



CITIZENS UNION OF THE CITY OF NEW YORK
Testimony to the City Charter Revision Commission

NYU Law School
June 14, 2018

Good afternoon Chair Perales and distinguished members of the New York City Charter Revision Commission. My name is Rachel Bloom and I am the Director of Public Policy and Programs at Citizens Union. We thank you for inviting us here today and giving Citizens Union the opportunity to publicly share our recommendations on campaign finance with you.

Over the last three decades, New York City's campaign finance program has positioned itself at the forefront of efforts to empower the electorate in the face of the ever increasing influence of big money in political campaigning. It is acclaimed throughout the country as a groundbreaking model of how a municipal campaign finance system can transform elections and bring about a much more diverse range of candidates. It holds this position as a national model for two reasons: the principles of independence, populism and, by extension, anti-corruption that inform its mission; and the deliberative steps by which it was developed and amended.

Citizens Union, a nonpartisan good government group, has been focused on the City's campaign finance system since its inception. The following are our thoughts, concerns, and recommendations for the Commission to consider on the subject.

1. The Issue of Increasing Public Funds for Candidates.

Citizens Union is neutral on the issue of increasing public funds given to candidates. However if the Commission chooses to do so, we note some concerns regarding the potential impact that should be highlighted for the Commission.

- **Qualified Expenditures.** Matching funds from the Campaign Finance Board can only be used for qualified expenditures as dictated by law. For instance, matching funds cannot be used in advance of the calendar year of an election, to pay family members or for ballot litigation. The more a candidate receives in matching funds, the less they will be able to spend on unqualified expenditures.
- **Documentation Requirements.** A candidate relying upon the CFB for matching funds is required to keep detailed receipts of all qualified expenditures that matching funds are used for and to

submit them for review. Candidates must maintain and may be required to produce originals and copies of checks, bills, or other documentation to verify contributions, expenditures, or other transactions reported in their disclosure statements. Citizens Union has concerns that if the amount of matching funds rises, so will the justifiably heavy burden of submitting all required paperwork to the CFB. It will be a considerably heavier lift for candidates to maintain all of these needed records in smaller and smaller matchable amounts. The right balance needs to be struck between the benefit to a candidate of public funds and the burden of the restrictions and requirements of receiving those funds.

2. Prohibit Public Funds for Consultants that also Lobby the City.

Citizens Union believes that participants in the city's campaign finance program be banned from using public matching funds to purchase strategic campaign consulting services from firms that also lobby. While we do not take the position that campaigns cannot hire these lobbyists, we do believe that public funds should not be allowed for this purpose. We are concerned about the possibility of lobbyists having undue influence with the politicians they may have helped to elect and while there may be limits on what the law can regulate, at least the public should not be paying for this.

3. Subject Candidate Coordination, but not Communication, with Union Members to Campaign Finance Regulations.

Citizens Union believes communications between an organization and its members should not be impeded in any way when those communications are not coordinated with a candidate and the entity in question does not exist primarily for the purpose of influencing elections. However, when a candidate directs a union to act as an arm of her/his campaign and conduct its campaign work, this must be considered a direct in-kind contribution and should be regulated as such under the city's campaign finance laws.

Under the current law, union member campaign activities when in coordination with a candidate are considered an in-kind donation, which is subject to contribution limits. When the activity is done independently of a candidate it is an independent expenditure. The 2010 Charter Revision Commission, following the *Citizens United* decision, which amplified the undue influence of money on elections, established requirements to disclose independent spending that met certain criteria. Following the voters' overwhelming approval of the referendum, the New York City Campaign Finance Board promulgated rules on the new law after soliciting input over the course of three public hearings in 2011 and 2012. Under those rules, most union member-to-member communications are exempt from disclosure – a stance that Citizens Union has and continues to support. Local Law 15, passed in 2013, exempts even more member-to-member communications from disclosure, which Citizens Union also supported.

Citizens Union also supports unfettered communications between *candidates* and union members, as the law allows, but believes strongly that coordination between candidates and members should trigger in-kind donations, subject to limits. Currently, under section 3-716 of the administrative code, a candidate is allowed to appear before members at union-sponsored events as long as they are not fundraisers. A CFB advisory opinion (2013-1) further clarifies what permissible communications between candidates and member organizations to more clearly differentiate between routine and informative communications and those in which candidates are directly deputizing union resources, including membership, to carry out campaign activities.

The current provisions provide the proper balance between allowing organizations to communicate freely with their members (in recognition of their first amendment rights to free speech and association) and ensuring that candidates do not receive unlimited in-kind donations from large membership organizations. To allow the latter, as has been suggested at previous hearings of this Commission, would invite to New York City the kind of money-driven politics that we see playing out in gross proportions on the national stage.

4. Improve Laws Regulating Elected Officials Nonprofits.

In 2016, Local Law 181 brought nonprofits that are affiliated with elected officials under certain campaign finance regulations, closely reflecting a proposal by Citizens Union. We believe that the New York City Council missed some key 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. 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 Conflict of Interest Board to develop criteria to define “control” in such a way. The proposal should also include prohibitions on elected officials soliciting funds for affiliated organizations.

5. Enact War Chest Restrictions.

Citizens Union supports reducing public funds for candidates facing minimal opposition and recommend enacting “war chest” restrictions to limit the transfer of funds by candidates from running from one office to another office.

6. Transfer Lobbying Reporting and Enforcement to the Campaign Finance Board.

Citizens Union is concerned that the City Clerk is responsible for lobbying oversight and enforcement when that position is held by someone who is appointed by the City Council, the very entity in which lobbying of elected officials occurs. We believe this is a conflict of interest that must be removed. The Campaign Finance Board is already familiar with obtaining information related to lobbyists given that the City’s matching funds system, which provides for public financing of campaigns, has special rules concerning contributions from lobbyists. Likewise, in determining thresholds for the size of permissible financial contributions to candidates, the Campaign Finance Board is familiar with navigating the Doing Business Database, which contains a listing of those who do business with the City, including lobbyists. Given this we recommend that lobbying and reporting responsibilities are transferred from the City Clerk’s office to the Campaign Finance Board to create a more independent and effective system of lobbying law enforcement, and that the Campaign Finance Board be given sufficient resources to take on these new responsibilities.

We thank the Commission for its work and consideration in addressing these important democratic reform issues facing New York City. We look forward to the continued work of the Commission and assisting in its assessment of what changes are needed to the form and function of our city government.