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Re: H.B. 553, The Small Donor Democracy Matching System for Fair Elections Act

The Brennan Center for Justice at NYU School of Law appreciates the opportunity to testify in support of H.B. 5531, the Small Donor Democracy Matching System for Fair Elections Act (“the Act”). The bill’s small-donor matching system has the power to strengthen democracy in the state of Illinois.

Below, we explain why the Act will enable participating candidates to fund successful campaigns with a focus on grassroots support from ordinary constituents, freeing elected officials from the need to raise big checks that might be seen as giving the wealthy undue influence. The Act will enhance the representativeness of the state’s elected officials by reducing barriers to candidates with broad support in the community. And it will encourage widespread participation in politics by residents of the state, especially among low-income and racial-minority communities.

We also offer suggestions for how to strengthen the Act to achieve an even greater boost to democratic participation than it does in its current form.

Experience in New York City and other jurisdictions across the nation shows that public financing can fundamentally change the nature of democracy by acting as a counterweight to the power of wealth to influence government. The successes of New York City’s program have been widely recognized,¹ and other large cities, like Los Angeles and San Francisco, have their own

¹ 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), http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf.

programs. Most recently, the District of Columbia and two counties in Maryland have enacted multiple match programs.²

By making regular people an important part of funding campaigns, H.B. 5531 will bring more citizens, especially those from traditionally disenfranchised communities, into politics and amplify the people's control over their government.

Empowering ordinary citizens

The Act has the power to strengthen the democratic connection between elected officials in Illinois and the communities they represent. We are confident in predicting the benefits of the bill because of its similarities to the small donor matching system used in New York City for years. 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. The vast majority of candidates in New York City elections participate in the system,³ and candidate participation is important for any program hoping to fundamentally change the nature of campaigns and democracy.⁴

New York's 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 In 2009 and 2013, participating candidates took in more than 60 percent of their funds from small donors and the public match.⁶ This is all the more remarkable in a system where council candidates can accept contributions of up to \$2,750, and candidates who did not participate in the public financing system raised most

² See Peter Jamison, *D.C. mayor, reversing course, signs law creating publicly financed campaigns*, WASH. POST, Mar. 13, 2018, https://www.washingtonpost.com/local/dc-politics/dc-mayor-reversing-course-signs-law-creating-publicly-financed-campaigns/2018/03/13/699b6e90-26f5-11e8-b79d-f3d931db7f68_story.html; "Howard County, Fair Elections Maryland, <http://fairelectionsmaryland.org/about-us/howardcounty/>; Phil Andrews, "Montgomery County candidates test public financing," BALTIMORE SUN, June 4, 2017, <http://www.baltimoresun.com/news/opinion/oped/bs-ed-montgomery-financing-20170604-story.html>.

³ 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), http://www.nyccfb.info/PDF/per/2013_PER/2013_PER.pdf.

⁴ See MICHAEL J. MALBIN, CAMPAIGN FINANCE INSTITUTE, *CITIZEN FUNDING FOR ELECTIONS: WHAT DO WE KNOW? WHAT ARE THE EFFECTS? WHAT ARE THE OPTIONS?* 10-14 (2015), http://www.cfinst.org/pdf/books-reports/CFI_CitizenFundingforElections.pdf (explaining that, without candidate participation and changes to fundraising practices, public financing will not have benefits); MARK SCHMITT, NEW AMERICA, *SMALL-DONOR EMPOWERMENT, A NEW MENU OF OPTIONS TO STRENGTHEN THE VOICES OF CITIZENS* (2015), <https://www.newamerica.org/political-reform/small-donor-empowerment> (listing candidate participation and fundraising practices among metrics for success of public financing).

⁵ N.Y.C. Campaign Fin. Bd., *2013 Post-Election Report* at 49.

⁶ Michael Malbin, Campaign Finance Institute, *Testimony before the New York City Campaign Finance Board*, Feb. 13, 2013, [http://www.cfinst.org/Press/PReleases/14-02-13/Testimony before the New York City Campaign Finance Board Says Small Donor Matching Funds a Success but the City Should Look at Changes Moving Forward.aspx](http://www.cfinst.org/Press/PReleases/14-02-13/Testimony%20before%20the%20New%20York%20City%20Campaign%20Finance%20Board%20Says%20Small%20Donor%20Matching%20Funds%20a%20Success%20but%20the%20City%20Should%20Look%20at%20Changes%20Moving%20Forward.aspx).

of their money from donors of \$1,000 or more.⁷ Public financing in New York has drastically reduced candidates' reliance on big checks and special interest donors.

In 2016, the Brennan Center released a report containing interviews with 20 elected officials who have used public financing of all kinds, not just matching programs. Those officials explained that such systems “reduce the influence of big money in politics by making elections more accessible, fair, and constituent-oriented.”⁸ A participating candidate in the public financing system in Richmond, California, Councilmember Jovanka Beckles, explained: “When you take money from the public, you are beholden to the public only, and not any other corporate interest. That has really made a difference and helped the voters come to a place where they can say that they trust me.”⁹

State-level public financing programs have also made for healthier democracies. The block-grant program in Connecticut has led to participating candidates spending significantly less time fundraising from the wealthy and more time interacting with voters.¹⁰ Elected officials report improvements in governance since the system's implementation, with more time devoted to legislating rather than fundraising and a decline in the influence of special-interest lobbyists.¹¹ Similarly, legislators who ran under Arizona's block-grant system reported a greater ability to represent their constituents, rather than allowing financial contributions to sway legislative decisions.¹²

When increases in campaign costs force elected officials to rely on big-money donations to fund their campaigns, it can turn voters off and lead to cynicism about government. Fairly or not, people worry that large contributions are corrupting, giving wealthy interests unfair influence over policy making.¹³ H.B. 5531 can prevent corruption and its appearance by encouraging candidates to fund their elections principally through small contributions and public money, rather than potentially corrupting large, private donations.

⁷ MICHAEL J. MALBIN, PETER W. BRUSOE & BRENDAN GLAVIN, CAMPAIGN FINANCE INSTITUTE, WHAT IS AND WHAT COULD BE: THE POTENTIAL IMPACT OF SMALL-DONOR MATCHING FUNDS IN NEW YORK STATE ELECTIONS (2013), http://www.cfinst.org/pdf/state/NY/CFI_Impact-Matching-on-NYS.pdf.

⁸ Brennan Center for Justice, *Breaking Down Barriers: The Faces of Small Donor Public Financing* 3 (DeNora Getachew & Ava Mehta, eds.) (2016), https://www.brennancenter.org/sites/default/files/publications/Faces_of_Public_Financing.pdf.

⁹ *Breaking Down Barriers*, at 17.

¹⁰ MICHAEL G. MILLER, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 54 (2013).

¹¹ J. MIJIN CHA & MILES RAPPAPORT, DEMOS, FRESH START: THE IMPACT OF PUBLIC CAMPAIGN FINANCING IN CONNECTICUT 6-8, 9-11 (2013), <http://www.demos.org/publication/fresh-start-impact-public-campaign-financing-connecticut>.

¹² MICHAEL G. MILLER, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 39-41 (2013).

¹³ “Voters Say Money, Media Have Too Much Political Clout,” Rasmussen Reports, Feb. 16, 2016, http://www.rasmussenreports.com/public_content/politics/general_politics/february_2016/voters_say_money_media_have_too_much_political_clout (finding large majorities believe that wealthy individuals, companies, and special interest groups have too much influence over elections).

In sum, by applying incentives like those under New York’s program, H.B. 5531 can change the way that candidates campaign, encouraging retail campaigning rather than dialing for dollars and empowering those who are otherwise left out of the political process. As New York City Public Advocate Letitia James put it: “The public financing system in New York City gave me the opportunity to compete and succeed, allowing me to represent individuals whose voices are historically ignored.”¹⁴

Eliminating barriers for candidates

H.B. 5531 will 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. The prospect of raising large sums can discourage potential candidates, and the campaign finance arms race gives an unfair advantage to wealthy individuals and professionals in lucrative careers, like lawyers.¹⁵ Researchers have found that fundraising pressure is disproportionately discouraging to potential candidates who are female or African American, or who represent less-affluent districts.¹⁶

Public financing through a small-donor match breaks down these barriers by making broad community support, even from less affluent individuals, more valuable in financing campaigns. In New York, public financing has likely helped bring about a diverse and representative candidate pool.¹⁷ In Connecticut, Sen. Gary Winfield explained, “Without public financing, I would not have been a viable candidate. . . I didn’t come from money. I am a candidate of color, and I wasn’t a candidate for the political party or machine apparatus.”¹⁸

Encouraging broad public participation in politics

The Act will boost participation in elections by a broad range of citizens, including those who are unlikely to donate money in a system dominated by large contributions. Matching funds give candidates a powerful enticement to encourage new donors to give: their small money will become much more valuable. There is even evidence that public financing can encourage people to vote. A study in New York City found that registered voters who made a contribution in the

¹⁴ *Breaking Down Barriers*, at 7.

¹⁵ Adam Bonica, *Professional Networks, Early Fundraising, and Electoral Success*, 16 ELEC. L. J. 153 (2017).

¹⁶ ASHA DUMONTHIER, CHANDRA CHILDERS & JESSICA MILLI, THE STATUS OF BLACK WOMEN IN THE UNITED STATES, 4-5 (2017), https://www.domesticworkers.org/sites/default/files/SOBW_report2017_compressed.pdf.

¹⁷ NEW YORK CITY CAMPAIGN FINANCE BOARD, BY THE PEOPLE: THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM IN THE 2013 ELECTIONS 47 (2014), http://www.nyccfb.info/PDF/per/2013_PER/2013_PER.pdf; ANGELA MIGALLY & SUSAN LISS, BRENNAN CENTER FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 21 (2010), <https://www.brennancenter.org/publication/small-donor-matching-funds-nyc-election-experience>; NEW YORK CITY CAMPAIGN FINANCE BOARD, NEW YORKERS MAKE THEIR VOICES HEARD: A REPORT ON THE 2009 ELECTIONS 141-42 (2010), http://www.nyccfb.info/PDF/news_media/reports/2009_PER.pdf.

¹⁸ *Breaking Down Barriers*, at 12.

Democratic primary were almost three times as likely to vote.¹⁹ A multi-state study of block-grant systems found that voters are more likely to vote in elections featuring a publicly funded candidate.²⁰

In New York City, the public funding program has 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” donors to state legislative candidates representing the same communities (who do not run under a public financing system).²¹ The program has encouraged participation by donors from communities with high proportions of racial minorities and low-income residents—communities that do not traditionally contribute to campaigns in large numbers.²²

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.”²³ Big-money fundraising forces candidates to separate their campaigns into fundraising from rich people wherever they can be found on the one hand, and spending time with voters in the state or their specific district on the other. When small donations are multiplied, however, candidates can combine fundraising with retail campaigning where their actual voters are.²⁴ Every house party and barbecue becomes an opportunity to raise significant funds.

Suggested improvements to H.B. 5531

The Act has all the essential elements of a successful small-donor matching system. It is funded through general appropriations to ensure sufficient funds. It requires candidates to establish popular support to qualify by raising a threshold number of qualifying contributions. To earn the match or help candidates qualify for the program, contributions must come from natural persons living in Illinois, and only amounts between \$25 and \$150 are rewarded a match.

¹⁹ “Public Financing: What’s the Return on Investment at the Voting Booth?” New York City Campaign Finance Board, Aug. 26, 2015, <http://nyccfb.info/media/blog/public-financing-ROI-voting-booth>.

²⁰ Citizen funding reduces roll-off, which is the phenomenon of voters abstaining in down-ballot races after voting in the higher visibility elections. MILLER, *SUBSIDIZING DEMOCRACY* at 77 (finding roll-off decreases approximately 20 percent in Connecticut when there is a citizen-funding participant running).

²¹ Elisabeth Genn, Michael J. Malbin, Sundeep Iyer, & Brendan Glavin, BRENNAN CTR. FOR JUSTICE & CAMPAIGN FIN. INST., *Donor Diversity Through Public Matching Funds* 4 (2012), http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

²² Michael J. Malbin *et al.*, *Small Donors, Big Democracy: New York City’s Matching Funds as a Model for the Nation and States*, 11 *ELEC. L.J.* 3 (2012) (finding that donors in New York City’s citizen funding program are demographically representative of the city as a whole); NEW YORK CITY CAMPAIGN FINANCE BOARD, *BY THE PEOPLE: THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM IN THE 2013 ELECTIONS* 41 (2014), http://www.nyccfb.info/PDF/per/2013_PER/2013_PER.pdf (noting large numbers of first-time contributors and small contributors).

²³ Genn, *et al.*, *Donor Diversity*, at 4.

²⁴ ANGELA MIGALLY & SUSAN LISS, BRENNAN CENTER FOR JUSTICE, *SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE* 18 (2010), <https://www.brennancenter.org/publication/small-donor-matching-funds-nyc-election-experience>.

Participating candidates are subject to relatively a low contribution limit of \$500, participants must have an opponent in order to collect public funds, and public grants are capped. Finally, the Act provides for a strong agency to implement and enforce the program.

Here we suggest amendments to the Act to strengthen the program it would create.

First, we recommend adding a provision that would prevent participating candidates from using funds raised in prior election cycles. As they repeatedly run for reelection, some officials amass large campaign accounts. These “war chests” have the potential to alter the incentive structure crucial to the success of a small donor matching system, since they allow incumbents to rely on money raised outside the program’s restrictive contribution limits. To give the maximum effect to the incentive to rely on many small donors, participating candidates should be required to fund their campaigns only with money raised under the rules of the program.

Second, the Brennan Center recommends eliminating or lowering the minimum threshold for qualified contributions. H.B. 5531 provides that contributions between \$25 and \$150 will be matched. This may be intended to reduce administrative costs for processing matches to small donations or to ensure that donors are making a meaningful investment to earn the match. But \$25 may be out of reach for some members of the community. Studies have found that even very low amounts for qualifying contributions—\$5 or \$10—have an effect in encouraging candidates to engage with a broad swath of their constituents.²⁵ And the match’s incentive for low-income people to participate in elections by donating may be most powerful at the lowest dollar amounts, including below \$25.

Third, contribution limits for all candidates, whether they participate or not, should be reduced. This is important to public financing because it is crucial that candidates choose to participate, which requires making the program attractive as compared with privately financing a campaign. The proposed contribution limit of \$500 on participating candidates is less than 10 percent of the current \$5,600 individual contribution limit in existing law for nonparticipants (and of course the program would match an eligible \$500 contribution with another \$900).²⁶ But parties and PACs can give nonparticipants amounts many times higher than the individual limit—up to \$221,800 from a party to a statewide candidate, for example—and even corporations and unions can give \$11,100.²⁷ The requirement to forego these high donations may discourage many candidates from participating in public financing. The state’s high contribution limits should be lowered across the board for all candidates, which will make the public

²⁵ MICHAEL G. MILLER, *SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE* 34-35 (2014) (discussing the effectiveness of \$5 qualifying contributions as a threshold for participation, quoting Arizona legislative candidates to the effect that they are not easy to raise); ANGELA MIGALLY & SUSAN LISS, BRENNAN CENTER FOR JUSTICE, *SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE* 18 (2010), <https://www.brennancenter.org/publication/small-donor-matching-funds-nyc-election-experience> (quoting New York City Councilmember Daniel Dromm explaining that events to raise \$10 contributions had a “dual purpose—they got my name out among people and they raised some money”).

²⁶ ILLINOIS STATE BOARD OF ELECTIONS, *CONTRIBUTION LIMITS* (2017), <https://www.elections.il.gov/Downloads/CampaignDisclosure/PDF/Contribution%20Limits.pdf>.

²⁷ *Id.*

financing program function better and have the added benefit of reducing the risk of corruption and its appearance from candidates taking massive checks.

Fourth, we recommend requiring candidates to participate in public debates as a condition on the receipt of public funds. New York City, San Francisco, and New Jersey all impose such a requirement on candidates who participate in their small donor matching programs. Nonparticipating candidates should be invited, but not compelled, to join the debates.

Finally, we note the following potential textual issues with the bill.

- The Act provides new definitions of terms already defined in the Illinois Election Code, like “expenditure” and “independent expenditure.” Consider adopting a single definition of terms across the state’s election laws.
- The provision setting contribution limits, § 9A-35, is presumably intended to apply only to program participants. That could be made more explicit by adding “participating” before “candidate” in line 10 on page 15.
- We interpret the price indexing provision, § 9A-40, to require an adjustment to contribution limits in each election cycle. Yet the provision could be read to apply only to the election after the Act’s passage. We suggest adding “in each election cycle” to the end of the first sentence, at line 21 on page 16.

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The Brennan Center recommends that Illinois adopt the Small Donor Democracy Matching System for Fair Elections Act. Matching programs have been proven over time to meaningfully reduce the influence of large donors and encourage more citizens to participate powerfully in the election process. It is a reform that helps give voters confidence that their elected representatives work for all their constituents, not just the biggest spenders.

We encourage the General Assembly to improve the state’s elections and democracy by enacting the small-donor public financing system provided for by H.B. 5531 and would be happy to provide any further assistance.