



**CITIZENS UNION TESTIMONY TO
CAMPAIGN FINANCE BOARD
2009 POST ELECTION HEARINGS
DELIVERED by
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Citizens Union a good government organization committed to ensuring fair and competitive elections has been a strong and vocal supporter of the city's campaign finance program since its inception in 1988. Citizens Union has consistently advocated for a system that ensures a level playing field for candidates competing for office and limits the role of special interests in elections and politics. The organization actively supported the enactment of the campaign finance reforms contained in Local Law 34 of 2007 aimed at reducing the appearance and impropriety of contributions from those who do business with the city and other reforms to create fairer elections.

We commend the Campaign Finance Board for its work tackling critical campaign finance issues, as well as the City Council, the Administration and the larger civic community for working together to make this system a model for the country. In advance of receiving full analysis from the Board regarding the effect of LL 34, Citizens Union shares the following observations and concerns regarding the current system:

1. Limits on Contributions and Expenditures

Citizens Union urged for the expansion of the existing ban on corporate contributions to include limited liability companies (LLC), limited liability partnerships (LLP) and other forms of non-incorporated businesses. Citizens Union analyzed the effect of the organizational contribution ban and doing business contribution restrictions on several incumbent councilmembers, both white and non-white, and believes that except in a few cases this restriction has not largely affected the fundraising capability of candidates. More specifically, in the eight cases that we examined while the candidates were able to raise less money from certain sources it did not effect the amount of money that they were able to raise – with most candidates raising approximately \$10,000 less than they did in 2005, except for a couple of marginal examples where candidates did not face a challenger or raised significant sums, likely for a future run.

Citizens Union at the time the law was being negotiated recommended that the drafters study union contributions when considering which organizational contributions to ban. The organization still believes that this is an issue that should be evaluated to ensure equity in the treatment of organizational contributors and that union contributions should not be left untouched. We believe it is incumbent on the Council, the Mayor and the Board to ensure that an even hand is being applied and review other institutional contributions like those from unions.

While there may be compelling and supportable reasons for union contributions to be handled differently from other contributions, the city should engage in a public discussion on the pros and cons of this issue, especially in light of the increasing role of unions and political parties in the city's electoral process.

While we have not done a thorough analysis of the effectiveness of the current contribution limits, we support keeping the current limits in place, especially since the federal contribution limit is \$2,400 which is only \$100 less than the council contribution limit, and New York is a very expensive market for campaigning. We also support the clarification of the definition of permissible and impermissible campaign expenses to ensure that candidates do not use campaign funds for impermissible purposes. With respect to the issue of removing exemptions to the spending limits, Citizens Union supported reasonable exemptions to the law to clarify the definition of permissible and impermissible campaign expenses and would be interested in analysis from the Board regarding the effect of these new restrictions.

2. Public Matching Funds

Citizens Union supports LL 34's effort to level the playing field by giving small contributors a greater say in the process of electing their local representatives through the creation of a six-to-one match for contributions of \$175 or less for a maximum public match of \$1,050. Our analysis shows that in 2005 out of 74 participating candidates in the primary election, 33 received the maximum matching funds – totaling approximately 45% of the participating candidates. In 2009, however, out of 131 participating candidates in the primary election, 50 candidates received the maximum public funds – totaling approximately 38% of the candidates. While it seems that fewer candidates received the maximum public funds in 2009 than in 2005, it is noteworthy that in 2009 there was almost double the number of participating candidates. Moreover, this percentage is commendable given the current fiscal climate which could have made it difficult for candidates to raise money.

Also relevant to this point is LL 34's effort to strengthen the law to curb the outlay of public funds to candidates facing minimal opposition. Citizens Union continues to support the two-tiered approach for distributing public funds. We believe that bolstering the requirements that candidates must satisfy in order to obtain more than the initial 25% in public funds was an important and necessary reform to eliminate the leniency that result in abuse and unnecessary payouts of limited public funds to those facing marginal challengers. In particular, requiring that the candidate submit a *certified* Statement of Need demonstrating they satisfy the law's requirements for the Board to evaluate on a case-by-case basis is a strong improvement. Eleven candidates submitted Statements of Need in the 2009 Primary Election in comparison to six candidates during the same period in 2005. We were encouraged to see the comprehensive Statement of Need filings with appropriate documentation on the Board's website instead of the former one page submissions, but it was not easy to ascertain how the Board ruled on these requests without consulting the candidate's public funds payout to see if the candidate received additional public funds.

3. “Doing Business” Contributions

As we testified in 2007, we believe the influence that contractors, developers, and lobbyists have with elected officials, not only here but throughout the country, is enhanced by the ability of these persons and entities to contribute directly to a candidate's campaign for office. The ability to do

so leads to a less independent body of elected officials and erodes the integrity of government in the course of its policy deliberations and awarding of contracts. Citizens Union encouraged the city's effort to create a comprehensive database identifying those doing business with the city and applauds the city for completing certification on all components of that database consistent with the requirements of the 2007 legislation in time for the 2009 election cycle.

Citizens Union supports the law's restriction on doing business contributions to reasonable, non-matchable levels. We are especially pleased to see that out of all the money raised in 2009 there were 3,552 total doing business contributions to approximately 200 candidates amounting to \$905,301 in contributions with a little less than a third of those contributions being refunded for exceeding permissible limits. While Citizens Union does not have specific data from 2005, based on anecdotal information the 2005 contribution totals far exceeded these totals. Our analysis of doing business contributions for several white and non-white incumbent candidates shows that most candidates raised approximately the same number of doing business contributions in 2009 as they did in 2005, but the total amount of the contributions was at least a quarter to in some cases half of the 2005 levels. We were also encouraged that database implementation and management seemed to occur rather seamlessly, especially the prominent display of the database on the Mayor's Office of Contracts' website. We look forward to the Board's study of the database implementation and how it can be improved.

4. Independent Expenditures

Citizens Union is cognizant of the law's limited authority over third party or independent expenditures, except to the extent such expenditures were authorized, requested, suggested, fostered or cooperated in by the campaign. During the 2009 election cycle, as in cycles past, the Board was asked to evaluate the role and effect of independent expenditures. Using the Retail, Wholesale and Department Store Union and the Data Field Services examples, Citizens Union hopes that the Board will further study this issue and propose any necessary improvements to the law or the Board's rules to increase transparency relating to such transactions.

5. Educating Voters Through Publications, Video Voter Guide, Debate Program and Website

The Board's website remains an invaluable tool for the public and organization's like Citizens Union to track campaign contributions, access key election information and program requirements and keep track of advisory opinions and rulings. Likewise, the online voter guide is an invaluable resource and is deserving of a greater public awareness campaign to drive voters to the site. We also advocate a greater public awareness campaign in relation to the Video Voter Guide, while the efforts this year to partner with NBC were successful, the videos were hard to find on government sites so we would continue to advocate for greater publicity regarding this information.

We would also like to speak to Citizens Union's role as a cosponsor of several of the Board debates, including the second primary election debates for mayor, comptroller and public advocate, and the first general election debate for mayor. As you know, Citizens Union played a role in ticketing and outreach, inviting civic, business, and local community groups from throughout the city to participate in the live debates, as well as handling all general public requests for tickets. Given this role and our experience, we would encourage the Board to continue to look to civic groups such as Citizens Union to play a role in ensuring public participation in the debates,

particularly with regard to ensuring a diverse audience that represents the various communities and interests throughout the city.

Though Citizens Union did not play a major role in developing the format and editorial content of the debates, we would like to suggest that the Board work with cosponsors to ensure that the format of the debates facilitates discussion of significant policy issues as well as candidates' solutions and proposals in particular areas. While many important questions were asked of candidates during the course of the debates, Citizens Union largely felt that discussion of many important issues and candidates proposals was limited.

Citizens Union would also like to comment on the Board's debate outreach. We were pleased to see the Board's subway advertisements for the debates, and believe that other cosponsors of the debates also successfully promoted the debates through their media outlets and memberships. We would like to suggest that the Board use its website to more clearly provide information regarding the debates by perhaps providing a clear link and graphic on its homepage to view information about the debates, and perhaps providing a link to specific debates in the days before they occur. The debates information page was difficult to locate, and the schedule regarding several general election debates was still posted even after it was clear that they would not be held due to candidates no longer meeting the required thresholds to participate.

We would like to thank the CFB for considering Citizens Union as a sponsoring organization of the debate program. We will provide more comprehensive input regarding the debates in your sponsor survey.

6. High Spending Non-Participants

In light of the recent mayoral election where Mayor Bloomberg spent \$101 million – or \$174 per vote – up from \$85 million in 2005 and \$74 million in 2001, the Board still faces the challenge of determining how to address the disparity that exists for candidates participating in the program who face a well-funded or self-funded opponent. We do not have a silver bullet for how to remedy this issue, but we encourage the Board to build upon its previous track record to hold hearings on this topic to figure out how to address this concern moving forward. To help ensure a more level playing field and give program participants the opportunity to adhere to the principles of fair and clean elections and still compete with those candidates who do not follow the guidelines set forth by the Board, the Board and the City Council should undertake a comprehensive analysis of how this can be accomplished.

Below are some proposed solutions that purposefully do not include increasing the bonus match:

- Expanding opportunities for candidates to access low cost or free airtime on broadcast medium like radio or television, similar to the relationship with NBC for the 2009 Video Voter Guide. In addition to these short television profiles, such a campaign could include newspaper and train and bus ads, online outreach and other creative outlets that a candidate would truly value. The Board could help access this through agreements with affiliates and outlets, but also by providing media subsidies and other program incentives outside of an actual match. Likewise, the video voter guide and both the print and online guide should be more effectively marketed to reach a wider audience. This information is only as valuable as the number of people that it reaches. In particular, we recommend the

Board consider how to better advertise and market the video voter guide to ensure it reaches the maximum audience.

- Creating greater incentives for those that opt-in to the program and bonuses for those facing high-spending non-participants. Again, this does not have to be a direct financial payment. Other incentives could include additional ad space on buses (should the CFB broker a deal with the MTA or corporate underwriters), additional airtime on channel 74 and a bigger candidate profile in the New York Times and other news publications should the Board convince them to participate in the program.
- Ensuring earlier and more debates and attendance by all candidates.

We still have not figured out the best way to solve this problem in order to allow participating candidates to compete on a more level playing field against candidates who spend tens of millions of dollars of their own money. One possible solution that we are open to exploring is reassessing the law and the Board's rules regarding determining if a participating candidate is facing a high spending non-participant during a primary election. When there is a marginally competitive primary election, followed by a very short timeframe before the general election leaving very little time to campaign, we are open to examining how to reassess when and whether a candidate is facing a high spending non-participant and therefore can exceed the statutory expenditure limits. Regardless of the measures implemented, the ultimate goal has to be ensuring a more level playing field in the future in citywide races which will require more thorough analysis and a public discussion. Disclosure and transparency are the best tools we have to ensure integrity.

7. Establishing a more stringent “war chest” restriction to limit the transfer of funds raised in one race for use in another.

“War chests” have been shown to be a significant deterrent to challengers seeking elected office. They decrease the competitiveness of elections by decreasing both the quality and quantity of challengers to those who have large war chests entering an election season. The law has been strengthened to limit the ability of candidates to transfer funds raised for one office to that of a committee for another office. Now candidates must show documentation that the donor has approved of the transfer. Previously, Citizens Union took the position that candidates should only be allowed to transfer funds raised within the relevant election cycle. We stand by that position and hope that the Board and the Council act to implement it.

8. Use of Government Resources

Citizens Union retains its stated position that it is important to avoid the misuse of public funds for campaign related activities. We supported the extension of the blackout period on mailings from elected officials to 90 days and we believe there should be stricter requirements on citywide mailings, within these 90 days as well.

Thank you for the opportunity to provide testimony today and for all the work that has been put in to date to making this program a model for the nation. We look forward to reviewing the Board's 2009 post-election report and working with the Board, the Council and the Mayor to make the program even stronger.