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Transcript of the Meeting of the  
CHARTER REVISION COMMISSION  
held on Monday, August 25, 2003  
at 110 Williams Street  
4th floor  
New York, New York 10038

AR-TI RECORDING COMPANY, INC.	
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2 Meeting commenced at 6:00 p.m.

3

4 P R E S E N T:

5 FRANK MACCHIAROLA, Chairman

6

7

8

9 COMMISSIONERS:

10 BILL LYNCH

11 JERRY GARCIA

12 MOHAMMED KHALID

13 FRED SIEGEL

14 STEVEN NEWMAN

15 KATHERYN C. PATTERSON

16 PATRICIA L. GATLING

17 CECILIA NORAT

18 FATHER JOSEPH A. O'HARE

19

20

21

22 ALSO PRESENT:

23 DR. ALAN GARTNER, Director

24 ANTHONY CROWELL, General Counsel

25

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CHAIRMAN MACCHIAROLA: I would like to  
call this meeting to order.

4

5

I would like to start by beginning the  
analysis on the Voting Rights Act that were promised  
to you from the last time we met.

7

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From there we would move to a discussion  
of the language changes in the procurement  
resolutions that we had discussed, and then from  
there we will move to the final report and language  
ballot questions.

12

Allan, do you want to start?

13

DR. GARTNER: Yes, thank you.

14

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We have had the good fortune as we've  
gone through these several months of having guidance  
from two Voting Rights Act experts, Allan Lichtman  
and Jerry Hebert, who not only are experts in the  
Voting Rights Act but are knowledgeable and familiar  
and comfortable with the City, so we got two for the  
price of one in a certain sense.

21

22

23

We have all read, I assume, the case in  
Texas with the Texas legislature, the effort to -- I  
guess I shouldn't characterize it, should I?

24

25

The case in Texas about districting and  
the State senators who have found it necessary to

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1 protect their own First Amendment rights to leave  
2 the state.

3 Jerry Hebert is their lawyer and flew out  
4 from Texas and will go back there, and as it turns  
5 out, I didn't realize Allan Lichtman has been an  
6 expert witness in that.

7 If Jerry and Allan could come up and sit  
8 next to Mr. Lynch, I think that would be easiest.

9 COMM. LYNCH: Are they lawyers for  
10 Democrats?

11 DR. GARTNER: They're a lawyer for the  
12 good guys. They are only lawyers for good guys.

13 We have asked Jerry and Allan to come and  
14 to say something about Voting Rights Act issues. I  
15 assured them that we would not ask them, as Allan  
16 makes clear in his own testimony, that we sent out  
17 to you earlier that we are not going to ask him his  
18 judgment about non-partisan elections.

19 I literally don't know his view about it  
20 and I intend to come away from this meeting without  
21 knowing his view.

22 Each of them will make a brief  
23 presentation and then we'll have a chance for some  
24 questions of them.

25 We flipped a coin and Allan either won or

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1 lost, so he will start.

2 MR. LICHTMAN: I am Allan J. Lichtman,  
3 professor of history at American University in  
4 Washington D.C., a specialist in American political  
5 history and the quantitative mathematical analysis  
6 of historical and political information.

7 I have been an expert witness or  
8 consultant in more than 70 federal and state Voting  
9 Rights cases, including work for the Department of  
10 Justice, for state governments, municipal  
11 governments, and numerous civil rights groups  
12 representing both African-Americans and Hispanics.

13 I'm very pleased to have this opportunity  
14 to speak to you this evening, although it does seem  
15 a bit like deja vu all over again, since I have been  
16 testifying before various versions of this very  
17 distinguished Commission for several years.

18 What I will be briefly doing this evening  
19 is going over some of the highlights of my current  
20 report, which is a review and confirmation of  
21 previous analyses, reports and testimonies that I  
22 have prepared for this Commission.

23 And as Allan quite correctly indicated,  
24 the focus of my review of non-partisan citywide  
25 borough president and city council elections is to

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1        assess the question of whether a move from partisan  
2        to non-partisan elections at these three electoral  
3        levels would have the effect of competing  
4        opportunities for minority voters in the city to  
5        participate fully in the political process and to  
6        elect candidates of their choice.

7                    I am not doing a policy analysis of the  
8        pros and cons of partisan versus non-partisan  
9        elections, and I am not expressing my own views one  
10       way or the other about the wisdom of partisan versus  
11       non-partisan elections.

12                   I am focusing on voting rights and on the  
13       issue of whether you would risk a violation of the  
14       Voting Rights Act in a movement at these three  
15       levels from partisan to non-partisan elections.

16                   My conclusions and findings are based on  
17       specific detailed quantitative studies, both of the  
18       experience with partisan and non-partisan elections  
19       in recent years, of 100 largest cities in the United  
20       States, and a detailed analysis of such matters as  
21       party affiliation, and voting by various groups  
22       within the City of New York, for citywide borough  
23       president and city council elections.

24                   Briefly, what I have found is the  
25       following:

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1                   That the analysis of electoral results  
2                   and election systems from 100 of the nation's  
3                   largest cities indicates that non-partisan elections  
4                   are not an impediment to the election of mayors from  
5                   members of minority demographic groups.

6                   Second, that the analysis of elections  
7                   within the City of New York shows that standard  
8                   explanations for how partisan elections might help  
9                   minority voters elect candidates of their choice, do  
10                  not apply to elections in the City of New York.

11                  And moreover, that a change from partisan  
12                  to non-partisan elections at the various levels of  
13                  the City of New York might actually help rather than  
14                  impede the opportunities for minorities to  
15                  participate fully in the political process and to  
16                  elect candidates of choice for public office.

17                  These conclusions are sustained through  
18                  the analysis of citywide borough president and city  
19                  council elections.

20                  I will turn first to the external  
21                  evidence, what has been the experience of major  
22                  cities in the United States with partisan and  
23                  non-partisan elections with respect to the election  
24                  of minority mayors.

25                  In fact, the vast majorities of large

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1 cities in this country have chosen to elect their  
2 officials through non-partisan systems.

3 About 83 of the top 100 cities elect  
4 their mayor on a non-partisan basis; 17 elect their  
5 mayor on a partisan basis.

6 Of the 17 that elect their mayor on a  
7 partisan basis, only three have minority mayors, or  
8 18 percent. Those all come from majority, minority  
9 cities, I believe they're Philadelphia, Washington  
10 D.C. and Rochester, New York.

11 And all three of the mayors are  
12 African-Americans. That is 18 percent election  
13 rate, no minority mayors, all African-Americans, all  
14 from majority minority cities.

15 Out of the 83 cities, 24 have minority  
16 mayors, both Hispanic and African-American for a  
17 rate of 29 percent.

18 29 percent of the cities with  
19 non-partisan systems have minority mayors, as  
20 compared to 18 percent of the cities with partisan  
21 systems.

22 This slight lead for non-partisan systems  
23 persists when one controls for the demography of the  
24 cities. When one controls for the fact that  
25 different cities have different mixes of whites and

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1 minorities, the lead of non-partisan elections  
2 persists.

3 I am not here to say that if you have  
4 non-partisan elections that is necessarily going to  
5 lead to a greater probability of electing minority  
6 mayors, but I am here to testify that there is  
7 certainly nothing from the experience of 100 cities  
8 to suggest that a shift from partisan to  
9 non-partisan elections would impede the elections of  
10 minorities to the position of mayor.

11 Now, with respect to the New York City  
12 experience.

13 The typical argument as to why partisan  
14 elections might aid minorities goes as follows:

15 Minorities are overwhelmingly affiliated  
16 with the Democratic party. Whites tend to divide  
17 between the Democratic and Republican parties, even  
18 predominantly Republican.

19 As a result, minority voters dominate the  
20 Democratic primaries and can elect candidates of  
21 their choice in the Democratic primaries.

22 And in turn, those minority candidates  
23 nominated in the Democratic primary through  
24 overwhelming cohesion from minorities and cross-over  
25 votes from white Democrats can get elected. This

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1 model has worked quite well in congressional and  
2 state legislative elections in much of the south.

3 We basically have two minority groups,  
4 whites and blacks, and whites are to a great extent  
5 Republican and do not participate in Democratic  
6 primaries.

7 The model, however, does not pertain to  
8 the City of New York, or as you know, in the last 15  
9 years only two minorities have citywide advance to a  
10 general election; Mr. Dinkins, I believe, and Mr.  
11 Thompson.

12 There are several reasons why this model  
13 doesn't apply here.

14 First, whites, not minorities are the  
15 strongest voting block in Democratic primary  
16 elections. They have a plurality racial group in  
17 the city and they tend to affiliate as a majority  
18 with the democratic party.

19 Secondly, the voting strength of  
20 minorities is not divergent, especially in  
21 democratic primaries in general elections; in sharp  
22 contrast to the experience in the south where you  
23 have two minority groups and whites are  
24 predominantly Republican.

25 Third, you have very distinctive minority

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1 groups here in New York. The two predominant  
2 minority groups, of course, are African-Americans  
3 and Hispanics, but you also have about a 10 percent  
4 population of Asians, and at whatever level of  
5 election you look at, especially citywide elections,  
6 these minority groups do not necessarily come  
7 together to vote as a block. Quite often they have  
8 their own divergent preferences in primary  
9 elections.

10 Finally, a minority candidate nominated  
11 in a Democratic primary, as we have seen from the  
12 experience of Mr. Dinkens against Mr. Giuliani will  
13 not necessarily win enough white votes to carry the  
14 election.

15 And these conclusions are sustained by  
16 detailed statistical tables that I have included  
17 throughout this report, and that I have testified to  
18 in the past before this Commission.

19 With respect to elections in New York,  
20 and particularly citywide elections, it is quite  
21 possible that a shift from partisan to non-partisan  
22 elections might actually aid and expand the  
23 opportunities of minorities to participate fully in  
24 the political process, and to elect candidates of  
25 their choice.

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1                   As I indicated to you, and as you all  
2 know, minorities have not been especially  
3 successful, particularly in citywide elections, in  
4 advancing out of the Democratic primary into  
5 competition in the general election.

6                   If, however, you had a non-partisan  
7 primary in which all candidates were competing,  
8 including white Republicans, you would not be able  
9 to get a white nominee separately out of the  
10 Republican party.

11                   It is most unlikely that in a  
12 non-partisan primary, that whites, although the  
13 predominant group, are not the overwhelming  
14 predominant group. It is most unlikely that white  
15 voters would be able to elect two candidates of  
16 their choice out of the primary into the general  
17 election.

18                   It is quite likely that at least one  
19 minority candidate would advance out of a primary  
20 where everyone is voting and everyone is eligible to  
21 move on to the general election.

22                   So not only do my findings suggest that  
23 the move from partisan to non-partisan would not  
24 impede opportunities for minorities to elect  
25 candidates of their choice, but it might actually

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1       enhance such opportunities especially in citywide  
2       elections.

3                   The findings from citywide elections are  
4       confirmed by the examination of borough president  
5       and city council elections.

6                   As you know, four of the boroughs within  
7       the City of New York are majority minority in their  
8       racial composition, but not all of them have  
9       minority borough presidents.

10                   In particular, in the borough of  
11       Brooklyn, there is a white borough president who in  
12       the Democratic primary defeated an African-American  
13       competitor.

14                   In a system of non-partisan elections, it  
15       is extremely likely that both Mr. Markowitz, the  
16       victor, and Mr. Gadston, his African-American  
17       opponent, would have advanced into a general  
18       election and there would have been a second  
19       opportunity in the borough of Brooklyn to -- for  
20       minorities, and he was the candidate of choice of  
21       African-Americans to elect candidates of their  
22       choice.

23                   Given that only three of the four  
24       majority minority borough presidents currently have  
25       minority -- three of the four minority boroughs have

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1 minority borough presidents. There really isn't  
2 much latitude here for what we call retrogression.

3 Any decline in opportunities for  
4 minorities to elect candidates of their choice for  
5 borough president, if you move to non-partisan  
6 elections and the example of the Markowitz/Gadston  
7 race suggests there might even be some enhanced  
8 opportunity.

9 Finally, with respect to city council  
10 elections, I didn't know that much about city  
11 council elections. I have to say I was  
12 flabbergasted by what I found in looking at city  
13 council elections in New York.

14 It turns out essentially minorities,  
15 whether they be Asian, Hispanic, or  
16 African-Americans, are only elected in city council  
17 districts that are 70 percent or more combined  
18 minorities. Not 50, not 60, but 70 percent.  
19 Virtually every city council district, I think all  
20 but one that is 70 percent or more minority has  
21 elected a minority city council member. It's about  
22 half the districts.

23 With respect to the other half of the  
24 districts, only one district has elected a minority  
25 member of the city council.

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1                   So here certainly one could hardly argue  
2                   that a move to non-partisan elections would impede  
3                   opportunities for the election of minority members  
4                   of the city council, since currently they are only  
5                   being elected in overwhelming minority city council  
6                   districts.

7                   So in sum, then, when one looks at the  
8                   external picture, and one looks in great detail and  
9                   specificity at the internal statistics on party  
10                  affiliation, voting and election of minorities, it  
11                  seems quite clear to me that were you, for whatever  
12                  reasons, to switch from partisan to non-partisan  
13                  elections, you would not be running afoul of the  
14                  Voting Rights Act by impeding opportunities for  
15                  minorities to participate fully in the political  
16                  process and elect candidates of their choice to the  
17                  three levels of citywide positions.

18                  In fact, one could argue quite plausibly,  
19                  given the patterns within the City of New York, that  
20                  such a move could enhance the opportunities for  
21                  minority voters to participate fully in the process  
22                  and to elect candidates of their choice.

23                  DR. GARTNER:     Thank you, Allan.

24                  Jerry.

25                  One additional piece of information.

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1 Jerry was, for a number of years, an official in the  
2 civil rights section of the Department of Justice.

3 MR. HEBERT: Thank you, Allan.

4 It's an honor for me to have an  
5 opportunity to appear before the Commission and talk  
6 to the Voting Rights Act. It's something I have  
7 devoted my whole life to enforcing.

8 The City of New York is required under  
9 the Voting Rights Act to seek what is called  
10 preclearance approval from federal authorities  
11 before they make any changes at all that affect  
12 voting.

13 Holding a referendum on a switch from  
14 partisan to non-partisan elections, for example, is  
15 the implementation of voting changes and so  
16 therefore has to be approved in advance before it  
17 could be implemented.

18 Similarly, if in a referendum, voting  
19 changes are approved by the voters, then subsequent  
20 to that those approved voting changes again on the  
21 merits have to undergo preclearance approval from  
22 federal authorities.

23 There are two avenues of securing federal  
24 approval. One is to go through the federal court in  
25 Washington D.C., a special three judge court. The

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1 other is to proceed administratively through the  
2 Department of Justice in Washington, and submit your  
3 voting changes to them for approval.

4 99.999 percent of all the changes that  
5 gets submitted to federal authorities go to the  
6 Department of Justice because it's considered to be  
7 the more expedited, less costly means of obtaining  
8 preclearance review.

9 There are only 17 states that are subject  
10 to the preclearance requirements. New York City  
11 happens to have some counties that are covered, and  
12 so any changes that get implemented within the city  
13 have to undergo this preclearance review.

14 Generally speaking, New York has  
15 proceeded to -- the City I should say, not New York  
16 State, the City has proceeded to obtain preclearance  
17 by going to the Department of Justice in its cases.

18 In order to get preclearance approval,  
19 what the Justice Department looks at is whatever you  
20 are proposing to change. They are going to look at  
21 the before and the after, and they are going to see  
22 what impact that is going to have on minority  
23 voters.

24 To obtain preclearance, what the City has  
25 to show is that the proposed change, whether it be a

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1 holding of a referendum, whether it be a change from  
2 partisan to non-partisan elections for all city  
3 officers, whatever change is before the Department  
4 of Justice, the test has now become as a result of  
5 court rulings that the City would have to show that  
6 the changes are not intended to make minority voters  
7 worse off than they were before, and they will not  
8 have the effect of making minority voters worse off  
9 than they were before.

10 And the worse off language comes from a  
11 decision in 1976 called Beer versus United States,  
12 in which the court said that Voting Rights Act  
13 preclearance requirements are about retrogression.

14 That is to say changes really, we want to  
15 have a safety net that ensures that any changes that  
16 are made in any jurisdiction will not have any  
17 slippage or back-sliding for minority voters.

18 We will only be moving forward or  
19 neutral, we will not be moving backwards. So they  
20 come up with what is called a retrogression test.

21 Just this year you may have heard the  
22 Supreme Court of the United States rendered a new  
23 decision called Georgia versus Ashcroft. It does  
24 have some bearing on the issues that are pending  
25 before the Commission, so I thought I would spend

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1 just a minute to tell you a little bit about the  
2 Georgia versus Ashcroft decision.

3 What the decision did, it was just  
4 announced in June by the Supreme Court, it talked  
5 about how to define retrogression under the Voting  
6 Rights Act.

7 It was important because you had to  
8 measure the proposed system, the benchmark system,  
9 the old system as it was called and the new system.

10 But there was a lot of what I would call  
11 wiggle room in making that analysis.

12 Oftentimes you could have a redistricting  
13 map, for example, just to use the example from that  
14 case that had a number of minority districts that  
15 elected minorities.

16 And then a state could come in and  
17 produce an additional plan and say, now we have come  
18 up with a new plan and we've increased the number of  
19 districts by one.

20 But what if it could be shown they could  
21 have increased it by two or by three. Does that  
22 mean a fair plan that would have created more  
23 districts should have been adopted and the failure  
24 to adopt a plan that really maxed out minority  
25 voting strength was retrogressive in some way?

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1                   Or to use the example from Georgia versus  
2 Ashcroft, what if the districts in the state's map  
3 were all 60 percent minority and the states said,  
4 we think we could actually do a better job of  
5 enhancing minority voting strength by dropping some  
6 of the districts down to about 50 percent from 60,  
7 and creating additional districts that would be in  
8 the 40 to 50 percent level.

9                   We think we can actually provide greater  
10 opportunities for minorities under that.

11                   So the Supreme Court really gets to weigh  
12 in on those kinds of issues to how does that all  
13 sort out in the retrogression test.

14                   What the Supreme Court explained in  
15 bringing it back to New York City and the switch --  
16 considering a switch to non-partisan elections, what  
17 it means is that in Georgia versus Ashcroft, the  
18 court said when you are assessing a voting change  
19 under Section 5, what you really have to look at is  
20 what effect it's going to have on the ability of the  
21 minority group within the City of New York to  
22 effectively exercise the franchise under the new  
23 system.

24                   So you really have to compare, as Dr.  
25 Lichtman has done in his analysis, the opportunities

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1 that minority voters have under the partisan  
2 election scheme and then try to gauge what impact  
3 the new system would have on minority voters under a  
4 non-partisan system.

5 What the Supreme Court said in Georgia  
6 versus Ashcroft is that you have to look at the  
7 retrogression test in toto. You can't just pull out  
8 little pieces of the election scheme and say, well,  
9 this part of partisan elections is good and  
10 therefore if that opportunity is taken away in a  
11 non-partisan system, that would be bad and,  
12 therefore violative of the Voting Rights Act.

13 The Supreme Court said no, you have to  
14 look at the entire system in total and see if, even  
15 if there are some losses for minority voters as a  
16 result of going to a new system, do those losses get  
17 offset in other ways by enhancements or gains.

18 If the answer is that they at least wash  
19 out and are neutral, or if they in fact make  
20 minority voters better off and Dr. Lichtman has  
21 given you a couple of examples of how that would be,  
22 then the plan will be entitled to Section 5  
23 preclearance.

24 Now, having said all that and kind of  
25 laying out at least the legal standard, in New York

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1 the critical question under the Voting Rights Act is  
2 this:

3 It will be to examine the extent to which  
4 the change to non-partisan elections will impact the  
5 ability of minority voters to participate in the  
6 political process effectively.

7 And the Voting Rights Act is not about  
8 candidates getting elected and not about political  
9 parties. It's about voters being protected.

10 That is what the Voting Act Rights was to  
11 protect. Right to vote is an individual right, but  
12 it's also a group right when voters coalesce behind  
13 candidates of choice and the Voting Rights Act kind  
14 of gives that legal protection.

15 I have looked at thousands of submissions  
16 to the Justice Department that have been made over  
17 the years. The Justice Department on average gets  
18 about 20,000 voting changes submitted to it a year  
19 by jurisdictions that are subject to the  
20 preclearance requirements.

21 That doesn't mean there have been 20,000  
22 changes to non-partisan elections. There have been  
23 around 150 jurisdictions that are subject to the  
24 preclearance requirements that have indeed sought  
25 preclearance approval from the Justice Department.

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1                   In only one instance has the Justice  
2                   Department found the problem with the switch to a  
3                   non-partisan election scheme. And that was in a  
4                   very rural district in the deep south where it was  
5                   shown actually that in order to win election in the  
6                   general election, you really had to have the  
7                   benefits of a partisan primary.

8                   As Dr. Lichtman explained a few minutes  
9                   ago, minority voters in this city had difficulty  
10                  making it to that general election. Indeed he said  
11                  in citywide elections, I believe, only two  
12                  candidates, Mayor Dinkins and Mr. Thompson made it  
13                  to the general.

14                  So anything that could improve or at  
15                  least not make worse that situation, would certainly  
16                  seem like on its face to be an enhancement of  
17                  minority voting strength and would be somewhat  
18                  typical, I think of the changes that the Justice  
19                  Department had reviewed.

20                  I stopped counting at around 150 cities.  
21                  Only one of which again is a rural deep south, small  
22                  jurisdiction had an objection from the Justice  
23                  Department, the other 149 had been approved.

24                  The few things that I picked out when I  
25                  read Dr. Lichtman's report and I studied prior

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1 submissions on this issue to the Commission and read  
2 testimony, the few things that just stuck out for me  
3 and I think bear on the legal issue about  
4 preclearance are these two or three things.

5 The use of non-partisan elections would,  
6 according to Dr. Lichtman's data, actually improve  
7 the chances of minority preferred candidates because  
8 they would have at least an easier time of making it  
9 to the general election ballot, something that has  
10 proven difficult in the past.

11 The other significant enhancement is the  
12 candidate qualifying procedures that would expand  
13 the opportunities for people to circulate petitions,  
14 and therefore ease the ability to get on the ballot.

15 Again, harkening back to the Georgia  
16 versus Ashcroft decision which says you have to look  
17 at the system in toto, that may seem like a discrete  
18 change. As part of the overall system it can turn  
19 out to be a pretty significant enhancement.

20 At the end of the day what really matters  
21 under the Voting Rights Act is will any change to  
22 non-partisan elections decrease the chances of  
23 getting to the general election.

24 The answer is clearly no, until the  
25 switch to non-partisan elections in my judgement

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1 would be entitled to preclearance under the Voting  
2 Rights Act and would receive that approval being  
3 submitted to the city.

4 Having given you just that part of the  
5 Voting Rights Act, I want to alert you to one other  
6 piece that comes into play, Section 2 of the Voting  
7 Rights Act.

8 Even if something is precleared under the  
9 Voting Rights Act, under Section 5, the preclearance  
10 provisions that gives you a clean bill of health  
11 insofar as Section 5 is concerned, but minority  
12 voters still have the right under the Voting Rights  
13 Act to go to court and prove the system is  
14 discriminatory in its results.

15 That is to say it doesn't make minority  
16 voters worse off. It was not intended to make them  
17 worse off. Nonetheless, it results in a  
18 disadvantage to a particular racial or ethnic or  
19 language minority group in comparison to their  
20 ability vis-a-vis other groups to participate  
21 effectively in the political process.

22 I have not undertaken that study yet but  
23 I will tell you this, that if have you a system that  
24 does not retrogress and you have a system that  
25 actually enhances opportunities, I think your

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1 chances are prevailing on a Section 2 case seem  
2 excellent indeed, at least by way of forecast.

3 Thank you very much.

4 CHAIRMAN MACCHIAROLA: Are there any  
5 questions that any of the Commissioners have for Mr.  
6 Lichtman or Mr. Hebert?

7 COMM. LYNCH: The only question I have,  
8 Mr. Chairman, is, I do have some other questions.

9 The question I have now, or statement I  
10 have now is, I wish we would have gotten both  
11 reports a little earlier so we had an opportunity to  
12 take a look at it.

13 The question I have is, have you gotten  
14 any indication from the NAACP Legal Defense Fund  
15 about their position on non-partisan elections in  
16 general and New York in particular?

17 MR. HEBERT: I have not.

18 MR. LICHTMAN: I have not.

19 I have gotten no communications from them  
20 on this issue at all. I have been testifying on  
21 this for many years now.

22 MR. HEBERT: I did speak with the general  
23 counsel of the NAACP's Legal Defense Fund this  
24 afternoon relating to the Texas matter involving the  
25 Senators now in New Mexico. We didn't get into a

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1 discussion about it.

2 COMM. LYNCH: Could you make the final  
3 point, if I heard you correctly, that a minority  
4 group can go into court if they feel that this will  
5 put them at a disadvantage?

6 MR. HEBERT: That point I made at the end  
7 was just to alert the members of the Commission,  
8 even if a preclearance approval is obtained under  
9 the Voting Rights Act to a change in non-partisan  
10 elections, minority voters within the City of New  
11 York or an individual for that matter within the  
12 City of New York can still file a lawsuit  
13 challenging the non-partisan election system on the  
14 grounds that it dilutes minority voters' rights.

15 That is primarily what Section 2 of the  
16 Voting Rights Act has been used for.

17 There is a leading case back from 1986  
18 called Thornberg versus Gingles.

19 In that case, the court laid out some  
20 standards for judging cases under Section 2 of the  
21 Voting Rights Act.

22 It provides in essence that in order to  
23 establish a violation of Section 2, a court would  
24 examine the totality of circumstances and make an  
25 assessment based on a whole host of factors as to

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1       whether or not the ability of minority voters or  
2       language minority voters is being diluted in their  
3       ability to participate effectively in the political  
4       process is being denied and abridged under Section  
5       2.

6                   CHAIRMAN MACCHIAROLA:     How many  
7       instances do you know of where Section 2 has been in  
8       vote to invalidate a change from partisan to  
9       non-partisan elections?

10                  MR. HEBERT: I don't know of any.     I  
11       think I would know.     I'm not aware of any.

12                  CHAIRMAN MACCHIAROLA:     Are you giving us  
13       a warning but not based on substantial evidence of  
14       that having occurred in the past, just that there  
15       is, I guess, a remote possibility that that might  
16       happen?

17                  MR. HEBERT:    In every preclearance letter  
18       from the Justice Department there is a proviso that  
19       says our approval, that's under Section 5, does not  
20       prevent voters from filing suit, challenging the  
21       system.    I was alerting you to that fact.

22                  MR. LICHTMAN:   I will follow up on  
23       Jerry's comments about Section 2.

24                  One issue that is a bit tangential to my  
25       analysis, but is in there that has come up, there

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1 have been some suggestions that perhaps a move from  
2 partisan to non-partisan elections might depress  
3 turnout.

4 A couple of comments on that. I did test  
5 for that. I looked at every level of turnout I  
6 could find out in the 100 largest cities and found  
7 absolutely no relationship between partisan  
8 elections, non-partisan elections and turnout of any  
9 kind.

10 Similarly, in looking at non-partisan  
11 special elections in New York City, I was unable to  
12 find any evidence of differential low turnout for  
13 minorities.

14 And finally, the experience of the 100  
15 cities whereby you get a substantially higher  
16 election rate in non-partisan systems than partisan  
17 systems also speaks against the proposition that  
18 somehow non-a partisan system is going to depress  
19 turnout, which in turn will depress minority  
20 turnout, and in turn make it more difficult for  
21 minorities to elect candidates of their choice.

22 I wanted to get at that issue because it  
23 could arise in that context.

24 CHAIRMAN MACCHIAROLA: With only  
25 two-thirds of the voters, registered voters in the

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1 city able to participate in a partisan primary,  
2 doesn't that seem to suggest that voter turnout  
3 would be increased by a non-partisan primary  
4 election?

5 MR. LICHTMAN: In primaries there is no  
6 question you would greatly expand debates for voter  
7 participation.

8 CHAIRMAN MACCHIAROLA: You take a look  
9 at the fact that in 51 out -- 50 out of the -- 42  
10 out of the 51 council elections and 50 out of the 51  
11 elections, you have such a tremendous difference of  
12 30 percent in the case of 42 and less than 10  
13 percent in the case -- one remaining district.

14 MR. LICHTMAN: Exactly. The city council  
15 elections are so lopsided and non-competitive,  
16 anything that would begin to shake that up and get  
17 more competition in the general election would  
18 likely to spark greater turnout.

19 CHAIRMAN MACCHIAROLA: So we would have  
20 competitive elections in New York City at the local  
21 level?

22 MR. LICHTMAN: Wouldn't that be  
23 something?

24 CHAIRMAN MACCHIAROLA: It would be hard  
25 to get used to, wouldn't it?

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1 Dr. Khalid, any question?

2 DR. KHALID: The same question as you  
3 said.

4 My understanding of preclearance, there  
5 is no incident, to your knowledge, in any other  
6 jurisdiction when the non-partisan was changed from  
7 partisan?

8 MR. HEBERT: Not an instance where the  
9 change from a partisan to a non-partisan scheme was  
10 subsequently challenged in court and the plaintiffs  
11 prevailed.

12 There have been numerous instances of  
13 where people have actually changed from partisan  
14 elections to non-partisan, and in the vast  
15 overwhelming majority of cases, those have received  
16 approval under the Voting Rights Act and there was  
17 only one instance where that did not happen.

18 CHAIRMAN MACCHIAROLA: Are there any  
19 other questions?

20 COMM. NEWMAN: You talked about special  
21 elections for city council. You studied them.

22 My impression, I'm hoping you can tell me  
23 whether it's right or wrong, is that within New York  
24 City, special elections for city council have higher  
25 turnout than special elections for state assembly

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1 and state Senate races.

2 MR. LICHTMAN: I didn't do that study  
3 myself. I believe that was a correct conclusion,  
4 the comparison I did was if there was differentially  
5 low minority turnout.

6 COMM. NEWMAN: When you talked about the  
7 70 percent rule before, was that based on total  
8 population or registered voting?

9 MR. LICHTMAN: It wouldn't be based on  
10 registered voters. You wouldn't have that kind of  
11 breakdown. I believe it was based on voting age  
12 population.

13 COMM. NEWMAN: That was the question,  
14 whether this would just be triggered by the age, but  
15 you controlled for that, okay.

16 CHAIRMAN MACCHIAROLA: Are there any  
17 other questions?

18 Mr. Lynch?

19 MR. LICHTMAN: It is voting age  
20 population. I checked my table, absolutely.

21 COMM. LYNCH: We have been talking  
22 about, or proposing a kind of hybrid primary, and to  
23 my knowledge that is only applicable to three cities  
24 in the country: Jacksonville, Florida; Minneapolis,  
25 and the state of Louisiana.

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1 Does your information still hold?

2 MR. LICHTMAN: When you talked about a  
3 hybrid primary, you mean a primary with --

4 COMM. LYNCH: With party label.

5 MR. LICHTMAN: My experience with  
6 non-partisan elections is that even when there isn't  
7 explicit party labels, people know. That is  
8 usually its prominent figures, particularly for  
9 citywide elections.

10 So the fact that you might have party  
11 labels whereas other systems don't have party  
12 labels, I don't think -- this would of course only  
13 affect my external analysis of 100 cities. I don't  
14 think it would fundamentally impact upon the  
15 conclusions or findings of that analysis.

16 CHAIRMAN MACCHIAROLA: Are there any  
17 other questions?

18 Dr. Gartner, do you want to thank our  
19 witnesses?

20 DR. GARTNER: I will take on that  
21 chore.

22 I thank both Allan and Jerry.

23 One of the things at the beginning, I  
24 want to thank them again, is that the availability  
25 in all sorts of places, all sorts of hours of day

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1 and night, you say what about this, what about that.  
2 I know it has led me to be a better executive  
3 director and I trust a better product of the  
4 Commission.

5 So thank you, Jerry and Allan.

6 Anthony, want to enter something.

7 MR. CROWELL: I want to thank you, you  
8 have been extraordinary to work with this year and  
9 previous years that we worked together. I am  
10 really grateful for your service to the city and  
11 really the fine analyses you have given us as an  
12 underlying framework to work from on this year's  
13 commission.

14 So thank you again.

15 CHAIRMAN MACCHIAROLA: You also honor us  
16 by the fact that you are so distinguished in this  
17 field. You bring not only your analysis but  
18 history of your involvement and the way you advanced  
19 the cause of voting rights to all people in the  
20 country, particularly minorities, so we thank you  
21 very much.

22 MR. LICHTMAN: Thank you. We appreciate  
23 the opportunities we have had to be of assistance.

24 DR. GARTNER: May we have a five-minute  
25 recess?

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1                   CHAIRMAN MACCHIAROLA:    Sure.

2                   (Recess taken.)

3                   CHAIRMAN MACCHIAROLA:    May I please have  
4                   some order in the house?

5                   The order before us now is the question  
6                   of procurement, the language.

7                   Allan, please advise us, we had two  
8                   issues we were dealing with dealing with  
9                   procurement.

10                  Do you want to get to the two issues  
11                  regarding procurement that we had carried over from  
12                  the last meeting, or Anthony, are you prepared to do  
13                  that?

14                  MR. CROWELL:    We are going to move to  
15                  that.

16                  I just want to say the commissioners have  
17                  a copy of a draft final report.

18                  This is a follow-up to the E-mail they  
19                  received.    This draft contains some revisions that  
20                  we have made in terms of the appendices attached to  
21                  them and we have tightened up some of the language.

22                  And as we move through the substantive  
23                  proposal points, we will guide you through the  
24                  report.

25                  I will let Allan deal with the

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1 procurement issues now and then we will address the  
2 report more fully as we move to the various issues.

3 FATHER O'HARE: I read this on the  
4 computer this morning, my own identification is  
5 inaccurate. I am no longer the president of  
6 Fordham University, so it is to read the former  
7 president of Fordham University, the former chairman  
8 of the finance board, former resident of the Bronx.

9 DR. GARTNER: Are you anything now?

10 FATHER O'HARE: No.

11 DR. GARTNER: We will call you President  
12 Ameritus. You're far from former as far as we're  
13 concerned.

14 FATHER O'HARE: The last time we met, one  
15 of the topics we discussed was the question of  
16 procurement and the issue of the response on the  
17 failure of the City's part to act in a prompt and  
18 timely manner.

19 We heard at the Queens school meeting  
20 from both representatives of the Comptroller's  
21 office and of the Mayor's office, and they described  
22 conversations that they had.

23 There have been subsequent conversations  
24 between them, and the language that can be found on  
25 page 103, I'll give you a second to turn to that --

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1 paragraph 6 at the very top of the page, the  
2 underlined portion, you will note from two or three  
3 iterations ago, monetary was not in there, it is not  
4 now there.

5 Both the comptroller and the Mayor's  
6 representatives agree to this.

7 They have informed me as recently as four  
8 minutes ago that they continue to have discussions  
9 about fleshing this out, including the question of  
10 payment of interest.

11 And I recommend that you support this  
12 language that has been developed by the two offices.

13 Just as a kind of parenthetical note, I  
14 reflect on the work of the Commission, most  
15 particularly this area.

16 One needs to look, if one looks back on  
17 it retrospectively, on not just the things you pass  
18 and enact, but the things you have precipitated, I  
19 think in this area the Commission has been  
20 precipitant for a number of activities that I trust  
21 will be good for the City.

22 So I recommended that the underlined  
23 portion of the language on page 103 in number 6 be  
24 adopted by the Commission.

25 CHAIRMAN MACCHIAROLA: This reflects a

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1 change from the language we saw but does not go  
2 entirely to the point that was raised by members of  
3 the Commission.

4 Alan, in your judgment, this is as far as  
5 we could go without doing violence to the  
6 perspective on what the law --

7 DR. GARTNER: Or violence as to the  
8 perspective in each of those offices, appropriately  
9 different.

10 COMM. NEWMAN: Point of order?

11 CHAIRMAN MACCHIAROLA: Yes, sir.

12 COMM. NEWMAN: The Commission twice the  
13 other night voted for something very specific.

14 CHAIRMAN MACCHIAROLA: That is correct.

15 COMM. NEWMAN: I believe under the  
16 rules, unless one of the members of that majority  
17 called for a new vote, that what was specifically  
18 voted is required.

19 CHAIRMAN MACCHIAROLA: Dr. Khalid?

20 DR. KHALID: Yes. I certainly would like  
21 to ask questions on the non-profit interest payment.

22 I was not clear until I heard the member  
23 from the Comptroller's Office.

24 I can go for the monetary penalty, but I  
25 was not clear on it. That is why I said I wanted

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1 more information on it.

2 But I could go further to the monetary  
3 penalty, but I would vote no on your proposal.

4 CHAIRMAN MACCHIAROLA: Are you asking  
5 for a reconsideration?

6 DR. KHALID: Yes, absolutely.

7 CHAIRMAN MACCHIAROLA: Dr. Khalid has  
8 asked for reconsideration of that vote.

9 So let us now vote the issue as amended,  
10 as it is found in this language.

11 If we have a majority this will be the  
12 language we will have.

13 COMM. NEWMAN: Can I add one fact?

14 Since last Thursday, the issue of the  
15 objection to following the state law and creating a  
16 City Charter change that required interest payments  
17 for late contracting, the objection to it was that  
18 in some way, though the state could do it, it  
19 violated some section of state law.

20 I have had discussions with former  
21 councils to city procurement agencies who have  
22 researched this issue and find no such law.

23 And more importantly, I have spoken to a  
24 senior member of Attorney General Spitzer's staff,  
25 Dan Feldman, who has informed me that there is a

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1 section of the law that if you wanted to imply  
2 creating a problem, you could so imply but you could  
3 also imply it the other way.

4 Speaking for his office, there was a  
5 Charter amendment that was approved, he couldn't  
6 imagine they would have challenged it.

7 CHAIRMAN MACCHIAROLA: Mr. Crowell, you  
8 are our lawyer.

9 MR. CROWELL: Parts of the legal problem  
10 is under state law. Those cases I have heard under  
11 the Court of Claims.

12 Under the City, the determination is  
13 revealed upon an Article 78 petition which goes to  
14 State Supreme Court. It's a very, very lengthy  
15 process.

16 There is another strong legal argument to  
17 be made that you are actually going to hamper the  
18 process by elongating Article 78 rather than when  
19 you look at the State Court -- sorry, the state  
20 provisions that goes right to the Court of Claims,  
21 which is a much more expeditious process.

22 So you are not really achieving the goal  
23 that you would necessarily be seeking.

24 COMM. NEWMAN: One would assume that  
25 would happen once and then it would be resolved.

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1                   That you would have the court  
2                   determination that it was in the legal law.

3                   And from that point on, I am not an  
4                   attorney.

5                   MR. CROWELL:    That is part of the legal  
6                   analysis involved.

7                   We had a much more expansive legal  
8                   discussion over several meetings in the past month,  
9                   and that is where -- how it's evolving now in terms  
10                  of really trying to get a manageable time frame in  
11                  place.

12                  COMM. NEWMAN:   The same argument could  
13                  have been made on prompt payment.    The result has  
14                  been that the '89 Charter Commission went forward  
15                  anyway and has successfully resolved the payment  
16                  problem, because what it resulted in is city  
17                  agencies and the mayoralty having to set up systems  
18                  to expedite payments to contractors, and that is  
19                  what will happen here.

20                  A tracking system now exists on payment,  
21                  a tracking system doesn't exist for contracts.

22                  Things happen in series concerning  
23                  contracts.  They happen in parallel concerning  
24                  payments.

25                  I guarantee you, this passes, the City

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1 will figure out how to contract.

2 The same way they figured out how to pay  
3 quickly.

4 CHAIRMAN MACCHIAROLA: Could I suggest  
5 since we are at an impasse here that we add the  
6 phrase, "An interest to the extent permitted by  
7 law"?

8 COMM. PATTERSON: I thought there was  
9 more of a legal issue than purely whether state law  
10 permitted it.

11 I thought one of the concerns was that if  
12 you include in a Charter language which appears to  
13 give an entitlement of the specific type to somebody  
14 who might be a beneficiary of this section, you are  
15 risking litigation against the City, whereas if you  
16 specify monetary remedies, nobody really quite knows  
17 what kind of monetary remedies would be fashioned.

18 If you specify interest, everybody knows  
19 what interest is.

20 And there was some concern expressed by  
21 people who know a lot more about the procurement  
22 process than I do, that placing the word "interest"  
23 in the Charter was ultimately going to result in  
24 greater cost to the City in the sense of greater  
25 litigation, presumably in the Article 78 procedures.

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1                   COMM. NEWMAN:    That did not happen with  
2                   the '89 Charter Commission, but I can live with the  
3                   Chairman's suggestion.

4                   DR. GARTNER:     I would be happy to  
5                   accept your suggested conclusion.

6                   COMM. NEWMAN:    As would I.

7                   CHAIRMAN MACCHIAROLA:    To the extent,  
8                   accepted by -- to the extent permitted by state law.

9                   COMM. GATLING:     That doesn't deal  
10                  with --

11                  DR. GARTNER:     Let's understand what  
12                  happens.

13                  CHAIRMAN MACCHIAROLA:    Which rule shall  
14                  specify the appropriate remedy including monetary  
15                  remedies and interest to the extent permitted by  
16                  law, failure to meet the terms of any applicable  
17                  schedule for taking such actions can then -- the  
18                  Board may set forth exceptions to these rules.

19                  So the Board is the -- the power is all  
20                  on the Board.    We are not giving them more power  
21                  than they would choose to exercise because they have  
22                  the power to withdraw it or not.

23                  We are giving them the power, if they so  
24                  decide to give interest.

25                  The second sentence modifies that

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1       dramatically, I think.

2                   COMM. NEWMAN:    I accept it.

3                   CHAIRMAN MACCHIAROLA:    We have a few  
4       lawyers.

5                   COMM. GATLING:    I want to say "and  
6       interest."

7                   CHAIRMAN MACCHIAROLA:    "Or interest."

8                   DR. GARTNER:       My understanding of your  
9       suggestion was including monetary remedies, which  
10      encompasses what Commissioner Patterson said, which  
11      would specify and add to the extent permitted by  
12      state law but not add the word "interest."

13                   That is what I'm saying.

14                   COMM. NEWMAN:    Your recommendation did  
15      include the word interest.

16                   CHAIRMAN MACCHIAROLA:    If the word  
17      interest causes them a problem, monetary remedies --

18                   COMM. NEWMAN:    I don't know why it  
19      should.

20                   COMM. NORAT:     Interest is the monetary  
21      remedy.

22                   CHAIRMAN MACCHIAROLA:    Let me call the  
23      question on the way in which this is now worded,  
24      with the understanding that there's an expansive  
25      reading, and if they determine that interest is one

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1 of the monetary remedies, it's possible it's  
2 included in the scope, the history of this  
3 discussion we have had, it makes it clear that we  
4 are not in any way circumscribing interest, if that  
5 is permissible.

6 On the question as it is produced here --  
7 Mr. Lynch?

8 COMM. LYNCH: Yes.

9 COMM. NEWMAN: Yes.

10 COMM. PATTERSON: Yes.

11 DR. KHALID: Yes.

12 COMM. GATLING: Yes.

13 COMM. NORAT: Yes.

14 FATHER O'HARE: Yes.

15 COMM. GARCIA: Yes.

16 COMM. SIEGAL: Yes.

17 CHAIRMAN MACCHIAROLA: Unanimous.

18 Thank you very much.

19 We are now -- we had -- did we have one  
20 other issue on procurement?

21 DR. GARTNER: That is it.

22 CHAIRMAN MACCHIAROLA: That was worked  
23 out between the Comptroller and the Mayor. We had  
24 that language last time.

25 DR. GARTNER: Yes.

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1                   Questions for the ballot, do you have  
2                   that for us?

3                   COMM. LYNCH:     Mr. Chairman, on  
4                   procurement, I did get a memo from Commissioner  
5                   Patterson that we worked out the language on vendex  
6                   to the satisfaction of the city council.

7                   COMM. PATTERSON:   Commissioner Newman  
8                   sent an E-mail making a few observations regarding  
9                   your concerns, and then I sent around a responsive  
10                  E-mail that in essence said well done, Commissioner  
11                  Newman.

12                  And I said in addition, the language that  
13                  was presented at the last meeting as I understood  
14                  it, had been approved by -- regarding procurement,  
15                  and the relationship between the Mayor and the  
16                  Comptroller's office and the vendex issue, had been  
17                  approved by Speaker Miller and counsel.

18                  DR. GARTNER:     It was approved by his  
19                  counsel, who was asked whether he was speaking for  
20                  the speaker and he said yes.

21                  COMM. PATTERSON:   Yes.

22                  COMM. LYNCH:     So it's a yes to my  
23                  question?

24                  CHAIRMAN MACCHIAROLA:   Yes, it's a yes.  
25                  What we heard in Queens, we had the

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1 discussion here, and then in Queens we heard that  
2 they had reached a limit on the language, and that  
3 was fine with Mr. Lane, and then Mr. Lane was asked  
4 specifically if he was speaking on behalf of Speaker  
5 Miller, and he said yes.

6 COMM. LYNCH: Here.

7 CHAIRMAN MACCHIAROLA: He didn't say  
8 that here. He said that in his memorandum.

9 COMM. LYNCH: In Queens?

10 CHAIRMAN MACCHIAROLA: Did he say it in  
11 Queens or the memorandum?

12 COMM. PATTERSON: In the memorandum  
13 where you circulated new language.

14 DR. GARTNER: He said it to me and I  
15 have -- if any Commissioner wishes to see it, his  
16 handwritten version on the back of an old piece of  
17 paper, sitting in my cubicle in the bullpen.

18 CHAIRMAN MACCHIAROLA: We are fine on  
19 any of the languages.

20 Any questions that are open, we can now  
21 proceed to vote on the ballot language itself.

22 The determination, we have had three sets  
23 of ballot issues that we presented.

24 COMM. SIEGAL: What page?

25 CHAIRMAN MACCHIAROLA: I am not on any

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1 page yet.

2 Ladies and gentlemen, we have three sets  
3 of -- I want to work back through the ballot  
4 questions.

5 We have three separate items that if we  
6 agree will be presented to the voters as three  
7 ballot questions.

8 What I want to do is to start the  
9 discussion by starting with the question on city  
10 elections, non-partisan elections.

11 Before that you want to do something on  
12 effective dates?

13 MR. CROWELL: I want to make sure that  
14 everybody has this separately pulled out about the  
15 effective dates of the provisions, and we can go  
16 through that as we hit each ballot question.

17 If you want to do it by pockets, you can  
18 address it pocket by pocket, that way.

19 I want to make sure everybody that has it  
20 in hand culled out separately.

21 CHAIRMAN MACCHIAROLA: Let's first  
22 discuss the ballot question of non-partisan  
23 elections.

24 Alan, do you want to go through the  
25 pieces of this so that we can get a vote, I think?

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1 DR. GARTNER: Ballot questions is a  
2 foreign language. In which there are -- there is  
3 rules, some of which list the findings.

4 Essential intent of the ballot language  
5 is to give the voter a fair picture of what it is  
6 that is being proposed, to do it in language that is  
7 clear and not jargon filled, and to give the voter  
8 an indication of the -- both the scope of the change  
9 and what it is that it replaces, if it replaces  
10 anything.

11 And it's to be short. Or relatively  
12 short, however one defines "short."

13 What we have done, for me at least, you  
14 know, my head is organized in columns, I went  
15 through the 8 or 9 topics that we addressed, and you  
16 can see, I trust, the reflection of each of them in  
17 this item.

18 The first sentence addresses the  
19 question, overall question that there will be a new  
20 system of city elections and that it will cover the  
21 three sets of offices that we have -- that you have  
22 indicated you wanted to do, three citywide and five  
23 borough presidents and the council member.

24 The next sentence that begins, "The  
25 September primary," response to the question that

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1 will there be a primary election, and it makes clear  
2 that it will be open both to voters and candidates,  
3 and all means all, but in this instance, we spell  
4 out "all" regardless of party membership independent  
5 status.

6 The next question in that list, "How do  
7 you move from the primary election to the general  
8 election?"

9 It is the top two vote getters who move  
10 from the primary to the general election. That  
11 election is held in November.

12 The next sentence, "Both elections makes  
13 clear that the candidate, if he or she wishes, may  
14 indicate party membership on the ballot."

15 Next somewhat long sentence, I will come  
16 back to that in a moment, the question of  
17 relationship between campaign finance and the  
18 non-partisan election.

19 It makes clear that those candidates who  
20 participate in the voluntary campaign finance  
21 program, that word is underlined because it's  
22 critical in the legal analysis of whether you're  
23 dealing with infringement on free speech as opposed  
24 to someone voluntarily accepting minutes on his or  
25 her speech in exchange for public money.

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1                   May not accept contribution for political  
2 parties or party committees.

3                   The next sentence describes the major  
4 change that will replace the current system of  
5 political party nominations and primary elections,  
6 which only party members may vote.

7                   The changes would take effect after the  
8 2005 citywide election.

9                   I want to turn, if I may, before we get  
10 to whatever discussion, to the issue:

11                   We went back and forth at our last  
12 meeting about how to describe someone who is  
13 registered to vote but is not a member of a party.  
14 We played with words such as "unaffiliated" and  
15 "independent."

16                   The recommendation here is that we use  
17 the word "independent."

18                   The downside thereafter is it might  
19 confuse someone in terms of meaning the independent  
20 party. But the up-side is that's the common term  
21 that people use rather than "unaffiliated," and it  
22 seemed to be the clearer choice.

23                   I guess the third option, there always  
24 are three, is to use either/or, but that seemed to  
25 be confusing to the voters, so I think it best to

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1 opt for a particular one.

2 I just want to be clear that we have  
3 chosen independent status to describe persons who  
4 are registered but not -- did not select a party.

5 The other issue, and Anthony will talk  
6 about it, it's in the package that you have, relates  
7 to campaign finance, and the question of  
8 attribution.

9 We heard a great deal of discussion,  
10 testimony and discussion about attribution, how that  
11 is used in the current scheme and whether it could  
12 be used in a non-partisan setting.

13 Anthony, do you want to pick up on that?

14 MR. CROWELL: You will have seen in your  
15 report an analysis of the proposal to have the  
16 Campaign Finance Board attribute party spending in  
17 non-partisan primary in general election.

18 Upon review today, that section has  
19 changed a little bit, but the actual legislative  
20 language has not. That language, on page 79, the  
21 language based on all our testimony that we heard  
22 last Thursday night, the specific attribution  
23 language has been modified, and this is in the draft  
24 that was sent to you last night, to make more clear  
25 exactly how attribution should take place, and the

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1 representative from the Campaign Finance Board who  
2 was there spoke about their attribution rules.

3 What we put together for the Commission  
4 was based on using those rules, and using a lot of  
5 the characteristics that would be apparent in any  
6 non-partisan election.

7 Let me read to you the change to that  
8 section which is going to be 1052.

9 Section 1052(b) says, "The Board shall  
10 promulgate rules as it deems necessary to attribute  
11 expenditures that indirectly assist or benefit a  
12 candidate participating in the voluntary system of  
13 campaign finance reform as in kind contribution to  
14 such candidate."

15 What I just read was existing language.

16 The additional language, "In addition,  
17 and without limitation of the preceding sentence,  
18 the Board may require a participant to demonstrate  
19 in a proceeding before the Board that expenditures  
20 made by a party committee or a constituted committee  
21 of a party are not in kind contributions to the  
22 participant. Factors for determining whether  
23 contributions are expenditures by a party commission  
24 or constituted committee of a party are coordinated,  
25 shall include but not be limited to the party

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1 membership, party registration, choice of  
2 registration, status on the ballot, party  
3 affiliation, party identification, the voter guide  
4 or campaign literature of a party when the Board  
5 determines that the participating candidate has not  
6 met his or her burden of proof, and that an inkind  
7 contribution or expenditure has been made, the Board  
8 shall attribute such contributions or expenditures  
9 to the participating candidate consistent with its  
10 rules of governing party contributions and shall  
11 promulgate rulings to administer and enforce this  
12 provision."

13 CHAIRMAN MACCHIAROLA: I note the phrase  
14 that started the paragraph, "In addition and without  
15 limitation of the preceding sentence," which is the  
16 sentence which authorizes the campaign finance rules  
17 to do this work. Therefore gives to the Campaign  
18 Finance Board discretions.

19 In no way is this a limitation of the  
20 Campaign Finance Board, but rather an opportunity  
21 for the Campaign Finance Board to define those rules  
22 necessary to implement its power.

23 I think, Father O'Hare, the question you  
24 raised with us at the last time we discussed it --

25 FATHER O'HARE: I didn't say anything.

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1                   CHAIRMAN MACCHIAROLA:   At the time, you  
2                   said the Board may be limited.  I think the staff  
3                   has gone out of its way here to modify that to meet  
4                   that objection.

5                   FATHER O'HARE:    The change is that you  
6                   have given the Board discretion rather than telling  
7                   the Board what to do, I think that is a nice  
8                   diplomatic way of doing it.

9                   I am all for diplomacy, or at least  
10                  polite speaking.  It doesn't necessarily solve the  
11                  problem.

12                  CHAIRMAN MACCHIAROLA:   Anything else on  
13                  that?

14                  DR. GARTNER:     I will be glad to answer  
15                  any questions about the ballot language.

16                  CHAIRMAN MACCHIAROLA:   Let me first then  
17                  ask any of the Commission members if there is  
18                  anything in this language that does not include the  
19                  elements of what we have discussed.

20                  Is there anything missing in here or  
21                  anything inappropriately stated that we would like  
22                  to deal with?

23                  COMM. NEWMAN:    I have a question we can  
24                  lead to that.

25                  CHAIRMAN MACCHIAROLA:   Yes.

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1                   COMM. NEWMAN:    When we were discussing  
2                   the issue, we talked about special elections that  
3                   would take place between elections and we needed to  
4                   change those rules also to confirm to these rules,  
5                   and though we may have done that in the broader  
6                   document, the little paragraph doesn't communicate  
7                   that that has occurred.

8                   CHAIRMAN MACCHIAROLA:    What you're  
9                   saying is the proposal would amend the City Charter  
10                  to establish a new system of City elections for the  
11                  offices of Mayor, Public Advocate, Comptroller,  
12                  Borough President and Council Member in regular and  
13                  special elections.

14                  COMM. NEWMAN:    Yes.

15                  CHAIRMAN MACCHIAROLA:    Because the  
16                  special elections are also modified by this since --

17                  DR. GARTNER:    It is the intent of the  
18                  paragraph, Mr. Newman points out, it doesn't  
19                  specify.

20                  CHAIRMAN MACCHIAROLA:    Can we add that,  
21                  "in regular and special elections or in all  
22                  elections"?

23                  We are modifying.

24                  MR. CROWELL:    My recommendation is that  
25                  because we are establishing an entirely new system

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1 of City elections where the non -- where the current  
2 non-partisan special election is necessarily  
3 subsumed now into this new system.

4 We have in the legislative text included  
5 amendments to all those provisions in every one of  
6 the City offices. I think it was my intent when I  
7 wrote it and my understanding that it would be  
8 reflective of the entire system as applying to that  
9 entire system.

10 So I think the phrase, "A new system of  
11 City election for the offices," incorporates the  
12 notion of elections to fill vacancies.

13 COMM. NORAT: I agree.

14 MR. CROWELL: I think one of the things  
15 the Commission wants to consider is making sure the  
16 voters don't have too much to read through because  
17 there are going to be, obviously several other  
18 questions you're putting forth. But you want to  
19 make sure they have enough information to make those  
20 determinations.

21 We can certainly put information --

22 CHAIRMAN MACCHIAROLA: Let's see --

23 MR. CROWELL: My recommendation would be  
24 that it's incorporated in there.

25 CHAIRMAN MACCHIAROLA: Any objection to

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1 keeping it the way it is, Steve?

2 COMM. NEWMAN: No, it's okay, I was just  
3 asking the question.

4 CHAIRMAN MACCHIAROLA: Any other  
5 questions on this language as to this issue?

6 Commissioner Lynch? Commissioner Lynch  
7 has some issues in his memorandum. I don't think  
8 this is the appropriate time.

9 COMM. LYNCH: I just want to talk about  
10 some recommended changes, particularly on City  
11 elections.

12 In the first sentence, if we -- where it  
13 says "election for," if we could put "elimination of  
14 party primaries" in that first sentence.

15 And then in the third sentence where it  
16 says, "September primary elections," if we could put  
17 "preliminary" election, instead of "primary."

18 And the third recommendation would be on  
19 this language -- would be instead of "independent,"  
20 that we put "affiliate."

21 CHAIRMAN MACCHIAROLA: We have three  
22 suggestions.

23 Is there a second to any of those  
24 suggestions? Anybody seconding those suggestions?

25 FATHER O'HARE: I second them.

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1 CHAIRMAN MACCHIAROLA: All three?

2 FATHER O'HARE: Some of them, at least.

3 CHAIRMAN MACCHIAROLA: Let's get the  
4 ones you want to second.

5 Bill, the first one is?

6 COMM. LYNCH: The first one is in the  
7 first sentence where it says "election for," I want  
8 to put, "eliminating party primaries."

9 FATHER O'HARE: I don't support that.  
10 Later in the statement it says, "replace the current  
11 system."

12 They do say that further down.

13 CHAIRMAN MACCHIAROLA: You are not  
14 seconding that?

15 Is there any other second to that?

16 FATHER O'HARE: I think saying the  
17 September preliminary election system rather than  
18 primary would clarify the difference between the old  
19 system and the new.

20 CHAIRMAN MACCHIAROLA: Discussion on  
21 that?

22 COMM. LYNCH: The third was where it  
23 says "independent, affiliate."

24 CHAIRMAN MACCHIAROLA: One at a time.  
25 Father, you want to change "September

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1 primary election" to --

2 FATHER O'HARE: I am seconding Bill's  
3 suggestion from "primary" to "preliminary."

4 CHAIRMAN MACCHIAROLA: I never heard of  
5 a preliminary election. That is part of the  
6 problem.

7 I think most people describe it as  
8 primaries, even when they are non-partisan  
9 primaries, those elections are called primary  
10 elections.

11 I don't know.

12 FATHER O'HARE: You are not calling  
13 this --

14 CHAIRMAN MACCHIAROLA: It's a  
15 non-partisan.

16 We have been sensitive to the language  
17 that Bill sent. Bill sent some language to us. I  
18 think the drafter has made an effort to accommodate  
19 that.

20 That is why we are not using the language  
21 part.

22 What Bill had said to us in his  
23 memorandum was, in fact, reviewed by staff and they  
24 made those corrections to reflect -- or made those  
25 changes to reflect Bill's memo. There were a number

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1 of points in there.

2 So we have already gone to that point.

3 COMM. NEWMAN: A suggestion is maybe not  
4 to use any term and just refer to it as the  
5 "September election."

6 CHAIRMAN MACCHIAROLA: I think part of  
7 what we want to do is make it clear to voters, they  
8 understand it's a primary election.

9 It seems to me we are arguing around less  
10 clear than more clear language.

11 It's a September primary.

12 COMM. NEWMAN: We don't want to confuse  
13 voters either.

14 COMM. PATTERSON: Can I speak to that?  
15 I am not a local politician, I never have been, I  
16 have agonized on whether it should be primary,  
17 preliminary, or anything like that.

18 When you are talking to -- when you are  
19 trying to appeal to the kinds of voters that we seem  
20 to be trying to expand, to bring into the system,  
21 they aren't going to be thinking like party  
22 loyalists.

23 They think a primary is the first  
24 election you get to in September. They don't think  
25 of it as a party or non-party. Similar to what

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1 Frank was saying.

2 I say that as somebody who doesn't think  
3 like a partisan.

4 So I really felt quite strongly about  
5 this, as I thought it through.

6 And to me, primary means first. That is  
7 the dictionary definition, the first election is in  
8 September.

9 And I think to most people who are not  
10 intimately involved in local politics, primary just  
11 means the first time you go to the polls.

12 COMM. LYNCH: Someone who is very  
13 involved, the people I talk to, "primary" has a  
14 broader meaning than "first."

15 COMM. PATTERSON: I think there is a  
16 legitimate difference of opinion.

17 I'm just saying I really worried about it  
18 because I started thinking, what does the regular  
19 voter, the person who just has to show up to vote  
20 and who is not deeply involved in party politics,  
21 what does primary mean to that person.

22 And I can't get to the point of thinking  
23 it is so associated with the party primary that  
24 person is going to be confused if you are calling it  
25 a primary. They are going to think it's the one I

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1 have to vote for in September.

2 COMM. GARCIA: The second sentence of  
3 the section talks about it's a primary election.

4 The third to final sentence talks about  
5 primary elections, which only party members are  
6 allowed to vote.

7 I find that simple. If we introduce  
8 another word, that might throw people off in terms  
9 of what we want to make it from and to.

10 COMM. PATTERSON: I agree.

11 CHAIRMAN MACCHIAROLA: I think we have  
12 had discussion on this language, does this language  
13 fit the resolution -- I guess the question is --

14 COMM. LYNCH: I second it.

15 CHAIRMAN MACCHIAROLA: Let's vote on the  
16 amendments that Bill has suggested.

17 COMM. LYNCH: I vote yes.

18 CHAIRMAN MACCHIAROLA: Mr. Siegel?

19 COMM. SIEGAL: No to Bill's amendment.

20 COMM. NEWMAN: There's only one  
21 amendment.

22 CHAIRMAN MACCHIAROLA: Bill's three  
23 amendments.

24 COMM. NEWMAN: The first was seconded.  
25 The third one we haven't discussed.

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1                   CHAIRMAN MACCHIAROLA:    The second  
2                   amendment, which I think is the right to bear arms.

3                   COMM. NEWMAN:    I vote yes.

4                   COMM. PATTERSON:    Which is the yes and  
5                   which is the no?

6                   CHAIRMAN MACCHIAROLA:    The language Bill  
7                   wants to change to "primary."

8                   COMM. PATTERSON:    No.

9                   DR. KHALID:    I will keep the same order.  
10                  No.

11                  COMM. GATLING:    No.

12                  COMM. NORAT:    No.

13                  FATHER O'HARE:    Yes.

14                  COMM. GARCIA:    No.

15                  DR. GARTNER:    No.

16                  CHAIRMAN MACCHIAROLA:    Resolution is  
17                  defeated.

18                  The third of your amendments is --

19                  COMM. LYNCH:    Where it says  
20                  "independent," put "unaffiliated."

21                  CHAIRMAN MACCHIAROLA:    Both elections  
22                  candidates can indicate their party membership or  
23                  unaffiliated status on the ballot.

24                  COMM. LYNCH:    Instead of "independent,"  
25                  it says in the voter guide "unaffiliated."

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1                   CHAIRMAN MACCHIAROLA:    The question I'm  
2                   asking is whether this clearly represents what we  
3                   said.

4                   Did we vote that candidate could indicate  
5                   independent status on the ballot?    I don't think we  
6                   said that.

7                   COMM. LYNCH:     It said "unaffiliated."

8                   CHAIRMAN MACCHIAROLA:    I think we said a  
9                   candidate can identify with his or her political  
10                  party.

11                  We didn't say what the consequences would  
12                  be --

13                  COMM. NEWMAN:     We say nothing.

14                  FATHER O'HARE:  
15                  Independent/unaffiliated, if they are not on any  
16                  party, they can say independent/not affiliated.

17                  CHAIRMAN MACCHIAROLA:    We gave the  
18                  option, I didn't recall.

19                  COMM. PATTERSON:    It's on page 69.

20                  MR. CROWELL:     Section 69.  
21                  This is what Alan was getting to.

22                  COMM. PATTERSON:    Page 69.

23                  MR. CROWELL:     Those are in the  
24                  conforming amendments.

25                  This issue comes up I think eight times

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1 in this document.

2 And the question we need to resolve is  
3 exactly what options people are going to have.

4 This document can change by your vote.

5 The options were independent,  
6 unaffiliated, one or the other, or  
7 independent/unaffiliated.

8 The way this document reads now, and we  
9 were unclear, that's why we're seeking resolution is  
10 how should it read in the ballot, should someone be  
11 able to say independent? Should they be able to  
12 say independent and/or unaffiliated or should it be  
13 a combined term?

14 That is what we need the Commission to  
15 vote on now.

16 DR. GARTNER: That is in effect -- one  
17 of the options you're proposing is Mr. Lynch's  
18 motion?

19 MR. CROWELL: That is right. One of  
20 the proposals is Mr. Lynch's motion.

21 CHAIRMAN MACCHIAROLA: So that a  
22 candidate has the following choices, let's say, list  
23 party, if that is whatever party, registered,  
24 recognized political party.

25 MR. CROWELL: Right.

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1                   CHAIRMAN MACCHIAROLA:    Could indicate  
2                   independent/unaffiliated.

3                   MR. CROWELL:     Correct.

4                   CHAIRMAN MACCHIAROLA:   And could choose  
5                   to put nothing.

6                   MR. CROWELL:     Right, or they could  
7                   choose to put themselves as independent or  
8                   unaffiliated.    They can have four choices, up to  
9                   four choices; their party, independent, unaffiliated  
10                  or blank.    Up to four choices.

11                  FATHER O'HARE:     Can we reduce it to  
12                  three?

13                  COMM. NORAT:    We can take "independent"  
14                  out.

15                  CHAIRMAN MACCHIAROLA:   Take the word  
16                  "independent" out and list party, unaffiliated or  
17                  silent.

18                  Three choices.

19                  COMM. NORAT:    I thought Bill said  
20                  everywhere where independent appeared.

21                  COMM. PATTERSON:   He is talking about  
22                  this paragraph.

23                  COMM. LYNCH:    Only this paragraph.    I  
24                  was talking about just this paragraph.

25                  CHAIRMAN MACCHIAROLA:   I understand

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1       that.

2                     We'll have to go back and take that out.

3                     MR. CROWELL:    I want to point out, we  
4       had received some comments after the meeting last  
5       week, people were confused, and a number of people  
6       said to the staff that they were -- they felt use of  
7       the word "unaffiliated" somehow may be unclear to  
8       people.

9                     "Independent" actually means something in  
10       modern political parlance.

11                    So that was some of the commentary we had  
12       heard.

13                    COMM. NEWMAN:    What is the Board of  
14       Elections term?

15                    COMM. GATLING:    Independent  
16       unaffiliated, what does it say on the registration  
17       card?   I think it's independent unaffiliated.

18                    MR. CROWELL:    I don't have a  
19       registration card.   I think it is independent.

20                    CHAIRMAN MACCHIAROLA:    What you have to  
21       do, if you say "unaffiliated," which is -- which is  
22       Father O'Hare's suggestion, to add unaffiliated,  
23       your suggestion, your modification.

24                    Bill's choice of unaffiliated, we'll give  
25       Bill credit.

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1                   Does a Board of Elections -- if the Board  
2 of Elections says unaffiliated/independent --

3                   COMM. SIEGAL:    We can go around in  
4 circles, let's call a vote.

5                   CHAIRMAN MACCHIAROLA:   What is the  
6 question?

7                   COMM. SIEGAL:    Bill made a motion,  
8 Father O'Hare accepted, substitute "unaffiliated"  
9 for "independent."

10                  MR. CROWELL:    Independents on the voter  
11 recognition party would check off, I do not wish to  
12 enroll in a party.

13                  COMM. NEWMAN:   It doesn't use either  
14 term.

15                  COMM. PATTERSON:   We can take that  
16 entire phrase and put it in.

17                  CHAIRMAN MACCHIAROLA:   The other option  
18 is, of course, not to put anything.

19                  You can put your political party, list  
20 yourself as unaffiliated or leave it blank.

21                  Those are three choices that someone has.

22                  Bill's recommendation, we simplify it and  
23 say "unaffiliated" rather than "independent."

24                  Mr. Lynch, on the proposal?

25                  COMM. LYNCH:    Yes.

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1                   I want to be clear, exactly clear what I  
2 was voting on.

3                   "Unaffiliated."

4                   CHAIRMAN MACCHIAROLA: I wouldn't think  
5 of engaging you in any vote on the wrong side.

6                   I have my friendship to take care of,  
7 too.

8                   Mr. Siegal?

9                   COMM. SIEGAL: No.

10                  COMM. NEWMAN: Before I vote, I want to  
11 say the discussion we have been having talking about  
12 leaving people the option of not saying anything is  
13 nowhere listed in this paragraph.

14                  CHAIRMAN MACCHIAROLA: The word "could"  
15 conveys that. It doesn't say "shall," it says  
16 "could."

17                  Therefore, you can list party  
18 affiliation, independent under bill of the amendment  
19 or list nothing.

20                  When you read through here it will say  
21 that.

22                  On the resolution, the amendment.

23                  COMM. NEWMAN: Yes.

24                  COMM. PATTERSON: I don't know, let me  
25 pass.

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1 DR. KHALID: I'll pass.

2 COMM. GATLING: No.

3 COMM. NORAT: No.

4 FATHER O'HARE: Yes.

5 COMM. GARCIA: No.

6 CHAIRMAN MACCHIAROLA: Do you want to  
7 vote -- I'll vote no. If you want to be sure we  
8 have a majority here.

9 DR. KHALID: No means we are having  
10 independent/unaffiliated.

11 CHAIRMAN MACCHIAROLA: We are going to  
12 keep it exactly the way it is.

13 These guys worked all weekend to put all  
14 this stuff together.

15 The last thing I want to do is send them  
16 home and make them change all four.

17 DR. KHALID: I will keep the word like  
18 this.

19 COMM. PATTERSON: I will vote no.

20 CHAIRMAN MACCHIAROLA: The resolution  
21 fails.

22 MR. CROWELL: The question will remain  
23 "independent."

24 The legislation should just read, "Party  
25 registration or independent status."

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1                   Is that what I'm to understand?

2                   DR. GARTNER:     Yes.

3                   MR. CROWELL:     That's fine.

4                   DR. GARTNER:     One comment, only one of  
5                   the three of us worked all weekend, Mr. Crowell.

6                   CHAIRMAN MACCHIAROLA:     Somebody reported  
7                   you guys worked all weekend.

8                   COMM. NEWMAN:     My E-mail indicated  
9                   you're sending out a report at 4:00 a.m.     I thought  
10                  that was pretty impressive.

11                  DR. GARTNER:     I stayed up last night,  
12                  Mr. Crowell stayed up two nights in a row.     I want  
13                  the record straight.

14                  CHAIRMAN MACCHIAROLA:     He did get three  
15                  days off this summer.

16                  MR. CROWELL:     Today is my birthday.

17                  COMM. NORAT:     When we're done, we'll  
18                  sing.

19                  CHAIRMAN MACCHIAROLA:     This is the  
20                  resolution.     It embraces all of the amendments and  
21                  all of the suggestions that it made.

22                  Mr. Lynch made several suggestions of a  
23                  substantive nature.

24                  Bill, do you want to advance any of those  
25                  at this point for discussion, or modify anything you

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1 already agreed to?

2 COMM. LYNCH: No.

3 CHAIRMAN MACCHIAROLA: Then if we have  
4 it, let's put it to a vote.

5 I should emphasize here, this is a vote  
6 to submit this ballot question to the voters.

7 It does not require that you agree with  
8 all of it, with most of it, all it requires is that  
9 at this point in the process you believe the voters  
10 of the City of New York should have this question  
11 put to them in the election in November.

12 Mr. Lynch?

13 COMM. LYNCH: Mr. Chairman, before I  
14 vote, I would like to make a couple of short  
15 comments about the vote.

16 When I make my vote, I have taken into  
17 consideration a couple of things.

18 One, the community in which I come from  
19 and try to the best of my ability to understand that  
20 community's concerns on these issues.

21 I know I have been the poster boy on this  
22 Commission for the Democratic party, but I tried the  
23 best of my ability to be objective and listen to all  
24 the information to me brought to me before I made my  
25 vote.

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1                   Even before I cast my vote now, I want to  
2                   thank the Mayor, I want to thank the members of the  
3                   Commission, and I want to thank my two colleagues  
4                   behind me who helped me tremendously with this stuff  
5                   we had to look at.

6                   When I first was asked to do this I  
7                   wasn't sure if I could handle all the information  
8                   that was put before us.

9                   But I still think we rushed this process.  
10                  That we did it too quickly. We didn't do the  
11                  necessary study, and midway through the process, we  
12                  changed horses.

13                  And what I mean by that, we went -- we  
14                  were talking about non-partisan elections and then  
15                  we put this, what I call the Jacksonville position  
16                  on us, where candidates could put their party  
17                  affiliation, and we hadn't done any real study, we  
18                  hasn't really looked at it.

19                  I wasn't sure what we were voting on and  
20                  I'm not sure if the community in which I thought I  
21                  was representing was understand -- understood what  
22                  was happening here.

23                  First we were talking about non-partisan  
24                  elections, then we went to candidates putting their  
25                  names on the ballot.

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1                   The other concerns I had was what I  
2                   thought was the main objective of this Commission.  
3                   The main goal of this Commission was to increase  
4                   voter participation.    And I put forward three or  
5                   four proposals.

6                   One being same day voter registration,  
7                   and I thought there was some arguments pushing me  
8                   back that said that same day voter registration was  
9                   not in the purview of the Commission.

10                  I also raised the issue of non-federal  
11                  citizen participation.

12                  I got a similar push-back and I raised  
13                  the issue of extended voting days.

14                  And really didn't get an answer on that  
15                  until late in the process.

16                  And so being the politician I am, I went  
17                  public on it.

18                  I probably ruffled a few feathers on the  
19                  Commission, and therefore I apologize for doing  
20                  that, but I wanted the community at large to know at  
21                  least where I stood on this, and that's why I went  
22                  public.

23                  Again, I want to thank the Mayor for  
24                  allowing this, the Chairman and the staff for  
25                  tolerating whatever push-back I made.

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1                   And I particularly want to thank Andy and  
2                   Denise who have been very helpful advising me and a  
3                   lot of other people I talked to in the city about  
4                   what we're doing.

5                   With all of that, I vote no at this  
6                   point.

7                   CHAIRMAN MACCHIAROLA:   Thank you, sir.

8                   It goes without saying we all appreciate  
9                   your service.  These don't go to any basic questions  
10                  about how we relate to each other as people on this  
11                  Commission, as you have done a fine job in terms of  
12                  representing what you believe and we can only  
13                  support that, I can only support that and take my  
14                  hat off to you.

15                  Thank you.

16                  Commissioner Siegal?

17                  COMM. SIEGAL:    Yes.

18                  COMM. NEWMAN:   I believe this proposal  
19                  presents a great opportunity to increase voter  
20                  participation and independence in the governance  
21                  process of the city, so I vote yes.

22                  COMM. PATTERSON:   Yes.

23                  DR. KHALID: I also believe that this will  
24                  help the ethnic community all over the city and so I  
25                  vote yes.

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1                   COMM. GATLING:   Having served on this  
2                   Commission twice, I'm greatly honored and I learned  
3                   a lot.

4                   Like Mr. Lynch, I am a product of the  
5                   deep south and a benefactor of many things that went  
6                   on.   My grandfather had a cotton farm in  
7                   Mississippi.  He's 67 years old.  Just like I want  
8                   my grandfather to, I want the million and a half New  
9                   Yorkers who can't vote to vote.

10                  CHAIRMAN MACCHIAROLA:  Thank you.

11                  COMM. NORAT:    I am also very honored to  
12                  have served on this Commission twice.  I am very  
13                  happy to vote yes on this proposal.

14                  FATHER O'HARE:    I am afraid I have to  
15                  vote no on this proposal.  I will be open to  
16                  partially put on the ballot that the voters may  
17                  judge it even though I vote against it.  I feel  
18                  that posture is too confusing and too ambiguous.

19                  Let me previously say why I am voting no.

20                  I think the staff has pointed out that  
21                  the academic research done on the different election  
22                  schemes that we have considered and the experience  
23                  of other jurisdictions is inconclusive regarding New  
24                  York City.

25                  I understand this to mean that the

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1 academic research presently available cannot support  
2 confident predictions about either the negative or  
3 the positive consequences of the elimination of  
4 party primaries in New York City.

5           It is not clear to me what kind of new  
6 research could provide persuasive evidence, that the  
7 elimination of party primaries with both the  
8 important goals and greater voter participation of  
9 citizen engagement and other rationale behind what  
10 its proponents see in eventual reform.

11           Against this background of inconclusive  
12 research, and after considering the testimony we  
13 have heard for many citizens and groups over the  
14 past several months, I remain concerned about the  
15 possible unintended negative consequences of such a  
16 fundamental change. In particular, I'm concerned  
17 about three possible negative consequences.

18           I'm concerned about the great irony which  
19 Douglas Kelter warned on July 24th, that the  
20 elimination of party primaries could actually  
21 increase the power of party bosses by stripping away  
22 the right of party rank and file to vote in party  
23 primaries.

24           Most of all, I am concerned about the  
25 dangers that these fundamental changes poses for New

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1       York City's campaign financial program, dangers  
2       which I believe the staff and the Commission do not  
3       fully appreciate.

4               I am also bothered by the assertion of  
5       the staff report that I read this morning on my  
6       computer that 80 percent of the testimony we have  
7       heard supported the elimination of party primaries.

8               In fact, two groups consistently and  
9       repeatedly spoke in favor of this change,  
10      representatives of the Independence Party and the  
11      new era Democrats.

12              While it is true that elected public  
13      officials and Democratic party leaders were vehement  
14      in their opposition, and it could be argued they  
15      have a vested interest in the present system, it is  
16      also true we heard testimony from the working family  
17      party and from every good government group that  
18      appeared before us who argued against putting this  
19      proposal on the ballot at this time.

20              I refer to Citizens Union, NYPER and  
21      Common Cause.

22              Even the representatives of the  
23      Independence Party, the strongest, I should say  
24      those various good government groups testified only  
25      once; therefore, they are not included in the 80

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1 percent who testified for it.

2 Finally, the representatives of the  
3 Independence Party, the strongest and most  
4 consistent advocate of the elimination of party  
5 primaries have expressed their fundamental  
6 disagreement with the proposal we are now  
7 considering, namely one that would allow candidates  
8 to indicate their party affiliation or lack thereof.

9 For these reasons, I conclude I must vote  
10 against putting the changes in the ballot in this  
11 November's election.

12 CHAIRMAN MACCHIAROLA: Thank you.

13 COMM. GARCIA: I am sitting on last  
14 year's and this year's Commission and attending  
15 probably 30 or 40 hearings. I am happy to vote yes.

16 CHAIRMAN MACCHIAROLA: I have a note  
17 from Commissioner Tsang who unfortunately is  
18 traveling and can't be with us.

19 "Although I can't be with you to vote on  
20 which proposal should be placed on the ballot, I  
21 would nonetheless give my support. I support the  
22 Commission placing non-partisan elections on the  
23 ballot. It is clear to me is entity of the current  
24 partisan system of elections is deeply flawed and  
25 non-partisan elections would provide a breath of

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1 fresh air in the voting booth. This reform is  
2 critical to procuring our candidate pool that is  
3 reflective of the diverse communities and  
4 perspectives our city and elections are competitive  
5 and conducted with integrity."

6 I would like to express my support for  
7 the questions that we have here, both affirmatively.

8 It seems to me there have been a number  
9 of arguments that have been quite persuasive and  
10 arguments that convince me even further. I must  
11 confess I came to this process with a belief having  
12 offered the 1988 Charter provisions regarding  
13 non-partisan elections with special elections for  
14 the city council.

15 That it was a good thing, provided access  
16 for more people. I think the elections we have had  
17 since that time have demonstrated it.

18 But I think a number of things should be  
19 emphasized.

20 First, the tremendous number of people,  
21 fully one-third of the people who are enrolled,  
22 registered to vote do not participate in the primary  
23 elections that really matter in this city, the  
24 primary elections of the party to which I belong,  
25 Democratic party, and to which I would welcome

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1 additional voices into that party process.

2 The second thing that I think it would do  
3 would be to make sure that access is available to  
4 more candidates.

5 When we see so many ballot -- people  
6 being thrown off the ballot for technical reasons,  
7 for reasons that they have not properly filled out  
8 forms or had the appropriate people sign forms,  
9 expanding the pool of who can collect signatures and  
10 expanding the pool who can vote in those elections,  
11 just simply increases the opportunity for people to  
12 compete in those elections.

13 I think it will also ensure that we have  
14 had party elections. There is nothing more  
15 frustrating in going to the polls and in seeing the  
16 election is already foreclosed because a primary  
17 process would put a person on the ballot with 20  
18 percent. 25 percent of the vote in a party primary  
19 is tantamount to an election in the general  
20 election.

21 The result of that is we do not have as  
22 many representatives, truly representative of the  
23 communities.

24 This ensures that no one represents any  
25 district unless that person has received a majority

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1       vote of the people in that district who came to the  
2       polls on Election Day. It will represent a  
3       broadening of the legitimacy of the people who  
4       presently hold those positions.

5                   Finally, it is for the Campaign Finance  
6       Board, one of the most frustrating things, I think  
7       has to be that two-thirds of the money that's given  
8       by the Campaign Finance Board in elections in the  
9       City of New York are given to candidates who have no  
10      election. Candidates who are put on the ballot and  
11      are elected in most instances with a significant  
12      number of a significant margin.

13                   42 out of the last 51 councilmanic races  
14      in this city were decided by margins of over 30  
15      percent.

16                   That huge amount of margin money is  
17      invested from the Campaign Finance Board on the  
18      theory that these aren't competitive elections.  
19      They are not competitive elections and the money is  
20      really spent by candidates who have no chance of  
21      losing.

22                   Rather than do what they're intended to  
23      do, which is to provide access, what they simply do  
24      is provide a slush fund for people who are already  
25      elected to get on that ballot.

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1 anything except make it look that we're desperate to  
2 demonstrate support.

3 We shouldn't show such desperation.

4 I would encourage the removal of that  
5 language.

6 If you want, I'll make it as a motion.

7 DR. KHALID: I think that in one of the  
8 meetings, the language was changed from "percentage"  
9 to "majority."

10 I think it was changed to sort of 80  
11 percent.

12 CHAIRMAN MACCHIAROLA: Let me not  
13 entertain -- we can spend more time going over this.  
14 I want to get to the business of the Commission,  
15 which is, the conclusion of that, if you wants to  
16 raise that, I will be happy to entertain.

17 I want to go through the other amendments  
18 in the Charter.

19 Dr. Gartner?

20 DR. GARTNER: We have three items.

21 I want to note as Anthony did a moment  
22 ago that pertinent to either of them I suggest we  
23 take that up after the government reorganization,  
24 are effective dates and separate provisions.

25 CHAIRMAN MACCHIAROLA: Do you want to

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1 present that to us?

2 MR. CROWELL: I want to make sure you  
3 have it in front of you.

4 CHAIRMAN MACCHIAROLA: We have it in  
5 front of us. Explain what the ramifications are.

6 MR. CROWELL: Effective date would be  
7 for the 2009 citywide elections.

8 CHAIRMAN MACCHIAROLA: For the election  
9 after 2005?

10 MR. CROWELL: It would apply generally  
11 to that citywide election, 2009.

12 However, it would take effect on November  
13 9, 2005, the day after the general election of 2005,  
14 in which the Mayor is expected to seek reelection,  
15 and would apply to all those special elections that  
16 would take place, if there are any in that four-year  
17 period.

18 CHAIRMAN MACCHIAROLA: Thank you.

19 MR. CROWELL: Severability provisions,  
20 if any of the provisions are litigated in the way we  
21 fashioned the non-partisan program, that entire  
22 system wouldn't fail just because one provision may  
23 have some infirmity. There are safeguards built  
24 in.

25 Mr. Lynch?

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1                   COMM. LYNCH:    Yes.

2                   COMM. NEWMAN:    Yes.

3                   COMM. PATTERSON:  Yes.

4                   DR. KHALID: Yes.

5                   COMM. GATLING:    Yes.

6                   COMM. NORAT:      Yes.

7                   DR. GARTNER:      Again, paragraph 4 worked  
8           better on city elections.  I'm not sure I can fully  
9           justify the distinction.

10                   We again went through each of the issues  
11           that you had discussed.  The first item as it says  
12           in plain English, "Removing the detailed requirement  
13           for specific purchasing methods."

14                   Exploiting the municipal -- this is the  
15           law provision for special cases that will allow the  
16           PPB to fashion an appropriate method for each  
17           circumstance.

18                   The second deals with the issue of  
19           training and certification for ATC ACCO.

20                   Let me be clear that your agreement was  
21           this focus on ACCOs, we didn't say ACCOs here  
22           because we thought that was complicated.

23                   The third item is to -- an item we  
24           discussed, enhance opportunity to small businesses  
25           including minority women-owned businesses.

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1                   The fourth item deals with the situation  
2                   whereby determination of the Mayor, revealing what  
3                   the procurement is about in and of itself, would be  
4                   a danger to the city or its people, and required  
5                   procedures such as hearings would be waived by  
6                   determination of the Mayor in specific instances.

7                   The next item deals with a whole shebang,  
8                   if you will, of issues that you dealt with in terms  
9                   of reducing the impact on city contractors,  
10                  particularly but not exclusive for not-for-profit  
11                  organizations.

12                  And the final item is the shorthand of  
13                  A-133 brought to the city.

14                  Again, shall this proposal be adopted is  
15                  the final iteration of that?

16                  CHAIRMAN MACCHIAROLA:    Are there any  
17                  items that any of the commissioners think is not  
18                  included in here or wish to be clarified or restated  
19                  in a better or more enhanced way?

20                  COMM. NEWMAN:    The A-133 clause, I think  
21                  you want to use the term financial or financial and  
22                  operational audits.

23                  I don't think the intent suggested was to  
24                  discourage agencies from independent of a monitoring  
25                  the performance of their contractors.

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1 DR. GARTNER: I'm not sure, Steve,  
2 whether you wanted financial in or programmatic  
3 out --.

4 COMM. NEWMAN: I think you want to  
5 specify financial and operational. Not  
6 programmatic.

7 I don't think we want to stop agencies  
8 from monitoring how well their contractors are  
9 doing.

10 DR. GARTNER: That was the intent, we  
11 have no difficulty with that.

12 COMM. NEWMAN: I guess the other thing  
13 on that, it's in a big issue, but we talk about  
14 consolidate.

15 I guess the technical term that comes to  
16 exist in the country is consolidate audit  
17 requirements above.

18 I don't know that anybody will understand  
19 either of them.

20 MR. CROWELL: I appreciate that.

21 When we drafted this we thought the  
22 consolidate is effectively to bring it to one.

23 CHAIRMAN MACCHIAROLA: Why don't you  
24 put --

25 COMM. NEWMAN: Single audit is the

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1 official federal term for what they're doing.

2 CHAIRMAN MACCHIAROLA: Single audit.

3 DR. GARTNER: Single financial audit.

4 COMM. NEWMAN: Single financial and  
5 operational audits.

6 MR. CROWELL: We should use the  
7 consolidated term so there's flexibility, to  
8 reflect flexibility in how they are going to  
9 recreate this.

10 CHAIRMAN MACCHIAROLA: They have a  
11 system right now. I'm not asking to recreate it,  
12 just giving them the authority to provide -- right,  
13 you're adding --

14 MR. CROWELL: "Consolidate" seems like  
15 the appropriate word.

16 COMM. NEWMAN: It's a technical term.

17 MR. CROWELL: It's reflected as a single  
18 financial audit in the report, legislative history  
19 will note that.

20 DR. GARTNER: Insert the word  
21 "financial."

22 COMM. NEWMAN: Financial and  
23 operational.

24 CHAIRMAN MACCHIAROLA: Financial and  
25 operational audit requirement?

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1                   COMM. PATTERSON:    It's not designed to  
2                   audit and operate.

3                   DR. GARTNER:        My understanding was we  
4                   were talking about financial audits.

5                   COMM. NEWMAN:       Financial normally  
6                   includes operational.

7                   CHAIRMAN MACCHIAROLA:   Use the word  
8                   financial.

9                   Consolidate financial audit requirements  
10                  for city contractors.    The language of that is  
11                  clear.

12                  With that amendment, is there any  
13                  objection to the amendment that Mr. Newman has added  
14                  to it and it's accepted by the staff?

15                  Let's vote on the audit.

16                  Commissioner Lynch?

17                  COMM. LYNCH:        Yes.

18                  COMM. NEWMAN:        Yes.

19                  COMM. PATTERSON:     Yes.

20                  DR. KHALID:        Yes.

21                  COMM. GATLING:        Yes.

22                  COMM. NORAT:        Yes.

23                  FATHER O'HARE:        Yes.

24                  COMM. GARCIA:        Yes.

25                  CHAIRMAN MACCHIAROLA:   Commissioner

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1 Siegal, we don't know where he is.

2 We will give him the opportunity to vote  
3 when he returns.

4 Also indicate to you that Commissioner  
5 Tsang fully supports the Commission placing the  
6 issue of procurement reform on the ballot.  
7 Obviously, that vote doesn't count but we should  
8 enter that in the record.

9 So this resolution is adopted.

10 Resolution 3 --

11 MR. CROWELL: Let's go over the  
12 severability provisions.

13 Most of the procurement provisions will  
14 take effect immediately if they are adopted by the  
15 voters and there is a 90-day window for  
16 implementation or effective date on the vendex  
17 provisions and the employment report from the  
18 Department of Employment Services.

19 CHAIRMAN MACCHIAROLA: We have discussed  
20 this before. We have discussed all this before.

21 MR. CROWELL: Yes.

22 DR. GARTNER: This is the time we will  
23 affirm.

24 CHAIRMAN MACCHIAROLA: Do you want a  
25 single vote on all of this?

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1 DR. GARTNER: No. Collective vote on  
2 all of the items would be fine.

3 CHAIRMAN MACCHIAROLA: On the  
4 servability or effectiveness issues?

5 COMM. LYNCH: I'm unclear.

6 CHAIRMAN MACCHIAROLA: We are now doing  
7 the servability and effective language on  
8 procurement.

9 We voted on procurement. Everyone voted  
10 in the affirmative.

11 COMM. SIEGAL: Yes.

12 CHAIRMAN MACCHIAROLA: Can we  
13 consolidate this?

14 We're voting on the time in which this  
15 takes effect and the servability clauses similar to  
16 what we did.

17 MR. CROWELL: Same concept, exactly.

18 COMM. LYNCH: I pass for right now.

19 I'm clear about the first part, but I'm  
20 not quite clear about the second part.

21 CHAIRMAN MACCHIAROLA: Having voted on  
22 procurement, there are some technical questions  
23 regarding when it takes place.

24 COMM. SIEGAL: Servability questions?

25 CHAIRMAN MACCHIAROLA: Effective date

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1 and servability questions.

2 DR. GARTNER: For all the items, all  
3 three sets of recommendations, there are servability  
4 clauses that apply. Any one leg falls the whole  
5 house does not fall.

6 On the effective date question, the city  
7 elections effective date is one date, the day after  
8 the 2005 general election.

9 DR. GARTNER: There is a mixture of  
10 effective dates.

11 The general effective date is immediately  
12 except for two particular items where the effective  
13 date is nine months subsequent to the passage.

14 CHAIRMAN MACCHIAROLA: All of which we  
15 discussed before, if you remember the question of  
16 4th of July.

17 COMM. SIEGAL: Yes.

18 MR. CROWELL: The way this works is each  
19 ballot question is a separate legal document for  
20 presentation to the City Clerk, separate  
21 legislation, has to have a separate effective date  
22 and servability clause. That is why we are doing it  
23 this way.

24 I will in effect be creating three  
25 separate packets for the City. It will be down in

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1 one.

2 COMM. SIEGAL: Yes.

3 COMM. NEWMAN: Yes.

4 COMM. PATTERSON: Yes.

5 DR. KHALID: Yes.

6 COMM. GATLING: Yes.

7 COMM. NORAT: Yes.

8 FATHER O'HARE: Yes.

9 COMM. GARCIA: Yes.

10 CHAIRMAN MACCHIAROLA: There are a  
11 series of consolidated questions, four consolidated  
12 questions. We have dealt with each of them before.

13 There is a question that Commissioner  
14 Seigel brought to my attention before. I don't know  
15 whether that question has been resolved. Ms. Norat  
16 has participated in this.

17 Why don't we explain what the issue is?

18 Alan, start by telling us.

19 DR. GARTNER: I'm happy to have Fred do  
20 it.

21 COMM. SIEGAL: I had some objections to  
22 this initially. In terms of servability, I wanted  
23 to serve some of the provisions. I wanted some of  
24 them to be put under the purview of the Consumer  
25 Affairs Department, others not.

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1                   Then we were told that business groups  
2                   found this acceptable, the language was acceptable.

3                   Now I have learned today that some small  
4                   business groups have serious questions about this  
5                   and are not willing to go along with this.

6                   Which raises questions about this.

7                   Part of this I'm very strongly in favor  
8                   of, especially when it deals with selling of box  
9                   cutters, spray paint, et cetera, et cetera.

10                  That clearly --

11                  We were given an entire package. We  
12                  decided not to sort it out because we were told  
13                  there were no longer any objections.

14                  If there really are objections, the last  
15                  thing I want to do is stir up a hornet's nest by  
16                  making life more difficult for small business owners  
17                  in New York.

18                  I am up in the air. I am not sure what  
19                  to do.

20                  I am reluctant to go ahead with this  
21                  first provision.

22                  I'm simply reluctant to go ahead with  
23                  this first item, with this ambiguity hanging over  
24                  it.

25                  COMM. NORAT: I agree.

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1                   CHAIRMAN MACCHIAROLA:   Ms. Norat also  
2                   had discussions.

3                   I think what we have to understand, I  
4                   just heard about this tonight, this is not something  
5                   I knew anything about, the issue that we had  
6                   presented to us was an issue which the former city  
7                   commissioners of Consumer Affairs had written to us  
8                   on behalf of these proposals.

9                   The proposals also had been vetted  
10                  through some of the larger groups. Commissioner  
11                  Norat had worked with those groups as well.

12                  These new groups had not been consulted  
13                  and brought an issue to our attention late in the  
14                  process.

15                  Have you had any --

16                  COMM. NORAT:   The problem mostly is we  
17                  haven't been able to confer with the small business  
18                  people.

19                  The last we heard, they were in  
20                  opposition and we have not -- the other day we were  
21                  able to determine that the big groups removed their  
22                  application because they worked on the final  
23                  version.

24                  It just came to our attention today that  
25                  apparently we have nothing to confirm with the

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1 others.

2 So we are not comfortable -- we are not  
3 at the level of comfort that the other day we had  
4 when we assumed that all business groups had signed  
5 off on this, and were comfortable.

6 CHAIRMAN MACCHIAROLA: Well --

7 COMM. SIEGAL: One other point.

8 As I understand it, much of this can be  
9 done by the council, not -- tell me if I'm wrong.

10 The most important provision, the one  
11 about items being sold of potentially an untoward  
12 nature, that cannot be done by the council, am I  
13 right about this? Box cutters, acetylene paint?

14 COMM. NORAT: There was a bill in Albany  
15 last session which didn't go anywhere, as most of  
16 the bills last year.

17 MR. CROWELL: The issue here is hearing  
18 authority and docketing authority. These are the  
19 bigger issues.

20 What the city council can't do is give a  
21 city agency docketing authority. That is an issue  
22 exclusively for state government, state legislature.

23 They can give them hearing authority to  
24 hear on matters ordinarily within its jurisdiction.  
25 That is where the issues you are talking about do

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1           come into play.

2                       What my understanding is is that the  
3           Department of Consumer Affairs has not introduced  
4           this in the council at this time, just for the  
5           hearing authority.

6                       What they have pursued is the  
7           consolidated package of hearing and docketed  
8           authority in Albany, that has failed to be enacted,  
9           as Commissioner Norat has stated.

10                      COMM. NORAT:    I would have to remove my  
11           support at this point.    There are too many unknowns  
12           that we were not aware of.

13                      COMM. SIEGAL:    I agree.

14                      CHAIRMAN MACCHIAROLA:    Let's take that  
15           item separately.

16                      The last sentence of the first bullet,  
17           the last phrase of the last bullet --

18                      DR. GARTNER:    If I may, if you split  
19           the two and have a comment about the second, if you  
20           end the first item with the words, "such tribunals."

21                      CHAIRMAN MACCHIAROLA:    Period.

22                      MR. CROWELL:    Semi colon.

23                      CHAIRMAN MACCHIAROLA:    In other words,  
24           you have two pieces here.    One piece that says up  
25           until and expand the authority of the administrative

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1 tribunal of the Department of Consumer Affairs to  
2 hear all matters within the agency's jurisdiction.

3 We will take each section of that  
4 separately.

5 The first section is to authorize the  
6 Mayor to issue rules governing the official conduct  
7 and administrative law judges of the City's  
8 administrative tribunals, and require the  
9 coordination of such tribunals.

10 On that part of the resolution, Mr.  
11 Lynch?

12 COMM. LYNCH: Abstain.

13 COMM. SIEGAL: Yes.

14 COMM. NEWMAN: Yes.

15 COMM. PATTERSON: Yes.

16 DR. KHALID: Yes.

17 COMM. GATLING: Yes.

18 COMM. NORAT: Yes.

19 FATHER O'HARE: Yes.

20 COMM. GARCIA: Yes.

21 CHAIRMAN MACCHIAROLA: On the second  
22 part will either read or expand the authority of the  
23 administrative tribunal of the Department of  
24 Consumer Affairs to hear all matters within the  
25 agency's jurisdiction or it will fail.

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1                   On this particular section, expanding the  
2                   authority of the administrative tribunal, unless  
3                   there is more discussion, is there anyone that wants  
4                   more discussion on this?

5                   DR. GARTNER:     Let me say I was aware of  
6                   the issues that Mr. Siegal raised and Ms. Norat  
7                   raised.    I think this is an important gain.  I was  
8                   impressed by the recommendation of the prior  
9                   commissioners.

10                  I think this is a matter I am not able to  
11                  make a recommendation to.    The question is what the  
12                  comfort level of each commissioner is in going  
13                  forward with the valid assurance which I cannot give  
14                  you that I was comfortable giving you several days  
15                  ago.

16                  CHAIRMAN MACCHIAROLA:    Mr. Lynch, up or  
17                  down?

18                  COMM. LYNCH:     Let me see if I'm clear  
19                  here.

20                  Didn't we make a minor change with this  
21                  at our last meeting?    On whether -- I vote yes.

22                  COMM. SIEGAL:     No.

23                  COMM. NEWMAN:     Yes.

24                  COMM. PATTERSON:    Yes.

25                  DR. KHALID:     Yes.

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1                   COMM. GATLING:    No.

2                   COMM. NORAT:     No.

3                   FATHER O'HARE:    Yes.

4                   COMM. GARCIA:     No.

5                   COMM. NEWMAN:     5-4.

6                   CHAIRMAN MACCHIAROLA:   Motion is  
7                   adopted, 5-4.

8                   Is that enough to carry?

9                   DR. GARTNER:     I believe so, there is no  
10                  super majority vote.

11                  MR. CROWELL:     On that section, you  
12                  should know that independent of this discussion  
13                  which I did not know was going to be coming up, I'll  
14                  give you the pages, that is on page 122, the  
15                  legislative text is just revised.

16                  I reviewed it today and it appeared that  
17                  when BCA transmitted it to us, they had too much  
18                  language that suggested a local law can authorize  
19                  docketing authority.

20                  I revamped the legislation in  
21                  consultation with the Law Department and now the  
22                  legislation is precise as to its just the hearing  
23                  authority that can get the local component.

24                  CHAIRMAN MACCHIAROLA:   It's not quite as  
25                  bad as one would have thought then.

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1                   Enhance the enforcement authority of the  
2                   conflict of interest board by allowing increased  
3                   penalties for violation of the city's ethics law.

4                   COMM. LYNCH:     Yes.

5                   COMM. SIEGAL:     Yes.

6                   COMM. NEWMAN:     Yes.

7                   COMM. PATTERSON:   Yes.

8                   DR. KHALID:       Yes.

9                   COMM. GATLING:     Yes.

10                  COMM. NORAT:       Yes.

11                  FATHER O'HARE:     Yes.

12                  COMM. GARCIA:      Yes.

13                  CHAIRMAN MACCHIAROLA:  Yes.

14                  Place the current 16 member Voter  
15                  Assistance Commission with a 7 member panel which  
16                  would include the public advocate -- with the  
17                  counsel's advice and consent coordinator of Voter  
18                  Assistance.  Voter Assistance would be appointed by  
19                  the Mayor with counsel's advice and consent instead  
20                  of by the Commission.

21                  COMM. NEWMAN:     The other issue we  
22                  discussed which maybe fits in here but doesn't show  
23                  up anywhere is the issue of the video, the franchise  
24                  use of TV for elections, which we did approve at  
25                  some point.  But it doesn't show up.

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1                   MR. CROWELL:    It's in the non-partisan  
2                   election section.

3                   COMM. NEWMAN:    But it doesn't --

4                   MR. CROWELL:    It was -- ballot questions  
5                   as Alan said try to be as broad and reflective of  
6                   everything that is going on, but at the same time  
7                   not every single change is reflected.    But that  
8                   will be reflected in the voter guide itself, under  
9                   description of the question.

10                  COMM. NEWMAN:    Okay.

11                  FATHER O'HARE:    But it's in connection  
12                  with the campaign finance vote, not with voter  
13                  assistance question.

14                  DR. GARTNER:    Mr. Newman is correct if  
15                  that is where we discussed it.    It belongs in the  
16                  context of the election and Campaign Finance Board.

17                  CHAIRMAN MACCHIAROLA:    Do you think we  
18                  should not include that in the ballot question?

19                  Never mind.    It's done.

20                  On the question of the Voter Assistance  
21                  Commission, are we ready to call this question?

22                  Any further discussion?

23                  MR. CROWELL:    I want to make clear on  
24                  the Voter Assistance Commission revision, we refined  
25                  the language just slightly to make it clear -- it

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1 comes up with the effective date, the effective date  
2 will be in April. Accordingly, we modified the  
3 text just to reflect it rather than make it too long  
4 a period before that took effect.

5 CHAIRMAN MACCHIAROLA: Mr. Lynch?

6 COMM. LYNCH: Yes.

7 COMM. SIEGAL: Yes.

8 COMM. NEWMAN: Yes.

9 COMM. GATLING: Yes.

10 COMM. PATTERSON: Yes.

11 COMM. NORAT: Yes.

12 FATHER O'HARE: Yes.

13 COMM. GARCIA: Yes.

14 CHAIRMAN MACCHIAROLA: Unanimous.

15 The annual publication of the Mayor's  
16 office management report, a preliminary Mayor's  
17 management report will no longer be required.

18 COMM. GATLING: Yes.

19 CHAIRMAN MACCHIAROLA: You jumped the  
20 line.

21 COMM. NEWMAN: Such enthusiasm from the  
22 City Commissioner to change the tortured position.

23 CHAIRMAN MACCHIAROLA: Mr. Lynch?

24 COMM. LYNCH: No.

25 COMM. SIEGAL: Yes.

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1                   COMM. NEWMAN:    Yes.

2                   COMM. PATTERSON:   Yes.

3                   DR. KHALID: Yes.

4                   COMM. GATLING:     Yes.

5                   COMM. NORAT:       Yes.

6                   FATHER O'HARE:     Yes.

7                   COMM. GARCIA:      Yes.

8                   CHAIRMAN MACCHIAROLA:   Yes.

9                   Are there any other provisions?

10                  DR. GARTNER:       Excuse me, one more  
11 round, effective date and servability.

12                  CHAIRMAN MACCHIAROLA:   Questions that  
13 have been submitted for this section that the  
14 commissioners feel has not been governed or missing  
15 or is not reflected in this set of questions here?

16                  Anyone?

17                  MR. CROWELL:     This section, I told you  
18 that provisions concerning Voter Assistance  
19 Commission would take effect in April.   PMMR,  
20 Department of Consumer Affairs would take effect  
21 immediately.

22                  And then the coordinator of  
23 administrative justice would take effect  
24 immediately.

25                  CHAIRMAN MACCHIAROLA:   All right.

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1                   On those resolutions?

2                   Mr. Lynch?

3                   COMM. LYNCH:     I pass.

4                   COMM. SIEGAL:    Yes.

5                   COMM. NEWMAN:    Yes.

6                   COMM. PATTERSON:  Yes.

7                   DR. KHALID: Yes.

8                   COMM. GATLING:   Yes.

9                   COMM. NORAT:     Yes.

10                  FATHER O'HARE:    Yes.

11                  COMM. GARCIA:     Yes.

12                  CHAIRMAN MACCHIAROLA:  Yes.

13                  DR. GARTNER:     Should I ask the general  
14                  counsel, could it be effective yesterday,  
15                  retroactively?

16                  MR. CROWELL:     Only if the retroactive  
17                  applicability was interesting.

18                  CHAIRMAN MACCHIAROLA:  There is one  
19                  other item we have to do.  Then we can go onto the  
20                  questions that we had about --

21                  MR. CROWELL:     I would like to clarify a  
22                  couple of things in the report.

23                  On page 7, the difference between the  
24                  draft you received and this draft, I have just  
25                  expanded the description of our scope of work and

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1 our outreach and made that section tighter.

2 On page 33, after discussing -- after  
3 talking with Professor Hebert and looking at the  
4 entire document, I added some language concerning  
5 the Georgia versus Ashcroft decision to make it  
6 clear about the City's authority post Georgia versus  
7 Ashcroft.

8 Also, on page 137, I added some more  
9 clarifying language about why we have deferred  
10 questions to other commissions or decided not to put  
11 certain questions on the ballot.

12 This is on page 137 in this draft.

13 COMM. SIEGAL: Am I missing something?  
14 My draft begins on page 37, is that correct?

15 MR. CROWELL: Your draft should begin on  
16 page 2.

17 Would you like to have mine?

18 CHAIRMAN MACCHIAROLA: You can have  
19 mine.

20 COMM. NEWMAN: You can have everybody's,  
21 probably.

22 DR. GARTNER: What you have before you  
23 is a formal resolution that enables the presentation  
24 of the matters that you have just voted on to be  
25 presented to the City Clerk.

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1                   It authorizes the chair, executive  
2                   director and chief counsel to take actions necessary  
3                   to move forward on that, including technical,  
4                   non-substantive technical changes, and also  
5                   authorizes any defense or commencement litigation to  
6                   protect the interests of the Commission.

7                   And also to go forward with publication  
8                   of material, as part of the presentation for the  
9                   City Clerk, we will take the document that you have  
10                  just approved, the ballot language, and the  
11                  legislative language which you previously approved  
12                  and craft abstracts for the ballot process.

13                  I recommend and urge that you adopt the  
14                  resolution so that we can complete the work.

15                  CHAIRMAN MACCHIAROLA:    These  
16                  resolutions, or this resolution is not a resolution  
17                  in support of the proposals that we put on the  
18                  ballot.

19                  This resolution simply authorizations  
20                  work of this Commission to go forward.

21                  If you oppose, in Bill's case, in Father  
22                  O'Hare's case, you both opposed one of the ballot  
23                  questions, that does not mean you have to oppose  
24                  this resolution.

25                  DR. GARTNER:            That's correct.

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1                   CHAIRMAN MACCHIAROLA:    You're  
2                   authorizing to do the Commission --

3                   MR. CROWELL:    You have authorization on  
4                   some of the substantive provisions to go forward.

5                   CHAIRMAN MACCHIAROLA:    In other words,  
6                   we have votes on several of the proposals.    This is  
7                   an independent question, not a question -- it will  
8                   not say you support non-partisan elections.

9                   FATHER O'HARE:    What does it mean, the  
10                  Commission adopts the report --

11                  CHAIRMAN MACCHIAROLA:    The Commission  
12                  adopts the report.

13                  FATHER O'HARE:    Does that mean we agree  
14                  with everything in the report?

15                  CHAIRMAN MACCHIAROLA:    Please tell us  
16                  what it does.

17                  DR. GARTNER:    It does not mean -- in  
18                  terms of the three ballot language areas,  
19                  non-partisan elections -- it authorizes the actions  
20                  to place them on the ballot, like them or not,  
21                  having voted for them or not.

22                  In terms of the report, part of the  
23                  submission to the City Clerk is mandated in state  
24                  legislation, is that a Charter Revision Commission  
25                  submit a report of its work to -- it completes that

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1 work.

2 This is that report. It is not an item  
3 where any indication is when it supports this or  
4 that, no more than one would say, the document  
5 reports on testimony given by a particular witness  
6 which you disagree with.

7 FATHER O'HARE: If we adopt this report  
8 which we just got tonight, we say I adopt this  
9 report, what does it mean? Does it mean I agree  
10 with this report?

11 DR. GARTNER: It does not.

12 FATHER O'HARE: I adopt it, I make it  
13 my own, isn't that what that word means, I adopt it?

14 CHAIRMAN MACCHIAROLA: It doesn't  
15 actually.

16 If you have trouble with it, don't vote  
17 for it.

18 I don't want to convince you of more than  
19 I have to.

20 We have enough votes to secure it.

21 It's not an endorsement of it. It's  
22 simply authorizing the Chair to go forward and  
23 submit what the Commission itself as a Commission  
24 voted, not what the individual members of the  
25 Commission did.

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1                   COMM. NEWMAN:    Is it possible we can  
2       revise the words in a way that makes it comfortable?

3                    Instead of adopting it which does make it  
4       at least to me, I'm an engineer, not an attorney or  
5       whatever, but the meaning to me when I vote to adopt  
6       something, I agree with it.

7                    I certainly don't agree with that 80  
8       percent of the people who came here to testify.

9                   MR. CROWELL:    That actually will be  
10      changed.

11                   CHAIRMAN MACCHIAROLA:   We have held that  
12      vote, when you had gone to the bathroom, we had more  
13      votes than when you were here.

14                   COMM. NEWMAN:    What will it say?

15                   MR. CROWELL:    We'll revise that out of  
16      there.

17                   CHAIRMAN MACCHIAROLA:   Take all the  
18      references out.

19                   COMM. NEWMAN:    Take all the references  
20      out.

21                   CHAIRMAN MACCHIAROLA:   It's not  
22      necessary.

23                   COMM. NEWMAN:    That's correct.

24                   COMM. LYNCH:    If I vote yes on this, or  
25      if I vote no on this, you're still asking me to sign

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1 this to go forward? Only if I vote yes are you  
2 asking me to sign it?

3 CHAIRMAN MACCHIAROLA: You know what?  
4 What is the requirement on the signatures?

5 MR. CROWELL: What is the question  
6 again?

7 CHAIRMAN MACCHIAROLA: Bill wants to  
8 know if he votes yes does he have to sign it.

9 DR. GARTNER: No, if he votes no.

10 COMM. LYNCH: If I vote no, do I still  
11 have to sign it.

12 MR. CROWELL: There is nothing mandating  
13 signing this. All this does is you're authorizing  
14 the Commission staff to go forward and file the  
15 documents to put the information on the ballot.

16 COMM. LYNCH: But if there are 5 yes  
17 votes in the room, and I vote no, they sign it, it  
18 will still go forward?

19 MR. CROWELL: Right.

20 COMM. LYNCH: That's all I want to know.

21 FATHER O'HARE: I certainly think you  
22 should forward it. I'm troubled by that phrase  
23 that adopting means I agree with it. I haven't  
24 read it. I don't think anybody here has read it.

25 DR. GARTNER: Let me suggest, perhaps,

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1 to address Father O'Hare's inquiry.

2 Instead of the word "adopt," accepts or  
3 receives.

4 COMM. NEWMAN: Receives.

5 CHAIRMAN MACCHIAROLA: And then resolved  
6 that it authorizes and delegates to the Chair.

7 MR. CROWELL: I think received means you  
8 have received it.

9 I think you want to say you have used  
10 this as the underlying basis to provide information  
11 for those votes that you voted yes on and that  
12 you're allowing the Commission staff to go forward  
13 witness.

14 If you have exceptions to certain things  
15 in the report, you can certainly denote that.

16 We have had situations in the past where  
17 someone from last year's Commission who is here  
18 tonight actually had a statement --

19 CHAIRMAN MACCHIAROLA: You know what,  
20 this phrase, "Resolve, Commission hereby adopts the  
21 report that is attached hereto and be it further  
22 resolved" -- that whole clause can be stricken. It  
23 doesn't add anything to it.

24 MR. CROWELL: I think it's actually --  
25 it actually makes a concrete step that the

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1 Commission has taken this report as it's the  
2 underlying basis for which it made its decisions,  
3 and therefore I think it should stay in.

4 COMM. NEWMAN: Is a compromise that it  
5 adopts the Charter changes that are within the  
6 report?

7 COMM. PATTERSON: We have already done  
8 that.

9 MR. CROWELL: Have you already done  
10 that?

11 COMM. NEWMAN: What we have done is a  
12 summary of them. The more specific version of them  
13 are in this document.

14 CHAIRMAN MACCHIAROLA: It says:

15 Resolved, pursuant to Section 36, three  
16 proposals to amend the Charter of the City of New  
17 York, appropriate ballot questions and the  
18 amendments to be effected upon the approval of such  
19 questions are attached hereto, to be filed with the  
20 City Clerk.

21 Resolved, City Clerk shall take such  
22 action as may be required by law to provide for the  
23 submission of the said provisions to the electist of  
24 the City of New York at the general election to be  
25 held November 4, 2003, and be it further resolved

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1           that the Commission hereby authorizes and delegates  
2           to the chair and executive director of chief counsel  
3           the duty and power to take all necessary and  
4           appropriate actions to effectuate the placement of  
5           the questions on the ballot.

6                         That clause serves no purpose except to  
7           antagonize members of the Commission.

8                         It's a resolved clause, not an effect  
9           clause. It doesn't have to be there.

10                        Tell me what that says.

11                        MR. CROWELL: I think it's part of --  
12           this is the way resolutions are typically done.  
13           This is the way previous Charter Commissions have  
14           done resolutions.

15                        I believe there is the practice we should  
16           follow.

17                        There is precedent for it, I do not like  
18           to deviate from that precedent.

19                        This is the underlying basis for the  
20           report, and that's why I drafted it that way. And  
21           I think "adopt" is the proper legal terminology for  
22           how we came about making the underlying decisions,  
23           whether they be for it or against it.

24                        CHAIRMAN MACCHIAROLA: It says ballot  
25           questions have been voted upon by the Commission.

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1                   That's what it says.

2                   COMM. NORAT:    That's a summary of the  
3                   report.

4                   COMM. PATTERSON:   The legislative  
5                   language is in the report.

6                   DR. KHALID:    We are looking at this,  
7                   adopting it after a majority vote on the Commission.

8                   COMM. PATTERSON:   What you want to make  
9                   sure of, absolutely first and foremost, is that you  
10                  have all the necessary -- underpinnings for these  
11                  three resolutions.

12                  You want to put into the record we have  
13                  done our homework on three issues being submitted to  
14                  vote.

15                  That doesn't cover everything.

16                  This thing covers a lot of stuff,  
17                  including why we rejected certain things, and  
18                  certain proposals.

19                  If there is some merit to saying we have  
20                  adopted that portion of the report that relates to  
21                  these three proposals that are going to be put on  
22                  the ballot, I think we should have something in  
23                  there.

24                  That doesn't necessarily mean we have to  
25                  say we are specifically adopting everything.

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1                   COMM. NORAT:    The intention is on the  
2                   points people voted against.

3                   COMM. PATTERSON:   If you're saying  
4                   resolved that the Commission hereby adopts the  
5                   report attached hereto with respect to the matters  
6                   to be submitted which affect proposals to the  
7                   amended charters of the City of New York, that is  
8                   what you need.

9                   FATHER O'HARE:    Change the word "adopt"  
10                  to "receive," thereby establishing the legislative  
11                  history, if that's what you need.

12                  COMM. GATLING:    Can they sign with an  
13                  exception, like on an evaluation, you have to sign  
14                  the evaluation before you move on, even though the  
15                  person being evaluated doesn't like it.    Have them  
16                  sign it but saying "with exception."

17                  COMM. NEWMAN:    Can we accept the report  
18                  rather than adopt it?

19                  COMM. GATLING:    They should sign it.  
20                  We should keep "adopt."    If they want to accept,  
21                  they can sign with exception.

22                  CHAIRMAN MACCHIAROLA:   Let's see if we  
23                  have enough votes to accept it as written.

24                  If there are enough votes to accept it as  
25                  written, we don't have to entertain any other

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1 issues.

2 Those that choose to sign it, sign it.

3 Those that choose not to sign, they choose not to  
4 sign it.

5 COMM. PATTERSON: What are they  
6 accepting?

7 COMM. NORAT: The acceptance.

8 COMM. GATLING: They're not accepting  
9 the ballots.

10 COMM. NORAT: Adopt or accept.

11 COMM. PATTERSON: Mr. Lynch has just  
12 been advised that he doesn't have to sign this at  
13 all.

14 I think it's sort of moot as to whether  
15 he's taking exception to something he doesn't have  
16 to sign.

17 CHAIRMAN MACCHIAROLA: You don't have to  
18 sign it. As long as have you enough voters to --  
19 Somebody wants a five-minute recess.

20 (Recess taken.)

21 CHAIRMAN MACCHIAROLA: Ladies and  
22 gentlemen, can we reconvene?

23 We are voting on the question, resolution  
24 as submitted to us, and the language submitted to  
25 us.

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1                   Mr. Lynch?    The resolution and the  
2                   language as submitted to us.

3                   COMM. LYNCH:    No.

4                   COMM. SIEGAL:    Yes.

5                   COMM. NEWMAN:    I'll pass for the moment.

6                   COMM. PATTERSON:  Yes.

7                   DR. KHALID: Yes.

8                   COMM. GATLING:   Yes.

9                   COMM. NORAT:     Yes

10                  FATHER O'HARE:   No.

11                  COMM. GARCIA:    Yes.

12                  CHAIRMAN MACCHIAROLA:  Six yeses.  The  
13                  resolution is adopted.

14                  Do you want to say something about  
15                  signing it?

16                  MR. CROWELL:    Who voted for it again?

17                  I'll go around.

18                  DR. GARTNER:    You will stand at the  
19                  door.

20                  COMM. NEWMAN:    When do you have to  
21                  submit this?

22                  MR. CROWELL:    It will be submitted by  
23                  Friday.

24                  COMM. NEWMAN:    I have no problem with  
25                  any of the Charter change stuff in it.  It's the

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1 descriptive stuff that may trouble me.

2 You have given me a few days to skim it.  
3 By Friday I may be prepared to sign it.

4 CHAIRMAN MACCHIAROLA: The question is  
5 to the adoption of it and signing it. Is that the  
6 issue?

7 MR. CROWELL: It's typically supposed to  
8 be signed in the presence here, although because we  
9 have the votes, it can be signed tonight and marked  
10 as received tonight. What we can do is  
11 supplementaly support it.

12 If he so chooses to sign it, it won't  
13 necessarily carry to the number, it will go to the  
14 weight of the resolution.

15 CHAIRMAN MACCHIAROLA: The resolution is  
16 adopted, with affirmative votes of Commissioner  
17 Seigel, Patterson, Khalid, Catling, Norat, Garcia  
18 and Macchiarola.

19 As to signing it, anyone wishes to sign  
20 it can sign it now. Anyone that doesn't wish to  
21 sign it, doesn't have to.

22 Anyone that wishes to sign it with  
23 reservations can do that.

24 And we will extend the time to sign it --

25 MR. CROWELL: This will be the official

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1 signing. If someone wants to sign it after this,  
2 they are free to submit a supplementary statement to  
3 be attached to it.

4 CHAIRMAN MACCHIAROLA: Veronica can do  
5 that.

6 MR. CROWELL: We have Veronica's letter.  
7 It won't go to the actual document itself.

8 CHAIRMAN MACCHIAROLA: We have a series  
9 of questions that involve ballot issues.

10 We are going to handle them at the next  
11 meeting.

12 It's late enough to allow this meeting to  
13 conclude.

14 We will have another meeting on September  
15 11th.

16 DR. GARTNER: I will canvas the  
17 commissioners as to a meeting the first full week in  
18 September, the 11th, the entity advises me would not  
19 be an appropriate day, it commemorates fallen  
20 citizens.

21 I will canvas commissioners in that  
22 regard. And the two items we will discuss at that  
23 meeting is the education program and the various  
24 resolutions that have been proposed to the  
25 commission.

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1                   CHAIRMAN MACCHIAROLA:   Those are  
2                   resolutions on ballot access, et cetera.

3                   DR. GARTNER:       Right.

4                   CHAIRMAN MACCHIAROLA:   If there is a  
5                   motion for adjournment --

6                   COMM. GATLING:     So moved.

7                   (Time noted:     9:00 p.m.)

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C E R T I F I C A T E

I, ROBERT BLOOM, a Register Professional Reporter and Notary Public, do hereby certify that the foregoing is a true and accurate transcription of my stenographic notes.

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

---

Robert Bloom, RPR

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