

CITIZENS UNION OF THE CITY OF NEW YORK

FAIR ELECTIONS FOR NEW YORK STATE, 2014 Update: How Public Matching Creates Greater Voter Choice and Candidate Competition

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I. INTRODUCTION and MAJOR FINDINGS

For far too long, New York State's weak campaign finance laws have enabled the influence of large donors and special interests in state policy making, crowding out the voice of everyday New Yorkers.

Contribution limits are far too high, disclosure is inadequate for voters to know who is backing particular candidates, and enforcement of existing laws is virtually nonexistent. When these challenges are coupled with a system that gives a competitive edge to those candidates with more money – almost always incumbents – voters have fewer choices at the ballot box and there is less competition among candidates.

Fortunately for New York State's voters, there is increasing public attention to the corrupting influence of money in our politics and its deleterious impact on voters' choices. New York City's model campaign finance system, which creates greater voter choice and candidate competition, is an example which shows our legislative leaders and governor that there is a better way to fund our campaigns. Indeed, a proposal submitted by Governor Andrew Cuomo in this year's Executive Budget legislation as well as Speaker Sheldon Silver in the Assembly's budget resolution contain provisions for a campaign financing system modeled on the city's heralded public matching system. The State Senate majority coalition in its budget resolution left the door open for campaign finance reform and signaled a willingness to address the long overdue issue.

New York City and New York State's campaign finance systems are very different in policy and 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 because candidates have access to a needed baseline of funding. The opportunity to match public funds with those privately raised creates this baseline, allowing candidates to run more effective campaigns and get their messages out. For state legislative contests, choices are much more limited because there are fewer candidates who can raise the necessary money to run. This divergence speaks to the strength of the city's campaign finance system, which includes not only public funding, but also reasonable contribution and pay-to-play limitations, as well as more robust disclosure of campaign contributions and spending.

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 candidate competition between state legislative elections and New York 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.

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

This new report updates our research by including the 2013 city council elections and reveals the following major findings, which can be found in Section II on page 5:

Major Findings for State Legislature vs. City Council

1. 21 percent of all state legislative contests in New York City went uncontested in both the primary and general elections in the four cycles between 2006 and 2012 while only 8 percent of races were uncontested for the City Council during the three cycles between 2005 and 2013 (Figure D).
2. Incumbents were challenged in only 27 percent of assembly seats and 18 percent of senate seats for the 2012 state primary elections occurring in New York City, while 57 percent of incumbents were contested in the 2013 city council primaries (Figure B).
3. In primaries featuring incumbents, fewer than 20 percent of state legislative primaries occurring in New York City had 3 or more candidates from 2006 to 2012, while 59 percent of city council primaries had 3 or more candidates from 2005 to 2013 (Figure G).
4. In primaries for open seats, voters have far greater choice of candidates for city council races, with 5 candidates typically running (rounded from 4.6), while state assembly primaries had an average of 3 candidates (rounded from 2.9), and state senate primaries had only 2 candidates run (rounded from 2.4) for those races occurring in New York City (Figure H).
5. The re-election rate for state legislators from New York City was 96.5 percent from 2006 to 2012, while city councilmembers had a slightly lower re-election rate of 94.1 percent from 2005 to 2013 (Figure I).

A major structural difference between the city and state election systems is that 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 as they related only to races involving incumbent or open seats. It should be noted that New York City also saw a change to its petitioning procedures in 2010 after the voters approved a charter amendment. This significantly reduced petition signature requirements, particularly for independent candidates.

These issues are discussed in detail in Section II beginning on page 5, along with graphs illustrating our major findings as well as other conclusions.

Summary of Citizens Union Recommendations

Citizens Union recommends overhauling the state’s campaign finance system through this year’s authorizing legislation of the state budget. Specifically, we recommend implementation of the following reforms:

- **Creation of a public matching funds program** that empowers small donors;
- **Independent, effective enforcement** to prevent violations of campaign finance law while assisting candidates in compliance;
- **Lower contribution limits** for individual candidates and political parties;
- **“Pay to play” limitations for state contractors and lobbyists;** and
- **Robust disclosure** of money in politics, from candidates, parties and independent political actors.

These recommendations are provided in more specific details in Section III beginning on page 14 of this report.

II. DETAILED RESEARCH FINDINGS

Citizens Union in this updated report of *Fair Elections for New York: How Public Financing Creates Greater Voter Choice and Competition*², examines a the following areas for state legislative and city council elections occurring in New York City from 2005 - 2013:

- **Presence of uncontested races, primary and general election** – including solely uncontested incumbents;
- **Number of candidates running in primary election races** – including for incumbent and open seats; and
- **The incumbent re-election rate.**

An in-depth examination of each of these areas is provided below.

A. Uncontested Races

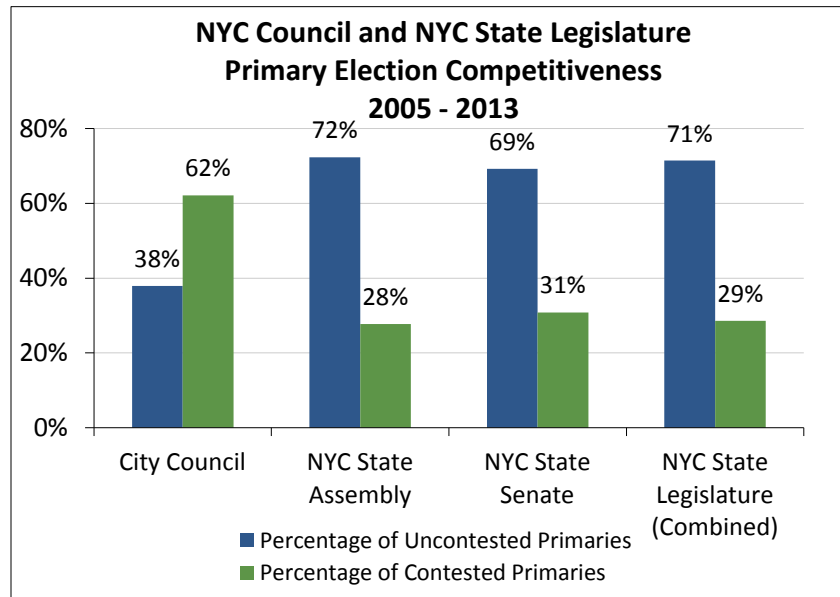
Primary Elections

Primary elections for City Council are more competitive than elections for the New York State Legislature in New York City when examining the number of contested races. Perhaps the most influential races in New York City are the primary elections, as Democrats make up over 3 million of the city's 4.6 million voters – with Republicans representing less than .5 million of the registered voters in the city.³

As seen in Figure A on the next page, in the past three city council elections – in 2005, 2009 and 2013 – approximately 62 percent of contests for district seats have held a primary, while less than one-third of state legislative seats held primaries from 2006 to 2012. Given the importance of primary elections in New York City, this increased level of candidate competition can engage more voters' attention and possibly motivate them to vote.

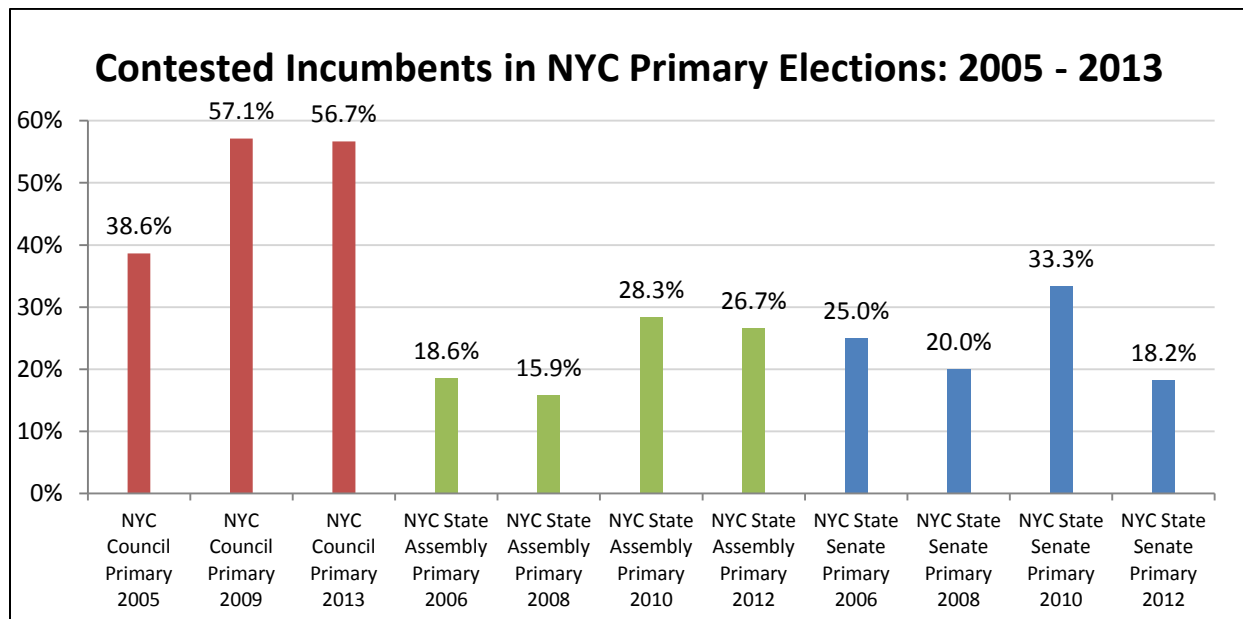
² Available at: http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_Report_FairElectionsforNY_11_19_2012.pdf

³ New York State Board of Elections 11/1/2013 Enrollment Statistics. Available at: http://www.elections.ny.gov/NYSBOE/enrollment/county/county_nov13.pdf



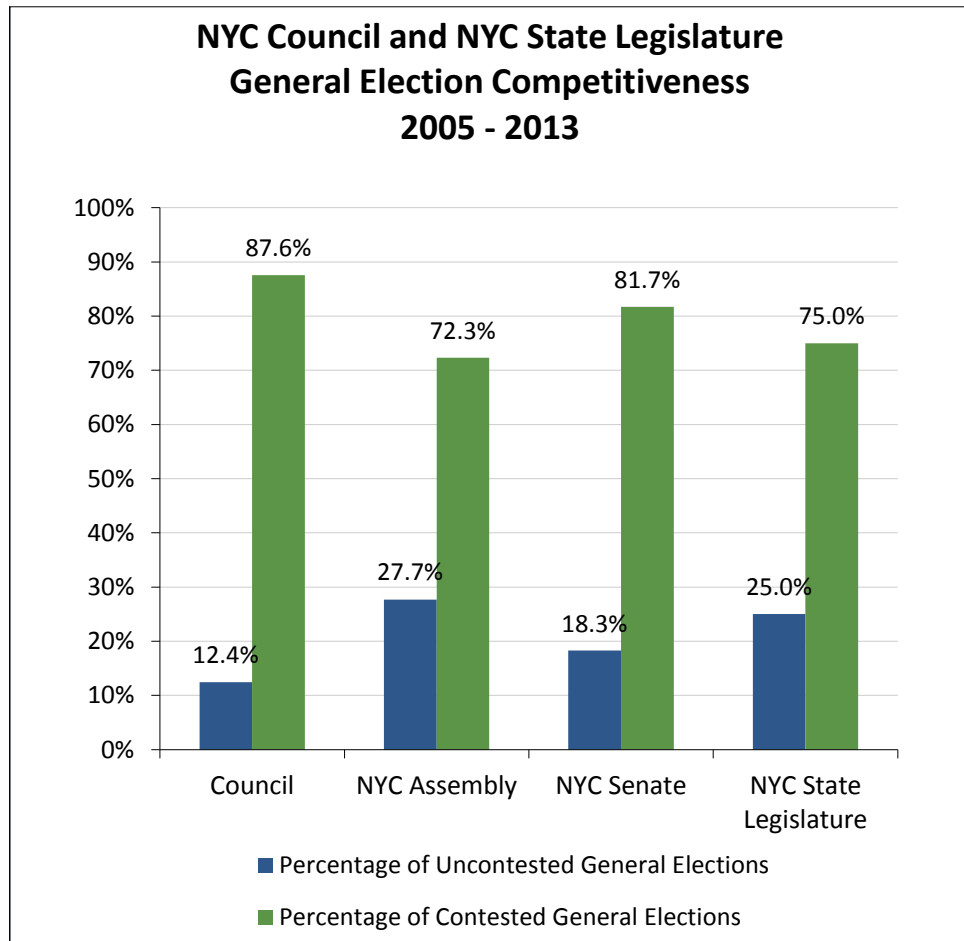
(Figure A)

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 city council races in 2009 and 2013, which is much higher than the number of incumbents who were contested for state legislative seats from 2006 – 2012, at a third or less, as seen in Figure B. 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. For the most recent elections, incumbents were challenged in only about 27 percent of assembly seats and 18 percent of senate seats for the 2012 state elections occurring in the city, while about 57 percent of incumbents were contested in the 2013 city council primaries.



(Figure B)

General Elections

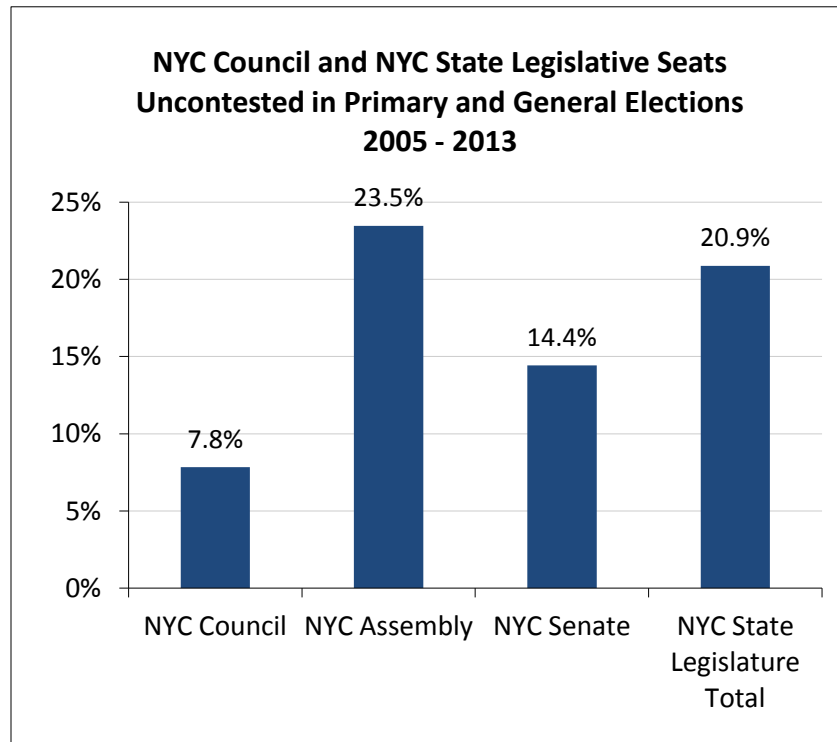


(Figure C)

There are different dynamics at play for General Elections occurring within New York City, but again, when comparing city council races to state legislative races occurring within the city from 2005 – 2013, there are fewer uncontested races at the municipal level. General election contests for City Council in New York City were contested nearly 88 percent of the time, while for state legislative seats within the city, they were contested 75 percent of the time, as seen in Figure C above. The difference is greatest for assembly races, which were contested only about 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, essentially making state senate races more likely to be contested.

It should be noted that the number of independent candidates (those lacking official ballot status) doubled from 2009 to 2013 for city council races, from 9 to 18. Overall, however, the percentage of wholly uncontested races dropped dramatically in the City Council 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.

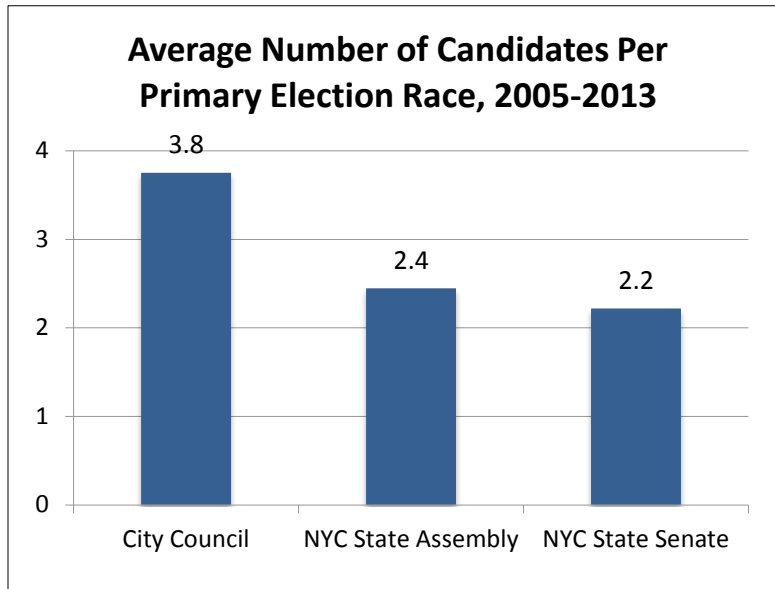
Uncontested Seats in Both the Primary and General Election



(Figure D)

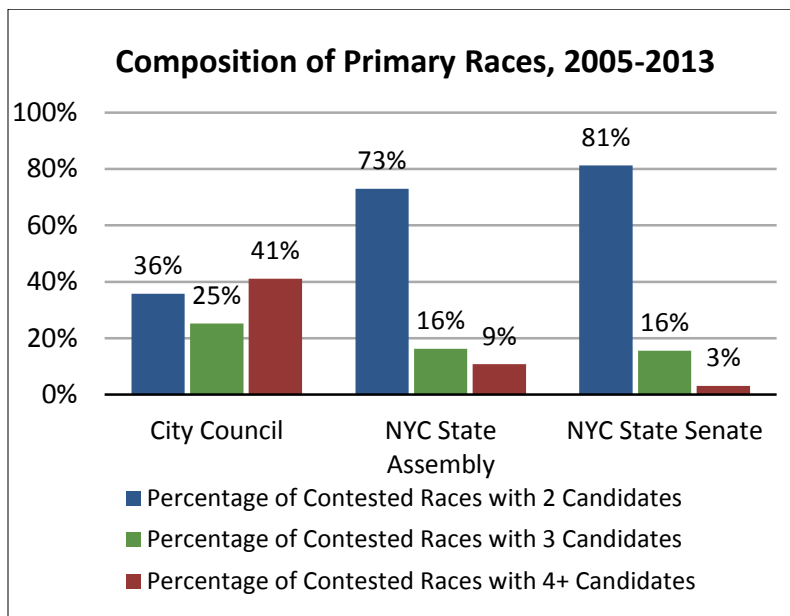
When considering both primary and general elections, the difference between the city and state becomes more apparent, as seen in Figure D above. For nearly 21 percent of state legislative seats in New York City, voters had ***no choice*** at the polls, as there was only a single individual running in 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



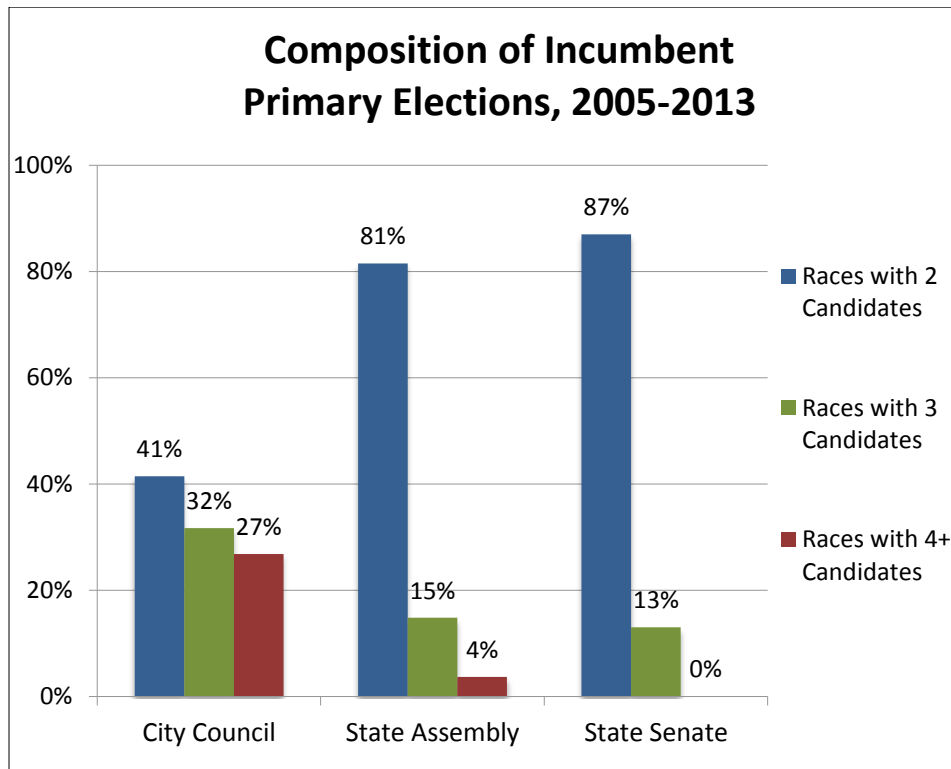
(Figure E)

When looking at contested primary races, the average number of candidates running in primary elections for city council shows greater competitiveness as well, as a larger number of candidates provides a greater range of choice for voters. As shown in Figure E above, in city council elections, the 2005, 2009 and 2013 primaries featured an average of about 4 candidates (rounded from 3.8). Meanwhile, typical primaries for the State Assembly and State Senate within New York City had 2 candidates running during the 2006 to 2012 period (rounded from 2.4 and 2.2, respectively). As per Figure F below, 73 percent of state assembly races occurring in New York City had only 2 candidates, while 81 percent of state senate races in New York City had 2 candidates during this period.

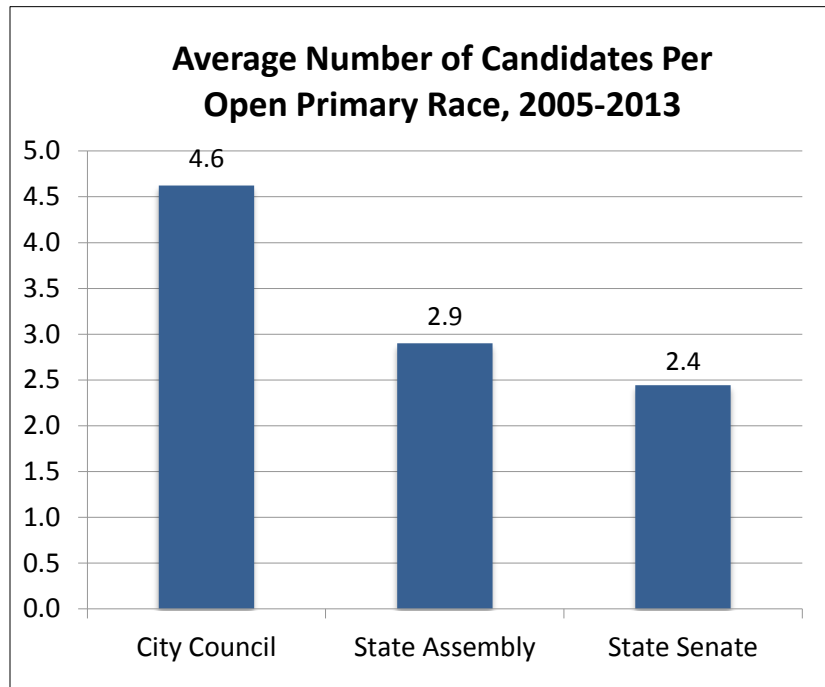


(Figure F)

It should be cautioned, however, that having many candidates in a race can sometimes split the “opposition” vote against an incumbent or a 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 Figure G 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.



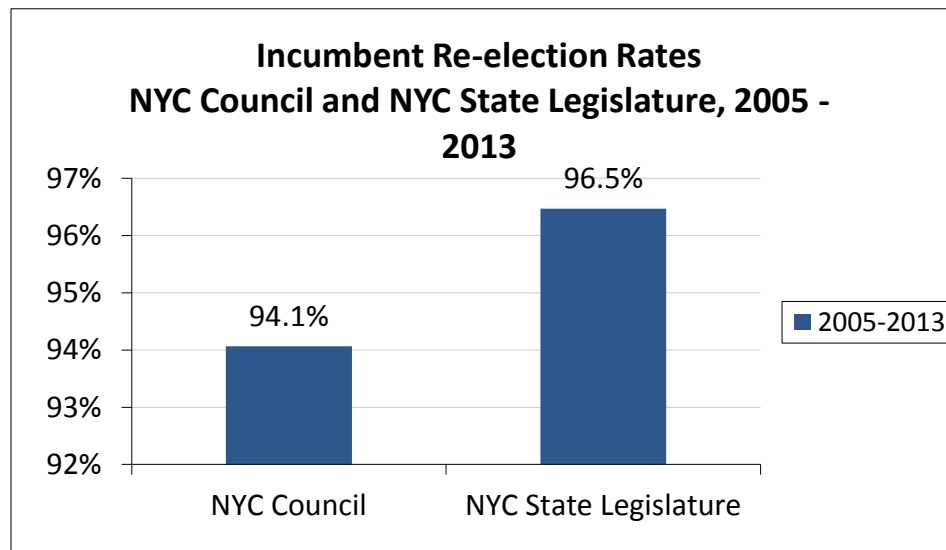
(Figure G)



(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 (rounded from 4.6), and open state legislative primaries featured an average of about 3 candidates for open assembly seats and 2 candidates for open senate seats (rounded from 2.9 and 2.4, respectively). 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, which meant that some possible new candidates declined to run, opting to wait for open seats in 2013.

C. Incumbent Re-Election Rate



(Figure I)

In most elections, incumbents have an advantage over their challengers, particularly when their access to campaign funds is greater. 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 I above.

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

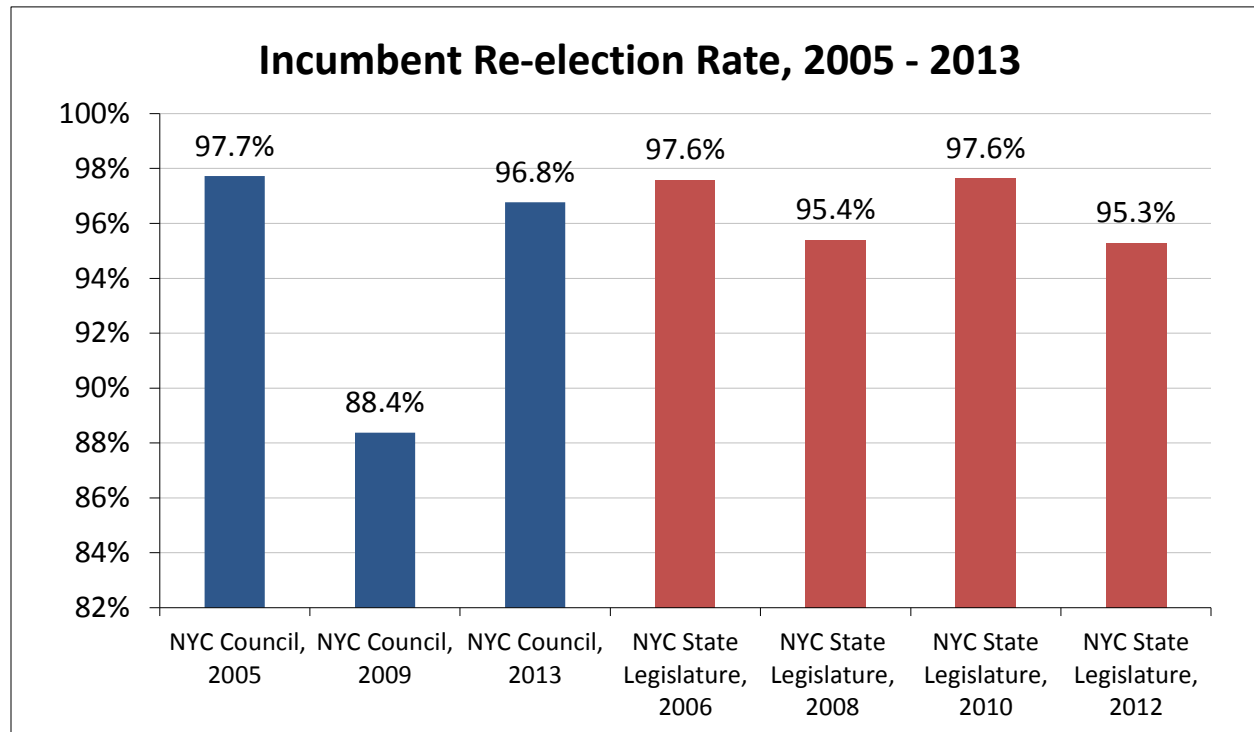
- 2005: Allan Jennings (1)
- 2009: Maria Baez, Alan Gerson, Kenneth Mitchell, Helen Sears and Kendall Stewart (5)⁴
- 2013: Sarah Gonzalez (1)

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)

⁴ 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 J below.



(Figure J)

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 most recent 2013 city council 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 of a challenger winning in spite of independent spending, 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 him, or against 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.

III. CITIZENS UNION RECOMMENDATIONS

Given the positive experience of the New York City campaign finance system in creating more competitive elections and increasing voter choice, thus creating more accountability for New York City's voters in municipal elections, Citizens Union supports its expansion to the state level. The particular appeal of the New York City model is its comprehensive approach to campaign finance reform.

Citizens Union recommends that New York State's government leaders build on the successful model of the New York City campaign finance system through implementation of the following reforms through the state budget authorizing legislation:

- **Inclusion of a public matching program** that empowers small donors;
- **Independent, effective enforcement** to prevent violations of campaign finance law while assisting candidates in compliance;
- **Lower contribution limits** for individual candidates and political parties;
- **"Pay to play" limitations for contractors and lobbyists;** and
- **Robust disclosure** of money in politics, from candidates, parties and independent political actors.

Citizens Union specifically recommends the following in these five important areas:

1. Public Financing of Elections

- a. A matching program should be created to empower small donors. We propose modeling a statewide system on the New York City system.
- b. The outlay of public funds should be curbed for candidates facing minimal opposition.
- c. Participating candidates should not be subject to spending limits, but rather the total amount of public funds available for each candidate should be capped at a reasonable limit.
- d. Only campaign contributions by natural persons should be matched by public monies (LLCs and LLPs, for example, would not have contributions matched).
- e. Public education including debates and distribution of a Voter Guide should be included as part of a public matching program.

2. Enforcement and Administration

- a. A new, independent oversight and enforcement body should be created with responsibility for public financing and all campaign finance law administration. This body should:
 - i. be independently and adequately funded;
 - ii. be vigorous in enforcing campaign finance law;
 - iii. monitor the public financing program and regularly propose improvements to enforcement and administration;
 - iv. serve as a candidate resource that assists with administration and compliance; and
 - v. write regulations and advisory opinions regarding oversight and enforcement of the campaign finance system.
- b. The Attorney General and local district attorneys should be able to investigate and prosecute alleged violations of the Election Law independent of the Board of Elections.
- c. Only one committee should be authorized per candidate per election.
- d. Fines should be significantly increased for exceeding contribution limits and violating campaign finance disclosure laws. The penalty for failing to file should be increased. Violations that are a class A misdemeanor or a class E felony should be subject to higher civil penalties, particularly for knowing and willing violations of campaign finance law.

3. Contribution Limits and “Pay to Play” Rules

- a. The individual contribution limit should be significantly reduced from any source for all candidates both within and outside the public financing system.
- b. Personal use of campaign contributions should be restricted by clarifying permissible and prohibited expenditures.
- c. “Pay-to-play” limitations should be enacted to further reduce contribution limits for lobbyists and contractors doing business with the state, and public matching funds should not be provided for contributions by lobbyists and contractors, similar to what is required in the New York City system.
- d. Contributions from non-political accounts of affiliated unions, LLCs, LLPs, and corporations should be treated as coming from a single source, and the enforcement body should produce a list of related sources for candidates to check contributions against.

- e. Limits in hard money – i.e. direct contributions – to state and local party committees should be lowered to a more reasonable level.
- f. “Housekeeping” accounts, which are currently unlimited soft money, should be subject to reasonable contribution limits. The housekeeping statute should be clarified, and enforcement and regulation of these funds should be improved so that housekeeping money is only used for party-building activities and not to support the election of a specific candidate.
- g. Contributions to political party committees, irrespective of whether such committees serve the state or local party or clubs, should count toward overall limits on party contributions.
- h. Party transfers to candidates should either be subject to a reasonable threshold, or should be limited to funds that have been raised in small donations consistent with contribution limits to candidates.
- i. “Warchest” restrictions should be put in place to limit the practice of transferring funds raised in one race for use in another.

4. Disclosure

- a. Disclosure of independent political spending – including all express advocacy, and broadcast communications, print advertising, direct mail and phone banking that meet an “electioneering communications” definition – should be improved, specifically linking expenditures to candidates and noting whether they are made in support of or opposition to the candidate and disclosure of funders should be provided on any advertisements.
- b. Two additional periodic campaign finance reports should be filed during the legislative session to reflect contributions given during the budget adoption and review process.
- c. Intermediaries or bundlers should be disclosed, including their names and employers.
- d. Periodic reports of campaign contributors should include the full name, home address, and employer/business name and address for each contribution of \$100 or more.
- e. Fines should be increased for violations of campaign finance disclosure laws.