



CITIZENS UNION

ISSUE BRIEF AND POSITION STATEMENT

Instant Runoff Voting and the New York City Runoff Election

May 2013

Citizens Union is a nonpartisan good government group dedicated to making democracy work for all New Yorkers. Citizens Union serves as a civic watchdog, combating corruption and fighting for political reform. We work to ensure fair and open elections, honest and efficient government, and a civically-engaged public. We are New Yorkers from diverse backgrounds and political beliefs, connected to our communities and united in our commitment to put the city's long-term interest ahead of all special interests. Principled and pragmatic, Citizens Union is an independent force for constructive reform, driving policy and educating the public to achieve accountable government in the City and State of New York.

Citizens Union's Issue Briefs and Position Statements present CU's analysis of, and positions on, important issues. They seek to inform our members and shape the public discussion on policy issues by also providing background information and making specific policy recommendations.

INTRODUCTION

Citizens Union (CU) is an advocate for open and fair elections, supporting a voting process that is accessible to voters and ultimately reflects their choice. Elections should strive to elect the candidate with the broadest and strongest support from voters – electing the candidate who secured at least a strong plurality if not a majority of votes. It is for this reason that Citizens Union has recently examined Instant Runoff Voting and its potential application in New York.

New York State Election Law §6-162 currently requires that if no candidate for mayor, public advocate or comptroller in New York City secures forty percent or more in a political party's primary election, the city must hold a runoff election for the top two-vote getters, which takes place two weeks after the primary election according to §8-100 of the Election Law. Citizens Union has a long-standing position in support of the city's runoff election requirements, which were initially instituted in 1973. The organization believes that the runoff ensures that candidates for these three important citywide positions demonstrate a strong base of support within their party, by either surpassing the forty percent threshold to win a primary, or by being among the top two candidates to then compete in a runoff election. The concern that a citywide elected official could win a primary election with only a small plurality of the vote and later face little general election opposition in a city as diverse as New York is one we believe should be taken seriously in considering changes to the law regarding the runoff election.

For the city's 2013 Primary Election, there is not enough time under the current election calendar for ballots to be certified if a runoff election occurs for citywide primaries due to administrative issues with the new voting machines. Further, a runoff after a primary is likely to result in low voter turnout. In order to best address these problems, Citizens Union supports continuing to hold the city's primary in September, while instituting an Instant Runoff Voting (IRV) system. IRV would have voters rank their preferred candidates on the day of the primary rather than cast ballots on two different election days. It would also ensure that the winning candidate enjoys broad electoral support, as well as avoiding the logistical and financial burdens of runoff elections that often yield low voter turnout.

HISTORY OF THE CITY'S RUNOFF ELECTION

The most common format for elections in the United States is a Plurality Voting System, in which the candidate who receives the highest number of votes wins the election, even if no candidate wins a majority of the votes. In races with multiple candidates, this can allow the victor to have a low share of the overall vote. This scenario played itself out in the 1969 Democratic primary for mayor in New York City, in which Mario Procaccino won against former Mayor Robert F. Wagner, Jr. with only 32.8 percent of the vote. Procaccino went on to lose to the incumbent mayor John Lindsay, who stood as the Liberal Party candidate in the general election after having lost the Republican Party primary election.¹ To remedy this shortcoming in the electoral process, New York State – urged on by Democrats – enacted a runoff election system for the offices of mayor, city comptroller and council president in 1973; the law was updated in 1993 to include the public advocate after the 1989 Charter Revision process replaced the council president with the separate citywide office of public advocate. If no candidate wins 40 percent of the popular vote in the first round of the primary election, a runoff election is now held between the two candidates who receive the most votes.

Runoff elections have been held in the following election years²:

- 2009: two runoffs; Democratic primary for comptroller (John Liu and David Yassky) and public advocate (Bill de Blasio and Mark Green)
- 2001: two runoffs; Democratic primary for mayor (Fernando Ferrer and Mark Green) and public advocate (Betsy Gotbaum and Norman Siegel)
- 1993: one runoff; Democratic primary for comptroller (Alan Hevesi and Elizabeth Holtzman)
- 1977: two runoffs; Democratic primary for mayor (Edward Koch and Mario Cuomo); Democratic primary for council president (Carol Bellamy and Paul O'Dwyer)
- 1973: one runoff; Democratic primary for mayor (Herman Badillo and Abraham Beame)

While the enactment of the runoff election sought to address the concern of the ultimate victor in citywide elections not having sufficient support from voters, unfortunately runoff elections have been plagued by low voter turnout. The most recent runoff elections in 2009 featured just over 7 percent of Democrats turning out to vote for public advocate, and about 8 percent for comptroller. When all registered voters are taken into consideration, only about 5 percent of all registered voters voted in the runoff elections. Given the lack of strong Republican challengers in these races, the 2009 Democratic runoff elections were determinative races. Democratic runoff winner John Liu won the general election with 76 percent of the vote, and Democratic public advocate runoff winner Bill de Blasio won with nearly 73 percent.

ADMINISTRATIVE PROBLEMS WITH THE RUNOFF ELECTION

The city faces a major hurdle in 2013 in administering a possible runoff election. With the new voting machines in use for the first time in a city election year, there is not enough time between the primary election and the general election to hold a runoff election and certify the results due to requirements for certification of the ballots and needed programming of the electronic ballot

¹ Getachew, DeNora and Senteno, Andrea. "Is New York Ready for Runoffs?" Gotham Gazette. November 23, 2009. Available at: <http://www.gothamgazette.com/index.php/archives/395-is-new-york-ready-for-instant-runoffs>

² Citizens Union review of election results and research from FairVote.

scanners. In considering possible contingency plans, the Board of Elections in the City of New York (Board) has looked at a number of potential options, including Instant Runoff Voting, most of which require a change to state law. State legislators have additionally proposed measures to address this problem. A summary of the possible changes are presented below.

Possible Changes to State Law

1. Pass state legislation to allow for implementation of Instant Runoff Voting (IRV).
2. Eliminate the runoff election (note that Citizens Union has a historic position in favor of the runoff).
3. Move the date of the primary election to earlier in the year, for citywide races or potentially for all races. The Election Commissioners Association has supported moving all primaries occurring in New York State to the last Tuesday of June as a permanent solution to address both the city's runoff election as well as requirements under federal law for military and overseas voters. It should be noted that this option is no longer feasible for New York City given that the election cycle has already begun, particularly with regard to fundraising.
4. Delaying the runoff election forward by one week so that it occurs three weeks after the primary rather than two.
5. Allow for runoff ballots to only list "Candidate A" and "Candidate B," with poll workers providing cards that denote the candidates who represent choices A and B for each race into the privacy booth.
6. Allow for labels to be printed that can be placed on runoff election ballots at the poll site by poll workers.
7. Allow for an all paper ballot runoff primary, but change state law to allow for use of a central scanner and counting of results.
8. Allow for the use of lever machines for the election. It should be noted that Citizens Union opposes the return of the outdated lever machines.

Possible Administrative Options Should State Law Not be Changed

1. Declare an emergency and conduct an all paper ballot. Absent a change in state law, this would require all ballots to be counted by hand by poll workers at each poll site.
2. Change State Board of Elections regulations to adjust testing and certification requirements so that they will allow the current optical scanners to be used for both the primary and runoff elections. The Board of Elections in the City of New York has formally adopted this plan as the preferred option, should state law not be changed.
3. Pre-printing of all possible combinations of runoff ballots, which could number 342 or more³, which would cost the city over \$500 million and is thus not a feasible alternative. This option would also require the purchasing or leasing of another set of scanners, which would cost \$17.5 million, or nearly the cost of administering the runoff election itself (\$20 million). Should funding not be provided, the Board would have the other undesirable option of declaring an emergency, in which case paper ballots would be used, as currently occurs when there are machine breakdowns; however, under current law this would require a manual hand count at the end of the night of all ballots, as scanners could not be utilized.

³ The number of 342 assume there are 3 possible runoffs (Democratic primaries for mayor, comptroller and public advocate), with 4 candidates in each race, for a total of 342 combinations of candidates, each necessitating a different ballot. It is possible that the Republican primary for mayor may also trigger a runoff, in which case the number of combinations would be higher.

MILITARY VOTERS AND THE RUNOFF ELECTION

Under the current election calendar, other than the administrative challenges mentioned previously, there is also a real concern that military voters will not be able to fully participate in the city's runoff elections, as they currently occur just two weeks after the primary. There are currently just under 3,000 military voters registered in New York City.⁴ Military voters are eligible to vote absentee in all races – including state and local races – while other overseas voters are only eligible to vote in federal races. While reforms have been made in recent years regarding ensuring access to the ballot for military and overseas voters stemming from the federal Military and Overseas Voter Empowerment (MOVE) Act, the requirement for ballots to be sent to voters 45 days in advance of elections only apply to federal races. In 2012 the federal primary election for congressional seats was moved to June as the result of court action to ensure that there was a long enough period between the primary and general elections for military voters to receive and return their ballots, but the primary date for state and local races remains in September.⁵

In compliance with the MOVE Act, New York has implemented online systems that allow for military and overseas voters to apply for absentee ballots online, receive ballots via email or fax, and track receipt of ballots after they have been returned via mail.⁶ Ballots are currently required to be returned by mail rather than submitted electronically once they have been filled out.⁷

It should be noted that boards of election in New York State do not have a good track record in sending ballots to military and overseas voters. Under New York law and the election schedule at the time, the September 2010 Primary was too close to the November 2010 General Election for ballots to be mailed 45 days in advance. New York thus applied and was granted a waiver⁸ by the Department of Defense for 2010. While the waiver allowed the state to send military and overseas ballots by Oct. 1, 2010, more than 43,000 New York ballots were not sent by this deadline; military and overseas ballots were not transmitted to voters in the City of New York, and the counties of Erie, Niagara, Putnam and Westchester.⁹ The U.S. Department of Justice filed a lawsuit in response which was resolved by a consent decree providing until Nov. 24, 2010 for receipt of absentee ballots to ensure eligible military and overseas voters had sufficient time to cast and return their votes and to have them counted.¹⁰ Given past problems, Citizens Union believes that reforms should be enacted to ensure that military voters are able to fully participate in selecting candidates from their party.

⁴ 2012 Annual Report. Board of Elections in the City of New York. Available at:

<http://vote.nyc.ny.us/downloads/pdf/documents/boe/AnnualReports/BOEAnnualReport12.pdf>

⁵ Kaplan, Thomas. "Judge Moves Congressional Primary to June." January 27, 2012. Available at:

<http://cityroom.blogs.nytimes.com/2012/01/27/judge-moves-congressional-primary-date-to-june/>

⁶ See New York State's Military and Overseas Voters website here:

<https://newyork.overseasvotefoundation.org/vote/home.htm>

⁷ For more information see: <http://www.elections.ny.gov/VotingMilitaryFed.html>

⁸ To access the waiver and other relevant documents, visit: <http://www.fvap.gov/reference/laws/nywaiver.html>

⁹ Winter, Jana. "New York Violating MOVE Act." Fox News. October 10, 2010. Available at:

<http://www.foxnews.com/politics/2010/10/10/exclusive-new-york-violating-act/>

¹⁰ U.S. Department of Justice website: http://www.justice.gov/crt/about/vot/litigation/recent_uocava.php#ny_uocava10

SPECIAL ELECTIONS AND LOW VOTER TURNOUT

Beyond the issue of the runoff election, other elections that occur outside of the regular election calendar have suffered from similarly low turnout. Special elections in New York for state legislature involve, as the Republican and Democratic parties nominate their candidates in closed-door proceedings rather than through a competitive primary election by the voters. For the most recent special elections in 2012 (one for Senate and four for Assembly), turnout averaged 11.2 percent, with the lowest turnout a dismal 3.4 percent to fill the vacancy in Assembly District 93.¹¹ While candidates are able to petition on to the ballot as independent candidates without the support of the major parties, these candidates face an uphill battle. Citizens Union remains troubled by the increasing prevalence of legislators first elected through special elections – 30 percent of legislators as of March 2012.¹²

City Council special elections – while more democratic in that they are nonpartisan special elections in which all candidates are able to petition on to the ballot and are required to create their own party labels – also have low turnout, and typically many candidates on the ballot. For the most recent special election for City Council District 31 in Queens, 8 candidates ran on the ballot, and only 3 percent of registered voters turned out to vote in the district. It should be noted, however, that generally turnout for the City Council’s nonpartisan special elections is higher than for state legislative special elections. A Citizens Union report from August 2010 found that the average turnout for nonpartisan special elections for City Council seats since 2000 was 10.30 percent, which is 57 percent greater than partisan special elections for state legislative contests, which averaged only 6.58 percent from 2000 to 2010.¹³

EXAMINING INSTANT RUNOFF VOTING (IRV)

There are several methods of conducting IRV which can be examined for possible implementation in New York City. A recent proposal in the 2010 Charter Revision Commission Final Report¹⁴ suggested using a version of IRV that would closely simulate New York City’s current runoff system. Voters would rank up to three candidates in order of their preference, and if no one candidate received 40 percent of the first choice votes in the first round of counting, an instant runoff would occur. For the ballots for which the top two finishers in the first round were not designated by voters as their first choice, their votes would be recanvassed. Their votes would be reallocated to one of the top two

¹¹ Turnout figures calculated from vote totals and enrollment from New York State Board of Elections website:
<http://www.elections.ny.gov/NYSBOE/elections/2012/Special/MultiOfficeSpecialMarch202012Results.pdf>
http://www.elections.ny.gov/NYSBOE/elections/2012/Special/27SD_SPECIAL_RESULTS.pdf
http://www.elections.ny.gov/NYSBOE/enrollment/senate/senate_apr12.pdf
http://www.elections.ny.gov/NYSBOE/enrollment/assembly/assembly_apr12.pdf

¹² Citizens Union. March 2012. Available at:

http://www.citizensunion.org/www/cu/site/hosting/Reports/CU_SpecialElection_LegislatorListing_March2012.pdf

¹³ Citizens Union. “Voter Turnout Analysis: Nonpartisan City Council Special Elections has Higher Turnout than Partisan State Legislative Special Elections.” August 2010. Available at:

http://www.citizensunion.org/www/cu/site/hosting/Reports/NonPartisan_Special_Elections_Report_August3_2010_FIN_AL.pdf

¹⁴ New York City Charter Revision Commission. “Preliminary Staff Report and Recommendations to the Chair of the 2010 Charter Revision Commission.” July 9, 2010. Available at:

http://www.nyc.gov/html/charter/downloads/pdf/preliminary_report_final.pdf

candidates for these ballots, based on which candidate was ranked higher. The winning candidate would be the one preferred over the other by the majority of all voters who expressed a preference for those two candidates. One weakness of this approach, however, is that voters who did not select the top two finalists among their original three choices will not have the opportunity to choose between the top two finalists in a separate runoff election, as occurs under other IRV options. To address this concern, it has been proposed that voters be allowed to rank in order of preference all candidates in the race rather than be limited to three.

Another version of IRV would allow voters to rank all of the candidates appearing on the ballot, and have all candidates considered should no candidate reach the 40 percent threshold. In this scenario, in the first round only the first place choices are counted. If a candidate receives more than 40 percent of the first place votes, that candidate wins the election. If no candidate reaches 40 percent, a recount is triggered, in which vote choices are reallocated. The steps for this reallocation are listed below:

1. The candidate who received the fewest first place votes is eliminated.
2. On ballots in which voters' first choice was the eliminated candidate, the second ranked candidates are counted as the new top choices and the votes they received are recounted as first choice votes.
3. If no candidate receives 40 percent of the reallocated votes after step 2, the last place candidate is again eliminated and votes are recounted, and this process is repeated until one candidate is the remaining top choice on 40 percent of ballots, at which point he or she is declared the winner.

Instant Runoff Voting in Other Jurisdictions

Instant Runoff Voting is in place in several jurisdictions across the country, mostly for municipal elections; Minneapolis, Berkeley and San Francisco use IRV for mayor and city legislative offices, and Arkansas, South Carolina and Louisiana use IRV for overseas voters for runoff elections. A two-round IRV system, similar to the one proposed by the 2010 Charter Revision Commission, is used to elect the mayor of London. Additionally, the Academy of Motion Picture Arts and Sciences uses an Instant Runoff system to vote for the Academy Awards.¹⁵

In San Francisco, research indicates that the number of minorities elected has been increased under IRV, with minority candidates becoming "increasingly skilled" with the new dynamics of ranked choice elections. Further, it has been suggested that IRV is well-suited to cities which "have a high degree of racial/ethnic, social and cultural diversity, a high level of political activism and mobilization, and multiple axes of political conflict."¹⁶ New York City shares many of these characteristics with San Francisco.

As Instant Runoff Voting is significantly different from the current voting system in New York City, there would need to be thorough voter education and assistance. Exit polls from San Francisco's

¹⁵ Fair Vote, "Where Instant Runoff is Used." Web. Accessed January 31, 2013. Available at: <http://www.fairvote.org/where-instant-runoff-is-used#.UQqr6B1EEoI>

¹⁶ DeLeon, Richard and Lijphart, Arend. "In defense of ranked choice voting." January 22, 2013. San Francisco Gate. Available at: <http://www.sfgate.com/opinion/openforum/article/In-defense-of-ranked-choice-voting-4215299.php>

2004 and 2005 elections, the first to use IRV, showed that over 85 percent of voters understood the system at least “Fairly Well,” which while encouraging, demonstrates the need for public education, should IRV be implemented in New York.¹⁷ Another obstacle to IRV is that the ballot scanners currently used for New York City elections are not capable of conducting multiple rounds of vote counting, meaning that results could take longer to be counted. The City’s Board of Elections, however, has stated that it could purchase sorting machines for the 2013 elections that would eliminate the need for a full hand count. For future elections, the city’s voting machine vendor, ES&S, could program the current scanners to be able to conduct this count.

CITIZENS UNION POLICY RECOMMENDATIONS

Citizens Union calls upon the State Legislature and Governor to provide for an immediate solution to address the administrative difficulties presented by potential runoff elections this fall that ensures meaningful participation for voters in 2013, while providing permanent reforms for future citywide races. Changing the date of the 2013 Primary Election at this juncture – when fundraising for some citywide offices in particular is well underway – would inject uncertainty into the political process, potentially allowing certain candidates to benefit from a truncated schedule. It would also add additional administrative burdens to the city’s Campaign Finance Board, which would have to manage the public matching and debate program under a different schedule than currently planned.

It should also be noted that Citizens Union believes that many of the possible solutions that have been raised to address the runoff are unacceptable. Citizens Union opposes eliminating the runoff, as well as using the lever machines for the runoff election. Using lever machines for the runoff would not provide for uniformity in voting and there would be a potential for mechanical failures. We believe that the following immediate and long-term reforms should be implemented by the State Legislature and the Governor:

IMMEDIATE SOLUTIONS

- 1. State law should be amended to move New York City’s runoff election to three weeks after the primary election, rather than the current two weeks** to allow for additional time for optical scan machines and paper ballots to be prepared. This would require a change to state law. Any associated state regulations should be updated regarding certification and testing requirements for voting machines and ballots to match for this new schedule. This change should be coupled with the following:
 - a. Instant Runoff Voting should be implemented for subsequent elections;** this would go into effect in 2014, and next effect citywide elections in 2017. A change to the law in this regard will eliminate the need for a separate runoff election, alleviate the challenges faced by the City Board in administering the election, and save the city upward of \$20 million.

¹⁷ New York City Charter Revision Commission. “Preliminary Staff Report and Recommendations to the Chair of the 2010 Charter Revision Commission.”

- b. Instant Runoff Voting should be implemented for the 2013 primary election for military voters and permanent absentee voters registered in New York City.** This will importantly ensure that military voters and voters with disabilities are able to fully participate in electing their candidate of choice in their party, while introducing IRV to New York City and State.
- 2. Absent action by the state, the City Council should pass legislation moving the date for the runoff election to three weeks after the primary election, implementing IRV for military voters in 2013, and implementing IRV for the primary election for citywide offices, the latter of which would put forth the proposal as a ballot question to voters in November 2013.** Upon approval by the voters, IRV would be in effect for the 2017 primary election for citywide offices, thereby allowing ample time for the City Board of Elections to prepare for the change and educate voters accordingly.

LONG TERM REFORMS

- 1. Instant Runoff Voting should be implemented for state legislative and city council special elections.** This would allow voters to rank candidates at the time of voting and ensure that should no candidate receive an outright majority of the vote, that the candidate who is elected most accurately reflects the will of the electorate. For state legislative special elections, Citizens Union also supports reforming the process to abolish the current party-nomination process and instead hold a nonpartisan special election along the lines of the current process for filling vacancies in the New York City Council in which the ballot is open to all who can petition on to it.
- 2. Voters should be provided sufficient information and public education regarding Instant Runoff Voting, so that they fully understand this new voting process, if adopted.** The city's Voter Assistance and Advisory Committee, which is housed in the Campaign Finance Board, is currently charged with educating New Yorkers about elections through means such as the printed Voter Guide and would be uniquely suited to this task, supporting the work of the Board of Elections in the City of New York. New York City should also learn from other jurisdictions which have implemented IRV in developing educational materials.

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