

**Written Testimony of Marina Pino
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**Before the New York City Council Committee on Governmental Operations
RE: New York City's Campaign Finance Program in the 2021 Citywide Elections &
Preconsidered Legislation**

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The Brennan Center for Justice at New York University School of Law welcomes the opportunity to testify before the New York City Council Committee on Governmental Operations on the success of New York City's small donor public financing program and the importance of reasonable disclosure requirements in ballot contests. For more than twenty-five 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.²

The Success and Influence of the New York City Matching Program

For more than 30 years, New York City's public financing program has served as a necessary counterweight to the power of wealth to influence our government. The program has helped bring more candidates and donors from different backgrounds into the political process and has given candidates the flexibility to spend more time interacting with their constituents, particularly those from under-served communities.³

¹ The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice and for more than 25 years has studied, litigated, and drafted legislative solutions regarding money in politics, voting, and election administration. The opinions expressed in this testimony are only those of the Brennan Center and do not necessarily reflect the opinions of the NYU School of Law.

² See, e.g., 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>; Michael Malbin, et al., *Donor Diversity Through Public Matching Funds*, Brennan Center for Justice & Campaign Finance Institute, 2012, <https://www.brennancenter.org/our-work/research-reports/donor-diversity-through-public-matching-funds>; Angela Migally, Susan Liss, and Frederick A.O. Schwartz, Jr., *Small Donor Matching Funds: The NYC Election Experience*, Brennan Center for Justice, 2010, <https://www.brennancenter.org/our-work/research-reports/small-donor-matching-funds-nyc-election-experience>.

³ See, e.g., Clark, Millard, and Paez, *Small Donor Public Financing Plays Role in Electing Most Diverse New York City Council*; Michael J. Malbin, Peter W. Brusoe, and Brendan Glavin,

Enthusiasm for public financing in the 2021 elections was stronger than ever, with robust participation in the program among candidates and donors alike. After New Yorkers voted overwhelmingly to increase the public match ratio to \$8-to-1 in 2018, the program saw record-breaking participation in 2021. Almost 94 percent of candidates in the primary and 81 percent of candidates in the general participated in the program, representing an increase in participation over the primary and general elections in 2013 and 2017.⁴ In total, the program paid \$126.9 million in public funds to 308 candidates, matching nearly \$18.3 million in contributions from New Yorkers.⁵

Among many benefits of the newly strengthened program, it has helped make the city's government more reflective of the people it serves. Powered by public financing, in 2021, the city elected the most demographically representative council in history.⁶ Women, who are 52 percent of city residents, increased their representation on the council to 61 percent. People of color, who are 68 percent of city residents, increased their representation on the council to 67 percent.⁷

New York City's system also fosters stronger ties between candidates and their communities. This benefit is especially important at a time when megadonors across the country leverage unfettered private wealth to shape our politics.⁸ New York City continues to buck that trend. As the New York City CFB reported, in the 2021 cycle small-dollar contributions were by far the most important source of candidate fundraising.⁹ The city saw the highest rate of small-dollar individual contributions over the last three cycles, with 84.6 percent in the primary and 79 percent in the general.¹⁰ Most individual contributions came from New York City residents.¹¹

With its continued success in fighting back against the influence of unfettered wealth in our politics, New York City's public financing program has served as a powerful model for reform across the nation. Over the last decade, states and cities across the country have implemented small donor match programs modeled after New York City's. In Denver, which is in the midst of its first cycle of public financing, more than two-thirds of mayoral candidates and 90 percent of at-large council candidates are participating in the city's recently enacted program ahead of next year's elections.¹² And in the first cycle of Washington, DC's program in 2020, participating candidates

Small Donors, Big Democracy: New York City's Matching Funds as Model for the Nation and States, 11 ELECTION L.J. 3 (2012).

⁴ New York City Campaign Finance Board, *2021 Post-Election Report*, 2022, 16, http://www.nycfb.info/PDF/2021_Post-Election_Report.pdf.

⁵ *Id.* at 9.

⁶ Clark, Millard, and Paez, *Small Donor Public Financing Plays Role in Electing Most Diverse New York City Council*.

⁷ *Id.*

⁸ *Id.*

⁹ New York City Campaign Finance Board, *2021 Post-Election Report*, 13.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 3.

¹² Sandra Fish, "More than 70 candidates are running for Denver mayor or City Council. Here's what to watch in the 2023 election," *The Colorado Sun*, December 7, 2022, <https://coloradosun.com/2022/12/07/what-to-watch-as-denvers-2023-municipal-election-kicks-into-high-gear/>.

tended to outraise and outspend their privately financed counterparts.¹³ Other programs will soon launch in Baltimore County¹⁴ and Prince George’s County in Maryland.¹⁵

Perhaps the most groundbreaking example of this program’s influence, however, was the launch of New York State’s new statewide public financing program last month. Just two weeks ago, elected leaders, agency officials, and democracy reform advocates celebrated the launch of New York State’s public campaign finance program on the steps of City Hall. New York City’s program paved the way for this historic moment. The state’s program draws on many of the tried-and-true aspects of city’s program and stands to be the strongest statewide program in the nation—one with the promise to empower more New Yorkers and meaningfully bring their voices into the political process. The Brennan Center looks forward to seeing the reform’s benefits unfold in future statewide and legislative elections.

Improving Campaign Transparency

Just as the city’s small donor public financing program empowers New Yorkers to take a more meaningful role in financing campaigns, common-sense campaign finance transparency requirements empower voters to make better-informed choices at the ballot box. The Brennan Center applauds the City Council for considering legislation to increase transparency in municipal ballot campaign spending.

The bill before this Committee addresses an important gap in the city’s otherwise robust campaign disclosure law by applying existing donor disclosure and "paid for by" disclaimer rules for candidate elections to municipal ballot contests.¹⁶ It sensibly brings light to dark money spending in these contests while still capturing only the largest spenders seeking to sway voters. This is an important step. Secret spending in state and local elections, even at relatively modest levels, can have an outsized impact. Across the country, there are numerous examples of economically motivated special interests spending considerable sums to influence voters in ballot races, often taking advantage of gaps in disclosure rules to hide their spending from public scrutiny.¹⁷ Some of this spending may even come from foreign governments and corporations, who are barred from

¹³ Hazel Millard & Mariana Paez, *How Public Campaign Financing Empowers Small Donors Nationwide*, Brennan Center for Justice, 2022, <https://www.brennancenter.org/our-work/analysis-opinion/how-public-campaign-financing-empowers-small-donors-nationwide>.

¹⁴ Bennett Leckrone, “Baltimore County Officials Announce Plan for Tiered Public Campaign Financing System,” *Maryland Matters*, November 15, 2021, <https://www.marylandmatters.org/2021/11/15/baltimore-county-officials-announce-plan-for-tiered-public-campaign-financing-system/>.

¹⁵ Rachel Chason, “Prince George’s approves matching funds for local candidates—starting in 20216,” *Washington Post*, October 24, 2018, https://www.washingtonpost.com/local/md-politics/prince-georges-approves-public-finance-system-for-local-candidates/2018/10/24/47f7b75a-d738-11e8-a10f-b51546b10756_story.html.

¹⁶ Under current law, an entity that makes an independent expenditure of \$5,000 or more with respect to a *candidate* must report specific information concerning its funding sources to the Campaign Finance Board. New York City Charter § 1052(a)(15)(b).

¹⁷ Chisun Lee & Douglas Keith, *Secret Spending in the States*, Brennan Center for Justice, 2016, 14, <https://www.brennancenter.org/our-work/research-reports/secret-spending-states>.

spending money on candidate elections but permitted to spend money to influence voters in ballot contests.¹⁸

Accordingly, we support common-sense legislation to require individuals and entities spending significant amounts on ballot measure campaigns to disclose the sources of their spending.¹⁹ Such disclosure laws foster a more informed electorate, which promotes the vital First Amendment value of an enlightened self-government. A growing body of social science research demonstrates that when voters know the interests spending large amounts to influence their votes, they can make more informed choices that align with their policy preferences. This is especially important for ballot initiatives, where voters may lack a comprehensive understanding of a measure's contemplated policy benefits and are also deprived of common informational cues that help them select candidates (like the candidate's background and party affiliation).²⁰

To strengthen this bill further, we respectfully urge this body to consider an amendment to the bill. As drafted, the bill eliminates the phrase "in any covered election" from the city's existing independent expenditure disclosure regime in section 1052(a)(15)(b) of the City Charter. We recommend retaining that phrase to ensure that the scope of the law's application is clear.

The Brennan Center commends the City Council for taking up this important issue and stands ready to assist the Council in its work to build a more inclusive and informed democracy for all New Yorkers.

¹⁸ See, e.g., Ryan Byrne, "Signatures verified for Maine ballot initiative designed to void international hydroelectric transmission project," *Ballotpedia News*, March 6, 2020, <https://news.ballotpedia.org/2020/03/06/signatures-verified-for-maine-ballot-initiative-designed-to-void-international-hydroelectric-transmission-project/>; Steve Mistler, "Documents Shed Light On Effort To Fund Casino Campaign, Now Facing \$4M Fine for Ethics Violations," *Maine Public Radio*, November 3, 2017, <https://www.mainepublic.org/politics/2017-11-03/documents-shed-light-on-effort-to-fund-casino-campaign-now-facing-4m-fine-for-ethics-violations>; Shawn Musgrave, "Offshore money pours into slot machine initiative in Massachusetts," *GBH News*, November 13, 2015, <https://www.wgbh.org/news/2016/11/03/offshore-money-pours-into-slot-machine-initiative-in-massachusetts>.

¹⁹ See, e.g., *Rio Grande Found. v. City of Santa Fe, et al.*, Brennan Center for Justice, 2018, <https://www.brennancenter.org/our-work/court-cases/rio-grande-foundation-v-city-santa-fe-et-al>.

²⁰ See, e.g., Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Finance Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295, 298 (2015) (noting that knowledge of who is spending money to influence a contest is a "particularly credible" informational cue to help voters make reasoned choices consistent with their policy preferences); Cheryl Boudreau, *Making Citizens Smart: When do Institutions Improve Unsophisticated Citizens' Decisions?* 31 POL. BEHAV. 287, 292-94, 303 (2009) (finding that voters learning a speaker's interest were contrary to their own helped subjects make choices aligned with their own interests under some circumstances); Elizabeth R. Gerber & Arthur Lupia, *Campaign Competition and Policy Responsiveness in Direct Legislation Elections*, 17:3 POL. BEHAV. 287, 290 (Sept. 1995) ("[H]ow campaign statements affect a voter's beliefs depends on her assessment of the campaigner's incentive to tell the truth.").