



**Statement of Tyler Martinez
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**B22-0192, the “Fair Elections Act of 2017”
Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia
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Chairman Allen and members of the Committee on the Judiciary and Public Safety, on behalf of the Center for Competitive Politics (“the Center”),¹ thank you for affording me the opportunity to testify before you today regarding the nature of taxpayer-financed campaign programs and B22-0192, the “Fair Elections Act of 2017,”² which would institute a citywide system of taxpayer-funded political campaigns for candidates for Mayor, Attorney General, Council Chair, Councilmember, and State Board of Education in the District of Columbia.

While proponents of so-called “matching funds” or “public financing” proposals tout these programs as a panacea for eliminating corruption and “fixing” perceived ills in government, the experiences of existing programs in New York City, Los Angeles, Arizona, Connecticut, and Maine – all of which have similar systems to that proposed in B22-0192 – are very telling. Since the inception of taxpayer financing programs, much research has been devoted to assessing whether these schemes truly realize the many claims made by their proponents or result in better government. Quite simply, there is no evidence to support these claims. These programs have failed to live up to their lofty expectations, while wasting precious taxpayer dollars, and forcing citizens to subsidize the candidacies of individuals with which they may disagree on many issues, including at times highly controversial candidates whom many, if not most, taxpayers oppose.

Of note, any attempts to institute a citywide tax-financing program in Washington, D.C. must be done carefully and in accordance with Supreme Court precedent, which deemed a “rescue fund” aspect of Arizona’s statewide taxpayer-funded campaign program unconstitutional in 2011.³ So, while “governments ‘may engage in public financing of election campaigns’ and [] doing so can further ‘significant governmental interest[s],’ such as the state interest in preventing corruption,”⁴ “the goal of creating a viable public financing scheme can only be pursued in a

¹ The Center is a nonpartisan, nonprofit § 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For example, it is currently involved in litigation against California, Missouri, and the federal government.

² Fair Elections Act of 2017, B22-0192, 22d Council (D.C. 2017) (“B22-0192”).

³ *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 728 (2011) (“We hold that Arizona’s matching funds scheme substantially burdens protected political speech without serving a compelling state interest and therefore violates the First Amendment.”).

⁴ *Id.* at 754 (quoting *Buckley v. Valeo*, 424 U.S. 1, 57, n.65, 96 (1976)) (second bracket in *Arizona Free Enterprise*).

manner consistent with the First Amendment.”⁵ For more information on potential constitutional issues inherent in existing tax-financing programs, please see law professor and former senior attorney for the ACLU Joel Gora’s analysis in “Don’t Feed the Alligators: Government Funding of Political Speech and the Unyielding Vigilance of the First Amendment,” which analyzes the constitutionality of various aspects of tax-financing programs in light of the Court’s 2011 decision.⁶

I highlight a number of policy arguments in my analysis: (I) past corruption scandals in the District of Columbia would have been unaffected by the existence of a tax-financing program; (II) New York City’s matching funds program, one of the oldest in the country, is fraught with corruption; (III) similar programs in Los Angeles, Arizona, and Maine have also experienced much corruption since their inception; (IV) academic studies have found no evidence that these programs decrease the incidence of public corruption or improve trust in government; (V) an analysis of Connecticut’s tax-financing program has demonstrated its failure to change legislative voting patterns; (VI) existing statewide programs have done little to diminish alleged “interest group” influence; (VII) many other claims by advocates of “clean elections” have also been shown to be false; and (VIII) the cost of a citywide program in Washington, D.C. would be immensely expensive *and* likely to rise over time.

For a more comprehensive analysis of the failure of tax-financing programs as a policy prescription, please consult the Center for Competitive Politics’ Policy Primer on the issue, “Taxpayer-Financed Campaigns: A Costly and Failed Policy.”⁷

I. Past corruption scandals in Washington, D.C. would have been unaffected by the existence of a matching funds program like the one proposed in B22-0192.

As D.C. residents are keenly aware, the District historically suffered from corrupt politicians. Since 2012, three Council members have pled guilty to various corruption charges. Michael A. Brown was found guilty of accepting bribes, Kwame Brown was convicted of bank fraud and misuse of campaign funds, and Harry Thomas pled guilty to embezzlement and tax fraud charges.⁸ Currently, the city is embroiled in two corruption scandals – one surrounding Council member Brandon T. Todd’s failure to properly document over \$100,000 in contributions from a

⁵ *Id.*

⁶ Joel M. Gora, *Don’t Feed the Alligators: Government Funding of Political Speech and the Unyielding Vigilance of the First Amendment*, 2010-2011 CATO SUP. CT. REV. 81 (2011). Joel Gora is an Academic Advisor to the Center for Competitive Politics.

⁷ MATT NESE, TAXPAYER-FINANCED CAMPAIGNS: A COSTLY AND FAILED POLICY, CENTER FOR COMPETITIVE POLITICS July 16, 2014 *available at*: http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-07-16_Policy-Primer_Taxpayer-Financed-Campaigns.pdf.

⁸ “D.C. corruption scandals: A primer” THE WASHINGTON POST, June 10, 2013 *available at*: <http://www.washingtonpost.com/wp-srv/special/local/dc-corruption-scandals/>.

previous race⁹ and another involving staff for Mayor Muriel E. Bowser giving preferential treatment in school placement to prominent D.C. officials.¹⁰

It is important to note that none of these scandals would have been avoided, forestalled, or more quickly come to light under B22-0192. Of the many scandals that have plagued D.C. politics for generations, none would have been prevented by providing tax dollars to those campaigning for city office. In fact, if D.C. had doled out tax revenue to these corrupt or allegedly corrupt individuals, many of the scandals, most notably those involving Councilmember Todd, would have become worse. Instead of failing to properly document the source of privately raised campaign funds, candidates like Mr. Todd would be directly mishandling the District's resources.

Although supporters of B22-0192 present the bill as an anti-corruption measure, noting recent scandals, the opposite is true. The vast majority of the corruption charges affecting Washington, D.C.'s elected officials stem from either the misuse of tax dollars for personal gain or the misuse of campaign funds. Far from weeding out corruption, a matching funds program combines the two problems, opening the door for *more* potential abuses. Ultimately, proposing to get rid of corruption by providing more tax dollars to politicians is like proposing to get rid of sharks with fresh meat.

D.C. taxpayers should not be forced to pay for what amounts to earmarks for politicians, or foot the bill for corrupt candidates and their crooked schemes. Instead of asking for government subsidies, politicians should spend time addressing the real concerns of the people they represent.

II. The Center for Competitive Politics examined publicly available information on corruption New York City's taxpayer-financed campaign system and found disturbing amounts of corruption.

For a litany of examples of so-called "clean elections" programs' failure to stem corruption, one need look no further than New York City, which has had a citywide matching funds program similar to the one proposed in B22-0192, since 1988. The Center published an extensive report in August 2013 compiling public data from news reports and official sources on corruption in Arizona, Maine, and New York City's tax-financing programs.¹¹ The Center's report sought to evaluate the claims of these programs' proponents that such systems deter either corruption or the appearance of corruption. The abuse of tax-financed funds is so pervasive, particularly in New

⁹ Aaron C. Davis, "Secret audit left D.C. voters 'in the dark.' Now it stirs talk of election reform.," WASHINGTON POST, May 1, 2017 *available at*: https://www.washingtonpost.com/local/dc-politics/secret-audit-left-dc-voters-in-the-dark-now-it-stirs-talk-of-election-reform/2017/05/01/7fb1d7c2-2c29-11e7-be51-b3fc6ff7faee_story.html?utm_term=.b8ae9c883611.

¹⁰ Peter Jamison, "Second mayoral appointee identified in school-lottery scandal," WASHINGTON POST, May 10, 2017 *available at*: https://www.washingtonpost.com/local/dc-politics/second-mayoral-appointee-implicated-in-school-lottery-scandal/2017/05/10/17e72092-35b2-11e7-b373-418f6849a004_story.html?utm_term=.05e25c907b78.

¹¹ MATT NESE AND TOM SWANSON, CLEAN ELECTIONS AND SCANDAL: CASE STUDIES FROM MAINE, ARIZONA, AND NEW YORK CITY, CENTER FOR COMPETITIVE POLITICS Aug. 14, 2013 *available at*: http://www.campaignfreedom.org/wp-content/uploads/2013/08/2013-08-05_Issue-Review_Swanon_Clean-Elections-Scandal-Case-Studies-From-Maine-Arizona-And-New-York-City.pdf. The Center's report examined multiple jurisdictions' systems for tax-financing of political campaigns. Because the District is more like New York City—a vibrant jurisdiction with national import and surrounded by dense urban and suburban influence, we focus on the New York City's experiences in this section.

York City’s program, that such a system cannot possibly live up to the “clean” moniker that has been assigned to it by its supporters.

The following sections spotlight some key findings of the Center’s report. Although this report was published in 2013, since that time, additional incidents of public officials misusing or abusing matching fund systems have continued to be a regular feature of these programs, including in jurisdictions that have only recently enacted or fully funded these programs, such as Los Angeles and Connecticut. Nevertheless, the pattern remains the same: wherever tax-financing has been enacted, abuses of these programs – and, by extension, taxpayer dollars – have followed.

The corrupt experience of New York City’s program is particularly instructive, as B22-0192 appears to be modeled after that system.

a. The Astonishing Public Cost to Taxpayers of Corruption in New York City

The Center’s study found that between 2001 and 2013, a staggering total of \$19,232,067 in taxpayer dollars was distributed to participating candidates in New York City’s so-called “clean elections” program, who were then investigated for – and, in many cases, convicted of – abuse, fraud, and other forms of public corruption.¹²

In 1988, New York City began a voluntary Campaign Finance Program, which provides tax funds to qualifying candidates for mayor, public advocate, comptroller, borough president, and city council. The details of the program have changed over the years, and the program has offered richer matches, which has led to an increase in its cost. Currently, New York City offers qualified candidates matching funds at a ratio of \$6 in tax funds for every \$1 raised from a contributor, with a maximum of \$1,050 in tax funds granted to a participating candidate per individual contributor.¹³ The New York City Campaign Finance Board (CFB), which administers the program, also sets spending limits for participating candidates based on the type of race being run.¹⁴ In certain situations, these limits are lifted if a candidate who participates in the program is running against a high-spending, non-participating candidate.¹⁵ To be eligible for taxpayer funds, candidates must have an opponent on the ballot, be on the ballot themselves, and comply with all program regulations, or face fines. In many ways, these requirements mirror those in B22-0192.

By its own account, the NYC CFB has come up short in fulfilling the goals of the program to “level the playing field” by assisting candidates with fewer fundraising resources. In its report on the 2003 City Council elections, the CFB lamented that “the program’s requirements...appear to have contributed to greater disparities between office holders’ and challengers’ campaign

¹² *Id.* at 36-37.

¹³ For individuals residing in New York City, the program matches contributions up to \$175 at a 6:1 rate. This means that an individual giving \$175 to a participating candidate enables that candidate to then receive \$1,050 in matching funds. See “How it Works,” NEW YORK CITY CAMPAIGN FINANCE BOARD (2016) available at: <http://www.nyccfb.info/program/how-it-works/>.

¹⁴ CAMPAIGN FINANCE HANDBOOK: 2017 ELECTION CYCLE | VERSION 3, NEW YORK CITY CAMPAIGN FINANCE BOARD, 38 (2017) available at: <http://www.nyccfb.info/candidate-services/handbook/>.

¹⁵ *Id.* at 40.

finances...” The Board further admitted that “the Public Fund has helped to finance possibly unnecessary campaign expenses and uncompetitive campaigns.”¹⁶

Since its inception nearly 30 years ago, New York City’s taxpayer-financed matching funds system has been abused through a variety of nefarious methods by a number of candidates and entities. The following sections detail just a handful of major instances of abuse of millions of dollars in taxpayer funds.

b. Taxpayer-Funded Hate

Thomas Lopez-Pierre is currently campaigning for a New York City Council seat on the platform of making “greedy Jewish Landlords” pay.¹⁷ He is on pace to qualify for \$100,000 in taxpayer dollars to help spread his message. New Yorkers, including those on the City Council, are rightly appalled by Lopez-Pierre’s anti-Semitic message. Council Speaker Melissa Mark-Viverito says that to “have someone be able to spend [taxpayer dollars] to put forth that kind of a message is despicable.” But under New York’s matching fund system, there is nothing the City can do. The First Amendment prohibits laws from discriminating against individuals based on the content of their message.¹⁸ As such, if B22-0192 is enacted, Washington, D.C. would be constitutionally required to fund the speech of all candidates that meet the qualifications for matching funds – including those with racist, anti-Semitic, sexist, homophobic, transphobic, or otherwise hateful messages. As Lopez-Pierre’s campaign proves, this is not an unfounded fear.

c. John Liu’s Straw Donors

Two former aides to former New York City Comptroller and 2013 mayoral candidate John Liu were convicted and found guilty of conspiracy to commit wire fraud and attempted wire fraud in a straw donor scheme.¹⁹ Although Liu’s involvement and knowledge of this operation has never been proven, his campaign treasurer and an associated fundraiser were found guilty in a scheme to obtain matching funds in New York City’s tax-financing program by using fake contributors in an effort to loot the matching funds program and evade existing contribution limits. Although never charged, Liu’s former Press Secretary admitted in her testimony at the trial of Liu’s aides to

¹⁶ THE 2003 CITY COUNCIL ELECTIONS: A REPORT BY THE CAMPAIGN FINANCE BOARD, NEW YORK CITY CAMPAIGN FINANCE BOARD, 9 (Vol. 1, Sep. 2004) *available at*: http://www.nycfb.info/PDF/per/2003_PER/PER_complete.pdf.

¹⁷ Editorial Board, “Taxpayer-funded hate, thanks to the city campaign-finance system,” NEW YORK POST, Mar. 3, 2017 *available at*: <http://nypost.com/2017/03/03/taxpayer-funded-hate-thanks-to-the-city-campaign-finance-system/>.

¹⁸ *Reed v. Town of Gilbert*, 576 U.S. ___, ___ 135 S. Ct. 2218, 2226 (2015) (Under the First Amendment, “a government, including a municipal government vested with state authority, has no power to restrict expression because of its message, its ideas, its subject matter, or its content. ... Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional....”) (internal citation and quotation marks omitted); *see also Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573 (1995) (collecting cases); and *Arizona Free Enterprise*, 564 U.S. at 739 (applying *Hurley* to Arizona’s public financing system).

¹⁹ Benjamin Weiser, “Two Former Liu Associates Are Found Guilty in Campaign-Finance Scheme,” N.Y. TIMES, May 2, 2013 *available at*: <http://www.nytimes.com/2013/05/03/nyregion/former-liu-associates-convicted-in-fund-raising-case.html>.

offering to reimburse potential donors for their contributions to Liu's 2013 mayoral campaign.²⁰ Regardless of the particulars of this scheme, one thing is certain: the lure of a lavish tax-financed matching funds program appears to have motivated Liu's aides to falsify donors in order to attempt a raid on the city's tax coffers.

d. Illegal Coordination with Independent Expenditures from Labor Unions

A provision in New York City's program seeks to prevent participating candidates from coordinating with any entity making independent expenditures, but, despite this, matching funds have been shown to exacerbate, not limit, such coordination. For example, two New York City Council candidates have been investigated for collusion with New York's Health and Human Services Union, 1199/SEIU, AFL-CIO, known more simply as 1199 SEIU.

1199 SEIU's well-documented involvement with Fernando Ferrer's 2005 mayoral campaign was investigated by the CFB, which found the relationship between the union and the campaign were sufficiently close to question its legality. According to the CFB's report:

Notably, key personnel on leave from their positions at 1199 SEIU were involved with organizing the campaign's field operations and get-out-the-vote efforts, which extensively utilized 1199 SEIU members. Moreover, 1199 SEIU officials attended a campaign strategy meeting in the month preceding the election with Mr. Ferrer and campaign staff. 1199 SEIU also printed and distributed hundreds of thousands of glossy brochures in support of Ferrer.²¹

The Board concluded in July 2009 that SEIU's activity on behalf of the campaign amounted to coordinated activity and assessed a \$10,000 penalty against Ferrer's campaign committee for accepting over-the-limit and in-kind contributions.²²

In October 2007, New York City Councilwoman Annabel Palma was fined \$30,000 by the New York City Campaign Finance Board for illegally coordinating with 1199 SEIU during her 2003 campaign. CFB found the union provided in-kind contributions in excess of local limits. At the time, Ms. Palma claimed no desire to seek taxpayer dollars for her future campaigns, but was a recipient of tax-financed funding through the CFB program during the 2009 election.²³ Palma still sits on the New York City Council.

²⁰ Christina Boyle, "Controller John Liu former press secretary admits to offering to reimburse donors," NEW YORK DAILY NEWS Apr. 25, 2013 *available at*: <http://www.nydailynews.com/news/politics/ex-liu-press-secretary-admits-offering-reimburse-donors-article-1.1326906>.

²¹ NEW YORK CITY CAMPAIGN FINANCE BOARD, NEW YORKERS MAKE THEIR VOICES HEARD: A REPORT ON THE 2009 ELECTIONS, 74 (2010) *available at*: http://www.nycffb.info/PDF/per/2009_PER/2009PostElectionReport.pdf.

²² *Id.*

²³ Azi Paybarah, "After Fine, Palma Will Reject Matching Funds," NEW YORK OBSERVER, Oct. 17, 2007 *available at*: <http://observer.com/2007/10/after-fine-palma-will-reject-matching-funds/>.

e. The Conviction of “Cash and Carry Larry” Seabrook

Others who have accepted taxpayer funding for their campaigns have been investigated for unsavory behavior, indicating that the “clean election” tag may be anything but when it comes to New York City politics.

Former Councilman Lawrence Seabrook, known colloquially as “Cash and Carry Larry,”²⁴ was charged with a litany of abuses dating back to at least 2003 in a mammoth 66-page, 13-count federal indictment in February 2010.²⁵ Seabrook, who was re-elected in 2009 with an overwhelming 90.3% of the vote, accepted \$16,542 in taxpayer dollars from the CFB for that campaign.²⁶

Among other crimes, Seabrook was convicted of accepting bribes, extorting money, and other questionable behavior that netted him approximately \$200,000 in “illegal rent, expenses and payoffs,” including extorting a Bronx boiler company executive who collected a \$283,000 Yankee Stadium contract with Seabrook’s alleged assistance.²⁷ Seabrook was eventually convicted on nine of twelve counts and was sentenced to five years in prison on January 8, 2013.²⁸

As with prior examples, the city’s matching funds program did nothing to prevent Seabrook’s bribery schemes.

f. Fraudulent Disclosures, Personal Use of Taxpayer Funds, and Criminal Conspiracy

Recipients of taxpayer dollars under New York City’s tax-financing program have manipulated the system in a variety of other ways as well.

Former New York City Councilman Miguel Martinez was granted \$128,786 in matching funds for his 2001 campaign. During routine audits by the CFB, Martinez failed to disclose documentation that justified his use of public funds. The CFB issued a draft audit report finding that the campaign had been unable to document any qualified expenditures and would have to repay all the public funds received. In response, the campaign subsequently produced documents that appeared to have been fabricated, “including apparently altered invoices, discrepancies in signatures, and false endorsements of checks.” The CFB fined Martinez \$44,780 and demanded he return all \$128,786 in public funds he had received. Martinez sued, but CFB won the case in December 2008. Martinez later pled guilty to federal corruption charges, including admitting that he converted over \$100,000 in taxpayer funds to personal use through various illegal schemes in

²⁴ Celeste Katz, “Bronx Councilman ‘Cash And Carry Larry’ Seabrook In Trouble Again,” *NEW YORK DAILY NEWS*, Dec. 18, 2010 *available at*: <http://www.nydailynews.com/blogs/dailypolitics/bronx-councilman-cash-carry-larry-seabrook-trouble-blog-entry-1.1679243>.

²⁵ Alison Gendar and Larry McShane, “Bronx City Council member Larry Seabrook hit with laundry list of corruption charges,” *NEW YORK DAILY NEWS*, Feb. 9, 2010 *available at*: <http://www.nydailynews.com/new-york/bronx-city-council-member-larry-seabrook-hit-laundry-list-corruption-charges-article-1.194822>.

²⁶ *NEW YORKERS MAKE THEIR VOICES HEARD*, *infra* n. 22, at 119.

²⁷ Gendar and McShane, *NEW YORK DAILY NEWS*, *infra* n. 26.

²⁸ Robert Gearty and Ginger Adams Otis, “Former city councilman Larry Seabrook sentenced to five years for misappropriation of funds,” *NEW YORK DAILY NEWS*, Jan. 8, 2013 *available at*: <http://www.nydailynews.com/new-york/larry-seabrook-sentenced-years-misappropriation-funds-article-1.1235667>.

which he approved and submitted fabricated documents to New York City. He was sentenced to five years in prison.²⁹

CFB also audited Michael Roth, a 2005 New York City Council candidate, who received \$20,392 in matching funds, and found that he converted \$17,223 of those funds for personal use. CFB claimed that “Roth made eighty expenditures from campaign funds totaling \$8,035 that were unrelated to his election, such as payments for groceries, gas and car expenses, and MetroCards.” Following the election, Roth spent an additional \$9,188 on a flight to Florida, tourist attractions, restaurant tabs, more MetroCards, and phone bills. The Board assessed \$20,000 in penalties against Roth in December 2008 for failing to prove that the expenditures were campaign-related and for knowingly making fraudulent expenditures. After the CFB received a judgment against Roth in June 2010, he repaid all the public funds.³⁰

Veteran New York City Councilman Sheldon Leffler was convicted in New York Supreme Court in November 2003 on charges of attempted defrauding of the CFB of \$38,000 in public funds, during his failed 2001 bid for Queens Borough President. According to Queens real estate executive Rita Stark, she and Leffler schemed to divide her \$10,000 contribution into 38 “clean elections”-compliant \$250 contributions to qualify for the then-\$4 to \$1 match in tax-financed funds. The Board noticed “irregularities” in the campaign’s documentation and Leffler was denied public funds and eventually indicted on 13 counts of criminal conspiracy, attempted grand larceny, forgery, and filing of false documents. Leffler was found guilty on seven counts, sentenced to five years of probation, ordered to pay a \$5,000 fine, and complete 540 hours of community service.³¹

Attempted violators are caught before funds are spent—at the price of more taxpayer money spent in investigation and policing the use of matching funds. For example, In December 2008, the CFB won its case against former City Councilman and then-New York Senate Majority Leader Pedro Espada, Jr. regarding improprieties in his 2001 campaign for Bronx Borough President. The CFB found, among other violations, that Espada had not properly disclosed the use of corporate contributions and had repeatedly failed to provide full disclosure of campaign expenditures. He was summarily denied matching funds due to the violations, but during the post-election audit, the CFB discovered additional violations, including the campaign’s acceptance of in-kind contributions from entities controlled by Espada, such as Soundview HealthCare Network, whose employees had been reimbursed for their contributions to his campaign. The Board found Espada to be in violation of 22 campaign finance laws and assessed his campaign \$61,750 in penalties. After months of legal wrangling during which Espada unsuccessfully sued the CFB and demanded payment to his campaign of the \$173,000 in matching funds he had originally qualified for, Espada paid the penalties he owed in August 2009—eight years after the 2001 election.³²

Although the above stories represent just a small sample, the litany and sheer variety of abuses in New York City’s matching funds program prove one thing: providing politicians with taxpayer dollars, as B22-0192 seeks to do, only provides more avenues for corruption, not less.

²⁹ NEW YORKERS MAKE THEIR VOICES HEARD, *infra* n. 22, at 74-75.

³⁰ *Id.* at 76.

³¹ THE 2003 CITY COUNCIL ELECTIONS, *infra* n. 17, at 8.

³² NEW YORKERS MAKE THEIR VOICES HEARD, *infra* n. 22, at 73-74.

III. Corruption and misuse of tax-financed funds is not limited to New York City, as the experiences of tax-financing programs elsewhere demonstrate.

It is important to note that other jurisdictions have suffered from corruption in their taxpayer-financed campaign programs as well.

a. Fake Contributions in Los Angeles

In 2015, Los Angeles City Council candidate Robert L. Cole, Jr. was caught attempting to receive matching funds for fraudulent small dollar donations.³³ Cole claimed qualifying donations in an amount over \$60,000, including from at least five dead constituents, and was fined over \$91,000 after it was discovered that 71% of the small dollar donations he claimed for matching funds were fraudulent.

While the Ethics Commission in Los Angeles caught Robert Cole's fraud, they failed to detect the same scheme from Councilwoman Nury Martinez.³⁴ Martinez is currently under investigation by the FBI for fraudulently claiming small qualifying donations from contributors that did not give to her campaign. While the investigation is ongoing, three of the first five contributors contacted by the FBI and *Los Angeles Times* had not given any contribution. Martinez received over \$65,000 in matching funds and won her re-election bid.

It is worth noting that Los Angeles's matching fund program uses a 2 to 1 scheme. If this fraud had occurred under the system proposed by B22-0192, D.C. residents would have lost as much as two-and-a-half times the money as a result of the tiered matching scheme set forth in the legislation.

b. Corruption in Arizona's Citizens Clean Elections Act (CCEA)

The seventeen-year-old CCEA has been expertly gamed by Arizona candidates, political action committees, political parties, and other interest groups, who have found myriad ways to not only evade reporting requirements and spending limits, but have used the mechanisms of the program to their personal advantage, contrary to the intent of the "Clean Elections" Act.

In November 2010, former Arizona Senate candidate Robert Green was indicted for submitting false documents to the Arizona Clean Elections Fund to collect more than \$21,000 in taxpayer dollars to run his campaign.³⁵ Green had actually been removed from the matching funds program by the Citizens Clean Elections Commission the previous May and was ordered to repay \$20,000.³⁶ According to the indictment, Green lied about receiving qualifying contributions, knowingly accepted contributions in the name of another, and lied about the violations.³⁷ In 2011,

³³ Jean Merl, "Ex-L.A. council candidate fined for fraudulent bid for matching funds," LOS ANGELES TIMES, June 3, 2015 *available at*: <http://www.latimes.com/local/cityhall/la-me-ethics-fine-20150604-story.html>.

³⁴ David Zahniser, "Federal investigators focus on small campaign donations to L.A. Councilwoman Nury Martinez," LOS ANGELES TIMES, Jan. 21, 2016 *available at*: <http://www.latimes.com/local/california/la-me-martinez-donors-grand-jury-20160122-story.html>.

³⁵ "Former Legislature candidate indicted on fraud, theft charges," THE ARIZONA REPUBLIC, Nov. 2, 2010 *available at*: <http://www.azcentral.com/news/articles/20101102former-arizona-legislature-candidate-indicted02-ON.html>.

³⁶ NESE AND SWANSON, CLEAN ELECTIONS AND SCANDAL, *infra* n. 12, at 6.

³⁷ *Id.*

Green signed a plea agreement that sentenced him to probation and ordered him to pay a nearly \$10,000 fine and over \$11,000 in restitution to the Arizona Secretary of State and the Citizens' Clean Elections Commission.³⁸

Then there was Yurikino Centit "Yuri" Downing, who was criminally indicted on six felony counts in July 2004, claiming he misused over \$100,000 in public matching funds during his campaign and the campaigns of his two friends, Trevor Clevenger and Paul DeDonati, for which he served as campaign manager and treasurer. Downing, who claimed to be running a "youth oriented" libertarian campaign when he ran for state legislator in 2002, spent taxpayer funds on parties at Scottsdale nightclubs and restaurants, on vehicle rentals, and to purchase expensive office equipment. Colleen Connor, then-Executive Director of the Arizona Citizens Clean Elections Commission, said in April 2003 that she could find no evidence that there was a serious bid for public office by Downing or the other two candidates, Clevenger and DeDonati. Downing and the other candidates were ordered by the Commission to repay the entire sum of the public funding they received, but both Clevenger and DeDonati managed to have their fines reduced to \$15,000 each.³⁹

Unsuccessful Republican State Senate candidate Andre Campos ran in 2008 and was granted \$45,841 in taxpayer funds, spending \$23,155 of his funding at a company he owned, Image Design Communications.⁴⁰ Another Republican candidate for State Representative, John Fillmore, paid himself \$2,861 in "petty cash/miscellaneous" expenses from his pool of matching funds, allegedly to avoid his bank's checking fees.

The Green, Downing, Campos, and Fillmore examples are just a small sampling of the abuse and corruption surrounding Arizona's Citizens Clean Elections Act. In total, \$2,237,925 in taxpayer dollars was granted to participating candidates in Arizona who were investigated for campaign finance abuses between 2001 and 2012.⁴¹ In similar fashion to New York City, over \$2.2 million in taxpayer money was spent on frivolous purchases, used for personal expenses, or obtained fraudulently.

c. Corruption under Maine's Clean Election Act

As with New York City, Los Angeles, and Arizona, Maine's Clean Election Program has dealt with its share of corruption as well. A 2007 report on the Maine Clean Election Act prepared by the Maine Commission on Governmental Ethics and Election Practices detailed numerous instances of corruption stemming from the program.

Examples ranged from more minor instances of candidates inappropriately using taxpayer funding to pay for personal expenses, like car maintenance costs and new shoes,⁴² to a variety of serious misdeeds, like the forging of signatures necessary to meet the qualifying contribution

³⁸ *Id.*

³⁹ NESE AND SWANSON, CLEAN ELECTIONS AND SCANDAL, *infra* n. 12, at 6.

⁴⁰ Sarah Fenske, "The Dirty Truth about 'Clean' Elections," PHOENIX NEW TIMES, Apr. 2, 2009 *available at* <http://www.phoenixnewtimes.com/2009-04-02/news/the-dirty-truth-about-clean-elections/>.

⁴¹ NESE AND SWANSON, CLEAN ELECTIONS AND SCANDAL, *infra* n. 12, at 12-13.

⁴² MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES, 2007 STUDY REPORT: HAS PUBLIC FUNDING IMPROVED MAINE ELECTIONS? 84, (Apr. 2007) *available at* https://www1.maine.gov/ethics/pdf/publications/2007_study_report.pdf.

requirement.⁴³ In another incident that at least raises the appearance of impropriety, a gubernatorial candidate in Maine paid her husband over \$100,000 in campaign consulting fees using taxpayer dollars.⁴⁴

By the Center's count, a total of \$184,940 in Mainers' tax dollars was granted to so-called "clean elections" candidates, who were later investigated for abuses of taxpayer dollars between 2001 and 2012.⁴⁵

IV. In addition, academic studies have found that campaign finance reforms, including taxpayer-financed campaigns, fail to decrease the incidence of public corruption or improve public trust and confidence in government.

In April 2013, Professor of Economics at the University of Missouri, Jeff Milyo, and Adriana Cordis, then-Assistant Professor of Economics at the University of South Carolina Upstate, released a working paper, which systematically examined the effects of campaign finance laws on actual corruption rates in the states.⁴⁶ In addition to other reform measures, the paper specifically evaluated the corruption convictions of public officials in states with existing tax-financed campaign programs in its analysis of the effects of campaign finance regulations.⁴⁷

Cordis and Milyo assessed the effects of state campaign finance reforms on both convictions and filings in cases of public corruption over the past twenty-five years. Ultimately, the authors found "no strong or convincing evidence that state campaign finance reforms reduce public corruption."⁴⁸ Earlier research from Milyo and David Primo, an Associate Professor of Political Science and Business Administration at the University of Rochester, also found that state campaign finance reforms fail to increase public trust and confidence in government in any meaningful way.⁴⁹ Taken together, this research further calls into question both the claims of matching funds proponents and the likely long-term effects of the implementation of a tax-financed campaign program in the District.

⁴³ *Id.* at 86.

⁴⁴ MAINE COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES, "Amended Minutes of the July 16, 2007 Meeting of the Commission on Governmental Ethics and Election Practices," 12 *available at*: <http://www.maine.gov/ethics/pdf/meetings/20070716/20070716minutes.pdf>.

⁴⁵ NESE AND SWANSON, CLEAN ELECTIONS AND SCANDAL, *infra* n. 12, at 21-22.

⁴⁶ Adriana Cordis and Jeff Milyo, "Working Paper No. 13-09: Do State Campaign Finance Reforms Reduce Public Corruption?" Mercatus Center at George Mason U. (April 2013) *available at*: mercatus.org/sites/default/files/Milyo_CampaignFinanceReforms_v2.pdf. Jeff Milyo is an Academic Advisor to the Center for Competitive Politics. Adriana Cordis is now an Assistant Professor in the College of Business Administration at Winthrop University.

⁴⁷ *Id.* at 18.

⁴⁸ *Id.* at 2.

⁴⁹ David M. Primo and Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy: Evidence from the States*, 5 ELECT. L. J. 23 (2006) *available at*: <http://www.rochester.edu/college/psc/primo/primomilyoelj.pdf>. David Primo an Academic Advisor to the Center for Competitive Politics.

V. An analysis of Connecticut’s tax-financed campaign program demonstrates that such systems fail to change legislative voting patterns in any meaningful manner.

Advocates of tax-financed campaigns systems often claim that such programs will reduce the impact of special interests. However, there is no evidence to support this claim. In a 2012 report, the Center measured changes in the voting patterns of legislators who served in the Connecticut General Assembly during the 2007-2008 and 2009-2010 legislative sessions and accepted taxpayer dollars for their 2008 re-election campaigns through the state’s Citizens’ Election Program (CEP).⁵⁰ The Center compared the voting records of “clean elections” participant legislators in the session before the state’s tax financing program went into effect (2007-2008) and in the session afterwards (2009-2010) with the priority legislation of the top five interest groups in the state.

The report concluded that the CEP had not changed the frequency with which state legislators voted in favor of the positions of organized interest groups.⁵¹ In many cases, the number of times that legislators voted in favor of the interest groups’ studied actually *rose* after Connecticut’s Citizens’ Election Program went into effect.⁵² These findings were consistent with an earlier study of the voting patterns of state legislators in Arizona the first year after that state began its taxpayer-financed campaign system, which found that Arizona’s program had no effect on the voting patterns of participant legislators.⁵³

Contrary to the contention of “clean elections” advocates that taxpayer-financed campaign programs change legislative behavior by decreasing the influence of “special interests,” the experiences of both Connecticut and Arizona strongly suggest otherwise.

VI. Tax-financed campaign programs have not diminished interest group involvement in campaigns. New Jersey’s failed experiment with taxpayer-financed campaigns for select legislative races serves as a lesson to the District of Columbia.

Proponents of tax-financing systems regularly claim that these programs will decrease “interest group” involvement in campaigns, “level the playing field,” reduce campaign spending, increase voter turnout, and end negative campaigning, among other lofty goals. As far as interest groups are concerned, states with similar programs have continued to witness considerable interest group involvement in campaigns, as these groups often organize to help candidates raise the required qualifying contributions necessary to receive tax-funding. This has happened in Arizona, Maine, and Los Angeles as well as in New Jersey’s failed pilot project. In Arizona’s statewide tax

⁵⁰ JASON FARRELL, SEAN PARNELL, & BRETT SULLIVAN, MEET THE NEW LEGISLATURE, SAME AS THE OLD LEGISLATURE: A QUANTITATIVE ANALYSIS OF THE CONNECTICUT CITIZENS’ ELECTION PROGRAM, 3, CENTER FOR COMPETITIVE POLITICS, Oct. 22, 2012 *available at*: <http://www.campaignfreedom.org/wp-content/uploads/2012/11/Connecticut-Clean-Elections.pdf>.

⁵¹ *Id.* at 9.

⁵² *Id.* at 10.

⁵³ ROBERT J. FRANCIOSI, “IS CLEANLINESS POLITICAL GODLINESS?: ARIZONA’S CLEAN ELECTIONS LAW AFTER ITS FIRST YEAR,” THE GOLDWATER INSTITUTE, 2 (Nov. 2001) *available at*: https://goldwater-media.s3.amazonaws.com/uploads/Is_Cleanliness_Political_Godliness--_Arizonas_Clean_Elections_Law_After_Its_First_Year.pdf.

financing program, this practice is so widespread that one news report noted that “...special interest groups routinely collect the necessary number of \$5 contributions to help candidates qualify for tax-financed funding.”⁵⁴

For evidence of these programs’ failures to achieve their high expectations, residents of D.C. should look to New Jersey, which experimented with a pilot program for taxpayer-financed campaigns for state legislative candidates in a limited number of districts in 2007. In “Appendix 5: Conclusions and Recommendations on New Jersey’s ‘Clean Election’ Experiment,” the Center compared the program’s outcomes with its stated goals to determine whether the pilot program was a success.⁵⁵ Our research demonstrated that the pilot program failed to achieve the majority of its stated goals, including limiting interest group involvement.

VII. Additional research has proven that many other claims of “clean elections” advocates are false.

Supporters of taxpayer-funded campaign programs often argue that replacing private contributions with taxpayer dollars will lead to a decrease in both the number of lobbyists and the influence of “special interests.” In 2013, the Center tested this claim by examining lobbyist registrations in Arizona and Maine both before and after those states’ tax-financed campaign programs went into effect.⁵⁶ Our analysis found no relationship between the existence of these programs and changes in the number of registered lobbyists.⁵⁷

Proponents of tax-financed campaigns also argue that these programs will lead to more diverse legislatures featuring “non-traditional candidates,” commonly characterized as those candidates lacking backgrounds in either law or business. The Center also scrutinized this claim by surveying the occupations of legislators in both Arizona and Maine, both before and after each state’s taxpayer financing programs went into effect.⁵⁸ We witnessed no decline in the number of legislators from “traditional” backgrounds, and concluded that so-called “clean elections” systems do not increase the diversity of occupations in legislatures.⁵⁹

Tax-financed campaign advocates also assert that matching funds programs increase the proportion of women elected to office. Again, the Center examined this argument by examining the number of women legislators in Arizona and Maine, both before and after those states’

⁵⁴ “Clean Elections Institute loses money stream, seeks donations,” ARIZONA CAPITOL TIMES, Jan. 2, 2009 *available at*: <http://azcapitoltimes.com/news/2009/01/02/clean-elections-institute-loses-money-stream-seeks-donations/>.

⁵⁵ CENTER FOR COMPETITIVE POLITICS, *Appendix 5: Conclusions & Recommendations on New Jersey’s ‘Clean Election’ Experiment*, May 27, 2008 *available at*: http://www.campaignfreedom.org/wp-content/uploads/2008/05/2008-05-01_Policy-Briefing-No.-1_CCP_Appendix-5-NJ-Clean-Elections.pdf.

⁵⁶ Matt Nese and Luke Wachob, “Do ‘Taxpayer-Funded Campaigns Reduce Lobbyist and Special Interest Influence?,” CENTER FOR COMPETITIVE POLITICS, Aug. 14, 2013 *available at*: <http://www.campaignfreedom.org/wp-content/uploads/2013/08/Issue-Analysis-1.pdf>.

⁵⁷ *Id.* at 3.

⁵⁸ Matt Nese and Luke Wachob, “Legislator Occupations – Change or Status Quo After Tax-Funded Campaigns,” CENTER FOR COMPETITIVE POLITICS, Aug. 14, 2013 *available at*: http://www.campaignfreedom.org/wp-content/uploads/2013/08/2013-08-01_Issue-Analysis-2_Legislator-Occupations-Change-Or-Status-Quo-After-Tax-Funded-Campaigns.pdf.

⁵⁹ *Id.* at 3.

taxpayer-funded campaign programs began.⁶⁰ We found that the average number of women legislators in both states actually *declined* slightly after Arizona and Maine began providing taxpayer dollars to state legislative candidates.⁶¹

Champions of tax-financing programs have also alleged that such programs save taxpayer dollars due to a predicted decrease in so-called “special interest” influence. The Center tested this theory by evaluating the tax burdens and the rate of growth in government spending in Arizona and Maine both before and after each state’s tax-financing program went into effect.⁶² The Center found that “[i]n Arizona and Maine, the implementation of taxpayer-funded campaigns coincided with more rapid government growth and stable trends in per capita spending.”⁶³ As a result, we concluded that “there is no evidence supporting the contention that replacing private, voluntary contributions to candidates with tax dollars leads to savings for taxpayers, either in the form of decreased government growth or reduced per capita spending.”⁶⁴

Tax-financed campaign programs are also credited with increasing competition in elections. The Center examined this claim as well, and found it too was unfounded. In looking at incumbency re-election rates of state legislative officials from 2010-2016, we found that there was no statistical difference between states with tax-financing programs and those without. The center concluded that, “If [tax-financing] laws fail to change the composition of legislatures or give challengers a significantly better chance of winning office, they risk spending taxpayer dollars for results that are identical to those in states with privately-funded campaigns.”⁶⁵

Finally, those who advocate for taxpayer-funded campaign schemes argue that these programs will stimulate voter turnout. The Center tested that claim too by examining Arizona and Maine’s voter turnout rates before and after their implementation of taxpayer-financed campaign programs in 2000, and comparing their experiences with the nationwide turnout rate.⁶⁶ Ultimately, our analysis found no evidence from the data in Arizona and Maine to defend the claim that taxpayer-funded campaigns increase voter turnout. As our study notes, “since implementing taxpayer-funded campaigns, Arizona and Maine have experienced an average *decrease* in turnout for non-Presidential elections while the national rate has risen. In presidential elections, both

⁶⁰ Matt Nese and Luke Wachob, “Do Tax-Funded Campaigns Increase the Percentage of Women in State Legislatures?,” CENTER FOR COMPETITIVE POLITICS, Aug. 14, 2013 *available at*: <http://www.campaignfreedom.org/wp-content/uploads/2013/08/Issue-Analysis-3.pdf>.

⁶¹ *Id.* at 3.

⁶² Matt Nese and Luke Wachob, “Do Taxpayer-Funded Campaigns Actually Save Taxpayer Dollars?,” CENTER FOR COMPETITIVE POLITICS, Nov. 1, 2013 *available at*: http://www.campaignfreedom.org/wp-content/uploads/2013/11/2013-11-19_Issue-Analysis-4_Do-Taxpayer-Funded-Campaign-Actually-Save-Taxpayer-Dollars.pdf.

⁶³ *Id.* at 3.

⁶⁴ *Id.*

⁶⁵ Joe Albanese, “Do Taxpayer-Funded Campaigns Increase Political Competitiveness?,” 3, CENTER FOR COMPETITIVE POLITICS, June 7, 2017 *available at*: http://www.campaignfreedom.org/wp-content/uploads/2017/06/2017-06-05_Issue-Analysis-10_Do-Taxpayer-Funded-Campaigns-Increase-Political-Competitiveness.pdf.

⁶⁶ Luke Wachob, “Do Taxpayer-Funded Campaigns Increase Voter Turnout?,” CENTER FOR COMPETITIVE POLITICS, Dec. 11, 2013 *available at*: http://www.campaignfreedom.org/wp-content/uploads/2013/12/2013-12-03_Issue-Analysis-8_Do-Taxpayer-Funded-Campaign-Increase-Voter-Turnout.pdf.

Arizona and Maine have experienced a significantly slower rate of increase in voter turnout than the national average since 2000.”⁶⁷

VIII. Lastly, a tax-financed program in Washington, D.C. would be immensely expensive and is likely to rise in cost over time.

B22-0192 outlines in §5(b)(1)-(5) the maximum possible revenue a candidate can receive from the proposed matching fund. Using voter registration data from the D.C. Board of Elections,⁶⁸ we can calculate a rough estimate for the funds required to cover the cost of various races. If B22-0192 becomes law and assuming just two candidates for mayor receive public funds and no additional voters register with the District, the next mayoral race will cost D.C. residents \$5,773,000. Similarly, the 2018 Council election will cost taxpayers \$4,568,500.⁶⁹ The proposal also provides funding for candidates for attorney general and Board of Education as well. Even at modest participation levels, B22-0192 will cost D.C. taxpayers upwards of \$10 million every election cycle, and as voter registration increases, the costs of the program will increase. Further, this estimate is still conservative given the unknown nature of the administrative and enforcement costs that the District would incur through the creation of the program itself, an allocation not specified in the bill.

Historically, when tax-financed campaign programs fail to sufficiently allocate funds for their operation, costs tend to increase over time, as supporters demand an expansion of the original program. For example, New York City’s program started with a \$1 to \$1 match, which is now a \$6 to \$1 match today.⁷⁰ With those increases, the amount of taxpayer dollars allocated to the program also increased. The proposed program in D.C. is already a mix of \$2 to \$1, \$3 to \$1, and \$5 to \$1 matching provisions.

As another example, the Presidential Election Campaign Fund⁷¹ started with a \$1 check off, which is now \$3 per taxpayer,⁷² and there are proposals to increase the amount to \$5 or \$10 per taxpayer. At the same time, participation in this program by taxpayers has fallen dramatically. According to the Federal Election Commission, “participation in the tax checkoff program has declined each year, from a high of 28.7% for 1980 returns, to 5.4% for returns filed with the Internal Revenue Service (IRS) in 2015.”⁷³

⁶⁷ *Id.* at 3 (emphasis added).

⁶⁸ District of Columbia Board of Elections, “D.C. Board of Elections Monthly Report of Voter Registration Statistics,” May 31, 2017 *available at*: https://www.dcboe.org/popup.asp?url=/pdf_files/StatRep_31May2017.PDF.

⁶⁹ This calculation assumes two candidates for Council Chairman (\$1,202,500 total for the race), two candidates for each of the two at-large Councilmember seats up in 2018 (\$721,000 for each at-large seat), and two candidates for each of the four ward Councilmember seats up in 2018 (\$481,000 for each ward seat).

⁷⁰ New York City Campaign Finance Board, “History of the CFB,” <http://www.nycfb.info/about/history>.

⁷¹ Established by 26 U.S.C. § 9006(a).

⁷² Fed. Election Comm’n, “Public Funding of Presidential Elections,” <https://transition.fec.gov/pages/brochures/pubfund.shtml>

⁷³ “Presidential Election Campaign Fund,” Federal Election Commission, May 13, 2016 *available at*: <http://www.fec.gov/press/bkgnd/fund.shtml>; *see also* Andrew Flowers, “A Checkbox On Your Tax Return Helped Kill Public Campaign Funding,” FIVETHIRTYEIGHT, Apr. 9, 2015 *available at*: <https://fivethirtyeight.com/datalab/a-checkbox-on-your-tax-return-helped-kill-public-campaign-funding/> (noting similar drop off).

Ultimately, it remains to be seen how many millions of dollars will be taken from the wallets of District residents to fund the creation of a taxpayer-financed campaign program. Given the intense competition for scarce resources in the District, allocating millions in tax dollars to politicians' campaign coffers is a remarkably unsound fiscal decision.

* * *

A litany of information exists to dismiss nearly all claims of those who desire to implement a citywide system of taxpayer-funded campaigns in Washington, D.C. One need only look to the experience of New York City – let alone Arizona, Connecticut, or Maine – to realize these systems in fact breed new forms of corruption.

In discussing taxpayer-financing proposals, perhaps John Samples, said it best in an essay in his book, *Welfare for Politicians? Taxpayer Financing of Campaigns*: “Such proposals, especially the ‘clean elections’ variant, simply transfer wealth from taxpayers to a preferred set of candidates and causes.... Far from being a reform, government financing offers more ‘politics as usual....’”⁷⁴ Certainly, members of this Committee should seek to avoid “more ‘politics as usual.’”

Thank you for affording me the opportunity to testify before you today.

⁷⁴ JOHN SAMPLES, “Introduction: Taxpayer Financing of Campaigns,” *WELFARE FOR POLITICIANS? TAXPAYER FINANCING OF CAMPAIGNS*, 17 (John Samples, ed., The Cato Institute, 2005). John Samples is the Director of the Center for Representative Government at the Cato Institute, with prior adjunct professorships at Johns Hopkins University and Georgetown University. He is an Academic Advisor to the Center for Competitive Politics.