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Submitted to the Council of the District of Columbia

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Re: B22-0192, The Fair Elections Act of 2017

The Brennan Center for Justice at NYU School of Law appreciates the opportunity to testify in support of the Fair Elections Act of 2017 before the Council today. The bill's small-donor matching system has the power to strengthen democracy in the District of Columbia.

Below, we explain why the Fair Elections Act will enable participating candidates to fund successful campaigns with a focus on grassroots support from ordinary constituents, freeing elected officials from the need to raise big checks that might be seen as giving the wealthy undue influence. The bill will aid the representativeness of the Council by reducing barriers to candidates with broad support in the community. And it will encourage widespread participation in politics by residents of the District, especially among low-income and racial-minority communities.

Experience in New York City and other jurisdictions across the nation shows that public financing can fundamentally change the nature of democracy by acting as a counterweight to the power of wealth to influence government. The successes of New York City's program have been widely recognized,¹ and other large cities, like Los Angeles and San Francisco, have their own programs. Most recently, Montgomery County, Maryland, implemented a multiple match program, and similar legislation is moving in neighboring Howard County.²

¹ See, e.g., Michael J. Malbin et al., *Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States*, 11 ELECTION L.J. 3 (2012), http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf.

² See Phil Andrews, "Montgomery County candidates test public financing," BALTIMORE SUN, June 4, 2017, <http://www.baltimoresun.com/news/opinion/oped/bs-ed-montgomery-financing-20170604-story.html>.

By making regular people an important part of funding campaigns, the Fair Elections Act will bring more citizens, especially those from traditionally disenfranchised communities, into politics and amplify the people's control over their government.

Empowering ordinary citizens

The Fair Elections Act has the power to strengthen the democratic connection between elected officials in the District and the communities they represent. We are confident in predicting the benefits of the bill because of its similarities to the small donor matching system used in New York City for years. New York City uses a 6:1 match ratio on all contributions of \$175 or less, so a \$100 donation from a constituent is matched by \$600 from the city. The vast majority of candidates in New York City elections participate in the system,³ which is important for any program hoping to fundamentally change the nature of campaigns and democracy.⁴

New York's program has helped candidates rely on small contributions and public money: In 2013, the median contribution size for participating city council incumbents was \$100, while the median for participating challengers was \$50.⁵ In 2009 and 2013, participating candidates took in more than 60 percent of their funds from small donors and the public match.⁶ This is all the more remarkable in a system where council candidates can accept contributions of up to \$2,750, and candidates who did not participate in the public financing system raised most of their money from donors of \$1,000 or more.⁷ Public financing in New York has drastically reduced candidates' reliance on big checks and special interest donors.

Last year, the Brennan Center released a report containing interviews with 20 elected officials who have used public financing of all kinds, not just matching programs. Those officials explained that such systems "reduce the influence of big money in politics by making elections

³ In the city's most recent elections, 92% of primary election candidates participated and 72% of general election candidates participated. N.Y.C. Campaign Fin. Bd, *2013 Post-Election Report* 45 (2014), http://www.nycfb.info/PDF/per/2013_PER/2013_PER.pdf.

⁴ See MICHAEL J. MALBIN, CAMPAIGN FINANCE INSTITUTE, *CITIZEN FUNDING FOR ELECTIONS: WHAT DO WE KNOW? WHAT ARE THE EFFECTS? WHAT ARE THE OPTIONS?* 10-14 (2015), http://www.cfinst.org/pdf/books-reports/CFI_CitizenFundingforElections.pdf (explaining that, without candidate participation and changes to fundraising practices, public financing will not have benefits); MARK SCHMITT, NEW AMERICA, *SMALL-DONOR EMPOWERMENT, A NEW MENU OF OPTIONS TO STRENGTHEN THE VOICES OF CITIZENS* (2015), <https://www.newamerica.org/political-reform/small-donor-empowerment> (listing candidate participation and fundraising practices among metrics for success of public financing).

⁵ N.Y.C. Campaign Fin. Bd, *2013 Post-Election Report* at 49.

⁶ Michael Malbin, Campaign Finance Institute, *Testimony before the New York City Campaign Finance Board*, Feb. 13, 2013, [http://www.cfinst.org/Press/PReleases/14-02-13/Testimony before the New York City Campaign Finance Board Says Small Donor Matching Funds a Success but the City Should Look at Changes Moving Forward.aspx](http://www.cfinst.org/Press/PReleases/14-02-13/Testimony%20before%20the%20New%20York%20City%20Campaign%20Finance%20Board%20Says%20Small%20Donor%20Matching%20Funds%20a%20Success%20but%20the%20City%20Should%20Look%20at%20Changes%20Moving%20Forward.aspx).

⁷ MICHAEL J. MALBIN, PETER W. BRUSOE & BRENDAN GLAVIN, CAMPAIGN FINANCE INSTITUTE, *WHAT IS AND WHAT COULD BE: THE POTENTIAL IMPACT OF SMALL-DONOR MATCHING FUNDS IN NEW YORK STATE ELECTIONS* (2013), http://www.cfinst.org/pdf/state/NY/CFI_Impact-Matching-on-NYS.pdf.

more accessible, fair, and constituent-oriented.”⁸ A participating candidate in the public financing system in Richmond, California, Councilmember Jovanka Beckles, explained: “When you take money from the public, you are beholden to the public only, and not any other corporate interest. That has really made a difference and helped the voters come to a place where they can say that they trust me.”⁹

State-level public financing programs have also made for healthier democracies. The block-grant program in Connecticut has led to participating candidates spending significantly less time fundraising from the wealthy and more time interacting with voters.¹⁰ Elected officials report improvements in governance since the system’s implementation, with more time devoted to legislating rather than fundraising and a decline in the influence of special-interest lobbyists.¹¹ Similarly, legislators who ran under Arizona’s block-grant system reported a greater ability to represent their constituents, rather than allowing financial contributions to sway legislative decisions.¹²

When increasing campaign costs force elected officials to rely on big-money donations to fund their campaigns, it can turn voters off and lead to cynicism about government. Fairly or not, people worry that large contributions are corrupting, giving wealthy interests unfair influence over policy making.¹³ The Fair Elections Act of 2017 can prevent corruption and its appearance by encouraging candidates to fund their elections principally through small contributions and public money, rather than potentially corrupting large, private donations.

In sum, by applying incentives like those under New York’s program, the District’s Fair Elections Act can change the way that candidates campaign, encouraging retail campaigning rather than dialing for dollars and empowering those who are otherwise left out of the political process. As New York City Public Advocate Letitia James put it: “The public financing system in New York City gave me the opportunity to compete and succeed, allowing me to represent individuals whose voices are historically ignored.”¹⁴

⁸ Brennan Center for Justice, *Breaking Down Barriers: The Faces of Small Donor Public Financing* 3 (DeNora Getachew & Ava Mehta, eds.) (2016), https://www.brennancenter.org/sites/default/files/publications/Faces_of_Public_Financing.pdf.

⁹ *Breaking Down Barriers*, at 17.

¹⁰ MICHAEL G. MILLER, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 54 (2013).

¹¹ J. MIJIN CHA & MILES RAPPAPORT, DEMOS, FRESH START: THE IMPACT OF PUBLIC CAMPAIGN FINANCING IN CONNECTICUT 6-8, 9-11 (2013), <http://www.demos.org/publication/fresh-start-impact-public-campaign-financing-connecticut>.

¹² MICHAEL G. MILLER, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 39-41 (2013).

¹³ “Voters Say Money, Media Have Too Much Political Clout,” Rasmussen Reports, Feb. 16, 2016, http://www.rasmussenreports.com/public_content/politics/general_politics/february_2016/voters_say_money_media_have_too_much_political_clout (finding large majorities believe that wealthy individuals, companies, and special interest groups have too much influence over elections).

¹⁴ *Breaking Down Barriers*, at 7.

Eliminating barriers for candidates

The Fair Elections Act of 2017 will allow a broader set of candidates to run by encouraging the candidacy of those who lack personal wealth or a network of wealthy friends and acquaintances. The prospect of raising large sums can discourage potential candidates, and the campaign finance arms race gives an unfair advantage to wealthy individuals and professionals in lucrative careers, like lawyers.¹⁵ Researchers have found that fundraising pressure is disproportionately discouraging to potential candidates who are female, African American, or represent less-affluent districts.¹⁶

Public financing through a small-donor match breaks down these barriers by making broad community support, even from less affluent individuals, more valuable in financing campaigns. In New York, public financing has likely helped bring about a diverse and representative candidate pool.¹⁷ In Connecticut, Sen. Gary Winfield explained, “Without public financing, I would not have been a viable candidate. . . I didn’t come from money. I am a candidate of color, and I wasn’t a candidate for the political party or machine apparatus.”¹⁸

Encouraging broad public participation in politics

The Fair Elections Act of 2017 will boost participation in elections by a broad range of citizens, including those who are unlikely to donate money in a system dominated by large contributions. Matching funds give candidates a powerful enticement to encourage new donors to give: their small money will become much more valuable. There is even evidence that public financing can encourage people to vote: a multi-state study of block-grant systems found that voters are more likely to vote in elections featuring a publicly funded candidate.¹⁹

In New York City, the public funding program has succeeded in attracting small donations from a larger and more diverse group of citizens. In 2012, the Brennan Center and the Campaign Finance Institute studied the New York City matching program, finding that “[s]mall donors to 2009 City Council candidates came from a much broader array of city neighborhoods than” donors to state legislative candidates representing the same communities (who do not run

¹⁵ Adam Bonica, *Professional Networks, Early Fundraising, and Electoral Success*, 16 ELEC. L. J. 153 (2017).

¹⁶ ASHA DUMONTHIER, CHANDRA CHILDERS & JESSICA MILLI, THE STATUS OF BLACK WOMEN IN THE UNITED STATES, 4-5 (2017), https://www.domesticworkers.org/sites/default/files/SOBW_report2017_compressed.pdf.

¹⁷ NEW YORK CITY CAMPAIGN FINANCE BOARD, BY THE PEOPLE: THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM IN THE 2013 ELECTIONS 47 (2014), http://www.nyccfb.info/PDF/per/2013_PER/2013_PER.pdf; ANGELA MIGALLY & SUSAN LISS, BRENNAN CENTER FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 21 (2010), <https://www.brennancenter.org/publication/small-donor-matching-funds-nyc-election-experience>; NEW YORK CITY CAMPAIGN FINANCE BOARD, NEW YORKERS MAKE THEIR VOICES HEARD: A REPORT ON THE 2009 ELECTIONS 141-42 (2010), http://www.nyccfb.info/PDF/news_media/reports/2009_PER.pdf.

¹⁸ *Breaking Down Barriers*, at 12.

¹⁹ Citizen funding reduces roll-off, which is the phenomenon of voters abstaining in down-ballot races after voting in the higher visibility elections. MILLER, SUBSIDIZING DEMOCRACY at 77 (finding roll-off decreases approximately 20 percent in Connecticut when there is a citizen-funding participant running).

under a public financing system).²⁰ The program has encouraged participation by donors from communities with high proportions of racial minorities and low-income residents—communities that do not traditionally contribute to campaigns in large numbers.²¹

Candidates told researchers that the “system gives them an incentive to reach out to their own constituents rather than focusing all their attention on wealthy out-of-district donors.”²² Big-money fundraising forces candidates to separate their campaigns into fundraising from rich people wherever they can be found, on the one hand, and spending time with voters in the district or ward, on the other. When small donations are multiplied, however, candidates can combine fundraising with retail campaigning where their actual voters are.²³ Every house party and barbecue becomes an opportunity to raise significant funds.

* * *

The Brennan Center recommends that the District of Columbia adopt the Fair Elections Act of 2017. Matching programs have been proven over time to meaningfully reduce the influence of large donors and encourage more citizens to participate powerfully in the election process. It is a reform that helps give voters confidence that their elected representatives work for all their constituents, not just the biggest spenders.

We encourage the Council to continue its efforts to improve the District’s elections and democracy by enacting the small-donor public financing system provided for by the Fair Elections Act, and would be happy to provide any further assistance.

²⁰ Elisabeth Genn, Michael J. Malbin, Sundeep Iyer, & Brendan Glavin, BRENNAN CTR FOR JUSTICE & CAMPAIGN FIN. INST., *Donor Diversity Through Public Matching Funds* 4 (2012), http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

²¹ Michael J. Malbin *et al.*, *Small Donors, Big Democracy: New York City’s Matching Funds as a Model for the Nation and States*, 11 ELEC. L.J. 3 (2012) (finding that donors in New York City’s citizen funding program are demographically representative of the city as a whole); NEW YORK CITY CAMPAIGN FINANCE BOARD, BY THE PEOPLE: THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM IN THE 2013 ELECTIONS 41 (2014), http://www.nycffb.info/PDF/per/2013_PER/2013_PER.pdf (noting large numbers of first-time contributors and small contributors).

²² Genn, *et al.*, *Donor Diversity*, at 4.

²³ ANGELA MIGALLY & SUSAN LISS, BRENNAN CENTER FOR JUSTICE, SMALL DONOR MATCHING FUNDS: THE NYC ELECTION EXPERIENCE 18 (2010), <https://www.brennancenter.org/publication/small-donor-matching-funds-nyc-election-experience>.