

**Testimony of Joanna Zdanys
Senior Counsel-Manager, Elections and Government Program
Brennan Center for Justice at NYU School of Law¹**

**Before the New York City Council
Committee on Governmental Operations, State & Federal Legislation
RE: Oversight: NYC Campaign Finance Board and Laws
June 14, 2024**

The Brennan Center for Justice appreciates the opportunity to provide testimony on three bills² concerning oversight at the New York City Campaign Finance Board (CFB). 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. Since the Center’s inception, our staff have studied, litigated, and drafted legislative solutions regarding money in politics and have advised on the development, implementation, and improvement of public campaign financing systems nationwide.

The Democracy-Strengthening Benefits of New York City’s Matching Funds Program

Since 1988, New York City’s small donor matching funds program has provided an important counterweight to the outsized influence of wealth in our government. The voluntary program has helped to bring more New Yorkers into the political process as candidates and donors. And, it has given campaigns, especially those in historically under-served communities, greater flexibility to spend more time engaging with their constituents.³

Among its many documented benefits, the program has played an important role in promoting a city government that is representative of the people it serves. After a wide margin of city voters approved increasing the program’s public match ratio to 8-to-1 in 2018, the program saw record-breaking participation and helped usher in the most diverse and representative City Council in New York City’s

¹ The Brennan Center is a nonpartisan public policy and law institute that focuses on the fundamental issues of democracy and justice. 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 New York City Council, *Int. No. 0952-2024*, Sess. 2024 – 2025 (2024); New York City Council, *Int. No. 0953-2024*, Sess. 2024 – 2025 (2024); New York City Council, *Int. No. 0954-2024*, Sess. 2024 – 2025 (2024).

³ 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*, November 5, 2021, <https://www.brennancenter.org/our-work/research-reports/small-donor-public-financing-plays-role-electing-most-diverse-new-york>.

history.⁴ Women, who are 52 percent of city residents, increased their representation on the council to 61 percent.⁵ People of color, who are 69 percent of city residents, increased their representation on the council to 67 percent.⁶ These gains remained consistent following the 2023 City Council elections.⁷

The program has also broadened donor participation and strengthened the ties between candidates and the communities that they seek to represent. Data show that publicly financed City Council candidates rely far more on in-district donors, including small donors, for campaign support than their privately financed counterparts in the City Council and State Assembly running to represent the same neighborhoods.⁸ And, the program has made small donors the most important source of campaign fundraising in city elections.⁹ In 2021, 84.6 percent of all primary contributions and 79 percent of general election contributions came from small donors.¹⁰

With its continued track record of success in pushing back against the unfettered influence of wealth in elections, the program has been an influential model for reform across the country. It laid the groundwork for New York State's historic new matching funds program, the most significant statewide response to *Citizens United* enacted anywhere in the country.¹¹ And new city and county matching funds programs have proliferated over the last decade, from Denver, Colorado, to Washington, D.C. and its surrounding counties, and most recently Evanston, Illinois.¹²

Comments on Legislation Before the Council

Allegations of abuse of the matching funds program are deeply serious. If proved, they are an affront to

⁴ Clark, Millard, and Paez, "Small Donor Public Financing Plays Role in Electing Most Diverse New York City Council."

⁵ Clark, Millard, and Paez, "Small Donor Public Financing Plays Role in Electing Most Diverse New York City Council."; U.S. Census Bureau, "Quick Facts: New York, New York," *U.S. Census Bureau*, accessed June 7, 2024, <https://www.census.gov/quickfacts/fact/table/newyorkcitynewyork#>.

⁶ Clark, Millard, and Paez, "Small Donor Public Financing Plays Role in Electing Most Diverse New York City Council."; U.S. Census Bureau, "Quick Facts: New York, New York."

⁷ Analysis on file with the Brennan Center for Justice.

⁸ 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, <https://www.brennancenter.org/our-work/research-reports/constituent-engagement-effect-small-donor-public-financing-statistical>.

⁹ New York City Campaign Finance Board, *2021 Post-Election Report*, 2022, 13, https://www.nycfb.info/PDF/2021_Post-Election_Report.pdf.

¹⁰ New York City Campaign Finance Board, *2021 Post-Election Report*, 14. These data are the most recent available.

¹¹ New York State Public Campaign Finance Board, "New York State Public Campaign Finance Program," *New York State Public Campaign Finance Board*, accessed June 12, 2024, [pcfb.ny.gov](https://www.pcfb.ny.gov); 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>.

¹² Lily Ogburn, "Small Donor Match Fund Aims to Level Election Playing Field," *The Daily Northwestern*, October 3, 2023, <https://dailynorthwestern.com/2023/10/03/city/small-donor-match-fund-aims-to-level-election-playing-field/>; Brennan Center for Justice, *Guide to Public Financing Programs Nationwide*, last updated June 10, 2024, <https://www.brennancenter.org/our-work/research-reports/guide-public-financing-programs-nationwide>.

the millions of voters the system was intended to serve. We commend the City Council for assessing these concerns. As you consider these three proposals, we urge you to study both their utility in safeguarding public funds from misuse and their potential unintended impacts on political equity and participation.

Int. No. 0952-2024: Verified Contributions

Int. 0952-2024 defines a new category of “verification-required contributions”: contributions aggregating over \$50 from a single contributor that are either (1) delivered or solicited by an intermediary or (2) that require a contribution card under city law.¹³ The bill requires the CFB to make “reasonable efforts” to verify these contributors and states that the CFB “shall not” provide matching funds until it has verified the relevant contributor or intermediary. A campaign that fails to respond to the CFB’s inquiries within 30 days will be disqualified from receiving public matching funds, and the agency must publicize the campaign’s disqualification on its website.

While the considerations that motivated this bill are serious, we are concerned about the potential impact of significant new requirements on lesser-resourced campaigns and community-based donors, and the unintended weakening of the program’s ability to promote equity in our political system. The Brennan Center respectfully opposes this bill unless or until its sponsors are able to demonstrate that such impacts are not a concern.

The bill risks imposing a disproportionate compliance burden on campaigns and donors in lower-income districts and communities of color. Nearly 306,000 New York City households – 9.4 percent of the city’s population – are unbanked.¹⁴ These households are concentrated in neighborhoods that are predominantly Black and/or Latino and that have the highest poverty rates and the lowest median household incomes.¹⁵ Donors who are unbanked tend to rely on cash or money orders to donate to campaigns, the same vehicles that require contribution cards and that therefore would require agency verification under this bill.¹⁶

¹³ City law requires contribution cards for cash contributions and, with some exceptions, money orders. New York City Campaign Finance Board, *Campaign Finance Handbook: 2023 and 2025 Election Cycle*, 2022, 22, https://nyccfb.info/PDF/candidate_services/2025_Campaign_Finance_Handbook.pdf.

¹⁴ That rate is nearly double in the Bronx, at 17.2 percent. New York City Department of Consumer and Worker Protection, “Department of Consumer and Worker Protection Research Finds 305,700 NYC Households are Unbanked,” *New York City Department of Consumer and Worker Protection*, February 2, 2024, <https://www.nyc.gov/site/dca/news/008-24/departement-consumer-worker-protection-research-finds-305-700-nyc-households-unbanked>.

¹⁵ New York City Department of Consumer and Worker Protection, “Department of Consumer and Worker Protection Research Finds 305,700 NYC Households are Unbanked.”

¹⁶ A 2023 study by the Federal Reserve showed that unbanked adults used money orders at 2.5 times the rate of banked adults, and that reliance on money orders is more common among lower-income adults, Black and Hispanic adults, and adults with disabilities. Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2022*, May 2023, 40, <https://www.federalreserve.gov/publications/2023-economic-well-being-of-us-households-in-2022-banking-credit.htm>.

Several negative unintended consequences could follow. The bill could disincentivize campaigns from accepting cash and money order donations, to avoid potential compliance challenges. Doing so could exclude many historically under-represented New Yorkers from having their voices heard in the political process. It may instead incentivize candidates to fundraise outside of their districts among wealthier and whiter enclaves in the city. The bill also risks placing the greatest compliance and enforcement burdens – including disqualification – on lower-income candidates and candidates of color running to represent their neighbors in city government.

If the Council moves forward with this legislation, we offer several recommendations:

- *Ensure adequate due process.* Candidates participating in public financing should not be able to ignore agency inquiries without consequence. But they must be afforded meaningful and adequate due process. The Council should further assess how this bill's requirements and penalties would be implemented and regulated, to ensure that meeting the important goal of protecting the public and voters from potential fraud does not undermine the important equity-promoting benefits of the program. The Brennan Center stands ready to support this effort to the extent the Council might find it helpful.
- *Raise the verification threshold.* The legislation wisely sets a minimum threshold for triggering donor verification requirements. We recommend raising the threshold from \$50 to \$100. Doing so will help lessen the bill's burden on truly small donors and the candidates running to represent them. It will also put less strain on agency resources.

This approach would exempt cash contributions from mandatory verification, because campaigns cannot receive cash contributions over \$100. But another bill before the Council, Int. No. 0945-2024, which we discuss below, addresses concerns about the origin of cash contributions.

Int. No. 0953-2024: "Doing Business" Intermediary Limits

Int. No. 0953-2024 would limit the total contributions that individuals doing business with the city can intermediate. The proposed new intermediary limits are identical to existing limits for direct contributions from individuals in the city's Doing Business Database: \$400 per cycle for citywide offices, \$320 per cycle for Borough President, and \$250 per cycle for City Council.¹⁷ Currently, there are no limits on how much money an individual doing business with the city can deliver as an intermediary, though the underlying contributions cannot be matched with public funds.¹⁸

The legislation's goals are laudable and its imposition of a limit, rather than an outright ban, on intermediated contributions is reasonable. We respectfully recommend modestly raising these intermediary limits, however, given the different nature of bundling versus giving direct contributions. While we agree that bundled contributions from these individuals should be limited, we note that limits set too low may incentivize some "doing business" intermediaries to seek influence through less

¹⁷ New York City Campaign Finance Board, "Doing Business FAQs," accessed June 12, 2024, <https://www.nyccfb.info/candidate-services/doing-business-faqs/>.

¹⁸ New York City Campaign Finance Board, "Doing Business FAQs."

transparent channels that, under the current Supreme Court, are constitutionally protected from limits on what they can receive and spend.

Int. 0954-2024: Donor Outreach

Int. 0954-2024 requires the CFB to mail an acknowledgement to all contributors listed in campaigns' disclosure reports to afford them the opportunity to dispute a contribution or raise any inaccuracies. The Brennan Center supports the aim of this legislation. We note that enacting this requirement will create new demands on the CFB's administrative resources. If enacted, the city's budget should include additional funding for the agency to ensure that these required communications do not siphon resources away from other oversight needs.

The Brennan Center stands ready to assist the City Council in its work to further strengthen this program and build a more inclusive democracy for all New Yorkers.