

## **New York City Campaign Finance Board**

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**Testimony of Amy Loprest  
Executive Director  
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**City Council Committee on Governmental Operations  
February 11, 2011**

Good morning Chairwoman Brewer, and Committee members. I am Amy Loprest, Executive Director of the New York City Campaign Finance Board (CFB). Thank you for allowing me the opportunity to testify before you today.

Reformers have long sought to enact regulations on campaign finances as a safeguard against real or perceived corruption. In recent years, even the most reasonable of these reforms have come under attack in the courts. Challenges against voluntary public campaign financing systems like ours have called into question whether additional public funds can be awarded to participating candidates who face high-spending non-participants.

Arizona's Clean Elections program, created by that state's voters in 1998, is one of those systems facing judicial challenge. In May 2010, the U.S. Court of Appeals for the Ninth Circuit upheld Arizona's bonus funds provision in *McComish v. Bennett*. Last November, the U.S. Supreme Court agreed to consider the plaintiffs' appeal of that ruling. The system's opponents claim that the provisions of Arizona's public financing system that provide additional grants to candidates facing high-spending opponents or significant independent expenditures violate the First Amendment. They argue that these additional funds chill the speech of non-participating opponents or outside groups.

I wanted to take this opportunity to encourage the Council to weigh in on an issue that may determine the future of public campaign financing programs across the nation, including ours. I also would like to talk briefly about our Program's experience with high-spending non-participants in recent elections, which disproves the theory underlying the plaintiffs' First Amendment claims.

Candidates who join New York City's Campaign Finance Program and are opposed by a high-spending non-participant are eligible to receive additional public funds at an increased matching rate (*i.e.*, "bonus" rate), and their spending limit is raised or removed completely. This has been true since the Program's inception in 1989.

Originally, the bonus awarded matching funds at the rate of two public dollars for every dollar raised, rather than the standard one-for-one rate. With the regular matching rate now at six-to-one, there are now two bonus tiers—one for candidates facing high-spending non-participants who raise or spend more than half of the spending limit, and a second for candidates facing opponents who raise or spend more than three times the applicable limit. (See attached chart for more information.)

It is important to note that there are fundamental differences between New York City's matching funds program and the "Clean Money" programs at issue in Arizona and other jurisdictions. In "Clean Money" programs, participating candidates receive all of their campaign funds from the public financing system. In Arizona, candidates who face high-spending opposition may receive "equalizing funds" to match their opponent's spending, up to two times the original spending limit. In our matching funds system, participating candidates must continue to gather private support from New Yorkers to maximize their access to public funds.

All public financing programs, however, have the common goal of preventing corruption and the appearance of corruption—a goal that is best achieved when more candidates participate in the system. If public financing programs are not able to offer an adequate

level of public funds to candidates facing high-spending non-participants, these programs will be unable to attract participants. The disincentive to participation created by high-spending non-participants is a serious challenge to any public financing program.

Opponents claim that so-called “trigger” funds, or bonus funds, suppress the speech of a non-participating candidate, because the non-participant’s spending may cause additional payments of public funds to his opponent. In our long experience, we have seen no evidence whatsoever of a “chilling” effect on non-participants’ spending. If it were true, we would see many candidates who spend up to the trigger amount, and stop before they exceed it. But to the contrary, practically all candidates who opt out of the system spend well below or well above the bonus trigger amount.

Since 1989, 35 high-spending non-participants have triggered bonus payments for participating candidates. A clear majority, 23 candidates (65.7 percent), spent more than double the trigger amount. Eleven of these candidates (31.4 percent) spent more than *six times* the trigger amount. Even without Michael Bloomberg, non-participants whose spending resulted in bonus determinations averaged more than four times the trigger amount.

On the other end of the spectrum, many non-participating candidates conduct small campaigns, or report no spending at all. Of the 313 non-participants since 1989 who did not spend enough to trigger a bonus, only 53 candidates had enough financial activity to require itemized reports of their spending. On average, these participants spent 82.5 percent below the bonus trigger amount. Only two came as close as 5 percent of the bonus trigger, and both were candidates in the same City Council race in 1997.

The truth is that public funds have increased—rather than restricted—the volume of political speech in New York City elections. For example, in the most recent mayoral election, Michael Bloomberg, a non-participant in the program, outspent William Thompson, a participant, by nearly \$100 million. There is no suggestion whatsoever that Bloomberg’s campaign felt “compelled” to curtail its spending in order to limit the

amount of public funds available to his opponents; his campaign spent what it felt was necessary. Additional public funds distributed through the Campaign Finance Program provided Thompson with a greater ability to get his message out, helping provide voters with a real choice.

Public financing helps ensure candidates have the resources to communicate with potential voters, even if they lack access to large contributions or personal wealth. Our Program's ability to provide an appropriate level of funding to participants competing against high-spending non-participants has been absolutely critical to maintaining high levels of participation in the Program.

Thank you again for allowing us the opportunity today to speak about our experiences, and for stepping forward to take a leadership role on this important issue.

## New York City Campaign Finance Board

### Fact Sheet: THE BONUS SITUATION

If you are a participating candidate running against a well-financed non-participant, you can qualify to receive additional public funds at an increased matching rate and have your spending limit raised or removed. This is called “the bonus situation”.

#### **Tier 1: Non-participating opponent raises or spends more than half the applicable spending limit**

Under the Tier 1 bonus, your eligible contributions are matched at a higher rate, up to \$1,250 in public funds per contributor, and the cap on the total amount of public funds you can receive increases from 55% to 2/3 of the spending limit. In addition, your spending limit for that election is increased by 50%.

#### **Tier 2: Non-participating opponent raises or spends more than three times the applicable spending limit**

Under the Tier 2 bonus, you can receive up to \$1,500 in matching funds per contributor; the cap on the total amount of public funds you can receive increases to 125% of the spending limit; and your spending limit is removed entirely.

OFFICE	BONUS TIER	MATCHING RATE	“TRIGGER” AMOUNT	MAXIMUM PUBLIC FUNDS	EXPENDITURE LIMIT
<b>Mayor</b>	No bonus	\$6 : \$1	—	\$3,534,300	\$6,426,000
	Tier 1	\$7.14 : \$1	\$3,213,001	\$4,284,000	\$9,639,000
	Tier 2	\$8.57 : \$1	\$19,278,001	\$8,032,500	no limit
<b>Public Advocate/ Comptroller</b>	No bonus	\$6 : \$1	—	\$2,209,900	\$4,018,000
	Tier 1	\$7.14 : \$1	\$2,009,001	\$2,678,667	\$6,027,000
	Tier 2	\$8.57 : \$1	\$12,054,001	\$5,022,500	no limit
<b>Borough President</b>	No bonus	\$6 : \$1	—	\$795,300	\$1,446,000
	Tier 1	\$7.14 : \$1	\$723,001	\$964,000	\$2,169,000
	Tier 2	\$8.57 : \$1	\$4,338,001	\$1,807,500	no limit
<b>City Council</b>	No bonus	\$6 : \$1	—	\$92,400	\$168,000
	Tier 1	\$7.14 : \$1	\$84,001	\$112,000	\$252,000
	Tier 2	\$8.57 : \$1	\$504,001	\$210,000	no limit

**Testimony by**  
**Deanna Bitetti, Associate Director of Common Cause/New York**  
**to the**  
**Committee on Governmental Operations**  
**Re: Res. No. 646**

Good morning Chair Brewer and members of the Committee on Governmental Operations. Thank you for the opportunity to speak today. My name is Deanna Bitetti, and I am the Associate Director of Common Cause/New York. Common Cause/NY is a non-partisan, non-profit citizens' lobby and a leading force in the battle for honest and accountable government. Common Cause/New York has been a long-standing advocate for innovative campaign finance and ethics laws in New York, as well as throughout the country. Common Cause has remained a steadfast and ardent supporter of the public funding of elections-or as we like to say Voter Owned Elections. We have been involved in supporting, crafting, and ultimately passing, virtually all of the public funding systems that are functioning at the state and national level, as well as numerous municipal level systems, including the highly regarded public funding of elections system in New York City.

We have, over the years, in study after study detailed a deeply disquieting situation. It is one that causes the public to perceive that special interest campaign dollars and not the public interest is a controlling factor in elections. This disillusionment of the political system process has fostered great momentum for a public financing system of elections. Common Cause/NY is part of a coalition that supports voter owned or publicly financed elections on the state level – using New York City's current system as a frame, which has gathered much support in the State legislature. Governor Cuomo in his State of State address even pledged to make campaign finance reform a main tenet of his legislative priorities and to support public financing of elections. We applaud the Committee on Governmental Operations for introducing Resolution No. 646 in support of upholding Arizona's trigger funds provision of its campaign finance law.

This will mark the first time in nearly 35 years that the Supreme Court has ruled in a public financing case. At issue are "trigger matching funds," issued to participating candidates who face high-spending nonparticipating opponents. Trigger matching funds enable states such as Arizona, and of course New York City, to provide candidates who opt into the program with enough money to run in competitive races and forgo corporate and special interest dollars. Triggered matching funds place no limit on the amounts that privately financed candidates may raise or spend on their campaigns. Nevertheless, Plaintiffs claim that the system's "trigger matching funds" halt the speech of non-participating opponents or outside groups, and thus violate the First Amendment.

Common Cause/NY supports the position of the defendants in this case, who claim that the provision does not infringe on freedom of speech rights as guaranteed by the first and fourteenth amendments to the Constitution, but rather encourages candidates to forgo corporate money in exchange for participation in a public financed system. The Ninth Circuit Court of Appeals declared the trigger provision constitutional and we hope that the Supreme Court will uphold this ruling.

There is constant pressure on elected officials to raise money for their campaigns. We force even the best elected officials into impossible situations. A comprehensive and robust campaign finance system in the form of a public financing helps to both clearly articulate the “line” for elected officials and constituents alike and restores faith in our election process. Without such a system there will continue to be a widening disparity between the amount of dollars contributed by special interests and those given by small contributors, as documented by a recent study put out by NYPIRG. We need to put elections back into the hand of voters. The current political landscape, which is easily dominated by big money contributors – a situation compounded by the U.S. Supreme Court’s *Citizens United* decision, as we saw in last year’s election- has fostered great momentum around the nation in support of voter owned elections. We must stand up and support the right to secure trigger funds provisions for states that have publicly financed elections – or we risk undermining the process.

A robust public financing system will accomplish the following:

- Emphasize and amplify the impact of small dollar donations
- Encourage district and voter directed campaigning over “dialing for dollars” and special interest fund-raising
- Decrease significantly the amount of time candidates must spend fund-raising
- Increase the involvement and “investment” of small dollar donors and grassroots participants in our state election campaigns

Therefore we wholeheartedly support the intention of this resolution which would authorize the New York City Council to join in an amicus brief to be filed with the United States Supreme Court to uphold the trigger funds provision of Arizona’s campaign finance law. At such a critical juncture in the shaping of campaign finance laws around the nation, this case will have a deep and lasting impact on how publicly financed election systems are crafted for years to come.

Thank you once again for providing me with the opportunity to speak today.

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Testimony of  
MIMI MARZIANI

Submitted to the  
NEW YORK CITY COUNCIL  
COMMITTEE ON GOVERNMENTAL OPERATIONS

For the hearing on  
RESOLUTION # 646

February 11, 2011

Ms. Chairwoman and Members of the Committee:

I am here to voice my strong support of Resolution Number 646, authorizing the New York City Council to participate as *amicus curiae* in *McComish v. Bennett*, an upcoming U.S. Supreme Court case concerning the constitutionality of Arizona's public financing system.<sup>1</sup> This case will be the Court's first consideration of a public funding program since its 1976 decision in *Buckley v. Valeo*, where it upheld the presidential public funding program. By participating as an *amicus*, this Council would play a significant role in a case that may well set the constitutional parameters for public financing for the foreseeable future. What may be at stake is a jurisdiction's ability to design workable and cost-effective public funding systems that can offer a viable alternative to potentially corrupting private campaign fundraising. Indeed, as explained in greater detail below, an adverse ruling in *McComish* could disrupt public financing systems in at least twenty jurisdictions, including New York City's own groundbreaking system. Moreover, *amicus* participation would affirm the Council's robust support of New York City's small-donor matching funds program – one of this country's most innovative and successful public financing systems.<sup>2</sup>

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<sup>1</sup> The Brennan Center, with its *pro bono* counsel Munger, Tolles & Olson LLP, represents Arizona Clean Elections Institute, one of the defendants in the case.

<sup>2</sup> For more information, see ANGELA MIGALLY & SUSAN LISS, SMALL DONOR MATCHING FUNDS: THE NYC EXPERIENCE (Brennan Center 2010), submitted as an appendix to this testimony.



## The Constitutional Issues at Stake in *McComish v. Bennett*

Public financing has long stood on firm constitutional footing. Ever since the Supreme Court's ruling in *Buckley v. Valeo*,<sup>3</sup> federal courts have repeatedly upheld public financing systems against constitutional challenge.<sup>4</sup> In recent years, however, litigious plaintiffs, most of them ideological opponents to public funding, have advanced a series of attacks to such systems across the country. The most hotly-contested issue is that which lies at the heart of the *McComish v. Bennett* case – the constitutionality of trigger funds.

Trigger funds, also known as “rescue funds” or “fair fight funds,” are additional public grants made available to a publicly-funded candidate facing high spending from either a privately-funded opponent or from an independent spender. Under Arizona's Clean Elections Act, participating candidates initially receive a base grant equal to one-third of the maximum per-candidate funding. If a publicly-funded candidate's privately-funded opponent spends more than that base grant amount, or if she is targeted by hostile independent expenditures, the participating candidate receives additional funds ultimately capped at twice the amount of the initial grant. (In other words, extra public money is “triggered” to publicly-funded candidates when they are caught in particularly competitive, high-spending races.) This system was carefully designed to both provide participating candidates with sufficient resources to run competitive campaigns and to avoid wasting limited state funds on noncompetitive races.

*Buckley* did not address the constitutionality of trigger funds because the presidential public financing system does not contain this type of funding mechanism. But, historically, lower federal courts have easily upheld these provisions, finding them to be presumptively constitutional.<sup>5</sup> In recent years, however, following the Supreme Court's 2008 decision in *Davis v. FEC*,<sup>6</sup> appellate courts have reached different conclusions in their assessments of trigger funds. Indeed, while the Ninth Circuit Court of Appeals unanimously upheld the trigger funds specifically at issue in *McComish*, the Second Circuit recently struck down similar provisions in Connecticut's Citizens Election Act.<sup>7</sup>

The Brennan Center, counsel for intervening-defendants in *McComish* and involved in similar litigation nationwide, is confident that *Davis* provides no grounds for invalidating trigger funds within a public funding program. As the Ninth Circuit correctly held, “*Davis* says nothing about

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<sup>3</sup> 424 U.S. 1, 85-109 (1976) (upholding the presidential public financing system under Federal Election Campaign Act).

<sup>4</sup> See, e.g., *Green Party of Conn. v. Garfield*, 616 F.3d 213 (2d Cir. 2010) (upholding majority of Connecticut's Clean Election Program); *McComish v. Bennett*, 605 F.3d 720 (9th Cir. 2010) (upholding Arizona's Clean Elections Act); *Duke v. Leake*, 524 F.3d 427 (4th Cir. 2008) (upholding North Carolina's judicial public financing system); *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445 (1st Cir. 2000) (upholding Maine's Clean Election Act); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1552 (8th Cir. 1996) (upholding Minnesota's public funding program); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 39 (1st Cir. 1993) (upholding Rhode Island's public financing law).

<sup>5</sup> See, e.g., *Leake*, 524 F.3d at 437-38; *Daggett*, 205 F.3d at 464-65.

<sup>6</sup> *Davis v. FEC*, 128 S. Ct. 2759 (2008).

<sup>7</sup> See *Green Party*, 616 F.3d at 243-46; see also *Scott v. Roberts*, 612 F.3d 1279 (11th Cir. 2010) (striking down trigger provisions in Florida's public financing law). But see *Respect Maine PAC v. McKee*, 622 F.3d 13 (1st Cir. 2010) (denying emergency motion to enjoin Maine's triggered supplemental funds in advance of 2010 election), *aff'd* 131 S. Ct. 445 (U.S. Oct. 22, 2010) (No. 10-A362).

public funding schemes and therefore says nothing about their constitutionality.”<sup>8</sup> Instead, the *Davis* case arose in the context of traditional, private financing, where the same fundraising rules necessarily apply to all candidates. The *Davis* Court struck down the so-called “Millionaires’ Amendment” to the Bipartisan Campaign Reform Act, a law that imposed an “unprecedented penalty” upon the speech of self-funded candidates. Specifically, under that provision, once a candidate spent more than \$350,000 of personal funds on his or her campaign, the initial contribution limits were tripled and the limits on coordinated party/candidate expenditures were eliminated – but *only* for the self-funded candidate’s opponent. Thus, in the same privately-funded, congressional race, a self-funded candidate could potentially be subject to discriminatory fundraising that were substantially more restrictive than those governing her opponent.

Plaintiffs challenging trigger funds in Arizona and elsewhere claim that the prospect of triggering additional funds to their political foe constitutes a similar penalty upon their free speech; thus, they allege, they are forced to refrain from spending. There is, however, absolutely no evidence that the prospect of triggering supplemental funds in fact deters the speech of privately-funded speakers in Arizona, or anywhere else.<sup>9</sup> Moreover, Plaintiffs’ reliance on *Davis* is grossly misplaced: The discriminatory penalty struck down by the *Davis* Court cannot apply where candidates – some publicly-funded and some not – voluntarily occupy different fundraising spheres in which different rules necessarily apply.

While *Davis* is readily distinguishable and there is no proof of any actual First Amendment injury, there is reason to be genuinely concerned about the Court’s decision in *McComish*. Shortly after the Ninth Circuit upheld Arizona’s system, the Court issued a stay, instantly enjoining the trigger funds. Technically, this order has no precedential force and expresses no view on the merits of the case.<sup>10</sup> But the Court’s willingness to disrupt Arizona’s public financing system in the midst of the 2010 election cycle signals some amount of preexisting suspicion towards the contested provisions.

Moreover, in recent years, the Court has issued a series of decisions finding state and federal campaign finance regulations to be unconstitutional. Specifically, in 2006, the Court struck down (for the first time) a state’s campaign contribution limits as too low;<sup>11</sup> in 2008, it invalidated the Millionaires’ Amendment as discussed above; and, in the controversial *Citizens United v. FEC*, the

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<sup>8</sup> *McComish v. Bennett*, 611 F.3d 510, 521 (9th Cir. 2010) (citation and quotation marks omitted).

<sup>9</sup> Indeed, both the district court and the Ninth Circuit confirmed that there is no evidence of any substantial chilling effect. *See McComish*, 611 F.3d at 524 (“Plaintiffs have not demonstrated that any chilling effect exists.”); *McComish v. Brewer*, No. CV-08-1550-PHX-ROS, 2010 WL 2292213, at \*3 (D. Ariz. Jan. 20, 2010) (“Plaintiffs’ testimony is somewhat scattered and shows only a vague interpretation of the burden of the Act.”).

<sup>10</sup> *See Indiana State Police Pension Trust v. Chrysler LLC*, 129 S. Ct. 2275, 2276-77 (2009) (emphasizing that decision to grant or deny stay is “not a decision on the merits of the underlying legal issues”); *Barefoot v. Estelle*, 463 U.S. 880, 907 n.5 (1983) (Marshall, J. dissenting) (“Denials of certiorari never have precedential value ...and the denial of a stay can have no precedential value either ...”). A cautionary example about attempting to guess the direction of the Court based on a stay decision may be found in the recent *Doe v. Reed* decision, in which the Court granted a stay against the application of a state disclosure law at the plaintiffs’ request but then ruled in favor of state defendants on the merits. *Compare Doe v. Reed*, 130 S. Ct. 486 (2009) (granting stay against disclosure requirements) *with Doe v. Reed*, 130 S. Ct. 2811 (2010) (upholding disclosure requirements against facial challenge).

<sup>11</sup> *Randall v. Sorrell*, 548 U.S. 230 (2006).

Court recently freed business corporations from longstanding restrictions upon their political spending.<sup>12</sup> To many, the Court's decision in *Citizens United* raises serious concerns that at least some current Justices may be inclined to reach beyond the four corners of the issues presented in *McComish* and speak more broadly about public financing. And indeed, some of the *amici* in support of Petitioners in *McComish* – perhaps sensing some naturally sympathetic allies on the Court – have urged a broad ruling that could undermine the constitutionality of public financing generally.

### The Constitutionality of Trigger Funds is an Issue of National Importance

The constitutionality of trigger funds is undoubtedly an issue of national importance. As the Supreme Court and other federal courts have found time and again – and as New York City knows from experience – successful public financing systems promote myriad public interests. Indeed, public financing promotes “uninhibited, robust, and wide-open public debate” through direct subsidies for speech as well as through more indirect means.<sup>13</sup> Instead of relying on the deep pockets of special interests, public financing makes it possible for candidates to run a viable, competitive campaign through grassroots outreach alone. This lowers fundraising barriers to entering the political process, thereby encouraging electoral competition and enhancing voter choice. And, public financing leaves participants indebted to no one but their constituents when they reach public office. In this way, public financing systems serve compelling anti-corruption interests, combating “both the actual corruption threatened by large financial contributions and the erosion of public confidence in the electoral process through the appearance of corruption.”<sup>14</sup> Moreover, by protecting the integrity of the electoral process – “the very means through which a free society democratically translates political speech into concrete governmental action” – public financing directly encourages widespread public participation in political debate.<sup>15</sup>

Trigger funds play a key role in ensuring the success of many public funding programs nationwide. In addition to Arizona, ten states and local governments have triggered supplemental funds within their public financing systems. On top of that, at least ten more jurisdictions have a different sort of triggered benefit – for instance, raising the expenditure limits of publicly-funded candidates when an opponent exceeds a certain spending threshold.<sup>16</sup> Like Arizona, these states and municipalities have pointedly designed their public financing systems to provide sufficient funds to participating candidates in competitive contests while protecting the public fisc against unnecessary spending.<sup>17</sup> Indeed, in light of the fiscal crises at all levels of government and the surge of corporate

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<sup>12</sup> 130 S.Ct. 876. Some commentators have marveled at the Roberts Court's sudden deregulatory turn in this area of the law, departing from the Rehnquist Court's generally deferential approach to campaign finance reform regulations enacted by federal and state lawmakers. See, e.g., Richard L. Hasen, *Beyond Incoherence: The Roberts Court's Deregulatory Turn in FEC v. Wisconsin Right to Life*, 92 MINN. L. REV. 1064, 1064 (2008).

<sup>13</sup> Buckley, 424 U.S. at 93 n.127 (citations omitted).

<sup>14</sup> *McConnell v. FEC*, 540 U.S. 93, 136 (2003) (quotation marks omitted); see also Buckley, 424 U.S. at 96 (“It cannot be gainsaid that public financing as a means of eliminating the improper influence of large private contributions furthers a significant government interest.”).

<sup>15</sup> See *McConnell*, 540 U.S. at 137 (quoting *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 401 (2000) (Breyer, J., concurring)).

<sup>16</sup> For more information, see the memorandum entitled “States and Municipalities with Public Financing for Candidate Elections,” submitted as an appendix to this testimony.

<sup>17</sup> Unsurprisingly, undisputed evidence in *McComish* shows that, without trigger funds, participation in Arizona's program would either decline substantially – out of fear of insufficient funds – or Arizona would have to spend millions more each year to fund larger initial grants.

political spending facilitated by the *Citizens United* decision, triggered supplemental funds have perhaps never been so important.

By broadly ruling against Arizona's system, the Supreme Court could potentially disrupt all of these public financing systems. More generally, an adverse decision could handicap the ability of state and local governments to properly protect the integrity of their elections. And, as Justice John Stevens noted, dissenting in *Citizens United*, "[t]ake away [government's] authority to regulate the appearance of undue influence and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance."<sup>18</sup>

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It is no secret that New York City's own public financing system, which matches small donations at a six-to-one ratio of public funds, is one of the most innovative and successful in this country. To affirm its support of that program, and its support of public financing initiatives in Arizona and elsewhere, this Council should adopt Resolution Number 646 and participate as an *amicus* in this important upcoming constitutional litigation.

Please do not hesitate to contact me for further information.

Respectfully submitted,

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The following documents are attached as appendices to this testimony:

- Angela Migally & Susan Liss, *Small Donor Matching Funds: The NYC Experience* (Brennan Center 2010)
- Brennan Center Memorandum Entitled "States and Municipalities with Public Financing for Candidate Elections"

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<sup>18</sup> *Citizens United*, 130 S. Ct. at 963 (Stevens, J., dissenting) (citation and quotation marks omitted).

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## MEMORANDUM

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Date: December 22, 2010

Re: States and Municipalities with Public Financing for Candidate Elections

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### I. PUBLIC FUNDING PROGRAMS WITH TRIGGERED SUPPLEMENTAL FUNDS PROVISIONS

#### A. *Arizona*

The Arizona trigger provision applies to all publicly financed races in the state. The trigger provision provides additional funding to participating candidates when opponent spending exceeds the participating candidate's voluntary spending limit during the primary or general election cycle.<sup>1</sup> For the purposes of the trigger provision, independent expenditures made against a participating candidate or in favor of one of her opponents are treated as expenditures by an opposing candidate.<sup>2</sup> Friendly independent expenditures do not count against a participating candidate's ability to receive supplemental funds. A participating candidate's increased spending limit (including all supplemental funds) cannot exceed three times the original spending limit for a particular election.<sup>3</sup>

#### B. *Florida*

Florida offers public financing for candidates who run for governor or a statewide cabinet position. Florida provides a voluntary expenditure limit (based on the number of registered voters in the state) for candidates who accept public funds.<sup>4</sup> If a non-participating candidate exceeds the expenditure limitation, a participating candidate will be able to spend up to what their opponent has spent, and will also receive supplemental funds up to twice the amount of the expenditure limit.<sup>5</sup> Independent expenditures are not factored into this distribution system. Distribution of supplemental funds was blocked during the past election cycle by a preliminary injunction issued by the 11th Circuit Court of Appeals on July 30, 2010.<sup>6</sup>

#### C. *Maine*

The trigger provision in Maine applies to all races, both primary and general, involving candidates running for governor, state senator, or state representative who have been certified as Maine Clean Election candidates.<sup>7</sup> The trigger threshold is at the sum of a certified candidate's

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<sup>1</sup> ARIZ. REV. STAT. ANN. § 16-952 (West 2010).

<sup>2</sup> ARIZ. REV. STAT. ANN. § 16-952(C) (West 2010).

<sup>3</sup> ARIZ. REV. STAT. ANN. § 16-952(E) (West 2010).

<sup>4</sup> FLA. STAT. ANN. § 106.34 (West 2010).

<sup>5</sup> FLA. STAT. ANN. § 106.355 (West 2010).

<sup>6</sup> See *Scott v. Roberts*, 612 F.3d 1279, 1282 (11th Cir. 2010).

<sup>7</sup> ME. REV. STAT. ANN. tit. 21-A, § 1122(1) (West 2010).

fund revenues and favorable independent expenditures.<sup>8</sup> Independent spending can trigger more funds, and independent expenditures favorable to a certified candidate serve to raise the trigger threshold.<sup>9</sup> Supplemental funds for publicly-funded legislative candidates are limited to two times the amount originally distributed.<sup>10</sup> For certified gubernatorial candidates, supplemental funds are limited to 1/2 the amount originally distributed during the primary, and the 100% of the original grant distribution for a general election.<sup>11</sup>

#### D. *Nebraska*

Nebraska's public financing system relies entirely on triggered funds; it is designed to provide public funds to legislative candidates who agree to a voluntary spending limit and whose opponent exceeds the spending limit.<sup>12</sup> When the estimated amount of election funds available exceeds \$150,000, the Nebraska Accountability and Disclosure Commission may also provide public funds to candidates for statewide office.<sup>13</sup>

#### E. *New Mexico*

Public financing is available in New Mexico only to candidates running for public regulatory commissioner and statewide judicial positions.<sup>14</sup> Supplemental funds are triggered for a participating candidate when an opponent's total contributions or expenditures (whichever is greater), in conjunction with independent expenditures made on behalf of the opposing candidate, exceeds the amount originally distributed to any certified candidate.<sup>15</sup> The limit to such funding is twice the base grant amount.<sup>16</sup>

#### F. *North Carolina*

The public financing program in North Carolina covers judicial candidates for the North Carolina Court of Appeals or North Carolina Supreme Court.<sup>17</sup> For primary elections, the trigger is equal to the maximum qualifying contributions for participating candidates. For general elections, supplemental funds are triggered when spending exceeds the base grant amount.<sup>18</sup> Independent expenditures and electioneering communications in opposition to a certified candidate or in favor of an opponent to that certified candidate are added to an opposing candidate's own spending in determining the amount of the supplemental grant.<sup>19</sup> Friendly independent spending does not count against publicly financed candidates.

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<sup>8</sup> ME. REV. STAT. ANN. tit. 21-A, § 1125(9) (West 2010).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> NEB. REV. STAT. §§ 32-1604, 1606 (2010).

<sup>13</sup> NEB. REV. STAT. §§ 32-1611 (2010).

<sup>14</sup> N. M. STAT. ANN. § 1-19A-2(D) (West 2010).

<sup>15</sup> N. M. STAT. ANN. § 1-19A-14 (West 2010).

<sup>16</sup> *Id.*

<sup>17</sup> N.C. GEN. STAT. § 163-278.62(12) (2010).

<sup>18</sup> N.C. GEN. STAT. § 163-278.62(18) (2010).

<sup>19</sup> N.C. GEN. STAT. § 163-278.67(a)(2) (2010).

### G. Wisconsin

Wisconsin's public financing program covers judicial candidates for the Wisconsin Supreme Court. Eligible candidates receive initial grants of \$100,000 for the primary election and \$300,000 for the general election.<sup>20</sup> In addition, publicly-funded candidates can receive up to three times the initial grant amount when (1) their opponent's expenditures exceed 5% above the initial public grant (*i.e.*, \$105,000/\$315,000); or (2) aggregate independent expenditures against the participating candidate exceed 120% of the initial public grant (*i.e.*, \$120,000/\$360,000).<sup>21</sup> Friendly independent spending does not count against publicly financed candidates.

### H. Albuquerque, NM

The Albuquerque public funding program applies for Mayor and City council and includes a trigger provision. The base amount available to each participating candidate is \$1.00 per registered City voter (for mayor) or \$1.00 per registered voter in a district (for City Council).<sup>22</sup> If the sum of the funds opposing a candidate, including both an opponent's direct spending and independent expenditures, exceed that candidates' seed money plus public funds, then the candidate will receive supplemental funds up to twice the amount originally given to them as public funding.<sup>23</sup>

### I. Chapel Hill, NC

Public financing is available to candidates for mayor or council, including a triggered supplemental funds provision.<sup>24</sup> The trigger threshold is at 140% of the spending limit for a certified candidate.<sup>25</sup> Supplemental funds are triggered based on a combination of an opponent's direct spending and independent expenditures (in opposition to a certified candidate or in favor of an opponent).<sup>26</sup> Friendly independent expenditures do not count against a certified candidate. A grant of supplemental funds is released to a participating candidate once opposing funds reach the trigger threshold.

### J. New Haven, CT

The New Haven public financing law, including the trigger provision, applies to candidates for the office of mayor.<sup>27</sup> Participating candidates receive a base grant and are eligible for a two to one match of public funds for resident contributions of \$25 or less and a one to one match for contributions of \$50 or less. If a nonparticipating opponent exceeds the participating

<sup>20</sup> WIS. STAT. ANN. § 11.511(2)-(3) (West 2009)

<sup>21</sup> WIS. STAT. ANN. §§ 11.512(2), 11.513(2) (West 2009)

<sup>22</sup> ALBUQUERQUE, N.M., CHARTER OF THE CITY OF ALBUQUERQUE ART. XVI, § 12 (2009), available at [http://www.amlegal.com/albuquerque\\_nm/](http://www.amlegal.com/albuquerque_nm/).

<sup>23</sup> ALBUQUERQUE, N.M., CHARTER OF THE CITY OF ALBUQUERQUE ART. XVI, §§ 3(M), 16 (2009).

<sup>24</sup> CHAPEL HILL, N.C., GEN. ORDINANCES OF THE TOWN § 2-95(a) (2010), available at <http://www.ci.chapel-hill.nc.us/index.aspx?page=115>.

<sup>25</sup> CHAPEL HILL, N.C., GEN. ORDINANCES OF THE TOWN §§ 2-95(a)-(b) (2010).

<sup>26</sup> CHAPEL HILL, N.C., GEN. ORDINANCES OF THE TOWN § 2-95(b), (d) (2010).

<sup>27</sup> NEW HAVEN, CONN., CODE OF GENERAL ORDINANCES § 2-822(2) (2010).

candidate's expenditure limit, a participating candidate who has raised at least 85% of the expenditure ceiling can either get an additional \$25,000 in supplemental funds or have the expenditure ceiling lifted.<sup>28</sup> If the participant chooses to have the expenditure ceiling lifted, she will not get further contributions matched.<sup>29</sup> Independent expenditures do not count toward the trigger threshold.<sup>30</sup>

## II. PUBLIC FUNDING PROGRAMS WITH OTHER TYPES OF TRIGGER PROVISIONS

### A. Connecticut

Connecticut's program provides full public funding to eligible state legislative candidates and candidates for statewide office. Full grant amounts are set at the level historically spent in competitive contests for each office. Participants facing a minor-party opponent who has fundraised only a *de minimus* amount (specifically, less than the qualifying contributions level to receive public funding for that office) receive a two-thirds grant; participants who are unopposed receive a one-third grant.<sup>31</sup>

The majority of the program's eligibility and grant distribution provisions were upheld by a decision issued by the 2nd Circuit Court of Appeals on July 13, 2010, but the court struck down the program's triggered supplemental funds.<sup>32</sup> The Connecticut legislature subsequently repealed these provisions. On December 10, 2010, the plaintiffs in this litigation filed a petition for *certiorari*. Among other complaints, they argue that the current grant distribution system contains an unconstitutional trigger because it supplies a full grant to participating candidates once their minor-party opponent fundraises over a certain threshold.

### B. Michigan

Michigan provides public funding in primary and general elections for candidates for governor and lieutenant governor.<sup>33</sup> Michigan's public funding program does not include any supplemental funding provisions. However, a publicly-financed candidate's voluntary expenditure limits are lifted if a wealthy non-participating opponent contributes more than \$340,000 to his or her campaign.<sup>34</sup>

### C. Minnesota

Minnesota provides general election (but not primary election) public funding for qualified candidates for statewide and state legislative offices.<sup>35</sup> Publicly-funded candidates

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<sup>28</sup> NEW HAVEN, CONN., CODE OF GENERAL ORDINANCES § 2-825(c) (2010).

<sup>29</sup> NEW HAVEN, CONN., CODE OF GENERAL ORDINANCES § 2-825(d) (2010).

<sup>30</sup> See NEW HAVEN, CONN., CODE OF GENERAL ORDINANCES § 2-822(9) (2010) (defining "expenditure" as "any purchase, payment, distribution, gift of money, or anything else of value made by a mayoral committee").

<sup>31</sup> CONN. GEN. STAT. ANN. § 9-705 (West 2010).

<sup>32</sup> See *Green Party of Connecticut v. Garfield*, 616 F.3d 213 (2d Cir. 2010).

<sup>33</sup> MICH. STAT. §§ 169.264, 169.265 (2010).

<sup>34</sup> MICH. STAT. §§ 169.269(8) (2010).

<sup>35</sup> MINN. STAT. §§ 10A.322, 10A.323 (2010).



must agree, among other conditions, to voluntary expenditure limits.<sup>36</sup> The program does not provide any triggered supplemental funding. However, a publicly-funded candidate's expenditure limits are lifted if a non-participating opponent's contributions or expenditures exceed a threshold amount.<sup>37</sup>

#### D. *Rhode Island*

Rhode Island's matching funds program is available to all statewide candidates in the general election. It matches contributions under \$500 at a two to one ratio, and matches all other contributions at a one to one ratio (contributions are capped for each office).<sup>38</sup> Participants agree to abide by limits on fundraising and spending. If a participant's nonparticipating opponent exceeds the applicable spending limit for that office, the participating candidate's expenditure limit is raised a corresponding amount and she is allowed to continue to privately fundraise.<sup>39</sup>

#### E. *Austin, TX*

In Austin, a candidate for mayor or city council may elect to participate in the Fair Campaign program by signing a "campaign contract"<sup>40</sup> obligating him or her to comply with limitations on contributions and expenditures, and to participate in a series of candidate forums.<sup>41</sup> Public funding is provided for qualifying candidates in a runoff election, to the extent that funds are available from the Austin Fair Campaign Finance Fund.<sup>42</sup> A participating candidate's voluntary contribution and expenditure limits are lifted if opponent spending or independent expenditures exceed certain threshold amounts.<sup>43</sup>

#### F. *Los Angeles, CA*

Los Angeles' public funding program provides matching funds for candidates running for city office. Candidates for Mayor, City Attorney or Controller are able to receive matching funds for the first \$500 they receive from an individual donor, and candidates for City Council are able to receive matching funds for the first \$250 they receive from an individual donor.<sup>44</sup> Participating candidates agree to voluntary expenditure limits and other conditions.<sup>45</sup> Expenditure limits on participating candidates are lifted if a non-participating candidate spends in excess of the expenditure limit, or if independent expenditures in the aggregate exceed certain statutory thresholds (\$50,000 in a City Council race, \$100,000 in an election for City Attorney or

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<sup>36</sup> MINN. STAT. § 10A.25 (2010).

<sup>37</sup> MINN. STAT. § 10A.25(10) (2010).

<sup>38</sup> R.I. GEN. LAWS §§ 17.25.19-20 (West 2010).

<sup>39</sup> R.I. GEN. LAWS § 17.25.24 (West 2010).

<sup>40</sup> Austin Fair Campaign Contract, [http://www.ci.austin.tx.us/election/downloads/candidate\\_contract.pdf](http://www.ci.austin.tx.us/election/downloads/candidate_contract.pdf).

<sup>41</sup> AUSTIN, TEX., CITY CODE §§ 2-2-12, 2-2-13 (2010), available at [http://www.amlegal.com/nxt/gateway.dll/Texas/austin/thecodeofthecityofaustintexas?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:austin\\_tx\\$anc=](http://www.amlegal.com/nxt/gateway.dll/Texas/austin/thecodeofthecityofaustintexas?f=templates$fn=default.htm$3.0$vid=amlegal:austin_tx$anc=).

<sup>42</sup> AUSTIN, TEX., CITY CODE § 2-2-63 (2010); see also § 2-2-11.

<sup>43</sup> AUSTIN, TEX., CITY CODE § 2-2-17 (2010).

<sup>44</sup> LOS ANGELES, CAL., MUNICIPAL CODE § 49.7.20 (2010), available at [http://ethics.lacity.org/PDF/laws/law\\_cfo\\_2010.pdf](http://ethics.lacity.org/PDF/laws/law_cfo_2010.pdf).

<sup>45</sup> LOS ANGELES, CAL., MUNICIPAL CODE § 49.7.13 (2010).

Controller, or \$200,000 in an election for Mayor).<sup>46</sup> Participating candidates are also eligible for increased matching funds when these triggers are met.<sup>47</sup>

#### G. *New York, NY*

New York City's public financing program applies to all city offices. Under the program, participating candidates are eligible for a six to one match of public funds on resident contributions of \$175 or less up to a certain limit. When the nonparticipating opponent of a participating candidate exceeds 50% of expenditure limit applicable to participating candidates for that office, the participating candidate have her spending limit increased by 150% and becomes eligible for additional public funds matched at a 7.14 to one ratio.<sup>48</sup> And, if the candidate nonparticipating opponent exceeds three times the expenditure limit for that office, the participating candidate's expenditure limit is lifted altogether and she becomes eligible for additional public funds matched at an 8.57 to one ratio.<sup>49</sup> Independent expenditures do not count toward the trigger threshold.

#### H. *Oakland, CA*

The Limited Public Financing Act makes funds available to candidates for district city council and school board director.<sup>50</sup> To qualify, a candidate must accept voluntary spending ceilings and contribution limits.<sup>51</sup> Candidates who qualify may receive public matching funds for the first hundred dollars of each contribution made by a contributor whose principal residence or business is located within the city of Oakland.<sup>52</sup> The maximum amount a candidate may receive in public funds is thirty percent of the voluntary expenditure ceiling.<sup>53</sup> Expenditure ceilings for participating candidates are lifted when a non-participating opponent receives contributions or makes qualified campaign expenditures equal to 50% or more of the expenditure ceiling, or when independent expenditures reach certain thresholds.<sup>54</sup>

#### I. *San Francisco, CA*

San Francisco provides public funding for its board of supervisors and mayoral races. Participating candidates receive an initial lump sum grant and are eligible for a match of public funds for each contribution (contributions are matched at a four to one ratio up to a certain limit and are then matched at a one to one ratio).<sup>55</sup> When a nonparticipating candidate or hostile

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<sup>46</sup> LOS ANGELES, CAL., MUNICIPAL CODE § 49.7.14 (2010).

<sup>47</sup> LOS ANGELES, CAL., MUNICIPAL CODE § 49.7.22 (2010).

<sup>48</sup> N.Y., N.Y., NEW YORK CITY ADMINISTRATIVE CODE § 3-706(3), available at <http://www.nycctfb.info/act-program/CFACT.htm>.

<sup>49</sup> *Id.*

<sup>50</sup> OAKLAND, CAL., MUNICIPAL CODE § 3.13.160(A) (2010), available at [http://library.municode.com/HTML/16308/level2/TIT3MUEL\\_CH3.13LIPUFIA.html](http://library.municode.com/HTML/16308/level2/TIT3MUEL_CH3.13LIPUFIA.html).

<sup>51</sup> OAKLAND, CAL., MUNICIPAL CODE § 3.13.070 (2010).

<sup>52</sup> OAKLAND, CAL., MUNICIPAL CODE § 3.13.110 (2010).

<sup>53</sup> *Id.*

<sup>54</sup> OAKLAND, CAL., MUNICIPAL CODE § 3.12.220 (2010).

<sup>55</sup> SAN FRANCISCO, CAL., SAN FRANCISCO CAMPAIGN & GOVERNMENTAL CONDUCT CODE § 1.144 (2010), available at [http://library.municode.com/HTML/14133/level2/ARTIELCA\\_CH1CAFI.html](http://library.municode.com/HTML/14133/level2/ARTIELCA_CH1CAFI.html).

independent expenditure exceeds the applicable expenditure limit, each participating candidate in that race gets her expenditure limit lifted by \$10,000 (for board of supervisors) or \$100,000 (for mayoral races).<sup>56</sup> Thereafter, whenever any candidate's spending plus independent expenditures made on their behalf exceeds any multiple of \$10,000 or \$100,000 above the expenditure limit, the limit for all participating candidates is raised by an equal amount. Ultimately, the total amount of public funds available to candidates is capped.

#### J. *Sacramento, CA*

Qualifying candidates for mayor and city council are eligible to receive dollar-to-dollar matching funds for contributions received within 88 days of the election, up to \$250 in public funds per contributor.<sup>57</sup> Public matching funds are provided up to a maximum of \$35,200 per election period for city council candidates, and \$117,000 per election period for mayoral candidates.<sup>58</sup>

Participating candidates agree to expenditure limits.<sup>59</sup> These voluntary expenditure limits are lifted when contributions or expenditures for a non-participating opponent exceed 75% of the applicable spending limit or when independent expenditures exceed 50% of the applicable spending limit.<sup>60</sup>

### III. PUBLIC FUNDING PROGRAMS WITHOUT TRIGGER PROVISIONS

#### A. *Hawaii*

Hawaii does not have any trigger provisions or supplemental funding in its Partial Public Financing program.<sup>61</sup> Candidates are eligible for public funding if they agree to voluntary expenditure limits.<sup>62</sup> Public funding grants cannot exceed 10% of the voluntary expenditure limit for candidates for governor, lieutenant governor or mayor, or 15% of the voluntary expenditure limit for candidates for state senate, state representative, county council member or prosecuting attorney.<sup>63</sup> As an additional incentive, the state provides a tax deduction for donations to candidates that have agreed to the voluntary expenditure limit.<sup>64</sup>

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<sup>56</sup> SAN FRANCISCO, CAL., SAN FRANCISCO CAMPAIGN & GOVERNMENTAL CONDUCT CODE § 1.143 (2010).

<sup>57</sup> SACRAMENTO, CAL., CITY CODE § 2.14.140 (2010), available at <http://www.qcode.us/codes/sacramento/>

<sup>58</sup> *Id.*

<sup>59</sup> SACRAMENTO, CAL., CITY CODE § 2.14.050 (2010), available at <http://www.qcode.us/codes/sacramento/>

<sup>60</sup> SACRAMENTO, CAL., CITY CODE § 2.14.060 (2010), available at <http://www.qcode.us/codes/sacramento/>

<sup>61</sup> HAW. REV. STAT. § 11-421, et seq. (Westlaw 2010). Hawaii's campaign finance laws were recodified by the state legislature effective July 6, 2010. The Partial Public Financing Law previously appeared at HAW. REV. STAT. § 11-217, et seq.

<sup>62</sup> HAW. REV. STAT. § 11-423 (Westlaw 2010).

<sup>63</sup> HAW. REV. STAT. § 11-425 (Westlaw 2010).

<sup>64</sup> HAW. REV. STAT. § 11-424 (Westlaw 2010).

### B. *Massachusetts*

Massachusetts does not have any trigger provision in its matching funds program for statewide candidates.<sup>65</sup> The Massachusetts program matches qualifying contributions on a one to one ratio up to a ceiling.<sup>66</sup> Participating candidates are required to agree to expenditure limits. There are no provisions that increase the expenditure limits based on the spending of opponents or by third parties.

### C. *Vermont*

Vermont provides public funding for candidates for Governor and Lieutenant Governor in lump sum grants for the primary and general elections.<sup>67</sup> After the eligibility stage, participating candidates are barred from accepting any private contributions and must spend only public funds. There are no provisions that increase the grant amount or otherwise ease restrictions based on the spending of opponents or by third parties.

### D. *Boulder, CO*

In Boulder, a candidate for city council may opt in to the publicly financed matching program by raising at least ten percent of the expenditure limit in contributions of \$25 or less, and by committing to limit expenditures, to contribute no more than twenty percent of the expenditure limit from his or her personal wealth, and to return a portion of unexpended funds to the city.<sup>68</sup> Candidates who opt in to the program may request public funds that match monetary campaign contributions.<sup>69</sup> The maximum any one candidate may receive through this program is fifty percent of the expenditure limit.<sup>70</sup> Boulder's program does not include any supplemental funding or trigger provisions.

### E. *Long Beach, CA*

Matching funds in Long Beach, California, are available to candidates for city council, city attorney, city auditor, city prosecutor, and mayor.<sup>71</sup> To qualify for matching funds, a candidate must accept expenditure ceilings, raise funds above a specified minimum, and also be opposed by a candidate who has qualified for matching funds or raised a specified amount of funds.<sup>72</sup> The program does not include any supplemental funding or trigger provisions.

<sup>65</sup> MASS. GEN. LAWS CH. 55C (2010).

<sup>66</sup> MASS. GEN. LAWS CH. 55C, §§ 5, 7 (2010).

<sup>67</sup> VT. STAT. ANN. tit. 17, §§ 2851-56 (West 2010).

<sup>68</sup> BOULDER, COLO. REVISED CODE § 13-2-21 (2010), available at <http://www.colocode.com/boulder2/chapter13-2.htm>.

<sup>69</sup> BOULDER, COLO. REVISED CODE § 13-2-20 (2010).

<sup>70</sup> *Id.*

<sup>71</sup> LONG BEACH, CAL., MUNICIPAL CODE § 2.01.410 (2010), available at [http://library.municode.com/HTML/16115/level4/VO1\\_TIT2ADPE\\_CH2.01THLOBECAREAC\\_DIVIVEXCEMAFU.html#VO1\\_TIT2ADPE\\_CH2.01THLOBECAREAC\\_DIVIVEXCEMAFU\\_2.01.410EXCE](http://library.municode.com/HTML/16115/level4/VO1_TIT2ADPE_CH2.01THLOBECAREAC_DIVIVEXCEMAFU.html#VO1_TIT2ADPE_CH2.01THLOBECAREAC_DIVIVEXCEMAFU_2.01.410EXCE).

<sup>72</sup> *Id.*

F. *Miami-Dade County, FL*

Public funds are available to candidates for mayor or county commissioner from the Election Campaign Financing Trust Fund.<sup>73</sup> To qualify, a candidate must agree to limits on expenditures, limits on the use of personal funds and other conditions.<sup>74</sup> Each qualifying candidate may receive a lump-fund grant from the Fund in an amount specified in the County Code.<sup>75</sup> The maximum amount available to a candidate for county commissioner is \$75,000 for a general election and \$50,000 for a runoff election. The maximum available to a mayoral candidate is \$300,000 for a general election and \$200,000 for a runoff election.<sup>76</sup> The program does not include any supplemental funding or trigger provisions.

G. *Richmond, CA*

Candidates for mayor and city council are eligible to receive matching funds (up to a total of \$25,000 per election) based on the candidate's receipt of matchable contributions from private donors.<sup>77</sup> The program does not include any spending limits for participating candidates. There are also no trigger provisions or supplemental funds.

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<sup>73</sup> MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 12-22(c) (2010), *available at* [http://library.municode.com/HTML/10620/level2/PTIIICOR\\_CH12EL.html#PTIIICOR\\_CH12EL\\_S12-22ELCAFITRFU](http://library.municode.com/HTML/10620/level2/PTIIICOR_CH12EL.html#PTIIICOR_CH12EL_S12-22ELCAFITRFU).

<sup>74</sup> *Id.*

<sup>75</sup> MIAMI-DADE COUNTY, FLA., CODE OF ORDINANCES § 12-22(f)(3) (2010).

<sup>76</sup> *Id.*

<sup>77</sup> RICHMOND, CAL., MUNICIPAL CODE §§ 2.43.020, 2.43.030 (2010), *available at* <http://library.municode.com/index.aspx?clientId=16579&stateId=5&stateName=California>

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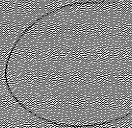
Foreword by Frederick A.O. Schwarz, Jr.

## ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. Our work ranges from voting rights to campaign finance reform, from racial justice in criminal law to presidential power in the fight against terrorism. A singular institution – part think tank, part public interest law firm, part advocacy group – the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

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**Susan Liss** is the Director of the Democracy Program, supervising the Center's work on Voting Rights and Elections, the Right to Vote, Money and Politics, Fair and Independent Courts, Census and Redistricting, and New York State Government Accountability. In her 30-plus year legal career, Ms. Liss has worked for a number of constitutional, civil rights and women's organizations. During the Clinton-Gore administration, she served at the Department of Justice as Deputy Assistant Attorney General for Policy Development and as Chief of Staff and Counselor in the Civil Rights Division. She also served as Chief of Staff to Mrs. Gore and Special Counsel to the Vice President. Prior to joining the Brennan Center, she was the Director of Federal Relations for the Commonwealth of Massachusetts. She is an honors graduate of the University of Michigan and Georgetown University Law Center, and a member of the Bar of the District of Columbia.

**Frederick A.O. Schwarz, Jr.** is Chief Counsel of the Brennan Center, which he joined full time in 2002. Since graduation from law school in 1960, Mr. Schwarz has had an uncommon career, mixing the highest level of private practice with a series of critically important public service assignments. Mr. Schwarz's private practice was at Cravath, Swaine & Moore, where he was a litigation partner with a broad and varied practice. From 1975-76 Mr. Schwarz was Chief Counsel to the Church Committee and was New-York City Corporation Counsel under Mayor Edward I. Koch (1982-86). Then in 1989, he chaired the Commission that extensively revised New York City's Charter, and from 2003-08 he chaired the New York City Campaign Finance Board. He currently chairs the board of Atlantic Philanthropies. For almost twenty years, he served as Chair of the boards of both NRDC and the Vera Institute of Justice, on whose boards he continues to serve. He also chaired the board of the Fund for the City of New York. At the Brennan Center, he has tried three cases, testified frequently before Congress, edited various reports, and written substantially. Mr. Schwarz received an A.B. *magna cum laude* from Harvard College in 1957 and a J.D. *magna cum laude* from Harvard Law School in 1960



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# FOREWORD

*By Frederick A.O. Schwarz, Jr.\**

Some eighty years ago, Supreme Court Justice Louis Brandeis reminded us:

**“[I]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”<sup>1</sup>**

A courageous city can do the same. This aptly describes the potential benefit to the country of New York City’s Campaign Finance Act.<sup>2</sup>

The following Report demonstrates in detail how New York City’s voluntary small-donor matching fund system has benefits beyond simply limiting the size of campaign contributions and expenditures. As I know from first-hand experience, matching small donor donations changes how candidates campaign—in a way that betters democracy. Candidates have a much greater incentive to reach out to ordinary voters, everyday New Yorkers without deep pockets. In turn, being asked to contribute—even small amounts—increases citizen interest and participation in elections.

Based on my personal involvement in the development, defense and implementation of New York City’s matching fund system, I offer a few additional insights.

First, some history. The genesis of reform was a shared conviction that the existing political system was failing and frustrating voters. At the time, in the mid-1980s, the City was shattered by a major corruption scandal. Accompanying the corruption were shockingly large (but legal!) political contributions made to New York City officials under state law. I was then Corporation Counsel for Mayor Edward I. Koch. Koch was himself completely honest, but nonetheless devastated by the scandal and its impact on the City. My advice to the Mayor was to take advantage of the scandal by pressing for governmental reform, including, most importantly, campaign finance reform. To borrow Shakespeare’s words, I urged Mayor Koch to recognize that “sweet are the uses of adversity.”

Mayor Koch did so, and thanks to his efforts, good lawyering by my successor, Peter Zimroth, and the leadership of Peter Vallone, Speaker of the City Council at the time, the landmark City system became law in 1988.

It was passed overwhelmingly in the City Council. It was then enshrined in the City Charter by a very substantial majority voting by referendum—I had the honor to be Co-Chair of the Citizen’s Committee in support.<sup>3</sup> Support for the law was bipartisan.

\* From 2003 until 2008, Frederick A.O. (“Fritz”) Schwarz, Jr. was Chair of the New York City Campaign Finance Board. Before that, he was the 1988 Co-Chair of the Citizens Committee for support of the City Charter amendment establishing the City’s Campaign Finance Law. As City Corporation Counsel from 1982 through 1986, Mr. Schwarz pushed for radical reform of the City’s campaign finance system. Finally, while in private practice, Mr. Schwarz represented, on a pro bono basis, some forty candidates who intervened against (unsuccessful) efforts to prevent the City from offering a four-to-one match of public funds.

In 1989, at the first election that followed, all three Mayoral candidates, Koch and David Dinkins, both Democrats, and Rudolph Giuliani, a Republican, praised the new system—and participated in it. Since that first election, an overwhelming majority of candidates for all City offices have participated in the program.

Second, a word about the program's administration. The City Campaign Finance Board ("CFB") administers the law. A major reason for the CFB's success is that it has had no partisan divides or partisan stalemates. In this way, the CFB is unlike the Federal Election Commission or the New York State Board of Elections.

In part, the CFB has avoided partisanship because of its appointment structure.<sup>4</sup> But far more important have been the traditions established by the first Board members, led by Fordham University President Father Joseph O'Hare as the founding Board chair, and by the first Executive Director, Nicole Gordon. O'Hare served for three terms—fifteen years. Gordon served for eighteen years. By the time I became the CFB's second Chair in 2003, it was crystal clear, internally and externally, that the CFB had no partisan agenda.

My third point is a related one. The CFB's Board and staff are vigorous in policing the requirements of the law. All candidates are audited rigorously. Violations are publicized and punished with fines—and, in some extreme cases, by disgorgement of public funds. Some candidates may be vexed by the vigorous enforcement. But most conclude that forceful enforcement is appropriate. As it surely is. Among other things, vigorous enforcement weakens any public perception that public money is "wasted" on City elections.

Finally, and of great importance, the City system has continued to evolve over time. Indeed, continued improvement is part of the program's fabric: the law requires the CFB, after each election cycle, to hold public hearings and then issue a written report on suggested improvements. City officials and public interest groups also occasionally suggest improvements.

In my judgment, the most important improvement has been twice lowering the matched amount and increasing the match ratio. Unlike other models that provide candidates with a lump sum grant, the New York City system matches contributions collected by candidates. The program started with a one-to-one match on \$1,000 donations. For the 2001 election, this changed to a four-to-one match on \$250 donations. Then, for the 2009 election cycle, a six-to-one match on \$175 donations was implemented.<sup>5</sup>

The following Report shows what a dramatic difference this multiple match on small donations has made: it has led to more competition, more small donors, more impact from small contributions, more grass roots campaigning, and more citizen participation in campaigns. All this, while simultaneously reducing the influence of big money in general and corporate money in particular (only donations from living, breathing New Yorkers are matched).

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In their understandable disgust with large contributions, many reformers missed a big point—and a big opportunity. Political contributions are *not* inherently tainted. Political contributions do not always raise the specter of corruption. Large ones may. But small financial contributions are a natural part of a healthy participatory democracy. New York's system should be a model for reform nationwide.

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## I. INTRODUCTION

Two great trends are at odds in the financing of elections. In *Citizens United v. FEC*, the U.S. Supreme Court ruled that corporations have a First Amendment right to make unlimited expenditures in elections—raising the prospect of a flood of newly-legal special interest spending. In his sweeping dissent, Justice John Paul Stevens warned that people “may lose faith in their capacity, as citizens, to influence public policy” in the face of massive corporate political spending.<sup>6</sup>

But there is a second, far more hopeful trend: the rise of small donor democracy. In the 2008 campaign, millions of small contributions energized the presidential campaign.<sup>7</sup> For the health of our democracy, we must find a way to boost this positive trend so it is not overwhelmed by the new reality of special interest cash.

The key reform that can enhance the power of small donors and promote government “of, by and for the people” is the public financing of elections. Proposals are now moving forward to create citizen funding of congressional campaigns and to revise the current presidential public financing system. Of note, federal lawmakers are not currently considering traditional public financing models—systems predicated on prohibiting almost all private fundraising for the duration of an election. Rather, proposed measures are new and innovative—designed to boost small donor giving and participation throughout the entire election cycle.

The bipartisan Fair Elections Now Act (“Fair Elections”) would establish, for the first time, public financing for Congressional candidates. Fair Elections would offer participating Congressional candidates an initial public grant and then would match small contributions of only \$100 or less at a rate of four-to-one for the duration of the election (up to a certain cap).<sup>8</sup> The recently introduced, bipartisan Presidential Funding Act of 2010—intended to revitalize the current presidential public financing system—would provide a four-to-one match for contributors who gave only \$200 or less (candidates would also receive an initial lump sum grant in the general election).<sup>9</sup>

Questions about this novel approach abound: How would such small donor public financing work? Would it, in fact, amplify the voices of ordinary citizens? Would it change how candidates campaign?

This report examines the success of New York City’s multiple match public financing system—the model upon which these small donor public financing proposals are based. For over 22 years, the City has run a voluntary public funding program for the offices of Mayor, Comptroller, Public Advocate, Borough President, and City Council.<sup>10</sup> Like many public financing systems, the City’s program provides public money to candidates in exchange for the candidate’s acceptance of expenditure limits and enhanced disclosure. However, the heart of the system, and what sets it apart, is the multiple match—a feature that supercharges small donations by matching up to \$175 of each contribution at a six-to-one ratio.

As a result, New York City politicians can run for office while raising a significant amount of their money from small donors. The City's campaign financing system may not be perfect—big money still plays an outsized role in some campaigns and billionaire candidates, like Mayor Michael Bloomberg, can use their personal fortunes to outspend opponents—but it offers valuable lessons in how to build a campaign finance system that boosts the impact of ordinary citizens.

As discussed below, data from recent New York City elections demonstrates the following:

- The program enjoys robust participation by serious, credible candidates.
- Since the enactment of the multiple match, the number of overall contributors and the number of small donors has increased.
- Participants rely on a greater number of smaller donors than do nonparticipants.
- The program encourages candidates to fuse fundraising and voter outreach efforts.
- The system promotes voter choice by enabling a diverse pool of candidates with substantial grassroots support but little access to large donors to run competitive campaigns.
- Finally, especially in open-seat elections, the system has boosted competition by enabling greater spending parity between candidates.

## II. THE CONTOURS OF THE NEW YORK CITY MULTIPLE MATCH SYSTEM

### A. From Scandal to Reform

In New York City, as has happened so often elsewhere, scandal bred reform.

Late one night in January 1986, two patrol officers saw a car weaving across the Grand Central Parkway. When they pulled it over, they found Queens Borough President Donald Manes, one of the most powerful politicians in the city, at the wheel covered in blood.<sup>11</sup> At first, Manes claimed he had been kidnapped and attacked. It soon became clear, however, that he had actually attempted suicide. Soon after, Manes successfully ended his life.<sup>12</sup>

The suicide was just one piece of a larger saga: Manes was one of several targets of a federal investigation into a rich scheme of extortion and bribery between contractors and city officials. Several officials pled guilty while others were convicted of racketeering, mail fraud, and perjury. At the same time, in an unrelated case, Stanley Friedman—then, the Bronx Democratic leader—was convicted of bribery.<sup>13</sup>

These scandals left a vivid taint over city politics.<sup>14</sup> As Mayor Edward Koch and other Democratic incumbents scrambled to distance themselves from these incidents, they began a public push for campaign finance reform. In 1986, Koch and Governor Mario Cuomo jointly appointed a State-City Commission on Integrity in Government.<sup>15</sup> The Commission eventually proposed a package of reforms including optional public financing. Attempts to pass state-wide and city voluntary public financing deadlocked in the state legislature.<sup>16</sup> Stymied in Albany, reform efforts turned to the local level.

In February 1988, the New York City Council overwhelmingly passed the New York City Campaign Finance Act.<sup>17</sup> It established a voluntary public funding program that matched a portion of contributions raised by participating candidates if they limited their spending, among other conditions. Koch hailed it as “the most fundamental reform of the political process ever enacted by the city.”<sup>18</sup>

Like all public financing systems, the program was designed to prevent corruption and its appearance.<sup>19</sup> But the City also had greater ambitions. In addition to combating corruption, the City sought to expand the role of citizens in elections from voter to that of financier and even candidate.<sup>20</sup>

In its inaugural run in 1989, the program matched the first \$1,000 of each contribution from a New Yorker to a participating candidate. In exchange, participating candidates agreed to abide by significantly reduced contribution limits (between \$2,000 to \$3,000 depending on the office sought) and expenditure limits.<sup>21</sup> (At the time, the City was governed by the State’s porous campaign laws under which a single individual could give as much as

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**The New York City public financing system seeks to prevent corruption and expand the citizen’s role in elections from voter to that of financier and even candidate.**

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\$100,000 to a citywide candidate.<sup>22</sup> Thus, nonparticipating candidates for city government could still accept substantial gifts.)

This launched a steady effort to “democratize” fundraising by rewarding candidates who collected smaller donations. From 1998 to 2009, the City gradually increased the matching ratio while decreasing the matchable amount. Mark Green, the City’s Public Advocate (an elected ombudsman) between 1994-2001 and a leading champion of the multiple match, explains the motivation behind these changes:

At the time, the existing one-to-one match at \$1,000 was better than nothing. But a multiple match at a lower amount would motivate candidates to seek smaller donors, involve more people in democracy, and invite more candidates with grassroots support to run because they would have a floor of funding to be competitive.<sup>23</sup>

Thus, starting in the 2001 elections, the City matched the first \$250 of each contribution at a four-to-one ratio.<sup>24</sup> (The 2001 contest was extraordinary, putting it mildly: the primary was initially scheduled for September 11, 2001 and was postponed due to the attack on the World Trade Center.)

Then, the City further democratized the system, when it lowered the matchable amount to the first \$175 of each contribution and upgraded the matching ratio to six-to-one for the 2009 election cycle.<sup>25</sup>

## B. How It Works

The system has four elements: the multiple match, the qualifying threshold for eligibility, the voluntary spending limits and the enhanced disclosure requirements.

### 1. The Small Donor Multiple Match

The distinct element of the New York City system is the multiple match. Matching funds, of course, are not a new concept. Since 1976, the Federal Election Campaign Act has provided a one-to-one match for the first \$250 of each contribution in presidential primary elections.<sup>26</sup> But, New York City is among only a handful of jurisdictions<sup>27</sup> that provide a *multiple match*, *i.e.*, a matching ratio that is greater than one-to-one. Among these jurisdictions, the City’s program provides the largest matching ratio on the lowest matchable amount—matching the first \$175 of each eligible contribution at a six-to-one ratio.<sup>28</sup>

Note, only the “small donor” part of a contribution is matched, even though candidates can accept gifts in amounts larger than \$175.\* Thus, the multiple match encourages candidates to draw financial support from a broad base of small donors throughout the election by literally making small contributions more valuable.

\* Contributions to all city candidates (both participating and non-participating) are subject to the following limits: \$4,950 for Mayor, Public Advocate and Comptroller, \$3,850 for Borough President, and \$2,750 for City Council. NEW YORK CITY CAMPAIGN FINANCE BOARD, 2009 CAMPAIGN FINANCE HANDBOOK 9 (2009), [http://www.nycfb.info/candidates/candidates/handbooks/2009\\_Handbook.pdf](http://www.nycfb.info/candidates/candidates/handbooks/2009_Handbook.pdf); *see also* NEW YORK CITY, N.Y., ADMIN. CODE § 3-703(1)(f), (7). Contributions from persons doing business with the City are limited to: \$400 for Mayor, Public Advocate and Comptroller, \$320 for Borough President, and \$250 for City Council. *Id.* at § 3-703(1-a).



For example, assume Table 1 represents five contributions made to Candidate A. The system turns a relatively small \$175 contribution into \$1,225 for the participating candidate. Compare the overall value of one \$500 contribution—\$1,550—to the overall value of three \$100 contributions—\$2,100.

**Table 1**

Contributions to Candidate A		
Contribution Amount	Match Amount	Overall Value of Contribution
\$50	\$300	\$350
\$100	\$600	\$700
\$175	\$1,050	\$1,225
\$500	\$1,050	\$1,550
\$1,000	\$1,050	\$2,050

Moreover, only contributions from New York City residents are matched; the system will not match contributions from political action committees (“PACs”), unions, out-of-district residents, lobbyists or natural persons doing business with the City.<sup>29</sup> (Contributions from corporations are banned for all candidates.)<sup>30</sup> So, a \$175 contribution from a New York City resident (resulting in \$1,225) is worth more than a \$1,000 contribution from a Connecticut resident. Two \$175 contributions from City residents (resulting in \$2,450) are worth more than a \$2,000 contribution from a political group promoting the interests of the real estate industry.

In the four election cycles since 1997, the City has disbursed more than \$101.2 million in matching funds to 543 candidates.<sup>31</sup> Pursuant to statute and regulation, the City must distribute matching funds at least three times in the 30 days prior to an election.<sup>32</sup> In 2009, matching funds were distributed eight times throughout the entire

election cycle—four times in the primary and four times in the general.<sup>33</sup>

**Table 2**

Maximum Matching Funds Per Election, 2009	
Mayor	\$3,386,900
Public Advocate	\$2,117,500
Comptroller	\$2,117,500
Borough President	\$762,300
City Council	\$88,550

As part of the system’s package of benefits and burdens, participants agree to limit their spending. (See *infra* p. 7 for a discussion of the system’s expenditure limits). The funds available to participants are capped at 55% of the maximum amount

that a participating candidate is allowed to spend. Table 2 illustrates the maximum funds distributed in 2009 in a typical race.<sup>34</sup> A City Council candidate is generally eligible to receive up to \$88,550 in matching funds for the primary and another \$88,550 for the general. At the City Council level, it is possible for a candidate to receive the maximum amount of matching funds—over half the total spending allowed—from just 84 people who contribute \$175.

## 2. Qualifying Criteria: Making Small Donors Essential from the Start

Before becoming eligible to receive matching funds, participating candidates must first meet a “qualifying threshold” by gathering contributions from a large number of constituents (see Table 3).<sup>35</sup> In 2009, a candidate for Mayor had to raise \$250,000 from at least 1,000 city residents. A City Council candidate had to raise \$5,000 in small donations from at least 75 in-district residents. But only the first \$175 of any contribution from a natural person in the candidate’s district is counted towards this eligibility threshold. Accordingly, any amount over \$175 and any donation from non-persons like corporate PACs and unions will not count.<sup>36</sup> In this way, New York’s system induces greater reliance on constituent money from the start.

**Table 3**

<b>Qualifying Fundraising Thresholds</b>		
	<i>Aggregate Qualifying Amount</i>	<i>Number of In-District Contributors</i>
Mayor	\$250,000	1,000
Public Advocate	\$125,000	500
Comptroller	\$125,000	500
Borough President	\$10,000-\$49,307 <sup>37</sup>	100
City Council	\$5,000	75

To better illustrate how the qualifying threshold elevates the importance of the average New Yorker, consider the following. Assume a candidate for Public Advocate who is interested in participating in the program receives the four contributions set forth in Table 4. Although this candidate has technically raised \$14,075, only \$350 will be counted towards the system’s qualifying threshold. For qualification purposes, the \$4,950 contribution by a New York City resident is worth the same amount as a \$175 contribution from another New York resident. The \$175 contribution from the New York City resident is worth more than a special interest PAC’s \$4,000 contribution. In short, if a candidate wants to qualify, the marginal importance of a large special interest check is diminished while the value of a small individual donor is enhanced.

**Table 4**

<b>Sample Receipts for Candidate for Public Advocate</b>		
<i>Contributor</i>	<i>Amount of Contribution</i>	<i>Amount Counted Towards Qualifying Threshold</i>
NYC Resident	\$4,950	\$175
NYC Resident	\$175	\$175
California Resident	\$4,950	\$0
Real Estate PAC	\$4,000	\$0
<b>Total</b>	<b>\$14,075</b>	<b>\$350</b>

Beyond garnering small contributions, candidates must also establish a committee, qualify for the ballot, have an opponent, and file a certification that officially binds a candidate to the system on or before June 10 of the election year. In addition, all candidates (including those who take no public funds) must comply with registration and disclosure requirements.<sup>38</sup>

### 3. Voluntary Expenditure Limits

**Table 5**

Expenditure Limits Per Election, 2009	
Mayor	\$6,158,000
Public Advocate	\$3,850,000
Comptroller	\$3,850,000
Borough President	\$1,386,000
City Council	\$161,000

In exchange for public monies, candidates agree to certain limitations. Most importantly, they must abide by expenditure limits.<sup>39</sup> For example, in a typical 2009 race, participating City Council candidates were restricted from spending more than \$161,000 for the primary and \$161,000 for the general—a spend-

ing budget, in total, of \$322,000.<sup>40</sup> Table 5 illustrates these restrictions.

### 4. Empowering Voters with Information

In addition to encouraging candidates to establish and maintain connections with individual voters for fundraising purposes, the New York City system empowers voters by providing information about candidates through disclosure requirements, public debates, and voter guides.

First, all candidates, both participating and non-participating, are required to file frequent, accurate and timely disclosure statements.<sup>41</sup> During the 2009 election cycle, there were 16 reporting periods.<sup>42</sup> Additionally, as the election nears, candidates are required to make daily disclosures of contributions and expenditures (in excess of a certain threshold) during the two weeks leading up to an election.<sup>43</sup>

The Campaign Finance Board uses technology to facilitate effective disclosure—candidates can make disclosures online which are then made public in a number of ways, including through the use of a searchable online database.<sup>44</sup> Through examining these filings, the press, public interest organizations and other members of the public can review the identity, occupation and employer of every contributor, the amount of each contribution, whether the contribution was collected by an intermediary, and how the campaign spent its money.<sup>45</sup>

Also, since 1996, New York City has required participating candidates to take part in at least one public debate.<sup>46</sup> This creates a culture where public debate is anticipated and valued. Accordingly, many nonparticipating candidates have decided to participate as well. Most notably perhaps, Mayor Bloomberg, although self-funded, has participated in mayoral debates with participating candidates during each of his campaigns.<sup>47</sup>

Finally, New York City prints voter guides in English and Spanish (and, in some districts, Chinese or Korean) and mails them to each household with a registered voter.<sup>48</sup> The City also publishes them online. The guides contain each candidate's photograph, name, party identification, previous and current public offices, current and prior occupation and employer, experience in public service, educational background, major organizational affiliations, and the candidate's concise statement of his or her principles, platform, or views. They also contain general useful information about the electoral process, such as the election date, polling hours, voter registration and absentee or regular voting processes, and district maps.<sup>49</sup>

### *5. The Campaign Finance Board and Fund*

The Campaign Finance Board ("CFB") is charged with taking the "necessary and proper" actions to administer this system.<sup>50</sup> It is comprised of five members: two are appointed by the Mayor, two are appointed by the City Council Speaker and the CFB's chair is appointed by the Mayor after consultation with the speaker.<sup>51</sup> Each member serves staggered five-year terms.<sup>52</sup> The CFB's responsibilities are great throughout the entire election cycle. It administers the matching system (which includes determining who qualifies for the system, confirming which contributions are matchable and disbursing the funds), publishes the voter guide, conducts the candidate debates, and performs rigorous real time and post-election auditing.<sup>53</sup>

Unlike its federal counterpart, the Federal Elections Commission, the CFB is widely considered a model of campaign finance enforcement.<sup>54</sup> This is largely attributed to the CFB's non-partisan nature and clear statutory authority to enforce the system.<sup>55</sup>

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**The New York City Campaign Finance Board is widely considered a model of campaign finance enforcement.**

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The New York City Charter mandates that the CFB conduct all its activities "in a strictly non-partisan manner."<sup>56</sup> As a result, the City is spared the bipartisan gridlock that plagues the FEC at the federal level.<sup>57</sup> Since 1988, the City's leadership has consistently appointed credible, non-partisan members. The original mem-

bers of the board included Father Joseph O'Hare (President of Fordham University), Justice Sonia Sotomayor (at the time, a lawyer in private practice), James Lewis (a lecturer in History at Hunter College), Frank Macchiarola (former Chancellor of the New York City School System), and Robert McKay (professor at New York University Law School). Since then, the City has continued to appoint credible leaders to the CFB.<sup>58</sup>

Also, the CFB has clear authority to and actually does rigorously enforce the Act. The CFB has the power to audit candidates, issue subpoenas, depose witnesses, bring enforcement actions, promulgate regulations and render advisory opinions.<sup>59</sup> Recently, Amy Loprest, Executive Director of the CFB, confirmed that the CFB reviews every claim for matching funds before making payment and conducts comprehensive audits of every candidate's campaign. She says, "this ensures that disclosure is accurate, helps the public know that their investment in democracy is being well spent, and it helps the candidates know that everyone is playing by the same rules."<sup>60</sup>

To be sure, the CFB's enforcement efforts have not been without critique. Almost every candidate, campaign consultant and lawyer who was interviewed for this report complained that compliance with the CFB's rules were extremely taxing and required significant resources. At the same time, a recent *New York Times* article accused the CFB of lax regulation, claiming that the CFB failed to recover at least \$800,000 in unused money by participating candidates.<sup>61</sup>

However, inquiry into these complaints indicates that the CFB has overall been very successful in enforcing the program. In the end, all candidates who were interviewed conceded that strict regulation was important to ensure that public money is not wasted. Additionally, the \$800,000 that was reportedly not collected by the CFB accounts for 0.8% of the funds that the CFB has disbursed since 1997.<sup>62</sup>

The City established a special fund—the New York City Campaign Finance Fund—to pay for the system.<sup>63</sup> The Fund is financed through general appropriations from the City Council budget.<sup>64</sup>

### **Big Apple Elections: Not Your Typical Municipal Race**

Every four years, New Yorkers elect their Mayor, Comptroller, Public Advocate, five Borough Presidents and 51 Councilmembers.<sup>65</sup> New York City's large population and expensive media market creates a high stakes electoral environment that rivals many statewide and federal elections.

New York is the most populous city in the United States.<sup>66</sup> Its city-wide offices govern over 8 million people (the rough equivalent of the combined populations of 10 states), including 4.5 million voters.<sup>67</sup> Even at the district level, city councilmembers regularly represent more people than many state legislators. Indeed, in 2003, each of the City's districts had between 140,000 and 170,000 constituents.<sup>68</sup> Of all state legislative house districts across the country, only California's districts have more constituents on average than New York City council districts.<sup>69</sup> Borough Presidents can represent as many as 2.5 million constituents.<sup>70</sup>

With so many voters to reach in one of the nation's most expensive media markets, New York City candidates frequently spend more money on their campaigns than do candidates in federal and state races. In 2008, for example, winning candidates for U.S. Senate spent an average of \$8.5 million.<sup>71</sup> As is well known, New York City Mayor Michael Bloomberg has spent unprecedented sums of his own money in his bids for Mayor—in 2009 he spent \$108 million.<sup>72</sup> Less known is that his outmatched opponents have spent substantial sums too—at least \$9 million in 2005 and 2009.<sup>73</sup>

Council races also are unusually expensive. In 2009, the average amount spent by privately financed City Council candidates in the primary was \$119,921 and \$62,731 in the general election.<sup>74</sup> Indeed, in the District 19 race, Kevin Kim, relying only on private money, spent over \$650,000.<sup>75</sup> This parallels the money involved in most New York State races—in 2008, for instance, the average amount raised by a candidate for New York State Assembly was \$125,354.<sup>76</sup>

### III. THE DEMOCRATIZATION OF CAMPAIGN FUNDRAISING

It is hard to isolate the precise impact that the multiple match has had on City campaigns: other factors, such as term limits and city demographics, play a major role in all elections. But the experience of candidates, backed up by data, shows that the multiple match has had a discernible effect on city politics. As explained below, the multiple match has played a role in democratizing the fundraising process.

The system has attracted robust levels of participation by credible candidates, particularly in highly competitive primary races. Such high participation rates in a system that supercharges small contributions have stimulated significant demand for small donors. The result has been an influx of small donor participation in the system.

Since the enactment of the multiple match in 2001, City elections have seen not just more donors, but more small donors. Participating candidates rely on more small donors than their nonparticipating counterparts. This has enabled candidates to fuse their fundraising and voter outreach strategies, fostering early and continuing interactions between candidates and voters.

The system also seems to create more competition. The multiple match and the expenditure limits work together to create greater spending parity among participating candidates. By assuring candidates that they will have enough money to get their message out, the system encourages diversity in the candidate pool.

#### A. Robust Participation Levels

The vast majority of serious candidates choose to participate in the system.

In New York City, the most competitive races tend to be primaries. This is no surprise: 69% of the city's voters register as Democrats.<sup>77</sup> Mayoral elections, however, are marked by robust partisan competition.<sup>78</sup>

In 2009, almost all primary candidates—a whopping 93%—financed their elections through the City's program. That year, 66% of general election candidates participated.<sup>79</sup> These rates have been consistent for over a decade.<sup>80</sup> Indeed, nearly every credible candidate participates: in 2009's contest, the Public Advocate, the Comptroller, all five Borough Presidents, and all but two of the 51 City Council candidates who were elected to office participated.<sup>81</sup>

There is a gargantuan exception, of course: Michael Bloomberg. *Forbes* lists the media mogul as the world's 23rd richest man.<sup>82</sup> In his three bids for Mayor, he opted out of the system and spent \$73 million, \$85 million and \$108 million of his own money respectively. However, all three of his general election competitors participated in the system.

The other significant factor driving high participation rates (and competition) is the city's term limits law. Enacted by referendum in 1993, the law limited public officials to two four-year terms. As a result, most candidates poured their energy into contesting open seats—which arose predictably every eight years. At the same time, term limits discouraged challengers from taking on incumbents while they were eligible to run again.<sup>84</sup>

Then, in 2008, prodded by Mayor Bloomberg, the Council changed the term limits law to allow officeholders to seek a third term. Although this surprise move scrambled many calculations, many candidates who had originally planned to contest open seats chose to challenge incumbents anyway (often on the issue of term limits themselves).

**Table 6**

**New York City Public Financing Participation Rates 1997-2009**

Year	Participation Rates (Number of Participants)		Number of Participants Elected to Office (out of a possible 59)
	Primary Elections	General Elections	
1997	81% (79 candidates)	54% (97 candidates)	43
2001	93% (214 candidates)	71% (159 candidates)	54
2005	87% (93 candidates)	68% (93 candidates)	53
2009	93% (141 candidates)	66% (100 candidates)	56

**B. Increasing the Supply of and Demand for Small Donors**

The genius of the multiple match is this: it simultaneously drives candidates to rely more on small donors than would have been otherwise the case while incentivizing citizens to donate.

*1. Expanding the Pool of Donors*

Anecdotal evidence and hard data confirm that the multiple match has boosted giving by donors.

New York State is notorious for its dismal donor participation rates. According to a recent study, of the 34 states that had statewide and legislative races in 2006, New York State had the lowest donor participation rate in the country—only 0.59% of the voting age population contributed to state campaigns.<sup>85</sup> Participation by New York City donors in state elections was even worse—only 0.34% of the voting age population in New York City contributed to state elections.<sup>86</sup>

Donor participation rates in New York City elections are a completely different story. In 2005, 1.39% of the voting age population in New York City contributed to city campaigns, more than triple the participation rates of city residents in state campaigns.

Several candidates attribute the City's higher donor participation rate to the multiple match system. Indeed, the incentives created by the system are so powerful that candidates often use the multiple match as the centerpiece of their fundraising pitches.

- ◆ City Councilmember Brad Lander (District 39, Brooklyn), the highest spending candidate in a five-candidate primary and a three-candidate general election,<sup>87</sup> said, "Our fundraising pitch was based on the multiple match. When we explained to donors that their contributions would be matched six-to-one, it seemed to resonate with them."<sup>88</sup> Lander used this pitch to raise over \$121,000 from 558 contributors, 89% of whom gave \$250 or less.<sup>89</sup>
- ◆ "Regular New Yorkers...who never thought of contributing, now get very excited about contributing . . . . They don't feel dwarfed by big money interests,"<sup>90</sup> observed Stephan DiBrienza, a four-term City Councilmember, during his failed 2001 bid for Public Advocate. In that election he raised an astonishing \$735,000 from 3,020 contributors, 83% of whom gave \$250 or less.<sup>91</sup>
- ◆ Former Public Advocate Betsy Gotbaum, who raised more than any other candidate in her successful 2001 bid for office, (\$1.76 million from 2,136 contributors),<sup>92</sup> explained: "The [match] seems to have created a kind of enthusiasm for political giving and participation that I have not previously seen."<sup>93</sup>

The data demonstrates that the number of donors has generally expanded after the enactment of the multiple match. Between 1997 (the last election under the one-to-one match) and 2009 (the first election under the six-to-one match) the number of donors who gave to participating candidates grew by 35%.<sup>94</sup> The pool of small donors grew by 40%.<sup>95</sup> These increases occurred notwithstanding the economic downturn in 2008.

During the 2009 election campaign, political fundraisers were concerned that asking for contributions in an economic downturn "would be alienating for voters," explained Public Advocate Bill de Blasio. To his surprise, de Blasio found that the six-to-one match not only prevented such feelings, it encouraged many New Yorkers to contribute. He explained:

Even people who were not very interested in politics were energized by the possibility that they could play such a role in the campaign because of the effect the multiplier had on their smaller contribution. When people who didn't understand that there was a six-to-one match learned about the match, it was huge for them. Someone who would never have given \$175 to a campaign would do it with the match. It empowered them by empowering their money.<sup>96</sup>



The system also appears to have widened the circle of *who* gives. Candidates perceive the flowering of a more diverse and inclusive political culture. For instance, during Mayor Rudolph Giuliani's unsuccessful court challenge to the four-to-one match in 2001, the following testimony was given:

- ◆ “African-Americans, Latinos and women on average have less disposable income to contribute to political campaigns” explained C. Virginia Fields, Manhattan Borough President from 1997-2005 and the first African-American woman to run for Mayor. “The Program reduces the disparity in political participation based on wealth, and empowers groups who, historically, have been disproportionately less powerful in the political process.”<sup>97</sup>
- ◆ Rockwell Chin, a council candidate in one of the City's most ethnically and economically diverse districts, noted myriad obstacles to new immigrants in his district, including mis-translated ballots and few translators at the polls. “These barriers to political participation begin to alienate [new immigrants] . . . . The City's . . . matching program, however, brings them into the political process.”<sup>98</sup>
- ◆ Richard Perez, a New York Police Department detective, ran to represent Bushwick and Cypress Hills' poor and largely Latino and black neighborhoods. He testified, “I have been reaching out to people in my district who usually don't think it's worth making their small contributions. I believe the match encourages them to contribute . . . . I think this is particularly important for the mostly minority community I will represent.”<sup>99</sup>

No comprehensive data exists regarding the race, gender, and other demographics of donors. But, available information is highly suggestive. A scan of the occupations of 2009 donors to council candidates reveals a diverse group. Many contributors were lawyers or businesspeople, of course. However, the contributor lists also included a significant number of artists, administrative assistants, barbers and beauticians, cab and bus operators, carpenters, police officers, students, nurses and clergy.<sup>100</sup>

## *2. Increasing Candidate Reliance on Small Donors*

The multiple match has also increased candidate demand for small donors. Three candidates with extensive fundraising experience under both the private fundraising system and the multiple match system explain the difference in incentive structures.

- ◆ In 2001, Bill de Blasio, Hillary Clinton's campaign manager who helped her raise \$28 million in her U.S. Senate campaign,<sup>101</sup> candidly stated “every candidate knows that to have a viable campaign they have to raise money.” Because of this necessity, under a privately financed system, “campaigns are tempted to go to people and institutions who can bring in a lot of money . . . .” With the multiple match, candidates “don't need to rely on big money

donors.”<sup>102</sup> Two City Council races and one successful Public Advocate race later, Public Advocate de Blasio maintains that “there is no question about the democratic impact of the program. While the system may not completely replace big donors, for many offices, especially City Council races, you can make small donors the centerpiece of a campaign.”<sup>103</sup>

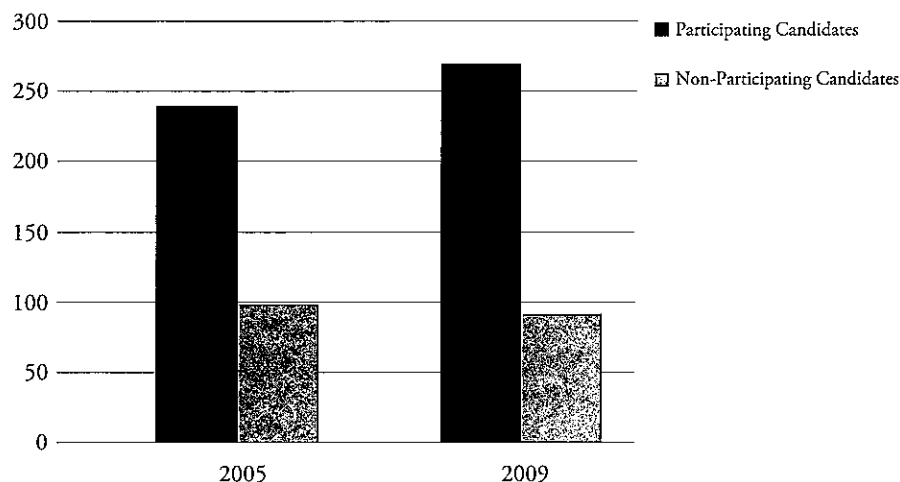
- ◆ As a former City Councilmember and a candidate for City Comptroller and U.S. Congress, Taxi and Limousine Commission Chairman David Yassky has proven to be a successful fundraiser under both the publicly and privately financed regimes. As a participating candidate for City Comptroller, he raised more money through the multiple match system than anyone in his race.<sup>104</sup> In his congressional run, he raised \$1.5 million through private contributions, more than any other congressional candidate in an open seat race that year.<sup>105</sup> Based on this experience, he agrees that the multiple match creates greater demand for small donors. He explains the calculus of campaign fundraising under both systems:

[W]ithout the multiple match, a \$175 contribution is of marginal value to a campaign because it is simply too time intensive to seek out small donors. For example, I could make one phone call and ask for a \$2,000 check, or I could make 20 calls to solicit \$100 donations. The six-to-one multiple match turns \$100 into \$700, making it worth it to pursue small donors. Because there is no public financing system in place at the federal level, federal candidates are much less interested in \$100 checks than are candidates in New York City elections.<sup>106</sup>

- ◆ City Councilmember Mark Weprin raised money under New York State’s loosely regulated campaign finance regime during his 15 years as a State Assemblyman. There, he could accept donations as high as \$7,600 per person—more than double New York City’s contribution limit of \$2,750 for City Council.<sup>107</sup> Given his background, Weprin had the opportunity to run his New York City Council campaign by relying on a handful of large contributors. Instead, Weprin participated in New York City’s public financing system and ran a campaign with an average contribution of just \$240, less than one tenth the City’s contribution limit.<sup>108</sup> He attributes his focus on small donors to the multiple match program, “the City’s matching system lets the campaign put far less emphasis on the big money people. We were not looking for as many maximum checks as possible.”<sup>109</sup> This style of campaigning differs significantly from Weprin’s strategy in his state legislature races:

When I was in Albany, I used to have these big events to raise money. I hosted a golf outing at a country club and a fundraiser at a Mets game where people could have pictures taken with players and things like that. I’m not going to do that in the City system — the cost of either one would have eaten up my spending limit. Instead, we had a lot of house parties.<sup>110</sup>

Median Number of Small Contributors (\$250 or less),  
City Council Races 2005 and 2009

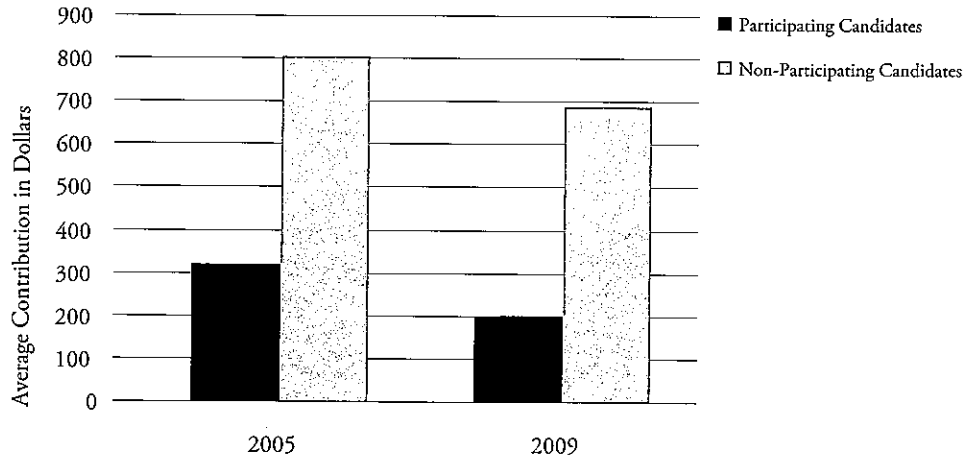


By supercharging small donations, campaigns now can be built using the support of many more small donors. In 2009, the typical participating City Council candidate had more than *double* the number of contributors than a typical non-participating City Council candidate.<sup>111</sup> Four years earlier, with fewer competitive races, the typical participating candidate had 51% more contributors than did the typical nonparticipating candidate.<sup>112</sup>

Participating candidates rely not just on more donors, but on more small donors. In 2009, the typical participating City Council candidate enlisted the support of almost triple the number of small donors than did her non-participating counterpart; four years before, participants garnered support from more than double the small givers than non-participants.<sup>113</sup>

This increased reliance on small donors drove down the average contribution size for participating candidates as compared to non-participants. In 2009, the average contribution to a participating City Council candidate was \$199, less than one-third the \$690 average contribution for non-participating candidates. In 2005, the average contribution to participating City Council candidates was \$321, significantly lower than the \$804 average contribution for non-participants.<sup>114</sup>

**Average Contributions,  
City Council Races 2005 and 2009**



Median contribution size was also lower.<sup>15</sup> (This is significant because a few big givers can tilt the average; at times, candidates “seed” their campaigns with a few big gifts from family members and close friends before seeking a larger number of small donations.) In 2009, the median contribution to a participating City Council candidate was \$80; it was \$180 for non-participating candidates. In 2005, the median contribution for participating candidates was \$100, less than one third of the \$350 median contribution to non-participants.<sup>16</sup>

## Has the System Curbed the Power of Special Interests?

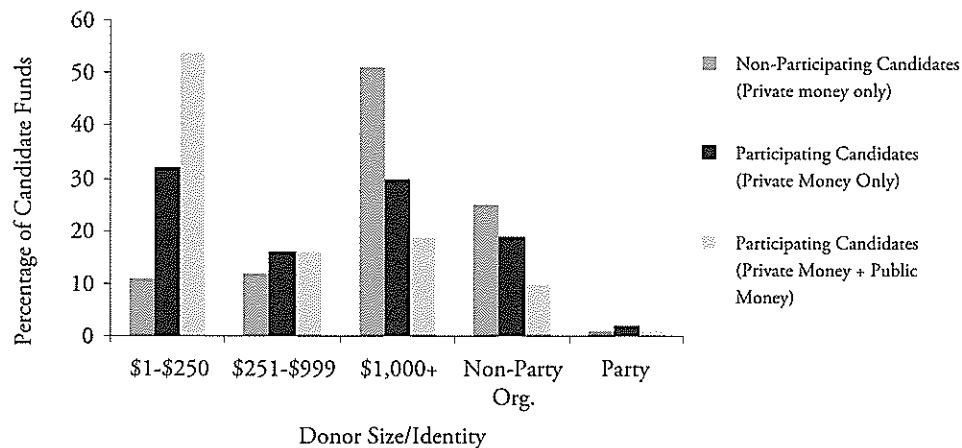
It is extremely difficult to quantify the power of special interests and to isolate the impact of the system on such interests. We lack reliable, pre-enactment spending data; other reforms (such as the 2001 ban on direct corporate contributions) have had an impact as well. And much interest group influence is wielded by individual donors, e.g., real estate developers or bankers, without recourse to PACs or direct corporate gifts. A recent study by Professor Michael Malbin of the University at Albany, State University of New York, suggests, however, that large donors, unions and PACs exert less influence on participating candidates, who depend heavily on small donors.

The chart below depicts the source of candidate funds in 2005 City Council races by type and size of contributor.<sup>117</sup> (Only natural person donors were counted in groups identified based on contribution size. Non-party organizations include donor PACs and unions.) As the study shows, the sources upon which participating and non-participating candidates rely are mirror opposites. Over half of the money available to participating candidates came from people who gave \$250 or less (and the matching funds attributable to these small donations) while over half of the money available to non-participants came from donors who gave \$1,000 or more (and the matching funds attributable to these donations).

The chart also illustrates that the power of special interest PAC's and unions make up a much smaller percentage of the money collected by participating candidates. A quarter of the money available to non-participants came from these special interest organizations; only 10% of participating candidates' money came from these organizations.

Under the system, participants are far less reliant on large donors and organizational interests and much more reliant on small individual donors—increasing the power of small individual donors.

**Sources of Money in City Council Races (2005)**



Those in the fundraising trenches confirmed that the multiple match frees candidates from a dependency on special interest money.

- ◆ Councilmember Brad Lander said, “Because of the multiple match, I was able to refuse all contributions from political action committees. Without the multiple match, I would not have been able to finance my campaign solely on contributions from individuals.”<sup>118</sup>
- ◆ Campaign consultant Alex Navarro-McKay agreed. “The match makes it easier to raise money from small donors, thereby reducing the need to raise money from the City Hall lobbyist crowd.”<sup>119</sup>
- ◆ Commissioner Yassky echoed this sentiment: “[S]ince the multiple match increases reliance on small donors, there is less need for a candidate to cozy up to special interests.”<sup>120</sup>

## C. Fusing Fundraising with Voter Outreach

Another impact is less tangible, but highly visible to those who watch city politics—campaigns have learned how to use their fundraising activity to build their volunteer corps and voter outreach efforts.

David Yassky noted, “In a traditional campaign, you do one of two things. You’re chasing money or you’re chasing votes.”<sup>121</sup> Usually, candidates raise funds (focusing on large donors) to pay for outreach to voters (often through impersonal means such as television, radio or mail). Under the NYC system, candidates are incentivized to build networks of small donors who become networks of organizers. The most cost-effective fundraising and the most persuasive organizing takes place at the same spot: in supporters’ living rooms.

- ◆ City Councilmember Daniel Dromm, a newcomer in 2009 who unseated the incumbent in Queens District 25, described how the multiple match system—which encouraged him to hold small fundraisers in district—helped him win the election:

I started fundraising early on in the election. I had many, many small fundraisers throughout the district. I had events at local restaurants, house parties, and a fundraiser during Queens pride day. I had \$10 meet and greets. All of these events served a dual purpose—they got my name out among people and they raised some money. How I raised money—from small donors, at events that reached out to the different communities—contributed to the sense of inclusion that translated into other kinds of support.<sup>122</sup>

- ◆ “Obviously, the bigger guys bring in more money. But the little guys are more important for the long term of the campaign and your service to the district. They are the ones who will knock on doors for you and who will talk to neighbors for you. Raising money with the six-to-one match helps you build relationships with your constituents because it encourages you to take an extra step to get them involved,” said City Councilmember Mark Weprin.<sup>123</sup>
- ◆ Fernando Ferrer, four-term Bronx Borough President and mayoral candidate, explained, “Because the match makes it effective for me to raise money in all communities, my fundraising activities do not diverge as much from my actual campaign as they would without the match. I am in contact with many of the same people, regular voters, both for regular campaign purposes and fundraising purposes.”<sup>124</sup>

## D. Boosting Competition Through Spending Parity

*In the past, New York City elections had a certain lack of symmetry. One candidate had the money, the mailings, the endorsements, the bunting, the headquarters with real desks and spare phones and carpets. That was the incumbent. The challenger needed a great deal of nerve and occasionally even a bodyguard to venture out on the streets.*

*This year is different. Democracy is having its day courtesy of a term limits law that made available more than 40 elective offices at various levels of city government. On top of that is a campaign finance system that offers public money to match contributions for qualifying candidates.*

*As a result, the city has been swarming with political hopefuls, reflections of the city itself with its many voices, colors, nationalities and political leanings . . . . The best part of this wild election year is the way it's broadening the city's base of politically active residents beyond the old tenured officeholders, their immediate families and their anointed successors.*

EXCERPT FROM NEW YORK TIMES EDITORIAL, SEPT. 9, 2001<sup>125</sup>

There can be no question that the system's high levels of participation, matching funds and the spending limits has led to more spending equality among campaigns. This spending parity has led to more competitive races, or as one candidate put it, "fewer invisible candidates."<sup>126</sup> For example:

- ◆ In almost half of all primary races in 2009, at least two candidates spent more than 90% of the applicable spending limit.<sup>127</sup>
- ◆ In six districts, three or more candidates spent within 10% of the spending limit. For example, in the hotly contested race in Brooklyn Council District 39, four candidates effectively spent the total.<sup>128</sup>
- ◆ In 2009, 12 challengers spent within 10% of what the incumbent spent.<sup>129</sup>

Both newcomers and veteran politicians alike state that the system leads to more competitive races.<sup>130</sup>

- ◆ City Council Speaker Christine Quinn noted that "the system makes it much more likely that a candidate who only has access to small donors will run for office."<sup>131</sup>
- ◆ City Councilmember Mark Weprin commented, "The system definitely accomplishes the goal of making it easier to have a competitive race. [My opponents] probably had a lot more resources because of the system and the matching funds. Because we all raised money right up to the spending limit, we were operating with almost the same amount of resources. It was harder for me but good for the district."<sup>132</sup>

- ◆ Councilmember Jumaane Williams, one of five City Council candidates to defeat an incumbent in 2009, explains how the matching system made his victory possible. “My opponents had access to big money in a way that I do not, but the matching fund helped me keep up with them in fundraising. The availability of matching funds absolutely makes it easier for someone like me to run for office in New York, particularly given that I was challenging an incumbent. Without matching funds, winning would have been more difficult if not impossible.”<sup>133</sup> Ultimately, Williams was able to raise more money—much of it in small contributions—than his incumbent opponent.

Nicole Gordon, the former director of the Campaign Finance Board, clarified that the purpose of the system is not to unseat incumbents but to foster better representation:

One of the most important things we can hope for from a better campaign finance system is not that incumbents get thrown out and maybe not that there are narrow margins of victory, but simply the regular presence of opposition and the threat that someone might have the wherewithal to make a meaningful run for office. This is very important because it forces elected officials to focus on what the voters want, keeps the officials from becoming complacent about the power of incumbency, and, I hope, not distracted by all the other pressures placed on them.<sup>134</sup>

In 2009, the system helped a crop of challengers actually defeat incumbents. All five incumbents who lost reelection in 2009 were defeated by candidates who participated in the program. Again, many factors contribute to electoral outcomes—including public anger over the change in term limits and the effects of the economic recession.<sup>135</sup> It is impossible to parse the precise role the matching system plays in unseating incumbents. But in all five cases, the participating candidates nearly matched, equaled or exceeded the funds raised by the doomed incumbents.<sup>136</sup>

Opponents of public funding insist that only self-financing candidates (or those able to raise huge sums) can effectively dislodge incumbents. In fact, the record of successful public funding systems shows a different reality. Under the presidential public funding system, which worked well for two decades, *three* challengers defeated incumbent presidents. New York City’s system adds to the data suggesting that if nothing else, public funding boosts competition.



## E. Producing a New Crop of Candidates

Another less measurable but deeply significant consequence of the NYC system: a far more diverse crop of candidates who choose to seek office. The matching funds system, after 2001, produced a City Council made up of a striking mix of backgrounds: lawyers, of course, but also police officers, teachers and community organizers.

The program also has been tied to a series of “firsts” in New York City politics. In the program’s inaugural run, incumbent Mayor Ed Koch was ousted by David Dinkins, the City’s first African-American Mayor, who used the system to finance his race. The first Dominican-American, first Asian-American, first Asian-American woman, and first African-American woman from Staten Island to get elected to City Council used the system, as did the first third party candidate in 30 years.<sup>137</sup> And in 2009, for the first time, the City Council is “majority minority”—a majority of City Councilmembers come from communities of color.<sup>138</sup>

The real story behind how the matching system increases the diversity of the candidate pool is its ability to assure candidates who rely on small donors that they will have enough money to get their message out. Mark Green, a former Public Advocate who was instrumental in the enactment of the multiple match, has observed that the multiple match has “substantially increased the variety of people who run for office. [A] millionaire has always been able to run for office. But now a local librarian, teacher or labor leader, who has a network of friends, can run knowing that they will have the minimal amount of money to say who they are and what they believe.”<sup>139</sup> Dan Cantor, Chair of the Working Families Party, a third party in New York, agrees. He says “the multiple match system has tremendously lowered the barrier to candidates who come from a background of service to communities and unions. The combination of term limits and the multiple match has dramatically increased the quality and diversity of who throws their hat into the ring.”<sup>140</sup>

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**New York City's matching system has led to more competition, more small donors, more impact from small contributions, more grass roots campaigning, and more citizen participation in campaigns. And it has reduced the influence of big money in general and corporate money in particular.**

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In 2001, the year that term limits vacated several seats, several grassroots candidates, including a Legal Aid Society lawyer, the director of the New York State Tenant and Neighbors Coalition, and a NYPD detective, stated that their decision to run for office was the result of the interplay of the term limits and the introduction of the multiple match. Steven Banks, a community lawyer for 20 years with the Legal Aid Society said, “traditional candidates who can rely on the support of elected officials or party officials for whom they have worked can more easily raise funds than a community advocate like me. However, the . . . match creates a level playing field for a community advocate candidate because matching funds are available to multiply the impact of small contributions raised through grassroots fundraising.”<sup>141</sup> Banks had more contributors, and more small contributors, than anyone else in his race.<sup>142</sup>

## F. What About Bloomberg?

A major challenge to public financing of elections is the possibility of high spending outside of the system. In its seminal 1976 case on the law of money in politics,<sup>143</sup> the U.S. Supreme Court ruled that it was unconstitutional to limit candidates from spending personal funds on their own behalf. (One cannot corrupt oneself, the reasoning went.)<sup>144</sup> Ever since, publicly funded candidates have dreaded the specter of a free-spending candidate able to overwhelm a public funding program.

In New York City, of course, Mayor Bloomberg's unprecedented campaign spending poses this very dilemma: How can candidates relying mostly on small gifts, and voluntarily curbing their own spending, hope to compete?<sup>145</sup>

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Recent history suggests a couple of answers.

**"It is irrational to argue against a system that enables a diverse group of people to run competitive campaigns because a wealthy candidate can occasionally outspend a participating candidate. The program benefits are not undermined by the rare occurrence of a Bloomberg candidate."**

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To be sure, when a candidate is willing and able to spend nearly six times the spending limit of a publically financed candidate, the mismatch will have some impact. No matter how generous a public financing system is, no program could hope to match such massive spending. With amazement, political cognoscenti note that Bloomberg regularly bought TV ads during the seventh game of the World Series while the Yankees were playing—a level of expense unimaginable for most candidates.<sup>146</sup>

But candidates who have faced high spending opponents still view the system favorably. Mark Green, for instance, faced Bloomberg in the 2001 mayoral race. He observes that "it is irrational to argue against a system that enables a diverse group of people to run competitive campaigns because a wealthy candidate can occasionally outspend a participating candidate. The program benefits are not undermined by the rare occurrence of a Bloomberg candidate."<sup>147</sup> Moreover, Green and other Bloomberg challengers all raised more money with the matching system than they would have without it. It gave them a stronger platform on which to stand, albeit one several stories shorter than their opponent's.

The New York City experience also underscores another argument long made by proponents of reform: candidates need enough money, not necessarily equal money. In 2009, for example, William Thompson, the city Comptroller, ran against Bloomberg. He spent roughly \$9.38 million, \$3.27 of that being publically funded.<sup>148</sup> Although Mayor Bloomberg outspent him by more than 10 times, Thompson came within five points of unseating the Mayor.

Here's another example. In a Queens council race in 2009, Republican Daniel Halloran participated in the system and relied on small donor matching funds. His Democratic opponent, Kevin Kim, was a privately-funded and politically connected candidate. Kim raised and spent almost \$660,000 in the primary and general election—substantially more than what Halloran raised.<sup>149</sup> (Halloran raised \$63,237 and received \$102,000 in matching funds.<sup>150</sup>) But, Halloran won by six percentage points. "We were overwhelmingly outspent," Halloran recalls, "but we showed that you don't need big money to win."<sup>151</sup>

## IV. CONSTITUTIONAL CONSIDERATIONS

Recently, a spate of constitutional lawsuits has challenged campaign finance regulations, some involving public funding programs.<sup>152</sup> These lawsuits do not, however, cast doubt on the overall legality of public financing. More importantly, there is no question that the heart of New York City's system—the multiple match program—is constitutionally sound.

Thirty-four years ago, in *Buckley v. Valeo*, the Supreme Court roundly endorsed the constitutionality of public financing. Specifically, it upheld the presidential public funding program which—like the City's original structure—matches small donations at a one-to-one ratio during the primary election phase. The Court praised the matching component for “require[ing] candidates to solicit smaller contributions from numerous people,”<sup>153</sup> noting that it both “reduce[s] financial barriers” for candidates and “enhance[s] the importance of smaller contributions.”<sup>154</sup> It explained that this aspect of the presidential program—like public financing generally—represents the “use of public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.”<sup>155</sup> In 2008, the Court reaffirmed the constitutionality of public financing, stating that “Congress . . . may condition acceptance of public funds on an agreement . . . to abide by specific expenditure limits.”<sup>156</sup> And, federal circuit courts of appeals have consistently upheld state public funding programs.<sup>157</sup>

Despite such favorable precedent, certain public financing systems have been the target of recent attacks. After the Supreme Court's 2008 ruling in *Davis v. FEC*—a case that did not involve public financing—opponents of campaign finance reform have launched several challenges to “trigger” provisions contained within some public financing systems, claiming that the provisions chill the speech of nonparticipants.<sup>158</sup> Trigger funds, which are also known as “rescue funds” or “fair fight funds,” are additional public grants made available to a publicly-funded candidate facing high spending from either a privately-funded opponent or from an independent spender. In other words, extra public money is “triggered” by an opponent or an independent spender spending above a set monetary threshold. Currently, there is a circuit split as to the constitutionality of these provisions.<sup>159</sup> Many speculate that the Supreme Court will decide this issue in its upcoming term.<sup>160</sup>

New York City's system has been challenged with similar claims. Specifically, opponents object to provisions that increase the matching ratio and raise the expenditure limits for participating candidates when their privately financed opponents spend past a certain threshold.<sup>161</sup> Regardless of how these claims are ultimately resolved, however, core aspects of New York City's system—including the multiple match, the qualifying criteria, and the disclosure requirements—will not be disturbed. Although tiered increase on the matching ratio and expenditure limits may be integral to incentivizing candidate participation in high spending races, the bulk of New York City's races are not high spending. Indeed, in 2005, 85 of the 89 primary, primary run-off, and general election races did not need to use these provisions<sup>162</sup> and in 2009, 94 out of 99 races did not need these additional funds.<sup>163</sup> Thus, even if the Supreme Court rules trigger provisions unconstitutional, most City races will be unaffected.

## V. CONCLUSION: SMALL DONOR PUBLIC FINANCING— A MODEL FOR REFORM

This report demonstrates that a multiple matching system can shift the dynamic of political fundraising. The New York City system engages voters early in an election campaign, and encourages them to stay connected to candidates. For this reason alone, it promotes the core values inherent in our elections—to produce government bodies that represent “We the People” and not just special interests. Candidates report that when they fuse voter outreach with fundraising from small donors, they are rewarded with early support and sufficient funds to run competitive campaigns. Careful oversight by an independent agency, combined with thorough review after each election, promotes public confidence in the system, and provides information on how the system can be improved. In New York City, we have found ample evidence that this model of campaign financing works—for the candidates, but most importantly, for the voters.

The introduction of the Fair Elections Now Act and the Presidential Funding Act of 2010 demonstrates that interest in the multiple match system—and in particular, its innovative offspring, the small donor multiple match—has developed significant new momentum.<sup>164</sup>

Small donor multiple matching has recently been endorsed by prominent academics Anthony Corrado, Michael Malbin, Thomas Mann and Norman Ornstein. In their recent report, they argue that a system that provides a multiple match for only small donors would create the strongest possible incentive for candidates to seek out small donors.

Several factors are driving this next generation multiple match.

One is technology: the rise of Internet fundraising makes plausible, for the first time, a culture of small giving as the engine of campaign financing. However, technology alone cannot unilaterally transform campaign fundraising.<sup>165</sup> The small donor revolution of 2008 was real, but incomplete. Although small donors made headlines in the presidential race, the small donor revolution remains just a rumor on Capitol Hill. Congressional candidates still are raising their funds the old-fashioned way: in large amounts, flowing overwhelmingly to incumbents, from individuals and political action committees with a direct economic interest in legislation. Small donor matching systems will provide the needed incentives to make the possibility of small donor fundraising a reality.

Another reason for interest in the multiple match is the recent trend of Supreme Court litigation. As discussed previously, opponents of reform are raising an armada of challenges to campaign finance reform generally. Given *Buckley's* approval of the matching system in presidential elections, the small donor multiple match is currently a constitutional safe harbor.

The small donor multiple match has advantages over other approaches, and drawbacks as well. The multiple match boosts the voices of ordinary citizens and incentivizes candidates to organize voters, fusing fundraising and organizing. A match for only small donors will only amplify this effect.

On the other hand, one of its drawbacks is that candidates must continue to fundraise, imposing a severe time drain on lawmakers. There is no golden moment when fundraising no longer matters, and candidates can focus solely on communicating with voters.

In addition, a multiple matching fund system would require skilled administration and enforcement. It requires campaigns to create and maintain accurate records, and requires already overburdened FEC staff to process significant amounts of information showing multiple small gifts in order to approve funding grants. The current FEC does not have the staff or infrastructure to handle these increased demands.

We encourage the Congress to use the evidence and policy considerations set forth in this report to bolster efforts to transform the current federal regulatory morass into a new model that promotes citizen engagement and fair elections.



## ENDNOTES

- <sup>1</sup> *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1930) (Brandeis, J. dissenting).
- <sup>2</sup> See Frederick A.O. Schwarz, Jr., *States and Cities as Laboratories of Democracy*, 54 THE RECORD OF THE ASSOC. OF THE BAR OF THE CITY OF N.Y. 131, 157 (1999), available at <http://www.abcnyc.org/Publications/record/mar-apr99pp.1.pdf>.
- <sup>3</sup> See Todd S. Purdum, *New York Adopts Public Financing of Political Races*, N.Y. TIMES, Feb. 10, 1988, at A1, available at <http://www.nytimes.com/1988/02/10/nyregion/new-york-adopts-public-financing-of-political-races.html>; Michel Marriott, *The 1988 Election: New York City Charter, Rules on Mayoral Succession And Anti-Corruption Voted*, N.Y. TIMES, Nov. 9, 1988, at B1, available at <http://www.nytimes.com/1988/11/09/nyregion/1988-elections-new-york-city-charter-rules-mayoral-succession-anti-corruption.html>.
- <sup>4</sup> Pursuant to the New York City charter:  
There shall be a campaign finance board consisting of five members. Two members of the board shall be appointed by the Mayor, provided that not more than one such member shall be enrolled in any one political party, and two members shall be appointed by the speaker of the council, provided that not more than one such member shall be enrolled in any one political party, and one member, who shall be the chairperson, shall be appointed by the Mayor after consultation with the speaker.  
NEW YORK CITY, N.Y., CHARTER § 1052(a)(1).
- <sup>5</sup> Mr. Schwarz helped defend against a lawsuit challenging the four-to-one match, and was Chair of the CFB when the change was made to a six-to-one match.
- <sup>6</sup> *Citizens United v. FEC*, 130 S.Ct. 876, 974 (2010) (5-4 decision) (Stevens, J., dissenting).
- <sup>7</sup> ANTHONY J. CORRADO, MICHAEL J. MALBIN, THOMAS E. MANN & NORMAN J. ORNSTEIN, THE CAMPAIGN FINANCE INSTITUTE, AMERICAN ENTERPRISE INSTITUTE, & BROOKINGS INSTITUTION, *Reform in the Age of Networked Campaigns*, at 13 (2010), [http://www.cfinst.org/books\\_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf](http://www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf).
- <sup>8</sup> S. 752, 111th Cong. § 523(a) (2009); H.R. 1826, 111th Cong. § 523(a) (2009) (introduced by Senators Dick Durbin (D-IL) and Arlen Specter (D-PA), and by Representatives John Larson (D-CT) and Walter Jones (R-NC)).
- <sup>9</sup> S. 3681, 111th Cong. § 101(a)(1)(A) (2010); H.R. 6061, 111th Cong. § 101(a)(1)(A) (2010) (introduced by Senator Russell Feingold (D-WI) and Representatives Chris Van Hollen (D-MD), David Price (D-NC), Michael Castle (R-De) and Todd Russell (R-PA)).
- <sup>10</sup> NEW YORK CITY, N.Y., ADMIN. CODE §§ 3-701 to -720 (2009).
- <sup>11</sup> JACK NEWFIELD & WAYNE BARRETT, *CITY FOR SALE: ED KOCH AND THE BETRAYAL OF NEW YORK* 51-61 (1988).
- <sup>12</sup> Richard J. Meislin, *Manes's Death: A Frantic Call, A Fatal Thrust*, N.Y. TIMES, March 15, 1986, available at <http://www.nytimes.com/1986/03/15/nyregion/manes-s-death-a-frantic-call-a-fatal-thrust.html>.

- <sup>13</sup> Peter L. Zimroth, *Reflections on My Years as Corporation Counsel*, 53 N.Y.L. SCH. L. REV. 409, 411 (2008/09).
- <sup>14</sup> See, e.g., Frank Lynn, *Bronx Chief Quits and Friedman Gets 12-Year Sentence*, N.Y. TIMES, Mar. 12, 1987, available at <http://www.nytimes.com/1987/03/12/nyregion/bronx-chief-quits-and-friedman-gets-12-year-sentence.html> (describing “a wide pattern of bribery, extortion and racketeering charges that have plagued Mayor Koch’s administration for more than a year”).
- <sup>15</sup> Josh Barbanel, *State-City Panel Appointed To Seek End To Corruption*, N.Y. TIMES, March 12, 1986, <http://www.nytimes.com/1986/03/12/nyregion/state-city-panel-appointed-to-seek-end-to-corruption.html> (subscription only).
- <sup>16</sup> Jeffrey D. Friedlander, Stephen E. Louis & Laurence D. Laufer, *The New York City Campaign Finance Act*, 16 HOFSTRA L. REV. 345, 350 (1988) (citing N.Y.A. 6809, 110th Sess (1987), N.Y.A. 6809-B, 111th Sess. (1988), N.Y.A. 8526, 110th Sess. (1987)).
- <sup>17</sup> NEW YORK CITY, N.Y., LOCAL LAW No. 8 OF 1988, § 1. Shortly thereafter, the New York City Charter Commission adopted the reforms and placed them on the ballot for voter approval. In November 1988, 79.8% of voters approved these proposals. N.Y. CITY CHARTER REVISION COMMISSION, THE REPORT: VOL. I, 23-24, 44-45 (1988), available at [http://www.nyc.gov/html/charter/downloads/pdf/1986-1988\\_final\\_report.pdf](http://www.nyc.gov/html/charter/downloads/pdf/1986-1988_final_report.pdf).
- <sup>18</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, DOLLARS AND DISCLOSURE: CAMPAIGN FINANCE REFORM IN NEW YORK CITY 10 (1990) [hereinafter “DOLLARS AND DISCLOSURE”], available at [http://www.nycffb.info/PDF/per/90\\_PER-intro-ch.7.pdf](http://www.nycffb.info/PDF/per/90_PER-intro-ch.7.pdf).
- <sup>19</sup> NEW YORK CITY, N.Y., LOCAL LAW No. 8 OF 1988, § 1 (describing the Act as intended “to reduce improper influence of local officers by large campaign contributions and to enhance public confidence in local government”).
- <sup>20</sup> *Id.* (“[I]t is vitally important to democracy . . . to ensure that citizens, regardless of their personal wealth, access to large contributions or other financial connections, are enabled and encouraged to compete effectively for public office. . .”).
- <sup>21</sup> *Id.* at § 2.
- <sup>22</sup> DOLLARS AND DISCLOSURE, *supra* note 18, at 10.
- <sup>23</sup> Telephone Interview by Angela Migally with Mark Green, New York, NY (June 26, 2010).
- <sup>24</sup> NEW YORK CITY, N.Y., LOCAL LAW No. 48 OF 1998 § 7(b), available at <http://legistar.council.nyc.gov/ViewReport.aspx?M=R&N=Text&GID=61&ID=474567&GUID=8A6CB53B-C3B0-4321-80F4-CF33C08331E7&Title=Legislation+Text> (“four dollars for each one dollar of matchable contributions, up to one thousand dollars in public funds per contributor”).
- <sup>25</sup> NEW YORK CITY, N.Y., LOCAL LAW No. 67 OF 2007, § 11, available at <http://legistar.council.nyc.gov/ViewReport.aspx?M=R&N=Text&GID=61&ID=483738&GUID=9C19C1A3-1D2A-4F59-96E5-66E4CE2521FF&Title=Legislation+Text> (codified at ADMIN. CODE § 3-705(2)(A)).
- <sup>26</sup> See 26 U.S.C. §9034 (a). Between 1976 and 2000, every major party presidential nominee, except for George W. Bush, participated in the primary matching program. However, in 2004, neither President George



W. Bush nor Senator John Kerry participated in the program for the primary. In 2008, Senators Barack Obama, Hillary Clinton and John McCain each declined to participate in the primary season matching fund program. See JOSEPH E. CANTOR, CONGRESSIONAL RESEARCH SERVICE, *The Presidential Election Campaign Fund and Tax Checkoff: Tax and Background Issues*, at CRS-5 (2005), <http://www.policyarchive.org/handle/10207/bitstreams/19424.pdf>; Thomas E. Mann, *Money in the 2008 Election: Bad News or Good?*, CHAUTAUQUAN DAILY, July 1, 2008, [http://www.brookings.edu/opinions/2008/0701\\_publicfinance\\_mann.aspx](http://www.brookings.edu/opinions/2008/0701_publicfinance_mann.aspx).

<sup>27</sup> Florida, Michigan, New Jersey, and Rhode Island all have multiple match systems. See FLA. STAT. § 106.35(2) (2009) (Since 1994, Florida has provided a two-to-one match for contributions of \$250 or less for a handful of offices, including governor and cabinet level offices); MICH. COMP. LAWS §§ 169.201 – 169.282 (2009) (Since the 1976, Michigan has provided a two-to-one match for contributions less than \$100 to participating gubernatorial candidates); N.J. STAT. ANN. § 19:44A-33 (2009) (Since 1974, New Jersey has offered a two-to-one match on contributions of \$1500 or less for gubernatorial candidates.); R.I. GEN. LAWS § 17-25-19 (2009) (Since 1988, Rhode Island has offered a two-to-one match for contributions less than \$500 for all state offices). In general, these systems have been successful. However, despite initially having high participation rates, Michigan and New Jersey's systems have seen participation dwindle due to underfunding and expenditure limits that have not kept pace with rising campaign costs. See SASHA HORWITZ, CENTER FOR GOVERNMENTAL STUDIES, *PUBLIC CAMPAIGN FINANCING: MICHIGAN – DRIVING TOWARDS COLLAPSE?* 10 (2008), available at [http://www.cgs.org/images/publications/cgs\\_mi\\_final\\_081808.pdf](http://www.cgs.org/images/publications/cgs_mi_final_081808.pdf); JESSICA A. LEVINSON, CENTER FOR GOVERNMENTAL STUDIES, *PUBLIC CAMPAIGN FINANCING: NEW JERSEY GOVERNOR— WEEDING OUT BIG MONEY IN THE GARDEN STATE* 20-27 (2008), available at [http://www.cgs.org/images/publications/cgs\\_nj\\_gov\\_final\\_081808.pdf](http://www.cgs.org/images/publications/cgs_nj_gov_final_081808.pdf).

<sup>28</sup> NEW YORK CITY, N.Y., ADMIN. CODE § 3-705(2)(a) (2009). In the event that a participating candidate has a non-participating opponent who spends past a certain amount, the matching ratio can increase up to 8.57-to-1. *Id.* at § 3-706(3)(b)(iii) (raising to \$1500 the match for a donation of \$175 when a participating candidate faces an opponent who spends more than three times the spending limit for all elections after Jan. 1, 2008).

<sup>29</sup> *Id.* at §§ 3-702(3) (“The term ‘matchable contribution’ shall mean (i) a contribution . . . made by a natural person resident in the city of New York”); 3-703(1-a), (14)(a)(iii).

<sup>30</sup> *Id.* at § 3-703(1)(l).

<sup>31</sup> CAMPAIGN FINANCE BOARD, *CANDIDATE FILINGS 1997-2009*, (as of May 17, 2010) available at [http://www.brennancenter.org/page/-/Democracy/CFR/Candidate\\_Filings\\_1997\\_to\\_2009.pdf](http://www.brennancenter.org/page/-/Democracy/CFR/Candidate_Filings_1997_to_2009.pdf). This chart only includes candidates who appeared on the ballot. This chart does not contain information on non-participating candidates from 1997-2001 because non-participating candidates did not report to the Campaign Finance Board until the 2005 election cycle.

<sup>32</sup> NEW YORK CITY, N.Y., ADMIN. CODE § 3-709(5) (2009); NEW YORK CITY, N.Y., RULES, tit. 52, § 5-01(i)(3) (2009).

<sup>33</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, *2009 CAMPAIGN FINANCE HANDBOOK* 69 (2009), [http://www.nycffb.info/candidates/candidates/handbooks/2009\\_Handbook.pdf](http://www.nycffb.info/candidates/candidates/handbooks/2009_Handbook.pdf).

<sup>34</sup> *Id.* at 68. Under certain provisions that are currently subject to constitutional challenge in Court, the maximum amount of matching funds per candidate can be increased when a non-participating opponent spends in excess of a certain threshold. NEW YORK CITY, N.Y., ADMIN. CODE § 3-705(6), (7)(b)(1) (2009). See p. 24 for a discussion of the legal challenge to these provisions.

<sup>35</sup> NEW YORK CITY, N.Y., ADMIN. CODE § 3-703(2) (2009); 2009 CAMPAIGN FINANCE HANDBOOK, *supra* note 33, at 60.

<sup>36</sup> *Id.* at §§ 3-702(3); 3-703(2)(a).

<sup>37</sup> Borough President candidates run for office in one of New York City's five boroughs: Manhattan, Brooklyn, Bronx, Queens and Staten Island. The aggregate qualifying threshold depends on the size of each borough. *Id.* at § 3-703(2)(a)(iii).

<sup>38</sup> This includes, registering a candidate committee with both the New York City and the New York State board of elections and filing a "Filer Registration" form with the City's Campaign Finance Board. These forms must be filed before any candidate can receive contributions or make the requisite disclosure of campaign receipts and expenditures. 2009 CAMPAIGN FINANCE HANDBOOK, *supra* note 33, at 1-3. Candidates can file these forms anytime and usually candidate committees are established years before an election. For example, in the 2009 election cycle, the first mandated disclosure was July 17, 2006. NEW YORK CITY CAMPAIGN FINANCE BOARD, *Disclosure Statement Deadlines for the 2009 Citywide Elections*, [http://www.nyccfb.info/candidates/candidates/disclosure\\_deadlines/2009.htm](http://www.nyccfb.info/candidates/candidates/disclosure_deadlines/2009.htm) (last visited Aug. 6, 2010).

<sup>39</sup> NEW YORK CITY, N.Y., ADMIN. CODE §§ 3-703(1)(i), 3-706(1)(a), (e). Additionally, participating candidates agree to significantly restrict the use of their personal funds for campaigning. *Id.* at § 3-703(1)(h).

<sup>40</sup> These expenditure limits represent the general caps on spending. Like the cap on matching funds, the expenditure limit is tied to the level of competitiveness in a participating candidate's race. In the event that a participating candidate's non-participating opponent spends in excess of a certain threshold, the participant's expenditure limit can be increased or possibly lifted. *Id.* at § 3-706(1)(a) (2009). Opponents of this system have raised a constitutional challenge in Court to this provision. *See* p. 24 for a discussion of the legal challenge to these provisions.

<sup>41</sup> NEW YORK CITY, N.Y., RULES, tit. 52, § 3-02 (2009).

<sup>42</sup> 2009 CAMPAIGN FINANCE HANDBOOK, *supra* note 33, at 78.

<sup>43</sup> NEW YORK CITY, N.Y., RULES, tit. 52, § 3-02 (a)(3)(e) (2009).

<sup>44</sup> NEW YORK CITY, N.Y., ADMIN. CODE § 3-708(9) (2009).

<sup>45</sup> NEW YORK CITY, N.Y., RULES, tit. 52, § 3-03 (2009).

<sup>46</sup> NEW YORK CITY, N.Y., ADMIN. CODE § 3-709.5(1)(a) (2006).

<sup>47</sup> Patrick D. Healy, *Attacks Escalate in Final Debate of Mayoral Election*, N.Y. TIMES, Nov. 2, 2005, at A1; Michael Barbaro, *Mayoral Foes Trade Attacks In First Debate*, N.Y. TIMES, Oct. 14, 2009, at A1; Adam Nagourney, *Bloomberg and Green Clash Over Capability in Debate*, N.Y. TIMES, Nov. 2, 2001, at A1.

<sup>48</sup> NEW YORK CITY, N.Y., RULES, tit. 52, § 10-03 (2009).

<sup>49</sup> *Id.* at § 10-02.

<sup>50</sup> NEW YORK CITY, N.Y., ADMIN. CODE § 3-708(11).

<sup>51</sup> *Id.* at § 3-708 (1).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at §§ 3-702(3), 3-705(1),(4), 3-708(5), 3-709.5, 5-710.

<sup>54</sup> Richard Briffault, *Public Financing and Democratic Elections*, 148 U. Pa. L. Rev. 563, 585 (1999).

<sup>55</sup> Editorial, *A Solid Choice for City Campaign Chief*, N.Y. TIMES, Mar. 6, 2003, available at <http://www.nytimes.com/2003/03/06/opinion/a-solid-choice-for-city-campaign-chief.html> (“The board’s nonpartisan culture and evenhandedness in the heat of campaigns stands in refreshing contrast to the partisan bickering and stalemates that characterize the toothless Federal Election Commission.”).

<sup>56</sup> New York City, N.Y., Charter § 1057.

<sup>57</sup> The FEC is comprised of six members, three Democrat and three Republican. It is one of very few federal agencies with an even number of members. As a result of this even-numbered, bi-partisan make-up, the FEC is largely viewed as incapable of properly enforcing federal campaign finance law. Benjamin Weiser and Bill McAllister, *The Little Agency that Can’t*, WASH. POST, Feb. 12, 1997, at A01, available at <http://www.washingtonpost.com/wp-srv/politics/special/campfin/stories/fec.htm>.

<sup>58</sup> Nicole Gordon, *The New York City Model: Essentials for Effective Campaign Finance Regulation*, 6 J.L. & POL’Y 79, 84 n. 21; *A Solid Choice for City Campaign Chief*, *supra* note 55.

<sup>59</sup> NEW YORK CITY, N.Y., ADMIN. CODE § 3-708.

<sup>60</sup> Interview by Ciara Torres-Spelliscy with Amy Loprest, Executive Director, New York City Campaign Finance Board, in New York, N.Y. (May 17, 2010).

<sup>61</sup> Alison Leigh Cowan, *New York Fights to Be Repaid By Candidates*, N.Y. TIMES, July 6, 2010, available at <http://www.nytimes.com/2010/07/06/nyregion/06finance.html>.

<sup>62</sup> Since 1997, the CFB has disbursed over \$101.2 million to participating candidates. See CFB, CANDIDATE FILINGS 1997-2009, *supra* note 31.

<sup>63</sup> NEW YORK CITY, N.Y., ADMIN. CODE § 3-709.

<sup>64</sup> *Id.*; see also New York City, N.Y., Local Law No. 8 of 1988.

<sup>65</sup> NEW YORK CITY, N.Y., CITY CHARTER §§ 4 (Mayor), 24(a) (Public Advocate), 25(a) (City Council), 81(b) (Borough Presidents), 91 (Comptroller) (2009). The term for most City Councilmembers is typically four years, however, the term for City Council candidates who run in general elections in 2001 and 2003 and elections every twentieth year thereafter is two years. *Id.* § 25(a).

<sup>66</sup> U.S. CENSUS BUREAU, POPULATION DIVISION, ANNUAL ESTIMATES OF THE POPULATION OF METROPOLITAN AND MICROPOLITAN STATISTICAL AREAS: APRIL 1, 2000 TO JULY 1, 2008 (2009), <http://www.census.gov/popest/metro/tables/2008/CBSA-EST2008-01.xls>.

- <sup>67</sup> See U.S. CENSUS BUREAU, STATE AND COUNTY QUICK FACTS, “New York (city), New York,” <http://quickfacts.census.gov/qfd/states/36/3651000.html> (last visited Aug. 7, 2010) (finding that over eight million people live in New York City); U.S. CENSUS BUREAU, GEOGRAPHIC COMPARISON TABLE, “GCT-T1-R. Population Estimates (geographies ranked by estimate),” available at <http://factfinder.census.gov/servlet/GCTTable> (last visited Aug. 7, 2010); N.Y. STATE BOARD OF ELECTIONS, NYS VOTER ENROLLMENT BY COUNTY, PARTY AFFILIATION AND STATUS 10 (2010), available at [http://www.elections.state.ny.us/NYSBOE/enrollment/county/county\\_apr10.pdf](http://www.elections.state.ny.us/NYSBOE/enrollment/county/county_apr10.pdf) (last visited Aug. 7, 2010).
- <sup>68</sup> See U.S. CENSUS BUREAU, 2000 CENSUS TABLE SF3 P21 – TOTAL POPULATION BY CITIZENSHIP STATUS, “2003 New York City Council Districts,” available at <http://www.nyc.gov/html/dcp/pdf/census/cncl03citizen.pdf> (last visited Aug. 5, 2010).
- <sup>69</sup> NATIONAL CONFERENCE OF STATE LEGISLATURES, CONSTITUENTS PER STATE LEGISLATIVE DISTRICT, available at <http://www.ncsl.org/default.aspx?tabid=16643> (last visited Aug. 5, 2010).
- <sup>70</sup> See “New York City Quick Facts,” *supra* note 67.
- <sup>71</sup> CENTER FOR RESPONSIVE POLITICS, BIG PICTURE: ELECTION STATS, Election Cycle 2008, [http://www.opensecrets.org/bigpicture/elec\\_stats.php?cycle=2008](http://www.opensecrets.org/bigpicture/elec_stats.php?cycle=2008).
- <sup>72</sup> In 2005, Mayor Bloomberg spent \$85 million on his reelection campaign; in 2008, he spent \$108 million. See CFB, CANDIDATE FILINGS 1997-2009, *supra* note 31.
- <sup>73</sup> *Id.*
- <sup>74</sup> See Campaign Finance Board, Candidate Expenditures, 2009 Report, (as of June 9, 2010) available at [http://www.brennancenter.org/page/-/Democracy/CFR/Candidate\\_Expenditures\\_2009.pdf](http://www.brennancenter.org/page/-/Democracy/CFR/Candidate_Expenditures_2009.pdf). This analysis includes candidates who had at least one contributor and was on the ballot. Primary election data includes all expenditures that were made on or before 9/21/2009 or were otherwise undated. General election date includes all dated expenditures made on or after 9/22/2009.
- <sup>75</sup> See CFB, CANDIDATE FILINGS 1997-2009, *supra* note 31.
- <sup>76</sup> NATIONAL INSTITUTE ON MONEY IN STATE POLITICS, NEW YORK 2008 DATA, “Table 4: Average Dollars by Status,” [http://www.followthemoney.org/database/StateGlance/state\\_candidates.phtml?s=NY&y=2008&cf=0&so=a#sorttable](http://www.followthemoney.org/database/StateGlance/state_candidates.phtml?s=NY&y=2008&cf=0&so=a#sorttable) (last visited Aug. 5, 2010).
- <sup>77</sup> NYS VOTER ENROLLMENT BY COUNTY, PARTY AFFILIATION AND STATUS, *supra* note 67, at 10.
- <sup>78</sup> Over the past half century, the mayoralty has been won by a Republican six times, a Democrat six times, a third party Liberal once, and an Independent once. Winning mayoral candidates were 1961: Wagner (D); 1965: Lindsay (R); 1969: Lindsay (L); 1973: Beame (D); 1977: Koch (D); 1981: Koch (D); 1985: Koch (D); 1989: Dinkins (D); 1993: Giuliani (R); 1997: Giuliani (R); 2001: Bloomberg (R); 2005: Bloomberg (R); 2009: Bloomberg (I). Various times, candidates accepted cross endorsements (e.g., in 1981 Koch ran as the Republican as well as the Democrat); this list is based on the candidate’s main self-identification. *Mayoralty*, in THE ENCYCLOPEDIA OF NEW YORK CITY, 735, 735-744 (Kenneth T. Jackson ed., 1995) (discussing mayors through the 1993 election of Giuliani); *Times Topics: Rudolph Giuliani*, N.Y. TIMES, [http://topics.nytimes.com/top/reference/timestopics/people/g/rudolph\\_w\\_giuliani/index.html](http://topics.nytimes.com/top/reference/timestopics/people/g/rudolph_w_giuliani/index.html) (last visited Aug. 5, 2010); Sam Roberts, *Times Topics: Michael Bloomberg*, N.Y. TIMES, [http://topics.nytimes.com/top/reference/timestopics/people/b/michael\\_r\\_bloomberg/index.html](http://topics.nytimes.com/top/reference/timestopics/people/b/michael_r_bloomberg/index.html) (last visited Aug. 5, 2010).

<sup>79</sup> See NEW YORK CITY CAMPAIGN FINANCE BOARD, *NEW YORKERS MAKE THEIR VOICES HEARD* 140, 208 (forthcoming Sept. 1, 2010). Participation in the general election is less robust because general election campaigns are usually much less competitive.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *The World's Billionaires*, FORBES, Mar. 10, 2010, [http://www.forbes.com/lists/2010/10/billionaires-2010\\_The-Worlds-Billionaires\\_Rank.html](http://www.forbes.com/lists/2010/10/billionaires-2010_The-Worlds-Billionaires_Rank.html) (last visited July 6, 2010).

<sup>83</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, *PUBLIC DOLLARS FOR THE PUBLIC GOOD: A REPORT ON THE 2005 ELECTIONS* (2006), [http://www.nycffb.info/PDF/per/2005\\_PER/2005\\_Post\\_Election\\_Report.pdf](http://www.nycffb.info/PDF/per/2005_PER/2005_Post_Election_Report.pdf); <http://www.nycffb.info/> (follow "press" hyperlink; then follow "Campaign Finance Summaries" hyperlink) (last visited July 6, 2010); See CFB, *CANDIDATE FILINGS, 1997-2009*, *supra* note 31.

<sup>84</sup> In 2001, term limits barred many incumbents from running for re-election. As a result, an unprecedented number of open seats emerged. Forty-four seats, including Mayor, Public Advocate, Comptroller, four Borough Presidents, and 37 of 51 City Council seats were open seats. In 2005, there were just 7 open seats. In 2009, as a result of city council's decision to extend term limits, there were only ten open seats in 2009. See NEW YORK CITY CAMPAIGN FINANCE BOARD, *AN ELECTION INTERRUPTED: THE CAMPAIGN FINANCE PROGRAM AND THE 2001 NEW YORK CITY ELECTIONS* 12 (Sept. 2002), [http://www.nycffb.info/PDF/per/2001\\_PER/2001\\_PER\\_Vol.1.pdf](http://www.nycffb.info/PDF/per/2001_PER/2001_PER_Vol.1.pdf); NEW YORK CITY CAMPAIGN FINANCE BOARD, *PUBLIC DOLLARS FOR THE PUBLIC GOOD: A REPORT ON THE 2005 ELECTIONS* 13 (2006), [http://www.nycffb.info/PDF/per/2005\\_PER/2005\\_Post\\_Election\\_Report.pdf](http://www.nycffb.info/PDF/per/2005_PER/2005_Post_Election_Report.pdf).

<sup>85</sup> Michael J. Malbin and Peter W. Brusoe, *Campaign Finance Policy in the State and City of New York*, in *Handbook of New York State Politics* 20 (Gerald Benjamin ed., forthcoming).

<sup>86</sup> *Id.*

<sup>87</sup> See CFB, *CANDIDATE FILINGS 1997-2009*, *supra* note 31; See Campaign Finance Board, *Candidate Expenditures, 2009 Report*, available at [http://www.brennancenter.org/page/-/Democracy/CFR/Candidate\\_Expenditures\\_2009.pdf](http://www.brennancenter.org/page/-/Democracy/CFR/Candidate_Expenditures_2009.pdf).

<sup>88</sup> Telephone Interview by Angela Migally with Brad Lander, Member, New York City Council (July 8, 2010).

<sup>89</sup> See CFB, *CANDIDATE FILINGS 1997-2009*, *supra* note 31.

<sup>90</sup> Affidavit of Stephan DiBrienza ¶ 3, *City of New York v. N.Y. City Campaign Finance Board*, No. 400550/01 (Sup. Ct. N.Y. County 2001) (Feb. 12, 2001). *Note*: All affidavits relating to *City of New York v. N.Y. City Campaign Finance Board* were submitted as part of Mayor Rudolph Giuliani's 2001 unsuccessful court challenge to the four-to-one match.

<sup>91</sup> See CFB, *CANDIDATE FILINGS 1997-2009*, *supra* note 31.

<sup>92</sup> *Id.*

<sup>93</sup> Affidavit of Betsy Gotbaum ¶ 4, *City of New York v. N.Y. City C.F.B.*, No. 400550/01, (Feb. 14, 2001).

- <sup>94</sup> In 1997, 72,082 donors gave to participating candidates. In 2009, 97,277 donors gave to participating candidates. In 2001, the first year that the system offered a multiple match, the number of donors skyrocketed to 146,949 donors, a 97% increase. The significant increase in donors cannot be attributed solely to the multiple match since an unprecedented number of candidates ran for a large number of open seats that were vacated by term limits. However, even in 2005, an election cycle with few open seats, 90,081 donors gave to participating candidates, a 25% increase in the number of donors who gave before the enactment of a multiple match. See CFB, Candidate Filings 1997-2009, *supra* note 31.
- <sup>95</sup> In 1997, 54,547 small donors gave to participating candidates. In 2009, 76,471 small donors gave to participating candidates. *Id.*
- <sup>96</sup> Telephone Interview by Elizabeth Daniel with Bill de Blasio, Public Advocate, New York, NY (May 18, 2010).
- <sup>97</sup> Affidavit of C. Virginia Fields ¶¶ 4,6, *City of New York v. N.Y. City C.F.B.*, No. 400550/01, (Feb. 13, 2001).
- <sup>98</sup> Affidavit of Rockwell Chin ¶¶ 3-4, *City of New York v. N.Y. City C.F.B.*, No. 400550/01, (Feb. 9, 2001).
- <sup>99</sup> Affidavit of Richard Perez at ¶ 4, *City of New York v. N.Y. City C.F.B.*, No. 400550/01, (Feb. 2001).
- <sup>100</sup> See CAMPAIGN FINANCE BOARD, CANDIDATE RECEIPTS, 2009 Report, (as of May 18 2010) *available at* [http://www.brennancenter.org/page/-/Democracy/CFR/Candidate\\_Receipts\\_2009.pdf](http://www.brennancenter.org/page/-/Democracy/CFR/Candidate_Receipts_2009.pdf).
- <sup>101</sup> FEDERAL ELECTION COMMISSION, CANDIDATE SUMMARY REPORTS, 2000 Election Cycle Report for Hillary R. Clinton, *available at* [http://query.nictusa.com/cgi-bin/cancomsrs/?\\_00+S0NY00188](http://query.nictusa.com/cgi-bin/cancomsrs/?_00+S0NY00188) (last visited Aug. 5, 2010).
- <sup>102</sup> Affidavit of Bill de Blasio ¶ 2, *City of New York v. N.Y. City C.F.B.*, No. 400550/01, (Feb. 14, 2001).
- <sup>103</sup> de Blasio interview, *supra* note 96.
- <sup>104</sup> See CFB, CANDIDATE FILINGS 1997-2009, *supra* note 31.
- <sup>105</sup> FEDERAL ELECTION COMMISSION, CANDIDATE SUMMARY REPORTS, 2006 Election Cycle Report for David Yassky, *available at* [http://query.nictusa.com/cgi-bin/cancomsrs/?\\_06+H6NY11117](http://query.nictusa.com/cgi-bin/cancomsrs/?_06+H6NY11117) (last visited Aug. 5, 2010).
- <sup>106</sup> Interview by Angela Migally with David Yassky, Commissioner/Chair, N.Y. City Taxi and Limousine Commission, New York, NY (June 25, 2010).
- <sup>107</sup> NEW YORK CITY, N.Y. ADMIN. CODE, § 3-703(1)(f)(iii) (2009), raised to \$2,750 in 2002 via 3-703(7); *Contributions and Receipt Limitations*, N.Y. STATE BOARD OF ELECTIONS, <http://www.elections.state.ny.us/Contributions.html#LimitFormula> (last visited June 8, 2010).
- <sup>108</sup> See CFB, CANDIDATE FILINGS, 1997-2009, *supra* note 31.
- <sup>109</sup> Telephone Interview by Elizabeth Daniel with Mark Weprin, Member, N.Y. City Council (April 19, 2010).
- <sup>110</sup> *Id.*

<sup>111</sup>In 2009, the median number of contributors for a non-participating candidate was 141 donors. For participating candidates it was 305. *See* CFB, CANDIDATE FILINGS 1997-2009, *supra* note 31.

<sup>112</sup>In 2005, the median number of contributors for a non-participating candidate was 188 donors. For participating candidates it was 284. *Id.*

<sup>113</sup>In 2005, the median number of small donors was 239 for participating City Council candidates and 98 for non-participants. In 2009, the median number of small donors for participating candidates was 269 and 91 for non-participants. *Id.*

<sup>114</sup>*See* Campaign Finance Board, Candidate Receipts, 2005 Report, (as of May 18, 2010) available at [http://www.brennancenter.org/page/-/Democracy/CFR/Candidate\\_Receipts\\_2005.pdf](http://www.brennancenter.org/page/-/Democracy/CFR/Candidate_Receipts_2005.pdf); 2009 Candidate Receipts Report, *supra* note 101. This analysis includes receipts from candidates whose name were on the ballots.

<sup>115</sup>*Id.*

<sup>116</sup>*Id.* A similar comparison of candidate receipts in the Mayor's races in 2005 and 2009 is not plausible due to the very high spending of Mayor Michael Bloomberg and the absence of serious non-participating candidates. In both 2005 and 2009, Mayor Bloomberg spent, respectively, \$85 and \$108 million of his own money. In 2009, the other two non-participating candidates did not launch robust campaigns—combined, they received contributions from only 40 people. Thus, the average contribution for non-participating candidates is in the millions while the average contribution to participating candidates for Mayor was \$482. *Id.*

<sup>117</sup>Malbin, *supra* note 85, at 22.

<sup>118</sup>Lander interview, *supra* note 88.

<sup>119</sup>Telephone Interview by Angela Migally with Alex Navarro-McKay, Consultant at BerlinRosen (June 23, 2010).

<sup>120</sup>Yassky interview, *supra* note 106.

<sup>121</sup>*Id.*

<sup>122</sup>Telephone Interview by Elizabeth Daniel with Daniel Dromm, Member, N.Y. City Council (April 22, 2010).

<sup>123</sup>Weprin interview, *supra* note 109.

<sup>124</sup>Affidavit of Fernando Ferrer ¶ 4, *City of New York v. N.Y. City C.F.B.*, No. 400550/01, (Feb. 12, 2001).

<sup>125</sup>Eleanor Randolph, "Editorial Observer; A Big City Election: 8 Million New Yorkers and 400 Candidates," N.Y. TIMES, Sept. 9, 2001, available at <http://www.nytimes.com/2001/09/09/opinion/editorial-observer-a-big-city-election-8-million-new-yorkers-and-400-candidates.html>.

<sup>126</sup>Yassky interview, *supra* note 106.

<sup>127</sup>*See* 2009 Candidate Expenditures Report, *supra* note 74. (In the Public Advocate and Comptroller primaries and in the primaries of City Council Districts 1, 3, 11, 14, 19, 23, 25, 26, 33, 34, 36, 39, 45, and 49).

- <sup>128</sup> *Id.* (City Council Districts 1, 3, 33, 34, 39 and 45).
- <sup>129</sup> *Id.* (City Council Districts 1, 3, 11, 12, 14, 25, 31, 34, 40, 42, 45, and 49).
- <sup>130</sup> Of note, gerrymandering is generally *not* a bar to competition in New York City. Council districts are drawn by a nonpartisan commission. NEW YORK CITY, N.Y., CHARTER §§ 50-52. The Council, too, was expanded in size from 35 seats to 51 seats to assure greater representativeness. See Alan Finder, *Overhaul of New York City Charter Is Approved, Polls Show*, N.Y. TIMES, Nov. 8, 1989, at B1, available at <http://www.nytimes.com/1989/11/08/nyregion/1989-elections-charter-overhaul-new-york-city-charter-approved-polls-show.html>.
- <sup>131</sup> Telephone Interview by Angela Migally with Christine Quinn, Speaker, N.Y. City Council (July 28, 2010).
- <sup>132</sup> Weprin interview, *supra* note 109.
- <sup>133</sup> Telephone Interview by Elizabeth Daniel with Jumaane Williams, Member, N.Y. City Council (April 19, 2010).
- <sup>134</sup> Nicole Gordon, Vice President, JEHT Foundation, Remarks at the Rockefeller Institute's Public Policy Forum: Can and Should NYC's Campaign Finance Reforms be Extended to State Offices? 17 (April 25, 2007), available at [http://www.rockinst.org/pdf/public\\_policy\\_forums/2007-04-25-public\\_policy\\_forum\\_can\\_and\\_should\\_nyc%27s\\_campaign\\_finance\\_reform\\_be\\_extended\\_to\\_state\\_offices\\_presented\\_by\\_nicole\\_a\\_gordon\\_amy\\_loprest\\_and\\_michael\\_j\\_malbin.pdf](http://www.rockinst.org/pdf/public_policy_forums/2007-04-25-public_policy_forum_can_and_should_nyc%27s_campaign_finance_reform_be_extended_to_state_offices_presented_by_nicole_a_gordon_amy_loprest_and_michael_j_malbin.pdf).
- <sup>135</sup> Rachael Fauss, *New York City Council Races Get More Competitive*, GOTHAM GAZETTE (Dec. 2009), <http://www.gothamgazette.com/article/governing/20091216/17/3127>; N.Y. CITY CAMPAIGN FINANCE BOARD, CANDIDATES: 2009 CITYWIDE ELECTIONS, [http://www.nycffb.info/reports/candidate\\_09.htm?sm=press](http://www.nycffb.info/reports/candidate_09.htm?sm=press) (last visited July 6, 2010) (indicating which candidates participated in public financing). The CFB defines a "competitive" race as one where the winner receives no more than 60 percent of the vote.
- <sup>136</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, CAMPAIGN FINANCE SUMMARY: 2009 CITYWIDE ELECTIONS, [http://www.nycffb.info/VSAppls/WebForm\\_Finance\\_Summary.aspx?as\\_election\\_cycle=2009&sm=press\\_&sm=public\\_h1](http://www.nycffb.info/VSAppls/WebForm_Finance_Summary.aspx?as_election_cycle=2009&sm=press_&sm=public_h1) (last visited July 6, 2010).
- <sup>137</sup> NEW YORK CITY CAMPAIGN FINANCE BOARD, AN ELECTION INTERRUPTED: THE CAMPAIGN FINANCE PROGRAM AND THE 2001 NEW YORK CITY ELECTIONS 12, 36 (Sept. 2002) available at [http://www.nycffb.info/PDF/per/2001\\_PER/2001\\_PER\\_Vol.1.pdf](http://www.nycffb.info/PDF/per/2001_PER/2001_PER_Vol.1.pdf); Robin Finn, *With These Pancakes, No Sleeping In*, N.Y. TIMES, Feb. 5, 2010, available at <http://www.nytimes.com/2010/02/07/nyregion/07routine.html>; A.G. Sulzberger, *Staten Island Elects Its First Black Council Member*, N.Y. TIMES CITY ROOM BLOG (Nov. 4, 2009, 3:45 PM), <http://cityroom.blogs.nytimes.com/2009/11/04/staten-island-elects-its-first-black-council-member>; Winnie Hu, *A Third Party Makes Its First Mark*, N.Y. TIMES, Nov. 9, 2003, available at <http://www.nytimes.com/2003/11/09/nyregion/a-third-party-makes-its-first-mark.html>; N.Y. CITY CAMPAIGN FINANCE BOARD, *Candidates: 2009 Citywide Elections*, [http://www.nycffb.info/reports/candidate\\_09.htm](http://www.nycffb.info/reports/candidate_09.htm) (indicating that Margaret Chin, Deborah Rose, and Letitia James all participated in the city's public funding program).
- <sup>138</sup> Sewell Chan, *Election Remakes City Council, and May Give It More Bite, Too*, N.Y. TIMES Nov. 5, 2009, available at <http://www.nytimes.com/2009/11/06/nyregion/06council.html>; Sam Roberts, *In Council, Minorities on Edge of Majority*, Sept. 17, 2009, available at <http://www.nytimes.com/2009/09/18/nyregion/18council.html>.



<sup>139</sup> Green interview, *supra* note 23.

<sup>140</sup> Telephone Interview by Angela Migally with Dan Cantor, Chair, Working Families Party (June 30, 2010).

<sup>141</sup> Affidavit of Steven Banks ¶ 2, *City of New York v. N.Y. City C.F.B.*, No. 400550/01 (Feb. 14, 2001).

<sup>142</sup> See CFB, CANDIDATE FILINGS 1997-2009, *supra* note 31.

<sup>143</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>144</sup> See *id.* at 53.

<sup>145</sup> Under the City's system, participating candidates are eligible to receive a higher match and increased expenditure limits if they are faced with a high spending candidate. NEW YORK CITY, N.Y., ADMIN CODE § 3-705(7) (b)(i). In the last two election cycles, these additional funds were only triggered in nine out of 188 city races. These provisions are currently the subject of legal challenge.

<sup>146</sup> Michael Cooper, *At \$92.60 a Vote, Bloomberg Shatters An Election Record*, N.Y. TIMES, Dec. 4, 2001, at A1, available at <http://www.nytimes.com/2001/12/04/nyregion/at-92.60-a-vote-bloomberg-shatters-an-election-record.html>.

<sup>147</sup> Green interview, *supra* note 23.

<sup>148</sup> See CFB, CANDIDATE FILINGS 1997-2009, *supra* note 31.

<sup>149</sup> See *id.* Halloran received a seven-to-one match rather than the standard six-to-one, an infusion of funds he said helped his campaign.

<sup>150</sup> *Id.*

<sup>151</sup> Telephone Interview by Elizabeth Daniel with Daniel Halloran, Member, N.Y. City Council (April 19, 2010).

<sup>152</sup> See, e.g., *Citizens United v. FEC*, 130 S. Ct. 876 (2010) (striking down source restrictions on corporate independent expenditures); *Davis v. FEC*, 128 S. Ct. 2759 (2008) (striking down asymmetrical contribution limits for privately financed candidates); *Scott v. Roberts*, No. 10-13211, 2010 WL 2977614 (11th Cir. July 30, 2010) (granting preliminary injunction against trigger funds in Florida's public financing system); *Green Party of Conn. v. Garfield*, No. 09-3941-cv, 2010 WL 2737153 (2d. Cir. July 13, 2010) (upholding majority of Connecticut's Clean Election Program, but striking down trigger fund provisions); *RNC v. FEC*, 698 F. Supp. 2d 150 (D.D.C. 2010) (upholding ban on use of soft money in federal elections), *aff'd*, --- S.Ct. ---, No. 09-1287, 2010 WL 2571874 (June 29, 2010) (mem.); *McComish v. Bennett*, 605 F.3d 720 (9th Cir. 2010) (upholding Arizona's Clean Elections Act, including trigger funds), *stay granted by* No. 09A1163, 2010 WL 2265319 (S. Ct. June 8, 2010) (enjoining Arizona's trigger fund provisions pending certiorari decision); *SpeechNow v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (striking down contribution limits on independent expenditure organizations).

<sup>153</sup> *Buckley*, 424 U.S. at 106.

<sup>154</sup> *Id.* at 107.

<sup>155</sup> *Id.* at 92-93.

<sup>156</sup> *Davis*, 128 S. Ct. at 2772 (quotations omitted).

<sup>157</sup> See, e.g., *Green Party of Conn.*, 2010 WL 2737153 at \*7-23 (upholding majority of Connecticut's Clean Election Program); *N.C. Right to Life Comm. Fund v. Leake*, 524 F.3d 427 (4th Cir. 2008) (upholding North Carolina's judicial public financing system); *Daggett v. Comm'n on Gov't Ethics & Election Practices*, 205 F.3d 445 (1st Cir. 2000) (upholding Maine's Clean Election Act); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1552 (8th Cir. 1996) (upholding Minnesota's public funding for elections).

<sup>158</sup> In recent years, challengers have raised *Davis*-based claims against public financing systems in North Carolina, Maine, Connecticut, Arizona, Wisconsin and New York City.

<sup>159</sup> Prior to the Court's 2008 *Davis v. FEC* decision, the First and Fourth Circuits upheld the constitutionality of trigger fund provisions in North Carolina and Maine. See *Leake*, 524 F.3d at 437-38, *cert. denied by Duke v. Leake*, 129 S.Ct. 490 (Nov. 3, 2008) (affirming denial of preliminary injunction against North Carolina's trigger fund provisions); *Daggett*, 205 F.3d at 463-65. More recently, however, the Second Circuit and the Eleventh Circuit have struck down the trigger fund provisions of Connecticut and Florida's public funding program while the Ninth Circuit unanimously upheld Arizona's analogous provisions. See *Scott v. Roberts*, No. 10-13211, 2010 WL 2977614 (11th Cir. July 30, 2010) (granting preliminary injunction against trigger funds in Florida's public financing system); *Green Party of Conn. v. Garfield*, No. 09-3941-cv, 2010 WL 2737153 (2d. Cir. July 13, 2010) (striking down Connecticut's trigger fund provisions); *McComish v. Bennett*, 605 F.3d 720 (9th Cir. 2010) (upholding Arizona's Clean Elections Act, including trigger funds), *stay granted by* No. 09A1163, 2010 WL 2265319 (S. Ct. June 8, 2010) (enjoining Arizona's trigger fund provisions pending certiorari decision).

<sup>160</sup> See, e.g., Kenneth P. Doyle, Ruling on Connecticut Law Could Spur Supreme Court to Eye Public Financing, MONEY & POLITICS REPORT, July 14, 2010, available at [http://news.bna.com/mpdm/MPDMMWB/split\\_display.adp?fedfid=17452494&vname=mpebulallissues&fn=17452494&cjd=a0c3r4u2z5&csplit=0](http://news.bna.com/mpdm/MPDMMWB/split_display.adp?fedfid=17452494&vname=mpebulallissues&fn=17452494&cjd=a0c3r4u2z5&csplit=0).

<sup>161</sup> See e.g. Amended Complaint at ¶¶ 245-276, *Ognibene v. Parkes*, 599 F. Supp. 2d 434 (S.D.N.Y. 2009) (No. 08 Civ. 1335). Plaintiffs also raise a novel equal protection claim that the multiple matching of only the first \$175 is unconstitutional. *Id.* at ¶ 147. This claim has not yet been litigated.

<sup>162</sup> CAMPAIGN FINANCE BOARD, THE IMPACT OF HIGH-SPENDING NON-PARTICIPANTS ON THE CAMPAIGN FINANCE PROGRAM 9 (2006), available at [http://www.nycffb.info/PDF/issue\\_reports/High-Spending-White-Paper.pdf](http://www.nycffb.info/PDF/issue_reports/High-Spending-White-Paper.pdf) (last visited Aug. 5, 2010).

<sup>163</sup> Press Release, Campaign Finance Board, Campaign Finance Board Announces Fourth and Final Public Funds Payments for 2009 Primary Elections, Makes Determination (Sept. 11, 2009), available at [http://www.nycffb.info/press/news/press\\_releases/2009-09-11.pdf](http://www.nycffb.info/press/news/press_releases/2009-09-11.pdf); Press Release, Campaign Finance Board, Campaign Finance Board Announces Fourth Public Funds Payments for 2009 General Elections to 55 Candidates, Issues Advisory Opinion (Oct. 29, 2009), available at [http://www.nycffb.info/press/news/press\\_releases/2009-10-29.pdf](http://www.nycffb.info/press/news/press_releases/2009-10-29.pdf).

<sup>164</sup> ANTHONY J. CORRADO, MICHAEL J. MALBIN, THOMAS E. MANN & NORMAN J. ORNSTEIN, THE CAMPAIGN FINANCE INSTITUTE, AMERICAN ENTERPRISE INSTITUTE, & BROOKINGS INSTITUTION, REFORM IN THE AGE OF NETWORKED CAMPAIGNS 40 (2010), available at [http://www.cfinst.org/books\\_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf](http://www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf).

<sup>165</sup> *Id.* at 1, 9 ("While technology increases access, it does not change the *logic* of political participation.").

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