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**Submitted to the  
New York Senate Standing Committee on Elections**

**May 7, 2013 Hearing  
On the Need for Statewide Comprehensive Campaign Finance Reform**

The Brennan Center for Justice at NYU School of Law<sup>1</sup> welcomes the opportunity to discuss the need for comprehensive campaign finance reform, including public financing, to address Albany's persistent corruption problem. We further welcome the chance to debunk misinformation about the public financing systems in New York City and Connecticut. As an integral part of comprehensive reforms that included lower contribution limits, stronger independent enforcement, and more transparency, public financing has definitively altered the culture of corruption that long existed in both political systems by increasing competition, curbing the dominance of special interests, and increasing the participation, influence and confidence of citizens without access to large sums of money.

The recent spate of scandals that have rocked our state is merely the latest evidence that systematic changes are needed to address Albany's "show me the money" culture. Comprehensive campaign finance reform with public financing at its core is New York's best response to the explosion of official corruption and the public cynicism that corruption scandals breed.

Despite the success of comprehensive campaign finance reform in New York City, Connecticut and elsewhere, opponents have attempted to portray the New York City system as plagued by corruption. As I explain in detail below, attacks on the city's public

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<sup>1</sup> The Brennan Center for Justice is a non-partisan public policy and legal advocacy organization that focuses on fundamental issues of democracy and justice. Our Money in Politics project works with policy makers and activists to help draft and enact legislation, defend campaign finance laws in court, and promote innovative public financing solutions nationwide, particularly small donor matching fund systems. We are an active member of the Fair Elections for New York Coalition working to address the impact of huge campaign contributions on elections and politics in the Empire State.

financing system by anti-reform groups like the Center for Competitive Politics, now relied upon by opponents of reform in Albany, are not supported by the facts.

Many in Albany are content to offer partial reforms that would do little to change the culture of politics in this state or address growing disenchantment among voters with the political process. Our state's corruption crisis demands more: we need to change the culture of Albany, change the financial incentives that candidates face, and change the relationship between ordinary New Yorkers and their elected representatives.

At bottom, opponents of comprehensive reform are defenders of the status quo, champions of a system that works for lobbyists and special interests, but not everyday New Yorkers. Clinging to the existing system, opponents of reform would evidently prefer to allow corruption to continue festering in Albany.

### **Reform has a proven record of positive change in New York City and Connecticut.**

New York City enacted comprehensive campaign finance reform, including a public financing matching system, in response to a cancer of corruption that had spread through city government. Mayor Koch's administration was slammed with a series of graft, bribery, and extortion scandals in the 1980s.<sup>2</sup> Koch was not accused of corrupt behavior, but on his watch thousands of parking meter attendants and municipal inspectors took graft. Multiple whistleblowers were ignored in a system where party bosses had tight control over their agencies. In the years prior to the passage of public financing in 1988, accusations of corruption reached the highest levels of government, from heads of agencies to borough presidents, one of whom was ultimately convicted, and another who killed himself before he could be tried.

Since the enactment of public campaign financing, New York City has not seen another corruption crisis even remotely resembling that of the 1980s. Of course, any system is still vulnerable to bad actors, and New York City is no exception. But the city's reforms have succeeded in making elections more competitive, in allowing candidates to campaign more than they fundraise, and in substantially increasing the number of people who donate to campaigns.<sup>3</sup> The system has also dramatically increased the diversity of

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<sup>2</sup> See generally JACK NEWFIELD & WAYNE BARRETT, CITY FOR SALE (1988).

<sup>3</sup> See ANGELA MIGALLY & SUSAN LISS, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE (2010), <http://www.brennancenter.org/sites/default/files/legacy/Small%20Donor%20Matching%20Funds-The%20NYC%20Election%20Experience.pdf>. Public financing programs in other states have been found to increase voter participation and the competitiveness of elections. See LAURA LOY ET AL., MORE THAN COMBATING CORRUPTION: THE OTHER BENEFITS OF PUBLIC FINANCING (2011), <http://www.brennancenter.org/analysis/more-combating-corruption-other-benefits-public-financing>.

donors, greatly increasing the influence and voice of small donors who lack access to large sums of money.<sup>4</sup>

Robust enforcement has been critical to the success of reform efforts. The New York City Campaign Finance Board (CFB) carefully oversees the city's public financing program. Routine audits ensure that candidates do not receive more public funds than they are entitled to.<sup>5</sup> In its oversight of the 2009 elections, the New York City Campaign Finance Board penalized several campaigns for improper spending: the agency imposed fines and required campaigns to return more than \$400,000 in public funds. In contrast, the New York State Board of Elections currently has no investigators and is simply incapable of adequately policing state campaign finance law.<sup>6</sup> The state desperately needs a well-funded enforcement agency to implement a small donor matching system, assist candidates with compliance, and enforce violations of Article 14.

In neighboring Connecticut, comprehensive campaign finance reform with public financing has been an enormous success since it was implemented in 2008. As in New York City, Connecticut adopted public financing after a series of scandals that had earned the state the shameful sobriquet of "Corrupticut."

In Connecticut, too, comprehensive campaign finance reform had changed the political culture, drastically decreasing the power of special interest money and garnering overwhelming public support, with a 79 percent approval rating.<sup>7</sup> And voters understand the connection to the influence of money and corruption: they were more than three times more likely to agree with the statement, "The state needs the Citizens' Election Program because, in the past, lobbyists and state contractors received special deals in exchange for political contributions which has even landed some politicians in jail," than an alternative criticizing the cost of the program. A recent report co-authored by Connecticut's former Secretary of State shows that the state's system has decreased the number of uncontested elections and reduced the influence of lobbyists.<sup>8</sup> Perhaps not coincidentally, the four-year

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<sup>4</sup> ELISABETH GENN, MICHAEL MALBIN, SUNDEEP IYER & BRENDAN GLAVIN, *DONOR DIVERSITY THROUGH PUBLIC MATCHING FUNDS* (2012), [http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport\\_WEB.PDF](http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF).

<sup>5</sup> N.Y. CITY CAMPAIGN FINANCE BD., *NEW YORKERS MAKE THEIR VOICES HEARD: A REPORT ON THE 2009 ELECTIONS*, 73-76 (2010), [http://www.nyccfb.info/PDF/per/2009\\_PER/2009PostElectionReport.pdf](http://www.nyccfb.info/PDF/per/2009_PER/2009PostElectionReport.pdf) (listing candidates who attempted to defraud the public funding system but were caught by the CFB's routine enforcement).

<sup>6</sup> Thomas Kaplan, *Cuomo Adds Election Law Office to Anticorruption Proposals*, N.Y. TIMES, Apr. 16, 2013, <http://www.nytimes.com/2013/04/17/nyregion/cuomo-bolsters-anti-corruption-efforts.html>.

<sup>7</sup> Zogby International, *Results from Poll*, Jan. 14, 2010, <http://www.commoncause.org/atf/cf/%7Bfb3c17e2-cdd1-4df6-92be-bd4429893665%7D/ZOGBY011410.PDF>.

<sup>8</sup> J. MIJIN CHA & MILES RAPOPORT, *FRESH START: THE IMPACT OF PUBLIC CAMPAIGN FINANCING IN CONNECTICUT* (2013), [http://www.demos.org/sites/default/files/publications/FreshStart\\_PublicFinancingCT\\_0.pdf](http://www.demos.org/sites/default/files/publications/FreshStart_PublicFinancingCT_0.pdf).

stretch since reforms were implemented has had the fewest federal convictions of any four consecutive years since federal officials started reporting this data.<sup>9</sup>

Public financing is highly popular in other states that have implemented it. In Arizona, 78 percent of voters are in favor of the public financing system, and are far more likely to agree with a statement saying that the state needs public financing to address special interest deals than a statement saying the state can't afford the program.<sup>10</sup> Maine's system is overwhelmingly popular, with 88 percent of Mainers in support.<sup>11</sup>

### **Opponents are wrong; New York City's system has not fostered corruption**

Opponents wrongly claim that public financing won't help to address the problem of money in politics, even suggesting that public financing will increase corruption. Defenders of the corruption-fraught status quo have seized on a 2011 report by the Center for Competitive Politics (CCP) that argues public financing systems in Arizona, Maine, and New York City are characterized by the "rampant" abuse of public funds and corrupt practices.<sup>12</sup>

The CCP report's section on New York City lists 24 scandals that are supposed to be evidence that the city system has not deterred corruption. But a closer look reveals severe flaws in CCP's analysis.

Several cases had nothing to do with public financing, including one state legislator who never participated in the city system. Half of the cases involve no wrongdoing: They either describe activity that is legal and not corrupt or cite investigations that never found a crime or election law violation. Finally, there are a number of examples of candidates attempting to violate the rules of the city's public funding system. Every campaign in this last category was caught by the city's effective enforcement agency and either fined or denied public funds. This shows that enforcement works, and it is a necessary part of comprehensive campaign finance reform that includes public funding.

The following list breaks down all 24 alleged scandals described in the CCP report to show how little they tell us about the relationship between corruption and public financing, suggesting that the CCP's zeal to attack public funding motivated it to trump up these cases.

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<sup>9</sup> DEP'T OF JUSTICE PUBLIC INTEGRITY SECTION, REPORTS TO CONGRESS (1976 – 2011), <http://www.justice.gov/criminal/pin>.

<sup>10</sup> Zogby International, Results from Telephone Survey of Arizona Likely Voters, Apr. 7, 2010.

<sup>11</sup> CRITICAL INSIGHTS, CRITICAL INSIGHTS ON MAINE TRACKING SURVEY 5 (2012), [https://www.mainecelelections.org/sites/default/files/polling/2012\\_Spring\\_MCCE\\_Critical\\_Insights.pdf](https://www.mainecelelections.org/sites/default/files/polling/2012_Spring_MCCE_Critical_Insights.pdf).

<sup>12</sup> JASON M. FARRELL, CENTER FOR COMPETITIVE POLITICS, CLEAN ELECTIONS AND SCANDAL: CASE STUDIES FROM MAINE, ARIZONA, AND NEW YORK CITY (2011), <http://www.campaignfreedom.org/2011/09/23/clean-elections-scandal-case-studies-from-maine-arizona-new-york-city>.

*Cases that have nothing to do with public campaign funding*

- The report lists **one** member of the State Assembly who never participated in the city's public funding system, even though the CCP claims its list consists of "New York City 'Clean Elections' candidates."
- **Six** cases of abuse of City Council members' discretionary funds are described.\* These scandals have nothing to do with public funding or campaign finance. Until recently, the discretionary funds system suffered from a complete lack of transparency and oversight, in stark contrast with the watchful enforcement of the city's public campaign funding system.

*Cases with no official finding of wrongdoing*

- **Two** candidates accepted public funds for elections that the report claims were not competitive. This is not illegal, and it's not corruption.
- **Eight** candidates were allegedly involved in collusion between the Working Families Party and Data & Field Services. Federal prosecutors decided not to file charges against those candidates, and there was no finding of wrongdoing in a civil lawsuit that WFP settled.
- There are at least **two** unfounded allegations that candidates spent public funds improperly. The report cites a news article that merely speculates that the spending was illegal; neither that article nor the CCP report presents any evidence that the expenditures violated the law.

*Cases that were caught by New York City enforcement*

- **Two** candidates were found by the Campaign Finance Board found to have coordinated with a labor union, resulting in in-kind contributions that exceeded contribution limits. Both candidates paid hefty fines.
- **Four** candidates violated campaign finance laws but were caught by the Campaign Finance Board's routine audits.\* The agency either denied the candidates public funds or ordered them to repay all the public funds they had received.

\*Former City Councilmember Miguel Martinez engaged in both discretionary funds abuse and campaign finance violations that were caught by routine audits.

In short, three-quarters of the scandals discussed in the CCP report had nothing to do with public financing and the handful that did were all readily caught by the city's enforcement agency. In fact, criminal convictions for campaign finance violations have depended on the CFB's practice of conducting routine audits and informing prosecutors of wrongdoing by campaigns.

**New York State Needs Comprehensive Reform with Public Financing at its Core**

Today, Albany's corruption problems are threatening to completely destroy public faith in government. In the last seven years, at least 32 state officeholders have been convicted of a crime, censured or otherwise accused of wrongdoing. 13 state elected officials have been convicted on charges relating to corruption, and several more have been indicted. The corruption has reached the highest levels of state government: Former Comptroller Alan Hevesi steered \$250 million of the state pension fund's money to a company in exchange for almost \$1 million in cash and travel benefits from the company's founder. Three of the last five Senate Majority Leaders have been indicted or convicted on corruption charges: Joseph Bruno is awaiting retrial after his 2009 conviction was overturned due to a change in the law, Pedro Espada pleaded guilty last year and faces a trial on more charges, and Malcolm Smith was charged this month. The damage to public trust is undeniable: A recent poll found that over 90 percent of New Yorkers think that corruption is a somewhat serious or very serious problem.<sup>13</sup>

Opponents of reform have also expressed concern about the cost of public financing. A small donor matching system of public financing would cost between \$26 and \$41 million per year.<sup>14</sup> That comprises only 0.003 percent of the state's budget; it is about \$2 per New Yorker. This estimate comes from the Campaign Finance Institute, a national, non-partisan research organization, which used peer-reviewed methods. A small donor matching program is a worthwhile investment in the infrastructure of our democracy that will make Albany work for average New Yorkers, not special interests. Public campaign funding will pay for itself in the long run. It will save the state money by stopping special interests from using campaign cash to win themselves sweetheart deals like massive tax breaks that cost the state hundreds of millions of dollars every year.

Although no system can stop individuals from behaving badly, public financing combined with strong enforcement, disclosure, and reasonable contribution limits can change the culture of Albany. It will end the mad chase for campaign cash that starts some elected officials down the road to corruption, and it will make candidates dependent on ordinary voters rather than special interests. A system of matching small donations with public funds will encourage New Yorkers to participate in elections and give them a greater sense of ownership of their government. Contrary to the exaggerated claims by ideological opponents like the Center for Competitive Politics, public financing systems have been a crucial element of anti-corruption reform in New York City, Connecticut, and elsewhere.

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<sup>13</sup> Siena Research Institute, 81% of Voters Say More Arrests of Legislators for Corruption Are Likely; About 1/3 Say Their Legislator Could Be Arrested, Apr. 22, 2013, [http://www.siena.edu/uploadedfiles/home/parents\\_and\\_community/community\\_page/sri/sny\\_poll/SNY%20April%202013%20Poll%20Release%20--%20FINAL.pdf](http://www.siena.edu/uploadedfiles/home/parents_and_community/community_page/sri/sny_poll/SNY%20April%202013%20Poll%20Release%20--%20FINAL.pdf).

<sup>14</sup> CAMPAIGN FINANCE INST., PUBLIC MATCHING FUNDS IN NY STATE, REVERSING THE FINANCIAL INFLUENCE OF SMALL & LARGE DONORS, WOULD LEAVE THE CANDIDATES "WHOLE" WHILE COSTING NEW YORKERS ONLY \$2/YEAR (2013), [http://www.cfinst.org/Press/PReleases/13-04-01/Updated\\_CFI\\_Research\\_on\\_Public\\_Matching\\_Funds\\_Proposal\\_for\\_New\\_York\\_State.aspx](http://www.cfinst.org/Press/PReleases/13-04-01/Updated_CFI_Research_on_Public_Matching_Funds_Proposal_for_New_York_State.aspx).