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YEARS

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February 6, 2017

The Honorable Gregg Harper  
Chair  
House Administration Committee  
Washington, DC 20510

The Honorable Robert Brady  
Ranking Member  
House Administration Committee  
Washington DC 20510

**Re: Brennan Center Opposition to H.R. 634 (Election Assistance Commission Termination Act) and H.R. 133 (terminating the Presidential Election Campaign Fund)**

Dear Chairman Harper and Ranking Member Brady:

On behalf of the Brennan Center for Justice at New York University School of Law, we strongly urge you to reject H.R. 634, the Election Assistance Commission (“EAC”) Termination Act, and H.R. 133, which would dissolve the Presidential Election Campaign Fund (“PECF”). H.R. 634 would eliminate the only federal agency charged with improving our voting systems and helping states with other critical functions of election administration. At a time when the vast majority of our country’s voting machines are outdated and in need of replacement, and after an election in which international criminals already attempted to hack our state voter registration systems, eliminating the EAC would pose a risky and irresponsible threat to our election infrastructure. H.R. 133 would destroy a presidential public financing system that is one of the few remaining tools to increase the voice of everyday Americans vis-à-vis the rising tide of special interest money that has flooded the political system since the Supreme Court’s controversial decision in *Citizens United*.

Do Not Eliminate the Election Assistance Commission

The EAC is the only federal agency which has as its central mission the improvement of election administration, and it undertakes essential activities that no other institution is equipped to address. It sets national standards for new voting machines and systems through its certification program, tracks and corrects problems with those systems through its quality monitoring program, conducts research into election management and improvement, collects and disseminates critical election administration data, provides a clearinghouse of information for local election officials, and promotes accessible voting for Americans with disabilities.

A functioning EAC is especially important at this time. In 2014, the bipartisan Presidential Commission on Election Administration (“PCEA”) identified an “impending crisis” in voting technology. A 2015 Brennan Center report detailed this crisis.<sup>1</sup> Among that report’s key findings were that the vast majority of voting machines in use today are either perilously close to or exceed their expected lifespans; that policymakers have not been responsive to election officials’ calls for new equipment; and that more problems may arise the longer we delay purchasing new equipment. Those problems include increased machine failures, and security and reliability flaws. When these vulnerabilities are coupled with credible reports that Russian cybercriminals already attempted to access state voter registration systems, insecure voting machines can place our democracy at serious risk, at the very least of a loss of public faith in our elections.

The EAC has a vital role to play in responding to these challenges. The agency sets standards for voting systems on criteria like performance, accessibility and security; and certifies testing laboratories that ensure that equipment actually meet those standards. Forty-seven states rely on the EAC’s standards and testing program in some way.<sup>2</sup> Now, the agency is developing new standards, which are badly needed so that states can begin purchasing new equipment with the latest security features. And the EAC helps in other ways, including by acting as a clearinghouse for voting system problems and their solutions. Eliminating the EAC would badly damage this work at a moment when it is most necessary.

No other federal agency has the capacity, willingness, or expertise to absorb its responsibilities, and these responsibilities can only be effectively or efficiently performed at the national level.

Given the pending threats to our election systems, and the critical role the EAC plays in responding to those threats, Congress must reject H.R. 634 and resist all efforts to weaken the EAC.

### Do Not Eliminate Presidential Public Financing

H.R. 133 would eliminate public financing of presidential elections—an unacceptable response to last year’s election, in which voters made clear they are unhappy with the influence of big money over our politics, and desire a more responsive government. Instead of eliminating the only federal public financing program, Congress should work to modernize the PECF so that it is still a viable program for major party candidates in the age of Super PACs.

For decades, nearly every major party candidate—from Jimmy Carter and John Kerry to Ronald Reagan and George W. Bush—used the presidential public financing system. The program was

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<sup>1</sup>LAWRENCE NORDEN & CHRISTOPHER FAMIGHETTI, BRENNAN CTR. FOR JUSTICE, AMERICA’S VOTING MACHINES AT RISK (2015), available at <https://www.brennancenter.org/publication/americas-voting-machines-risk>.

<sup>2</sup> Press Release, U.S. ELECTION ASSISTANCE COMM’N, EAC Updates Federal Voting System Guidelines (Mar. 31, 2015), available at <http://www.eac.gov/assets/1/Documents/EAC%20Updates%20Federal%20Voting%20System%20Guidelines-NewsRelease-FINAL-3-31-15-website.pdf>


successful at reducing candidates' reliance on large private contributions and high-dollar fundraisers. Unfortunately, the program has not been modernized in the face of greatly increased costs. In the years since the Supreme Court's 2010 decision in *Citizens United*, spending by outside groups has skyrocketed, totaling well over \$1 billion in the 2012 and 2016 elections.<sup>3</sup>

Instead of eliminating the Presidential Election Campaign Fund, Congress should respond to voters' frustration with the dominance of large and often secret spending in our elections by amending the system so it gives everyday citizens a chance to increase their voice and influence. There is already a proven method for improving citizen funded campaign finance systems. New York City's public financing program, which provides matching funds for small contributions to candidates who agree to abide by certain restrictions, has proven remarkably resilient in the post-*Citizen United* era. A 2012 report, jointly issued by the Brennan Center and Democracy 21, explains how a similar system could successfully replace the current presidential public financing program.<sup>4</sup>

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Thank you for your attention to this important matter. If you have any questions, or are in need of additional information, please contact us at (646) 292-8310 or [nicole.austin-hillery@nyu.edu](mailto:nicole.austin-hillery@nyu.edu) or [wendy.weiser@nyu.edu](mailto:wendy.weiser@nyu.edu).

Sincerely,



Wendy Weiser  
Director, Democracy Program  
Brennan Center for Justice  
at NYU School of Law



Nicole Austin-Hillery  
Director and Counsel, Washington Office

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<sup>3</sup> *Outside Spending by Cycle, Excluding Party Committees*, CTR. FOR RESPONSIVE POLITICS, [https://www.opensecrets.org/outsidespending/fes\\_summ.php](https://www.opensecrets.org/outsidespending/fes_summ.php) (last visited Feb. 6, 2017).

<sup>4</sup> ADAM SKAGGS & FRED WERTHEIMER, BRENNAN CTR. FOR JUSTICE & DEMOCRACY 21, EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS (2012), available at [http://www.brennancenter.org/sites/default/files/legacy/publications/Small\\_donor\\_report\\_FINAL.pdf](http://www.brennancenter.org/sites/default/files/legacy/publications/Small_donor_report_FINAL.pdf).