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Submitted to the
Independent Democratic Conference
of the New York State Senate

For the hearing entitled,
“Restoring the Voters’ Trust in New York State Government:
Reforming New York State’s Campaign Finance and Election Laws by
Increasing Accountability”

May 1, 2013

On behalf of the Brennan Center for Justice at N.Y.U. School of Law, I want to thank Senator Klein and the members of the Independent Democratic Conference for holding this hearing, and for their continued attention to the numerous existing problems with the campaign finance system in New York State.

My name is Ian Vandewalker, and I am counsel at the Brennan Center. The Brennan Center 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.

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 of corruption. 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. Most elected officials go to Albany with the best of intentions, and most serve the public honorably. But there have been too many scandals in recent years to deny the fact that the system fosters corruption. The campaign finance system needs fundamental change.

While there are already different visions of the best path forward, there is broad agreement among reformers on the key elements of comprehensive reform. Advocates and policy makers alike agree that any proposal will fail to meaningfully address the crisis we face if it does not

include public financing through a voluntary small donor matching program, effective enforcement, transparency, and lower contribution limits. Together, these reforms can change Albany by reducing the influence of big donors and increasing the relative importance of all who can afford to give small donations. Similar reforms have worked in New York City, Connecticut, and elsewhere. In addition, reform can restore the public trust by encouraging more civic participation and giving voters more choice.

Of course, not everyone agrees that overarching reform is needed. Some have said that we should retain current campaign finance laws and simply strengthen the powers of New York's prosecutors. But 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.

As always, there are powerful forces in Albany committed to maintaining that status quo. For this reason, we urge Senator Klein to introduce the bill and work to get it to the floor as soon as possible. We are confident that if everyone works in good faith, the differences among those who truly believe in comprehensive reform can be worked out. In the face of an opportunity to bring real and lasting change to Albany, those differences should not be an excuse to do nothing.

Reform is necessary to change the culture of Albany.

Reform will reduce candidates' dependence on big donors and give ordinary New Yorkers more influence.

Comprehensive campaign finance reform is necessary to reduce the importance of big money donors in our state's politics. New York's campaign contribution limits are the highest of any state that has limits and for most offices are many times higher than federal limits. The cost of running a campaign continues to rise, in part due to candidates' risk of being targeted by unlimited outside spending. This forces candidates to spend huge amounts of time fundraising, time they should spend talking to voters or the media — or for incumbents, governing.

This fundraising pressure gives candidates a powerful incentive to focus on the small number of donors who can afford to give the most. In 2012, legislative candidates raised 74 percent of their funds from donors of \$1,000 or more and interest groups; only 8 percent came from individuals who gave \$250 or less.¹ The disproportionate importance of moneyed interests to fundraising gives them an outsized influence over government. Policymakers must keep the donor class happy in order to be able to run for reelection.

¹ 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.

The mad chase for campaign cash can also give elected officials an incentive to look beyond the legal means of fundraising and consider other ways of acquiring money, like bribery, fraud, and extortion.

Comprehensive reform will change that. Reducing contribution limits for all candidates will narrow the gulf between what the average person can afford to contribute and the amount of the largest contributions. Improved disclosure, especially of bundlers and outside spending, will allow the voters to know which interests support a candidate, and therefore whom the candidate may be beholden to.²

Most importantly, a small donor matching system of public financing will give candidates a strong incentive to raise much of their money from ordinary New Yorkers, the people who will be their constituents if they are elected. Because public funds are dispersed in proportion to candidates' ability to engage in grassroots fundraising, the system will make candidates dependent on small donors rather than special interests. This will lift up the voices of ordinary New Yorkers, making government more responsive to them rather than the relatively tiny numbers of big donors who currently underwrite elections in the Empire State.

Small donor matching will reduce candidates' need to chase big donors to fund their campaigns, reducing the time they spend fundraising and freeing time to talk to constituents. And as the pressures to raise unlimited campaign cash decrease, so will the pressure on elected officials to seek illegal sources of money.

Reform has changed the culture in New York City and Connecticut.

New York City enacted a public financing matching system in response to a cancer of corruption that had spread through city government. Mayor Ed Koch's administration was slammed with a series of graft, bribery, and extortion scandals in the 1980s.³ Koch was not accused of corrupt behavior, but on his watch party bosses packed several city agencies with patronage appointments. This created a system in which 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 decade prior to the passage of public financing in 1988, four of the city's elected officials, including a borough president, were convicted of corruption charges, one was censured by the City Council and later convicted of tax crimes, and another borough president committed suicide as more and more evidence came to light implicating him in bribery and kickback schemes.

Since the enactment of public campaign financing, New York City has not seen another corruption crisis even remotely resembling that of the 1980s. The city's public funding system has succeeded in making elections more competitive, in allowing candidates to campaign more

² See *Buckley v. Valeo*, 424 U.S. 1, at 67 (1976). The Supreme Court recognized that the disclosure of information about political spending "allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office."

³ See generally JACK NEWFIELD & WAYNE BARRETT, *CITY FOR SALE* (1988).

than they fundraise, and in substantially increasing the number of people who donate to campaigns.⁴ The system has also dramatically increased the diversity of donors, greatly increasing the influence and voice of small donors who lack access to large sums of money.⁵

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.⁶ 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.⁷ The state desperately needs a well-funded, non-partisan 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." After the adoption of their public funding system, however, the number of federal public corruption convictions in Connecticut decreased drastically, to a small fraction of the numbers seen in the years immediately preceding reform.⁸ The four-year stretch since reforms were implemented has had the fewest convictions of any four consecutive years since federal officials started reporting this data. 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.⁹

⁴ 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>.

⁵ 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.

⁶ N.Y. CITY CAMPAIGN FINANCE BD., NEW YORKERS MAKE THEIR VOICES HEARD: A REPORT ON THE 2009 ELECTIONS, 73-76 (2010), http://www.nycfb.info/PDF/per/2009_PER/2009PostElectionReport.pdf.

⁷ 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>.

⁸ DEP'T OF JUSTICE PUBLIC INTEGRITY SECTION, REPORTS TO CONGRESS (1976 – 2011), <http://www.justice.gov/criminal/pin>.

⁹ 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.

Reform will restore public faith in government.

Albany's corruption problems are threatening to completely destroy the public trust in government. In the last 10 years, at least 18 state elected officials have been criminally charged with or convicted of corruption. The corruption has infected 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 or Co-Leaders, spanning almost two decades, 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. Eighty-seven percent of New Yorkers think that corruption is a somewhat serious or very serious problem.¹⁰ Cynicism has set in, and voters have come to expect corruption scandals: eight out of 10 said in late April that more legislators are likely to be arrested for corruption.¹¹ Only deep, fundamental reform will help restore the public trust. Public financing in combination with efficient, credible enforcement and other measures can revitalize faith in Albany by increasing ordinary New Yorkers' participation in elections due to the power of reform to encourage new candidates to run and new donors to give.

Reform will increase civic participation.

By instilling a sense of ownership of the system and connection to candidates, a small donor matching system of public financing will make voters feel that Albany belongs to them, rather than to the special interests. Lowering contribution limits will reduce New Yorkers' cynicism about the ability of wealthy individuals and companies to influence legislation with a single check in an eye-popping amount. And improved disclosure will bring the money that is used for influence and access into public view, allowing voters to decide whom they should trust.

Public financing will increase civic participation. New York State has one of the lowest rates of people contributing to political campaigns in the nation.¹² But matching funds will persuade regular people to give, knowing their \$50 becomes worth \$350 to the candidate they support.

¹⁰ Jon Campbell, *Poll: Voters Want More from Cuomo in Corruption Fight*, JOURNAL NEWS, Apr. 17, 2013, <http://www.lohud.com/article/20130417/NEWS/304170078/Poll-Voters-want-more-from-Cuomo-corruption-fight>.

¹¹ SIENA RESEARCH INST., SIENA COLLEGE POLL: 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.

¹² CAMPAIGN FINANCE INST., VERMONT AND RHODE ISLAND HAD THE HIGHEST PERCENTAGES OF ADULTS CONTRIBUTING IN 2010 AND 2006 STATE ELECTIONS; NEW YORK, UTAH, CALIFORNIA AND FLORIDA THE LOWEST (2012), http://www.cfinst.org/Press/PReleases/12-12-20/VT_and_RI_Had_the_Highest_Percentages_of_Adults_Contributing_in_2010_and_2006_State_Elections_NY_UT_CA_and_FL_the_Lowest.aspx.

New York City's multiple match has dramatically increased the number of small donors who give and the importance of small donors to candidates' fundraising.¹³

Anecdotal evidence from the New York City system indicates that people who have invested in a campaign are more likely to continue to actively support that campaign, for example by volunteering to phone bank.¹⁴ This may be driven by a version of the "sunk cost" effect, a powerful psychological force that drives people to continue to support an endeavor they have invested in.¹⁵

Furthermore, a public matching funds system will increase the diversity of donors as it brings more people into the class of political donors. New York City's system has encouraged new donors from low-income and minority communities. A recent study comparing city races under the matching funds system to New York State Assembly races found that small donations come from a much broader array of communities under the city system.¹⁶ For example, the predominantly African-American and low-income neighborhood of Bedford-Stuyvesant in Brooklyn is the source of 24 times more donors, and the heavily Latino communities in Upper Manhattan and the Bronx give 12 times more.¹⁷

Reform will give voters more choice.

By encouraging quality candidates to run even if they do not have access to big money donors, public financing will give voters more choice.¹⁸ Under a small donor matching system, candidates who are not part of a political machine can run meaningful campaigns by mobilizing grassroots support into the small donations needed to qualify for public matching funds. This can lead to a more diverse candidate pool and fewer uncontested elections.

Studies of public funding systems in Arizona, Maine, and Connecticut have shown that elections are more competitive.¹⁹ Public funding allows challengers to present themselves and their messages to the public, giving voters a choice. The existence of meaningful choices for voters is

¹³ Michael J. Malbin, Peter W. Brusoe & Brendan Glavin, *Small Donors, Big Democracy: New York City's Matching Funds as Model for the Nation and States*, 11 ELECTION L. J. 3 (2012).

¹⁴ See MIGALLY & LISS, *supra* note 4, at 18 (quoting City Councilmember Daniel Dromm explaining that his focus on small donors "contributed to the sense of inclusion that translated into other kinds of support").

¹⁵ See, e.g., Hal R. Arkes & Catherine Blumer, *The Psychology of Sunk Cost*, 35 ORGANIZATIONAL BEHAVIOR & HUMAN DECISION PROCESSES 124 (1985).

¹⁶ GENN ET AL., *supra* note 5, at 4.

¹⁷ *Id.*

¹⁸ COMM. FOR ECONOMIC DEVELOPMENT, PROMOTING SMALL DONOR DEMOCRACY: THE VALUE OF PUBLIC MATCHING PROGRAMS 6-8 (2013), <http://www.ced.org/pdf/Promoting-Small-Donor-Democracy.pdf> (describing the benefits of the New York City program for voter choice).

¹⁹ See, e.g., CHA & RAPOPORT, *supra* note 9, at 11; Neil Malhotra, *The Impact of Public Financing on Electoral Competition: Evidence from Arizona and Maine*, 8 ST. POLS. & POL'Y Q. 263, 263 (2008); Kenneth R. Mayer, Timothy Werner & Amanda Williams, *Do Public Funding Program Enhance Electoral Competition?*, in THE MARKETPLACE OF DEMOCRACY: ELECTORAL COMPETITION AND AMERICAN POLITICS 245 (Michael P. McDonald & John Samples eds., 2006).

important to a healthy democracy, and it counteracts the cynical belief that voters lack meaningful control over Albany.

Public campaign funding has been associated with an increase in the diversity of candidates and elected officials in New York City and Connecticut.²⁰ A trend toward elected officials being more representative of the population they serve is likely to make voters feel closer to their government and counteract distrust.

Reform will not happen unless the Senate votes on and passes a comprehensive bill.

New York needs fundamental campaign finance reform, which will necessarily affect many elements of the existing system. There are varying views on what the ideal balance of reforms is, on how best to improve this or that element of the system, and so on. These different visions must not become an obstacle to the passage of any reform measure. If every advocate insists that legislation conform to his or her own view of the best possible reform, then we all run the risk of getting nothing done. If reformers refuse to come together and negotiate, opponents of reform will be able to maintain the status quo without lifting a finger.

The Brennan Center takes a historical perspective. Public funding systems in New York City and other jurisdictions have been improved over time. When it was first enacted in 1988, New York City's system provided only a one-to-one match of the first \$1,000 of each contribution. Originally, the city did not reduce contribution limits for candidates who chose not to participate in the public funding system, leaving them free to accept six-figure checks — but candidates still participated in public financing in droves. Over the years, the matching ratio was increased to four-to-one, and then to six-to-one. The matchable contribution was lowered to \$250, and then to \$175. The system is now a far more powerful incentive for small donors than it used to be. And as the percentage of city council members who participated in the system increased, lower contribution limits and stronger disclosure requirements were eventually imposed on all candidates, whether they accept public funds or not.²¹ New York City's experience demonstrates how legislators who have experienced the benefits of a small donor matching system first hand can be expected to strengthen that system over time.

The federal presidential public financing system was also improved by amendments during the 1970s and '80s. The program was a consistent success for decades. Unfortunately, Congress — the members of which have never benefitted from public financing — has failed to amend it more recently to keep up with the skyrocketing costs of presidential campaigns, and the system has become moribund.

Even Connecticut's relatively new program, implemented in 2008, has been improved upon. In 2011, the legislature made a number of amendments, including increasing the frequency of disclosures and prohibiting anonymous contributions to nonparticipating candidates.²² Maine's law, passed by public referendum, has been strongly embraced by legislators, who have sought

²⁰ CHA & RAPOPORT, *supra* note 9, at 13; MIGALLY & LISS, *supra* note 4, at 21.

²¹ N. Y. CITY ADMIN. CODE § 3-719.

²² CONN. GEN. STAT. §§ 9-606(b), 9-712.

to enhance it.²³ Legislation amending the act has improved disclosure for candidates and outside spenders, strengthened rules about what public funds may be used for, and raised the bar for candidates to qualify.²⁴

The consistent experience in public funding jurisdictions has been that public financing is a beneficial change that proves immensely popular with candidates and the public. Elected officials who see the benefit of participation in the system will be motivated to strengthen it over time.

Reform that includes the key elements of: small donor matching, restrictions on contributions, improved disclosure, and effective enforcement will fundamentally change the way our leaders in Albany are chosen. It will make ordinary New Yorkers as important as the special interests seeking to influence policy. It will help to address both a critical cause of corruption — the chase for campaign cash — and a destructive effect of corruption — the people’s lack of faith in government.

When fundamental campaign finance reforms are in place, the mindset that seeks to protect the ability of big money to influence government will become less and less common. Future legislatures will be sensitive to the need for and benefits of campaign finance reform, creating the conditions that will allow the continuation of the effort that begins this year with the passage of strong reform.

The Brennan Center urges Senator Klein and the IDC to bring a comprehensive campaign finance reform bill to the floor for a vote.

²³ In each of the four election cycles from 2004 to 2010, around 80% of general election candidates participated in the Maine Clean Election Act program. MAINE COMM’N ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES, REPORT ON MAINE CLEAN ELECTION ACT A4 (2011), http://www.maine.gov/ethics/pdf/2011_report_on_MCEA_webversion.pdf.

²⁴ MAINE REV. STAT. tit. 21-A, §§ 1019-B, 1125(2-B), (3), (6-C).