CLC
ADVANCING DEMOCRACY THROUGH LAW

February 18, 2021

Submitted electronically to judiciary@dccouncil.us

Charles Allen, Chair
Committee on the Judiciary and Public Safety
Council of the District of Columbia

Dear Chair Allen and Members of the Committee,

Campaign Legal Center ("CLC") respectfully submits this written testimony to the Judiciary Committee regarding the D.C. Fair Elections Program ("FEP").

CLC is a nonpartisan, nonprofit organization that works to protect and strengthen democracy at the federal, state, and local levels. Since the organization's founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other federal and state court proceedings. Our work promotes every American's right to an accountable and transparent democratic process.

CLC has supported the Fair Elections Act ("Act") since its enactment in 2018 and closely followed the Fair Elections Program's launch during the 2020 election cycle. CLC is now preparing a forthcoming report that will evaluate the FEP's impact in District elections last year, including its effects on political participation and engagement around the city. The findings in our report will be drawn primarily from candidate interviews and information made available by the Office of Campaign Finance ("OCF"). CLC looks forward to presenting these findings at a future hearing on the FEP.

This written testimony raises preliminary issues for this Committee and the larger Council to consider as it reviews the FEP's rollout in 2020, and suggests some potential amendments to the Act.

I. Clarify the Act's restrictions on participating candidates' use of campaign funds, including public funds received through the FEP.

As part of its review of the FEP, the Committee should clarify the Act's rules for participating candidates' use of campaign funds. When candidates are given public funds, there are strong reasons to closely regulate their disbursements. However, one of the Act's underlying objectives is to empower candidates from a variety of backgrounds to effectively campaign for elected office in the District. Thus, participating candidates should have some flexibility to spend public funds in ways that most benefit their individual candidacies.

Accordingly, we suggest the Committee consider potential amendments to the Act to make clear that participating candidates may use their campaign funds for the following purposes:

Childcare expenses related to campaigns. A growing number of jurisdictions have amended their campaign finance laws in recent years to permit candidates to use campaign funds for childcare expenses in connection with their campaigns. Since 2018, at least seven states have adopted new laws to allow childcare expenses to be paid with campaign funds.[1] In other states, election officials have sanctioned the payment of childcare expenses with campaign funds via regulations or advisory opinions.[2] Likewise, the Federal Election Commission, in a 2018 advisory opinion, authorized a congressional candidate's use of campaign funds to pay childcare expense "to the extent such expenses are incurred as a direct result of campaign activity."[3]

In the District, participating candidates in the FEP should be able to use their campaign funds to pay childcare costs that are directly connected to their campaigns, which would align with the equity goals of the Act.[4] Moreover,

---

[1] *See* Cal. Gov't Code § 89512(i); Colo. Rev. Stat. § 1-45-103.7(6.5); Minn. Stat. § 10A.01(subd. 26); N.H. Rev. Stat. § 664:2(VIII); N.J. Stat. 19:44A-11.2(d); N.Y. Elec. Law § 14-130(3)(xi); Utah Stat. § 20-11-104(2)(n).

[2] *State Candidates and the Use of Campaign Funds for Childcare Expenses*, Ctr. for Am. Women & Politics (July 2020), https://cawp.rutgers.edu/use-campaign-funds-childcare-expenses#Table.

[3] FEC AO 2018-06, https://www.fec.gov/data/legal/advisory-opinions/2018-06/.

[4] *See* Comm. on Judiciary & Public Safety, Rep. on B22-0192, the "Fair Elections Amendment Act of 2017" at 2 (Dec. 13, 2017) (explaining the "purpose" of the Act is "to strengthen the District's democracy, amplify the voices of everyday voters, and reign in the outsized influenced of wealthy and corporate contributors in District elections.").

enshrining the use of campaign funds for childcare expenses in law, rather than by regulation or advisory opinion, would provide the most legal force to this allowance and signal that the Council values improving opportunities for women and parents to run for and hold elected office in the District.

To protect against the possibility of misuse, a childcare allowance in the Act should include guardrails specifying that participating candidates may only use campaign funds for childcare expenses incurred in *direct connection* with their campaigns. For example, California's Political Reform Act, as amended last year, now allows state candidates to spend campaign funds for "reasonable and necessary childcare expenses for a dependent child resulting directly from the candidate engaging in campaign activities."[5] California's law further defines the scope of permissible "childcare expenses" by candidates.[6] This Committee should review California's allowance for childcare expenses, along with the other state laws, as a framework for a similar provision within the Act.

Campaign-related travel. The Committee also should consider amending the Act to expressly allow participating candidates to use their campaign funds for campaign-related travel expenses. Similar to authorizing campaign disbursements for childcare costs, permitting FEP candidates to use campaign funds to travel to and connect with D.C. residents in different parts of the city advances the equity goals animating the Act.

In fact, the D.C. Board of Elections has already sanctioned expenditures for campaign-related travel. Pursuant to the Board's existing regulations, any candidate (whether or not participating in the FEP) may use campaign funds to pay for "travel expenses and necessary accommodations" that are "directly related to a campaign purpose."[7] This regulatory language could provide the framework for a corresponding amendment to the Act.

II. Review whether additional base amount payments should be made available to participating candidates.

As part of its review of the FEP, this Committee should also assess whether the Act could be amended to give additional base amount payments to participating candidates who run in a contested primary then proceed to the general election, to help offset the added costs of two competitive races within an election cycle. The availability of additional public funding would serve to

[5] Cal. Gov't Code § 89512(i)(2).
[6] Cal. Gov't Code § 89512(i)(1).
[7] D.C. Mun. Regs. tit. 3, § 3013.2(a).

promote even more voter outreach and engagement among participating candidates in the city's closest races, in furtherance of the Act's objectives.

The availability of additional base amount payments to participating candidates in the FEP could be conditioned on those candidates raising an additional number of qualifying contributions from District residents during the general election phase of the campaign. Maine's Clean Elections Act, for example, makes "supplemental" lump-sum grants available to publicly financed candidates in contested elections if they raise a specific number of additional qualifying contributions from state residents. [8] Like Maine's program, the FEP could condition candidates' receipt of additional base amount payments on their raising of more small-dollar contributions from D.C. residents in the final stages of the campaign.

III. Sustain the FEP's success through effective administration.

The FEP's rollout in 2020 was a definite success. Thirty-six candidates—with diverse backgrounds and life experiences—were certified to run for office through the program, and D.C. residents from across the city were empowered to make small-dollar contributions to participating candidates. OCF's successful administration of the new program amid a pandemic is likewise a tremendous achievement.

To build on this momentum, and to ensure the FEP remains a viable option for candidates in future elections, the Council and the Board of Elections must regularly review FEP's administrative processes and fine tune as necessary. Based on interviews with FEP participants in 2020, CLC recommends the Committee consider the following administrative improvements at this time:

Revamping OCF's filing portal to make uploading contribution and expenditure information easier. In interviews with CLC, multiple candidates have reported that uploading information onto OCF's filing portal can be onerous. Some candidates described spending multiple days manually entering contributor information in advance of reporting deadlines. Given the importance of ensuring participating candidates' accurate and complete disclosure of their contributions and expenditures, the Committee should look into options for improving OCF's filing system to permit bulk uploads of campaign data in a manner that still comports with the Act's documentation requirements.

Minimizing payment delays. Candidates, particularly those who ran in the general election, have noted that they experienced delays in receiving public

[8] Me. Stat. tit. 21-A, § 1125(8-B).

funding payments. A few candidates also described receiving matching funds payments *after* the election. The Committee should review options to minimize payment delays to participating candidates in future election cycles.

Providing partial refunds for excess contributions. When campaign donors inadvertently gave participating candidates contributions above the program-specific limits, candidates had to fully refund those contributions because OCF's system would not allow for partial refunds to donors. The Committee should evaluate whether this issue could be corrected through administrative adjustments by OCF or the Board of Elections.

Conclusion

CLC appreciates the Committee's consideration of our written testimony. We look forward to providing additional input to the Committee as it continues to review the FEP and potential changes to the Act.

Respectfully submitted,

/s/ Catherine Hinckley Kelley
Catherine Hinckley Kelley
Senior Director, Policy & Strategic Partnerships

/s/ Austin Graham
Austin Graham
Legal Counsel