



New York City Campaign Finance Board
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VIA EMAIL
March 23, 2020

Honorable Andrew M. Cuomo
Governor of the State of New York

Honorable Andrea Stewart-Cousins, Majority Leader
New York State Senate

Honorable Carl Heastie, Speaker
New York State Assembly

Honorable Bill de Blasio
Mayor of the City of New York

Honorable Corey Johnson, Speaker
New York City Council

Dear Governor Cuomo, Majority Leader Stewart-Cousins, Speaker Heastie, Mayor de Blasio, and Speaker Johnson,

We write as the city and state are marshaling an unprecedented effort to combat the spread of COVID-19 while also ensuring certain essential civic functions can persist. It is our duty to ensure democracy can function effectively throughout the COVID-19 emergency. Reducing uncertainty around elections is essential not only to our democracy, but to the health and safety of our fellow New Yorkers.

The challenges of in-person voting during a pandemic are clear and significant. The special election for Queens Borough President scheduled for March 24, 2020 has already been canceled pursuant to a mayoral order. There are also calls to reschedule the state's April 28, 2020 presidential primary election—and the City Council District 37 and State Assembly special elections—to coincide with the state and federal legislative primary elections scheduled for June 23, 2020.

We are writing to share our recommendation that the special elections for Queens Borough President and City Council District 37 be held on June 23, 2020 to fill both seats through December 31, 2021. This provides a path forward by utilizing the existing process under the Charter for

filling a vacancy that occurs later in an elected term.

Having declared a local state of emergency on March 12, 2020, the mayor is authorized to suspend local laws in furtherance of addressing that emergency. Under the same authority used to cancel the Queens Borough President special election in his March 16, 2020 executive order, the mayor is empowered to reschedule that special election, along with the Council District 37 special election currently scheduled for April 28.

Pursuant to Charter §§ 25(b)(5) (for City Council) and 81(e)(5) (for borough president), if a vacancy occurs less than seven days before the petitioning deadline for the primary election, a special election is held in the year in which the vacancy occurs, and the confirming primary and general elections are held in the following year. The Charter thus recognizes that, under certain circumstances, it is appropriate to hold the confirming election in the calendar year subsequent to the special election, and those circumstances explicitly include a truncated petitioning period.

The primary election petition deadline has already passed pursuant to an Executive Order by the Governor, and because 2021 is a regularly scheduled citywide election year, a rational interpretation of the law dictates that the special elections for these offices should be held on the previously-scheduled primary election date, followed by primary and general elections in 2021. The governor can accomplish this by executive order.

A single election to fill those seats is the most straightforward administrative solution. A proposal to hold a special election and a primary election for the same seat on the same day would create significant operational challenges for the voters, contributors, and candidates participating in those elections, and for the agencies charged with administering these elections—including the CFB. An approach that considers simplicity for administrators and voters is the best way forward in this challenging moment.

There is a very high potential for voter confusion if two elections are held for the same office on one day. Some of the candidates might be on the special election ballot but not on the primary election ballot. Because the petitioning deadline has passed, some candidates will be excluded from the primary election ballot if they are registered in a political party that does not have a party primary election. Some voters will be able to vote in both elections while others, because of their party registration, will only be able to vote in one, causing confusion and misunderstanding. There could also be a scenario where a candidate could win the special election, but not be on the primary election ballot. This would result in one candidate holding the office until December 31, 2020 and another holding office until December 31, 2021 without the first having the opportunity to be elected to fill the rest of the term.

Administratively, candidates would need to open and maintain two different committees, with separate contribution limits, spending limits, and thresholds to receive public matching funds. This would create confusion for candidates who have registered and been actively campaigning using a single committee for fundraising. The recordkeeping that will be required of candidates, and the subsequent CFB audit of expenditures, will be borderline unmanageable. It will be enormously difficult to differentiate between expenditures in furtherance of the special election versus primary election, since under the Campaign Finance Act and CFB rules, all spending is presumed to be in furtherance of the next election. Requiring candidates to comply with two different sets of contribution limits as they raise funds for two committees simultaneously will be demanding.

Rescheduling the special elections to fill these offices through the end of 2021 will also result in a significant conservation of public funds. As of the date of this letter, three out of six candidates registered with the CFB and on the ballot for the Queens Borough President special election have already received public funds totaling \$1.9 million. So far, one out of three candidates in the Council District 37 special election received public funds totaling \$93,000. A single election would avoid the necessity to pay candidates twice to campaign for votes in two elections happening on the same day.

I know you share our belief that elections are essential, particularly and especially in these difficult moments, and we greatly appreciate your attention to this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy M. Loprest". The signature is fluid and cursive, with the first letter of the first name being a large, stylized 'A'.

Amy M. Loprest