

Testimony of

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Committee on Governmental Operations

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Good morning, Council Members, and thank you for the opportunity to testify in support of this important package of bills and resolutions. My name is Wendy Weiser, and I am an attorney at the Brennan Center for Justice at NYU School of Law. The Brennan Center's Democracy Program works on a number of research, litigation, and advocacy initiatives aimed at expanding voter participation and eliminating barriers to full and equal political participation, especially for people of color and low-income citizens. My testimony today is informed by two such projects. First, the Center works to ensure that states, including New York, implement the Help America Vote Act in a manner that protects voters' rights. Second, the Center advocates to restore voting rights and to remove registration barriers for people with felony convictions.

We commend the Speaker, the Chair, and the Committee on Governmental Operations for supporting legislation and resolutions to strengthen the Pro-Voter Law and to enhance the franchise for New Yorkers. Although the Brennan Center supports all of the bills and resolutions being considered today, I will focus my remarks on Resolution 19 and Intro 560.

Intro 1

With respect to Intro 1, we concur with the comments by Erika Wood of the Legal Action Center and Steven Carbo of Demos, and we would be happy to offer our assistance in preparing materials for or otherwise participating in the trainings that would be required.

Resolution 19

Voting is both a fundamental right and a civic duty. Restoring the right to vote strengthens our democracy by increasing voter participation. Moreover, exercising the right to vote helps people who have completed their incarceration to reintegrate into society. For these and other reasons, the Brennan Center urges the City Council to pass Resolution 19 in support of a state law to re-enfranchise parolees.

As you know, under New York law, people who are convicted of felonies lose their right to vote while they are incarcerated and while they are on parole. As of 2000,

the most recent year for which we have data, New York disfranchised more than 130,000 people under these laws, of whom nearly half, 57,858, were parolees.

Felony disfranchisement has a disproportionate impact on minority communities. The disfranchisement rate among African Americans in New York is 3½ times the rate for the general population. Latinos are also disfranchised at higher rates than their representation in the overall population.

People on parole have been deemed by courts and corrections officials to be safe to rejoin and live in their communities. They have many of the same rights and responsibilities as other citizens. They can marry or divorce, write letters to the editor, go to church, and participate in their children's PTA organizations. They work and pay taxes. It is in the community's interest to encourage these activities, because positive connections with the community prevent crime. A recent study found that formerly incarcerated people who vote were half as likely as those who do not vote to end up back in prison. State laws that disfranchise our neighbors not only harm them but also leech political power from some of the communities that most need to be heard.

Moreover, a rule that all non-incarcerated people can vote has the virtue of administrative simplicity. A 2003 Brennan Center survey found that more than half the counties in the state, including all of New York City, refused to register individuals with past felony convictions unless they provided various documents that were difficult or impossible to obtain. While the State Board of Elections issued a directive to correct this problem, there remains enormous confusion about the voting rights of people with criminal records. Much of this confusion would be dispelled if officials were permitted to register any citizen who appeared in person, and thus who, by definition, was not in prison. Such a rule would go a long way toward eliminating the errors and misinformation that lead to the disfranchisement of people even when they are legally entitled to vote. On behalf of the City and its neighborhoods, the Council should take a stand in favor of restoring the fundamental right to vote to people on parole.

Intro 560

The Brennan also urges the Council to pass Intro 560, which would require the Board of Elections to provide written notification to voters who cast affidavit or paper ballots as to whether their votes were counted, and, if they were not, to explain the reason.

This provision is an appropriate supplement to HAVA's requirement that each state establish a free access system, such as a toll-free number, for voters who cast provisional ballots to determine whether their votes were tallied. Since many voters are unaware of or have trouble accessing such systems, the written notification requirement will better ensure that all voters are informed of what happened to their votes. This will not only enable voters to monitor and protect their own voting rights, but it will also breed more confidence in the City's administration of elections.

One minor clarification that we would like the Council to consider including in the legislation is a provision making clear that the requirements of Intro 560 are intended to supplement, and not supersede, HAVA's requirement of a toll-free access system. Information about the status of an affidavit or other paper ballot might be available through the toll-free system more quickly than the time period provided in Intro 560 (ninety days after the certification of an election). Voters who seek information about the status of their ballots should have access to it as soon as it is available. In addition, voters who move or who do not have stable addresses may not receive the written notifications.

In addition, although this is perhaps beyond the scope of Intro 560, we also urge the Council to introduce a provision requiring the New York City Board of Elections to count affidavit ballots cast in the wrong polling place, unless there is affirmative evidence (such as a signed notation on an affidavit ballot envelope) that the voter was notified of the consequences of casting an affidavit ballot in the wrong polling place, was directed to the correct polling place, and could have voted at that polling place without undue hardship.

This would entail a change in New York City's election practices, since the local board currently counts affidavit ballots only if they are cast in the right polling place, regardless of the underlying circumstances. But the current practice is unfair and misleading to voters in a number of ways. Perhaps the most glaring reason it is unfair is that voters often have no way of determining the polling places at which they are supposed to vote. The board is not required to send notices to *all* voters, and a certain percentage of notices it does send get lost in the mail. What's more, the board cannot accurately and promptly respond to all voter inquiries. The New York Post recently reported that the City Board of Elections responded to voter inquiries about where to vote five months *after* the election. For those voters, casting a ballot was not unlike playing the lottery.

As you are no doubt aware, earlier this year, the Court of Appeals decided that New York law requires local boards to count affidavit ballots cast in the wrong election district, but not those cast in the wrong polling place. It is important to note that the Court did *not* say that New York law *prohibits* local boards from counting affidavit ballots cast in the wrong polling places. Also, the Court did not consider *federal* law, which in fact *does* require that those ballots be counted. There is simply no good reason why the City should continue to countenance a practice that has the effect of unfairly disenfranchising voters as a result of administrative errors.

Thank you. I would be happy to answer any questions about my testimony.