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Transcript of The New York City  
CHARTER REVISION COMMISSION  
Forum - Campaign Finance and Vote Counting  
held on Monday, July 21, 2003  
Bronx County District Attorney's Office,  
198 East 161st Street, Second Floor,  
Borough of The Bronx

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1 Hearing convened at 3:15 p.m.

2 P R E S E N T:

3 DR. FRANK MACCIAROLA, Chair

4 FATHER JOSEPH O'HARE

5 WILLIAM LYNCH, JR.

6 STEVE NEWMAN

7 DR. MOHAMMED KHALID

8 ANTHONY CROWELL

9 ALAN GARTNER

10 PATRICIA GATLING

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1 FATHER O'HARE: Good afternoon. We are  
2 going to begin now.

3 Some of our commissioners are on the way.  
4 I think you all know Frank Macciarola, who is the  
5 chair of the Commission and Alan Gartner, it's  
6 executive director.

7 We have been holding hearings -- there is  
8 a genre of dialogue that I've learned under Chairman  
9 Macciarola and the tutelage of Mr. Gartner. We have  
10 meetings, we've had some meetings. We've had  
11 hearings and we've have forums, and this is going to  
12 be a forum that's devoted to two issues: Campaign  
13 finance initiatives and how they would relate to a  
14 system of non-partisan elections; and later, expert  
15 testimony on counting the vote.

16 So, to begin with, I think the first  
17 testimony is going to be given by Nicole Gordon,  
18 Executive Director of the New York City Campaign  
19 Finance Board.

20 MS. GORDON: Thank you. I hope you can  
21 hear me and I hope someone has distributed the  
22 testimony.

23 I won't take up your time reading every  
24 word of this and I will note, though, the  
25 interesting fact that the two Commissioners who are

1 starting this meeting are both former members of the  
2 Campaign Finance Board.

3 FATHER O'HARE: Only one of whom ran for  
4 public office, though.

5 MS. GORDON: Correct, also.

6 DR. MACCIAROLA: My filings were  
7 terrific, but my campaign was a mess.

8 MS. GORDON: And, I did also want to  
9 thank Alan Gartner, in particular, for his courtesy  
10 as over the past few weeks we have had some very  
11 interesting and pleasant conversations about a lot  
12 of issues centered on this, but we have gone astray  
13 a few times and had a good time doing that.

14 I want to start by emphasizing that the  
15 Campaign Finance Board will -- does not have and  
16 will not take any position on the wisdom of  
17 non-partisan elections for New York City per se, but  
18 does have a position about how non-partisan  
19 elections would affect the Campaign Finance Program,  
20 and asks that the Commission weigh its concerns  
21 carefully, as we know you will. In light of the  
22 City's record of success with the program, the Board  
23 also asks that you proceed cautiously before putting  
24 before the voters any proposal that might threaten  
25 the Program's capacity to contain and equalize

1 campaign spending. And the Board, therefore,  
2 welcomes the Commission's concern and the burden it  
3 has taken on to take care to ensure that a  
4 non-partisan system of elections, should it be  
5 adopted, fully supports the City's Campaign Finance  
6 Program.

7 Consistent with this concern of the  
8 current Commission, every one of the Charter  
9 Revision Commissions convened since 1988 has  
10 considered ballot questions that might implicate the  
11 operation of the City's program, and not one of them  
12 was adopted for possible public approval and change  
13 that could weaken or undermine the Program. Right  
14 now, as you know, the Board's most pressing concern  
15 is how non-partisan elections would open the door to  
16 unregulated soft money spending by political parties  
17 that would no longer be constrained by State law or  
18 the Board's rules.

19 Given the people who are here, I am going  
20 to skip over any description of the law or the  
21 background to it. We do have for you and for any  
22 other members who want to see it, a brochure that  
23 briefly describes the Program. But along the way, I  
24 would just mention one fact that's in this  
25 historical part, and that is that the fact that the

1 law is passed against the background of federal law  
2 and state law, creates certain burdens for the  
3 Charter Revision Commission that I will get into as  
4 I testify.

5 I also want to say that the practical  
6 results of the Program over the last 15 years have  
7 been very gratifying. The Program is an  
8 acknowledged leader in the nation of operating local  
9 reforms and we have seen effective limits on  
10 contributions, meaningful restraints on spending,  
11 competitive races, unprecedented computerized  
12 disclosure and an opportunity for candidates who are  
13 not wealthy and don't have access to wealth to  
14 compete effectively. As well as a value, I think,  
15 that's been overlooked sometimes and that is the  
16 opportunity for contributors who make small  
17 contributions, knowing that they are going to match  
18 \$4-to-\$1, to feel that they have an impact on the  
19 campaign. And we saw almost a doubling of the  
20 number of contributors in this last set of  
21 elections, for a lot of reasons, but one of them we  
22 believe was the \$4-to-\$1 match.

23 Of course, the Program is not a complete  
24 answer to every concern about our political system  
25 or even our campaign finance system. And after each

1 election, the Board does have the mandate to review  
2 what -- how the Program has operated and does so in  
3 formal and informal ways.

4 The centerpiece of my testimony is the  
5 section starting on page six of what we've handed  
6 out about non-partisan elections and how political  
7 party spending might be effected.

8 We've posed the four following questions,  
9 and these overlap with the specific questions that  
10 Mr. Gartner had put in his letter to me, that I'll  
11 refer to later:

12 Will non-partisan elections open the door  
13 to unregulated "soft" money spending?

14 What is the evidence that this might  
15 happen?

16 To what degree will the Charter  
17 Revision's goals of greater candidate and voter  
18 participation, including minority participation be  
19 implicated, if in any way the Campaign Finance  
20 Program's effectiveness is altered?

21 And, what costs and other implications  
22 arise?

23 This last item is not really a first  
24 order of concern to the Board, but we did address it  
25 since these are things that are raised in the

1 staff's report to the Commission.

2 DR. MACCIAROLA: Excuse me.

3 Is there anything else we're missing?

4 Are these the ones you want to address or are they

5 just the ones we put at you?

6 MS. GORDON: These are just the last -- I

7 tried to approach the problem. And later on, you'll

8 see in bold that we have stated what we think are

9 the questions that now recast the questions so that

10 it becomes how the Charter Revision Commission, in

11 arguendo, needs to look at the challenge and whether

12 to meet it.

13 DR. MACCIAROLA: Okay. Thank you.

14 MS. GORDON: The issue of party spending

15 can be divided into two parts; the primary and the

16 general election. And the way those are regulated

17 under current law are as follows:

18 The state law forbids parties to spend

19 money during the primary period on specific

20 candidates. So, I am not saying that never happens,

21 I'm just saying that's what the law says and if it

22 is abided by, if it is enforced, that ought not to

23 be happening.

24 In the second part, in the general

25 election, the Board has developed a presumption that

1 a party that has a nominee and spends money  
2 supporting that nominee is acting in a coordinated  
3 fashion with its nominee, and the nominee will be  
4 presumed to be working together with a party and any  
5 spending that the party makes will be attributed to  
6 the nominee. So that the spending limits of the  
7 Program that apply to the nominee will subsume the  
8 spending of a party that has nominated that person.  
9 The net result of this is that the Board and the  
10 Program operate against a background that controls  
11 party spending.

12 In 1993, the Board faced its biggest  
13 instance of party spending, and that is Democratic  
14 party spending, State Democratic party spending on  
15 behalf of the Dinkins' campaign. The amount was  
16 something in the neighborhood of \$250,000. This was  
17 challenged by Dinkins' opponent. There was a  
18 hearing before the Board, and there was a great deal  
19 of editorial outcry about it. And the Dinkins'  
20 campaign paid the Democratic party for the  
21 literature and so forth that had been distributed,  
22 at a cost of about \$250,000. A lesser claim that  
23 there was Republican party spending on behalf of the  
24 Giuliani campaign in the same year, also led to a  
25 payment by the Giuliani campaign to the Republican

1 party. After that, we did not see substantial  
2 charges that the parties were spending on behalf of  
3 the candidates, and the Board's presumption has  
4 apparently been accepted and acted upon since then.

5           The question that arises is whether in a  
6 non-partisan election context, how either state law  
7 or the Board's presumption might operate. Now, the  
8 state law would presumably have no role whatsoever  
9 because there are no longer primaries under a  
10 non-partisan -- there are no longer parties in  
11 primaries under a non-partisan system. So, there  
12 would not be a restraint, presumably, on the parties  
13 from spending on candidates in the primary period.

14           The question that arises in the general  
15 election is also whether the Board's presumption  
16 that party spending on behalf of its nominee or  
17 perhaps I guess it would be called someone who  
18 received an endorsement, I don't know exactly how  
19 that works, whether that presumption could withstand  
20 challenge in a non-partisan election context. And  
21 the reason that's the important question is that  
22 independent spending, truly independent spending,  
23 cannot be captured by the voluntary New York City  
24 Program. The New York City Program addresses how  
25 candidates operate. If they do so in conjunction

1 with another entity, then that could be captured.  
2 Independent spending cannot. So that, if it turns  
3 out that you can no longer have a presumption that  
4 the party and the candidate are operating together,  
5 then the party can spend "independently" and there  
6 won't be any control on that.

7 DR. MACCIAROLA: Excuse me.

8 Can I just get a clarification?

9 What if a candidate is identified with  
10 the party in the non-partisan election, that is to  
11 say, even though the election, the primary election,  
12 is non-partisan, everybody can participate,  
13 everybody votes, no Democrat or Republican, but the  
14 party identification appears with the candidates'  
15 name in parentheses, pick your party, wouldn't then  
16 the presumption be able to be applied?

17 MS. GORDON: Are you talking about the  
18 primary period or the general election period?

19 DR. MACCIAROLA: In the primary period.

20 The primary itself would be a  
21 non-partisan primary, but the identification of the  
22 candidate with the political party would not be  
23 prescribed. So that if a candidate ran as a  
24 Republican or Democrat, and spending by the party  
25 occurred in that election, it could be attributed to

1 the candidate for whom it was spent.

2 FATHER O'HARE: With that hypothesis, you  
3 could conceivably have several candidates running in  
4 that first non-partisan primary who identify  
5 themselves as Democrat.

6 DR. MACCIAROLA: Right. But, I would  
7 assume, that if the campaign literature promoted the  
8 candidacy of any of those candidates, that would be  
9 traceable. The issue is --

10 FATHER O'HARE: Well, what if the parties  
11 supported all of the Democratic candidates?

12 DR. MACCIAROLA: Divide it up among the  
13 Democratic candidates.

14 MS. GORDON: I think tracing it is a  
15 different question from whether it can be charged to  
16 the candidate. For example, merely because, let's  
17 say, for example, the Sierra Club or the NRA, and  
18 you have to choose one from every category, endorsed  
19 a candidate, that does not automatically mean that  
20 you can claim, or presume, that the spending is done  
21 in coordination with the candidate for purposes of  
22 independent spending. And the question I am posing,  
23 and I am not claiming to have the answer to this  
24 question, is whether the courts would uphold a  
25 presumption of the sort that you are describing if

1 the context was non-partisan elections?

2           When you have a general election and the  
3 candidate is on the ballot, because a party has a  
4 line on the ballot, and the candidate had to go  
5 through a process in order to get there, there is a  
6 very close connection that goes beyond merely some  
7 group getting together and saying, "We're endorsing  
8 this person." And I think that presumption is  
9 wholly defensible. I am raising the question  
10 whether one can feel with any assurance that you  
11 could go as far as the kind of situation you are  
12 describing.

13           This setting with a federal law that  
14 requires a program to be voluntary and a federal law  
15 that requires that independent spending not be  
16 captured within the program, unless it is not  
17 independent spending, and very high state law  
18 consideration contribution limits does raise the  
19 question whether -- rather than controlling soft  
20 money, in the form of party spending, like we do  
21 now, whether non-partisan elections would not lead  
22 both to significant party spending and to  
23 contributions to local candidates being funneled  
24 through the parties.

25           And what I mean by that is as follows:

1           We did a study called Party Favors, and  
2           saw some attempt to use the very lax contribution  
3           limits at the state level to assist candidates by  
4           sending money up to the state party, hoping that it  
5           would come back to the City in other forms. Right  
6           now, as you know, the McCain-Feingold legislation,  
7           that's under review by the Supreme Court, puts very  
8           strong limits on what federal soft money might look  
9           like, assuming the Court upholds McCain-Feingold.  
10          And one of the things a lot of observers have been  
11          saying is that if McCain-Feingold is upheld, a lot  
12          of soft money that used to go to the federal level  
13          will now start to flow to the state level, which  
14          heightens the concern that that money will find its  
15          way to an unregulated form of support, of party  
16          support for candidates.

17                 So having been studying this question  
18                 ourselves, we leave questions for the Charter  
19                 Revision Commission:

20                         1) How can the Charter limit or control  
21                         party spending on behalf of candidates be consistent  
22                         with state law? And,

23                         2) Whether Charter Revision Commission  
24                         changes can be considered that are conditioned on  
25                         state law changes and contribution limits to

1 parties?

2 I don't want to pass by another item  
3 about state law, which is that the disclosure at the  
4 state law level is very difficult to follow, party  
5 spending in particular. There are some kinds of  
6 contributions and expenditures that are  
7 computerized, and so forth. But, party spending is  
8 not easily traced. And, if there were to be  
9 significant party spending in New York City, right  
10 now there is no way for us even to know what the  
11 numbers look like at all.

12 DR. MACCIAROLA: That's under the  
13 existing system?

14 MS. GORDON: Under the existing system  
15 it's very difficult to track.

16 The one thing that protects us is that if  
17 candidates see this happening, then it puts them at  
18 a disadvantage and then they come to the Board and  
19 they complain about it, and the Board can deal with  
20 it, within concern limits, obviously.

21 Ironically, then, under a partisan  
22 system, it is conceivable that the parties could  
23 wield more, rather than less, influence over  
24 elections, at least through the mechanism of  
25 spending, taking that as a separate item.

1 FATHER O'HARE: That's a potential  
2 advantage to the parties that the party leaders  
3 don't seem to recognize.

4 MS. GORDON: Indeed. And I have a little  
5 section here -- I can't -- I won't speculate on  
6 behalf of the parties what their preferences might  
7 be or should be, but, as I said, in a narrow matter  
8 of spending money, that would be something that they  
9 might be able to do to a greater degree than they  
10 are able to do now.

11 The only obvious response is that we see  
12 legal responses to Independent Party spending would  
13 be either lifting the expenditure limits when there  
14 is Independent spending, and it rises to a certain  
15 level. So that, let's say, the candidate comes to  
16 the Board and says, "There has been \$100,000 worth  
17 of party spending. It hurts me. Help me somehow."  
18 And the Board, if there were a change in the law,  
19 the expenditure limit could be lifted. This is not  
20 a very desirable outcome.

21 In Los Angeles there has been a lot of  
22 lifting of expenditure limits. It's happened so  
23 often now that questions have been raised about how  
24 effective the Los Angeles program is. You have to  
25 remember that public funds are given in return for

1 observation of spending limits. So, that's an  
2 important value.

3 Another possible alternative is making  
4 more public funds available to the candidate against  
5 whom the independent spending or the party spending  
6 is done. And, apart from the cost to the public,  
7 which one possibly could justify, the real question  
8 is whether you could do this effectively because  
9 sometimes independent spending, maybe more often  
10 than not, will occur at the very last minute and  
11 there won't be any opportunity to give out the  
12 public funding, much less see it used in a way that  
13 redresses a balance.

14 Just briefly, to talk about Los Angeles.  
15 Our staff looked into Los Angeles and a number of  
16 other jurisdictions that the Commission staff had  
17 identified as having both non-partisan elections and  
18 a campaign finance program in place. For the most  
19 part, we did not think that anything much could be  
20 learned from that exercise. To the extent that  
21 comparisons can be made, Los Angeles might be the  
22 closest, although it has a very different history.  
23 It has had non-partisan elections for 100 years, and  
24 only a much more recent campaign finance system.  
25 But in that context, there is significant party

1 independent spending of the sort that I have  
2 described, at least it would be considered  
3 significant by our standards.

4           It's also interesting that in Los Angeles  
5 they have a different, maybe a stronger home-rule  
6 authority than in New York City. And Bob will  
7 speak, I am sure, to some interesting ideas that his  
8 organization has come up with on this subject. But,  
9 in any event, in Los Angeles they have disclosure  
10 rules that govern the parties. I don't know whether  
11 even Bob's conclusions reach as far as the parties;  
12 but in any event, we don't have that disclosure in  
13 New York City. And we don't know very much about  
14 it. And that raises a question linked to my  
15 previous question, which is whether the Charter can  
16 require disclosure by parties of spending on behalf  
17 of local campaigns?

18           On the Charter Revision goals that  
19 overlap with the Campaign Finance goals, I know that  
20 among them are addressing candidate and voter  
21 participation, including minority participation. If  
22 you do look at the records since 1988, since the  
23 Campaign Finance Board Program has been in effect,  
24 and certainly, it is not the only cause of these  
25 facts, but it's a contributor to them, New York City

1 has seen its first black mayor, it's first black  
2 comptroller, and it's first black female borough  
3 president of Queens; it has seen a Republican mayor  
4 who was twice elected as a participant in the  
5 Program; it has seen the first Dominican,  
6 Caribbean-American and Asian-American City Council  
7 members; continued minority and female  
8 representation at all levels of office; two  
9 incumbent mayors who were unseated by challengers  
10 where both the mayors and their challengers were  
11 Program participants; and, vigorous competition  
12 among candidates at all levels of office, including  
13 among minority and immigrant groups, such as the  
14 Russian community in Brooklyn.

15           The combined effects of term limits and a  
16 new generous matching rate spurred unparalleled  
17 activity in the 2001 elections. There were 353  
18 candidates who joined the New York City Program,  
19 approximately \$42 million was dispersed to 200 of  
20 them.

21           And, as I said earlier, the number of  
22 contributors to the campaigns doubled. We have a  
23 report that we've given to your staff that goes into  
24 detail about how the 2001 elections operated, and  
25 the studies that we are aware of, as well as

1 anecdotal evidence to show significant increase in  
2 minority representation in New York City.

3 A question that we would raise is whether  
4 the Program's record of success in helping to  
5 increase candidate and contributor participation  
6 would be maintained if the election structure is  
7 altered?

8 We have a number of other items here on  
9 the costs of a change in the Voter Guide, on the  
10 date of a primary, on debates. These are, I think  
11 by comparison, much smaller items. And I don't know  
12 whether -- perhaps, I won't take your time with it  
13 now. It's all in the testimony. You can read it.

14 But, I would say that the Board does look  
15 forward to continued discussion and examination of  
16 the questions on whether and how non-partisan  
17 elections can be structured in a manner that fully  
18 supports the City's Program. And the Board does ask  
19 that I leave you with the thought that we've been  
20 fortunate to have in place a program that has served  
21 as a model for other jurisdictions and that the  
22 Board's message, as it has been in the past, is  
23 first, no harm, that even well-intentioned efforts  
24 can undo good that has already been established.  
25 And, therefore, we urge you to study carefully all

1 the potential harmful effects that changes might  
2 bring to the Campaign Finance Program.

3 So, thank you for allowing me to testify.  
4 And I look forward to answering your questions.

5 FATHER O'HARE: Before we pose any other  
6 questions, I would like to introduce some members of  
7 the Commission that have arrived.

8 Dr. Mohammed Khalid, is a resident of  
9 Staten Island; Bill Lynn, former New York City  
10 Deputy Mayor and resident of Manhattan; Steve  
11 Newman, former New York City Deputy Comptroller and  
12 a resident of Queens.

13 Perhaps, Bob, we can hear your testimony  
14 before we have questions for both on campaign  
15 finance.

16 Bob, you are going to talk on both  
17 issues, both counting and campaign finance; right?

18 MR. STERN: If you'd like. I thought I  
19 would talk about campaign finance first.

20 FATHER O'HARE: This is Bob Stern,  
21 Director of the Center for Governmental Studies in  
22 Los Angeles.

23 MR. STERN: Thank you very much. It's  
24 nice to be back. I was here in 1988, when the  
25 Commission was considering campaign finance

1 legislation for the City. I testified once or  
2 twice. I also testified before the City Council,  
3 and the result, not of my testimony, but I think  
4 overall, was that you have an extremely -- a very  
5 effective campaign financing law in New York City.

6 Just to give you a little background as  
7 to who I am, I have been involved with political  
8 reform issues now for about 33 years. I worked for  
9 the California legislature for a couple of years,  
10 I've worked for the California Secretary of State as  
11 his election counsel for a couple of years, and  
12 drafted the California Political Reform Act of 1974,  
13 which set up California's campaign disclosure,  
14 conflict of interest and lobbying laws. Then I  
15 became general counsel of the agency in charge of  
16 administering those laws, the Fair Political  
17 Practices Commission, and was there for nine years.

18 For 20 years I have been with the Center  
19 for Governmental Studies. And during that time,  
20 we've been specializing in looking at state and  
21 local campaign finance ethics and election laws. In  
22 1990 I helped draft the Los Angeles Public Financing  
23 Law, that was passed by the voters that year. And  
24 the last few years, our staff has been studying  
25 public financing laws in local jurisdictions

1 throughout the country. And we put out a report on  
2 New York City called, "The Statute of Liberty,"  
3 looking at the New York City Campaign Finance Law  
4 and making suggestions on how to improve it. As  
5 well, we put out a report on Los Angeles, "Eleven  
6 Years of Reform and Many Successive More To Be  
7 Done." We've also done a report on Suffolk County  
8 and a report on San Francisco. And we'll be coming  
9 out with a few more reports. So, we've been  
10 studying campaign finance laws throughout the  
11 country.

12 Your law is one of the best campaign  
13 finance laws in the country. In my view, you have  
14 the best Campaign Finance Commission in the country,  
15 whether it be local or state. Your Campaign Finance  
16 Commission is regarded as the best in the country.  
17 Your Ethics Commission also is regarded as being one  
18 of the top in the country. So, you have extremely  
19 capable people here in New York City to help advise  
20 you.

21 When I mentioned to two people that I was  
22 coming to testify, I said -- I told them what I was  
23 testifying about, and I said, "What do you think  
24 about non-partisan elections?" And one said,  
25 "Absolutely have non-partisan elections. Potholes

1 don't have parties." The other person, who is an  
2 expert in Los Angeles also said, "Have partisan  
3 elections. Don't change it."

4           So, I'm getting different views on that.  
5 And I am somewhat agnostic about the whole question.  
6 Although, having looked at the Mayor's letter of  
7 Thursday, I am feeling much, much better about the  
8 proposal, because the one concern I had seemed to  
9 have been addressed by the Mayor's letter in a way;  
10 and that was that the candidates were not identified  
11 by party in the original proposal. And, in Los  
12 Angeles and California, they are not identified by  
13 party, but, the latest proposal seems to indicate  
14 that the Mayor is suggesting that you have a  
15 non-partisan election and that the candidates be  
16 identified on the ballot by party. And, so, that  
17 was the biggest objection that I had in terms of the  
18 voters not being able to figure out who are these  
19 people. And that's what the problem we have in  
20 California, in Los Angeles, is taken care of. So, I  
21 think perhaps the City Council member I talked to  
22 might change his mind, as well.

23           You also have much better coverage of pol  
24 politics here in New York than in Los Angeles, and  
25 so your voter turnout is far different in New York,

1 and, I think, would be far different. In Los  
2 Angeles, our voter turnout -- we have elections at  
3 very strange times, March, April and June of odd  
4 years. And our voter turnout is very, very poor.  
5 And we see with non-partisan elections throughout  
6 California that when they are not held at the same  
7 time as the gubernatorial or the presidential  
8 elections, the voter turnout is bad. At least you  
9 have one election in November of an odd numbered  
10 year, and these people are more used to voting in  
11 November than they are in March, April or June.  
12 But, it's one thing that you need to be concerned  
13 about in terms of elections, I am sure you are  
14 already, in terms of voter turnout.

15           Just to give you an idea, in Los Angeles,  
16 in our first election for mayor in this last 2001,  
17 we had 34 percent voter turnout, and in the run off,  
18 it was 38 percent. We just had a City Council  
19 election -- we have citywide elections every four  
20 years, with half the Council up, the other half of  
21 the Council is up two years later. So, we just had  
22 an election a few months ago where half the City  
23 Council was up, our voter turn out was about 20  
24 percent in the primary, or in the first election,  
25 and ten percent in the run-off election. In those

1 districts, there were two districts where there was  
2 a run-off.

3 In Los Angeles, if you get 50 percent  
4 plus one vote in the first election, you are  
5 elected. And that's the way it is, by the way, in  
6 all of the cities in California that have elections,  
7 even if there is a runoff. There is only a runoff  
8 with candidates who have not -- nobody's gotten 50  
9 percent of the vote. In an election where there was  
10 a runoff in Los Angeles, the turn out was 25 percent  
11 in one district and 20 percent in the other  
12 district. So, there is a concern about turn out.  
13 But, as I say, you have a much higher interest in  
14 politics, your T.V. stations cover your political  
15 campaigns. And, more importantly, all of your  
16 elections are held on the same day, whether it be  
17 City Council or citywide elections. And that makes  
18 a difference.

19 I just note that at your last election, I  
20 was watching the Today Show, and both mayoral  
21 candidates were interviewed on the Today Show, and  
22 extensively, nationwide. We did not see the Today  
23 Show covering the Los Angeles mayoral candidates.  
24 So, there is -- you have five newspapers, we have  
25 one newspaper. So, there are a lot of differences,

1 obviously, between the cities. But, one thing you  
2 do need to be concerned about is turn out.

3           One other thing that you might be  
4 concerned -- less concerned now, because of the  
5 Mayor's letter, but in California, when we have  
6 non-partisan elections, there is a significant  
7 number of Green Party candidates who win because  
8 voters, frankly, don't know that they are a member  
9 of the Green Party. They just run. They walk the  
10 precincts, and they win City Council races. So,  
11 without an identification on the ballot it is  
12 possible that you will have third party candidates  
13 having a much better chance of winning elections,  
14 with the identification next to the name, much less  
15 of a chance.

16           Now, let's turn to the campaign finance  
17 questions. As I said, New York City has one of best  
18 local public financing in the country, if not the  
19 best; and Los Angeles, as far as we're concerned,  
20 are the two best public financing programs out of  
21 the 11 local programs that there are.

22           However, your law only applies to those  
23 candidates who accept the public financing, and that  
24 shocks me. Shocks me. That's the way it is. In  
25 California and in many other jurisdictions, state

1 law specifically allows local communities to have  
2 tougher laws than the state law. When we drafted  
3 the Political Reform Act, we wrote in that if the  
4 city law wants to go beyond the state law, go do it.  
5 We have 100 cities and counties in California that  
6 have tougher laws than the state law. Now, your  
7 state law does not specifically say that. We have  
8 analyzed your state law and my colleague, Paul Wyatt  
9 has consulted law professors here in the City. We  
10 believe, that you can go beyond the state law. We  
11 believe that the state law would permit you to do  
12 so. And we would make a recommendation that this  
13 Commission actually tighten up and recommend that  
14 your -- both your disclosure laws and your  
15 contribution limit laws apply to all candidates who  
16 are running for city office. And we think it would  
17 be upheld.

18 I asked Alan whether or not you had a  
19 severability clause, and the answer is yes, so that  
20 even if this part of the law was declared invalid,  
21 which we don't think it would be, it wouldn't bring  
22 down the entire law. We think, actually, that it  
23 would make for a stronger recommendation for you to  
24 come in and say, "We supply all of our contribution  
25 limits to every candidate running. We supply all of

1 our disclosures to every candidate running." Every  
2 candidate should file electronically with the  
3 Campaign Finance Board, as opposed to the State  
4 Board, to the State Board of Elections or the City  
5 Board of Elections.

6 The most pressing question you have  
7 beyond the question of tightening up your law is  
8 with the limited role of the political party in the  
9 first round of elections. My understanding is that  
10 they are not allowed to participate right now in the  
11 primary election. The question is whether with your  
12 proposal they will be allowed? There is a case that  
13 Nicole sites, a San Francisco case, that indicates  
14 -- in California, California law said that parties  
15 cannot participate in non-partisan elections. It  
16 was a flat constitutional prohibition saying parties  
17 were not allowed to participate in non-partisan  
18 elections. It was challenged by the Democratic  
19 party. The U.S. Supreme Court ruled that that was  
20 unconstitutional. You could not prohibit parties  
21 from participating in non-partisan elections. And,  
22 so, that decision will apply to your law.

23 MR. GARTNER: Bob, is this the Eu case?

24 MR. STERN: Yes. Yes. Eu, E-U, yes.

25 And we have seen, in Los Angeles, the

1 Democratic party has been a factor, although not a  
2 major factor, but a factor in mayoral elections in  
3 Los Angeles. In 1993, it contributed \$200,000 to  
4 Mike Woo, and spent \$200,000 on behalf of Mike Woo,  
5 who is a Democratic candidate, if you want to say  
6 so. It didn't say "Democrat" on the ballot, but he  
7 was a Democrat. He was running against Republican,  
8 Richard Riordan. A very wealthy person, who went on  
9 to win the election. In 2001, the party spent  
10 \$693,000 on member communications supporting Antonio  
11 Villaraigosa, who was a Democrat, former Speaker of  
12 the California Legislature, who's running against a  
13 fellow Democrat, Jim Hahn, in the run-off election.  
14 And the party spent money on behalf of Villaraigosa,  
15 as well as other candidates for City Attorney and  
16 City Council. Villaraigosa also lost the election.  
17 So, the parties are 0 for 2, in terms of supporting  
18 candidates and winning. But, they have spent a  
19 significant amount of money supporting candidates.

20 As I understand it, in New York State law  
21 political parties can contribute as much as they  
22 want to political candidates running for City  
23 Council or Mayor, as long as those candidates are  
24 not agreeing to the public financing. So, the  
25 question would be if they can, and they are allowed

1 to, would that also encourage candidates not to  
2 accept the public financing because they can receive  
3 substantial amounts of money directly from the  
4 party; unless you change the law, as I would hope  
5 you would.

6           You may not have the authority to do so,  
7 but I am not sure also why you're suggesting two  
8 elections. In other words, my recommendation to  
9 you, if you are going to go non-partisan elections,  
10 I understand maybe there is a state law on this as  
11 well, but, if it's possible, my recommendation would  
12 be you have one election where if somebody got 50  
13 percent plus one, that person would be elected. And  
14 it seems kind of strange that if somebody gets 85  
15 percent of the vote in their first election, they  
16 still have to go to the second election, still have  
17 to raise money and spend money. And, perhaps,  
18 receive public financing for the second election,  
19 even though they are clearly the favorite. Now, I  
20 guess there is a state law, but again, you might  
21 want to take a look at and question whether you can  
22 supersede the state law.

23           MR. CROWELL: The state law dictates that  
24 we have to have at least two elections.

25           MR. STERN: As I understand, state law

1 dictates you have to have a November election.

2 MR. CROWELL: A November election. But,  
3 what happens if no one gets that 50 percent  
4 threshold? You couldn't have a run off beyond that  
5 November election day.

6 MR. STERN: Because November is the date  
7 you have to decide the person who wins.

8 MR. CROWELL: Right. Whoever is elected  
9 that day has to win. Right.

10 MR. STERN: Has to win.

11 FATHER O'HARE: Can I just ask a  
12 question?

13 Going back to the point you made earlier  
14 about such low turnouts, if you have 15 or 20  
15 percent turn out and a candidate gets 50 percent  
16 plus one of 20 percent, that's a very, very small  
17 percentage of the voters putting him in office.

18 MR. STERN: Certainly is. It's almost  
19 criminal to have such a small turn out of people and  
20 a lot of money to spend, and if they get 50 percent  
21 in this last election, 6 of the 8 candidates, one  
22 got 50 percent in the first election because there  
23 was very little competition, and they were elected  
24 and did not go onto the second one.

25 If you can make recommendations on your

1 campaign finance laws, I would suggest the following  
2 recommendations that you make, and maybe even put in  
3 the Charter:

4 A candidate not get public financing  
5 unless there is a serious candidate running for  
6 office against the person who has qualified.

7 It's my understanding now that your law  
8 is, as long as there is somebody running against  
9 you, if you qualify for the public financing you get  
10 the money, even if that person is not a serious  
11 candidate. In many jurisdictions, including Los  
12 Angeles, you have to have a serious opponent running  
13 against you. "Serious," is defined as somebody  
14 who's either qualified for the public financing or  
15 somebody who's raised or spent a certain amount of  
16 money. That has worked quite well. It's kept the  
17 cost down in Los Angeles.

18 State law, as I understand, allows  
19 contributions of up to \$76,500 to political parties.

20 That's a huge amount. That could be used  
21 in non-partisan elections. And, as I understand it  
22 again, there is no limits on contributions by the  
23 parties to the candidates if they don't participate.  
24 I think something should be done about that. You  
25 should lower the limits to the political parties and

1 apply contribution limits to the political parties  
2 who are giving to any candidate in New York City.

3 You should change the disclosure  
4 requirements.

5 New York State disclosure requirements  
6 are very, very weak. New York State disclosure  
7 requirements don't require that occupations and  
8 employers be listed by contributors. And this is  
9 one of the minority of states that don't require  
10 occupations and employers. And I would hope that  
11 you would suggest that any candidate running for New  
12 York City office, they would have to list  
13 occupations and employers.

14 You should require late independent  
15 expenditure reporting. Independent expenditures  
16 apparently have to be reported, but they don't have  
17 to be disclosed until the last few days before the  
18 election. You should have the independent  
19 expenditures report filed in the local jurisdiction,  
20 as opposed to at the state. We had a very difficult  
21 time trying to track down independent expenditures  
22 spent in New York City elections. People told us  
23 the labor unions were very actively involved in the  
24 elections, and we couldn't find any labor union  
25 filing indicating that they were active in the

1 elections. It was very confusing, both for us and  
2 also apparently for New York State officials, trying  
3 to track those down.

4 So, with that, I think I will stop. I  
5 think I've been somewhat helpful. And I hope you  
6 have some comments on both my testimony and Nicole's  
7 testimony. Thank you very much for the invitation.  
8 I certainly enjoyed doing some research on  
9 non-partisan elections.

10 One final point, it's not an issue in  
11 California, if anybody suggested going back to  
12 partisan elections in California, they would be  
13 laughed out of the room. So, it's not even an issue  
14 in California. So, I appreciate the opportunity to  
15 sort of research it. You are going to become the  
16 nation's experts on non-partisan elections because  
17 very few people are.

18 Thanks so much.

19 FATHER O'HARE: Nicole, as I understand  
20 it, the Campaign Finance, what is proposed, the  
21 state legislation, the change in the state  
22 legislation is to achieve some of the things that  
23 Bob was talking about?

24 MR. GORDON: Absolutely, yes, on both  
25 counts.

1 FATHER O'HARE: I don't suppose it was  
2 greeted with enthusiasm?

3 MS. GORDON: It's only been 14 years.

4 FATHER O'HARE: Bob was saying we don't  
5 need to. Bob was saying the Charter can overrule  
6 it?

7 MS. GORDON: Yes. And our Board has been  
8 very interested in the report that was done. We  
9 are -- it would be great if it turns out to be  
10 right. I think, at the moment, it's not clear that  
11 it is. It's contrary -- put it this way, it's  
12 contrary to the perceived wisdom in New York City,  
13 but it's a very interesting proposal and one that  
14 certainly deserves attention.

15 FATHER O'HARE: Any questions from any of  
16 the Commissioners?

17 DR. KHALID: Yes. You said in Los  
18 Angeles you cannot have a party label for  
19 non-partisan election.

20 How would that affect us -- the Mayor  
21 said that we can have party labels for a candidate?

22 MR. STERN: I think that's a much better  
23 idea, frankly. I think that is, in a sense, the  
24 perfect compromise between non-partisan and partisan  
25 elections. Not necessarily have a party primary,

1 but at least let the voters know who -- what party  
2 the candidate is from that they are voting for.  
3 Because what we're finding in Los Angeles and  
4 throughout California is the voters have no clue,  
5 except if the person is very well known, has spent a  
6 huge amount of money, as to who these people are.

7 I was talking to a City Council member  
8 and he was saying that -- there are only 15 city  
9 Council Members, I think you have a lot more and  
10 it's better to have more, but of the 15 City Council  
11 members, 13 are Democrats. So, he was saying to me  
12 one of the Republicans who has been elected wanted  
13 to make sure that nobody knows that he's a  
14 Republican because he would be worried that he  
15 wouldn't be elected.

16 But, I think that it is extremely  
17 important to give the voters some idea of where the  
18 person is coming from. That is a good clue for the  
19 voters, I think.

20 DR. KHALID: Thank you.

21 MR. STERN: Of course, one more point.

22 If you do that, then the argument might be, "Well,  
23 then, what's the reason to have non-partisan  
24 elections if you are making them somewhat partisan?"

25 And that will be an argument used against

1 it. They might say, "Look, either be non-partisan  
2 or partisan, but don't be in between."

3 DR. KHALID: Would we be violating any  
4 state law in that?

5 MR. STERN: No. I would not see any --  
6 well, it's -- I am not an expert on New York State  
7 law, except when it comes to some of the Campaign  
8 Finance positions. Nicole might -- I don't think  
9 you have any state law that would prohibit that.  
10 But, Nicole...

11 MS. GORDON: I don't know the answer and  
12 I am going beyond my expertise.

13 MR. STERN: It certainly wouldn't be  
14 violating any constitutional law.

15 FATHER O'HARE: Just an observation. I  
16 noticed over the weekend a reference, a news  
17 commentator on WQXI was saying that the Mayor's  
18 proposal is to eliminate political parties in the  
19 election, which is a simplification. That really  
20 obscures the whole point of the suggestion that  
21 candidates do identify themselves with their party,  
22 as they would identify themselves, as I understand  
23 it, with the college that they went to, the degrees  
24 they've earned, the other positions they'd had in  
25 life.

1 MR. STERN: Well, except you don't put  
2 that on your ballot.

3 FATHER O'HARE: You would put it in a  
4 Voter Guide.

5 MR. STERN: That's right. Interesting.  
6 I don't think that the Voter Guides in California  
7 are allowed to even put the party if they are  
8 running for a non-partisan election. I think they  
9 are not allowed to do that. Although the parties do  
10 endorse and send money. That's an interesting  
11 question.

12 FATHER O'HARE: Maybe we can follow on  
13 that for a moment.

14 One of the criticisms that we've heard in  
15 our hearings is that people are concerned that  
16 non-partisan elections will mean that the voting  
17 public will not know enough about the candidates  
18 because the party label apparently identifies the  
19 ideology of the candidate, even though that ideology  
20 may be very elastic in some cases. But that raises  
21 the question of the role of the Voter Guide in  
22 non-partisan elections.

23 Nicole, do you think that the New York  
24 City Voter Guide would be an asset to a system of  
25 non-partisan elections, and to the degree that it

1 would answer the criticism that without party  
2 support and the hypothesis of those hearings, party  
3 identification, voters would not know enough about  
4 the candidates to vote for them?

5 MS. GORDON: I just want to make sure I  
6 understand. You are talking about not adopting the  
7 Mayor's proposal, the idea being that you would have  
8 a ballot that didn't show --

9 FATHER O'HARE: No. I am talking about  
10 the value of the Voter Guide as an instrument to  
11 assist voter education in the face of non-partisan  
12 elections where presumably the lack of party  
13 involvement, even though there might be party  
14 identification, would diminish the public's  
15 understanding of the position of the candidate?

16 MS. GORDON: Well, we like to believe the  
17 Voter Guide is a useful source of information for  
18 the voters. I am a little loathe to speculate about  
19 -- to what degree it does or doesn't overcome what  
20 other people might think are obstacles of people's  
21 knowledge. I plead ignorance on that, but we like  
22 to think it's helpful.

23 MR. GARTNER: If I can piggy-back on your  
24 question about information to the voters.

25 I talked with Bob earlier and they have

1 some interesting practices in California about  
2 providing information to voters, some of which we  
3 talked about here in terms of the use of Crosswalks  
4 or the franchise. But, what Bob might -- maybe you  
5 would share some of those ideas, the best practices,  
6 models and so forth?

7 MR. STERN: My colleague, Tracy Westin is  
8 a Professor of Communications at USC, and he has  
9 developed something called the Democracy Network, a  
10 voter information guide over the television and  
11 Internet. But, he's also working this summer on  
12 looking at studying all of the governmental access  
13 channels throughout the country that have provided  
14 free T.V. time to political candidates. And he's  
15 going to come up with a tape showing what the best  
16 practices are for these government access channels.  
17 One of them, in Santa Monica, has a group -- takes  
18 six candidates running for city council, puts them  
19 in front of the telephone set and says, "Pretend you  
20 are a City Council member and here is your issue.  
21 Work out the issue." And the voters get to see how  
22 these people interact with each other and how they  
23 act as a City Council.

24 They also have debates. They also have  
25 -- a City Council candidate, they ask a question on

1 a particular issue and if the issue is housing,  
2 they'll take all the answers on housing and make  
3 that a half hour program, so that voters will see  
4 all the answers.

5 But, television -- cable television is a  
6 very effective way of reaching the voters. And we  
7 think, also, the Internet will be, as well. Only 14  
8 percent of the American public now get their  
9 television over the air; 86 percent get it through  
10 cable and satellite and 67 percent of the people now  
11 have Internet access. And it's a much higher  
12 percentage for voters. And if you could get  
13 candidates participating both in a government access  
14 channel, cable television and also on the internet,  
15 it's a very effective way to get their message  
16 through in a less expensive way. Television, in my  
17 mind, frankly, is the best way to communicate with  
18 voters, and we would like to see candidates debate,  
19 using their active television, cable television, and  
20 get their messages out that way.

21 FATHER O'HARE: Any other questions on  
22 campaign -- Steve?

23 MR. NEWMAN: One, a quick comment. You  
24 were talking about the low turnouts, you should just  
25 be aware, you know, primaries in New York City at

1 present frequently have turnouts of less than the  
2 percentages you were talking about for party  
3 primaries.

4 MR. STERN: Less than 20 percent?

5 MR. NEWMAN: Yes. There is nothing  
6 unique about what you are suggesting.

7 MS. GORDON: Turn out, I thought, was  
8 pretty good this last time.

9 MR. NEWMAN: In 2001. But, if you go  
10 back to '97, I don't believe the primary reached 20  
11 percent. Or, if they did, barely.

12 MR. STERN: Your question is how much  
13 competition there is in the primary -- because you  
14 have -- all your elections are held at one time, I  
15 would think that the turn out depends on whether  
16 there is competition in the Democratic primary for  
17 mayor. If there is not, then the turnout has been  
18 very low for all the City Council races, as well.

19 MS. GORDON: Although I just want to  
20 mention, I am not an expert on voter turnout at all,  
21 but I did hear it said that this election, 2001, of  
22 course we had the added confusion of a delayed date  
23 for the primary because of the attack on September  
24 11th, and nonetheless had a fairly strong primary  
25 turnout. And I heard speculation that a lot of the

1 reason for that was the intense interest in the City  
2 Council races, that because there had been a lot of  
3 activity and a lot of competition at that level,  
4 that a lot of people were mobilized to come out and  
5 vote. I don't know if that's true.

6 MR. NEWMAN: It would be an interesting  
7 sociological study, I would bet, due to increased  
8 patriotism and stuff. But, anyway, I just wanted to  
9 point that out about the turnouts.

10 MS. GORDON: I am wondering how many  
11 people would turn out; between confusion, depression  
12 and a lot of other reasons, they might or might not  
13 turn out. It was very heartening, in a way.

14 FATHER O'HARE: The other issue we want  
15 to talk about today is vote counting. Unless there  
16 are --

17 MR. CROWELL: I have some questions after  
18 Commissioner Newman.

19 MR. NEWMAN: Don't we list occupations  
20 now? I mean, I remember when I've made  
21 contributions --

22 MS. GORDON: What Bob is saying is that  
23 at the local level for candidates who participate in  
24 the Program, in the New York City Program, that  
25 question is asked. But for candidates who don't

1 participate or for candidates who are not from one  
2 of the five offices that are covered, state law does  
3 not require that and doesn't record it.

4 MR. NEWMAN: But does it cover the  
5 elections we're talking about, the three citywide  
6 offices, borough president, city council --

7 MS. GORDON: For candidates who opt into  
8 the Program, and what I think what Bob is saying is,  
9 he was suggesting that the Charter Revision might  
10 attempt to address a state law problem by invoking  
11 the city's interest in having that information.

12 MR. NEWMAN: You were talking about  
13 government access channels. Is any community  
14 requiring as part of their cable T.V. franchises,  
15 requiring the major cable stations to provide free  
16 time so that it's not just stations that very few  
17 people watch, but that --

18 MR. STERN: Well, the question is --

19 MR. NEWMAN: Basically, the British  
20 system, which is ban T.V. ads in the last week  
21 and require --

22 MR. STERN: Which I am not in favor of.

23 But, the problem is -- many governments  
24 require cable to have either a government access  
25 channel or a public access channel or an educational

1 access channel. And on those channels, that's not  
2 the channels to watch.

3 MR. NEWMAN: Nobody's watching them.

4 MR. STERN: As ESPN or CNN --

5 MR. NEWMAN: I'm an interested person and  
6 I don't watch them.

7 MR. STERN: But, it's not -- the problem  
8 is how can you require the cables to require ESPN or  
9 CNN, you can't require them to require that they be  
10 the most watched stations. You can only require  
11 them to put it on the stations they control, which  
12 are the government access channels or the public  
13 access channels. So, there's no way to do that,  
14 actually.

15 As you know, Congress is -- it's been  
16 proposed several times that Congress require the  
17 broadcast stations to provide free time. And that  
18 will happen only when there are term limits in  
19 Congress, which will basically never be because the  
20 incumbents -- when the incumbents get to the  
21 Congressional level, the state level, the city  
22 level, generally they do not want their challengers  
23 to get any free anything, free time. And that's why  
24 it's such a tribute to New York and Los Angeles that  
25 the incumbents actually voted to permit public

1 financing to their challengers. And the problem  
2 again is for broadcast channels, it's only Congress  
3 that can mandate that. You cannot -- even if the  
4 City Council wanted to say free T.V. time on the  
5 major stations -- local stations, you cannot mandate  
6 that on the local stations. You would be preempted  
7 by Congress.

8 MR. NEWMAN: Nicole, you talked about  
9 soft money. How do you control soft money now from  
10 political clubs, unions, environmental groups,  
11 business groups, et cetera?

12 MS. GORDON: You have to make a  
13 distinction between parties and the rest, and that's  
14 the first thing. But, truly independent  
15 expenditures are not controlled. There is no legal  
16 mechanism to do that. The federal law essentially  
17 says if you are an independent candidate and you  
18 want to spend your money, to the extent you want to  
19 do that, you can do that. In order to regulate it  
20 at all, you would have to find that the spending was  
21 coordinated with the candidate, which obviously is  
22 very difficult to do if you want to pursue those  
23 kinds of cases. On occasion, those kinds of cases  
24 have come up, but I can't say that there has been  
25 very much of it and surprisingly little complaint

1 about it.

2           We have heard a number of comments about  
3 unions spending and, I guess, I have three things to  
4 say about that. One is that without a set of  
5 concrete facts, there is really nothing to say about  
6 it. But the other thing I would also caution  
7 everyone about is that there are some activities  
8 that are not reached by the Program at all and never  
9 would be, such as volunteer activity. And when the  
10 parties or the union or anybody provides volunteer  
11 help, that may or may not be very effective but it's  
12 not considered within the Program as an expenditure  
13 or in-kind contribution. No negative value, in a  
14 sense, is attached to that. I think it's actually  
15 an activity that's promoted by the Program.

16           When there are indications that  
17 photographs or materials of the candidate are being  
18 used by an outside entity, you can start to inquire  
19 whether, in fact, there was coordination. One of  
20 the protections that we've had for the Program is  
21 the assumption, the presumption that a party  
22 spending on behalf of its own nominee, that the  
23 nominee can be held accountable for that because per  
24 se, having gotten through that process, gotten the  
25 ballot line and so on, that that relationship is one

1 that can be considered -- these are one person for  
2 the purposes of the Campaign Finance law. And  
3 that's the issue that I have been addressing and  
4 which the Board sees a great danger to in the  
5 context of non-partisan elections. And that the  
6 Board has tried to find an answer to, but hasn't  
7 come up with one.

8 MR. NEWMAN: In the present system, have  
9 we fined anybody?

10 MS. GORDON: We've had -- well, in 1993,  
11 the -- no fine was attached to this. What happened  
12 was -- I think we may have talked about this a  
13 little bit before you arrived, but the Dinkins'  
14 campaign -- there was a complaint by the Guiliani  
15 campaign that the State Democratic party spent about  
16 \$250,000 on Dinkins' materials. The Board had a  
17 hearing and before any decision was reached about  
18 it, the campaign paid the Democratic party the sum  
19 that was spent and mooted the issue.

20 There have been a lot of cases that have  
21 been brought up that have never reached the penalty  
22 stage, but -- which in the audit process, the  
23 campaigns have to take account of. And I mentioned  
24 in my testimony, also, there was a complaint by the  
25 Dinkins' campaign against the Guiliani campaign for

1 a lesser amount, but that also was handled the same  
2 way.

3 MR. CROWELL: On the rules regulating  
4 independent expenditures, how -- can you explain a  
5 little bit about how it works now? Can you go into  
6 a little more depth?

7 And then I would like to know your  
8 thoughts on a candidate's party I.D. and how,  
9 perhaps, those rules could be applied in the case of  
10 non-partisan election, especially where we do have a  
11 candidate's I.D.

12 MS. GORDON: The way the presumption  
13 works is that a candidate -- it's simply the fact of  
14 being the nominee of a party that creates the  
15 presumption. There are distinctions made between  
16 what you might consider generic spending by the  
17 party, get out the vote, vote Democratic or vote  
18 Republican, as opposed to spending that identifies  
19 the candidate, has a photograph, et cetera. And as  
20 to the first group, the generic, the presumption  
21 does not apply. As to the second, the presumption  
22 does apply. And a candidate would have the  
23 opportunity to come before the Board and make a case  
24 that it's not the case that even though they used my  
25 picture, et cetera, it's not and independent.

1           And, conversely, a candidate could make a  
2 case that generic spending was so linked to a  
3 particular candidate that it had to be done in  
4 coordination and should be charged against the  
5 campaign, as other independent spending -- again,  
6 you would have to have a lot of information that the  
7 Board -- not easily come by -- about contacts and  
8 connections between candidates and other entities.  
9 But, in the case of parties, the Board has taken the  
10 step with some confidence that if it were ever  
11 challenged, it would be upheld.

12           I don't know exactly where you were going  
13 with the question about the candidate I.D., whether  
14 I think that by putting the candidates --

15           MR. CROWELL: If we can somehow apply the  
16 independent expenditure rules to candidates who are  
17 identifying in a non-partisan election, does the  
18 fact that a party I.D. would appear on the ballot  
19 somehow make it easier, especially when you are  
20 talking about expenditures or even coordinated  
21 expenditures --

22           MS. GORDON: You are talking about the  
23 primary or the general election?

24           MR. CROWELL: The primary. The primary  
25 is the primary concern when it comes to party

1 spending.

2 MS. GORDON: Well, for us, it's both.

3 MR. CROWELL: I know it's both, but in  
4 terms of what can be regulated and the problem that  
5 comes up in non-partisan elections is, it seems the  
6 non-partisan primary is in the first line of  
7 problems that you indicated.

8 MS. GORDON: Well, there are two  
9 problems. I don't know that I would say one is  
10 greater than the other. The first problem is that  
11 in the primary period now, it's completely  
12 forbidden. And, if it were a question of having  
13 multiple candidates on the ballot and each one is  
14 labeled as a Democrat, I don't know how far you can  
15 go by saying -- I just don't know the answer to this  
16 and I would be loath to hang my hat on it to be  
17 sure -- I don't know just by labeling yourself with  
18 a party name whether you could effectively enforce a  
19 presumption there.

20 In the general election, we have a  
21 presumption that links the two and, I guess, it's a  
22 very similar question that arises. A mere  
23 endorsement by an outside entity is not generally  
24 enough to make the link. And if the party becomes  
25 like any other organization out there or the more it

1 becomes like any other organization out there, it  
2 seems to me the less likelihood you would have to be  
3 able to capture a party's activity within the  
4 candidate's campaign.

5 FATHER O'HARE: Nicole, if you had  
6 several candidates in the non-partisan primary  
7 identified as Democrats, and the party spent in  
8 support of one of those, would not the presumption  
9 hold then?

10 MS. GORDON: I don't think that you can  
11 say it as clearly as that because, as I said, if the  
12 parties understood now to be just like the Sierra  
13 Club and the NRA, and you go forward as a candidate  
14 and ask them for their endorsement, without more, I  
15 am not clear that you get past --

16 FATHER O'HARE: More than endorsement.  
17 Is there political advertising and all the rest?

18 MS. GORDON: No. No. Let me go back.  
19 Let's say the Sierra Club -- you go to the Sierra  
20 Club, you get their endorsement and they start to  
21 spend money on your behalf, I don't think that a  
22 presumption of the sort the Board now has that  
23 applies to the parties would necessarily withstand  
24 attack. Even if they spent a lot of money. Because  
25 it's not the question if they are spending the

1 money, it's a question of the relationship between  
2 the organization and the individual.

3 DR. MACCIAROLA: But if the Sierra Club  
4 targeted its literature in such a way, wouldn't the  
5 presumption not be all in place? In other words,  
6 isn't that spending on the candidate, the Sierra  
7 Club produces material in concert with the  
8 organization?

9 MR. STERN: If it is not coordinated with  
10 the candidate --

11 DR. MACCIAROLA: Wouldn't it seem --

12 MR. STERN: They would make sure that  
13 they are not coordinated with the candidate. They  
14 do that in Los Angeles, they do that in state races  
15 so that they can spend a lot more than the  
16 contribution limit, which is in Los Angeles, \$500  
17 for a City Council member; \$1,000 for a mayoral  
18 candidate. The Democratic party spent \$600,000 on  
19 behalf of Democratic candidates in Los Angeles,  
20 independent expenditures.

21 DR. MACCIAROLA: But that's permitted,  
22 you said.

23 MR. STERN: It's permitted, but I don't  
24 think that you can pass a law saying that the  
25 presumption is, in a non-partisan election where the

1 party is acting as the Sierra Club, and supporting  
2 one candidate, that the presumption will be that the  
3 candidate has coordinated the expenditure. You have  
4 to prove that the candidate worked with that party,  
5 with that expenditure. The party is going to make  
6 very sure, I guarantee you, that they won't even  
7 talk to the candidate, they won't talk to the  
8 candidate's campaign manager. They will spend the  
9 money independently and the candidate will not have  
10 any disclosure requirements, will not have any  
11 spending attributed to his or her spending, and the  
12 party will be able to spend unlimited amounts of  
13 money on behalf of the candidate. And that's just  
14 constitutional law. As long as the party is  
15 careful, which I am sure they will be, to make sure  
16 that they don't have it attributed.

17 MR. CROWELL: One other question. Not  
18 much has been said about the shared goals between  
19 non-partisan elections and the Campaign Finance  
20 Program.

21 Bob, can you please expand upon that a  
22 little bit? And then I'll ask Nicole the same  
23 question. And I have some subsidiary questions for  
24 Nicole.

25 MR. STERN: There are two goals for any

1 campaign finance program. One goal is to affect the  
2 election process and another goal is to affect the  
3 governmental process. I don't think that the  
4 non-partisan election/partisan election really has  
5 that much of an impact on the governmental process;  
6 it will have an impact on the election process. And  
7 the argument is that it frees candidates from  
8 seeking the party endorsement and allows candidates  
9 who are not the party favorite to run for office,  
10 and not be identified -- not have the party control  
11 the election. And also allows candidates to -- for  
12 instance, right now in California some of you might  
13 have heard me -- we probably are going to have a  
14 recall election. We are going to have, basically, a  
15 non-partisan recall election. Very similar to what  
16 you are proposing. Basically, it will be two votes:  
17 One first vote, should we recall Davis or not? And  
18 the second vote will be electing candidates, and the  
19 candidate will have their party identification, but  
20 the candidate who gets the most votes will win that  
21 election.

22           So, there are some moderate Republicans  
23 now who are running who probably will be running  
24 because they will get Democratic votes in that  
25 election. Whereas, if it were the party primary,

1 they would probably not be nominated by the  
2 Republicans because they are too moderate for the  
3 Republicans.

4 In a sense, what you do with non-partisan  
5 elections is that you allow everybody to vote for  
6 any candidate, as opposed to only Democrats voting  
7 for Democrats, only Republicans voting for  
8 Republicans the first time around. So, in essence,  
9 in my view, what you will do is you will have more  
10 moderate candidates emerging as the people in the  
11 runoff, as opposed to someone who is very liberal,  
12 say is Democrat, so they might be very  
13 conservative -- don't have conservatives here in New  
14 York, but anyway -- somebody who might be  
15 conservative might be nominated by the Republicans,  
16 as has happened recently, but the goal, I think, of  
17 non-partisan elections is to allow everybody to vote  
18 for any candidate, no matter the party label.

19 MS. GORDON: Shared goals?

20 MR. CROWELL: Yeah, the shared goals and  
21 then I have two questions; one about equity and one  
22 about efficiency.

23 MS. GORDON: Just -- to save a little  
24 time, starting on page 13 of what I handed out and I  
25 sort of summarized it a little earlier, with respect

1 to candidate and voter participation. We believe  
2 that the Campaign Finance Program has contributed to  
3 a lot of progress in those areas. And I listed  
4 since 1988 some of the steps that we thought were  
5 positive in that direction, a lot of adversity that  
6 has been achieved. And, also, I mentioned that I  
7 think that from the voters's point of view, the fact  
8 that the matching program is so generous is a big  
9 incentive for people of modest means to be able to  
10 feel that they have a meaningful place in the  
11 campaign. And we've heard very moving testimony to  
12 that effect, and it's a reality. I mean, to think  
13 that a \$10 contribution really means \$50, I think is  
14 a big incentive for people to participate. And in  
15 this last set of elections, we saw an almost  
16 doubling of the number of people who contributed to  
17 campaigns, due to a lot of factors, but we believe  
18 that the presence of the Campaign Finance Program is  
19 one of them.

20 MR. CROWELL: Under the program, only  
21 candidates who face a primary opponent may receive  
22 funds; correct?

23 MS. GORDON: Right, in a primary. Right.

24 MR. CROWELL: The vast majority of people  
25 in these primaries are Democrats and it seems like

1 Democrats, more than any other party, would actually  
2 be able to get twice the amount of funds because  
3 there would be Democrats also going on to the  
4 general election.

5           Wouldn't a non-partisan election actually  
6 provide a more equitable approach for the Campaign  
7 Finance Program and, certainly, in the primary  
8 round?

9           MS. GORDON: In the primary period, under  
10 your hypothetical, there is a competitive Democratic  
11 primary and no Republican primary. If you gave  
12 public funds to the Republican candidate and the  
13 Democrats are fighting each other, causing each  
14 other damage that will continue on into the general  
15 election, and the Republican is able to have a free  
16 ride, so to speak, during that period, that, from a  
17 Democratic candidate's of view, presumably it would  
18 be an uneven playing field.

19           What the program does, which I think  
20 is --

21           MR. CROWELL: Sometimes there is no  
22 Republican in the primary, for instance.

23           MS. GORDON: That's what I am saying, but  
24 that means that what you are hypothesizing is a  
25 situation which that Republican, not withstanding

1 the fact that he or she doesn't have any meaningful  
2 combat going on, is getting the benefit of public  
3 funds.

4           What the Program does, and I think it is  
5 a pretty fair result, the Program allows the  
6 Republican candidate in that hypothetical to spend  
7 up to the primary election limit, but without the  
8 aid of public funds. So that the Republican  
9 candidate doesn't get the extra boost of money from  
10 the public because, at least in the primary period,  
11 he or she doesn't have an opponent, but still,  
12 because of the possibility that more attention is  
13 going to the Democratic contenders, the Republican  
14 gets the opportunity to spend at private "expense"  
15 up to the same limit as the Democratic candidate in  
16 that hypothetical. So, I think that kind of evens  
17 it out.

18           MR. STERN: You should recognize that if  
19 you moved to non-partisan elections, it will  
20 increase the cost of public financing, that you will  
21 be giving public financing to the Republican who is  
22 running in that -- to everybody who is running in  
23 that primary. So, you need to take a look at how  
24 much more the program will cost, because it will  
25 cost more money.

1           MR. CROWELL: What about in the situation  
2 of non-competitive general elections, such as the  
3 Brooklyn Borough President's race in '01 where, I  
4 believe, \$500,000 was sent to the Democratic  
5 candidate and there was just not a real race. Is  
6 that really an efficient use of public money?

7           MS. GORDON: I think that's a subject  
8 that has been very troubling to the Board. And the  
9 City Council came up with quite an interesting  
10 solution to it in the last round of legislative  
11 changes. The way the law operates is that if you  
12 have an opponent on the ballot, regardless of how  
13 serious an outsider might think that candidate is,  
14 then you are entitled to receive public funds. And,  
15 I guess, the argument goes that if you are on the  
16 ballot, that was the threshold you had to pass. The  
17 way the law has been amended now, it puts the burden  
18 on the candidate who is faced with possibly not such  
19 serious opposition, and that's defined along the  
20 lines of what Bob was describing that they had in  
21 some jurisdiction, which is: Has that person  
22 qualified to receive public funds or has that person  
23 raised or spent a certain amount of money?

24           The law provides that the candidate who  
25 may have a less-than-serious opponent must justify,

1 in a letter to the Board, the need for additional  
2 public funds. And I think that one of the reasons  
3 this -- it's not an up or down thing. The way Bob  
4 has described it in other jurisdictions, is that  
5 there are instances where people's name recognition  
6 or other factors may suggest that the monetary  
7 threshold is not always going to yield a fair  
8 result. For example, you have situations -- we have  
9 one now, where an opponent of an incumbent has the  
10 same -- has almost an identical name. We had that  
11 actually in Manhattan for the Borough President the  
12 last time out. That's a pure confusion potential.  
13 But, in addition to that, you do have instances of  
14 Al Sharpton, for example, can mobilize a lot of  
15 people, get a lot of attention, almost triggered a  
16 runoff with Ruth Messinger, and yet, never even  
17 qualified for public funds because he's able to  
18 command a great deal of attention without spending  
19 money.

20 So, those are some of the inequities.  
21 You can't, obviously, do a system that provides  
22 absolute fairness in every circumstance. I am not  
23 sure how much -- I'm not sure that it matters  
24 whether it's a non-partisan or a partisan context.  
25 That will always be a problem.

1           MR. CROWELL: Do you think a non-partisan  
2 format would be actually more competitive for these  
3 general elections, as the top two vote-getters move  
4 on, and as Bob says, there's more moderate  
5 candidates coming towards the middle and issues  
6 become the real --

7           MS. GORDON: I have no idea. I just  
8 don't know. I guess it depends whether the -- I  
9 guess it will depend on how many people come out of  
10 first round with a very big lopsided majority, or  
11 not. I just don't know about that.

12          FATHER O'HARE: Can we move on to the  
13 second item?

14          MR. GARTNER: If I may, let me thank  
15 Nicole and her colleagues for giving such care and  
16 attention to issues that they didn't ask for and we  
17 gave to them.

18           On the next round, if I may, just a word  
19 of introduction. We've invited three people to  
20 participate in the vote counting; Bob Stern, who  
21 we've already met, Steve Abramson, who perhaps  
22 should come up now, and Bernard Grofman, who is a  
23 professor at the University of California, Irvine,  
24 voting rights expert.

25           And with your permission, Father O'Hare,

1 I would like to read into the record one paragraph  
2 of what Professor Grofman sent us.

3 MS. GORDON: Thanks very much.

4 MR. GARTNER: Thank you, Nicole.

5 He says, "I'm generally sympathetic to  
6 IRV, but the more I think about it, the more worried  
7 I get about its use in New York City. It's main  
8 advantage is that it saves the City the cost of a  
9 second run off. Its main drawback is that it  
10 requires voters to provide a rank order of the  
11 candidates. While many choose not to submit a  
12 complete rank order of all candidates, but just to  
13 rank a few, or even just a vote for a single  
14 candidate at the cost of not having their vote  
15 transferred to a lower choice if their first choice  
16 is eliminated earlier, which requires a different  
17 type of voting machine.

18 "But also in New York City, I worry that  
19 minorities might be likely to pool their vote for a  
20 single candidate and thus be more likely to have  
21 their votes 'wasted'". Thus, raising Voting Rights  
22 Act issues. Moreover, if lots of people are bullet  
23 voting, you can even have the embarrassing situation  
24 of a winner being chosen with less than a majority  
25 of the ballots cast, even though the IRV procedure

1 supposedly is majoritarian. While a number of votes  
2 are wasted, votes, in this way, might still be  
3 smaller than the number of voters who wouldn't  
4 bother to go to the polls in the second of the  
5 normal majority runoff. Wasted votes are perhaps a  
6 lot more visible.

7 "Finally, if you do use a normal runoff,  
8 the question remains as to the rule for who gets  
9 into the runoff. I prefer the top two rule. Then  
10 you have the question of when it is to require a  
11 runoff. There certainly are good arguments that can  
12 be given for using a rule of less than a majority;  
13 i.e., if the plurality winner had more than 40  
14 percent of the votes in the first round, but there  
15 are also strong arguments for requiring the  
16 majority. Moreover, if you say 50 percent and  
17 everybody says, "Yeah, that's a majority, that makes  
18 sense.' But if it's say, 40, percent, then people  
19 say Why not 45 or 48 percent?"

20 FATHER O'HARE: Bob, you or Steve?

21 MR. ABRAMSON: I will be happy to start.

22 Thank you, Father O'Hare, Members of the  
23 Commission. It is a pleasure to be invited here to  
24 speak to you on behalf of instant run-off voting.  
25 I'm a life-long resident of New York State,

1 currently living in the town of South Hampton, New  
2 York, and have started -- and I have founded and  
3 direct the NYSIRV Organization which is the Instant  
4 Run-off Voting Organization for New York State to  
5 promote the concept. And the concept is based upon  
6 the idea that we should, indeed, with respect to the  
7 comment made from the professor, have majority  
8 winners, because they clearly represent the public  
9 will best.

10 In instant run-off voting, what you have  
11 is a situation where if no one wins a majority of  
12 the vote outright, then you have a run-off  
13 condition. A run-off condition, without having to  
14 go to a run-off election because the people who have  
15 already, the first time around on their ballot, will  
16 have ranked the candidates in order of preference.  
17 So that you can have a runoff based upon their  
18 desires from the get-go. In New York City, that's a  
19 pretty important thing.

20 The run-off election for the Mayor in the  
21 last Democratic primary cost the City \$10 million in  
22 a time of deficits. You could also expect to see in  
23 most elections where there is not a lot of heat and  
24 where they might not necessarily occur, a runoff  
25 might not necessarily occur in November when people

1 are going to a booth for general elections of  
2 importance, that in a runoff that there would be a  
3 decline in the number of voters participating, and  
4 voter anticipation is also very important.

5 I noted that in the June 26th meeting  
6 that you had thought that, it was suggested that  
7 instant runoff voting should be approached and  
8 looked at. I would like to give to you an example  
9 that I was discussing earlier with Frank Macciarola,  
10 with regard to the 1977 Democratic primary for  
11 mayor. The idea being in that year that we would  
12 have a run-off of the two top vote getters. We had  
13 a stellar field in New York City running, just as  
14 you are likely to have with the idea of non-partisan  
15 elections, with a lot of people from a lot of  
16 disciplines coming into the ballot. We had Mario  
17 Cuomo. We had Ed Koch. We had Percy Sutton, Bella  
18 Abzug. We had Herman Badillo -- and who have I  
19 omitted -- and Abe Beame, of course, Mayor Abe  
20 Beame. In the election, in the primary election,  
21 first primary, the winner was Ed Koch with just  
22 barely 20 percent of the vote, and second place was  
23 Mario Cuomo with 19, and third place was Mayor Beame  
24 with 18. And we had Bella Abzug with 17, Percy  
25 Sutton with 14 and Herman Badillo with 11. All

1 qualified people, of course, and all getting a good  
2 share of the vote. But under the rules, only two  
3 people were propelled then into the runoff, because  
4 no one candidate had gotten 40 percent of the vote.  
5 In reality, the top two who went into the runoff  
6 didn't have 40 percent between them.

7           So, you could have had a situation  
8 whereby perhaps the 60 percent of the people who  
9 preferred a candidate other than Koch or Cuomo,  
10 might very well have rallied around one of the  
11 people who were eliminated, and it would strike one  
12 that it would be the easiest and best thing to do,  
13 to have a sequential runoff, in terms of preference,  
14 and that's what we have with an instant run-off  
15 voting.

16           I would like to note for you, please,  
17 that instant run-off voting is now endorsed by  
18 Robert's Rules of Order in their revised 10th  
19 edition, in which they say, "Instant run-off voting  
20 makes possible a more representative result than  
21 under a rule that a plurality shall elect." This  
22 type of preferential ballot is preferable to  
23 election by plurality.

24           It's a new concept. And when you discuss  
25 new concepts, just as when you discuss the idea of

1 non-partisan elections, it's difficult to make  
2 changes. You have people who have been elected  
3 under the current system who may consider it to be  
4 an unknown as to how things will work out under a  
5 new system and might be fearful of it. But, we have  
6 a lot of things that are dove-tailing now at the  
7 present time. Information technology is coming to  
8 the fore to assist us. We have to replace our lever  
9 equipment, our lever voting machines in New York.  
10 That's a mandate from the New York State Commission  
11 on Election Modernization that was put together by  
12 Governor Pataki. We are supposed to convert from  
13 lever-based machines to ATM touch screen equipment  
14 within the next four years thoroughly, throughout  
15 the state. This will allow us, with the proper  
16 software, to have instant run-off voting, truly  
17 instantaneous and calculated without any difficulty  
18 in all elections.

19 Our organizations, NYSIRV, has been  
20 working with Fred Thiele, of Sag Harbor, who has  
21 presented now two bills before the assembly for  
22 instant run-off voting in elections; one for all  
23 primary elections and one for local, general  
24 elections with the permission of the population by  
25 referendum. Senator Liz Kruger, of New York, has

1 also now proposed something before the New York  
2 State Senate. And there are many people who are now  
3 endorsing it nationally. Most notably, John McCain  
4 and Governor Howard Dean and Representative Dennis  
5 Kucinich, all have thoroughly endorsed instant  
6 runoff voting as a much more democratic, small deed  
7 concept to elect people.

8           The advantages of instant runoff, apart  
9 from the fact that it will replace costly elections  
10 is that because a candidate running will possibly  
11 need the support of the people who are supporting an  
12 eliminated candidate in order to achieve victory,  
13 the majority, there is likely to be far less  
14 negative campaigning and far less mud slinging in  
15 campaigns than we currently have. Something that  
16 the public is thoroughly fed up with. So there are  
17 many endorsements that are now running in the press.  
18 I invite people to please go to the nysirv.org  
19 website, [www.nysirv.org](http://www.nysirv.org), where you will see lots of  
20 information on past elections of national and  
21 statewide; as well as finding information on the  
22 background of instant runoff voting in other  
23 countries.

24           Also, the NYSIRV group has just started  
25 something which you may find fun to take a look at.

1 We will begin on August 1, publicizing a monthly  
2 presidential stronghold using instant run-off voting  
3 in which there are 15 candidates, including George  
4 Bush and John McCain, Ralph Nader, Hilary Clinton  
5 and everyone else that you know who has already  
6 announced. And, of course, as that field narrows  
7 down, we are doing this month by month. You will be  
8 able to see the results yourself as to how they  
9 worked out and how the balloting changed round by  
10 round.

11           This is not a concept which is partisan.  
12 This is not a concept which is only for Democrats.  
13 The Republican party used it in May of 2002 to  
14 select the candidates that they would use to run for  
15 Congress. In one of the districts, there were 12  
16 candidates where, theoretically, someone could have  
17 won with only nine percent of the vote. And if that  
18 sounds silly, just think about district 69 in New  
19 York where the Democrat won with 34 percent of the  
20 vote, and two out of three people wanted someone  
21 else. And the person who won in the first round,  
22 the plurality in the first round in that district in  
23 Utah, was not the ultimate winner. The ultimate  
24 winner was the person who was second in the first  
25 round and ultimately got the majority of people to

1 support him in his election.

2 I would be very happy now to accept any  
3 questions that you might possibly have about it.

4 And, again, I appreciate the opportunity to speak  
5 here.

6 FATHER O'HARE: I just want to note that  
7 another one of our Commissioners has arrived, Pat  
8 Gatling, Commissioner on Human Rights.

9 Are there any questions?

10 MR. GARTNER: Why don't we hear from Bob,  
11 first.

12 MR. STERN: I have a much shorter  
13 statement than either Steve or my statement earlier  
14 on because instant runoff is a new system for me.  
15 We tried it with our staff. We were trying to pick  
16 a place to go for a field trip. So we had five or  
17 six places that people had nominated. So I said,  
18 "Let's have an instant runoff." So, we tried it and  
19 the vote was tied. And we ended up going to a place  
20 that wasn't on the ballot. So it didn't quite work,  
21 but, that doesn't mean to say that it wouldn't work  
22 elsewhere.

23 The problem, of course is, in San  
24 Francisco is trying it, it's mandated to have it for  
25 this year's mayoral election, and, unfortunately, it

1 looks like San Francisco will not be able to  
2 implement the program, that the voting machine  
3 company was not able to come through in time for  
4 testing. And they are either going to have instant  
5 run-off and take a week or two to count the ballots  
6 or go back to this other system where they will have  
7 a regular run-off and not count the ballots. So, we  
8 were hoping that San Francisco would show us how  
9 this worked. Unfortunately, it doesn't look like  
10 it's going to be happening. In San Francisco, by  
11 the way, the way it works is that the public will,  
12 if it's implemented, will vote for three candidates.  
13 And that means that there is a possibility if there  
14 are 15 or 20 candidates running, even with instant  
15 run-off, you wouldn't have the majority of people  
16 actually voting for the winner because instant  
17 run-off brings it down to the final two.

18 Now, of course, it also is the same case  
19 when you have a run-off election, it's very possible  
20 that in a run-off election, the majority of the  
21 people who voted in the primary are not voting in  
22 the run-off, it may not look that way either. But,  
23 instant run-off does not necessarily mean that the  
24 person who wins has a majority of those who voted.  
25 You should recognize that.

1           I don't know whether you are ready at  
2   this time to endorse two concepts, but I would  
3   suggest that probably you go a little slow on  
4   instant run-off just because it seems to me it is  
5   somewhat untested here in the United States. And if  
6   San Francisco is any indication, your Elections  
7   Department is going to have a very, very difficult  
8   time implementing this with a new voting machine  
9   system and educating the voters on how this works.  
10   That's probably the biggest problem is educating the  
11   voters on what this means and how you do it. And  
12   you will have some confusion.

13           MR. ABRAMSON: May I please comment on  
14   this?

15           The reality is that you have called for  
16   either a 2005 or 2009 implementation day, and I  
17   would agree that the concept is new in the United  
18   States, although it was developed by an MIT  
19   professor a long time ago and it has been in place  
20   for decades in Australia, where it works quite  
21   successfully, works in Ireland quite successfully.  
22   And I think that we will not find that Americans are  
23   less capable of finding their way through this  
24   system than they are in those places. But, by 2005  
25   and 2009, you will have all of the answers in place

1 by all of the equipment manufacturers and see how it  
2 will work.

3 And, again, I invite you to take a look  
4 at the presidential poll that we're running because  
5 it works just fine there, and that is potuspoll.com,  
6 P O T U S, for president of the United States dot  
7 com. And you will be able to see examples of how it  
8 will work. I am not saying that you should think  
9 about implementing it for this November, that's  
10 impossible. You won't even have the equipment in  
11 place for a few years here. But dove-tailing  
12 together with the concept of non-partisan elections  
13 and also the presentation of the equipment that's  
14 necessary to do this, and we will have it ready in  
15 time. Don't think that we don't have the  
16 intellectual and computer power to do this.

17 MR. CROWELL: I have a question. You've  
18 been working with Assemblyman Thiele?

19 MR. ABRAMSON: Yes.

20 MR. CROWELL: So it's NYSIRV representing  
21 the Assemblyman's position that there needs to be  
22 state authorization or state implementing  
23 legislation on the authorized localities to actually  
24 have a system of instant run-off voting?

25 MR. ABRAMSON: That's my understanding.

1           MR. CROWELL: And how many municipalities  
2 have expressed interest in doing this so far in New  
3 York State, but believe they don't have the  
4 authority to do it but need obviously the state  
5 legislature to act?

6           MR. ABRAMSON: I am unaware of it.

7           MR. CROWELL: Okay. Do you have a copy  
8 of your proposed legislation with you?

9           MR. ABRAMSON: No, I don't. But everyone  
10 can access Fred Thiele's legislation via our  
11 website, we're hot-linked to it and you'll be able  
12 to see the Assembly bills. They are AO-4481 and  
13 AO-4482.

14           MR. CROWELL: Are they amending the State  
15 Election Law or the State Home Rule Law?

16           MR. ABRAMSON: I am not an attorney.

17           MR. CROWELL: Not a problem. I am trying  
18 to recall back. But, I think it may have been --  
19 all right. I will provide that to the Commission.

20           FATHER O'HARE: Any other questions?

21           Well, thank you very much.

22           MR. STERN: Thank you.

23           FATHER O'HARE: As you know, this has  
24 been a forum where we have invited testimony from  
25 experts on two specific questions, campaign finance

1 and vote counting. But, those members of the public  
2 who are here who would like to speak on either one  
3 of these issues, this is not the same as a hearing  
4 where you might want to offer testimony on a variety  
5 of issues, but the two issues we are considering  
6 here are campaign finance and vote counting.

7 I have a list here of some people who  
8 have signed up. Whether they wish to speak or not,  
9 I am not sure.

10 Charles Moore?

11 MR. MOORE: Yes, I wish to speak.

12 FATHER O'HARE: Generally, in the public  
13 hearing, Mr. Moore, we limit interventions to three  
14 minutes, but at this forum we can be a little less  
15 strict on that.

16 MR. MOORE: Thank you.

17 FATHER O'HARE: You want to sit down.

18 MR. MOORE: Yes. Mr. Chairman, presiding  
19 officer over the Commission, members of the  
20 Commission, ladies and gentlemen, my name is Charles  
21 Robert Moore. I am a candidate for United States  
22 Congress.

23 The topic that I chose to speak on is the  
24 vote counting system. I graduated from Manhattan  
25 College as an electrical engineer, so I feel as if I

1 have a subtle information that can be an advantage  
2 in this matter.

3           The news -- several news reports have  
4 quoted electronic systems, or voting systems are  
5 being used in Florida and in Georgia, and they give  
6 quite a spectrum of choices. What I have done is  
7 narrowed it down to the touch-screen system. This  
8 touch-screen system, basically, would be almost the  
9 same as the old mechanical system where you just  
10 touch the lever and register your vote. In this  
11 system, you touch the screen and you touch the  
12 candidate's name and you register the vote in the  
13 candidates's box. Or you touch the proposition and  
14 you register a "yes" or a "no". But you only touch  
15 the screen in two places to register your vote for  
16 all candidates and all propositions.

17           I believe that the electronic system must  
18 also include the capability where if a voter is  
19 unlisted or his vote is contested, the computer  
20 system must have the capability of saying that this  
21 is a contested vote or an unlisted voter. And so  
22 there should be like another place on the screen  
23 that all you would have to do is touch that and you  
24 would have the same as the paper ballot vote. And  
25 the total vote would obviously be tallied up and the

1 candidates can check for themselves whether there  
2 were so many uncontested voters that it would  
3 justify a legal action, but the computer system  
4 would have the whole thing just by touching that box  
5 on the screen. So, nobody would be denied the right  
6 to vote. As a Constitutional guarantee, I think the  
7 computer system must have that capability.

8           The other capability is that there must  
9 be an ability for the voter to change his vote or to  
10 correct his vote. For example, you touch the  
11 voter's name, you touch the proposition, "yes" or  
12 "no," and then you touch the final vote. Now, at  
13 this point, you still can change your vote. And if  
14 you don't change your vote, then you press the  
15 "Exit." Then the final vote is registered and the  
16 vote is erased. It's like throwing the lever over  
17 and opening the curtain again and you start all over  
18 again. But, basically, it boils down to just a  
19 simple touch on the screen. A lot of us using the  
20 ATM systems around Bronx County and around the City  
21 are familiar with these mechanical devices, these  
22 electronic devices, and a lot of the systems have  
23 the touch screen and the keyboard and other buttons.

24           In conclusion, I am saying that the punch  
25 card system, the keyboard system, the mouse system

1 of a screen combination are unnecessarily  
2 complicated and require other mechanical devices.  
3 Therefore, I am recommending the touch screen  
4 electronic computer system, because it's the  
5 simplest, it's the most efficient and it's the most  
6 popular computer system and it only requires one  
7 device, the screen. So, I recommend that the City  
8 choose the touch-screen system for the new  
9 elections.

10 FATHER O'HARE: Thank you very much, Mr.  
11 Moore.

12 Any questions from any of the  
13 Commissioners?

14 (No response.)

15 FATHER O'HARE: Thank you. Your  
16 testimony will be part of the record of the forum.

17 MR. MOORE: Oh, okay. Thank you.

18 FATHER O'HARE: Thank you, Mr. Moore.  
19 Gregory Lee, of the Board of Elections.

20 MR. LEE: Excuse me, Commissioner. We  
21 thought that was a sign-in sheet.

22 FATHER O'HARE: That's fine. You don't  
23 have to testify if you don't want to.

24 And is that true for Lucille Grimalde, as  
25 well?

1 MR. LEE: Yes.

2 FATHER O'HARE: Doug Muzzio?

3 MR. MUZZIO: Good afternoon. I really  
4 hadn't intended to say anything at this forum, but  
5 rather at the next one.

6 But, two comments on the subjects that  
7 were just addressed. I am dumbfounded by the remark  
8 that IRV is new and Americans don't have experience  
9 with it. This is nonsense. New York City elected  
10 its City Council from 1939 to 1947 using a single  
11 transferrable vote system that was exactly the same  
12 as this. And, in fact, the New York School Board of  
13 Elections is using the very same system. So I am  
14 totally at a loss to understand the previous  
15 conversation with the presumed academic expert who  
16 is talking about it being a new thing under the sun.  
17 It was invented by Thomas Hare, in Britain, in the  
18 19th century. So, on the first instance, this --  
19 the characterization of it being new is absolutely  
20 false.

21 And, second of all, there are a great  
22 many technical flaws with single transferrable  
23 voting, including what voting theorists call  
24 non-monotonicity and that means that you can lose  
25 with more votes. I have submitted comment on these

1 various voting systems to the Commissioner, to Dr.  
2 Gartner. So, on that basis, I think IRV is  
3 certainly not the way to go, and given the fact that  
4 we're dealing with a topic that's gotten extensive  
5 literature, rather than no history at all.

6 The second comment that I would briefly  
7 make, and I would probably reiterate this later on,  
8 is that Ms. Gordon's testimony, I think, shows that  
9 much of the work of this Commission is not only  
10 going to fall prey to the law of unintended  
11 consequences; but, in fact, may fall prey to the law  
12 of perverse consequences. And that is you create  
13 the very condition that you are attempting to avoid.

14 If I understood Ms. Gordon's and Mr.  
15 Stern's comments they are saying that the parties  
16 can spend unlimited amounts in the first and second  
17 rounds, very different than what is currently the  
18 case. So what the Commission might be doing, if it  
19 adopts the staff recommendations is empowering the  
20 Democratic leaders. And many of you have conveyed  
21 against the Democratic party and, in fact, the work  
22 of this Commission looks like it is an attempt to if  
23 not destroy, weaken the Democratic party. And I  
24 think in the effort to remove the Democrats, big  
25 "D," you are adversely impacting democracy, with a

1 small "d"

2 Those are my comments that are  
3 particularly germane to the particular conversation  
4 that just took place. I have further comments that  
5 I would like to address to the Commission in the  
6 second hearing beginning at six o'clock.

7 FATHER O'HARE: Not to put words in your  
8 mouth, but in connection with the impact on the  
9 Campaign Finance Program, you would seem to give  
10 some justification to those critics that would say  
11 the whole idea of non-partisan elections is a  
12 solution in search of a problem.

13 MR. MUZZIO: I said before this  
14 Commission that -- I quoted the eminent philosopher  
15 Yogi, that before you build a better mousetrap, to  
16 make sure there are mice out there. The Chairman  
17 has, in his Gotham Gazette piece, pointed out some  
18 mice. I think I would argue that -- and I will  
19 begin that argument at six o'clock -- that the trap  
20 is worse than the rodents.

21 FATHER O'HARE: We look forward to  
22 talking about the rodents after supper.

23 MR. MUZZIO: Thank you.

24 FATHER O'HARE: Finally, last speaker, I  
25 think, is George Spitz.

1 George, you want to come up?

2 MR. SPITZ: Thank you. Since this  
3 testimony is a little too long, I am not going to  
4 read it. And furthermore, Father O'Hare, you've  
5 heard my proposals on campaign finance.

6 FATHER O'HARE: I enjoy them every time,  
7 George.

8 MR. SPITZ: But, unfortunately, you  
9 haven't been in a position until now to help  
10 implement them. Because only a Charter Revision  
11 Commission or a City Council can.

12 At the heart of it is, the Campaign  
13 Finance Board is excellent and is very well  
14 administered. I know, I have been a candidate.  
15 Never gotten matching funds, never been qualified to  
16 get them, but, it is capable of carrying out a  
17 program for removing the deleterious influence of  
18 money and leveling the playing field. But the  
19 present Campaign Finance law doesn't do that.

20 The March 12, 2001, issue of Crain's  
21 featured a front-page story titled, "Politicians  
22 soak New York." This article revealed that at that  
23 early date, 28 fat cats had contributed to "All four  
24 mayoral candidates." Of course, they omitted me from  
25 that, but, I was never recognized by Crain's as a

1 candidate, but I have made a practice of refusing  
2 contributions from people who do business with the  
3 City, particularly those in the real estate  
4 industry, not because realtors are necessarily  
5 corrupt, but because they are regulated by the City,  
6 and the Commission on Government Integrity  
7 recommended that this type of contribution be  
8 banned. Later on, the real estate industry  
9 announced plans and the times to collect one million  
10 dollars and distribute it equally among the four  
11 so-called "major Democratic candidates."

12 Now, what I am proposing is -- also, this  
13 program, the matching funds is expensive. Last year  
14 it cost the City Treasury \$42 million. This year,  
15 when incumbents are expected to win re-election,  
16 it's going to cost about \$20 million. If we should  
17 try to suggest alternative ways of doing away with  
18 matching funds at this point, the coalition -- and I  
19 am going to comment on this coalition tonight --  
20 that is gathering to defeat any type of Charter  
21 Revision will shout that Mayor Bloomberg is trying  
22 to buy elections, even in the face of overwhelming  
23 evidence that special interest money dominated the  
24 2001 Democratic mayoral primary.

25 I am suggesting a program based on an

1 enhanced voter's directory, cable T.V., the goal of  
2 which is to provide the voter with the information  
3 necessary to make an intelligent choice. Instead of  
4 focusing on giving candidates money, a lot of which  
5 goes to poll takers, consultants, et cetera, try to  
6 see that the money is spent on focusing the issues  
7 and the candidates getting the information to the  
8 public. And you do this through a combination of  
9 cable T.V., like it's done in Boston, and an  
10 enhanced voter's directory.

11 Now, I've had some praise. When Sam  
12 Roberts was writing a municipal affairs column for  
13 The Times, he praised it. The late Robert Wagner  
14 said, "I think George Spitz' idea is a very good  
15 idea." And I would like to see it tried next year.  
16 You've got the excellent Campaign Finance Board.  
17 They can supervise the cable T.V. and enhanced  
18 voter's directory. If it works, eventually people  
19 -- these raids on the City Treasury can come to an  
20 end. You can prove that you can get the information  
21 to the public.

22 Now, one final thing. I don't think any  
23 campaign finance program can be worthwhile unless  
24 you adopt the Fairing (ph.) Commission's  
25 recommendations. I've gone into this many times. I

1 hope that I will go into it again on the  
2 procurement, when procurement comes, but you can't  
3 have meaningful campaign finance reform when you've  
4 got special interests giving money, which is  
5 multiplied by four. Look at what happened with  
6 Gifford Miller. I read this in previous testimony.  
7 He's got people like Bob Dreyfus and others going  
8 around bundling contributions and the people, the  
9 contributors, are getting things out of the City  
10 budget. You can't do it. You've got to prevent  
11 that. And only the Fairing Commission's  
12 recommendations will prevent it.

13 Thank you.

14 FATHER O'HARE: Thank you, George.

15 I think that's the end of our forum on  
16 campaign finance and vote counting. We are  
17 adjourned.

18 The Charter Revision Commission will hold  
19 a hearing, beginning at 6:00 p.m., in the County  
20 Courthouse.

21 (Whereupon, at 4:52 p.m. the above matter  
22 was concluded.)

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C E R T I F I C A T I O N

I, KELLY FINE-JENSEN, a Registered Professional Reporter and a Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.

KELLY FINE-JENSEN, RPR

