

WRITTEN TESTIMONY

FROM COMMON CAUSE/NY TO THE NEW YORK STATE PUBLIC CAMPAIGN FINANCING COMMISSION ANNOUNCES SEPTEMBER 10 PUBLIC HEARING IN MANHATTAN

Thank you for the opportunity to submit this testimony on behalf of Common Cause/NY. Common Cause fights to strengthen public participation and faith in our institutions of self-government and to ensure that government and political processes serve the general interest, and not simply the special interests. For nearly 50 years, we have worked at both the state and municipal level to bring about honest, open and accountable government. We have been a long-standing advocate for innovative campaign finance and ethics laws in New York, as well as throughout the country. Common Cause is a leading supporter of comprehensive campaign finance reforms and public funding of elections throughout the country. We have been involved in helping craft, ultimately pass and help implement, improve and sustain virtually all of the public funding of election systems that are functioning at the state and national level, as well as numerous municipal level systems. We submit this testimony as an adjunct to, and outline of, the oral testimony that Executive Director Susan Lerner will give to the Commission on September 10. Our purpose in testifying to the Commission is to share the considerable experience which we at Common Cause have had in establishing and sustaining public campaign financing systems across the country.

We believe that a robust and open legislative process is the appropriate and essential way to set public policy and get the details of complex issues, such as public campaign finance, right. It is essential that any public financing system balance competing factors of encouraging qualified candidates to run for office with appropriate financial safeguards. There is little point in setting up a system which, due to poorly thought-out provisions or political compromises that ignore practicalities, does not succeed in its objectives, as outlined in the 2020 state budget. In fact, such a failure would not achieve the laudable public policy goals of refocusing our campaign finance system away from wealthy special interests and big donors, and move towards small dollar contributions by every day New Yorkers and encourage more qualified candidates to run.

We commend the Commission for holding this series of public hearings; it is a good way to begin to address the unusual task set for it in the budget. However, we urge the Commission to seek public input through a hearing or hearings *after* an initial draft of a proposed public financing law is prepared. It is the process of refining and amending a bill through public hearings, comment, bill mark-up and input which instills public confidence in the laws passed. Given the atypical and unconventional nature of this Commission, seeking the maximum amount of public input should be its additional goal.

KEY ISSUES FOR SUCCESSFUL DESIGN AND IMPLEMENTATION OF PUBLIC CAMPAIGN FINANCING FOR NEW YORK

There is no one perfect way to provide public financing of elections. Rather, an effective and practical public financing system resolves relevant policy issues based on factual data revealing the actual campaign practices. The balance of this testimony is a series of questions and issues which we believe must be addressed, and which when answered based on New York specific data should, we hope, help design a workable public financing system for New York elections.

The issues which should be considered fall, we believe, into certain broad categories:

1. How much public money, how do candidates qualify for it and what can candidates use it for;
2. How fast does the money come to candidates;
3. Who administers the public funding system and with what resources;
4. What enforcement of the rules of the system is there and who is enforcing it; and finally
5. What incentives are there for using the public financing system, other than the obvious one of receiving public money;

Core Issues Regarding Public Money

Common Cause/NY believes that the first and key question that should be asked in setting up a practical and effective public financing system is how much does it actually cost to run an effective campaign for each of the offices that will be covered. It is not clear that there has been a detailed analysis of the cost of NY campaigns over the last several election cycles. Expenditure data is essential to properly set the maximum matchable amount. Much flows from that determination, including how much of an incentive there is to forgo larger contributions and participate in the public financing system as well as whether the system itself is fiscally sustainable. The goal should be to set the maximum matchable amount at a level that allows a candidate to run an effective campaign, but not create a surplus or encourage wasteful spending that could bankrupt the system. Data into campaign expenditures can also resolve the question of whether there is any validity to imposing geographically based differences in maximum matchable amounts. We believe that there should be different maximums set for primary and general elections, as well as lower limits for participating candidates who do not face a competitive opponent.

The amount of the publicly financed maximum can also influence the thresholds for qualifying for the public financing program. Setting qualifications which demonstrate that the candidate has an adequate base of support in the district in which he or she is running is essential, but if the qualifying standards are set too high, no one will use the system, as has been shown by certain high profile pilot programs in New York and New Jersey.

Setting a higher matchable amount makes it easier to justify more stringent restrictions on the ways in which the public moneys can be spent. However, it is clear that safeguarding the appropriate expenditure of those moneys is essential for the public's faith in the system.

Getting the Candidates the Money

Much discussion has taken place around whether the public match should be at a 6 to 1 or 8 to 1 match. Once the maximum matchable cap is set, this discussion takes a secondary role. The ratio of the match and the amount of the small contribution to be matched really controls how fast the money gets to the candidates. A very visible factor, to be sure, but one secondary to where the central decision lies: setting the maximum matchable cap.

A factor of great importance to candidates, but of lesser importance to the public, is how fast the money gets to the candidates. Candidates will be reluctant to use a system where, as was the criticism of the NYC system for many years, public moneys were not released until late in the campaign.

Administration and Enforcement

This issue has been highly controversial in all discussions of a state system of public financing of elections in New York State. New York's elected officials are most comfortable with assigning administration and enforcement to the State Board of Elections, an entity that they are familiar with. They fear an over-zealous independent public financing agency. Yet experience in other jurisdictions, such as Connecticut, Maine, and Arizona, show that an independent campaign finance agency can appropriately balance its administration and education responsibilities with strong but not unduly punitive enforcement.

However, there is another important factor to consider. Realistically, the State Board of Elections cannot handle the added responsibility. It is already struggling with an ever shrinking budget to meet the increased demands of the necessary voting reforms which have been adopted and the new reforms we expect to see passed in the next 2 years. Connecticut provides a good example of how a campaign finance agency can be set up to properly serve the needs of candidates, while still protecting the interest of the public in safeguarding public resources.

It is essential that any proposed bill contain 2 baselines. First, there must be a guaranteed minimum annual budget for the necessary administering agency, sufficient for it to maintain a reasonable staffing level and with appropriate escalations over time. We estimate that the sweet spot for the agency's size is somewhere between that of Maine's 4 people and New York City's 60. Second, the funding for the public funding system must be protected from diversion, in order to provide a reliable system that candidates will use.

The administering agency's enforcement powers must be clearly delineated, with strong penalties for those trying to cheat the public by attempting to game the system. Arizona applies the ultimate penalty for deliberately defrauding its Clean Elections system: removal from office. The agency must have the ability to levy fines, collect judgments and withhold public funding from those who violate the letter and spirit of the public financing law.

We recommend that the administering and enforcing agency be specifically empowered to use sampling, spot audits, and other creative, effective auditing measures that hold down costs. We further recommend that the administering and enforcement be required to provide written and binding guidance to candidates who query the agency, within a reasonable, specified timeframe.

Incentives for Using the System

Experience in New York City shows that the very existence of a campaign finance system is, to some degree, an incentive to use it. However, experience in other cities and states shows that the system has to be properly calibrated in light of the specific campaign climate in which it operates to be used as extensively as supporters and the public expect. An important component of that climate is the over-all campaign contribution limits that apply to those who participate in the system, but to those who do not as well.

CONCLUSION

Common Cause/NY recognizes the difficult and unusual task assigned to the Commission. We thank the members for their willingness to devote their time to this essential issue. Due to the irregular nature of the

Commission, we urge the Commission to focus on the narrow scope of its unusual authority, which is designing a public financing system of elections, so that its work product is practicable and likely to withstand challenge. We further urge the Commission to base its determinations and recommendations on relevant New York campaign data. Recognizing that the Commission was formed without any provisions for staff or budget, we suggest that you request assistance in analysis from organizations which have performed such tasks in the past. Finally, we strongly urge the Commission to solicit and consider public input on any proposal which it is considering before such proposal is finalized as a commission recommendation.