

## **ADVISORY OPINION NO. 2025-1 (May 30, 2025)**

Re: Administrative Code of the City of New York (“Admin. Code”) § 3-705(9); Board Rule § 3-01(d)(ii)(A)(6); Op No. 2025-1.

The New York City Campaign Finance Board (the “Board” or “CFB”) issues this advisory opinion to clarify the application of a provision of the Campaign Finance Act (the “Act”) and corresponding Board Rule to candidates who cross-endorse another candidate running in the same primary election subject to a ranked choice voting system.

### **Applicable Statutes, Board Rules, and Advisory Opinions**

Section 3-705(9) of the Admin Code provides that a participating candidate that endorses or publicly supports an opponent for election will be ineligible for public funds.

Board Rule § 3-01(d)(ii)(A)(6) provides that a participating candidate that endorses or publicly supports such candidate’s opponent will be ineligible for a public funds payment pursuant to Admin. Code § 3-705(9).

### **Analysis**

Section 3-705(9) of the Admin. Code specifies that a candidate participating in the public funds program that “endorses or publicly supports his or her opponent for election” is not eligible to receive public funds. Section 3-705(9) was enacted in the fall of 2007 as part of a larger set of amendments adopted by the New York City Council.<sup>1</sup> This provision was enacted before New Yorkers began using ranked choice voting to determine winners of special and primary elections. An express purpose of this set of amendments was, among others, to “rein in the use of matching funds in non-competitive elections.”<sup>2</sup> A City Council Committee Report published shortly before the amendments’ adoption stated specifically that the language of § 3-705(9), in disallowing public funds to be paid to a candidate that endorses or publicly supports an opponent for election,

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<sup>1</sup> See Local Law No. 34 (2007) of the City of New York.

<sup>2</sup> See Comm. On Gov. Ops. Report, “A Local Law to amend the New York city charter and the administrative code of the city of New York, in relation to campaign finance,” at 2 (June 21, 2007). Along with adding the provision at issue, Local Law 34 amended the Act to heighten the requirements to be demonstrated in a statement of need, adding a certification requirement, and removed the automatic trigger of full public funds for a participating candidate in the case where such a candidate’s opponent qualified for public funds. See Local Law 34.

would “strengthen” the Acts provisions “regarding non-competitive elections.”<sup>3</sup> The Board Rule incorporating this provision became effective in November of 2008.<sup>4</sup>

Thirteen years later, in June 2021, New York City used ranked choice voting to determine party nominees in municipal primary elections for the first time.<sup>5</sup> Ranked choice voting was adopted after a successful 2019 ballot proposal that stemmed from the 2019 Charter Revision Commission recommendation.<sup>6</sup> The ranked choice voting system permits a voter to rank up to five candidates rather than selecting one, and a winner is determined when one candidate receives the majority of the vote after eliminating the least popular candidate through tallying rounds.<sup>7</sup> As a result, a candidate running for a particular office may encourage voters to rank or contribute to another candidate in the same race. Such cross-endorsement or coalition building is not indicative of a non-competitive race, but rather an expected outcome of the ranked choice voting process.

Shortly before the June 2021 primary election, the Board published informal guidance that declared that “supporting and/or campaigning with opponents will not jeopardize your eligibility for public funds so long as you are also promoting your own candidacy, even if you are seeking lower-ranked votes.” This Advisory Opinion reiterates this guidance and further clarifies that cross-endorsement and cross-fundraising<sup>8</sup> in the context of a ranked choice voting election does not run afoul of Admin. Code § 3-705(9) or Board Rule § 3-01(d)(ii)(A)(6).

**NEW YORK CITY  
CAMPAIGN FINANCE BOARD**

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<sup>3</sup> *See id.* at 28.

<sup>4</sup> *See* Board Rule § 5-07(f)(7) (Eff. Nov. 22, 2008).

<sup>5</sup> Schaffer, Frederick, Chair of the New York City Campaign Finance Board, “The Introduction of Ranked Choice Voting in New York City Elections,” American Constitution Society (Aug. 10, 2021), <https://www.acslaw.org/expertforum/the-introduction-of-ranked-choice-voting-in-new-york-city-elections/>.

<sup>6</sup> *Id.*

<sup>7</sup> Board of Elections in the City of New York, “Ranked Choice Voting for NYC Local Elections,” <https://vote.nyc/page/ranked-choice-voting>.

<sup>8</sup> Public funds must be spent according to Act and Board rules, *see* Admin. Code § 3-704; Board Rule § 6-02(a), and campaigns must comply with all fundraising and expenditure reporting and documentation requirements.