

Testimony of
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in Response to the
Charter Revision Commission Staff Report, Dated August 13, 2003,
on the Impact of Non-Partisan Elections on Democracy in New York City

August 19, 2003

Good evening Chair Macchiarola and Members of the Commission. My name is Deborah Goldberg. I am the Democracy Program Director at the Brennan Center for Justice at NYU School of Law. With me is Adam Morse, Associate Counsel in the Democracy Program, who has produced the thorough, dispassionate, and critical review of the scholarly literature that forms the basis for the Center's prior Statement on non-partisan elections. As you know, the Center's Statement and the report prepared by Prof. Muzzio represent virtually the sole focus of the Commission Staff's report of August 13, 2003.

We have come here tonight to make five brief points on behalf of the Brennan Center. Because our time is limited, and because we did not receive the latest Staff Report until yesterday, we plan to submit a more comprehensive supplemental statement in writing before the Commission's public hearing later this week.

The Chair has just announced that a majority of this Commission has firmly made up its mind to place an initiative on the ballot. My remarks are therefore directed to those of you who may still have an open mind about the legitimacy of this process and the conclusions reached by the Staff. I would encourage any Member with lingering concerns to publish a minority report that will enable the public to understand the reasons for doubting the wisdom of the Commission's position.

1. Our first point is the main point of our original Statement: It is irresponsible to make so fundamental a change in the City's electoral processes as a move to non-partisan elections would be without first undertaking serious, methodologically defensible, empirical analysis of its probable impact. In the absence of new and reliable research, however, those of us (and those on the Commission) who strive for intellectual rigor and honesty in formulating policy have no alternative but to review pre-existing studies on non-partisan elections. In undertaking that review, the Brennan Center has been acutely aware of the gaps, weaknesses, and inconsistencies in those studies – indeed, we made a point of noting the small samples, failure to control for potentially confounding factors, and other scientific deficiencies in the data and analyses upon which we were forced to rely – and our tentative conclusions were expressly qualified by reference to those concerns. I would certainly hope that members of this Commission would be as offended as we were at the Staff's insinuation that we were unmindful of the limitations of the available scholarship in reporting what little consistent information could be gleaned from it. We do not insist, based on that research, that non-partisan elections are necessarily a bad idea. But major policy proposals should be based on more persuasive evidence than is now before the Commission.

2. The Commission should also insist that its Staff follow appropriate scientific method. It is easy to pick out individual races in which losing candidates of color *might* have done better under non-partisan elections. Even assuming (without evidence) that those candidates *would* have been more competitive, it is quite another matter to demonstrate – and the Staff has done nothing to demonstrate – that non-partisan elections *systematically* improve opportunities for communities of color to elect representatives of their choice. To the contrary, the refusal to produce either Prof. Lichtman’s prior studies of mayoral races or documentation of alleged Department of Justice preclearance decisions only heightens concerns about retrogression. Those concerns cannot be allayed, as the Staff suggests, by “imagin[ing]” what might have happened under non-partisan elections in an isolated race or two. Promoting genuine and lasting diversity at all governmental levels requires a transparent and replicable analysis of partisan and non-partisan elections that fully controls for competing explanations of success among minority candidates.

3. Third, it is worth noting that the Center is being asked to direct its commentary at what appears to be a constantly moving target. The policy change that was at least ostensibly up for consideration when we prepared our initial position paper was a move to non-partisan elections. We applaud the Commission’s response to concerns about the loss of political party cues on the ballot, but the new proposal – to abolish political party primaries in favor of a single election including all candidates for an office, while allowing each candidate to list on the ballot the political party in which he or she is enrolled – has been the subject to even *less* study, and there is far less experience with it available for analysis. As far as we know, there are two cities (Jacksonville and Minneapolis) and one state (Louisiana) that use such a system. The Staff cannot have it both ways – they cannot both claim to have eliminated the risks of genuinely non-partisan elections by putting political party affiliations back on the ballot, as they do in Louisiana, and at the same time insist that Louisiana’s experience with fringe candidacies provides no basis for concern about politics in New York City.

4. Allowing party membership to be listed on the ballot, as recently proposed, creates new and different problems for New York City voters. Under current law, New York provides for what is known as “fusion” ballots, on which political parties may cross-endorse a single candidate. Fusion offers voters additional information about the candidate’s political views – a truly conservative Republican may secure the endorsement of the Conservative Party; a truly progressive Democrat may be endorsed by the Working Families Party. Fusion also allows voters to express allegiance to minor-party views, without forcing the party to run what may be a “spoiler” candidate. Because major-party candidates want votes from minor-party supporters, fusion helps to keep Democrats and Republicans true to politically distinct ideologies. Under truly non-partisan elections, the benefits of fusion are lost, but all parties lose equally – none is identified on the ballot. The current proposal allows minor parties on the ballot only if candidates are party members – and potential spoilers – negating the benefits of fusion and entrenching major-party control over the political agenda.

5. Finally, the Staff has done nothing to address concerns about the Charter revision process. Indeed, the *ad hominem* attacks in the most recent report suggests that fair-minded evaluation of the merits of non-partisan elections (or an open primary system) is not on the Staff’s agenda. We hope that it *is* on the Commission’s agenda and that the Commission

members will look past the straw men set up by the Staff to the serious issues that we and others have raised. We include among those issues the Commission's legitimate argument that many voters now have no meaningful influence on City Council races. But we reiterate our view that the proposed solution to that problem – whether the original plan or the new one – leaves a trail of unanswered questions. My hope is that by focusing on those questions, the Brennan Center can assist the Commission in serving common interests in public policy that demonstrably respects the voting rights of communities of color, encourages increased participation among voters regardless of their socio-economic status, and improves representation for the residents of New York City.