

December 2, 2024

Chair Barbara Lifton
Vice-Chair Brian Kolb
New York State Public Campaign Finance Board
40 North Pearl Street, Suite 5
Albany, NY 12207-2729

Re: Public Comment on the Effect of Public Campaign Financing in New York State

Dear Chair Lifton, Vice-Chair Kolb, and members of the Public Campaign Finance Board:

On behalf of the Brennan Center for Justice at New York University School of Law,¹ we write to provide comment on the inaugural run of New York State's long-awaited small donor Public Campaign Finance Program. For nearly thirty years, the Brennan Center's nonpartisan expertise has informed policies that protect and expand democracy at the state, local, and federal levels, including public campaign financing programs and common-sense measures to bring greater transparency to election spending.

The Public Campaign Finance Program is the most powerful antidote to counter the outsized influence of private wealth in New York State politics. The program enables participating candidates to run competitive campaigns funded by small donations from their own constituents. At a time when federal elections are increasingly dominated by a tiny class of the very wealthiest donors, New York is leading the way to show that there is an alternative, one that prioritizes constituent-based, small-donor fundraising.²

Early Indicators of Success and Influence of the Public Campaign Finance Program

New York's historic program draws on many of the time-tested aspects of longstanding public financing programs while integrating innovative elements that respond to campaign realities in the era of super PACs. From our work on similar programs across the country, we believe that New York's program is the strongest model of reform enacted to date to give everyday residents more clout in politics. Its progressively tiered match for legislative campaign contributions, which provides the greatest match to the smallest donations, is an important tool for giving constituents of modest means a greater voice in

¹ The Brennan Center is a nonpartisan public policy and law institute that focuses on the fundamental issues of democracy and justice. This comment does not reflect views, if any, of the NYU School of Law.

² See, e.g., Theodore Schleifer and Susanne Craig, "Trump's Victory is a Major Win for Elon Musk and Big-Money Politics," *New York Times*, November 6, 2024, <https://www.nytimes.com/2024/11/06/us/elections/trump-musk-america-pac.html>; and Ryan Cooper, "This Was the Most Expensive Election in American History," *The American Prospect*, November 20, 2024, <https://prospect.org/power/2024-11-20-most-expensive-election-in-american-history/>.

elections.³ By matching in-district donations only, the program boosts the voices of local residents against outside spenders with specific agendas.⁴ At the same time, by allowing candidates to continue fundraising if their needs exceed the maximum public funds allotment, the program takes account of the practical realities that some candidates face in the era of unlimited outside spending in campaigns.

We are encouraged by the widespread enthusiasm for the program among voters and candidates alike. A majority of New York voters across demographics including race, age, and political party have expressed support for the state's program.⁵ By this February's registration deadline, more than three hundred candidates for state senate and assembly from across the political spectrum opted in, far outpacing participation rates in many other programs in their first run.⁶ Indeed, a majority of the candidates who ran in the 2024 legislative elections signed up for the program. These campaigns include both incumbents and newcomers hailing from more than three-quarters of legislative districts in rural, urban, and suburban communities across the state.⁷

Of these campaigns, the Public Campaign Finance Board ("PCFB") ultimately issued matching funds to one hundred and sixty-one candidates.⁸ This figure highlights the program's effective cost-control limits: candidates only received payments after meeting criteria including demonstrating a viable base of support via minimum fundraising thresholds and establishing that their races were competitive, as defined in program rules. Throughout this year's legislative elections, those candidates credited the program with their ability to run constituent-powered, competitive campaigns,⁹ avoid special interest donations,¹⁰ and inspire first-time donors to contribute to their campaigns.¹¹

³ Ian Vandewalker, Brendan Glavin, and Michael Malbin, *Analysis Shows Amplification of Small Donors Under New NY State Public Financing Program*, Brennan Center for Justice and OpenSecrets, January 30, 2023, <https://www.brennancenter.org/our-work/research-reports/analysis-shows-amplification-small-donors-under-new-ny-state-public>.

⁴ Nirali Vyas, Chisun Lee, and Joanna Zdanys, *The Constituent-Engagement Effect of Small Donor Public Financing: A Statistical Comparison of City Council (2017) and State Assembly (2018) Fundraising in New York City*, Brennan Center for Justice, September 9, 2019, 1, 7, <https://www.brennancenter.org/our-work/research-reports/constituent-engagement-effect-small-donor-public-financing-statistical>.

⁵ Tenneth Fairclough II and Isa Alomran, "New York Voters Support New Public Campaign Finance Program," Data for Progress, February 28, 2024, <https://www.dataforprogress.org/blog/2023/2/28/new-york-voters-support-new-public-campaign-finance-program>.

⁶ David Moore, "Public Campaign Financing is Already Changing New York Elections," *Sludge*, November 1, 2024, <https://readsludge.com/2024/11/02/public-campaign-financing-is-already-changing-new-york-elections/>; Fair Elections for New York, "More Than 300 Candidates Register for New York's Public Campaign Finance Program for 2024," February 27, 2024, <https://www.fairelectionsny.org/candidates-registered-2024/>.

⁷ New York State Public Campaign Finance Board, "List of Filers," last accessed November 27, 2024, <https://publicreporting.elections.ny.gov/ActiveDeactiveFiler/ActiveDeactiveFiler>.

⁸ *Id.*

⁹ "Michele Frazier meets threshold for public financing," *River Reporter*, March 20, 2024, <https://www.riverreporter.com/stories/michele-frazier-meets-threshold-for-public-financing,140245>

¹⁰ Amira McKee and Manuela Silva, "Candidates make final push in competitive District 69 State Assembly race," *Columbia Spectator*, June 25, 2024, <https://www.columbiaspectator.com/city-news/2024/06/25/candidates-make-final-push-in-competitive-district-69-state-assembly-race/>.

¹¹ Austin C. Jefferson, "First-time state Senate candidate raises over half a million dollars," *City & State New York*, June 17, 2024, <https://www.cityandstateny.com/politics/2024/06/first-time-state-senate-candidate-raises-over-half-million-dollars/397418/>.

Although the final data from the post-general disclosure reports is not yet available, fundraising totals from the primary indicate that the program is on pace to live up to its promise of a government more accountable to all New York voters, “regardless of wealth or position.”¹² Available data shows that the majority of publicly financed candidates’ fundraising in the primary came from small-dollar donations and matching funds.¹³ We also estimate that publicly financed participants raised proportionally more small money from individual donors than did their non-publicly financed counterparts.¹⁴ And, of course, any matching funds these participants received originated from in-district donations, underscoring the important constituent-engagement benefits of the program. These early findings demonstrate how the program has rewarded candidates who run strong, grassroots-focused campaigns rooted in their own communities, liberating them from dependence on the very wealthiest donors.¹⁵ The 27-day post-general report will provide the requisite data to confirm just how much small-donor, in-district constituents have increased their share of contributions in the 2024 elections.

Recommendations for Future Election Cycles

State law requires the PCFB to review and evaluate the impact of the program on election campaigns in New York State, including recommendations for legislative updates.¹⁶ At this juncture, we recommend certain refinements to the program to improve upon the benefits we’ve seen thus far for future statewide and legislative elections. Final data from this year’s general election will provide a strong basis for any additional recommendations for the PCFB to consider and include in its final report to the Legislature.

First, the program should permit a more practical date for the earliest disbursement of matching funds. Under current law, participating candidates cannot receive matching funds any earlier than thirty days after the deadline to file designating petitions or certificates of nomination.¹⁷ Moving payments to 150 days before the primary election will better align with the political calendar and the intent of the public financing law to meaningfully assist candidates of all backgrounds in running their campaigns. New York City amended its program in 2018 to follow this approach and enable candidates to have the funds they need to rely on small-donor constituents during the resource-intensive petitioning process.¹⁸ We note that this change would also require modest amendments to the program’s qualification criteria.

¹² N.Y. Elec. Law § 14-200.

¹³ Data on file with the Brennan Center for Justice.

¹⁴ *Id.*

¹⁵ The 200 largest donors to state candidates outgave all 206,000 small donors in the 2022 legislative elections. Vandewalker, Glavin, and Malbin, *Analysis Shows Amplification of Small Donors Under New NY State Public Financing Program*.

¹⁶ N.Y. Elec. Law § 14-210.

¹⁷ *Id.* § 92-t(6).

¹⁸ See New York City Charter Revision Commission, “Final Report of the 2018 New York City Charter Revision Commission,” September 6, 2018, 27-28, <https://www.nyc.gov/assets/charter/downloads/pdf/final-report-20180904.pdf>; and New York City Campaign Finance Board, “Statements on Passage of Charter Revision Proposal 1 and Election Day 2018,” November 8, 2018, <https://www.nyccfb.info/media/press-releases/statements-on-passage-of-charter-revision-proposal-1-and-election-day-2018/>.

Second, the PCFB’s deadline to submit a post-election report to the Legislature should be moved later to align with the realities of the political calendar. Currently, the PCFB must submit this report by January 1 in the year after an election, which is just four weeks of receiving campaigns’ post-election reports.¹⁹ We advise providing the PCFB an additional four weeks to complete this report, to enable the agency to assess post-election data, make sound legislative and regulatory recommendations with the benefit of experience from the prior cycle, and allow experts and the public adequate time to provide advice, while still providing the Legislature ample time within the session calendar to consider any advisable modifications.

Third, the PCFB should employ a voluntary self-reported demographics form for candidates who opt into and participate in the program. Public financing increases opportunities for candidates who historically have faced barriers in private wealth-based politics, including women, people of color, members of the LGBTQ+ community, and low-income Americans.²⁰ In programs across the country, from New York City to Albuquerque to Washington, D.C., public financing has helped voters elect more representative governments.²¹ With voluntary self-reported information, the PCFB can better understand and evaluate how the program increases political participation in New York State.

Fourth, the PCFB should continue to evaluate its rules to maintain the program’s integrity. Recent investigations into alleged fraud on the program are serious, and the Brennan Center commends the PCFB for promptly tightening important oversight controls, including closing a loophole the Board identified ahead of this year’s general election.²² The new regulation – which requires candidates to submit a contributor’s phone number or email alongside a physical address for each claim – makes it harder for candidates to submit fraudulent claims for matching funds and aids the PCFB in responsibly administering payments. Additionally, the PCFB’s program handbook makes plain that campaigns may

¹⁹ This year’s 27-day Post-General Report is due on December 2, 2024. Public Campaign Finance Board, “2024 Public Campaign Finance Program Calendar,” revised October 24, 2024, https://pcfb.ny.gov/system/files/documents/2024/10/pcfb-program-calendar-revision-accessible_1_0_0.pdf.

²⁰ Mariana Paez and Ian Vandewalker, “Small Donor Public Financing Explained,” Brennan Center for Justice, June 29, 2023, <https://www.brennancenter.org/our-work/research-reports/small-donor-public-financing-explained>; see also Marina Pino and Julia Fishman, “Small Donor Public Financing Can Help More Women Get Elected,” *Ms. Magazine*, April 25, 2024, <https://msmagazine.com/2024/04/25/small-donor-donations-public-financing-women-politics/>.

²¹ See Gregory Clark, Hazel Millard, and Mariana Paez, *Small Donor Public Financing Plays Role in Electing Most Diverse New York City Council*, Brennan Center for Justice, 2021, <https://www.brennancenter.org/our-work/research-reports/small-donor-public-financing-plays-role-electing-most-diverse-new-york>; Austin Fisher, “A dozen candidates in N.M. running on small donations and public funds,” *Source NM*, October 23, 2023; <https://sourcenm.com/2023/10/23/a-dozen-candidates-in-n-m-running-on-small-donations-and-public-funds/>; and Catherine Hinckley Kelley, Austin Graham, and Aseem Mulji, *Democratizing The District: D.C.’s Fair Elections Program in 2020*, Campaign Legal Center, https://campaignlegal.org/sites/default/files/2021-10/CLC_DemocratizingTheDistrict%20%281%29.pdf.

²² 9 NYCRR § 6221.16(c); see also Jay Root, Bianca Pallaro, and William K. Rashbaum, “F.B.I. Agents Investigate Use of Fake Donors in N.Y. Assembly Race,” *New York Times*, updated November 24, 2024, <https://www.nytimes.com/2024/11/23/nyregion/dao-yin-investigation-donors.html>.

not accept contributions made in another person’s name.²³ This explicit warning is another important step to deter fraud in the program, and one that we have recommended the New York City Campaign Finance Board similarly adopt in light of recent allegations of straw donor activity in its program.²⁴ We encourage you to remain vigilant in continuing to refine strong program safeguards that are also balanced and proportional – ones that do not deter participation by under-resourced campaigns or impede due process.

Finally, the PCFB should adopt modifications to the Public Reporting System and Electronic Filing System (EFS). Accessible data is essential for analyzing campaign finance trends and assessing the program’s efficacy. The PCFB should therefore make the reporting system more easily navigable, including enhancements to (1) indicate whether a contribution is both in-district and matchable; (2) provide more information on the office, such as the specific office and district as applicable; and (3) standardize candidates’ names across different committees.²⁵ Further, a more user-friendly online platform for candidates can help ensure that campaigns are able to better access the program and comply with its rules in future cycles. A strengthened platform can help campaigns ensure compliance, provide notice of potential violations, and save the PCFB time and resources for other crucial components of its work. We support adequate budget appropriations to implement the necessary technological advancements, including those set forth in our recommendations to the PCFB in October 2024, in FY 2026 and beyond.

The Brennan Center commends the PCFB for a strong rollout of the Public Campaign Finance Program to date. We stand ready to assist in your continued work to deliver the strongest possible program for participating candidates and New York voters.

Respectfully submitted,

BRENNAN CENTER FOR JUSTICE

AT NYU SCHOOL OF LAW

Joanna Zdanys, Deputy Director, Elections & Government

Marina Pino, Counsel, Elections & Government

120 Broadway, Suite 1750

New York, NY 10271

²³ New York State Public Campaign Finance Board, “New York State Public Campaign Finance Handbook,” 29, December 1, 2023, <https://pcfb.ny.gov/system/files/documents/2023/12/pcfb-handbook-final-accessible-andsecured-12012023.pdf>.

²⁴ Joanna Zdanys and Marina Pino, “Supplemental Testimony before the New York City Campaign Finance Board,” Brennan Center for Justice, October 25, 2024, <https://www.brennancenter.org/our-work/research-reports/supplemental-testimony-new-york-city-campaign-finance-board>.

²⁵ The Brennan Center submitted a comprehensive list of recommendations for the Public Reporting application redesign and the Electronic Filing System user experience on October 10, 2024.