



October 20, 2017

By Electronic Mail (frank.iannuzi@phila.gov, eric.bodzin@phila.gov)

Council of the City of Philadelphia  
Committee on Law and Government  
City Hall  
Philadelphia, PA 19107

Re: Testimony in Support of Bill No. 170680 Establishing a  
System of Public Financing for Political Campaigns

Dear Chairman Greenlee and Members of the Committee:

Thank you for the opportunity to submit this written testimony, and to testify at the Committee's hearing on October 24, in support of the matching funds public campaign financing bill, Bill No. 170680, being considered by the Committee. The Campaign Legal Center (CLC) has reviewed the bill closely, and we believe it is a well-crafted and constitutional piece of legislation. If enacted, the bill would establish a public financing system for the City of Philadelphia's election campaigns and propel the City to the national forefront in this area.

Multimillion dollar contributions from individuals to super PACs and other political entities have left many Americans feeling excluded from the democratic process. Public funding offers an alternative. Public funding can elevate the voices of all citizens in the political process, not just those who can afford to write large checks. Although there are many important and effective reforms the Council might wish to consider, the CLC believes that public funding is a particularly promising option. Public funding programs can reorient our elections by facilitating dialogue between voters and our elected officials and increasing participation in the electoral process. We urge the committee to move forward with this important piece of legislation.

CLC's testimony provides analysis of the constitutionality of the bill, presents a brief survey of empirical research on the benefits of public financing and suggests two modifications to further strengthen the bill.

**I. The multiple-match public financing system the Council is considering has proven successful in other jurisdictions.**

The multiple-match program the Council is considering is very similar to the long-running programs in New York City and Los Angeles.<sup>1</sup> Matching funds public financing has proven to be a successful form of public financing that allows candidates to run viable, publicly financed campaigns while reducing candidates' reliance on large contributions.

Bill No. 170680 would establish a voluntary, matching funds program of public financing for city office candidates.<sup>2</sup> To qualify, candidates would collect a threshold number of contributions of \$150 or less from their constituents and satisfy several additional requirements. Candidates who qualify would receive a five-to-one match from the program for contributions up to \$150 from Philadelphia residents. Participating candidates would be subject to several requirements, including: clear parameters on how public funds can be spent to ensure these funds are used exclusively to further a candidate's campaign and not to enrich the candidate, their family, or staff; and a cap on the amount of money the campaigns of publicly financed candidates can spend throughout the course of the election. The Board of Ethics (Board) would be charged with administering and enforcing the program.

The bill includes an important provision that would require the Board to "provide regular reports to the Mayor and the Council regarding the efficacy, administration and impact" of the program."<sup>3</sup> The Board's review of the program and assessment of changes that need to be made to update it will be critical to keeping the program up to date with the changing needs of campaigns and maintaining the program as a viable funding option for candidates. As the Council considers enacting public financing, we urge the Council to see enacting a program as an important first step in a longer process and not as the end of the process. Once enacted, a public financing program will require evaluation, maintenance, and updates. The program will benefit from the Council's continued interest and attention.

Additionally, it is worth noting that the need for proper administration is heightened in the context of public financing, where public funds are distributed to campaigns. Experience has shown that the success of any campaign finance system depends in large part on the agency charged with administration and enforcement of that system. We have every confidence in the Board's ability to run a successful public financing program. Moreover,

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<sup>1</sup> For a list of jurisdictions with matching funds programs, see Michael J. Malbin, *Citizen Funding for Elections: What do we know? What are the effects? What are the options?* at 5, Campaign Finance Institute (2015), available at [http://www.cfinst.org/pdf/books-reports/CFI\\_CitizenFundingforElections.pdf](http://www.cfinst.org/pdf/books-reports/CFI_CitizenFundingforElections.pdf). Since the publication of this comprehensive report the Berkeley, CA, Howard County, MD, and Portland, OR have also adopted multiple-match public financing programs.

<sup>2</sup> The candidates for the office of Mayor, District Attorney, Controller and "all other city elective offices," would be eligible for public financing. See Phila. Council Bill No. 17680 § 20-1402(2).

<sup>3</sup> *Id.* § 20-1410.

the City already has in place strong laws and regulations that would further support the integrity of a public financing program.<sup>4</sup>

## **II. Voluntary public financing programs such as the program before the Council are constitutional.**

After careful review of the bill, CLC believes it is entirely consistent with all relevant constitutional requirements. As discussed below, the Supreme Court has generally determined that public financing of election campaigns is constitutional under the First Amendment as long as (1) candidates' participation in the public financing system is voluntary; and (2) the system does not include "trigger" provisions that give additional public funds to participating candidates in direct response to campaign spending by non-participating candidates and outside groups. Because the bill neither compels participation by candidates nor contains trigger provisions, the Campaign Legal Center is confident that the legislation is constitutional under existing First Amendment case law.

Since the enactment of the first public financing programs in the 1970s, courts have consistently recognized that voluntary systems of public financing advance important governmental interests in preventing political corruption and enhancing participation in the political process. In *Buckley v. Valeo*, the U.S. Supreme Court upheld the presidential public financing regime as a constitutional means "to reduce the deleterious influence of large contributions on our political process, to facilitate communication by candidates with the electorate, and to free candidates from the rigors of fundraising."<sup>5</sup> The Court expressly rejected the assertion that public financing violates the First Amendment, explaining that public financing "is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people."<sup>6</sup> The Court had little difficulty concluding that these aims were "sufficiently important" to uphold the presidential system.<sup>7</sup>

Following *Buckley*, a three-judge federal district court reaffirmed the constitutionality of the presidential program and repudiated the claim that public financing infringes the First Amendment rights of candidates and their supporters.<sup>8</sup> In *RNC v. FEC*, plaintiffs asserted the presidential system violated their First Amendment rights because the program effectively compelled participation and conditioned eligibility for public funds on candidates' acceptance of expenditure limits.<sup>9</sup> As in *Buckley*, the district court stressed public financing served a compelling governmental interest in preventing corruption by diminishing candidates' "reliance on large private contributions and on the implicit obligations to

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<sup>4</sup> For example, the Board's regulations include strong coordinated expenditure rules. Phila. Bd. of Ethics Reg. 1.38. For jurisdictions considering public financing, CLC generally recommends the type of provisions regarding coordination and soft-money solicitations that Philadelphia already has in place.

<sup>5</sup> 424 U.S. 1, 91 (1976) (per curiam).

<sup>6</sup> *Id.* at 92-93.

<sup>7</sup> *Id.* at 95-96.

<sup>8</sup> *Republican Nat'l Committee v. FEC*, 487 F. Supp. 280 (S.D.N.Y. 1980), *aff'd mem.*, 445 U.S. 955 (1980).

<sup>9</sup> *Id.* at 283.

private contributors that may arise from such reliance without decreasing the ability of the candidates to get their message to the people.”<sup>10</sup>

Moreover, the fact that a candidate’s acceptance of public funds was completely voluntary offset any First Amendment burden imposed by the program’s expenditure ceilings. “[Public financing] merely provides a presidential candidate with an additional funding alternative which he or she would not otherwise have and does not deprive the candidate of other methods of funding which may be thought to provide greater or more effective exercise of rights of communication or association than would public funding.”<sup>11</sup> The district court proceeded to dismiss the plaintiffs’ challenge, and the Supreme Court summarily affirmed.<sup>12</sup>

In 2011, the Supreme Court again endorsed the overall constitutionality of public financing even as it recognized that “trigger” provisions providing publicly financed candidates additional funds in response to campaign spending by non-participating candidates and independent expenditure groups impermissibly burdened political speech.<sup>13</sup> Despite invalidating the trigger mechanism in Arizona’s Citizens Clean Elections Act, the Court reaffirmed that “governments may engage in public financing of election campaigns and that doing so can further significant governmental interest[s], such as the state interest in preventing corruption.”<sup>14</sup> Thus, *Arizona Free Enterprise* did not “call into question the wisdom of public financing as a means of funding political candidacy,” or the constitutionality of such systems.<sup>15</sup>

### **III. Evidence regarding the effects of public financing on election campaigns**

A considerable body of empirical and academic research substantiates the beneficial effects of public financing on the political process. In particular, research demonstrates that public financing promotes engagement between candidates and voters, and increases electoral competitiveness.

#### **a. Public financing promotes engagement.**

By design, public financing programs encourage candidates to draw more voters into the political process. In full public financing regimes, an aspiring participant typically must demonstrate viability as a candidate by raising a certain number of small donations from constituents before becoming eligible for a grant of public funds. Accordingly, these candidates must conduct a substantial amount of direct voter outreach early in the campaign cycle to qualify for the grant. Once a participating candidate does qualify, full

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<sup>10</sup> *Id.* at 284 (quotation omitted); *see also id.* (“If the candidate chooses to accept public financing he or she is beholden unto no person and, if elected, should feel no post-election obligation toward any contributor of the type that might have existed as a result of a privately-financed campaign.”).

<sup>11</sup> *Id.* at 285.

<sup>12</sup> 445 U.S. 955 (1980).

<sup>13</sup> *Ariz. Free Enterprise Club’s Freedom PAC v. Bennett*, 564 U.S. 721 (2011).

<sup>14</sup> *Id.* at 754 (quotations and citation omitted).

<sup>15</sup> *See id.* at 753.

public funding systems continue to promote meaningful engagement since a candidate need not concentrate resources on fundraising and can instead focus on winning over voters through canvassing and other outreach efforts.

Matching funds programs similarly spur candidates to interact with more voters by magnifying the economic power of small contributions. These systems give candidates a financial incentive to reach out to a greater number of voters since the candidate will collect additional public funds for each qualifying contribution raised. Moreover, these programs can induce citizens to make a contribution knowing the financial impact of a relatively small donation — which may seem inconsequential in a privately-funded race — will be amplified through the public funds match.

Studies of jurisdictions with public financing demonstrate these effects.

- Following Connecticut’s introduction of full public financing for statewide elections in 2010, the importance of small contributions increased dramatically. In 2006, prior to the enactment of public financing, successful candidates for statewide office in Connecticut raised about 8% of their total campaign funds in contributions from individuals in amounts between \$5 and \$100. When public financing was introduced for statewide races in 2010, every successful candidate opted to participate in the program. In accordance with the program’s qualification requirements for full funding, these candidates raised a full 100% of their campaign contributions from individuals in amounts between \$5 and \$100.<sup>16</sup>
- A 2008 nationwide survey of state legislative candidates found that candidates accepting full public funding devoted significantly more time to non-fundraising campaign activities, such as canvassing and public speaking, than candidates who did not accept public financing. Statistical analysis of the survey results showed that legislative candidates accepting full public funding spent about 11.5% more time per week on direct voter outreach than privately financed candidates.<sup>17</sup>
- A study of New York City’s public financing program found that the city’s implementation of public matching funds in 2001 resulted in a significant increase both in the number of small contributors, measured as donors of \$250 or less, and in the proportional importance of small contributors to “competitive” candidates for City Council (*i.e.*, candidates who received at least half as many votes as the winning candidate in a primary or general election) participating in the program.<sup>18</sup>
- Following New York City’s adoption of multiple-matching funds, examination of campaign data revealed that 89% of the city’s census block groups had at least one

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<sup>16</sup> STATE ELECTIONS ENFORCEMENT COMM’N, CITIZENS’ ELECTION PROGRAM 2010: A NOVEL SYSTEM WITH EXTRAORDINARY RESULTS 8-12 (2011), [http://www.ct.gov/seec/lib/seec/publications/2010\\_citizens\\_election\\_program\\_report\\_final.pdf](http://www.ct.gov/seec/lib/seec/publications/2010_citizens_election_program_report_final.pdf).

<sup>17</sup> Michael G. Miller, SUBSIDIZING DEMOCRACY: HOW PUBLIC FUNDING CHANGES ELECTIONS AND HOW IT CAN WORK IN THE FUTURE 56-62 (2013).

<sup>18</sup> Michael J. Malbin et al., *Small Donors, Big Democracy: New York City’s Matching Funds as a Model for the Nation and States*, 11 ELECTION L. J. 3, 9-10 (2012).

contributor of \$175 or less to a city candidate in the 2009 municipal elections. By comparison, individual contributions of \$175 or less to candidates for the New York State Assembly, which are not matched with public funds, were made from 30% of the city's census-block groups in 2010. Moreover, the census block groups with at least one small donor to a city candidate were statistically less affluent and more racially diverse than census block groups with at least one large donor (those who gave \$1,000 or more), suggesting that the city's program spurred candidates to interact with a much broader segment of the city population.<sup>19</sup>

- Following New York City's implementation of a 6-to-1 rate for matching funds, analysis of the city's program found that more than half of the people who made a contribution during the 2013 city elections were first-time contributors. Additionally, 76% of these first-time donors made a small contribution of \$175 or less, giving strong support to the assertion that public financing brings new and diverse voices into the electoral process.<sup>20</sup>
- In January 2017, the city of Seattle launched a novel public financing system for city election campaigns known as the Democracy Voucher Program.<sup>21</sup> Under the program, Seattle offers to any eligible city resident \$100 in publicly-funded vouchers to assign to participating candidates of their choosing.<sup>22</sup> Available data from Seattle show the program has spurred impressive levels of local engagement. Since January, city residents have collectively assigned over 37,300 Democracy Vouchers worth nearly \$934,000 to participating candidates.<sup>23</sup> In the 2017 race for one city council position, over 8,500 Seattle residents have provided Democracy Vouchers to participating candidates with several weeks still remaining before Election Day.<sup>24</sup> This figure is almost triple the total number of contributors to all candidates for that same position 8 in 2015, when around 3,000 individuals and groups gave to candidates for the seat.<sup>25</sup>

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<sup>19</sup> Elisabeth Genn et al., Brennan Ctr. for Justice, *Donor Diversity Through Public Matching Funds* 10 (2012).

<sup>20</sup> N.Y.C. CAMPAIGN FIN. BD., *BY THE PEOPLE: THE NEW YORK CITY CAMPAIGN FINANCE PROGRAM IN THE 2013 ELECTIONS* 41 (2014).

<sup>21</sup> *About the Program*, Seattle Ethics & Elections Comm'n, <http://www.seattle.gov/democracymatcher/about-the-program>.

<sup>22</sup> *Id.*

<sup>23</sup> *Program Data*, Seattle Ethics & Elections Comm'n, <http://www.seattle.gov/democracymatcher/program-data> (last visited Oct. 16, 2017).

<sup>24</sup> 2017 Seattle Elections Contributors by Type All City Council Position 8, <http://web6.seattle.gov/ethics/elections/charts.aspx?cycle=2017&n1=contributions&n2=type&n3=groupings&n4=allcontests&n5=contest155&n6=number#aChartTop> (last visited Oct. 16, 2017).

<sup>25</sup> 2015 Election Report, Seattle Ethics & Elections Comm'n, March 2, 2016, <http://www2.seattle.gov/ethics/elpub/2015Report.pdf>.

## **b. Public financing increases electoral competitiveness.**

Multiple analyses of public financing programs have found these systems increase measures of electoral competitiveness, and may even weaken incumbent candidates' advantages over challengers. In particular, studies show a measurable increase in the number of contested elections in jurisdictions that have adopted public financing.

- A 2008 academic study on the impact of the Maine Clean Elections Act determined that, after taking effect, the availability of public financing immediately increased the number of candidates and decreased the margin of victory in state senate elections in 2000 and 2002 — compared to 1994 through 1998 — in races where a candidate accepted public funding.<sup>26</sup>
- Another study of Maine following its adoption of public financing concluded that, through 2004, “electoral competitiveness” had improved, as measured by percentage of incumbents facing major-party opposition, percentage of incumbents winning with less than 60% of the vote, and incumbent re-election rate.<sup>27</sup>
- According to data compiled by Connecticut’s State Elections Enforcement Commission, the number of unopposed legislative races decreased substantially following the state’s implementation of public financing, from 53 unopposed elections in 2008 to 32 in 2010. This jump in contested elections was consistent with an overall increase in the number of legislative candidates in 2010, many of whom cited the availability of public funds as a factor in their decision to seek office.<sup>28</sup>
- The availability of public funds for candidates for Connecticut’s legislature in 2008 and 2010 correlated with a general decline in candidates’ margins of victory in “competitive” races, defined as those in which two major party candidates opposed each other, after 2006.
- In 2016, the National Institute for Money in State Politics issued a report on monetary competitiveness in state legislative races in 2013 and 2014. Under the report’s methodology, a legislative race was considered monetarily competitive if the race’s top fundraiser raised no more than twice the amount of the next-highest fundraiser. Analyzing campaign data from 47 states, the report found that only 18 percent of legislative races nationally were monetarily competitive during the 2013 and 2014 elections. However, the percentage of monetarily competitive elections was considerably higher in the five states offering public financing for legislative candidates: an average of 41 percent of legislative races in states with public

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<sup>26</sup> Neil Malhotra, *The Impact of Public Financing of Electoral Competition: Evidence from Arizona and Maine*, 8 ST. POL. & POL’Y Q. 263, 275-77 (2008).

<sup>27</sup> Kenneth R. Mayer, Timothy Werner & Amanda Williams, *Do Public Funding Programs Enhance Electoral Competition?*, in THE MARKETPLACE OF DEMOCRACY: ELECTORAL COMPETITION & AMERICAN POLITICS 245, 247-49 (Michael P. McDonald & John Samples, eds., 2006).

<sup>28</sup> STATE ELECTIONS ENFORCEMENT COMM’N, CITIZENS’ ELECTION PROGRAM 2010: A NOVEL SYSTEM WITH EXTRAORDINARY RESULTS 6 (2011).

financing programs for legislative candidates were monetarily competitive in 2014. Moreover, three of the five *most* monetarily competitive states had public financing systems for legislative candidates, while none of the ten *least* monetarily competitive states offered public funds to candidates for the legislature.<sup>29</sup>

- The National Institute for Money in State Politics report also concluded that public financing increased the number of contested legislative races. In states with public financing for legislative elections, 87% of legislative seats were contested. By comparison, only 61% of legislative seats were contested in states lacking public financing programs.<sup>30</sup>

#### **IV. CLC recommends the Council consider two modifications to further strengthen Bill No. 170680.**

The bill before the committee contains many of the elements we consider critical to a public financing program. As discussed below, we recommend a few additions to further strengthen the bill.

##### **a. Publicly financed candidates should be limited in the amount of their personal funds they can use to finance their campaigns.**

Public financing programs frequently include a provision limiting the amount of personal funds a publicly financed candidate can use to finance their campaigns.<sup>31</sup> There are important policy considerations for such a limit. Public financing programs are

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<sup>29</sup> Zac Holden, NAT'L INST. FOR MONEY IN STATE POLITICS, 2013 AND 2014: MONETARY COMPETITIVENESS IN STATE LEGISLATIVE RACES (2016), [https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races/#ftnref\\_3\\_link](https://www.followthemoney.org/research/institute-reports/2013-and-2014-monetary-competitiveness-in-state-legislative-races/#ftnref_3_link).

<sup>30</sup> *Id.*

<sup>31</sup> See, e.g., N.Y.C. ADMIN CODE. § 3-703.1(h) (participating candidates may “not make expenditures from or use his or her personal funds or property . . . in connection with his or her nomination for election or election except as a contribution to his or her personal committee in an amount that does not exceed three times the maximum contribution amount” for the office). Courts have recognized that limits on the amount of personal funds candidates can contribute to their own campaigns are permissible in the public financing context. *Montoya v. Herrera*, 276 P. 3d 952, 955-957 (N.M. 2012) (upholding limit on contributions that publicly financed candidate could contribute to his own campaign); *Corren v. Donovan*, 2017 WL 1187529 at \*3-4 (D. Vt. Mar. 29, 2017), *appeal docketed*, No. 17-1343 (2d Cir. Apr. 28, 2017) (denying plaintiffs’ motion for reconsideration of question of self-financing by publicly funded candidates); *Gable v. Patton*, 142 F. 3d 940, 949 (6th Cir. 1998) (acknowledging that state could impose limit on contributions from the personal funds of candidates who voluntarily opt to participate in public campaign financing); see also *Davis v. Fed. Election Comm’n* 554 U.S. 724, 739 (2008) (distinguishing involuntary limit on personal expenditures from voluntary limit imposed as condition of public funding program); *Ognibene v. Parkes*, 671 F. 3d 174, 193 (2d Cir. 2011) (“When participation is voluntary and public money is used, stricter restrictions may be imposed, perhaps even restrictions that would normally be impermissible.”).



continuously subject to the attack that public financing is “welfare for politicians” and similar critiques regarding whether these programs are a prudent use of the public fisc. If candidates are using public funds in addition to spending significant amounts of their own money on their campaign, the system will be open for criticism that it is just subsidizing the campaigns of candidates who can afford to self-finance. Candidates will always have the option to self-finance, but the Council should consider reasonable limits on what publicly financed candidates can personally spend on their campaigns.

**b. CLC recommends requiring audits of participating candidates’ campaigns.**

The bill does not require mandatory audits of participating candidates’ campaigns. CLC believes such audits are an important administrative safeguard and recommends adding them to the Act. Audits are essential for detecting mistakes and wrongdoing and ensuring the public’s confidence in public funding systems. Many other public financing programs require audits for participating candidates.<sup>32</sup> Any public financing program enacted by the Council should include a similar provision. If candidates or their campaigns misuse public funds — whether intentional or not — it is important that the public knows the misuse will be caught and addressed by the Board through the audit process.

**V. Conclusion**

For all of these reasons, the Campaign Legal Center supports Bill No. 170860. We respectfully recommend that the Committee add the provisions suggested in this testimony and to take favorable action on this important piece of legislation. We appreciate the opportunity to submit this testimony.

Sincerely,

/s/

Adav Noti  
Senior Director, Trial Litigation & Strategy

/s/

Catherine Hinckley Kelley  
Director, Policy & State Programs

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<sup>32</sup> See, e.g., 26 U.S.C. §§ 9007, 9038 (requiring FEC to conduct audits of qualified campaign expenses of every candidate after each primary matching payment period and after each presidential election); N.Y.C. ADMIN. CODE § 3-710 (empowering Campaign Finance Board to audit city candidates); S.F., CAL., CAMPAIGN & GOVERNMENTAL CODE § 1.150(a) (directing its Ethics Commission to audit all candidates who receive public financing); L.A., CAL., ADMIN. CODE § 24.41 (mandating audits for all candidates who raise or spend more than \$100,000 and at least twenty percent of all other candidates at random).