



Public Financing of Elections Senate Elections Committee Hearing

March 20, 2019

Good afternoon Chair Myrie and members of the Senate Elections Committee. My name is Alex Camarda, and I am a Senior Policy Advisor for Reinvent Albany. Reinvent Albany is a government watchdog organization that advocates for open and accountable government. Thank you for holding this hearing on the important topic of public financing of elections and other campaign finance reforms.

Thank you Senator Myrie and the Senate for passing S.3167 (Myrie)/A. 113(Buchwald) this month, which bans campaign contributions by vendors lobbying for, bidding on, or recently having won a state contract. Reinvent Albany advocated for this bill since 2016. We believe the passage of the bill marked the first time in recent memory the legislature voted on a bill specifically related to campaign contributions by companies doing business with the state.

My testimony today is devoted to the public financing of elections, and has two parts:

- 1. Why public financing should be established in the budget now**
- 2. Truths about the public financing of elections**

- 1. Why public financing should be established in the budget now**

Public financing is Long Overdue

Reinvent Albany strongly supports creating a small donor public matching system for New York State candidates in this year's budget.

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Public financing is not a new proposal, nor is it in need of further study. To the contrary, it is long overdue. Overall, public financing of elections has worked well in New York City for 30 years. More candidates run for office in New York City and there are more candidates from diverse backgrounds gaining public office, including people of color, women, and people from different socioeconomic backgrounds.

In 2013, the Moreland Commission appointed by Governor Andrew Cuomo recommended establishing a public financing proposal as a core part of reducing corruption and conflict of interest.¹ In 1991, 28 years ago, the New York State Commission on Public Integrity, convened by Governor Mario Cuomo, recommended public financing saying, “The campaign finance law of the State is a disgrace and an embarrassment.”²

Big Money Skews Policy and is a Corruption Risk

The dominance of big money in Albany gives a select few wealthy interests an outsized influence over how decisions affecting the public are made. The 100 top donors contributed more to state candidates in 2018 than all 137,000 estimated small donors combined, according to the Brennan Center for Justice. In 2014, only half of one percent of New York’s adult population gave any money at all to a state legislative or gubernatorial candidate.³

Individual lawmakers raise far more of their campaign contributions from large donors and those with business before the state than they do small donors who live in their districts. The Moreland Commission reported that candidates between 2009 and 2012 received 79% of their campaign funds (over \$180 million) from donors who gave more than \$500; 65% of funds from donors who gave \$1,000 or more; and only 3% of funding came from donations of under \$100.⁴ The problem is even more acute when looking at legislative committees. The Moreland Commission reported the Assembly Health and Senate Committee Chair in 2011-2012 received about ¾ of their campaign contributions from the healthcare and insurance industry or lobbyists.⁵

¹ The Commission to Investigate Public Corruption, Preliminary Report. December 2, 2013. Available at: <https://publiccorruption.moreland.ny.gov/press-release/moreland-commission-investigate-public-corruption-releases-report.html>

² <https://ir.lawnet.fordham.edu/ulj/vol18/iss2/4/>, p. 253.

³ Michael Malbin and Brendan Glavin, “Small-Donor Matching Funds for New York State Elections: A Policy Analysis of the Potential Impact and Cost*”, The Campaign Finance Institute. February 2019. Page 12.

⁴ The Commission to Investigate Public Corruption, Preliminary Report. December 2, 2013. Pages 30-31. Available at: https://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf

⁵ Ibid, p. 31.

Large contributions by those doing business with the state increases the risk of corruption and creates a pay-to-play culture that has too often resulted in criminality in Albany. According to the Moreland Commission, between 1999 and 2013, 1 of every 11 lawmakers left office “under the cloud of ethical or criminal violations.”⁶ That was before the convictions of both the previous Assembly Speaker and Senate President.

Public Financing Mitigates Undue Influence

The solution to the undue influence and increased corruption risk from large contributions is to establish a public financing system. The Governor’s Executive Budget proposal establishes a good foundation to build from and, like the New York City system created in 1988, can be improved and refined over time.

Reinvent Albany makes many recommended improvements to the Governor’s proposal in the appendix of this testimony. However, the only amendment we feel that must be done before passing this bill as part of the budget is to create a separate enforcement board from the State Board of Elections to oversee campaign finance for all offices, including the public matching program. An independent, adequately funded enforcement entity is critical, and the Governor’s bill has modified the enforcement entity to ensure it is more customer friendly to candidates. It must also be moved outside of the State Board of Elections.

By matching small dollar contributions with public funding at a rate of \$6 in public funds for every \$1 in private donations for the first \$175 of any contribution, candidates will rely more on ordinary New Yorkers whom they represent to fund their campaigns rather than wealthy donors, many with business before the state.

This means lawmakers like you have more freedom and latitude to use your judgment to make decisions on policy and legislation that are in the best interest of New York State and your constituents. Lawmakers who are raising funds from more donors in small amounts, who are residents of their district and state, and have a diversity of concerns and interests, means that lawmakers have reduced dependence on any single donor. This creates more independence for lawmakers to make decisions that are in the public interest without the concern of the electoral impact of taking positions counter to the stances of big donors.

⁶ Ibid, p. 11.

2. Truths about the Public Financing of Elections

Public Financing Has Had Little Impact on the Re-election of NYC Incumbents

Lawmakers privately express concerns that public financing could cause them to lose re-election. The facts do not bear this out. The re-election rate for incumbent Councilmembers from 2005-2013 in New York City under a public matching system was 94.1 percent, while for state lawmakers from New York City it was 96.5 percent, according to a Citizens Union report.⁷ In 2017, only a single Councilmember (Elizabeth Crowley) of 41 incumbents lost a race for re-election. In the State Senate, 11 incumbents lost in the primary and/or general elections during the 2018 election without a public matching system.⁸ An Independent Budget Office (IBO) analysis revealed during the 2017 elections, New York City incumbents were more likely to qualify for public funds, and received more public funding than challengers.⁹ While the City Council has term limits which may cause challengers to wait for open seats, there is little evidence to suggest incumbents lose seats in significant numbers as a result of public financing.

Public Financing Will Cost \$3 a Year Per New Yorker and May Save Money

Public financing elections is a very small cost - especially given the magnitude of its impact on our democracy. According to the Campaign Finance Institute, publicly financing New York State elections will cost about \$60 million annually. This includes \$20 million in increased administrative costs to run the program.¹⁰ Public financing would be less than 1/2 of 1/1,000th of New York's proposed \$175B state budget. Put another way, it is about \$3 a year per New Yorker, or a cup of coffee to ensure greater integrity of New York State government.

Some have said the State can't afford public financing in a tight budget year. The reality is public financing could very well save taxpayers enormous amounts of money by curbing budget giveaways to wealthy donors. Consider just one high profile example cited by the Moreland Commission on Public Corruption: in 2013, five otherwise

⁷ Citizens Union, "Fair Elections For New York State, March 2014 Update: How Public Matching Creates Greater Voter Choice and Competition," November 2012, Page 3. Available at: http://rebranding.citizensunion.org/wp-content/uploads/2015/04/CUCompetitivenessReport_March20141.pdf

⁸ https://ballotpedia.org/New_York_State_Senate_elections,_2018

⁹ New York City Independent Budget Office, "NYC By The Numbers: Did Incumbents or Their Challengers Benefit More From the City's Campaign Finance System?," October 29, 2018. Available at: <https://ibo.nyc.ny.us/cgi-park2/2018/10/did-incumbents-or-their-challengers-benefit-more-from-the-citys-campaign-finance-system-in-2017/>

¹⁰ http://www.cfinst.org/pdf/State/NY/Policy-Analysis_Public-Financing-in-NY-State_Feb2019_wAppendix.pdf

ineligible luxury properties on Billionaire's Row in Manhattan received 421-a tax benefits costing New York City tens of millions of dollars in foregone revenue.¹¹ The owners of those buildings gave hundreds of thousands in campaign contributions to state elected officials.

Public Financing Has Little Impact on Independent Expenditures

Speaker Carl Heastie has raised concerns that a public matching system would make candidates more vulnerable to independent expenditures. A public matching system has little impact on independent expenditures for better or for worse. Independent expenditures are campaign spending by third party groups and individuals that do not coordinate with candidates. This is constitutionally permissible and will occur regardless of whether a public matching system exists. If candidates believe for some reason that they will be harmed by a public matching system, they can simply opt out as the system is voluntary for all candidates.

Public Financing Is Little Affected by Minor Party Lines

Governor Cuomo and Speaker Heastie have said the minor parties and candidates running on multiple party lines complicates a public matching system. We dispute this and have not found any evidence supporting this assertion. In Governor Cuomo's bill, public match funds are distributed to candidates based on reaching eligibility thresholds, and how much money they raise from small donors. Public money is tied to candidates, not party lines. Transfers by party or constituted committees are not matchable for major or minor parties. Candidates must have an opponent on the ballot to receive public funds except if they run uncontested in a primary election, and there is also a Democratic or Republican primary for the same office. So based on these facts, the only scenarios in which party lines even come into play for public financing in a way that would make a difference is: 1) a third party primary in which at least one candidate actually qualified (\$10K minimum in matchable contributions for the Assembly alone), and a major party also had a primary for the same office; or 2) a candidate only has a minor party line in a contested general election and qualifies to receive matching funds. We believe these scenarios are rare.

NYC CFB Enforcement is Not a Reason for Failing to Act on Public Financing

There is a perception that the New York City Campaign Finance Board is overzealous in its enforcement of campaign finance law.

¹¹ The Commission to Investigate Public Corruption, Preliminary Report. December 2, 2013. Page 34. Available at: https://publiccorruption.moreland.ny.gov/sites/default/files/moreland_report_final.pdf

Here are the facts: a majority of city candidates during the 2013 elections received no penalties (46.3) percent or less than \$1,000 in penalties (57 percent).¹² 81 percent of candidates are fined between \$0 and \$5,000.¹³ The most common violation in New York City was accepting corporate contributions, which are banned in New York City but not New York State. This would not be a violation in New York State unless contributions were more than \$5,000 annually from one corporation.¹⁴

Reinvent Albany recognizes the CFB can make improvements to its campaign finance administration. Audits take too long. Candidates feel it is challenging to navigate the system without being penalized and fined. The Board needs to use technology - especially TurboTax like online tools - to make compliance easier for candidates. The Board needs a more customer-friendly approach with sufficient candidate liaison staff dedicated to particular races and districts.

The good news is these are all issues you can fix. You write the laws in New York State, and can create a more customer-service friendly enforcement unit in the public financing legislation in the budget. CFB enforcement should not be an excuse for inaction on public financing.

Thank you for the opportunity to testify today. I welcome any questions you may have.

¹² New York City Campaign Finance Board, "Keeping Democracy Strong: New York City's Campaign Finance Program in the 2017 Citywide Elections." Page 133. Available at: <https://www.nyccfb.info/program/2017-post-election-report/>

¹³ Ibid, Page 134.

¹⁴ Ibid, Page 136.

Appendix A - Reinvent Albany Recommendations for Improving Governor Cuomo's FY2019-2020 Executive Budget Public Financing Proposal

Campaign Finance Board

A separate board is needed to administer campaign finance. The State Board of Elections should be limited to administering elections - election day operations, petitioning and nominating of candidates, voter registration, among other responsibilities.

The bill requires random audits of 50 percent of candidates for legislative office and 100 percent of candidates for statewide office. We believe all campaign committees for particular districts should be randomly audited. Districts should be selected by an outside firm like Price Waterhouse Cooper. Districts in which committees collectively raise or spend above a particular threshold should automatically be audited.

A penalty schedule should be created in law or mandated in rules laying out fines for infractions, with fines varying in amount between repeat and one-time offenses, cured and uncured infractions, and between willful and unwillful infractions.

Public hearings should be held for fines totaling more than a particular threshold but should not be held for small fines or many small fines totaling a small sum.

Public Match/Spending Caps

Reinvent Albany recently succeeded in advocating for the public match cap in New York City to be raised to 75 percent of the spending limit for the office from 55 percent. The state proposals do not have a spending limit but rather a limit on public matching funds. We believe a spending limit should be imposed but lifted when a nonparticipant candidate or independent spender spends or raises twice the spending cap for the office. New York City raises the spending limit for public fund participants in the face of nonparticipant spending and has determined it does not run afoul of *Arizona v. Bennett*.

The public match limits in the state bills are likely too low for competitive races and too high for uncompetitive races. Caps for primary and general elections combined should be considered (rather than per election) as both elections are rarely competitive for both districts.

Doing Business Restrictions

We support lower contribution limits for individuals doing business with the city and a ban on corporate contributions including Limited Liability Companies (LLCs). A starting point is to restrict campaign contributions by vendors during the restricted period when bidding on a contract, and for one year after winning a contract, as proposed by Governor Cuomo. [A.9924 \(Buchwald\)/S.8039 \(Croci\)](#) strengthens the Governor's proposal.

Early Release of Public Funds to Candidates

One of the major reforms Reinvent Albany lobbied for and won as part of the reforms to the NYC public matching program in 2018 was delinking payments from petitioning. Payments to candidates should be made months before petitioning if certain thresholds are met.

Funding for Enforcement

We support providing a fixed budget for the campaign finance board. In New York City, the Independent Budget Office's (IBO) budget is a fixed percentage of the Office of Management and Budget (OMB). The New York City Campaign Finance Board's budget is not fixed, but the budget requested by the Board must be included in the Preliminary Budget.

Covered Offices

We support expanding the offices covered to include elected judicial offices and district attorneys in the public matching program.

Technology/Transparency

The campaign finance board should be required in law to issue an RFI and RFQ for employing software/technology to make the public financing system user interface candidate friendly for compliance and usability, and to make campaign finance filings more transparent.

Public Funding Match Ratio

While a \$6:\$1 match on \$250 or \$175 is a good starting point, NYC recently raised its match to \$8:\$1 on \$250 for citywide offices, and \$8:\$1 on \$175 for all other offices.

Non-matchable contributions

Contributions from lobbyists, contractors, bundlers, state grant recipients, candidate and party committees should not be matched in addition to non-matchable contributions in the proposals.

Sure Winner Provisions

We support limiting the distribution of public funds when a candidate does not have a viable opponent. New York City law limits the distribution of public funds to “sure winners” by requiring a Statement of Need be filed and certain criteria met demonstrating a need for public funds. [We recommend simplifying these criteria as recommended by the New York City Campaign Finance Board \(see p. 129\).](#)

Voter Information

In addition to mandatory participation in at least one debate, the campaign finance board should be required to issue a voter guide to all registered voters via mail with an opt out provision for voters to receive a digital copy of the guide.