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Transcript of the Meeting of the  
CHARTER REVISION COMMISSION  
held on Wednesday, July 30, 2003  
Spector Hall, 22 Reade Street  
Borough of Manhattan

AR-TI REPORTING COMPANY, INC.	
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1 Meeting convened at 6:20 p.m.  
2 P R E S E N T

3 FRANK MACCHI AROLA, Chair man  
4 COMMI SSI ONERS:  
5 WILLIAM LYNCH  
6 VERONI CA TSANG  
7 CECELI A NORAT  
8 JERRY GARCIA  
9 MOHAMMED KHALI D  
10 FATHER JOSEPH O' HARE  
11 KATHERYN PATTERSON  
12 FRED SIEGAL

13 Also Present:

14 DR. ALAN GARTNER, Executi ve Di rector  
15 ANTHONY CROWELL, General Counsel  
16  
17  
18  
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1 CHAIRMAN MACCHI AROLA: Ladi es and gentl emen,  
2 let me call the meeting to order. I will call the  
3 Commi ssi on meeting to order. We are still waiting for  
4 two Commi ssi oners, but I think we should begi n. First  
5 what I want to do is explai n, I think what we will be  
6 doing, the format and then any comments that anyone has  
7 on that. I plan to work off of Alan' s memo and go poi nt

8 by point covering the topics that have been presented  
9 for us in terms of non-partisan elections. I don't  
10 think we will get much beyond that, so that procurement  
11 will be set for the next meeting of the Commission, and  
12 we'll get the same kind of a memo with those issues in  
13 place. My expectation is that meeting will take place  
14 this Monday, we will try to get this place Monday night  
15 and then we'll get some dates.

16 (Pause.)

17 CHAIRMAN MACCHIAROLA: So we'll follow the  
18 next memo, which will be a memorandum on procurement and  
19 we'll move to that on Monday and carry that discussion  
20 over, if necessary, until Tuesday, and then I'll get  
21 additional dates as we need them, if we need them, as we  
22 move through.

23 The dates become more pressing for us as we  
24 move closer to a decision on the matter of 2003 or 2004,  
25 the presentation on the ballot, and I'm going to work

4

1 off of Alan's memo right now. And what I also indicated  
2 to people who asked, members of the Commission who  
3 asked, we will not lock in anything tonight, but what I  
4 need is a sense of the body, so that when people  
5 question as to what we are doing, I'm operating on the  
6 basis of a more informed idea of it, based on what  
7 you've all told me. So that the first question becomes  
8 a very important question. If the sense of the meeting  
9 tonight is that we move off of 2004, that that's when we  
10 put this to the voters, our ballot questions to the  
11 voters, then we can spend August on the beach. If not,

12 we've got to move quickly on this.

13 So I have heard that, from most that have  
14 spoken to me and most of the members of the Commission  
15 who have talked to me about it, that our preference is  
16 to move forward for November 2003. Does that meet with  
17 a general acceptance by the body or are we -- should we  
18 proceed with 2003?

19 COMM. TSANG: Yes.

20 COMM. KHALID: Yes.

21 CHAIRMAN MACCHIAROLA: Yes, Father?

22 COMM. O'HARE: Frank, I was impressed by the  
23 statement of the Brennan Center. It seems to me this  
24 whole question around partisan elections involves  
25 certain of the goals that we're seeking to achieve or

5

1 that the staff enunciates for non-partisan elections are  
2 goals that everyone would support, at least I certainly  
3 would support; greater participation, et cetera. The  
4 actual evidence, though, on whether non-partisan  
5 elections would, as a matter of fact, increase  
6 participation seems to me uncertain. The Brennan report  
7 calls for greater studies of these impacts. I'm not  
8 sure such studies are feasible. I'm not sure that you  
9 could have studies that would resolve this question with  
10 the kind of clarity and certainty that may not be  
11 available. You're talking about consequences that you  
12 hope for and consequences that may result that are not  
13 intended.

14 I think the Brennan Center's response makes  
15 a good point, that we haven't established that the  
16 desired objectives that we seek in greater

17 participation, et cetera, would actually result from  
18 non-partisan elections. I'm not sure what kind of  
19 evidence would ever resolve that question one way or  
20 another, but I raise that issue simply before somebody  
21 saying yes, we should put it on the ballot, because I  
22 think the Brennan Center calls for further research,  
23 further studies and I raise the question, is that kind  
24 of research possible or feasible?

25 In other words, the kinds of studies they

6

1 are talking about, would they really give us greater  
2 satisfaction about the likelihood of our desired  
3 objectives being achieved by non-partisan elections?

4 CHAIRMAN MACCHIAROLA: Alan's studied that,  
5 Father. Why don't I ask Alan to report that, since he's  
6 spent some time with that report.

7 DR. GARTNER: I guess the short answer is  
8 no. The kind of longitudinal study that one would look  
9 for in the Academy, a world in which both you and I  
10 spent some time, is not the kind of thing we can  
11 establish by additional research. We will have for the  
12 Commission additional turnout data in the various  
13 jurisdictions. I think the big piece of evidence that  
14 one would need is the evidence that we already have, is  
15 that some 800,000 people in this City are registered to  
16 vote but can't play in the game that matters. Will all  
17 800,000 of them, once this is passed, play? I think the  
18 answer is of course not. Do we have a reasonable  
19 expectation that a significant number of them might be  
20 enfranchised, I think that's a reason that we can be

21 confident in.

22 COMM. O' HARE: Alan, would you agree with me  
23 that the consequences that we're trying to measure are  
24 difficult to measure with any kind of statistical  
25 certitude?

7

1 DR. GARTNER: Are more than difficult.

2 COMM. O' HARE: Impossible.

3 DR. GARTNER: I fully agree with you on  
4 that.

5 CHAIRMAN MACCHIAROLA: I think the anecdotal  
6 data, though, from the last election, just the last  
7 election where two Council seats and two Assembly seats  
8 were up at the same area; the level of competitiveness,  
9 the level of participation that occurred, because access  
10 on that ballot was available to people outside of  
11 political establishment, whether it be a party  
12 establishment or whether it be whatever the form was,  
13 and the turnout in the councilmanic elections was far  
14 greater and the elections were much more strongly  
15 contested and candidates that advanced were really  
16 clearly advanced on the basis of more activity on the  
17 local level in terms of people.

18 So I think anecdotally, as Alan said, the  
19 question to me is always, if 800,000 people are excluded  
20 from voting, then how can you have a lesser turnout from  
21 that process, whether you're invited to participate in,  
22 when the impediments of ballot access, when the  
23 impediments of getting on the ballot are so much  
24 removed, it just seems to me that that's the best  
25 evidence you have that it works.

1                   Okay, well, to the question, the question  
2 we're discussing for Fred's benefit and for Bill's  
3 benefit, question 1, and what we were determining was,  
4 are we still on track for '03. The reason that it  
5 becomes important, obviously, is because if we get to  
6 '03, we decide we want to do it in '04, we in fact, we  
7 can have the summer off. If we decide we want to do it  
8 in 2003, we've got to work this month, and if we decide  
9 we're still not sure, we will lose that ability if we  
10 don't proceed to go forward.

11                   I'd like to say again, and the reason here  
12 is, the more you can tell me about what your preferences  
13 are, the easier it is for me to communicate to people  
14 who are asking questions of us what it is that we're  
15 doing. It gets very difficult to do that if we haven't  
16 had meetings to clarify some of these issues, and as you  
17 know, we haven't had meetings, we've adhered to the Open  
18 Meetings Law and therefore we haven't had a forum for  
19 ourselves to discuss these beyond our initial meeting.

20                   So I'm going to assume that 2003 is still in  
21 place. I'm not going to -- we don't have to have votes  
22 on this if we get a consensus, we can just move to the  
23 next question. Is there a problem with that? Is there  
24 a problem with my assuming that? Anyone have a problem  
25 with it?

1                   DR. GARTNER: Let me suggest, since two of  
2 the Commissioners were not here, that you repeat

3 something about not being locked in.

4 CHAIRMAN MACCHIAROLA: We're not locked in,  
5 what I'm trying to do is get a sense of the body so we  
6 can prepare documents which will in fact allow us to  
7 take our votes and make our decisions. But I need in a  
8 sense a sense of the body to let our staff get to work  
9 and in this case we need to make sure we're still on  
10 track.

11 COMM. LYNCH: I have some concerns,  
12 Mr. Chairman, about what year, and the concerns are  
13 about what is going to be put on the ballot. Until I  
14 know what we're going to put on the ballot, I don't want  
15 to vote on what year we'll put it on the ballot and my  
16 concern is the comments that were made by the Mayor in  
17 the newspaper as it relates to whether it's going to be  
18 in '09 when it goes for approval -- I mean, once it's  
19 implemented, if it's approved, and two, whether the  
20 candidates can have a choice of party designation, and I  
21 don't know if we're going to deal with that or not.

22 CHAIRMAN MACCHIAROLA: I'm going to try to  
23 deal with that. The reason I'm raising the question  
24 first about what year, as I said, it makes the next part  
25 of the meeting -- if the rest of you all say we want to

10

1 go with 2004, then it makes this meeting less timely  
2 than it would be, and what I'm assuming is by asking  
3 this question first, that we can proceed to answer those  
4 questions and then come back to that if that's a  
5 problem.

6 COMM. LYNCH: I'm still a little concerned  
7 about that if we're going to go in 2003, and we're going

8 to use the two issues that the Mayor proposed, we  
9 haven't done any look at any study, any research on  
10 that, so I'm trying to figure out how can we go in 2003  
11 and I'm prepared to wait on that issue until we answer  
12 some of those questions.

13 CHAIRMAN MACCHIAROLA: Okay, so then let's  
14 get to the second question. The second question is what  
15 changes, if adopted by the voters -- when should the  
16 changes take effect. Well, 2005 or subsequently? The  
17 debate has been essentially moved to a post-2005  
18 election and the question is, are we in favor of  
19 post-2005 or 2005? I say post-2005, which most people  
20 have said is 2009, but 2005 or the election after that,  
21 which I would assume is 2009, but I think we should  
22 write this so that there's no, there's a point rather  
23 than two poles for any confusion that might --

24 COMM. LYNCH: For example, if there's a  
25 special election in 2006, it would be implemented then.

11

1 CHAIRMAN MACCHIAROLA: Correct. So, sense  
2 of the body? Anyone want to speak on this one?

3 COMM. GARCIA: One question I wanted to  
4 throw in, I think I know the answer to it, is, is there  
5 an opportunity to separate the effective date of the  
6 Mayoral impact versus the other bodies, municipal  
7 bodies. I think the answer is no, I think it becomes  
8 very complicated to do that, but I just wanted to ask  
9 the question.

10 CHAIRMAN MACCHIAROLA: We are -- I think we  
11 can address that one when we get to which offices, and

12 if anybody decides they want to pull away from one, then  
13 we can deal with that. We can certainly -- I mean, my  
14 sense is we're talking post-2005. That's all I've heard  
15 at this point, there's nobody I heard both from the  
16 Board of Elections that has indicated what they thought  
17 it should be, so I'm making the assumption we're talking  
18 about a post-2005 and that meets with our -- again,  
19 we're not putting it forward, we're just looking to see  
20 how it will be -- staff will now work on the assumption  
21 that it's going to be post-2005.

22 Which offices should be elected in a  
23 non-partisan election. I'm doing all the talking here,  
24 maybe I shouldn't be doing that. We've not heard much--  
25 COMM. KHALID: All of them.

12

1 COMM. TSANG: All of the municipal offices.

2 CHAIRMAN MACCHIAROLA: All of them?

3 Everybody? We don't separate out City Council from  
4 Mayor, from Comptroller, so one way or the other, for  
5 everybody?

6 COMM. TSANG: Right, everybody.

7 CHAIRMAN MACCHIAROLA: Okay, all together.

8 Now the question of on what basis should  
9 candidates get on the ballot, and the question here  
10 refers to the objections that some have raised or the  
11 issues that some have raised about whether or not the  
12 Election Law requires that we use a greater number than  
13 the number used in the election today, that is to say,  
14 the 900 number as opposed to 2700, which is used if it  
15 is a non-partisan election currently.

16 We ourselves have, I think in the course of  
Page 10

17 our own discussions, given the sense to people that have  
18 asked that we're not interested in increasing access  
19 threshold, that our interest was not that. I didn't  
20 hear anybody suggest that we should pick a higher  
21 number. And I also heard the discussion that we should  
22 conform our election as much as possible to the current  
23 system for purposes of validity, the legality of the  
24 election. So it seems to me that most people that we've  
25 heard on the subject have fallen to the current levels,

13

1 the current numbers, which of course would be an  
2 increase in availability because of the increased  
3 numbers that would be signing petitions and et cetera.  
4 So that gives us, that's what we've heard.

5 Now, discussion on that subject?

6 COMM. PATTERSON: Just for the record, I  
7 wanted some clarification. There was some testimony, I  
8 don't even remember when, at one of the hearings, where  
9 there were reservations expressed as to whether we could  
10 legally permit the lower signatory number of 900 as  
11 opposed to 2700 when you have something called a  
12 non-partisan election. I would like you to speak to  
13 that, because I want it to be clear that we're not  
14 running afoul.

15 CHAIRMAN MACCHIAROLA: Anthony has consulted  
16 with the Corp. Counsel for that question.

17 COMM. PATTERSON: I wanted that to be on  
18 the record since somebody raised that.

19 MR. CROWELL: Originally in our report we  
20 discussed that there were options whether to use an

21 independent nominating petition, which is currently used  
22 which is a choice that was made when designing our  
23 system of non-partisan special elections and the issue  
24 is whether you could use the numbers that are in the  
25 Election Law for partisan designating petitions, instead

14

1 of the independent nominating petitions, and, yes, under  
2 my original legal conclusion was that you could use  
3 that, that we had a choice to pick one or the other, and  
4 it's fine to choose either. Since the State Election  
5 Law doesn't speak to a non-partisan election, per se,  
6 when crafting a municipal non-partisan election, the  
7 municipality would have the choice to pick one or the  
8 other in doing so, and so a partisan designating  
9 petition, the numbers found for them would be fine and  
10 the Law Department has confirmed my original legal  
11 analysis.

12 COMM. PATTERSON: Okay, so 900 signatories  
13 would be sufficient without -- under this proposal  
14 without any identification of party affiliation --

15 MR. CROWELL: Yes.

16 COMM. PATTERSON: -- to get a candidate on  
17 the ballot in a non-partisan let's say City Council.

18 MR. CROWELL: You could use the process that  
19 is currently used for independent nominating petitions,  
20 but use the number of signatures required for the  
21 partisan designating petition and it would just have to  
22 be written explicitly into the statute what we're trying  
23 to achieve and it would be permissible.

24 COMM. PATTERSON: I think that's also very  
25 helpful if there were any challenges raised to this

1 proposal under the Voting Rights Act, because in fact,  
2 what we're suggesting is that it would take less -- it  
3 would take fewer, a lesser effort on the part of a  
4 candidate to get his or her name on to a ballot for a  
5 non-partisan election, because that candidate could seek  
6 signatures from any registered voter, rather than from a  
7 voter with the registration in a particular party.

8 DR. GARTNER: It would be twice better, if I  
9 could use that formulation.

10 COMM. PATTERSON: I just want to make that  
11 clear so that there's no --

12 DR. GARTNER: It would be all registered  
13 voters, not just those from particular parties, and the  
14 number would be lower than it is for the current  
15 special, so-called non-partisan elections.

16 COMM. PATTERSON: Okay, good, thanks.

17 COMM. LYNCH: Help me with this. You know,  
18 I'm kind of slow and country here. This does not need  
19 State approval to make, to go to 900 instead of the 2700  
20 that is required?

21 MR. CROWELL: No.

22 DR. GARTNER: The whole Charter revision  
23 process does not need State approval.

24 MR. CROWELL: That's right.

25 COMM. LYNCH: I thought on this issue there

1 was need for State approval.

2 DR. GARTNER: No, sir.

3 CHAIRMAN MACCHIAROLA: So the question now  
4 is, do we adopt the lower number.

5 COMM. TSANG: I would say yes.

6 COMM. PATTERSON: Yes.

7 COMM. KHALID: We should.

8 CHAIRMAN MACCHIAROLA: So we maintain the  
9 present number for partisan elections for the  
10 non-partisan elections. We received assurance from  
11 Corp. Counsel that is permissible under the State law.

12 COMM. LYNCH: Just a point of clarification.  
13 That means it's 900 signatures for all offices, starting  
14 with Mayor?

15 MR. CROWELL: The maximum signatures that  
16 would be required would be 7500 for Mayor, 4,000 for  
17 Borough President, 900 for a Council Member.

18 COMM. O'HARE: These are the existing  
19 requirements.

20 MR. CROWELL: Those are the existing maximum  
21 numbers for a partisan designated petition.

22 COMM. O'HARE: So transferring that from  
23 partisan to non-partisan.

24 COMM. KHALID: Keeping the same.

25 COMM. O'HARE: And not increasing them as

17

1 some would argue we would have to.

2 COMM. TSANG: I just want to make it clear.  
3 It's 900 for the Council offices?

4 MR. CROWELL: That would be the maximum  
5 number required.

6 COMM. TSANG: Is 5,000 for the Borough  
7 President, 4,500 for the citywide positions, existing.

8 DR. GARTNER: As Father O'Hare said, it's  
9 using the partisan numbers in a non-partisan elections.

10 COMM. TSANG: Good.

11 DR. GARTNER: That's what we have assurance  
12 for the Corporation Counsel that's within our authority  
13 to do.

14 COMM. O'HARE: Sometimes the Corporation  
15 Counsel has been wrong.

16 DR. GARTNER: I don't ever remember that.

17 COMM. O'HARE: From time to time.

18 DR. GARTNER: But it's all we got.

19 CHAIRMAN MACCHIAROLA: He hasn't been wrong,  
20 he's just been overruled.

21 COMM. PATTERSON: I would find it ironic  
22 for someone to challenge a referendum, a Charter  
23 proposal, the effect of which was to grant candidates  
24 greater access to the ballot. I wonder who would want  
25 to argue that 2700 is the correct number instead of 900.

18

1 COMM. NORAT: Somebody would.

2 CHAIRMAN MACCHIAROLA: There's been a lot of  
3 people arguing against additional voters --

4 COMM. PATTERSON: There were a lot of  
5 people arguing that it couldn't possibly be okay, and  
6 that's why I wanted to make it clear that we were quite  
7 comfortable that it can be 900 for City Council.

8 MR. CROWELL: Yes, the maximum.

9 COMM. TSANG: Maximum.

10 COMM. PATTERSON: It's a percentage basis,  
11 but 900 is the maximum.

12 MR. CROWELL: Right, 900 the maximum. 4,000  
13 for borough office and for 7,500 for city office.

14 COMM. GARCIA: It's 5,000 or 4,000?

15 MR. CROWELL: 4,000.

16 CHAIRMAN MACCHIAROLA: We now move to the  
17 question of the role of political parties in the concept  
18 of non-partisan elections. This comes I think in two  
19 issues. The first issue is one over which we've had  
20 plenty of discussion, at least from the standpoint of  
21 people telling us that the rights of the political  
22 parties to express themselves should be present and I  
23 think that's a First Amendment right, the Courts have  
24 said that. So we're making it clear, I hope we're  
25 making it clear that nothing in here prohibits the

19

1 political parties from expressing whatever preferences  
2 they have and whatever mechanisms they have presently to  
3 do that. What is being changed is the use of the  
4 primary as an instrument of the parties' nominating  
5 procedure, and so the party is being removed from that,  
6 and the suggestion has been made that as a furtherance  
7 of the First Amendment right that, what we should also  
8 do is allow candidates if they so choose to put on the  
9 ballot their party identification.

10 COMM. SIEGAL: Frank, doesn't the use of  
11 party identification then complicate the relationship  
12 between non-partisan elections and our Campaign Finance  
13 Law? Doesn't it create an additional entanglement  
14 that's problematic?

15 CHAIRMAN MACCHIAROLA: What it does do, I  
16 think, is to strengthen the Campaign Finance Board's

17 ability to regulate spending on behalf of candidates who  
18 have self-identified. I mean, the issue that the  
19 Campaign Finance Board raised with us, and I think it's  
20 a serious issue, is the question of whether or not we're  
21 inhibiting the Campaign Finance Board from exercising  
22 its authority to regulate spending by political parties  
23 on behalf of candidates. And while I think this somehow  
24 does cause the Campaign Finance Board to have to apply  
25 standards to this in a new environment, I think the

20

1 answer is, the answer that we've gotten from the Corp.  
2 Counsel is, that it's not, it doesn't bar us from  
3 proceeding. The Campaign Finance Board will have to  
4 work its rules out.

5 So that --

6 COMM. SIEGAL: I wouldn't argue that.

7 CHAIRMAN MACCHIAROLA: I think there's a  
8 spot for that and I want to cover it while Father O'Hare  
9 is here.

10 COMM. SIEGAL: Let's suppose now there are  
11 three Democrats running. Seems to me the problem of how  
12 the spending is going to be regulated becomes immensely  
13 more complicated and potentially opens the door to a  
14 good deal more spending.

15 CHAIRMAN MACCHIAROLA: The question on the  
16 Campaign Finance Board's ability, I think that comes up  
17 later on.

18 COMM. SIEGAL: But it's connected to this.

19 CHAIRMAN MACCHIAROLA: It is connected to  
20 this and the question I'm asking is do you want to

21 address it in the context of this or do you want to  
22 address it in the context of the Campaign Finance Board?

23 COMM. SIEGAL: I think it belongs here,  
24 Frank. Because the question of whether you identify  
25 people -- I assume only people who are registered in a

21

1 party will be allowed to identify with that party, but  
2 assuming that, it seems to me it creates problems -- we  
3 could have unanticipated problems in that first round as  
4 a consequence, where we might not be able to maintain  
5 the campaign financing regime in anything like a  
6 reasonable form.

7 COMM. GARCIA: I think the question becomes  
8 a question of consistency. Three candidates as you  
9 outlined, one of them decides not to put their party  
10 label on, then how does that affect that one individual?  
11 Right, I mean in terms of what could they or could they  
12 not do if they identify themselves, as one example.

13 COMM. SIEGAL: Let's suppose all three  
14 decide to identify themselves. Does the party get to  
15 spend on all three of them?

16 DR. GARTNER: The party would make its  
17 choice. It might choose to support one or another or  
18 all three. You would have a different circumstance. If  
19 the party chose to support one of several people who  
20 self-identified and I want to be clear that the  
21 recommendation is that it be the party in which the  
22 individual is registered, so you eliminate the issue of  
23 lying or otherwise deceiving.

24 COMM. SIEGAL: Misidentification.

25 DR. GARTNER: That's a gentler word. If the

1 party chose to support candidate X and not candidate Y  
2 and Z, that would be one set of circumstances to which  
3 the Campaign Finance Board would have to deal with  
4 attribution. If the party chose to support all of the  
5 three or two of the three, that would be a different set  
6 of circumstances and each of them would perhaps lead to  
7 a different attribution pattern, but it would not  
8 preclude the Campaign Finance Board from providing that,  
9 and in fact, given the right of the candidate per the  
10 Court decisions to self identify as a member of the  
11 party and the right of the party to indicate its  
12 preference for a candidate, the additional fact of the  
13 person having the option of self identifying on the  
14 ballot would give an additional basis for the  
15 attribution from the Campaign Finance Board. I think it  
16 would ease the problem rather than aggravate.

17 COMM. SIEGAL: The danger here is that the  
18 first round turns into a de facto partisan election.  
19 That's the implicit danger on one hand, and you can  
20 imagine all the accommodations and permutations of party  
21 spending relating to the Campaign Finance Board about  
22 that. This may turn out to be functionally something  
23 like a partisan election, a first round of a partisan  
24 general election, right, and then Democrats could say or  
25 Republicans can say we're not supporting this, we're

1 funding all three of these people. In fact, using the  
2 money from two to subvent the third. You see what I'm

3 getting at? It seems to me this opens the door --

4 CHAIRMAN MACCHIAROLA: Doesn't that exist in  
5 the current primary system?

6 COMM. SIEGAL: It does, but the problem with  
7 the current primary system, as we well know, especially  
8 at the non-Mayoral level, is it tends not to produce  
9 accountable outcomes.

10 COMM. O'HARE: Frank, if I could just make a  
11 point. The difficulty with the campaign finance program  
12 is going to be establishing a presumption that there's a  
13 connection between the party spending and the candidate.  
14 Campaign Finance Board can only govern contributions  
15 through the candidate. When you have a partisan  
16 election where the Democratic Party picks the candidate  
17 and controls who's going to be in the primary, then a  
18 presumption has been made in the past and has been  
19 sustained that spending on behalf of the candidate is  
20 not independent, but is connected. If you sever that  
21 link between the party that's controlling the nomination  
22 and simply have candidates, then the party spends on  
23 behalf of one candidate or several candidates, they'd be  
24 in the position of any other citizens group that sought  
25 to endorse a candidate.

24

1 So I think the problem is, how do you  
2 establish the presumption that now hinges on the fact  
3 that the party determines who the candidate is going to  
4 be in the primary. Once you sever that link the  
5 presumption of attributing party spending to the  
6 candidate is weakened considerably in the view of the  
7 Campaign Finance Board.

8                   Is it possible that some other arrangement  
9                   could be made that could be substituted for that? I  
10                  suppose there is, but that is the danger. The precise  
11                  danger is weakening the presumption because you sever  
12                  the link between the party and whoever is going to run  
13                  the primary election.

14                 COMM. PATTERSON: Isn't that a risk  
15                 regardless of whether a candidate self identifies as a  
16                 member of a political party?

17                 COMM. O'HARE: Yes.

18                 COMM. PATTERSON: It's a risk that's  
19                 inherent to the entire --

20                 CHAIRMAN MACCHIAROLA: That's why I wanted  
21                 to move it to the next set of questions.

22                 COMM. PATTERSON: It's inherent in the  
23                 entire proposal for non-partisan elections.

24                 COMM. SIEGAL: I think you're right, the  
25                 risk is there, but the risk is greater if a party's

25

1                 prestige is on the line. I think it intensifies the  
2                 problem, and opens up the possibility of considerable  
3                 skulduggery.

4                 CHAIRMAN MACCHIAROLA: I think the other  
5                 thing -- the Campaign Finance Board to date has been  
6                 quite good in dealing with these issues, and in fact,  
7                 the reason that it has been good is that it has acted I  
8                 think judiciously in the cases where it's been chosen or  
9                 at least there's been a presumption that they could  
10                sustain and the candidates themselves are in a sense  
11                being held to that standard by the Campaign Finance

12 Board.

13 The Campaign Finance Board has operated less  
14 with case law than it has with moral force, and with a,  
15 also with a very strong position that it's in of not to  
16 give out the funds if the Campaign Finance Board  
17 suspects there's a problem. Ultimately, it's the  
18 candidate that needs the Campaign Finance Board, and  
19 therefore, oughtn't to be doing things that are  
20 inappropriate.

21 So I think we have to rely on an agency  
22 that's done a good job, continue to go do that good job,  
23 even though the difficulties are greater than they have  
24 been before.

25 COMM. O'HARE: I do think that the danger is

26

1 not any greater if they identify by party on the ballot.

2 COMM. PATTERSON: What has happened when an  
3 interim --

4 DR. GARTNER: Is not any greater.

5 COMM. PATTERSON: What has happened when  
6 there have been special elections under the current  
7 non-partisan system? What is the involvement of the  
8 Campaign Finance Board, say when you have an interim  
9 council election when there is no party affiliation.  
10 Yet we know these people are Democrats or Republicans  
11 when they run.

12 COMM. O'HARE: As far as I know the question  
13 has never arisen, so the presumption has never been  
14 invoked because they've never challenged party spending.

15 CHAIRMAN MACCHIAROLA: Have you had a sense,  
16 Father, that the reason that the challenge to party

17 spending didn't occur, because we've had more than ten  
18 years, I guess thirteen years of elections like this, is  
19 it because we haven't had the abuse or because the  
20 regulations aren't there to deal with the issue?

21 COMM. O'HARE: There were a few isolated but  
22 highly publicized cases, as you might recall.

23 CHAIRMAN MACCHIAROLA: I'm talking about  
24 local elections.

25 COMM. O'HARE: Hasn't come up in local

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1 elections.

2 CHAIRMAN MACCHIAROLA: So in other words you  
3 haven't detected an inordinate effort on political  
4 parties --

5 COMM. O'HARE: That the parties spend in the  
6 special elections, no.

7 COMM. LYNCH: Mr. Chairman, my concern is --  
8 I'll yield, Cecilia.

9 COMM. NORAT: I have a question. Going  
10 back, leaving the finance piece and going to the  
11 original labelling, are we talking about you would walk  
12 into a voting booth and you would have all the  
13 candidates, let's say in alphabetical order, and then in  
14 parenthesis what they want to call themselves?

15 CHAIRMAN MACCHIAROLA: No, what they want to  
16 call themselves, what party they're affiliated with and  
17 the question has come up that they could choose that.  
18 It wouldn't be required.

19 COMM. NORAT: My question, then, is we  
20 would get away from the columns that identify Democrat,

21 Republicans. You just have everyone and then I would be  
22 Cecilia whatever.

23 CHAIRMAN MACCHIAROLA: Everyone would be  
24 listed on a ballot to which every voter would have  
25 access.

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1 COMM. LYNCH: And if they so choose they  
2 could name themselves, either Republican, Democrats or  
3 any other name they so chose.

4 DR. GARTNER: If they are registered as a --  
5 blank.

6 CHAIRMAN MACCHIAROLA: The discussion we've  
7 had is they must be registered in the political party.  
8 So you couldn't create the impression that you were a  
9 Democrat if you weren't, but you could be silent as to  
10 what political party you belong to.

11 COMM. LYNCH: My question is, if now they  
12 can so label themselves, is what we're putting forward  
13 non-partisan elections?

14 CHAIRMAN MACCHIAROLA: Well, I think the  
15 election itself becomes non-partisan, because every  
16 person in the district who is registered to vote is able  
17 to vote in the election, and every person who is in that  
18 district can carry the petitions for that person and  
19 everyone in that district can sign those petitions.

20 So the election itself, the whole mechanism,  
21 removes the party from any participation in it, but what  
22 it doesn't do is prevent the candidate from indicating  
23 at that point, just as he would in a campaign, in the  
24 Voter Guide, and he indicates more information in the  
25 Voter Guide, but indicate what political party --

1                   COMM. LYNCH: I'm told the only place this  
2 takes place is in Jacksonville, Florida, and I can't  
3 find out what they call it in Jacksonville, Florida.

4                   CHAIRMAN MACCHIAROLA: I have not spent any  
5 time in Jacksonville, Florida, so I don't have any sense  
6 of that. Maybe counsel can tell me.

7                   COMM. LYNCH: Dr. Gartner and I have some  
8 old friends.

9                   DR. GARTNER: They call it Duval County, as  
10 you know. You're correct, at least to our current  
11 knowledge, it is the jurisdiction that allows in what  
12 they call a non-partisan election, the name of the party  
13 next to the candidate in which that individual is  
14 registered. And it is also optional for the candidate  
15 to so have that designation.

16                  COMM. LYNCH: My other concern is, this,  
17 like, came to us out of the blue. Well, not out of the  
18 blue, but from the Mayor.

19                  CHAIRMAN MACCHIAROLA: Out of the blue room,  
20 maybe.

21                  COMM. LYNCH: We haven't done any research  
22 on it, no -- none of it has come to us, and the groups  
23 that have been so supportive of non-partisan elections  
24 as we originally had on the table, well, the  
25 Independence Party as one, and they're opposed to it,

1 and I'm trying to figure out why are we moving forward  
2 with it now? Is it because the Mayor wants us to damper

3 down the cry out there, or placate the cry out there  
4 have the option to give people parties or not to give  
5 people parties? I'm trying to figure out why we're  
6 going down this road.

7 CHAIRMAN MACCHIAROLA: I can't speak for the  
8 Mayor, but what I can indicate, in my reason for being  
9 supportive of it, is that we've heard a great deal about  
10 people saying that their identity was being compromised  
11 by our proposal, and the feeling that I had was no one  
12 was intending to compromise anyone's identity. If  
13 anything, the same people who were claiming that we were  
14 compromising their identity collected designations from  
15 multiple parties in order to run, further on securing  
16 what political party or what political position they  
17 held. So in a sense, if the issue was free speech, I  
18 think the system that would put that person's name,  
19 party name on the ballot, I think that would be more in  
20 consonance with free speech than the present system we  
21 have, where multiple parties cloud the voter.

22 So, from my own standpoint, when the Mayor's  
23 proposal was made, it seemed reasonable to me at the  
24 time, and I think if people were being -- I mean, I  
25 remember the testimony of a number of people who said

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1 that they resented that in the non-partisan elections  
2 they had, they had to identify and put a party forward  
3 that wasn't a real political party, and so if they felt  
4 that they would be abandoning their political party by  
5 participating in a non-partisan election, it seemed a  
6 reasonable compromise.

7 That's how I got to the point of thinking it  
Page 26

8 was fine.

9 COMM. TSANG: I have a question. I mean, if  
10 we let the candidate of free will to label them either  
11 party or not, I find it very confusing to the voters,  
12 unless we do a very good job in educating the voters,  
13 because there's a change to begin with, with a  
14 non-partisan election and some candidate may choose to  
15 label their party next to their name and some candidate  
16 may choose not to. So if we're not consistent with our  
17 approach, I find it could be very confusing. That's my  
18 concern.

19 CHAIRMAN MACCHIAROLA: Right, okay.

20 COMM. NORAT: Frank, just one thought. I  
21 just want to put this in perspective. Up to -- if we  
22 leave the ballot box for a second, the campaign that  
23 these non-partisan candidates would run, would allow  
24 them to have flyers, palm cards saying that they're  
25 anything they want. I'm a Democrat, I believe in

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1 Democratic philosophy, which is one of the issues that  
2 kept coming up, how important it was to identify the  
3 philosophy of the party, to know what the candidate  
4 stands for.

5 So basically the Mayor's proposal just goes  
6 one small step forward and it is, after I've left my  
7 posters and my palm cards and everything else, I walk  
8 into a voting booth and in addition to everything I had  
9 had in my hand before I entered, all he's saying is now  
10 in the voting booths I can be called Cecilia Norat,  
11 Democrat. That's the only addition, because I was

12 allowed to use it before or am I wrong?

13 DR. GARTNER: No, you're correct.

14 So we're only talking about adding that --  
15 in other words, that identification that I had with the  
16 party, even though I was running in a non-partisan  
17 election existed in every piece of literature that I  
18 created for my party, up to the moment that I entered  
19 into the voting booth. The only change we're making,  
20 after the Mayor's request, is that we're now putting in  
21 parenthesis one more time that identification that I  
22 chose from day one. Is that correct?

23 CHAIRMAN MACCHIAROLA: Yes.

24 COMM. NORAT: Then I don't have any problem  
25 with it personally.

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1 COMM. KHALID: Frank, I would question, I  
2 know a gentleman from Los Angeles had testified about a  
3 couple of weeks ago. Are there other municipalities  
4 which has non-partisan elections and they still can have  
5 the label of the parties?

6 COMM. GARCIA: Jacksonville.

7 DR. GARTNER: The one we know about is  
8 Jacksonville, Florida.

9 COMM. SIEGAL: Frank, I want to ask Father  
10 O'Hare a question. A lot hinges on this.

11 Let's suppose for argument's sake, a  
12 candidate is running on attaining the dollar fifty fare,  
13 forget the relationship to the MTA. That's his or her  
14 proposal. Now, the party does not endorse this  
15 candidate, but it spends massively to promote this  
16 issue. What do we do with the linkage question?

17                   COMM. O'HARE: I don't think you'd be able  
18 to establish linkage. If the party is spending in  
19 support of an issue, and you have a candidate who  
20 identifies with that issue, I would doubt that the  
21 presumption of a connection could be invoked in that  
22 case.

23                   COMM. PATTERSON: But it couldn't even be  
24 invoked now. You have all sorts of special interest  
25 groups, including parties that spend money to promote

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1                   specific agendas, buy air time, buy ads and so on, and  
2 so long as they do not specifically identify a  
3 candidate, there's no way to attribute, even on the  
4 current system.

5                   COMM. SIEGAL: No, no, I agree.

6                   COMM. O'HARE: I have another question. You  
7 said they could identify themselves as Democrats,  
8 Republicans, if they're actually registered? Who is  
9 going to police that? What if somebody says I'm a  
10 Republican with a small r, or I'm a Democrat with a  
11 small d. Who is going to do that?

12                   CHAIRMAN MACCHIAROLA: That would be easy,  
13 because he or she would have to be a member of the  
14 political party that's on the ballot. They do that now.  
15 They run as Democrats or Republicans and they check it,  
16 the Board of Elections checks it, and they check the  
17 signatures of everybody who signs petitions, presumably,  
18 if challenged. They shouldn't have a hard time figuring  
19 out whether a candidate is really a Republican or  
20 Democrat if he or she's registered in that District.

21 COMM. O'HARE: Would n't it be confusing if  
22 someone said I'm not a Democrat, I'm a democrat, small  
23 d.

24 CHAIRMAN MACCHIAROLA: We make it clear,  
25 they must be registered in the political party, they

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1 must be a registered voter in the political party in  
2 which they claim membership. No, lawyers can figure  
3 that out.

4 COMM. TSANG: Everybody has integrity here.

5 COMM. O'HARE: People can self identify, put  
6 it on the ballot.

7 COMM. PATTERSON: But couldn't that be a  
8 requirement in the petitioning process, if someone  
9 wishes to identify himself with a particular party and  
10 he's running for City Council, I don't think it's too  
11 much to ask him to choose which party he or she is a  
12 member of when the petition gets registered with the  
13 Board of Elections.

14 CHAIRMAN MACCHIAROLA: That could be part of  
15 the petition. So you'd sign a petition that has the  
16 name of the candidate and in parenthesis the party in  
17 which that candidate is enrolled.

18 COMM. PATTERSON: If the candidate wants to  
19 reserve the right to identify himself or herself on the  
20 ballot as a capital D Democrat or a capital R  
21 Republican, then that candidate might be required by  
22 regulation to specify in the nominating petition that is  
23 registered with the Board of Elections that he or she is  
24 in fact a capital D or a capital R. If he does not so  
25 designate, I don't see why you should allow that person

1 to put a lower case D or a lower case R on his name in  
2 the ballot box. But I think that's something that we  
3 might want to think about suggesting be dealt with by  
4 regulation of the Board of Elections.

5 DR. GARTNER: I think that the lower case D  
6 or the lower case R is a matter for the campaign  
7 literature, not for the ballot.

8 CHAIRMAN MACCHIAROLA: Okay. Is there  
9 further discussion on this, before I get kind of a sense  
10 of the body? Is the sense of the body to put it forward  
11 the way in which it's been suggested here, with the  
12 party affiliation as a matter of option for the  
13 candidate?

14 COMM. TSANG: Yes, I guess.

15 COMM. KHALID: I think we'll go along with  
16 that.

17 COMM. GARCIA: Personally, while I don't  
18 see, I understand, I agree with Cecilia's point of view  
19 that it's really not that far of a step in terms of  
20 allowing them to identify themselves optionally on the  
21 ballot, I personally don't see the need for it. Up to  
22 that point, again if I was running for office as a  
23 registered Democrat, I have every ability 24 hours a day  
24 to make it known through my position and views what my  
25 party is, and if I lied about it, it would probably be

1 on the front page of the newspapers the next day and  
2 that would erode my credibility. If I walk into the

3 ballot booth, I don't see the need to have it listed  
4 there, either as a voter or somebody running for office,  
5 unless I want to capture those votes as somebody who  
6 doesn't know me, but wants to capture the votes of the  
7 Democrats and capitalize on that in the election, and if  
8 somebody is running and choosing not to put their party  
9 affiliation, if their not a registered Democrat or a  
10 Republican in the City, then that would be almost a  
11 disadvantage with those voters, because it's not  
12 consistent across the board.

13 So again, I don't personally feel the need  
14 to push for that.

15 CHAIRMAN MACCHIAROLA: I'm not gathering an  
16 overwhelming sense on this one, but at least we can say  
17 that the question is basically, counting noses, I don't  
18 want to count noses in the sense, but is there strong  
19 opposition to doing it this way? Okay, so as best I can  
20 figure out, that we're headed in this direction, but we  
21 may -- we should think a little bit about it and  
22 realize, of course, we're not closing the door on  
23 anything.

24 COMM. O'HARE: Frank, are we ever going to  
25 have to address the practical issue of what a voting

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1 machine would look like if you had non-partisan and  
2 partisan elections on the same day?

3 CHAIRMAN MACCHIAROLA: Well, we've got,  
4 assuming that we're doing this post-2005, which is what  
5 we've sort of agreed to, the Board of Elections, when  
6 they presented their testimony were asked the questions  
7 about what the format of the machine will be, couldn't

8 give it to us because it hasn't been agreed to. What  
9 they did say was, that they thought that there wouldn't  
10 be a difficulty at all in 2000, beyond 2005, 2009 is the  
11 way we posed it. They did feel there would be a problem  
12 in 2005 in the format of the ballot, and I don't  
13 remember if you were there, we had a meeting with them  
14 and then we had the hearing in which they testified. It  
15 was very difficult -- you remember it?

16 COMM. PATTERSON: I had thought, the one  
17 impediment they raised that would not go away with new  
18 machines, and implementation of HAVA, was that there's  
19 some State law out there that says partisan elections  
20 have to be laid out first on the ballot, so you'd have  
21 this -- it would not apply if we had non-partisan  
22 primaries on a different day from partisan primaries,  
23 but you could end up even with new machines with this  
24 weird situation where you're voting for Supreme Court  
25 and Civil Court judges and district attorney as the

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1 first people you see on the upper left-hand side of the  
2 ballot and you don't get to Mayor and Comptroller and  
3 City Council until you get farther down.

4 CHAIRMAN MACCHIAROLA: As I remember, it  
5 wasn't those offices, it was alternative judicial  
6 delegate to the county committee.

7 COMM. PATTERSON: In essence, obscure  
8 offices that are largely chosen by party loyalists.

9 CHAIRMAN MACCHIAROLA: I think it was their  
10 focus on their administrative tasks rather than on their  
11 understanding of what an election was about.

12 COMM. PATTERSON: I thought there was some  
13 State law requirement that the partisan elections get  
14 first look on the ballot.

15 MR. CROWELL: Through the authority given to  
16 the Commission by a Court of Appeals decision to have  
17 non-partisan elections, I think there's a way that we  
18 can explicitly state in whatever statute we craft, that  
19 those municipal offices be given prominence on the  
20 ballot, and I will proceed to draft that.

21 COMM. PATTERSON: All right.

22 CHAIRMAN MACCHIAROLA: Okay, is there any  
23 further discussion on the question of the role of  
24 political parties in the non-partisan election? Anyone  
25 want to raise anything else? Okay.

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1 COMM. LYNCH: Mr. Chairman, right now it's  
2 tabled and we'll come back to it?

3 CHAIRMAN MACCHIAROLA: We have a sense that  
4 the body is more inclined one way or the other, but it's  
5 not decided.

6 COMM. LYNCH: Okay.

7 CHAIRMAN MACCHIAROLA: Should there be one  
8 or two elections, i.e., a primary and then a general  
9 election? Alan, do you want to talk about that and  
10 raise that question?

11 DR. GARTNER: Yes, there are, the options  
12 are one or two. One can have a single election, first  
13 pass the post as the election people call it. The  
14 positive of that is it's a single election, the negative  
15 of that is that someone can win with significantly less  
16 than a majority of votes.

17                   If you go to two elections, there's the  
18                   question that comes immediately to mind about the State  
19                   requirement that the November election be dispositive,  
20                   and so you have to have an election in front of  
21                   November, if you will, which is what we have, of course,  
22                   now. The argument against two elections is that there's  
23                   a cost, a cost to administer the election, and a human  
24                   cost, if you will, to come out a second time. That is a  
25                   cost which we currently expend on both accounts, so it's

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1                   not as if we were adding an additional cost.

2                   To slide into the next topic, one could have  
3                   a November election and then have a vote counting scheme  
4                   such as instant runoff that would seem to satisfy the  
5                   State requirement that the November election be  
6                   dispositive. The last point would be that, to the  
7                   extent that we can, and it's the jurisdiction that, the  
8                   authority that Anthony mentioned a moment ago, the  
9                   authority that the Court of Appeals gave in the Bearham  
10                   decision to municipalities crafting non-partisan  
11                   elections, the more we stay with the current pattern,  
12                   the better off we are in terms of a possible legal  
13                   challenge. There seems to be, at least in my judgment,  
14                   no substantive reason to go to one election, and the  
15                   caution for not wandering afar from the current pattern  
16                   would suggest that two elections would make sense.

17                   CHAIRMAN MACCHIAROLA: So the  
18                   recommendation, then, is to have a primary and general  
19                   election, similar to what we understand, doing it on the  
20                   normal election day.

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COMM. TSANG: Right.

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CHAIRMAN MACCHIAROLA: We've also had some discussion of the question of what the primary day would be.

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DR. GARTNER: That's number 8 on the next

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page. We might hold that for a second.

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CHAIRMAN MACCHIAROLA: We'll hold that. So the concept election after primary, election day; primary the two candidates with highest number of votes move to the general election, winner take all in the general election. That's the scheme.

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COMM. LYNCH: My concern is what we label. I agree with two rounds of elections and we're going to get to vote getting later, but I would hope not to call it a primary, that we call it a two round election, rather than a primary and a general election.

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CHAIRMAN MACCHIAROLA: Is that a problem?

DR. GARTNER: Why is that?

COMM. TSANG: Yes, I was going to ask what is your concern.

COMM. LYNCH: Why don't I want to call it --

COMM. TSANG: What is your concern?

COMM. LYNCH: My concern is the voters know what we're putting forth before them. I think if we say primary, they'll think it's like it used to be and it's not.

CHAIRMAN MACCHIAROLA: I think what you said the last time we had this discussion, now I'm recalling what you meant, was that it be a non-partisan primary, wasn't that what you said when we were talking? You

1 didn't want it confused with the current partisan  
2 primary?

3                   COMM. LYNCH: When you said last time --

4                   CHAIRMAN MACCHIAROLA: You and I were  
5 talking, we weren't having a meeting or anything, you  
6 said you didn't want the confusion between a partisan  
7 primary and a non-partisan primary. So I was not -- I  
8 thought that that wouldn't be a problem to call it a  
9 non-partisan primary election.

10                  COMM. LYNCH: Well, I think how we label it  
11 as a two election, one being -- rather than calling it a  
12 primary election, let's just call it we're having a  
13 two-election election.

14                  COMM. SIEGAL: First round, second round.

15                  COMM. LYNCH: First round and second round.

16                  CHAIRMAN MACCHIAROLA: Why don't you look  
17 into seeing if there's any difficulty?

18                  COMM. KHALID: I think it would be easier to  
19 call it non-partisan primary. I don't find any reason  
20 why would changing the name to non-partisan primary,  
21 making round one, round two, it's the same thing.

22                  MR. CROWELL: The phrase that's used now is  
23 party primary, and by changing to "non-partisan  
24 primary," one could argue that voters would not be  
25 confused. Hence our report would first do it as a

1 non-partisan primary. One could call it a universal  
2 primary.

3 COMM. LYNCH: Are the special elections now  
4 called non-partisan primaries?

5 DR. GARTNER: They're called special  
6 elections.

7 MR. CROWELL: But there's only one special  
8 election, it's a one-shot election. There are no  
9 multiple rounds in a special election.

10 COMM. LYNCH: You mean in this town or in  
11 other jurisdictions.

12 MR. CROWELL: In this town.

13 COMM. LYNCH: There are non-partisan  
14 primaries?

15 CHAIRMAN MACCHIAROLA: There are special  
16 elections. The special election for City Councilman is  
17 special election, it's non-partisan. When there's a  
18 vacancy, special election, one round.

19 COMM. LYNCH: And it's called a --

20 MR. CROWELL: Special election.

21 COMM. LYNCH: And therefore it's called a  
22 special election or a non-partisan primary?

23 CHAIRMAN MACCHIAROLA: No, it's called a  
24 special election because it is the election. It's not  
25 held during the regular election cycle, so it's called a

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1 special election. The fact that it's now non-partisan  
2 hasn't changed the description of that election. We  
3 have special elections that are partisan and special  
4 elections that are non-partisan. Our State elections  
5 are special elections and we elect Assemblymen and State  
6 Senator in special elections. We do the same for City  
7 Council members. They're called the same thing even

8           though one is partisan, one is non-partisan.

9                       COMM. GARCIA: One could argue that calling  
10           it a non-partisan primary gets to your concern as to  
11           making people aware these are different. Right now I  
12           would argue, somebody says special election, there are a  
13           lot of people that don't know it is in fact a  
14           non-partisan election, as opposed to a partisan  
15           election. Calling it a non-partisan primary should we  
16           move forward on that, makes it very clear that actually  
17           this is a different type of election.

18                      MR. CROWELL: You could use the  
19           phrase "non-partisan primary." You could also, as I  
20           suggested before, put an additional qualifier such as a  
21           universal non-partisan or something like that.

22                      COMM. TSANG: That's even better.

23                      CHAIRMAN MACCHIAROLA: I think in fact it  
24           will be called a primary election, because it will  
25           probably held on dates when other elections are also

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1           taking place. So it will be the primary election for  
2           like judges and others who are running in primaries.

3                      COMM. LYNCH: We run state office elections  
4           here and they will have a primary and a general  
5           election. Only City offices will be non-partisan  
6           primaries.

7                      CHAIRMAN MACCHIAROLA: Right, but in other  
8           words, if there's a Statewide office on the ballot at  
9           the same time, like district attorney, and there's a  
10          primary, there will be both a partisan primary and a  
11          non-partisan primary. They will be both called, I am

12 sure, primary elections. That's what the nature of the  
13 beast is, I'll simplify it.

14 DR. GARTNER: If you look for a name to  
15 distinguish the first election, you then give up the  
16 term that everybody knows and uses for the second  
17 election, namely, the general election, and it would be  
18 possible, but I think peculiar to call the first  
19 election round one or something else, and the second  
20 election the general election. So it seems to me that  
21 those two go in tandem and there's nothing that we're  
22 proposing that would change the nature of the general  
23 election, and I think that's a term sufficiently  
24 comfortable for the public, that we don't want to lose  
25 that term.

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1 COMM. KHALID: I think we should not confuse  
2 the waters. Primary, non-partisan primary, and general  
3 election is very simple. Been existing, except that  
4 we're changing.

5 COMM. LYNCH: For you it's simple.

6 CHAIRMAN MACCHIAROLA: I think the question,  
7 Bill, you're interested in making sure there's, to the  
8 voters comes -- I mean, actually the real issue is what  
9 the voters will be voting on. I think the next question  
10 of what happens five years from now assuming it's  
11 adopted and assuming it's ten years from now in place,  
12 it won't really matter what the voters call it, because  
13 they'll have decided whether they wanted it or not. So  
14 we should take care making the presentation less than  
15 what the label is, because I think the label is going to  
16 be changed to a primary, that's what it's going to be

17 called, but we should be clear to make it to the voters  
18 when we make our presentation to them, that this is a  
19 change in the partisan system that we've had to be a  
20 non-partisan system and we'll work on the language of  
21 that to satisfy the members of the Commission.

22 COMM. LYNCH: Mr. Chairman, you can move  
23 this issue. I'm fine. I'm not fine, but --

24 CHAIRMAN MACCHIAROLA: Okay. All right. I  
25 think the second question has been also --

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1 DR. GARTNER: We've touched on it, issue  
2 seven, if there are two election rounds, on what basis  
3 does one go forward. I think there was a general  
4 agreement that we go forward so that you could have a  
5 majority in the general election in the second round,  
6 you go forward for the first or the second. There are,  
7 as one gets into this, always intricacies, what happens  
8 if there's not enough candidates for there to be a race  
9 in an election. I think the answer is given to us, it  
10 makes it easy, by the stricture of the State  
11 Constitution that the November election be dispositive.  
12 So you can't just say if there's only one candidate in  
13 September, cancel November. I'm using those as synonyms  
14 for first and second.

15 And so, while it might seem on the face of  
16 it a little foolish, it might in fact be a little  
17 foolish to run an election in November, even though  
18 there's only one candidate running in that election. I  
19 think nonetheless we don't have any choice about that,  
20 but the essence of the recommendation is that you go

21 forward to the second round based upon the top two vote  
22 getters in the first round, allowing one-on-one race in  
23 the general election. That's really the heart of the  
24 recommendation, that the general election be one-on-one  
25 for people who are the top vote getters, and we had some

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1 discussion, let me just touch on it briefly, why should  
2 you have to go through a second election when you won  
3 the primary, if you've got a majority in the primary?  
4 All the turnout data that we've been able to collect and  
5 we've shared with you, indicates that the turnout in the  
6 general election is for the most part substantially  
7 greater than the turnout in the primary election, the  
8 first election, and therefore you'd want the candidate,  
9 if you think about the issue, actually one of our  
10 witnesses I think from Common Cause talked about the  
11 issue of accountability in governance with the election  
12 system you choose. You want the candidate who gets  
13 chosen and then acts as our representative to have the  
14 maximum support from the public, and therefore you'd  
15 want the opportunity of that person running in a general  
16 election, where there were more voters than likely in  
17 the primary election.

18 COMM. TSANG: Although with the non-partisan  
19 election, the primary voters, the voters could be  
20 higher.

21 DR. GARTNER: It could be. Under the  
22 current scheme, the primary election voters are smaller  
23 by definition than the general election voters. Yes,  
24 that is possible.

25 CHAIRMAN MACCHIAROLA: I think one of the

1 reasons also to move to November is it's not just one  
2 election that you're looking at. Your Councilmanic  
3 election is decided by a winner take all primary, in a  
4 sense, you really do want people to continue to vote in  
5 the other elections, Mayoral election, so to the extent  
6 that you make the primary election dispositive of the  
7 general election, you really depress turnout.  
8 Particularly I think that would be true in neighborhoods  
9 where there's just one political party, basically.

10 And so, having two people go forward  
11 increases voter turnout in all of the districts of the  
12 City of New York, I think, and my sense is it would  
13 probably work to the advantage of the minority  
14 community, since many of those primaries are dispositive  
15 of the election, you would be bringing candidates  
16 forward into the general election and thereby increasing  
17 the participation for Mayor, district attorney and other  
18 elections that are also on the ballot at the same time.

19 COMM. O'HARE: Frank, I know we're going to  
20 discuss when this primary should be, in June or  
21 September, but is the assumption that we would want to  
22 have the non-partisan primary on the same date as  
23 partisan primaries? Because I could see on the one hand  
24 you could argue that would make for greater turnout, on  
25 the other hand it would make for greater confusion.

1 CHAIRMAN MACCHIAROLA: We have a little bit  
2 of a wrinkle, I think on that one.

3 COMM. LYNCH: Say that again? You have a  
4 little bit --

5 CHAIRMAN MACCHIAROLA: A little bit of a  
6 wrinkle. I think if we go to the question of what our  
7 own statements have been about access and increasing  
8 voter participation, one of the things that has been put  
9 into State law to inhibit participation has been the  
10 change from the June primary to a September primary.  
11 That really means that insurgent candidates, having to  
12 fight a primary battle, now go into a general election  
13 without time to build support. It is to me one of the  
14 most negative aspects of the present system of running  
15 elections and for many years the Democratic reform  
16 movement embraced a June primary. The argument being  
17 that the two candidates that move past June into the  
18 election would generate greater participation and for  
19 insurgents and people who were not accessible to the  
20 system, the opportunity to coalesce. I think Bill could  
21 probably make those arguments better than I.

22 And for that reason, I have been very  
23 hopeful that the Commission would adopt a June primary  
24 date. I don't think that may be possible, and that is  
25 because of the section of the state Election Law which

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1 is absolutely precise on this point. Now, I am going to  
2 get a sense of the body as to whether you'd like an  
3 early primary or not, sort of holding off on your  
4 question, because I think your question may be decided  
5 by what the law already tells us, you have to have it in  
6 September when the other election is there. And I'd  
7 like us to get from Corp. Counsel a clearer ruling.

8 It's addressed in some ways in the memoranda that Alan  
9 was talking about and Anthony was talking about before,  
10 but not as clear. So that I'd like us to know exactly  
11 what we're leading into if we decide to go with a June  
12 primary, because I think that's certainly a major, major  
13 reform, but it may be out of our hands.

14 I mean, we are preparing as well a set of  
15 resolutions and the exact way in which these resolutions  
16 are presented as something that we're going to have to  
17 work on. I mean, there is no question, and we've heard  
18 every person who's come to testify about these proposals  
19 of an election, not everyone, but a large number of  
20 them, have come up with other kinds of things that  
21 should be done, none of which we have any jurisdiction  
22 over. All of which, most of which are commendable and  
23 most of which should be pursued, so I think, as the memo  
24 that we got suggests, some addressing of that in a form  
25 that puts the issue to those people who can deal with

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1 it, basically the State Legislature, is something that  
2 we should be crafting, because there are a whole host of  
3 things, including the fact that when School Board  
4 elections were held, parents were allowed to vote, even  
5 though they may not be citizens, because they had  
6 children in the schools and it was a matter of  
7 importance to them. It was one of the best features of  
8 the Community School Board elections that we had. That  
9 election, I think that procedure should be available for  
10 people who are living in the City, legal residents of  
11 the City, may not yet be citizens.

12 You heard the testimony from former  
13 Councilman Lenairres, and I think those are the kinds of  
14 things we should be having a meeting and discussion  
15 about, and see how we can put it forward the best way  
16 possible. The June primary is tied to that, because I  
17 think you really can't do it, if Corp. Counsel's  
18 judgment is correct, but we're going to explore more of  
19 it, Anthony is going to have to sit down with us and get  
20 a memo on that, that tells us what our limitations are.

21 So I think, Father, we may not have to worry  
22 about that question, it may be decided for us. I mean,  
23 my hope was that if we had a June primary, they would,  
24 for other elections, adapt to us, since other elections  
25 being run in the municipal year are not as important

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1 generally as the Mayor and other public officials.

2 COMM. O'HARE: Not to prolong this, but if  
3 the State law says definitively that partisan primaries  
4 have to be held in September, does that prevent a  
5 proposal being made that non-partisan primary be held in  
6 June?

7 CHAIRMAN MACCHIAROLA: I think the way it's  
8 written, it doesn't identify the primaries as partisan,  
9 but it says primary election shall be held. That's why  
10 I think it's a problem. It actually prescribes the  
11 first Tuesday after the first Monday in September as  
12 primary day.

13 COMM. PATTERSON: So what if we call it  
14 round one?

15 COMM. LYNCH: Thank you.

16 COMM. PATTERSON: Bill, we agreed on  
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17 something.

18 CHAIRMAN MACCHIAROLA: Hey, Bill, that's one  
19 of the issues, I think. I think we have to be as  
20 creative as possible in getting an interpretation that  
21 we would find acceptable. That may very well be round 1  
22 and 2. I don't know the answer to it. I just  
23 discovered this one. This was not something that was on  
24 my screen. I was alerted to it as I went through this  
25 memo.

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1 So, we are going to address that later on  
2 when we know what we want to do. I think we want to  
3 adhere to the law, I don't think we want proposals to go  
4 down on a questionable or a challenge to the law in a  
5 way that puts us at risk, but I think we have to get an  
6 answer to that. Okay, Alan, next question?

7 DR. GARTNER: We've touched on it, which is  
8 the when. As you indicated, it seems fairly clear-- I'm  
9 on the how.

10 DR. GARTNER: I'm on the top of page 6.

11 CHAIRMAN MACCHIAROLA: You're still on the  
12 when.

13 DR. GARTNER: I'm just closing that out.  
14 That that first election, and I suspect while I know  
15 Mr. Lynch's word craftsmanship from a long time ago,  
16 that even if we call it a kumquat, that regulation from  
17 the State primary election will be in September --

18 CHAIRMAN MACCHIAROLA: Don't practice law,  
19 Alan. We have enough of that.

20 DR. GARTNER: Bill and I both practice it

21 without a license. But I hear from several  
22 Commissioners, the Chair most particularly that the  
23 disposition of the body is towards a June primary, and  
24 we will explore whether there's any way within the  
25 constraints of the State law to do it in that way.

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1 CHAIRMAN MACCHIAROLA: By the way, I want --  
2 this is -- Steve Newman raised this question first and  
3 Steve, who is not with us today because he's traveling,  
4 I think he's somewhere in Scandinavia --

5 COMM. TSANG: He's in Copenhagen.

6 CHAIRMAN MACCHIAROLA: -- that he felt very  
7 strongly about that, that's why. I got his sense, a  
8 sense from Bill.

9 COMM. TSANG: He sent us all a memo.

10 DR. GARTNER: Okay. The question about  
11 counting is a question, as the memo indicates, whether  
12 we count it in the current way or some alternative  
13 scheme is adopted, such as instant runoff. There are a  
14 number of alternative schemes, I just discovered, far  
15 beyond what I thought I would have known, is that there  
16 are seven or eight different schemes, and perhaps more  
17 than that, many of them used in countries outside of the  
18 United States.

19 The argument in favor of some alternative  
20 scheme is that it might avoid a second round and that it  
21 has the potential to coalesce around a majority view.  
22 On the other hand, others point out, while there is some  
23 experience in using alternative schemes, the experience  
24 has been limited and not all that efficacious.  
25 Dr. Macchiarola is correct, that we did do Community

1 School Board elections allowing non-citizen parents to  
2 vote, but the other experience we had with the Community  
3 School Board elections was in an alternative voting  
4 scheme called proportional representation which a task  
5 force of the State Legislature established to look at  
6 community school board elections, found that one of the  
7 impediments to that election producing larger turnout  
8 was even though the procedure existed for nearly two  
9 decades, people never did understand what it is that  
10 proportional representation did. There are three  
11 jurisdictions in the country, three sets of  
12 jurisdictions in the country, or two and a half, if I  
13 may, that use an alternative scheme; Cambridge,  
14 Massachusetts, I believe it's 22 towns in the State of  
15 Vermont, and then it is expected that it will be used in  
16 San Francisco. That was very interesting and indeed  
17 intriguing.

18 We've certainly learned, and I believe  
19 Robert Stern testified to that effect at the forum last  
20 week, that it looks like San Francisco is not going to  
21 be able to mount that for the current election and some  
22 conversations I had with people in California is because  
23 it simply was too complicated for them to do it.

24 And that leads me to recommend that we ought  
25 to count votes the way we count them now and not

1 experiment with some other schemes that are simply not  
2 proven, and about which, as Professor Bronfman's

3 testimony that was read into the record at the forum has  
4 the potential of a being a non-majoritarian vote-counting  
5 scheme.

6 CHAIRMAN MACCHIAROLA: Is there anyone that  
7 wants to explore that issue on proportional  
8 representation? Fred, are you --

9 COMM. SIEGAL: No, I talked earlier about  
10 San Francisco, people thought I was kidding, having  
11 difficulty conducting the simplest of elections.

12 CHAIRMAN MACCHIAROLA: Well, that's because  
13 they insist on counting most of the votes. The last  
14 issue presented as a separate issue, although there are  
15 some parts to that, some of which I think are important,  
16 I think the question of expanding the responsibility for  
17 issues like letting the public know through the use of  
18 television are implicit in that, when you talk about the  
19 Voter Guide and its greater growth and expansion of  
20 that. I also think the voter assistance issue is also  
21 there, but I think we can deal with that separately.

22 I want to make sure that the Charter  
23 Commission doesn't get what it doesn't want, and if it  
24 gets what it wants, it gets it in terms it can deal with  
25 it. So we probably should put voter assistance off to

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1 the side until we've had some clarification. I'll give  
2 you a shot at that, Father, make sure you're here when  
3 we deal with that issue, because I don't want to have  
4 you not --

5 COMM. O'HARE: You mean when the Corporation  
6 Counsel says the problems are going to be solved, you  
7 want me to be here?

8 CHAIRMAN MACCHIAROLA: No, I'm thinking  
9 about the voter assistance unit issue.

10 COMM. O'HARE: I expressed my view earlier  
11 to Alan. The other proposal -- this proposal in Alan's  
12 memo is that it be integrated into the Campaign Finance  
13 Board and I think that's possible as long as the  
14 appointment of the coordinator is also under the  
15 authority of the Campaign Finance Board because we had  
16 experience the other way and it never worked out.

17 However, in my view the proposal we heard  
18 from the Chairman. Voter Assistance Commission that the  
19 whole Commission be restructured and have a smaller  
20 Board, I think that's -- clearly something has to be  
21 done with the Voter Assistance Commission and his  
22 suggestion also seemed to me to be a viable suggestion.

23 CHAIRMAN MACCHIAROLA: That's why I suggest  
24 is what, we've got two other I think ballot type sets of  
25 questions. We've got this issue of non-partisan

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1 elections. We have the question of procurement which  
2 we'll get to in our next meeting, and then there are  
3 that series of other issues which memos have been  
4 prepared and I think the voter assistance unit is  
5 probably something that deserves to be treated in that  
6 context, and to have it done after there's been some  
7 discussions, so that people know we're trying to be  
8 helpful, not trying to be, not trying to interfere in  
9 what goes on.

10 So that's why I sort of move it to the side,  
11 but know we've got to deal with it.

12 COMM. O'HARE: Frank, I am going to be away  
13 from the first twelve days of August.

14 CHAIRMAN MACCHIAROLA: We're probably not  
15 going to lock this thing in for the first twelve days of  
16 August anyway, Father, so you will get the opportunity  
17 to bat again, but I'll make sure we -- I think what I  
18 read or what I heard you were not opposed to a more  
19 judicious resolution of this, and didn't have a  
20 preference one way or the other, as long as it seemed to  
21 be the way the people who were in charge of running it  
22 wanted it to be. We can get some consensus from them.

23 COMM. O'HARE: As long as you don't rehearse  
24 the error we had initially.

25 CHAIRMAN MACCHIAROLA: Okay. This proposal

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1 on campaign finance, and the intersection, I think it's  
2 not a separate proposal, but it is a series of questions  
3 that have been raised, we've asked Alan to look at it,  
4 and to make some suggestions. I hope that Father has  
5 had an opportunity to have his input in it, because it's  
6 important that we not lose the benefit of the wisdom  
7 he's had as Chair of the Campaign Finance Board.

8 Alan, do you want to --

9 DR. GARTNER: Apropos of your comment a  
10 moment ago, Dr. Macchiarola, about those areas where we  
11 don't have authority, but have views, I hope that you'll  
12 come back to those that are spelled out in the first  
13 paragraph of the memo. This would not be a matter that  
14 would go in the Charter proposals, but, rather,  
15 something that we would communicate to the Campaign  
16 Finance Board as items that we would urge them to look

17 at and undertake. Just dealing with the back question,  
18 let me get a word in on that.

19 The third topic that we will be presenting  
20 to the Commission are a series of Government  
21 organization or reorganization issues, and whether one  
22 does is proposed at the bottom of page 7 or the  
23 alternative that Professor Krauss mentioned or Father  
24 O'Hare suggested that would be part of that package. It  
25 went here because it was part of the broad issues that

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1 we were dealing with, but structurally we would deal  
2 with this Government organization issue.

3 Basically, the half dozen recommendations on  
4 page 7 are just that. They're not Charter items as  
5 such, but rather matters where another body is there.

6 Now, in theory, to be precise about it,  
7 Anthony will help me on it, the provisions of the  
8 authority of the Campaign Finance Board are in the  
9 Charter, so we could theoretically do this by Charter --

10 MR. CROWELL: Or the administrative code or  
11 the rules of the City of New York.

12 DR. GARTNER: The disposition is to do this  
13 as friendly advice to the Campaign Finance Board and not  
14 a heavy handed Charter revision.

15 COMM. LYNCH: Mr. Chairman, on the second  
16 paragraph on page 7, there's reference to the State  
17 Chairman, Assemblyman Denny Farrell, where he said he  
18 wanted no more money for the party. And I read this, I  
19 asked him, I said, "Denny, did you say this?"

20 He said no. What he said, he might have

21 been misunderstood, he was saying thanks, but no thanks  
22 to that request, so he wanted the Commission to know  
23 that he was not saying no to no more money for the  
24 party.

25 DR. GARTNER: Okay, thank you.

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1 CHAIRMAN MACCHIAROLA: Okay. Father, is  
2 this agreeable to you, the suggestions to the Campaign  
3 Finance Board?

4 COMM. O'HARE: Yes, as long as they're  
5 suggestions. I can't speak for the Campaign Finance  
6 Board.

7 CHAIRMAN MACCHIAROLA: I'm asking you to  
8 speak for Father O'Hare.

9 COMM. O'HARE: I do say that the history of  
10 the Board and Charter Revision Commission that they  
11 unfortunately have received a number of mandates at  
12 Charter Revision Commissions that often proved to be  
13 very impractical, therefore, I think it would be far  
14 more helpful if the wisdom of whatever wisdom was  
15 available was posed as suggestions they might consider,  
16 rather than mandates which would prove impossible to  
17 implement.

18 CHAIRMAN MACCHIAROLA: I certainly think  
19 that that's the way to go, and if you're in agreement,  
20 then we'll follow that. As far as I'm concerned, we  
21 should follow it. Is there anybody that has any dissent  
22 from that?

23 All right, now. There are some other issues  
24 that Alan has put forward in the front part of the memo?

25 DR. GARTNER: On page 3, paragraph 1. There  
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1 are those issues as you referred to earlier, Dr.  
2 Macchiarola, which many people testified, members of the  
3 Commission, there was put forward with the testimony,  
4 there were at least four of them that I wanted to note.  
5 Same day voter registration, extending the period in  
6 which the polls are open, either a longer day or  
7 multiple days; those are matters of the State  
8 Legislature. We also had recommendations, or discussion  
9 at least, about allowing lawful permanent residents to  
10 vote and there is a related issue about voting, persons  
11 who are convicted felons who have paid their price, as  
12 it were, to society, to be allowed to vote.

13 What I have recommended is that on the first  
14 two, same day registration and extending the hours of  
15 the polls are open, that the Commission by resolution  
16 urge the State Senate -- the State Legislature, excuse  
17 me, the Senate and Assembly, to act on those.

18 At the same time, the Commission may want to  
19 consider seeking from the City Council a Home Rule  
20 message in that regard. The other two issues, voting by  
21 lawful permanent residents and voting by convicted  
22 felons I think those are less ripe recommendations and  
23 one might want to request of the Legislature their  
24 exploring, holding hearings on those topics. So that  
25 that's the proposal in that regard.

1 CHAIRMAN MACCHIAROLA: I guess the question  
2 that I have, as just looking at it, you've given two

3 mandates or two endorsements and two explorations, and I  
4 wonder why the convicted felons category fits into the  
5 explorations, given the fact that most states already  
6 have a system of rehabilitating people who have been,  
7 paid their time.

8 COMM. SIEGAL: Not most states, Frank.

9 DR. GARTNER: Some few states have it. It  
10 is the subject of a recently filed lawsuit by the Inc  
11 Fund, challenging it on racial discrimination lines.  
12 I've read those papers and again with a non-lawyer's  
13 eye, I think there's something there warrants at least  
14 further exploration and that's what I'm proposing.

15 CHAIRMAN MACCHIAROLA: Okay. Well, is there  
16 any comments on this? If there isn't --

17 COMM. LYNCH: I'm in concurrence with the  
18 recommendations, approaching this in a two-tier way. I  
19 hope that we get very aggressive about it, as it relates  
20 to the City Council, and the State Legislature, and I  
21 would urge the Chairman to talk to the Mayor, that I  
22 hope he uses his influence on both bodies to try to move  
23 these items.

24 If you remember in the Speaker's testimony  
25 in Brooklyn, he said that he would be willing to move a

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1 Home Rule message to the State Legislature on this. I  
2 know it's very difficult for me to stay in the box we're  
3 supposed to be in, and my history has been to move  
4 outside of the box, but let's try to do a little bit on  
5 this item.

6 CHAIRMAN MACCHIAROLA: I actually raised  
7 with Alan the possibility of speaking with Speaker

8 Miller about it, because I think, you know, the  
9 opposition to the question of non-partisan election I  
10 think is a separate issue from the question of access.  
11 I think they see access differently, so if we're taking  
12 the issue of access and moving forward with it, we ought  
13 to, I believe, find those who agree with us on that  
14 question and get their support for those things about  
15 access that we are all in agreement about.

16 So I will actually indicate, I will call the  
17 Speaker and indicate that this is what we have  
18 tentatively decided. I'm sure I don't even have to call  
19 him, I'm sure he'll hear it before I actually get the  
20 chance to make the phone call, but I will make the phone  
21 call and tell him that we'll be looking for a Home Rule  
22 message. I'll communicate the same to the Mayor, so  
23 that he understands where we're at, and then I hope we  
24 will get it in draft, we'll get it to circulate to all  
25 of you so that we'll have something concrete and

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1 hopefully soon to deal with in terms of that.

2 Does that meet with your approval and  
3 support?

4 COMM. TSANG: Yes.

5 CHAIRMAN MACCHIAROLA: Okay. All right, now  
6 there are, I think no other issues on non-partisan  
7 elections that we have, is that correct, Alan?

8 DR. GARTNER: That's correct.

9 CHAIRMAN MACCHIAROLA: From Alan's  
10 standpoint. Is there anything from the Commissioners'  
11 standpoint that people want to deal with?

12 COMM. TSANG: What's the next step?

13 COMM. LYNCH: The last item on voting  
14 rights. One concern that I have is, at the hearing or  
15 forum in Brooklyn at the library, the representative of  
16 the Asian Legal Defense Fund who talked about going,  
17 they felt that they had a voting rights case as it  
18 relates to non-partisan elections and how it adversely  
19 affects the Asian community and they were thinking about  
20 going into the Justice Department.

21 Now, I'm trying to figure out, have we taken  
22 that into consideration, have we talked to them about  
23 their concerns?

24 CHAIRMAN MACCHIAROLA: I think Alan has had  
25 conversations.

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1 DR. GARTNER: We've talked to them. We  
2 disagree, but we've talked to them.

3 COMM. LYNCH: You mean disagree with their  
4 right to go forward?

5 DR. GARTNER: No, no, we assume their  
6 intention to go forward under either Section 2 or  
7 Section 5 or both, and have been alert to that all the  
8 way through the process, alert to the requirement that  
9 changes in the election process in New York in the three  
10 counties, at least, would require preclearance. It's  
11 always been a matter on our mind from day one. And as I  
12 indicate in the memo, we have consulted with Voting  
13 Rights Act experts all the way through the process, and  
14 will continue to do that as we draft the particulars.

15 One of the issues that was raised at that  
16 hearing was, for example, the question of providing

17 material in other than English. We have provided to the  
18 representative of ALDF all the material that was  
19 prepared in other than English. Whether that will  
20 suffice, that's a different issue, but we continue to be  
21 alert and concerned about that.

22 COMM. LYNCH: My understanding in the  
23 testimony and I looked at it today briefly, that they  
24 think that non-partisan elections will adversely affect  
25 their community, to promote candidates, it will set them

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1 back.

2 DR. GARTNER: All I can say is we don't  
3 agree. The analyses that we've done suggest the  
4 opposite. I would further point out, as I know you  
5 know, until last year, there was no Asian American  
6 elected to any office in this city in a system of  
7 partisan elections. We don't have much of a track  
8 record against which to make judgments.

9 CHAIRMAN MACCHIAROLA: I think as I read  
10 their data, it seemed to me to suggest a tremendous,  
11 significant number of Asians who aren't part of the  
12 Democratic Party. All minority groups, they are the  
13 least disadvantaged by having a system that -- as I read  
14 it.

15 COMM. LYNCH: Mr. Chairman, in the  
16 testimony, they said that most Asians are in the  
17 Republican Party, not in the Democratic Party. The  
18 present --

19 CHAIRMAN MACCHIAROLA: That isn't what they  
20 said. No, I don't think they said there are more in the

21 Republican Party, but I think the numbers in the  
22 Republican Party and the numbers of non, people not in  
23 parties, is much higher than in any other, which would  
24 suggest to me that in a non-partisan situation a  
25 candidate, an Asian candidate would have stronger

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1 support outside of the Democratic Party for that  
2 candidacy. That's how it struck me. I didn't quite  
3 understand it.

4 I also understood him to say that if, when  
5 he relooked at the data, he thought that we were right,  
6 he might reconsider his position. Is that your  
7 recollection of --

8 DR. GARTNER: He said he would consider what  
9 it is that we finally put forward --

10 CHAIRMAN MACCHIAROLA: He might.

11 DR. GARTNER: And decide whether that  
12 warranted going forward with a challenge or not.

13 COMM. LYNCH: I don't want to speak for the  
14 Asian community. I have enough problems trying to speak  
15 for my own community. I just, I am concerned that they  
16 raise this and I just want to make sure that --

17 DR. GARTNER: All I could do is tell you  
18 that we have been concerned about it and we continue to  
19 be concerned about it.

20 COMM. TSANG: I think, I'm not speaking on  
21 behalf of the entire Asian community, but I think the  
22 sentiment is, you know, even if we have material in  
23 multi language, people are not aware of it, you know,  
24 like the gentleman is saying they're not aware that we  
25 have our material in Chinese, in Korean, in different

1 languages, so what I think we have to do a better job in  
2 letting the community know that multi language material  
3 is available and also we have to do a better job, we,  
4 meaning --

5 CHAIRMAN MACCHIAROLA: All of us.

6 COMM. TSANG: All of us have to do a better  
7 job in encouraging people to register to vote as well.

8 CHAIRMAN MACCHIAROLA: Well, enhanced access  
9 to television that we are contemplating in this proposal  
10 would have an effect as well in terms of the foreign  
11 language broadcasting, which is on the City stations.

12 Okay, does anyone else have any issue to  
13 present at this point?

14 COMM. NORAT: Just to speak to the issue  
15 Bill brought up, I didn't hear that testimony, but the  
16 point is, anyone can say that they feel they would be  
17 disadvantaged and will bring a case. The question is,  
18 do they have any evidence to support their presumption,  
19 because it would be very difficult to say that this new  
20 system would disadvantage the community, at least from  
21 where I stand, since they really have had, as Alan have  
22 said, up to last year only one office. So it's not like  
23 they've done, have had marvelous success under the  
24 partisan system.

25 Now, I'm not doubting that they could bring

1 a case, but any good lawyers, particularly coming out of  
2 Fordham law school, can bring a good case out of

3 anything.

4 DR. GARTNER: Is that a partisan comment?

5 COMM. O' HARE: Was he from Fordham law  
6 school?

7 COMM. NORAT: He wasn't, but I'm saying I  
8 could bring a case.

9 COMM. O' HARE: I want to make a comment, go  
10 back to something I said at the beginning of the  
11 meeting. His concern on behalf of the Asian community  
12 speaks to me to the problem of making a judgment on the  
13 whole issue of non-partisan elections. That is to say,  
14 judging whether the positive consequences of this change  
15 are so compelling that they weigh out the dangers of  
16 some unintended consequences, and I don't think this is  
17 a case -- that's why I said at the beginning, the  
18 Brennan Center urges us to do more studies to see -- I  
19 wonder in the end whether research is going to settle  
20 that question, because you're talking about consequences  
21 that -- the purposes for which non-partisan elections  
22 are being proposed, the purposes that the staff has  
23 indicated in their report, are very admirable purposes.  
24 I think we could all be committed, certainly all New  
25 Yorkers could be committed to it, but as we've seen in

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1 hearings, there are many people who believe that as  
2 noble as these purposes are, this proposal might  
3 actually compromise them rather than advance them, and  
4 that's a judgment I think voters are going to have to  
5 make, and I don't think there's any evidence around  
6 that's going to make it black and white one way or the  
7 other.

8 CHAIRMAN MACCHIAROLA: Okay. If there's no  
9 other business before the Commission, we will adjourn  
10 and we will reconvene on Monday night.

11 COMM. TSANG: Mr. Chairman, what is the next  
12 step now for us?

13 CHAIRMAN MACCHIAROLA: Next step for us is  
14 to deal with procurement, Monday, and if we get to it, a  
15 number of the other issues that Alan had raised for us  
16 which are the reorganization issues.

17 (Time noted: 7:45 p.m.)

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