



MEMORANDUM OF OPPOSITION

Intro. No. 0034-2018

October 19, 2021

Title: A Local Law to amend the New York City Charter, in relation to the use of government resources during an election campaign.

Summary

This bill, originally introduced in 2018, proposes to amend Section 1136.1 of the New York City Charter. If passed, the statutory period during which public servants who are running for elective office are prohibited from sending any official mass-mailing prior to an election would be shortened from 90 days to 30 days. The rule applies to any officials, officers, and employees of the City, including members of community boards and advisory committees, except unpaid members of advisory committees. The Charter would still provide such public servant-candidate the option to send one mass mailing concerning the executive budget up to 21 days after it is adopted, along with other existing exceptions.

Statement of opposition

New York City has taken important steps to level the playing field in campaigns and ensure that incumbents do not have unfair advantages over challengers. Citizens Union believes that weakening the prohibition on the use of government resources for mass mailers would be a step in the opposite direction. This regulation helps ensure that government resources are used for government business, and not to bolster an elected official's reelection campaign. New York City is a leader in campaign finance, ethics, and lobbying regulations. These regulations do not put our local elected officials at a disadvantage - they create a healthy democracy.

Legislative history

City Charter Section 1136.1 prohibits certain uses of government funds and resources by city employees or officers for political purposes. Originally passed in 1998¹, it placed a 30-day moratorium on all city-funded mass mailings by city officials running for local office, prior to any primary or general election in which the city official was a candidate. It also prohibited city employees running for election or their spouses to appear in publicly funded ads in an election year. In 2002, the Campaign Finance Board (CFB), in their Post-Election Report,² recommended amending Section 1136.1 to increase the mailing blackout

¹ Local Law 40 of 1998, [Council Int 0346-1998-A](#)

² New York City Campaign Finance, An Election Interrupted. September 2002
https://www.nyccfb.info/PDF/per/2001_PER/2001_PER_Vol.1.pdf

period to 90 days prior to an election, after it found several cases of inappropriate use of government resources for campaign purposes³. That recommendation was made into law in 2004 as part of a broader reform of the city's campaign finance system⁴. Extending the blackout period on mass mailings from 30 to 90 days was approved by a substantial majority of 43 council members, including current Mayor Bill de Blasio and State Attorney General Letitia James. Notably, the 2004 bill also added a provision that allows elected officials to send their constituents one mass mailing concerning the adoption of the executive budget up to 21 days after the budget is adopted, which typically occurs in the second half of June.

Comparative Federal and State Laws

New York City is not the only jurisdiction that restricts the use of mass mailings by officeholders before an election. Federally, 39 U.S.C. Section 3210(a)(6)(E) prohibits "a Member of, or Member-elect to, Congress" from sending mass franked mail, or mail paid for by the federal government, prior to elections.⁵ Specifically, U.S. Senators are not allowed to send mass mailings fewer than 60 days before any primary election in which they are a candidate and before any general election, regardless of whether they are a candidate. This prohibition is backed by Senate Rule 40.⁶ House Members are not allowed to send mass mailings fewer than 60 days prior to any general or primary election in which they are a candidate, and "within 90 days immediately before the date of any primary or general election for the U.S. House of Representatives."⁷

In New York State, Assembly Rule V prohibits mass mailings bearing the name or likeness of a candidate in a local, special, primary, or general election within 30 days of such local, special, or primary election and prohibits mass mailings of the same criteria within 60 days of a general election.⁸ The limits for state senators are not part of the Senate rules, but media reports from 2016 noted internal Senate guidelines prohibit mass-mailing of over 500 pieces within 30 days of a primary or general election.⁹

The disparity between city and state rules and its effects

Some have argued that the 60-day disparity between city and state restrictions gives an advantage to state lawmakers running in local elections in New York City over opponents who serve as city officials¹⁰, and that therefore, the city's blackout period should be shortened. That argument is inaccurate and misguided.

³ The CFB also recommended to strengthen Section 1136.1 by completely banning the use of government resources to distribute gifts that promote an officeholder's candidacy, after finding that one Mayoral candidate spent almost \$200,000 of city funds on tote bags and flags that said "Compliments of New York City Council" with his name and title.

⁴ Local Law 58 of 2004, Council [Int. No. 124-A](#)

⁵ <https://www.law.cornell.edu/uscode/text/39/3210>

⁶ https://www.ethics.senate.gov/public/_cache/files/efa7bf74-4a50-46a5-bb6f-b8d26b9755bf/2015---red-book---the-senate-code-of-official-conduct.pdf#page=30

⁷ <https://cha.house.gov/communications-guidelines>; see also <https://sgp.fas.org/crs/misc/RS22771.pdf>

⁸ <https://nyassembly.gov/Rules/?sec=r5#s10>

⁹ <https://www.democratandchronicle.com/story/news/local/2016/09/30/new-york-state-legislature-lawmakers-mailings-taxpayers-constituents-cost-funding-money/91321144/>

¹⁰ <https://www.gothamgazette.com/city/7163-mass-mailer-loophole-gives-state-legislators-advantage-in-city-council-races>; see also <https://bklyner.com/senator-kevin-parker-floods-some-constituents-with-mailers-before-election-deadline/>

First, **the discrepancy in the city and state blackout periods does not necessarily lead to electoral advantage.** For example, in the most recent June primary election, nine state legislators ran for elected offices in New York City. Only two of those won. All other seven lost to incumbent council members who were under the stricter blackout rule¹¹. One state senator took advantage of the lax Senate rules to send a reported 20 mailers in one month, yet still ended up in the 6th place in his race¹². And in the 2017 municipal election, the two legislators who ran for a City Council seat against city officials - who were under the 90-day restriction - lost their race.¹³ Clearly, the supposed advantage in the mailing abilities of state lawmakers is not a decisive factor in a campaign against city officials.

Second, **New York City's robust system of good government rules should be applauded, not relaxed.** The city has been a leader in restricting the use of money in campaigns, disclosing the impact of lobbyists on elected officials, banning lawmakers' outside income, and other ethics regulations. These regulations do not put our local elected officials at a disadvantage. They create a healthy democracy.

Third, **the real effect of cutting back on the mass-mailing blackout period would not be in helping council members who are running against state legislators but in hurting new candidates who are trying to enter the political arena.** Local council members would have an even greater advantage than already exists over lesser-known candidates who have no government funding to send mass mailers. New York City has taken important steps to level the playing field in campaigns and encourage newcomers to run, including by creating the most generous public campaign funding program in the nation. The result has been a more diverse field of candidates and fairer elections. Weakening the prohibition on the use of government resources for mass mailing would be a step in the opposite direction.

Rather than weaken the city's regulation and regressing to the 1998 version, **we should be looking to strengthen this regulation at the state level.**

Lawmaking in the final weeks of the City Council

Changing the Charter-mandated prohibitions on the use of government resources by city officers for political purposes has potentially broad implications on future elections. Any discussion of such a proposal should be backed by data and thoroughly considered by lawmakers, especially when amending a Charter provision that has been in place for 17 years. Citizens Union believes it would benefit the City Council to refrain from advancing a bill of this kind in the final weeks of the session, with over two-thirds of its members term-limited in December. The current City Council has made great strides in promoting a fair, ethical, and open government in New York City. It should continue the path it has set.

¹¹ State Sen. Brian Benjamin, State Sen. Kevin Parker, and Assembly Member David Weprin lost the Comptroller race to Council Member Brad Lander. State Sen. Brad Hoylman lost the Manhattan Borough President race to Council Member Mark Levine. State Sen. Luis Sepulveda and Assembly Member Nathalia Fernandez lost the Bronx Borough President race to Council Member Vanessa Gibson. Assembly Member Jo Anne Simon lost the Brooklyn Borough Presidency to Council Member Antonio Reynoso.

¹² <https://bklyner.com/senator-kevin-parker-floods-some-constituents-with-mailers-before-election-deadline/>

¹³ Former Assembly Member Felix Ortiz lost to incumbent Council Member Carlos Menchaca; Assembly Member Robert Rodriguez lost the election for an open council seat to Diana Ayala, who served as Chief of Staff in the Council.