

# CITIZENS UNION OF THE CITY OF NEW YORK

## FAIR ELECTIONS FOR NEW YORK STATE: How Public Matching Creates Greater Voter Choice and Competition

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**Research and Policy Analysis by Citizens Union Foundation**

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## I. EXECUTIVE SUMMARY

New York State's campaign finance laws are sorely inadequate. Contributions remain far too high, disclosure is inadequate for voters to make informed choices at the polls, and enforcement of the laws that are on the books is much too lax. When these challenges are coupled with a system in which those who do business with the state are treated the same as average New Yorkers – and indeed give far more to political campaigns by taking advantage of existing loopholes – the voice of the public is too often drowned out, and there is a resulting lack of competition and choice at the ballot box.

Fortunately for the state, there is increasing public attention to these problems and a model campaign finance system in New York City that our legislative leaders and governor can look to for reform. The city's heralded public matching system enables more candidates to run for office and increases public confidence in government by ensuring that the contributions of those who seek to influence it are appropriately limited so everyone's voice is heard.

Our research has demonstrated that for the same constituents – voters living in New York City – New York City elections are more competitive and provide greater voter choice. New York City's strict campaign finance regulations, coupled with a matching funds program, have significantly increased the political power of the average New Yorker. New York State's campaign finance system on the other hand, is extremely lax in regulation, falling far short of the city system. It simply needs reform.

### **MAJOR FINDINGS**

Citizens Union examined city council elections in 2005 and 2009 and compared them to state legislative elections taking place within New York City in 2006, 2008, 2010 and 2012, and found a striking lack of competition and voter choice in state legislative elections. City council races, however, offered voters more choices, and were more competitive under several measures. A summary of our major findings is below.

#### **1. The New York City Council Featured More Contested Races than the State Legislature**

- **Uncontested Seats in both the Primary and General Election**
  - **In nearly 21 percent of state legislative seats in New York City, voters had *no choice at the polls*.** The incumbent was the only candidate running for both the primary and general election.
  - **City council seats, in contrast, were wholly uncontested in only about 9 percent of seats.**
  
- **Primary Elections**
  - **56 percent of council seats had a contested primary, while less than one-third of state legislative primaries were contested.**

- **General Elections**
  - **City council races were contested 81 percent of the time, while state legislative seats representing the city were contested 75 percent of the time.**
    - **Assembly races were contested only 72 percent of the time.**
    - **Senate races were about as competitive as races for the city council, contested 82 percent of the time.**

## 2. City Council Primary Races Featured Greater Choice of Candidates<sup>1</sup>

- **All Races**
  - **City council primaries featured an average of about 4 candidates, while the vast majority of state legislative primaries featured only 2 candidates.**
    - For the state senate and assembly, only 2 candidates were on the ballot in more than two-thirds of primaries.
    - In city council primary elections, only 33 percent of races had only 2 candidates.
- **Races with Incumbents**
  - **Incumbent primary elections also show that council elections featured greater voter choice and competition based on the number of candidates running for office.**
    - **41 percent of city council incumbent primaries featured only 2 candidates, versus over 80 percent of incumbent primaries in state legislative seats in the city which featured only 2 candidates.**
    - **Approximately 27 percent of incumbent primary re-election races for city council positions have featured four or more candidates. Only 4 percent of state assembly primaries with incumbents and no state senate incumbent primaries featured four or more candidates.**
- **Open Seats**
  - **Open city council primary elections featured an average of about 5 candidates per race.** Four or more candidates ran in approximately 76 percent of open city council elections.
  - **Open state legislative races featured fewer candidates, with an average of 2 or 3 candidates.**

## 3. Incumbents Are Re-Elected at Greater Rates for State Legislative Seats in New York City

- **Overall Re-Election Rate**
  - **Between 2005 and 2012, incumbents were re-elected in about 93 percent of city council races.**
  - **Incumbents in the state legislature from New York City were re-elected 97 percent of the time from 2006 to 2012.**

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<sup>1</sup>The number of candidates was not examined for general elections, as contested general elections typically feature two major-party candidates, and third party candidates are not typically competitive, gathering 10 percent or less of the vote.

- **2005 vs 2009 for City Council**
  - **Council races may have become more competitive due to the public match increase from 4-1 to 6-1, which took effect for the 2009 elections.**
    - **Before this change was made, the incumbent re-election rate for city council incumbents was 97.7 percent**, on par with the state legislative rate.
    - **After the public match increased, the incumbent re-election rate dropped by ten points to about 87 percent.** The Council's controversial vote on term limits was also a contributing factor, though public matching may have aided challengers in their efforts to unseat incumbents.

#### **4. Challengers are Able to Raise More Funds to Run Competitive Races at the City Level**

- **Funds Raised by Incumbents vs Challengers**
  - **At the state level in 2010, incumbents in the state had an approximately 2.3:1 financial advantage over their challengers.**
  - **In city council races in 2009, the ratio of incumbent to challenger funds was much closer at 1.4:1**, all while incumbents who participated in the program had similar access to public funds.

### ***CITIZENS UNION'S RECOMMENDATIONS***

Citizens Union recommends that New York State build on the successful model of the New York City campaign finance system through implementation of the following reforms:

- **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;
- **Reasonable 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.

Our detailed recommendations are available on page 31.

## **II. ACKNOWLEDGEMENTS**

This report was written by Rachael Fauss, Policy and Research Manager, with writing and research assistance from Omair Ahmed, Policy and Research Intern. Editors include Dick Dadey, Executive Director; Alex Camarda, Director of Public Policy; and Adelia Harrison, Executive Assistant. Additional writing and research assistance was provided by Lillian Smith and Gus Bowe, Policy and Research Interns, and Teodora Popovska, IREX Community Solutions Fellow.

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### III. INTRODUCTION

New York State's campaign finance system is in dire need of comprehensive reform. New York State has long had both dismally low voter participation and a state government that too often falls short of the promises of efficiency and accountability. While reforms have been put in place recently with regard to ethics and the state's prospective redistricting process, concerns remain regarding one particular area of accountability: the state's election and campaign finance systems. It has been nationally recognized that New York's campaign finance system results in a lack of accountability. Indeed, New York State recently received an overall grade of "D" from the Center for Public Integrity for its high corruption risk, and a "D-" for its campaign finance system.<sup>2</sup> Fortunately for New York State, there is a model campaign finance system which is in place locally in New York City which the state should look to in achieving substantive campaign finance reform. The city model incorporates a public matching system with independent enforcement, "pay to play" limitations, and lower contribution limits, among other components, creating an effective campaign finance system that works well for New York City voters.

In examining what the different systems mean for voters, Citizens Union researched the competitiveness of both city council and state legislative elections occurring within New York City. While other factors such as ballot access and the partisan drawing of district lines contribute to the lack of accountability, Citizens Union believes that the state's campaign finance system is a major contributor to the lack of competition and voter choice at the polls. Our research has demonstrated that for the same constituents – voters living in New York City – New York City elections are more competitive and provide greater voter choice. New York City's strict campaign finance regulations, coupled with a matching funds program, have significantly increased the political power of the average New Yorker. New York State's campaign finance system on the other hand, is extremely lax in regulation, falling far short of the city system. It simply needs reform.

Fortunately, there have been recent political events that seem to suggest the possibility of comprehensive reform being on deck in the horizon. The 2012 presidential and congressional elections were the most expensive elections in U.S. history. In particular, the increased amount of independent spending as a result of the *Citizens United* U.S. Supreme Court decision has resulted in voter disenchantment with the political process.

At the state level, Governor Cuomo in his 2012 State of the State address advocated for campaign finance reform and a public matching system, stating, "a smaller percentage of the population gives to candidates for election to state office in New York than in any other state. We must reconnect the people to the political process and their government."<sup>3</sup> During the 2011-

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<sup>2</sup> Center for Public Integrity, New York Corruption Risk Report Card. February 2012. Web. <[http://www.stateintegrity.org/new\\_york](http://www.stateintegrity.org/new_york)>

<sup>3</sup> Cuomo, Andrew M. "State of the State Address 2012." State of the State. Albany. Speech. <<http://www.governor.ny.gov/assets/documents/Building-a-New-New-York-Book.pdf>>

2012 legislative session, bills implementing comprehensive campaign finance reform have been introduced in both the State Senate and Assembly.<sup>4</sup>

Citizens Union believes that a New York State campaign finance system should be modeled after New York City's comprehensive system – in which public matching funds are provided and the size of contributions are limited – to make statewide elections more competitive and increase state-level political accountability. Given the momentum for reform and growing public support, now is the time for New York State to enact comprehensive campaign finance reform.

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<sup>4</sup> Cuomo, Andrew M. "State of the State Address 2012." State of the State.

Reisman, Nick. "Senate Democrats Push Prod and Nudge on Campaign Finance Reform." Capital Tonight, 1 May 2012. Web. 01 May 2012. <<http://capitaltonightny.ynn.com/2012/05/senate-democrats-push-prod-and-nudge-on-campaign-finance/>>.



## IV. CAMPAIGN FINANCE IN NEW YORK STATE VS NEW YORK CITY

Given a “D-” by the Center for Public Integrity, New York State’s campaign finance system is among the worst in the nation. This is in sharp contrast to the New York City system, which has been described as a “model for the nation.”<sup>5</sup> Of states with contribution limits, New York has the highest: candidates for governor can receive up to \$60,800 from individuals, and parties can receive up to \$102,300 from individuals.<sup>6</sup> Limits on lobbyist and corporate donations to political parties are ineffective in practice and enforcement of campaign finance violations is either “nonexistent or extremely weak.”<sup>7</sup> There are many loopholes, and the public is often denied access to important information regarding political spending. On the other hand, the city system has strict disclosure laws, tight contribution limits, and an important matching funds program. This matching funds program has also significantly “expanded the diversity of candidates and enhanced the voices of small donors.”<sup>8</sup>

As this report demonstrates, Citizens Union found that city council elections were more competitive than state legislative races taking place in New York City during the same time period of 2005 - 2012, especially after the matching funds ratio was raised from 4-to-1 to 6-to-1. Citizens Union believes that the city system has enhanced voter choice and competition, while the state system has limited voter choice and competition, pointing to the relative efficacy of New York City’s campaign finance system. The differences in the two campaign finance systems are described below, including: disclosure, contributions, doing business or “pay to play” limitations, fines and enforcement, personal use of campaign funds, and voter education.

### A. New York State’s Campaign Finance System

Campaigns and political spending in New York State are regulated through a weak system of high contribution limits and lax enforcement of the law. Laws and regulations governing campaign finance are implemented by a bipartisan, appointed State Board of Elections, with two Republican and two Democratic appointees, which must conduct elections, receive campaign disclosure reports, and enforce campaign finance laws and regulations. Given the equal number of appointees per party, however, enforcement decisions often divide along party lines, preventing investigations from moving forward and thwarting effective application of the law.

In several areas that are key to an effective campaign finance system, including disclosure, contribution limits, doing business or “pay to play” limitations, fines and enforcement, personal use of campaign funds, and voter education, New York State fails to serve its New York

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<sup>5</sup> Malbin, Michael; Bruscoe, Paul and Glavin, Brenden. “Small Donors, Big Democracy: New York City’s Matching Funds as a Model for the Nation and States.” Election Law Journal. Volume 11. 2012. Web <[http://www.cfinst.org/pdf/state/NYC-as-a-Model\\_ELJ\\_As-Published\\_March2012.pdf](http://www.cfinst.org/pdf/state/NYC-as-a-Model_ELJ_As-Published_March2012.pdf)>

<sup>6</sup> Spector, Joseph. “Campaign Contribution Limits In New York Going Up, Not Down.” Politics on the Hudson. The Journal News, 21 Jan. 2011. Web. <<http://polhudson.lohudblogs.com/2011/01/21/campaign-contribution-limits-in-new-york-going-up-not-down/>>.

<sup>7</sup> Center for Public Integrity, New York - Political Financing Survey. February 2012. Web. <[http://www.stateintegrity.org/newyork\\_survey\\_political\\_financing](http://www.stateintegrity.org/newyork_survey_political_financing)>

<sup>8</sup> Cuomo, Andrew M. “Clean Up Albany: The New New York Agenda.” 2010. Web.

<[http://www.andrewcuomo.com/system/storage/6/2a/3/1101/andrew\\_cuomo\\_clean\\_up\\_albany.pdf](http://www.andrewcuomo.com/system/storage/6/2a/3/1101/andrew_cuomo_clean_up_albany.pdf)>

constituents effectively. These areas are detailed below. For a quick summary of this comparison, see the Appendix.

### **i. Disclosure**

All candidates who raise or spend more than \$1,000 in a given period must file a report with the State Board of Elections. In addition to two semi-annual reports in January and June which are required when any funds are raised or spent, candidates for state office are required to file three campaign disclosure reports for each election (primary and general) during the campaign season. The three election-year reports are required 32 and 11 days prior, as well as 10 days after the primary and/or general election. No disclosure reports are required during the six-month legislative session when most political contributions are made and the state budget is passed, making it difficult to track contributions that are given when important decisions are being made. Candidates are additionally required to file statements for contributions or loans in excess of \$1,000 made reporting the final days of the campaign within 24 hours of the transaction, though this filing requirement is widely ignored. In spite of these non-rigorous requirements, however, many candidates and committees repeatedly fail to file disclosure statements. For the July filing date in 2012, an election year, over 2,000 committees failed to file disclosure reports, which in total had collected over \$31 million.<sup>9</sup>

Candidates for state office are not required to report the occupations and employers of their contributors, making it difficult to track and know the sources of political contributions. New York additionally has only limited disclosure requirements for independent expenditures by advocacy organizations for election-related advertising.

### **ii. Contribution Limits**

Contribution limits vary depending on the entity receiving or giving the funds. “Hard money” contributions, with lower limits and stricter uses, are contributions given directly to candidates by individuals, unions, or corporations. “Soft money” contributions, with higher limits and broader uses, are contributions given to political parties or party housekeeping accounts. Party housekeeping contributions are unlimited, and between 1996 and 2006, corporations and other business entities donated over \$32 million to state party housekeeping accounts.<sup>10</sup> This loophole has rendered other limits on donations useless, however. The following chart outlines the current contribution limits in New York State. Funds may be raised and used for the primary only if the election is contested.

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<sup>9</sup> King, David Howard. “Campaign Committees Operate with Little Oversight, Groups Says.” Gotham Gazette. 27 Aug. 2012. Web. <<http://www.gothamgazette.com/index.php/topics/open-government/1438-campaign-committees-operate-with-little-oversight-groups-say>>

<sup>10</sup> Ciara Torres-Spelliscy and Ari Weisbard. “What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action.” Ciara Torres-Spelliscy and Ari Weisbard.

<b>Contribution Limits in New York State 2012 Election Cycle</b>							
<b>LIMITS</b>	<b>To Candidates for Assembly</b>	<b>To Candidates for Senate</b>	<b>To Candidates for Governor</b>	<b>To PACS</b>	<b>To Party or Constituted Committees</b>	<b>To Party Housekeeping</b>	<b>Maximum Aggregate Amount for all Contributions</b>
<b>From Individuals (LLCs and LLPs are considered individuals by the State Board of Elections)</b>	\$4,100 Primary <u>\$4,100</u> General \$8,200 Total	\$6,500 Primary <u>\$10,300</u> General \$16,800 Total	\$19,700 Primary <u>\$41,100</u> General \$60,800 Total	\$150,000 Year	\$102,300 Year	Unlimited	\$150,000 Year
<b>From Unions</b>	\$4,100 Primary <u>\$4,100</u> General \$8,200 Total	\$6,500 Primary <u>\$10,300</u> General \$16,800 Total	\$19,700 Primary <u>\$41,100</u> General \$60,800 Total	\$150,000 Year	\$102,300 Year	Unlimited	\$150,000 Year
<b>From Corporations (related subsidiaries may make separate contributions)</b>	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	Unlimited	\$5,000 Year
<b>From Political Action Committees (PACs)</b>	\$4,100 Primary <u>\$4,100</u> General \$8,200 Total	\$6,500 Primary <u>\$10,300</u> General \$16,800 Total	\$19,700 Primary <u>\$41,100</u> General \$60,800 Total	\$150,000 Year	\$102,300 Year	Unlimited	\$150,000 Year
<b>From Political Parties</b>	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

(Figure A)<sup>11</sup>

Corporations can avoid the \$5,000 limit by having their subsidiaries make additional contributions. Individuals can also avoid contribution limits by setting up shell limited liability corporations (LLCs) or using commonly controlled LLCs or partnerships (LLPs) to make multiple over-the-limit, but allowable, contributions.

### iii. Doing Business or “Pay to Play” Limitations

Those who do business with the state have no additional restrictions on the contributions that they can make to candidates for public office. Currently, individuals with special interests can lobby by day and attend fundraisers outside of government offices in the evenings.<sup>12</sup> Contractors and lobbyists can give as both corporations and individuals, and by using subsidiary LLCs and

<sup>11</sup> Table Updated and Adapted from “What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action.” Ciara Torres-Spelliscy and Ari Weisbard. Please note that party housekeeping accounts are for the maintenance of a permanent party headquarters and staff, and ordinary activities which are not for the express purpose of promoting the candidacy of specific candidates. Contributions to party housekeeping are not included in the maximum aggregate contribution limits.

<sup>12</sup> Torres-Spelliscy, Ciara. “Testimony for the New York State Commission on Public Integrity.” Brennan Center for Justice. New York University School of Law, 08 Sept. 2009. Web.

[http://www.brennancenter.org/content/resource/brennan\\_center\\_testimony\\_for\\_the\\_new\\_york\\_state\\_commission\\_on\\_public\\_integrity/](http://www.brennancenter.org/content/resource/brennan_center_testimony_for_the_new_york_state_commission_on_public_integrity/).

LLPs. Lobbyists also “bundle” contributions from multiple clients to maximize their fundraising contributions and influence, and there is no separate disclosure of this activity.

#### **iv. Fines and Enforcement**

The maximum fine for failing to file a disclosure statement is \$500, and knowingly and willfully failing to file the statement within 10 days of the deadline is just a misdemeanor. Penalties are also enforced for several other violations, including a misdemeanor for knowingly and willfully accepting or donating an amount above the contribution limit. It is a class E felony to evade or attempt to evade contribution limits by making expenditures outside of registered candidate committees. There are no regular audits, however, and there is little on-going oversight provided by the Board of Elections to uncover such violations and enforce compliance, as noted previously with regard to the filing of disclosure reports. While the State Board of Elections has responded to claims<sup>13</sup> that it has not sufficiently enforced the law by stating that it has initiated over 5,000 actions since 2006 to collect over \$1.5 million in fines, even when violations are found and fines are issued, the fines are not always collected. In 2009, for example, it was revealed that 1,421 state-level candidates had ignored nearly \$1.7 million in fines. Many of those fines were accumulated in the 1980s and 1990s. Often, candidates did not even know they were fined.<sup>14</sup>

#### **v. Personal Use of Campaign Funds**

While personal use of campaign funds is technically prohibited, these funds may be legally used for activities that involve the holding of a public office or party position. This broad exception has resulted in the abuse of campaign funds in some cases, allowing the use of such funds on items unrelated to campaigning. Some state lawmakers, in fact, have used their campaign funds to lease luxury cars, pay for country club membership, travel abroad, and pay for legal fees when legislators or candidates run into trouble with the law.<sup>15</sup>

#### **vi. Voter Education**

New York State does relatively little to educate voters about upcoming elections and the choices they have on Election Day. The New York State Board of Elections maintains a website in which it explains the election process to New York voters, as do local boards of election, though this information is often presented using technical terms voters may not be familiar with. Though Governor Cuomo recently instituted a reform that allows voters to register or update their voter registration online through the Department of Motor Vehicles, this information is not easily found on the State Board of Elections website, though it should be noted that the Board of Elections in the City of New York provides this link on its homepage.

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<sup>13</sup> “Campaign Committees Operate with Little Oversight, Groups Says.” Gotham Gazette.

<sup>14</sup> Scott, Brendan. “Owe, No! Top Pols Ignore Elex Fines.” New York Post. NYP Holdings, 13 Apr. 2009. Web. 22 May 2012. <[http://www.nypost.com/p/news/regional/item\\_cPkQVezV20Dlvx5Q4H2rgK](http://www.nypost.com/p/news/regional/item_cPkQVezV20Dlvx5Q4H2rgK)>.

<sup>15</sup> Ciara Torres-Spelliscy and Ari Weisbard. “What Albany Could Learn from New York City: A Model of Meaningful Campaign Finance Reform in Action.” Ciara Torres-Spelliscy and Ari Weisbard.

The boards also mail registered voters information on certain Election Day processes, including the location of local poll sites. Thirty-eight of the 58 local boards of election in New York State provided online sample ballots in 2011, some through poll site locators which allows users to see a model of the exact ballot they will use on Election Day. The boards of election do not provide any information about specific candidates running for office other than their campaign finance filings.

## **B. New York City's Campaign Finance System**

After several ethics scandals in the mid-1980s, New York City adopted the Campaign Finance Act, establishing the Campaign Finance Board (CFB) as an independent agency tasked with regulating the financing of political campaigns. New York City's campaign finance system is centered on an important public matching funds system, a voter education program, and strict rules and regulations limiting the role of private fundraising in political campaigns.<sup>16</sup> New York City's campaign finance system has become, according to a study by the Campaign Finance Institute, a "model for jurisdictions across the country."<sup>17</sup>

### **i. Public Matching Funds Program**

The matching funds program is an integral part of New York City's campaign finance system. In this program, every participant is eligible receive public fund payments from the city budget for the first \$175 of every donation they receive. These payments are apportioned at a 6:1 basis, meaning the Campaign Finance Board allocates six dollars to every participating candidate for every dollar out of the first \$175 that is received. For example, a \$175 contribution from an individual voter to a participating candidate is worth \$1,225 in total: \$1,050 in matching funds and \$175 from the original contribution. Larger contributions are also matched, but only up to the first \$175, so a \$1,000 contribution is worth \$2,050: \$1,050 in matching funds and \$1,000 in the original contribution. The program therefore encourages small donations. Participating candidates agree to spending restrictions, which reduces overall electoral expenditures, limiting the seemingly ever-increasing cost of running a campaign.

The qualifying thresholds also put additional emphasis on obtaining small donations. To qualify for public financing in a mayoral race, for example, a candidate must first obtain a minimum of 1,000 contributors and \$250,000 in total contributions.<sup>18</sup> For candidates to meet both thresholds, they must appeal to a wider constituent base, obtaining more small donations. This program also levels the playing field for challengers to established incumbents and lessens the importance of fundraising to the political process.

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<sup>16</sup> "A Brief History of the CFB." Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <[http://www.nyccfb.info/candidates/candidates/overview.aspx?sm=candidates\\_overview](http://www.nyccfb.info/candidates/candidates/overview.aspx?sm=candidates_overview)>.

<sup>17</sup> Malbin, Michael J. and Peter W. Bruscoe. "Small Donors, Big Democracy: New York City's Matching Funds as a Model for the Nation and States." The Campaign Finance Institute.

<sup>18</sup> "Contribution Limits, Spending Limits, and Minimum Thresholds." Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <<http://www.nyccfb.info/candidates/candidates/limits/2013.htm>>.

<b>Eligibility Thresholds For Participation in Public Matching System 2013 New York City Elections</b>				
	<b>Mayor</b>	<b>Public Advocate or Comptroller</b>	<b>Borough President</b>	<b>City Council</b>
<b>Minimum Contribution</b>	250,000	125,000	10,000-50,094 <sup>19</sup>	5,000
<b>Minimum Number of Contributors</b>	1,000	500	100 <sup>20</sup>	75 <sup>21</sup>

(Figure B)<sup>22</sup>

Strict fundraising limits, important disclosure requirements and effective enforcement are also in place as part of the system to ensure taxpayer money is used appropriately and that the public more aware of the donors and contributors to candidates running for city office. These regulations work together with the matching funds program to create a relatively clean political process for New York City’s local elections. The public matching program is now used by the vast majority of New York City candidates: more than 90 percent of New York City candidates participated in the matching funds program in 2009, abiding by its limits and regulations.<sup>23</sup>

## ii. Disclosure

In addition to two semi-annual reports, four disclosure reports must be filed with the Campaign Finance Board before an election, whether general or primary, including two within a month of an election. After an election, there is another report due within ten days of each election. There are also required daily disclosures in several special circumstances. For example, if a candidate accepts a large donation in excess of \$1,000 or makes an expenditure of \$20,000 within fourteen days of an election, a report must be filed within 24 hours of the transaction.

There are several important additional pieces of information that must be reported by candidates. Candidates must report the occupation, business address, and employer of anyone who donates over \$99. If there is a personal conflict of interest for the candidate in the form of a business relationship or familial relationship between a candidate and a donor, the candidate must disclose such a relationship and the amount of the donation. Candidates must also disclose intermediaries that collect donations for candidates – also known as “bundlers” – who raise above \$500.<sup>24</sup>

<sup>19</sup> For borough president, the threshold dollar amount is based upon the number of persons living in each borough. The dollar amount (based on the 2010 census) for each borough is: Bronx, \$27,702; Brooklyn, \$50,094; Manhattan, \$31,717; Queens, \$44,614; and Staten Island, \$10,000.

<sup>20</sup> Must be borough residents.

<sup>21</sup> Must be district residents.

<sup>22</sup> "Contribution Limits, Spending Limits, and Minimum Thresholds." Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <<http://www.nycffb.info/candidates/candidates/limits/2013.htm>>.

<sup>23</sup> Malbin, Michael J. and Peter W. Bruscoe. "Small Donors, Big Democracy: New York City’s Matching Funds as a Model for the Nation and States." The Campaign Finance Institute.

<sup>24</sup> "Campaign Finance Board Rules." Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <<http://www.nycffb.info/act-program/rules/index.aspx#top3>>.

### iii. Contribution Limits

<b>Contribution Limits Under New York City Campaign Finance System 2013 Election Cycle</b>			
<b>LIMITS</b>	<b>To Candidates for City Council</b>	<b>To Candidates for Borough President</b>	<b>To Candidates for Mayor, Comptroller, or Public Advocate</b>
<b>From Individuals, PACs, Unions, and Party Committees</b>	\$2,750 General and Primary Combined	\$3,850 General and Primary Combined	\$4,950 General and Primary Combined
<b>From Corporations, LLCs, Partnerships, and LLPs</b>	Contributions are <u>NOT ALLOWED.</u>	Contributions are <u>NOT ALLOWED.</u>	Contributions are <u>NOT ALLOWED.</u>

(Figure C)<sup>25</sup>

The rules governing political contributions are relatively simple for New York City's local elections. Candidates – whether or not they participate in the public matching program – must not accept any direct or indirect contributions from corporations (or related businesses) and must abide by strict contribution limits. The contributions limits are provided in Figure C above. Political Action Committees, unions, and party committees must abide by the same limits as individuals. “Soft Money” contributions, those donated by political committees, and “Hard Money” contributions, those given directly to candidates, are treated equally under the law by the New York City Campaign Finance Board.<sup>26</sup>

### iv. Doing Business or “Pay to Play” Limitations

<b>Contribution Limits for Those Who Do Business with the City Under New York City Campaign Finance System 2013 Election Cycle</b>			
	<b>Mayor, Public Advocate, or Comptroller</b>	<b>Borough President</b>	<b>City Council</b>
“Doing Business” Limit	\$400	\$320	\$250

(Figure D)<sup>27</sup>

Individuals involved in business dealings with city government must abide by strict contribution limits. These limits ensure that lobbyists and representatives of institutions that have or are seeking business with the city do not have undue influence over the laws, regulations and contracts that would benefit them directly rather than the broader public interest.<sup>28,29</sup> These individuals and organizations are disclosed online to the public through the city's Doing Business Database.<sup>30</sup>

<sup>25</sup> "Contribution Limits, Spending Limits, and Minimum Thresholds." Campaign Finance Board.

<sup>26</sup> "Contribution Limits, Spending Limits, and Minimum Thresholds." Campaign Finance Board.

<sup>27</sup> "Contribution Limits, Spending Limits, and Minimum Thresholds." Campaign Finance Board.

<sup>28</sup> "Campaign Finance Act - Campaign Finance Disclosure Statements" Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <<http://www.nycffb.info/act-program/CFACT.htm>>.

<sup>29</sup> "Contribution Limits, Spending Limits, and Minimum Thresholds." Campaign Finance Board.

<sup>30</sup> See the Doing Business Database online at [www.nyc.gov/bizsearch](http://www.nyc.gov/bizsearch).

## **v. Fines and Enforcement**

The Campaign Finance Board has relatively strict penalties aimed at curbing any rule-breaking by candidates or donors. If a candidate accepts a corporate donation or a donation from a PAC that is not registered with the city government, the candidate is penalized, regardless of intent. If there was a deliberate violation, the associated penalty and fine is higher. If the contribution is not returned, the penalty can total up to \$10,000. Even if the contribution is returned, the penalty can be \$125. In enforcing the law, the CFB is required to audit every campaign's filings, though it can also receive complaints from the public for potential investigation. Though auditing every campaign can be time consuming for the CFB, it means that candidates know their campaigns are being checked for potential violations.

## **vi. Personal Use of Campaign Funds**

All campaign funds, public and private, cannot be used for any activity unrelated to a political campaign. If a candidate spends funds on personal use, then the penalty can be as much as \$10,000 per infraction.<sup>31</sup> Candidates cannot pay for automobile purchases, personal grooming services, or gifts using their campaign funds. The law is extremely strict, and only allows the use of campaign funds for campaign-specific events; for example, candidates cannot pay for travel that involves both personal and campaign activities with public funds. Rather, candidates must divide their costs and can pay for campaign activities by using campaign money separately.<sup>32</sup>

## **vii. Voter Education Efforts**

The Campaign Finance Board also manages several different voter education efforts. Most recently as a result of the work of the 2010 City Charter Revision Commission, the CFB has a renewed and expanded focus on voter education. The Commission's new title is the Voter Assistance and Advisory Committee, which is housed in the Campaign Finance Board and importantly shares staff and resources. The CFB also manages a debate program that requires every citywide candidate participating in the matching funds program to participate in two public debates before both the primary and general elections. Through the debate program, matching-funds participants debate their views publicly, exposing their policy positions to a broader audience.<sup>33</sup> The Campaign Finance Board is also required to mail a Voter Guide to all eligible voting households before every city election, and additionally has created an online version of the directory that includes information on candidates beyond those just running for city office, such as congressional, state and judicial elections. The printed voter guide lists information about voting, a list of candidates on the ballot, profiles of the candidates, and information on ballot proposals and propositions.<sup>34</sup>

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<sup>31</sup> "Penalty Assessments for Certain Violations." Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012.

[http://www.nycfb.info/candidates/candidates/penalty\\_guidelines/2009.htm?sm=candidates](http://www.nycfb.info/candidates/candidates/penalty_guidelines/2009.htm?sm=candidates) >.

<sup>32</sup> "Campaign Finance Board Rules - Public Funds." Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <<http://www.nycfb.info/act-program/rules/index.aspx#top5>>.

<sup>33</sup> "Debate Program - New York City Campaign Finance Board" Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <<http://www.nycfb.info/debates/overview.htm>>.

<sup>34</sup> "About NYC's Voter Guide" Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <[http://www.nycfb.info/public/voter-guide/about.aspx?sm=public\\_00](http://www.nycfb.info/public/voter-guide/about.aspx?sm=public_00)>.



## V. What the Different Campaign Finance Systems Mean for Voters

New York City and New York State's campaign finance systems are very different in structure. New York City's campaign finance system includes effective oversight of campaign fundraising and expenditure activity, and includes a public financing system, whereas New York State's campaign finance system has lax limitations on fundraising and allows greater control of the political system by large donors. Given these differences, Citizens Union compared the competitiveness of elections within New York City at the state and local level and found that city council elections are significantly more competitive and provide for more accountability than state legislative elections occurring within New York City. Citizens Union also found that voters have more choices in city-level elections than state-level elections. The difference in the competitiveness of elections is not due to different voters, because the constituents are the same – New York City's voters. Rather, the difference in competitiveness is in part due to the differences between the two campaign finance structures.

### A. Methodology

New York City and New York State run very different campaign finance systems, and as a result, there are major consequences. Citizens Union measured these consequences by looking at indicators that aim to explain the difference in choice and competition of state legislative and city council elections within New York City for elections taking place in 2005 and 2009 for city council, and in 2006, 2008, 2010 and 2012 for the state legislature. Citizens Union only targeted state legislative elections taking place in New York City to evaluate the same pool of voters who are eligible to participate in city council elections. Citizens Union focused on primary elections given the heavy enrollment of voters in the Democratic Party, though also includes data regarding general elections. All data was obtained from the Board of Elections in the City of New York and analyzed by Citizens Union.<sup>35</sup>

Citizens Union used the following metrics to highlight the difference between city and state elections:

- i. **Uncontested Races:** the number of races in which there is no challenger. Citizens Union examined primary and general elections, though please note that because New York City leans heavily Democratic, primary elections are often determinative. City council elections and state legislature elections within New York City were contrasted to highlight the effects of the differences in campaign finance law.
- ii. **Number of Candidates Running in Primaries:** number of candidates running in city council or state legislative primary elections within New York City. If more candidates are running in primaries, then elections are more competitive. Citizens Union did not examine general elections, as evaluating the number of candidates beyond two in general elections would necessarily include third-party candidates, who generally do not receive more than 10 percent of the vote.

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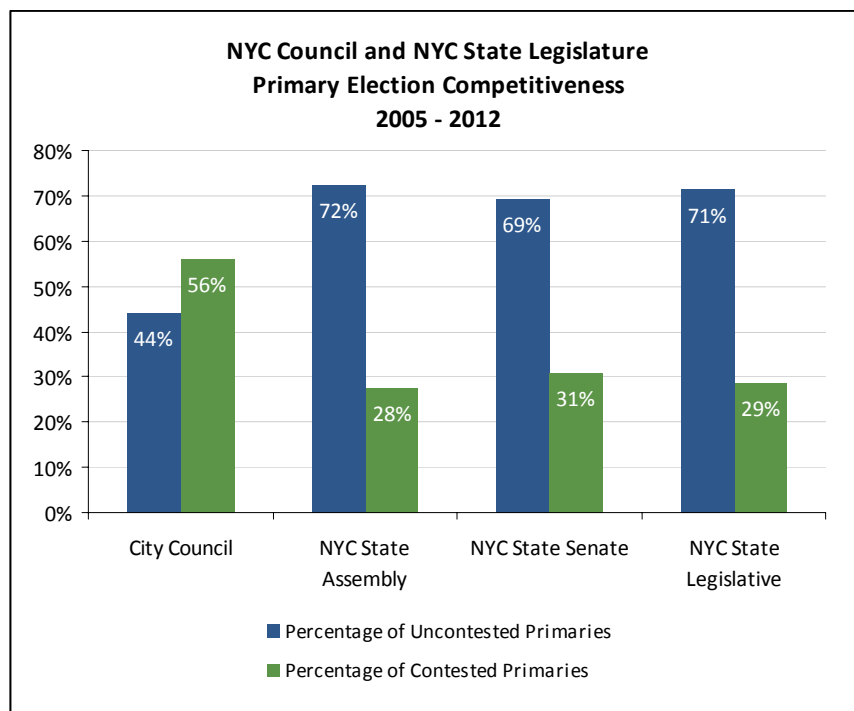
<sup>35</sup> New York City Government. New York City Board of Elections. Elections Results. Web. <<http://vote.nyc.ny.us/results.html>>

**iii. Incumbent Re-Election Rate:** measures the rate at which incumbents are re-elected, looking at the loss of seats as a result of the primary and general election. Because incumbents have several advantages over their competitors, such as greater access to funding and greater name recognition, elections in which challengers perform well should be considered relatively competitive.

It should be noted that other than the campaign finance systems in place at the state and city levels, a major structural difference is the presence of term limits for members of the city council. 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 on the competitiveness of state elections by looking at several of the metrics above as they related only to races involving incumbents. This analysis is presented in section (h) below.

**B. Uncontested Races**

**Primary Elections**

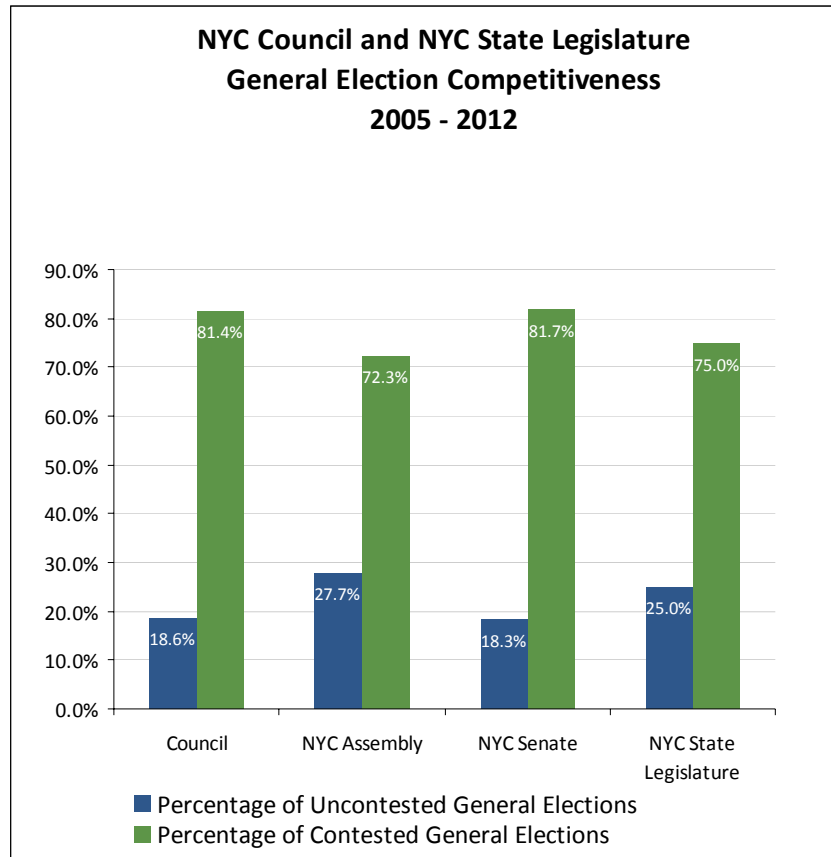


(Figure E)

Primary elections for city council are more competitive than elections for state legislature when examining the number of contested races. As seen in Figure E above, in the past two city council elections – in 2005 and 2009 – approximately 56 percent of contests for district seats have held a primary, while only about one-third of legislative party contests from 2006 to 2012 were contested. Sixty-nine percent of senate districts and 72 percent of assembly districts within the New York City featured no primary for either party in the past four state legislative election

years. For the most recent election cycle in 2012, a total of 62 state legislative seats were uncontested in the primary election out of 91 seats in New York City: two-thirds of all races. New York City is one of the most Democratic areas in the United States; Democrats outnumber Republicans in the city by a six-to-one margin.<sup>36</sup> Therefore, Democratic primary elections should be relatively competitive within the city. Yet, there were forty-four uncontested state assembly primary elections within New York City in 2012: more than half of the districts had no primary election. On the other hand, there were only eighteen uncontested city council primary elections in 2009: less than thirty percent of all elections.

### General Elections



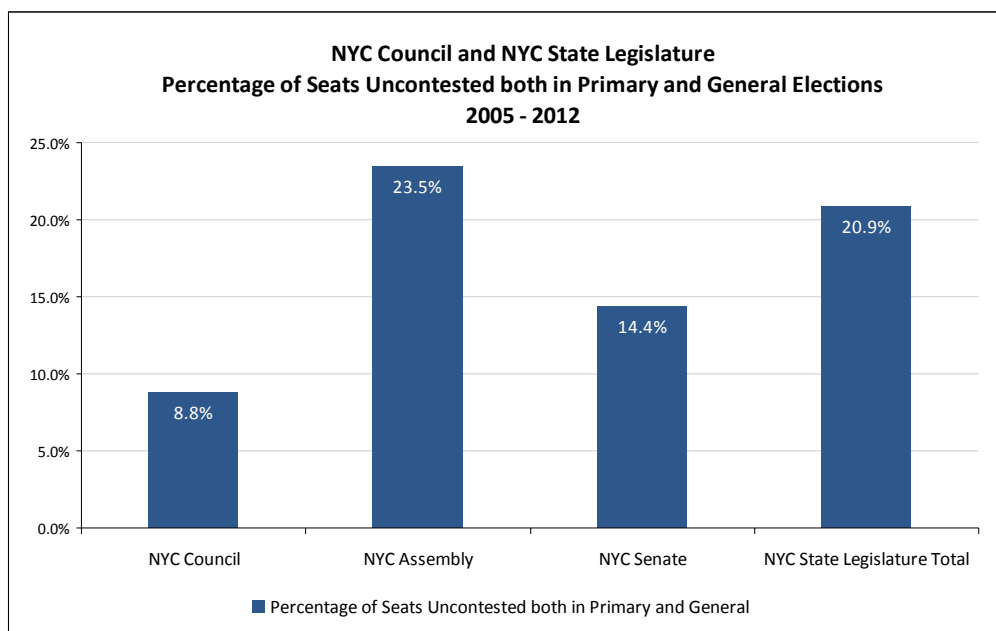
There are different dynamics at play for General Elections within New York City, but again, when comparing city council races to state legislative races occurring within the city, there are fewer uncontested races, on average. General election contests for city council in New York City were contested 81 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; races for senate were as competitive as for the city council, contested about 82 percent of the time. It should be noted, however, that

<sup>36</sup> New York State Government. Board of Elections. New York State Enrollment by County, Party Affiliation and Status. New York State Board of Elections, 1 Apr. 2012. Web.  
<[http://www.elections.ny.gov/NYSBOE/enrollment/county/county\\_apr12.pdf](http://www.elections.ny.gov/NYSBOE/enrollment/county/county_apr12.pdf)>.

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.

The city system is more nonpartisan, and prohibits the drawing of districts to minimize or maximize any given party's influence. Nonetheless, campaign finance continues to play a role, as in a heavily-Democratic City, the percentage of Republicans in the City Council is higher and more proportional, currently at nearly 8 percent (4 of 51 members: Daniel Halloran, Vincent Ignizio, James Oddo and Eric Ulrich, though it should be noted that 5 Republicans were elected in 2009, as Peter Koo later changed his party to Democrat), while the Republican conference from New York City which will take office in 2013 in the state legislature is half that at 4 percent (4 of 91 members: Joe Borelli and Nicole Malliotakis in the Assembly, and Marty Golden and Andrew Lanza in the Senate). Given that the effects of redistricting in the Assembly and Senate balance each other out, it is likely that campaign finance reform, rather, has enabled Republicans in New York City to hold a greater proportion of seats.

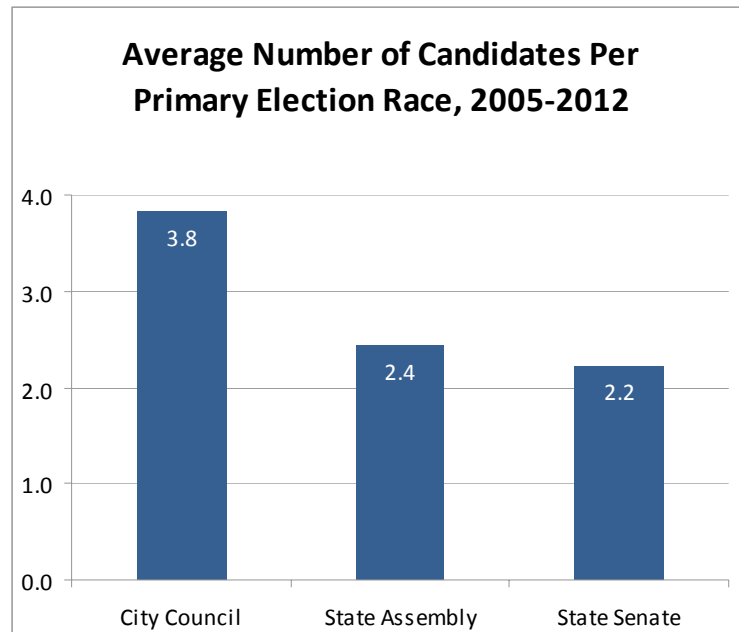
### ***Uncontested Seats in Both the Primary and General Election***



(Figure G)

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 9 percent of seats. Even if seats are drawn to favor the majority party as a result of redistricting, this effect would in theory be negated when looking at both the primary and general election; therefore, campaign finance reform is likely the major contributing factor to the lack of competition at the state level.

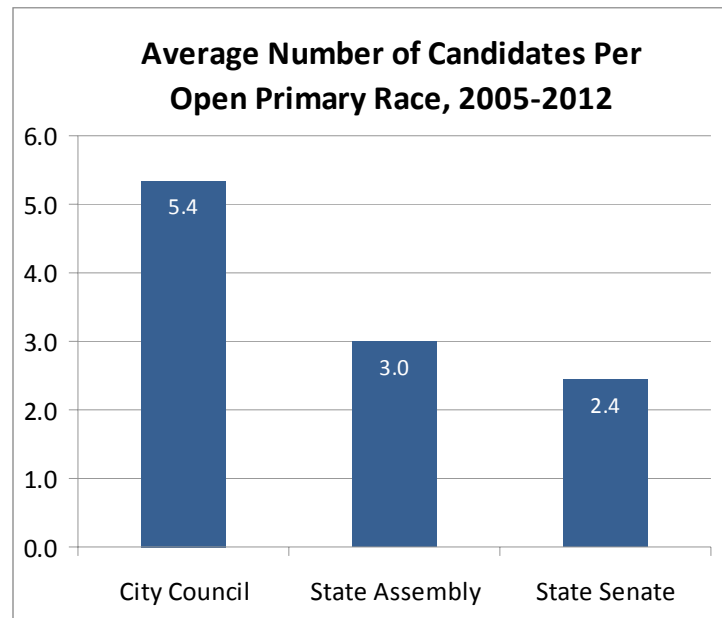
### C. Number of Candidates Running in Primary Elections



(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 noted previously, Citizens Union did not examine general elections, as the number of viable candidates in contested general elections is usually two, as third-party candidates typically do not receive more than ten percent of the vote. Additionally, the number of uncontested general elections is a better indicator of competitiveness rather than the number of candidates, due to our two-party system.

As shown in Figure F above, in city council elections, the 2005 and 2009 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. Open races, however, may feature more candidates (and thus choice) while also being more competitive.

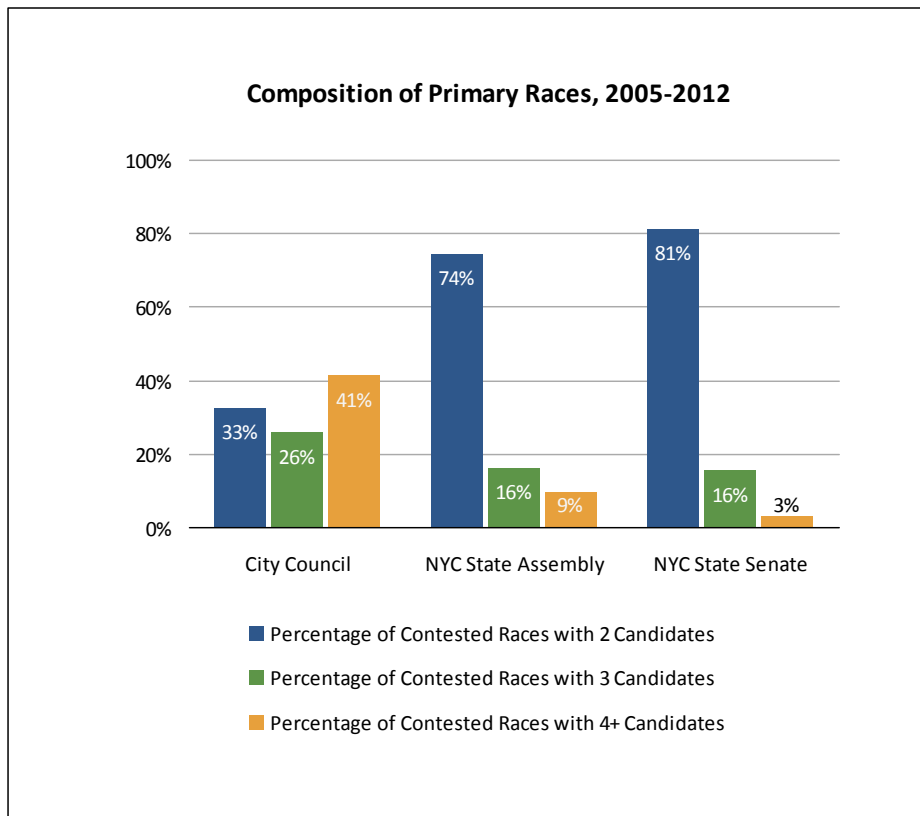


(Figure G)

The trend of more choice in city council races versus state legislative races holds true for open seats, as seen in Figure G 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. In 2008, the New York City Council controversially voted to extend term limits, ensuring no incumbents would face term limits in 2009: of the council's 51 members, 35 would have been barred by term limits from seeking re-election.<sup>37</sup> The effect of terms limits is examined further in section IV(e).

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<sup>37</sup> Chan, Sewell, and Jonathan P. Hicks. "Council Votes, 29 to 22, to Extend Term Limits." New York Times City Room. New York Times, 23 Oct. 2008. Web. 10 May 2012. <<http://cityroom.blogs.nytimes.com/2008/10/23/council-to-debate-term-limits-change/>>.

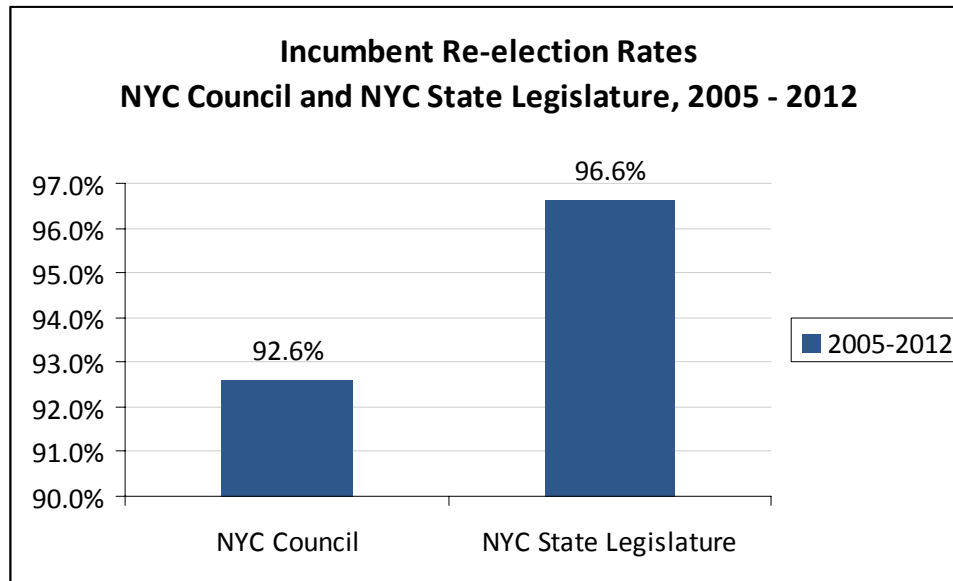


(Figure H)

The breakdown of the number of candidates in contested primary races for the state legislature or city council specifically demonstrates what choice is available to voters. A plurality of contested city council elections featured 4 or more candidates in 2005 and 2009, as shown in Figure H above, whereas the vast majority of contested primary elections for the state legislature featured only 2 candidates from 2006 to 2012. In over three quarters of contested state assembly primary elections, only 2 candidates were in the race. For the state senate, only 2 candidates were on the ballot in 81 percent of primaries. In city council elections, however, only 33 percent or one third of all races had 2 candidates in the race.

Why might differences in campaign finance laws cause such a distinct difference in the number of candidates running for an election? One major factor is the cost of running campaigns. The matching funds program provides an opportunity for grassroots candidates without the usual political support base to raise enough money to mount a serious campaign. Most successful candidates for the city council are now enrolled in the city matching funds program: in 2009, approximately 95 percent of winners were enrolled in the matching funds program. While the public financing system can help candidates with less access to funds raise money, the program also limits the perception if not influence of larger donations, which are often more accessible to established candidates and incumbents. It should be noted, however, that other factors such as strict regulations regarding petitioning on to the ballot and partisan gerrymandering play a role in limiting the number of candidates who are able to run for office, particularly at the state level.

#### D. Incumbent Re-Election Rate



(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 2012, incumbents were re-elected in about 93 percent of city council races, while incumbents in the state legislature were re-elected 97 percent of the time, as shown in Figure J above. Citizens Union has previously examined the statewide incumbent re-election rate in the legislature, which has averaged about 96 percent from 2002 – 2010,<sup>38</sup> which is similar to the re-election rates for seats in New York City. The statewide rate for 2012 cannot be calculated as of the release of this report, as the results in several races are still being determined.

In the 2005 and 2009 city council elections, for which there are 51 seats, 6 members lost their seats to challengers:

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

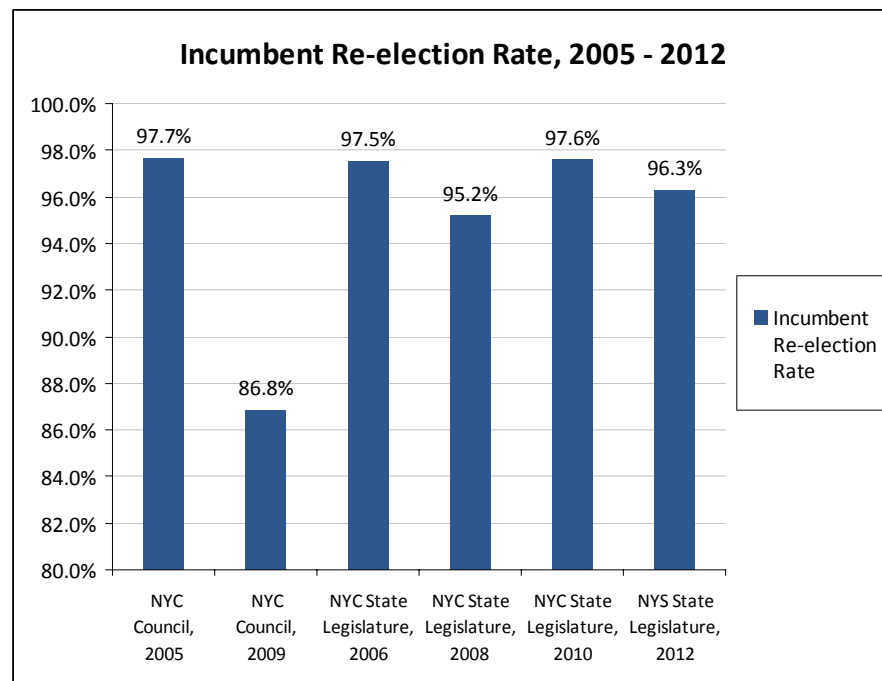
For state legislative seats in New York City, for which there are 91 total seats, 11 legislators lost their seats between 2006 and 2012:

- 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)

<sup>38</sup> See Citizens Union's report, *ReShaping New York: Ending the Rigged Process of Partisan Gerrymandering*, November 2011. Available at: [http://www.citizensunion.org/www/cu/site/hosting/Reports/CU\\_ReshapingNewYork\\_November2011.pdf](http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_ReshapingNewYork_November2011.pdf)



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.



(Figure K)

The New York City Campaign Finance Board introduced significant changes to the matching funds program in 2007. The Board changed the matching funds ratio from 4-to-1 to 6-to-1, meaning that every dollar of private fundraising could be subsidized with six dollars from the New York City government.<sup>39</sup> Before this change was made, the incumbent re-election rate in New York City was 97.7 percent, which is on par with the state legislative rate. After the change, the city council's incumbent re-election rate dropped by ten points to about 87 percent and city council elections became much more competitive than state legislative elections. It should also be noted that term limits may have been a factor in the 2005 high re-election rate, as challengers to incumbents may have decided to wait for incumbents to be term limited out before running for office. The effect of term limits is explored in greater detail in section (h) below.

New York City's elections operate with a 6:1 matching funds program, meaning that New York City's voters have greater choice at the polls and incumbents often face tougher competition in city elections as opposed to state elections. The more races are contested, the more opportunity there is for challengers to unseat incumbents, as can be seen in city council in 2009 races versus state legislative races in 2010. Citizens Union does not include 2012 state races, as the final campaign finance filings for the general election have not yet been made as of the release of this report.

<sup>39</sup> "A Brief History of the CFB." Campaign Finance Board. New York City Campaign Finance Board. Web. 20 Apr. 2012. <[http://www.nyccfb.info/candidates/candidates/overview.aspx?sm=candidates\\_overview](http://www.nyccfb.info/candidates/candidates/overview.aspx?sm=candidates_overview)>.

<b>Funds Raised in 2010 New York State Legislative (full state) and 2009 New York City Council Races</b>		
<b>Type of Candidate</b>	<b>Total Candidates Filing</b>	<b>Average Raised</b>
Assembly Challenger	113	\$59,005.02
Assembly Incumbent	130	\$135,926.26
Senate Challenger	48	\$257,249.50
Senate Incumbent	55	\$617,270.19
Incumbent Assemblymembers Running for Senate	5	\$703,307.31
City Council Challenger	138	\$125,189.39 (including public funds)
City Council Incumbent	40	\$175,108.53 (including public funds)

(Figure L)<sup>40</sup>

In the 2009 city council elections, many challengers obtained enough resources from the public matching funds program to compete with and in some instances even defeat their incumbent opponents. In fact, 12 challengers outspent their incumbent opponents in both the primary and general city council elections. Meanwhile, 14 challengers were outspent by only \$25,000 or less. New York City's public matching funds program, while not completely evening the playing field for challengers, has brought more parity to city elections by giving challengers the resources necessary to compete and possibly even succeed in local elections.<sup>41</sup>

At the state level, incumbents have a clear advantage over their challengers, particularly for state senate, as seen in Figure L above. New York State elections are extremely expensive to win; as shown above, it cost at least tens of thousands of dollars in 2010 to mount a state assembly election and hundreds of thousands of dollars to win a state senate election. At the state level in 2010, incumbents had an approximately 2.3:1 financial advantage over their challengers. Incumbents simply have access to more institutional, large donors, which creates a "heavy reliance on those with financial resources to fund elections."<sup>42</sup> In sharp contrast, challengers in city council races in 2009 had access to greater funds with the addition of public financing, and while incumbents who participated in the program had similar access to public funds, the ratio of incumbent to challenger funds was much closer at 1.4:1.

Beyond the pure dollar amount discrepancy in terms of fund raising ability, the type of donors should be noted for incumbents at the state level. In 2010, 87.67 percent of money in New York

<sup>40</sup> Adapted and updated from Horner, Blair, Russ Haven, and Bill Mahoney NYPIRG. "Analysis of Campaign Spending in the 2010 New York Election." New York Public Interest Research Group, Jan. 2011. Web.

<<http://www.citizensunion.org/www/cu/site/hosting/Reports/GoodGovReportCapitalInvestments2010.pdf>>, with data from the Campaign Finance Board's 2009 Post-Election Report, "New Yorkers Make Their Voices Heard: A Report on the 2009 Elections." 2010. Campaign Finance Board. Web.

<[http://www.nycfb.info/PDF/per/2009\\_PER/2009PostElectionReport.pdf](http://www.nycfb.info/PDF/per/2009_PER/2009PostElectionReport.pdf)>

<sup>41</sup> New York City Government. "New Yorkers Make Their Voices Heard: A Report on the 2009 Elections." 2010. Campaign Finance Board. Web. <[http://www.nycfb.info/PDF/per/2009\\_PER/2009PostElectionReport.pdf](http://www.nycfb.info/PDF/per/2009_PER/2009PostElectionReport.pdf)>

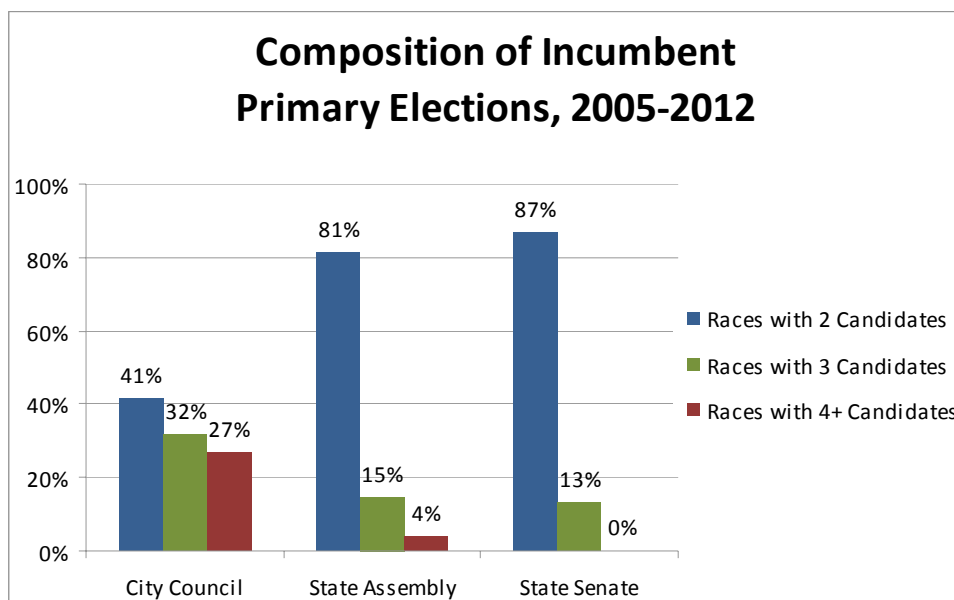
<sup>42</sup> NYPIRG. "Analysis of Campaign Spending in the 2010 New York Election."

State elections came from large donors who gave more than \$1,000 to one candidate.<sup>43</sup> These donors donated extensively to incumbents, largely in connection to lobbying interests in the New York State Legislature. Challengers are therefore at a significant disadvantage when trying to raise funds for a costly state legislative election.

### E. Accounting for Term Limits

New York City elections have one unique feature that New York State elections do not have: term limits. New York City officials are currently limited to two consecutive four-year terms, though as will be described in greater detail, this was temporarily extended to three consecutive terms in 2008. Term limits have changed the composition of New York City elections significantly. In every election, approximately 25-30 percent of elected officials can be expected to be term-limited. Therefore, city council elections feature more open races than state legislative elections.

If a potential challenger knows that the city council member from his or her district is going to be term-limited, his or her decision to run for office may be influenced by this factor. Incumbents usually have a strong advantage in elections; challengers can avoid facing incumbents, however, by waiting for their terms to be finished. Due to this different incentive structure for city elections, Citizens Union chose to control for the impact of term limits to the extent possible by looking at a subset of state and city elections in which only incumbents were running, or in which there were open seats.

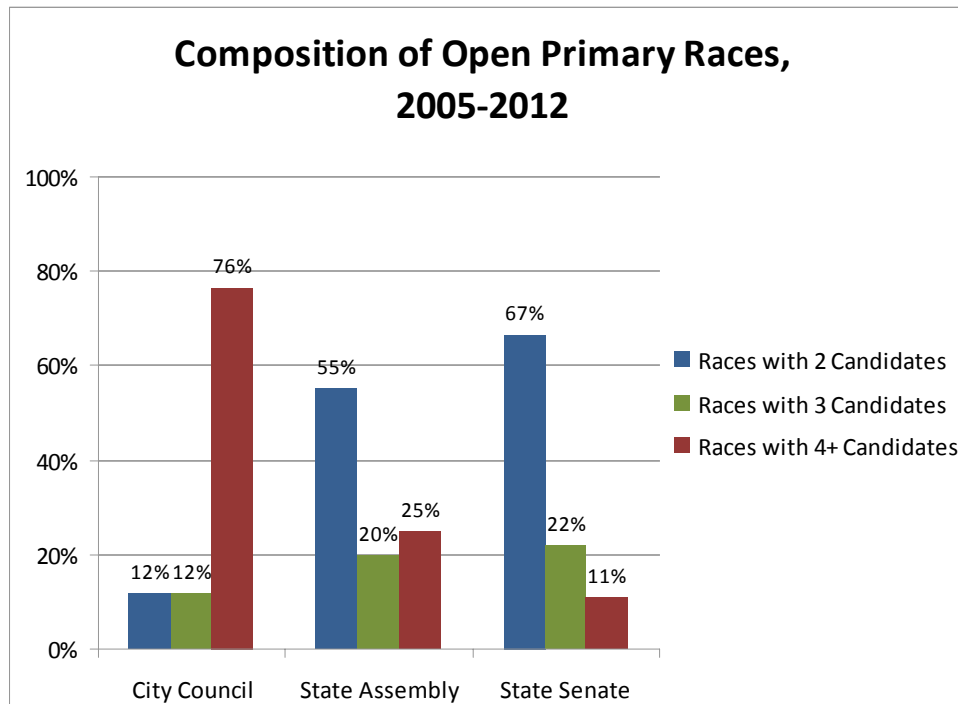


(Figure O)

As seen in Figure O, even primaries only involving incumbents show that city elections feature greater voter choice and competition when looking at the number of candidates running for office. Forty-one (41) percent of city council incumbent primaries featured only 2 candidates, versus over 80 percent of incumbent primaries in state legislative seats in the city.

<sup>43</sup> NYPIRG. "Analysis of Campaign Spending in the 2010 New York Election."

Approximately 27 percent of recent incumbent primary elections for city council positions have featured four or more candidates, whereas only 4 percent of state assembly incumbent primary elections and *no* state senate incumbent primary elections have featured four or more candidates.



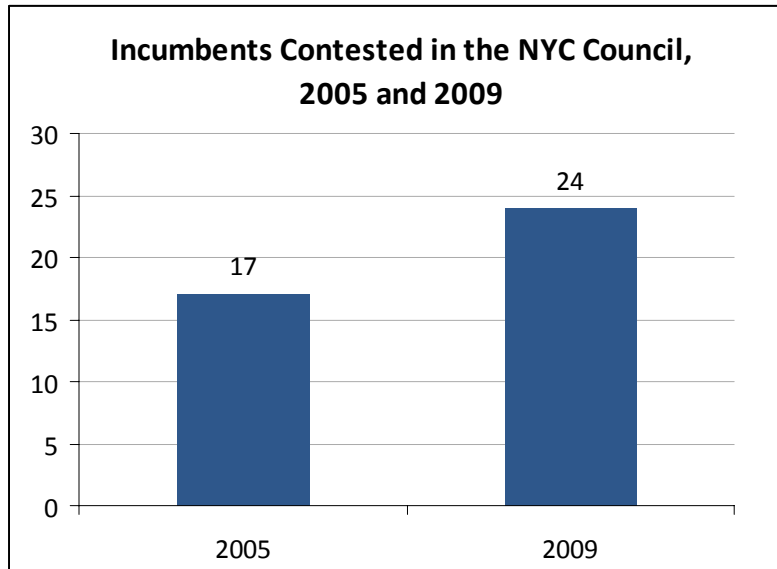
(Figure P)

As seen in Figure P, while city council elections are relatively competitive if they feature an incumbent, they are much more competitive if incumbents are not running. Four or more candidates ran in approximately 76 percent of open city council elections. Meanwhile, a plurality of competitive open state legislative races had only two candidates running. The term limit effect has pushed potential challengers away from running against incumbents, and instead toward waiting for open seats.

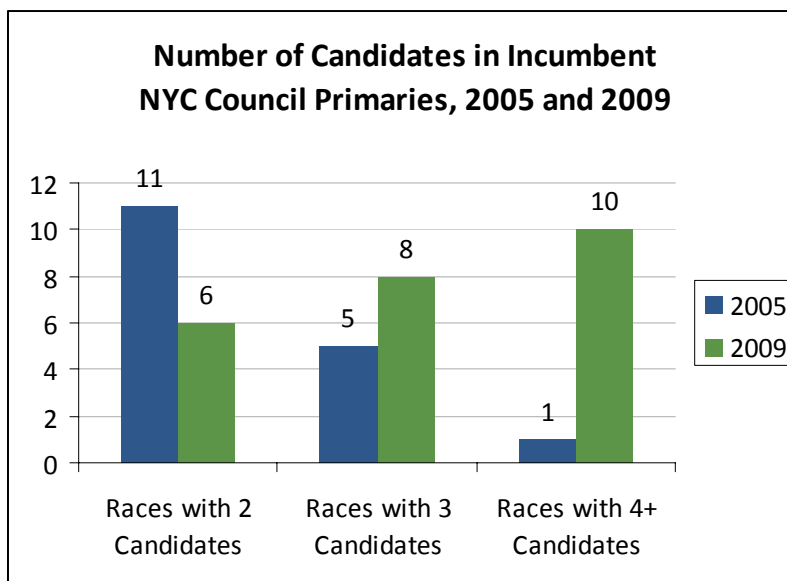
It should also be noted that the time between the 2005 and 2009 city elections was politically quite turbulent. As will be explained further, there was an extremely controversial extension of term limits from two four-year terms to three four-year terms in 2008, giving every incumbent the opportunity to run for re-election in 2009. Due to this extension, many challengers chose to no longer wait to run until seats opened up, and many used the controversial votes of incumbents as a rallying point for their candidacy, partially offsetting the term limit effect that is typically seen when challengers chose to wait for open seats.

As seen below, in Figure Q, more candidates indeed ran in 2009 against incumbent city council members. The number of incumbents who were contested in the primary increased from 16 in 2005 to 24 in 2009, as seen in Figure Q. In 2005, the number of incumbent races with 3 or more candidates was equal to the number that featured 2 candidates: 6 for each category; however, in 2009, 18 incumbent races featured 3 or more candidates, and 6 had only 2 candidates. The term

limit effect was seemingly offset completely. The large increase in competitiveness of council elections in 2009 may have increased the competitiveness of incumbent re-election races as well. These two reasons, along with reasons mentioned in Section V(c), may have led to the offsetting of the term limits effect.



(Figure Q)



(Figure R)

## **VI. The Benefits of Public Financing**

Citizens Union’s research regarding state legislative and city council elections demonstrates that according to several indicators, city council elections are more competitive and feature greater voter choice than state legislative elections occurring in New York City. Even when the constituents eligible to vote in an election are the same, there are significantly different results between state and city elections. The New York City’s campaign finance system appears to be a major contributing factor to this difference, particularly when looking at incumbent races.

According to research by the University of Wisconsin, taxpayer-financed elections generate several significant benefits.<sup>44</sup> First, public funding can help potential candidates overcome the financial barriers that might otherwise prevent them from running in an election. In particular, it can encourage candidates of who lack access to funding to run for office—especially given that incumbents generally possess a fund-raising advantage over challengers. It also reduces the influence of private contributions on policy by allowing candidates to collect their campaign funds from a greater variety of smaller donors. And finally, in the face of soaring campaign costs, public financing can help to bring down the overall amount candidates spend on elections.

While other important reforms such as increasing access to the ballot through petitioning reform and redistricting reform will also result in positive benefits to voter choice and competition, public financing is an important component in reforming New York State’s elections. Further details regarding the benefits of public funding are provided below as they relate to New York.

### **A. Providing Voters with More Choices and Greater Competition**

If challengers are not at a large financial disadvantage to incumbent legislators, the competitiveness of elections is likely to increase. Public funding has provided more candidates the opportunity to run for office, which is one important factor in increasing competition. In the 2009 city council elections, for example, five incumbents were defeated, more incumbents faced primaries, fewer ran unchallenged, and the margins of victory were closer than in any other recent city council election. At the state level, uncontested races continue to make up too large a percentage of races: over two-thirds of seats featured no primary election, and one-quarter featured no general election in New York City.

What public funding ultimately serves to accomplish is to increase the pool of candidates in a given election. Challengers are more likely than incumbents to accept public funding, and where these public financing programs are in place, it is more likely that there will be competitive races. For voters, this means more choices in an election—and with an incumbent reelection rate of over 96 percent at the state level in New York, the ability to have more options and possibly greater competition is essential to ensuring that voters have confidence that their votes matter. Unfortunately, New York State’s current electoral system does not provide voters with sufficient

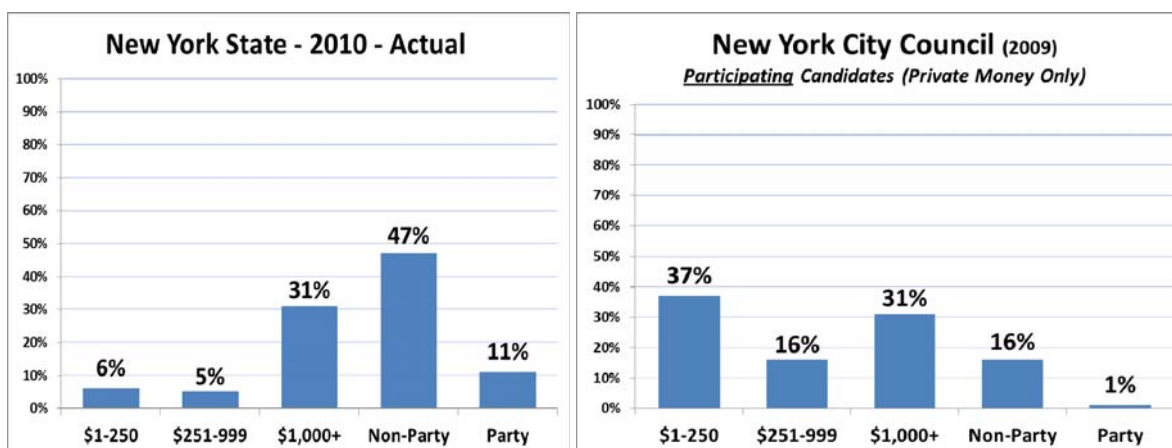
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<sup>44</sup> Mayer, Kenneth, Werner, Timothy, and Amanda Williams. “Do Public Funding Programs Enhance Electoral Competition?” Department of Political Science, University of Wisconsin-Madison: 2006.

reason to participate: the State ranks near the bottom for civic participation, voter participation, political accountability and competitiveness of elections.<sup>45</sup>

## B. Making the Pool of Donors More Representative

Through eligibility thresholds, matching funds systems require that candidates running for office – both incumbents and challengers – obtain many small donations, allowing them to reach out to more voters rather than the usual list of big donors. Accepting many small donations from constituents in their districts also makes it more likely that candidates, once elected, may be free to make policy decisions that accurately reflect the electorate, rather than the interests of a few large donors. Further, when campaign finance systems seek to limit donation from those who do business with government, the perception of a “pay-to-play” culture diminishes and elected officials are better able to make policy decisions that reflect the greater public interest rather than narrow special interests.



(Figure S: Percentage of Donations in Different Size Categories, 2010 State and 2009 City Elections)<sup>46</sup>

As described previously, a public campaign finance system also gives more voice to small donors, because small donors become an increasingly significant part of a candidate’s fundraising efforts in a matching funds program. According to the Campaign Finance Institute, small donations are obtained at a much greater rate for participating candidates, as seen in Figure S above.<sup>47</sup>

Small donors tend to be more representative of the public at large because they are “more interested in candidates’ positions while large donors are far more interested in commercial or

<sup>45</sup> Horner, Blair, Russ Haven, and Bill Mahoney. "Analysis of Campaign Spending in the 2010 New York Election." New York Public Interest Research Group, Jan. 2011. Web.

<<http://www.citizensunion.org/www/cu/site/hosting/Reports/GoodGovReportCapitalInvestments2010.pdf>>.

<sup>46</sup> Malbin, Michael J., Peter W. Brusoe, and Brendan Glavin. "What Is and What Could Be: The Potential Impact of Small-Donor Matching Funds in New York State Elections." Campaign Finance Institute. Campaign Finance Institute. Web. <[http://www.cfinst.org/pdf/state/NY/CFI\\_Impact-Matching-on-NYS.pdf](http://www.cfinst.org/pdf/state/NY/CFI_Impact-Matching-on-NYS.pdf)>.

<sup>47</sup> Malbin, Michael J., Peter W. Brusoe, and Brendan Glavin. "What Is and What Could Be: The Potential Impact of Small-Donor Matching Funds in New York State Elections." Campaign Finance Institute. Campaign Finance Institute. Web. <[http://www.cfinst.org/pdf/state/NY/CFI\\_Impact-Matching-on-NYS.pdf](http://www.cfinst.org/pdf/state/NY/CFI_Impact-Matching-on-NYS.pdf)>.

legislative interests.”<sup>48</sup> Currently, New York State’s elected officials often rely on financial support from large donors and thus average New Yorkers see a system that often responds to special interests, rather than the interests of the general citizenry. If small donors were able to have greater relative influence in elections through a public matching system, the interests of all voters may be better represented.

### C. Increasing Confidence in Government

New York State’s political system does not currently inspire the confidence of the public, as there is a perceived culture in which those who do business with the state can have undue influence on decision-making, which is largely due to the state’s campaign finance system. Candidates running for state office, mainly incumbents, raise 78 percent of their money from large donors and often institutions which do business with the state, and holding “roughly 200 fundraisers [annually] to raise money from lobbyists and their clients during the state’s legislative session” alone.<sup>49</sup> In March, the month of the year in which the budget must be finalized, fundraising spikes as special interests extensively lobby the legislature. Not even all of the donations are from New Yorkers: nearly 10,000 out of the 68,000 individuals who donate to New York State’s elected officials are not New Yorkers.<sup>50</sup>

Under a reformed campaign finance system in which contributions by average New Yorkers are matched and those who do business with the state are limited in what they can give, the public would have greater confidence that government is doing the people’s business. Public financing with appropriate pay-to-play restrictions is one important component of ensuring that elected officials are seen as accountable to the public, rather than to narrow special interests.

A strong demonstration of how easing the ability to run for office was the 2009 elections, in which more candidates ran for office and voters responded to the City Council’s controversial 2008 decision to extend their own term limits. While much of the competitiveness of city council elections in 2009 could be attributed to systemic differences between the city and state system, the controversy surrounding the term limits helped spur more challengers to run for office, who had the benefits of a public financing system which allowed them to run competitive races.

After voters cast their ballots for city council in 2009, the incumbent re-election rate for city council fell from 97 percent in 2005 to approximately 87 percent in 2009, and only incumbents who would have been term limited in 2009 and voted for a term-limit extension were voted out of office by city voters. In elections in which an incumbent who voted for a term-limit extension ran for a third consecutive term, the incumbency re-election rate fell to 78 percent. In all other

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<sup>48</sup> Horner, Blair, Russ Haven, and Bill Mahoney. "Analysis of Campaign Spending in the 2010 New York Election." New York Public Interest Research Group, Jan. 2011. Web.

<<http://www.citizensunion.org/www/cu/site/hosting/Reports/GoodGovReportCapitalInvestments2010.pdf>>.

<sup>49</sup> Horner, Blair, Russ Haven, and Bill Mahoney. "Analysis of Campaign Spending in the 2010 New York Election." New York Public Interest Research Group, Jan. 2011. Web.

<<http://www.citizensunion.org/www/cu/site/hosting/Reports/GoodGovReportCapitalInvestments2010.pdf>>.

<sup>50</sup> Horner, Blair, Russ Haven, and Bill Mahoney. "Analysis of Campaign Spending in the 2010 New York Election." New York Public Interest Research Group, Jan. 2011. Web.

<<http://www.citizensunion.org/www/cu/site/hosting/Reports/GoodGovReportCapitalInvestments2010.pdf>>.



elections, the incumbency re-election rate was about 95 percent. While term limits was not the only issue that voters considered in making their choices on election day, it was a major issue for which voters sought to hold their elected officials accountable. And though the term limits extension itself was fresh in voters' minds, certainly public funds provided a catalyst for challengers in magnifying their voice and articulating their positions to voters.

## VII. CITIZENS UNION'S 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 city 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:

- **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;
- **Reasonable 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.

Appendix – Comparison Chart of New York State and New York City Campaign Finance Systems

Category	New York State Campaign Finance System	New York City Campaign Finance System
Disclosure	<ul style="list-style-type: none"> <li>• Two semi-annual disclosure reports are required in January and June, as well as reports 32 and 11 days prior to the election and 10 days after the election.</li> <li>• No requirement to report the occupations and employers of contributors.</li> <li>• No additional requirement to report conflicts of interest of donors.</li> <li>• Donations of \$1,000 or more will require a 24-hour report if within 11 days of an election.</li> </ul>	<ul style="list-style-type: none"> <li>• In addition to two semi-annual reports, four different disclosure reports must be filed before elections. One filing is required within 10 days after the election.</li> <li>• Occupations and employers are required and documented.</li> <li>• If there is a personal conflict of interest between a candidate and a donor, the donation must be disclosed.</li> <li>• Donations of \$1,000 or more, or large expenditures over \$10,000 require reports within 24 hours in the last 14 days before an election.</li> </ul>
Contribution Limits	<ul style="list-style-type: none"> <li>• Contribution limits are high, and can easily be avoided through soft money contributions.</li> <li>• Unlimited contributions are allowed to political housekeeping accounts.</li> <li>• Corporations permitted to donate a maximum of \$5,000 to campaigns.</li> <li>• Corporations can skirt that limit by having subsidiaries such as LLCs and LLPs contribute to campaigns as well.</li> <li>• Party housekeeping accounts are used by political parties to raise unlimited funds to support campaign activities.</li> </ul>	<ul style="list-style-type: none"> <li>• Strict contribution limits for those matching funds participating candidates.</li> <li>• Party committees, PACs, individuals, and unions are subject to same limits.</li> <li>• Corporations, LLPs and LLCs are completely banned from political donations.</li> <li>• Corporations cannot use subsidiaries or related business to skirt limits.</li> </ul>

Category	New York State Campaign Finance System	New York City Campaign Finance System
<p>Doing Business or “Pay-to-Play” Regulation</p>	<ul style="list-style-type: none"> <li>• No additional contribution limits or restrictions. Lobbyists often bundle multiple clients’ contributions. Contractors and lobbyists can give as corporations, LLCs, LLPs, and individuals, resulting in a higher contribution limit.</li> <li>• No disclosure of Doing Business contributions.</li> </ul>	<ul style="list-style-type: none"> <li>• Individuals and organizations involved in business dealings with the city are subject to stricter contribution limits. For example, lobbyists can give a maximum of \$400 to a candidate for citywide office.</li> <li>• Doing Business Database discloses to the public those individuals’ and organizations contributions.</li> </ul>
<p>Fines and Enforcement</p>	<ul style="list-style-type: none"> <li>• Fines are able to be assessed, but are small. For example, the state can to fine candidates \$500 for failing to file a disclosure statement, but fees are not typically collected and are often ignored.</li> <li>• There is little auditing or oversight by the State Board of Elections.</li> <li>• Most violations are found typically when an outside inquiry is made, rather than through routine enforcement and oversight.</li> </ul>	<ul style="list-style-type: none"> <li>• There are strict penalties, aimed at curbing rule-breaking and keeping up the system’s integrity. For example, candidates are penalized heavily for accepting corporate donations. Fines can total up to \$10,000 per infraction, not including the forced return of donations.</li> <li>• The Campaign Finance Board audits campaigns to ensure rules are being followed. Its investigators sometimes visit campaign headquarters unannounced and make detailed inquiries of donors, bundlers, and vendors to ensure all information disclosed is accurate.</li> </ul>
<p>Personal Use and Funds Transfers</p>	<ul style="list-style-type: none"> <li>• While personal use is prohibited, there are major exceptions and loopholes to get around personal use limitations.</li> <li>• Certain exceptions are worse than others. State politicians have infamously used their campaign funds to “lease luxury cars, pay for country club membership, and travel abroad,” and other activities that are not campaign-related but which can be paid for through campaign fundraising as they relate to one’s “public office.”</li> </ul>	<ul style="list-style-type: none"> <li>• Extremely strict personal use limitations that apply to public and private funds. Candidates cannot use campaign funds for any personal expenditure of any form.</li> <li>• Even an expenditure that is partially campaign-related and partially personal must be allocated as such. For example, if traveling involves both personal and campaign activities, personal expenditures must be allocated to the activity and campaign funds can only be allocated to pay for campaign activities.</li> </ul>

Category	New York State Campaign Finance System	New York City Campaign Finance System
<p>Voter Education Efforts</p>	<ul style="list-style-type: none"> <li>• New York State does relatively little to educate voters, only maintaining a website which explains the election process to voters, though local boards of election provide some information on polling locations and voter registration.</li> <li>• No specific information is provided about candidates, as there is no Debate Program or Voter Guide which explains candidates' positions.</li> <li>• Only some local boards of election voluntarily post sample ballots online.</li> </ul>	<ul style="list-style-type: none"> <li>• Campaign Finance Board handles voter education efforts through its Voter Assistance and Advisory Committee.</li> <li>• Voter Guides are mailed to voters for city elections and published online, informing voters about logistical details of the election, profiles of the candidates running, and different proposals on the ballot.</li> <li>• The Debate Program requires all matching funds program participants in citywide elections to participate in debates before both primary and general elections. It gives candidates the opportunity to have their positions on the issues heard.</li> </ul>