



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the New York City Campaign Finance Board
Post-Election Hearing, 2021 Election Cycle

Remote Hearing
December 16, 2021

Distinguished members of the New York City Campaign Finance Board (CFB). My name is Ben Weinberg, and I am the Director of Public Policy at Citizens Union. Citizens Union is an independent and nonpartisan good government group dedicated to making democracy work for all New Yorkers. For over 120 years, we have worked to expand voter participation, reduce the impact of big money in elections, and open the city's political system. We thank you for the opportunity to speak today about the 2021 election cycle.

This election was historic for several reasons. Because of term limits, the cycle ushered one of the largest turnovers in city government New York has seen. With the introduction of Ranked Choice Voting, voters and candidates faced a new way to vote and campaign. And the expansion of public funding for campaigns made it easier for more people to run for office with the support of their community.

In this testimony, Citizens Union will focus on voter participation, electoral competitiveness and representation, and campaign finance. It includes several recommendations on reducing 'pay-to-play' donations, making elections fairer and more competitive, improving the effective use of public funds, and adapting debates to the new "remote" election season.

ELECTORAL COMPETITIVENESS AND REPRESENTATION

The 2021 election saw a significant increase in the number of candidates running, a more diverse pool of candidates, and more women and people of color win. An analysis conducted by Citizens Union¹ in July and compared the 2021 and the 2013 primary elections found overwhelmingly positive results.

The total number of candidates soared. The 2021 primary had more than double the candidates of the 2013 primary – 372 people ran for local office this year, compared to 172 in the last large competitive city election. On average, 7.5 people ran for every open seat in 2021 compared to 4.1 people in 2013.

The number of female candidates almost tripled. 152 women ran for city offices in the primary, compared to 52 female candidates in 2013. The difference is even bigger when looking at the more

¹ Ranked Choice Voting in the 2021 Primary Election: Preliminary Analysis of Turnout, Candidate Diversity, and Voters' Impact on Results. Citizens Union, July 2021. <https://citizensunion.org/wp-content/uploads/2021/07/RCV-Analysis-After-June-2021-Primary-Turnout-Candidates-Voters-Impact.pdf>

competitive races for "open seats," where incumbents are not running for reelection. In 2013, only 35 women ran in open-seat races; in 2021, that number was 116 – 231% higher.

More women and people of color won elections. The next City Council will be the most diverse and representative in New York City's history. Women will hold 31 of the 51 seats in the Council, as opposed to 14 seats after the 2013 election.² According to a Brennan Center analysis³, people of color will increase their representation in the Council from 51% to 67%, on par with the city's actual demographic composition.

There are several reasons for those democratic gains, including the introduction of Ranked Choice Voting and the renewed interest in local politics in recent years. But it is New York City's generous public campaign finance system that allows a broader spectrum of candidates to run for office. Nearly all the women and people of color who won Council elections participated in the voluntary public matching campaign funds program⁴.

VOTER PARTICIPATION

Despite initial concerns that Ranked Choice Voting would depress turnout, at least 1 million New Yorkers voted in the June 2021 primary election. That is the most votes in a municipal primary election since 1989 and a substantial increase over the last competitive citywide election in 2013. About 27% of eligible voters cast a ballot, compared to only 23% in the 2013 primary.⁵ More research would need to be done to assess the impact of Ranked Choice Voting on turnout in various communities across the city.

The general election told a different story. Only 23% of active registered voters cast their ballots in November. That number is not only lower than in 2013; it is also likely the lowest turnout rate for a mayoral general election in the city's modern history, based on data from the Board of Elections. Turnout rates for mayoral general elections have been steadily dropping since the early 1990s.⁶

MONEY RAISED AND MONEY SPENT

The expansion of public funding in the 2021 cycle led candidates to rely less on private donations. With more candidates running than ever before, the **total dollars fundraised from private individuals actually decreased in this election.** As of December 2021⁷, candidates raised a total of \$72.7 million in private funds, compared to \$94.8 million in 2013. The mayoral race saw a decrease of about \$10 million in private funds overall.

Although spending in this cycle increased by more than half—almost \$190 million were spent by campaigns in the 2021 cycle compared to \$121 million in 2013—that increase resulted from the new 8:1 match rate and the growth in the number of participating candidates who received public funds.

² City Council Adds Historic Number of Women to Its Ranks as Republicans Gain. The City, November 2021.

<https://www.thecity.nyc/2021/11/3/22760797/city-council-adds-women-republicans>

³ Small Donor Public Financing Plays Role in Electing Most Diverse New York City Council. Brennan Center for Justice, November 2021. <https://www.brennancenter.org/our-work/research-reports/small-donor-public-financing-plays-role-electing-most-diverse-new-york>

⁴ Ibid.

⁵ Voter Turnout Surged in AOC's Queens and Dropped Where COVID Raged Worst. The City, June 2021.

<https://www.thecity.nyc/2021/6/27/22552850/voter-turnout-2021-nyc-primary>

⁶ New York City Board of Elections annual reports.

⁷ New York City Campaign Finance Board, Campaign Finance Summary.

Independent expenditures (IE) continued to grow. With \$31.8 million of outside money flowing into the mayoral race, IE spending almost quadrupled compared to eight years ago.

IMPROVEMENTS TO THE NEW YORK CITY CAMPAIGN FINANCE SYSTEM

The New York City campaign finance system has been a national model for decades, thanks in part to ongoing reforms implemented by the City Council and the CFB. The post-election review process provides us with the best opportunity to improve the system in the face of changes in voter behavior, campaign fundraising and spending patterns, and the legal framework.

For example, after the 2013 election, Citizens Union recommended addressing the rise of independent PAC expenditures by adopting a "stand by your ad" disclaimers on campaign material and strengthening the donor disclosure for such entities. And after elected officials skirted the campaign finance law by raising major sums to affiliated nonprofits from donors with business before the city, we urged to put organizations controlled by elected officials under pay-to-play limitations. Such reforms, which have since been implemented, have helped to level the playing field restrict the opportunity for corruption.

Yet, there is still much room for improvement, especially concerning pay-to-play issues brought to light during this election, independent expenditures, and the use of public funds. The impact of recent reforms, particularly Ranked Choice Voting and the new 8:1 match, will also need to be studied.

RECOMMENDATIONS: REDUCING PAY-TO-PLAY IN NEW YORK CITY

1. Prohibit the use of public funds to purchase campaign consulting services from firms that also are registered city lobbyists

Citizens Union believes that participants in the city's campaign finance program should be banned from using public matching funds to purchase strategic campaign consulting services from firms that also lobby the city. We have recommended implementing such a provision before. This practice received renewed public attention in the 2021 election after multiple leading mayoral candidates entrusted their campaigns to powerful lobbying firms. For example, Andrew Yang's campaign was led by employers of Tusk Strategies, the largest lobbying firm in the city in 2020.⁸ Eric Adams' senior political consultants operated Pitta Bishop & Del Giorno, a lobbying outfit representing clients with business before the city.⁹ Other candidates hired similar advisors.¹⁰ And this practice is common in down-ballot races as well; The Advance Group provided campaign consultancy services for borough president candidates and a dozen candidates for City Council.¹¹ It lobbies the Council, borough president offices, and other city agencies on behalf of dozens of clients.

⁸ Andrew Yang's Mayoral Campaign is Being Run by a Lobbying Firm. City & State New York, April 2021.

<https://www.cityandstateny.com/politics/2021/04/andrew-yangs-mayoral-campaign-is-being-run-by-a-lobbying-firm/182966/>

⁹ Eric Adams Gets NYC Mayoral Campaign Advice from Lawyers Who Lobby Him. The City, May 2021.

<https://www.thecity.nyc/2021/5/31/22462414/eric-adams-gets-nyc-mayoral-campaign-advice-from-lobbyists>

¹⁰ See for example, Consultants, Advisors and Staff: Who's Running the Democratic Mayoral Campaigns. Gotham Gazette, May 2021. <https://www.gothamgazette.com/city/10486-consultants-advisors-staff-who-is-running-mayoral-candidate-campaigns>

¹¹ New York City Campaign Finance Board Follow the Money database.

Campaign advisors develop unique relations with candidates and receive an easier access to their office if the candidate wins.¹² We are concerned about the possibility of lobbyists having undue influence with the politicians they helped to elect. While there may be limits on what the law can regulate - we do not take the position that campaigns cannot hire these lobbyists - we do believe that taxpayer dollars should not be used to foster a practice that is going to give a disproportionate influence to the few at the expense of the public.

2. Ban bundling by lobbyists and people on the Doing Business with the City Database

To limit real or perceived pay-to-play, donation limits for individuals with business ties to city government and registered lobbyists are substantially limited, and those donations are not matched. But those individuals can still bypass those restrictions by "bundling" donations from others.

Our analysis found over 50 individuals on the Doing Business Database—including lobbyists and owners of companies with substantial contracts with city government—who acted as bundlers in this election, most fundraising for mayoral campaigns. For example, a president of a company with contracts before the city, whose donation limit is set at \$400, bundled \$47,500 for a mayoral candidate. A registered lobbyist from Queens who represents several real-estate companies and can legally give only up to \$250 for a City Council candidate managed to bundle over \$13,000 in donations for the reelection campaign of Chair of the Land Use Committee. And some lobbyists bundled for multiple candidates, getting thousands of dollars for each. In total, bundlers, or intermediaries as they are officially called, have raised over \$1.4 million in the 2021 election cycle.

Bringing in large amounts of dollars to a campaign increases the chances for the bundler to receive access to the officeholder. Allowing people on the Doing Business Database to use this loophole undermines the goals of the campaign finance law.

3. Improve the regulation of nonprofits affiliated with elected officials by prohibiting elected officials from soliciting funds for those organizations, limiting how prominently the official is featured in communications, and expanding the definition of "affiliation"

In 2016, Local Law 181 brought nonprofits that are affiliated with elected officials under certain campaign finance regulations. However, the law missed some opportunities to ensure that organizations under the influence of an elected official are appropriately regulated to prevent the circumvention of campaign finance rules, or the appearance, thereof.

First, although the law restricts the acceptance of certain donations to affiliated organizations, and conflict of interest rules prohibit officeholders from soliciting donations from anyone with a pending issue before them, fundraising for affiliated organizations still creates ethical problems. Recent media reports revealed that nonprofits raised hundreds of thousands of dollars from entities who have lobbied the city, and that elected officials ignored ethics guidelines issued by the Conflicts of

¹² See for example: Emails Show Lobbying Firm Had Wide Reach During de Blasio's First Term. Politico NY, August 2017. <https://www.politico.com/states/new-york/city-hall/story/2017/08/16/emails-show-lobbying-firm-had-wide-reach-during-de-blasios-first-term-113937>

Interest Board by contacting donors who had business before the city.¹³ **The law should be amended to prohibit elected officials from soliciting funds for affiliated organizations.**

Second, community programs organized by affiliated nonprofits are often used to promote an elected official's image.¹⁴ The official's presence on printed and digital communications could overshadow the information about an event, suggesting the aim of the communications is self-promotion. **Citizens Union believes the law should be amended to limit how prominently an elected official is featured in communications of their affiliated nonprofit.**

Third, under current law, an organization affiliated with an elected official is defined as an entity for which the official or their agent is the principal officer with control over the organization, or which was created by the official or their agent in recent years. This definition is too narrow. **To properly determine whether an official "controls" an organization or whether it is independent, we recommend that additional factors be considered**, including whether the official's political operation and the organization share office space, other resources, or consultants; whether the organization sponsors programs prominently featuring the official; and whether the organization has directors or managers with close ties to the official. The law does, however, leave open the possibility for the Conflicts of Interest Board to develop criteria to define "control" in such a way.

RECOMMENDATIONS: MAKING ELECTIONS FAIRER AND MORE COMPETITIVE

4. **Make explicit regulation defining coordination between Independent Expenditure entity and candidate, including reference to family members and former staff**

The amount of dollars IEs spend on municipal elections has increased significantly in the last decade: IEs spent \$15.9 million in the 2013 election and over \$40m in 2021. All of that growth came from the mayoral race. Every leading mayoral candidate this year had a PAC supporting them, some heavily funded by immediate family members,¹⁵ despite participating in the campaign finance program. We must do more to limit this practice, which allows candidates to circumvent the program's spending limits. New York City Charter currently only forbids coordination by "candidate, nor any agent or political committee authorized by a candidate."¹⁶ It should be amended, or regulations should be promulgated, to clearly define coordination. They should also include specific reference to the candidate's family members as well as their former government or campaign staff.

¹³ De Blasio Fought for 2 Years to Keep Ethics Warning Secret. Here's Why. The New York Times. December 2021 <https://www.nytimes.com/2021/12/08/nyregion/bill-de-blasio-donors-nyc.html>. Eric Adams' Campaigns and Nonprofit Reaped Big Bucks from Lobbyists and Developers Seeking Help. The City, April 2021.

<https://www.thecity.nyc/2021/4/18/22391194/eric-adams-campaign-contributions-lobbyists-developers>. Brooklyn BP Eric Adams Uses Nonprofit to Raise from Donors with Business Before City – Skirting Campaign Finance Rules in Quest for City Hall. New York Daily News, August 2019. <https://www.nydailynews.com/news/politics/ny-eric-adams-nonprofit-donors-business-before-city-campaign-finances-20190811-ifhehrejurbi7l3pswgza6hjua-story.html>.

¹⁴ How a Top New York Mayoral Candidate Used a Charity to Boost His Profile. Politico NY, April 2021.

<https://www.politico.com/news/2021/04/30/eric-adams-charity-485070>

¹⁵ 'Climate mayor' bankrolled by dad with massive carbon footprint. New York Post, May 2021

<https://nypost.com/2021/05/31/climate-mayor-bankrolled-by-dad-with-massive-carbon-footprint/>

¹⁶ New York City Charter §1052(a)(1)(15)

5. Enact "war chest" restrictions to limit the transfer of funds by candidates from running from one office to another office or for reelection

Almost \$2.7 million were transferred from other political committees to the campaign accounts of candidates running in the 2021 cycle. Most of this amount came from just one candidate.¹⁷ However, most candidates in this election were first-time candidates; two-thirds of the city's elected officials were term-limited. "War chests" could become a much more significant burden on newcomers challenging incumbents in the 2023 election cycle, when all council members will be up for reelection. There is currently about \$10 million in the balances of campaign accounts, although that number is likely to drop after the next disclosure report. Citizens Union supports enacting "war chest" restrictions in local elections.

6. Expand donor disclosure rules for independent expenditures on municipal ballot proposals

Citizens Union supports expanding the disclosure requirements that exist for independent expenditure spending on city offices to apply when money is spent on municipal ballot proposals. These include the funding sources of IEs that spend more than \$50,000, the owners, officers, and board members of IEs, and a "paid for by" disclosure, with names of donors, on campaign material. Similar disclosure rules in elections for city offices have helped voters learn who is funding campaigns and reduced the effect of "dark money" in our city.

Although there was no municipal ballot proposal before the voters in 2021, independent expenditures have been involved in the last few municipal ballot proposals. Extending these rules to ballot proposal campaigns is a reasonable response to new challenges facing our campaign finance system.

RECOMMENDATIONS: EFFECTIVE USE OF PUBLIC FUNDS

7. Further reduce public funds for candidates facing minimal opposition

To receive public funding, a candidate must be opposed by at least one other candidate on the ballot. In case of a pre-ballot payment, the candidate must have at least one other candidate who has registered to run with the CFB for the same seat. Citizens Union supports reducing public funds for candidates facing minimal opposition. This would be especially relevant for the 2023 council election, which would likely be much less competitive than the most recent one.

8. Examine the impact of recent reforms on campaign spending

Citizens Union recommends the CFB examine how recent reforms, including the expanded funding through the 8:1 match and Ranked Choice Voting, impacted spending patterns across the city. For example, whether specific vendors received a large share of public funding across the city, catering to candidates with small campaigns but access to funds (records show that one campaign consultancy firm served 15 different candidates); what was the impact on spending, if any, of races where candidates campaigned together under a Ranked Choice Voting strategy; and did the number of candidates who received pre-ballot payments but did not make it on the ballot change under

¹⁷ New York City Campaign Finance Board Follow the Money database.

these reforms. Including such analysis in the CFB's post-election report would inform any future discussion on needed improvements.

RECOMMENDATIONS: ADAPTING DEBATES TO THE NEW VIRTUAL ELECTION SEASON

9. Consider mandating live, in-person debates absent a declaration of a state of emergency that prevents large gatherings.

Citizens Union was a proud co-sponsor of the mandated Campaign Finance Board debates this past election season. We appreciated the opportunity to do so, as we have in the past.

This year, candidates in citywide races had already appeared in countless debate-like virtual events by the time they were mandated to be on the CFB debate. Yet, the upsurge of "Zoom candidate forums" has shown the value of the traditional, in-person live format of debates. Citizens Union recommends revising the debate rules to require major debates be held live and in-person, absent a declaration of a state of emergency that prevents large in-person gatherings.