CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the
New York City Campaign Finance Board
Post-Election Hearing, 2013 Election Cycle
February 13, 2014

Good morning, members of the New York City Campaign Finance Board (NYC CFB). My name is Dick Dadey, and I am the Executive Director for Citizens Union of the City of New York. Citizens Union is a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union congratulates Chair Rose Gill Hearn on her appointment, and looks forward to working with you to ensure that the New York City public matching program remains strong and ensure the confidence of New Yorkers.

Today's panel discussion is focused on the strengths and challenges to the New York City public matching system for funding campaigns. My comments will focus on the strongest part of the system: the electoral competitiveness and voter choice for city council brought about because of the opportunity candidates have to participate in the public matching system. We will present research comparing the competitiveness of the 2013 elections to previous cycles in New York City as well as to state legislative elections, noting the advantages conferred by the city's public financing system.

While focusing our testimony on competitiveness, we recognize there are other important strengths to the system such as lower contribution limits, needed transparency through effective disclosure, spending caps, robust and independent enforcement, and increased participation by New Yorkers in our electoral process by making contributions knowing that their smaller gifts will result in public matching funds.

New York's public matching system is not, however, without its challenges including the rise in independent expenditures, the rise in the importance and influence of bundlers (as a result of the city's program limiting the size of contributions of lobbyists and those doing business with the city and making ineligible for matching their contributions), and the inequity in the law governing institutional contributions between unions and corporations.

Our testimony concludes with recommendations to further improve the public financing program by addressing these and other challenges. We are also in the process of developing further recommendations to address these and other challenges that we will share with the CFB in the coming months.

I.   Competitiveness of City Council vs State Legislative Races

New York City and New York State's campaign finance systems are very different in structure, which provides dramatically different results for voters in New York City. For City Council elections, voters have had the benefit of choosing among more candidates, who are better able to get their messages out due to the public financing system. For state legislative contests, choices are much more limited, as state races do not have the benefit of public financing. This speaks to the strength of the city's campaign finance system, which includes not only public funding, but reasonable contribution and pay-to-play limitations, as well as more robust disclosure.

Citizens Union in 2012 released a report, *Fair Elections for New York: How Public Financing Creates Greater Voter Choice and Competition*[1], which showed the difference in choice and competition between state legislative elections within New York City and city council elections for elections taking place in 2005 and 2009 for city council, and in 2006, 2008, 2010 and 2012 for the state legislature. Our updated research in this testimony includes the 2013 city council elections, and reveals the following major findings:

A. Council vs. State Legislature
   1. Less than 1 in 12 Council races are uncontested in the primary and general elections; in the state legislature 1 in 5 contests are uncontested.
   2. 59 percent of Council primaries have 3 or more candidates; less than 20 percent of state legislative primaries have 3 or more candidates.
   3. The Council has a 94.1 percent incumbent reelection rate; the state legislature 96.5 percent.

B. 2013 Council Elections vs. Previous Council Elections
   1. 56.7 percent of Council incumbents faced primary challengers in 2013 (about the same as the 57.1 percent in 2009) versus only 38.6 percent in 2005.
   2. 3 of 17 incumbent Councilmembers who had primary races had more than 4 candidates in 2013, a drop from 10 out of 24 races in 2009.
   3. Only 1 Council incumbent- Sara Gonzalez- lost in 2013 while 5 incumbents lost in 2009 perhaps due to the controversial vote by the Council to extend term limits. Four Councilmembers who voted in favor of extending term limits lost in 2009.

As noted in our major findings a major structural difference between the city and state campaign finance systems is members of the city council are term limited. There are no term limits for state legislators. Given that term limits create unique dynamics in terms of when challengers choose to run against incumbents (a challenger, for example, may choose to wait to run for a seat only after an incumbent is term-limited out), Citizens Union took into account the effect of term limits by looking at several of the metrics above as they related only to races involving incumbent or open seats. It should be noted that New York City also saw a change to

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[1] Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_Report_FairElectionsforNY_11_19_2012.pdf

its petitioning procedures in 2010, after the voters approved a charter amendment to reduce petition signature requirements, particularly for independent candidates.

These issues are discussed in detail below along with graphs illustrating our major findings and other conclusions.
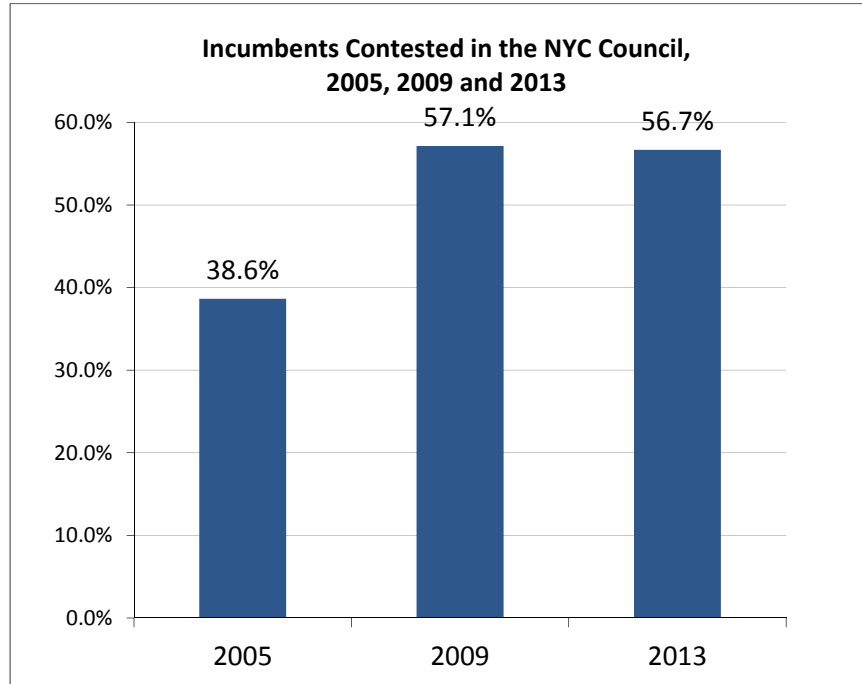
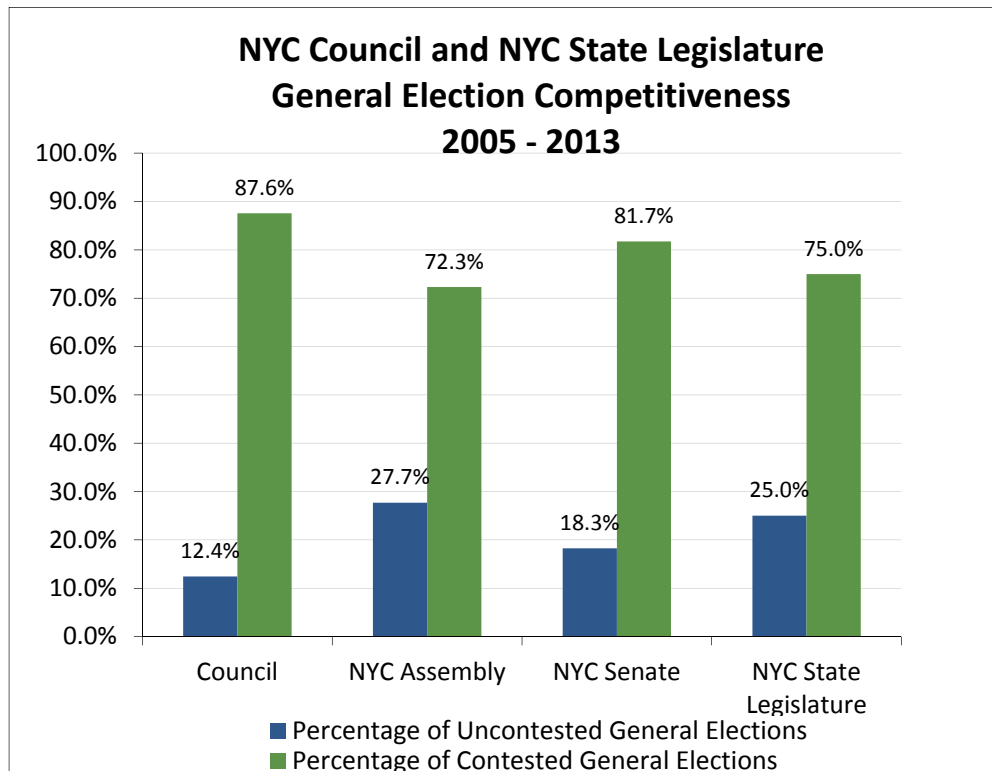### A. Uncontested Races

Primary Elections
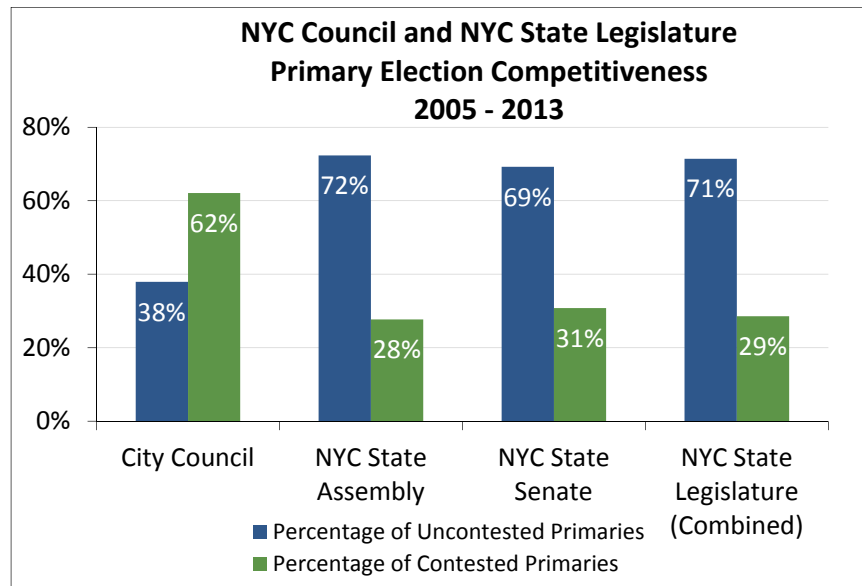
(Figure A)

Primary elections for city council are more competitive than elections for state legislature when examining the number of contested races. As seen in Figure A above, in the past three city council elections – in 2005 and 2009 – approximately 62 percent of contests for district seats have held a primary, while less than one-third of legislative party contests from 2006 to 2012 were contested. Given the importance of primary elections in New York City due to the enrollment advantage held by the Democratic Party, this increased level of competition can engage more voters' attention and possibly motivate them to vote on the more provides for a healthy democracy.

Looking over time and accounting for term limits, the percentage of incumbents who have had contested races increased from 2005 to 2009, perhaps due to the raising of the public match from 4:1 to 6:1 during this period. More than half of incumbents were contested in 2009 and 2013, which is much higher than the less than one-quarter of incumbents who were contested for state legislative seats from 2006 – 2012. Given that New York City has term limits, the fact that more candidates chose to challenge incumbents rather than wait out the end of their terms also speaks to the strength of the public matching system.

Incumbents Contested in the NYC Council, 2005, 2009 and 2013

Year	Percentage
2005	38.6%
2009	57.1%
2013	56.7%

(Figure B)

General Elections

NYC Council and NYC State Legislature General Election Competitiveness 2005 - 2013

|	Percentage of Uncontested General Elections	Percentage of Contested General Elections
Council	12.4%	87.6%
NYC Assembly	27.7%	72.3%
NYC Senate	18.3%	81.7%
NYC State Legislature	25.0%	75.0%

(Figure C)

There are different dynamics at play for General Elections within New York City, but again, when comparing city council races to state legislative races occurring within the city, there are fewer uncontested races, on average. General election contests for city council in New York City were contested nearly 88 percent of the time, while for state legislative seats within New York City, they were contested 75 percent of the time. The difference is greatest for assembly races, which were contested only 72 percent of the time from 2006 to 2012. It should be noted, however, that the difference between the houses of the state legislature is in part due to the effect of redistricting, as the party in control of each house drew the district lines that were in place for the elections during this time period.

Looking at just NYC Council races, the percentage of wholly uncontested races rose slightly from 2009 to 2013 from nearly 10 percent to nearly 12 percent, but more seats were contested by third-party candidates, perhaps in part to the lessening of petition signatures. Overall, the number of independent candidates (those lacking official ballot status) doubled from 2009 to 2013, from 9 to 18. Overall, however, the percentage of wholly uncontested races dropped dramatically from 2005 to 2009/2013, from nearly 28 percent to 10 (2009) or 12 (2013) percent, perhaps showing the effect of the increase in the public match from 2005 to 2009.
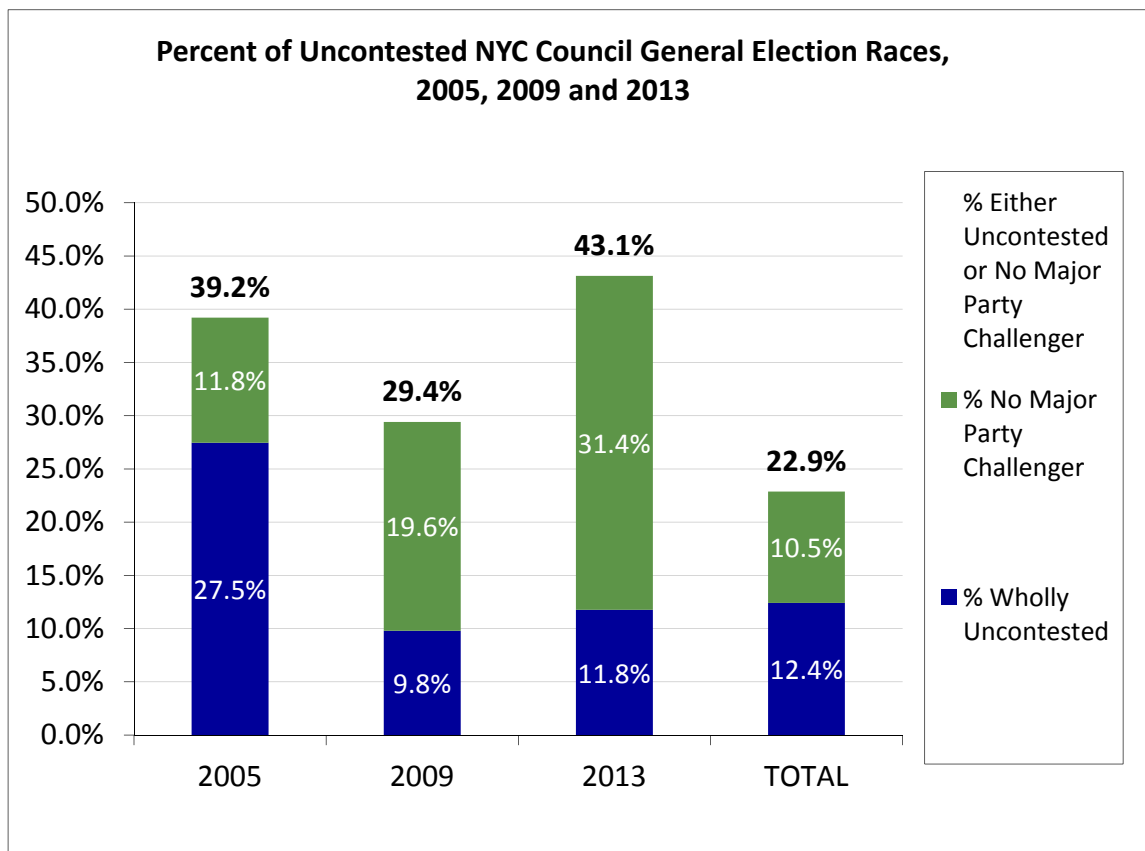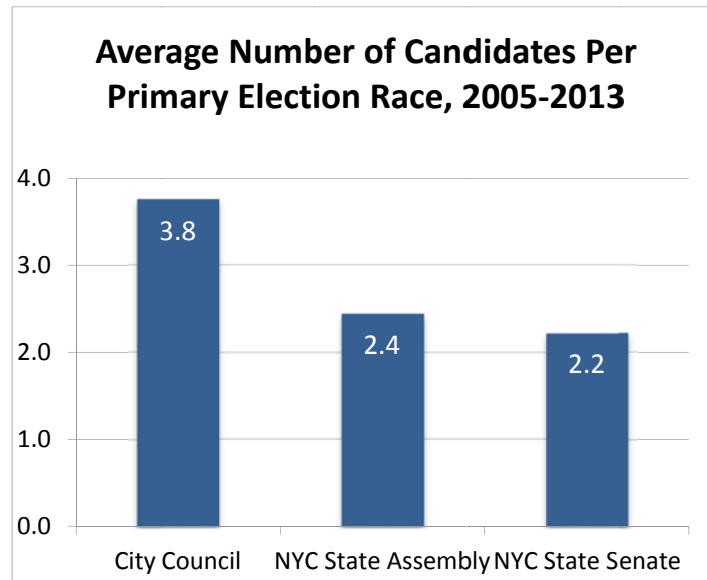

(Figure D)

Uncontested Seats in Both the Primary and General Election

NYC Council and NYC State Legislature
Percentage of Seats Uncontested both in Primary
and General Elections
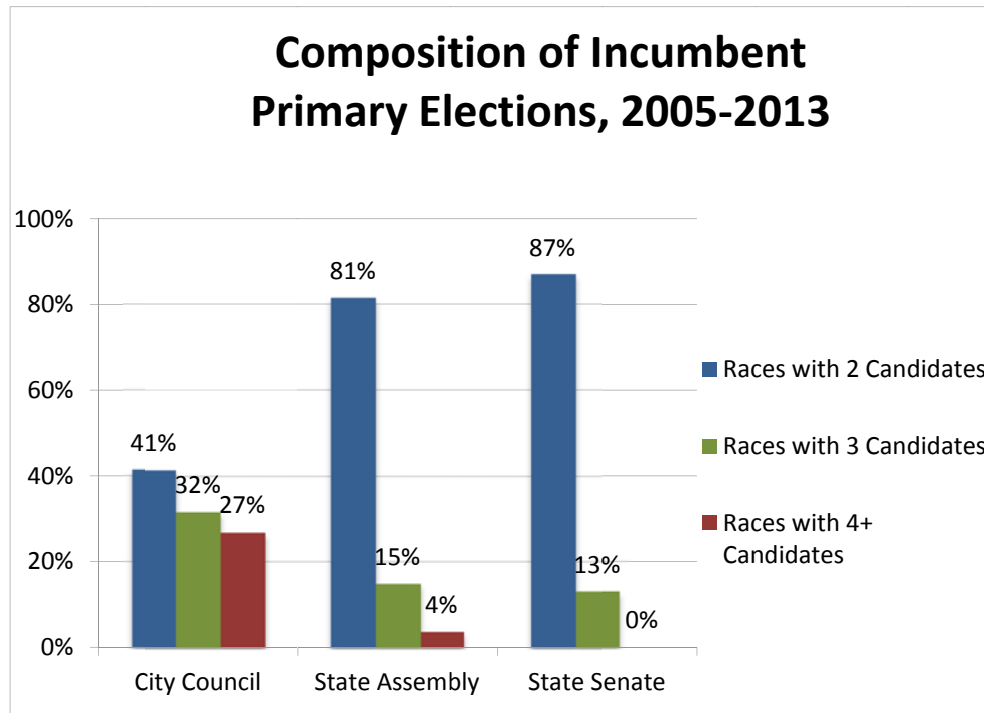**2005 - 2013**
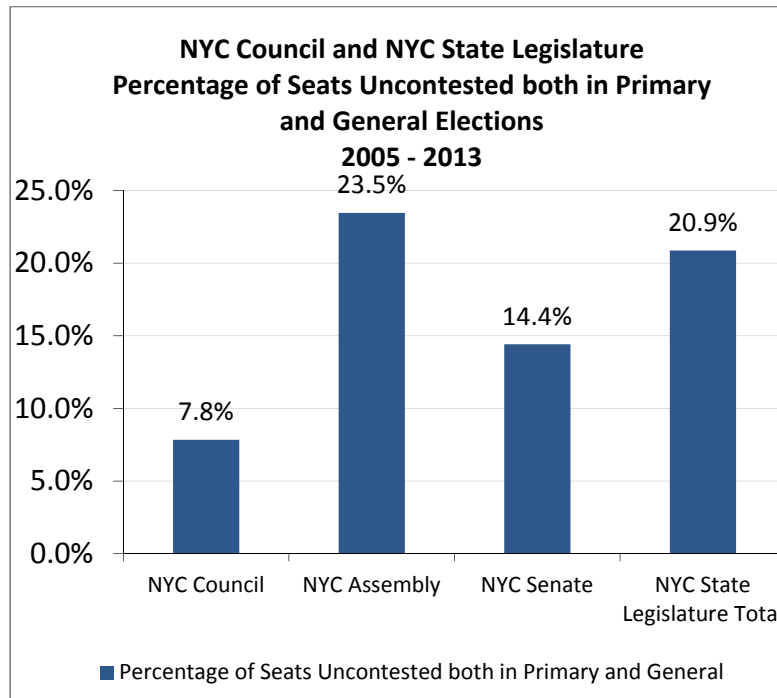
(Figure E)

When considering both primary and general elections, the difference between the city and state becomes more apparent. For nearly 21 percent of state legislative seats in New York City, voters had **no choice** at the polls, as there was only a single individual running in both the primary and general election: the incumbent. City Council seats, on the other hand, were uncontested for both the primary and general election in only about 8 percent of seats.

B.   Number and Composition of Candidates Running in Primary Elections

Average Number of Candidates Per Primary Election Race, 2005-2013

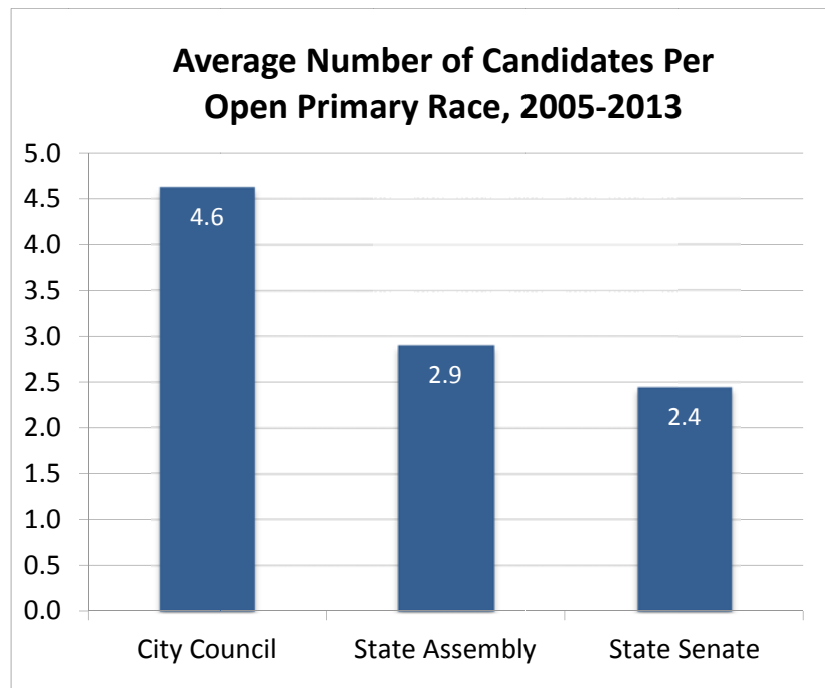|	
City Council	3.8
NYC State Assembly	2.4
NYC State Senate	2.2

(Figure F)

When looking at contested primary races, the average number of candidates running in New York City primary elections shows greater competitiveness as well, as the larger number of candidates provides a greater range of choice for voters. As shown in Figure F above, in city council elections, the 2005, 2009 and 2013 primaries featured an average of about 4 candidates. Meanwhile, typical primaries in the state senate and assembly within New York City had 2 candidates running during the 2006 to 2012 period. It should be cautioned, however, that having many candidates in a race can sometimes split the "opposition" vote against an incumbent or perceived front-runner. Thus while choice may be increased, the competitiveness of the race may not when there are more candidates running for office, as seen with the figure below, in which City Council incumbent primary elections had more candidates, with 26 percent having four or more candidates, versus less than 4 percent for state legislative races. Open races, however, may feature more candidates (and thus choice) while also being more competitive.

Composition of Incumbent Primary Elections, 2005-2013

(Figure G)

Average Number of Candidates Per Open Primary Race, 2005-2013

(Figure H)

The trend of more choice in city council races versus state legislative races holds true for open seats, as seen in Figure H above. Open city council primary elections featured an average of about 5 candidates per race, and open state legislative primaries featured an average of 3 candidates for open assembly seats and 2 candidates for open senate seats. It should be noted,

however, that open seats for city council elections are often known further in advance by prospective candidates, as term limits provide for an expected exit date for incumbents. An exception is the 2009 city council election due to the extension of term limits.

Composition of City Council Primary Elections 2005 to 2013, Incumbent and Open Seats
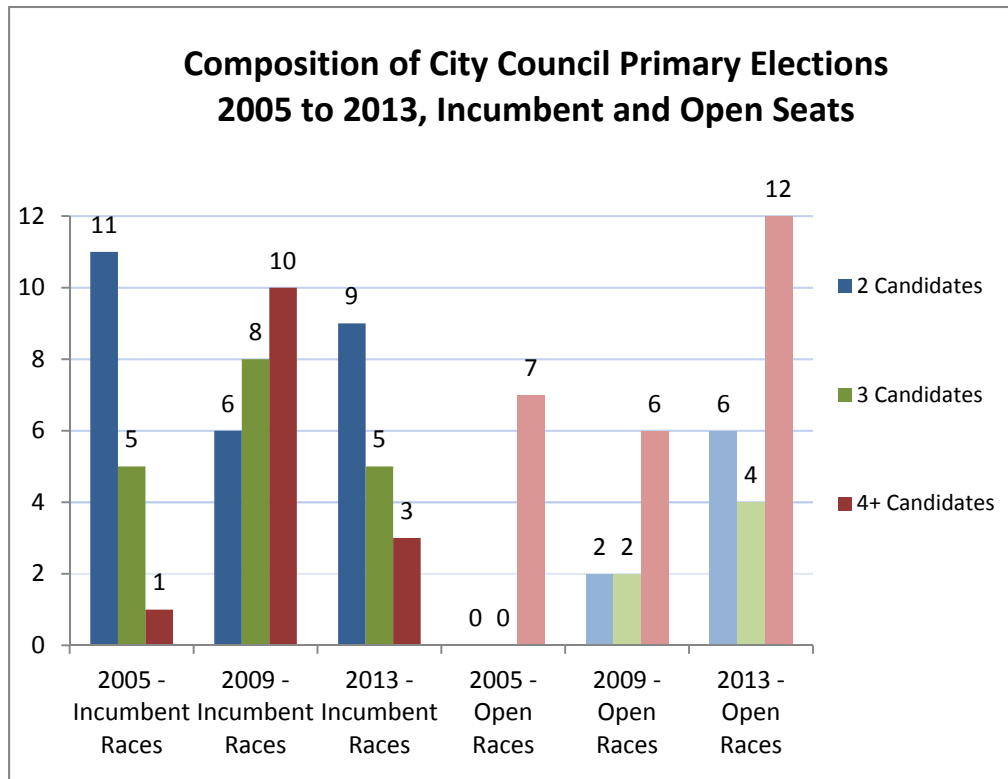
(Figure I)

Looking over time, during the 2005 – 2013 City Council primaries, incumbent races and open seats have seen changes in their composition. For example, from 2009 to 2013, incumbents saw fewer challengers, perhaps due to the term limits vote coloring the 2009 elections; 10 out of 24 incumbent races had more than 4 candidates in 2009, versus only 3 of 17 in 2013. On the other hand, open races have seen a steady increase in the number of candidates running. This could be due to both the increase in the public match from 2005 to 2009, as well as the reduction in petition signatures required to get on the ballot resulting from the 2010 charter amendments.

C. Incumbent Re-Election Rate

Incumbent Re-election Rates
NYC Council and NYC State Legislature, 2005 - 2013
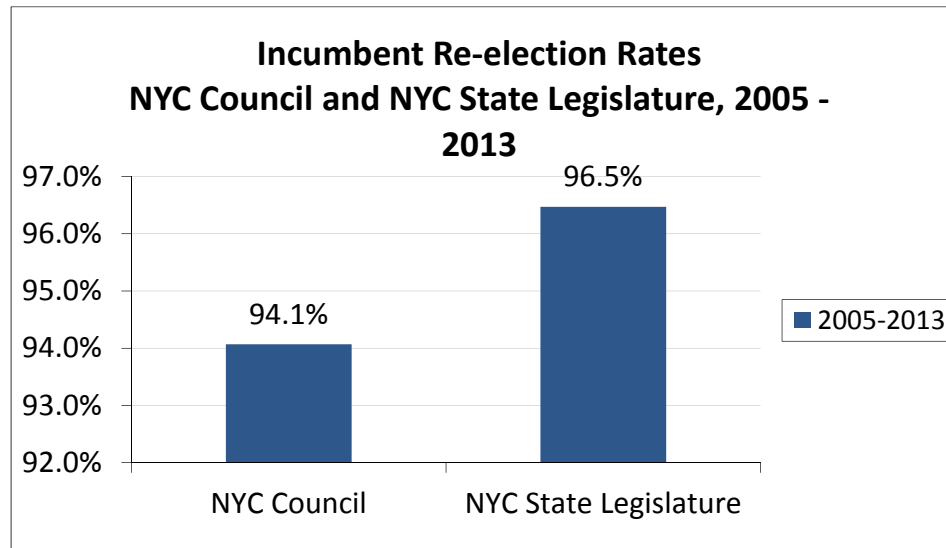
(Figure J)

In most elections, incumbents have an advantage over their challengers in contested elections; therefore, more contested races generally feature lower incumbency re-election rates. Between 2005 and 2013, incumbents were re-elected in about 94 percent of city council races, while incumbents in the state legislature located in NYC were re-elected nearly 97 percent of the time, as shown in Figure J above.

In the 2005, 2009 and 2013 city council elections, for which there are 51 seats, 7 members lost their seats to challengers:

➢ 2005: Allan Jennings (1)
➢ 2009: Maria Baez, Alan Gerson, Kenneth Mitchell, Helen Sears and Kendall Stewart (5)[2]
➢ 2013: Sarah Gonzalez (1)

For state legislative seats in New York City, for which there are 91 total seats, 11 legislators lost their seats between 2006 and 2012:

➢ 2006: Assemblymember Sylvia Friedman; Senator Ada Smith (2)
➢ 2008: Assemblymember Ellen Young; Senators Marty Connor, Efrain Gonzalez and Serph Maltese (4)
➢ 2010: Senators Pedro Espada, Jr. and Frank Padavan (no assemblymember lost a seat) (2)
➢ 2012: Assemblymember Naomi Rivera; Senators Shirley Huntley and David Storobin (3)

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[2] As discussed earlier, the unseating of incumbents in 2009 is largely thought to be related to the Council's vote to extend term limits. Councilmembers Baez, Gerson, Sears and Stewart all voted in favor of extending term limits. Mitchell was elected to office in February 2009 in a special election and did not vote on term limits in October 2008. He was defeated in the Democratic primary in 2009 by Debi Rose.

While the city council's incumbent re-election rate was slightly lower than the state legislature's, Citizens Union also did an election-by-election breakdown to further explore the differences. Here, Citizens Union found interesting results, as shown in Figure K.

Incumbent Re-election Rate, 2005 - 2013
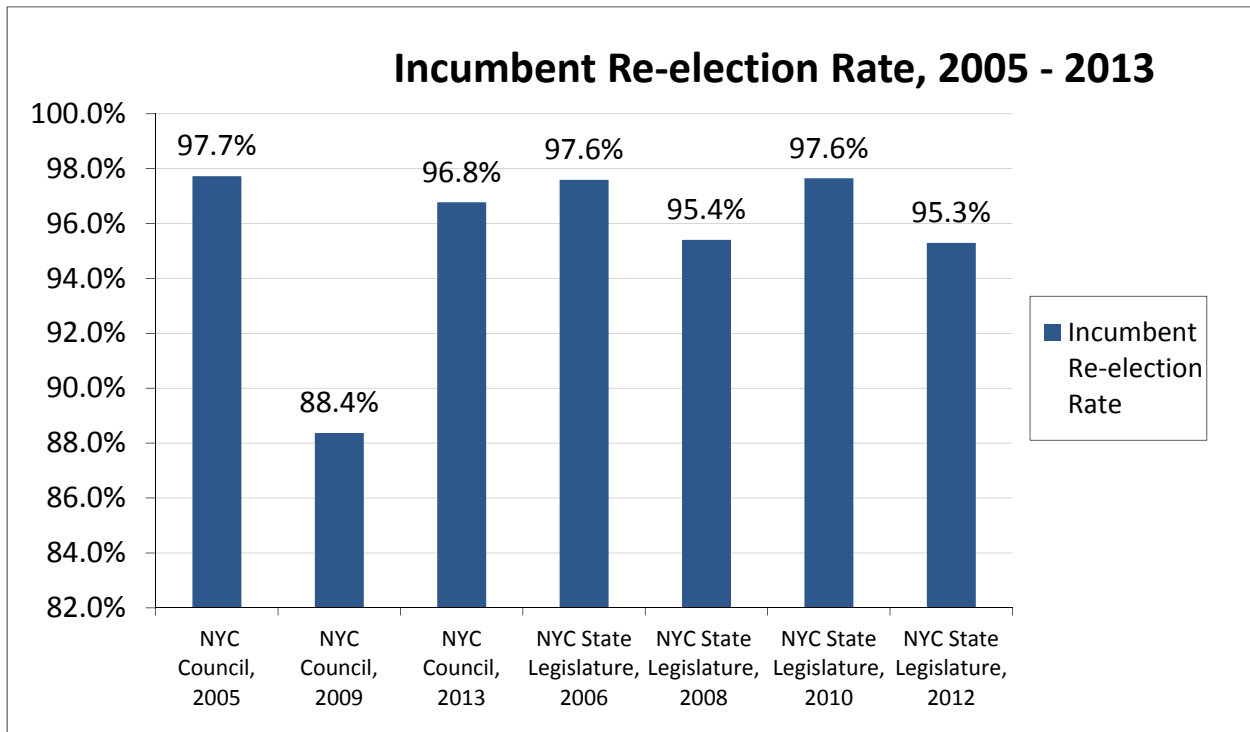
(Figure K)

The incumbent re-election rate saw a large decrease in 2009, which is likely due to two major factors: the decision of challengers to attempt to unseat those who voted for the term limits extension, and the ability of the city's public matching system to provide for a more even playing field. As can be seen for state legislative seats, the incumbent re-election rate has remained more constant. For the current 2013 elections, it should be noted that many candidates chose to run in open seats rather than against incumbents, given that a large number of seats – 20 in total – were open. Additionally, independent expenditures played a larger role in elections, in most cases benefitting incumbents. The notable exception, however, is for the race for Council District 38, in which incumbent Sara Gonzalez had the benefit of over $405,860 spent in support of her, or against her opponent, Carlos Menchaca, versus only $142,880 spent in support of Menchaca, or against the Gonzalez. In this race, it has been speculated that the public matching program was the equalizer against this large amount of independent spending, as Menchaca raised and spent $158,241 to Gonzalez's $107,636.

II.   Consequences of Competitiveness

What also needs to be examined is what the result is or consequence of this increased competitiveness on the composition of our elected officials.

For the first time in its history, the City Council in 2010 better reflected the demographics of the city, owed in part to the opportunities provided by the availability of matching public funds during the 2009 elections. The majority of its representatives then were of color, 27 of 51 seats or 53% - closer mirroring the demographic makeup of city residents that was recorded during the 2010 U.S. Census which shows 64% of city residents are people of color. Now in 2014, this number was slightly reduced, with the number of people of color representatives at 26 of 51 seats, or 51%.

CITYWIDE DEMOGRAPHICS – 2010 U.S. Census				
	2010 Population	**2010 Voting Age Population**	**2010 Council Representation**	**2014 Council Representation**
White, Non-Hispanic	2,722,904	2,284,419	24	25
Black, Non-Hispanic	1,861,295	1,420,058	14	13
Asian, Non-Hispanic	1,030,914	834,547	2	2
Hispanic	2,336,076	1,709,204	11	11
Total Pop	8,175,133	6,407,022	51	51

And though Citizens Union is only beginning to analyze this, I suspect that the composition of the new Council is younger, less connected to political institutions, machines, and family dynasties and instead more connected to communities and neighborhood organizations.

III.   Recommendations

Despite the many strengths of the city's public matching system including electoral competitiveness and voter choice, the system contains challenges that need to be addressed. These include the rise in independent spending by third-party actors, the perception of or actual influence of special interests, among other challenges.

Citizens Union is conducting internally a review of the city's campaign finance program to address these and other challenges facing the system. We will make further recommendations to the NYC CFB for inclusion in its quadrennial report issued this year. While we have not yet completed our review, we make the following recommendations for the CFB to consider today:

To address the rise of campaign spending by independent political committees and non-profit organizations:

1. Adopt a law, similar to the kind of "stand by your ad" disclaimers used in federal elections, for both Independent Expenditures and Electioneering Communications. Such a law would require disclaimers identifying the top funders whose contributions pay for outside groups' political spending, if their contributions surpass a specific dollar threshold or represent a percentage of the independent spenders' budget above a specific threshold. It is appropriate for the number of donors required to be listed in a given communication to vary depending on the medium used. Councilmember and Deputy Speaker Brad Lander has introduced a bill in the Council aligned with this principle of disclosure.

2. Require disclosure of an independent expenditure by any person or political committee within 48 hours of a contract being made arranging for the expenditure. West Virginia passed a law, H.B. 4647, doing this.[3]

3. Require any entity making independent expenditures to acquire approval from its board of directors or organizational leadership body, and to report such expenditures to its shareholders or members and make the report public on its website. Iowa passed in 2010 Senate File 2354 which prohibits an entity, including "without limitation" any corporation or union from making an independent expenditure without authorization from a majority of its board or decision-making body. Disclosure of the independent expenditure further provides, "A certification by an officer of the corporation that the board of directors, executive council, or similar organizational leadership body expressly authorized the independent expenditure or use of treasury funds for the independent expenditure by resolution or other affirmative action within the calendar year when the independent expenditure was incurred."[4]

To address the impact of contributions raised through bundling by those who are lobbyists, run political campaigns, and do business with the city   Citizens Union recommends:

4. Prohibit contributions bundled by lobbyists from receiving matching funds, and ban placement agents from bundling donations for any elected official directly or indirectly; and
5. Prohibit participants in the city's campaign finance program from using public matching funds to purchase strategic campaign consulting services from firms that also are registered city lobbyists.

To further enhance electoral competition and save taxpayer money, Citizens Union recommends:

6. Establishing "war chest" restrictions to limit the transfer of funds from one race to another.

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[3] See the text of H.B. 4647 at
http://www.legis.state.wv.us/bill_status/bills_text.cfm?billdoc=HB4647%20SUB%20ENR.htm&yr=2010&sesstype=RS&i=4647
[4] See the text of Iowa Senate File 2354 at http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&Service=Billbook&ga=83&hbill=SF2354

To education voters and encourage participation:

7. Broaden the Voter Guide to include all contests occurring in the city such as state and federal elections (Int. No. 769 of 2012); and providing voters email notification of upcoming election dates, deadlines and availability of sample ballots (Int. No. 613 of 2012).

Thank you again for holding this hearing and allowing Citizens Union to present its initial analysis of the city's campaign finance system and our recommendations for reform. We are available to answer any questions that you have.