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New York City Bar Association
Statement to the 2010 Charter Revision Commission

July 26, 2010

This statement is submitted in response to the July 9, 2010 Preliminary Staff Report and Recommendations (the “Preliminary Report”) of the 2010 Charter Revision Commission (the “Commission”).

The New York City Bar Association (the “Association”) commends the Commission for acknowledging that many proposals require more study and should be reserved for future consideration. The Association believes that the Commission should not rush its work to place proposals on the 2010 ballot that may require more examination and discussion than the current timetable permits. Allowing for extra time will vastly strengthen the end product, at the same time increasing public confidence in the Commission’s integrity and its interest in hearing the public’s opinion.

We submit this second report to focus on two areas that appear to be of particular interest to the Commission for this year –term limits and consolidation of New York City’s administrative tribunals.

The Special Case of Legislative Term Limits

Term limits are not a one-size-fits-all issue. There are numerous reasons, supported by academic and empirical research, why it might make sense for executive and legislative officials to be treated differently with respect to terms limits as they are in our Federal system. At the same time, because the executive (the Mayor) is the City’s most visible official, there is a danger that voters will not think about these differences when they go to the polls. Their minds will be on the question, “How long do I want this Mayor?” and not, also, “What does that mean for my Councilmember?” Therefore, before putting any term limit proposal on the ballot, we urge the Commission to ensure that the voters are adequately educated on the fact that these questions are different, and might not merit the same answers.

In our previous submission, we urged the Commission to devote particular attention to these different considerations. We commend the Commission Staff’s Preliminary Report for also highlighting them.¹ However, based on recent public comments by members of the Commission itself, it appears that many Commissioners do not agree that the question whether legislative officials should have longer terms than the executive deserves further attention. The Association strongly disagrees, and urges the Commission to study those differences, make proposals that take those differences into account, and thoroughly educate the public as to why those differences are critical.

¹ Preliminary Report, at 22-25.

The Mayor is by far the most visible and powerful member of New York City government. It is precisely for that reason that the City Council members need sufficient time in office to be an effective check and balance on Mayoral authority. Legislators need time to develop the substantive and political expertise to counterbalance the Mayor's significant authority and presence. Nor is the City well served by legislators that, due to term limits, are constantly focused on their next political office, and hence more interested in politics than policy. The Association believes that legislators need the opportunity to run for at least three four-year terms in office if the City Council is to be truly effective and achieve the intended balance between the branches of government.

In our previous submission we outlined several risks attendant to restoring the two-term limit for council members, including:

- **Deprivation of institutional knowledge:** A two-term limit applied to the Council depletes institutional knowledge too quickly or before it can even be acquired. As a result, the City loses the benefit of a body of legislators who have gained expertise in substantive areas and familiarity with the particulars of the legislative process and the budget;
- **Disproportionate staff influence:** The less experience legislators have, and the less time they have to gain it, the more they will rely on professional staff. This runs the risk of disproportionately increasing the influence of the unelected staff;
- **Diminished quality of legislation:** With less time to “make their mark,” new legislators have incentives to propose “attention-grabbing legislation” quickly, rather than taking time to fully study the political process and the issues;
- **Inattention to critical but low-visibility issues, such as infrastructure:** For these same reasons, necessary expertise in and attention to critical but not highly visible areas may be lacking;
- **Promising careers cut short or unduly hastened:** A two-term limit may lead to the early end of promising careers in public service, or force new legislators into leadership positions before they are ready.

The largest study to date of term limits in state legislatures confirms that the risks outlined above are a reality for many state legislatures that are subject to term limits. The Joint Project on Term Limits (JPTL) is the result of a three-year study of the effect of state legislative term limits across the nation, conducted by the National Conference of State Legislatures, the Council of State Governments, the State Legislative Leaders Foundation and a group of distinguished American political scientists.² JPTL's findings should be of high interest to members of the Commission, not only because there is little work specifically on municipal term limits, but also because New York City is likely institutionally more comparable to many state governments both in size and in the complexity of its administration than it is to many other municipal governments. The Charter Commission Staff's Preliminary Report itself acknowledges the aptness of the state legislative comparison.³

² National Conference of State Legislatures, *Coping with Term Limits* (2006).

³ Preliminary Report, at 22-24.

In addition to the concerns raised by the Association in its first submission, the JPTL report outlines several additional considerations that deserve the Commission's attention:

- **Terms limits do not end “political careerism”:** Term limited legislators do not return to their old jobs, but rather continue to seek higher office.
- **Term limits diminish the quality and effectiveness of legislative leaders:** As the JPTL report states: “No legislative leader in a term-limited state has served more than four years in a leadership post, and the vast majority have been limited to two years. ... The decrease in legislative experience and shortened leadership tenure not only make the learning curve steep for new leaders, but also make it more difficult for leaders to exert influence on their caucus. The ‘lame duck’ factor has played a critical role in the declining influence of leaders in term-limited legislatures.”
- **Term Limits lead to less experienced and less effective committee chairs:** The result of this can be disproportionate outside influence, not only by staff but by other government officials and lobbyists, as well as the tendency to revisit the same issues in every legislative session due to lack of institutional knowledge and expertise. Moreover, “the combination of increased turnover and decreased experience has caused committees to become more chaotic and less effective at gatekeeping and screening out ineffective legislation.”
- **Term limits have increased partisanship and political aggressiveness that affects the quality of debate and the success of legislation:** JPTL reports that because term-limited members “know less about the substance of bills, debates in committees seem to be more personal, partisan and political.” And, in general even outside the committee context, JPTL's study revealed that “increase[s] in conflict were reported in term-limited legislatures The consequences of this are more than a simple change in the social climate—the decline in civility has reduced legislators' willingness and ability to compromise and engage in consensus building.”
- **Term limits lead to the decline of the influence of the legislature in relation to the executive:** This finding is critical as to the role of the legislature as a check on the executive's authority. Of significance, the JPTL report also notes that this “decline in legislative power is most visible in the budget process.”⁴

The JPTL findings are corroborated with respect to City government in an article by Hofstra Law Professor Eric Lane, himself co-executive director and counsel of the 1989 Charter Revision Commission and a former special counsel to the New York City Council:

First, and unexpectedly, term limits have resulted in an intentional decentralization of the Council leadership's power. Second, the argument that term limits will replace careerists with citizen legislators is wrong; almost all of those elected since the City's term limit law has become effective have had political backgrounds and intend to remain in elective politics. Third, as a consequence, many members seem to be in a great rush to promote themselves individually, at a cost to the Council's newly decentralized

⁴ JPTL, at 1-5.

deliberative processes. Fourth, both the dispersion of power and the career concerns have made the Council more accessible, allowing new “special” interests into the process, while at the same time upping the cost of participating for traditional interests. Finally, the large number of new members increased the relative influence of the speaker, staff, and lobbyists. From a broader perspective, term limits have improved the representative and accessibility characteristics of the Council. But they have also resulted in growing pressures for the immediate enactment of laws, raising serious questions of whether they have undermined the Council’s deliberative processes, those which fight against conversion of factional passions into law.⁵

In conclusion, we emphasize a warning made in the JPTL report, namely, that “[a]mong the most dramatic and fundamental changes term limits have brought to state legislatures are those that have occurred in the internal workings of legislatures, where they are largely invisible to the public.”⁶ This invisibility raises particular concerns about voter education in this area and the ability of the average voter in the voting booth to understand the special considerations attendant to legislative term limits, when they are most likely focused only on the simpler and far-more-intuitive question of whether they would like their Mayor to serve two or more terms.

Although the Commission has been commendably independent thus far, it has also moved with significant speed. As a result, the Association remains concerned that the both the Commission and the public have not been sufficiently educated about the differences between executive and legislative term limits. It is not clear that the public has even been made sufficiently aware that it is possible to implement different limits for different offices and that there may be reasons to do so. Without this knowledge, it will be impossible for public to make an informed choice on election day. Indeed, the dominance of the focus on the Mayor in any public consideration of the term limits question may even counsel in favor of the Commission’s writing two separate questions on term limits—one for the Mayor and one for the Council—should it choose to include both. We urge the Commission to change course and study more thoroughly the special considerations attendant to legislative term limits before making any proposals that would affect them.

Consolidation of Administrative Tribunals

The Preliminary Report proposes an amendment to the Charter that would allow for the consolidation of the various New York City tribunals into one agency. Specifically, the proposal envisions an amendment authorizing the Mayor to transfer the adjudicatory functions of various tribunals under the umbrella of a single tribunal/agency, such as the Office of Administrative Trials and Hearings (OATH). The Association believes this proposal should not be placed on the 2010 ballot because it requires a longer, more in-depth study than the current timetable permits.

The Association commends the efforts of OATH and the Mayor’s Office of Administrative Justice to streamline the adjudication hearing process of New York City’s tribunals in recent years. In 2005, the Charter was amended to set a code of conduct for administrative law judges mirroring the code applicable to state court judges. In 2006, the Mayor created the Office of the Coordinator of Administrative Justice, to increase the operational efficiency of the City’s tribunals. Most recently, in 2008, legislation was enacted consolidating the jurisdiction over adjudications of the Environmental Control Board (“ECB”), the second largest administrative tribunal in the City, with OATH.

⁵ Eric Lane, *The Impact of Term Limits on Lawmaking in the City of New York*, 3 Elec. L. J. 670, 671 (2004). Professor Lane advocates removing legislative term limits entirely, rather than extending them for an additional term beyond the Mayor’s.

⁶ JPTL, at 2.

However, meaningful changes to the City's administrative justice process require a careful consideration of the diverse interests and policies of the City's agencies. Thousands of administrative hearings are conducted annually by New York City and its agencies in a variety of specialized tribunals. These tribunals employ vastly different processes. The Association believes it may be difficult for the Commission to obtain, analyze and reflect on the information required to effectuate a consolidation of the City's tribunals within the time frame for the 2010 ballot. In particular, we recommend studying the consolidation of ECB with OATH to understand best practices and process. While the Association recognizes that a proper and efficient functioning of these tribunals is essential to the City's administrative justice system, the proposal to reconfigure the consolidation of the various City tribunals into one agency requires a longer and more in-depth study. These proposals should be reserved for future considerations when the Commission can proceed in an informed and orderly manner.

In addition, additional time is needed to promote public understanding of the City's administrative tribunals, so that any vote on the topic is informed. The City's administrative agencies are diverse, and it is not reasonable to expect most voters to understand how agency determinations are made and the implications of consolidation within OATH in time for voters to make educated decisions in time for the 2010 ballot. We submit that devoting additional time to the study of this issue will also lead to better informed voters.

We thank the Commission for the opportunity to comment on its proposals, and hope that it will consider our recommendations. In particular, we urge the Commission to include on the November 2010 general election ballot only those matters as to which the Commission has given due consideration and about which the Commission is certain the public is sufficiently informed.

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