Public Campaign Finance Debate Regulation

PART 6221 Public Campaign Finance Program

6221.34 Debate, Statewide Office

(a) Requirement to Participate in Debates. Participating candidates for statewide office are required to take part in at least one debate before each election for which the candidate receives public funds, unless the participating candidate is running unopposed, or no other nonparticipating candidate qualifies for such a debate.

(1) Non-participating candidates may participate in such debates subject to meeting criteria in paragraph (a)(5) of this section.

(2) Each debate held shall be at least one hour in duration.

(3) For the purposes of this section, a "debate" shall mean the moderated reciprocal discussion among candidates on the ballot for the same office.

(4) Except as otherwise provided for, each debate for a primary or general statewide election shall include those participating candidates and non-participating candidates the PCFB has determined to meet the non-partisan, objective and non-discriminatory criteria set forth in subdivision (a)(5) of this section.

(5) Each participating and non-participating candidate shall meet criteria, including financial criteria requiring that a participating or non-participating candidate shall be eligible to participate in such debate if they have, by the last filing date prior to such debate raised, and spent an amount equal to or more than 5% of the limits on public funding for the candidate provided under section 14-204 of the election law during the applicable election cycle. For the purposes of these criteria, candidates for governor and lieutenant governor from the same party in a covered election shall each be deemed to satisfy the criteria if either of them does or if both of them together do.

(6) If a non-participating candidate does not accept such invitation to debate or does not appear at such debate, the debate shall go forward as scheduled; provided, however, if there is only one candidate participating, such debate shall be cancelled.

(7) Nothing contained in this section shall preclude any candidate from agreeing to participate in any number of additional debates between any and all candidate for a statewide office, including non-participating candidates. These debates need not be held under guidelines or the purview of the Public Campaign Finance Board

(b) Eligibility to Host a Debate. The Public Campaign Finance Board shall select one or more hosts for each debate required by this section:

(1) Organizations which have been in existence for at least two years, and are not owned by or share common operational control with a political party, political committee, or holder or candidate for public office which have not endorsed or opposed any candidate in the pending primary, special or general election, nor made any contributions or expenditures independent or otherwise, to or regarding any such candidate, from either the organization itself or any affiliated political committees, shall be eligible to host a debate. Upon applying, an applicant shall certify to the criteria above. If the applicant is a subsidiary or related company, whose parent or sister company does not

meet the criteria above, the applicant must show that an adequate firewall is in place where the persons, or companies, with controlling authority, meet the criteria outlined above.

(i) For the purposes of this section, common operational control shall mean: when the same individual or individuals exercise actual and strategic control over the day-to-day affairs of both the organization and the political party or political committee; or employees of the political party or political committee and organization engage in communications related to strategic operations of the entities.

(ii) An organization's role sponsoring a debate pursuant to this section shall not constitute a contribution to or expenditure in coordination with the candidates who take part in the debate.

(2) The rules for conducting such debate, and the date, time, and location of such debate, shall be solely the responsibility of the organizations selected, but shall not be made final without consultation and agreement from the PCFB. Debate locations shall take into consideration the geographic diversity of New York State.

(i) The debate for each office shall be no earlier than five (5) weeks before and no later than one week before early voting.

(ii) Any broadcast plan accepted by the Public Campaign Finance Board shall include a requirement that the debate be made available, at no cost to the public, for simultaneous broadcast on television and over the internet. Any organization, other than the selected host, that simultaneously broadcasts the debate after receiving the consent of the host shall not automatically be deemed a host of such debate. Hosting of a debate may only be granted by the board. Further, such broadcast plan shall provide for a livestream of the debate on the internet at no cost to the public.

(iii) Any broadcast plan shall provide for plans for accessibility to the debate location and presentation of said debate for persons with disabilities, including, but not limited to, live closed captioning as well as American Sign Language interpretation of the debate.

(iv) Each debate held pursuant to these provisions shall be broadcast simultaneously, to the extent technologically practicable and in accordance with federal law and the rules and regulations of the federal communications commission. Additionally, debates shall be made available via internet/web-streaming to the extent technologically practicable and in accordance with all related state and federal laws, rules and regulations.

(v) Any materials produced by the host organization or PCFB for use in a debate held pursuant to this section, including programs, shall be made available to the public and posted on the PCFB website in accordance with subdivision eight-a of section 103 of the state technology law.

(c) Applying to Host a Debate. Written applications by organizations to host a statewide debate shall be submitted to the Public Campaign Finance Board on a form provided by the board not later than a date chosen by the PCFB in any year in which an election is held for statewide offices.

(1) The written application shall:

(i) Demonstrate that the organization and any proposed co-host shall meet the criteria in paragraph (b)(1) of this section;

(ii) Specify any elections for statewide office for which the organization seeks to host debate(s);

(iii) Demonstrate the ability to broadcast the debate statewide. Broadcast is defined as radio and television as such are regulated by the federal communications commission, including digital radio and television. Cable television is also a viable option. Broadcast via television is the preferred vehicle, which can be supplemented by radio broadcast. Broadcasting of debates shall also be supplemented by internet/web streaming when technologically feasible;

(iv) Set forth proposed dates, times, duration, and location(s) of the debate(s) and the specific and exclusive circumstances under which the date(s) or time(s) may be changed, together with a provision for when the rescheduled debate(s) would be held;

(v) Provide a detailed description of the format and ground rules for the debate(s) as well as general topic areas for questions. Topic areas should reflect the geographic and population diversity of New York State;

(vi) Verify that the staging, promotion, coverage, and broadcast of the debate(s) shall be in conformance with all applicable state laws;

(vii) Include an agreement to indemnify the State, including the State Board, for any liability arising from the acts or omissions of the host;

(viii) Set forth plans for publicity and for broadcast and other media coverage for the debate(s); and

(ix) Set forth plans to have a transcript and digital recording of the debate provided, free of charge, to the Public Campaign Finance Board.

(d) Selection of the Host for Debates. Prior to choosing a host, the board shall provide for the receipt of comments from interested persons and candidates regarding the qualifications of potential hosts. The board shall consider and give substantial weight to such comments submitted by candidates. The board shall publish a list of applicants on its website as soon as practicable upon closing of the application period. Interested persons, including candidates, may submit written comments regarding the qualifications of applicants to the Board via a dedicated email address conspicuously posted by the board on its website for such purpose, or by mail to the Board, addressed to the PCFB, Attn: Debate Applicant Comments. Such comments must be submitted no later than the date indicated by the Board in conjunction with its publication of the list of applicants.

(1) Based upon the sufficiency of the host applications and the discussions with the applicant regarding their ability to meet all the requirements outlined above, the ability to present a fair and impartial debate and any comments received, the board shall select the organization to sponsor the debate(s).

(i) Should more than one written application be deemed acceptable, then the host shall be chosen from the acceptable applications by random lottery drawing; provided, however, that in the event that the debate is for a statewide primary, the candidates shall be provided a list of approved hosts by the PCFB. If the candidates can agree on a preference for a debate host, they shall notify the PCFB of that preference within 72 hours of receiving the list of those approved. If no preference is received, a host shall be selected by random lottery drawing. The Board shall notify all participating candidates and non-participating candidates which are eligible to participate in such debates of the selection of the host organization.

(ii) For all debates, the board shall provide each debate host selected with a list of participating candidates and non-participating candidates who are eligible to participate in such debates.

(e) Failure of a Candidate to Participate in Debates. Upon a determination by the PCFB that a participating candidate inexcusably fails to participate in any debate required under this section before an election, the candidate shall potentially be ineligible to receive any further matching funds for that election and may also be fined or sanctioned for such failure. For purposes of this subdivision, each primary or general election shall be considered a separate election. Such candidate shall be provided a notice of an opportunity to be heard to challenge the initial determination.

(1) Should a candidate request a hearing to challenge the PCFB determination, a hearing consistent with §6221.44 of this Title shall be held, that the failure to participate in the debate occurred under circumstances beyond the control of the candidate, including Acts of God, and of such nature that a reasonable person would find the failure justifiable or excusable.