



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, NY 10007

**FOR IMMEDIATE RELEASE**

October 16, 2008

No. 411

[www.nyc.gov](http://www.nyc.gov)

**TESTIMONY OF BLOOMBERG ADMINISTRATION OFFICIALS ANTHONY CROWELL AND MICHAEL CARDOZO ON INTRO. 845-A BEFORE THE NEW YORK CITY COUNCIL COMMITTEE ON GOVERNMENTAL OPERATIONS CONCERNING THE EXTENSION OF TERM LIMITS**

*Testimony As Prepared of Anthony W. Crowell, Counselor to the Mayor*

“Good afternoon Chair Felder and members of the Committee. I am Anthony Crowell, Counselor to Mayor Michael Bloomberg, and I am here on behalf of the Administration to testify in support of Intro. 845-A. This bill would amend the City Charter’s provisions regarding term limits by changing the number of full consecutive terms of office that may be served by a City elected official from two to three terms. Joining me today is New York City Corporation Counsel Michael Cardozo, who will deliver testimony focused on the legal issues tied to this bill, and others being considered by the Council.

“The issue of term limits is an important one for the Council to consider, and we would encourage you to begin by thinking about where our City is today – and how we got here. Looking back over the past six and three-quarter years since the Mayor was first sworn into office, along with many of you, the City has made gains that no one thought possible. I am sure all of you know the key stats:

- Crime has been cut to a 40-year low;
- Graduation rates have climbed 20 percent;
- Record budget deficits were turned into record surpluses;
- Unemployment dropped to all-time lows;
- 165,000 units of affordable housing are being built or preserved – the largest such program undertaken by any city, ever;
- Lower Manhattan has been transformed from a 9 to 5 business district into a vibrant 24-7 community;
- Smoking rates among teens have been cut by more than half;
- New York’s public hospitals have never been healthier or higher rated;
- And carbon emissions are being reduced, thanks to the Mayor’s visionary PlaNYC agenda.

(more)

“All of this – and more – has not happened by accident. It has been achieved by the Mayor and the City Council, working together in partnership.

“The great progress we have made, however, is now threatened by the turmoil on Wall Street and bank panics that carry echoes of the 1930s. In just a few short months, some of New York’s largest and most important financial institutions have collapsed – victims of a financial crisis that is rocking the global marketplace and shaking the very foundation we have worked so hard to build.

“Under these crisis conditions, everything has changed. Whereas a year ago, we could think of term limits in theoretical terms, crisis has a way of clearing the mind and forcing us to put pragmatism first. As Ben Bernanke, the chairman of the Federal Reserve has noted, ‘There are no atheists in foxholes, and no ideologues in financial crises.’ In Washington, free market ideologues have now become proponents of a rescue plan in which government will take an ownership interest in banks.

“The economic crisis has made everyone stop and think – and re-assess. That is healthy. And it is necessary. Because when conditions change, all of us have the responsibility to factor them into our thinking. To do otherwise would be to allow stubbornness to get in the way of rational and clear-headed decisions.

“Here in New York, as the Mayor has said, the financial crisis threatens many of the gains we have made as a City. In light of this, many people have paused to reconsider the issue of term limits and how they are structured. After listening to many different people with many different opinions, the Mayor has come to believe that it is in the City’s best interests to give voters more options, not fewer – and let them decide who they want in office. In addition, he intends to appoint a Charter Revision Commission to study the issue and consider whether to put before voters in 2010, among other potential issues, a proposal on term limits.

“There has been a great deal of support for the merits of extending term limits, while much of the opposition has concentrated on the process by which it would occur. So let me address the process briefly, and let me begin with a historical precedent.

“In 1966, voters approved a citizen-driven referendum – by a margin of 63 percent to 37 percent – that effectively repealed Mayor Lindsay’s Civilian Complaint Review Board by requiring that all members of any complaint review board be full-time members of the NYPD. But twenty years later, in 1986, the City Council reconsidered the issue and passed a law requiring that half the members of the board be civilians. Council members did not put the issue to a referendum, because they had no legal obligation to do so, and because they believed they were acting in the best interest of the City – and, in our opinion, they were right. The revised structure of the CCRB has served the City well.

“Today, the circumstances are not so different. Twelve years ago, voters upheld the two term limit in a referendum, by a far narrower margin than the 1966 referendum was decided. The Courts have upheld the Council’s authority to amend Charter provisions originally adopted by referenda, including the 1966 referendum – and so the question today for the Council is a straightforward one: Is extending term limits from two to three terms in the best interests of the City?

“If you believe the answer is ‘yes,’ as we do, we urge you to vote for this legislation and not hold it hostage to process concerns that have no legal basis. In addition, we urge you to consider that the alternative process, a special election in the winter or spring of 2009, is fraught with difficulties:

“First, it could leave candidates in limbo for at least another four months, making fundraising and organizing exceptionally difficult.

“Second, it would feature low voter turnout – perhaps as low as 10 or 15 percent. In such elections, special interests often have a disproportionately large voice, creating a result that does not reflect the broad popular will.

“Third, the time requirement posed by a Charter Revision Commission and the Voting Rights Act pre-clearance process could conceivably delay a special election until well into the spring, leaving candidates under a cloud of uncertainty until then.

“Fourth, it bears noting that holding a citywide special election would cost taxpayers upwards of \$15 million, at a time when all City agencies are being asked to reduce spending, and the possibility of rescinding the 7 percent property tax cut is being discussed.

“For all of these reasons, we believe a special election to decide this question is far more problematic, and far less representative, than a vote by the 51-member Council, each member representing 160,000 New Yorkers. In addition, it is worthwhile to note how public opinion on this issue has shifted – just as it did with the CCRB in the two decades following the 1966 vote. A referendum reflects public opinion at a particular point in time. Current polls show public opinion now supports an extension to three terms. The Mayor has never believed that any decisions should be made based on polls – that’s not leadership. But the recent polls do show the times have changed, and people’s opinions have changed too.

“Finally, the Administration understands that this is a difficult issue and one that requires thoughtful consideration. As you deliberate, we urge you to put policy above process – and leave the rest to voters. If the bill is passed, they will be empowered to render the ultimate verdict on whether we were right or wrong.

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<sup>1</sup> The 1996 referendum extending term limits to three was defeated by a margin of 53.7% to 46.3%, but only 1.2 million of the 2 million voters who went to the polls – out of more than 3.8 million registered voters – cast a ballot on the issue. Thus, the referendum was defeated by less than 17 % of all registered voters.

“Thank you for the opportunity to testify today, and now I will ask Corporation Counsel Michael Cardozo to offer his guidance on the legal ramifications of the bills before us today.”

*Testimony As Prepared of Corporation Counsel Michael A. Cardozo*

“Chairperson Felder and members of the Governmental Operations Committee, good afternoon, and thank you for giving me the opportunity to testify before you today. As you know, I am Michael Cardozo, and since the beginning of the Bloomberg Administration I have had the honor to serve as the City’s Corporation Counsel. Together with Mr. Crowell, I am here to give brief testimony on Intro. Number 845, a bill that would amend the term limit provisions of the City Charter to provide that elected officials serve no more than three, rather than two, full consecutive terms.

“In particular, I am here to stress to you and to the public-at-large that the representative legislative body of this City – the City Council – has clear legislative authority to enact this bill. In general, in accordance with the home rule provisions of the State’s Constitution and Section 10 of the Municipal Home Rule Law, the authority of the City to amend its Charter to adopt term limits (and, in turn, to amend or repeal them) is well settled.

“When term limits were originally proposed as a petition initiative, the question arose as to whether the City could enact term limit provisions by local law or whether State action was required. In a decision upheld by the state’s highest court, the New York State Supreme Court held that the City possessed the authority to enact term limits locally without any further State action.<sup>2</sup>

“Given this general authority, the law is crystal clear that the City can enact, amend or repeal the term limit provisions of the City Charter in three different ways – by petition initiative approved by the voters, by action of a charter revision commission subject to approval of the voters, or by action of the City’s elected representatives in the City Council.

“It is important to stress, however, that no one of these means of amending the Charter is somehow inherently ‘better’ or more appropriate. Pursuant to Section 10 and Article 3 of the Municipal Home Rule Law, the City Council regularly amends the City Charter. Indeed, amendments to both the Charter and the Administrative Code are carried out in the normal course by the City Council, acting on behalf of the City’s residents.

“Thus, the only remaining question is whether the City Council, which normally has the authority to amend the City Charter, lacks the authority to change provisions that were initially enacted as a result of a referendum. The courts have spoken to this issue, and the answer is clear – the Council has authority to enact Charter amendments regardless of whether a prior local law enacted those provisions or whether such provisions were enacted by referendum.

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<sup>2</sup> See *Roth v. Cuevas*, 158 Misc. 2d 238 (N.Y. Sup. Ct. New York County 1993), *aff’d*, 197 A.D.2d 369 (1st Dep’t 1993), *aff’d*, 82 N.Y.2d 791 (1993).

“This very question was at issue in the Golden case, which I personally argued on behalf of the City in the Appellate Division, Second Department, which concerned the City Council’s authority to change the City’s term limit provisions to address an anomaly that had arisen as a result of the original passage of term limits.

“Under the original term limit language, certain council members would have been term limited at 6 years, even though other council members could have served for 8 years. In 2002 the Council addressed this issue by amending the Charter to define a ‘full term’ as two two-year terms for purposes of the term limit provisions. The appellate court ruled that State law did not require that the change be put to a mandatory referendum.

“Perhaps more importantly for purposes of our discussion today, the Court held that the Council could amend a Charter provision even if it had been enacted first by referendum because, as the court noted, ‘laws proposed and enacted by the people under an initiative are subject to the same constitutional, statutory and charter limitations as those passed by the Legislature.’<sup>3</sup>

“This decision interpreted Section 23 of the Municipal Home Rule Law and relied primarily on two decisions of the State’s highest court. In the earlier of the two, the Court of Appeals had upheld the action of the City Council of Buffalo when it abolished a one-term limit on the Mayor of Buffalo, even though the original term limit provision had been enacted by referendum.<sup>4</sup> My colleague Mr. Crowell already discussed the second decision, which was quoted in Golden and held that the City Council could amend by local law without a referendum provisions of the Charter relating to the Civilian Complaint Review Board that had been adopted by a petition initiative in 1966.<sup>5</sup>

“Given these precedents, it should come as no surprise that the City Council has on numerous occasions amended provisions of the Charter that were originally enacted by referendum, including many provisions adopted by the voters upon the recommendations of the 1988 and 1989 charter revision commissions. Thus longstanding legal authority, recently re-enforced in the Golden case, as well as historical practice, remove any possible doubt that the City Council has the authority to enact the change proposed by Intro. No. 845 even though term limits were originally enacted by referendum.

“I want to also briefly address Intro No. 850, which was not covered by my colleague’s testimony, because I believe it raises serious legal questions. That bill purports to amend provisions of the City Charter by making any change to term limit provisions subject to a mandatory referendum. However, Section 23 of the Municipal Home Rule Law already specifies types of local laws that subject such laws to mandatory referenda, and the City’s ability to

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<sup>3</sup> *Golden v. New York City Council, et al.*, 305 A.D. 2d 598, 600 (1st Dep’t 2003), *appeal denied*, 100 N.Y.2d 504 (2003) (emphasis added) (citing *Matter of Caruso v. City of New York*, 136 Misc. 2d 892, 895-896 (N.Y. Sup. Ct. New York County 1988), *aff’d*, 134 A.D.2d 601 (1st Dep’t 1989), *aff’d*, 74 N.Y.2d 854 (1988)).

<sup>4</sup> *Benzow v. Cooley*, 12 A.D.2d 162 (4th Dep’t 1961), *aff’d*, 9 N.Y.2d 888 (1961).

<sup>5</sup> *See Caruso*, 136 Misc. 2d at 895-896.

augment that list by local action only is, as a long line of decided state cases suggest, at best highly doubtful.

“I recognize that Section 38 of the Charter contains a provision specifying additional grounds for a mandatory referendum, but note that much of that provision originates in the work of charter revision commissions that were specially created by the State Legislature.

“Finally, if Intro. No. 845 is enacted into law, the City will submit the bill to the Department of Justice for a process known as ‘pre-clearance’, during which the Department of Justice would review the bill to confirm that it would not adversely affect the voting rights opportunities of certain racial or ethnic groups. The original enactment of term limits was pre-cleared by the Justice Department, as was the 2002 amendment I described earlier. Based on these precedents and the federal law governing pre-clearance questions, I am confident that the Justice Department will find nothing objectionable about the amendment proposed in Intro. No. 845.

“In short, the proposed term limits change will not diminish the opportunities the City’s diverse racial and ethnic groups currently have to nominate and elect the candidates of their choice, whether or not such candidates are incumbents. Thank you once again for your time, and I am happy to take any questions you may have.”

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