



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the
Committee on Governmental Operations of New York City Council
Oversight Hearing Regarding the Campaign Finance Board 2013 Post-Election Report
Wednesday, November 20, 2013

Good morning, Chair Kallos, and members of the Committee on Governmental Operations. My name is Rachael Fauss, and I am the Director of Public Policy for Citizens Union of the City of New York, a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union serves as a civic watchdog, combating corruption and fighting for political reform. We work to ensure fair and open elections, honest and efficient government, and a civically-engaged public.

We are pleased that the City Council is holding this oversight hearing so soon after the release of the Campaign Finance Board's (CFB) 2013 Post-Election report. The city's Campaign Finance Program (the Program) is a nationally-recognized model, and this report and the Council's review today signal a dedication to keep improving the program, as Citizens Union has continually supported since the Program's creation in 1989. The last notable change in 2007 limited contributions from those doing business with the city, which was supported by CU.

The Council has laudably already begun to improve the Program following the 2013 elections, having passed two bills that expanded disclosure of campaign mailings and independent expenditures, banning anonymous ads and providing voters more information about donors to independent spenders. At this juncture, we believe that additional changes are necessary to further reduce the influence of organized interests and further mitigate the rise of independent spending.

To this end, Citizens Union's recommendations to improve the Program cover the following categories, for which we urge Council action:

- 1. Adjust the Spending Cap and Public Funds Cap for City Council races** to counteract the spending of independent campaigns;
- 2. Strengthen the doing business restrictions** by no longer matching contributions bundled from those who do business with the city and limiting institutional contributions to the limit in place for individuals who do business with the city;
- 3. Enact administrative changes to create greater efficiencies and clarify rules;**
- 4. Provide greater public reporting of independent expenditures** and requiring organizations to obtain approval before spending funds; and
- 5. Provide greater voter education,** while ensuring that cost savings can be realized.

I will detail our specific recommendations in each of these areas, as well as our rationale for the changes.

Citizens Union Recommendations

In examining changes today, we would like to emphasize that the Program is complex and multi-layered, intended to ensure that voters have greater choices of candidates, and ensuring the impact that money has on our politics is appropriately limited where possible while providing public transparency of spending and appropriate enforcement to ensure the protection of public funds. In changing one aspect of the system, we urge the Council to examine how it impacts the interrelated components, to ensure that the Program continues to fully live up to its purpose.

1. Adjust the Spending Cap and Public Funds Cap for City Council Races

Given the increase in independent expenditures in 2013, and the ability for groups to easily outspend candidates, we support raising both the spending and public matching caps for participating candidates for City Council races. According to the CFB's report, independent spenders outspent candidates in 17 of 41 council primaries. While independent expenditures also played a role in citywide races, the much larger spending limit of approximately \$8 – 13 million for these races over the cycle (higher for mayor than public advocate and comptroller) better allow these candidates to compete against the spending. The current council spending limit of \$381,000 over the election cycle is much more easily overcome by an independent spender. To counter the effects of independent spending, Citizen Union recommends the following:

- a. Raise the spending cap on Council candidates who receive public funds** so they can continue to raise private dollars to better compete with independent spending by outside actors. We propose raising the amount from \$182,000 for the 2017 cycle to \$290,000, an increase about equal to the largest independent expenditure spent in opposition to a Council candidate during the 2013 primary elections, provided that the outlay of public funds in uncompetitive races is still limited.
- b. Raise the cap on public matching fund payments for all Council candidates** so they can continue to raise private dollars and public matching funds for those private dollars to better compete with independent spending by outside actors. We propose raising the amount to \$159,500 from \$100,100, an increase equal to about 55 percent of the largest independent expenditure spent in opposition to a Council candidate during the 2013 primary elections.

We would also like to note that in considering increasing the caps on spending and matching funds, the Council should also **establish "war chest" restrictions** to limit the transfer of funds by candidates from running from one office to another office, particularly since greater contributions could be raised with an increased spending cap.

2. Strengthen the Doing Business Restrictions

One of the major strengths of the Program is the doing business restrictions, which help to ensure that candidates are seeking contributions from small donors within their communities and that those who are seeking to influence government are appropriately limited in what they can give.

While contributions are not matched and limited for those who do business with the city, there is a loophole that currently allows lobbyists and those who do business with the city to bundle contributions from individuals that are matchable. For example, a lobbyist can only individually give \$400 to candidates for mayor which are *not* matchable, but could bundle several \$4,950 contributions that are matchable. Additionally, the doing business limits only apply to individuals, not institutions, and candidates can currently contract with consultants using public funds with firms that lobby in addition to providing campaign services. To address these loopholes, we recommend the following:

- a. **Reduce the impact of bundling by people doing business with the city** – While contributions from people who are identified as doing business with city government are strictly limited, a loophole exists that allows these individuals to bundle unlimited amounts of money to the same candidate, thus undermining the intent of the law to prevent or limit the appearance of “pay-to-play” influence. Making these contributions non-matchable would limit their impact and help to close this loophole.
- b. **Expand the doing business restrictions that subject individuals to “doing business” with the city to contribution limits of no more than \$400:**
 - i. Add entities rather than simply individuals to those subject to the lower contribution limits as a result of doing business with the city. This would limit contributions by sole proprietorships, political committees and employee organizations to up to \$400 per candidate.
 - ii. Expand the types of business with the city that subject individuals to lower campaign contribution limits under the city’s doing business law to include collective bargaining agreements with the city.
 - iii. Apply the doing business campaign contribution limits to the immediate family members of individuals doing business with the city (spouses, domestic partners, and unemancipated children).
- c. **Prohibit participants in the city’s campaign finance program from using public matching funds to purchase strategic campaign consulting services** from firms that also lobby.

3. Enact Administrative Changes to Create Greater Efficiencies and Clarify Rules

The CFB’s report notes several areas where important efficiencies can be created for candidates and its own staff, as well as areas in which clarifications should be provided to ensure that candidates are fully aware of the city’s requirements. We support efforts to streamline the program and clarify requirements, including the following recommendations:

- a. **Clarify the restrictions on “mass mailing” by public officials close to an election** – Under the Charter, public officials who are running for office are prohibited from using government resources to send mass mailings in the 90 days before an election, with the exception of “ordinary communications to the members of the public.” Citizens Union agrees with the CFB recommendation that the Charter define ordinary communications as communications sent for the purpose of providing time-sensitive factual information that is of potential concern to the recipients and should not include a photograph of the candidate or promotional material involving the candidate.
- b. **Eliminate the requirement for candidates to submit Conflicts of Interest Board (COIB) disclosures to the CFB** – While the financial income disclosure requirement should continue as a condition for public funds eligibility, the burden of notifying the CFB of compliance need not be on the candidates. It would be more efficient for the COIB to transmit that information directly to the CFB.
- c. **Require the CFB to better comply with the Open Meetings Law, including:**
 - i. Taking minutes at meetings and making minutes accessible to the public including executive session votes that are not exempted under Article 6 of the Open Meetings Law; and
 - ii. Requiring motions in which the Board enters executive session to include general information as to why executive session was called.

4. Provide Greater Public Reporting of Independent Expenditures

As noted previously, we supported the Council’s efforts in passing legislation earlier this year to ensure voters were provided greater information on advertisements, and recommend that the Council examine the following additional recommendations regarding independent expenditures:

- a. **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.”
- b. **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.

5. Provide Greater Voter Education and Appropriate Cost Savings

The Program's requirements for voter education are increasingly necessary as voter turnout continues to decrease. In seeking to strengthen mandates to inform more voters, Citizens Union realizes that there may be additional costs, and therefore supports measures to modernize the program. Our recommendations on voter education are as follows:

- a. **Broaden the Voter Guide to include all contests occurring in the city such as state and federal elections; and providing voters email notification of upcoming election dates, deadlines and availability of sample ballots.**
- b. **Add flexibility to the Voter Guide mandate** – The New York City Charter currently mandates the CFB to print and distribute a Guide to each household with a registered voter before each primary and general election. A more flexible mandate would allow New Yorkers who prefer to access the Guide electronically to opt out of receiving the guide in the mail, saving money on both printing and postage.
- c. **Require participating candidates for borough president to engage in CFB-sponsored debates.**

Also in the vein of voter participation and engagement, Citizens Union would also like to note that the CFB has supported the adoption of **Instant Runoff Voting**, which Citizens Union supports to eliminate the need for runoff elections for citywide offices, which we believe will ensure greater voter participation in what are often determinative elections – the primaries. This would save the City Board of Elections at least \$13 million, and also eliminate the need for public matching funds to be provided for an additional election. Public funds have totaled \$4.3 million in runoff elections since 2001.

Citizens Union is continuing to examine new recommendations in the CFB's report, such as making public funds determinations earlier in the cycle and adjusting the statement of need requirements, and will be providing the Council feedback regarding those recommendations in the coming weeks.

Thank you again for holding this hearing and allowing Citizens Union to present its views and recommendations. I am available to answer any questions you have.