

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION, SECOND DEPARTMENT

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In the Matter of the Application of

MARTIN GOLDEN, JEFFREY LIVINGSTON, and  
FELIPE LUCIANO,

Petitioners-Appellees, **Second Department  
Case No. 2003-02410**

-against-

THE NEW YORK CITY COUNCIL and THE CITY OF NEW  
YORK,

**Kings County Index  
No. 45068/02**

Respondents-Appellants.

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**MEMORANDUM OF LAW FOR *AMICI CURIAE* BRENNAN CENTER FOR JUSTICE  
AT NYU SCHOOL OF LAW; CITIZENS UNION; COMMON CAUSE/NY; LEAGUE OF  
WOMEN VOTERS OF THE CITY OF NEW YORK; NEW YORK PUBLIC INTEREST  
RESEARCH GROUP; AND WOMEN'S CITY CLUB IN SUPPORT OF APPELLANTS**

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## PRELIMINARY STATEMENT

*Amici*, a group of prominent civic organizations devoted to ensuring democratic and open government in New York City, submit this Memorandum of Law in support of Appellants' effort to defend Local Law 27. The law in question corrected an unintended anomaly in the City's Charter that allowed certain City Council members to continue in office for eight years while forcing others to leave office after only six years. The anomaly threatens to rob constituents of certain City Council districts of their elected representation for the full eight years that were clearly envisioned and embraced by the people of New York in the 1993 term limits referendum. In supporting that referendum, the voters were told in the referendum campaign literature that they were supporting a term limit of eight years for members of the City Council, rather than a limit of six years. Indeed, the father of the 1993 term limits referendum, Ronald S. Lauder, considered using the campaign slogan "Eight is Enough" to convince voters to support the referendum and produced literature with this clear message. Not surprisingly, Mr. Lauder now vocally supports Local Law 27 to eliminate the "unintended consequence" of limiting certain officeholders to just six years in office. Far from undermining the term limits voters placed upon the City Council, therefore, Local Law 27 vindicates the will of the people by correcting this anomaly. In addition, Local Law 27 serves important public policy objectives in preserving the proper balance of power between the City Council and the Mayor. For these reasons, the undersigned organizations have come together as *amici* to support this appeal and the soundness of Local Law 27.<sup>1</sup>

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<sup>1</sup> *Amici* take no position at this time on the desirability of term limits, generally, or the need for a referendum to amend the term limits law in other circumstances.

## STATEMENTS OF INTEREST

The BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW (the “Brennan Center”), a non-profit organization in New York City, seeks to bring the ideal of representative self-government closer to reality. The Brennan Center was formed in 1995 to carry on and honor the legacy of U.S. Supreme Court Justice William J. Brennan, Jr., by implementing a nonpartisan agenda of scholarship, public education, and legal action that promotes equality and human dignity, while safeguarding fundamental freedoms. The Brennan Center’s Democracy program collaborates with grassroots groups, advocacy organizations, and reform-minded government officials to eliminate barriers to full and equal political participation and to ensure that public institutions reflect and represent the diverse voices and interests inherent in a healthy democracy. The Brennan Center supports this appeal because Local Law 27 vindicates New York City voters’ will in passing the 1993 term limits referendum and avoids inequities in representation created by the anomaly in prior law.

CITIZENS UNION was founded in 1897 to fight the corruption and cronyism of Tammany Hall. Over the years, Citizens Union spearheaded the fights for campaign finance reform, historic preservation, improved voting procedures, City Charter revision, and home rule for New York City. Citizens Union supports this appeal to remove an anomaly in the term limits qualifications for the City Council and vindicate the intent of the voters’ 1993 term limits referendum.

COMMON CAUSE/NY is a non-partisan, non-profit citizen's lobby and a leading force in the battle for honest and accountable government with a proven track record of hard-fought legislative campaigns and lasting victories at the state and local levels in New York State. For

more than 30 years, Common Cause/NY has been a respected and active leader in the fight for campaign finance reform, election reform and participation, ethics and open government, and other measures dedicated to fair, open, and accountable democracy. With approximately 200,000 members across the country and more than 15,000 members in New York State, Common Cause has worked since its founding to provide a voice for citizens in support of open, honest, and accountable government at all levels. Common Cause/NY supports upholding Local Law 27 because it clearly represents the intended will of voters and corrects an anomaly that would create inequity in the City Council.

The LEAGUE OF WOMEN VOTERS OF THE CITY OF NEW YORK supports the active and informed participation of citizens in New York City government. The League is a unique, multi-issue, nonpartisan civic organization that influences public policy through advocacy and education. The League supports this appeal to remove an unintended consequence in the term limits qualifications for the City Council and vindicate the intent of the voters' 1993 term limits referendum.

The NEW YORK PUBLIC INTEREST RESEARCH GROUP (NYPIRG) is a non-profit research and advocacy organization directed by New York State college students, many of whom are registered voters in New York City. NYPIRG has long supported reforms to make New York City government more open and democratic and annually registers tens of thousands of New Yorkers to vote. NYPIRG closely monitors the work of the New York City Council and lobbies its members on a wide range of government reform, social justice, environmental, transportation and public health initiatives. NYPIRG supports this appeal, and submitted testimony in support of Local Law 27 prior to its passage by the City Council, because this law corrects an unnecessary and unintended inequity in the term limits as they apply to certain Council members.

The WOMEN’S CITY CLUB OF NEW YORK, INC. (WCC), is an independent not-for-profit, nonpartisan organization. For 88 years, WCC has been an advocate working to make New York City a better place by shaping public policy and encouraging citizen involvement in government. WCC has had a long-standing commitment to openness, accountability and fairness in the operations of government. In analyzing public policy issues and making recommendations about local laws and policies on many subjects, WCC has worked closely with members of the New York City Council and has frequently testified at Council hearings, including the hearing held on Local Law 27. WCC supports this appeal because Local Law 27 addresses an inequitable and unintended anomaly in the term limits imposed on members of the City Council.

## **ARGUMENT**

### **I.**

#### **LOCAL LAW 27 VINDICATES THE VOTERS’ INTENTIONS IN SUPPORTING THE 1993 TERM LIMIT REFERENDUM**

In 1993, through a successful citizen-initiated term limit referendum, voters added Sections 1137 and 1138 to the New York City Charter. Section 1137 declared that it is

the public policy of the city of New York to limit to not more than *eight consecutive years* the time elected officials can serve as mayor, public advocate, comptroller, borough president and council members so that elected representatives are “citizen representatives” who are responsive to the needs of the people and are not career politicians.

City Charter § 1137 (emphasis added). This plain objective – to ensure that elected citywide and borough-wide officials, as well as City Council members, would serve a maximum of eight consecutive years – was accomplished in Section 1138, which states that no official may serve more than two presumptively four-year terms.

The campaign to pass this 1993 referendum hinged on a simple proposition: the City’s principal elected officials should serve no more than eight consecutive years in office. Not

surprisingly, Ronald S. Lauder, the single most significant proponent of the term limit referendum, considered adopting “Eight is Enough” as a campaign slogan to support the referendum. *See* Exhibit A.<sup>2</sup> In his words, eight years was “long enough to make a contribution but not long enough to make a career.” New Yorkers for Term Limits, the primary organizational sponsor of the referendum, published literature that described the referendum as “a voter referendum to limit the Mayor, City Council President, Comptroller, Borough President and City Council Members to *two consecutive four-year terms*.” Exhibit B (emphasis added). The Ballot Proposal itself simply stated “should the New York City Charter be amended . . . to provide that a person may not hold the office of mayor, public advocate, comptroller, borough president or City Council member for more than two consecutive terms?” Exhibit C. In short, the voters of New York City were presented with a simple choice whether to vote for or against term limits that would limit their representatives to eight years in office by limiting them to two consecutive terms. That is the referendum that voters chose to support.

Contrary to the voters’ plain intentions, Section 25(a) of the City Charter, which temporarily changes the normal four-year Council term into two separate two-year terms every 20 years, combined with this new term limits referendum to create an unintended anomaly that affects only certain Council members and does so only every 20 years. Specifically, Council Members who precede or follow a two-year term with a four-year term as a result of Section 25(a) of the Charter will be limited to six years of service under the 1993 term limits referendum.

Neither the literature underlying the 1993 campaign nor the Ballot Proposal itself explained this anomaly to voters prior to their decision to support the referendum. The notion that certain elected representatives would be limited to six years, rather than the eight years trumpeted by

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<sup>2</sup> Unless otherwise noted, citations to exhibits in this memorandum refer to those exhibits annexed to the Affirmation

supporters of the referendum, never entered the public debate and cannot be considered an intended outcome of the voters' choice at the polls. The people of New York could only have assumed they were voting for a limit of eight years through two four-year terms.

Not surprisingly, when this anomaly came to light and the City Council sought the narrow amendment embodied in Local Law 27, Mr. Lauder himself joined with Council Speaker Miller in writing an opinion editorial in the *Daily News* to explain that the current term limits law has the “*unintended* consequence of actually limiting some officeholders to just six years in office.” Exhibit D (emphasis added). In his view: “As applied to the City Council at least, ‘Eight is Enough’ proved to be a more powerful campaign rallying cry than an accurate legal description of the new law.” *Id.* Mr. Lauder supported Local Law 27 to “cure the term limits quirk. Under the new law, provided the voters want to keep him or her in office, every Council Member will be able to serve a full eight years . . . .” *Id.* As the father of New York City’s term limits has recognized, Local Law 27 simply conforms existing law to the expressed will of the voters to allow their elected representatives to serve eight years in office. For this reason, the organizations gathered as *amici* respectfully submit that Local Law 27 better protects the popular will than the lower court’s decision to require this unintended anomaly to stand uncorrected.

## II.

### **LOCAL LAW 27 PROVIDES CRITICAL UNIFORMITY AND PREVENTS UNINTENDED INEQUITIES IN REPRESENTATION**

Local Law 27 also brings uniformity to the City’s term limits: all elected representatives may serve, depending on their ability to be re-elected, a minimum of eight years in office.<sup>3</sup> Without this

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of Jeremy M. Creelan that accompanies this memorandum.

<sup>3</sup> The trial court noted in support of its decision that Local Law 27 would mean that some Council members could serve as many as 10 years, and a few, because of special elections to fill vacancies, as many as 11.8 years. *See* pp. 20-21. While Local Law 27 does not foreclose such an outcome in unusual circumstances, it also did not itself create it. Even

change, the Charter would rob voters in certain districts of the opportunity to elect their representatives for a full eight years, although, of course, the voters would have to decide to do so. Greater seniority in the City Council means greater resources and a more powerful voice in that body with which to represent one's constituents. Without Local Law 27, therefore, the City Charter would produce an inequitable system of representation that would place constituents in those districts affected by this anomaly at a significant disadvantage in the City Council's representation of their interests. Not only would their current representatives in the Council be disqualified after six years, but even their successors would be similarly disqualified in another six years. Such an outcome would contravene both the purpose of the 1993 term limits referendum and the democratic value of fair and equal representation. For this reason as well, the Court should reverse the lower court's decision to prevent this inequitable outcome.

### III.

#### **LOCAL LAW 27 PRESERVES THE IMPORTANT BALANCE OF POWER BETWEEN THE CITY COUNCIL AND THE MAYORALTY THAT TERM LIMITS WERE NOT INTENDED TO DISRUPT**

Local Law 27 also corrects a significant threat to the delicate balance of power between the City Council and the mayoralty. Absent this important corrective law, several senior members of the City Council, as well as countless future members, will be forced to leave office after only six years.

This increased turnover exceeds that envisioned by voters when they passed the 1993 term limits referendum and, more importantly, will weaken the City Council substantially.

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before Local Law 27 was passed, the time served by a Council member who filled an unexpected vacancy did not count toward the calculation of his or her term limit. Moreover, the potential for such an outcome is irrelevant to the principal purpose and validity of both the original 1993 term limits and Local Law 27 itself. Just as in the case of the office of President of the United States, a person who fills an unexpected vacancy could conceivably serve as many as ten years, even though both the President and New York City Council members face a limit of two terms or eight years. *See* U.S. Const. amend. XXII, § 1. The absolute ceiling for time served varies in limited circumstances. But this fact does not in any way alter or undermine the soundness of setting a uniform floor, *i.e.*, eight years in office. Indeed, without such a floor, the inequitable representation wrought by this legal anomaly will be left unchanged.

The mayoral agencies that gird the authority of the mayoralty relative to the City Council feature ongoing, institutional memory and service carried forward through the years by both senior civil servants and even repeated political appointees. This institutional authority buttresses the mayoral power and authority in his or her negotiations and other interactions with the City Council. Staff members in these agencies possess longstanding knowledge of City and State programs, access to data and program staff built up over years of service, and reputational clout that can only come with seniority.

By contrast, the City Charter's term limits ensure that turnover in the City Council occurs at least every eight years for members and their designated staff. With this turnover comes a reduced institutional authority and memory that inevitably threatens the City Council's impact on policy and budget negotiations with a Mayor. Nevertheless, the voters of New York City approved such a balance of power with the 1993 term limits referendum.

The voters did not, however, knowingly choose to undermine the Council's authority even more dramatically by limiting certain members to six years in office. This unintended outcome threatens to harm voters by reducing the Council's authority in relation to the mayoralty, particularly at a time of sensitive budget negotiations. Local Law 27 addresses this threat wisely and narrowly. In the view of the undersigned organizations, the delicate balance of powers struck by the City Charter between the City Council and the mayoralty must be preserved in this manner.

## CONCLUSION

For the foregoing reasons, the decision of the court below should be reversed in its entirety.

DATED: March 27, 2003

RESPECTFULLY SUBMITTED,

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