

TO: New York Public Campaign Financing Commission
FROM: The Brennan Center for Justice
DATE: October 29, 2019
RE: **UPDATED** Analysis of Commission's proposed legislative qualifying thresholds and recommendations.

We write to share our data-based analysis of the qualifying thresholds you proposed for legislative offices in your October 14 working meeting, and to provide recommendations for improvements. The proper setting of qualifying thresholds is crucial to the success of the program. The thresholds must not be too high for viable candidates to meet. In a small donor matching program — where, unlike in a block grant program, candidates can only receive as much public funding as they are able to earn by raising matchable contributions — protecting the public fisc does not require setting high thresholds.

Our most important findings and recommendations are:

- 1) You should identify a uniform threshold that is attainable by viable candidates in all districts: **no higher than \$4,000 for Assembly districts and \$9,600 for Senate districts**. Professor Malbin of the Campaign Finance Institute has conducted an independent analysis that supports these recommended thresholds.¹ It is critical that you specify these uniform thresholds in your legislation, so that, should your district income-based adjustments not survive for whatever reason, your current “baseline” thresholds will not then apply to districts where they are too high to achieve.
- 2) Your proposed “baseline” qualification thresholds of \$7,500 for Assembly candidates and \$18,000 for Senate candidates would, if applied throughout the state, be far too high for many districts, and could prevent many viable candidates from being able to participate. Professor Malbin’s independent analysis reaches the same conclusion.
- 3) **[NEW]** Your proposed district median income-adjusted thresholds are too high for many viable candidates in the relevant districts to meet. Professor Malbin’s analysis also supports this conclusion. If you decide to move forward with the district median income-adjusted approach, **the threshold for the “baseline” districts should be no higher than \$5000 for Assembly districts and \$12,000 for Senate districts. The amount for the two lower adjusted thresholds should be no higher than \$4,000 for Assembly districts and \$9,600 for Senate districts** (the same as our recommended uniform thresholds).

We provide details, below.

I. Commission’s Proposed Qualifying Thresholds

You proposed “baseline” thresholds that are adjusted downward in legislative races for certain districts with lower median incomes. These are the baseline qualifying thresholds, to be raised in amounts between \$5 and \$250 from each donor:

¹ Malbin, Michael J. and Glavin, Brendan, Campaign Finance Institute, to the New York State Public Campaign Financing Commission, memorandum, October 28, 2019. “Qualification Thresholds: Analysis of a Serious Flaw with the proposed approach and a recommended alternative that relies on within-district donors for legislative candidates.”

- **Governor:** from in-state, 6,000 donors and \$600,000
- **Lt. Gov/AG/Comptroller:** from in-state, 1,000 donors and \$100,000
- **Senate:** from in-district, 150 donors and \$18,000
- **Assembly:** from in-district, 75 donors and \$7,500

The requirement you have proposed for legislative candidates to qualify is unusually restrictive. Candidates would have to raise their qualifying money only counting up to the first \$250 of each donation and *entirely in-district*. By contrast, New York City permits legislative candidates to count up to the first \$175 of donations from anywhere in the city — including out-of-district — toward their qualifying amount of \$5,000. They must also secure at least 75 in-district donors.

You have proposed that, for legislative districts whose median income falls below the state’s median income (\$62,765 as of 2017), the *amount of fundraising* required to qualify would be reduced to 75% or 50% of the baseline threshold, with the greatest reduction for the districts whose median income falls below the average of the state’s median and the lowest district median income. (The minimum *number of in-district donors* required would be the same for all districts: 75 donors for Assembly, 150 donors for Senate.) In essence, you have proposed three tiers of qualifying thresholds for Assembly and Senate:

Assembly

- Upper income (district median income \$62,765 and above) – 69 districts: \$7,500 to qualify
- Middle income (district median income \$43,680 - \$62,765) – 63 districts: \$5,625 to qualify
- Lower income (district median income below \$43,680) – 18 districts: \$3,750 to qualify

Senate

- Upper income (district median income above \$62,765) – 30 districts: \$18,000 to qualify
- Middle income (district median income \$45,955 - \$62,765) – 25 districts: \$13,500 to qualify
- Lower income (district median income below \$45,955) – 8 districts: \$9,000 to qualify

II. Our Methodology

A. Questions Explored

We have tested whether viable candidates would be able to qualify under the following circumstances:

- 1) Via the tiered district median income-based thresholds as proposed.
- 2) At the upper income, “baseline” threshold applied to all districts (in case the district median income-based tiers do not work out for whatever reason).
- 3) With our recommended reduction in qualifying thresholds.

B. Assuming Changed Behavior of Legislative Candidates Under New Incentives

As some commissioners have noted, a meaningful test of proposed rules should account for how state candidates will change their behavior in response to new incentives. Currently state campaign finance laws provide virtually no incentive to raise money from small donors, let alone from in-district small

donors. This Commission aims to shift this very incentive structure. So, your deliberations will benefit from evidence from a system where small donor public financing has shaped incentives for a long time.

Fortunately, the behavior of New York City Council candidates in their longstanding public financing program enables us to approximate the behavior of state legislative candidates under the incentives of the Commission's proposed plan. City Council candidates must seek small donations because only the first \$175 is counted toward both the qualifying threshold and the public match, and they must have 75 in-district donors to qualify. These incentives are not exactly the same as under your proposal — your qualifying thresholds are more restrictive — but they are close enough to provide instructive evidence of the likely effects of your choices.

C. Data Analyzed²

- 1) We looked at **City Council districts**, because they are similar in size to Assembly districts. The average voting age population of City Council districts is about 1.2 times that of Assembly districts.
- 2) We estimated **each City Council district's median income**, which allowed us to apply the Commission's proposed qualifying thresholds for Assembly districts. It is worth noting that New York City's median income is \$57,782, just about \$5,000 less than the state median income — so, in terms of the spread of districts' median incomes, the two jurisdictions are comparable.
- 3) We looked at the most recent (2017) fundraising records of publicly financed City Council **winner**s and, in those winners' districts, the viable publicly financed **challengers who raised the most money**, to be sure we looked at **viable candidates**.³
- 4) We counted up to **the first \$250 of every in-district donation these City Council candidates raised over the entire four-year election cycle**, not just during their qualifying period, to see which candidates would meet the various Assembly thresholds. This makes our results about how many candidates fail to qualify conservative and helps compensate for the greater incentive state candidates would have under the Commission's proposal to raise small dollars from inside their districts.

III. Findings

A. Qualifying Rates Under Commission's District Income-Based Plan

While all candidates we examined were able to meet the minimum *number of in-district donors* your proposal requires, many were not able to raise the threshold *amount of in-district money* raised from the first \$250 of each donation. Applying your district income-adjusted Assembly thresholds to City Council districts of the relevant median income tiers, we find that all winning City Council candidates in our sample would have qualified (Table 1). But a substantial number of serious challengers — 6 out of 20 across all three income tiers — would not have qualified even counting all the in-district small

² Underlying data and calculations are available upon request.

³ We excluded three challengers who were not viable, as evidenced by the fact that they raised dramatically less in private funds than any other candidate in our sample. None of the three raised more than \$10,030, while the next lowest-raising challenger raised \$32,738 and the lowest-raising winner collected \$38,420 in private funds.

donations they raised over four years. It is, of course, crucial that the Commission’s plan allow not just incumbents but also viable challengers to qualify.

TABLE 1: Qualifying Results Under Assembly District Income-Based Threshold Amounts
(first \$250 of in-district contributions)

| | Candidate Type | No. qualify | No. fail to qualify | % qualify |
|--|----------------------------|-------------|---------------------|-----------|
| Upper income (\$7,500): <i>City Council districts at or above state median income (15 districts)</i> | Winner | 15 | 0 | 100% |
| | Highest-raising Challenger | 8 | 3 | 73% |
| Middle income (\$5,625): <i>City Council districts below state median income (8 districts)</i> | Winner | 8 | 0 | 100% |
| | Highest-raising Challenger | 3 | 3 | 50% |
| Lower income (\$3,750): <i>City Council districts with lowest median income (4 districts)</i> | Winner | 4 | 0 | 100% |
| | Highest-raising Challenger | 3 | 0 | 100% |

[NEW] Given the findings in Table 1, if you decide to move forward with the district median income-adjusted approach **our recommended threshold for “baseline” level Assembly districts is no higher than \$5,000 and for the two lower adjusted thresholds no higher than \$4,000.** Though you may assume the ability of viable candidates in the middle income tier to qualify tracks in lock-step with their districts’ relative median incomes, the data show that assumption is wrong. It is worth noting that the middle income tier holds many more legislative districts at both the state and New York City levels than the lowest income tier. So, setting the adjusted threshold too high for the middle income districts would have widespread negative consequences, rendering the system inaccessible to serious challengers in many parts of the state.

[NEW] Recommended District Median Income-Adjusted Thresholds for Senate: We extrapolate from our Assembly recommendations to provide recommended adjusted thresholds for the Senate. We extrapolate based on the population difference between districts for each chamber — Senate districts have 2.4 times the average voting age population as Assembly districts.⁴ Our recommendation for the Senate is therefore 2.4 times as high as for the Assembly: if you decide to move forward with the median income-adjusted approach **the “baseline” threshold for Senate districts should be no higher than \$12,000 and for the two lower adjusted thresholds no higher than \$9,600.**

⁴ Assembly districts have an average voting age population of 103,968, and Senate districts have an average voting age population of 247,538.

B. Qualifying Rates Under Commission’s Baseline Threshold

In case the Commission’s district income-based approach to thresholds proves unworkable or undesirable for whatever reason, we wanted to see how districts in all median income tiers would fare under the proposed baseline threshold (Table 2). We find that, in the two below-median tiers, 5 out of 12 City Council *winners* (42%) would not have qualified at the baseline threshold, even counting the first \$250 of all contributions they raised in-district over four years. There is no doubt these are viable candidates, since they won. In addition, in the two below-median tiers, more than half of serious challengers (56%) would have failed to qualify at the baseline threshold.

Should the tiered district income-based approach to thresholds prove unworkable or undesirable for whatever reason, it is critical that the default threshold be achievable by viable candidates in districts of all income levels. Our analysis provides strong evidence that your current “baseline” threshold for Assembly candidates, that they must raise \$7,500 in small in-district donations, would exclude too many viable candidates if applied to districts of all income levels.

In his independent analysis using a different methodology, Professor Malbin of the Campaign Finance Institute has reached a similar conclusion. He finds that 37% of Assembly *winners* in 2018 Assembly races would not have been able to qualify at the baseline \$7,500 threshold, even assuming a major increase in the number of donors.⁵

TABLE 2: Qualifying Results Under a Uniform Assembly Baseline Threshold of \$7,500
(first \$250 of in-district contributions)

| | Candidate Type | No. qualify | No. fail to qualify | % qualify |
|--|----------------------------|--------------------|----------------------------|------------------|
| Upper income: <i>City Council districts at or above state median income (15 districts)</i> | Winner | 15 | 0 | 100% |
| | Highest-raising Challenger | 8 | 3 | 73% |
| Middle income: <i>City Council districts below state median income (8 districts)</i> | Winner | 6 | 2 | 75% |
| | Highest-raising Challenger | 2 | 4 | 33% |
| Lower income: <i>City Council districts with lowest median income (4 district)</i> | Winner | 1 | 3 | 25% |
| | Highest-raising Challenger | 2 | 1 | 66% |

Your proposed middle district-income threshold, \$5,625, is also too high to serve as a baseline for all districts, because many viable candidates, including *winning candidates*, are not able to meet it (Table 3). In the lowest-income districts, this threshold was too high for 3 out of 4 winners, even counting the

⁵ See pages 2-4 of the Campaign Finance Institute’s memorandum to the New York Public Campaign Financing Commission, dated October 28, 2019.

first \$250 of all contributions they raised in-district over four years. Serious challengers also could not meet this threshold in all the district income tiers.

TABLE 3: Qualifying Results Under a Uniform Assembly Middle Threshold of \$5,625
(first \$250 of in-district contributions)

| | Candidate Type | No. qualify | No. fail to qualify | % qualify |
|--|----------------------------|-------------|---------------------|-----------|
| Upper income: <i>City Council districts at or above state median income (15 districts)</i> | Winner | 15 | 0 | 100% |
| | Highest-raising Challenger | 10 | 1 | 91% |
| Middle income: <i>City Council districts below state median income (8 districts)</i> | Winner | 8 | 0 | 100% |
| | Highest-raising Challenger | 3 | 3 | 50% |
| Lower income: <i>City Council districts with lowest median income (4 districts)</i> | Winner | 1 | 3 | 25% |
| | Highest-raising Challenger | 2 | 1 | 66% |

C. Recommended Uniform Threshold

The Commission must identify a uniform qualifying threshold that is achievable by viable candidates in districts of any income level, in case the district income-based tiered model does not work out. The highest measure of viability is, of course, whether a candidate won. (We stress that public financing programs must also permit viable *challengers* to qualify.) To ensure that all 2017 publicly-financed City Council *winners* in all districts would have been able to qualify under the Commission’s plan, which counts in-district donations only up to \$250 toward qualifying, **the uniform threshold for the Assembly should be no higher than \$4,000.**

Setting the threshold any higher would leave viable candidates out. At a threshold of \$4,500, for example, 4 of the 47 viable candidates we studied would have failed to qualify.

Again, the results of Professor Malbin’s independent analysis support our conclusions. At our recommended \$4,000 threshold, the Campaign Finance Institute’s analysis finds that 77% of Assembly winners would qualify. Higher thresholds, CFI found, excluded more winners and serious challengers.⁶

⁶ See page 4 of the Campaign Finance Institute’s memorandum to the New York Public Financing Commission, dated October 28, 2019.

TABLE 4: Qualifying Results Under Assembly Recommended Uniform Threshold of \$4,000
(first \$250 of in-district contributions)

| | Candidate Type | No. qualify | No. fail to qualify | % qualify |
|--|----------------------------|--------------------|----------------------------|------------------|
| Upper income: <i>City Council districts at or above state median income (15 districts)</i> | Winner | 15 | 0 | 100% |
| | Highest-raising Challenger | 11 | 0 | 100% |
| Middle income: <i>City Council districts below state median income (8 districts)</i> | Winner | 8 | 0 | 100% |
| | Highest-raising Challenger | 6 | 0 | 100% |
| Lower income: <i>City Council districts with lowest median income (4 districts)</i> | Winner | 4 | 0 | 100% |
| | Highest-raising Challenger | 3 | 0 | 100% |

Recommended Uniform Threshold for Senate: We extrapolate from our Assembly recommendations to provide a recommended uniform threshold for the Senate. We extrapolate based on the population difference between districts for each chamber — Senate districts have 2.4 times the average voting age population as Assembly districts.⁷ Our recommendation for the Senate is therefore 2.4 times as high as for the Assembly: **the uniform Senate qualifying threshold should be no higher than \$9,600.**

⁷ Assembly districts have an average voting age population of 103,968, and Senate districts have an average voting age population of 247,538.