefits across diverse districts, including robust participation by small donors who live in the lowest-income districts of the City (which are also the lowest-income districts in the State). In the most recent City Council elections, 47% more small donors participated in the lowest-income quartile of districts (943 residents on average) than in the wealthiest quartile of districts (643 residents on average).¹¹ This recent trend lines up with our 2012 study with the Campaign Finance Institute, finding that in low-income neighborhoods with predominately Black, Latinx, and Asian populations, small donors were far more active in City Council campaigns than in Assembly campaigns.¹² In Bedford-Stuyvesant 24 times more small donors supported candidates for City Council than for State Assembly; in Chinatown 23 times more; and in Upper Manhattan and the Bronx 12 times more.¹³

Benefit: increases importance of constituents to candidates – Participating in the City's public financing program caused City Council candidates to earn support from far more donors in-district than privately-financed City Council and State Assembly candidates running in the same

¹¹ Analysis based on Census data on poverty. Data on file with the Brennan Center.

¹² Elisabeth Genn, Michael J. Malbin, Sundeep Iyer, & Brendan Glavin, *Donor Diversity Through Public Matching Funds*, May 12, 2012, 4, https://www.brennancenter.org/sites/default/files/2019-08/Report_DonorDiversity-public-matching-funds.PDF.

¹³ *Id.*

districts, according to a statistical analysis we published last month. In-district donors were also more financially important to publicly-financed candidates: the median publicly-financed City Council candidate in 2017 raised 30% more of their funds in-district than did their privately-funded 2018 State Assembly and 2017 City Council counterparts.¹⁴

Benefit: increases importance of small donors to candidates – Our study also found that the City’s public financing system has encouraged candidates to seek small-donor support — this Commission’s core goal. The median publicly-financed City Council candidate in 2017 raised 47% percent of their funds from small donors (\$175 or less), compared to just 5% for the median privately-financed Assembly candidate running to represent the same constituents in 2018.¹⁵ When we estimated the effects of the Governor’s recent \$6-to-\$1 public financing bill on state fundraising, we found that the share state candidates raised from small donors in 2018 could have gone from only 5% of total funds to 30% of total funds.¹⁶

7) What is the maximum in public funds (a.k.a., the “match cap”) a candidate should be able to receive?

To incentivize serious candidates to participate, the maximum available public funds per candidate (“match cap”) must be great enough to enable candidates to earn substantial sums if they need to. The vast majority of participating candidates in the New York City system, which provides reasonable match caps, do not reach the match cap — 78% of candidates raised below the match cap in 2017.

Worries about wasting public funds on frivolous candidates by setting match caps too high are based on a misunderstanding of how small donor matching systems work. Candidates need to earn every dollar of their matching funds by raising matchable contributions from individual supporters. Frivolous candidates will not find enough supporters to be able to earn serious amounts of public matching funds. When projecting costs of a matching funds model, it is irrational to assume that every candidate will reach the maximum — it makes much more sense to consider real candidates’ real abilities to win supporters.

Our recommended match caps (see Table 4, on the next page) provide candidates the opportunity to earn competitive sums but set the maximums at reasonable levels to conserve public money. Professor Malbin’s February 2019 analysis showed that a public financing program with our recommended caps would have provided most candidates enough funding, while costing \$59.5 million—far less than this Commission’s \$100 million/year authority. And

¹⁴ Vyas et al., *The Constituent-Engagement Effect of Small Donor Public Financing: A Statistical Comparison of City Council (2017) and State Assembly (2018) Fundraising in New York City*, 4.

¹⁵ *Id.* at 6.

¹⁶ *See id.* at 1.

that analysis assumes, with unrealistic generosity, that every single candidate in 2018 would have qualified for public funding. Even with an imaginary opt-in rate of 100% of all candidates, the cost of our match caps is reasonably low.

Our recommended match caps make sense compared to the match caps in New York City’s program, which are high enough to attract healthy rates of participation by candidates even though almost none of them raise up to the match cap. Importantly, candidates know that they *can* raise competitive sums by opting into public financing, if they need to. (84% of all primary and 64% of all general candidates in 2017 participated in the City’s program). We recommend a match cap of \$175,000 per election for candidates for state Assembly, whose districts are comparable in size to City Council districts where the match cap per candidate is \$168,888 per election.

TABLE 4: Recommended Maximum Matching Funds (“Match Caps”) per Candidate

Office	Recommended Cap – Primary	Recommended Cap - General
Governor*	\$8 million	\$10 million (combined with lieutenant governor)
Lt. Governor*	\$4 million	\$10 million (combined with governor)
Attorney General	\$4 million	\$4 million
Comptroller	\$4 million	\$4 million
Senate	\$375,000	\$375,000
Assembly	\$175,000	\$175,000

* The offices of Governor and Lieutenant Governor are combined for the general election as one ticket.

8) If matching funds are capped, how will publicly-financed candidates respond to unlimited independent expenditure groups?

Participating candidates should not be limited in their ability to keep raising and spending unmatched funds as they feel they need to once they reach their max caps, provided they comply with individual contribution limits.

9) Should New York provide small donor public financing for primary as well as general elections?

Yes. Data bear out the common presumption that primary elections in New York often matter more than general elections in determining who wins office. To bring meaningful benefits to

New Yorkers and to candidates, the new small donor public financing program must cover primary elections as well as general.

Consider the average vote shares of primary and general election winners in the last legislative elections (see Table 5, below). They show that the outcome in primary elections was much less certain than that in general elections.

TABLE 5: Average Vote Shares of Primary and General Winners in the 2018 Legislative Elections

	Avg. vote share, <i>primary</i> winner	Avg. vote share, <i>general</i> winner
Assembly	62%	80%
Senate	60%	75%

Also consider how infrequently legislative districts have flipped parties in recent general elections, indicating that competition typically is quite low at the general election stage in New York (see Table 6, below). To be meaningful to New York residents and candidates, the new public financing program needs to include primary elections.

TABLE 6: Frequency of Party Change in Legislative General Elections, 2014-2018

	% seats where party changed – 2014	% seats where party changed - 2016	% seats where party changed - 2018
Assembly	2%	2%	4%
Senate	6%	5%	13%

10) How much would a small donor public financing program for New York cost?

It is possible to project the realistic costs of proposals this Commission is considering. This February Professor Malbin projected the cost of the Governor’s public financing bill, which was similar in many ways to the Brennan Center’s recommended bill. He did so using 2018 state candidates’ records, *but assumed a great many more candidates (4x more primary challengers) and a great many more donors (3x more donors)*.¹⁷ He assumed many more candidates and donors because, as some Commissioners have noted, both competition and donor participation could be expected to rise with public financing. He added to the projected cost of state matching funds the projected cost for administering the program, extrapolated from New York City’s actual administrative costs.¹⁸ Assuming quadruple the primary candidates in 2018, triple the donors, and administrative costs extrapolated from NYC’s actual experience, Professor

¹⁷ Malbin & Glavin, *Small-Donor Matching Funds for New York State Elections*, 4, A-1.

¹⁸ *Id.* at 11.

Malbin projected that the Governor's recent proposal would have cost \$59.5 million/year, which is well within this Commission's \$100 million/year authority.¹⁹ We urge you to obtain and consider his cost projections for other models.

11) What are the key criteria for an oversight body that will administer public financing well?

Avoid deadlock – An odd-numbered board should oversee all aspects of campaign finance, as in most well-established public financing systems. A structure that avoids ties is key to enabling the swift decisions candidates will need to participate in public financing. Any partisan affiliations on the board should be evenly split among parties, and there should be at least one member who is not affiliated with any party.

Ensure nonpartisan enforcement – To maintain the trust of candidates and of the public, enforcement must be clearly nonpartisan. One strategy is to hire the head of enforcement via a majority vote of the members of the oversight agency instead of making a political appointment.²⁰

Provide consistency for all candidates – The same entity should oversee both participating and non-participating candidates. This structure helps avoid situations where competitors for the same office face different rules or penalties. Similarly, both participating and non-participating candidates running for the same office should be audited, as in Connecticut and New York City. Auditing only participating candidates could disincentivize candidates from opting in to public financing. And the oversight body should create a schedule of penalties for common violations to ensure that candidates engaging in similar conduct face similar consequences.

Ensure adequate staffing and resources – A successful program requires enough staff to assist candidates with participation and compliance, and to promptly process claims for matching funds. A dependable and sufficient stream of funding is critical. Professor Malbin has estimated that administration of a small donor public financing program for New York State will cost approximately \$20 million per year, extrapolating from the cost of administering New York City's program.²¹ The City's program audits 100% of all participating and non-participating candidates, but we recommend a reduced and therefore less costly audit approach that has still proven effective at promoting compliance. As in Connecticut's public financing program, New York could audit only about half of legislative candidates, selected by an objective lottery weighted by the recency of past audits.²²

¹⁹ *Id.* at 12.

²⁰ *Contra* N.Y. ELEC. LAW § 3-100(3-a) (the chief enforcement counsel is chosen by the governor and confirmed by each house of the legislature, and may be removed by the governor for cause).

²¹ Malbin & Glavin, *Small-Donor Matching Funds for New York State Elections*, 11.

²² CONN. GEN. STAT. § 9-7b(5)(B).