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Transcript of the Meeting of the
CHARTER REVISION COMMISSION
held on Tuesday, August 19, 2003
Economic Development Corporation,
110 William Street
Borough of Manhattan

AR-TI REPORTING COMPANY, INC.	
305 Madison Avenue	142 Willis Avenue
Suite 405	P.O. BOX 347
New York, N.Y. 10038	Mineola, N.Y. 11501
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1 Meeting convened at 4:15 p.m.

2 P R E S E N T

3 FRANK MACCHIAROLA, Chairman

4 COMMISSIONERS:

5 BILL LYNCH

6 JERRY GARCIA

7 MOHAMMED KHALID

8 FRED SIEGEL

9 STEVEN NEWMAN

10 FATHER O'HARE

11 CECELIA NORAT

12 PATRICIA GATLING

13

Also Present:

14

DR. ALAN GARTNER, Director

15

ANTHONY CROWLEY, General Counsel

16

SPENCER FISHER, Representative, Law Department

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1 CHAIRMAN MACCHIAROLA: Good afternoon. I
2 apologize for not getting here quickly. Alan, I think
3 we're going to call upon you, I just want to give
4 everybody a sense of how we are proceeding here. We
5 have one set of issues remaining, large global issue
6 remaining on non-partisan elections, then we have some
7 additional items that were leftover issues on
8 procurement that we also have. And then we have some
9 developments of what's taking place, some discussion of
10 registration and not-for-profits that Alan will report
11 on. After that, we have some testimony, and then the
12 public hearing. And hopefully we'll be finished by
13 tomorrow evening.

14 Alan, will you start off for us, please?

15 DR. GARTNER: Good evening, or good
16 afternoon, I guess. I have told the Commission that
17 there are occasions where I think I ought to be paying
18 tuition as opposed to paying a salary. I certainly
19 learned in my reference to the Perils of Pauline --
20 Commissioner Patterson helped me understand who Pauline
21 was. In my somewhat deprived childhood where I was not
22 allowed to go to the movies on Saturday afternoon, I
23 missed that, although Kitty was kind enough to say it
24 was before my time. And let me apologize and express my
25 disappointment that the blackout and various and sundry

1 other matters delayed getting the material to the
2 Commission on non-partisan elections, the language for
3 the Charter and I will note the work that Anthony did in
4 getting that out.

5 What I've done is to, it helped me think
6 about the topic, is we've been talking about
7 non-partisan elections around a series of questions,
8 eight or nine or ten questions. And what I simply did
9 when I read the next to the last time the document that
10 we sent out yesterday, I just kind of made this little
11 grid for myself and I thought it would be helpful for
12 you. Anthony will go through in whatever detail the
13 Commission wishes the specific language, but let me just
14 go through the items so you see that these should be
15 familiar to all of you.

16 In terms of the offices included, these are
17 all municipal offices, Section 60. In terms of the
18 basis for getting on the ballot, the shorthand is the
19 partisan petition procedure, which is it's the one area
20 where the partisan and the non-partisan petition
21 procedure or independent petition procedures differ, is
22 the number of signatures required for the City Council.

23 You have opted for the lower of those
24 figures, not 2700, but 900, and that's what this
25 language reflects. In terms of number eleven, two

1 rounds in general for the primary runoff. The elections
2 will be in September and November, remembering that the
3 Commission preferred an earlier initial round, but it
4 seemed clear that the State law precludes that. It
5 would be the top two vote getters who would go on from
6 the first round to the second round. The language here
7 proposes that the individuals may have the party in
8 which they are registered on the ballot. We don't
9 discuss it in the Charter, because we would take as a
10 given that the individual is free per the First
11 Amendment to announce his or her party preference or
12 anything else about him or herself and that the parties
13 are allowed by associational rights to identify whatever
14 they have on a candidate, including endorsing a
15 candidate, in any other procedure than a State-run
16 primary election, which would include if they're members
17 or any other way.

18 In terms of campaign finance -- and I will
19 come back to that -- in this language we propose the
20 Campaign Finance Board promulgate rules for non-partisan
21 elections. It presumes, of course, that that's adopted
22 by the voters.

23 I'll have something to say about the issue
24 of contributions of other entities in a moment and the
25 election, this would take effect in the election

1 subsequent to the municipal election of 2005. The
2 reason we see that circumlocution, rather than saying in
3 the shorthand we've been saying, '05, '09, we would deal
4 with the possibility, although not scheduled, there
5 would be a special election subsequent to 2005 and if
6 that were the case, that election would be subject to
7 the rules, assuming the voters adopt them in November.

8 So let me turn, if I may, to Anthony.

9 MR. CROWELL: Okay. I hope all you've had a
10 chance to review the material. We tried to digest it as
11 simply as possible for you, and I think it's fairly
12 clear how it's flowed. Next to me is Spencer Fisher,
13 who is a senior counsel at New York City Law Department.
14 He and Elizabeth Paladino were invaluable in terms of
15 putting this legislation together, so he's here to
16 explain it and we owe him a great debt of gratitude.

17 Let's start, we'll go section by section, as
18 we've done with the other topics that we've been
19 covering, most recently procurement. What we do in this
20 draft is we create a new chapter, Chapter 3 in the
21 Charter called "Elections for City Office" and this
22 would govern the entire non-partisan election system.
23 Section 60 contains general provisions regarding the
24 scope of the chapter and its relation to the State
25 Election Law.

1 The chapter covers elections, as Alan said,
2 for Mayor, Comprtoller, Public Advocate, Councilmembers
3 and the Borough Presidents. The general theory of the
4 chapter is that except where the chapter provides
5 otherwise, the provisions of the Election Law that are
6 used currently to govern partisan elections will also be
7 used to govern non-partisan elections.

8 This section recognizes that the Election
9 Law has many references, for instance, to party members
10 throughout its provisions and rather than specifically
11 addressing each one, the section deems those references
12 to party members to refer to qualified voters in New
13 York City. So when read in connection with offices,
14 that's how the chapter covers that.

15 The section also enables sections of the
16 Election Law referenced in the chapter to be amended
17 also without requiring the Charter also to be amended,
18 so it will create a fairly durable document that
19 provides the flexibility to adapt to changes in the
20 Election Law.

21 CHAIRMAN MACCHIAROLA: Excuse me, Anthony, I
22 think the procedure probably would be to break up these
23 questions when you do in fact have a vote, so that we're
24 voting on specific sections, because some of them are
25 still open questions. So in order to effect that, I

1 would appreciate from the Commission a sense of whether
2 you'd like to hear it all laid out first and then come
3 back and do the voting or would you like to vote it
4 section by section is the preference from my colleagues.

5 I think the easiest thing would be to vote
6 section by section, but I'm amenable to anything that
7 anybody else wants to suggest.

8 COMM. LYNCH: I concur.

9 CHAIRMAN MACCHIAROLA: Section by section.

10 COMM. KHALID: Yes, section by section.

11 DR. GARTNER: Could I intrude one item?

12 When we finish this, the Commission has many times
13 talked about other issues that it was concerned with;
14 same day registration, longer voting, we have a series
15 of recommendations that the Commission could consider,
16 so once we finish about non-partisan elections.

17 CHAIRMAN MACCHIAROLA: There are also some
18 things that aren't included in here that we've discussed
19 and I don't know, maybe they are in here, things like
20 where we do have control, that access to the City's
21 television stations be available and that be included.
22 Is that in this package?

23 DR. GARTNER: Those are not in the package.
24 I think those are things the Commission ought to deal
25 with as independent items. I didn't think they belonged

1 as Charter requirements, but obviously the Commission
2 could do that or could make them resolutions or in
3 effect instructions to the various departments.

4 CHAIRMAN MACCHIAROLA: I think we want to
5 get access to the candidates.

6 DR. GARTNER: Oh, absolutely.

7 CHAIRMAN MACCHIAROLA: We would guarantee
8 that in whatever provision we have.

9 COMM. LYNCH: Mr. Chairman, I'm a little
10 confused about -- is this the language that these issues
11 will be put on the ballot in the final vote?

12 CHAIRMAN MACCHIAROLA: The little one or the
13 big one? No, this cannot be in the ballot in this form.
14 This is our form and we will then have to --

15 COMM. LYNCH: Vote on the language itself?

16 CHAIRMAN MACCHIAROLA: Vote on the language,
17 not tonight, we'll vote on the language on the 25th.
18 That's what we're putting forward.

19 MR. CROWELL: Here's how it works. There's
20 a ballot question, there may be a ballot question
21 exclusively on non-partisan elections if you choose,
22 then there will be a Voter Guide abstract that the
23 voters will be able to look at and will abstract
24 everything we're discussing tonight, explaining how the
25 system of non-partisan elections works.

1 What you have here, what we're going over, a
2 discussion of the actual textural amendments that we
3 provided you in that new Chapter 3, so this is the
4 actual language that if the voters approve the ballot
5 question, this is what will be adopted and put into the
6 Charter.

7 CHAIRMAN MACCHIAROLA: The lawyers got ahead
8 of us.

9 COMM. LYNCH: Okay.

10 CHAIRMAN MACCHIAROLA: But the lawyers are
11 in a sense telling us is this is the way the language
12 will appear in the Charter as amended and then they're
13 going to work back to find language that accurately
14 portrays that and that will be the language which we'll
15 vote on on the 25th.

16 FATHER O'HARE: Remember, Frank clarified
17 that by saying this-this (indicating).

18 CHAIRMAN MACCHIAROLA: We've already seen
19 what the size of the Charter is. So we will take a look
20 at this and make sure that what we voted is in fact what
21 we believe and that will be the Charter language. Okay?

22 So then the first question is, the ballot
23 question will be for all three levels of municipal
24 offices. Is that agreed to by members of the
25 Commission? Go around the room. Fred, Bill?

1 COMM. KHALID: Yes.

2 COMM. GATLING: Yes.

3 COMM. GARCIA: Yes.

4 COMM. LYNCH: Yes.

5 COMM. SIEGEL: Yes.

6 FATHER O'HARE: Yes.

7 COMM. NORAT: Yes.

8 COMM. PATTERSON: Yes.

9 CHAIRMAN MACCHIAROLA: First question, all
10 three levels of municipal offices will be included.

11 MR. CROWELL: The next set of issues
12 concerns the number of rounds, one or two rounds -- the
13 basis of getting on the ballot, Section 61. Alan made
14 this sheet. Okay, the Section 61 sets forth the basic
15 rules for becoming a candidate in the non-partisan
16 system. Under subdivision A, you'll see that in order
17 to run in a non-partisan primary election, a candidate
18 must be designated by a petition. This will be known as
19 the non-partisan designating petition. And that will
20 contain signatures of registered voters of the political
21 unit for which the designation is made.

22 What I mean by political unit is
23 Councilmanic District or if it's a citywide office will
24 be a citywide district. As subdivision B indicates,
25 non-partisan designation petitions are now the existing

1 designation nominating petitions under the Election Law,
2 but they will remain nonpartisan designating petitions
3 because they will be filled out at the same time that
4 partisan designation petitions used for candidates to
5 get on the primary ballot for a party in partisan
6 elections, such as those for State offices will be
7 filled out. The similarities to independent nominating
8 petitions would help the public and the Board of
9 Elections more readily understand and implement the new
10 system.

11 CHAIRMAN MACCHIAROLA: They're independent
12 -- they're different petitions?

13 MR. CROWELL: They'll be different
14 petitions.

15 CHAIRMAN MACCHIAROLA: You can't carry a
16 petition for six names including non-partisan elections,
17 is that right?

18 MR. CROWELL: They'll be separate.

19 CHAIRMAN MACCHIAROLA: It will be separate
20 for non-partisan elections, it can carry more offices,
21 but only for non-partisan elections. That's clear on
22 that.

23 MR. CROWELL: Yes. Subdivision B of this
24 Section references Election Law Section 6136 for the
25 number of signatures needed to get on the ballot for the

1 non-partisan primary election. This is an important
2 exception to the general approach analogizing to the
3 independent nominating petition system.

4 As we have discussed before, Section 6136
5 provides for the number of signatures needed on a
6 partisan designating petition to get on the ballot for
7 various offices. As you'll remember, for a City Council
8 position on the independent nominating petition, 2700
9 signatures required, but on the partisan petition only
10 900 numbers required. The system we have adopted is
11 effectively a hybrid permitted by State law that would
12 render the system of non-partisan elections with a
13 requirement for Councilmember of 900 signatures. The
14 rest of the signature requirements for the other office,
15 citywide office, 7500; Borough President, 4500 and City
16 Council, 900.

17 CHAIRMAN MACCHIAROLA: So the only change is
18 to the non-partisan nature of the ballot. The numbers
19 remain the same?

20 MR. CROWELL: The number would remain the
21 same, except for -- right it basically adopts the
22 independent nominating petition, but it puts the number
23 at 900.

24 CHAIRMAN MACCHIAROLA: Does it affect
25 special elections where those numbers are greater?

1 MR. CROWELL: They'd be the same.

2 CHAIRMAN MACCHIAROLA: So we are in addition
3 to affecting the general election, also changing the
4 requirements for the special elections of City Council.

5 MR. CROWELL: The new system of non-partisan
6 elections will make all City elections, including the
7 current non-partisan special elections, adhere to the
8 new system of petitioning, where 900 signatures are
9 required per Councilmember.

10 FATHER O'HARE: Those 900 signatures have to
11 come from the Councilmanic district.

12 MR. CROWELL: Absolutely.

13 DR. GARTNER: From any registered voter.

14 COMM. PATTERSON: But specifically from the
15 Councilmanic district.

16 DR. GARTNER: Or the borough.

17 COMM. PATTERSON: It's the Council issue
18 where we're looking into 900.

19 CHAIRMAN MACCHIAROLA: The reason I think
20 everybody is double checking is there was a mistake in
21 the newspaper that gave a different impression.

22 COMM. SIEGEL: A repeated mistake.

23 CHAIRMAN MACCHIAROLA: All the news that's
24 fit to repeat.

25 Okay, is there any further discussion of

1 this? Can I get the sense of the Commission that the
2 members are in agreement that this is the number that
3 would be put forward?

4 COMM. SIEGEL: Yes.

5 COMM. LYNCH: I abstain.

6 COMM. GARCIA: Yes.

7 DR. GARTNER: I agree.

8 COMM. KHALID: I would agree.

9 COMM. NORAT: Yes.

10 FATHER O'HARE: Yes.

11 COMM. PATTERSON: Yes.

12 CHAIRMAN MACCHIAROLA: Do you want to tell
13 us why, your sense? Are we going off from your
14 standpoint? I mean, you don't have to.

15 COMM. LYNCH: I am really not clear about
16 the difference between partisan and independent petition
17 gathering, and that is just, I'm not clear. I'm not
18 ready.

19 CHAIRMAN MACCHIAROLA: Okay.

20 COMM. LYNCH: I could vote no, but I'd
21 rather not.

22 CHAIRMAN MACCHIAROLA: You have hired help
23 from the Corporation Counsel.

24 MR. CROWELL: Between me and the Corporation
25 Counsel's representative, I think we could help you if

1 you wanted help answering the question.

2 CHAIRMAN MACCHIAROLA: I think it doesn't
3 have to be done now. It's a really technical issue. I
4 just wondered if Bill wanted to tell the rest of us
5 about those items, but I think we can handle it.

6 Thank you.

7 CHAIRMAN MACCHIAROLA: Section 65 and 68.

8 MR. CROWELL: Let me walk you through. It's
9 fine, some of these -- they're conforming. Let me go
10 through that. Section 62 sets forth provisions
11 governing the forming of the designated non-partisan
12 petitions and except for the first paragraph the forms
13 set forth in Election Law 6140 for independent
14 nominating petitions is used. I've already said that.
15 In addition, in light of the Second Circuit's opinion in
16 Lehrman versus Board of Elections, which invalidated the
17 requirement of Election Law 6132-2, that witnesses to
18 designating petitions be residents of the political
19 subdivision in question, the requirement of Section 6140
20 about the independent nominating petitions that the
21 witness reside in the political unit in question is
22 accepted out of the Charter, Section 62.

23 CHAIRMAN MACCHIAROLA: So we're conforming
24 to Federal law, Second Circuit. And the language is
25 conforming to judicial opinion.

1 MR. CROWELL: Right.

2 CHAIRMAN MACCHIAROLA: Do we have to vote
3 that? I don't think so.

4 MR. CROWELL: No, it's just to clarify that
5 we recognize that.

6 CHAIRMAN MACCHIAROLA: 63.

7 MR. CROWELL: 62 also adopts a form of the
8 petition. But we just explained that.

9 CHAIRMAN MACCHIAROLA: Do you think we need
10 to have a separate vote on it?

11 MR. CROWELL: If you were going section by
12 section I would, but I think you embraced that in your
13 earlier vote.

14 CHAIRMAN MACCHIAROLA: I'd rather do the
15 crosswalk, rather than do this, unless there are things
16 missing in the section.

17 MR. CROWELL: Okay. Let me just run through
18 Section 63. This section deals with vacancy in the
19 designation to run for the non-partisan primary
20 election. It sets forth the manner in which a person
21 designated as a candidate for nomination may decline the
22 nomination and how vacancies on the non-partisan primary
23 ballot caused by such declination or any other reason
24 shall be filled. This is consistent with --

25 CHAIRMAN MACCHIAROLA: It's consistent with

1 current law. So it's the Committee on Vacancy and the
2 same procedures that we have, and it's applying it,
3 fixing the language to read non-partisan elections.
4 That's what that is.

5 MR. CROWELL: Yes. It is different for
6 nominations, but we are getting to that.

7 CHAIRMAN MACCHIAROLA: Are you taking
8 attendance? So you know that Mr. Newman has arrived.

9 MR. CROWELL: Section 164 of the Election
10 Law. It's provided that the opportunity -- there's an
11 opportunity to avoid uncontested primary through the
12 opportunity to ballot. Section 64 of our draft does the
13 same thing for the non-partisan primary. Under this
14 section, qualified voters may file a petition with the
15 Board of Elections requesting the opportunity to write
16 in the name of a candidate who need not be specified for
17 the office in question. The number of signatures needed
18 for this type of petition is the same as the number
19 needed for the non-partisan designating petition. Upon
20 receipt of such a petition by the Board of Elections,
21 the office is deemed contested and the contest is
22 resolved in the non-partisan primary.

23 CHAIRMAN MACCHIAROLA: It's the same law we
24 presently have. Same rules that we presently have.
25 We're not changing anything, we're just --

1 MR. CROWELL: No, we're following 64.

2 CHAIRMAN MACCHIAROLA: The language from
3 partisan to non-partisan. We don't need to vote that.

4 MR. CROWELL: Section 65, this section sets
5 forth the basic provision for the non-partisan primary
6 election. This says that it will be held at the time of
7 the fall primary under the Election Law and is held in
8 any year when a candidate for the office of Mayor,
9 Comprtoller, Public Advocate, Councilmember or Borough
10 President is to be elected. It should be noted that
11 ordinarily a non-partisan primary election is
12 uncontested if there are one or two candidates.

13 CHAIRMAN MACCHIAROLA: Okay.

14 COMM. LYNCH: One more time on that?

15 MR. CROWELL: In a non-partisan election,
16 non-partisan primary election will be deemed uncontested
17 if there's only one or two candidates. The two
18 candidates means because they would both advance
19 automatically because the top two vote getters
20 necessarily advance to the general election runoff.
21 Thus, it's uncontested at the primary level.

22 CHAIRMAN MACCHIAROLA: This carries with it,
23 then, the fall primary, it carries with it a forward, it
24 moves forward the election if there are two or one.
25 That is a change. I think we should vote this one.

1 Mr. Newman?

2 COMM. NEWMAN: I'd like to hear one more
3 time the explanation for why not June.

4 MR. CROWELL: I think you were out when we
5 discussed that. The Election Law states explicitly --
6 the State Election Law states explicitly that the
7 primary be held in September and that municipalities
8 don't have the authority to deviate from that. It's
9 argued that --

10 MR. FISHER: If I could just speak for a
11 moment, there. It would be a strong argument that the
12 Commission does not have the authority to set a primary
13 date on another date, because the date set in the
14 Election Law in Section 8-100 says, "A primary election
15 known as the fall primary shall be held on a date in
16 September, unless otherwise changed by an act of the
17 Legislature."

18 That language is fairly unusual, and would
19 raise a serious question as to whether the Charter
20 Commission, which does not have the powers of the State
21 Legislature, could alter that date. So it would be
22 taking a significant risk to attempt to alter the fall
23 primary date, so that's why it was decided to leave it.

24 CHAIRMAN MACCHIAROLA: When it was discussed
25 in the preparation of documents in addition to ballot

1 proposals was moving, advancing the number of
2 alternatives for the Legislature to consider. In
3 addition to that, in areas where we feel there's
4 sufficient strength for us to advocate. So for some it
5 would say we advocate, for some it would say we urge the
6 study of it, and I think for some, obviously, there
7 would be some difference of opinion and others there is
8 very few differences of opinion, but the decision we
9 made in your absence was that this would move into that
10 category.

11 COMM. NEWMAN: Okay. I had a different
12 understanding of the law, which is obviously incorrect.
13 I thought the law mandated June, unless the Legislature
14 overrode it, which I thought they did uniformly for the
15 last thirty years.

16 CHAIRMAN MACCHIAROLA: We got the whole memo
17 on that, and it apparently happened during Governor
18 Wilson's administration.

19 COMM. NEWMAN: So it had been June
20 overridden all the time and at some point they made it
21 the law.

22 MR. FISHER: The default date is now
23 September in the Election Law. It was June for a time
24 in the '60s. We felt while there was not a hundred
25 percent certainty, I think we felt there was significant

1 risk in the Commission attempting to change the primary.

2 CHAIRMAN MACCHIAROLA: Okay. So we're
3 voting on two rounds and I guess 65 and 68 include
4 votes, so why don't we consider them. 65 deals with the
5 fall primary and 68 covers the same thing.

6 MR. CROWELL: It adds that poll watchers may
7 be appointed by candidates in the non-partisan election.
8 It also states that parties may appoint poll watchers.

9 COMM. GARCIA: Can you clarify the last
10 sentence in 65, the purpose or impact of that sentence?

11 MR. CROWELL: In the digest or the
12 legislation itself?

13 COMM. GARCIA: Before the digest.

14 MR. CROWELL: It just means that ordinarily
15 when you're having the non-partisan primary election,
16 it's going to be deemed uncontested if there's one or
17 two candidates running. That's because, by operation of
18 law the top two vote getters advance to the general
19 election, the runoff. So if there's only one or two in
20 the primary, necessarily those people would advance,
21 because just by mathematics. So that's how they would
22 deem it uncontested. Or to be contested you would need
23 to have three candidates running.

24 CHAIRMAN MACCHIAROLA: Why don't we bundle
25 the three questions. It's September-November election

1 and primary, two rounds and with the top two vote
2 getters in the primary advancing to the general
3 election. That's basically what we've been talking
4 about and it's covered in 65, 68, 66.

5 Yes, sir?

6 COMM. NEWMAN: Just a question on 68. If
7 we're talking about non-partisan elections, why should
8 we permit the parties to appoint watchers?

9 CHAIRMAN MACCHIAROLA: Because they're being
10 elected at the same time the partisan elections are
11 taking place. You don't want to prevent partisan poll
12 watchers.

13 MR. FISHER: It's also provided for in the
14 Election Law. The idea was not to remove rights from
15 parties that they have as part of the Board of Elections
16 process.

17 MR. CROWELL: It was really to insure that
18 non-partisan candidates had rights to appoint poll
19 watchers.

20 MR. FISHER: There will be, as the chair
21 said, partisan elections that will often be proceeding
22 at the same time, since the DA elections are on the same
23 cycle.

24 COMM. NEWMAN: How about in primaries?
25 Parties don't appoint watchers in primaries, right?

1 Parties are not allowed to appoint watchers in
2 primaries, as I recall?

3 COMM. LYNCH: Yes, they are.

4 CHAIRMAN MACCHIAROLA: They can, Bill. I
5 would think so.

6 DR. GARTNER: I think, just to reiterate the
7 point, we sought the good advice of the law department
8 not to change anything in the Election Law, unless it's
9 necessary. The Election Law -- this is what I call the
10 O'Hare conundrum, which is how do you do a non-partisan
11 election with a partisan Board of Elections, a partisan
12 set of poll watchers, et cetera, et cetera. You try to
13 mix and match, in a sense to add rights, as Spencer
14 pointed out, rather than to take rights away from the
15 parties.

16 COMM. NEWMAN: But our whole premise is
17 taking rights away from the parties. So why would we --

18 DR. GARTNER: Only those rights that are
19 necessary to effectuate a non-partisan election. I
20 think, as I understand the argument that has been
21 accepted from the Law Department, there are some things
22 you have to change because it's in the very nature of a
23 non-partisan election to do that differently. There are
24 other things like, for example, a Commission on
25 vacancies that are not in the nature of the non-partisan

1 election and you endanger the non-partisan elections.

2 MR. FISHER: I think the Commission may have
3 the flexibility to maybe deal with the Commission on
4 Vacancies. The way I guess I would put it is watchers
5 could be argued are a basic scheme of boards of
6 elections and the bipartisan administration Board of
7 Election that's provided for under the State
8 Constitution, and I think it would be a concern that
9 it's not our place to take away the rights of inspectors
10 and watchers. We can insure that non-partisan
11 candidates sometimes have those same rights, where
12 partisan candidates would have them.

13 To remove the rights of the parties to
14 appoint watchers might have been a step that as the
15 executive director said is not necessary to the
16 administration of non-partisan elections and might raise
17 questions about us seeking to change the basic
18 administration of the Election Law, which is really not
19 the point of non-partisan elections.

20 MR. CROWELL: Rather than changing the form
21 of the election.

22 COMM. LYNCH: So in a non-partisan election,
23 if a candidate has not designated himself with party
24 affiliation, if they want to have poll watchers, you go
25 as a, "I'm a Bill Lynch poll watcher," is that the way

1 it will be dealt with, rather than, "I'm a Democratic
2 poll watcher," and I get approval from the Democratic
3 Party?

4 MR. CROWELL: That's the way it would work.

5 MR. FISHER: The Election Law provides any
6 two or more candidates can actually gang together and
7 appoint a watcher now. Watchers are not always
8 associated with parties.

9 MR. CROWELL: An independent candidate can
10 assign their own.

11 MR. FISHER: Under a non-partisan scheme, it
12 doesn't make sense to require two or more candidates to
13 gang together. We provided each candidate is a party
14 unto himself in a sense and can appoint a watcher, and
15 there would be a Bill Lynch poll watcher.

16 COMM. LYNCH: The process now in the primary
17 election is the party issues the poll watchers
18 certificate by the approval of the party. And if I'm
19 not, if I don't have a party designation, that I am not
20 party designated, then the candidate approves the
21 watchers' certificate. In a primary, I'm talking about.

22 COMM. NEWMAN: The candidate approves now.
23 Both do. The primary candidates, because you'll have
24 independent candidates from the party candidates, so
25 they both approve.

1 CHAIRMAN MACCHIAROLA: What we're really
2 doing is clarifying the right of a non-partisan
3 candidate to have poll watchers, which right is already
4 there for people, for two or more and the parties.

5 MR. FISHER: The provision we're discussing,
6 8-500 of the Election Law is not about the primary, it's
7 about the general election. Primaries are not covered
8 by that provision. I don't know that there's a separate
9 provision dealing with watchers of primaries.

10 COMM. NEWMAN: There should be, because
11 watchers are appointed all the time.

12 MR. FISHER: We'll clarify that.

13 MR. CROWELL: The reality is, when we
14 drafted this provision, we explained the legal basis for
15 it. Also you have to reflect that there will likely be
16 parties involved with these elections, perhaps, so it
17 provides the opportunities both for independent
18 candidates as well as parties to have poll watchers.
19 It's a logical consequence, A; B, it also respects the
20 underlying administration of elections as it's different
21 from the form of elections that were effectuated. So I
22 think that's the best way to explain that, and the
23 intent in drafting that provision.

24 COMM. NEWMAN: Could I ask a question, to
25 beat this to its final death? Fred Siegel is running

1 and he self-designates himself as a Democrat, assuming
2 we approve that and you could have party designations.
3 Is he allowed to issue a poll watchers certificate for
4 his campaign?

5 MR. CROWELL: Absolutely.

6 COMM. NEWMAN: He can do it independently of
7 the party?

8 MR. CROWELL: And the party to which he
9 claims to be a member could as well.

10 CHAIRMAN MACCHIAROLA: All right, we're
11 ready to vote on this? Got three pieces, sections that
12 we're covering? Section on two rounds, two sections;
13 Sections 65, 68 and 66, three sections on two rounds.
14 Election September-November, the top two vote getters
15 advance from primary to general election. On that
16 scheme, Mr. Newman?

17 COMM. NEWMAN: Yes.

18 COMM. SIEGEL: Yes.

19 COMM. LYNCH: Abstain.

20 COMM. GARCIA: Yes.

21 COMM. GATLING: Yes.

22 COMM. KHALID: Yes.

23 COMM. NORAT: Yes.

24 FATHER O'HARE: Yes.

25 COMM. PATTERSON: Yes.

1 CHAIRMAN MACCHIAROLA: All right. The role
2 of parties. Now, this is a lively one, here, and as far
3 as -- do you want to start by telling us what it says,
4 then we'll get into a discussion.

5 MR. CROWELL: Section 69 permits, but does
6 not require candidates to list their party registration
7 or to list themselves as independent/unaffiliated as
8 their registration stands adjacent to their names on the
9 ballot. It otherwise prohibits the placement of any
10 partisan or independent body identification, symbol or
11 emblem on the ballot or voting machine at any such
12 election for offices covered by this Chapter.

13 CHAIRMAN MACCHIAROLA: Okay, well, the issue
14 is whether we want in a non-partisan election to permit
15 the candidate to list party registration. There's been
16 all kinds of -- we've had some discussion of it, or
17 discussion as I heard it was not inclusive, that is to
18 say, members of the Commission took both sides.

19 COMM. NORAT: This is on the ballot, if I
20 may clarify.

21 CHAIRMAN MACCHIAROLA: Yes, this is on the
22 ballot, yes.

23 COMM. NORAT: In other words, they could say
24 it any other place.

25 CHAIRMAN MACCHIAROLA: This is only an issue

1 of whether or not it can appear on the ballot, and I
2 want to reiterate, we did receive a letter from the
3 Mayor, and I want to reiterate that the Mayor's letter
4 was not an instruction. Some people may think the
5 Mayor's letter was an instruction, the Mayor certainly
6 didn't think it was an instruction. So it's a whole big
7 question for the Commissioners to discuss. We can have
8 that discussion and then decide whether we want to do it
9 one way or the other.

10 FATHER O'HARE: Just a point of
11 clarification. If I understand this language, it means
12 a candidate if he so chooses or she chooses say I'm a
13 Democrat, Republican -- what if I want to make up my own
14 party? I can't do that?

15 CHAIRMAN MACCHIAROLA: The way it is written
16 I think is to permit the candidate to identify the party
17 to which, in which that person is enrolled. So you'd
18 have to be an enrolled Democrat, an enrolled Republican,
19 an enrolled Conservative. It modifies the present law
20 in that there is no requirement that the party label
21 that you carry actually represents the party to which
22 you belong.

23 In this situation, you would be a member of
24 the political party and you, therefore, if you were,
25 you'd have the right to list that party on the ballot.

1 MR. CROWELL: To clarify for you, Father
2 O'Hare, the independent nominating process is what gives
3 rise to the ability for someone to name their own party,
4 as has been the current practice in non-partisan special
5 elections.

6 What we do to address that issue is
7 explicitly provide for the form of the petition that
8 would only allow for either the registered party or the
9 independent unaffiliated status, and that of course
10 would apply to the current system of non-partisan
11 specials.

12 CHAIRMAN MACCHIAROLA: So those specials
13 would also be eliminating --

14 DR. GARTNER: We'd end "Nice Guy Party" or
15 whatever.

16 MR. CROWELL: We heard a lot of complaints
17 about that.

18 CHAIRMAN MACCHIAROLA: Working Families?

19 MR. CROWELL: Certainly not, that's a
20 recognized party.

21 CHAIRMAN MACCHIAROLA: Under the current
22 system, what they've been doing, what's required, they
23 create a party to run on that label, Good Government,
24 Less Tax, and what we're now doing is conforming the
25 special elections and the regular elections and in

1 conforming that, eliminating the option of declaring
2 your own party.

3 COMM. PATTERSON: One of the issues that we
4 heard testimony on was what was, I think, not very
5 pleasantly referred to as the stealth candidate, the
6 candidate that has an affiliation, let us say with a
7 party that's not especially popular in New York, the
8 Conservative Party, and doesn't want to list his or her
9 designation on the ballot. If you had somebody who was
10 -- people are only, as I understand it, candidates are
11 only allowed to identify on the ballot the party to
12 which they in fact are registered.

13 MR. CROWELL: That's correct.

14 COMM. PATTERSON: And if a person is a
15 member of a recognized party that is not particularly
16 popular in New York, he or she can be silent, but cannot
17 say independent, right? Independent literally means not
18 registered with an affiliation in a party, correct?

19 DR. GARTNER: Yes.

20 COMM. PATTERSON: That's the way I read
21 this, I think that's the intent.

22 MR. CROWELL: That is correct.

23 COMM. PATTERSON: I think the intent is to
24 make sure if somebody puts his or her party designation
25 on the ballot, it really, truly is that person's party

1 and not just a name that that person wants appended
2 because it might be more politically attractive to the
3 voters in that district.

4 MR. CROWELL: It was written expressly to
5 account for a lot of that which we heard.

6 COMM. PATTERSON: So if you say you're
7 independent, you really have to be independent.

8 MR. CROWELL: Yes.

9 COMM. PATTERSON: You can't be independent
10 or a Republican, which I think were the issues that were
11 raised.

12 DR. GARTNER: Or any other unpopular party.

13 COMM. PATTERSON: Those were the two parties
14 that were specifically mentioned.

15 COMM. NEWMAN: Is that true? Because the
16 way I read this, what I read is you can self-designate
17 your party, or if you choose not to, meaning you're
18 Conservative and you don't want people to know it, you
19 can go into the independent/unaffiliated party.

20 COMM. PATTERSON: It's a registration
21 status, is what I was getting to. You have to be
22 registered independent in order to call yourself
23 independent.

24 COMM. NEWMAN: So that means that
25 everybody's party affiliation will be listed.

1 COMM. PATTERSON: Not necessarily. You
2 could say nothing.

3 CHAIRMAN MACCHIAROLA: You choose your party
4 affiliation.

5 MR. CROWELL: We expressly wrote as
6 registration status. So you can operate not to have
7 your registration status. You wouldn't be able to label
8 yourself as independent.

9 COMM. NEWMAN: So it would say nothing.

10 MR. CROWELL: It would be blank, yes.

11 DR. GARTNER: And there would obviously be
12 some other candidate who will say, "How come Steve
13 Newman chooses to deny his membership in the Applesauce
14 Party."

15 CHAIRMAN MACCHIAROLA: Ultimate First
16 Amendment opportunity.

17 COMM. NEWMAN: Okay. There are people
18 registered as independents and there are people who are
19 registered with the Independence Party.

20 COMM. NORAT: Independents, Independence.

21 COMM. NEWMAN: How do we deal with the
22 confusion over that?

23 MR. CROWELL: If you look at the explicit
24 language that we have on page 12 in Section 69, the
25 independent registration status would be known as

1 independent/unaffiliated, and that's why we have it in
2 quotation marks and therefore in addressing a number of
3 concerns we heard from the Commission as well as from
4 the public that, would address the concern about
5 confusion between the Independence Party and someone who
6 is registered as independent. Pardon my enunciation.

7 COMM. NEWMAN: That's what I was getting at.

8 MR. CROWELL: That's what I was getting at.

9 CHAIRMAN MACCHIAROLA: Another thing to do
10 is strike "independent" and make it "unaffiliated." A
11 person's political status is unaffiliated and you put
12 that in parenthesis, "(unaffiliated.)"

13 MR. CROWELL: I think we felt that
14 "independent" is in the Election Law, it's implied.
15 It's the practice of the Board of Elections.

16 CHAIRMAN MACCHIAROLA: We've already heard
17 testimony from the Board of Elections, so you have a
18 sense of how serious people take their intent. If
19 someone's unaffiliated, they're unaffiliated. If the
20 Board -- it's what I remember, Alan, in special
21 education, when the youngsters were moved from special
22 education into the mainstream, the old Board of
23 Education classified them as -- do you remember what
24 that classification was? What was the word they used?
25 They used -- go ahead, tell me.

1 DR. GARTNER: I don't remember.

2 CHAIRMAN MACCHIAROLA: They used a word to
3 describe someone who was promoted from special ed into
4 regular ed. They called them --

5 COMM. NEWMAN: Mainstreamed.

6 DR. GARTNER: The word was, as if it were a
7 dropout.

8 COMM. NEWMAN: No, because mainstreaming
9 would be positive.

10 CHAIRMAN MACCHIAROLA: Someone who was
11 successfully mainstreamed and they got a diploma, they
12 called it attrition. We labeled it success. Crazy. So
13 if the Board of Elections labeled someone unaffiliated
14 as independent and there's an Independence Party, why
15 should we permit that confusion? Just put
16 "unaffiliated."

17 COMM. PATTERSON: Can I ask a very simple
18 question? I hope it's simple.

19 CHAIRMAN MACCHIAROLA: Your very simple
20 questions always required confused, compound answers.

21 COMM. PATTERSON: When somebody fills out
22 his or her registration to vote, there are boxes you can
23 check at the bottom. I walked my son through it about a
24 year ago, so -- because he got to register when he got
25 his driver's license.

1 Don't those, isn't one of those boxes
2 "independent" with a T or not?

3 MR. FISHER: We checked it recently, I
4 believe it says "I choose not to be enrolled in a
5 party."

6 COMM. PATTERSON: If somebody checks
7 independent, because they don't want to be in a party --

8 MR. CROWELL: The reality is people consider
9 themselves independent, in the context out there in the
10 greater political world. That's what we tried to
11 embrace here. You have the independent nominating
12 petition, so we chose independent/unaffiliated. The
13 Commission, obviously, can choose something otherwise.

14 CHAIRMAN MACCHIAROLA: Unaffiliated makes it
15 easier. This way people -- if you're in the
16 Independence Party, say Independence Party, not worry
17 people are going to be confused.

18 COMM. NORAT: I've been struggling with this
19 question now for weeks, since the Mayor put it on the
20 table --

21 CHAIRMAN MACCHIAROLA: Whoa, whoa, that's
22 the larger question. We'll get to the larger question.

23 COMM. NORAT: I was going to say to you, my
24 position has just been solidified by the amount of
25 conversation that it took to figure out should we put

1 this, or that, or this, or that and figure it out. I
2 can wait until we get to the second part, but I can only
3 tell you this solidifies my position.

4 CHAIRMAN MACCHIAROLA: Let's get to the
5 second part, because this may be an abstract issue. Do
6 we want the names of the parties listed on the ballot?
7 We can have discussion and then we could have a vote,
8 then we can have a vote and get a show of hands.

9 As I said, this meeting can go on until
10 Thursday or we could --

11 COMM. LYNCH: I am concerned we haven't done
12 enough research on this, and I'm prepared to vote no on
13 this.

14 CHAIRMAN MACCHIAROLA: On putting the party
15 down?

16 COMM. LYNCH: Yes.

17 COMM. NEWMAN: I'm strongly for it. I
18 believe when people run for government office, it's a
19 political process and if people belong to parties that
20 they should have a right to identify themselves with
21 that party, recognizing that there will be multiple
22 candidates from some parties in races, because to me the
23 benefit of non-partisan elections is getting all
24 registered voters involved in making the selection of
25 public positions.

1 CHAIRMAN MACCHIAROLA: I'm going to go
2 around the room and ask all of you. Then when I get a
3 sense I will put the question forward that I think the
4 majority will support. Mr. Siegel?

5 COMM. SIEGEL: Pass.

6 CHAIRMAN MACCHIAROLA: What does that mean?

7 COMM. SIEGEL: As in poker.

8 (Laughter.)

9 CHAIRMAN MACCHIAROLA: Oh, my goodness.
10 Bill, you already told us, you said no.

11 COMM. GARCIA: No.

12 COMM. GATLING: Yes.

13 COMM. KHALID: Yes.

14 COMM. NORAT: No.

15 COMM. O'HARE: Yes.

16 COMM. PATTERSON: Which is the no and which
17 is the yes? I view it as comparable to First Amendment
18 issue. I don't see -- I think the candidate should have
19 the right to have himself or herself identified as a
20 member of a party, and if he can do it in a campaign
21 speech, I think it's a very logical extension to say,
22 and we can't stop him from doing it in a campaign
23 speech, I think it's a logical extension to say he can
24 put it on the ballot.

25 COMM. NORAT: If I may say, there's many

1 things they can do up to the law in the voting booth and
2 there are many things they're no longer allowed to do
3 like electioneer.

4 COMM. PATTERSON: But that's more focused on
5 voter intimidation, which I don't think happens when
6 you're alone in the booth and staring at a sheet.
7 That's why I think there's very legitimate policy rules
8 that say people handing out pamphlets have to stay 500
9 feet from the polling place. It doesn't stand between
10 you and the sheet.

11 COMM. NORAT: I give more credit to voters.
12 I think if we're doing non-partisan and we want to put
13 all the names on an equal footing, then we're just
14 complicating by saying now some will have parties,
15 others won't. I think it kind of defeats the purpose of
16 everything we've worked for on this non-partisan issue.

17 COMM. GARCIA: Another way to look at it,
18 let's say if eight Democrats, including myself, were
19 running for city office and obviously everyone has a
20 choice, but if the other 17 candidates put their party
21 labels in a Democratic district, I'd be crazy not to do
22 it. So I almost view it as akin to advertising, which I
23 don't think belongs in an election booth.

24 CHAIRMAN MACCHIAROLA: Okay. I think this
25 is an issue which we've discussed. This is not a

1 mystery issue, so we don't need an hour discussion on
2 it.

3 So I'm going to put before the house the
4 proposal as I hear it, and I'm waiting for Fred to
5 decide, but he's not going to pass.

6 COMM. SIEGEL: I'll raise.

7 CHAIRMAN MACCHIAROLA: I'm going to put
8 before the house that we put the identification down,
9 and if that vote passes, then that's where we are.
10 Mr. Newman?

11 COMM. NEWMAN: Yes.

12 COMM. SIEGEL: Yes.

13 COMM. LYNCH: I'm still concerned that we
14 have not done enough research on this. The only place
15 we know this takes place is in Jacksonville, and I've
16 been told since I heard about Jacksonville, Florida,
17 that it's done in Minneapolis and it's done in New
18 Orleans as the other two places that this is done. And
19 I would like to get more information about it. So right
20 now, I vote no.

21 COMM. GARCIA: No.

22 COMM. GATLING: Yes.

23 COMM. KHALID: Yes.

24 COMM. NORAT: No.

25 FATHER O'HARE: Yes.

1 COMM. PATTERSON: Yes.

2 CHAIRMAN MACCHIAROLA: Yes. So the answer
3 is yes.

4 DR. GARTNER: Let me, could I answer
5 Commissioner Lynch's question? Two pieces of
6 information. Minneapolis has a system which allows the
7 candidate to put any three words. You can use your own
8 imagination to think it up.

9 COMM. PATTERSON: But no happy faces.

10 COMM. SIEGEL: That's because it's
11 Democratic, Farm or Labor.

12 DR. GARTNER: I assume the three come from
13 Democratic, Farm or Labor, which is one party in the
14 State of Minnesota, but for whatever that's worth, the
15 best example or the most looked at example is
16 Jacksonville.

17 There was a study done by another
18 jurisdiction that was considering non-partisan elections
19 and they reported that of all the cities of a comparable
20 size, Jacksonville had the highest turnout, and they
21 attributed it to the non-partisan election in
22 Jacksonville, not this particular feature necessarily.
23 It is an interesting feature. I think there's not much
24 more research to be done.

25 CHAIRMAN MACCHIAROLA: I just want to

1 comment that if there's any reason to move forward, I
2 certainly don't want to bump next year's Charter
3 proposals from the ballot, so we better make sure we put
4 it on the ballot this year, so we can have less size to
5 consider. Okay.

6 MR. CROWELL: We should go back to Section
7 67 quickly.

8 CHAIRMAN MACCHIAROLA: Okay.

9 COMM. NEWMAN: Just a technical question on
10 this. There are a couple of political parties that
11 didn't get sufficient votes to retain their ballot
12 lines, the Liberals, the Greens, one or two others;
13 Right to Life, is that true?

14 CHAIRMAN MACCHIAROLA: They're recognized
15 parties.

16 COMM. NEWMAN: But they still are allowed,
17 the Court ruled last week that they're still allowed to
18 retain their party registrations, so I assume a
19 candidate from one of those parties will be able to list
20 that party, because they're still registered.

21 MR. CROWELL: Provided that a party is, that
22 people are allowed to retain those party registrations
23 that would require their circumstance, absolutely.

24 COMM. PATTERSON: Another point of
25 clarification on this. A lot of times it's noted that

1 candidates received endorsements from a number of
2 political parties, but this proposal would require the
3 candidate to specify only that party in which he or she
4 is registered, if they choose to specify a designation.

5 MR. CROWELL: That's correct. However, they
6 would still be able to say what endorsements they got
7 through the Campaign Finance Board votes.

8 COMM. KHALID: But on the ballot there will
9 be only one.

10 MR. CROWELL: Their party of registration,
11 correct.

12 COMM. LYNCH: Can I put my designation on
13 the first round and not on the second or vice versa?

14 MR. CROWELL: No.

15 COMM. LYNCH: If I don't put it on the
16 first, can I then put it on the second?

17 MR. CROWELL: No. Again, the system is
18 designed to deter the kind of abuse that the Commission
19 and the public thought would arise. I think we've
20 adequately put safeguards in to guard against that.

21 CHAIRMAN MACCHIAROLA: Okay, we had a series
22 of discussions and what I would like to do is to
23 readdress those discussions, because I think the
24 discussions we had were not conclusive, and they were in
25 another piece, and those are discussion that come up --

1 well, bar on contributions from certain entities, which
2 is what we discussed before, but it does also affect --

3 DR. GARTNER: If I may -- Anthony had --

4 MR. CROWELL: We skipped Section 67, which
5 is important. That section --

6 CHAIRMAN MACCHIAROLA: But it's not on the
7 list?

8 MR. CROWELL: It's not on Alan's list.
9 You're not misbehaving, sir.

10 CHAIRMAN MACCHIAROLA: I'm not misbehaving.
11 Alan is misbehaving.

12 MR. CROWELL: You should know, we did not
13 anticipate using this list in the first instance, but
14 you got me, I'm going to make sure every gap is filled,
15 here, so --

16 All right, Section 67 provides for the
17 filling of the vacancies in a nomination after the
18 non-partisan primary election. Consistent with Election
19 Law 6150, vacancies that occur shortly before the
20 election are not able to be filled. Currently they're
21 not able to be filled by the vacancy committee. There's
22 provisions in the Election Law to govern that, when that
23 happens, if the name has to advance to the actual
24 general election. Nonetheless, if the vacancy can't be
25 filled, then a Committee to Fill Vacancy will have the

1 opportunity to fill the vacancy.

2 And here's the system that we're putting in
3 place when there is a vacancy in a nomination, such as
4 what we had, unfortunately, for Councilmember Davis. If
5 Councilmember Davis -- if a Councilmember were to --

6 CHAIRMAN MACCHIAROLA: In a non-partisan
7 election?

8 MR. CROWELL: Yes, were deceased, which had
9 died during their term in a non-partisan system, what
10 would happen is, would be that the person after, who
11 received the next largest votes in the primary would get
12 the nomination and go forward to the general election.
13 So --

14 CHAIRMAN MACCHIAROLA: No Committee on
15 Vacancies?

16 MR. CROWELL: There would not be a Committee
17 on Vacancies, unless there was no one who would actually
18 accept the nomination or who would, if there were no
19 other person, so -- it would go to a Committee on
20 Vacancies in those two instances. So what we'd do is
21 we'd take --

22 CHAIRMAN MACCHIAROLA: We're now applying a
23 change from a Committee on Vacancies Section when a
24 person authorizes someone to choose --

25 MR. CROWELL: Right.

1 CHAIRMAN MACCHIAROLA: And it's now no
2 committee --

3 MR. CROWELL: This is an option, this is a
4 policy choice that the Commission has to decide. It's
5 an option that embraces the kind of system that you've
6 created with non-partisan elections.

7 CHAIRMAN MACCHIAROLA: So everyone advances
8 to the ballot.

9 MR. CROWELL: People advance.

10 CHAIRMAN MACCHIAROLA: Suppose there are no
11 other candidates?

12 DR. GARTNER: Let me just walk through that.
13 We felt as a policy decision and it's appropriate for
14 the Commission to think about it, that it was more small
15 d democratic to look at what the voters had done in the
16 primary election. We're looking at between the first
17 and second round, where there's been an election, where
18 someone has been selected for moving ahead and that
19 person is no longer available, we then turn to the next
20 person who got the next highest number of votes.

21 If there is either no such person or that
22 person declines the opportunity to move forward then you
23 have no next person, as it were, then a Committee of
24 Vacancies structure is empaneled.

25 CHAIRMAN MACCHIAROLA: But this situation

1 with Councilman Davis, there was no primary.

2 MR. CROWELL: There was no primary, but I'm
3 giving you an example if you had a deceased
4 Councilmember --

5 DR. GARTNER: Davis is not a good example.

6 CHAIRMAN MACCHIAROLA: Because I do think
7 when a Councilmember is on the ballot --

8 MR. CROWELL: You would have to have a
9 Committee on Vacancies for preprimary.

10 CHAIRMAN MACCHIAROLA: If a person doesn't
11 make it to the primary election, then the Committee on
12 Vacancy should choose a candidate.

13 MR. CROWELL: I choose Councilman Davis only
14 because that's where most people have recently learned
15 about the Committee on Vacancies.

16 CHAIRMAN MACCHIAROLA: It's sort of like
17 using a sneaker when you really meant a shoe; is that
18 right?

19 MR. CROWELL: I suppose.

20 CHAIRMAN MACCHIAROLA: All right, so what
21 this does is provide in a primary election, the top two
22 candidates chosen to move forward and if one of those
23 candidates, first or second candidate doesn't make it
24 for reasons of vacancy, that the replacement will be the
25 person who was third in the primary election. Okay.

1 Commissioner Newman?

2 COMM. NEWMAN: I actually don't think it is
3 democratic. Presumably candidates stand for something,
4 and the candidate who died's Committee on Vacancy may be
5 much more likely to stand for the same things than
6 whoever finished third. So I actually think what is
7 more democratic is the Committee on Vacancies, because
8 presumably the candidate acquiesced, though not
9 necessarily true in a party organization, but presumably
10 they acquiesced on whom the Committee on Vacancies were
11 and there were people who had to have somewhat or
12 reasonably similar views. That's why it's important.

13 I know in any campaigns I was ever involved
14 on running, I made sure we controlled the Committee on
15 Vacancies.

16 CHAIRMAN MACCHIAROLA: Does anyone disagree
17 with what Steve just said? Let's strike that.

18 COMM. SIEGEL: As I understand now, as it
19 stands, if between the September primary and the
20 November election, the leading candidate, the person who
21 led in the first round dies, it doesn't matter, the
22 person who is second moves forward?

23 CHAIRMAN MACCHIAROLA: No, no, no. It goes
24 to a Committee on Vacancies. The Committee on
25 Vacancies--

1 COMM. PATTERSON: The person who is second
2 will move forward. It's the person who is third,
3 doesn't, unless we put this in.

4 COMM. NEWMAN: We, presumably if you
5 finished in the first two, there's no moving forward.

6 COMM. SIEGEL: Could I finish? So is the
7 logic of this, in case of one of those two passes away,
8 that the third place finisher is brought up to the tier
9 of the top two?

10 MR. CROWELL: That's right.

11 DR. GARTNER: That's what the staff proposed
12 and that's what the Commission rejected.

13 CHAIRMAN MACCHIAROLA: I asked, does anybody
14 disagree with what --

15 COMM. SIEGEL: That's why I'm going through
16 it. I do disagree with what Steve said. I do think the
17 original proposal makes sense, that you still have, it's
18 still in the hands of the voters rather than the hands
19 of the Committee on Vacancies. I think that's small d
20 democratic. Let the third move into the top tier and
21 the other -- it's not like we're controlling an outcome.

22 COMM. LYNCH: So you're in agreement --

23 COMM. SIEGEL: I'm in agreement with
24 Professor Crowell.

25 CHAIRMAN MACCHIAROLA: We have a discussion

1 now. Bill, go ahead.

2 COMM. LYNCH: I'm in agreement with Steve.
3 I don't agree that we should nullify the votes of the
4 second place person, so I want to go back to the old way
5 of a Committee on Vacancies.

6 COMM. PATTERSON: Can somebody explain to me
7 the procedure for the Committee on Vacancies, if let's
8 say the front runner dies in an election. In a
9 non-partisan circumstance, the number 2 person will
10 automatically go into the election anyway?

11 COMM. NEWMAN: That was always the person
12 who goes into the election automatically anyway.

13 CHAIRMAN MACCHIAROLA: If we were to apply
14 the rules that presently apply in partisan elections,
15 the rules that apply would be that the Committee on
16 Vacancies would put forward a new candidate, so that if
17 the Democrat, if in the Democratic primary, a Democrat
18 who won could not advance to the general election, the
19 Committee on Vacancies would select a candidate to run
20 on the Democratic line.

21 The procedure that I thought we would follow
22 would be basically the same thing, that a Committee on
23 Vacancies designated by the candidate would choose the
24 replacement for that candidate if that candidate was for
25 one or another reason disabled.

1 What staff has suggested is that, I believe
2 the basis for it, is that it is really the individual
3 that is being selected and therefore the vote, the voice
4 in the primary of those people who voted for those
5 candidates once one candidate is no longer available to
6 advance should be given, that place should be given to
7 the candidate to finish third so the top two contenders
8 would move forward and at least they would be people
9 that the voters considered. That's the logic behind it.
10 This came out of staff's --

11 COMM. SIEGEL: Frank, you said before the
12 Davis analogy wasn't apt. It's very apt. You have a
13 situation now where the Committee on Vacancies has
14 picked someone who is manifestly unfit to sit on the
15 panel.

16 CHAIRMAN MACCHIAROLA: The reason I said it
17 was good is that in the present case the Committee on
18 Vacancies would put forward -- we haven't had an
19 election. So the Committee on Vacancies would put the
20 candidate forward in the first election.

21 COMM. SIEGEL: I don't want to get into the
22 integuments here. Functionally, since other candidates
23 are knocked off -- part of the reason I'm in favor of
24 non-partisan elections is because of the way the game is
25 played. Functionally the candidate designated by the

1 Committee on Vacancies is very likely to be, even
2 though we haven't had an election, the next holder of
3 the seat. Because the other contender, Mr. Herbert, has
4 been knocked off the ballot. Seems to me the logic of
5 what Tony is talking about says, that because an
6 individual is well regarded, it doesn't mean that, and
7 Steve's assumption is therefore their point of view will
8 generally be represented. But Council races are not so
9 terribly ideological, by and large they revolve around
10 competence and community service. The way the Committee
11 on Vacancy works is the replacement could be someone of
12 let's say lesser character.

13 CHAIRMAN MACCHIAROLA: You're assuming that
14 the Committee on Vacancies is an instrument of the
15 political party?

16 COMM. SIEGEL: I'm not assuming that. I'm
17 assuming the Committee on Vacancies is an instrument of
18 the candidate.

19 CHAIRMAN MACCHIAROLA: If's an instrument of
20 the candidate and the candidate who is running has been
21 chosen by, decided to run and is selecting people to go
22 and carry petitions in a non-partisan framework, that
23 person has chosen a number of people to be on the
24 Committee on Vacancies that reflect the kind of support
25 that that person has. It can be an ideological, it

1 could be for whatever reason.

2 COMM. SIEGEL: Or just a family connection.

3 CHAIRMAN MACCHIAROLA: It's how some people
4 regard the Committee on Vacancies. Some people regard
5 it as part of the political operation, some people
6 regard it as part of the candidate's personal choices
7 and other people regard it differently. What we're
8 presuming here is that when the candidate is no longer
9 there, that any reason that the candidate had to be on
10 the ballot is lost because the candidate has
11 disappeared.

12 COMM. SIEGEL: That's the correct
13 presumption.

14 CHAIRMAN MACCHIAROLA: And that is not
15 necessarily the way in which a Committee on Vacancies
16 could be seen. It could be seen in another way.

17 When Steve made his presentation, I just, my
18 feeling was this was a big change coming very quickly,
19 so that's why I --

20 FATHER O'HARE: In a non-partisan election,
21 who selects the Committee on Vacancies?

22 CHAIRMAN MACCHIAROLA: The candidate.

23 FATHER O'HARE: Each candidate is going to
24 select his own Committee on Vacancies.

25 CHAIRMAN MACCHIAROLA: Usually the party

1 does it for you. They tell you just give a few bucks
2 over here and we'll --

3 COMM. NEWMAN: But that won't happen in this
4 context presumably.

5 CHAIRMAN MACCHIAROLA: Presumably we're
6 talking about a changed system. You come out of, Steve
7 comes out of the reform Democrat movement, so in Steve's
8 world, Committee on Vacancies was something taken quite
9 seriously and when a candidate chose a Committee on
10 Vacancy it was a candidate choice and it represented,
11 they probably had four meetings on it. That's why they
12 didn't win any elections.

13 COMM. NORAT: Twenty meetings.

14 CHAIRMAN MACCHIAROLA: So it has a different
15 meaning to you.

16 COMM. SIEGEL: It seems to me the logic of
17 Anthony's position is that it is more democratic to
18 allow someone who has been voted for to enter the
19 process than to allow --

20 CHAIRMAN MACCHIAROLA: Voted for and
21 rejected.

22 COMM. SIEGEL: Not rejected.

23 COMM. NEWMAN: How about I conjure up a
24 three way race, 36-45-9. Should we advance to the final
25 election the person who got 9 percent or the

1 replacement--

2 CHAIRMAN MACCHIAROLA: What about 32-32-31.

3 MR. CROWELL: We thought about that, it was
4 of concern and the idea was that the voters ultimately
5 got a chance to decide again that the 9 percent was 9
6 percent.

7 COMM. NEWMAN: But the designee of that 45
8 or 46 percent might turn out to be, more than likely
9 will turn out to be a viable candidate because there's a
10 viable political organization that has been created on
11 behalf of a group of people.

12 CHAIRMAN MACCHIAROLA: Does any other
13 Commissioner except Fred, Steve and myself want to say
14 anything?

15 COMM. NORAT: I have a concern because I
16 think the way Steve put it is a perfect description if
17 we lived in a perfect world but I think the real world
18 is more like what Fred said and I am not making any
19 comments on whether Mr. Davis' replacement is acceptable
20 or not because I don't live there and I don't know
21 either one of them. I will tell you this: I am
22 getting a little concerned about the way the City has
23 gone into that royalty of bringing the family of
24 everybody who gets elected into the office. We had term
25 limits so we could now put in the daughters, the sons,

1 and I'm not sure -- that probably would not have
2 happened if the Steve world of the way he's thinking of
3 the purity of the Committee of Vacancies the appropriate
4 people to choose the candidates, who will follow the
5 duties of the person who leaves the office.

6 So while I believe what Steve says in the
7 abstract, I'm more with Fred in the reality, I'm voting
8 with Fred because of the real world.

9 CHAIRMAN MACCHIAROLA: Way have a real mix.

10 COMM. GATLING: Fred's reality set in.

11 CHAIRMAN MACCHIAROLA: All right, let's call
12 the question, unless someone else wants to say
13 something. Okay, the proposal is to adopt the method
14 that was selected by the staff, and Steve, you get the
15 opportunity to cast the first negative vote.

16 COMM. NEWMAN: No.

17 COMM. SIEGEL: Yes.

18 COMM. LYNCH: No.

19 COMM. GARCIA: Yes.

20 COMM. GATLING: Yes.

21 COMM. KHALID: Yes.

22 COMM. NORAT: Yes.

23 FATHER O'HARE: No.

24 COMM. PATTERSON: Yes.

25 CHAIRMAN MACCHIAROLA: Yes. Yes carries.

1 Okay. Now -- I thought we could roll past
2 that one.

3 DR. GARTNER: You could see why the
4 executive director excluded it. I knew it was there. I
5 thought it was a minor matter. Forgive my error.

6 At the last meeting of the Commission, you
7 discussed under the topic of campaign finance a
8 two-pronged effort. One to instruct assuming the voters
9 adopt this in November, instruct the Campaign Finance
10 Board to develop rules to conduct a non-partisan
11 election, including the financing of it and attribution
12 schemes in that regard, and secondly, a provision that
13 would prohibit participating candidates from accepting
14 funds and the various synonyms for funds from a number
15 of entities. I'll get to those entities in a minute.

16 What we were concerned with is the issues
17 that were presented to the Commission and to the public
18 and the media from the Campaign Finance Board as to the
19 ability to regulate party expenditures, and as we
20 thought about that issue and responded to that issue, we
21 looked to the Campaign Finance Board work itself and
22 came upon the provision the Campaign Finance Board
23 developed following the 2000 election barring candidates
24 -- proposing to bar candidates who participated in a
25 campaign finance program from accepting contributions

1 from certain entities, corporations, partnerships,
2 limited liabilities, political committees, employee
3 organizations and other entities.

4 We thought that would be an appropriate
5 response to the campaign finance board's concerns which
6 was focused around the question of party response. We
7 heard from one of the Commissioners at the previous
8 meeting that that was undesirable from her point of
9 view, Commissioner Norat, and needless to say, we've
10 heard in the media about other entities that feel that
11 it's inappropriate for their role to be affected.

12 And so what I would like to present to you
13 is that you reconsider what it is you approved the last
14 time and in effect, bar only contributions, acceptance
15 of contributions from parties and party political
16 committees, so the section reads, "notwithstanding any
17 other provision of law, the Board shall prohibit
18 candidates participating in a voluntary system of
19 campaign finance reform from accepting, either directly
20 or indirectly, or by transfer a campaign contribution,
21 loan, guarantee or other security for such loan from any
22 corporation," that's, all this is in the current
23 language. This is in addition, "political party or a
24 committee of such a political party."

25 "The Board shall promulgate," now that

1 language is already there, "the Board shall promulgate
2 such rules as it deems necessary to implement and
3 administer this provision." So in short we're adding to
4 the bar on accepting contributions from corporations, a
5 bar on accepting contributions from parties or political
6 committees of parties. I think that is more narrowly
7 crafted and I think it speaks to the concern that we
8 heard from the Campaign Finance Board.

9 CHAIRMAN MACCHIAROLA: So labor unions and
10 worker PACs or PACs of worker groups, employees, are no
11 longer proscribed under your --

12 DR. GARTNER: Would no longer be affected,
13 correct.

14 CHAIRMAN MACCHIAROLA: Okay, so we're
15 rethinking the scope of that. Okay? Discussion?

16 COMM. LYNCH: How is that different from
17 what the Board does now? Are parties allowed to do it
18 now?

19 DR. GARTNER: Parties are allowed to do it
20 now, within certain limits. There's a contribution
21 limit on the amount of money that the candidate can
22 receive and there's a limit on the contribution limit.
23 What this would do would be to bar such contributions.

24 COMM. LYNCH: At all.

25 DR. GARTNER: At all, period.

1 MR. CROWELL: In both a non-partisan primary
2 and general election. Parties now are only barred in
3 the primary but not the general, because state law takes
4 care of the primary.

5 CHAIRMAN MACCHIAROLA: Okay? I think it
6 reflects the discussion that we had and it reflects
7 sensitivities to what difficulties were cited. On the
8 modification, could I have some discussion?

9 COMM. SIEGEL: Could I ask Alan a question?
10 Alan, why the modification?

11 DR. GARTNER: I think that, the word that
12 staff suggested was it could be overreached. I think
13 the concern that we had was responsive to the concern
14 expressed by Nicole and others about party
15 contributions.

16 Rather than crafting something that was
17 solely focused on that, we latched on to the
18 recommendation that the Campaign Finance Board developed
19 during the 2001 election and assumed -- I assumed that
20 was an appropriate solution. I think it was broader than
21 the problem we were addressing and I think listening to
22 what Cecilia had to say and listening to the response in
23 the newspaper and media and talking with people over the
24 past day, it would seem to me that that was overreaching
25 on our part.

1 CHAIRMAN MACCHIAROLA: I think one of the
2 things you want to do, we've been holding hearings,
3 we've been having meetings. There really are no
4 surprises. I don't think anyone is surprised by the
5 fact that we're coming up with resolutions of this kind.
6 I think this one was a surprise. I think this genuinely
7 caught people who assumed we would not be affecting the
8 contributions in such a way, and I think if this thing
9 is to be passed, then perhaps it's better to be passed
10 by others who spend more time addressing it, rather than
11 ourselves who I think might risk the, quite frankly,
12 risk the success of the whole program because it looks
13 like what you, on the one hand are doing, which is to
14 encourage First Amendment rights, now adopting campaign
15 finance restrictions that are probably more restrictive
16 than they have to be. So I think it's a sensitivity
17 that's been picked up, it's certainly been picked up in
18 the press, it was certainly communicated to me by a
19 number of people, including Cecilia and articulated at
20 the meeting, I have to say after we left I started
21 thinking about it myself.

22 COMM. LYNCH: Mr. Chairman, why do we have
23 to tamper with it at all. Why don't we leave it for the
24 Board to regulate. Don't they have regulations on this
25 now?

1 DR. GARTNER: They have some regulations
2 now. One of the responses from the Board has been that
3 they recognize it as a problem but don't know how to
4 resolve it.

5 COMM. LYNCH: I thought I heard that they
6 would figure out how to resolve it.

7 CHAIRMAN MACCHIAROLA: I don't think we're
8 telling them how to resolve it. What we're suggesting
9 it is that we affirm the obligation to deal with it.
10 There is nothing in the language that we are doing that
11 is adopting rules for the Campaign Finance Board. What
12 we are doing is telling the Campaign Finance Board that
13 we support the effort that they've already indicated
14 they want to do and we're supportive of that effort.
15 It's the kind of encouragement I think that's
16 appropriate to a body that is going to get a lot of
17 difficulty, face a lot of difficulty as they seek to
18 refine that section.

19 Having been a member of the Campaign Finance
20 Board, Father O'Hare having chaired it for many years,
21 that's not the warm and fuzzy place that you might
22 imagine that it is.

23 COMM. LYNCH: Mr. Chairman, you don't have
24 to tell me.

25 CHAIRMAN MACCHIAROLA: So whatever extent we

1 can give to the Campaign Finance Board as they make
2 these regulations, which Nicole has indicated they would
3 like to find a way to be able to do, so I think that's
4 the rationale. Is that --

5 DR. GARTNER: Yes, sir.

6 COMM. GARCIA: Have we had subsequent
7 conversations with the Campaign Finance Board about the
8 narrower approach? Because originally the language is
9 what they originally proposed.

10 FATHER O'HARE: That language was proposed
11 and they took the context. It wasn't after the 2001
12 election but after the 1998 Charter Revision Commission
13 where the Board proposed a prohibition not just on
14 corporations but also labor unions, PACs, so that was in
15 a different context and the Charter Revision Commission
16 acted at that time only to bar contributions from
17 corporations. I myself believe that the Campaign
18 Finance Board does not have to be instructed by the
19 Charter Revision Commission to develop regulations that
20 won consistent with any changes you're going to make
21 which is why I would vote against this proposal.

22 CHAIRMAN MACCHIAROLA: Well, are you of the
23 feeling that this is so substantial that it should be
24 done?

25 DR. GARTNER: Yes, I would recommend that

1 you do it, yes, with this narrower focus.

2 COMM. NORAT: Just one clarification. The
3 parties cannot spend the money on a candidate, is that
4 correct?

5 DR. GARTNER: That's correct.

6 COMM. NORAT: But they can spend the money
7 on issues or whatever they want.

8 CHAIRMAN MACCHIAROLA: Well, do we have to
9 bring the Campaign Finance Board into it at all?

10 MR. CROWELL: The Campaign Finance Board
11 can't establish rules unless it's explicitly provided
12 for in the Charter or the Administrative Code. That's
13 the only way that -- it's not provided explicitly they
14 have in this area.

15 CHAIRMAN MACCHIAROLA: If they choose to do
16 it, can they do it right now?

17 MR. CROWELL: No.

18 CHAIRMAN MACCHIAROLA: So why don't we give
19 them the opportunity to do it but not instruct them, but
20 give them the opportunity.

21 MR. CROWELL: They could not ban party
22 contributions. They need legal authorization to adopt
23 rules.

24 CHAIRMAN MACCHIAROLA: Why don't we give
25 them the authority to do it and leave out the rules, let

1 them figure it out. Say that the contribution of
2 political campaigns in the following way are prohibited.

3 DR. GARTNER: Excuse me, that's what we say.
4 We say they're prohibited and then in the last sentence
5 we say the Board should promulgate the rules as it deems
6 necessary. We don't tell them how to do their business
7 but set the policy.

8 MR. CROWELL: It's a mere authorization to
9 do it in this area.

10 CHAIRMAN MACCHIAROLA: How does that sound?
11 Sound better?

12 FATHER O'HARE: I'm not sure the Charter can
13 authorize the Campaign Finance Board to make these
14 restrictions, if it would be sustained in court.

15 CHAIRMAN MACCHIAROLA: We would only
16 authorize to make legal restrictions. If they determine
17 that they lack the legal authority to do it, we can't do
18 it. So you're not telling them to have to do it.
19 You're telling them they're authorized to do it, if they
20 choose to do it and can do it fine, if they choose not
21 to do it, fine, and if they can't do it because there's
22 a legal prohibition, that's also fine.

23 MR. CROWELL: I just wanted to address
24 Father O'Hare's point that this is the voluntary
25 campaign finance system. If they had the legal

1 authority to develop the rules to do the ban, because
2 it's a voluntary system, I don't see where there would
3 be any Constitutional problems with it.

4 CHAIRMAN MACCHIAROLA: By the same token if
5 they choose to do that, if we told the candidates they
6 couldn't accept it, they would be prevented from
7 accepting these contributions regardless of whether the
8 campaign finance mechanisms were put in place.

9 DR. GARTNER: Yes.

10 CHAIRMAN MACCHIAROLA: So it does make a
11 difference, then. It does make a difference that we put
12 this forward.

13 DR. GARTNER: Yes, it does.

14 MR. CROWELL: That we put it forward, yes.

15 CHAIRMAN MACCHIAROLA: Okay, any further
16 discussion on this point.

17 COMM. NORAT: Just one question. I got lost
18 there. What do you mean by if the campaign finance --

19 CHAIRMAN MACCHIAROLA: The Campaign Finance
20 Board were to implement certain rules, they are -- we
21 now say if you wish to participate in a political
22 campaign if you're running in a non-partisan election,
23 you can not accept, and we go through the list of those
24 exceptions.

25 COMM. NORAT: Even if I choose not to make

1 myself --

2 CHAIRMAN MACCHIAROLA: If you choose not to
3 participate in the scheme of things we can't regulate
4 that.

5 DR. GARTNER: This only affects people who
6 voluntarily participate in the campaign finance program.

7 MR. CROWELL: I think there's a lot of
8 confusion. First off in state law there's already a ban
9 on contributions in the primary. I just want to clarify
10 that. The only thing is the language as we have it
11 requires the Campaign Finance Board to promulgate these
12 rules. That would, it's not just authorizing them, it's
13 a requirement. That's in our original draft.

14 CHAIRMAN MACCHIAROLA: If they conclude that
15 they can't do it because it violates an inability to do
16 it, what can we then require?

17 MR. FISHER: You can get into whether it's
18 their place to conclude that.

19 CHAIRMAN MACCHIAROLA: Are there provisions
20 in the City Charter where agencies are empowered to do
21 things where they haven't done them?

22 MR. FISHER: This is like true confessions.

23 CHAIRMAN MACCHIAROLA: We would be here to
24 Thursday if you listed them.

25 MR. FISHER: Ordinarily, agencies will

1 approach the Corporation Counsel and ask whether they
2 have the authority to do it. I think based on the fact
3 that corporate contributions have already been banned
4 based on the voluntary nature of the program, I think we
5 think it's likely that there is authority to restrict --
6 campaigns are free not to participate in the program.

7 CHAIRMAN MACCHIAROLA: Then you provide
8 assistance to the Campaign Finance Board to permit them
9 to go forward with the authorization that we've now
10 given. Is that --

11 MR. FISHER: Yes, although I would
12 characterize it as a mandate not an authorization. The
13 way it's drafted now. You can change it obviously.

14 CHAIRMAN MACCHIAROLA: If we wish it to
15 occur we've got to make it occur by way of a mandate, I
16 would think, to limit contributions to political
17 parties.

18 COMM. SIEGEL: Could I ask Alan to read the
19 new provision again?

20 DR. GARTNER: Yes. Notwithstanding any other
21 provision of law, the Board shall prohibit candidates
22 participating in the voluntary system of campaign
23 finance reform from accepting either directly or
24 indirectly or by transfer a campaign contribution, loan,
25 guarantee or other security for such loan, from any

1 corporation. That's the current language. We add,
2 "from any corporation or political party or committee of
3 a political party," period. Again now back to the
4 current language. "The Board shall promulgate such
5 rules as it deems necessary to implement and administer
6 this provision.

7 MR. CROWELL: So we took the mandatory
8 language on the corporation and added to it political
9 party.

10 COMM. GARCIA: Anthony, the State
11 prohibition against party contributions in primaries,
12 does it stop at parties or does it expand to other
13 entities?

14 MR. CROWELL: It's parties.

15 COMM. NORAT: The State has very few
16 limitations.

17 CHAIRMAN MACCHIAROLA: Aren't organizations
18 barred?

19 COMM. NORAT: No, \$5,000 a company.

20 CHAIRMAN MACCHIAROLA: It's a very highly
21 ethical system of campaign finance in New York State.
22 Okay.

23 COMM. LYNCH: Mr. Chairman?

24 CHAIRMAN MACCHIAROLA: Yes, sir.

25 COMM. LYNCH: If a party endorses a

1 candidate, does that mean they can't spend any money
2 advertising that they've endorsed that candidate? Is
3 that what this section means?

4 MR. CROWELL: Can you repeat your question?
5 Can they --

6 COMM. LYNCH: If a party endorses a
7 candidate, can they spend resources advertising that
8 they have endorsed this candidate? Can they buy ads,
9 can they advertise?

10 MR. FISHER: It would depends upon whether
11 that constitutes a contribution.

12 MR. CROWELL: This is a tricky thing. It
13 depends on how it's done and whether it would be deemed
14 to be a contribution to that candidate.

15 COMM. LYNCH: You don't need to put that in
16 the rules.

17 FATHER O'HARE: The point is whether that
18 candidate's spending would be a contribution. You're
19 saying they can't accept contributions. The whole point
20 is whether this is independent or coordinated spending.
21 So the party, it seems to me, can't be prevented from
22 advertising on behalf of a candidate. The candidate
23 says I'm not accepting a contribution, that's they're
24 free, they can do with their money whatever they want.

25 DR. GARTNER: If the party endorses someone

1 but goes its own merry way, as it were, in expressing
2 that support, unless it can be attributed to that party,
3 then that's an independent expenditure, and the
4 candidate him or herself could use legally raised money
5 to inform the voters that he or she has been endorsed by
6 the party.

7 CHAIRMAN MACCHIAROLA: Can I ask a question?

8 COMM. LYNCH: That's no different than what
9 it is now.

10 DR. GARTNER: That's correct.

11 COMM. LYNCH: So what are we --

12 DR. GARTNER: What we are saying is that the
13 party cannot make a direct contribution to the candidate
14 who voluntarily is participating in the campaign finance
15 program.

16 FATHER O'HARE: The present system, Bill,
17 the party designates the candidate. It is now a
18 partisan primary. Then there is a presumption that has
19 been invoked a few times, that that is not really an
20 independent spending, but it's really a contribution to
21 the candidate in kind. Once you break a connection
22 between the party nominating somebody, designating them,
23 you can't invoke that presumption.

24 CHAIRMAN MACCHIAROLA: Father, how does that
25 come to the attention of the Campaign Finance Board when

1 the issue --

2 FATHER O'HARE: Generally when another
3 candidate --

4 CHAIRMAN MACCHIAROLA: So when another
5 candidate in an election objects to the political
6 spending that they've uncovered, because you're not
7 sending your own people out, then that question comes
8 from the Board to adjudicate once it has the facts
9 whether that's occurred or not.

10 In how many instances has the adjudication
11 by the Board that this is a legitimate or this is an
12 inappropriate expenditure, one on each side, how many
13 times has that been tested in the Courts and the
14 Campaign Finance Board was found wanting in the
15 jurisdictions to address the issue.

16 FATHER O'HARE: I can't recall.

17 CHAIRMAN MACCHIAROLA: My sense it has never
18 has. I don't know if you know the answer to the
19 question, that once the finance board made the
20 determination the candidate seeking the funds comply
21 with the request of the campaign --

22 MR. FISHER: I don't know if that particular
23 issue has been litigated.

24 MR. CROWELL: I'm not sure it has been
25 litigated.

1 CHAIRMAN MACCHIAROLA: The reason I ask the
2 question is my sense is, if the Campaign Finance Board
3 chooses to put rules forward that it sees fit, that
4 would address these abuses -- if the Campaign Finance
5 Board determines they're abuses, we give them the
6 language, they determine it's abusive. My sense is,
7 maybe it's your leadership, but this is my sense, that
8 the moral authority of the Campaign Finance Board has
9 been more persuasive than the legal authority of the
10 Campaign Finance Board. People are willing to rest on
11 the assumption that this Board discharges its
12 responsibility.

13 FATHER O'HARE: I'm sure if this is decided
14 by the voters, that the Campaign Finance Board will
15 develop appropriate regulations. They came before us
16 with a concern. They're concerned. My objection is
17 that having been told it's a concern, we now instruct
18 them to solve it.

19 CHAIRMAN MACCHIAROLA: Well, I'm sure when
20 you were chairman, you told them how to solve it. Okay,
21 is there more discussion on this?

22 COMM. NEWMAN: I just want to understand the
23 present State law. The present State law bans
24 contributions by parties or it bans contributions by
25 parties to candidates?

1 MR. FISHER: It bans contributions on I
2 believe spending by parties in primaries. It's 2-126 I
3 think.

4 COMM. NEWMAN: So there's no assumption that
5 they can make independent expenditures.

6 MR. FISHER: Not in primaries.

7 CHAIRMAN MACCHIAROLA: It's probably the
8 most abused section of the law.

9 COMM. NEWMAN: There's no doubt that's true.

10 CHAIRMAN MACCHIAROLA: Having made
11 contributions to political clubs and parties that were
12 siphoning it off to their favorite primary candidates.

13 COMM. NEWMAN: But if that's true and that's
14 how the law is worded, wouldn't we be better off in
15 doing what we're doing for non-partisan elections to
16 communicate in essence that they're banned from making
17 contributions, whether direct or independent?

18 MR. CROWELL: If you recall, our proposed
19 language is two-fold. One to directly require the
20 Campaign Finance Board to develop rules for the
21 attribution of party expenditures and then the other
22 thing was the generalized ban. So there's a two part.
23 I believe what we've only been talking about is the
24 generalized ban at this point and not about the
25 attribution which we have had extensive discussion about

1 last week and --

2 FATHER O'HARE: You're banning party
3 contributions but you're not banning party spending.

4 DR. GARTNER: That's correct.

5 MR. CROWELL: Unless it can be attributed.

6 COMM. NEWMAN: If it's illegal, how can you
7 attribute it?

8 MR. CROWELL: Because it's not illegal in a
9 non-partisan primary.

10 CHAIRMAN MACCHIAROLA: It's not illegal for
11 the party to spend money.

12 COMM. NEWMAN: It's illegal for the party to
13 spend money on candidates.

14 DR. GARTNER: No it's only illegal for the
15 party to spend money on candidates if the Campaign
16 Finance Board can attribute that expenditure to the
17 candidate.

18 COMM. NEWMAN: Wouldn't it be more effective
19 to make it illegal for them to spend money on a
20 candidate?

21 MR. FISHER: We had issues -- the direct ban
22 of which you speak, which would not use the voluntary
23 campaign finance program that would be a direct ban
24 raises serious questions about the Commission's
25 authority to do that, both Constitutional authority and

1 Election Law authority to do that, and the City has
2 traditionally used the vehicle of the campaign finance
3 program to achieve these goals because that's not
4 clearly within the city's authority. That's the clearer
5 answer.

6 CHAIRMAN MACCHIAROLA: If you want to
7 participate in the campaign finance system, you waive
8 certain rights that you have. These are among the
9 rights that you waive, in return for the enormous
10 funding that comes from it. It is significant funding.
11 Okay.

12 COMM. NEWMAN: One more. Do we have a right
13 so the Campaign Finance Board doesn't have to make the
14 decision, to automatically attribute any political
15 party's expenditure on a candidate to that candidate?

16 DR. GARTNER: We don't do that.

17 COMM. NEWMAN: I know you don't. I'm asking
18 why not. He's not there anymore, but it would make
19 their life easy.

20 CHAIRMAN MACCHIAROLA: On what basis would
21 you implement that.

22 COMM. NEWMAN: If you found a flyer that was
23 for the candidate X put out by a political party on
24 behalf of candidate X.

25 CHAIRMAN MACCHIAROLA: Then what would

1 happen?

2 COMM. NEWMAN: The Campaign Finance Board
3 would no longer have to make the decision whether it was
4 independent or not, they would just have to calculate
5 the value of it and attribute it to the candidate.

6 CHAIRMAN MACCHIAROLA: That would be the
7 nice way to deal with the issue. Who is going to be
8 attributing what? Come on. All right. I think it's
9 overkill. Let's get this question before us. Phrase it
10 for us so that we can vote.

11 MR. CROWELL: Okay. Alan, why don't you
12 read the language. It would be -- okay we would be
13 amending the language that we originally took from the
14 Campaign Finance Board proposal and the new language
15 would say notwithstanding any other provision of law the
16 Board shall prohibit candidates participating in the
17 voluntary system of campaign finance reform from
18 accepting either directly indirectly or by transfer a
19 campaign contribution loan, guarantee or other security
20 for such loan from any corporation or political party or
21 committee of such party. The Board shall promulgate
22 such rules as it deems necessary to implement and
23 administer this provision.

24 CHAIRMAN MACCHIAROLA: Okay. On the
25 question. Mr. Newman?

1 COMM. NEWMAN: I abstain.

2 COMM. SIEGEL: Yes.

3 COMM. LYNCH: No.

4 COMM. GARCIA: Yes.

5 COMM. GATLING: Yes.

6 COMM. KHALID: Yes.

7 COMM. NORAT: Yes.

8 FATHER O'HARE: No.

9 COMM. PATTERSON: Yes.

10 CHAIRMAN MACCHIAROLA: I vote yes. Adopted.

11 Okay. When to take effect?

12 MR. CROWELL: We have to go back, actually.

13 CHAIRMAN MACCHIAROLA: Do you have more

14 sections?

15 MR. CROWELL: Yes.

16 CHAIRMAN MACCHIAROLA: Let's do the last one

17 on Alan's paper which is when to take effect. Okay, can

18 we do that? Would that do violence to your scheme?

19 MR. CROWELL: No, it certainly does not do

20 violence to anything. I think what we could do is, it

21 comes up in this, but go ahead.

22 CHAIRMAN MACCHIAROLA: Okay, well, when to

23 take effect, the election subsequent to the municipal

24 election of 2005. Any special elections, any other

25 elections, any called election after 2005 would be under

1 this system. Any discussion of that. Yes, sir.

2 COMM. NEWMAN: I'm not sure the Board of
3 Elections would be prepared to do this in 2006 or 2007.
4 The reason I was heavily supportive of 2009 besides the
5 political reasons was the operational reasons and I
6 don't think we want to create a system that has an early
7 test and fails.

8 COMM. NORAT: Don't they do it now for
9 special elections? And it's the only thing that could
10 happen.

11 CHAIRMAN MACCHIAROLA: The testimony from
12 the Board of Elections was you could do it in 2005. I
13 remember very few things that they said, but that one
14 they said very clearly. They could do it by 2005. So
15 dreaming up further executions for the Board of
16 Elections not to fulfill its mandated responsibility
17 when they've already acknowledged that they could --

18 COMM. NORAT: But we could possibly have a
19 special election citywide now and they'd have to deal
20 with it. Something happens to the Mayor --

21 CHAIRMAN MACCHIAROLA: They have to do it
22 now, present rules require non-partisan elections,
23 special elections.

24 COMM. NORAT: I'm saying, Bill is looking at
25 me --

1 COMM. LYNCH: Don't read my face. I'm
2 thinking about my wife.

3 CHAIRMAN MACCHIAROLA: The present Charter
4 provides special election for Mayor, all the other
5 offices, by non-partisan election.

6 MR. CROWELL: Right. Let me just point out
7 one thing. Depending on when a vacancy occurs, there is
8 a chance that the so-called special election would
9 actually be played out through a normal primary and
10 general election. What this proposal would do generally
11 is it would apply to the citywide election in 2009 most
12 likely. But in the event there is one of these special
13 elections that would require not your traditional
14 non-partisan special election that we've had in the
15 past, but this new kind, this primary and general
16 election, they work -- new system of non-partisan
17 elections would apply to those, so it could be '06, '07
18 or ' 08.

19 CHAIRMAN MACCHIAROLA: Okay, on the
20 resolution to apply it to any election subsequent to the
21 municipal election of 2005.

22 COMM. NEWMAN: No.

23 COMM. SIEGEL: Yes.

24 COMM. LYNCH: Pass.

25 COMM. GARCIA: Yes.

1 COMM. GATLING: Yes.

2 COMM. KHALID: Yes.

3 COMM. NORAT: Yes.

4 FATHER O'HARE: Yes.

5 COMM. PATTERSON: Yes.

6 CHAIRMAN MACCHIAROLA: Okay, yes. It
7 carries. Okay. Now, issues that you have on this.

8 MR. CROWELL: All right, let me go back to,
9 we have Section 70. Section 70, it follows the current
10 system that the Election Law sets out for the order of
11 names on ballots. The order of names on ballots now for
12 non-partisan primary elections and non-partisan general
13 elections, and that where it deviates is that the
14 section also would set forth the requirement that the
15 non-partisan elections be separated on the ballot from
16 partisan elections and be given prominence in a manner
17 comparable to the current election system. And so that
18 addresses the discussion we had at the July 22nd meeting
19 about requiring that the Board of Elections --

20 CHAIRMAN MACCHIAROLA: Trying to delegate to
21 the Judicial Conference --

22 MR. CROWELL: Not be given the first row.
23 It would be given in a comparable manner to the current
24 manner.

25 CHAIRMAN MACCHIAROLA: Any questions on this

1 do we need a vote?

2 COMM. NEWMAN: Yes.

3 COMM. SIEGEL: Yes.

4 COMM. LYNCH: Abstain.

5 COMM. GARCIA: Yes.

6 COMM. GATLING: Yes.

7 COMM. KHALID: Yes.

8 COMM. NORAT: Yes.

9 FATHER O'HARE: Yes.

10 COMM. PATTERSON: Yes.

11 CHAIRMAN MACCHIAROLA: Yes, okay.

12 MR. CROWELL: Section 71, you already voted

13 on that, pertains to the campaign finance provision.

14 Generally giving broad authority to the Campaign Finance
15 Board to promulgate rules to make the system work.

16 Section 72 -- there is actually a provision in 71 that I
17 will mention. It relates to the campaign finance
18 provisions and the Election Law. In general, the
19 subdivision A of Section 71 adopts the contribution
20 receipt limitation set forth in the Election Law, except
21 it makes them applicable to non-partisan primaries and
22 non-partisan general elections as opposed to partisan.

23 CHAIRMAN MACCHIAROLA: Do you need a vote on
24 that?

25 MR. CROWELL: Not unless anyone finds a

1 problem?

2 CHAIRMAN MACCHIAROLA: Any problems anyone
3 has? Okay.

4 MR. CROWELL: Okay, and then effectively, in
5 voting on your effective date for Section 72, Section 72
6 would make the non-partisan election system applicable
7 to the success rules in the event of vacancies in city
8 elective offices, so that would apply to your special
9 elections for non-partisan primary and general elections
10 to fill vacancies.

11 CHAIRMAN MACCHIAROLA: Okay.

12 MR. CROWELL: All of those are attached and
13 how it plays out are attached at the end of your
14 document. If you want to review them, beginning at --

15 MR. FISHER: There's a painful series of
16 vacancy provisions, they repeat themselves for every
17 office. They appear intricate, but it's the same thing
18 over and over.

19 CHAIRMAN MACCHIAROLA: I don't think we have
20 to vote on this. I realize you're not a lawyer in the
21 private sector, but these are how you get billable
22 hours, carried over into Government service.

23 Okay, is there anything else that's left
24 out?

25 MR. CROWELL: Well, yes, let's continue on

1 with Section 73. Section 73 covers particular
2 situations which will probably be infrequent, we should
3 note, in which violations of the Charter provisions
4 would occur in the absence any Election Law violations,
5 so what we do here is we create new misdemeanors that
6 address these situations similar to misdemeanors that
7 apply to the Election Law.

8 CHAIRMAN MACCHIAROLA: There's no
9 substantive change in what these violations are, it's
10 only made applicable to non-partisan elections.

11 MR. CROWELL: It similarly tracks to what
12 the Election Law does. It accounts for a system of
13 non-partisan elections.

14 CHAIRMAN MACCHIAROLA: We can pass a
15 resolution authorizing you guys to make conforming
16 language, as long as it doesn't change the intent of the
17 Charter.

18 MR. CROWELL: Okay. Section 74 and 75.
19 These sections which set forth the provisions of the
20 Election Law which are inapplicable or modified for the
21 purposes of non-partisan election under the chapter are
22 provided to avoid the situation illustrated in Behren
23 versus City of Rochester. In that case prior chapters
24 were not modified and superseded, which led Court of
25 Appeals to strike down that city's non-partisan election

1 system, notwithstanding the fact that the Court thought
2 that such a system could be legally adopted by Local
3 Law. Although the state's Home Rule law provisions have
4 been amended since Behren to provide that the failure to
5 specify the change or superseding State law provisions,
6 quote-unquote, "shall not effect the validity of such
7 Local Law," the Municipal Home Rule law Section 21,
8 since State law now requires that the locality specify
9 the effected section. So what we have done here is
10 specify with great detail those sections of the Election
11 Law which are superseding to avoid any legal challenge
12 on the grounds that we failed to do something similar to
13 Rochester.

14 CHAIRMAN MACCHIAROLA: Any discussion of
15 that? Hearing no discussion, that is adopted.

16 DR. GARTNER: What I would like to turn
17 before we break from the meeting to the hearing is we
18 have discussed I think nearly every time we've talked
19 about non-partisan election, a series of issues that
20 concern the Commission members and I think each of the
21 Commission members voiced concern about the topic, but
22 which was beyond the scope of the Charter, and in trying
23 to look at that, we've developed a series of draft
24 resolutions which we would like to present for your
25 consideration. We would see these being incorporated in

1 the Commission's final report and following up on them
2 with the people in Albany. It concerned several topics
3 that we talked b like same day voting, extending voting
4 periods, permanent resident voting for legal immigrants
5 and voting for people convicted of felonies. Do we have
6 enough, Bill?

7 COMM. LYNCH: We're one short.

8 CHAIRMAN MACCHIAROLA: Alan, these
9 resolutions, I guess, we've got a lot to put on our
10 plate under the deadline that we have. We have a
11 deadline putting questions on the ballot which will be
12 met by our meeting of August 25th.

13 DR. GARTNER: Correct.

14 CHAIRMAN MACCHIAROLA: Assuming that we get
15 it crafted and finish all that work, then we will have
16 discharged our responsibility to the, I guess whatever
17 agency the Board of Elections which would certify or put
18 these questions on the ballot.

19 DR. GARTNER: The City Clerk.

20 CHAIRMAN MACCHIAROLA: None of this concerns
21 that. So the deadline for this is not the same
22 deadline.

23 DR. GARTNER: Correct.

24 CHAIRMAN MACCHIAROLA: I suggest that we
25 defer this until after we've put everything else forward

1 so that we could craft and draft and see what should be
2 in this when we talk to people who might be interested
3 in giving us support for what we're talking about.

4 DR. GARTNER: I'm amenable to that and I'm
5 mindful of the schedule, to put it mildly. I don't want
6 to lose the larger picture that Commissioners have
7 raised of seeing access in the context of non-partisan
8 elections and access issues in these other areas as
9 well, and so I don't want anything that we do to
10 diminish the attention to this, even though it is not a
11 Charter issue as such.

12 CHAIRMAN MACCHIAROLA: What I am worried
13 about, is the enormous amount of confusion that has and
14 will continue to occur and if it looks like the Charter
15 Commission is in a terrain or territory, that these
16 resolutions, all of which have implications that go
17 beyond what we're dealing with, then go out into the
18 public arena before we've had the chance to put the
19 whole package of what we're submitting to the voters
20 together -- because this isn't going to be submitted to
21 the voters, it's going to be submitted to the
22 Legislature, first to the City Council if we're looking
23 for Home Rule message.

24 DR. GARTNER: Correct.

25 CHAIRMAN MACCHIAROLA: Then to the Mayor.

1 If we move it apart from this Charter process we have a
2 better chance of getting attention focused on this,
3 rather than lending it to what we're doing in the
4 Charter. So I'd like to --

5 COMM. LYNCH: Mr. Chairman, point of
6 clarification, couldn't we have this as part of the
7 Charter resolution, even though we have to have State
8 approval, can't New York City approve it by the voters--

9 CHAIRMAN MACCHIAROLA: No.

10 COMM. LYNCH: Then it's a Home Rule message.

11 CHAIRMAN MACCHIAROLA: We can't submit this
12 to the voters.

13 MR. CROWELL: No --

14 COMM. LYNCH: I'm slow and country now.
15 Let's do it one at a time.

16 CHAIRMAN MACCHIAROLA: We can't submit it to
17 the voters, this is outside of our jurisdiction. That's
18 what Corporation Counsel has told me.

19 COMM. LYNCH: I'm told that New York City as
20 part after Home Rule message can have the voters vote on
21 this and then it's sent up as part of a package.

22 MR. FISHER: The Home Rule message is
23 reserved to the local Legislative body which is not --
24 although the Charter Commission functions in some
25 respects similar to a local legislative body, the Home

1 Rule message -- we looked at this question once when
2 people said that. We could find no authority for the
3 Charter Commission to, quote, "deliver a Home Rule
4 message" and have the voters approve one. That role was
5 reserved to the City Council.

6 COMM. LYNCH: Let me strike the Home Rule
7 message from it. Can't the voters in New York adopt
8 these provisions and then they'd be sent to the State
9 Legislature for passage for New York City?

10 MR. CROWELL: No. Here's why. We looked at
11 this for you.

12 COMM. LYNCH: Okay.

13 MR. CROWELL: Effectively -- first off, the
14 Charter Commission should not put forward anything that
15 it believes it doesn't have the legal authority to
16 actually put into law, and that we know that we can't do
17 this, because these are things that are reserved solely
18 to the State Legislature or that require Constitutional
19 amendment. That's A.

20 B, effectively what you would be wasn'ting
21 to do is an opinion poll which is prohibited by State
22 law also. Because you would be wanting the voters to
23 say they support this and then send a message via that
24 vehicle to Alan. We looked into that. That also is
25 prohibited by State law and so anything, if the Charter

1 Commission were to make an attempt to do that, then this
2 would be eliminated likely from the ballot.

3 COMM. NORAT: I had one question. If what
4 Frank is proposing, leaving this until after we vote on
5 the question, what is the legality, once we put forth
6 what's going to go on the ballot, doesn't the Commission
7 cease to exist?

8 MR. CROWELL: No, you cease to exist at the
9 time the polls close on election day. The Commission's
10 authority is not limited to act after you vote to put
11 something on the ballot, in order to pass some sort of
12 resolution that wouldn't have any legally binding
13 effect. However, you may want to consider the import of
14 having these documents in your final report, which would
15 necessarily require filing along with the provisions to
16 the City Clerk on the date soon thereafter your August
17 25th meeting. So it may be in your best interests to
18 act sooner on these so these are properly incorporated
19 and reflected in that report rather than after.

20 CHAIRMAN MACCHIAROLA: Does our final report
21 have to be printed on the 25th?

22 MR. CROWELL: No, but it should be prepared
23 soon thereafter so it could be filed with the proper
24 amendments to the Charter and the ballot questions.

25 CHAIRMAN MACCHIAROLA: We're presenting a

1 legal document to the Board of Elections. We don't die
2 on the 25th. So within a week we could prepare another,
3 in another package and that package could be submitted
4 in a way that we're talking about.

5 MR. CROWELL: Submitted to Albany?

6 CHAIRMAN MACCHIAROLA: Submitted to whoever
7 we want to submit it to, and you guys tell us who it
8 would have the most effect. It could be done on August
9 29th, it could be done on September 3rd.

10 DR. GARTNER: Anthony is suggesting, and I
11 surely would recommend to you that one do not need to
12 act on it tonight. I think it is prudent to act on it
13 as part of the package that gets filed 60 days prior to
14 election day.

15 CHAIRMAN MACCHIAROLA: Why?

16 DR. GARTNER: Because I think it makes --
17 because it makes a coherent package of full access.

18 CHAIRMAN MACCHIAROLA: Why do you have to
19 present a coherent package on the day that you send it
20 to the Board of Elections when you have two months
21 between the time we submit those proposals and the time
22 the voters vote on them, to articulate our case?

23 DR. GARTNER: You don't have to do that.

24 MR. CROWELL: There's no legal reason, it
25 was just a recommendation.

1 CHAIRMAN MACCHIAROLA: That's what I'm
2 saying. No legal reason. I would like to get a
3 deadline of the 25th to get all the work that we have to
4 get done, done. And if we can do this by the 25th,
5 that's fine, too. I don't have a problem with it. I'm
6 just looking at what we have here in front of us
7 tonight, two days of hearings. We have more to do on
8 the registration, more to do for not-for-profits. Then
9 we've got testimony.

10 DR. GARTNER: We surely --

11 CHAIRMAN MACCHIAROLA: By the way, part of
12 what we want to do is get the ideas of other people who
13 are elected officials in this town and are willing to
14 support a package. I'd like that package rather than to
15 be our idea, to be more of a consensus backed. We've
16 held hearings on everything else. We've never held
17 hearings on this.

18 DR. GARTNER: If that's the body's wish,
19 let's move on.

20 COMM. LYNCH: Before you do, I have one last
21 simple question. Can we put it in the package that we
22 think is going to go to the State, isn't there one
23 provision that does not have to go to the State that is,
24 as it relates to non-citizens? Don't non-citizen
25 parents now have the right to vote in New York City?

1 DR. GARTNER: Per the State Education Law.
2 Excuse me, New York -- the Board of Education of the
3 City of New York could not have done that by itself,
4 when there was a Board of Education. It had to be done
5 as part of the State Education Law.

6 COMM. LYNCH: And I thought there was a
7 provision in the State Election Law to make that happen.
8 Why can't we use that provision now to put that item on
9 the ballot if we can't put the others on.

10 DR. GARTNER: I'm not familiar with that
11 provision -- I'm not familiar with any provision of the
12 State Election Law, if there is, I can check it out --

13 MR. CROWELL: I think the issue is that the
14 Community School Board elections are governed by the
15 Education Law now, there may be provisions in the
16 Election Law about qualifications for voters but the
17 Election Law per se doesn't authorize those people to
18 vote. It's expressly the Education Law that gives
19 parents of enrolled school children, regardless of
20 immigration status the ability to vote in those
21 elections. So it's a very narrow avenue that the State
22 Legislature has created for those parents to vote in
23 those circumstances rather than for political offices of
24 a municipality.

25 CHAIRMAN MACCHIAROLA: They also give the

1 parent the choice in voting in either the election in
2 the district in which the child goes to school or the
3 district in which the child is registered. Goes through
4 all kinds of confusion, because you're either a parent
5 voter or a citizen voter, you have a choice.

6 COMM. LYNCH: Mr. Chairman, I didn't mean to
7 cause any confusion here. I am not a lawyer. I try --

8 CHAIRMAN MACCHIAROLA: That's one of your
9 saving graces.

10 COMM. LYNCH: I try to hire my own experts
11 to help me with this. I am very frustrated with the
12 fact that I don't know enough about the intricacies of
13 this, but I'm very concerned that we're not moving
14 forward with the items that you just now brought, and
15 basically that's all I have to say about that.

16 CHAIRMAN MACCHIAROLA: I don't think the
17 intention is not to move forward. I think the intention
18 is to get to those issues when we absolutely have
19 deadlines and then to address those issues if we have
20 time and to do it in a timely fashion and to do it with
21 the kind of support that I think those issues deserve,
22 and I know that it will not get the support -- the
23 discussions I've had already, I know it will not get the
24 support of some of the leaders of the city, unless it's
25 a more jointly developed type of proposal we make. And

1 that discussion is firsthand, and what I don't want to
2 do is I don't want to be out the things that other
3 people want or can't claim some joint ownership of. I
4 would much rather see the Mayor's office, the Speaker
5 and other officials put support behind those proposals
6 we're going to propose.

7 MR. CROWELL: I would also like to say on
8 behalf of the staff, Commissioner Lynch, we have looked
9 at every angle backwards and forwards to try to
10 effectuate some of your proposals for the ballot and we
11 have not been able to find a legal means to do it.

12 CHAIRMAN MACCHIAROLA: Okay. Alan, we move
13 to questions --

14 DR. GARTNER: We have a number of public
15 officials who wanted to address the Commission.

16 CHAIRMAN MACCHIAROLA: Are we not to that
17 point yet?

18 DR. GARTNER: That's part of the mopping up,
19 as it were.

20 We had a discussion at the last meeting
21 about consumer affairs and some comment at the staff
22 meeting and I invited Commissioner Dykstra to come and
23 add additional information to what was left open. If
24 you want to call her as part of the hearing --

25 CHAIRMAN MACCHIAROLA: I think when we had

1 the discussion, the reasons we were not going to address
2 those questions had nothing to do with the merits as
3 much as it had to do with the desire for us not to get
4 into an additional enforcement, set of enforcement
5 issues and I tried to make that clear. I just am
6 fighting a clock and fighting a deadline here and I
7 don't think -- now, you are taking it upon yourself to
8 invite somebody to address us, you are the executive
9 director, I will --

10 DR. GARTNER: I did take it on myself. I
11 thought that was the Commission's wish. I would be
12 willing to have the Commission overrule that wish.

13 CHAIRMAN MACCHIAROLA: Well, go ahead.

14 DR. GARTNER: Is Commissioner Dykstra here?

15 COMM. NORAT: That solves that problem.

16 DR. GARTNER: So let me turn to procurement
17 issues.

18 There were two issues that were left open
19 regarding procurement. One was a discussion regarding
20 registration of contracts and there were proposals to
21 try to address the issue of the balance of
22 responsibility between the Mayor's office and the
23 Comptroller's office. I reported at the last three
24 meetings, I believe, that conversations were going on
25 between the office of the Mayor and the office of the

1 Comptroller. I was informed just before this meeting
2 began that the Mayor's office and the controller's
3 office have agreed and they have agreed to strike the
4 recommendation and to leave the status quo as it is, and
5 for them, for each of those offices to figure out how to
6 deal with it, rather than to accept the recommendation
7 that we made, and it's my recommendation to you that we
8 honor that agreement between the Mayor and the
9 Comptroller not to adopt any language.

10 CHAIRMAN MACCHIAROLA: Any objection to
11 removal of that language? All the parties agree, so
12 yes. In other words, we're keeping the language that's
13 presently in the Charter.

14 DR. GARTNER: That's correct.

15 CHAIRMAN MACCHIAROLA: And that's because
16 the Comptroller and the Mayor both think that's the most
17 advisable thing to do, and since the controversy is
18 between the Mayor and the Comptroller --

19 DR. GARTNER: It seems we should not stick
20 our nose to it.

21 CHAIRMAN MACCHIAROLA: If it ain't broke,
22 don't fix it. Okay.

23 COMM. NORAT: Maybe it's too broke.

24 CHAIRMAN MACCHIAROLA: It's too broke to be
25 fixed.

1 DR. GARTNER: Okay, on the not-for-profits.
2 I was asked and I have held meetings with a number of,
3 goodly number of senior officials concerned with
4 procurement and registration and the question was how
5 can we assure or how can we work towards not-for-profits
6 getting a fair shake in the registration of contracts
7 and in the payment for contracts.

8 What I want to report to you is that as a
9 result of meetings that ended just before this meeting
10 began, there will be presented, there can be presented
11 to you with your permission, remembering that Thursday
12 is another one of these double headers with a meeting,
13 if necessary, beforehand and a hearing afterwards, the
14 following set of recommendations: One of the problems
15 that many of the not-for-profits have is that their work
16 goes on from year to year, but in effect the work is
17 treated as a renewal or as a new contract with a new
18 RFP. The new RFP often is in effect for the same work
19 that the not-for-profit has done for many years before
20 and presumably done effectively if the City wants to
21 continue them. So one of the questions that would come
22 to you on Thursday is to reduce the frequency of the RFP
23 process, to allow the work to go forward, which would
24 reduce the burden both on the agency and on the
25 not-for-profit and would lead, the expectation is that

1 that would lead to less delay in the registration of
2 contracting and the payment on them.

3 Secondly, to shift from the permissive
4 language in the current Charter that authorizes the
5 Procurement Policy Board may issue rules in regard to
6 payment, we shift that to a mandatory "shall" and to
7 offer a tool box, if you will, of remedies that would be
8 worked out between the agency and the vendor, toll box
9 of remedies including advances, interest at the same
10 rate as interest is paid to any other vendor in the
11 city, and loans. Those are the provisions that would, I
12 believe, at least address the problem in a serious way.
13 The administration is working very hard trying to deal
14 with it.

15 On the administrative matters, I think the
16 other issues are in fact administrative matters, so my
17 recommendation to you is to allow the process to go
18 forward another 48 hours and hear what it is that the
19 administration can propose.

20 CHAIRMAN MACCHIAROLA: If we get language
21 that is proposed by then, we should have also vetted
22 that language with the various groups that you have
23 identified that brought to us this issue before?

24 DR. GARTNER: We will do it.

25 CHAIRMAN MACCHIAROLA: So they will also

1 have something to say, we'll be having a hearing as well
2 as a meeting, so we can adopt those proposals or at
3 least consider those proposals and then they will be
4 available for that meeting, so we'll hear their concerns
5 and let them have an opportunity to comment on it. Is
6 that a good procedure?

7 DR. GARTNER: That's a good procedure. And
8 it has in effect already begun. Marla Simpson with the
9 Mayor's Office of Contracts is here, and with the
10 Commission's permission I know she is prepared to talk
11 to the Commission about what it is proposed. I suspect
12 she would not find it the most terrible rejection in
13 life if she didn't.

14 CHAIRMAN MACCHIAROLA: Well, if it's
15 proceeding on the right course and it's working out,
16 then I think we don't need to gild a lilly here. Is
17 that fine with the Commissioners?

18 COMM. NEWMAN: I just have a question. In
19 talking about advances, interest and loans, when we talk
20 about interest, are we going to also be including in
21 that public reporting by agency of interest paid out?
22 Because what has made, or at least what I believe, what
23 has made prompt payment work so well for the City is not
24 the payment of interest, but the reporting of the
25 payment of interest.

1 DR. GARTNER: Marla, could you help me on
2 that?

3 MS. SIMPSON: I'm sorry, I don't want to
4 prolong this, but I would like to answer a couple of
5 questions just to put some number on this issue. At the
6 meeting that we had this afternoon, the one commitment
7 that we made that starts right away is that the current
8 prompt payment interest which pays for late payment on
9 invoices of registered contracts, that law which is in
10 effect now, the administration has agreed will change to
11 a uniform rate of interest across all codes which right
12 now is set at 3.125 that would be applicable to
13 everyone, that is a public number, but just to give some
14 sense to the Commission of what it means when you put
15 that kind of an interest provision into law and then try
16 to extend it as the remedy that somehow is going to fix
17 the very different problem of late contracting, right
18 now, on the codes that generate interest for prompt
19 payment of invoices the codes reflect about \$300,000 a
20 year in interest. That's not a huge number, but when
21 the City actually inputs at the agency level the data
22 that the law allows them to put in to adjust those
23 times, the actual amount of interest paid is below
24 80,000. So there is a huge amount of leeway between
25 what actually looks like the interest generated and what

1 is paid.

2 All of it's public and all of it will be
3 public under this system as well, but if the Commission
4 is moving into the direction of interest for late
5 contracts, thinking that that's going to have a
6 prophylactic effect on causing the agencies to make
7 those contracts happen more rapidly, we ran some numbers
8 on that idea too and the numbers you're going to
9 generate are not very large and are not going to
10 actually be of a magnitude that's likely to have the
11 effect that you're looking at, and we have some
12 alternatives which is why we want the additional 48
13 hours to come back.

14 CHAIRMAN MACCHIAROLA: We're less interested
15 in creating a problem for you than solving a problem for
16 people who have the problem.

17 MS. SIMPSON: We totally understand that and
18 I just spoke to people at Human Services Council and
19 also the New York Employment Training Council in the
20 last several days and I think they're beginning to
21 understand as well that a check for \$300 that they get
22 in November is not going to help them make payroll in
23 July. I don't want to go down the road where we wipe it
24 off the radar from the standpoint the agencies say well
25 this is fixnd and we're going to make some payments and

1 it's going to make everybody happy because it's not
2 going to make everybody happy and the dollar amounts I
3 fear is not going to be sufficient, that they're not
4 going to have the effect of quote-unquote shaming. I
5 ran some numbers, I'll leave the agency names out of it
6 now, but some of the agencies that have fairly large or
7 perceived large issues with retroactive contracting,
8 talking about maybe a thousand dollars a month. I don't
9 know that that's going to cause a lot of changed
10 behavior. We have some other ideas about ways in which
11 you can impact that process. Again, I'm coming at this
12 from the perspective of having been in a not-for-profit,
13 having tried to make that July payroll. I don't think
14 that the interest solution is going to get you there.

15 CHAIRMAN MACCHIAROLA: Well, the issue that
16 you've just presented and that we've been struggling
17 with is one where we don't have a conclusion. We have a
18 sense of that, and I think to some extent the dialogue
19 that you've had both with our staff and with the
20 not-for-profit community has brought that attention as
21 you indicated, to some kind of new perspective on how to
22 resolve it. And our issue, if you listen to what we've
23 been trying to do with the Commission, we're trying not
24 to create problems, we're trying to in effect solve
25 problems. The issue for us is access and we're trying

1 to encourage people to do business with the City and for
2 the City to have the availability of that kind of
3 service from people who might not be able to provide it
4 if they're not given their payment in a timely fashion.
5 So the solutions you're talking about, and we've heard
6 some of them that seem to me to be as appropriate, more
7 appropriate, perhaps, than the ones we thought of, and
8 so that's why we're waiting. That's why we're waiting
9 on discussion. And we all appreciate what you've been
10 doing. I have to say, the response in your agency as
11 well as from many, many City agencies to the needs of
12 the Charter revision have been wonderful.

13 MS. SIMPSON: Thank you.

14 COMM. NEWMAN: Could I ask for something for
15 Thursday? The Charter on late payments occurred in
16 1989. It would be useful to have the payments for 1990
17 to date by year.

18 MS. SIMPSON: We can do that, although,
19 again, there are some issues that also influence that
20 besides the prompt payment but we can do that. In every
21 year you'll see a huge reduction between what it
22 generates and what the agency actually pays. It does
23 come down, no question.

24 COMM. NEWMAN: I'm looking for the trend
25 from 1990.

1 MS. SIMPSON: It does come down. It's not
2 clear on this circumstance, you have some legal issues
3 that are different here, because how you create an
4 ability for a government agency to pay without a
5 contract, that's a tricky question, and when you do
6 that, you probably create an event that qualifies as
7 State action, and when you do that, you create a
8 litigation stream or a potential for litigation and that
9 doesn't necessarily, again, I spent thirteen years as a
10 litigator, but I'm not sure that speeds anything up.

11 COMM. NEWMAN: The goal is not to pay
12 without a contract. The goal is to have a contract by
13 the time the period starts.

14 MS. SIMPSON: I understand that, but you
15 have an option to have a contract and you're looking at
16 whose fault that is, you got an issue.

17 COMM. NEWMAN: I'll stop now.

18 CHAIRMAN MACCHIAROLA: Thank you. At this
19 time, we've concluded the business of the meeting, that
20 is to say we've resolved the issues of non-partisan
21 election. We're going to ask staff to prepare for
22 Thursday's meeting the language that we will have
23 presented so that we have that available on the web, as
24 well as the language that is now present that we will be
25 voting on as best we can get on August 25th.

1 MR. CROWELL: The legislation, you mean.

2 CHAIRMAN MACCHIAROLA: Whatever adjustments
3 or changes were made.

4 MR. CROWELL: We'll be continuing to review
5 and whatever changes are made we will inform you fully
6 as to what those changes are.

7 CHAIRMAN MACCHIAROLA: The Thursday meeting
8 will start with a presentation of where we are on that.
9 We will consider the issue, one less left hanging issue,
10 then we'll move into the hearing stage.

11 We're now going to move into the hearing, if
12 there's no objection by any of the Commission members,
13 we're going to move into the hearing phase after we take
14 a brief break.

15 COMM. NEWMAN: Could I make a quick comment?
16 It goes back on the procurement issue. It's always
17 referred to as a not-for-profit issue and 95 percent of
18 the incidents are not-for-profit issues, in the same way
19 late payment was largely a for profit issue and it only
20 periodically affects the not-for-profit. Here there are
21 for profits who end up in the same late contracting
22 situation.

23 CHAIRMAN MACCHIAROLA: Why don't you mix in
24 with that discussion. You got some free time. This is
25 an issue of concern. You have every right to have a

1 concern and express it when these guys try to get
2 something for us by Thursday. Okay?

3 COMM. NEWMAN: Okay.

4 CHAIRMAN MACCHIAROLA: You already solved
5 the problem.

6 (Time noted: 6:45 p.m.)

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