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**Before the New York City Council Committee on Governmental Operations
RE: Int. 2429-2021**

November 29, 2021

The Brennan Center for Justice at New York University School of Law¹ appreciates the opportunity to testify concerning Int. 2429 and the budgeting process for the New York City Campaign Finance Board (CFB). For more than two decades, the Brennan Center's nonpartisan experts have helped design and implement campaign finance reforms in states and cities across the country and at the federal level. We have long studied New York City's landmark campaign finance system as it has evolved over the years.²

The Brennan Center strongly opposes Int. 2429. The bill would needlessly increase mayoral control over the budget of the Campaign Finance Board. **The agency already has adequate oversight from elected officials.** The mayor and the speaker of the council appoint its members, and its budget is ultimately controlled by the council.³ At the same time, the CFB is unique among agencies in the risk of political retaliation from the elected officials whose campaigns it regulates. **Some degree of independence for the CFB must be carefully protected** — especially at a time when the administration of elections is facing dangerous political attacks across the country.⁴

¹ The Brennan Center is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The Center's Election Reform and Money in Politics projects work to reduce the real and perceived influence of money on our democratic values. The opinions expressed in this letter are only those of the Brennan Center and do not necessarily reflect the opinions of NYU School of Law, if any.

² See, e.g., Angela Migally, Susan Liss, and Frederick A.O. Schwarz, 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>; 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>.

³ New York City Charter § 1052(a)(1), (b)(3).

⁴ See, e.g., Will Wilder, Derek Tisler, and Wendy Weiser, *The Election Sabotage Scheme and How Congress Can Stop It*, Brennan Center for Justice, 2021, <https://www.brennancenter.org/our-work/research-reports/election-sabotage-scheme-and-how-congress-can-stop-it>. President Trump baselessly threatened to

New York City's system of small donor public financing is the most powerful solution available to counter the corrosive influence of big money in politics in the age of unlimited spending by a wealthy few. The program enjoys high rates of participation from candidates, has empowered diverse candidates that are representative of the city's population to run, and has strengthened civic participation by encouraging New Yorkers of all demographics to donate to campaigns.⁵

A successful public financing program requires fair and efficient oversight. Robust enforcement mechanisms, including comprehensive post-election audits, protect the public fisc. Candidates benefit from clear and consistent implementation of program rules, as well as preliminary statement reviews that give candidates opportunities to cure problems and access to training and advice on compliance. Although no agency is perfect, and some enforcement decisions are sure to create understandable frustration on the part of campaigns that work hard to comply, the CFB needs adequate resources to perform its crucial functions.

The CFB, as a campaign finance agency, is unlike any other government body. Campaign finance agencies are in the unique position of enforcing rules against the elected officials who control the policies and budgets that those agencies need in order to operate. These circumstances invite politicians to trim an agency's budget if they prefer weak enforcement or want to retaliate for past enforcement actions. Indeed, there have been examples of this in other jurisdictions.⁶ The CFB's unique governmental role justifies

withhold federal funds from states for attempting to improve access to voting in the response to the dangers of COVID-19. Nicholas Riccardi and Zeke Miller, "Trump threatens funds for states easing voting in pandemic," *AP News*, May 21, 2020, <https://apnews.com/article/nv-state-wire-donald-trump-us-news-ap-top-news-virus-outbreak-61ed35968fb6b0420e463ac65f6ed058>. Legislators in Wisconsin and Arizona threatened election administration funding over officials' refusals to engage in partisan reviews. A.J. Bayatpour, "Sauk Co. GOP calls on lawmakers to cut Elections Commission funding," *WKOW*, October 14, 2021, https://www.wkow.com/news/sauk-co-gop-calls-on-lawmakers-to-cut-elections-commission-funding/article_84aa81e0-2d26-11ec-bd5e-476df5aa9661.html.

⁵ 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>; Nirali Vyas, Chisun Lee, and Joanna Zdanys, *The Constituent Engagement Effect of Small Donor Public Financing*, Brennan Center for Justice, 2019, <https://www.brennancenter.org/our-work/research-reports/constituent-engagement-effect-small-donor-public-financing-statistical> (finding the program encourages candidates to focus on in-district donors); 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) (finding the program has increased the number and importance of small donors).

⁶ *No Bark, No Bite, No Point*, Project FEC, 2002, 19-24, 71-80, <http://www.democracy21.org/uploads/%7BB4BE5C24-65EA-4910-974C-759644EC0901%7D.pdf> (collecting examples of members of Congress attacking the budget of the Federal Election Commission); Mark Sommerhauser, "Walker signs bills dismantling GAB, overhauling campaign finance law," *The Chippewa Herald*, December 17, 2015 (Gov. Scott Walker and allies in the Wisconsin legislature eliminated an agency that was investigating his alleged campaign finance violations); Steve Mistler, "Clean Elections fund runs low

special independence in the budgeting process. As the Brennan Center has explained concerning the Federal Election Commission, consistency in budgeting will “keep the budget process from being used as leverage over the agency to deter enforcement.”⁷

For more than two decades, the New York City Charter has required the CFB’s estimated budget to be included in the mayor’s executive budget without alteration. The mayor may, however, recommend changes to the budget, and the council has the power to alter the CFB’s estimated budget through its typical budget process.⁸ And of course, the mayor’s power to appoint a majority of the CFB and the speaker’s power to appoint the remainder and consult on the tiebreaking appointment serve as important checks on the agency.⁹

The current CFB budgeting process was recommended as part of a package of campaign finance reforms by Mayor Rudy Giuliani’s 1998 Charter Revision Commission.¹⁰ The voters approved the resulting ballot question by a 60 percent vote.¹¹ The commission’s report explained that the process was needed to “protect the independence of the Campaign Finance Board,” as a remedy for the fact that the CFB was otherwise “vulnerable to political pressures through the uncertainty of the budget process.”¹²

The commission’s reasoning is just as true today.

We therefore recommend that the council reject Int. 2429. In order to ensure the continued success of New York City’s landmark public financing program, the City Charter must maintain its protection of the CFB’s resources and independence.

on cash,” *Portland Press Herald* (Maine), February 24, 2016 (describing actions by Maine legislature and governor to deplete funding for public campaign financing program).

⁷ Daniel I. Weiner, *Fixing the FEC: An Agenda for Reform*, Brennan Center for Justice, 2019, 9, <https://www.brennancenter.org/our-work/policy-solutions/fixing-fec-agenda-reform>.

⁸ New York City Charter § 1052(b)(3).

⁹ New York City Charter § 1052(a)(1).

¹⁰ Report of the New York City Charter Revision Commission, 1998, https://www1.nyc.gov/assets/charter/downloads/pdf/1998_final_report.pdf.

¹¹ Bruce Lambert, “The 1998 Elections: New York State – The Ballot Question; Mayor’s Campaign Finance Plan is Approved,” *N.Y. Times*, November 4, 1998, <https://www.nytimes.com/1998/11/04/nyregion/1998-elections-new-york-state-ballot-question-mayor-s-campaign-finance-plan.html>.

¹² Charter Revision Commission, 9-10, 14.