

# BRENNAN CENTER --- FOR JUSTICE

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New York State Board of Elections, Public Campaign Finance Board  
40 North Pearl Street, Suite 5  
Albany, New York 12207-2729  
[Via email to [comments@elections.ny.gov](mailto:comments@elections.ny.gov)]

*Re: Draft Debate Regulations, Part 6221.38*

To the Public Campaign Finance Board:

The Brennan Center for Justice at New York University School of Law<sup>1</sup> appreciates the opportunity to comment on draft regulations published by the Public Campaign Finance Board (“PCFB”) as it begins the crucial work of building New York’s new small donor public financing program.<sup>2</sup> 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.

As we noted in our prior comment on PCFB draft regulations, New York State’s new system will be a historic step toward achieving a more inclusive and participatory democracy. This program will provide a multiple match on small contributions from New York residents to candidates who opt in. Its innovative design gives candidates the chance to raise competitive amounts based on modest contributions from constituents. By incentivizing grassroots fundraising, the program will empower ordinary people and strengthen the connection between elected officials and their constituents.

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<sup>1</sup> The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The Center’s Election Reform and Money in Politics projects work to reduce the real and perceived influence of money on our democratic values. The opinions expressed in this letter are only those of the Brennan Center and do not necessarily reflect the opinions of NYU School of Law, if any.

<sup>2</sup> Part 6221.38 Draft Debate Regulations for Public Comment, New York State Public Campaign Finance Board,  
<https://www.elections.ny.gov/NYSBOE/download/law/Part622138DebateStatewideOffice.pdf>.

The Brennan Center offers this comment in support of the PCFB's important work to implement the debate requirement for participating candidates for statewide office.<sup>3</sup> Debates are a valuable voter education mechanism, and statewide candidates accepting public funds should face the voters through debates.

### **Eligibility Threshold**

The draft regulation requires candidates to meet financial criteria to be eligible for debates: they must have raised and spent at least 5% of the limit on public funding for the office they are seeking (all statewide races have the same limit).

§ 6221.38(C)(2)(ii). This is a wise policy. It will ensure that debates are not crowded with candidates who are not seriously campaigning.

Setting the threshold at 5% is supported by the example of the longstanding New York City public financing system, where the threshold is set at an analogous level. Given the state's public funding limit, 5% works out to a spending threshold of \$175,000 for statewide candidates in a primary. By comparison, the debate spending threshold for mayoral candidates in the New York City system was \$182,150 in the 2021 primary election.<sup>4</sup>

New York City's definition of the threshold works differently, even though it comes to a similar amount in practice. The city system pegs the debate spending threshold to a percentage of an office's expenditure limits. The state program has no expenditure limits, but modifying the percentage to proportionally apply to the public financing limit is a suitable alternative. In the city's program, candidates are eligible to take part in debates if they have raised and spent at least 2.5% of the expenditure limit.<sup>5</sup> At the time this threshold was set, the city program's public funds caps were approximately half the expenditure limits for each office.<sup>6</sup> To keep the percentage proportional, when the denominator is halved, the percentage must be doubled. This means the city's debate threshold was originally approximately 5% of the public funds cap. Thus, defining the state debate threshold at 5% of the public funding limit makes it analogous to the New York City precedent.

### **Lieutenant Governor Candidates**

The draft regulation does not explain how the debate rules apply to candidates for lieutenant governor, who run on their own in the primary, but on a party ticket in the general election. The debate eligibility threshold is set as a percentage of the

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<sup>3</sup> N.Y. Elec. Law § 14-211.

<sup>4</sup> *2021 NYC Debates: Schedule and Eligibility Criteria*, New York City Campaign Finance Board, 2021, [https://nyccfb.info/pdf/2021Debates\\_ScheduleCriteria\\_20210308.pdf](https://nyccfb.info/pdf/2021Debates_ScheduleCriteria_20210308.pdf).

<sup>5</sup> New York City Code § 3-709.5(5)(b).

<sup>6</sup> Prior to 2018, the public funding cap was 55% of the expenditure limit for each office. "Limits and Thresholds: 2017 Citywide Elections," New York City Campaign Finance Board, <http://www.nyccfb.us/candidate-services/limits-thresholds/2017/>. The public funding cap has since been increased to 89% of the expenditure limit. New York City Code § 3-705(2)(b).

public funding limit, and the statute sets that limit for governor and lieutenant governor combined.<sup>7</sup> Therefore, the regulation should clarify how candidates for governor and lieutenant governor in the general election can meet the threshold. The same issue applies to special elections.

We propose adding the following sentence to the end of § 6221.38(C)(2)(ii).

For the purposes of these criteria, candidates for governor and lieutenant governor from the same party in a general or special election shall each be deemed to satisfy the criteria if either of them does or if both of them together do.

### **Translation of Debate Transcripts**

The regulation provides that debate sponsors must include in their applications a plan to have the transcript of the debate translated into Spanish.

§ 6221.38(C)(1)(ix). Translation is important to inform New York’s diverse population about their choices for statewide office. Translation into more languages would allow more New Yorkers to learn about candidates’ positions. New York State has an inclusive language access policy: Executive Order 26.1 requires agencies to translate vital documents into the ten most common non-English languages spoken by people with limited language proficiency in New York.<sup>8</sup> Regardless of whether this order strictly applies to debate transcripts, the spirit of the statewide language access policy counsels for access beyond Spanish. We propose requiring sponsors to translate debate transcripts into the ten most common non-English languages, as published by the state.<sup>9</sup>

### **Accessibility for Persons with Disabilities**

The draft regulation states that any broadcast plan shall provide for live closed captioning as well as American Sign Language interpretation of the debate.

§ 6221.38(K). We support this provision but believe sponsors can do more to ensure accessibility beyond people with hearing disabilities. We propose adding the following to the criteria that debate sponsors must meet in their applications.

Set forth plans for accessibility of the debate location and presentation for persons with disabilities.

### **Debate Sponsorship Not a Contribution**

The draft regulation does not explicitly state that an organization’s role as debate sponsor is not a contribution to the candidates at the debate. A strict reading of the definition of “contribution” in the Election Law could lead to the interpretation that the debate sponsor, by featuring candidates in a public forum, is contributing a

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<sup>7</sup> N.Y. Elec. Law § 14-204(2)(a).

<sup>8</sup> N.Y. Comp. Codes, R. & Regs. tit. 9, § 8.26.1.

<sup>9</sup> “Language Access Policy,” New York State, <https://www.ny.gov/language-access-policy> (listing current top ten languages).

“thing of value.”<sup>10</sup> Clearly this is not the intent of the law, but we recommend making it explicit, to avoid discouraging potential debate sponsors. By comparison, existing regulations concerning disclosure of independent expenditures address the analogous issue by defining independent expenditures to exclude debate sponsorship.<sup>11</sup> We propose adding a new paragraph to the debate regulation, as follows.

An organization’s role sponsoring a debate pursuant to this section shall not constitute a contribution to or expenditure in coordination with the candidates who take part in the debate.

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By boosting community-based fundraising, voluntary small donor public financing enables a closer connection between elected officials and their constituents. Requiring statewide candidates to face the voters in debates helps facilitate that connection. The Brennan Center applauds the PCFB’s work implementing this program and stands ready to assist.

Respectfully submitted,

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Brennan Center for Justice at NYU School of Law

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<sup>10</sup> N.Y. Elec. Law § 14-100(9).

<sup>11</sup> N.Y. Comp. Codes, R. & Regs. tit. 9, § 6200.10(b)(2)(iv).

