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Submitted to the New York City Council Committee on Governmental Operations

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On behalf of the Brennan Center for Justice, I appreciate the opportunity to discuss Introduction 1130-A before the Committee on Governmental Operations today. The Brennan Center supports this proposal, which will raise the limit on public funds distributed to city candidates. The bill will allow candidates to rely entirely on small contributions and public financing when running for office, and hopefully the change will provide an incentive for candidates to raise fewer large, private contributions. We also suggest consideration of additional reforms to the public financing program that would require citywide candidates to raise more small contributions and further increase the likelihood that all candidates focus on soliciting contributions from small donors. These suggested reforms include lowering contribution limits for citywide offices, adopting geographic fundraising requirements for citywide candidates, and providing enhanced matching for candidates who rely more heavily on small contributions.

New York City's Matching Program

New York City's matching program has been a success because it allows candidates who are unable or unwilling to raise large contributions to fund their campaigns principally through small donations and public financing. Participating candidates are therefore less dependent on large, special interest donors that will inevitably ask for favors after the election is over. They are also more likely to raise money from lower-income donors from parts of the city that are often overlooked by political candidates and campaigns.¹ And because most candidates participate in the system and the Campaign Finance Board (CFB) is willing to enforce the law diligently, the matching program serves as a model for other cities and states considering ways to reform their elections.

Yet there is room for improvement in the city's system. Despite high participation in the program, some candidates — especially candidates for mayor — still raise a significant portion

¹ See Elisabeth Genn, Michael J. Malbin, Sundeep Iyer, & Brendan Glavin, BRENNAN CTR FOR JUSTICE & CAMPAIGN FIN. INST., *Donor Diversity Through Public Matching Funds* 4 (2012), http://www.brennancenter.org/sites/default/files/legacy/publications/DonorDiversityReport_WEB.PDF.

of their money from high-dollar contributors. Research by the Campaign Finance Institute shows that in the 2013 election, 75% of mayoral candidates' campaign money came from donors that gave \$250 or more.² When participating candidates raise so much of their money from those who can afford to give many hundreds or thousands of dollars, it can create a risk of corruption and its appearance. Further, candidates who know they can depend on contributions of \$4,950 from a smaller group of wealthy backers may be less likely to seek smaller contributions or meet constituents from low-income areas of the city that have fewer residents able to write big checks.

Support for Int. 1130-A and Suggestions for Additional Reform

For the reasons above, the Brennan Center supports Int. 1130-A because it would encourage candidates to raise more money through matchable, small contributions. This may become even more important in future elections, as spending from outside groups such as super PACs rises.³ More candidates may need to raise and spend money in an effort to compete with groups whose spending cannot be limited.

While the goal of increasing public funding available to candidates is laudable, the Council should explore with the CFB how Int. 1130-A could be written and implemented in a way to maximize efficiency of administration. Under certain circumstances, the bill would result in candidates raising more money than the spending limit. This is because the bill directs the CFB to provide full public financing "less the amount of matchable contributions received" — thus, any *non-matchable* contribution received by a candidate would not be included when the CFB calculates the amount of funds to be disbursed to a candidate, which could cause the total amount raised by the candidate to exceed the spending limit. This problem might be solved by adding language directing the Board not to provide public financing if a candidate's combined fundraising totals exceed the spending limit. Consulting with the CFB would help determine how best to address the issue.

In addition to passing Int. 1130-A, the Council should consider additional reforms to the city's system. While increasing the amount of available public funds is a positive step, it does not require candidates to change their fundraising habits. Therefore, there is some likelihood that candidates will continue to raise contributions at or close to the maximum allowed under the contribution limits: \$4,950 for citywide candidates, \$3,850 for borough president, and \$2,750 for member of the city council. Because candidates for mayor still rely heavily on large contributions,⁴ the Council should consider a moderate reduction in the contribution limits for citywide candidates to reduce their reliance on large contributions and encourage them to raise more money from small contributors.

² Michael J. Malbin & Michael Parrott, *How Policy Details Can Affect Major Outcomes: Comparing Small Donor Matching Funds in New York and Los Angeles* 18 (Campaign Fin. Inst., Working Paper, 2016), http://www.scholarsstrategynetwork.org/sites/default/files/malbin_comparing_small_donor_matching_funds_in_new_york_and_los_angeles.pdf.

³ The CFB explained that in the 2013 election, "independent expenditures grew well beyond anyone's expectations," reaching almost \$16 million. See N.Y.C. Campaign Fin. Board, 2013 Post-Election Report 72 (2014), http://www.nyccfb.info/PDF/per/2013_PER/2013_PER.pdf.

⁴ Malbin & Parrot, *supra* note 2 at 18.

BRENNAN CENTER FOR JUSTICE

Another way to decrease citywide candidates' reliance on large contributions is to introduce geographic requirements for fundraising, such that candidates could not rely solely on large contributions from wealthy residents of Manhattan. This could be achieved in several ways including (1) requiring that a certain amount of a candidate's contributions came from each borough; or (2) requiring that qualifying contributions be raised from a minimum number of city council districts. These are just two examples of methods to encourage candidates to vary their fundraising practices and seek contributions from diverse sources. If the Council pursues a geographic fundraising requirement, the Brennan Center is willing to assist by analyzing the effects of a proposal to ensure that it would accomplish its goals without discouraging candidates from entering the matching program.

Finally, the Council could encourage small contributions by increasing the matching amount for very small contributions or by providing higher matches to candidates who agree only to accept contributions at or below the matchable contribution limit. For example, in the Government by the People Act, introduced by Rep. John Sarbanes (D-MD), candidates who agree not to accept contributions exceeding \$150 receive a 9-to-1 match on eligible contributions.⁵ A system like this would provide an incentive for candidates to avoid large-dollar contributions and focus on the small contributions that should be central to the city's publicly-financed candidates.

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New York City's matching program should be commended for its success in encouraging candidates to participate, agree to spending limits, and focus on small donors and public financing. Yet this bill recognizes that some candidates are able use the system successfully while still raising much of their money from larger donors. Thus, the Brennan Center supports Int. 1130-A because of its potential to engender greater reliance on small donors and public money. However, because it is not yet clear how strong that incentive will be, the Council should consider additional reforms to help advance the program's goals.

⁵ H.R. 20, 115th Cong. § 501(b)(2) (2017).