

Chairman Myrie and Committee Members:

My name is Martin Ascher and I am an attorney living in Brooklyn and speaking in my personal capacity. In 2019, while still a law student at NYU I wrote an article on reforming New York City's Board of Elections. In that article, which I am happy to share with the committee or staff, I cited incidents such as the [illegal purging](#) of 120,000 voters before the 2016 Democratic primary and [Charter Revision Commission](#) proposals printed in 7.5-size font in 2019 due to board resistance to creating multiple ballots with a smaller number of languages. Unfortunately, the article stayed relevant, and I recirculated the piece in 2020 after the BOE sent many Brooklyn voters, myself included, the wrong interior envelope for their primary absentee ballot and of course after the debacle involving the faulty election results in the Mayoral primary.

While the problems each election were different, the root was always the same. The New York City Board of Elections is an agency in serious need of reform, and State legislation or even better, a Constitutional Amendment, are needed to take power away from political insiders and give it to a professional staff capable of administering elections for the people of New York City.

The structure of New York City's BOE is established in New York's State Constitution. Article II Section 8 of the Constitution requires that local Boards of

election have a bipartisan composition. According to the Constitution, these board members must be nominated by representatives of the parties. Today the board consists of one Democrat and one Republican from each borough, giving the board ten total members. These Commissioners are selected by the Democratic and Republican City Council caucuses respectively and are made in consultation with the county executive committee for each party. This means that Commissioners have a dual role, with obligations to both the public as government officials and the local political parties. Given that all election administration decisions, are made by the BOE this dual role has detrimental implications.

The bipartisan structure is based on the premise that since neither party could be trusted to be unbiased, an evenly divided BOE would ensure that the parties watch over each other and mischief is minimized. While this approach may have made sense in an era when political parties had traditionally taken the lead in administering elections, it does not make sense today. Many New Yorkers do not affiliate with either of the two major parties, and this structure prevents these voters from being represented on the BOE. Additionally, only 10% of New York City's voters are registered Republicans but they get the same amount of voting power on the BOE as the almost 68% of the City's voters who are

registered Democrats. Since BOE decisions must be made by majority vote, this gives the Republican Party's commissioners an effective veto over everyone else in the City if they vote as a block.

Proposal 1: Removing the Partisanship Requirement from the BOE

Ideally, I propose removing the bipartisanship requirement from New York's State Constitution. While I would not require that all BOE Commissioners be unaffiliated with a major party, I would amend the State Constitution to allow unaffiliated people to serve as commissioners. In doing this the City's board could be restructured and based on the model of the City's Campaign Finance Board or merged into it. The City's CFB is a non-partisan city agency made up of five commissioners, two of whom are appointed by the Mayor, two appointed by the Speaker of the City Council, and one chosen by the Mayor in consultation with the Speaker. Each of these appointees have a staggered five-year term and the Mayor and Speaker cannot choose two board members from the same political party. Utilizing this structure would remove the dual loyalty problem as commissioners would have no direct incentive to protect county parties. Given this, the public interest side of the dual role will benefit at the expense of the partisan side, which is likely more interested in preserving the status quo. It would also remove both

the disproportionate power over City elections Republicans enjoy under the current system, and the required exclusion of those unaffiliated with the major parties.

Operational efficiencies would also be gained by merging the BOE into the CFB. Once partisanship requirements are eliminated, the election administration roles normally performed by the board could be performed by the CFB instead. Additionally, the odd number of CFB board members should prevent the deadlocks made possible by a BOE split evenly between two parties. Since the City already has an organizational structure in place to handle some aspects of election administration, it makes sense to give that agency more power rather than the BOE which has proven its incompetence repeatedly. Given the potential efficiencies that could be gained, I would recommend eliminating the City's BOE and placing its former functions under the direction of the CFB over retaining the BOE as a separate agency. There is already a sensible structure in place for election administration in New York City, so we should use it.

Proposal 2: Working within Constitutional Limits

Given the difficulties of passing an amendment to New York's Constitution it is worth examining what could be done either instead, or while awaiting passage, of the amendment. This "damage-mitigation" approach would use legislation to strip

as much power away from the City's BOE commissioners as is legally possible and give this power to the board's Executive Director and staff. Since these staff members are not directly chosen by the party executive committees, they should at least in theory be less prone to the political pressures felt by the BOE commissioners themselves. Under this approach, the BOE would remain in place nominally, and with five members from each of the two major parties, though with significantly less power and less control over election administration.

If the professional staff of the City's BOE is to be given an expansive set of new powers, then it also makes sense to ensure that this staff is qualified. The Department of Citywide Administrative Services (DCAS) can work with the City's BOE to establish hiring criteria, that while allowing Democratic or Republican partisanship to be necessary requirements, also assess a candidate's election procedure knowledge or other abilities relevant to the job they will be performing. This could lead to a more uniform hiring process and a more qualified BOE staff. If the staff must remain bipartisan and evenly split, it could at least have clear hiring criteria designed to weed out the worst candidates.

This approach would require the passage of legislation at the New York State level and fortunately, there is already a bill in the State Senate to do so. Senator

Kreuger's Senate [Bill 6226](#) would take some of the non-essential powers of the City's BOE commissioners and give them to the BOE's Executive Director and Deputy Director. This bill removes the ability of the BOE Commissioners to make certain decisions while preserving the bipartisan structure of the BOE necessitated by New York's State Constitution. Kreuger's bill also advises the BOE commissioners to consult with DCAS in establishing written personnel policies. Sen. Kreguer's bill does not contemplate transfer of the unmandated powers to the CFB, but I believe this is an idea worthy of serious consideration.

By reforming the City's BOE we can improve our elections. It is essential that the public trust that elections are being administered competently. Given the City's recent experience under the current BOE structure, changes need to be made to keep or restore that trust. Thank you for holding this hearing today, and I hope you all will have the political courage to do what is right for the people of this City.