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**Submitted to the New York State Legislature
at the Joint Legislative Budget Hearing Concerning
Local Government Officials and General Government**

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The Brennan Center for Justice at New York University School of Law welcomes the opportunity to testify in support of additional funding for the State Board of Elections (“SBOE”) in this year’s budget to begin the critical work of building the infrastructure of New York’s new small donor public financing program. Relatively modest start-up funds are crucial to delivering the program, which, if well implemented, will be lauded as a historic achievement and the nation’s most powerful response to *Citizens United*. We urge you to provide the necessary funding in your legislative budgets and remedy the omission of this important need from the executive budget.

I. A Historic Achievement for Campaign Finance Reform in New York

Last year you helped to deliver long-overdue reform, when the New York State Public Campaign Financing Commission you enacted produced a small donor public financing plan for statewide and legislative elections.² This is an extraordinary accomplishment.

¹ The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice and for nearly 25 years has studied, litigated, and drafted 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.

² By statute, the Commission’s determinations took effect on December 22, 2019. See FY 2020 Budget Bill, S.1509C, Part XXX, § 1(a) (N.Y. 2019). Those recommendations also included unnecessary changes to ballot access requirements for independent and minor party candidates, which are unjustified by the Commission’s stated rationale of keeping public financing costs low, as a recent Brennan Center analysis found. Brennan Center for Justice, *Brennan Center Analysis of Minor Party Cost to Public Financing Programs*, January 15, 2020, https://www.brennancenter.org/sites/default/files/2020-01/Brennan%20Center%20Analysis%20of%20Minor%20Party%20Cost%20to%20Public%20Financing%20Programs_1.pdf.

New York now offers the most powerful solution available to *Citizens United*, giving regular New Yorkers a voice to counter the influence of wealth in our political process.³

The stakes for making this achievement a reality cannot be overstated. Big money has long dominated New York’s politics, leaving everyday New Yorkers behind. In the 2018 cycle, just 100 big donors contributed more to state candidates than all of the estimated 137,000 small donors combined.⁴ Candidates raised only 5 percent of their campaign funds from small donors giving \$175 or less.⁵ Frequent corruption scandals have branded Albany with a “pay-to-play” reputation, with the widespread perception that large donors call the tune.⁶ No wonder that a 2018 Quinnipiac Poll reported that 85 percent of New Yorkers considered government corruption either a “very serious” or “somewhat serious” problem.⁷

The new public financing program can correct this severe imbalance. 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.⁸ 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.⁹ Though the effects on campaigns for statewide office would have been less dramatic, they still would have been substantial.¹⁰

³ 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 Zdany, “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>.

⁴ Chisun Lee and Nirali Vyas, “Analysis: New York’s Big Donor Problem & Why Small Donor Public Financing Is an Effective Solution for Constituents and Candidates,” Brennan Center for Justice, January 28, 2019, <https://www.brennancenter.org/our-work/research-reports/analysis-new-yorks-big-donor-problem-why-small-donor-public-financing>.

⁵ Brennan Center for Justice, *The Case for Small Donor Public Financing in New York State*, February 26, 2019, 9, <https://www.brennancenter.org/sites/default/files/2019-08/Report%2BCaseforPublicFinancingNY.pdf>.

⁶ In its 2013 report, the Moreland Commission to Investigate Public Corruption observed that New York’s “pay-to-play political culture is greased by a campaign finance system in which large donors set the legislative agenda.” Moreland Commission to Investigate Public Corruption, *Preliminary Report*, State of New York, December 2, 2013, 10, https://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf.

⁷ Quinnipiac University Poll, “New Yorkers Say Almost 4-1 Increase Abortion Rights, Quinnipiac University Poll Finds; But Few Say Abortion Is Most Important in Gov Race,” July 19, 2018, <https://poll.qu.edu/new-york-state/release-detail?ReleaseID=2556>.

⁸ Malbin and Glavin, *Small Donor Public Finance*, 1.

⁹ *Id.* 21-22.

¹⁰ *Id.* 23-27.

New York's new 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, the new program 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.¹¹ Certain aspects of other programs, such as restrictions on donors with business before the state, should be added to New York's program in the future.

Innovative features of the new program specifically address lower-income districts across the state. Legislative candidates in lower-income districts face a reduced fundraising threshold in order to qualify to participate in the matching funds program.¹² The program also strengthens the connection between legislative candidates and their constituents by matching only in-district contributions, but still provides the possibility of competitive funding levels to participating candidates by offering a meaningful match that most highly values the smallest contributions from constituents.¹³ As experts who advise on designing and improving public financing programs nationwide, including in Congress, we expect New York's innovations to generate progressive new thinking elsewhere.¹⁴

The national appetite for innovative solutions to the *Citizens United* problem has only grown. Even the most activated small donors, in the traditional system, cannot hope to match the influence of just a few huge donors. The reported surge of small donor engagement in the 2018 federal midterms was drowned out by megadonors giving \$100,000 or more: fewer than 3,500 megadonors gave more than at least 7 million small

¹¹ Campaign Finance Reform Commission, *Report to the Governor and the Legislature*, State of New York, December 1, 2019, 18, 26, <https://campaignfinancereform.ny.gov/system/files/documents/2019/12/campaignfinancereformfinalreport.pdf> (Part I (contribution limits) and Part II, § G(2) (multiple match)).

¹² *Id.* 23-24 (Part II, § D(2)).

¹³ 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 next \$100 will be matched \$8-to-\$1. Campaign Finance Reform Commission, *Report to the Governor and the Legislature*, 26 (Part II, § G(2)).

¹⁴ H.R. 1 proposes a \$6-to-\$1 match on donations of \$200 or less in presidential and congressional races and creates a pilot program for vouchers that provides eligible donors \$25 to the congressional candidates of their choice in \$5 increments. For the People Act of 2019, H.R. 1, 116th Cong. (2019), Title V, Subtitle B, Parts 1-2 (public financing for congressional races); *id.* Title V, Subtitle C (presidential public financing). A recent 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>.

donors who contributed \$200 or less.¹⁵ Across the country, Americans are rising to meet this crisis by moving toward public financing. In the past few years alone, over a dozen localities have adopted versions, with signs of early success from the first cycles of those that already have been implemented.¹⁶ New York’s new state program is by far the most prominent and potentially powerful model.

But that will only be the case 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 to set the program up for success as it launches and grows.

II. Funding Must Begin Now

The program must be ready to launch on November 9, 2022.¹⁷ There is much to be done even now to ensure that its implementation has the confidence of candidates and the public. The SBOE testified that it will take approximately two and a half years to ready the program.¹⁸ Work needs to start immediately to allow for thoughtful preparation, design, development and purchase of new technology, and testing of the program’s unique features. Such careful attention to detail is “especially important given the scale of the program,” as one member of the Public Campaign Financing Commission observed.¹⁹ A modest investment this year will be critical to that work.

Our national work on public financing tells us that the implementation period that the SBOE anticipated and the Commission allotted is reasonable, but leaves no time to spare. It took Connecticut the same amount of time to ready its own system, which required hiring new technology staff and engaging outside contractors to meet its deadline. In the immediate term, the SBOE must flesh out the rules of the program, hire new technical staff, and begin translating each requirement and threshold of the law into a functional

¹⁵ Ian Vandewalker, “The 2018 Small Donor Boom Was Drowned Out by Big Donors, Thanks to Citizens United,” Brennan Center for Justice, January 10, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/2018-small-donor-boom-was-drowned-out-big-donors-thanks-citizens-united>.

¹⁶ Millard and Zdany, “Public Campaign Financing Is a Bright Spot in the Shadow of Citizens United.”

¹⁷ Campaign Finance Reform Commission, *Report to the Governor and the Legislature*, 5, 15, 36.

¹⁸ *Id.* 15 (describing SBOE testimony “that developing the necessary software and hiring the appropriate staff to ensure the success of the public campaign finance system’s administrative agency would require approximately two and a half years, leading to a build-out date concluding in 2022”).

¹⁹ *Id.* 53 (statement of Commissioner DeNora Getachew in support of the proposed public financing program).

and easy-to-use system, so that candidates may begin participating immediately after the system launches.

The budget needs to allow for hiring new, qualified officials to supervise the build-out of the program, which will be overseen by a new Public Campaign Finance Board (“PCFB”) composed of the current SBOE commissioners and three new appointees.²⁰ Under the new public financing law, the new commissioners must be appointed by July 1, 2020, and will generate per diem compensation (capped at \$25,000 per year).²¹ They must issue the detailed rules and regulations governing the public financing program – 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, 2021.²² In addition, they will need to prepare guidance for candidates and informational materials for the public.²³ All of these tasks will take time and resources.

Even before the new commissioners take office, work must begin on adapting the SBOE’s existing financial disclosure software to the needs of the new program.²⁴ 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 its technological infrastructure was central to the SBOE’s estimated implementation timeline.²⁵ Funding must begin now to support this work, including by providing funding for additional technical staff.

Adding to the urgency of beginning now, the SBOE will need time to test, recalibrate, and re-test the system before candidates begin applying for and receiving matching funds. 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 Iowa caucus app just this week.²⁶ 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. Work needs to begin now to

²⁰ *Id.* 28 (Part II, § I(1)).

²¹ *Id.*

²² *Id.* 26, 29, 32 (Part II, §§ G(4), I(1), K(1)).

²³ *Id.* 29 (Part II, § I(3)).

²⁴ *Id.* 13 (discussing “efforts needed within the State Board for reprogramming software to be used when administering the public campaign finance system”).

²⁵ *Id.* 15.

²⁶ 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 (updated Feb. 4, 2020), <https://www.nytimes.com/2020/02/03/us/politics/iowa-caucus-app.html>.

construct this program prudently and efficiently to save time, money, and public faith down the road.

Should this Legislature fail to fund these needs in this year's budget, the message to New Yorkers will be clear: our state's leaders were not serious about delivering the reform they promised.

III. There is No Excuse for Delay

A relatively minimal investment in properly building the historic new public financing program is well worth the public benefit to be gained by reducing the perception that big donors wield too much influence over state policy making. And reducing government waste from cronyism yields actual gains, too. As the 2013 Moreland Commission to Investigate Public Corruption concluded, "the elimination of just one wasteful tax expenditure or one unnecessary spending program could cover the full cost of the [public financing] program."²⁷

Nor should pending legal challenges excuse delay in funding the program's creation. Any threat from these lawsuits to the public financing portion of the new plan is easily solved with a technical amendment. The program's fate should not rest on the whim of a court ruling. Every moment that funding and resources are delayed could compromise its quality. One need only look to 2014's failed public financing pilot program for comptroller candidates to appreciate that hurried implementation will set up the system to fail.²⁸

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

²⁷ Moreland Commission to Investigate Public Corruption, *Preliminary Report*, 47.

²⁸ See, e.g., New York State Board of Elections Office of Counsel, *2014 Pilot Public Financing Program for the Office of the State Comptroller*, New York State Board of Elections, 7, <https://www.elections.ny.gov/NYSBOE/download/finance/FinalPublicFinancing2014ReportWithAppendix.pdf> (noting the "potential problems with a full program roll out because of the extremely short implementation timeframe" and recommending that "[t]he mandated entity should be provided with two years to implement a program"); Thomas P. DiNapoli, "New York Should Opt Into Public Financing of Elections," Office of the New York State Comptroller, August 26, 2015, <https://www.osc.state.ny.us/press/releases/aug15/082615.htm> (arguing that "officials must have at least two years to implement a program"); Karen Dewitt, "Reform Groups Say Failed Public Finance Experiment Should Be A Wake Up Call To State Lawmakers," *WAMC*, August 19, 2015, <https://www.wamc.org/post/reform-groups-say-failed-public-finance-experiment-should-be-wake-call-state-lawmakers>.

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.

IV. Automatic Voter Registration

Last year’s session ended with a commitment from both houses to make automatic voter registration (“AVR”) a priority in 2020, and we are pleased that the Senate already has passed AVR this session. 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.²⁹ Both the Senate and Assembly bills include important features to reach as many eligible voters as possible while also protecting vulnerable New Yorkers. Enacting AVR this session will build on the historic strides that New York has made to strengthen democracy in our state over the last year. We stand ready to assist so that implementation may begin as soon as possible.

²⁹ Kevin Morris and Peter Dunphy, *AVR Impact on State Voter Registration*, 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.