

THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N. Y. 10007

KAREN E. MEARA  
DIRECTOR  
CITY LEGISLATIVE AFFAIRS

November 14, 2005

Hon. Bill Perkins  
Chair, Committee on Governmental Operations  
Council of the City of New York

Re: Int. No. 628, relating to non-citizen voting and ancillary matters

Dear Mr. Perkins:

I write to you to present legal and policy issues raised by Int. No. 628, which would create a system of non-citizen voting in municipal elections in the City of New York. I am attaching a letter from the New York City Law Department that I have requested summarizing legal issues raised by this proposal. The Law Department's letter expresses the view that Int. No. 628 is inconsistent with the State Constitution, and that measures changing voting practices in this manner would, in any event, require a referendum of the current electorate.

In addition to the serious legal problems identified by the Law Department, the Mayor has raised policy concerns about the effect of Int. No. 628 and similar proposals upon efforts both to encourage non-citizens to become U.S. citizens and realize the full benefits of citizenship and to achieve reforms of federal immigration law. Indeed, the Administration believes that the better avenue for expanding the franchise in this circumstance is by making available the appropriate mechanisms and incentives for non-citizens to obtain citizenship. To this end, the Mayor's Office of Immigrant Affairs, working with other City agencies, has for many years been committed to providing information and assistance to non-citizens and groups representing them about the naturalization process.

Accordingly, for the legal and policy reasons outlined above, the Council should not advance this bill.

Sincerely,

  
Karen Meara



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
100 CHURCH STREET  
NEW YORK, NY 10007

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November 10, 2005

Karen Meara  
Director, Office of City Legislative Affairs

Re: Int. No. 628, relating to non-citizen voting and ancillary matters

Dear Ms. Meara:

You have asked this office to review Int. No. 628, which is under consideration by the City Council's Committee on Governmental Operations. This measure would permit voting by non-citizens in municipal elections within New York City. This office is aware that a variety of legal arguments have been made in support of non-citizen voting initiatives in recent years. We have considered those arguments and have also reviewed relevant constitutional, legislative and judicial authority. We would, of course, be available to consider any additional arguments that are presented to your office or to the City Council. However, based upon the research done by this office, it is our view that the bill is not authorized by the State Constitution and, even if it were authorized, would require a referendum in order to be enacted. Briefly summarized, the reasons for our views are:

1. The United States Constitution permits states and localities to restrict voting privileges to United States citizens. Sugarman v. Dougall, 413 U.S. 634, 647-649 (1973).

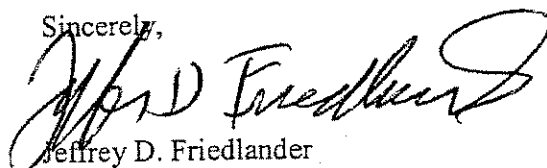
2. The New York State Constitution and the Election Law govern qualifications of voters in elections for State and local offices. Article II, §1 of the State Constitution provides: "Every *citizen* shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such *citizen* is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election." (Emphasis added.) Further, Election Law §5-102(1) provides: "No person shall be qualified to register for and vote at any election unless he is a *citizen of the United States* and is or will be, on the day of such election, eighteen years of age or over, and a resident of this state and of the county, city or village for a minimum of thirty days next preceding such election." (Emphasis added.)

3. The home rule provisions of State Constitution Article IX apply the restrictions of Article II §1 to elections for local office. Article IX requires local legislative bodies "elective by the people" of the local government and further states that other local elective officers are to be "elected by the people of the local government..." Art. IX §1(a), (b). Significantly, the "people" are defined as "[p]ersons entitled to vote as provided in section one of article two of this constitution." Art. IX §3(d)(3). Thus, the voter qualifications of Art II §1 set forth above have been incorporated directly into the constitutional provisions concerning local elected officers.

4. A referendum of the current electorate would in any event be required to implement the new election-related procedures and requirements of Int. No. 628. The Municipal Home Rule Law and the Charter require a referendum for any local law that "changes the method of nominating, electing or removing an elective officer..." Municipal Home Rule Law §23(2)(e); Charter §38(4). A substantial alteration in the composition of the electorate by local legislative action, accompanied by new procedural requirements, would fall within both the plain language of these referendum requirements and their intent that significant changes in local election schemes be approved by the electorate. Int. No. 628 does not provide for a referendum.

In addition, an expansion of the franchise to non-citizens would require preclearance for counties within New York City that are subject to section 5 of the Voting Rights Act (42 U.S.C. §1973c), and would also be required to satisfy the standards of section 2 of that Act. 42 U.S.C. §1973. Such an expansion could not be implemented without such preclearance.

Sincerely,



Jeffrey D. Friedlander