

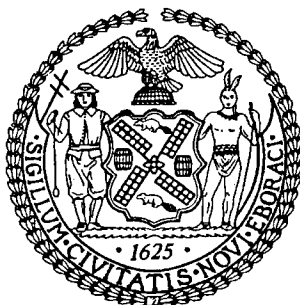
***ENHANCING
ACCESS, OPPORTUNITY
& COMPETITION:***

A BLUEPRINT FOR REFORM

FINAL REPORT

**NEW YORK CITY
CHARTER REVISION COMMISSION**

September 4, 2003



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FINAL REPORT¹

**NEW YORK CITY
CHARTER REVISION COMMISSION
2 Lafayette Street, New York, NY 11201
www.nyc.gov/charter**

September 4, 2003

¹ This report reflects non-substantive technical changes made subsequent to the Commission's August 25, 2003 meeting in accordance with the resolution adopted at that meeting. It also includes documentation memorializing the Commission's August 25, 2003 meeting.

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***ENHANCING ACCESS, OPPORTUNITY
& COMPETITION:
A BLUEPRINT FOR REFORM***

Executive Summary

At its August 25, 2003 meeting, the Charter Revision Commission adopted this report entitled *Enhancing Access, Opportunity & Competition: A Blueprint For Reform* and approved three ballot questions for inclusion on the November 4, 2003 ballot. The ballot questions are entitled City Elections, City Purchasing, and Government Administration.

Nonpartisan Elections (City Elections)

This proposal would make changes to the way the City conducts its elections for the offices of Mayor, Public Advocate, Comptroller, Borough President, and City Council Member. The proposal would provide for a single September primary election open to all eligible voters and candidates, and the top two vote getters in that election would compete in the November general election. The changes would take effect after the 2005 citywide election and apply to all elections, including special elections to fill vacancies in office.

How it Works—Currently, candidates who are running for elected office compete against each other in party primary elections (followed in certain instances by runoff primaries). In these elections, which are held in September, each party's members cast ballots to decide the general election nominee of that party. Candidates may also be nominated for the general election through an independent nominating petition process. Under the proposed system, all candidates for an office would run against each other in the September primary election. Voters would be eligible to vote for any candidate, including a candidate who belongs to a different political party or is registered as an independent. Only the top two finishers in the primary election, regardless of their party or independent registration status, would compete in the November general election.

Who is Eligible to Vote—Currently, only registered voters who are enrolled in political parties may vote in primary elections. Voters registered as independents cannot participate until the general election. Under the proposed system, all voters, including independent voters not enrolled in any party, would be eligible to participate in the primary election.

Ballot Access—Currently, registered voters who carry or sign a petition to place a candidate on the ballot generally must be enrolled in the same party as the candidate petitioning to get on the ballot. Under the proposed system, all eligible registered voters, regardless of their party enrollment or independent status, would be permitted to carry and sign a petition to place a candidate on the ballot. In addition, the maximum number of petition signatures required would generally be the same maximum number that is currently provided for candidates to be placed on the primary election ballot. The new signature requirements would also apply to candidates in special elections to fill vacancies.

The Ballot—Currently, the ballot lists a candidate's party affiliation. Under the proposed system, candidates would be permitted, but not required, to list their party registration or independent status on the ballot.

Political Party Campaign Contributions—Currently, all candidates, including those who participate in the City's voluntary campaign finance program, which provides money from the City treasury to help fund candidates' campaigns, are permitted to accept campaign contributions from political parties, up to specified limits, but candidates may not accept contributions from corporations or unregistered political committees. Under the proposed system, candidates who participate in the campaign finance program would also be prohibited from accepting campaign contributions from political parties. In addition, the Campaign Finance Board would have the authority to address party expenditures in relation to candidates participating in the City's campaign finance program in order to protect the contribution and spending limits of the program under the new system of elections.

Voter Guide—Currently, all candidates may place biographical summaries, campaign information, and a picture of themselves in the printed Voter Guide. This proposal would create a video Voter Guide that broadcasts candidates making brief statements on a municipal cable television channel.

Vacancies in Nominations

Currently, if a candidate dies or a nomination otherwise becomes vacant, the candidate's committee to fill vacancies generally chooses a successor to run in his or her place, if time allows. Under the new system, the next eligible top vote getter in the primary election could fill the vacancy and advance to the general election accordingly. If the vacancy could not be filled in that manner, then a committee to fill vacancies would fill it.

Procurement (City Purchasing)

Chapter 13 of the Charter establishes many of the rules by which the City may purchase (or procure) goods and services. The Charter Revision Commission proposes the following changes to Chapter 13 and to several related sections:

Chapter 13 of the Charter establishes many of the rules by which the City may purchase (or procure) goods and services. The proposal would make changes to Chapter 13 and to several related sections.

Administrative flexibility—Currently, the Charter contains provisions governing a variety of purchasing methods. The proposal would delete a number of these provisions and would require the Procurement Policy Board (“PPB”) to issue rules on most of the deleted topics. In addition, the proposal would authorize the PPB to issue rules for all alternative purchasing methods.

Currently, the Charter generally requires that purchases of goods be made by the Department of Citywide Administrative Services (“DCAS”). This proposal would allow the commissioner of DCAS to delegate a specific purchase of a specific good to another agency, for direct purchase by that agency, provided that the DCAS commissioner could not make this delegation for goods to be generally used by City agencies.

Currently, the Charter authorizes the Mayor to designate DCAS to perform specified administrative functions for certain specified City agencies. This proposal would permit the Mayor to designate additional agencies for which DCAS could perform procurement services.

Currently, the Charter requires proposed contractors and subcontractors for contracts above a certain monetary value to submit reports on workplace employment issues. This proposal would eliminate Charter provisions governing the content and review of these employment reports, and would require the commissioner of the Department of Small Business Services (“DSBS”) to issue rules on these topics.

Qualifications for City purchasing officials—Currently, the Charter contains no provisions governing the training or qualifications of City purchasing officials. This proposal would require the PPB to issue rules setting forth training and professional standards for these purchasing officers, taking into account the volume and complexity of agency contracting activities.

Small businesses and minority and women-owned businesses—Currently, the Charter requires the Department of Small Business Services (“DSBS”) to take steps relating to the promotion of equal opportunities for minority and women-owned businesses. This proposal would require citywide agency coordination by the Mayor to enhance opportunities for vendors.

Security-related contracts—Currently, the Charter generally requires public notice and hearing of contracts for the purchase of goods and services. This proposal would provide an exception to this requirement where the Mayor determines that the notice or hearing would disclose sensitive information that, if made public, could be detrimental to the security of the City or its citizens.

Timeliness of contracting and payment—Currently, the Charter requires that the PPB issue rules for the prompt payment of vouchers, including rules for the payment of interest to vendors whose vouchers are not paid on time. This requirement would be modified to require uniform interest for all vendors. In addition, this proposal would require the PPB to issue rules: mandating timetables for the completion of purchasing steps and remedies for failure to meet such timetables; providing for expedited renewal or extension of existing human services contracts in certain circumstances; and requiring the development of annual contract plans by the City’s human services agencies. This proposal would also establish an annual mayoral procurement report, which would include not only procurement activity indicators (as currently required to be included in the Mayor’s management report) but also indicators on agency performance relative to the timeliness of agencies’ procurement actions.

Financial audits—Currently, the Charter does not provide for financial audits of vendors by agencies. This proposal would require the PPB to issue rules governing City agency requirements for annual financial audits of vendors, including rules providing for consolidated audits across multiple contracts held by vendors with one or multiple agencies.

VENDEX—Currently, the Charter does not contain any provisions regarding VENDEX, the City’s computerized vendor integrity data system, which was created pursuant to the City’s Administrative Code. This proposal would require the Mayor and Comptroller to jointly issue rules necessary to maintain the VENDEX system. The proposal would not limit the power of the Council to legislate with respect to the VENDEX system.

Effective Date—The proposal would generally take effect immediately after approval by the voters. However, the employment report and VENDEX provisions would take effect nine months after such approval.

Agency Reorganization & Government Accountability (Government Administration)

The proposal would make the following changes to the Charter in areas related to government administration and accountability.

The City's Administrative Justice System—Currently, Administrative Law Judges and Hearings Officers who preside over cases in the City's administrative tribunals are generally not subject to a uniform code of professional conduct. This proposal authorizes the Mayor to issue rules governing the professional conduct and training and development of the City's Administrative Law Judges and Hearing Officers.

In addition, these Administrative Law Judges and Hearing Officers currently conduct thousands of administrative hearings annually in a variety of specialized tribunals, many of which are housed at specific agencies. There is no centralized mechanism to coordinate the operational policies and management practices of these tribunals. The proposal would create the new position of Coordinator of Administrative Justice, in the Office of the Mayor, to coordinate such policies and practices.

Finally, the proposal would expand the authority of the Department of Consumer Affairs (DCA) to hear more cases in its own tribunal. Currently, DCA cannot adjudicate many of the violations it issues in that tribunal. Instead, DCA has to take legal action in the State Courts. The proposal would authorize the Department to: (1) conduct administrative hearings to adjudicate violations of any law within the Department's jurisdiction; and (2) impose civil penalties of up to \$500 per violation (except to the extent that penalties are otherwise provided).

Penalties for Violations of the City's Ethics Laws—The City's ethics law, known as the Conflicts of Interest Law, is enforced by the Conflicts of Interest Board (COIB). The proposal raises the maximum penalty allowed from \$10,000 to \$25,000. COIB would continue to have discretion in determining the appropriate penalty. In addition, the proposal authorizes COIB to commence a civil forfeiture action to recover moneys from those who have profited from a violation of the law.

Voter Assistance Commission—The Voter Assistance Commission (VAC) facilitates voter registration. Currently, VAC is comprised of sixteen members: the Public Advocate, the Budget Director, the Corporation Counsel, the President of the Board of Education, the Chair of the Campaign Finance Board, the First Deputy or another Deputy Mayor; the Executive Director of the Board of Elections; six members of the public appointed by the Council and three

appointed by the Mayor. The chair is elected by the members from the membership. Appointed members serve for a term of three years. On recommendation of the Mayor, VAC appoints the Coordinator of Voter Assistance.

The proposal reduces VAC from sixteen to seven members. Of the seven members, five (one from each borough) would be appointed by the Mayor with the advice and consent of the Council, one would be appointed by the Council Speaker in consultation with the Mayor, and the Public Advocate would also serve. One of the appointed members would be designated to serve as chair by the Mayor, in consultation with the Speaker of the Council. Appointed members would serve for four-year terms. The Coordinator of Voter Assistance would be appointed by the Mayor with the advice and consent of the Council.

The Preliminary Mayor's Management Report—The Preliminary Mayor's Management Report (PMMR) reports on the performance of City government in the first four months of each fiscal year. It is followed by a final Mayor's Management Report (MMR) that evaluates the full fiscal year. The proposal eliminates the requirement that the City produce a PMMR.

Effective Date—The proposal would generally take effect immediately after approval by the voters. However, the provisions concerning VAC would take effect on April 1, 2004, after such approval.

An Overview Of The Charter Revision Process

The New York City Charter is the basic document that defines the organization, power, functions and essential procedures and policies of City government. As a “short form” charter, it sets forth the institutions and processes of the City’s political system and defines the authority and responsibilities of elected officials—the Mayor, Council, Comptroller, Borough Presidents, and Public Advocate—and City agencies in broad strokes, while leaving the details of operation to local law and agency rulemaking. Unlike the United States Constitution, which is amended rarely, the City’s Charter is a fluid document that is amended often. Indeed, while the U.S. Constitution has been amended only 27 times in its 216 year history, the Charter has been amended well over 100 times since 1989 by referendum and local law, as recently as this summer.

In the United States, city governments receive their legal authority from the states in which they are located. In the State of New York, municipalities have broad authority to structure how they operate by virtue of the Home Rule provisions of the State Constitution and the Municipal Home Rule Law. The City’s Charter, along with the State Constitution, the Municipal Home Rule Law and other State statutes, provides the legal framework within which it may conduct its affairs.

Under State law, charter revision may occur as an ongoing process through the passage of local laws. There are, however, limitations on that authority. For example, there can be no curtailment of powers of an elected official. A charter can also be revised pursuant to a charter revision commission, which has the authority to put proposals before the voters. A charter revision commission may put proposals before the voters regarding all elements of a charter, including the curtailment of powers of an elected official, as well as provisions that could also be adopted through local law. Municipal Home Rule Law (“MHRL”) § 36(4) permits the Mayor to establish a “charter commission” in New York City. The composition of a mayoral charter commission must consist of nine to fifteen members. The members must be City residents and may hold other public offices or employment. In addition to appointing members, the Mayor designates the chair, vice-chair and secretary of the commission pursuant to MHRL §§ 36(4) and (6)(d).

Charter commissions are not permanent commissions. MHRL § 36(6)(e) limits the term of a charter commission. A commission expires on the day of the election at which a proposed

new charter or amendments prepared by a commission are submitted to the voters. However, if a commission fails to submit a new charter or any amendments to the voters, the commission expires on the day of the second general election following the commission's creation. There are no prohibitions against the reappointment of a commission or appointment of a new commission upon the expiration of an existing commission.

A charter commission may propose a broad set of amendments that essentially "overhauls" the entire charter, or may narrowly focus upon certain areas and explain why such an approach is preferable in a report to the public. MHRL § 36(5)(a); see Matter of Cruz v. Deierlein, 84 N.Y.2d 890, 892-893 (1994). The proposed amendments must be consistent with general State laws and can only effect changes that are otherwise within the City's local legislative powers as set forth in the State Constitution and the MHRL.

The proposed amendments must be filed with the City Clerk for action by the voters no later than the second general election after the commission's creation, and must be voted on at a general or special election held at least sixty days after the filing. The proposed amendments may be submitted to voters as one question, or a series of questions or alternatives. MHRL § 36(5)(b).

The Commission Membership

On March 26, 2003, Mayor Michael R. Bloomberg appointed Dr. Frank J. Macchiarola, President of St. Francis College, as Chair of the Charter Revision Commission, and on April 6, 2003 appointed ten other distinguished leaders from the civic, academic, and business communities to the Commission. The Commission is the most diverse in the City's history, a majority of its members from boroughs other than Manhattan.

Dr. Frank J. Macchiarola (Chair) is President of St. Francis College in Brooklyn. His service to New York City stretches back three decades, and he was most recently called upon to be the mediator who helped settle the Broadway musicians' strike. He served as chief of staff of the Emergency Financial Control Board (1975-1976), schools chancellor (1978-1983), and president of the New York City Partnership (1983-1987). He chaired the Districting Commission (1990-1992), and he has been a member of two Charter Revision Commissions (1986-1988 and 1983), the Campaign Finance Board (1988), the Water Board (1985-1988), and the Tax Study Commission (1986-1990), and chaired a New York City Partnership study of the Board of

Elections (1985). His career has included service at the City's public and private universities: as Dean of the Benjamin N. Cardozo Law School, Yeshiva University; and as Professor and Assistant Vice President, Columbia University; as Professor and Assistant Vice President, at Baruch College and The Graduate School and University Center, The City University of New York. He is a resident of Queens.

Cecilia Norat (Vice Chair) is Director of State Relations for the American International Group and was a member of the 2002 Charter Revision Commission. She is a resident of Manhattan.

Pat Gatling (Secretary) is the Commissioner and Chair of the New York City Commission on Human Rights and was a member of the 2002 Charter Revision Commission. She is a resident of Manhattan.

Jerry Garcia is Vice President and Manager for Employee Financial Services at JP Morgan Chase Bank in New York City and was a member of the 2002 Charter Revision Commission. He is a resident of Brooklyn.

Mohammed Khalid is a Doctor of Dental Medicine and President both of the Iron Hill Civic Association, and the Pakistani Civic Association of Staten Island. He is a resident of Staten Island.

William Lynch, Jr. is Chief Executive Officer of Bill Lynch Associates, and a former New York City Deputy Mayor under Mayor David Dinkins. He is a resident of Manhattan.

Steve Newman is Chief Operating Officer of the Medical and Health Research Association, and a former New York City Deputy Comptroller. He is a resident of Queens.

Reverend Joseph O'Hare, S.J. is former President of Fordham University, the former Chair of the New York City Campaign Finance Board, and was a member of the 1988 Charter Revision Commission. He was a Bronx resident when appointed, and now lives in Manhattan.

Katheryn Patterson is a former law partner at Coudert Brothers. She is a resident of Manhattan.

Fred Siegel is a Professor at the Cooper Union for Arts and Sciences, and a former Fellow at the Institute of Advance Studies. He is a resident of Brooklyn.

Veronica Tsang is Vice President of Chase Workplace Financial Services. She is a resident of Queens.

The Commission Staff

The Commission is staffed mainly by career public servants and pro bono attorneys and is led by its Executive Director, Alan Gartner, and Chief Counsel, Anthony Crowell. They would like to acknowledge the following City attorneys and officials for their expertise and invaluable assistance during the process: Spencer Fisher, Howard Friedman, Stephen Louis, Elisabeth Palladino and Marla Simpson.

Alan Gartner has served as Executive Director, New York City Districting Commission; at The Graduate Center, CUNY, as professor, as Dean for Research, and as Co-Director, National Center on Educational Restructuring and Inclusion; and Executive Director, Division of Special Education, New York City Public Schools. He is the author or co-author of more than two-dozen books on education, race, social policy, and disability. Dr. Gartner is on leave from his position as Research Director in the Office of Dennis Walcott, Deputy Mayor for Policy.

Anthony Crowell has extensive experience with the process of Charter revision. He served as Co-Executive Director to the 2002 Charter Revision Commission, General Counsel of the 2001 Commission and Counsel to the 1999 Commission. Prior to joining the City, he managed government affairs and policy at the International City/County Management Association (ICMA) in Washington, D.C. He is an adjunct professor at Brooklyn Law School and New York Law School, where he teaches municipal law. He has published numerous articles on public management and legal affairs. Mr. Crowell is on leave from his position as Special Counsel to the Mayor.

Members of the staff include: Francis Barry, Research Director; Paul Elliott, Communications Director; Mary Rose O'Connell, Deputy Chief Counsel; Elaine Reiss, Pro Bono Counsel; Owen Stone, Deputy Director for Communications and Research; Mark Tyler, Chief of Staff and Deputy Chief Counsel; Sara Vidal, Director of Community Affairs; Richard

Wager, Senior Advisor; and Jimmy Yan, Deputy Chief Counsel. The Commission's legal and research interns include: Rebecca Adams, Justin Bernstein, Krystal Castle, Shawn Clark, Ralph Cosentino, Tom Donohoe, Ariel Dvorkin, Matt Elkin, Shakima Figuera, Brian Kaszuba, Kryzstof Lach, Allicia Lam, Tiffany Leyseth, Tucker McKee, Jinja Murray, Jae Woo Park, Erik Peyton, Nathan Pinsley, Ingrid Rodriguez, David Shyer, Harold Thompson and Chris Watson. Additionally, the Commission staff thanks Victor Kuznetsoff for his assistance throughout the process.

Scope of Review

The Commission developed its proposals for the November 2003 ballot by: (1) initiating a public outreach campaign to solicit proposals for Charter revision from the public and City agencies; (2) providing notice of all of its activities on its website, as well as through mailings (there were approximately 9,000 individuals on the Commission's mailing list)¹, and in advertisements in City newspapers (English), in language papers in Spanish, Chinese and Korean, and in daily notices in the *City Record*, and on broadcast radio²; (3) having staff meet with numerous constituency groups on an ongoing basis to gather their substantive input on Charter revision; (4) holding an extensive series (three cycles) of public meetings, hearings and forums, throughout the City's five boroughs, to receive public comment on Charter revision; (5) providing for forums or briefings of the Commission by many experts concerning Charter revision; (6) televising public meetings, hearings and expert forums over NYC-TV, the City's cable access television station; (7) distributing to the public staff reports and proposal updates setting forth options and rationales for Charter revision and requesting comments on the content of those documents; (8) deliberating publicly the merits of the proposals and deciding what issues to put before the voters on the November 2003 ballot; and (9) distributing to the public a summary of the final proposals in English, Spanish, Chinese and Korean. Proposal summaries are also made available in Russian.³

¹ The Commission's mailing list was developed by merging the cumulative mailing list that was developed by previous Charter Revision Commissions from 1998 to 2002, as well as the mailing list of the 2002-2003 Districting Commission.

² The publications in which the notices were published include *The New York Times*, *The New York Post*, *The Daily News*, *The Staten Island Advance*, *New York Newsday*, *Amsterdam News*, *The World Journal*, *El Diario*, *The Korean Times*, *Sing Tao*, *Hoy*, and *Novoye Russkoye Slovo*.

³ Proposal summaries will be distributed upon completion and filing of this report.

At all times, the Commission and its staff were mindful of the Voting Rights Act concerns raised by its topics of inquiry. Throughout the process, staff was aware that proposals to change the New York City election system (i.e. to establish nonpartisan elections) would be subject to the standards of the Voting Rights Act. In considering particular features of nonpartisan elections, and the idea as a whole, staff was alert to the Section 5 standard for “preclearance” and “retrogression,” per Reno v. Bossier Parish School Board and Georgia v. Ashcroft, as well as the Section 2 standards. In this regard, the Commission had the resources of:

1. Staff experience (Commission Executive Director, Dr. Alan Gartner, supervised the preclearance process for the Districting Commission in 1992, and Commission Chief Counsel, Anthony Crowell, supervised the preclearance process for the 1999, 2001, and 2002 Charter Revision Commissions);
2. The expertise of Charter Revision Commission Chairman Frank J. Macchiarola, who chaired the Districting Commission and guided its successful preclearance application.
3. The experience of the city in submitting and gaining preclearance for the conduct of “special elections” on a nonpartisan basis as recently as 2002, as well as the Law Department’s experience in submitting preclearance applications for the work of the Charter Revision Commissions of 1999, 2001, and 2002; and
4. The expertise of Voting Rights Act experts J. Gerald Hebert, former Chief of the Voting Right Section at the U.S. Department of Justice, and Allan J. Lichtman, Professor of History at American University. They brought vast experience in Voting Rights Act issues, as recent as the current redistricting in Texas, as well as familiarity with the circumstances in New York City from their previous work with Charter Revision Commissions. Their reports were distributed to the Commission and can be found in Appendices O and P. In addition, at the April 14, 2003 meeting Commissioners were invited to present the Commission with names of any other experts to assist them and the staff in reviewing any issues.

In addition, the Commission’s staff was multilingual and was available in all covered Voting Rights Act languages including English, Spanish, Chinese and Korean, as well as languages not covered including Russian, Polish and Portuguese. In addition, professional translation (including sign language) services were made available to any member of the public,

upon advance request, at all of the Commission's events: meetings, forums and hearings. However, when such services were needed, but not requested in advance, Commission members themselves offered, and did, provide language translation as a courtesy. The Commission's multilingual staff was also always on hand to assist.

The public was afforded the opportunity to testify and submit proposals on Charter revision before the staff made any reports, and the Commission remained open to new public and City agency proposals throughout the process. Moreover, the principal issues considered by the Commission were analyzed thoroughly and made public before the Commission's final hearing and vote. As a result, the public was able to shape the Commission's agenda and critique the proposed Charter revisions.

The Commission's Schedule

On April 14, 2003, the Commission held its initial public meeting in Brooklyn. Chairman Macchiarola stressed that the Commission was committed to reviewing the entire Charter and encouraged the other Commissioners, the public and City agencies to continue to raise issues for possible Charter revision. Chairman Macchiarola emphasized that the Charter review proceedings would be fair and open to the public. The Commission staff provided an orientation to the Commission members on the Charter, the process of Charter revision and the range of issues addressed by the previous four Charter Revision Commissions: the 1998 Powers Commission, the 1999 and 2001 Mastro Commissions, and the 2002 McGuire Commission. Briefing binders containing the public reports of prior Commissions were given to the Commissioners. Those reports, and transcripts of the 2002 Commission's hearings and meetings, were also made available to the public on the Commission's website and upon request.

From May through August the Commission held an extensive program of public events, including meetings, hearings, and forums. There were nine commission meetings, thirteen hearings (at which the public could testify on any charter-related topics) and five forums (which focused on particular topics and where expert testimony was presented and followed by the opportunity for public testimony on the topic). Meetings and hearings generally began at 6:00 p.m., and forums began either at 3:00 or 4:00 p.m. All members of the public were given three minutes to speak at the public hearings, but many spoke for more than the allotted time. Many members of the public and elected officials testified.

Between May 12 and June 2, 2003, the Commission held nine events, including public hearings and expert forums, in all five boroughs which received extensive public participation.⁴ These events were held on May 12 (forum) and May 27 (hearing) in Manhattan; May 14 (hearing) and May 29 (forum) in Brooklyn; May 22 (forum) and May 28 (hearing) in Queens; May 20 (hearing) in Staten Island; and May 19 (hearing) and June 2 (meeting) in The Bronx.

At the June 2 public meeting, the Chair, after extensive discussion with the Commission, directed the staff to prepare reports with preliminary options and recommendations in three areas: nonpartisan elections, procurement, and agency reorganization and government accountability. He also asked the Commission and staff to continue in its review of the entire Charter.

At its meeting of June 26 in Manhattan, the Commission received staff proposed recommendations concerning nonpartisan elections, procurement and agency reorganization. After discussion and honing of these recommendations, the Commission adopted the staff proposal for the conduct of public hearings on these recommendations in all five boroughs. The staff reports were posted on the web and public comment was requested on several sets of recommendations based on those reports. Those recommendations were also made available to the public in languages covered by the Voting Rights Act, including Spanish, Chinese and Korean. They were also made available in Russian.

These events, publicized through mailings, newspaper advertisements, publication in the City Record, and postings on the Commission website, were held on July 15 (hearing) in Staten Island; July 17 (hearing) in Queens; July 21 (forum and hearing) in the Bronx; July 22 (forum and hearing) in Brooklyn; and July 24 (forum and hearing) in Manhattan.

At the July 30 meeting in Manhattan, staff reported on the five hearings. After Commission deliberation based upon these reports, staff was instructed to develop proposals on nonpartisan elections, procurement, and agency reorganization and government accountability, which could form the basis for the Commission to build a consensus. At its meetings of August 4, 11, 13 and 19, the Commission staff presented a variety of ideas and proposals, and the Commission engaged in significant dialog on the substantive issues. The Commission considered these ideas and proposals and instructed staff to develop proposed ballot language based on that consensus for nonpartisan elections, procurement, and agency reorganization and

⁴ All of these facilities were accessible to fully handicap accessible and equipped to accommodate more than 200 persons. Additionally, sign-language or translation services in Chinese, Korean and Spanish were made available.

government accountability. On August 19 and 21, the Commission held public hearings in Manhattan and Queens concerning nonpartisan elections, procurement, and agency reorganization and government accountability.

Again, all these events were publicized, in the manner noted above. At each point during the process, the staff posted the progress of the Commission's work on substantive proposals on the Commission website and requested comment. The transcripts for every meeting and hearing hosted by the Commission were posted on the Commission's website and were available upon request. The Commission's website received a heavy volume of hits throughout the entire process.

On August 25th, the Commission held a meeting to settle outstanding issues, and to review three questions and vote on whether to place them on the ballot. The Commission reviewed proposed ballot questions on nonpartisan elections (City Elections), procurement (City Purchasing), and agency reorganization and government accountability (Government Administration). There were ten members present. Commissioner Veronica Tsang was absent but submitted a letter to Commission Chair Macchiarola for the record. The statements of Chair Macchiarola and Veronica Tsang can be found in Appendix Q.

The Commission voted to place each question on the November 4, 2003 ballot in the order stated above. Because there are two State referenda items on the ballot, the Commission's questions will be numbered three through five on the ballot. The question entitled "City Elections" will be the third question on the ballot. It should be noted that Joseph A. O'Hare, S.J., and William Lynch, Jr. did not vote to approve the proposal. A statement from Commissioner Lynch can also be found in Appendix R. The question entitled City Purchasing will be the fourth question on the ballot. The question entitled Government Administration will be the fifth question on the ballot.

Meeting Locations

In selecting locations for the public events (meetings, hearings, and forums), attention was given not only to holding them in each of the five boroughs, but also at diverse and publicly accessible (by bus, subway or both) locations within each; e.g. in The Bronx, at Hostos Community College (South Bronx), at the County Court House (Central Bronx), and at the Fordham Campus (Northern Bronx); in Manhattan, at the Columbia-Presbyterian Medical Center (Washington Heights), at the State Office Building (Central Harlem), at the City Planning Commission and Economic Development Corporation (Lower Manhattan); in Queens at P.S. 69

(Jackson Heights) and Queens Borough Hall (Kew Gardens); and at New Dörp High School (Staten Island).

CITY ELECTIONS

I. INTRODUCTION

Elections for City offices, like those for federal and state offices, are conducted in a partisan fashion; candidates compete in party nominating elections and a candidate's party affiliation appears with his or her name on the ballot. Under a typical nonpartisan election system, candidates do not run in party nominating elections and ballots do not denote a candidate's party affiliation. Instead, all candidates for a particular office run together in a nonpartisan election, alternatively called a "preliminary" or "general" election. Typically, the two candidates who receive the most votes in that election advance to a second election, alternatively called a "general" or "run-off" election, often depending on whether victory can be secured in the first election by winning 50 percent of the vote. There are, however, exceptions to these "traditional" nonpartisan approaches, and structural variables (including procedures for getting on the ballot and the words that may be placed on the ballot) differ by city.⁵ For example, this Commission ultimately proposed that the two top vote getters in the "nonpartisan primary" election will advance to a run-off in the "general election."

The Origins of Nonpartisan Elections

The Progressive Era dawned at the turn of the 20th Century, and its final achievement – ratification of the Nineteenth Amendment to the Constitution, which granted women the right to vote – was its greatest. In between, States and the federal government enacted reforms aimed at democratizing elections. In addition to passing a Constitutional Amendment in 1913 providing for the direct election of U.S. Senators, who previously were elected by State legislatures, State enacted reforms included the secret ballot, short ballot, initiative, referendum, recall, direct primaries, at-large election of city council members, council-manager forms of government, and nonpartisan elections.

⁵ To make clear, some cities allow for a candidates professional status or a political slogan to be listed on the ballot. The latter is effectively the case under New York State's Independent Nominating Petition procedure, and how the City's ballots are presented in current nonpartisan special elections.

The outrage that fueled Progressive Era social welfare reforms also fueled its electoral reforms. The industrial age spawned enormous wealth and corrupt government contracts generated dizzying new heights of government boodle. As party bosses and their elected underlings reaped the spoils of office, muckraking journalists unearthed the dirty details, and their consequences for the public welfare, to an increasingly literate audience. Reformers aimed to reduce corruption and patronage, create real voter choice, attract a wider-range of candidates, and improve government efficiency by limiting the power of the party bosses to control the ballot, the wellspring of their power. To accomplish these ends, two chief reforms were advocated: direct party primaries and nonpartisan elections. By the end of the progressive era, most States had adopted direct party primaries, and by the 1950s, more than 60 percent of municipalities nationwide had adopted nonpartisan elections. Today, 41 of the 50 largest cities in the United States with an elected mayor use nonpartisan elections, including Los Angeles, Houston, San Diego, Detroit, Dallas, Phoenix, San Antonio, San Francisco, Boston, and Seattle.

II. THE STUDY OF NONPARTISAN ELECTIONS

Academic Studies

By the early 1950s, as a result of election reforms, New Deal policies, and other factors, the power of party machines was on the wane, and political scientists, led by Charles R. Adrian, began theorizing that nonpartisan elections had undemocratic results. Conclusions drawn from studies by Eugene C. Lee in 1960, based on local elections in California, and Willis D. Hawley in 1968, based on the study of 88 towns in the San Francisco Bay area, lent empirical support to Adrian's claims and strengthened their popularity among political scientists, who argued that elections without party labels favored Republicans, increased the importance of ethnicity and incumbency, encouraged personality rather than issue oriented campaigns, and depressed turnout.

Early studies on nonpartisan elections had significant limitations. They largely ignored highly conditional variables, such as population, partisanship, form of government, and regional location. Subsequent studies sought to control for these variables and have presented evidence challenging the initial wave of scholarship. Such studies, beginning with Charles E. Gilbert's

examination of twenty of the nation's largest cities⁶, suggested that the case against nonpartisan elections was overdrawn. A 1986 study by Susan Welch and Timothy Bledsoe⁷ found that once a city's partisan electoral environment was taken into account, "Republican advantage" appeared only in smaller cities, in those of moderate incomes, and in those with at-large elections. Large cities (over 100,000) with district elections showed no Republican advantage. Welch and Bledsoe also raised concerns about the sustained validity of studies that were performed within a narrow geographic focus (California) and prior to radical demographic and political changes that have occurred in urban areas since the 1960s and 1970s.

In a 1986 article⁸ reviewing the literature on nonpartisan elections since Adrian's first paper in 1952, Carol A. Cassel noted that "scholars generally have turned only recently from studies of one or several communities to comprehensive comparative analyses," which have challenged some of the findings of the earlier empirical studies. Cassel's review of the literature, focusing on several key areas – turnout, incumbent advantage, Republican advantage and social background of elected officials, and the election of Black candidates, is summarized below.

Voter Turnout

Cassel noted that studies have shown that voter turnout is lower in nonpartisan than partisan elections. In drawing causal linkages, however, she cautioned that "other features of the municipal reform structure, such as holding elections independent of state and national elections and council-manager government, are associated with the nonpartisan ballot and also tend to depress turnout...When elections are held concurrently [with state and national elections], not only is municipal turnout substantially higher, but there is virtually no difference in the level of turnout in nonpartisan and partisan cities (Karnig and Walter, 1977)."

Incumbent Advantage

In reviewing the idea that nonpartisan elections advantage incumbents (because voters, lacking a party label, resort to familiarity), Cassel stated:

Both Lee (1963) and Karnig (1977) found that at the municipal level, incumbent candidates for mayor fare better in partisan elections. Their conclusions are noteworthy since both studies are based on surveys of all U.S. cities with

⁶ Gilbert, Charles E. "Some Aspects of Nonpartisan Elections in Large Cities." *Midwest Journal of Political Science*, Vol. 6, p. 345-362, Nov., 1962.

⁷ Welch, Susan and Timothy Bledsoe. "The Partisan Consequences of Nonpartisan Elections and the Changing Nature of Urban Politics." *American Journal of Political Science*, Vol. 30, Feb., 1986, p. 128-139.

⁸ Grofman, Bernard and Arend Lijphart, Ed. *Electoral Laws and Their Political Consequences*. New York: Agathon Press, 1986, p. 226-241 (Cassel, Carol A. "The Nonpartisan Ballot in the United States.")

populations of 25,000 and above. In 1975, the incumbent success rate for mayors was 75 percent in partisan cities and 61 percent in nonpartisan cities ‘probably as a consequence of the stabilizing influence party identification has on structuring electoral choices’ (Karnig and Walter, 1977)...Incumbent council members also appear to be helped in their re-election efforts by the partisan ballot, although the advantage is modest. It appears that the incumbent electoral advantage increased in partisan cities in recent years, creating the relative advantage for partisan incumbents. In 1975, 82 percent of partisan and 76 percent of nonpartisan incumbent council members who sought reelection were successful (Karnig and Walter); whereas in 1962, 76 percent of partisan and 75 percent of nonpartisan incumbent council members who sought reelection were successful (Lee, 1963).

Cassel suggested that a possible exception to the advantage enjoyed by partisan incumbents (compared to nonpartisan incumbents) may be that incumbents on a partisan ballot are more susceptible to attempts, which can result from pervasive voter dissatisfaction, to “throw the rascals out.” Yet this exception only holds when comparisons are made between nonpartisan elections and competitive two-party partisan elections. In partisan cities where there is no real opposition party, no collective alternative exists. Cassel writes, “In such elections, incumbents have the advantage of both a majority party base and name recognition. In the real world of noncompetitive municipal elections, it is actually the partisan incumbent whose office is more secure.” In cities where no competitive two-party system exists, the literature indicates that nonpartisan elections benefit challengers by reducing the advantages of incumbency.

Social Background and Republican advantage

In a 1985 survey of all U.S. cities with populations of 2,500 or greater, Cassel found that there was no difference in age or education between partisan and nonpartisan council members. There was, however, some difference in socio-economic levels, with nonpartisan elections containing a higher proportion of persons with higher occupational status. Cassel cites scholarship both supporting and refuting the claim that nonpartisan elections advantage Republicans.

Election of Minorities

In reviewing the literature on Black representation in partisan and nonpartisan systems, Cassel cites studies by Robinson and Dye (1978) and Karnig and Welch (1980) that conclude that nonpartisan elections contribute to the under-representation of Blacks. She also notes that the Karnig and Welch study “did not find the positive association between partisan elections and black candidate access to be statistically significant.” The same Karnig and Welch study concluded that black mayoral candidates were more likely to be successful under a nonpartisan

system than a partisan one: in the 1970s, 8 percent of partisan and 21 percent of nonpartisan cities elected a black mayor. “In summary,” Cassel writes, “it appears that the nonpartisan system of election inhibits the election of black council members but promotes the election of black mayors. On balance, since the office of mayor is more important, the nonpartisan system seems beneficial to blacks.” Six years after Cassel’s article, a 1991 International City/County Management Association survey, while suggesting that ballot type is not a determinative factor in the election of women and minorities to city councils, found that Hispanic city council candidates fared better in nonpartisan than in partisan elections.

Past Charter Revision Commissions

The use of nonpartisan elections has been considered in recent years by four Charter Revision Commissions (1998, 1999, 2001, and 2002), of which all studied the issue itself, engaged experts, and received extensive public comment.

1998 Charter Revision Commission

The 1998 Commission extensively examined the issue of nonpartisan elections. As part of its work, the Commission conducted an expert forum specifically on this issue. A summary of this forum is attached in the appendices. The efforts of the 1998 Commission culminated in a comprehensive staff report.

The 1998 report examined data from the 48 largest American cities. In the 11 cities using partisan elections, only two (18%) had minority mayors. In comparison, of the 37 cities that used nonpartisan elections, 15 (41%) had minority mayors. In addition, the report noted that, in 1988, New York City adopted nonpartisan elections for special elections to fill vacancies in City elective offices other than the Mayor’s office.⁹ Frank Mauro, Research Director for the 1988 Charter Revision Commission, described the rationale: “The purpose of the nonpartisan special election was to dilute the power of the party leaders and to make it easier for those not chosen by the leaders to qualify for the ballot.”¹⁰

The 1998 report conducted a thorough analysis of the legality of establishing nonpartisan elections for citywide offices in New York City, focusing on considerations arising from the requirements of the New York State Election Law and the federal Voting Rights Act. The

⁹ The Charter provides for nonpartisan independent nominating petitions to fill vacancies in the offices of the Comptroller (Charter § 94(c)(7)), Public Advocate (Charter § 24(c)(7)), Council member (Charter § 25(b)(7)), and Borough President (Charter § 81(e)(7)).

¹⁰ The New York Times, July 11, 1990 at B2.

Commission staff concluded that cities in New York State are permitted, under the principles of home rule, to amend their charters in order to adopt nonpartisan elections.

The 1998 Commission retained Professor Allan J. Lichtman, then Chair of the Department of History at American University, and an expert in voting rights, to conduct an analysis of whether the establishment of nonpartisan elections would violate the federal Voting Rights Act. Dr. Lichtman analyzed statistics concerning race, voting patterns, and election results. He concluded that the change from partisan to nonpartisan elections would not violate the Act. Dr. Lichtman testified that his statistical analysis showed that party identification is not a necessary pre-condition for minority candidates to be elected.

The 1998 report also explored the mechanics of nonpartisan ballots, including whether the City's older voting machines could accommodate nonpartisan balloting on the same election day that state party primaries are held.

1999 Commission

The 1999 Commission began its examination of the issue of nonpartisan elections by conducting a thorough review of the 1998 Commission's staff report.

The 1999 Commission held an expert forum on election issues on August 6, 1999. Lawrence Mandelker, an election lawyer, had favorable views on nonpartisan elections, as did Dr. Lichtman, based on his research. Stanley Schlein, counsel to the State Assembly Election Law Commission, and Professor Robert Bailey of Rutgers University, disagreed with nonpartisan elections.

Dr. Bailey stated that party affiliation and race are the two main predictors of voting patterns.¹¹ He further stated that removing party affiliation would highlight race as a factor in elections.¹² Dr. Bailey further explained that by removing party, "you in a sense are eliminating one filter or one other umbrella identity that could mitigate some racial voting patterns in this city."¹³

Dr. Lichtman performed extensive statistical analysis of Citywide elections within the City from 1989 through 1997.¹⁴ He emphasized the uniqueness of the City's voting patterns, and

¹¹ Transcript of 1999 Charter Revision Commission Expert Forum, August 6, 1999 ("1999 Expert Forum Transcript") at p. 114.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at pp. 121-122.

concluded that, in the primaries, blacks and Hispanics do not vote cohesively to form a single minority block.¹⁵

Dr. Lichtman noted that the lack of minority cohesion in the City is significant because, as a result of the large number of white voters in the City's Democratic Party, minority cohesion is necessary to advance a minority candidate out of the partisan primary and into the general election. As a result, Dr. Lichtman concluded that nonpartisan elections would even the playing field between whites and minorities in New York in regard to candidate selection, because a minority candidate would be more likely to advance to the general election.

Stanley Schlein testified that "it still should be the right of parties to put forward candidates to run in primaries, to coalesce behind philosophical ideas...".¹⁶

The 1999 Commission also received testimony about the practical difficulties that New York City would face if it were to implement nonpartisan elections. As in 1998, these difficulties primarily concerned New York City's older voting machines.

Lawrence Mandelker pointed out some of the logistical issues that needed to be resolved in order to use New York's voting machines for nonpartisan elections.¹⁷ He noted that it could be problematic for a partisan primary election to be held simultaneously with a nonpartisan election, because of the lockout mechanism used to ensure that primary voters vote in the primary for party in which they are registered. Mr. Mandelker proposed solutions such as buying new voting machines, requesting the Legislature's approval to conduct partisan and nonpartisan primaries on different days, or using paper ballots, an alternative he disfavored.

The 2001 Commission

The 2001 Commission also considered the issue of nonpartisan elections for the Citywide offices of Mayor, Comptroller, and Public Advocate. The Commission's staff reviewed the work of the 1998 and 1999 Commissions on the issue. In addition, the Commission received public comment about nonpartisan elections.

As set forth in its final report, the 2001 Commission decided to defer the issue to another Commission. Nonetheless, the Commission specifically noted the compelling testimony of candidates for City offices whose candidacies had been frustrated by partisan election procedures. The Commission further noted that while term limits and campaign finance reform

¹⁵ *Id.* at pp. 118-143.

¹⁶ *Id.* at p. 103.

¹⁷ *Id.* at pp. 92-94.

had opened the door to election reform, party politics nonetheless controlled primary elections and the overall electoral process.

The 2002 Commission

The 2002 Charter Revision Commission was the fourth Commission in five years to study nonpartisan elections. Dr. Lichtman again served as a consultant to the Commission. Based on his analysis of partisan and nonpartisan electoral systems in the nation's 100 largest cities, 82 percent of which have nonpartisan elections, Dr. Lichtman concluded that nonpartisan elections are not an impediment to the election of mayors from members of minority demographic groups. Twenty-seven percent of cities with nonpartisan systems (including approximately 18 percent with white majorities) have African-American or Hispanic mayors, while only 22 percent of those with partisan elections have minority mayors, none of them in any of the 11 cities with white majorities. Controlling statistically for the demographics of cities, the slight lead in terms of minority mayors for nonpartisan elections systems widens quite substantially. Dr. Lichtman stated that these results hold up over time.

Dr. Lichtman's analysis indicated that voter turnout is not reduced by nonpartisan elections, but rather that voter turnout tends to be low in municipal elections that do not occur simultaneously with elections for higher office such as Governor or President. Minority turnout is generally higher for such elections, and voting in general is higher for higher offices. Dr. Lichtman also concluded that voting patterns in Citywide elections show that standard explanations of how partisan elections help minority voters elect their preferred candidates do not apply to citywide elections in New York City. Dr. Lichtman noted that the phenomena of minorities being able to dominate Democratic primaries, and of major differences between the voting strength of minorities and whites in Democratic primaries and general elections, does not apply in New York City, perhaps because of the diversity of significant minority populations in the City and of the failure of minority voters to coalesce in support of candidates from other minority groups.

Dr. Lichtman found that a change from partisan to nonpartisan elections of Citywide officials might enhance the prospects of minority candidates because, under a nonpartisan system, two candidates from the field, rather than one candidate from each party – generally a white candidate from the Republican Party – advance to the general election. Dr. Lichtman also concluded that a change from partisan to nonpartisan elections for Borough President and City Council elections would not violate the Voting Rights Act because it would not result in a

retrogression of opportunity for minorities to participate fully in the political process and elect their preferred candidates.

The 2002 Charter Revision Commission, while deferring the question of nonpartisan special elections to a future Commission, approved a ballot question on mayoral succession. The proposal amended the Charter to require that a nonpartisan special election be held in the event of a mayoral vacancy, as is the case with the other four city offices (Public Advocate, Comptroller, Borough President, and City Council Member). The proposal passed with more than 60 percent of the vote in a November, 2002 referendum.

Summary

The scholarship performed and data collected by social scientists on nonpartisan elections is far from conclusive. Applying mixed and tempered conclusions that reflect marginal differences in electoral outcomes while ignoring highly conditional variables should be done with the highest degree of caution. This is particularly true in the case of New York City, which is fundamentally different from the small towns that are the focus of most of the academic literature. This need for extreme caution does not, of course, prevent opponents and proponents of nonpartisan elections from making sweeping claims, even when no empirical data exists, or drawing conclusions based on outdated and inapplicable data. A more complete discussion of these issues can be found in the staff's report, "Reviewing Globally, Analyzing Locally: The Impact of Nonpartisan Elections on New York City," found in Appendix N.

In his 1960 study that advanced the case of Republican advantage, Eugene C. Lee identified the critical questions raised by competing election structures and concluded that answers must be considered in light of local realities:

Which system [partisan or nonpartisan] will do most to enhance the twin factors of competition and consensus essential to democratic process? Which system will best promote freedom and equality of access to public office and political activity by all groups in the community? Which system will best encourage the presentation of alternative viewpoints on key issues facing the community and relate these views to candidate choice? And finally, which system will best lead to the recruitment and election of those men and women of ability and integrity without whom the community will fail to reach its potential as a vital force in the life of its citizens? In answering these questions, each community will have to examine its own problems, needs and resources. Important and helpful as they are in raising the question for debate, the generalizations of both the partisan and nonpartisan advocates can never be an adequate substitution for the thoughtful individual consideration. The size of the city, the character of its population, the

quality of its civic institutions, the integrity of its press – these and countless other matters will determine which type of ballot and what kind of politics will result in the most vital political life for the community and its citizenry.¹⁸

Lee recognized the limits of scholarship in providing guidance to cities on the issue of nonpartisan elections – wisdom that has been confirmed by the mixed conclusions that scholars have since drawn – and concluded that local considerations should be preeminent in determining electoral structures. Lee’s suggestion that each City, in assessing the value of nonpartisan elections, examine its own “problems, needs, and resources,” is the only conclusive lesson that fifty years of scholarship provides. Indeed, New York City’s dynamic political environment is ripe for such an examination. The Commission staff has focused carefully on the impact of nonpartisan elections on New York City’s problems – its disenfranchised voters, powerful party bosses, restrictive ballot access laws, and uncompetitive general elections; its resources – its strong unions, vibrant press, active community groups, generous public financing program, and Voter Guide; and its needs – a more open, participatory, and responsive electoral process.

III. ELECTIONS IN NEW YORK CITY

Judging the efficacy of nonpartisan elections requires, as Lee suggests, a local focus. The prevalence of nonpartisan elections in municipalities throughout the nation is not a sufficient justification for adopting them in New York, nor will academic studies of other municipalities offer sufficient evidence to determine whether nonpartisan elections will improve the democratic process in New York City. Such studies raise important questions that must be answered in light of local peculiarities and exceptionalities – of which New York City has no shortage.

New York City is the largest, most ethnically diverse city in the nation. Its unions are strong, its press aggressive, its neighborhoods organized, its immigrant population large, its media outlets – print, radio, electronic and television (cable and otherwise) – vast, and its political machines, and its Mayor, are powerful. These factors alone distinguish New York City from most of the cities that scholars have studied. Indeed New York’s vibrant field of third parties, its district (rather than at-large) elections for city council, and its volatile campaigns, which discuss policies and programs of enormous economic and social significance, further distinguish City elections.

¹⁸ Lee, Eugene C. *The Politics of Nonpartisanship: A Study of California City Elections*. Berkeley: University of California Press, 1960.

New York City's history of political party activity is also exceptional. Tammany Hall, which occupies a fabled place in American politics, birthed the men who would come to personify corruption: William M. Tweed, the nation's first and most famous "boss;" George Washington Plunkitt, who added "honest graft" to the lexicon; and Mayor Jimmy "Beau James" Walker, the dapper and vice-loving mayor of Night New York. These corrupt party leaders were "fine old oaks" to Plunkitt, and reformers nothing more than "morning glories." Throughout New York City's two hundred years of elections, there have been few breaks in the battles fought between them. In considering whether the latest battle – nonpartisan elections – is worth fighting, it is important to consider how recent battles have re-shaped the current political landscape.

Recent Reforms

In the mid-1980s, a series of municipal corruption scandals linked top ranking government officials to Democratic Party bosses in the Bronx (Stanley Friedman) and Queens (Donald Manes).¹⁹ To help restore the public's trust, open up politics to those who would challenge the machine, and minimize the influence, and the appearance of influence, of money on elections, Mayor Edward I. Koch (1978-1989) supported the creation of a voluntary public financing system for candidates who run for office. The 1988 Charter Revision Commission placed the reform, along with a Citywide Voter Guide, on the ballot, and the referendum passed with strong support.

Several years later, the term limit movement gained strength, and in 1993, Ronald Lauder, heir to the Estee Lauder cosmetics fortune, and an unsuccessful mayoral candidate, spent \$2 million on a ballot initiative to limit the City's elected officials to two consecutive terms in office. Despite opposition from nearly the entire political establishment, the initiative passed handily, 59 percent to 41 percent. In 1996, City Council Speaker Peter Vallone spearheaded a campaign to extend the limit on terms from two to three, placing the question on the ballot and raising \$600,000 for advertising. Lauder bankrolled the opposition's counter-attack, and the voters rejected the change, 54 percent to 46 percent.

¹⁹ Bronx Democratic Leader Stanley Friedman and Queens Borough President and County Democratic Leader Donald Manes were involved in a series of political scandals during the 1980s. Initial investigation into a bribery case at the Parking Violations Bureau implicated Manes in other crimes, and he committed suicide before being indicted. The PVB scandal also involved Friedman, who was convicted and sentenced to twelve years in jail.

The impact of the two term limit for City office holders was first realized in 2001, when 36 of 51 Council Members, four of five Borough Presidents, the Comptroller, Public Advocate, and Mayor all were barred from seeking re-election. In the same election, another new law went into effect: the campaign finance program's public funds matching rate had been changed to \$4-to-\$1, for up to the first \$250 contributed by a City resident. (Previously, the rate had been \$1-to-\$1, up to the first \$1,000 contributed.) Together, term limits and the new matching rate produced the busiest and most competitive primary election in the City's history. However, with the exception of the races for Mayor, Staten Island Borough President, and a handful of City Council seats, the general election was uncompetitive.

In assessing prospectively the impact of nonpartisan elections on New York City, the costs that opponents fear, and the benefits that proponents hope for, must be considered in light of New York City's unique characteristics. In conducting this exercise, it is critical to consider fully the three recent electoral reforms adopted by the City's voters by referenda within the past 15 years – the Campaign Finance Program, Voter Guide, and term limits. Each will be discussed in further detail in later sections of the report.

Problems With The Present Election System

Despite the City's pioneering public financing program and voter guide, which are indeed relatively new in history, its election process remains, in many ways, exclusive and undemocratic. Outlined below are some of the characteristics that define the present election system that is, if not broken, in a state of deep disrepair.

Phantom Opponents, Phantom Choices

The overwhelming majority of the City's current office holders won election in huge landslides -- often with 80 percent and 90 percent (sometimes even with 100 percent) of the general election vote. With the exception of a few offices, including Mayor, candidates who win the Democratic primary wage general election campaigns that are typically devoid of any organized opposition. In these elections, the one-third of city voters who are not registered Democrats are left to rubber stamp the party's nominee.

Disenfranchised Voters, Derailed Preferences

Under the current system, registered independents are prohibited from participating in primary elections. Yet winning the primary is tantamount to election for all but a few races. Without participating in the primary, independents, the fastest growing block of registered voters, are effectively disenfranchised. As a result, New York has two classes of voters: those

who select general election candidates and those who are prohibited from taking part in that selection. Both classes pay taxes that are used for managing and running the general election selection process, but voters not enrolled in a party cannot participate in the selection. Neither the Constitution, which makes no reference to political parties, nor the laws governing voting rights, contemplate a second class of voters.

In a 2002 survey, the Joint Center for Political and Economic Studies found that young black and Hispanic voters are the most likely to identify as themselves as independents: for voters aged 18-25, 37 percent of Hispanics and 34 percent of blacks responded that they consider themselves neither Democrat nor Republican, but independent. In New York City, where one party dominates and where a large number of voters, particularly young minorities, do not enroll in a political party, all voters do not share the same rights. The principle of “One man, one vote” is lost when the practicable result is “One independent voter, one rubber stamp.”

In addition to raising concerns about the voting rights of a large minority of the population, partisan elections also present concerns about the will of the majority. Many candidates were elected to office in 2001 while winning less than 35 percent of the votes cast in the Democratic primary, with some barely edging past 20 percent. If the top vote getter in the Democratic primary receives only one-quarter of the vote, then which candidate do the other 75 percent of Democrats – and the 33 percent of the population registered as something other than Democrat – prefer? The current system’s low threshold for victory presents troubling questions about its ability to reflect voters’ preferences.

Narrowed Public Discourse, Narrowed Candidate Pool

It is an accepted political truth that party primaries tend to force candidates to the extremes while general elections tend to move them to the center. In addition, competitive general elections can have the effect of moderating voters’ primary election choices if voters factor in a candidate’s general election prospects. But this is not necessary in the City, where the overwhelming majority of general elections are a *fait accompli*. Thus, not only are general election voters deprived of a meaningful public debate, they are left with candidates who were never forced to broaden their appeal beyond a narrow slice of the electorate. Potential candidates are harmed too; those who do not want to run in a Democratic primary, or who do not believe that they can win a Democratic primary because of the narrowed debate, may opt not to run – a loss for the democratic process.

Faux Democratic Voters, Faux Democratic Candidates

In a bow to reality, it is not uncommon for Republicans and others who may not feel at home in the Democratic Party to register as Democrats nonetheless, recognizing that the Democratic primary provides the only real opportunity to participate meaningfully in the City's electoral process. In addition to feeling less than at home in the Democratic Party, Republican-turned-Democratic voters disqualify themselves from voting in Republican primaries for statewide and presidential elections. And just as voters may feel compelled to register as Democrats so that their voices may be heard, candidates who hope to win office may run as Democrats even if they have little interest in party ideology.

Protecting the Machine, Protecting Incumbents

Restricting the universe of ballot petition signatories and carriers to party members helps make getting on the ballot famously difficult, staying on the ballot exceedingly expensive, and knocking opponents off the ballot absurdly common. Reports that the party boss has died, to paraphrase an astute observer of American politics, have been greatly exaggerated. Incumbents, too, reap the benefits of a closed primary in a one-party town: the last group to turn against an incumbent, the party faithful, is the most important block of voters in the primary election. This is one of several factors contributing to re-election rates that approach 100 percent for elected officials in the City.

When considering the impact of nonpartisan elections on the problems outlined above, the discussion must begin with the acknowledgement of one undisputable fact: Nonpartisan elections will enfranchise the fastest growing group of voters, independents, who now number 670,000, as well as an additional 670,000 voters who are registered in a party other than the Democratic Party, and thus have virtually no meaningful role in choosing general election candidates through the primary election system. Typically, the Democratic Party is the only party to hold a primary in the vast majority of races for City office. For example, the Republican primary for Council District 5, represented by Council Speaker Gifford Miller, is the first being held in Manhattan since the late 1960s.²⁰

The rhetorical arguments offered in opposition to nonpartisan elections must be weighed against whether the benefits of partisan elections are sufficiently great, or the unintended

²⁰ Hicks, Jonathan P. "In Manhattan, A Rare Sight: Republicans Squaring Off," *New York Times*, August 23, 2003.

consequences of nonpartisan elections sufficiently harmful, as to warrant the exclusion of nearly one third of the electorate from casting a meaningful vote in all but a few municipal elections.

Public Testimony Highlights The Problems

The problems discussed above were raised by members of the public at the Commission's public hearings between May and August 2003. Many of those who testified argued that nonpartisan elections would open up the political process to new voters and candidates, reduce the party machine's control of the ballot, and enhance the competitiveness of elections. Those who testified in opposition to nonpartisan elections argued that nonpartisan elections would favor wealthy candidates, deprive voters of an important cueing device, result in large numbers of candidates and thus a chaotic voting process, and should not apply to the Citywide election of 2005 in which the Mayor is expected to seek re-election. They also argued that the Charter, as the City's Constitution, should not be examined every year for amendment. And while opponents argued that nonpartisan elections would decrease voter turnout and minority participation, proponents argued the opposite.

The majority of individuals who testified spoke in support of nonpartisan elections, many of them members of the Independence Party, but the majority of elected officials spoke in opposition. One elected official, Council Member Erik Martin Dilan (D-BK), stated that although he opposed nonpartisan elections, he believed that the public should be given the opportunity to decide the issue itself. Those who spoke in support of nonpartisan elections cited many of the grievances outlined above, including:

- Voter participation in municipal elections continues to decline and incumbent re-election rates approach 100%.
- The percentage of registrants who choose not to designate a party membership is rapidly increasing, particularly among young and immigrant registrants.
- Many candidates win Democratic Party primary elections with less than a third of the vote in a primary election, which fails to express the majority preference of even a small segment of the population (Democratic Party primary election voters), and then coast to victory in the general election.
- The procedures for getting on the ballot are famously burdensome, and the process of staying on the ballot famously difficult.

- Party bosses still seek to stifle competition, particularly from new immigrant groups, and exact patronage.

Witnesses also raised other election reform issues, including instant runoff voting, proportional representation, candidate access to cable television, and the number of signatures required for ballot petitions. On May 22, 2003, the Commission held a forum on nonpartisan elections. The two experts who testified were Doug Muzzio, professor of Political Affairs at Baruch College, and Phil Thompson, professor at the Massachusetts Institute of Technology. Their testimony is summarized in Appendix C.

IV. STATE AND FEDERAL LEGAL ISSUES

State Law Issues

The City's authority to enact local legislation creating nonpartisan elections for local offices derives from Article IX of the New York State Constitution and Section 10 of the Municipal Home Rule Law ("MHRL").²¹ In Bareham v. City of Rochester, 246 N.Y. 140 (1927), the Court of Appeals considered whether Rochester had the authority, under the State's home rule provisions, to adopt nonpartisan elections in light of the inconsistent provisions of the Election Law. Although the Court struck down the Rochester law at issue because of its technical failure to cite the Election Law provisions that were being superseded, it nonetheless held that cities in New York State possess the authority to establish nonpartisan election systems.²²

As discussed more fully below, several cities in New York State continued to use nonpartisan election schemes for some time after the decision in Bareham, including the cities of Sherrill and Watertown. The existence of these schemes strengthens the argument that New

²¹ Under MHRL § 10(1), cities have the power to adopt local laws relating to the "powers, duties, qualifications, number, [and] mode of selection . . . of its officers and employees," provided that such local law is not inconsistent with the State Constitution or any general State law, and provided that the State Legislature has not restricted the adoption of such a local law on a matter of State concern. See MHRL §10(1)(ii)(a)(1) (emphasis added). This provision derives directly from Article IX, § 2(c), of the State Constitution.

²² The Court in Bareham acknowledged that Rochester would not have had the authority to pass a local law inconsistent with the Election Law had that State law been a "general" law, see MHRL §2(5) (general law is one that "in terms and in effect applies alike" to, for example, all cities within the State), but noted that, on its face, the Election Law was instead a "special" law, with which a properly enacted local law could be inconsistent. See MHRL §2(12) (special law is one which "in terms and in effect" applies to, for example, one or more, but not all cities within the State).

York City has the authority to create nonpartisan elections. Furthermore, although the Election Law has been recodified since the decision in Bareham, the Bareham analysis applies to the current Election Law. Election Law § 1-102 specifically states that “[w]here a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of [the Election Law] specifies that such provision of [the Election Law] shall apply notwithstanding any other provision of law.” There is no existing provision of the Election Law that mandates partisan elections “notwithstanding any other provision of law.”

In 1991, New York City’s authority to adopt nonpartisan elections in its Charter was explicitly recognized in City of New York v. New York City Board of Elections, Index No.41450/91 (Sup. Ct., New York Co.), aff’d, __ A.D. 2d __, (1st Dept.), lv. app. den., 77 N.Y.2d 938 (1991). That case concerned the validity of Charter § 25(b)(7), the nonpartisan special election provision for City Council vacancies that was added by the 1988 Commission. In that case, the Board of Elections, despite the new Charter amendment, accepted the party nomination of a candidate and attempted to place that candidate’s name and party affiliation on the ballot in a special election to fill a Council vacancy. The Board of Elections claimed that Election Law § 6-114, which provides that party nominations for an office to be filled at a special election be made in accordance with party rules, preempted the Charter. Relying on Bareham, MHRL § 10, and Election Law § 1-102, the Court ruled that New York City had the right to adopt nonpartisan elections in its Charter, notwithstanding the Election Law. Specifically, the Court held that although the Election Law allowed party labels in elections, “the Election Law gives way to inconsistent local law provisions.” This decision was affirmed unanimously by the Appellate Division, First Department.

Indeed, local authority to implement nonpartisan elections for local offices, as identified in Bareham, has never been compromised by the Legislature’s enactment of a general law or an explicitly restrictive special law. Thus, the Election Law may be reasonably construed only to set forth the framework for governing partisan elections for those cities that choose to use them. New York City has held numerous special elections for City Council vacancies. In fact, the entire Council leadership – its Speaker, Majority Leader and Minority Leader were all elected initially to the Council in a nonpartisan election.

In light of Bareham and City of New York, it appears clear that cities in New York State possess the home rule authority to adopt nonpartisan elections by amending their charters. See

also Steinberg v. Meisser, 291 N.Y. 685 (1943) (upholding the denial of an injunction against the City of Long Beach placing before the voters a proposed local law amending its charter to provide, inter alia, for nonpartisan elections for City Council).

Nonpartisan Elections in New York State

Nonpartisan election systems have existed in New York State for over 80 years. For example, in addition to Rochester, the cities of Sherrill and Watertown have had nonpartisan elections since 1916 and 1920, respectively.

Rochester attempted to institute nonpartisan elections for its Citywide officers by local law, but its legislation was struck down in Bareham because of the law's failure to cite the provisions of the Election Law that were to be superseded. Following the decision in Bareham, in 1929, Rochester again instituted nonpartisan elections by local law, but this time the law contained the required list of superseded Election Law sections.²³

The City of Sherrill's nonpartisan primary system was instituted by the State Legislature in 1916.²⁴ In creating this scheme, the Legislature effectively superseded various provisions of the then-applicable Election Law as it applied to Sherrill. At its most basic, Sherrill's system of nonpartisan elections modified the method by which a candidate qualified for the general election. While the Election Law at that time provided that the candidate who received the most votes in each party's primary proceeded to the general election, see then-effective Election Law § 89, Sherrill's nonpartisan system mandated that the two candidates who received the most votes at the nonpartisan primary would run in the general election, regardless of party.²⁵

The City of Watertown's nonpartisan primary system was instituted by the State Legislature in 1920.²⁶ As it had done for Sherrill, the Legislature effectively superseded various provisions of the Election Law as it applied to Watertown.²⁷

²³ The sections of the then-existing Election Law superseded by Rochester's law were: 83 (lists of nominations); 84 (publication by Board of Election of nomination lists); 89 (poll-books); 102 (placing names on ballot); 103 (order of names on ballot); 104, 105, 108, 119, 249, 268 (official ballots); 131 (party nominations); 135, 136 (designating petitions); 137 (independent nominations); 138 (declination of designation or nomination); 139 (filling vacancies in designations and nominations); 140 (times for filing petitions and certificates for holding conventions); 156 (additional meetings for registration); 157 (registration for other than general elections); 204 (challenges at primary elections); 212 (proceedings of inspectors at close of polls); 213, 270 (canvassing vote); 217 (tallying votes); 233 (proclamation of results). It should be noted that several years later, Rochester repealed its nonpartisan election system.

²⁴ Laws of 1916, Chapter 172.

²⁵ Sherrill's legislation varied from numerous sections of the 1916 Election Law. See, e.g., Sections 3 (definition of a primary election); 48 (process to choose candidates for primary election); 49 (filing declaration of candidacy); 58 (party affiliation on ballot); and 79 (when election supplies are to be delivered).

²⁶ Laws of 1920, Chapter 276.

The Legislature amended Watertown's nonpartisan election system in 1993,²⁸ but the basic structure of nonpartisan primary elections remained the same. The amendments merely conformed Watertown's system to certain administrative requirements of the Election Law and addressed certain administrative details.²⁹ As amended in 1993, Watertown's legislation effectively superseded various provisions of the modern Election Law.³⁰

Federal Voting Rights Act

A change to nonpartisan elections is considered a change in a "standard, practice, or procedure with respect to voting." Whenever the City seeks such a change it has two options to determine whether the change will have the effect of denying or abridging the right to vote on account of race or color. First, the City may commence an action before a specially convened three judge panel in the U.S. District Court for the District of Columbia for a declaratory judgment that such the change complies with the Voting Rights Act. 42 U.S.C. § 1973c. Second, the City may submit the change to the U.S. Department of Justice for preclearance. *Id.* The change may not take effect until the City receives either the declaratory judgment or preclearance. *Id.* When preclearance is sought from the Justice Department, the change may take effect if "the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made." *Id.*

²⁷ Watertown's 1920 legislation varied from numerous sections of the then-applicable Election Law. *See, e.g.,* 3 (defining primary as a party-based election); 74 (designation of polling places in accordance with political parties); 79 (number of ballots to be provided at election); 89 (two candidates receiving most votes at primary proceed to general election); and 122 (independent nominating petitions).

²⁸ Laws of 1993, Chapter 247.

²⁹ These administrative requirements addressed issues such as the filing and sufficiency of petitions; primary dates; revision and correction of registers of voters; the quality, weight, size, etc., of ballots; and the general conduct and canvassing of elections. The amendments also addressed details regarding the binding of petitions, the equipment to be furnished to the polling locations, the movement of voters between election districts, write-in candidates, and the conduct of general elections.

³⁰ Watertown's legislation varies from the following sections of the Election Law as it existed in 1993: 1-104 (defining a primary as a party-based election); 2-120 (statement of party positions to be filled at primary); 4-118 (party designation on notices of primary election); 6-119 and 6-132 (designating petition to include party); 6-128 (first nominations for new party); 6-136 (designation of candidates for primary); 6-138, 6-140, and 6-142 (independent nominating petitions); 6-156 (certificates of nomination to include party designations); 6-158 (filing of certificate of acceptance or declination of candidacy); 7-104, 7-106, 7-114 (party designations on ballots); 9-200 (selection of candidates to run at general election); and 9-210 (statements of canvassing results to include political parties).

As to preclearance of a change such as one to nonpartisan elections, which would require approval by referendum, see Municipal Home Rule Law § 23(2)(e), Charter § 38(4), the Department of Justice has set forth instructions regarding the timing of such preclearance. Under 28 C.F.R. § 51.22, entitled, “Premature submissions,”

The Attorney General will not consider on the merits: (a) any proposal for a change affecting voting submitted prior to final enactment or administrative decision or (b) any proposed change which has a direct bearing on another change affecting voting which has not received Section 5 preclearance. However, with respect to a change for which approval by referendum, a State or Federal court or a Federal agency is required, the Attorney General may make a determination concerning the change prior to such approval if the change is not subject to alteration in the final approving action and if all other action necessary for approval has been taken.

Thus, the Justice Department could, but would not be required to, consider for preclearance any change to the Charter’s provisions governing elections to City office prior to approval by the voters at referendum.

As stated above, Dr. Lichtman, the expert on voting rights for the 1998, 1999 and 2002 Commissions, concluded that a change to nonpartisan elections for Citywide offices would not violate the Voting Rights Act. The 2003 Commission used the conclusions of Dr. Lichtman’s 2002 Voting Rights analysis on nonpartisan elections for all City offices as the baseline from which it began its work. Although there were no minority versus white elections in New York City between August 2002 and August 2003 that necessitated a Voting Rights Act analysis for the Commission’s purposes, the 2003 Commission nonetheless retained the services of Dr. Lichtman to re-analyze his earlier studies and confirm that the Commission relied properly on his conclusions in developing its proposals. It should be noted in its June 26, 2003 decision, in Georgia v. Ashcroft, the Supreme Court emphasized in the redistricting context that Section 5 “gives States the flexibility to choose one theory of effective representation over the other.” The Commission believes that the evidence described in this report indicates that partisan elections are not the only means of effective representation for minorities in New York City.

Dr. Lichtman and Mr. Hebert each reviewed their analyses and conclusions from the 2002 Commission, independently, and in light of the system of nonpartisan elections that the 2003 Commission proposed. Dr. Lichtman’s review of the potential impact of a switch to

nonpartisan elections on minority voters concluded that there is no evidence of potential for retrogression, and that the evidence suggests that a switch to nonpartisan elections may well enhance the prospects of minority voters and the minority candidates they may prefer.

Mr. Hebert reviewed the process of preclearance under the Voting Rights Act, the standards and relevant judicial rulings, and the likelihood that New York City would receive preclearance. He, like Dr. Lichtman, found that the switch to nonpartisan elections would enhance access to the ballot for candidates and increase the likelihood that minority candidates would advance to the general election, concluding that “the switch to nonpartisan elections in New York for City offices would gain Section 5 preclearance.” The full text of their reports can be found in Appendices O and P.

V. THE BLUEPRINT FOR STRUCTURING NONPARTISAN ELECTIONS

To gain a better understanding of how nonpartisan elections work in other jurisdictions, and how they differ from partisan elections, the Commission’s staff, building on research from the 2002 Commission, surveyed the 50 largest cities, gathering data on their electoral structures, the characteristics that help define them (e.g., term limits, campaign finance program, etc.), and the outcomes that have resulted. Some of the survey’s findings are listed below:

Prevalence

- Of the 50 largest cities, 41 hold nonpartisan elections and nine hold partisan elections.

Offices Covered

- Of the 50 cities, elections for all city offices were either all partisan or all nonpartisan; none had a mixture of partisan and nonpartisan elections for different city offices.

Election of Minorities (Table 4)

- Of the 41 partisan cities, 15 (37 percent) have Black or Hispanic mayors; eight cities have black mayors and seven have Hispanic mayors. Of the nine partisan cities, 2 (22 percent) have Black mayors – Philadelphia and Washington -- and none have Hispanic mayors.

Reforms (Table 7)

- Of the 50 cities, 27 have laws limiting the number of terms that elected officials may serve.
- Of the 50 cities, seven have some form of public financing of campaigns.
- Of the 50 cities, six have municipal voter guides that are mailed to every registered voter.

- Of the 50 cities, only three (Long Beach, New York, and San Francisco) have public financing of campaigns, a citywide voter guide, and term limits.

Runoff Elections (Table 6)

- Of the 41 nonpartisan cities, 38 have run-off elections. (Appendix C)
- Of the 38 nonpartisan cities with run-off elections, 28 hold a runoff if no candidate receives 50% of the vote, and ten hold a runoff for the top two finishers regardless whether a candidate wins 50 percent in the first election. (Appendix C)

The staff's survey of the nation's 50 largest cities, its review of the academic literature, the work of past Commissions, and public and expert testimony, as well as its consideration of New York's unique electoral landscape, have informed its analysis of nonpartisan elections. The Commission's proposals, based on this analysis, have been developed towards the achievement of the following core principles:

- Increasing access for voters and prospective candidates;
- Enhancing and promoting participation in the electoral process among racial and political groups whose participation heretofore has been limited or precluded; and
- Forging greater governmental accountability.

To address the structural variables that define a nonpartisan election system, the Commission drew upon a number of resources available to it. First, it continuously reviewed the public testimony, expert testimony and written comments received by the Commission since April 2003. Second, it drew upon perspectives gained through various meetings during the months of April, May, June, July and August 2003 with numerous community leaders and good government and constituent based advocacy groups. (Appendix E). Third, it reviewed the work of the 1998, 1999, 2001 and 2002 Charter Revision Commissions. And, finally, it reviewed the body of social and political science literature addressing the topic.

In developing its blueprint for electoral reform the Commission and its staff was cognizant of the Voting Rights Act and aware of the need for preclearance. The particular recommendations comport with the advice of Voting Rights Act experts with whom the Commission has consulted.

Where the matter does not violate the principles enunciated above, the Commission favored less change (i.e., retaining the practices as present). It does so for three reasons: First, to present fewer changes to the voters to absorb; Second, to present fewer changes to the

Department of Justice for its Voting Rights Act analysis, where each proposed change requires separate analysis and justification. And third, while establishing the features of nonpartisan elections, we are mindful of the legal advantages that exist for adhering to the current design set forth in the Election Law.

The Commission used nine core variables in evaluating the issue of nonpartisan elections. They are as follows: (1) the offices to be covered; (2) petitioning; (3) election rounds; (4) timing of the election cycle; (5) threshold for victory; (6) counting the votes; (7) the impact on the Campaign Finance Program and Voter Guide; (8) the role of political parties; and (9) the effective date of nonpartisan elections.

1. Which Offices Should Be Elected in a Nonpartisan Format?

Nonpartisan elections are not a new concept in the City's electoral system. Although the City uses a partisan system of elections to choose candidates to serve a full term of office, it uses a system of special elections to fill vacancies, or unexpired terms, in those offices through the use of a nonpartisan system. This use of the "nonpartisan special election" was adopted initially by the voters in 1988 and applied to vacancies in the Offices of Comptroller, Public Advocate, Borough President and Council Member. See Charter §§ 94(c), 24(c), 81(e) and 25(b). In 2002, the voters approved the use of a nonpartisan system to fill vacancies in the Office of the Mayor. Charter § 10. Thus, vacancies in all City offices are authorized to be filled in a nonpartisan manner.

Consistent with the City's uniform approach for holding nonpartisan special elections for all offices, the results of the Commission's survey of other cities conducting nonpartisan elections revealed that all of them did so for each of their City's elective offices. There is no evidence in the social and political science research on the issue of whether imposing such a uniform system of elections would be better suited to empowering voters if it applied only to some offices and not all. Indeed, the Commission received public testimony on this issue that revealed overwhelming support for the position that nonpartisan elections should be held for all City offices. The Commission's survey, literature review, and the bulk of public testimony suggest that consistency and avoidance of voter confusion command a uniform approach.

Proposal: The Commission proposes that nonpartisan elections be held for all City elective offices.

2. How Should Candidates Get On The Ballot?

Election Law § 6-118 provides for the selection of candidates to participate in a partisan primary election to be made by “designating petition.” Section 6-136(2) sets out the signature requirements for elective offices in New York City. It provides that petitions must be signed by at least 5 percent of the enrolled voters of a party, as determined by the preceding enrollment, residing within the political boundaries of the office sought. However, the maximum number of valid signatures needed to get on the ballot is set at the following: 7,500 signatures for Citywide office (§ 6-136(2)(a)); 4,000 signatures for Borough office (§ 6-136(2)(b)); and 900 signatures for Council district office (§ 6-136(2)(c-1)).

The Charter provides that the selection of candidates to participate in a nonpartisan special election to fill vacancies in City offices be made by “independent nominating petition.” See Charter §§ 10(c)(Mayor), 94(c)(Comptroller), 24(c)(Public Advocate), 81(e)(Borough President) and 25(b)(Council Member).

Election Law § 6-138 governs independent nominating petitions (“INPs”) and requires that they contain signatures of registered voters, regardless of party, who are eligible to vote in the political unit for which a nomination is made. Election Law § 6-142(2) sets the minimum number of signatures required for a petition at 5 percent of the total number of votes cast for governor at the last gubernatorial election in the political unit (excluding blank and void votes). However, the maximum number of valid signatures required to get on the ballot is set at the following: 7,500 signatures for Citywide office (§ 6-142(2)(b)); 4,000 signatures for Borough office (§ 6-142(2)(c)); and 2,700 signatures for Council district office (§ 6-142(2)(d-1)). Individuals eligible to sign both a partisan designating petition (“PDP”) and an independent nominating petition (“INP”) may only sign one petition per elective office.

In its final report, the 2002 Commission recommended that candidates in a nonpartisan election system should access the ballot through the use of an INP. The 2002 Commission’s rationale was based on the precedent established in the Charter which currently requires that INPs be used by all candidates in nonpartisan special elections for every City office, a system that was aimed at creating a level playing field among candidates and that had already received Justice Department preclearance.

Although there was a modicum of support for the adoption of the 2002 Commission’s recommendation to continue the use of the INP in a new system of nonpartisan elections, there

was overwhelming and impassioned support for applying the current lower maximum signature requirements under the PDP system to the proposed system of nonpartisan elections.

The concern was that the maximum signature requirements for an INP and a PDP are significantly different for the office of Council Member: the INP maximum is 2,700 signatures, while the PDP maximum is 900 signatures. The Commission heard testimony suggesting that the PDP's maximum requirement of 900 signatures was already too difficult for some (typically Democratic Party) candidates to meet, and that increasing it to 2,700 signatures could have the unintended consequence of limiting ballot access – especially as the number of potential candidates increased – regardless of the expanded universe of potential signators. Because the Commission focused on opening access, it decided to recommend that a hybrid of the INP and PDP processes be established, and known as a Nonpartisan Designating Petition (“NDP”), to allow for an open process with lower signature requirements.³¹ Such a hybrid is allowed as within the parameters of the decision in Bareham, *supra*. The new NDP requirements would apply to all nonpartisan elections held in the City, including special elections to fill vacancies.

³¹ The Commission considered an open signatory system to allow registered voters to sign more than one petition for each elective office, thereby lifting the current restriction of just one petition. Although some argued that such an approach could lead to “mischief” in the petitioning process, others argued that this approach would institute safeguards against well organized party machines who would likely seek to invalidate the petitions of lesser organized independent candidates in an effort to eliminate competition.

The Commission also considered the proposal to require a filing fee from candidates in place of ballot petitions. A number of legal arguments were presented against this suggestion, and it was concluded that such a system could either encourage nuisance candidates if fees were set too low (as is currently the case with California's recall election), or limit ballot access if fees were set too high.

The new system would work as follows:

	Partisan Designating Petition (PDP)	Independent Nominating Petition (INP)	Nonpartisan Designating Petition (NDP)
Minimum Signature Requirement	5 percent of the enrolled voters of a party, as determined by the preceding enrollment, residing within the political unit, or a maximum of:	5 percent of the total number of votes cast for governor at the last election in the political unit, or a maximum of:	5 percent of the qualified voters of a political unit, as determined by the preceding enrollment, residing within the political unit, or a maximum of:
Citywide Office	7,500 signatures	7,500 signatures	7,500 signatures
Borough Office	4,000 signatures	4,000 signatures	4,000 signatures
Council District Office	900 signatures	2,700 signatures	900 signatures
Who may sign:	Enrolled member of a party may sign one petition for each office in the political district of signator's residence	Any registered voter, regardless of party registration, may sign one petition for each office in the political district of the signator's residence	Any registered voter, regardless of party registration, may sign one petition for each office in the political district of the signator's residence
Who may carry:	Only a qualified enrolled party member	Any qualified person regardless of party affiliation	Any qualified person regardless of party affiliation

Proposal: The Commission proposes the creation of a new Nonpartisan Designating Petition. The maximum number of valid signatures required to get on the ballot is set at the following: 7,500 signatures for Citywide office; 4,000 signatures for Borough office; and 900 signatures for Council district office. Any qualified individual can sign one NDP petition per office regardless of party affiliation. Any qualified individual regardless of party affiliation can carry a petition.

3. Should Elections Be Held In One Or Two Rounds?

Under nonpartisan elections, where no *party* primaries exist, voters have the opportunity to consider all candidates in one election. Several cities determine election winners in a single round of elections. The vast majority of the 41 nonpartisan cities examined by the Commission staff, however, hold a second round of elections. The three cities not having a second election (Albuquerque, Virginia Beach, and Colorado Springs), have populations under 500,000.

In New York's fiercely competitive political arena, a second election offers several important benefits, including: (1) avoiding the current problem of candidates winning office with only a small fraction of the total votes cast; (2) allowing voters the opportunity to take a closer look at the top two contenders; and (3) sharpening the choices presented to voters by extending the debate and limiting the participants. The two chief costs of a second election – the monetary cost of staging the election and the cost to voters of a second trip to the polls – are ones New York currently incurs. The difference, however, is that under nonpartisan elections, the second election would be competitive.

Proposal: The Commission proposes that there be two rounds of elections.

4. **When Should Nonpartisan Elections Be Conducted?**

State law provides that New York City “fall primary” elections be held “on the first Tuesday after the second Monday in September before every general election unless otherwise changed by an act of the legislature...” See Election Law § 8-100(1)(a). A general election is required to follow on the Tuesday following the first Monday in November.³² See Const. Art. 13, § 8.

Of the 41 largest nonpartisan cities surveyed by the Commission, many hold “off-season” elections in the winter and spring, including Los Angeles and Chicago. To separate nonpartisan local campaigns from partisan state campaigns occurring in the same year, elections in Los Angeles are held in April and June. Off-season elections have been shown to result in reduced voter turnout, but for many nonpartisan cities, including Los Angeles, they are the only option. Additionally, several cities hold elections in November followed by a runoff two weeks later (Atlanta), within thirty days (Houston), or in early December (San Francisco).

Because New York City holds state and federal elections in even-numbered years, and local elections in odd-numbered years, it does not have the same problem as Los Angeles. A switch to nonpartisan elections in New York City would not require voters to vote on days other than a “regular” election day in an effort to avoid the possible confusion between competing

³² State Constitution Article 13, § 8, entitled “City and county officers, election and term of office,” provides in pertinent part that: “All elections of city officers, including supervisors, elected in any part of a city, and of any county officers elected in any county wholly included in a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year” (emphasis added).

partisan and nonpartisan formats. Furthermore, because the State Constitution requires all elections for local office be decided dispositively on the November general election date, nonpartisan systems that decide an office holder after that date, like Atlanta, Houston or San Francisco, could not be used as a model for New York City. Cities with November elections hold their first elections in a variety of months, including June and October.

Indeed, the Commission heard testimony from the public and entertained substantial discussion on the issue of holding a June primary. Among the benefits explained of the June primary was that candidates would have more time between the primary and general elections to allow for substantive discourse and debate on important public issues, limited currently by the short timeframe between September and November.

Although a number of Commission members expressed a desire that the primary date be moved to June, the staff advised them that such a change would likely require State authorization because of the express language of Election Law § 8-100(1)(a) stating that the fall primary “*shall* be held on the first Tuesday after the second Monday in September before every general election *unless otherwise changed by an act of the legislature...*” (emphasis added).

Proposal: The Commission proposes no change to the current statutory and constitutional requirements that the fall primary be held in September, followed by a general election in November.

5. How Should The Winners Be Determined?

Currently, New York City conducts two types of elections for City office: (1) a party primary and general election; and (2) a nonpartisan special election to fill vacancies.

Election Law § 6-132 establishes New York City’s system for conducting a party primary to determine candidates for general election. Under this system, qualifying candidates are placed on the ballot in a party primary election. The candidate who receives the most votes wins and advances to the general election. However, if the candidate is running for Citywide office and receives less than 40 percent of the total votes cast in the party primary, a run-off election is held two weeks later between the two Citywide candidates with the most votes. The candidate with the majority of the vote in the run-off election wins and advances to the general election. The candidate with the most votes in the general election wins office.

Charter §§ 10, 94(c), 24(c), 81(e) and 25(b) establishes New York City's system of nonpartisan special elections to fill vacancies in all City elective offices. Under the nonpartisan special election system, qualifying candidates are placed on the ballot without traditional party affiliation. The candidate who receives the most votes for an office wins, unless he or she is a mayoral candidate who receives less than 40 percent of the total votes cast. In that case, the two candidates with the most votes advance to a run-off election held two weeks later. The candidate with a majority of the votes wins office.

The 2002 Commission recommended that a nonpartisan primary be held with the top two vote-getters, regardless of percentage of votes received, advancing to a run-off election to be held on the general election day. The top vote-getter in the general election would win with a majority, or a mandate, of the total votes cast. This approach is followed in 10 of the 41 largest nonpartisan cities – Detroit is the largest – and maximizes the ability of candidates to use their campaign resources efficiently by not forcing the candidates to plan for the possibility of an interim runoff.

The 2003 Commission heard a variety of public testimony on this issue that focused on a number of structures. After deliberation, the Commission concluded that the top two vote-getters should advance to the run-off because of the importance of establishing an election structure that adequately results in the preferred choice of the majority. In doing so, the Commission found that its guiding principles – increasing access, enhancing participation, and improving accountability – would be met.

Proposal: The Commission proposes that a “nonpartisan primary” be held on the September primary election day with the top two vote-getters advancing to a run-off general election be held on the November general election day. Uncontested races (races with one or two candidates) ordinarily would not be subject to a primary election.

6. How will votes be counted?

During public hearings, the Commission heard public testimony urging that any proposal for the adoption of nonpartisan elections contain provisions to change the way votes are counted in the City. Many of those who testified, including one expert, Steve Abramson, from New Yorkers for Instant Run-off Voting, suggested that instant runoff voting (“IRV”) be implemented because of the advantages it could provide the City's electoral system. Contradicting those

assertions, University of California Professor Bernard Grofman submitted written testimony to the Commission expressing concerns about IRV that could implicate the Voting Rights Act. In addition, one witness early in the Commission's process, Professor Steven Brams of New York University, argued for approval voting. (No municipality has approval voting.)

IRV is a system of voting that entails preference rank for races where no candidate reaches a majority in the first round. Instead of having a separate runoff election, voters make their runoff choice at the time of their first vote with an order of preference: first, second, third, etc. If no one receives a majority of the votes, the election automatically goes into a second round of voting, where the candidate with the fewest first-choice votes is eliminated. The premise is that no vote is "wasted" because if a voter's first choice candidate is eliminated, then the second choice candidate is counted. This continues until a candidate receives a majority of the votes. Thus, the system produces a winner with a majority vote and allows the voters to state their preference.

Proponents of this system put forward three advantages: (1) it eliminates costly second round runoff voting; (2) it increases voter turnout because in the current system of having runoff on a different day, there is always a much lower turnout; and (3) it prevents "spoiler" third party candidates from "splitting votes."

Opponents of the system argue that its elimination process may lead strategically rational voters to favor candidates who may not be their preferred choice, thereby attempting to "game" the system. This calls into question the legitimacy and quality of the result produced.

IRV has been adopted in the U.S. by a handful of jurisdictions. San Francisco became the first major city to adopt instant runoff voting. The City of Cambridge, Massachusetts, also uses a form of instant runoff voting to elect its City Council.

Approval voting is different from IRV chiefly because there are no rankings. Instead, voters can vote for as many candidates as they like in a multi-candidate election with more than two candidates, and the candidate with the most approval wins.

Approval voting allows the voter to cast a vote for more than one acceptable candidate. The system aims to find the strongest candidate overall. At the same time, it may reduce negative campaigning because a candidate will seek support not only from his or her own first choice supporters, but also from others to whom they are acceptable even though they are not a first choice. Approval voting is believed to make campaigns more expansive, and may result in increased voter turnout because voters have new options to better express themselves.

The Commission recommends no change to the current system of counting votes. A switch to an alternative voting scheme, at the same time that a new system of nonpartisan elections would be implemented, could result in a high level of confusion among voters. Thus, one major shift in electoral format is all that should be proposed. Putting aside the concerns about voter confusion, there would be remaining questions about whether the City's current lever-based voting equipment would likely not accommodate a switch to an alternative voting scheme.

Since the State is still in the process of developing an implementation plan on allocating money to municipalities for the replacement of voting equipment under the federal Help America Vote Act ("HAVA"), it is less than clear what types of voting equipment will be authorized by the State for use by municipalities. For Summary of HAVA Requirements, see Appendix D. Currently, State law requires that all elections in the State be conducted using a full face ballot. If the State law requirement is not changed in this regard, the types of new voting technologies available for use in New York City, such as ATM style voting machines, would be limited.

Accordingly, because instant runoff voting is untested in major municipalities and its full effects are still unknown, including the concern that it creates perverse incentives for voters, and concerns about the Voting Rights Act, the Commission recommended no change in vote-counting. San Francisco will conduct instant runoff voting for the first time in its November, 2003 election, which will provide New York City, and jurisdictions of all sizes, with an opportunity to observe its implementation, evaluate its performance, and gauge voter reaction.³³

Proposal: The Commission proposes no change in the method of counting votes.

7. **What Is The Role Of The Political Parties?**

The objective of reviewing options for nonpartisan elections in New York City is to open up ballot access for all candidates who, regardless of party affiliation, wish to compete freely with and among each other for City elective office. The objective is not to eliminate the role of political parties in the electoral process, but rather to ensure the removal of the exclusionary gatekeeper role that parties play in the current system of partisan elections.

Previous Commissions reviewing the issue of nonpartisan elections have not sought to limit the ability of candidates to affiliate themselves with a political party *except on the ballot*,

³³ It has been reported to the Commission that San Francisco is experiencing difficulty in implementing the system and may not do so in November.

nor have they sought to thwart the ability of a party to indicate their preference for a candidate, for example in private campaign literature, running in a nonpartisan election.³⁴ However, this Commission has decided to take a different approach on the issue of a candidate political party affiliation on the ballot.

After receiving extensive public and expert commentary indicating that voters need party labels, or cues, to determine candidate values and ideologies, to make an informed choice in the voting booth, the Commission considered a suggestion offered by Mayor Bloomberg, in a letter dated July 16, 2003, that candidates be allowed to list their party of registration on the ballot if the Commission proposed a new system of elections. The Commission staff was aware of several municipalities from its nationwide survey that conducted their nonpartisan elections in such a manner, including the nation's fourteenth largest city, Jacksonville, Florida, and Minneapolis, Minnesota.

Jacksonville requires candidates to list party registration on the ballot, while Minneapolis allows candidates to list any three words, including party affiliation. Because Jacksonville was the city closest in size to New York City, and the most recent to convert to nonpartisan elections (adopted by referendum in 1992), the staff undertook a case study of their system to understand its effects on voter turnout and the success of minority candidates. That case study can be found in Appendix M.

The Commission also solicited comment on whether candidates should be allowed to choose to list their party registration status, or "independent" status, or nothing adjacent to their name on the ballot.³⁵ The Commission received a variety of responses from the public. Although a number of those who testified, including members from the Independence Party, opposed the use of party labels on the ballot, the arguments expressing fear of confusion due to a lack of information ceased to be heard in testimony.

Proposal: The Commission proposes that full ballot access be afforded to all candidates wishing to run for office. Candidates may continue to identify themselves, on the ballot, with the

³⁴ See e.g., Eu v. San Francisco County Democratic Central Committee et al., 489 U.S. 214 (1989) (The First Amendment provides political parties the right endorse candidates in a nonpartisan election).

³⁵ It should be noted that the Commission expressed concern that the term "Independent" candidate, a term used widely in American political parlance for many decades, and someone who is registered in the "Independence Party" be clearly distinguished. It is recommended that the Board of Elections take steps to clearly delineate the differences in these listings on the ballot by listing a candidate's registration on the ballot accordingly as "Independent" or "Independence Party," and not "Independent" or "Independence."

political parties in which they are registered members, or list themselves as “independent” if they so choose. Candidates will not be able to change the status listed on the ballot once the candidate designates it, and once designated the label must appear in both the primary and general elections.

8. When Should A New System Of Nonpartisan Elections Take Effect?

The Commission reviewed two options for the effective date of nonpartisan elections: the Citywide elections either of 2005 or 2009. There were various considerations in the Commission’s determining an effective date.

The justification for a 2005 implementation date centered on opening up access to the ballot for candidates and voters shut out of the process. The argument against a 2005 implementation date centered on the contention that nonpartisan elections may benefit the Mayor in his 2005 reelection bid. In a letter dated July 16, 2003, Mayor Bloomberg suggested that a 2009 implementation date would take away any concerns that the Commission had been appointed to advantage him in 2005.

The June 26, 2003 staff report stated that it would be highly unusual, though not impermissible, for the implementation of a significant electoral reform to be delayed for five years after enactment. Taking this into account, the Commission, upon reflection of the testimony it heard, concluded that delaying the implementation date to the day after the 2005 Citywide election (November 9, 2005) would address all concerns and ultimately aid in enabling the passage of this important electoral reform. Although the reform would not be implemented generally until the Citywide election of 2009, it nonetheless would apply to all elections held to fill vacancies in City offices in elections subsequent to the general election of 2005.

Proposal: The Commission proposes that, if a new system of nonpartisan elections is approved by the voters, it be implemented on the day after the general election of 2005.

9. What Is The Nexus Between Nonpartisan Elections And The Campaign Finance Program?

Charter Chapter 46 establishes New York City’s Campaign Finance Program (“Program”). It is the most comprehensive local campaign finance reform program in the nation and has been held up as a model for New York and other States, as well as for the federal

government. The Commission examined a nonpartisan election system, careful consideration must be given to its impact on the performance of the Program.

Nonpartisan elections and the Campaign Finance Program come from the same family of reform; in large measure both are designed to increase voter participation, open up the electoral process to new candidates, and provide voters with a wider range of choices. Implementing nonpartisan elections presents both a challenge and an opportunity for the Campaign Finance Program.

Opportunities

The long-term success of the campaign finance program is attributable to its continuing evolution. After each Citywide election, the Charter requires the Campaign Finance Board to evaluate the Program's performance and recommend changes to the law as needed. The many legislative changes resulting from this process reflect the Program's ability to adapt to an always changing political environment. The establishment of nonpartisan elections would signal a significant change in the electoral landscape. Given the overlapping goals of the two reforms, nonpartisan elections may offer naturally occurring benefits to the Campaign Finance Program. And given the Program's history of adaptation, nonpartisan elections may present the opportunity to enhance further the Program's performance either by rule or by local law.

Challenges

The Commission has engaged in a comprehensive exploration of the nexus between nonpartisan elections and the Campaign Finance Program. Nicole A. Gordon, Executive Director of the Campaign Finance Board, has cautioned the Commission to examine the performance of the public financing program in the City of Los Angeles, which conducts nonpartisan elections, especially in regard to the issue of party spending. Of particular concern to Ms. Gordon is that unregulated spending by political parties would increase under a nonpartisan system because: (1) parties would no longer be prohibited from financially supporting candidates in the first round of elections as is the case with partisan primary elections; and (2) it is unclear whether the current presumption that party spending in a general election is on behalf of a candidate elected in a partisan primary would remain so when parties are no longer formally connected to candidates under a nonpartisan system.

The Commission has reviewed reports analyzing the performance of both New York City's and Los Angeles's public financing programs and has had conversations with experts on Los Angeles's system, including Lee Ann Pelham, Executive Director of the Los Angeles City

Ethics Commission, the agency charged with administering the city's public financing program. Despite contentions to the contrary, Ms. Pelham stated that party spending in Los Angeles's nonpartisan elections *has not* been a problem since her program began in 1990. Although a spike in party spending did occur in the 2001 mayoral election, it was dwarfed by spending from independent groups, particularly unions. Other cities have nonpartisan elections and campaign finance systems, including Tucson, Arizona; Long Beach, Oakland and San Francisco, California; Austin, Texas; and Miami/Dade, Florida. Similarly, they have not reported instances of party spending that has distorted local elections.

Attribution of Party Expenditures in a Nonpartisan Primary and General Election

The rules of the CFB presently set forth the circumstances where, in the existing electoral system, spending by a political party may be attributed to that party's candidates for office in the general election. See 52 Rules of the City of New York ("RCNY") §1-08(f)(4). Under those rules, the Board may require a "participant to demonstrate in any proceeding before the board that any of the following expenditures that are made by a party committee or constituted committee of the party nominating that participant, after the nomination of any candidate for the same office at a primary election, or as otherwise provided in New York Election Law §6-160(2), are not in-kind contributions to the participant:" (a) spending for "an electioneering message" about the candidate or the candidate's opponent in the general election, or (b) spending "for advertisements, broadcasting, mailings, or electronic media" in support of the candidate or against the candidate's opponent in the general election, or (c) spending for which the candidate has "promised or made reimbursement to the party". 52 RCNY §1-08(f)(4)(ii).

The rules also specify certain types of party spending that are not considered to be contributions to and expenditures by a candidate "unless it is demonstrated that the participant in some way cooperated in the expenditure and that the expenditure was intended to benefit that candidate." Such expenditures include spending for (a) materials devoted in general to the party's platform or philosophy, (b) "promoting party enrollment or voter turnout without reference to particular candidates", and (c) "raising funds for the party without reference to particular candidates[.]" 52 RCNY §1-08(f)(4)(i).

Although the current rules are limited by their terms to party spending in general elections, the Commission believes that they could be adapted to a non-partisan primary and general election. Indeed, the Commission's proposal that allows candidates to list party

registration on the ballot in both the primary and general elections addresses concerns launched initially about the effects of a traditional nonpartisan ballot on the campaign finance system.

A rule attributing party spending in non-partisan primaries, based on existing rules, could be drawn carefully. Indeed, with the stiff penalties that would be imposed upon candidates in the program, parties would continue to have large disincentives to spend on their behalf and would continue to risk drawing negative media attention to their preferred candidate.

Testimony before, however, the Commission suggested that such a rule might be objected to on constitutional grounds. That testimony indicated that the decision in Eu v. San Francisco County Democratic Central Committee, 489 U.S. 214 (1989) (striking down, as denial of free speech, state law prohibiting political parties from endorsing candidates in partisan primary elections) would be instructive on the issue of the constitutionality of the attribution of party expenditures in a nonpartisan election. Although this case was helpful to the Commission in understanding the limits of state interference in internal party activities, it was less helpful in understanding schemes for imputation of party expenditures to candidates participating in a voluntary system of campaign finance reform, as in New York City.

Arguments that such attribution schemes may be unconstitutional fail to account fully for the voluntary nature of the City's campaign finance system. Candidates subject to the Board's rules agree, in exchange for the receipt of public funds, to comply with the applicable limitations. Such programs were specifically sanctioned by the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976) at 57 n.65 ("Congress may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specific expenditure limitations"), and have subsequently been upheld, to the extent they are truly non-coercive, in a number of cases. See, e.g., Daggett et al. v. Commission on Governmental Ethics and Election Practices, 205 F.3d 445 (1st Cir. 2000); Republican National Committee v. Federal Election Commission, 487 F.Supp. 280 (S.D.N.Y.). aff'd mem., 445 U.S. 955 (1980). The Board's attribution rules (both current and as proposed herein) thus limit the benefit derived from such party spending by participating candidates.

Similarly, it is not the party but the participating candidate who is penalized when attributed contributions exceed applicable levels. Of course, a party could argue that it (like any other entity which spends in campaigns) is the true object of attribution rules and that its campaign spending is in fact limited by such rules. Courts appear to countenance this result, however, as long as the limitation is part of a voluntary program. Republican National

Committee, 487 F.Supp. at 284 (“since the candidate has a legitimate choice whether to accept public funding and forego private contributions, the [candidate’s] supporters may not complain that the government has deprived them of the right to contribute”).

Accordingly, the Commission believes that existing law supports its conclusion that the attribution of political party spending in non-partisan elections presents no constitutional problems, the chief concern raised by Ms. Gordon. By acting within reasonable constitutional bounds, given the voluntary nature of the program, and by adapting language from the CFB’s current rules to the Charter, the proposal addresses the practical concerns raised by Ms. Gordon.

Prohibition on Acceptance of Party Contributions

Consistent with the legal rationale for attribution presented above, the Commission also proposes prohibiting participants from accepting direct or indirect contributions from political parties or their committees. The rationale for this change is consistent with that of the 1998 Charter Revision Commission which put a question before the voters that prohibited participants in the Campaign Finance Program from accepting contributions from corporations. That ban was intended to eliminate any perception or reality that corporations exert undue influence over elected officials and the legislative process, but also to enhance the equality of individual citizen participation in City elections.

In its report following the 2001 elections, which included recommendations for legislative changes, the Campaign Finance Board (“CFB”) stated that the same rationale applies to all organized interest groups, including political committees (including PACs and party committees), limited liability companies, partnerships, and unions, and proposed extending the ban to include all of them. The City Council passed a bill in January 2003 making various amendments to the Campaign Finance Act, but did not include the CFB’s recommendation to ban organizational contributions.

In addition to achieving the “good government” goals outlined by the CFB, the ban would, under a nonpartisan system, maintain the current prohibition on party contributions to candidates (including in-kind contributions from party expenditures) during the primary election period and extend the prohibition to the general election. Amending the Charter to prohibit Program participants from accepting organizational contributions would restrict the ability of parties to monetarily support individual candidates. Currently, for example, political party committees may each contribute up to \$4,950 to citywide candidates. Indeed, effectively prohibiting party spending on behalf of a CFP participating candidate would address decisively

any concerns that party spending in a nonpartisan primary would undermine the Campaign Finance System. Accordingly, the Commission also proposes this reform.

Video Voter Guide

Currently, as mandated by the Charter, the Campaign Finance Board publishes and distributes a Voter Guide prior to both the primary and general election. Even if candidates appear in both the primary and general election guides, their statements remain the same. A second guide is necessary because many general election candidates do not run in primary elections and thus do not appear in the primary election Voter Guide.

Under nonpartisan elections, voters would receive statements from all candidates in the Voter Guide published and distributed for the first round of elections. Nonpartisan elections may obviate the need for two Voter Guides in the same election cycle, bringing considerable cost savings to the City. To inform voters of candidates on the November ballot, it may be proposed that the CFB mail to each voter a postcard or a sample ballot. The availability of the Voter Guide on the CFB's Web site offers an additional source of information to voters. The Commission received testimony from the CFB, expressing concern about the elimination of the second Voter Guide publication. This issue should be reviewed by another Commission.

In addition, at the Commission's public hearings, former mayoral candidate George Spitz suggested that the Commission adopt a video voter guide, allowing candidates to make statements for broadcast on cable television, and, if possible, streaming on-line on the CFB's Web site. The City does not control over-the-air broadcast channels, but it does have its own governmental cable channels, i.e. "NYC TV," formerly known as "Crosswalks," by way of cable franchise agreements. These channels can be directed to carry governmental programming and, in fact, the current Charter provides for coverage of Council hearings and other governmental proceedings. Charter § 1072(e).

Based on this model, the Commission proposes that for a period before elections, NYC TV dedicate programming time for airing campaign statements by local candidates. Increasing voter access to candidate information, and enhancing candidate access to free media, would complement the aims of nonpartisan elections.

Proposal: The Commission proposes that the Charter be amended to (1) continue to provide for attribution of party expenditures, now in the context of nonpartisan elections; (2) prohibit candidates participating voluntarily in the CFB's program from accepting contributions from political parties or their committees; and (3) provide for a new video voter guide program

to be managed through the joint promulgation of rules by the CFB and the Department of Information Technology and Telecommunications (“DOITT”).

VI. OTHER VOTER PARTICIPATION ISSUES

In testimony before the Commission, individual speakers recommended that the Commission study a variety of other election reforms that, along with nonpartisan elections, could be useful in providing increased access to the ballot for candidates and voters under a new system of nonpartisan elections. These reform ideas are significant and worthy of a thorough examination and debate by the Commission, even though all of them appear to be impossible to accomplish legally through a local Charter revision. They include: election day/same-day voter registration; expanded voting hours/days; voting by legal immigrants; voting by felons who have completed their sentence. Because these issues may not be placed on the ballot, they will be addressed separately by the Commission.

VII: PROPOSED CHARTER LANGUAGE

Section by Section Discussion

This discussion gives a section by section explanation of the Charter changes needed to effectuate a system of nonpartisan elections. Section 1 of the proposal establishes a **new Charter Chapter 3** entitled Election to City Office and sets forth new sections 60 through 75 as follows:

Section 60: This section contains general provisions regarding the scope of the chapter and its relation to the State Election Law. The chapter covers elections for mayor, comptroller, public advocate, council members, and borough presidents. The general theory of the chapter is that, except where the chapter provides otherwise, the provisions of the Election Law used to govern partisan elections also will be used for nonpartisan elections. Section 60 recognizes, however, that the Election Law has many references to party members throughout its provisions. Rather than specifically addressing each one, the section deems Election Law references to party members to refer to qualified voters in New York City, when read in connection with offices covered by the chapter. The section also enables sections of the Election Law referenced in the chapter to be amended without requiring the charter also to be amended.

Charter Section 61: This section sets forth the basic rules for becoming a candidate in a nonpartisan election. Under subdivision (a), in order to run in a nonpartisan primary election, a

candidate must be designated by a petition, the “nonpartisan designating petition,” containing the signatures of registered voters of the political unit for which the designation is made. As indicated in subdivision (b), nonpartisan designating petitions are analogous to independent nominating petitions under the Election Law, although they are named “nonpartisan designating petitions” because they will be filled out at the same time that partisan designating petitions—used for candidates to get on the primary ballot for a party in partisan elections—will be filled out. This similarity to independent nominating petitions would help the public and the Board of Elections more readily understand and implement the new system.

Subdivision (b) references Election Law § 6-136 for the number of signatures needed to get on the ballot for the nonpartisan primary election. This is an important exception to the general approach of analogizing to the independent nominating petition system. Section 6-136 is the provision for the number of signatures needed on a partisan designating petition to get on the ballot for various offices. It should be noted that, unlike for any other New York City office, the number of signatures needed for an independent nominating petition to get on the primary ballot for a City Council position (2,700) differs from the number of signatures needed for the same office for a partisan designating petition (900). Compare Election Law §§ 6-142(2)(d-1) and 6-136(2)(c-1). By referencing §6-136, the proposal adopts the lower number of signatures (900). Subdivision (c) sets forth many of the timing requirements for nonpartisan designating petitions.

Section 62: This section sets forth provisions governing the form of nonpartisan designating petitions. Except for the first paragraph, the form set forth in Election Law § 6-140 for independent nominating petitions is used. In addition, in light of the Second Circuit’s opinion in Lerman v. Board of Elections, 232 F.3d 135 (2d Cir. 2000), cert. den., 533 U.S. 915 (2001) (invalidating requirement of Election Law § 6-132(2) that witnesses to designating petitions be residents of the political subdivision in question), the requirement of Section 6-140 that the witness reside in the political unit in question is excepted out of Charter § 62. See Election Law §§ 6-140(1)(b) and 6-138(1).

Section 63: This section deals with vacancies in the designation to run for the nonpartisan primary election. It sets forth the manner in which a person designated as a candidate for nomination may decline the designation, and how vacancies on the nonpartisan primary ballot caused by such declination, or any other reason, shall be filled.

Section 64: In section 6-164, the Election Law provides the opportunity to avoid uncontested primaries through the “opportunity to ballot.” Section 64 of the draft does the same

thing for the nonpartisan primary. Under this section, qualified voters may file a petition with the Board of Elections requesting the opportunity to write in the name of a candidate, who need not be specified, for the office in question. The number of signatures needed for this type of petition is the same as the number needed for the nonpartisan designating petition. Upon receipt of such a petition by the Board of Elections, the office is deemed contested, and the contest is resolved in the nonpartisan primary.

Section 65: This section sets forth the basic provision for the nonpartisan primary election. It is held at the time of the fall primary under the Election Law, and is held in any year when a candidate for the office of mayor, comptroller, public advocate, council member, or borough president is to be elected. It should be noted that ordinarily a nonpartisan primary election is uncontested if there are one or two candidates.

Section 66: This section authorizes the Board of Elections to conduct the canvass of votes after the nonpartisan primary election, and directs the Board on how to certify the results. Section 66 provides that the candidates receiving the largest and next largest number of votes shall be the persons nominated for the office in question. There would be no other means for a candidate to be nominated for the general election ballot, although write-in candidacies would still be permitted.

Section 67: This section provides for filling vacancies in a nomination, i.e., after the nonpartisan primary election. Basically, the person who receives the next largest number of votes at the nonpartisan primary gets the chance to consent to be nominated, and so forth. If the vacancy cannot be filled in this manner, then the committee to fill vacancies would have the opportunity to fill the vacancies. Consistent with Election Law § 6-150, vacancies that occur shortly before the election may not be filled.

Section 68: This section provides for the nonpartisan general election, at which the persons whose names appear on the ballot for a given office will be the persons who were nominated at the nonpartisan primary election. It permits poll watchers to be appointed by candidates in the nonpartisan election. Parties may also appoint watchers as is the current practice.

Section 69: This section permits but does not require candidates to list their party registration or "independent" registration status adjacent to their names on the ballot. It otherwise prohibits the placement of any partisan, party, or independent body identification,

symbol, or emblem on the ballot or voting machine at any such election for offices covered by this chapter.

Section 70: This section sets forth the order of names on ballots for nonpartisan primary elections and nonpartisan general elections. This section also sets forth the requirement that the nonpartisan elections should be separated on the ballot from partisan elections and be given prominence in a manner comparable to the current election.

Section 71: Subdivision (a) relates to the campaign finance provisions of the Election Law. In general, this subdivision adopts the contribution and receipt limitations set forth in the Election Law, except that it makes them applicable to nonpartisan primaries and nonpartisan general elections. The major difference from the Election Law is that this section deems references in Election Law § 14-114(1)(b) to enrolled voters in the candidate's party in the relevant district to mean the number of registered voters in the district. Subdivision (b) relates to the provisions in the Charter and Administrative Code relating to the City's voluntary campaign finance system. It generally makes the system applicable to nonpartisan elections, and directs the Campaign Finance Board to promulgate rules to make the system work for nonpartisan elections, including, in particular, rules relating to attribution of party expenditures, in accordance with the amendments proposed to be made to Charter §1052(a)(11)(b).

Section 72: This section makes the nonpartisan election system applicable to the succession rules in the event of vacancies in City elective offices.

Section 73: This section covers the particular situations (which would probably be infrequent) in which violations of the Charter provisions occur in the absence of any Election law violations. It creates new misdemeanors to address these situations.

Sections 74 and 75: These sections, which set forth the provisions of the Election Law that are inapplicable or modified for the purposes of nonpartisan elections under the Chapter, are provided to avoid the problem illustrated in Bareham v City of Rochester, 246 N.Y. 140 (1927). In Bareham, Rochester's failure to name the sections it was modifying or superseding led the Court of Appeals to strike down that city's nonpartisan election system, notwithstanding the fact that the Court thought such a system could legally be adopted by local law. Although the State's home rule provisions have been amended, since Bareham, to provide that the failure to specify the changed or superseded State law provisions "shall not affect the validity of such local law," Municipal Home Rule Law § 22(1), State law still requires the locality to specify the affected sections. Id.

Conforming amendments to vacancy provisions for all City offices

Section 2 through 6 of the proposal makes conforming technical amendments are necessary to conform the vacancy provisions added by the Charter Revision Commissions of 1988 and 2002 to the proposed new Chapter 3 of the Charter providing for nonpartisan elections in the City. The amendments replace the standard in the existing language that refers to section 6-116 of the Election Law with a standard intended to achieve a similar result: the timing and application of the vacancy provisions turn on whether the date upon which the vacancy occurs permits a primary election to take place. Of course, the revised vacancy provisions would replace party primary elections, where specified, with non-partisan primary elections. In addition, the current provision for interim elections by independent nominating petition in certain circumstances would continue, with modifications to conform such elections to the manner in which other non-partisan elections would be held.

Sections 7 through 9 of the proposal amend provisions concerning the City's campaign finance laws and voter guide. The Campaign Finance Board would be required to continue to provide for attribution of party expenditures, now in the context of nonpartisan elections, in all elections. Candidates participating in the program of voluntary campaign finance reform would be prohibited from accepting contributions from political parties or their committees. And, a new video voter guide program would be established to be managed through the joint promulgation of rules by the CFB and DOITT.

Section 10 provides that the proposal would not apply to the Citywide election of 2005. Instead, it would take effect the day after the 2005 general election and apply to the 2009 Citywide election. Any elections to fill vacancies in office after the 2005 election would be conducted under the nonpartisan system. There is a severability clause for individual components of the new election system.

Proposed Text

Section one. The New York city charter is amended by adding a new chapter three to read as follows:

CHAPTER 3

ELECTION TO CITY OFFICE

§ 60. General scope of chapter; election law. The mayor, the comptroller, the public advocate, members of the council, and borough presidents of the city of New York shall be

nominated and elected as provided in this chapter. The provisions of the election law of the state of New York shall apply to the nomination and election of such officers except as provided in this chapter. Any reference in the election law to enrolled members of a party in connection with designation or nomination of candidates for offices covered by this chapter shall be deemed to refer to qualified voters in the city of New York. References to provisions of the election law in this chapter shall be deemed to refer to any successors to such provisions.

§ 61. Designation of candidates for nonpartisan primary election; rules. a. Candidates for nomination for the offices of mayor, comptroller, public advocate, member of the council, and borough president shall be designated only as hereinafter provided. Designations for the nonpartisan primary election for each such public office shall be made by a petition, known as a nonpartisan designating petition, containing the signatures of registered voters of the political unit for which a designation is made who are registered to vote.

b. Except as otherwise provided herein, the form of, and the rules for nonpartisan designating petitions shall conform to the rules and requirements for independent nominating petitions as set forth in article six of the election law. Except as otherwise provided herein, where the election law refers to independent nominating petitions, such law shall be deemed to refer to nonpartisan designating petitions in the case of elections covered by this chapter. However, the number of signatures required for such petitions shall be as set forth in subdivision two of section 6-136 of the election law for designating petitions, except that where such subdivision refers to enrolled voters of the party, such subdivision shall be deemed to refer to qualified voters of the city of New York.

c. The provisions of subdivision one of section 6-158 of the election law shall apply to the time for filing of a nonpartisan designating petition, and the provisions of subdivision two of section 6-158 of the election law shall apply to the time for filing a certificate of acceptance or declination of a nonpartisan designation. The provisions of subdivision three of section 6-158 of the election law shall govern the time for filing a certificate to fill a vacancy in a nonpartisan designation. The provisions of subdivision four of section 6-158 of the election law shall govern the time for filing a petition requesting the opportunity to write in the name of a candidate or candidates, pursuant to section sixty-six of this chapter.

§62. Designations for nonpartisan primary elections; form of petition. a. Each sheet of a nonpartisan designating petition shall conform to the provisions of section 6-140 of the election law applicable to independent nominating petitions, except that witnesses shall not be required to

reside in the political unit that is the subject of the petition, and except that the first paragraph of the form in such section shall be replaced with the following paragraph:

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a designation for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby designate the following named person (or persons) as a candidate (or as candidates) in the nonpartisan primary election for New York City public office (or public offices) to be voted for at the nonpartisan primary election to be held on the day of, 20..

b. The board of elections shall prepare a sample form of a nonpartisan designating petition for nonpartisan primary elections which meets the requirements of this section and shall distribute or cause such forms to be distributed. Such forms shall be made available to the public upon request. Any petition that is a copy of such a sample shall be deemed to meet the requirements of form imposed by this section.

§ 63. Designation for nonpartisan primary election; acceptance and declination; vacancies. A person designated as a candidate for nomination, or nominated without designation for an office covered by this chapter, other than a person nominated or designated to fill a vacancy as set forth in section sixty-seven of this chapter, may, in a certificate signed and acknowledged by him, decline the designation or nomination in accordance with section 6-146 of the election law, as modified by this chapter. Vacancies due to such declination of a designation or vacancies in a designation for any other reason shall be filled in accordance with the provisions of sections 6-148 and 6-152 of the election law. Vacancies due to such declination of a nomination shall be filled in accordance with section sixty-seven of this chapter.

§ 64. Uncontested nonpartisan primary election; opportunity to ballot; times and form; write-in ballots. a. Persons entitled to vote for the nomination of candidates for offices covered by this chapter may file with the board of elections a petition requesting the opportunity to write in the name of a candidate or candidates, who need not be specified, for such office. The number of signatures required for such petition shall be as set forth in subdivision b of section sixty-one of this chapter. Upon receipt of such petition, such office shall be deemed contested regardless of the number of designated candidates and the nonpartisan primary shall afford the opportunity to vote thereon. Except as set forth herein, the process set forth in section 6-164 of the election law shall apply.

b. The form of such petition shall conform to the requirements for a nonpartisan designating petition set forth in section sixty-two of this chapter, except as otherwise provided herein. Each sheet of such petition shall be signed in ink and shall be in substantially the following form:

I, the undersigned, do hereby state that I am a duly registered voter of the State of New York and entitled to vote at the next nonpartisan primary election of the City of New York, that my place of residence is truly stated opposite my signature hereto, and I do hereby request an opportunity to write in the name of an undesignated candidate or candidates for the nonpartisan primary election for the public office set forth below, to be voted on the day of 20 , as hereinafter specified.

Public Office Political unit
or party position or unit of representation

.....
.....

The appointment of a committee to receive notices, the signatures on the petition with all required information and the signed statement of a witness or authentication by a notary public or commissioner of deeds, shall be in the form prescribed in section sixty-two of this chapter for a nonpartisan designating petition.

c. Nothing in this chapter shall be construed to prohibit write-in ballots in nonpartisan primary or general elections, to the extent that the election law permits such ballots in party primary elections or in general elections.

§ 65. Nonpartisan primary election. At the time of the fall primary as provided by the election law, in any year when a candidate for any of the offices of the mayor, comptroller, public advocate, member of the city council, or borough president is to be elected, there shall be held a nonpartisan primary election for the purpose of nominating the candidates for such offices. Such nonpartisan primary election shall be held at the same places as such fall primary and conducted by the same officers. Every qualified voter shall be entitled to vote at such nonpartisan primary election at the polling place in the election district in which he or she is a resident. Except as provided by section sixty-four of this chapter, no primary election shall be held for any office if there are two or fewer candidates for such office. In such event, the

persons designated shall be deemed nominated without balloting, and their names shall be certified by the board of elections in the manner specified in section sixty-six of this chapter.

§66. Canvass; certificates of nomination. The board of elections shall conduct the canvass of votes after each nonpartisan primary election pursuant to the provisions of the election law. The board of elections shall certify the names of the persons who received the largest and next largest number of votes for mayor, comptroller, public advocate, member of the city council, and borough president, respectively. In addition to any filings required by article nine of the election law, one copy of the certificate shall be filed with the city clerk. The persons named in such certificates shall be the persons nominated for such offices, respectively.

§ 67. Vacancies; nomination. Vacancies in nominations made at the nonpartisan election primary caused by death or disqualification or by declination authorized by section sixty-three of this chapter shall be filled by the candidate or candidates who received the next largest number of votes at the nonpartisan election primary and who file with the board of elections a written consent to be nominated, duly acknowledged, not later than ten days after such death or disqualification, or ten days before the election, whichever is earlier. If such candidate fails to file such consent, or files a duly acknowledged declination, within such period, then the candidate receiving the next largest number of votes who files such written consent within the time specified in the preceding sentence will fill the nomination vacancy. In the event that a vacancy in the nomination is filled in accordance with this section, the board of elections shall promptly prepare and file an appropriate certificate of nomination in its own office and with the city clerk. In the event that a vacancy in nomination is not filled in accordance with this section, it may be filled in accordance with subdivision two of 6-148 of the election law. No vacancy in a nomination may be filled pursuant to this section where prohibited by section 6-150 of the election law.

§ 68. Nonpartisan general election. The nominees for mayor, comptroller, public advocate, member of the council, and borough president, as decided in the nonpartisan primary election and as certified pursuant to this chapter, shall advance to the general election and shall be the only candidates whose names shall appear on the ballot for election for such offices. At such election, the rights to have watchers that are provided by section 8-500 of the election law to independent bodies shall also be afforded to each such nominee.

§69. Ballot. a. Not later than the time for filing nonpartisan designating petitions pursuant to section sixty-two of this chapter, a candidate for city office may request that his or

her party registration or “independent” registration status be included on the ballot adjacent to his or her name. In the event of such request, the board of elections shall include such information on the ballot. If such candidate advances to the general election pursuant to section sixty-eight of this chapter, such information shall also be on the general election ballot.

b. Except as provided in subdivision a of this section, there shall be no partisan, party or independent body identification, symbol or emblem of any kind for the candidates for the offices of mayor, comptroller, public advocate, member of the council, and borough president on the ballot or voting machine at a nonpartisan primary election or general election conducted pursuant to this chapter.

§ 70. Order of names on ballot. The order of names on the ballot for a nonpartisan primary election and nonpartisan general election shall be determined as provided in the election law for candidates of a single party at a primary election as set forth in subdivision six of section 7-116 of the election law. When candidates for offices elected pursuant to this chapter appear on the same ballot as candidates for offices or party positions not covered by this chapter, the candidates for the offices covered by this chapter shall appear together on one part of the ballot, distinctly and prominently separated from the part or parts of the ballot used for candidates not covered by this chapter. The prominence on the ballot of elections for offices covered by this chapter shall be comparable to the prominence of elections for such offices on the ballot prior to the effective date of this chapter.

§71. Campaign Finance; campaign receipts and expenditures; voluntary system of campaign finance. a. The provisions of paragraph b of subdivision 1 of section 14-114 of the election law regarding campaign contributions and receipt limitations shall apply to all nonpartisan primary elections and nonpartisan general elections as specified in this chapter notwithstanding any inconsistent provision of law, except that any reference to the number of enrolled voters in the candidate’s party in the district in which he or she is a candidate shall be deemed to refer to the number of registered voters in the candidate’s district excluding voters in inactive status.

b. The provisions of chapter forty-six of the charter and any local law regarding the voluntary system of campaign finance shall apply to elections held pursuant to this chapter, notwithstanding any inconsistent provisions, except that any reference to a primary or general election, shall be deemed to refer to a nonpartisan primary or general election held pursuant to this chapter. Elections to fill vacancies in accordance with section seventy-two of this chapter

shall also be subject to such provisions of chapter forty-six and any such local law. Notwithstanding any inconsistent provision of law, the campaign finance board shall promulgate such rules, including rules pursuant to subparagraph b of paragraph eleven of subdivision a of section one thousand fifty-two of this charter, and take such other actions as may be necessary to effectuate this section and to ensure the full implementation of such voluntary system of campaign finance in relation to elections held pursuant to this chapter.

§ 72. Vacancies. The provisions of this chapter shall apply to the filling of vacancies in offices covered by sections ten, twenty-four, twenty-five, eighty-one, and ninety-four of the charter as provided therein.

§ 73. Violations of this chapter. a. Any person who knowingly and willfully violates any provision of this chapter, which violation is not specifically covered by section 17-168 or any other provision of article seventeen of the election law, is guilty of a misdemeanor.

b. A public officer who knowingly and willfully omits, refuses or neglects to perform any act required of him by this chapter or who knowingly and willfully refuses to permit the doing of any act authorized by this chapter or who knowingly and willfully hinders or delays or attempts to hinder or delay the performance of such an act is, if not otherwise provided by section 17-128 of the election law or any other law, guilty of a misdemeanor.

c. Any person convicted of a misdemeanor under this section shall be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment.

§ 74. Election law; inapplicable. The following provisions of the election law shall not apply in so far as they concern the nomination and election of mayor, comptroller, public advocate, member of the council, and borough president: section 2-126 (party funds; restrictions on expenditures); section 6-114 (party nominations; special elections); section 6-116 (party nominations; election to fill vacancy); section 6-118 (designation and nomination by petition); section 6-120 (designation and nomination; restrictions); section 6-128 (new party; first nomination by); section 6-132 (designating petition; form); subdivision three of section 6-138 (section relating to independent nominations; rules); section 6-142 (independent nominations; number of signatures); subdivision 3 of section 6-148 (section relating to nomination and designation; filling vacancies); section 6-156 (party nominations; certification); subdivisions six, seven, eight, nine, ten, eleven and twelve of section 6-158 (section relating to nominating and designating petitions and certificates, conventions; time for filing and holding); subdivision one

of section 6-160 (primaries); section 6-162 (primary; New York City, run-off); section 6-166 (primary; opportunity to ballot, form of ballot); paragraph b of subdivision one of section 8-100 (section relating to dates of and hours for voting); subdivision four of section 8-302 (section relating to verification of registration); section 8-314 (voting; primary election, missing enrollment record); paragraph d of subdivision 3 of section 9-102 (canvass; general provisions for); and the last sentence of subdivision one of section 9-200 (section relating to canvass of primary returns). In addition, any other provisions that may be added to the election law from time to time and that relate to the matters covered by the sections of the election law specified herein, similarly shall not apply insofar as they concern the nomination and election of such officers.

§ 75. Election law; modified. The following provisions of the election law shall apply as modified herein. a. For purposes of this chapter and for purposes of the election law as the provisions of such law apply to elections conducted pursuant to this chapter, the provision of section 1-104 of the election law are modified as follows: (i) the term “designation” shall mean the method in accordance with this chapter by which candidates for nomination to offices covered by this chapter may be named for the purpose of a nonpartisan primary election; (ii) the terms “nonpartisan primary” or “nonpartisan primary election” shall mean the mandated election at which qualified voters may vote for the purpose of nominating candidates for offices covered by this chapter; (iii) the terms “uncontested office” or “uncontested position” shall mean an office or position for which the number of candidates designated does not exceed the number to be nominated or elected thereto, and for which no valid petition pursuant to section sixty-four of this chapter has been filed; and (iv) references to “independent body” and “independent nomination” shall not apply except to the extent that provisions relating thereto are referenced by or incorporated into the provisions of this chapter.

b. Section 6-100 shall apply, provided that the provisions of article six of the election law shall not apply to the extent modified or superseded by this chapter.

c. Section 6-136 shall apply to nonpartisan designating petitions as specified by section sixty-one of this chapter.

d. Subdivisions 1 and 4 of section 6-138 shall apply to nonpartisan designating petitions to the extent specified in section sixty-one of this chapter.

e. Section 6-140 shall apply to nonpartisan designating petitions to the extent provided for in this chapter except as may be specified in section sixty-seven of this chapter.

f. Section 6-146 shall apply only to the extent specified in section sixty-three of this chapter.

g. Subdivisions one, two, four, and five of section 6-148 shall only apply to vacancies in designation, and shall not apply to vacancies in nominations, except as may be specifically provided in section sixty-seven of this chapter.

h. Section 6-152 shall apply except that no candidate for office shall be nominated and no vacancy in such an office shall be filled in accordance with rules of a party.

i. Subdivision 2 of section 6-160 shall apply provided that there are two or fewer candidates seeking an office.

j. Section 6-164 shall apply to the extent specified in section sixty-four of this chapter.

k. Article seven of the election law shall apply to elections held pursuant to this chapter, except to the extent that any provision of such article prevents application of this chapter. However, nothing in such article shall be construed to prevent or impede the application of this chapter, including section seventy of this chapter. Candidates designated for a nonpartisan primary election pursuant to this chapter shall be placed on the ballot in the same manner that candidates in a single party's primary would be so placed as set forth in subdivision six of section 7-116. No candidate for an office elected pursuant to this chapter may appear more than once on a primary ballot or general election ballot. Such ballot shall conform to sections sixty-eight, sixty-nine, and seventy of this chapter. The prominence on the ballot of elections for offices covered by this chapter shall be comparable to the prominence of elections for such offices on the ballot prior to the effective date of this chapter.

l. Subdivision three of section 8-100 shall be deemed to include nonpartisan primary elections and nonpartisan general elections held pursuant to this chapter, if such elections are uncontested as defined in subdivision a of this section.

m. Subdivision one of section 8-500 shall be deemed to include nonpartisan primary elections and nonpartisan general elections, provided, however, that in the general election, the rights provided to independent bodies pursuant to such subdivision shall be applied to candidates nominated pursuant to this chapter.

n. Sections 9-116 and 9-122 shall apply, provided that all votes of qualified voters shall be counted for nonpartisan primary and general elections held pursuant to this chapter.

o. Section 14-114 shall apply except as specified in section seventy-one of this chapter.

p. In addition, any other provisions that may be added to the election law from time to time and that relate to the matters covered by the sections of the election law specified herein, shall be deemed similarly modified as they concern the nomination and election of such mayor, comptroller, public advocate, member of the council, and borough president.

§ 2. Paragraphs 2, 4, 5, 7 and 9 of subdivision c of section 10 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 5, 2002, is amended to read as follows:

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the [last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in that same year, as provided in [section 6-116 of the election law] chapter three of this charter. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. [Party nominations] Nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a nonpartisan primary election held pursuant to chapter three of this charter, except as provided in paragraph five of this subdivision.

4. If a vacancy occurs during the first three years of the term and on or before the [last day] date in the third year of the term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which [party] nominations for a general election to fill the vacancy may be made and on or before the [last day on which an occurring vacancy

may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in the same year in which the vacancy occurs, as provided in [section 6-116 of the election law] chapter three of this charter.

5. If a vacancy occurs after the [last day] date in the third year of the term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election are being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, but not less than ninety days before the date of the nonpartisan primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

7. (a) All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition, provided that witnesses shall not be required to reside in the political unit that is the subject of the petition, and that the first paragraph of the form for independent nominating petitions set forth in section 6-140 of the election law shall be replaced with the following paragraph:

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named person (or persons) as a candidate (or as candidates) for election to public office (or public offices) to be voted for at the election to be held on the _____ day of _____, 20_____.

(b) A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

(c) Not later than the time for filing independent nomination petitions pursuant to this section, candidates may request that their party registration or "independent" registration status be included on the ballot for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision, adjacent to the names of the candidates. In the event of any such request by a candidate, the board of elections shall include such information on the ballot. If such candidate

advances to a runoff election pursuant to paragraph ten of this subdivision, such information shall also be on the runoff election ballot.

(d) The number of signatures required for a petition by this section shall be the number required for nonpartisan designating petitions pursuant to section sixty-one of the charter.

9. If a vacancy occurs less than ninety days before the date of the nonpartisan primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

§ 3. Paragraphs 2, 4, 5, 7 and 9 of subdivision c of section 24 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 8, 1988, paragraph 4 as amended and such section as renumbered by vote of such electors at a general election held on November 7, 1989, are amended to read as follows:

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the [last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in that same year, as provided in [section 6-116 of the election law] chapter three of this charter. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. [Party nominations] Nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a nonpartisan primary election held pursuant to chapter three of this charter, except as provided in paragraph five of this subdivision.

4. If a vacancy occurs during the first three years of the term and on or before the [last day] date in the third year of the term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as

provided in [section 6-116 of the election law] chapter three of this charter, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which [party] nominations for a general election to fill the vacancy may be made and on or before the [last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in the same year in which the vacancy occurs, as provided in [section 6-116 of the election law] chapter three of this charter.

5. If a vacancy occurs after the [last day] date in the third year of the term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in such year with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, but not less than ninety days before the date of the nonpartisan primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

7. (a) All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition, provided that witnesses shall not be required to reside in the political unit that is the subject of the petition, and that the first paragraph of the form for independent nominating petitions set forth in section 6-140 of the election law shall be replaced with the following paragraph:

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named person (or persons) as a candidate (or as candidates) for election to public office (or public offices) to be voted for at the election to be held on the _____ day of _____, 20_____.

(b) A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

(c) Not later than the time for filing independent nomination petitions pursuant to this section, candidates may request that their party registration or “independent” registration status

be included on the ballot for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision, adjacent to the names of the candidates. In the event of any such request by a candidate, the board of elections shall include such information on the ballot.

(d) The number of signatures required for a petition by this section shall be the number required for nonpartisan designating petitions pursuant to section sixty-one of the charter.

9. If a vacancy occurs less than ninety days before the date of the nonpartisan primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

§ 4. Paragraphs 2, 4, 5, 7 and 9 of subdivision b of section 25 of the New York city charter, paragraphs 2, 4 and 5 as amended and such section as renumbered by vote of the electors of the city of New York at a general election held on November 7, 1989 and paragraphs 7 and 9 as added by vote of such electors at a general election held on November 8, 1988, are amended to read as follows:

2. If a vacancy occurs during the first three years of a four-year term or the first year of a two-year term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the [last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in that same year, as provided in [section 6-116 of the election law] chapter three of this charter. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. [Party nominations] Nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a nonpartisan primary election held pursuant to chapter three of this charter, except as provided in paragraph five of this subdivision.

4. If a vacancy occurs during the first three years of a four-year term or in the first year of a two-year term and on or before the [last day] date in the third year of such a four-year term or the first year of such a two-year term [on which an occurring vacancy may be filled for the

remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which [party] nominations for a general election to fill the vacancy may be made and on or before the [last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in the same year in which the vacancy occurs, as provided in [section 6-116 of the election law] chapter three of this charter.

5. If a vacancy occurs after the [last day] date in the third year of a four-year term of the first year of a two-year term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, but not less than ninety days before the date of the nonpartisan primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

7. (a) All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition, provided that witnesses shall not be required to reside in the political unit that is the subject of the petition, and that the first paragraph of the form for independent nominating petitions set forth in section 6-140 of the election law shall be replaced with the following paragraph:

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named person (or persons) as a candidate (or as candidates) for election to public office (or public offices) to be voted for at the election to be held on the _____ day of _____, 20__.

(b) A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

(c) Not later than the time for filing independent nomination petitions pursuant to this section, candidates may request that their party registration or "independent" registration status be included on the ballot for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision, adjacent to the names of the candidates. In the event of any such request by a candidate, the board of elections shall include such information on the ballot.

(d) The number of signatures required for a petition by this section shall be the number required for nonpartisan designating petitions pursuant to section sixty-one of the charter.

9. If a vacancy occurs less than ninety days before the date of the nonpartisan primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

§ 5. Paragraphs 2, 4, 5, 7 and 9 of subdivision e of section 81 of the New York city charter, paragraph 4 as amended by vote of the electors of the city of New York at a general election held on November 7, 1989 and paragraphs 2, 5, 7 and 9 as added by vote of such electors at a general election held on November 8, 1988, are amended to read as follows:

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the [last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in that same year, as provided in [section 6-116 of the election law] chapter three of this charter. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. [Party nominations] Nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a nonpartisan primary election held pursuant to chapter three of this charter, except as provided in paragraph five of this subdivision.

4. If a vacancy occurs during the first three years of the term and on or before the [last day] date in the third year of the term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which [party] nominations for a general election to fill the vacancy may be made and on or before the [last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in the same year in which the vacancy occurs, as provided in [section 6-116 of the election law] chapter three of this charter.

5. If a vacancy occurs after the [last day] date in the third year of the term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, but not less than ninety days before the date of the nonpartisan primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

7. (a) All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition, provided that witnesses shall not be required to reside in the political unit that is the subject of the petition, and that the first paragraph of the form for independent nominating petitions set forth in section 6-140 of the election law shall be replaced with the following paragraph:

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is truly stated opposite my signature hereto, and that I do hereby nominate the following named

person (or persons) as a candidate (or as candidates) for election to public office (or public offices) to be voted for at the election to be held on the _____ day of _____, 20__.

(b) A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

(c) Not later than the time for filing independent nomination petitions pursuant to this section, candidates may request that their party registration or “independent” registration status be included on the ballot for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision, adjacent to the names of the candidates. In the event of any such request by a candidate, the board of elections shall include such information on the ballot.

(d) The number of signatures required for a petition by this section shall be the number required for nonpartisan designating petitions pursuant to section sixty-one of the charter.

9. If a vacancy occurs less than ninety days before the date of the nonpartisan primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

§ 6. Paragraphs 2, 4, 5, 7 and 9 of subdivision c of section 94 of the New York city charter, paragraph 4 as amended by vote of the electors of the city of New York at a general election held on November 7, 1989 and paragraphs 2, 5, 7 and 9 as added by vote of such electors at a general election held on November 8, 1988, are amended to read as follows:

2. If a vacancy occurs during the first three years of the term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the [last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in that same year, as provided in [section 6-116 of the election law] chapter three of this charter. If such a vacancy occurs in any year after such last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. [Party nominations] Nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a nonpartisan

primary election held pursuant to chapter three of this charter, except as provided in paragraph five of this subdivision.

4. If a vacancy occurs during the first three years of the term and on or before the [last day] date in the third year of the term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which [party] nominations for a general election to fill the vacancy may be made and on or before the [last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election] date that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election in the same year in which the vacancy occurs, as provided in [section 6-116 of the election law] chapter three of this charter.

5. If a vacancy occurs after the [last day] date in the third year of the term [on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election] that is seven days before the last day for circulating nonpartisan designating petitions for nomination at a nonpartisan primary election, as provided in [section 6-116 of the election law] chapter three of this charter, but not less than ninety days before the date of the nonpartisan primary election in the fourth year of such term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

7. (a) All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition, provided that witnesses shall not be required to reside in the political unit that is the subject of the petition, and that the first paragraph of the form for independent nominating petitions set forth in section 6-140 of the election law shall be replaced with the following paragraph:

I, the undersigned, do hereby state that I am a registered voter of the political unit for which a nomination for public office is hereby being made, that my present place of residence is

truly stated opposite my signature hereto, and that I do hereby nominate the following named person (or persons) as a candidate (or as candidates) for election to public office (or public offices) to be voted for at the election to be held on the _____ day of _____, 20__.

(b) A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

(c) Not later than the time for filing independent nomination petitions pursuant to this section, candidates may request that their party registration or “independent” registration status be included on the ballot for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision, adjacent to the names of the candidates. In the event of any such request by a candidate, the board of elections shall include such information on the ballot.

(d) The number of signatures required for a petition by this section shall be the number required for nonpartisan designating petitions pursuant to section sixty-one of the charter.

9. If a vacancy occurs less than ninety days before the date of the nonpartisan primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

§ 7. Subparagraph (b) of paragraph 11 of subdivision a of section 1052 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 3, 1998, is amended to read as follows:

(b) The board shall promulgate such rules as it deems necessary to attribute expenditures that indirectly assist or benefit a candidate participating in the voluntary system of campaign finance reform as in-kind contributions to such candidate. In addition, and without limitation of the preceding sentence, the board may require a participant to demonstrate, in a proceeding before the board, that expenditures made by a party committee, or a constituted committee of a party, are not in-kind contributions to the participant. Factors for determining whether contributions or expenditures by a party committee or constituted committee of a party are coordinated, shall include, but not be limited to: the party membership; party registration; choice of registration status on the ballot; party affiliation; party identification in the voter guide or campaign literature; or party endorsements of a participant. When the board determines that the participating candidate has not met his or her burden of proof, and that an in-kind contribution or expenditure has been made, the board shall attribute such contributions or expenditures to the

participating candidate consistent with its rules governing party contributions and expenditures. The board shall promulgate rules to administer and enforce this provision.

§ 8. Paragraph (12) of subdivision a of section 1052 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 3, 1989, is amended to read as follows:

12. Notwithstanding any other provision of law, the board shall prohibit candidates participating in the voluntary system of campaign finance reform from accepting, either directly [or], indirectly or by transfer, a campaign contribution, loan, guarantee or other security for such loan, from any corporation, or political party or committee thereof. The board shall promulgate such rules as it deems necessary to implement and administer this provision.

§ 9. Section 1053 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 8, 1988, is amended to read as follows:

§ 1053. [Voters] Voter guide. a. Each [voters] voter guide published by the board shall contain: [(a)] (i) material explaining the date and hours during which the polls will be open for that election; when, where, and how to register to vote; when a citizen is required to reregister; when, where, and how absentee ballots are obtained and used; instructions on how to vote; maps showing the boundaries of council districts; and any other general information on voting deemed by the board to be necessary or useful to the electorate or otherwise consistent with the goals of this chapter; [(b)] (ii) such tables of contents, graphics, and other materials which the board determines will make the [voters] voter guide easier to understand or more useful for the average voter; [(c)] (iii) biographical information on each candidate, including but not limited to name, party affiliation, present and previous public offices held, present occupation and employer, prior employment and other public service experience, educational background, and a listing of major organizational affiliations and endorsements; [(d)] (iv) concise statements by each candidate of his or her principles, platform or views; and [(e)] (v) where there is a ballot proposal or referendum, concise statements explaining such proposal or referendum and an abstract of each such proposal or referendum. The guide shall be prepared in plain language using words with common and everyday meanings. No later than the first day of January of nineteen hundred eighty-nine, the board shall promulgate such rules as it deems necessary for the preparation and publication of the guide in English, Spanish and any other languages the board determines to be necessary and appropriate, and for the distribution of the guide. The purpose of such rules shall

be to ensure that the guide and its distribution will serve to fully, fairly and impartially inform the public about the issues and candidates appearing on the ballot.

b. In furtherance of the purposes of subdivision a of this section, the board and the department of information technology and telecommunications shall jointly implement and administer a nonpartisan video voter guide program designed to give each candidate participating in the voluntary system of campaign finance reform an opportunity to present biographical information and concise statements of his or her principles, platform or views over at least one of the municipal cable television channels and, if practicable, through electronic media, including over the world wide web. The board and department shall jointly promulgate any rules as deemed necessary to implement and administer this program. The department shall also consider ways to enhance the video voter guide program through cable television franchise agreements.

§ 10. Section 1152 of the New York city charter is amended by adding a new subdivision j, paragraph (1), to read as follows:

j. (1)(a) The amendments to the charter, adding a new chapter three to the charter and amending sections ten, twenty-four, twenty-five, eighty-one, ninety-four, one thousand fifty-two and one thousand fifty-three, approved by the electors on November fourth, two thousand three, shall take effect on November ninth, two thousand five, and shall apply to elections for the offices specified in such chapter three, including elections to fill vacancies, held on and after such date. Such amendments thereafter shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees.

(b) If any clause, sentence, subparagraph, paragraph, subdivision, section or part of such amendments shall be adjudged by any court of competent jurisdiction to be invalid or otherwise cannot be implemented pursuant to law, such judgment or inability to implement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered or in the matter with respect to which implementation may not occur.

(c) Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of such amendments prior to the effective date prescribed in this paragraph.

CITY PURCHASING

I. INTRODUCTION

Charter Chapter 13 covers procurement. It has, through many influences discussed below, taken its current form. Although its goals when developed were salutary, there is now a consensus that Chapter 13 needs to be reformed, although there is less consensus in the procurement community³⁶ as to what steps should be taken. The following sections discuss the staff's proposals to revise Chapter 13. In light of the procurement process's central role in the City's ability to function and to deliver services to its citizens, these revisions are vitally important.

History

Although Chapter 13 currently contains provisions traceable back to the period of the Tweed Ring scandal of the 1870s, the Chapter is in large part the product of revisions proposed by several commissions created in response to the Parking Violations Bureau scandal in 1986 and the abolition of the Board of Estimate following the U.S. Supreme Court's decision in Board of Estimate v. Morris, 489 U.S. 688 (1989), holding it unconstitutional. Two State-City Commissions on Government Integrity—the Sovern Commission and Feerick Commission—as well as a study, commissioned by the Koch Administration, of the City's procurement system by the Institute of Public Administration, significantly influenced members and staff of the 1989 Charter Revision Commission. In addition, the Model Procurement Code developed by the American Bar Association was a significant influence on the Commission's work, leading to the creation of a procurement rule making board, the Procurement Policy Board (“PPB”).

In 1990, the PPB undertook its rulemaking mission with great zeal. The total number of pages of PPB rules increased steadily during the early years, especially after the PPB added special rules for human service contracts. The PPB considered special rules for human service contracts to be appropriate as the City was required, for the first time, to conform human services contract practice to the standards applicable to other sectors of the vendor community. Then, beginning in 1994, the PPB reversed the trend, streamlining its rules as an increasingly

³⁶ The procurement community includes, within the City government, the Department of Citywide Administrative Services, the Mayor's Office of Contracts, the Procurement Policy Board, the Law Department, the Office of Management and Budget, the Department of Small Business Services, the Department of Investigation, the Agency Chief Contracting Officers, the Comptroller's Office, and the Council. The community also includes private companies and not-for-profit organizations, within various industries, that do business with the City.

professionalized procurement staff was deemed less in need of minute direction and control from the rules.

Despite significant reforms over the past decade, there continues to be concern with the procurement process. Both the vendor community and the City's own procurement community note the overly rigid procurement rules under which the City is required to operate, and the delay and cost that result. The Commission staff has focused many of its proposals to revise the Charter on ones that would give greater flexibility to the procurement community, particularly agency's Agency Chief Contracting Officers ("ACCOs"), while at the same time ensuring that mayoral accountability is not diminished. The goal of the flexibility is to continue to achieve a number of the goals of the current Charter but do so, to a large extent, through rulemaking, so that the means to achieve those goals may be tailored to particular circumstances.

II. LEGAL FRAMEWORK

State Law

Both state and local law govern the City's procurement practice. Of primary importance is Article 5-A of the General Municipal Law (GML), which contains the basic procurement instruction to all municipalities. Specifically, GML § 103 requires all municipalities to award all (1) contracts for public works and (2) all purchase (i.e., goods or commodities) contracts over a specified minimum amount through competitive sealed bid after public advertisement to the lowest responsible bidder.

GML § 103, expressly and through judicial interpretation, provides seven exceptions to the competitive sealed bid requirement: (1) small purchases, (2) emergencies, (3) judicially created exceptions for special skills or judgment, (4) sole sources, (5) state laws that specifically allow municipalities to avoid competitive sealed bids, (6) local laws enacted before September 1, 1953 (known as the "special case" exception) and (7) change orders. State laws that specifically permit competitive sealed bid avoidance include those that permit municipalities to contract directly with other municipalities and state and federal agencies as well as to purchase directly off State Office of General Services contracts.

GML § 104-b instructs municipalities to adopt policies and procedures for alternative methods of procurement—those procurement processes other than competitive sealed bidding—so that contracts are let in a manner to assure prudent and economical use of public funds in the best interest of taxpayers, to obtain maximum quality at lowest possible cost under the

circumstances and to guard against favoritism, improvidence, extravagance, fraud and corruption. As discussed below, the Charter also contains a number of provisions governing alternative methods of procurement.

Charter Chapter 13

As a result of revisions resulting from the 1989 Charter Revision Commission, the Charter's general procurement process is administered primarily by the PPB, the Mayor, and the Comptroller. The PPB adopts rules governing the process generally, the Mayor is responsible for the implementation of the procurement system, and the Comptroller registers contracts and provides oversight through its audit responsibilities.

The PPB consists of five members, three of whom are appointed by the Mayor and two of whom are appointed by the Comptroller. Charter § 311(a). The PPB is given broad authority to promulgate rules governing the procurement process; it explicitly lacks the authority to address the award or administration of any particular contract. Charter §§ 311(b) and (f). The Charter also specifically requires the PPB to promulgate rules governing methods for soliciting bids or proposals and awarding contracts, the manner in which City agencies shall administer contracts, standards and procedures for determining whether a bidder is responsible, and procedures for the fair resolution of contract disputes. Charter § 311(b).

The Charter gives the Mayor ultimate responsibility for the procurement of goods, services, and construction through specific contracts. For example, under Charter § 317(b), the Mayor (or Deputy Mayor) has a non-delegable duty to review and approve proposed contracts worth more than two million dollars, where the proposed contractor was selected by a method other than competitive sealed bidding, competitive sealed bidding from prequalified vendors, or competitive sealed proposals. In addition, under Charter § 322, written approval of the Mayor is required prior to solicitation of bids or proposals whenever an agency determines that it should use an alternative procurement procedure for a particular procurement or type of procurement. Similarly, prior to filing for registration of a contract that has been let by other than competitive sealed bidding, the Mayor must certify that the relevant procedural requisites have been met. Charter § 327(a). Should the Comptroller object to the registration of a particular contract, the Mayor has the obligation to address the objection. Charter § 328. The Mayor's Office of Contracts ("MOC"), created by Executive Order, assists in the performance of the Mayor's functions in much the same way the Mayor's Office of Management and Budget assists in the performance of the Mayor's budget functions.

As to the specific methods of procurement that may be used, the Charter contains a requirement, consistent with State law, in favor of competitive sealed bidding in most situations. Charter § 312(b)(1). Competitive sealed bidding is where sealed bids are publicly solicited and opened and a contract is awarded to the lowest responsive, responsible bidder; the only variable at issue is price. The presumption in favor of competitive sealed bidding is consistent with the mandate of GML § 103(1), which, with certain exceptions, requires that all contracts for “public work” be awarded “to the lowest responsible bidder . . . after advertisement for sealed bids.” Under Charter § 312(b)(1), competitive sealed bidding must be accomplished pursuant to rules of the PPB.

The Charter permits the City to use a procurement method other than competitive sealed bidding in a "special case." Charter § 312(b)(1). A "special case" is defined as a situation "in which it is either not practicable or not advantageous to the city to use competitive sealed bidding" for any of certain enumerated reasons. Charter § 312(c)(1). These reasons include, for example, that "judgment is required in evaluating competing proposals, and it is in the best interest of the city to require a balancing of price, quality, and other factors." Charter §§ 312(c)(1)(ii), 317, and 319. Section 312(c)(1) also authorizes the PPB to define other situations that constitute special cases.

Between the alternative methods of procurement contained in Chapter 13, and those created by the PPB pursuant to Charter § 322, plus the other methods of procurement provided for by law, the City's methods of procurement (other than competitive sealed bidding) consist of:

- small purchases
- sole source procurements
- emergency purchases
- competitive sealed proposals (also known as Requests for Proposals or RFPs)
- negotiated acquisitions
- accelerated procurements
- intergovernmental and government-to-government purchases
- procurements using prequalified lists
- demonstration projects, and
- innovative procurement methods.

Current Efforts for Reform: Mayoral Initiatives

The City's procurement process reflects reactions to the 1986 PVB scandal, the need to devolve the Board of Estimate's contracting powers after it was held unconstitutional, and efforts to effect social policy through the procurement process. Implementation of these goals has added considerable time to the City's procurement process. Indeed, the impact of retroactive contracts on the vendor community, particularly on not-for-profit vendors, has generated considerable concern.

The Bloomberg Administration has taken a number of steps, both administrative and legislative, to achieve procurement reform. For example, the Administration has identified important goals and made progress toward completing administrative reform initiatives designed to speed the procurement process and reduce contract retroactivity. Other steps that have been undertaken include:

- Significant reduction by MOC of its oversight approvals where not mandated by Charter or PPB rules.
- Progressive delegation of procurement authority by MOC to ACCOs, in order to further speed contract processing; delegation is dependent upon agency performance.
- Creation of a "best practices" web site for ACCOs.
- Provision of technical assistance to vendors by MOC, as the general procurement entity.
- Simplification of VENDEX forms.

The Bloomberg Administration has also submitted a series of legislative proposals to the Council to support its administrative reforms. These proposals include:

- Amendment of Charter § 316 to allow flexibility to order services or construction off existing federal and state government contracts if price is fair and reasonable.
- Amendment of Charter § 317 to increase the threshold for mayoral approval of certain contracts to \$10 million (from \$2 million), and to permit the mayor to exclude agencies from mayoral approval upon finding of agency capacity. Amendment of §§ 318 and 320 to permit the Mayor, upon finding of capacity, to exclude agencies from mayoral approval of determination to employ selective solicitation from prequalified vendor lists.

When the Charter Revision Commission was established, there was a recognition that still more could be done through Charter amendment, and other efforts, to achieve important goals for the procurement system.³⁷

II. THE COMMISSION'S OUTREACH EFFORTS

In its effort to study procurement reform, the Commission has reached out for input in a number of ways. On May 12, 2003, the Commission hosted a special forum and heard testimony from vendors, including representatives of social service agencies, and the City's top procurement administrators, including policymakers from the PPB, MOC and DCAS.³⁸ Thereafter, Comptroller Thompson and Speaker Miller also testified before the Commission several times at the subsequent rounds of hearings held by the Commission. Council Member Robert Jackson, Chair of the Contracts Committee, also testified. The Commission also has reviewed the work of previous Charter Revision Commissions on procurement (from 1999 and 2001) and has reviewed many national and local reports concerning procurement policies and practices. The Commission's staff met with representatives of the construction industry, and has had intensive discussions with members of the PPB and MOC. Staff also consulted with the staff of the 1989 Charter Revision Commission, which drafted much of the current Charter procurement provisions.

Through the public testimony it has received and study it has done, the Commission has determined that a significant need for reform exists, not in the aims of the Charter's procurement provisions, but in the Charter's mechanisms for achieving those aims.

The Commission's Principles and Objectives

The following principles, which have been refined by the Commission over the course of its deliberations, have shaped the Commission's recommendations for Charter change. Those

³⁷ The Commission staff recognizes that this is a complex issue, and commends the efforts of MOC and the Comptroller to address it. The staff also commends the efforts that the Comptroller and Mayor have made, in general, jointly to address the procurement-related needs of the City.

³⁸ Martha Hirst, Commissioner, Department of Citywide Administrative Services ("DCAS"); Marla Simpson, Director, Mayor's Office of Contracts ("MOC"); Lenny Picker, representing Rose Gill Hearn, Commissioner, Department of Investigation ("DOI"); Brendan Sexton, Chair, Procurement Policy Board ("PPB"); Pat Thomas, ACCO, Department of Health and Mental Hygiene; Nancy Wackstein, Executive Director, United Neighborhood Houses; Fran Barrett, Executive Director, Community Resources Exchange; Cynthia Searcy, Research Associate, Citizens Budget Commission; Michael Stoller, Executive Director, Human Services Council; Frank McArdle, Managing Director, General Contractors Association; and Richard Anderson, New York Building Congress.

principles and objectives include prevention of fraud, favoritism, and corruption; promotion of efficiency, effectiveness and accountability in the purchase of goods and services; and the promotion of fairness for vendors and enhanced access for them to the City's procurement system.

To achieve its objectives, the Commission has developed a number of specific proposals for revision of the Charter, primarily involving revisions to Chapter 13. At present, the Charter contains a number of provisions mandating inflexible methods for how certain topics must be addressed. This inflexibility may hamstring the City and its contractors and potential contractors, because it does not allow the City to adapt to their concerns and needs as they change over time.

As a general matter, the PPB, through its rulemaking ability, is better suited to provide this needed flexibility, while doing so in a thoughtful manner. Therefore, the Commission proposes below a number of revisions that, while retaining the goals of the specific provisions at issue, revise those provisions to allow for flexibility, as appropriate, in meeting those goals. In most of these situations, the flexibility is provided by removing specific procedural requirements from the Charter, and having the Charter require the PPB to promulgate rules on the given topics.

The Commission's proposals are in the following areas:

- Ensuring integrity and accountability in the procurement process
- Encouraging the exercise of flexibility
- Issues of timeliness and accountability
- Not-for-profit organizations
- Expanding the universe of vendors
- Vendor Integrity/VENDEX
- Employment reports
- "By Whom Procured" Specific Goods/ Consolidated Procurement
- Security
- Procurement reports, and
- Financial audits

III. THE COMMISSION'S PROPOSALS

Ensuring integrity and accountability in the procurement process

The Commission recognizes that the need to ensure probity, or integrity, in the procurement process to prevent fraud, favoritism, and corruption continues. To ensure this, the Commission recommends Charter revisions related to sharpening the effectiveness of the VENDEX system and employment reports. In addition, the Commission proposes that the PPB be required to promulgate professional standards and certification requirements for agency chief contracting officers. Finally, the Commission recognizes the potential advantage of vendor prequalification, but it is aware that the State law limitations may preclude this as a general practice, while permitting it in particular circumstances, as provided by Charter and PPB rules. The Commission recommends that the City seek State legislation to ease these limitations.

Encouraging the exercise of flexibility

As a matter of overall practice, the city's interests are best served when the procurement method or tool used is tailored to the particular circumstances, as to the items to be purchased, the vendor market(s), the circumstances warranting the purchase. The constraints of the mandates of GML § 103, and its requirement of competitive sealed bids in many circumstances, often thwart the flexibility that would be in those best interests.

Toward this end, the Commission recommends revisions to Chapter 13 that will give the PPB increased authority in promulgating rules concerning alternative methods of procurement and repeal mandates the limit such flexibility. Under Charter § 312(b), consistent with State law, contracts—except for small purchases, emergency procurements, and intergovernmental procurements—must be awarded by competitive sealed bidding, except if a “special case” exists. Section 312(c) defines “special case” as “a situation in which it is either not practicable or not advantageous to the city to use competitive sealed bidding” for certain enumerated reasons or for “such other reasons as defined by rule of the procurement policy board.” Under Charter § 317(a), if an agency determines that a special case exists, it “shall select the most competitive alternative method of procurement provided for by sections three hundred eighteen through three hundred twenty-two which is appropriate under the circumstance.” Sections 318 through 321 contain provisions regarding competitive sealed proposals, competitive sealed bids and proposals from prequalified vendors, and sole source procurements. Section 322 empowers agencies to award contracts, if there is a special case, “according to another procurement procedure established by rule of the procurement policy board, under circumstances, defined by rule of the procurement policy board, in which the use of such procedures is in the best interest of the city.”

The Commission does not propose to change this structure in any substantive manner. However, the details contained in §§ 318 through 321, regarding the method by which certain types of procurements are done, have been seen as overly restrictive and, as discussed above, as not providing sufficient flexibility. Therefore, the Commission's proposal is to repeal §§ 318 through 321, and to give the PPB the power, in § 317, to promulgate rules for all alternative procurement methods. The proposed revision to § 317 requires the PPB to promulgate rules regarding competitive sealed proposals, sole source procurements, and procurements from prequalified vendors, methods of procurement that are currently addressed in §§ 318 through 321. The proposal keeps the substance of current § 322, but moves it to § 317. The Commission proposes to repeal § 323—regarding multi-step sealed proposals—as being a matter that, as with other procurement methods other than competitive sealed bidding, is more appropriately addressed by the PPB. The proposed repeal of § 318 through 323 requires, of course, renumbering of the subsequent Chapter 13 sections, as well as amendment of numerous cross-references throughout Chapter 13.

Issues of timeliness and accountability

The truism that “time is money” has no greater application than in the area of procurement. The months-long (and too often years-long) procurement process is costly for the contracting agencies, the vendors, for the consumers of City services, and for the City's taxpayers.

In order to provide the desired public accountability, the Commission proposes replacing the relatively narrow procurement indicators now required by the Charter as part of the Mayor's Management Report with a more comprehensive annual mayoral procurement report that would include a specific focus on timeliness. Along with the “stick” of accountability, the Commission encourages MOC to continue to use the “carrot” of enhanced authority for those agencies whose record is positive. A further area where flexibility is recommended is to remove from the Charter the prescriptions as to which official the Mayor may delegate his authority concerning contract approval. In the context of his overall responsibility for procurement, this Commission proposes this to be a matter of mayoral discretion, requiring only that he certify that the designee was an official qualified and competent to exercise this authority.³⁹

³⁹ Related legislation is pending before the Council.

The Commission also proposes a number of specific measures aimed at streamlining the procurement process and holding city officials accountable for the required actions. In particular, the Commission proposes to modify § 311 to require that the PPB promulgate a number of rules to ensure timeliness and accountability:

- Mandatory timetables for the completion of procurement actions and applicable reviews, with mandatory remedies for failure to meet such schedules.
- Provisions for expediting the processing of renewals and contract extensions for human services vendors who are providing in-place services, to ensure that they can be compensated pending the registration of new contracts;
- Requiring the development of annual contract plans by the city's human services agencies, linked to the budget adoption cycle;
- Mandating professional certification standards for agency chief contracting officers; and
- Requiring that city agencies compensate all vendors for late payment of vouchers at a uniform rate of interest.

Not-for-profit organizations

Not-for-profit and community-based organizations play an essential role in the provision of human services to the people of New York City, especially in low-income and “minority” communities. The importance of these organizations is reflected both in the extent of services provided by these organizations and in Charter § 311(b)(4), where the development, maintenance, and strengthening of ties of these organizations to the communities where services are to be provided is listed as the first among five circumstances as the basis of outside procurement of technical, consultant, or personal services. The Commission has proposed a number of Charter changes designed to ensure that the procurement process incorporate the essential role these organizations play, treating them as a full “partner” with city in the provision of human client services.

The realization of a full partnership relationship cannot occur simply through Charter changes. The Commission continues to believe that these measures will succeed best if city agencies implement their programs in close consultation with their not-for-profit partners,

sharing information to the maximum feasible degree so that appropriate planning can mutually occur.⁴⁰

Expanding the universe of vendors

It is in the City's interest to expand the universe of responsible vendors. Such an expansion would increase the range of those from whom the City can purchase goods and services, increase competition among vendors, and lead to better quality and/or reduced cost goods and services. In addition, this expansion would encourage small businesses (including those that are women and/or minority owned) to participate as vendors to the City, increasing their economic viability and engagement with the City.

Consistent with expanding the universe of vendors, it is important to note that on June 12, 2003, Mayor Bloomberg signed Executive Order No. 36, which deals with procurement opportunities for minority- and women-owned business enterprises ("M/WBEs"). As stated by the Mayor, New York City has a diverse business community with thousands of M/WBEs. The Mayor further stated that the City's economic welfare will be promoted by the growth of these businesses, which cumulatively generate substantial economic activity and employment opportunities. In an effort to ensure that M/WBEs have equal opportunity to compete for City business, the Mayor ordered that the Department of Small Business Services (DSBS) take a number of steps, including expanding efforts to certify eligible businesses as M/WBEs, increasing the awareness of M/WBEs of business opportunities with the City, and working with other City agencies to achieve these goals. Along with DSBS, MOC has taken steps to increase opportunities for M/WBEs, including modifying the database from which small purchase solicitation lists are generated, so that every small purchase solicitation will go to five randomly selected M/WBEs, in addition to five other randomly selected businesses from the City's bidders list.

Under Charter § 1304, the Department of Small Business Services is charged with responsibilities relating to the promotion of equal opportunities for diverse vendors to do business with the City. The Commission proposes to add a new subsection (i) to this section, to require the Mayor to ensure citywide agency coordination so as to further the policies and purposes of these vendor opportunity mandates.

⁴⁰ Staff's meeting with representatives from the engineering, planning, and construction communities commends this process in other areas as well.

Vendor Integrity/VENDEX

The City currently uses a computerized vendor integrity data system, known as “VENDEX,” to help agencies make responsibility determinations concerning potential contractors and subcontractors. See PPB Rules § 2-08(e). VENDEX was established pursuant to New York City Administrative Code § 6-116.2. Section 6-116.2 contains detailed requirements for the VENDEX system, including the information that must be submitted, the timing of the submission of information, the consequences for failure to submit information, and the limited circumstances under which exceptions may be made to the requirements of the section. See § 6-116.2(b) et seq.

The information received by the Commission indicates that all of the institutional participants in the City’s procurement process appreciate the importance of responsibility determinations and the value of the VENDEX system in helping agencies make those determinations. Furthermore, the Mayor, acting through MOC, and the Comptroller—the parties jointly responsible for all policy decisions regarding VENDEX (see § 6-116.2(b)(i)) —have worked together to improve VENDEX to the extent possible. The Commission has found, however, that the mandates set forth in § 6-116.2 have proven over time to be overly burdensome to vendors without necessarily providing City agencies with all needed information.

Indeed, for the system to perform its needed functions, it must be focused on essential questions, up-to-date, available on an electronic basis, and with relevant information coordinated through the MOC and made available to ACCOs. In order to achieve the needed flexibility, the Commission recommends a Charter change that would require the Mayor and the Comptroller to address these issues by rule. During that process, the Mayor and Comptroller would work with the City Council to modify the relevant Administrative Code provisions (§ 6-116.2(b)) to ensure similar flexibility.

Therefore, in order to obtain the necessary flexibility, the Commission proposes adding a new subdivision to the Charter (to the current § 335, to be renumbered as § 329) that would continue the VENDEX system, but would have its details governed by rules jointly promulgated by the Mayor and the Comptroller. This proposed revision contemplates that the Mayor and Comptroller would ultimately work with the City Council to bring the relevant Administrative Code provisions into synch with the new, more flexible regulations. The proposed revision specifically incorporates the public access mandates currently set forth in § 6-116.2.

The Commission notes that, with technology advances, it is now possible to design a responsibility system that would allow for different reporting requirements for different variables (value of contract, type of procurement, industry) instead of “one size fits all.” The Commission believes that, to make this effort correctly, the City needs the flexibility of rule-making.

The Commission also proposes creating a different effective date for the VENDEX-related changes. Unlike most other changes, which would take effect immediately upon approval by referendum, these changes would take effect nine months later. This later effective date would allow sufficient time for the Mayor and Comptroller to implement rules governing the new system, and to work with the City Council to enact conforming legislation.

Employment reports

Under Charter § 1305(e), proposed contractors and subcontractors for contracts above a certain monetary value must submit employment reports. While the commissioner may set the monetary level and may, by rule, provide for certain exemptions from the employment report requirements, § 1305(e) has, in practice, proved overly rigid, particularly as to the required elements of the employment report. Therefore, as with the proposed VENDEX revision, the Commission proposes a revision to § 1305(e) that, while still mandating employment reports, allows the commissioner of DSBS greater flexibility to promulgate rules governing the contents of the reports, the procedural rules to be followed by contractors and the procuring agencies, and the consequences flowing from incomplete or substantively problematic reports.

As with the Commission’s proposal regarding VENDEX, the Commission recommends that the employment report changes take effect nine months after approval by the voters. This later effective date would allow sufficient time for DSBS to implement rules governing the new system.

“By Whom Procured” – Specific Goods and Consolidated Procurement

As a general matter, goods must be purchased by the Department of Citywide Administrative Services (“DCAS”), except as otherwise provided in Chapter 13 or other law. See Charter § 329(b). Under Charter § 329(c), an agency may directly purchase goods in an amount not to exceed \$1,000, and may purchase goods in an amount not to exceed \$5,000 with the prior approval of the DCAS commissioner. These limitations do not apply to purchases by an agency under a vendor contract entered into by DCAS. Charter § 329(d) provides that the \$1,000 limit may be raised to \$5,000 by the DCAS commissioner with the approval of the Mayor. Increases in the limits above \$5,000 also require the approval of the Comptroller. For

the reasons below, the Commission recommends amending § 329 to include a new subdivision providing that, at the discretion of DCAS, there be an exception for individual procurements of specific goods that are used by individual agencies.

Some specific goods are purchased for use by only one agency, and could be more efficiently procured by that agency than by DCAS because of that agency's detailed knowledge about the product. The Commission's recommendation, which permits DCAS to delegate the purchase of specific goods to an agency, would give the procuring agency the freedom to take action in individualized cases only, and would still require it to procure common items through DCAS.

The proposal would ensure that the agency with expertise about the product's specifications and use would fully control the procurement process, and would allow DCAS to expend its resources on procurement of those more general or common items purchased by many agencies. Such delegation would also eliminate an often time consuming step in the procurement process, thereby expediting the purchase. While the recommendation permits the delegation for specific goods regardless of cost, it does not increase dollar limits for goods DCAS is suited to purchasing, such as those that will generally be needed by more than one agency. For example, in the case of bomb defusing robots, it is unlikely that more than one or two agencies would make such a purchase, and therefore there would be no monetary gain or other benefit realized by their procurement by DCAS.⁴¹

Just as the purchasing of specialized goods can best be handled by the user agency, rather than DCAS, so too, it is DCAS that may be in the best position to handle the procurement actions required by certain smaller agencies for whom maintaining the necessary expertise is not practicable. Thus, the Commission proposes to amend § 829 to permit the Mayor to designate additional agencies for which DCAS could perform procurement services.

Security

Since the tragedy of September 11, the City has had a greatly increased need to procure security-related goods and services vital to the protection of the City and its citizens. There are circumstances where the need being addressed is so sensitive that public knowledge of even the fact of the procurement could be considered problematic. Therefore, the Commission proposes an exception to the public notice and hearing requirements contained in §§ 325 and 326 for

⁴¹ This significant recommendation, referred to as the "Glickstein Provision" by staff, was offered to the Commission by Jordan Glickstein, Deputy ACCO, NYPD.

situations, per mayoral determination, where the notice or hearing would disclose information or strategy that could be detrimental to the security of the City or its people.

Procurement reports

The Commission believes that, as important as flexibility is, it must be balanced by accountability. As the Mayor is ultimately responsible for the City's procurement system, the public should be given information that will enable it to determine whether the City has performed its procurement function well. While Charter § 12 currently requires that a summary of procurement actions taken during the previous fiscal year be included in the Mayor's Management Report, the required information is narrow. Therefore, the Commission proposes repealing the requirement for MMR procurement indicators, and instead adding a new requirement, to be placed in Charter § 16, that the Mayor prepare an annual procurement report, to be made public and submitted to the Council, that would include not only procurement activity indicators but also indicators on agency performance, and would specifically address timeliness of agencies' procurement actions.

Financial audits

The Commission received input to the effect that certain contractors, particularly human service agencies, must go through multiple financial audits in a given year, in the situation where the contractor has multiple contracts with one or several City agencies. There are situations where the City may be able to do the financial audits it needs, without requiring the contractor to go through duplicative audits. Therefore, the Commission proposes adding a subdivision to Charter § 311 requiring the PPB to promulgate rules pertaining to the use of single financial audit for organizations involved with multiple city agencies, similar to the federal A-133 process.

IV. PROPOSED CHARTER LANGUAGE

Section by Section Discussion

Section 1: This section eliminates the reporting requirement of procurement actions in the Mayor's Management Report.

Section 2: This section establishes a separate report on procurement actions, to be due the same day as the MMR each year.

Section 3: This section makes conforming changes.

Section 4: This section requires the Procurement Policy Board to establish procedures and programs to facilitate timely procurement and prompt registration of contracts. The PPB also must promulgate rules for consolidated audits of vendors, as well as a professional standards and certification program for agency contracting officers, taking into account the volume and complexity of agency contracting activities.

Sections 5-7: These sections make conforming changes.

Section 8: This section consolidates existing provisions of the Charter into § 317.

Section 9: This section repeals those §§ 318-323 that have been consolidated into section 317.

Section 10: This section sets forth grid for renumbering of sections.

Section 11: This section requires the Mayor to approve any selective solicitation for a particular procurement or category of procurement by an agency. Selective solicitation would be provided for by PPB rule.

Section 12: This section provides exceptions to public notice requirement where procurement is related to a sensitive public safety matter.

Section 13: This section further effectuates public security exception.

Section 14: This section makes conforming changes.

Section 15: This section provides that a procurement of a specific good can be delegated to a user agency upon written request and approval by DCAS.

Section 16: This section makes conforming changes.

Section 17: This section requires that the PPB promulgate rules providing that interest to be paid to vendors, at a uniform rate, as a result of unpaid vouchers.

Section 18: This section continues the VENDEX system, but would have its details governed by rules jointly promulgated by the Mayor and the Comptroller. This proposed revision contemplates that the Mayor and Comptroller would ultimately work with the City Council to bring the relevant Administrative Code provisions into synch with the new, more flexible regulations.

Section 19: This section authorizes the Mayor to designate agencies with limited contracting or personnel activities to be given assistance by DCAS.

Section 20: This section requires the Mayor to ensure Citywide agency coordination of W/MBE policies and programs designed to expand the universe of vendors with whom the City does business.

Section 21: This section authorizes the Commissioner of Small Business Services to make requirements for the submission of employment reports more flexible.

Section 22: This section sets the effective date of the revisions to be immediately, with the exception of the VENDEX and employment reports revisions which will take effect nine months after adoption by the voters. The legislation contains a severability clause for individual proposals of the City purchasing package.

Proposed Text

Section one. Subdivision c of section 12 of the New York city charter, as amended by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

c. The management report shall include a review of the implementation of the statement of needs as required by subdivision h of section two hundred four and shall contain for each agency

(1) program performance goals for the current fiscal year and a statement and explanation of performance measures;

(2) a statement of actual performance for the entire previous fiscal year relative to program performance goals;

(3) a statement of the status of the agency's internal control environment and systems, including a summary of any actions taken during the previous fiscal year, and any actions being taken during the current fiscal year to strengthen the agency's internal control environment and system;

(4) a summary of rulemaking actions undertaken by the agency during the past fiscal year including

(a) the number of rulemaking actions taken,

(b) the number of such actions which were not noticed in the regulatory agenda prepared for such fiscal year, including a summary of the reasons such rules were not included in such regulatory agenda, and

(c) the number of such actions which were adopted under the emergency rulemaking procedures; and

(5) [a summary of the procurement actions taken during the previous fiscal year, including: (i) for each of the procurement methods specified in section three hundred twelve, the number and dollar value of the procurement contracts entered into during such fiscal year; and

(ii) for all procurement contracts entered into pursuant to a procurement method other than that specified in paragraph one of subdivision a of section three hundred twelve, the number and dollar value of such procurement contracts by each of the reasons specified in paragraph one of subdivision b of section three hundred twelve; and

(6)] an appendix indicating the relationship between the program performance goals included in the management report pursuant to paragraph two of this subdivision and the corresponding expenditures made pursuant to the adopted budget for the previous fiscal year.

§ 2. Section 16 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

§ 16. [Report] Reports on social indicators and procurement. a. Report of social indicators. The mayor shall submit an annual report to the council, borough presidents, and community boards analyzing the social, economic and environmental health of the city and proposing strategies for addressing the issues raised in such analysis. The report shall present and analyze data on the social, economic and environmental conditions which are significantly related to the jurisdiction of the agencies responsible for the services specified in section twenty seven hundred four, the health and hospitals corporation, and such other agencies as the mayor shall from time to time specify. The report shall include the generally accepted indices of unemployment, poverty, child welfare, housing quality, homelessness, health, physical environment, crime, and such other indices as the mayor shall require by executive order or the council shall require by local law. Such report shall be submitted no later than sixty days before the community boards are required to submit budget priorities pursuant to section two hundred thirty and shall contain: (1) the reasonably available statistical data, for the current and previous five years, on such conditions in the city and, where possible, in its subdivisions; and a comparison of this data with such relevant national, regional or other standards or averages as the mayor deems appropriate; (2) a narrative discussion of the differences in such conditions among the subdivisions of the city and of the changes over time in such conditions; and (3) the mayor's short and long term plans, organized by agency or by issue, for responding to the significant problems evidenced by the data presented in the report.

b. Report on procurement. Not later than September seventeenth in each year, the mayor shall make public and submit to the council a procurement report. The procurement report shall

include, but not be limited to, indicators on the city's procurement activities as well as agencies' performance relative to the timeliness of the procurement process.

§ 3. Section 310 of the New York city charter, as renumbered and amended by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

§ 310. Scope. Except as otherwise provided in this charter or by statute,

1. all goods, services or construction to be paid for out of the city treasury or out of moneys under the control of or assessed or collected by the city shall be procured as prescribed in this chapter; provided, however, that for (i) the office of an independently elected city official, or (ii) the council, where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred [thirty-four] twenty-eight, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken respectively, by (i) by such elected official or (ii) the speaker of the council, or another member of the council designated by the speaker with the approval of a majority of the members of the council, and

2. all goods, services or construction to be procured by an entity, the majority of the members of whose board are city officials or are individuals appointed directly or indirectly by city officials shall be procured as prescribed in this chapter; provided, however, that where the provisions of this chapter require action by the mayor or an appointee of the mayor in regard to a particular procurement except for mayoral action pursuant to subdivision c of section three hundred [thirty-four] twenty-eight, such action shall not be taken by the mayor or such appointee of the mayor, but shall be taken by the governing board of such entity or by the chair of the board or chief executive officer of such entity pursuant to a resolution adopted by such board delegating such authority to such officer.

§ 4. Section 311 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 7, 1989, paragraph 6 of subdivision b as amended by local law number 34 for the year 2002 and subdivision c as amended by local law number 91 for the year 1996, is amended to read as follows:

§ 311. Procurement Policy Board. a. There shall be a procurement policy board consisting of five members, three of whom shall be appointed by the mayor and two of whom shall be appointed by the comptroller. Each member shall serve at the pleasure of the appointing official. Members shall have demonstrated sufficient business or professional experience to

discharge the functions of the board. At least one member appointed by the mayor and one member appointed by the comptroller shall not hold any other public office or public employment. The remaining members shall not be prohibited from holding any other public office or employment provided that no member may have substantial authority for the procurement of goods, services or construction pursuant to this chapter. The mayor shall designate the chair.

b. The board shall promulgate rules as required by this chapter, including rules establishing:

1. the methods for soliciting bids or proposals and awarding contracts, consistent with the provisions of this chapter;

2. the manner in which agencies shall administer contracts and oversee the performance of contracts and contractors;

3. standards and procedures to be used in determining whether bidders are responsible;

4. the circumstances under which procurement may be used for the provision of technical, consultant or personal services, which shall include but not be limited to, circumstances where the use of procurement is (a) desirable to develop, maintain or strengthen the relationships between non-profit and charitable organizations and the communities where services are to be provided, (b) cost-effective, or (c) necessary to (i) obtain special expertise, (ii) obtain personnel or expertise not available in the agency, (iii) to provide a service not needed on a long-term basis, (iv) accomplish work within a limited amount of time, or (v) avoid a conflict of interest;

5. the form and content of the files which agencies are required to maintain pursuant to section three hundred [thirty-four] twenty-eight and such other contract records as the board deems necessary and appropriate;

6. the time schedules within which city officials shall be required to take the actions required by this chapter, sections thirteen hundred four and thirteen hundred five, or by any rule issued pursuant thereto, in order for contracts to be entered into, registered or otherwise approved, and [recommended] time schedules within which city officials should take action pursuant to any other provision of law or rule regarding individual contracts, which rules shall specify the appropriate remedies, including monetary remedies, for failure to meet the terms of any applicable schedule for taking such actions. The board may set forth exceptions to these rules. The promulgation of rules defining time schedules for actions by the division of economic

and financial opportunity of the department of business services and the division of labor services of such department shall require the approval of each division, as such rules pertain to actions required of such divisions, prior to the adoption of such rules by the procurement policy board;

7. procedures for the fair and equitable resolution of contract disputes; and

8. such other rules as are required by this chapter.

c. The board may promulgate such additional rules, policies and procedures consistent with and as may be necessary to implement the provisions of this chapter. The board shall annually review all of its rules, policies and procedures and make such revisions as the board deems necessary and desirable. Nothing herein shall prevent the board from reviewing its rules, policies and procedures, and making such revisions as the board deems necessary and desirable, more than once per year.

d. The board shall promulgate rules to facilitate the timely and efficient procurement of client services, and to ensure that such contracts are administered in the best interests of the city. Such rules shall include but not be limited to: (i) rules governing city agency requirements for annual financial audits of vendors, including rules providing for consolidated audits across multiple contracts held by vendors with one or multiple agencies; (ii) rules providing for expedited renewal or extension of existing client services contracts pursuant to a determination by an agency head, where necessary and appropriate to ensure that the providers of such services may continue to receive payment pending the registration of new contracts; (iii) rules mandating the promulgation of draft and final contract plans by all agencies procuring client services, which draft and final plans shall follow, respectively, the executive budget submission and budget adoption. The board may set forth exceptions to these rules.

e. The board shall promulgate rules setting forth professional standards and a certification process for agency contracting officers, taking into account the volume and complexity of individual agency contracting activities. The board may set forth exceptions to these rules.

[d] f. In the promulgation of any rules pertaining to the procurement of construction or construction related services, the board shall consult with any office designated by the mayor to provide overall coordination to the city's capital construction activities.

[e] g. The board shall make such recommendations as it deems necessary and proper to the mayor and the council regarding the organization, personnel structure and management of the agency procurement function including, where appropriate, recommendations for revision of this

charter or local laws affecting procurement by the city. Such reports may include recommendations regarding agency use of advisory groups to assist in preparation of bids or proposals and selection of contractors. The board shall also review the form and content of city contract documents and shall submit to the law department recommendations for standardization and simplification of contract language.

[f] h. The board shall not exercise authority with respect to the award or administration of any particular contract, or with respect to any dispute, claim or litigation pertaining thereto.

§ 5. Subdivision b of section 312 of the New York city charter, as relettered by local law number 35 for the year 1994 and as amended by local law number 3 for the year 1997, is amended to read as follows:

b. 1. Except as provided for in sections three hundred fourteen, three hundred fifteen and three hundred sixteen, contracts shall be awarded by competitive sealed bidding under such rules as shall be made by the procurement policy board, except that, in a special case as defined in subdivision b of this section, the head of an agency proposing to award such contract may order otherwise in accordance with policies and procedures established by the procurement policy board.

2. A determination by the head of an agency to use other than competitive sealed bidding except as provided for by sections three hundred fourteen and three hundred sixteen shall be made in writing, stating the reasons why competitive sealed bidding is not practicable or not advantageous and why the method of procurement selected pursuant to section three hundred seventeen is the most competitive alternative that is appropriate under the circumstances. The head of the agency shall include the determination or a summary of the determination in the notice of solicitation, or for an emergency procurement in the notice of award, required to be published pursuant to section three hundred [twenty-five] nineteen of this chapter.

§ 6. Subdivision b of section 313 of the New York city charter, as renumbered and amended by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

b. Procedures for competitive sealed bidding.

1. Bids shall be solicited through an invitation for bids, which shall include a purchase description and a notice of where vendors may obtain a copy of all contractual terms and conditions applicable to the procurement. A notice of the intention to solicit bids shall be publicly advertised in accordance with the provisions of section three hundred [twenty-five]

nineteen of this chapter. The terms of such contracts shall be settled by the corporation counsel as an act of preliminary specification to an invitation for bids.

2. The agency letting the contract may reject all bids if it shall deem it for the interest of the city so to do; if not, it shall, without other consent or approval, award the contract to the lowest responsible bidder, unless the mayor shall determine in writing, justifying the reasons therefor, that it is the best interest of the city that a bid other than that of the lowest responsible bidder shall be accepted. Such determination shall be published in the City Record. Tie bids are to be decided by the agency letting the contract and the award made. Whenever a contract is awarded to other than the lowest bidder because the lowest bidder is determined by the agency not to be a responsible bidder or because the lowest bid is determined by the agency to not meet the requirements and criteria set forth in the invitation for bids, the agency making such determination and awarding such contract shall immediately notify the lowest bidder of such determination and shall file in the agency contract file a statement in detail of the reasons therefor.

3. Any bidder who is declared not responsible by an agency and any bidder whose bid is determined by an agency to not meet the requirements and criteria set forth in the invitation for bids may, within five days of receipt of notice of the agency decision, appeal such decision to the agency head. A determination of an agency head of an appeal of a decision of non-responsibility may be appealed to the mayor who shall take final action regarding such matter. A determination of an agency head of an appeal of a decision that a bid does not meet the requirements and criteria set forth in the invitation for bids shall be final.

§ 7. Section 315 of the New York city charter, as amended by local law number 3 for the year 1997, is amended to read as follows:

§ 315. Emergency procurement. Notwithstanding the provisions of section three hundred twelve of this chapter, in the case of an unforeseen danger to life, safety, property or a necessary service, an emergency procurement may be made with the prior approval of the comptroller and corporation counsel, provided that such procurement shall be made with such competition as is practicable under the circumstances, consistent with the provisions of section three hundred seventeen of this chapter. A written determination of the basis for the emergency and the selection of the contractor shall be placed in the agency contract file and the determination or summary of such determination shall be included in the notice of the award of contract published pursuant to section three hundred [twenty-five] nineteen of this chapter.

§ 8. Section 317 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

§ 317. Alternatives to competitive sealed bidding. a. If, in accordance with section three hundred twelve, an agency determines that the use of competitive sealed bidding is not practicable or not advantageous to the city, the agency shall select the most competitive alternative method of procurement provided for by [sections three hundred eighteen through three hundred twenty-two] rule of the procurement policy board which is appropriate under the circumstance. Each agency contract file shall contain documentation of such determination and of the basis upon which each contract is awarded, as is required by the procurement policy board.

b. The procurement policy board shall promulgate rules establishing methods for procurements by competitive sealed proposals, sole source procurements, and procurements from vendors who have been prequalified in accordance with section three hundred eighteen.

c. A contract may also be awarded according to another procurement procedure established by rule of the procurement policy board, under circumstances, defined by rule of the procurement policy board, in which the use of such procedures is in the best interest of the city. An agency determination to utilize such other alternative procurement procedure for a particular procurement or for a particular type of procurement shall require the written approval of the mayor prior to seeking bids or proposals. The agency contract file shall contain the determination to use such other procurement procedure which shall state (1) which circumstances defined by the board to be in the best interest of the city apply to the procurement, including the basis upon which the agency made such determination, and (2) which procedure, as defined by the board pursuant to this section, was used in awarding the contract.

[b]d. Each contract for goods, services or construction in value of more than two million dollars proposed by an agency to be awarded which is let by other than (i) competitive sealed bidding, (ii) competitive sealed bids from prequalified vendors, or (iii) competitive sealed proposals, where the weight assigned to each of the factors or criteria to be considered in selecting the proposal most advantageous to the city was set forth in a writing filed in the agency contract file prior to the opening of proposals, shall require the approval of the mayor or a deputy mayor prior to its execution. The mayor or deputy mayor shall not delegate the authority to make such approvals to any other body or official.

§ 9. Sections 318 through 323 of the New York city charter are REPEALED.

§ 10. Sections 324 through 335 of the New York city charter are hereby renumbered as follows:

<u>old number</u>	<u>new number</u>
324	318
325	319
326	320
327	321
328	322
329	323
330	324
331	325
332	326
333	327
334	328
335	329

§ 11. Section 318 of the New York city charter, as formerly numbered section 324 and as renumbered as section 318 by section 10 of these revisions, is amended by adding a new subdivision c to read as follows:

c. If, pursuant to section three hundred seventeen, the procurement policy board promulgates a rule allowing for selective solicitation from a list of prequalified vendors, an agency determination to employ selective solicitation for a particular procurement or for a particular category of procurement shall be made in writing by the agency and approved by the mayor.

§ 12. Section 319 of the New York city charter, paragraph 3 of subdivision a as amended by local law number 46 for the year 1995 and subdivision b as amended by local law number 59 for the year 1996, as formerly numbered section 325 and as renumbered as section 319 by section 10 of these revisions, is amended to read as follows:

§ 319. Notification of contract opportunities and awards. a. Pursuant to rules of the procurement policy board, each agency shall

1. for each category of goods, services or construction which is regularly procured by the agency, periodically publish in the City Record a notice soliciting the names of vendors interested in being notified of future procurement opportunities in each such category,

2. for each category of goods, services or construction for which the agency prequalifies vendors for future procurement, periodically publish in the City Record a notice soliciting the names and qualifications of vendors interested in being considered for prequalification for such category, and

3. publish in the City Record, and, where appropriate, in newspapers of city, state or national distribution and trade publications, notice of

(a) the solicitation of bids or proposals pursuant to section three hundred thirteen and three hundred seventeen [through three hundred twenty-two], where the value of a contract is estimated to be above the small purchase limits, except where, [the agency has determined] pursuant to subdivision b of section three hundred [eighteen or three hundred twenty that] seventeen, the solicitation [should be] is limited to prequalified vendors,

(b) the award of a contract exceeding the small purchase limits in value. Each such notice of award shall indicate the name of the contractor, the dollar value of the contract, the procurement method by which the contract was let, and for contracts let by other than competitive sealed bidding, a citation of the clause of subdivision b of section three hundred twelve pursuant to which a procurement method other than competitive sealed bidding was utilized.

b. The procurement policy board, in consultation with the commissioner of citywide administrative services, shall promulgate rules providing for the publication and content of notices of contract actions required by this chapter. Such rules shall include provisions regarding

i. the timing and frequency of notices,

ii. the required duration of solicitation periods,

iii. the form and content of notices, including the organization and presentation of such notices within standard categories of goods, services and construction which are sufficiently detailed to provide meaningful distinctions among categories.

c. The notice required by subparagraph a of paragraph three of subdivision a of this section shall not apply to contracts awarded on an emergency basis pursuant to section three hundred fifteen, provided that the agency shall, as soon as is practicable, publish notice that such a contract has been entered into, pursuant to rules of the procurement policy board, nor shall such

notice requirements apply where the notice would disclose litigation strategy or otherwise impair the conduct of litigation by the city. In addition, such notice requirements shall not apply where the notice would disclose information or strategy that may be detrimental to the security of the city or its citizens, as determined by the mayor.

d. Notwithstanding any other provision of this section, whenever an agency determines that there is only a single source for a good, service or construction, and determines to engage in a sole source procurement pursuant to subdivision b of section three hundred seventeen, the agency shall give immediate notice in the City Record of such determination and shall in such notice solicit the application of vendors qualified to provide such good, service or construction, or interested in providing such good service or construction in the future. The procurement policy board shall by rule define the timing and duration of such notification to ensure that vendors qualified to provide such good, service or construction have sufficient opportunity to express their interest to the agency prior to the initiation of any sole source negotiation; provided, however, that if the agency has determined that it should not reveal to the vendor with whom it is negotiating that it is doing so on a sole source basis under circumstances defined by rule of the procurement policy board, the notice required by this subdivision shall be made upon the completion of such negotiations or the award of the contract. Vendors interested in providing such good, service or construction in the future shall be prequalified in accordance with section three hundred eighteen, or shall be included for receipt of notice in accordance with subdivision a of section three hundred nineteen. Notwithstanding the above, the notice requirements of this subdivision shall not apply where notice would disclose information or strategy that may be detrimental to the security of the city or its citizens, as determined by the mayor.

§ 13. Subdivision b of section 320 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 7, 1989, subdivision a as amended by local law number 8 for the year 2002, as formerly numbered section 326 and as renumbered as section 320 by section 10 of these revisions, is amended to read as follows:

b. The requirements of this section shall not apply to any procurement (i) let pursuant to a finding of an emergency under section three hundred fifteen, (ii) required to be made on an accelerated basis due to markets which experience significant, short-term price fluctuations, as identified by rule of the board, [or] (iii) where a public hearing would disclose litigation strategy or otherwise impair the conduct of litigation by the city; or (iv) where a public hearing would

disclose information or strategy that may be detrimental to the security of the city or its citizens, as determined by the mayor.

§ 14. Section 321 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 7, 1989, as formerly numbered section 327 and as renumbered as section 321 by section 10 of these revisions, is amended to read as follows:

§ 321. Certification of legal authority and procedural requisites. a. In the case of any contract which is let by other than competitive sealed bidding, the mayor shall certify, prior to the filing of the contract with the comptroller for registration in accordance with section three hundred [twenty-eight] twenty-two of this chapter, that the procedural requisites for the solicitation and award of the contract have been met. The mayor may delegate such function to the agency proposing to award a contract only upon adequate assurance of an agency's capacity to comply with procedural requirements.

b. The corporation counsel shall certify prior to the filing of a contract with the comptroller for registration in accordance with section three hundred [twenty-eight] twenty-two of this chapter, that each agency proposing to award a contract has legal authority to award each such contract.

§ 15. Section 323 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 7, 1989, as formerly numbered section 329 and as renumbered as section 323 by section 10 of these revisions, is amended by adding a new subdivision e to read as follows:

e. A specific procurement of a specific good may be delegated by the commissioner of citywide administrative services, in the best interest of the city, to any agency for direct purchase by such agency, and shall not be subject to the provisions of subdivisions b, c or d of this section; provided, however, that such delegation shall not be made for goods that are to be generally used by city agencies.

§ 16. Subdivision a of section 327 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 7, 1989, as formerly a subdivision in section 333 which is renumbered as section 327 by section 10 of these revisions, is amended to read as follows:

a. Each agency letting contracts shall monitor the performance of every contractor. Information with respect to contractor performance shall be maintained in a central place in accordance with subdivision c of section three hundred [thirty-four] twenty-eight.

§ 17. Section 326 of the New York city charter, as renumbered and amended by vote of the electors of the city of New York at a general election held on November 7, 1989, as formerly numbered section 332 and as renumbered as section 326 by section 10 of these revisions, is amended to read as follows:

§ 326. Payments procedure. The procurement policy board shall promulgate rules for the expeditious processing of payment vouchers by city agencies and departments including (i) the maximum amount of time allowed for the processing and payment of such vouchers from the later of (a) the date such vouchers are received by the agency, or (b) the date on which the goods, services or construction to which the voucher relates have been received and accepted by the agency, (ii) a program for the payment of interest, at a uniform rate, to vendors on vouchers not paid within the maximum amount of time pursuant to clause i of this subdivision, (iii) a process for the allocation and charging of any such interest payments to the budget of the agency responsible for the delay leading to the interest payments and (iv) agency reporting on the promptness of such payments in such form and containing such information as the board shall prescribe. The board shall coordinate and publish such prompt payment reports.

§ 18. Section 329 of the New York city charter, as repealed and reenacted by vote of the electors of the city of New York at a general election held on November 6, 2001, as formerly numbered section 335 and as renumbered as section 329 by section 10 of these revisions, is amended to read as follows:

§ 329. Centralized evaluation of contractor integrity, performance, and capability.

a. The mayor and comptroller shall jointly maintain a centralized computer data base, to be known as the VENDEX system, for information about franchisees, concessionaires and contractors for franchises, concessions and contracts entered into by any agency, New York city affiliated agency, elected official or the council which shall serve as a repository of

information for agencies to use (i) in determining whether a potential franchisee, concessionaire or contractor is responsible and (ii) in monitoring contractor performance pursuant to section three hundred twenty-seven of the charter. The mayor and comptroller shall jointly promulgate rules deemed necessary in relation to the VENDEX system pursuant to chapter forty-five of the charter. Nothing herein shall limit the power of the council to legislate with respect to the VENDEX system.

b. The information contained in the VENDEX system shall be required of, and available to, all agencies whose procurements are governed by this chapter and whose franchises and concessions are governed by chapter fourteen of the charter and other agencies pursuant to rules promulgated pursuant to this section. Such information shall be made available to members of the public, in accordance with sections three hundred twenty-eight and one thousand sixty-four of the charter, and article six of the public officers law. However, nothing in this subdivision shall be deemed to require disclosure of information that is confidential or privileged, or the disclosure of which would be contrary to law.

c. The mayor may evaluate the integrity, performance, and capability of entities that contract with the city, are seeking to contract with the city, or may seek to contract with the city. The mayor may designate one or more agencies to participate in such efforts. The evaluations of the mayor and any agency designated by the mayor may include conclusions regarding whether the entity should be considered a responsible contractor. The mayor and any agency designated by the mayor may make such evaluations and conclusions available to agencies and the public through a centralized data base.

§ 19. Section 829 of the New York city charter, as added by local law 59 of the year 1996, is amended as follows:

§ 829. The mayor may designate the department to perform specified administrative functions for the office of administrative trials and hearings and the board of standards and appeals, and such other agencies as shall be designated by the mayor, when the mayor determines that such a designation will reduce costs or result in more effective performance of such functions. Such functions may include personnel services, labor relations, facilities management, purchasing, management information systems, budget administration, and internal auditing.

§ 20. Section 1304 of the New York city charter, as added by local law number 61 for the year 1991, is amended by adding a new subdivision (i) to read as follows:

(i) The mayor shall, by executive order, ensure citywide agency coordination so as to further the policies and purposes of this section.

§ 21. Subdivision e of section 1305 of the New York city charter, as added by local law number 61 for the year 1991, is amended to read as follows:

e. 1. The commissioner shall require employment reports to be submitted in such form and containing such information as the commissioner may prescribe by rule, by contractors to whom agencies propose to award city contracts and their proposed subcontractors, when such contracts or subcontracts have a value above a monetary threshold that the commissioner shall by rule establish. The commissioner may by rule provide for appropriate exemptions from such requirements.

2. An employment report [shall] may include[, but not be limited to,] information such as employment practices, policies, procedures, statistics and collective bargaining agreements. The contracting agency shall transmit the employment report to the commissioner after the selection of a proposed contractor or subcontractor. The commissioner shall review all employment reports to determine whether such contractors and subcontractors are in compliance with the equal employment opportunity requirement of local, state and federal law and executive orders.

3. Except as provided in [paragraphs] paragraph four [4, 5 and 6] of this subdivision, a contracting agency may award the contract or approve a subcontractor upon receiving the approval of the division, or after a number of days to be specified by rule have passed since it submitted the employment report of the proposed contractor to the division, whichever is sooner.

4. [If the commissioner notifies the contracting agency that a proposed contractor or subcontractor has failed to submit a complete employment report, the commissioner shall require the contracting agency not to award the contract or approve the subcontractor until after a complete employment report has been submitted to the division for its review.

5. If the commissioner notifies the contracting agency that the division has reason to believe that the contractor or subcontractor is not in substantial compliance with the requirements of this section, the commissioner may require the contracting agency not to award the contract or approve the subcontractor until the contractor has agreed to take appropriate action to come into compliance with such requirements.

6.] The commissioner shall promulgate rules governing approval of the division, including procedural rules, and rules regarding the consequences of the failure of a proposed contractor or subcontractor to submit a complete employment report and the consequences if the

division has reason to believe that the contractor or subcontractor is not in substantial compliance with the requirements of this section. In addition, the commissioner may by rule provide for circumstances when a contract or subcontract may be awarded without the prior approval of the division [, which shall include but not be limited to requirements contracts which may be awarded prior to the approval of an employment report, subject to the condition that a purchase shall not be made under the contract until the division has approved the employment report, emergency contracts, and contracts with contractors or subcontractors for which the division has previously approved an employment report].

[7] 5. The time schedules for actions required to be taken pursuant to this section shall be defined by rule of the procurement policy board in accordance with the provisions of section three hundred eleven.

§ 22. Section 1152 of the New York city charter is amended by adding a new subdivision j, paragraph (2), to read as follows:

(2) (a) Except as provided in subparagraph (b) of this paragraph, the amendments to the charter, amending sections twelve, sixteen, eight hundred twenty-nine and thirteen hundred four, and all amendments to chapter thirteen of the charter, approved by the electors on November fourth, two thousand three, shall take effect immediately, and thereafter shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees.

(b) Notwithstanding subparagraph (a) of this paragraph, the amendments to the charter amending section three hundred twenty-nine, formerly numbered section three hundred thirty-five, and the amendments to the charter amending section thirteen hundred five shall take effect nine months after approval by the electors. Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of such amendments prior to such effective date.

(c) If any clause, sentence, subparagraph, paragraph, subdivision, section or part of the amendments described in subparagraphs (a) and (b) of this paragraph shall be adjudged by any court of competent jurisdiction to be invalid or otherwise cannot be implemented pursuant to law, such judgment or inability to implement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered or in the matter with respect to which implementation may not occur.

GOVERNMENT ADMINISTRATION

I. COORDINATION OF THE CITY'S ADMINISTRATIVE JUSTICE SYSTEM

Issue: Should the Charter provide for coordination of operational policies and management practices among the various administrative tribunals in the City to improve the overall effectiveness of the City's Administrative Justice System? Should the Charter also provide for a Code of Administrative Judicial Conduct, similar to the State's Code of Judicial Conduct, which would apply to the City's Administrative Law Judges and Hearing Officers, and be aimed at enhancing integrity in the City's Administrative Justice System?

Relevant Charter Provision: Chapter 1

Discussion: Tens of thousands of administrative hearings are conducted annually by the City in a variety of specialized tribunals, established both by State and local laws, that employ well over 500 lawyers as administrative law judges and hearing officers, many on a per diem basis.⁴² The cost of running these tribunals, which mostly adjudicate violations, as well as handle disciplinary matters, tops \$22 million according to figures from the Office of Management and Budget. The revenue income, which involves both fees and fines, was expected to top half a billion dollars for FY 2003, and projected revenues for FY 2004 are well over \$600 million. This fine and fee income is exclusive of cases involving real property or commercial taxes.

The following table outlines the structure, costs, and revenue and fine proceeds of some of the City's tribunals:

Tribunal	Source of Law	Types of Cases Heard	Administrative Law Judges or Hearing Officers	Annual Expense Budget FY 2004	Fee and/or Fine Revenues FY 2003 (actual) & FY 2004 (Projected)
Dept. Consumer Affairs ⁴³	Charter §§ 2201-2204	Licensing, Enforcing Consumer Laws	11 (FTE)	\$846,184 (incl. OTPS)	\$5,790,000 \$4,900,000
Dept. Health & Mental Hygiene	Charter § 558	Adjudicates violations of the Health Code	34 (10 or 11 work on any given day)**	\$700,000	\$11,660,000 \$15,910,000

⁴² The number of ALJs and Hearing Officers employed on a full time basis just tops 300, the remaining personnel is part-time or per diem.

⁴³ Unlike PVB and ECB, DCA has no docketing authority. DCA's tribunal is for licensing infractions only. For deceptive trade practices, DCA attorneys must go to State Court.

Dept. Environmental Protection (ECB) ⁴⁴	Charter §§ 1401-1404	Adjudicates violations for "quality of life" infractions	81 (FTE)	\$7,216,000 (incl. OTPS)	\$51,640,000 \$46,330,000
Tax Commission	Charter § 153	Reviews Real Estate tax assessments, upon application	11 FTE examiners; 1 President & Commissioner	\$905,736 (incl. OTPS)	
Tax Appeals Tribunal	Charter § 168	Adjudicates non-property business taxes & hears those appeals	4 ALJs 2 Commissioners hear the appeals	\$637,200 (incl. OTPS)	
Dept. of Finance – Parking Violations	Charter § 1504	Conducts hearings & collects fines for parking summons	105 (FTE)	\$7,227,621	\$429,050,00 \$564,880,00 (including Red Light Camera)
Taxi & Limousine Commission	City Charter § 2301	Adjudicates violations	61	\$18,242,72445	\$7,030,000 \$8,380,000
Board of Standards & Appeals	City Charter § 659-669 (Administered within OATH)	Zoning, variances, special permits issuance & revocation	5	\$446,535	\$1,080,000 \$750,000
Loft Board	Multiple Dwelling Law	Resolves issues regarding the legalization & regulation of loft buildings converted to residential use.	1 (full time Director of Hearings)	\$45,326	\$150,000 \$200,000
Office of Collective Bargaining	Charter §§ 1170-1177	Mediation, arbitration for resolution of labor disputes	5 full time trial examiners	\$446,535	-
Civil Service Commission (DCAS budget)	Charter § 813	Hears appeals from employees aggrieved by City Personnel Director	5	\$343,535	-
OATH (DCAS budget)	Charter §§ 1048-1049	Independent tribunal authorized to conduct hearings for all agencies	10 (includes 1 Chief ALJ)*	\$3,767,183	-

Source: OMB

FTE – Full Time Employees

OTPS – Other Than Personal Services

Note – Several Tribunals are non-mayoral agencies such as OCB.

⁴⁴ The Environmental Control Board ("ECB"), the adjudicative arm of the Department of Environmental Protection ("DEP") does not issue Notices of Violation. The issuing agencies include the Departments of Sanitation, Buildings, and Transportation, as well as the Fire Department, and other specified agencies.

⁴⁵ Includes enforcement costs

While the proper functioning of these tribunals is central to the City's administrative justice system, there is currently no centralized mechanism to coordinate operational policy and management practices. In other areas, such mechanisms of coordination already exist in the Charter, such as the Criminal Justice Coordinator, Charter § 13. It is widely believed, though not stated explicitly, that the 1988 Charter Revision Commission intended coordination of the tribunals when it proposed to establish the Office of Administrative Trials and Hearings ("OATH") in the Charter as the City's central tribunal.

This Commission proposes a Charter amendment that would provide for coordination of the administrative justice system. The coordinator would be appointed by, and be directly responsible to, the Mayor, and would advise and assist the Executive Branch in planning for increased coordination, cooperation and information sharing in the area of tribunal policy, management and enforcement. The coordinator would also review budget requests for all agencies for programs related to tribunal management and recommend to the Mayor budget priorities among such programs. The proposal provides the Mayor with the discretion to house the coordinator at OATH and appoint OATH's Chief Administrative Law Judge to serve as Coordinator. This type of reform would be consistent with a trend for centralization in other State and City administrative justice systems, including New Jersey and the District of Columbia.

Creation of OATH

Although set forth in the Charter by the 1988 referendum which established the City Administrative Procedure Act ("CAPA"), OATH has functioned since 1979 as the City's central tribunal with the authority to conduct administrative hearings for any agency, board or commission. The adoption of minimum standards for the conduct of administrative hearings and the establishment of OATH as the City's presumptive independent tribunal were two of CAPA's primary reforms.

OATH is directed by a Chief Administrative Law Judge who is appointed by the Mayor. OATH was established by Koch Executive Order No. 32 to professionalize the administrative hearing system serving City government, and functions as an independent agency so that its judges are not unduly influenced by the prosecutor or petitioning agency. In fact, OATH Administrative Law Judges serve five year term appointments, marking their independence from

the prosecuting agency and inspiring a higher level of confidence in the fairness of the adjudicative process.

Charter § 1048 states that OATH “shall conduct adjudicatory hearings for all agencies of the city, unless otherwise provided for by executive order, rule, law or pursuant to collective bargaining agreements.” Thus, the Charter envisioned a broad and remedial mandate for OATH as confirmed by the *Report of the Charter Revision Commission*, Vol. 2 at p. 103 (April 1989):

...[t]he purpose of formalizing OATH in the charter is to establish an independent adjudicative body that can be a resource to agencies in conducting their adjudications, while at the same time establishing an independent structure outside of the agency to provide an unbiased assessment of the matters to be adjudicated.

By anointing OATH as the premier, central tribunal of the City, earlier Charter Commissions visualized a more centralized adjudicatory process and quite possibly one in which a lead actor of OATH coordinates the operations of all the City’s tribunals for the sake of organization and accountability.

Need for Technology Coordination

Additionally, there is no centralized coordination of how individual agencies are using technology, specifically what the case tracking systems yield: whether targets for case dispositions are being met; and how much is collected in terms of rates of collection for fines. Coordination of this information would inevitably allow for targeted management improvement strategies and increased efficiency for the public.

With the advent of NYCServ, a computer system originating from the Citywide Consolidation Project, the City is taking a step toward this kind of information centralization. NYCServ has the goal of combining the licensing, collection, payment and adjudication functions which are currently scattered throughout various City agencies. Specifically, NYCServ seeks to knit together the legacy computer systems from the Departments of Finance, Consumer Affairs, Health, and Environmental Protection (including ECB). Currently, the NYCServ system allows the public to pay violations and taxes owed to multiple city agencies in one transaction. However, the NYCServ goals for adjudications do not touch on the centrality of administration; rather, the focus is on automated scheduling of hearings, electronic case folders, on-line decision tools, workload routing, and the digital recording of hearings.

Although the violations are coordinated for the consumer, the Administration has no mechanism to access the revenue, fine, and case disposed information from the various tribunals. Further, enforcement problems can arise due from the lack of central coordination of violations; delinquent violators are not prevented from acquiring licenses or permits from other agencies⁴⁶. If all records of violations and their results were coordinated, agency records could be linked so that each agency would know about violations issued by other departments, in the hope that this would allow for more effective collection. For example, if someone owed more than \$1,000 in fines, such person could be denied any license or permit he or she applied for until those fines were resolved. A proposal to establish a Coordinator for Administrative Justice would enable the City to have coordination of tribunal technology.

Enhanced Accountability

The idea behind vesting power in one person to coordinate the Administrative Justice System is to improve the overall accountability for the various tribunals. Currently, each agency or commission generates cases which are then adjudicated by its own Administrative Law Judges⁴⁷ or Hearing Officers, many of whom are per diem. These adjudicators are usually lawyers (sometimes they are not) who often have only been minimally trained in the narrow, technical, specific area they are refereeing.

It is also important to note that there is no State or local law that binds the City's Hearing Officers to any code of professional conduct or ethics like State Court judges are required to follow. Indeed, OATH is the only tribunal that requires its judges to adhere to one.⁴⁸ It has been argued that by subjecting all Administrative Law Judges and Hearing Officers to a code of conduct or ethics created exclusively for adjudicators in the City's tribunals would enhance accountability and be a step toward professionalizing the Administrative Law Judge and Hearing Officer corps. In light of the recent (and not so recent) judicial bribery and influence peddling scandals in the State Court system, notably in Brooklyn, it is imperative that the public be assured that Administrative Law Judges and Hearing Officers in the City tribunals are subject to "integrity checks."

⁴⁶ Independent Budget Office Report, "Is Everything Going to Be Fine(d)?," May 2003, p. 6.

⁴⁷ The title "Administrative Law Judge" is largely a courtesy title as the lawyers who adjudicate violations have an agency title of "Hearing Officer". Notable exceptions include the Administrative Law Judges at OATH and the Tax Appeals Tribunal. Charter § 1049(1) and 168(d).

⁴⁸ However, salaried City employees earning over a certain amount of money are subject to both the Conflicts of Interest Law and its financial disclosure requirements. It should be noted that Administrative Law Judges and Hearing Officers who are lawyers are subject to the Code of Professional Responsibility.

The Public Benefit

The public benefit of this proposal can be significant. With proper policy, planning and oversight concerning tribunal docket management, case resolution time for the public should improve. Additionally, because the design of Alternative Dispute Resolution programs would be required, citizens will be empowered because such programs are geared at giving all parties an equal voice in the process. Moreover, public confidence in government is the cornerstone of democracy. The rule of law must be respected by those who wield it, not only those who are subject to it. Ensuring that the public that the Administrative Law Judges and Hearing Officers, who hear the everyday types of violations that many people contend with at some time or another, are bound by a strong code of ethics that will help foster trust and faith in government.

The Commission asked the Deputy Mayor for Legal Affairs, Carol Robles-Román, to review and comment on this proposal. The Deputy Mayor has spearheaded issues of administrative tribunal management since joining City government, and has extensive experience in State Court administration. The Deputy Mayor has stated her support for the proposal.

Accordingly, because this proposal can have a significant impact in continuing to ensure quality and professionalism in the City's administrative tribunals, the Commission recommends it for inclusion on the ballot. If adopted by the voters it would take effect immediately.

PROPOSED CHARTER LANGUAGE

Section 1. The New York city charter is amended by adding a new section 13-a to read as follows:

§ 13-a. Coordinator of administrative justice. There is established in the executive office of the mayor a position of coordinator of administrative justice, to be appointed by the mayor. The coordinator shall:

(1) advise and assist the mayor in the coordination of policies, plans and operations common to the management of the city's administrative tribunals;

(2) review the budget requests of all agencies for programs related to the city's administrative justice system and recommend to the mayor budget priorities among such programs;

(3) receive reports from individual tribunals concerning their performance, including case management and enforcement, and appropriate use of technology, and recommend policies to improve tribunal efficiency for the public. The content of such reports and any such policies for reform shall be adopted by rule promulgated by the mayor;

(4) except where inconsistent with applicable law, develop and deliver programs for training and professional development of administrative law judges and hearing officers;

(5) develop and promote programs of alternative dispute resolution to be used by city administrative tribunals; and

(6) perform such other duties as the mayor may assign.

b. The mayor shall promulgate rules establishing a code or codes of professional conduct governing the activities of all hearing officers and administrative law judges in city tribunals, except to the extent that such promulgation would be inconsistent with law. An administrative law judge or hearing officer may be removed for violating such rules in the manner such administrative law judge or hearing officer may be removed or otherwise disciplined under law.

c. The mayor may appoint the chief administrative law judge of the office of administrative trials and hearings to also serve as coordinator.

II. Hearing Authority for the Department of Consumer Affairs

Issue: Should the Charter be amended to vest the Department of Consumer Affairs with hearing authority over all matters within its jurisdiction?

Relevant Charter Provision: Chapter 64

Discussion:

The Department of Consumer Affairs (“DCA”) is responsible for enforcing various state and local consumer protection laws, including the New York City License Enforcement Law; Article 16 of the New York State Agriculture and Market Law; and the New York City Consumer Protection Law. Any licensee charged with violating any of these laws is accorded due notice and an opportunity to be heard and represented by counsel at an administrative hearing held at the Department. While businesses that do not require licenses are given an opportunity to resolve violations of laws within the Department’s enforcement jurisdiction through informal settlement discussions, they are not afforded an actual hearing before an impartial fact finder. When the Department opts not to pursue a court action on unresolved violations, a business has no way to clear itself of an outstanding violation, which becomes a matter of public record.

This proposal would authorize the Commissioner of Consumer Affairs to: (1) conduct administrative hearings to adjudicate violations of any laws or rules which are within the

Department's enforcement jurisdiction, and (2) impose civil penalties of up to \$500 per violation (except to the extent that penalties are otherwise specifically provided).

By authorizing the Department to hold administrative hearings on all violations of laws it enforces, this proposal would afford respondents an opportunity to resolve disputed violations before an impartial tribunal and at less expense than the protracted State Court proceedings that are currently used to enforce such laws. Authorizing the Department to exercise its hearing authority in all cases involving violations of laws within its enforcement jurisdiction would also level the playing field for all businesses subject to those laws. By doing so, DCA will be able to enforce its laws more effectively and at a reduced cost to both businesses and the City. It should be noted that the Commissioner of Consumer Affairs, Gretchen Dykstra, testified before the Commission in favor of this proposal. The proposal would take effect immediately if adopted by the voters.

PROPOSED CHARTER LANGUAGE

Section 1. The New York city charter is amended by adding a new section 2203-a to read as follows:

§ 2203-a. Civil penalty adjudication. (a) Notwithstanding any other provision of law, the department shall be authorized, upon due notice and hearing, to impose civil penalties for the violation of any laws or rules the enforcement of which is within the jurisdiction of the department pursuant to the charter, the administrative code or any other general, special or local law. The department shall have the power to render decisions and orders and to impose civil penalties for all such violations. Except to the extent that dollar limits are otherwise specifically provided, such civil penalties shall not exceed five hundred dollars for each violation. All proceedings authorized pursuant to this section shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this subdivision shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(b) All such proceedings shall be commenced by the service of a notice of violation. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof, when filled in and served, shall constitute notice of the violation charged and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein. In addition to serving the notice on the person being charged, where written authorization is filed

with the department, the department shall deliver by first class mail a copy of the notice to the corporate headquarters or wholesale supplier of such person.

(c) For the purposes of this section, no act or practice shall be deemed a deceptive trade practice unless it has been declared a deceptive trade practice and described with reasonable particularity in a local law or in a rule or regulation promulgated by the commissioner.

III. Penalties for Violations of the City's Ethics Laws

Issue: Should the Charter be amended to increase the maximum penalty from \$10,000 to \$25,000 for, and provide for disgorgement of funds received as a result of, violations of the Conflicts of Interest Law?

Relevant Charter Provision: § 2606

Discussion: The maximum penalty for violations of the Conflicts of Interest Law, as established in Charter Chapter 68, and enforced by the Conflicts of Interest Board ("COIB"), has not been raised since 1989. The COIB requested that the Commission consider raising the maximum penalty allowed from \$10,000 to \$25,000 (the Board would continue to exercise its judgment in determining the appropriate penalty). The COIB also requested that the Commission consider a disgorgement provision permitting the Board to commence a civil forfeiture action to recover against those who have profited from a violation of the Conflicts of Interest Law.

This disgorgement provision addresses the inequity that results when a public servant, or indeed any other person or firm, profits significantly from a violation of the conflicts of interest law but under the current law is subject, at most, to a civil fine. Indeed, a private entity – for example, a former public servant's new employer to which the former public servant reveals valuable confidential City information – may not be penalized at all under current Chapter 68, unless the violation involved a contract between the private firm and the City, in which case rescission may lie. Charter § 2606(a). A civil action could be brought under this new provision, however, only if the public servant or other person or entity who or which benefits from the violation of Chapter 68 knows the facts that give rise to the violation; knowledge that the facts constitute a violation of Chapter 68 is not required.

Thus, for example, if the public servant discloses confidential City information to a friend's company, but the friend has no reason to know that the information is in fact confidential, then the action would not lie against the company although it would probably lie

against the public servant since the public servant would almost certainly know whether the information is confidential. If, on the other hand, the company knew that the information was confidential but not that its disclosure violated Charter § 2604(b)(4), the civil action would lie against the company.

As the Court of Appeals has held in the context of Charter § 2604(b)(3), “knowing” includes “should have known.” See Holtzman v. Oliensis, 91 N.Y.2d 488, 673 N.Y.S.2d 23, 695 N.E.2d 1104 (1998). Note that, as a general rule, the penalties in Charter § 2606 are cumulative; the imposition of one does not prevent the imposition of another. Furthermore, this provision would not preclude the City’s Corporation Counsel from bringing an action on behalf of the City under any other applicable statute or under the common law for rescission, fraud, conversion, restitution, or the like. Moreover, pursuant to Chapter 17 of the Charter, the Law Department would represent the Board in any action brought by the Board pursuant to this new provision. It should be noted that COIB Executive Director Mark Davies testified before the Commission in favor of this proposal.

The Commission recommended these issues for inclusion on the ballot because they are important to maintaining integrity in City government. These changes can only be accomplished through a referendum. The proposal would take effect immediately if adopted by the voters.

PROPOSED CHARTER LANGUAGE

§ 1. Section 2606 of the New York city charter, as added by vote of the electors at a general election held on November 8, 1988, is amended to read as follows:

§ 2606. Penalties.

a. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter, involving a contract, work, business, sale or transaction, has occurred, the board shall have the power, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, to render forfeit and void the transaction in question.

b. Upon a determination by the board that a violation of section twenty-six hundred four or twenty-six hundred five of this chapter has occurred, the board, after consultation with the head of the agency involved, or in the case of an agency head, with the mayor, shall have the power to impose fines of up to [ten] twenty-five thousand dollars, and if applicable, to recommend to the

appointing authority, or person or body charged by law with responsibility for imposing such penalties, suspension or removal from office or employment.

c. Any person who violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be guilty of a misdemeanor and, on conviction thereof, shall forfeit his or her public office or employment. Any person who violates paragraph ten of subdivision b of section twenty-six hundred four, on conviction thereof, shall additionally be forever disqualified from being elected, appointed or employed in the service of the city. A public servant must be found to have had actual knowledge of a business dealing with the city in order to be found guilty, under this subdivision, of a violation of subdivision a of section twenty-six hundred four of this chapter.

d. Notwithstanding the provisions of subdivisions a, b and c of this section, no penalties shall be imposed for a violation of paragraph two of subdivision b of section twenty-six hundred four unless such violation involved conduct identified by rule of the board as prohibited by such paragraph.

e. Any entity or person, whether or not a public servant, which or who realizes an economic benefit knowing it to be the result of conduct by a public servant that violates section twenty-six hundred four or twenty-six hundred five of this chapter shall be liable in a civil action brought by the board in a court of appropriate jurisdiction for the value of the benefit.

IV. Voter Assistance Commission (“VAC”)

Issue: Should the Voter Assistance Commission consist of seven, instead of sixteen, members? Should the Coordinator of Voter Assistance be appointed by the Mayor with Council advice and consent, instead of by the Commission upon the Mayor’s nomination?

Relevant Charter Provision: §§ 1054 and 1055

Discussion: The Voter Assistance Commission (“VAC”) was established by the 1988 Charter revision in Charter Chapter 46, § 1054 et seq. The Charter establishes VAC as an independent agency whose mission is to increase participation in the democratic process by encouraging and facilitating voter registration and voting by all eligible citizens residing in New York City. VAC undertakes its work in a nonpartisan fashion and does not promote any candidate for elected office, political party or political agenda. VAC’s work is directed by the Commission and performed by a Coordinator. VAC consists of sixteen members. Seven are ex-officio and nine are appointed, three by the Mayor and six by the Council. The ex-officio members include a Deputy Mayor, the Budget Director, the Schools Chancellor, the Public Advocate, the Executive

Director of the Board of Elections, the Corporation Counsel and the Chair of the Campaign Finance Board. The Charter requires that the nine appointed members be broadly representative of (1) groups that are underrepresented among those who vote and or among those who are registered to vote, (2) community, voter registration, civil rights, and disabled groups, and (3) the business community. Each of these nine members serve without compensation for staggered three year terms. The Coordinator is approved by the Commission upon the recommendation of the Mayor.

VAC's core functions include monitoring the performance of the voter assistance program established by this chapter; making recommendations to the Mayor, Council, Borough Presidents, and the Board of Elections for steps that could and should be taken by such officials or bodies or by City agencies to encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote; and undertaking, by itself or in cooperation with other public or private entities, activities intended to encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote.

Operational Challenges

VAC is funded from City tax levy dollars. It does not generate revenue or receive state or federal funding. VAC's funding was reduced dramatically over the five years prior to FY 2003. Due to the current fiscal crisis which necessitated across-the-board cuts citywide from levels during the Giuliani Administration, VAC's FY 2003 and 2004 funding has remained level with its FY 2002 level of approximately \$40,000. Thus, while VAC's budget did not increase during the past year and a half, it was not reduced like budgets of other agencies.

According to testimony by VAC's Chair, Dr. Jeffrey Kraus, at the Commission Forum on Election Administration and Voter Assistance on July 22, 2003, VAC is being funded, staffed and housed by the Mayor's Office. VAC's current budget covers the salary of one secretary who manages the day-to-day operations of VAC's office. Other costs are paid from existing resources within the Mayor's Office. The VAC Coordinator has provided part-time professional services to VAC as part of her full-time duties within the Office of the Deputy Mayor for Legal Affairs. Staff from the offices of VAC ex-officio members originally agreed to assist the VAC coordinator as part of a "coordinating committee" on various projects on an as needed basis. This cooperative arrangement was approved by the Commission members at a public meeting in early 2002. However, because it is not explicitly provided for in the Charter, this cooperative

agreement has not been successfully implemented, leaving the Administration's staff to carry on the work of the Commission.

VAC faces many operational challenges. Although it is the Commission staff's conclusion that VAC's current mode of operation does not violate the letter of the Charter, many public interest groups have nonetheless expressed that it frustrates its spirit. Consequently, VAC's dependence on the Mayor's Office for its budget, staff and office space is inconsistent with the notion that VAC is an independent body. Aside from these challenges, Commissioner Kraus reported that one of VAC's main problems is its large size and the fact that attendance by members is inconsistent. He reported that reaching a quorum can be a problem. In response to these challenges, he suggested that increased funding and reducing the size of the sixteen member Commission be considered. VAC Commissioner, Jane Kalmus, also testified and agreed with Dr. Kraus. With proper funding and restructuring, it was concluded that VAC could perform its function better and aid more effectively in educating voters about a new system of nonpartisan elections if approved.

To respond to these concerns, the staff recommends that the Charter Revision Commission propose reducing the size of VAC from sixteen to seven members. Of the seven members, five (one from each borough) would be appointed by the Mayor with advice and consent of the City Council, one would be appointed by the Council Speaker in consultation with the Mayor, and the Public Advocate would serve ex-officio. One of the appointed members would be designated as Chair by the Mayor, in consultation with the Speaker of the Council. The Coordinator would be appointed by the Mayor with the advice and consent of the Council. Changes to the Charter governing VAC and its Coordinator can only be accomplished through referendum.

PROPOSED CHARTER LANGUAGE

Section 1. Subdivision a of section 1054 of the New York city charter, as amended by local law number 68 for the year 1993, shall be amended as follows:

§ 1054. **Voter assistance commission.** a. There shall be a voter assistance commission [, the head of which shall be elected by the members of the commission from among their membership] which shall consist of [sixteen] seven members and which shall advise all appropriate officials on matters relating to voter registration and voter participation in New York city. The commission shall include the [the first deputy mayor, or if there is no first deputy

mayor, such other deputy mayor as the mayor shall designate to serve on this commission, the director of the office of management and budget, the president of the board of education,] public advocate [, the executive director of the board of elections, the corporation counsel, and the chair of the campaign finance board. In addition there shall be nine] and six appointed members broadly representative of (1) groups that are under represented among those who vote and or among those who are registered to vote, (2) community, voter registration, civil rights, and disabled groups, and (3) the business community. Each of these members shall serve for a [three] four year term, with [three] five to be appointed by the mayor with the advice and consent of the council, and the remaining [six to] member shall be appointed by the speaker of the council in consultation with the mayor. No two members appointed by the mayor shall be a resident of the same borough. The chair shall be designated by the mayor from among the members of the commission in consultation with the speaker of the council. [Of] Notwithstanding any inconsistent provision of this subdivision, of the [three] five members initially appointed by the mayor, three shall serve for a [two year] term which expires on June thirtieth, [nineteen hundred ninety] two thousand six, and [one] the three remaining appointed members, including the member appointed by the speaker of the council, shall serve for a term which expires on June thirtieth, [nineteen hundred ninety-one] two thousand eight [and one shall serve for a term which expires on June thirtieth, nineteen hundred ninety-two. Of the six members initially appointed by the council, two shall serve for terms expiring on June thirtieth, nineteen hundred ninety, two shall serve for terms expiring June thirtieth, nineteen hundred ninety-one, and two shall serve for terms expiring on June thirtieth, nineteen hundred ninety-two]. The members of the commission shall serve without compensation. An appointed member of the commission may be removed during his or her term for cause by the person who appointed such member upon notice and opportunity to be heard.

§ 2. Section 1055 of the New York city charter, as added by vote of the electors of the city of New York at a general election held on November 8, 1988, subdivision 6 of such section as amended by vote of the electors of the city of New York at a general election held on November 7, 1989, shall be amended as follows:

§ 1055. **Coordinator of voter assistance.** The mayor [commission] shall appoint [, upon nomination of the mayor,] with advice and consent of the council, a coordinator of voter assistance. The coordinator shall:

1. encourage and facilitate voter registration and voting by all residents of New York City who are eligible to vote and recommend methods to increase the rate of registration and voting by such residents;
2. identify groups or categories of such residents who are underrepresented among those registered and those voting and recommend methods to increase the rate of voter registration and voting among such groups and categories;
3. adopt rules establishing the content and format for city agencies to follow in preparing the annual voter assistance plans required by section one thousand fifty-six of this charter;
4. consistent with all state and local laws, coordinate the activities of all city agencies in general and specialized efforts to increase registration and voting including, but not limited to, the distribution of forms for citizens who use or come in contact with the services of city agencies and institutions; mailings by city agencies to reach citizens; cooperative efforts with non-partisan voter registration groups, community boards, agencies of city, state, and federal governments, and entities doing business in the city; and publicity and other outreach programs.
5. monitor voter registration and voting in New York City, and receive citizen complaints regarding such processes;
6. submit annually, no later than July thirtieth in each year, to the voter assistance commission a public report on the state of voter registration and participation in the city. Such report shall include, but not be limited to (a) a description of the activities of the voter assistance program and the effectiveness of those activities in achieving the goals of the program; (b) the number of voter registration forms distributed by the program, the manner in which those forms were distributed and the estimated number of persons registered through the activities of the program; (c) the number and characteristics of citizens registered and unregistered to vote during the previous primary, general and special elections and for the most recent time period for which such information is available; (d) the number and characteristics of citizens who voted during the previous primary, general and special elections; (e) a review and analysis of the voter registration and voting processes in New York City during the previous year; (f) recommendations for increasing voter registration and participation; and (g) any other information or analysis the commission deems necessary and appropriate; and
7. prepare and publish studies and reports on issues of relevance to voter registration and participation in New York City.

V. The Preliminary Mayor's Management Report ("PMMR")

Issue: Should the Charter be amended to reform the performance reporting provisions of the Charter to focus resources toward improved public accountability?

Relevant Charter Provision: § 12

Discussion: More than 25 years have passed since the City Council added agency performance reporting requirements to the New York City Charter. In its debut, these requirements represented an early milestone in a nationwide movement toward greater accountability in government. The world of performance measurement and monitoring in New York City has since changed and matured; however, the Charter requirements have remained rooted in their mid-1970s thinking and approach.

In his first State of the City address, Mayor Bloomberg directed a complete overhaul of the Mayor's Management Report to improve public accountability and to bring it into the 21st Century. While it continues to be a work in progress, the Mayor's Management Report has since been redesigned as a public report card that makes it easier for citizens, civic groups and public officials to get information about City agencies, and judge how well and how cost effectively they're functioning. It emphasizes results, links performance to the City's budget, and uses technology to make it user friendly and accessible. The Report is required to be submitted twice yearly. The Preliminary Mayor's Management Report provides a four-month snapshot of performance, which is later followed by a Final Report, evaluating the full fiscal year.

Consistent with the Commission's scope of review on government accountability, it should consider amending the New York City Charter to eliminate the outdated requirement that a Preliminary Mayor's Management Report be published annually on January 30th. As detailed below, this requirement should be repealed because: (1) it is no longer necessary as a result of technological advances which allow for greater public accountability; (2) it is not an effective means of assessing or improving agency performance; and (3) it is relatively expensive to produce without a lot of "bang for the buck" in terms of reporting on the delivery of citywide programs and services.

Technological Advances

When the Charter requirement for the Preliminary Mayor's Management Report (PMMR) was introduced in 1977, City government lacked most of the technical tools that now facilitate tracking and reporting information on services. The report was made available only

through distribution of printed copies, rather than the Internet; and agencies lacked the computer tools that now make it relatively easy to compile and report monthly performance statistics as well as figures for local service districts. Today, these new tools have enabled the City to exceed the intent of the Charter with respect to the frequency of performance reporting, the availability and ease of distribution of information to the public, and the informational content provided to New Yorkers. Widespread use of the Internet, the development of geographic information systems, easy-to-use database tools, and the availability of information captured directly from the public through the 311 Citizen Service Center, have fundamentally changed the information environment since the PMMR was first conceived.

In 2001 with the launching of the Citywide Accountability Program (Capstat), the City took a giant leap forward to provide the public with more information about performance results. While much work needs to be done to expand and improve this program, its monthly online performance updates far outpace the once a year publication of the Preliminary Mayor's Management Report. As such, Capstat provides greater disclosure and allows for better governmental planning than the PMMR.

Other ways that New York City has applied technology to improve public accountability include the innovative geographic information system, My Neighborhood Statistics, which was launched in September 2002. This Internet application allows users to display community information based on a specific street address or street intersection, provides the viewer with a thematic map that allows for easy comparisons of highs and lows in different neighborhoods, and allows the user to download statistics for use in a number of spreadsheet programs.

Through the Capstat and My Neighborhood Statistics programs, the City provided performance data online to over 56,000 users in the five months between the release of the PMMR and the end of the fiscal year (February through June 2003). In contrast, the combined interest in the PMMR on the web and through the distribution of the printed publication during the same timeframe amounted to less 4,300.

Finally, in 2003, the City launched its 311 Citizen Service Center. The Center provides real time information on agency service requests, complaints and other public inquiries, which will be used to make government more responsive to public needs, to evaluate service priorities and strategies, and to make service operations more efficient.

Effectiveness

While technology has rendered the Preliminary Mayor's Management Report obsolete, its value as a tool for New Yorkers to assess service delivery or for City agencies to improve performance is also questionable. This is primarily a result of the timing of its completion, which only allows for the collection of four months of statistics.

The Preliminary Mayor's Management Report is required to be submitted each year, approximately two weeks after the City's Financial Plan is made public. It is mandated to include statistics on performance results during the first four months of the fiscal year, and to establish proposed performance goals for the next fiscal year based on the Preliminary Budget. The two-week period between the Preliminary Mayor's Management Report and the Financial Plan makes it virtually impossible to reflect or revise agency information based on the new budget projections.

Additionally, the four-month reporting requirement, representing just a third of the year, has its limitations. The first four months of the fiscal year do not provide sufficient time to forecast performance for the entire year with any degree of confidence. It is also generally too short a timeframe to allow a realistic look at performance trends because of many seasonal influences. Four-month data is especially irrelevant for indicators related to the City's capital program since the bulk of capital work is completed toward the end of the fiscal year. Finally, many significant performance measures are reported only on an annual basis (for example, math and reading test scores, and health-related data), and are therefore not updated in the Preliminary Report.

It is also worth noting that in setting a new course for the overhaul of the Mayor's Management Report, a survey and series of interviews were undertaken with elected officials, government interest groups, and academics to assess the usefulness of the Report. Those most familiar with the Report did not differentiate between the Final and the Preliminary Mayor's Management Reports or use them any differently. In fact, the Charter-intended distinctions between the documents seemed completely lost. In the interviewing phase of the project some went so far as to suggest the elimination of the Preliminary Mayor's Management Report.

Costs

While not as important as assessing the need for or value of the Preliminary Mayor's Management Report, its preparation comes at a significant cost to the City. It currently involves

an intensive twelve-week process requiring nearly full time attention from 40 staff members from the Mayor's Office of Operations, as well as the involvement of at least 100 other City employees in over 40 agencies. Additionally, while costs for publishing the Preliminary Report have been significantly scaled back due to its major overhaul, there are still non-personal service expenses related to its printing and mailing.

More importantly, the production of this report significantly diverts agency and Operations' resources and attention from other ongoing concerns without adding significant value over and above the full-year Mayor's Management Report.

In conclusion, the Preliminary Mayor's Management Report is no longer needed. The full-year performance data included in the Final Mayor's Management Report, which is the most reliable data available on City services, addresses the needs of almost all users – for basic accountability in agency performance, for general analysis of trends in performance, and for evaluation of the City's budget. The partial-year updates included in the PMMR are significantly less informative and do not add significant value beyond the Final MMR. For users who demand more detailed data – including monthly updates and data by individual neighborhoods, neither of which are included in the PMMR – new reporting vehicles (Capstat and My Neighborhood Statistics) have already been created and are undergoing refinements to provide increasingly useful information to the public.

Testimony before the Commission from a representative of the Fund of the City of New York and the Chair of the IBO Board supported this change, which was opposed by the Speaker of the City Council. The City's Director of Operations also supported the change. The Commission recommends that the Charter be amended to reflect the new realities of modern performance reporting, allowing the City to drop the duplicative effort involved in producing the PMMR and concentrate on more valuable and innovative tools for accountability. If approved by the voters, this change would take effect immediately.

PROPOSED CHARTER LANGUAGE

Section 1. Section 12 of the New York city charter, as amended by vote of the electors of the city of New York at a general election held on November 7, 1989, is amended to read as follows:

§ 12. **Mayor's management report.**

a. Not [later than January thirtieth in each year the mayor shall make public and submit to the council a preliminary management report of the city and not] later than September

seventeenth in each year the mayor shall make public and submit to the council a management report.

b. [The preliminary management report shall contain for each city agency (1) a statement of actual performance for the first four months of the current fiscal year relative to the program performance goals and measures established for such year;

(2) proposed program performance goals and measures for the next fiscal year reflecting budgetary decisions made as of the date of submission of the preliminary budget;

(3) an explanation in narrative and/or tabular form of significant changes in the program performance goals and measures from the adopted budget condition to the current budget as modified and from said modified budget to the preliminary budget statements; and

(4) an appendix indicating the relationship between the program performance goals and measures included in the management report pursuant to paragraph two of this subdivision and the corresponding appropriations contained in the preliminary budget.

c.] The management report shall include a review of the implementation of the statement of needs as required by subdivision h of section two hundred four and shall contain for each agency

(1) program performance goals for the current fiscal year and a statement and explanation of performance measures;

(2) a statement of actual performance for the entire previous fiscal year relative to program performance goals; (3) a statement of the status of the agency's internal control environment and systems, including a summary of any actions taken during the previous fiscal year, and any actions being taken during the current fiscal year to strengthen the agency's internal control environment and system;

(4) a summary of rulemaking actions undertaken by the agency during the past fiscal year including

(a) the number of rulemaking actions taken,

(b) the number of such actions which were not noticed in the regulatory agenda prepared for such fiscal year, including a summary of the reasons such rules were not included in such regulatory agenda, and

(c) the number of such actions which were adopted under the emergency rulemaking procedures;

(5) a summary of the procurement actions taken during the previous fiscal year, including: (i) for each of the procurement methods specified in section three hundred twelve, the number and dollar value of the procurement contracts entered into during such fiscal year; and

(ii) for all procurement contracts entered into pursuant to a procurement method other than that specified in paragraph one of subdivision a of section three hundred twelve, the number and dollar value of such procurement contracts by each of the reasons specified in paragraph one of subdivision b of section three hundred twelve; and

(6) an appendix indicating the relationship between the program performance goals included in the management report pursuant to paragraph two of this subdivision and the corresponding expenditures made pursuant to the adopted budget for the previous fiscal year.

[d.] c. For agencies with local service districts or programs within community districts and boroughs, the mayor's [preliminary management report and] management report insofar as practicable shall include schedules of agency service goals, performance measures and actual performance relative to goals for each such local service district or program.

[e.] d. [Prior to April eighth in each year the council shall conduct public hearings on the preliminary management report and on the proposed program and performance goals and measures of city agencies contained in such report. The council shall submit to the mayor and make public not later than April eighth a report or reports of findings and recommendations.] Nothing in this section shall limit the powers of the council pursuant to sections twenty-eight and twenty-nine of the charter.

GOVERNMENT ADMINISTRATION: EFFECTIVE DATE PROVISION AND SEVERABILITY CLAUSE

Section 1. Section 1152 of the New York city charter is amended by adding a new subdivision j, paragraph (3), to read as follows:

(3) (a) The amendments to the charter, adding new sections thirteen-a and twenty two hundred three-a and amending sections twelve and twenty six hundred six, approved by the electors on November fourth, two thousand three, shall take effect immediately, and thereafter shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees.

(b) The amendments to sections one thousand fifty-four and one thousand fifty-five of the charter, approved by the electors on November fourth, two thousand three, shall take effect April

first, two thousand four, and thereafter shall control as provided with respect to all the powers, functions and duties of officers, agencies and employees. The term of any member of the voter assistance commission serving on such effective date shall be deemed expired on such date, and the chair of such commission and the voter assistance coordinator may thereafter be selected or removed in a manner consistent with such amendments. Officers and employees of the city shall take any actions as are necessary and appropriate to prepare for the implementation of such amendments prior to such effective date.

(c) If any clause, sentence, subparagraph, paragraph, subdivision, section or part of the amendments described in subparagraphs (a) and (b) of this paragraph shall be adjudged by any court of competent jurisdiction to be invalid or otherwise cannot be implemented pursuant to law, such judgment or inability to implement shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered or in the matter with respect to which implementation may not occur.

OTHER ISSUES CONSIDERED BY THE COMMISSION

The Commission considered a variety of topics, specific proposals and comments submitted by the public, Commission members, City Agency staff, and deferred by previous Commissions. The Commission staff made numerous presentations on those topics and proposals at public meetings of the Commission. The Commission considered both the written and oral testimony, and transcripts thereof, and staff memoranda that it received on these issues and others. Indeed, although the Commission has recommended a number of the proposals it received from the public and agency staff for inclusion on the ballot, there were many issues they did not recommend for inclusion. In general, the Commission felt that the areas of election reform and procurement had been reviewed extensively and require significant change in the near future for reasons stated elsewhere in this report. The Commission further highlighted the few issues that it found to be most pressing among the remaining issues for inclusion. However, because many other proposals would make important changes to the Charter to enhance significantly the operations of City government, the Commission recommends that a number of them be considered by a future Commission. The Commission further recommends that all other issues deferred by previous Commissions also be reviewed by a future Commission.

- **Salaries of Elected Officials**

Issue: Should the Charter be amended to provide that salary increases for elected officials only take effect after they have been elected to a second term of office?

Relevant Charter Provision: § 27

Discussion: The City Council currently has the power to adopt, and the Mayor to approve, local laws that increase their salaries, and the salaries of other elected officials, whenever they wish and in whatever amount they choose. These increases in salary can be made effective not only immediately, but also retroactively. Any such salary increases can create the appearance that the elected officials are acting out of self-interest, against the best interests of the public. It is for this reason that, under the U.S. Constitution (Article 1, Section 6), salary changes for members of Congress and the President cannot take effect until they have been re-elected to another term of office. Indeed, these Constitutional requirements can create an effective check against an appearance of impropriety or abuse of power.

Currently, a Quadrennial Advisory Commission for the Review of Compensation Levels of Elected Officials, as set forth in Administrative Code § 3-601, is appointed once every four years to recommend to the Mayor and City Council adjustments in the salaries of elected officials. The rationale for the establishment of a Commission of disinterested persons that periodically reviews and makes recommendations on elected official salary levels was made explicit in an uncodified provision of the law.

That provision establishes that public service should not be limited to the wealthy or those with limited personal obligations, and that elected officials should be paid salaries sufficient to maintain a reasonable standard of living consistent with the status of their elected office. Most notably, these salaries should be high enough to avoid limiting, or compressing, subordinate salaries to levels that prevent agencies from recruiting and retaining competent managerial and executive personnel. Maintaining this goal is arguably critical at this point in the City's history where the difference between public and private sector salaries is extremely disproportionate, especially given the tradition of generous private sector perks and bonuses.

Quadrennial Advisory Commissions meet in years that fall in the middle of an elected official's term in the traditional four-year election cycle. The last Commission met, and salary increases were approved, in 1999. The rationale behind the Commission's mid-term appointment, as opposed to an end-of-term appointment, is that elected officials would be

hesitant to vote themselves a pay raise in light of an upcoming reelection campaign where public scrutiny could be focused on that issue. In turn, their hesitance could result in compression of lower level salaries, something that was intended to be guarded against.

The Commission recognizes that the possible “appearance” of a conflict exists under current law, however it determined the system was designed expressly to address problems that were operational in nature and critical to the orderly and professional functioning of City government. As such, it determined that those systems should be left to continue functioning as intended. Thus, the Commission recommends no change be made.

- **Codification of the Basic Principles of the Financial Emergency Act**

Issue: Should the principles of the State Financial Emergency Act be codified in the Charter?

Relevant Charter Provisions: §§ 250(6), 1516, 95, 227

Discussion: In 1975, the State Legislature enacted The New York State Financial Emergency Act for The City of New York (The “FEA”) in response to the City’s fiscal crisis. The FEA requires the City to adhere to a strict set of budgeting and reporting rules and places certain limits on the City ability to undertake short term borrowings. The FEA requires that the City maintain an operating budget balanced in accordance with Generally Accepted Accounting Principles. The FEA also created the New York State Financial Control Board, which monitors the City budget and assumes a higher degree of scrutiny under conditions leading to “control periods.” The FEA is currently scheduled to expire in 2008. Charter Revision Commissions have reviewed the basic principles of the FEA and incorporated many of them into the Charter. This Commission has reviewed these basic principles and found that some principles already exist, some existing provisions can be expanded, and some require further review. The following basic provisions of the FEA are already incorporated in the City Charter:

- Four-Year Financial Plan § 250(6)
- Budget balanced in accordance with Generally Accepted Accounting Principles (“GAAP”) at beginning of fiscal year § 1516
- Annual audit by an independent accounting firm § 95
- General debt service fund § 227

The incorporation of additional provisions of the FEA requires significant further review. Many of the remaining provisions of the FEA, which was enacted by State legislation, are not

easily incorporated into local law. For example, the State Covenant not to change certain provisions of the FEA is not easy to replicate in local law. In addition, the requirement that the City's budget be balanced in accordance with GAAP at the close of the City fiscal year requires serious consideration. Because we are not faced with the imminent expiration of the FEA and because these issues call for significant thought and attention, the Commission does not recommend Charter revisions that include FEA provisions at this time. Rather, building on information received from the Office of Management and Budget and the Independent Budget Office, the Commission recommends that the City or a future Commission give serious consideration to this topic and commence a dialog now to get input from the many groups interested in this subject (such as the rating agencies) to determine a workable proposal prior to the expiration of the FEA. Commissioner Newman has noted that as a matter of great importance to the City, this matter should be a priority of the next Charter Revision Commission or other local body.

- **Unfunded Mandates**

Issue: Should the Charter ban unfunded mandates and provide that mandates arising from local law be made binding upon the City of New York only to the extent that funding is actually appropriated to accomplish such mandates?

Relevant Charter Provisions: §§ 33 and 217(d)

Discussion: In these times of fiscal austerity, the issue of avoiding unfunded mandates is critical. Currently, the Charter provides no mechanism for ensuring that mandates arising from local law be made binding upon the City only to the extent that funding is actually appropriated to accomplish such mandates.

Elected officials have in the past enacted mandatory programs without answering the hard questions of which taxes to raise or which other programs to cut in order to obtain the funds to pay for the new programs. Although § 33 of the Charter requires that fiscal impact statements accompany proposed laws or budget modifications, it contains no requirement that the fiscal impact statement specify where or how the estimated funds necessary for a newly-enacted general program to be implemented by the City will be obtained.

If the purpose of fiscal impact statements is to ensure that lawmakers fully confront the economic consequences of their actions, the current Charter provision thus meets this goal only halfway. The fiscal impact statements that are required by § 33 supply, as it were, the "pricetag"

of a measure, but they do not require lawmakers to consider how to find the money to pay that price. The merits of a proposed program cannot be meaningfully analyzed with such partial information: it is only when one considers which other programs need to be cut or which taxes need to be raised that the benefits and drawbacks of a new proposal can be fully assessed. Mandating the inclusion of such information in fiscal impact statements would thus promote better informed and more accountable policy-making.

Requiring the City Council to provide meaningful financial information at the time a law is adopted, while important, does not completely solve the problem of unfunded mandates. After passing a local law, the fiscal consequences can be ignored or the necessary appropriations can simply be omitted from the budget. In these circumstances, courts are invited to play a role that they are not well equipped to discharge. In particular, if a new law contains mandatory language or specified quantifiable goals, then courts may become the arena where the budgetary battles are fought. The judiciary, however, should not be faced with having to evaluate budgetary priorities, and relegating such funding decisions to courts both encourages fiscal confusion and dilutes political accountability.

The issue of unfunded mandates in New York City is complicated and goes to the heart of the intergovernmental dynamic. The Commission defers this issue to a future Commission.

• **Comptroller Registration**

Issue: Should the process that governs the registration of contracts by the Comptroller be reformed?

Relevant Charter Sections: Charter §§ 93 and 328

Discussion: Charter §§ 93 and 328 give the Comptroller certain specific powers in connection with the registration of contracts. Specifically, a contract may not be implemented until it is registered by the Comptroller. The Charter requires the Comptroller to register a contract within 30 days of its being filed.

The Comptroller may, however, refuse to register a contract where he has information indicating that: (i) there are insufficient appropriated funds to pay the estimated cost of the contract; (ii) a certification by the Mayor (regarding certain procedural requirements) or by Corporation Counsel (regarding the legal authority of the agency to award the contract) has not been made; or (iii) the proposed vendor has been debarred (a procedure that no longer exists in

the current Charter). In addition, when the Comptroller has reason to believe that there may have been corruption in the letting of the contract or that the proposed contractor is involved in corrupt activity, the Comptroller may deliver to the Mayor a written objection to the contract's registration, stating his grounds in detail. The Mayor must respond by identifying the corrective actions he is taking or by indicating in detail the reasons he disagrees with the Comptroller, but once he provides such a response, the Mayor may require registration despite the Comptroller's objections.

Historically, tension has existed between Mayors and Comptrollers over the use of this registration function, on occasion, as a vehicle for Comptrollers to raise various policy objections to particular procurements and/or to procurement processes, without a clear corruption-related basis for such objections. The 1975 Charter Revision Commission attempted to resolve this tension by mandating that the registration process occur within a limited 30-day time frame. But the problems continued beyond that charter revision, so the 1989 Charter Revision Commission revisited the issue, and sought to clarify and circumscribe the Comptroller's role. The compromise reached by the 1989 Charter Revision Commission was for the Comptroller's role to remain primarily ministerial (checking for sufficient funds, the appropriate certifications, and whether the proposed vendor has been debarred), with only limited discretion to raise the possibility of corruption and compel the Mayor to respond, and without discretion to affect the ultimate outcome where the Mayor intended a contract to be registered. Structure and Processes, 42 N.Y.L. Sch. L. Rev. at 895-96. This compromise (as currently set forth in the Charter) involved a "limited role for the comptroller," and "kept the policy goal of mayoral accountability intact." *Id.* Following the 1989 Charter revision, the PPB promulgated a rule (Rule 2-12) setting forth the documents which must be included with any contract submitted for registration, to permit the Comptroller to discharge his mandate to ensure that procedural requisites were met. Nonetheless, tensions persisted following the 1989 Charter revision.

Notwithstanding the efforts by successive Charter Revision Commissions and ruling by the courts, the registration process is still not a smooth one in every instance. When the Comptroller objects to a given contract—whether based upon a suspicion of corruption or upon other grounds, such as policy or price—such an objection can set in motion a lengthy and divisive tug-of-war with no real rules for resolving the dispute. A practice has evolved whereby the Comptroller, constrained by the language of the Charter, writes a letter “returning” (i.e., not rejecting or refusing to register) a contract that has been submitted by the Mayor, purportedly for

the purpose of “allowing” the agency or the Mayor to respond to various questions the Comptroller has, provide various documents (besides those required by the PPB rules) the Comptroller wishes to review, or take an opportunity to reconsider the procurement. On occasion, the Comptroller engages in this “returning” process more than once for the same contract. However, the Comptroller lacks the legal authority to engage in this process because it is outside the structure and intent of the Charter. Although the vast majority of contracts are registered without any such dispute, the potential for a detailed examination by the Comptroller of every aspect of the policy and pricing decisions behind each contract has a corrosive effect upon agencies’ decision-making processes, and particularly upon their efficiency and timeliness.

The Commission reviewed this issue extensively and considered a staff proposal to reform the process. However, after hearing testimony by the Comptroller on the issue, and because certain administrative reforms in this area were announced during the Commission’s deliberations, the Commission decided not to recommend any change at this time, but defer review of this issue to another Commission if appropriate.

- **Board of Correction**

Issue: Should the role of the Board of Correction be clarified to reflect regulatory realities in the Charter?

Relevant Charter Provision: § 626

Discussion: Charter § 626, establishes the Board of Correction and empowers it to adopt rules and inspect institutions and documents under the control of the Department of Correction (“DOC”). Although the staff believes that the Board was intended to have an advisory role with respect to DOC’s operations, the Charter does not clearly define this role. The Charter provides that the board may “submit to the mayor, the council, and the commissioner reports, findings and recommendations in regarding matters within its jurisdiction.” § 626(d). In addition, the Charter also provides that the Board may “study or investigate any matter within the jurisdiction of the department, and the board may make recommendations and submit reports of its findings to the appropriate authorities.” The language of the Charter does not specify the “matters within (the Board’s) jurisdiction,” nor does it explain which persons constitute the “appropriate authorities.” In the past, this language has been interpreted to create an advisory role for the Board of Correction, but in other instances the language has been interpreted to establish a role of oversight.

However, oversight is already currently provided for the Department of Corrections by the State Commission of Correction (“SCOC”), a regulatory body with broad powers pursuant to Article 3 of the Correction Law. This law establishes minimum standards for the operation and management of the City’s jails and provides for regular inspections. Oversight of medical and mental health services to inmates is subject to limited review by the New York State Department of Health and the Office of Mental Health. In addition, training programs for DOC’s peace officer employees must meet standards promulgated by the SCOC or the State Department of Criminal Justice Service’s Office of Public Safety, and must be approved by either or both of those bodies. All conditions of confinement are subject to judicial scrutiny, and many of DOC’s current policies and procedures are in place due to court decisions and orders regarding prison conditions.

DOC has made advances in ensuring proper inmate care in response to court orders resulting from cases brought by the above-mentioned State agencies. Because State agencies and the courts already provide for layers of regulatory control and oversight for DOC, Charter language clarifying the Board’s role as an advisor could be one way to ensure that its work is focused exclusively on those functions. Although the Commission does not recommend a Charter change at this time, it defers consideration of this issue to another Commission.

- **Independent Budget Office**

Issue: Should the Independent Budget Office be eliminated or reformed?

Relevant Charter Provisions: § 259

Discussion: The Commission staff re-examined an issue studied by the 1999 Commission of whether the Independent Budget Office (“IBO”) should continue to be funded with public money. The IBO is an independent office, established by Charter § 259, that is not under the control of the Mayor. The IBO performs the function of providing budget information to the public and to elected officials. While this office is intended to be an independent body, the Charter requires that its budget not be less than 10% of the budget for the Office of Management and Budget. The 1999 Commission concluded that the IBO’s functions are for the most part redundant, due to the fact that many government entities and private groups are already engaged in reviewing and analyzing the City’s Budget. Among these are the Council, Comptroller, State Financial Control Board, and the State Comptroller. While the 1999 Commission stated that the existence of the IBO merely adds another fiscal monitor to the Budget review process, it

concluded that more time was needed to analyze past reports that have been issued by the IBO, in order to make a more precise assessment as to whether this office should continue to receive public money. The 2001 and 2002 Commissions reviewed the issue, but also deferred it for consideration. The staff recommends that this issue be deferred for further consideration during another election cycle.

- **Commission on Public Information and Communication**

Issue: Should the Commission on Public Information and Communication be eliminated?

Relevant Charter Provision: § 1061

Discussion: COPIC was created to review public information policies and assist city agencies in facilitating public access. The Charter establishes the Public Advocate as COPIC's Chair. Heads of various related city agencies (or their designee) sit on the Commission. Those agency heads include the Corporation Counsel, the Director of Operations, the Commissioner of the Department of Records and Information Services ("DORIS"), the Commissioner of the Department of Information Technology and Telecommunications ("DOITT"), the President of the WNYC Communications Group (no longer in existence), and a Council Member elected by the City Council.

In addition, there are four appointees from the private sector: two appointed by the Mayor, one by the Borough Presidents acting together, and one by the Public Advocate. These appointees are meant to bring skills and experience to COPIC to improve the City's information technology and access.

COPIC is required to hold one hearing and issue one report annually, and issue advisory opinions regarding the applicability of the Charter or other laws regarding public access. Indeed, it should be noted that in reflection of the demands of public information accessibility in the electronic era, the City recently enacted a local law to require that all annual reports of the City agencies be made available to the public and DORIS in an electronic format.

COPIC's historic inactivity is due primarily to budget limitations. Although funds have not been provided to fulfill its Charter mandate, there does not appear to be a call for reform of COPIC necessitating a Charter revision at this time. Accordingly, this issue should be deferred for consideration by another Commission.

- **Equal Employment Practices Commission**

Issue: Should the Equal Employment Practices Commission (“EEPC”) be reformed?

Relevant Charter Provision: Chapter 36

Discussion: The EEPC was established by the 1989 Charter revision and began its work in 1992. EEPC is an independent commission that evaluates and monitors the employment procedures, practices and programs of City agencies, including the City’s central personnel agency, the Department of Citywide Administrative Services (“DCAS”), and the Civil Service Commission, to maintain an effective affirmative program of equal employment opportunity for minority group members and women who are employed by or who seek employment with the City. EEPC’s staff is headed by an Executive Director chosen by the Commission.

EEPC’s core functions include: reviewing the uniform standards, procedures and programs for equal employment opportunity at DCAS and all other City agencies for minority group members and women employed by, or seeking employment with, City agencies; recommending to DCAS and all other City agencies procedures, approaches, measures, standards and programs to be utilized to ensure fair and effective equal employment opportunity for minority group members and women; auditing and evaluating the employment practices of every City agency at least once every four years and whenever requested by the Civil Service Commission or the City’s Human Rights Commission; holding public and private hearings, and compelling the attendance of witnesses, if necessary, and administering oaths; establishing appropriate advisory committees to assist the Commission in addressing its mandate; and publishing an annual report to the mayor and City Council on the Commission’s activities.

The EEPC is comprised of five commissioners, two appointed by the Mayor, two by the City Council, and a Chair appointed jointly by the Mayor and Council Speaker. EEPC commissioners serve in staggered four-year terms and receive per-diem compensation for their service on the Commission.

Operational Challenges

EEPC’s expense budget is funded exclusively from City tax levy dollars. It does not generate revenue, receive state or federal funding, or have a capital budget. EEPC faces many operational challenges. Since 1992, EEPC has been audited twice by the Comptroller, once in 1997 and again in 1999. Both audits faulted EEPC for not meeting its Charter mandate to audit at least twenty-eight agencies per year, and failing to adequately supervise its capital budget purchases and timekeeping practices. The audits found that EEPC failed to meet its auditing mandate because the Vacancy Control Board thwarted the hiring of new EEPC staff. Currently,

EEPC still cites the need for increased staff to enable it to meet its mandate. Nonetheless, it appears that the number of audits EEPC has performed since the Comptroller's audits of it has increased. The Commission recommends that issues involving the EEPC be reviewed by future Commissions.

- **Department of Education and District Cabinets**

Issue: Should the Department of Education have a representative included in the District Cabinets?

Relevant Charter Provision: Chapter 69

Discussion: Based on the idea that each borough of the city is a conglomeration of smaller communities, and that the City government can most efficiently serve the people by meeting the needs of those communities on an individual basis, the City Charter establishes a method of providing support at the most local level through Chapter 69, "Community Districts and Coterminality of Services." As the Charter currently mandates, each borough is broken into smaller community districts, as explained in Section 2701. Pursuant to this section, each district has a specified size and population, carrying certain civic functions designed to promote "efficient and effective delivery of those services of municipal agencies required to be made coterminous with the community districts"

Section 2705 requires that each community district establish a cabinet of agency representatives in order to "deliver services in the community district" most effectively. While not specifically outlining the agencies that should have a representative in these district cabinets, the Charter does delineate the areas of concern that the cabinets should be able to address. Subsection 2 of Section 2705 explains that the members of the cabinet should include, "Representatives of other agencies that provide local services on a regular basis in the community district" From the plain language of the Charter, it appears that a representative from the Department of Education could serve as a District Cabinet member because public schools provide their local communities with services on a regular basis. Although the Commission found that no Charter change is required, it nonetheless recommends that the Department of Education take steps to serve as members of District Cabinets.

- **Merger of the Department of Juvenile Justice and the Administration for Children Services**

Issue: Should the Department of Juvenile Justice and the Administration for Children’s Services be merged?

Relevant Charter Provision: Chapters 24-B and 28

Discussion: The Administration for Children’s Services (“ACS”) became a Charter Agency as a result of the 2001 Charter revision (Chapter 24-B). The concern for the protection of this most vulnerable population of children led to the combination of various child-related services that had existed under various agencies. ACS investigates and deals with over 50,000 cases of child abuse annually. Its mission is to provide for safe and appropriate homes for children in foster care. In addition, it provides for subsidized child care and early childhood education. ACS also assists in certain child support issues.

The Department of Juvenile Justice (“DJJ”) is also a Charter agency (Chapter 28). The population served by the DJJ is a different group of children than those served by ACS. These are children that are alleged to be, or have been adjudicated as, juvenile delinquents or offenders. This population has committed offenses as opposed to being, per se, the victims of offenses, typically child abuse and neglect, who handled by ACS.

Given the vastly different roles of these two agencies in the City’s child welfare community, the Commission found that merger of them would likely undermine their separate and distinct roles. Further, such a move would not be in keeping with modern thinking among social scientists, social workers and public policy experts on the issues involved with the care of at-risk youth and juvenile detention and rehabilitation. Accordingly, no change was recommended.

- **Water Utility/Department of Environmental Protection**

Issue: Should the Department of Environmental Protection (“DEP”) be divided into a water utility agency and a separate environmental agency?

Relevant Charter Provision: Chapter 57

Discussion: The DEP is a diverse agency whose primary mission is to deliver potable water to those in its service area. DEP is also responsible for enforcement of the air, noise, and hazardous

materials laws and rules; billing and collection of water and sewer use charges; review of environmental impact statements; and administration of the Environmental Control Board. Delivery, billing and collection for water and sewage are part of a group of direct client service missions. Prevention and treatment of environmental dangers, as well as enforcement of environmental protection laws are generally executed without significant client contact except in an adversarial tribunal function. The current charter recognizes the inter-relationship of water, sewage, air resources and emergency response in the event of the release of hazardous substances into the environment. It follows that the creation of the Environmental Control Board is a beneficial addition to city government.

The DEP is divided into three bureaus: Bureau of Wastewater Treatment, the Bureau of Water and Sewer Operations, and the Bureau of Water Supply. The Bureau of Wastewater Treatment maintains the chemical and physical integrity of NY harbor and other local water bodies through the removal of organic and toxic pollutants, control of discharges, integration of watershed management concepts into facilities' planning and design, enforcement of a city-wide industrial pre-treatment and pollution prevention program. The Bureau also operates a skimmer vessel to retrieve floatable debris from local waters, manages the Harbor Survey Program for the routine sampling and analysis of the waters in New York Harbor.

The Bureau of Water and Sewer protects of the City's drinking water. The Bureau of Water and Sewer achieves its goal by maintenance and protection of the City's drinking water and wastewater collection (sewer) system, the protection of adjacent waterways, the development and protection of the Department's Capital Water and Sewer Design Program, the inspection of water and sewer connections performed by licensed plumbers and/or authorized contractors, the approval and inspection of all public and private construction projects which could have an impact on the City's water or sewer systems, the maintaining and updating all water and sewer information records for the City.

The Bureau of Water Supply's primary function is to manage, operate and protect New York City's upstate water supply system to ensure the delivery of a sufficient quantity of high quality drinking water. It conducts extensive monitoring of water quality, both within the City's distribution system and throughout the upstate watersheds. It is also responsible for system planning, management and acquisition of lands, enforcement of watershed regulations, and security.

During the 1980s there were significant complaints regarding DEP's transition into customer service via its water metering program. However, those complaints have dramatically reduced over time. At this time, the DEP includes within its agency subdivisions the Bureau of Customer Services, and a One Stop Information and Referral Center. The reduced complaints and DEP's efforts at improving customer service, indicate a positive trend. Conclusions about the benefits of separating the agency could be drawn only after a detailed investigation. Currently the benefits of centralization would appear to outweigh the benefit of separation of duties into a Water Utility Agency. Accordingly, the Commission does not recommend a Charter change at this time, but recommends that a future Commission review the issue.

- **Agency Responsibility for New York City Bridges**

Issue: Should the decision to keep bridge engineering and construction with the Department of Transportation ("DOT") instead of the Department of Design and Construction ("DDC") be re-evaluated?

Relevant Charter Provisions: Chapters 55 and 71

Discussion: DDC is a Charter agency. Its mandate was to assume the responsibility for the construction divisions of the Departments of General Services, Transportation, Environmental Protection, Sanitation and Parks. The purpose was to have one agency control the majority of construction projects in the city to deliver construction projects faster, with improved quality and customer satisfaction, increased professionalism, and better coordination of construction projects within neighborhoods. The Department is responsible for street, sewer, water main and most non-housing building construction funded by the capital budget. DDC now oversees the capital construction projects of 22 City agencies.

DOT's current functions include managing much of the city's transportation infrastructure, including city streets, highways, sidewalks, and bridges. DOT is also a charter agency and is responsible for among other things, installing and maintaining street signs, traffic signals, and street lights, resurfacing streets, repairing potholes and other street defects, installing and maintaining parking meters, managing municipal parking facilities, and operating the Staten Island Ferry.

Charter § 1202 lists some of the construction functions that fall under DDC purview: "design, construction and alteration of streets, highways, bridges and tunnels." However the

Charter also lists the “construction, alteration, and maintenance of all bridges and tunnels” as an obligation of DOT, § 2903(18)(b-1). There is an overlap of mandates between DDC and DOT as both agencies have listed the construction and alterations of the City’s bridges as one of their duties.

Commission staff reported on the perspectives of personnel at each of the agencies and that, in their view, the present arrangement is working well. It has been stated that because DOT has responsibility for bridge maintenance it is appropriate for DOT to keep bridge construction. Bridge maintenance and construction involve the same discrete set of skills and expertise and should not be separated. Maintaining the bridge infrastructure is vital to the economic health of the city. Currently, it appears to be functioning successfully. The issue of separating bridge maintenance from construction appears to be a complicated one given the engineering issues involved in the infrastructure. It is recommended that a future Commission review this issue to see if a change is then warranted.

- **Taxi and Limousine Commission and Department of Transportation Merger**

Issue: Should the Taxi and Limousine Commission (“TLC”) be merged into the Department of Transportation (“DOT”)?

Relevant Charter Provision: Chapters 65 and 71

Discussion: DOT regulates parking and traffic operations, highway operations, ferries and related facilities. Charter section 2300 delegates the authority of developing and improving the city’s taxi and limousine services citywide to the TLC. The TLC is charged with, “the promotion and protection of the public comfort and convenience to adopt and establish an overall public transportation policy governing taxi, coach, limousine . . . services as it relates to the overall public transportation network of the city” Currently, the Administration is taking steps to optimize the operational relationship between these two agencies given their mutual concern in the City’s transportation networks. Accordingly, no Charter change is recommended. However, the issue should be reviewed again in the future.

- **The Department of Transportation and Mass Transit**

Issue: Should the duties of the Department of Transportation (“DOT”) be modified to allow it to be involved with mass transit services and play an expanded role in the process of mass transit planning?

Relevant Charter Provision: Chapter 71

Discussion: Charter § 2903 requires the Commissioner of Transportation to monitor, report, develop and coordinate planning and programming for all forms of mass transportation within the city of New York, whether or not said transportation is within the sole operating jurisdiction of the City. Accordingly, DOT has the authority to be involved in mass transit planning and policy processes. Arguably, any expansion of this already broad authority beyond what is provided for in the Charter may require a change in State law. No Charter change is needed.

- **Uniform Land Use Review Procedure: Leasing**

Issue: Should the City’s Uniform Land Use Review Procedure (“ULURP”) be expanded to projects that the City leases?

Related Charter Provision: §§ 195, 197-c

Discussion: Prior to 1976, the City Planning Commission (“CPC”) reviewed only applications related to zoning, the City map and urban renewal and housing. In 1976, the list of applications subject to Commission review was enlarged pursuant to the Charter revision of 1989. The Charter's intent in requiring ULURP was to establish a standardized procedure whereby applications affecting the land use of the City would be publicly reviewed. The Charter also established mandated time frames within which application review must take place. Key participants in the ULURP process are now the Department of City Planning (“DCP”) and the City Planning Commission (“CPC”), Community Boards, the Borough Presidents, the Borough Boards, the City Council and the Mayor.

As established in Charter §§ 197-c (10) & (11), all dispositions and non-office space acquisitions of property, by any means, including lease, are currently governed by the Uniform Land Use Review Procedure (ULURP). All acquisitions of office space property, by any means, including lease, are currently governed by § 195 and function similarly to a slightly abbreviated ULURP. Because ULURP is already required of the City for leasing, no change is recommended.

- **ULURP and Subleasing**

Issue: Should the ULURP process be made more flexible so that City-leased surplus office space can be subleased in a timely manner to prevent waste?

Related Charter Provision: § 197-c

Submitted for Consideration by: Department of Citywide Administrative Services (“DCAS”)

Discussion: City property transactions are divided into acquisition (purchase/lease) and disposition (sale/lease-out) transactions of property. Established by Charter § 197-c, the Uniform Land Use Review Procedure (“ULURP”) is designed to govern all contracts, permits and authorizations for all city property by involving multiple agencies in the acquisition and disposition process.

Although designed to encourage uniformity, ULURP is considered a time consuming and complex process, and this loss of efficiency has led to the addition of exceptions to ULURP’s jurisdiction in the City Charter. Acquisitions of office space have been exempted from ULURP, § 197-c(11) and are handled separately in an abbreviated process governed by Charter § 195. While the handling of disposition of office space has been partially exempted from ULURP (§197-c(10)), no separate section establishes an alternate process, and ULURP still applies to portions of the disposition process. Additionally, Administrative Code § 3-406 mandates that leasing of public property requires review. DCAS has submitted a proposal to the City Council that would alter the Administrative Code, but the Council has not yet acted.

Because the Council has not yet acted, DCAS has written to the Charter Revision Commission seeking changes to the City Charter to exempt the process of subleasing City property from ULURP. DCAS claims that this change is necessary to allow the City to better compete in the real estate market. The current administrative code restricts the ability of the city to respond to changes in its own demand levels. DCAS claims that a great deal of surplus office space is unused every year, costing the City millions of dollars in rent. The current land use review and auction procedures are complex; sometimes taking up to twelve months. DCAS asserts that this added delay wastes valuable sources of potential income for the City. DCAS argues that its subletting procedure would allow the city to most efficiently manage its space needs and best maximize rental incomes.

According to DCAS, the City currently is constrained by two factors when dealing with sublet leases. The land use review process makes it difficult to facilitate a timely resolution to

sublet applications, making subletting a much less attractive option for the City. DCAS further asserts that the city has been forced to include termination clauses in their leases to protect itself in the event that a space becomes surplus. The necessary inclusion of these termination clauses has hurt the City's bargaining position and driven up lease prices. DCAS also argues that the streamlined sublet approval process would allow the city to quickly fill unused space by leasing to other groups.

The City's current system requires a new land use study when a subletting tenant in a city-leased building defaults on their sublease. The city must go through another review process before it can fill the space. Altogether, DCAS argues that these procedures make subletting city-leased buildings unfeasible in many situations.

DCAS argues that this streamlined approach that exempts the process of subleasing City property from ULURP is necessary to allow the City to better compete in the real estate market, and that it will make City government more efficient and better manage city real estate expenditures. In general, changes to ULURP require a referendum. Although the Commission acknowledged that this proposal would aid in freeing up vacant office space, and save money for the City, it deferred consideration of this issue to another Commission.

- **Fiscal Rules for Labor Welfare Benefit Funds**

Issue: Should the Comptroller's authority be explicitly extended to mandate fiscal rules for the City's Labor Benefit Funds?

Charter Provision: § 93

Discussion: Charter § 93(b) grants the Comptroller broad power to "audit and investigate all matters relating to or affecting the finances of the city, including without limitation the . . . receipt and expenditure of city fund" The Charter also grants the Comptroller the authority to prescribe accounting and reporting procedures for all agencies and to audit the agencies for compliance. § 93(m)(2). Section 93(a) of the Charter provides as follows:

"The Comptroller . . . shall advise the mayor and the council on the financial condition of the city or any phase thereof and make such recommendations, comments and criticisms in regard to the operation, fiscal policies and financial transactions of the city as he or she may deem advisable in the public interest."

The labor welfare benefit fund is established to provide union employees with benefits in excess of union contractual benefits for “supplemental” use such as eyeglasses, dental coverage and prescription drugs. These funds are managed by a board of between five and seven trustees, who are generally selected by the heads of the union local as a slate which is offered to the rank and file for election. Generally, there is no opposition to the slate, as insurgents often face an uphill battle simply to access the member list for mailings, for example. The choice of the governing body of the union is then approved by the rank and file of the respective local chapter. The trustees of the welfare fund determine how the funds shall be spent, and generally select someone to administer the overall coverage plan. The plan administrator reviews claims from members and makes appropriate payments.

Although the issue of fiscal controls is clearly important, the Comptroller’s broad powers of oversight may extend far enough to review activities of the funds to the extent that public funds are involved. Indeed, because of this existing authority, and because labor issues are sensitive and ever changing, it is recommended that no change be made at this time.

- **Pension Funds**

Issue: Should the “back office” functions of the City’s five pension systems be merged?

Relevant Charter Provision: None

Discussion: New York City has five employee pension systems: the New York City Employees’ Retirement System (“NYCERS”), Board of Education Retirement System (“BERS”), the New York City Teachers’ Retirement System (“TRS”), the New York City Police Pension Fund (“PPF”), and the New York City Fire Pension Fund (“FPF”), with combined assets nearing \$70 billion. Each system provides pension, disability, and death plans, allow for loans to members, offer options for beneficiaries, and function on a tier system. However, while the systems have many common attributes, they often have different guidelines to qualify for benefits because each system deals with different agencies that control different occupations.

The Commission found that merger of the “back office” functions of these systems is not required by or appropriate for a referendum. Indeed, the systems are currently established and operated pursuant to a series of State and local laws. Although the day-to-day management of pension investments is in the purview of the Comptroller, changes in the internal administrative controls of the systems can be highly political due to the union involvement on each of the fund

Boards. Accordingly, the determination of whether the merger of the back office functions would result in economies of scale and savings is likely best left to the Boards, working with their representatives from the Comptroller's and Mayor's offices, and not the Charter Revision Commission. Indeed, if such a plan were desired, it is arguable that it could be achieved administratively, rather than legislatively. Accordingly, no Charter change is needed at this time.

- **Joint Reports by the Departments of City Planning and Design and Construction on Infrastructure**

Issue: Should the Departments of City Planning and Design and Construction be required to submit status reports on the entire City infrastructure every 5 or 7 years?

Relevant Charter Provisions: § 191(6)

Discussion: The Charter makes little reference to mandatory infrastructure reporting by the Departments of City Planning (“DCP”) and the Department of Design and Construction (“DDC”). Charter § 1202 delineates the powers of the DDC to oversee city construction projects and acquire real estate property to fulfill construction or capital project requirements. DCP is responsible for coordinating city efforts in physical planning and public improvement projects, and mandated to assist in preparing several reports. These include the social, economic and environmental status report outlined in Charter §16 and also the strategic policy statement discussed in Charter § 17. Most relevant to this proposal is DCP’s responsibility to develop a ten-year capital strategy plan in conjunction with the Mayor. This capital report, outlined in Charter § 215, requires the City to submit a narrative describing the capital improvement strategy for the next decade considering all political, economic and social constraints. The ten-year capital strategy plan deals mainly with new capital projects, not existing infrastructure needs.

Besides DCP and DDC, other City agencies are closely involved in infrastructure planning and maintenance. The DOT is obligated to maintain the City’s bridges, tunnels and highway grid while NYC Transit (a subsidiary of the MTA, a State authority) is responsible for the care of the extensive subway network. Further, the Department of Environmental Protection (“DEP”) handles all water and sewer infrastructure maintenance while the Department of Information Technology and Telecommunications (“DOITT”) controls cable franchises and conduits for telecommunications.

DOT is mandated to develop and submit traffic improvement plans but not to develop any infrastructure reports. Charter § 1401, pertaining to DEP, does not discuss any formal infrastructure reports. Charter § 1110-a, pertaining to DOITT, outlines the most formal reporting of infrastructure status. Each year, each agency head is required to submit a description of the current status of the “capital plant” controlled by his or her agency. This must include current capital value, replacement and upkeep costs and maintenance schedules. These plans are then submitted to the Mayor and reviewed by outside engineers.

To effectively encompass the City’s infrastructure network in one comprehensive report, that report would have to include a number of agencies, not just DDC and DCP, including DOITT, DEP, DOT and NYC Transit. The Commission deferred this issue for consideration to another Commission.

- **Conflicts Of Interest Board**

The City’s Conflicts of Interest Board (“COIB”) which enforces the Conflicts of Interest Law found in Charter Chapter 68 submitted a series of proposals that the Commission considered. While the Commission has recommended one of those proposals (enhancing COIB’s enforcement authority by increasing penalties for violations of the City’s ethic’s laws) the Commission defers consideration of the other COIB proposals to a future Commission. Those proposals follow:

- **Assured Funding**

Issue: Should the Charter be amended to assure funding for COIB?

Relevant Charter Provision: § 2602

Discussion: The COIB proposed that its independence be established explicitly in the Charter by providing for an assured source of funding. As an independent ethics agency, COIB has no natural constituency and no source of revenue. This position is complicated by the fact that it regulates the very people who set its budget. Thus, it could be argued that COIB’s continued survival requires a source of assured financing.

There are several options to be considered that could provide assured funding. One possibility is making the agency self-funding, for example, by charging all of COIB’s 12,000 financial disclosure form filers a filing fee or by requiring short form disclosure by all public

servants, accompanied by a nominal filing fee. The Ohio Ethics Commission receives substantial funds in this manner, although most of the filing fees are paid by the filer's agency.

Another possibility is a guaranteed minimum budget. Such a provision might read: "The appropriations available to pay for the expenses of the board during each fiscal year shall not be less than six one thousandths of one percent of the net total expense budget of the city." See the provisions for the Independent Budget Office (Charter § 259(b)), whose budget must be at least 10% of the budget of the Office of Management and Budget. See also Mich. Const. Art. XI, § 5 (requiring that the legislature appropriate to the Michigan Civil Service Commission "a sum not less than one percent of the aggregate payroll of the classified service for the preceding fiscal year"). Under this option, every billion-dollar decrease in the City's budget would decrease the Board's budget by \$60,000; the City's Fiscal Year 2003 budget would provide COIB with a budget of about \$2.5 million.

Another form of an assured budget could provide a specific dollar amount, adjusted for inflation. Such a provision might read: "The appropriations available to pay for the expenses of the conflicts of interest board during each fiscal year shall not be less than two million five hundred thousand dollars, which amount shall be adjusted annually to reflect changes in the consumer price index for the metropolitan New York region published by the United States bureau of labor statistics." The adjustment language in that alternative provision is taken from current Charter § 2603(a) (adjustment to threshold for "ownership interest"). See, e.g., Calif. Gov't Code § 83122 (guaranteeing a budget of \$1,000,000 for fiscal year 1975-1976, adjusted for cost-of-living changes during each fiscal year thereafter, for the California Fair Political Practices Commission). COIB argues that such an increase in its budget, prudently spent, could cover the additional responsibilities given to the Board under Charter amendments presently being considered by the Board. It should be emphasized that such a provision only would set an assured minimum budget; the City could adopt a larger budget for the Board in any particular year.

COIB requests that it be able to submit a proposed budget to the Council, without amendment by the administration. COIB argues that this proposal is identical to the budget scheme adopted for the Campaign Finance Board in Charter § 1052(12)(c), with the addition of a provision governing mid-year modifications to the Board's budget. The Board's proposed budget would be public and any reductions would require affirmative action, reducing the likelihood of ill-advised cuts, while preserving the budget authority established by Chapter 10 of the Charter. The 2002 Commission deferred consideration of this issue, finding that it did not require immediate action.

IV. Investigative and Subpoena Power

Issue: Should the Charter be amended to give COIB investigative and subpoena power?

Relevant Charter Provision: § 2603

Discussion: Over the past ten years, the City has made tremendous progress in improving honesty and integrity in City government. Indeed, the COIB has played an important role in this accomplishment. To ensure that the City's elected officials and other powerful officers continue to maintain high standards in carrying out their public duties, COIB proposed that its powers be broadened to allow it to provide additional safeguards against corruption and appearances of impropriety. To this end, COIB requests the authority to conduct independent investigations of allegations of conflicts of interest and impropriety, and that it be empowered to issue subpoenas in connection with its investigations. Indeed, the authority to conduct investigations and issue subpoenas are common for bodies similar to the Board around the country, including the Securities and Exchange Commission, the Pennsylvania Ethics Commission and the Massachusetts Ethics Commission. The 2001 Commission rejected a proposal giving COIB subpoena power for fear that it would interfere with ongoing investigations at the Department of Investigation.

<i>Ethics Board</i>	Investigative <i>Authority</i>	Subpoena <u>Power</u>
Anne Arundel County (Annapolis, MD) Ethics Commission	Yes	Yes
Chicago Board of Ethics	Yes	<i>Yes</i>
Cook County (IL) Board of Ethics	Yes	<i>Yes</i>
Honolulu Ethics Commission	Yes	Yes
Los Angeles City Ethics Commission	Yes	Yes
Maui County Board of Ethics	Yes	Yes
Miami-Dade County Commission on Ethics and Public Trust	Yes	Yes
Oakland (CA) Public Ethics Commission	Yes	Yes
Seattle Ethics Board	Yes	Yes

V. COIB Clarifying Amendments

Issue: Should the Charter be amended to clarify that (1) a COIB member can act as lobbyist on his or her behalf before the City; and (2) the staff director should be known as the executive director instead of counsel?

Relevant Charter Provision: § 2602

Discussion: COIB proposed that the Charter § 2602(b) be amended to clarify that a Board member cannot act as a paid lobbyist on behalf of someone else but may act as a lobbyist on his or her own behalf, but not before the Board in violation of § 2604(b)(6).

COIB also proposed that the term "counsel," which was carried over to COIB from its predecessor, the Board of Ethics, be replaced with the term "executive director," as the person who shall serve as the staff director. First, COIB argued that the amendment reflects that the size and mission of the Conflicts of Interest Board are larger than that of the Board of Ethics. Second, it gives the Board the freedom to hire a qualified non-lawyer for the position of executive director.

APPENDIX A

SUMMARY OF TESTIMONY BY CURRENT ELECTED OFFICIALS ON NONPARTISAN ELECTIONS

Summary of Testimony by Current Elected Officials on Nonpartisan Elections

Keith Wright, New York State Assembly Member and Chairman of New York State Assembly Committee on Election Law (Statement read by Terrence Tolbert)

(Public Hearing, May 27, 2003)

- Assemblyman Wright opposes nonpartisan elections fearing that such elections could amplify any current problems with the electoral process. Councilman Wright stated that the party system is necessary to maintain the integrity of the election process in New York City. Without party oversight, candidates will be more vulnerable to the influence of special interests.
- Without the moderating effect of partisan politics the public will be subject to the exploitation of stereotypical cues because they will lack the knowledge of the candidate's core political values that party affiliation provides. Nonpartisan process will result in a less informed voting population.
- Worries that without a political party system, minority groups may face disenfranchisement. He feels that citizens will have more difficulty organizing and mobilizing without a party behind them.

Virginia C. Fields, Manhattan Borough President

(Public Hearing, May 27, 2003)

- Opposes nonpartisan elections because the public does not oppose the current process.
- Asserted that parties serve a vital function in the political process; that they provide a framework around which persons can organize causes and ideologies as well as rally around candidates with similar values. Borough President Fields notes that no evidence exists indicating that higher voter turn-out will result from nonpartisan elections.
- Expressed concern about financing and the fact that the nonpartisan system may favor those with greater financial resources since parties help to fund campaigns. Borough President Fields fears that the nonpartisan election process may have an adverse impact on minority voters, and may violate the Voting Rights Act.
- Urges the Commission to leave the system as is at least until the 2005 election cycle to avoid the appearance that the intent was to support a incumbent citywide elected person.

Bill Perkins, New York City Council Member (Deputy Majority Leader)

(Public Hearing, May 27, 2003)

- Opposes nonpartisan elections because the initiative lacks public support, the current system works well, and that eliminating party primaries will limit access

to the political process. He claims that the Charter Commission is serving as a rubber stamp for the mayor.

- Cites possible problems with financing campaigns, a function currently served by parties.
- Fears that doing away with party primaries will limit minorities' access to public office by diluting minority voting strengths
- Taking away party labels will leave voters confused as to where the candidates stand on certain issues.

David Weprin, New York City Council Member (Chair New York City Council Finance Committee)

(Public Hearing, May 27, 2003)

- Opposes nonpartisan elections because eliminating parties to fund candidates' campaigns will result in a process where the outcome is determined by the ability to finance a campaign.
- Expresses concern about voter turnout, especially by those of lower socioeconomic status.
- Cites the tradition of the party system in New York City's history and the lack of public opposition to the current process.
- Mentions that removing party affiliation may leave voters with less information about the candidate.
- Commission should conduct research into the possible affect of nonpartisan elections on voter and voter's needs.

William Thompson, New York City Comptroller

(Public Hearing, May 28, 2003)

- Opposes nonpartisan elections because it would favor people with large personal wealth and would confuse voters.

Betsy Gotbaum, New York City Public Advocate

(Public Hearing, May 22, 2003)

- Opposed to nonpartisan elections.
- Party labels convey a message.
- Eliminating party labels will give the very rich an advantage in elections.
- The primary system helps minority candidates.
- Disputes the claim that party leaders determine who gets nominated and elected.
- Feels it is a waste of money to continue having Commissions dealing with this issue.

- Eliminating primaries would create confusion and cause there to be less informed voters.

Herman D. Farrell, Jr., New York State Assembly Member

(Public Hearing, May 22, 2003)

- Opposes nonpartisan elections.
- Party labels provide valuable information and nonpartisan elections would hide that information.
- Disorder would result from making the system nonpartisan.

Michael Cohen, New York State Assembly Member

(Public Hearing, May 22, 2003)

- Opposes nonpartisan elections and asserts that the Commission is ignoring empirical evidence that supports opposition to nonpartisan elections.

Michael A. Benjamin, New York State Assembly Member (statement read by Kenneth Augusto)

(Public Hearing, May 19, 2003)

- Opposes nonpartisan elections because the current political system allows grass roots political activists to be heard.
- He believes that nonpartisan elections will elevate private ambition, individual goals and vanity over the needs of the electorate.
- Nonpartisan elections will further erode the socializing functions that political parties provide at the grass roots level.

Joel Rivera, New York City Council Member

(Public Hearing, May 19, 2003)

- Opposes the idea of nonpartisan elections because it may decrease voter participation. Pointed to examples such as Illinois that have already enacted similar procedures within the electoral process.
- Claims that nonpartisan elections would lead to wealthy people with no connection to the community being elected. Specifically expressed concern about the purchase of air time.
- He also proposed that the issue should not be put on the ballot this year, because more time was required for education.

David Yassky, New York City Council Member

(Public Hearing, May 14, 2003)

- Opposes nonpartisan elections because parties can play an important role in building ideological coalitions.
- If elections are nonpartisan, parties will just play the role of patronage dispensers and will not use their role as ideological congregations.

Pedro Espada, Jr., New York City Council Member

(Public Hearing, May 14, 2003)

- Supports nonpartisan elections because it opens up the race and removes monopoly power from the entrenched political machine.
- These elections encourage alliances of voters over issues, not party loyalty.
- The elections increase voter turnout by allowing people to vote who wouldn't otherwise because of the party primaries. Candidates have incentives to reach out to voters, after the first round of elections, who have been previously ignored by the parties.

Erik Martin Dilan, New York City Council Member

(Public Hearing, May 14, 2003)

- Opposes the idea of nonpartisan elections, but believes it should be offered on the ballot as a referendum.
- He will campaign against this, however, because the city was founded, and is based on, the party system and people vote for ideas that are represented by particular parties.

Marty Markowitz, Brooklyn Borough President (Statement read by Seth Cummins)

(Public Hearing, May 14, 2003)

- Opposes nonpartisan elections because New York City is home to a collection of small ethnic groups that can only have their interests represented by parties.
- Abandoning parties will prevent citizens and others without special means to gain the representation they deserve.
- Party labels also insure that voters who are less informed about individual candidates can at least choose to vote for a candidate from a party that represents their values. Voters who are less informed are less inclined to vote.
- New York City is at the whim of a "Republican dominated state legislature" that needs to be balanced out with a Democratically strong City, that can put pressure on the state.

**Robert Straniere, New York State Assembly Member
(Statement Read by Raymond Fasano)**

(Public Hearing, May 20, 2003)

- Supports nonpartisan elections because candidates should run on qualifications, not arbitrary political labels.
- Assembly Member Straniere pointed out that, running City Government depends more on one's ability to effectively manage the delivery of municipal services than on one's political ideology.
- Nonpartisan elections would increase the pool of qualified candidates who might not otherwise run because of their own personal political affiliation.
- Another benefit is that it could eliminate costly primary elections. Assembly Member Straniere suggested that the system hold a general election with a runoff if no candidate receives at least 40 percent of the vote.

Michael McMahon, New York City Council Member

(Public Hearing, July 15, 2003)

- Opposes nonpartisan elections because he believes that candidates have to have some beliefs, core values that identify them as being part of a party.
- Although the New York State system is wrong when it comes to things such as ballot access, he does not believe that by having nonpartisan elections in the New York is going to change the system.
- He believes that when you seek to address a problem you should address that problem and not find a side door cure that doesn't solve the problem and at the same time allows for greater manipulation of the system than exists now.
- Believes that there should be a debate, and there should be the process, but feels that the question on the ballot should be simple, and read: "Should the City of New York have nonpartisan elections or not?" And then if the voters decide yes, then the Commission should come back and do the work and answer all the questions that have been presented.

Helen Marshall, Queens Borough President

(Public Hearing, July 17, 2003)

- The possibility of increasing access for voters and prospective candidates, promoting participation in the electoral process among racial and political groups, and making government more accountable has already been accomplished to a great extent in Queens.
- The way to increase minority and female representation in public office is to increase the number of Council seats. She gave credit to reapportionment for her being able to come into office.

- The current “party system enables voters who do not know the candidates’ position on every issue, to have a general sense of what they stand for due to their party affiliation.” It is an information tool which allows the people “to get a better perspective of the candidate.”
- Eliminating the party labels will turn elections into a popularity contest, confuse voters who now know what the parties stand for, and place wealthy candidates at an advantage.
- Stated that if the Commission is “interested in making elections more accessible to voters and prospective candidates, it would modernize and upgrade the procedure and machinery used in conducting elections.”

Joseph Addabbo, New York City Council Member

(Public Hearing, July 17, 2003)

- The proposal to change to nonpartisan elections will “limit rather than increase a voter’s ability to make an informed decision prior to voting.”
- Putting two or more candidates of one party on the ballot will cause confusion to the voters and will blur the issues.

Eric Gioia, New York City Council Member

(Public Hearing, July 17, 2003)

- Gave the hypothetical that if there are two or more Democrats running and one Republican, it is likely that the Democrats will split the votes allowing the Republican candidate to win the election. He refers to this as the “tyranny of a minority.”
- In a nonpartisan election, the election becomes expensive because the candidate has to do more to reach out to more people to vote. Running elections are expensive, and to open the primaries to all registered voters would mean that the candidates cannot target specific voters.
- The key to solving this problem is to pour more public dollars into the election process and reform campaign financing.
- If the people do not look to party labels, they will start looking for other voting cues, such as race, sex, religion, name recognition, etc.
- Believes that money had an affect on the last mayoral election. Although it is not true that money will always determine an election, especially against an incumbent who was already put out into the public for the past four or eight years, money does make a big difference if the opponent does not have equal funds.

Aida L. Smith, New York State Senator

(Public Hearing, July 17, 2003)

- Opposes nonpartisan elections because “it would severely handicap grass roots, populace candidates, supported by local political clubs and organizations that depend on party affiliation to get out their message.”

Gregory Meeks, United States Congressman

(Public Hearing, July 17, 2003)

- Party affiliation means candidates do not stand for themselves; they stand for values, principles and the ideas of more than just themselves. Party affiliation promotes accountability and encourages candidates to take stands on issues.

Leroy Comrie, New York City Council Member

(Public Hearing, July 17, 2003)

- Voter turnout is especially low in areas of low socioeconomic status, and the impact of these elections hasn't been fully studied by this Commission.
- While we need to make sure that people have more valid access and reasons to come out to vote, we need to make sure that it's in a fair manner and will not be skewed to one ideology or another, one economic status or another.

David Weprin, New York City Council Member

(Public Hearing, July 17, 2003)

- It should be the responsibility, indeed the goal of every elected official, every community leader, and every political leader to increase the level of citizen civic involvement, to increase participation in government operation and through the electoral process. Nonpartisan elections and the elimination of party primaries will accomplish neither.

G. Oliver Koppel, New York City Council Member

(Public Hearing, July 21, 2003)

- Council Member Koppel believes that there are differences between the viewpoints of major parties and people should know which particular point of view you will probably represent. One can be pretty sure that Democrats, will follow, in broad aspects, the policies of the Democratic Party - and the same with Republicans.

- Council Member Koppel believes that minority candidates do not want to see themselves lose the party label. In an open nonpartisan election it is likely that minorities will have less influence percentage-wise than they do in a Democratic primary.

Jeffrey Dinowitz, New York State Assembly Member

(Public Hearing, July 21, 2003)

- The effort to eliminate partisan elections is nothing more than an effort to elect Republicans, period.
- People have every right to not register in a party, but, if they don't register in a party, then they shouldn't complain when they can't vote in the primary.
- Whether it's nonpartisan or partisan, if you are going to continue to have petitioning, then changing the process to nonpartisan isn't in and of itself going to increase ballot access.

Adolfo Carrion, Jr., Bronx Borough President

(Public Hearing, July 21, 2003)

- This proposal would have a decidedly negative impact on any voter interested in casting an informed ballot. Party philosophy matters. We're not electing bureaucrats, we are picking leaders.
- Without primaries, elections would simply boil down to who has the greater ability to raise or spend money for TV and news ads. Obviously, this benefits the wealthier candidate.

Martin J. Golden, New York State Senator

(Submission, July 22, 2003)

- Among the numerous advantages to a nonpartisan municipal election system, increased voter turnout and voter participation are clearly the most important.
- Nonpartisan elections demand a higher level of citizen awareness, as a greater burden would be placed on candidates to communicate what they stand for and how they are different from their opponents.

Betsy Gotbaum, New York City Public Advocate

(Public Hearing, July 22, 2003)

- This radical proposal to eliminate party primaries threatens the foundation of our campaign finance system.

James F. Brennan, New York State Assembly Member

(Public Hearing, July 22, 2003)

- Concerns about party boss control, I think have diminished over the years. Reforms like term limits and public financing of elections have dramatically opened up the political process in ways that we did not see many, many years ago when party organizations had a much greater lock on who got nominated for office.

Joan L. Millman, New York State Assembly Member

(Public Hearing, July 22, 2003)

- It seems to me that the problem with voter turnout is not so much party label, but other problems that we could really address. Such as poorly trained voting inspectors & outdated machines.
- People will look at identification, but they will also in this city look at qualification and see what that person has to say. I'm strongly opposed to doing away with party label.

Gifford Miller, New York City Council Speaker

(Public Hearing, July 22, 2003)

- Parties are important to the fabric of our civil society, and they're vital in identifying a set of beliefs that one can attach to a candidate that is not well known or who can't afford an expensive publicity campaign and without the primary process, without candidates being required to provide political identification, the entire process I think is open to confusion, manipulation and undue influence both by wealthy candidates.
- There are other ways if we want to encourage access, [i.e.,] same-day voter registration, which is a tremendous step forward, which would be great, but unfortunately it goes beyond the reach of this Commission. If we could actually get agencies to implement the "pro-voter bill" to get more registrations, that would encourage participation.
- The City Council caucuses by Democrats and Republicans, so party identification is important.

Marty Markowitz, Brooklyn Borough President

(Public Hearing, July 22, 2003)

- This issue of eliminating primaries should not be decided on the City level but on the State level.
- There are some problems with our current system, but don't weaken democracy - strengthen it. Strong political parties, in Borough President Markowitz's opinion, equal a strong democracy. By continuing to hold party primaries, we enhance interest and participation in the political process.
- There are far more equitable and innovative ways to get people to the polls - such as weekend, and multiple day voting, and same day voter registration.

Bill de Blasio, New York City Council Member

(Public Hearing, July 22, 2003)

- People will get involved in the political process just as they will be more likely to show up to a sporting event, when they think either team could win.
- Council member de Blasio feels the failure of local government and New York State to put the necessary resources into voter registration have led to reduced citizen involvement. Also, believes there are appropriate reforms that should be implemented to fix our system.

Scott Stringer, New York State Assembly Member

(Public Hearing, July 24, 2003)

- Argues that nonpartisan elections will not solve New York City's low electoral participation based on findings in other cities holding nonpartisan elections, including Chicago and Los Angeles, where low voter-turnout exists. Such cities act as indicators of what would lie ahead for New York City if nonpartisan elections were adopted.
- Argues that same-day voter registration would foster openness in the election process and increase voter participation overall.
- Supports increased funding to the Voter Assistance Commission to resolve low voter turnout.
- Supports the creation of a system at the Board of Elections that discusses bringing out the vote and modernizing how elections are conducted.
- Argues that nonpartisan elections would lower voter turnout because it is the existence of political parties that brings out the vote through the mobilization of volunteers, thereby fostering a more representative government.
- Calls for greater communication and collaboration between Mayor Bloomberg and state legislators in Albany to publicize and implement fundamental reforms.

Herman (Denny) Farrell, New York State Assembly Member

(Public Hearing, July 24, 2003)

- Supports the current campaign finance program because it makes it possible for minority candidates to run for office and attracts more voters by expanding the pool of candidates running for office.
- Calls for a clear ballot proposal that includes the words ‘the elimination of party primaries’ in order to demonstrate to voters exactly what is being proposed and its consequences.
- Argues that the focus of elections is about the issues, not political parties.

Keith Wright, New York State Assembly Member

(Public Hearing, July 24, 2003)

- Argues that eliminating party primaries opens the door for special interest groups to “buy influence,” in turn eroding stability in the electoral system.
- Supports political party identification as an important guide for voters to make informed decisions about candidates.
- Asserts that the existence of political parties “insures integrity in the Democratic process” and “provides a stable framework” for governing the city.

Eric T. Schneiderman, New York State Senator (Deputy Minority Leader)

(Public Hearing, July 24, 2003)

- Asserts that issues of parties and partisanship are separate and distinct from issues related to ballot access laws, campaign financing, and barriers to registration.
- Argues that parties are a critical part of stimulating voter involvement because of the diverse views represented. Voter participation rises as a result of partisanship. Parties foster an honest, vigorous debate.
- Asserts that democracy is based on ideologically-based parties--not on hidden party affiliation.

Robert Jackson, New York City Councilmember

(Submission July 24, 2003)

- People look at what party you’re affiliated with to reveal some of your ideals and what you stand for.
- For those individuals who say that many states have it, why not New York? New York is New York.
- I say it’s not broken, so don’t try to fix it.

- When I was campaigning, I said, “Come on vote for me in the Democratic primary.” Some said to me? “I’m a Republican.” I said, “Okay, take it anyhow, read my material. See you in November.”

Gifford Miller, New York City Council Speaker

(Hearing, August 19, 2003)

- I oppose the nonpartisan proposal or partisan nonpartisan proposal or whatever it is that we are actually considering.
- The Legislature has passed various improvements to the Campaign Finance law, working with the Campaign Finance Board. The proposal to require the Board to view any party expenditure that would directly or indirectly benefit a candidate as an in-kind contribution, would actually eliminate the system. I don't see how any candidate could possibly participate in the campaign finance program system under any circumstances. What you're saying is that the candidate is responsible for the actions of people that are not under his control, in which he's not aware and by definition he or she is, by definition unaware of what they're doing.
- The second proposal what I understand it to be is that, political committees of parties and parties themselves would be prohibited from making contributions to candidates. I think it's a certainly less sweeping and potentially less damaging proposal than the original, but I fail to understand what the -- I just don't understand it generally. I don't know what you mean by political committees of parties, does it mean clubs, does it mean candidates of parties?
- The City Council has repeatedly entertained from the Campaign Finance Board, from good government groups, from administrations, thoughtful, reasonable proposals on how to improve the system. The City Council actually addressed, partially, in our last amendments that were made to the campaign finance system in terms of making sure public dollars were going towards more competitive elections.

**William C. Thompson, Jr., New York City Comptroller,
Statement read by Edgar Maya**

(August 21, 2003)

- Ultimately nonpartisan elections will weaken the democratic process in New York City.
- New York voters are already independent minded and cross party lines.
- Present experience with nonpartisan elections indicates lowered turnout.
- The voters will be confused.
- Other election reforms more pressing and important such as, same day voter registration and extended voting hours.

Meryl Brodsky, District Leader 73rd Assembly District

(By Letter, received August 30, 2003)

- “It would be impracticable for any party to run its own primaries without government assistance.”
- “Nonpartisan voting might be used as a hedge to upset the apple cart where several Democrats are running – as happened in 2001 – by promoting a man ‘without a party’ who outspends any of the others. Riding on a white stallion, cross-dressed in drag, such a candidate could intentionally dilute the campaign finance law by discouraging some from running, draining resources by providing bonuses to candidates who comply with the law or eliminate matching program [sic].”
- “If primary competition was eliminated, our pattern of municipal government would characterize a fascist city-state instead of a constitutional two-party system.”

**SUMMARY OF TESTIMONY BY CURRENT
ELECTED OFFICIALS
ON THE REFORM FOR PROCUREMENT**

**Summary of Testimony by
Current Elected Officials on the Reform for Procurement**

William C. Thompson, Jr., New York City Comptroller

(Hearing, May 28, 2003)

- Sound, efficient procurement practices are important tools in the delivery of vital services to people, communities and businesses.
- There are some critical flaws in the system
- Comptroller's staff is working with the Mayor's Office of Contracts to develop administrative improvements to the contract system.
- Comptroller has joined with the City Council Leadership in forming a Joint Advisory Committee on Procurement Reform: to improve access to information and how contracts are processed; specific technology improvements and tracking in the Mayor's Management Report.
- Comptroller requested a charter change to permit rejection of a contract where there are additional specific reasons for protecting the City from a particular vendor or contract.
- Comptroller wants to have the ability to review the bid or Request for Proposals documents, which is not mandated currently.
- Comptroller does not believe that the current system of shared responsibility between the Comptroller's office and the Mayor's office for the VENDEX system should be modified through a Charter change.
- Comptroller does not want purchases from intergovernmental contracts to be exempt from the city registration review process.

Leroy Comrie, New York City Council Member

(Public Hearing, July 17, 2003)

- The present proposal limits opportunity for review and would only hurt the city's long-term ability to have a fair procurement process.

Robert Jackson, New York City Council Member

(Public Hearing, July 24, 2003)

- The proposals are, we believe, an illegal infringement on the Council's legislative powers and are unacceptable. They would violate the State Constitution and the Municipal Home Rule Law, and as a matter of policy: one, they are designed to strip the Council of power that it needs to act as an effective check and balance to the Mayor's already strong powers in procurement; two, they would provide greater opportunity for corruption; and three, they would silence the diverse voices of the Council in discussion of City procurement.

- The proposal regarding VENDEX is of little utility and it's facially illegal in that it intends to improperly restrict the Council's State-granted legislative powers.

Gifford Miller, Speaker of the New York City Council

(Public Hearing, July 22, 2003)

- Eliminating the power of the Council to amend VENDEX, to me is a dangerous idea. It is not right to allow the Mayor who is administering the procurement process to create the policies that affect how he governs himself.

Gifford Miller, Speaker of the New York City Council

(Public hearing, August 19, 2003)

- The procurement proposals are an infringement on the Council's legislative powers. Such changes are more appropriately dealt with by the legislature rather than Charter reform. The Mayor could have proposed legislation and the Council would have reviewed it after the necessary hearings.

**William C. Thompson, New York City Comptroller,
Statement read by Edgar Maya**

(August 21, 2003)

- The Office of the Comptroller is pleased that the City administration has acknowledged the need to retain the important system of checks and balances in the contract registration process. As the Comptroller testified in May, it is important for all branches of Government to be vigilant in correcting the flaws in the contract review process
- The improvements contemplated need not be pursued at the Charter Level.
- The Comptroller's Office has joined with the Council and formed an advisory committee to address the need for better procurement procedures
- Prior to the last Procurement Policy Board meeting, the Comptroller's Office in conjunction with the City Council, circulated a draft rule that would allow the payment of interest on retroactive contracts. This provision addressed cases in which a contract is registered after the work has already been performed or in some cases even completed, resulting in delayed payment to the contractor. For all vendors this proposal would mitigate the unnecessary hardship that has been created by retroactive payments
- The Comptroller's Office is aware that the City Council and the Mayor's Office are working together to resolve the VENDEX issue.

**SUMMARY OF TESTIMONY BY
ELECTED OFFICIALS
ON AGENCY MATTERS**

G. Oliver Koppel, New York City Council Member

(Written submission June, 2003)

Council Member Koppel advocates for an independent body to review the actions of the Police force. Council member Koppel believes that the present oversight and complaint process is insufficient. Therefore, he believes a Charter entity should be created to provide review and discipline when appropriate.

Gifford Miller, New York City Council Speaker

(Hearing August, 19, 2003)

Eliminating the Preliminary Management Report is a bad idea. The Mayor's Preliminary Report is an effective tool on doing oversight on the City's functioning and we have by Charter mandated oversight hearings which we take seriously and we'll continue to do and we don't see why we want to take away this tool.

APPENDIX B:

Summary of Public Testimony on Nonpartisan Elections

Summary of Public Testimony on Nonpartisan Elections

During the proceedings of the Commission, one-hundred eight-eight (188) individuals offered opinions regarding nonpartisan elections. Eighty (80) individuals were opposed to nonpartisan elections. Of these eighty individuals, thirty-three (33) were elected officials, twenty-nine (29) appeared in some relation to a political organization, and eighteen (18) appeared as private citizens. One-hundred eight (108) individuals were in favor of nonpartisan elections. Of these one-hundred eight, three (3) were elected officials, forty-nine (49) appeared in some relation to a political entity, and fifty-six (56) appeared as private citizens.

Generally, elected officials and members of the public disagree on whether nonpartisan elections should be put to ballot. A majority of public officials who testified opposed the idea, while a majority of the public who testified supported it. The arguments provided in favor of nonpartisan elections were that it will open up the political process, eliminate the influence of the political party machine on deciding who appears on the ballot, and provide for issue-driven rather than ideology-driven campaigns. Arguments against the proposal include a possible advantage to wealthy candidates and that voters can currently register with the dominant party to participate in the primary “that counts.” Many members of the public expressed concern that the removal of party labels on the ballot would remove a cue valuable to the voters.

Those in support of the reform felt it will increase minority participation and overall turnout while the ones speaking out against it argued the opposite, saying that it would decrease voter turnout and minority participation. Common proposals among proponents of election reform also included the idea of alternative voting mechanisms, such as instant runoffs and proportional representation, and reducing the number of signatures required for candidate petitions.

Public Sentiments:

Primaries:

- It makes sense to have a September primary and a general election in November.
- If there are only two candidates, there's no real reason to have a primary, just have the two candidates run with no label on the voting machine in November.
- Instant run-off voting should be instituted.

Pro nonpartisan elections:

- A nonpartisan system would provide more opportunity for the candidate to offer more visions and ideas to the voter.
- A nonpartisan system will allow more people to compete and win and ultimately help the voter out by bringing fresh new ideas to every community.

- Nonpartisan elections should be on the ballot in 2003 instead of 2004. All City Council candidates are running this year and it seems appropriate that we talk about the method of electing these council members in a year in which they're elected.
- The people in this City know for all their complaining about the climate in this nation and New York City in particular, that nonpartisan elections offers a chance to take the City back.
- There is generally a loyalty to the party. A candidate who is on party line may get the vote because the voter is guilty about not voting on the party line. The elimination of party line would allow the voter to be more objective with their selection.
- A label is not what makes you. If you run for the people and you prove to the people that you are a just and right candidate, it shouldn't matter who you are, where you are from or what's your neighborhood.
- Nonpartisan elections will allow the people to decide who speaks for them. And more than likely, the ones chosen to speak for the people will be the ones who actually listen to the people.
- Nonpartisan elections will eliminate elitism and promote better voter education, choice and inclusiveness.
- Nonpartisan elections would give you the liberty of choosing who should represent you in public office. With our present system, the major parties decide who should represent you and who should not. What is wrong with people deciding for themselves? Isn't that the heart and soul of our Constitution? Why would anybody be against that, unless they value their own power over the power of democracy?
- The political hacks will do everything to keep the present system of corruption and political patronage in place.
- If you really believe in the power of the democracy over the power of the powerful, you must let the people decide what is best for them and let them prove your point at the ballot box.

Against nonpartisan elections:

- Nonpartisan elections mislead voters and give wealthy candidates an even bigger advantage than they already have.
- Nonpartisan elections would be worse for Council races than Mayoral races because there's less information out there about candidates for City Council. So voters depend on the party label, their uniform, so to speak...to figure out who to vote for, who's on their team...It makes people feel more involved, it makes them more likely to volunteer, to participate, to stay informed. If we're serious about running the process and getting ordinary people involved in the process, we shouldn't take away team spirit.
- Nonpartisan elections will limit the ability of new parties to form and grow.
- Voters deserve full information even at the ballot. By solely using the party of the candidate's registration, voters are deprived of other valuable information about the candidate.
- The party primary is better than a back room, unofficial nominating process which is what will happen.
- Nonpartisan elections will lead to grid lock in government.
- Less valuable and even negative cues such as race and ethnicity will become the basis for voter choice.
- People who choose to be in no party know that they are not going to be allowed to vote in the primary – it's their choice.
- Voter turnout will be depressed as it is elsewhere – people like to vote for their team.

Summary of Public Testimony on Reform for Procurement

Summary of Public Testimony on the Reform for Procurement

- Public input is needed on this issue. There have been too many indications of corruption with regard to the granting of RFPs, in particular the RFPs granted by New York City Department of Parks and Recreation needs to be looked into.
- The City of New York depends on non-profit social service organizations to provide services to its most vulnerable citizens. Unfortunately, the City does not often demonstrate good business practices in its procurement procedures while partnering with human service agencies to provide those services. Our member agencies have found it increasingly difficult to maintain service levels and provide quality care because of the City's cumbersome and bureaucratic procurement system.
- There are too many instances of retroactive contracting, where payments by the city lapse, but the expenses and services have to continue. These delays hurt agencies and vendors.
- The New York City Police Department in particular is an agency which requires goods that are not typically purchased by other agencies and would like to acquire these specialized goods directly, rather than going through another agency.
- Rather than tamper with the New York City Charter provisions the Mayor, the Comptroller and the City Council should get together under the authority of the Charter and amend it from the lectern and promulgate a consolidated and updated set of procurement rules and procedures which may likewise be updated periodically.
- On the subject of delegation of procurement authority, particularly those which are operational in nature for specific products or services, while this method may give some advantages, it tends to weaken the uniform application of rules, procedures and supervision in every agency, due to lack of receipt of procurement expertise which normally is only found or resides at the centralized locations where highly developed contract laws, facilities, procedures and practices are perfected and applied.
- The reason why New York City's Government financial picture has steadily deteriorated is bad Government, particularly mushrooming contracting out and rental costs.
- We believe it is necessary to have a comprehensive law and a mandate time frame during which each phase of procurement must occur and extend financial protections to organizations in the form of interest payments and no interest loans, in cases of delays of the City's making.

APPENDIX C

Summary of Expert Testimony At Public Meetings

Summary of Expert Testimony on Nonpartisan Elections

Doug Muzzio, Professor of Political Affairs, Baruch College

**Phil Thompson, Professor of Political Science,
Massachusetts Institute of Technology**

(Forum, May 22, 2003)

On May 22, 2003, the Commission held a forum on nonpartisan elections. The two experts who testified were Doug Muzzio, professor of Political Affairs at Baruch College, and Phil Thompson, professor at the Massachusetts Institute of Technology.

Professor Muzzio, reviewing an article he wrote on nonpartisan elections, listed the three arguments in favor of nonpartisan elections: 1) weakening or destroying political parties; (2) broadening the candidate field; and (3) and providing candidates, and, by extension, elected officials, with a broader view of the electorate. He also cited claims that nonpartisan elections increase minority turnout, increase the number of minorities elected to office, and have a minimal or nonexistent impact on policy. He summarized the arguments against nonpartisan elections by citing academic claims of a class/socioeconomic bias, partisan bias, and public policy bias, and also noted that political scientists find political parties valuable. Muzzio further stated that when the party label is no longer available, some scholars have argued that other cues such as incumbency, race, and ethnicity tend to dominate. Claims have also been made that nonpartisan elections promote governmental gridlock and extremism.

Professor Muzzio stated that although nonpartisan elections have existed since the early part of the 20th Century in municipalities throughout the country, there is great ambiguity and lack of determinativeness in the social science literature. He argued, however, that some findings, although they contain weaknesses, are suggestive of “possible/plausible/probable” consequences that he found troubling: voter turnout tends to be lower in nonpartisan elections; voter participation in nonpartisan elections is skewed against those of lower socioeconomic status; race and ethnicity and incumbency replace party cues in nonpartisan systems for less engaged voters; and nonpartisan elections appear to have a Republican or at least a minor party bias. Nevertheless, according to Muzzio, the literature suggests that nonpartisan elections generally achieve their primary purpose – reducing parties' holds over nominations and elections, but also produce a series of negative results.

Stating that he is not a Voting Rights Act expert, Muzzio addressed the Voting Rights Act and questioned how nonpartisan elections would affect its concern regarding dilution or retrogression for minority voters. After agreeing with the conclusion reached by past Charter Revision Commissions that the City may, under the Municipal Home Rule law, adopt nonpartisan elections, Muzzio raised questions about how balloting would be conducted and noted that new voting machines will arrive in 2006. In addition, he stated that the Commission should address two important questions: how nonpartisan

elections would affect the number of signatures required for candidates' ballot petitions and whether a runoff election is necessary.

Currently, there is a difference between the number of signatures required for a party primary election, an independent nomination to the general election, and a nonpartisan special election. Regarding the runoff, Muzzio noted that most jurisdictions set the threshold for victory at 50 percent, and if no candidate receives 50 percent, the top two vote-getters advance to the final round. Muzzio noted that New York City currently has a 40 percent threshold for primary elections and any change to it could have voting rights implications. Muzzio believed that the higher the threshold the more difficult it would be for a minority group to elect a representative of its choice, all other things being equal. He also discussed the timing of the elections, noting that different jurisdictions hold nonpartisan elections at different points in the year.

Muzzio's chief recommendation to the Commission was to adopt values and criteria with which to judge proposals on all topics (nonpartisan elections, procurement, and agency consolidation). He argued that the criteria for nonpartisan elections should be equity of voting representation, maximal voter participation, and enhanced electoral responsiveness and accountability. Muzzio concluded by stating that before trying to build a better mouse trap, be sure that there are mice to catch.

Professor Thompson offered a different view of the academic literature on nonpartisan elections. He testified that the social science findings regarding nonpartisan elections are limited, inconclusive, and often ignore critical variables. For instance, Thompson stated the relative strength of a city's African-American churches impacts voter turnout, as does the strength of a city's unions. He noted that New York City has three politically active, predominantly African-American and Latino unions with close to 500,000 members that, accounting for family members, represent approximately one million people. Their impact on local politics, according to Thompson, is incomparable to other cities. Even in cities where unions are strong, most have a decentralized system of service delivery where unions negotiate with county, rather than municipal, governments.

In New York City, Thompson noted, there is both a highly centralized delivery of service and a highly centralized municipal power structure, concentrating authority, including authority to negotiate union contracts, in the Office of the Mayor. Thompson testified that nonpartisan elections tend to be held in jurisdictions that have highly fragmented systems for delivering social services, with county and independently elected authorities (e.g., school boards) delivering many services. According to Thompson, this accounts for elections where voter turnout among minorities is low. In New York, which has a highly centralized system of service delivery, a strong Mayor and strong civic organizations, nonpartisan elections would not, said Thompson, reduce turnout or reduce the level of information available to voters. In noting other differences between New York and other cities, Thompson noted that some cities are racially polarized and would skew a national study of elections. These and other local factors and nuances, he said, are not accounted for in any social science study.

Professor Thompson stated that the political science literature argues that parties increase voter participation among minorities and the poor and therefore, political scientists conclude that political parties should not be weakened. Thompson said that the literature failed to account for circumstances such as in New York, where strong civic

actors, such as third parties, churches, unions, and community organizations, are active participants in politics and elections.

Professor Thompson offered a theory on this that he believes is consistent with urban political research: nonpartisan elections link electoral outcomes more closely to the underlying civic structure of cities than do partisan voting systems. Nonpartisan elections tend to open the political process more than partisan elections, which means that if a city has strong civic organizations, nonpartisan voting makes it easier for them to have an impact on electoral politics. He gives two examples of this from the nonpartisan cities of Los Angeles and Oakland, California: 1) In his 2001 campaign for Mayor of Los Angeles, Antonio Villaraigosa formed a citywide civic coalition to contest the party leaders' favorite son, James Hahn, and he was nearly victorious; and 2) The Black Panther Party was the electoral apparatus that elected Lionel Wilson as Mayor of Oakland. Thompson stated that in many Southern cities, black churches and students from the civil rights movement were the driving force in mayoral elections. Only if a city does not have these strong civic organizations, Thompson suggested, would candidates with a lot of money and name recognition have an easier time getting elected.

According to Professor Thompson, nonpartisan elections would have a large, positive impact at the City Council level, while having a negligible impact at the mayoral level. He testified that low income and minority communities, especially immigrant communities that are not well-represented in the Council, would be the prime beneficiaries. The dominant political parties have had a negative effect on these communities, said Thompson, because strong civic organizations have become competitors with the party in these communities and this has turned the party into an incumbent protection program. Nonpartisan elections would make it easier for new immigrant groups to participate in local politics and this may indirectly result in a "bubble up" effect at the Council level by increasing local voter turnout.

Professor Thompson also spoke in favor of same day voter registration and non-citizen voting. He touched on the appropriate level for a first round threshold, suggesting that minority candidates would benefit from setting the threshold for a runoff election at a relatively low level.

Professors Muzzio and Thompson were asked questions by the Commissioners. Commissioner Garcia asked both experts what they thought the City would lose by going from a partisan to a nonpartisan system. Muzzio said that party labels on the ballot provide a cue for voters and parties provide voters with a great deal of information about ideology, programs and policy that may not be offered through a nonpartisan election system. Thompson stated that he held a different view: party competition is anemic and the Democratic Party doesn't offer a real party program in relation to the Republican Party. Also, political information is provided by individual candidate's campaigns and that the candidates raise money individually; therefore, information is not so much a function of the party as it is of candidates and their campaigns.

In response to Commissioner Siegel's question about the relationship between electoral structure and fiscal governance, Thompson stated that one of the goals of the Commission should be to increase voter participation as a means of putting pressure on the State government to help with the City's fiscal crisis. They were both asked about the Voting Rights Act; Muzzio stated that it raises some difficult questions, while Thompson

reminded the audience that that there are many more minorities, not just Blacks and Latinos.

**Steven Brams, Professor of Politics
New York University**

(Forum, May 22, 2003)

Professor Brams advocated an alternative method of balloting called “approval voting.” Under this system, which is differentiated from the “instant-runoff” system in that there is no ranking of candidates, a voter may “approve of” as many candidates as he likes. In this way, a voter may support as many candidates as he or she feels is qualified for the position. Mr. Brams hypothesizes that this measure would increase voter turnout, reduce negative campaigning, and provide more proportionally accurate representation to minorities.

Responding to an inquiry, Mr. Brams stated that while no governmental units he knew of used the system, a variety of political and professional organization employed the approval system for electing representatives. Mr. Brams made the claim that there is no state or constitutional law that would prevent the implementation of approval voting.

**Lucille Grimaldi, Director of Electronic Voting Systems
Department of the Board of Elections**

(Hearing, July 22, 2003)

Ms. Grimaldi expressed concern that the ballot layout requirements may result in paper ballots under a nonpartisan election scheme. Ms. Grimaldi noted that the City has already used paper ballots. Paper ballots are more difficult and time consuming to process. Ms. Grimaldi testified that there are voting machines that can accommodate a large ballot. However, the ability of the machines to accommodate a nonpartisan election in New York has not been tested.

John O’Grady, Chief Voting Machines Technician of the Board of Elections.

(Hearing July 22, 2000)

John O’Grady described how the new ballots for the new electronic machines will look in 2005. He noted that the Shoup 240 machine has eight columns and 40 rows and is capable of handling up to 40 parties on the machine configuration and is set for the maximum capabilities of public and party offices.

John Ravitz, Executive Director of the Board of Elections.

(Hearing, July 22, 2003)

Director Ravitz notes New York City is trying to move to electronic voting in a three-stage process. Director Ravitz has also agreed that while the layout that would be used in a nonpartisan election would pose challenges regarding setup and configuration, it should not be “insurmountable.” Mr. Ravitz preferred a 2009 start date to resolve technical issues.

Director Ravitz also testified that the Board would have to look for more funding since over 30,000 poll workers would have to be retrained and the public would also have to be educated. Implementing the revised election system in 2009 would allow more time to plan for the future and to work with City Council, the Mayor and the state Legislature to make all the appropriate changes. Director Ravitz ended by stating that if the move to electronic voting is to start in 2004, the Board recommends that the State decide the type of machine and purchase by December 31, 2003.

Steve Richman, General Counsel, Board of Elections

(Hearing, July 22, 2003)

Mr. Richman testified that if the nonpartisan elections were conducted on the same day as party primary dates, State Election Law would mandate that at least three parties would have to be on the machine. Mr. Richman noted that the statutory obligation is to accommodate parties first on the voting machine before moving to paper.

“The Republican Party, at least for the next three years, has row A no matter what happens (under the Constitution [and] the state Election Law), Democrats have row B, Independence Party C, Conservative has row D and Working Families have row E on the general election ballot, period. That's something mandated by the election constitution which gives the two major parties the first two columns; so we're talking about mandatory statute change if you want to do that.”

Nonpartisan elections, according to Richman, would have to be on paper under the current statute if the nonpartisan elections were held on the same day as the party primaries, resulting in over three million paper ballots to count. Richman noted that if nonpartisan elections are held separately from party primaries, the problem is solved. However, the city would incur the costs of another election.

If the Commission wanted to change the appearance of the ballot, state law may stand in the way. Currently, state law mandates that the two major parties receive the first two columns on the ballot.

Richman stated that it would be possible to hold a nonpartisan election under the current state statute. In the end, Richman stated that his only concern is that if a nonpartisan election occurred on what is officially called a party primary day, there may be issues raised by the election law's statutory language. He referred to this as the “only possible impediment for legally conducting it on a primary day.”

Douglas Muzzio, Professor of Political Science, Baruch College

(Hearing, August 19, 2003)

Professor Muzzio expressed concern that there was not sufficient study of the Jacksonville model now proposed by the Commission.

**Deborah Goldberg: Director the Democracy Program,
The Brennan Center for Justice at NYU School of Law.**

(Hearing, August 19, 2003)

Ms. Goldberg states that the scholarly studies of the effects of nonpartisan elections are contradictory and inconclusive. Ms. Goldberg believes that the Charter Commission staff should undertake the necessary scientific studies.

Ms. Goldberg expressed concern that the proposed ballot would hurt smaller parties because under truly nonpartisan elections, the benefits of fusion are lost. The current proposal allows minor parties on the ballot only if the candidates are party members and potential spoilers, negating the benefits of fusion and further entrenching major party control over the political agenda.

**Nicole Gordon, the Executive Director of
the New York City Campaign Finance Board**

(August 21, 2003)

Ms. Gordon, testified that the Campaign Finance Board is concerned that a change to nonpartisan elections could open the door to unregulated soft spending by political parties that would no longer be constrained by the State Law or the Board's rules.

Gordon expressed the need for an analysis of constitutional law to support an assertion that political party spending can be controlled in the context of nonpartisan elections. She stated that the existing combination of State law and Board rules effectively controls soft money party spending on behalf of New York City candidates.

Ms. Gordon noted that present regulations presume that political party spending on behalf of a party nominee is the equivalent of spending by the nominee and therefore counts against the nominee's spending limit. Gordon said that without the link between a party and its nominee created by a political party primary, nonpartisan general elections could make it extremely difficult, if not impossible, for the Board to continue to make the presumption contained in its current rules.

Ms. Gordon claimed that Constitutional law prohibited making the presumption based on an endorsement.

In cases other than a nominee, the Board must uncover evidence that there has been actual coordination between the campaign and another entity before the Board can conclude that the campaign and the entity may be treated as the same. Otherwise, the

entity can freely make independent expenditures on behalf of a candidate without consequence to the spending limit.

Ms. Gordon admitted that evidence is often unavailable, even when there has been coordination, and even if evidence can be found, the spending may not be corrected in time to maintain the level playing field that the program is intended to create.

Without the nomination presumption, Gordon testified political parties presumably could become more like other interest groups, stating that party spending would be much more difficult and perhaps impossible to capture and regulate under the Board's rules. She said that the Board has not identified viable mechanisms consistent with the First Amendment to control party spending in a nonpartisan context. At present the Board's records show few direct hard money contributions by political parties or their committees.

Gordon further testified that a complete ban on organizational contributions is an idea the Board has long supported and originally recommended in 1997. The ban now being considered applies only to contributions from political parties and political party PACs. She testified that such a ban would not include any of the purposes of the Board's original recommendation to ban organizational contributions, nor does it in any way address the problem of soft party spending that the Board has raised regarding nonpartisan elections.

In response to a question posed by Commissioner Siegel, Ms. Gordon was unable to say how the Board presently limited party spending if or when funneled through an independent entity or interest group.

In response to Commissioner Siegel's statement that Los Angeles sees its nonpartisan campaign finance as quite successful, Ms. Gordon insisted that Los Angeles has not been able to control party spending. However, she noted that the relevant campaign finance laws allow the lifting of spending caps under certain situations. She went on to admit that party spending in Los Angeles is fully disclosed, albeit in large amounts.

Commissioner Siegel noted the recent case in Los Angeles where the Democratic Party did not endorse and so did not disclose to the Los Angeles Ethics Board its expenditures. Commissioner Siegel noted that the two Democrats (Hahn and Veragosa) were still compelled to disclose the source of their campaign funds.

Despite the example Ms. Gordon insisted that endorsement alone was constitutionally insufficient to create a connection between a party and a candidate sufficient to limit party spending. Ms. Gordon characterized the Supreme Court holding in Eu as having given political parties a constitutional right to endorse and presumably spend for candidates in nonpartisan elections.

When questioned by Executive Director Gartner, Ms. Gordon was unable to answer whether endorsement combined with other factors would allow the Board to continue to make its presumption. Ms. Gordon admitted that the Campaign Finance board had never taken a candidate to court because no candidate had yet refused to comply with a request by the Board.

Ms. Gordon also expressed concern with the difficulty and expense of creating a video voters' guide.

**Summary of Expert Testimony
On Procurement at Public Meetings**

Brendan Sexton, Chairperson of the Procurement Policy Board.

(Forum, May 12, 2003)

Chairperson Sexton gave a brief history of the Procurement Policy Board, concluding that the Board has traveled far from the Board's early days when there were fears of a continuation of the corruption experienced by the Board of Estimate. Sexton stated that the PPB has pursued a philosophical ideology that promotes simplifying the process whenever possible. It follows that Chairperson Sexton believes that Charter Revision should follow that same objective.

Professionalism and training of procurement personnel are extremely important aspects of improving the City's procurement performance. "The Procurement Training Institute, PTI, is one of the greatest things to come out of the last Charter Revision Commission." Chairperson Sexton advocated creating City certification of procurement and related skills.

The City needs procurement people who can use their talents imaginatively, creatively to advance the public will, not to advance the system.

The procurement system itself should be so simple and clear that vendors will be interested in doing business with New York City and won't have to be seduced or coerced or dragged into doing business with New York City which has been the case in the past. Although less true today, the word has to go out that the City is actually a good place to do business. This is the true sunlight, this is the true budget savings, this is the true efficiency of procurement, to have an enriched supply of vendors, et cetera, who want to do business with us, interacting with a professional group who can be encouraged by them and be encouraged by them to come out for the good of us all.

Martha Hirst, Commissioner, Department of Citywide Administrative Services.

(Forum, May 12, 2003)

DCAS, through the Division of Municipal Supply Services (DMSS), is the primary purchaser of all goods for the City of New York. There are certain procurement requirements for goods in excess of \$25,000. These procurements result in requirement contracts that are available for use by all City agencies as well as contracts that are required by individual agencies to meet specific needs.

One of DCAS' goals is to make as many goods as possible available through Requirements Contracts (RCs). RCs typically are two to three years duration and offer the distinct advantage of treating City agencies as one enterprise or one purchasing entity rather than as individual purchasers. The most important benefit is the significant economies of scale obtained when vendors are aware that the city as a whole will be purchasing a large quantity of goods. Finally, when client agencies using RCs can place orders quickly with minimal paperwork, it's that much more efficient.

DMSS additionally provides critical service to agencies as part of citywide procurement responsibilities. The Bureau of Quality Assurance, or BQA, is responsible for the inspection of goods purchased by or in cooperation with DMSS. BQA inspectors

perform audit and corruption prevention functions by insuring that the same person does not order, receive and inspect the goods. The goal of these various projects is to enable DCAS and agency procurement personnel to utilize the City's intranet, the Internet and other technology to perform various purchasing functions.

These projects include the following: A new searchable database went on line in FY '02. The application allows requirements contracts to be searched by key words, descriptions, vendor names, contract numbers and buying categories. Each contract document can be printed as needed. DMSS developed an intranet-based searchable storehouse catalog. This allows users to have accurate cost and item information on the more than 2,000 items in the storehouse inventory. DMSS has developed an intranet application to allow agencies to create and submit storehouse orders on line. Item and agency shipping information will be retrieved directly from FMS, resulting in fewer errors.

The Charter should be amended to specify that City agencies do not have to comply with such repetitive procedural requirements before conducting Governmental procurements. Notwithstanding the fact that numerous agencies have sought and obtained the requisite approval to pursue such specialized procurements, DCAS is still required under Section 823 of the Charter to effectuate those procurements. Such procurements have included the purchase of personal body armor and bomb disposal robots by NYPD; a mobile data center by OEM and various counter terrorism equipment by FDNY most recently. Since the agencies that pursue such emergency approvals have superior knowledge regarding their contractual needs, they are in a better position than DCAS to effectuate the appropriate emergency procurement documents. The Charter should be revised to provide City agencies with the authority to conduct emergency procurements on their own.

**Leonard Picker, Inspector General for Procurement Policy Investigations,
Department of Investigation.**

(Forum, May 12, 2003)

The primary goal of procurement is to get the City what it needs when its needs it and at the greatest value. DOI's jurisdiction encompasses public service involved in obtaining goods, services and construction as well as private vendors who do business with the City or seek such business. That authority comes from the Charter, from executive orders and Procurement Policy Board rules. DOI works to protect the integrity of our City's procurement in two basic areas. Number one, by preventing procurement corruption; and, two, by assisting City contracting personnel in making determinations on responsibility, while providing information on the business integrity of prospective vendors. Because the DOI is continually dealing with procurement issues, almost on a daily basis, the Commissioner created the new position IG for procurement policy investigations.

In the procurement area, DOI is more often thought of as assessing business integrity. The City's Vendex system, "which is mandated by Administrative Code," requires a database of relevant information concerning prospective contractors be maintained and the PPB will also require that agency contract officials check with DOI

for information on investigations for certain subcategories of contracts. Thus City officials at the agencies can assess the information that we provide as part of making a responsibility determination.

The City has limited resources to do screening. One option would be to change the focus of the screening right now and that change could be either by adjusting the dollar amount of the contracts that are subject to screening beforehand or looking at other factors. There is a model that I am working on, which for marketing value we're calling STV or smarter targeted vetting. We're trying to look at what the effects would be, simply increasing the dollar amount of a contract, the value of such an approach is simple to understand, it comes in the wake of the fact that the additional dollar thresholds that were set over 10 years ago, I believe, were not set as a result of some sophisticated analysis where the integrity problems are most likely to be, they're dollar amounts linked to other dollar amounts on the part of procurement.

The City could make a reasonable decision under the present circumstances, which I believe are likely to persist for some time, that it will dramatically reduce efforts to weed out bad contractors in advance by mechanisms such as Vendex. Instead it could revive debarment, and thus give the City the ability to eliminate the very worst offenders for a fixed period of time. City contracts that are a defined subset would require contractors after the contract is awarded and after the award is final to provide detailed information which could be used should the City afterwards have information that leads to suspicion about the contractor.

If that in fact becomes the practice, shifting the timing of the detailed disclosure to post award period, there would be an elimination of some delay in pre-award, which in the language right now in my opinion does not offer city significant value and it would give the City the same basic protections it has now. There will be a signed representation from a vendor that carries penalties for material false statements, basic facts about the business key personnel and its affiliates that would be there to provide a road map to an agency such as mine without giving a red flag to the company that it's under investigation.

Rather than pretend the City can effectively screen the bad contractors, the City would make a judgment that its time and energy are better spent in other areas that are more likely to include the integrity of procurement. Further development of this idea is needed, but we believe it belongs on the table at the start of your consideration to think about, if you choose to do so, how the business integrity functions would be approached. This Commission's serious examination of procurement from top to bottom must do better in achieving the balance between efficiency and oversight. DOI is committed to sharing our perspective in any way that would be helpful to your work.

Patricia Thomas, Associate Commissioner and the Agency Chief Contracting Officer, Department of Health and Mental Hygiene.

(Forum, May 12, 2003)

In my ideal scenario, the small purchase limits as detailed in Section 314 of the Charter would specify \$100,000 as the minimum threshold; small purchases could be completed quicker. If the limits are increased, approximately 20 percent of all procurements done in the typical fiscal year could be treated as a small purchase, which would enable contracting staff to concentrate on more complex and expensive procurements. This increase would not yield increased risk. Expanding further on my ideal scenario, the Comptroller's office would not have to register any small purchase contracts. Section 328 of the Charter would be modified to require that the Comptroller only needs to register contracts greater than the small purchase limits. Currently, any contract greater than \$25,000 must go to the Comptroller for registration. Even though the small purchase limits for services has been increased to \$50,000, which was a great step, contracts greater than \$25,000 still require registration. This additional step adds several weeks to the process.

What other circumstances would exist in my ideal world? I would have appropriately trained staff. Several years ago, MOC specified minimum training staff or procurement staff. I believe this should be reinstated in some way. I realize that with fiscal constraints this is unlikely to happen, but it would make for more efficient contract processing.

Nancy Wackstein, Executive Director, United Neighborhood Housing.

(Forum, May 12, 2003)

Today our agencies contract with the City of New York for approximately \$200 million to provide programs like child care, Head Start, employment training, after school programs, English as Second Language, senior centers, adult social day care, mental health and homeless outreach, homeless centers, every kind of human service you can imagine.

There's inconsistency in the structure and quality of the RFPs, those are the requests for proposals, and the RFP processes. Some RFPs are so well thought out that after the bidder's conferences only one or two addenda are necessary. But in one specific case in a City Agency not known for well drawn RFPs, there were five or six addenda which completely changed the original solicitation and confused prospective bidders.

In this age of technology there is the possibility of some electronic and public tracking of RFP review and awards. A single review and award process takes months. Everyone from MOC, Mayor's Office of Contracts, to the City Agency to the Mayor's Office points fingers for the delay. Potential vendors, and our agencies, have no way of knowing for their own planning purposes how close the City is to make a decision and making it public. Our staffs spend hours calling multiple city representatives to find where an RFP is, when the awards will be made. This isn't idle curiosity. We need to know so we can either pay staff and plan agency budgets responsibly. Finally, this is a

minor point, but it makes a difference. There needs to be some accountability to the organizations that submit proposals but do not win. No letter telling you what happened is ever sent. City agencies should be obliged to inform bidders that don't win as well as ones that do win. It is not a good use of staff time to have to track down follow-up information.

Consolidation would help, but it seems kind of ludicrous that it takes anywhere near this long for a relationship with one City Agency. Second, we think that you should consider again, the practice of requiring multiple audits of a vendor with whom the City holds multiple contracts. The same member organization I cited above, reports that to meet the auditing requirements of the City Agency were told the twelve contracts with whom it holds itself, twelve contracts, it takes 62 staff days per year alone just to meet with auditors on all their visits. These are the auditors that are sent by the City Agency, not their outside auditor. For the City agencies holding six contracts it takes 30 days. None of this takes into account preparation time, which occupies far more staff time on both the fiscal and programmatic sides for both City and the settlement house employees. None of us in the nonprofit human services field argue for weak accountability. What we want is smart and efficient accountability. Since under state law every non-profit must prepare an independent comprehensive audit every year, we urge City agencies to accept our independent audit and require supplemental program specific information if and when the need arises. Our agency wide audits undoubtedly provide the same information that is collected multiple times over by these various City Agency auditors. Third, we are asking you to look at standardizing such contracts as the allowance of contract advances and indirect costs. It requires intensive staff time to keep track of how far behind the City is, not whether, but how far behind the City is in terms of vouchers, not to mention the lag in processing renewals. Some City agencies are better than others, but some are extremely weak.

Fran Barrett, Deputy Director, Community Resources Exchange

(Forum, May 21, 2003)

One of the prevailing issues for boards and at many, many board meetings you'll hear it raised again and again, the City simply doesn't pay the full cost of what it costs to deliver the service. The second thing you hear is that the opportunity costs to the organization to wait four, six, eight, twelve months to be reimbursed just adds insult to injury.

Instead of seeing the non-profit organizations as procurement stepchildren, I would like to see this Commission give the creation of a viable working relationship between the City and its impressive nonprofit sector a priority. I think there are a few particular ideas I'd like to suggest and these are simply ideas based on experience. They in and of themselves may not be useful, if they are useful they should definitely be tested.

The other thing is if we have any federal money, at all we're subjected to the A133 audit. If you're subjected to that, it's an extremely rigorous process that requires you not only to say, "I bought the roll of Scotch tape, here's the paper," you also have to say, "Here's the policy I have that says how I buy Scotch tape." You don't need more than that. The City audits are a big waste of time because the nonprofit sectors are now

serving 2.2 million needy people every day. Think about that, 2.2 million people every day and many have been doing so for 25 years, you could create a preferred list of nonprofits so many agencies could enter into contracts easily and quickly and this might allow for spikes and demands for service or exploration of good ideas or shifting money from an underperforming agency to a higher performing agency. These things could happen quickly and efficiently.

This Commission I think has the opportunity to do something remarkable, not just to help the nonprofit sector, but to help thousands of New Yorkers who rely on the nonprofit sector. We have learned in the last six months that we as non-profits cannot count on the state, they simply don't see us as citizens of the state as well and we have very low expectations at this point from the Federal Government. It is the City, the partnership that Nancy [Wackstein] spoke of, it is the City of New York and the nonprofit sector of New York that will bring this City together and you have within your hands to do something about the consternation that keeps us apart.

Cynthia Searcy, Citizen's Budget Commission

(Forum, May 12, 2003)

One of the three recommendations that we propose is to change the legal framework for procurement to give the Procurement Policy Board more independence. The CBC recommends greater independence for the PPB to avoid political entanglements that prohibit good rule making governing agency purchasing.

In the past the structure of the PPB has prevented procurement policy from becoming rule. Since the Mayor appoints three of the five members, majority rests with him or her. Implicit in this majority is the Mayor's power not just to control votes on rule changes, but also to decide what proposals make it to final vote before the Board. So prior to an official rule vote, changes are reviewed internally by the Mayor's Office of Contracts, the Law Department, Comptroller and, if voted on, to proceed through what's called the Citywide Administrative Procedures Act accounting process. A hearing is held for public process.

Beyond this point a rule can languish in CAPA, be added to the PPB agenda for vote or be withdrawn entirely from vote depending on the comments that were presented prior to an official vote. So this process dictates that procurement rules that conflict with the Mayor's interests may never make it before a vote before the PPB. An example: a past proposal to implement PPB's prompt payment rule to permit payment on retroactive contracts. As you heard today vendors, not-for-profit agencies, the Comptroller, have all attempted to amend this rule for years and all parties except for the Mayor agree this is a good procurement policy because it will require interest payments when City agencies fail to register contracts before work starts. But since it's not in the Mayor's interests to pay these penalties, it has never made it past the cabinet process for vote. Although we hear it is being considered, it hasn't made it there yet and I think it's supposed to be proposed soon. The CBC feels that good procurement policy is impeded by the Mayor's majority control of the Board and both officials' ability to dismiss members who may vote out of favor with their views.

To avoid such political entanglements, the PBC recommends that the Charter Revision Commission change the language of the Charter to require that no members of the PPB hold public employment and that they have fixed terms. The American Bar Association, after which much of the City's procurement policy is modeled, also recommended the structure in its model procurement code. Keeping policy making authority independent from administrative authority is a good practice. Functioning in other areas of City Government, the fox guarding the chicken coop would be unwise. Members of the Conflict of Interest Board, for example, serve six-year terms and are appointed by the Mayor with the approval of the City Council. Such independence is necessary when rule making guards the public interest, which in this case is \$8 billion in goods and services annually at least.

Michael Stoller, Human Services Council.

(Forum, May 21, 2003)

We have three major concerns that are interconnected: The prevalence of retroactive contracting for human services; the exclusion of human service contracts from interest penalties for late payments; and the lack of a statute that mandates time frames for action along the procurement path. A retroactive contract is one in which the provider begins work before the contract is registered by the Comptroller. Legally, this is not supposed to happen, but factually it does. The service must be delivered, so providers are strongly encouraged by the City to start work, and it is made clear there is no guarantee of payment.

The City must manage its procurement portfolio more efficiently, giving sufficient time for both new solicitations and contract renewals so that retroactive contracting is eliminated. New York State has a contracting law embedded in the State Financing Law which sets time frames in which all relevant agencies must act. The State law also created mechanisms to protect human service providers to be used, depending on the specific circumstances. These include advance payments, access to interest free-loan fund and interest payments from State agencies responsible for delays.

Second, advanced planning, as envisioned by the contract budget and PPB rules, has not done the job. We need a more detailed law with specific deadlines so agencies are given step by step instructions on how to plan. These plans must be communicated in a timely fashion to the providers so we can plan the best way to meet the City's needs. In human services, more often than not, the service is provided by a not-for-profit provider. The city agency is the manager in this contract portfolio, both financially and through performance evaluations. If we can't plan ahead for staff training and deployment for our own budget, we cannot do the job that the City needs done as efficiently as we otherwise could, and if the City is not keeping this information to itself, but rather does not actually have it, something must be done about the lack of planning at the City level. A law providing detailed procurement plans is essential.

Third, the chart of accounts must be maintained. This is a list maintained by OMB and the Comptroller's Office which indicates which purchases are interest eligible. When human service providers are paid late, they should receive PPB interest like other

contractors. Not surprisingly, interest payments in other sectors are a strong incentive for agencies to pay contractors on time.

The City needs to expand its interest-free loan fund. There must be sufficient dollars to meet the need. The process for accessing a loan must be transparent and money must be available from the moment of contract award, not as now from the point in time when the contract is submitted to the Comptroller for registration.

Frank McArdle, General Contracting Association.

(Forum, May 12, 2003)

The City has to get maximum value for the dollars it spends. The vendors have to look to the City first. In many circumstances, the City is the only customer, and like it or not, you have to put up with the City of New York, and that truly is what leaves the human services providers at the mercy of the City. They don't have a lot of other places to turn, and in fact a lot of the procurement reform proposals have kind of foundered on that fact.

The number one area in construction that is broken is the City's personnel system. This Charter Revision Commission could make some of the biggest long term improvements in procurement by improving and extending the personnel management system for the City of New York.

No City Commissioner today can walk into Cooper Union or Manhattan College and take the top ten percent of the graduating classes of those engineers and put them to work at the bottom of the City of New York. So the City does not recruit the best because the Commissioners do not have the tools to get the best (and I suspect that's true in many areas).

We need to improve the relationships that the City has with its contractors. We need to modernize our dispute resolution mechanisms. We need to change the contract documents and the powers by which the City of New York works.

The City of New York, my estimate, a nine billion dollar procurement area probably spends three to \$4 million a year buying Workers' Comp insurance. It buys it from the construction industry, it buys it from everybody else and I dare say that there's no one in the City of New York responsible with a staff for examining how the dollars spent on insurance protections and Workers' Comp costs could be better maximized. No place is there someone who is a profit center manager for these kinds of dollars, because it's hidden within the contracts and we have to look elsewhere. You'll have many things to do, many things to work on, but I think your objective has to be to create the basic mission in some fashion, that the City becomes the preferred customer for what it buys, and that has the objective to get the maximum value for the dollars spent. I think you can do that in many ways. It's not clear how much of this is purely Charter revision, but a lot of it is attitude.

Louis Coletti, President, Building Trades Employers Association of New York City.

(Forum, May 12, 2003)

The building contractors in my organization do not compete very much for projects awarded to "the lowest responsible bidder" on a regular basis. They've walked away from the public sector. The lowest responsible bidder requirement simply does not work.

Despite the best intentioned efforts of our public officials, and agencies, it is virtually impossible for them to enforce the prevailing wage law. That law requires a certain wage to be paid for a certain task. It's pretty simple to really know what my contractors' costs are. Our contractors actually pay the prevailing wage, because there is a dual enforcement system. Both the City agencies and members of organized labor ensure that workers are not paid any less than what is in the collective bargaining agreement. But a contractor who is on a building site, who is very interested in competing for building work, may not put the right number of hours in to build the job, because it's really tough to determine that, it's virtually impossible.

If they did business like that in the private sector, I could assure you that if their project came in with too many change orders, if the cost of those change orders greatly exceeded the original estimate that they gave to the private sector owner, they would never work for that owner again.

A second reason that my members will not significantly compete for public work, is the burden on the public owner to prove that the contractor is non-responsible. If a public owner wants to take a case that a particular contractor is non-responsible, the first thing that happens is that contractor files a lawsuit. That means the entire project stops, and that agency is at risk of delaying that project for five, six, seven years.

Why can't we have a system such as prequalification where you identify a contractor's competencies and integrity and safety record up front? I certainly heard both sides of the legal argument whether the City Charter Commission or the City Agency has the authority to do it; I think the Commission can. It is one of the strongest recommendations I would make to this Commission in changing the procurement law if you in fact have that power.

To those who would want to spend a lot of time reforming Vendex and changing it, my strongest recommendation would be just to throw it out and start over. It's an absolutely ludicrous process that is not achieving the objectives that it was set out to achieve.

We don't think that's a process that serves the taxpayers well, nor does it serve the interests of my own members or again, in the time where the private sector is sort of slow, still is hesitant to look at public works. Commissioner Ken Holdman shouldn't have to be the most creative person on the earth. Look at the different procurement options that have been provided by the Policy Procurement Board, thankfully. The Board has recognized his needs and has tried to give him the necessary tools. He should have a number of options available to him, all based on a prequalification basis.

Suellen Schulman, ACCO, Department Of Homeless Services

(Hearing, July 24, 2003)

- Annual budget of \$600 million dollars, approximately 80 percent is contracted out with 113 not-for-profits to operate transitional shelters. 14 family and adult shelters.
- Contracting portfolio consists of adult and family transitional shelters, many specializing in mental health or unemployment or substance abuse services, single room occupancies, medical and outreach services, rental assistance programs, repair and maintenance, architectural and engineering and construction management services; asbestos abatement, transportation, food, security services and more.
- We use every procurement tool available to deliver these services and goods.
- We need to stress the need for further development and training of the purchasing and contracting staff of the city. We can and should utilize the Procurement Training Institute.

**Margaret Stix, Associate Director,
The New York City Employment and Training Coalition**

(Hearing July 24, 2003)

- More flexible procurements allow the development of just-in-time training programs that meet the specialized needs of businesses that cannot wait for skilled workers while an RFP wends its way through the process.
- Making VENDEX simpler, fairer and more limited in its scope should alone qualify the Mayor and Comptroller to medals.
- Any effort to streamline VENDEX should pay attention to the length of time negative reports are stored and how they are used.
- Single biggest problem is late registration and the relationship with performance based contracts.
- Agencies must plan better beginning with the release of the executive budget. Each agency should compile a schedule of procurements and develop time frames for every step in the process, including adequate review by the Law Department and the Mayor's Office of Contracts.

Eric Lane, 1989 Charter Staff

(Hearing, August 19, 2003)

The proposal to alter VENDEX may be illegal and is not well advised. The Council is a necessary party to the procurement system to sustain the necessary checks and balances.

The Commission could empower the Mayor, and give guidance, on promulgating rules with respect to VENDEX. The Council must have a law making role, not just oversight. If there is a problem in the VENDEX system in some other administration, then the Council could enact a law to solve that problem.

Marla Simpson, Director, Mayor's Office of Contracts

(Meeting, August 21, 2003)

Ms. Simpson testified that, after thorough consideration, the decision was made to pursue Charter language that mandated time frames for payment and mandated remedies for violation of those time frames, without tying the PPB's hands as to what those remedies would be. Further it was deemed advisable to allow for enforcement or remedy options that arise prior to monetary remedies.

Ms. Simpson testified that the Law Department did not want to create a legal obligation to pay prior to registration of the contract by the Comptroller. The Law Department would require a new official, agency directive to pay, before creating the legal obligation to pay, as the state did. Moreover, that agency action should be carefully thought out, with the concern being that the creation of that action is a separate set of decisions that can then also be litigated. The City operates in a somewhat different litigation environment than the State, and that is a matter of concern.

Ms. Simpson testified that active discussions with the Comptroller were underway, and the State structure that creates a State loan fund is not the direction that has been pursued.

Ms. Simpson testified that the city gives an outright discretionary grant to a not-for-profit so that the loans that are granted are private actions, rather than State actions. As a result, they are not litigable. If necessary, there is room to restructure that loan fund to resolve and deal with this problem, but we do not want to make that loan fund a City version of a State loan fund, we want to keep that loan fund private.

Ms. Simpson testified that interest could legally be required but it would lead to unnecessary litigation.

John Graham, Assistant Comptroller:

(Meeting, August 21, 2003)

Testified that the Comptroller's Office is in favor of interest payments for all contractors, for retroactive contracts, and that special proposal to PPB was submitted on that issue. Therefore, Mr. Graham recommended the use of the phrase monetary remedy in the Charter language.

Summary of Expert Testimony on Agency Reorganization

Summary of Testimony on Agency Reorganization

Harvey Robbins, former Director of Operations for Mayor Dinkins (Forum, May29, 2003)

Mr. Robbins testified that transportation policy, environmental policy and housing policy would be three areas within the mayoralty that require day-to-day interaction with the Mayor, the Deputy Mayors, and the various Commissioners. Therefore, these three areas are appropriate candidates for direct Mayoral coordination. Moreover, each of these areas takes more than a specific function or specific Commissioners. Therefore, coordination at the mayoral level would be extremely helpful. Many of the smaller commissions near the Mayor would seem to be less likely to be productive and unnecessarily increase the size of government.

The MTA should handle the Staten Island ferry as well as private bus franchises.

Mayor Giuliani, as a political decision, closed the Fresh Kills landfill without a plan to deal with solid waste. The only way to rectify this is to go to a pay-as-you-throw policy to offset some of the escalating costs of sanitation. The additional cost arising from the closing of the landfill is in the hundreds of millions of dollars annually.

Mr. Robbins proposed to tax vacant land at a higher rate to promote the use of scarce land. He proposed that a legislative initiative be instituted because the Governor "bankrupted the Superfund." Literally hundreds and hundreds of pieces of property or land in the city, as well as throughout the State, lie dormant.

He recommended that the City begin to outsource appropriate Governmental functions. One beneficial effect would be competition. Competition would send a message to labor that it can't be business as usual in terms of work rules and productivity, or the lack thereof. When outsourcing takes place, labor gets a message that it's time, it's a new day, and the more that they hold on to yesterday's beliefs, the more the Mayor could let out more and more contracts, either on a geographic basis or on an agency basis.

Looking at the whole area of inspections and enforcement duties, where there is a proliferation of them across a number of agencies, whether in fact there can be fewer agencies doing this inspection and enforcement work, doing cross training in a way, having it shaken up a little bit, is always good in terms of the issue of accountability. Experimentation with new areas of inspection or enforcement might also prove beneficial. One example is the issue of sick leave abuse. By providing strict home visit policy the Dinkins Administration had success at reducing overtime costs. In general, medical leave and disability approvals should be done by physicians on a rotating basis.

Mr. Robbins suggested that the City could track demographic changes more closely to ensure that services were provided where needed. Mr. Robbins cited Professor Andrew Beverage as a valuable source for the necessary data.

Randy Mastro, Former Deputy Mayor

(Forum, May 29, 2003)

Mr. Mastro advocated eliminating certain electoral offices that serve no useful function. These offices were the product of political compromises and have no logical basis in our city's government.

Mr. Mastro stressed that changing the procurement process and centralizing procurement are needed reforms. The corruption scandals of the '80s led to an incredibly detailed set of Charter changes that are no longer applicable.

Mr. Mastro further suggested that the Commission adopt budgetary reforms that would serve future administrations well and give spine to that which we are required to do by law, which is to balance the budget each year. He asked the Commission to look at whether there is some common sense way to make it more difficult to increase spending by rates that are greater than the rate of inflation so the City isn't burdened with greater expense year to year than that which occurs by inflation.

Mr. Mastro noted that a good permanent reform would be to place in the Charter what is called a "rainy day fund." There was an increased special reserve that was imposed by agreement between the Mayor and the Speaker, but the Commission could, as a general proposition, embody the agreement in the Charter, so that when a crisis hits, like the ones that of the last couple of years, there is more in reserve to call on. When surpluses are run, some of the surplus that exists at the end of the year (and mayors through executive budgets try to have a surplus at the end of the year) may be used automatically to pay down some of the City's long term debt. That debt remains a crippling problem that we have from administration to administration, and year to year.

These fiscal rules are some of the ideas that were promoted through Charter revision in past years and the climate is right for the voters to be receptive to such changes.

Ronnie Lowenstein, Director, Independent Budget Office

(Forum, May 29, 2003)

When restructuring city government it is important to keep in mind the specific goals you hope to accomplish. Regardless of the outcome, it is very important to be able to look back and evaluate the success of your effort.

There are three basic ways of restructuring city government: One is to restructure City services; the second is contracting out; and the third is redesigning how we provide core services generally through technology.

Although times are tight it may still be wise to invest in technology because these are very long term issues. Many of them are capital. Many of them are, like ACRIS, are ultimately self-financing, and you should have those on your list of things to look at as you go forward.

It's possible, by making city government more efficient to turn the present fiscal climate into a more positive period.

Professor Ross Sandler, Former Commissioner of the DOT

(Forum, May 29, 2003)

Structural change is not a short-term solution for anything, because it is really dealing with cultures of people. It can take a long time and even the change of personnel to get different agencies to work together. There has been a lot of change in agencies in

the last ten years. Therefore, there may not be any organizational objectives appropriate for the Commission.

It might be wise for the City to create an on-going task force like the Crako Commission in the 1960s, perhaps in the first year of every new administration, and let them think about structural changes in a way that would then be presented to the City Council. There the politics are going to be fought out in a way that reflects representative Government. A possible Charter change would be that the Mayor appoints a task force that's beholden to the Mayor and that will present, to both the Council and the Mayor, a product that would be suggestive of efficiencies at that time and at that moment, evaluate past changes, and then recommend things that could go into the regular legislative process.

An important sunshine provision that came out of the closure of the bridges and of the massive deterioration of lots of the City's infrastructure during the fiscal crisis – as human services absorbed money because people were there demanding it and infrastructure got very little, and the result of not paying a little bit on maintenance is you pay enormously on capital, and so out of that the Charter Commission of '88 came an annual sunshine report which I must say is cloudy, and I would suggest that your staff might look at those reports and see if you can understand what they mean.

One suggestion is to remove the report from OMB. OMB is looking at the dollars when they're looking at the adequacy of the maintenance, whereas the engineers out there in the field are looking at the actual infrastructure and are saying, "you know, it's rusty and it's going to –." So remove the report from OMB and place it in the agencies and let their PE's certify exactly what's going on.

Many agencies have no capacity to do their own analytical work and planning. And it's very hard to fight for analysts and a planning group within an agency. They don't serve clients and they're the first to get cut. OMB always feels, "Why do you need them? You have us." The result is that the agencies have very poor or limited planning and analytical capability. Efficiency in government and delivery of services require planning and analytical capability. Otherwise, the likelihood of improvement is random. So, pursue the placement of analytical groups within agencies.

Some action must be taken on legislative mandates. Mandates are primarily the results of layered government, the federal and state mandates, although there are some Council mandates which are onerous. However, for example, special education is a \$3 billion mandate, federal mandate. Incidentally, it's up for reauthorization this year; it would be nice if Congress could do something about that. The City should be there fighting along with the National League of Cities and the state organizations and whoever else, to fight against the proliferation of the mandates. We have to stop Congress from legislating idealism and then telling cities to achieve and pay for that idealistic goal.

The city could improve its administrative justice by moving tribunals to OATH. OATH is very professional and to move toward the level of OATH is worthwhile goal.

Salvator Galetta, representing the American Engineering Alliance,

(Forum, May 29, 2003)

The Alliance is a national organization of engineering professionals from a variety of disciplines. The American Engineering Alliance was founded in New York City in 1995. The Alliance believes that it is inappropriate to have individuals head agencies that are largely dedicated to engineering that are not engineers and that engineers would more effectively manage engineering and engineering support units.

**Charles McFaul, Deputy Chief Administrative Law Judge
Office of Administrative Trials and Hearings,**

(Forum, May 29, 2003)

The rationale behind the Charter provisions creating this office was to establish a body outside of the agencies that have responsibility for enforcing various regulatory programs, enforcing contract provisions, bringing disciplinary proceedings against employees of the city; to provide an entity in which the adjudication of those disputed facts to be conducted separately from the agency, so the process of a quasi-adjudication, which is a due process proceeding, was moved or at least allowed to be moved to the Office of Administrative Trials and Hearings.

The purpose was to ensure objective adjudication on a level consistent with our aspirations for all judicial conduct. That is why Mayor Koch, by executive order, made OATH administrative law judges subject to the canons of judicial ethics. OATH would be willing to assume the adjudicative function for other agencies should the need arise consistent with its original purpose.

Gretchen Dykstra, Commissioner of the Department of Consumer Affairs.
(Hearing, August 19, 2003)

Commissioner Dykstra proposed a City Charter revision amending the Charter by adding a new Section 2230-A to authorize the Department to use its administrative tribunal to adjudicate all violations of the laws it enforces. DCA proposes this Charter amendment to strengthen and streamline the Department's ability to enforce all the laws under its jurisdiction and to create a level playing field for enforcing consumer protection laws, regardless of licensed status.

The Department currently faces a significant obstacle that dilutes its effectiveness and undermines its ability in an even-handed way. DCA licenses 55 different types of businesses and enforces the Consumer Protection Law and the Weights and Measures Law, but DCA can use its administrative tribunal only to adjudicate violations committed by licensees and a few specific other laws. When a non-licensed business breaks the Consumer Protection Law, DCA must take the case to court to enforce it. The Charter amendment proposed by DCA would clear away this obstacle by authorizing the

Department to use its administrative tribunal to adjudicate the violations of all the laws it enforces.

The proposal puts in place safeguards that have been carefully tailored to insure that the due process rights of business are fully preserved and that businesses are adequately informed about default decisions before such decisions can be enforced. It also provides businesses ample opportunity to respond before a default decision can be docketed as a judgment.

This proposal would ensure that the laws under the Department's jurisdiction would be enforced across the board against all business to which they apply. The Consumer Protection Law is the broadest of all the laws the Department enforces, covering a wide range of practices and businesses. Licensees charged with a CPL violation must resolve the violation or risk losing their license. Unlicensed businesses are encouraged to resolve the CPL through informal settlement hearings, but the Department cannot hear the case and as a result most unlicensed businesses can simply ignore outstanding CPL violations an impartial tribunal.

This authorization would also make it possible to resolve such disputed violations at less expense to both businesses and the City. Finally, it will level the playing field to all businesses subject to those laws.

In the early 1990's DCA reviewed all of its licensing categories to determine if the licensing requirements were sensible. Between 1992 and 1996 the Department eliminated the licensing requirements for 24 categories that had become outmoded. This freed nearly 5,000 businesses from licensing requirements, thus preventing the Department from holding unnecessary hearings on potential violations.

Barbara Cohn, Vice-president at the Fund for the City of New York and Director of its Center on Municipal Government Performance.

(Hearing August 19, 2003)

The Fund is in favor of the proposal to change the performance reporting provisions of the Charter so that City Government resources can be utilized more effectively to insure continuing agency and citywide productivity improvement, accuracy in performance reporting and enhanced accountability.

The Fund for the City of New York is a private, independent, non-profit, non-political operating office founded in 1968. The Fund has long-standing experience with government performance measures and reporting. Even before the Charter reform in the 1970's which incorporated the ground breaking Mayor's Management Report requirements, the Fund was creating scorecards, systematic rigorous measurements of some city services. Indeed, Sanitation Scorecard has been touted as the longest lived, continuously operating government measure in the country by some experts in the field. It is now operated by the Mayor's Office of Operations.

Our Center on Municipal Government performance has been creating, since 1995, new measures of Government performance that reflect the public's point of view and has achieved national recognition for its work.

Continuing technological advances and stunning initiatives begun by this administration, most notably in the City's website and the introduction of 311, are getting

more information about government performance out to the public faster than anyone envisioned possible when the requirement for a Preliminary Mayor's Management Report was instituted in the 1970's. The need for two major reports a year dissolve when City officials and the general public can already find monthly data for some services, on a citywide and neighborhood basis, on the City's website at any time.

Second, we now have the benefit of over two decades of experience with this Charter provision. We know that Operations needs to keep abreast of new relevant developments in the private sector and in governments elsewhere. It is impractical for Operations to fulfill all these roles and to produce two performance reports a year for the largest municipal government in this country. Staff seems to be primarily occupied in gearing up for working on the content or editing drafts of the report, leaving no time for other functions.

Third, a recent development, the Governmental Accounting Standards Board, otherwise known as GASB, the nationally accepted independent body that sets standards for State and local Government reporting of financial data, published in July, suggested criteria for the reporting now of performance data. The suggested criteria call for annual reports to the public. In fact, although there may be some, we know of no State or other City or local government that requires two reports a year.

To summarize, we are avid supporters of government performance reporting and the public's involvement in it. We think that eliminating the requirement for the Preliminary Mayor's Management Report should enhance New York City's efforts to continue to be a leader in this field by allowing the staff to concentrate on continuous improvement of its reports, concentrate on enhancing public involvement and on the significant other responsibilities the Office of Operations is mandated to do.

We have more outcome measures now than we ever had and you can find out much more about outcome in terms of crime, incidents of crime and all kinds of other things on the website now. It's my understanding that the annual report would include not only past data, but it would also have the plan for the next year, so that people would have annual data not just four months of data in front of them. Four months of data isn't really predictive of much, because there are seasonal changes and all kinds of other things. The Fund thought about the proposal carefully before coming to its conclusion to support the proposal.

The linking of budget data and operating statistics and outcome measures certainly is a valid concern. However, the preliminary report is supposed to be linked to the budget, but the timing makes it very difficult to comprehend. The annual report makes it very clear to the public how much we spend for particular outcomes. Those interested have the information to make conclusions about the validity of the City's managerial choices and how to make changes if necessary, providing more informed discussion about the city's plans.

APPENDIX D

Implications of the Help America Vote Act (HAVA) of 2002

Implications of the Help America Vote Act (HAVA) of 2002

Congress passed and the President signed the Help America Vote Act (HAVA) on October 29, 2002 to reform voting processes and systems across the nation. The Act provides federal funds to states to: (1) adopt new voting technologies and non-discriminatory standards that expand the opportunities to vote; and (2) implement measures to protect against voter fraud and misrepresentation. The following is an outline of HAVA's key provisions.

A. Improving Election Administration (Title I) (42 U.S.C. §15301)

Authorizes \$325 million to be distributed immediately to states for any of a number of election reform goals such as voter education, training poll workers, improving or replacing voting systems, improving the accessibility and quantity of polling places for disabled voters and limited English proficient (LEP) voters, establishing a toll free hotline for voters, and complying with Title III nondiscriminatory election requirements (see Section IV below).

B. Replacing Lever Voting Machines (Title I) (42 U.S.C. §15302)

Authorizes \$325 million to states for replacing lever voting systems with new, technologically updated systems that comply with Title III voting system non-discriminatory requirements (see Section IV below). New systems must be in place by the November 2004 federal election unless the state requests a waiver until January 1, 2006. New York State will likely seek the waiver.

C. Improving Accessibility of Polling Places for Individuals with Disabilities (Title II) (42 U.S.C. §§15421-15425)

Authorizes \$50 million in FY 2003, \$25 million in FY 2004, and \$25 million in FY 2005 to states for making polling places accessible to individuals with disabilities, providing information to voters on such accessibility, and training election officials and poll workers on how to promote the access of individuals with disabilities to elections. States must apply for these funds through the Department of Health and Human Services.

D. Implementing Uniform and Nondiscriminatory Election Requirements (Title III)

Authorizes \$1.4 billion in FY 2003, \$1 billion in FY 2004, and \$600 million in FY 2005 to states to ensure that their voting systems comply with the election requirements in sections A-D below:

Voting System Standards (effective 1/1/06)(42 U.S.C. §15481)

1. Permit the voter to verify their vote in a private and independent manner
2. Provide the voter an opportunity to correct his or her ballot
3. Notify the voter of selections of more than one candidate for a single office
4. Produce a permanent paper record of each vote with a manual audit capacity
5. Ensure accessibility for individuals with disabilities
6. Include at least one voting system equipped for voters with disabilities at each polling place
7. Provide access to LEP voters according to the 1965 Voting Rights Act
8. Minimize error rates in counting ballots

9. Adopt a uniform and nondiscriminatory standard that defines what constitutes a vote

Provisional Voting and Voting Information Requirements (effective 1/1/04)(42 U.S.C. §15482)

1. Allow an individual who claims to be a registered voter but does not appear on the rolls to cast a provisional ballot that will be counted upon verification of the voter's registration.
2. Create a free access system such as a toll free line or website that allows a voter to ascertain whether the provisional vote was counted and, if not, the reason the vote was not counted.
3. Post voting information at each polling place providing: (a) sample ballot (b) hours of polling place (c) voting instructions (d) instructions for mail-in registrants and first time voters (e) general voting rights information including how to complain about voting rights violations.

Computerized Statewide Voter Registration List (effective 1/1/04)(42 U.S.C. §15483(a))

1. The State shall implement "a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter."
2. The list "shall be coordinated with other agency databases within the State."
3. All election officials must be able to "obtain immediate electronic access to the information contained in the computerized list" and immediately and electronically enter voter registration information into the computerized list.

Voter Registration, Verification, and Identification (applies to registrations after 12/31/02)(42 U.S.C. §§15483(b)-(c))

1. Applicants for voter registration must provide their driver's license number or the last four digits of their social security number. If an applicant has not been issued such numbers, the State shall process the applicant and assign the applicant a unique identifying number.
2. The State shall verify the accuracy of registration information provided by the applicant using other state databases, including but not limited to those of the Department of Motor Vehicles and the Social Security Administration.
3. First-time voters in federal elections who *register by mail* must show the following identification at the poll only in a federal election:
 - a. A current and valid photo identification; or
 - b. A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

4. First-time voters in federal elections do not have to show identification at the polls if they:
 - a. Submit with their registration form a copy of one of the above forms of identification.
 - b. Submit a driver license number or last four digits of a social security number and have that information verified by the State shall not have to show identification at the poll.
 - c. Do not register by mail.

V. Creating a State Administrative Complaint System (Title IV) (42 U.S.C. §15512)

States shall establish state-based administrative complaint procedures to remedy violations of HAVA's Title III requirements.

VI. Election Assistance Commission (42 U.S.C. §15321-15330)

HAVA requires the establishment of a federal Election Assistance Commission to serve as a clearinghouse for election reform information, develop voluntary guidance for states, conduct testing and certification of voting systems, and conduct certain studies.

VII. State HAVA Plan and Committee (42 U.S.C. §15405)

States must form a committee consisting of election officials, stakeholders, and other citizens to develop and submit a plan implementing HAVA requirements.

Key HAVA Issues

While HAVA applies only to federal elections, many of its reforms will have implications for state and local elections. Pursuant to HAVA, New York State has convened a HAVA Implementation Task Force that is developing a draft plan that will be subject to public comment, including public hearings, during the summer of 2003. The following are key HAVA issues that may affect the voting process and voter participation in New York State and City.

1. HAVA provides funds to states for replacing lever voting machines with technologically updated voting machines that are uniform, reliable, and accessible. New York State will have these new machines in place no later than January 1, 2006. The introduction of technologically updated voting machines are likely to affect accessibility for disabled voters and LEP voters, voting system integrity, and the implementation of nonpartisan elections, should such elections be adopted.
2. HAVA provides funds for voter education and poll worker training, creating opportunities to inform voters and poll workers about election reforms and issues.
3. HAVA provides funds for poll worker recruitment to increase the numbers of poll workers who are competent and multilingual.

4. HAVA provides funds for improving access to LEP voters and voters with disabilities, including providing voter education to such populations. While specific money is earmarked for improving accessibility for disabled voters, states have broad discretion in whether to use money for translating materials and providing interpreters for voters.
5. HAVA requires states to allow a person to cast a provisional ballot if his or her name does not appear on the registration list or if an election official asserts that the person is not eligible. New York State already allows for such voting through its affidavit ballot system. Some voter rights advocacy groups propose that provisional ballots also serve as voter registration forms, as is the case in Georgia and Maryland. Advocates argue that this procedure would streamline the process of correcting registration information and allow voters to immediately correct errors that may prevent poll workers from properly identifying the voter's name on the rolls.
6. HAVA requires that person registering to vote submit driver's license or social security numbers, previously not required in New York. Some advocacy groups argue that this may deter some people from registering, particularly in New York City, where 52.1% of city residents have driver's licenses compared to 91% of residents in the rest of the state.
7. HAVA requires that first time voters in federal elections show identification at the polls. Prior to HAVA, no voters in New York were required to show identification. Some advocacy groups argue that this may prevent some people from voting when they do not have proper identification or when poll workers incorrectly, improperly, or discriminatorily enforce the requirement. Some propose that the State adopt an expansive and clear list of identification forms that will be accepted at polling places to prevent potential disenfranchisement. In New York, no voters will have to show identification until the Presidential Elections of 2004 unless there is a special federal election that is earlier.

APPENDIX E

Summary of Expert Testimony on Nonpartisan Elections from Previous Commissions

Expert Testimony on Non-partisan Elections from Previous Charter Commissions

1. Summary of 1998 Expert Forum on Nonpartisan Elections

On June 29, 1998, the 1998 Commission held an expert forum on nonpartisan elections. The persons who testified were: Allan Lichtman, Chair of the Department of History at American University; Fred Siegel, Political Science Professor at Cooper Union and Fellow at the Progressive Policy Institute; Arthur Bramwell, Chairman Kings County Republican Committee; Thomas Ognibene, Queens County Council Member; and Kenneth Sherrill, Political Science Chair at Hunter College.

Allan Lichtman was the first to testify. Lichtman is the author of numerous scholarly writings on political trends in American History and is recognized for his extensive public commentary on contemporary political developments. Lichtman also previously served as a consultant to the Charter Revision Commission on issues concerning Voting Rights Act compliance. Lichtman stated that he had been asked to answer one question by the Commission: whether or not, in his opinion, the move from partisan to nonpartisan elections would violate the Voting Rights Act. In considering this question, he specifically considered whether such a change would diminish the opportunities for minorities within the City of New York to elect candidates of their choice for positions of Public Advocate, Comptroller, and Mayor.¹ According to Lichtman, there are two main minority groups in New York City—African-Americans and Latinos—which together constitute about half of the population of the city and perhaps slightly under that in terms of the voting age population.² Lichtman noted that the City also has a significant Asian-American population.³

Lichtman stated that, in order to do his analysis he would both look at the experience of other cities and at data about elections within the City itself.⁴

He first considered the experience of other cities that have conducted nonpartisan elections. Of the 48 of the top 50 cities in the United States for which he had data, 37 had nonpartisan elections for mayor, while only 11 had partisan elections.

Lichtman noted that one of those eleven cities, Chicago, had adopted nonpartisan elections for its upcoming mayoral election.⁵ According to Lichtman, nine out of the 11 cities had Anglo mayors, and two had black or Hispanic mayors.⁶

Lichtman testified that of the cities that conduct nonpartisan elections, 22 had Anglo mayors, and 15 had black or Hispanic mayors.⁷ As the ratio of minority candidate success was higher in cities with nonpartisan elections, Lichtman concluded that partisan elections had failed as mechanism to allow Hispanics or blacks to advance to the position of mayor.⁸

¹ Transcript, New York City Charter Revision Commission, July 29, 1998 Nonpartisan Citywide Elections Forum (“Transcript 1998 Nonpartisan Forum”), at p. 7.

² *Id.*

³ *Id.* at p. 7.

⁴ *Id.* at p. 8.

⁵ *Id.* at p. 9.

⁶ *Id.* at p. 10.

⁷ *Id.*

⁸ *Id.*

Lichtman noted that a Voting Rights Act analysis requires an examination of the success of minority candidates, because most often minority voters have some tendency to vote for candidates of their own race.⁹ Lichtman testified that there were no cities with partisan systems that had black or Hispanic population majorities that have a black or Hispanic mayor. He noted that in cities with nonpartisan systems, 28 percent of such cities had either a black or Hispanic mayor. He also noted that, based on his data, there was a positive correlation between nonpartisan systems and the election of black and Hispanic mayors.¹⁰

Lichtman testified that he had done a statistical analysis looking at a number of factors that might affect the election of black or Hispanic mayors; such as the actual black and Hispanic population; the educational levels in the city; the existence of partisan or nonpartisan systems; and the positive correlation between nonpartisan systems and the election of a minority candidate for mayor.¹¹ According to Lichtman, this analysis indicated, based on the experience of other cities, that: (1) nonpartisan elections were the norm; and (2) there was no need for the identification that occurs from partisan elections in order to elect a minority candidate.¹²

Lichtman testified that, under a nonpartisan system, candidates are not forbidden from stating their party affiliation while campaigning. However, on the ballot, the party label or affiliation is not disclosed at the time of voting.¹³ He stated that, typically, a nonpartisan primary is different from a partisan primary only in that all the candidates run in one primary without party labels. According to Lichtman, the candidates who prevail in the primary advance to a general election if no one candidate gets the majority of the vote in the nonpartisan primary.¹⁴

Lichtman testified that there are two different schemes typically used to choose how candidates advance to the general election. The first is that the top two candidates advance to the general election irrespective of their percentage of vote. The second is that, if a plurality of candidates obtain over 25 percent of the vote, then the top three move on the general election. Lichtman opined that a city like New York might choose the latter system to help minority candidates move onto the general election ballot. New York has a white majority but also sizable and strong minorities which might benefit from a three way split.¹⁵

Lichtman also analyzed the voter turnout and voting patterns of New York City. He offered a typical example of how a minority candidate could be elected: A congressional district, for example, contains a 40 percent minority population; and that minority group votes cohesively in one party while the white population is divided between Democratic and Republican. Lichtman noted that, in such a case, the cohesive minority could easily predominate in the primary election, elect a candidate of their choice and then on occasion get enough white cross-over votes in the general election to elect a minority candidate.¹⁶ According to Lichtman, this was the scenario that allowed Cynthia McKinney, a representative from Georgia, to be elected in her district.

⁹ Id. at p. 11.

¹⁰ Id. at pp. 11-12.

¹¹ Id. at p. 12.

¹² Id.

¹³ Id. at p. 13.

¹⁴ Id. at p. 14.

¹⁵ Id.

¹⁶ Id. at p. 15.

Lichtman testified the minority population in New York City is nearly evenly split between black and Hispanic.¹⁷ Therefore, the extent to which minorities vote cohesively could determine elections. Lichtman noted that Hispanics, although they are overwhelming Democratic in New York, have a relatively low turnout rate in the primaries; and that in two of the three primaries, whites, who are half Democratic, had a higher voting turnout rate than Hispanics.¹⁸ Based on his analysis of the general elections in 1989, 1993, and 1997, Lichtman stated that whites have the highest turnout rates, blacks second, and Hispanic turnout is very low relative to either whites or blacks.¹⁹

Lichtman next analyzed actual voting habits in both primaries and in general elections from 1987 to 1997 by looking at all Mayoral elections and all Public Advocate and Comptrollers elections.²⁰ He noted that blacks and Hispanics do not necessarily vote together in primary elections.²¹ He noted, however, that with the Dinkins election, blacks and Hispanics were united in voting together for Dinkins in 1989, although that this was unusual. He also noted that blacks and Hispanics tend to vote together for a Democratic candidate in the general election regardless of whether the candidate was white or black.²²

Lichtman stated that based on his statistical analysis of primary and general elections there was no indication of a solid minority voting block of any kind in primary elections, although he did note that there was evidence of minorities uniting behind Democratic candidates in general.²³ He also noted that there is no great base of minority electoral success in New York for Citywide office from which retrogression can be measured.²⁴

Lichtman did an internal statistical analysis of the exit polls and noted that, in New York, whites are about half Democratic, blacks are overwhelmingly Democratic, and Hispanics are strongly Democratic.²⁵ He stated that it appears, based on the exit polls, whites are the plurality group within the Democratic party, at between 43 and 45 percent, depending on the counting mechanism used. He further noted that whites predominate in the Republican Party.²⁶

Lichtman used the exit poll data to analyze the three major ethnic groups in New York in terms of party affiliation and who they voted for in 1993 and 1997.²⁷ Lichtman noted that Ruth Messinger, a white candidate for Mayor, received a smaller percentage of the white Democratic vote than Dinkins, the black candidate, suggesting that the white vote was not based simply on racial cues.²⁸ According to Lichtman, black Independents tended to vote similarly to black Democrats and white Independents tended to vote similarly to white Republicans. Hispanic Independents tended to vote more like Democrats. Lichtman stated that, based on this analysis, it did not appear that there was a reason to conclude that a move

¹⁷ Id.

¹⁸ Id. at p. 17.

¹⁹ Id.

²⁰ Id. at p. 18.

²¹ Id.

²² Id. at p. 19.

²³ Id. at p. 22.

²⁴ Id.

²⁵ Id.

²⁶ Id. at p. 23.

²⁷ Id.

²⁸ Id. at pp. 23-24.

towards nonpartisan elections in New York would constitute a violation of the Voting Rights Act.²⁹

Lichtman was then questioned by the Commissioners. In response to a question posed by Commissioner Byrne regarding the importance of party labels, Lichtman stated that the party designation was very powerful and that in the absence of a party cue, voters would turn to other cues. He stated that one could generalize that party cues are less important in high visibility elections, such as in one for Mayor, than in elections where the voters are unlikely to know much about the candidates.³⁰

Lichtman also hypothesized that, in nonpartisan elections, the personality of the individual candidate becomes a more important issue.³¹ Lichtman stated, in response to another question, that a switch from partisan to nonpartisan would cause an increase in candidates running in the primary.³² He also stated that a narrowing of the field in the general election would not harm minority candidates because it was his experience that candidates under third party labels have not been successful.³³

Commissioner Rubin noted that advancing only two candidates to the general election would result in fewer candidates appearing in the general election because there are often third-party candidates on the general election ballot. Commissioner Rubin asked whether that reduction could have an adverse impact on minority voting rights.³⁴ Lichtman answered that since it was extremely unlikely to have a successful candidate under a third party label, there should not be a finding of an adverse impact.³⁵

The next speaker, Professor Fred Siegel, spoke regarding the failure of New York City's present electoral system. Professor Siegel noted that the present system resulted in officials too comfortable with the disastrous and long term decline of New York City.³⁶ Professor Siegel opined that, should such a downturn happen again, the political system now in place would once again fail to react. Professor Siegel stated that nonpartisan elections should be extended to all elections in New York City for several reasons: (1) New York has low voter participation; (2) New York is heavily weighted towards incumbents; (3) New York leads the nation in ballot access lawsuits and elections cases; and (4) the present system is a political monopoly which eliminates competition and accountability.³⁷

Professor Siegel disagreed with Mr. Lichtman only in that he believed the nonpartisan election mechanism should advance only two candidates to the general election, in order to avoid a successful candidate without a majority of the vote.³⁸ Professor Siegel supported a system similar to that used in Los Angeles, which establishes majorities.³⁹ He stated that the present system in New York allows a small faction of one party to dominate a large electorate.⁴⁰ In response to a question from Commissioner Crotty, Professor Siegel stated that

²⁹ *Id.* at pp. 24-25.

³⁰ *Id.* at pp. 27-28.

³¹ *Id.* at p. 30.

³² *Id.* at pp. 31-32.

³³ *Id.* at p. 34.

³⁴ *Id.* at p. 33.

³⁵ *Id.* at p. 33.

³⁶ *Id.* at p. 35.

³⁷ *Id.* at p. 36-42.

³⁸ *Id.* at pp. 41-45.

³⁹ *Id.* at p. 42.

⁴⁰ *Id.* at p. 43.

nonpartisan elections have helped the vibrancy of political parties in cities that have nonpartisan elections. He opined that nonpartisan elections encourage people to participate.⁴¹

Council member Thomas Ognibene, 30th Council District, Queens County, was the next to speak. Councilman Ognibene testified that he was a minority leader of the City Council and the Executive Director of the Queens County Republican Party.⁴² He stated that the City Council was at its best when it was least political. He claimed that anyone can be elected for City Council if they ran on the Democratic ticket. He claimed that many good Republican and Independent candidates have, in the past, not had a very good chance of prevailing at the general election.⁴³ He claimed that the City would be better off if there were nonpartisan elections, because the City Council works best without regard to political affiliation.⁴⁴ Ognibene also stated that he believed that nonpartisan elections would obviate the need for term limits.⁴⁵ Ognibene testified that it is most important to serve the interests of the people and the community and that an elected official does not need to be steeped in party tradition to do that effectively.⁴⁶ Ognibene stated that he believed that the quality of the candidate would be higher for City Council elections if the voters did not have to rely on party cues and if voters were required to judge a candidate on their beliefs and opinions.⁴⁷ When questioned by Commissioner Crotty as to whether he believed his views were applicable to Citywide elections, Ognibene stated that they were.⁴⁸ Ognibene stated, in response to a question as to what would happen to the Conservative Party if nonpartisan elections were implemented, that the Conservative party had no potency. Ognibene claimed that if nonpartisan elections were in effect, minorities would rally around their candidates based on racial cues more than on party cues.⁴⁹

Arthur Bramwell was the next speaker to testify. He stated that he was opposed to nonpartisan elections. Bramwell claimed that neither party affiliation nor race swayed voters; rather, voters were swayed by candidates who promise good government.⁵⁰ Bramwell stated that good government is not reserved for any one group and that nonpartisan elections are just another gimmick for change. He claimed that by changing the electoral process, there will be a need for new voting apparatus and money therefore to support that change, which will inevitably lead to higher taxes.⁵¹

Kenneth Sherrill, the Political Science Chair at Hunter College, then spoke against nonpartisan elections. He stated that there are many factors that affect a voter's choice, including ones representing long-term and short-term values. He noted that party is a long-term value for most people and an important factor in their voting choice.⁵² Sherrill opined that the alternative to party politics is "everyone for oneself" and that, in government, such an

⁴¹ Id. at pp. 44-45.

⁴² Id. at p. 46.

⁴³ Id. at p. 47-48.

⁴⁴ Id. at p. 50.

⁴⁵ Id. at p. 51.

⁴⁶ Id. at p. 52.

⁴⁷ Id. at pp. 53-55.

⁴⁸ Id. at pp. 56-58.

⁴⁹ Id. at pp. 58-60.

⁵⁰ Id. at pp. 61-62.

⁵¹ Id. at pp. 63-64.

⁵² Id. at pp. 81-83.

approach leads to gridlock, because office holders are under no pressure to act together. He believed this to be a poor result.⁵³

Sherrill opposed nonpartisan elections for the following reasons: (1) they are likely to lead to gridlock in government; (2) they are likely to reduce the influence of the Mayor over the City Council, if the City Council elections were to remain partisan; (3) they encourage extremism and reduces moderation; (4) they diminish collective responsibility in government; (5) they are likely to intensify rather than diminish racial and ethnic tensions; (6) they are likely to lead to lower voter turnout; (7) they will erect serious barriers to the political incorporation of those New Yorkers who are relatively disadvantaged; (8) they impose substantial difficulties on the average citizen's efforts to evaluate competing candidates; (9) they increase the influence of campaign contributions; and (10) they significantly disadvantage those who are least well off in society: racial minorities, immigrant groups, those with low income, and those with the least education.⁵⁴

Commissioner Crotty noted that the present party structure did not deliver the vital things that Professor Sherrill claims they do.⁵⁵ Professor Sherrill then stated that nominations through primaries as opposed to nominations through party organizations would cure the ills of the current system. He also added that fundraising matters much more in primaries than in general elections.⁵⁶ Commissioner Tsambinos stated that the problem with Professor Sherrill's analysis is that New York does not have a competitive two-party system.⁵⁷

In response to a question, Lichtman stated that there is no systematic relationship between partisan versus nonpartisan voter turnout in the top 25 cities.⁵⁸ Commissioner Crotty expressed his concern that there were over 500,000 voters who were not members of a particular party and therefore, under the present system, could not vote in any primary.⁵⁹ Bramwell responded that the solution is to change the Election Law to provide for open primaries so that everyone can vote.⁶⁰

⁵³ *Id.* at pp. 84.

⁵⁴ *Id.* at pp. 85-93.

⁵⁵ *Id.* at p. 96.

⁵⁶ *Id.* at p. 97.

⁵⁷ *Id.* at p. 99.

⁵⁸ *Id.* at p. 120.

⁵⁹ *Id.* at p. 124.

⁶⁰ *Id.* at p. 126.

2. Summary of Expert Testimony on Nonpartisan Elections Received at Public Meetings in 2002

Dr. Alan Lichtman, August 6, 2002, Professor of History, American University⁶¹

Dr. Lichtman cautioned that his sole focus was to ascertain whether, in his view, the proposed changes would violate the Voting Rights Act by diminishing opportunities for minorities to elect the candidate of their choice. In forming his opinion, Dr. Lichtman indicated he would be building upon and advancing his prior work for the 1999 Commission, which reviewed the issues of nonpartisan elections and mayoral succession. For the 1999 Commission, Dr. Lichtman had analyzed statistical data from the 1989, 1993 and 1997 elections including turnout statistics.

The analysis previously performed by Dr. Lichtman was intended to ascertain to what extent minorities voted together and whether as a result a move to nonpartisan elections opportunities for minorities to elect the candidate of their choice could, in any way, be reduced. The previous analysis had extended to a review of other large municipalities comparing the success of minority candidates in cities that use partisan and nonpartisan elections.

Gerry Hebert, August 6, 2002, former Acting Chief, Voting Rights Section, Department of Justice⁶²

Hebert testified that the timing for preclearance by the Justice Department on the substance of a specific voting change may take two basic paths. The covered jurisdiction may request preclearance prior to holding the referendum to adopt the change, or the referendum may be held, and if passed, the jurisdiction may then seek preclearance prior to instituting the voting change. Hebert said that most jurisdictions hold the referendum first and request preclearance only if passed. Hebert thought that only New York City has sought preclearance prior to holding the referendum.

New York was covered by the Voting Rights Act because it had a literacy test for people to register to vote and less than 50 percent of the voting age population either turned out to vote or was registered to vote as of the presidential election prior to coverage. These two factors brought New York, and a few other small northern jurisdictions, under the coverage of the Voting Rights Act.

Hebert stated that, to his knowledge, the Justice Department had never denied a simple change from partisan to nonpartisan elections. He noted that New York had already obtained preclearance for nonpartisan special elections. He described this fact as “probative” of the Justice Department’s potential analysis concerning a change to nonpartisan elections for all city elections.⁶³ However, it would be necessary for the City to update all analyses based on

⁶¹ Aug. 6, 2002, Transcript, at p. 17.

⁶² Aug. 6, 2002, Transcript at p. 25.

⁶³ *Id.* at p. 29.

the most recent data, because the Justice Department would be concerned with the most recent circumstances.

Hebert reviewed the history of the preclearance provision, Section 5 of the Voting Rights Act. Congress had found that the Justice Department was unable to eliminate discriminatory voting practices throughout the nation because, after the Justice Department had eliminated a particular discriminatory practice in a jurisdiction, another practice would immediately be instituted. Therefore, Congress sought, in Section 5, to freeze the status quo until the Justice Department had an opportunity to review proposed changes in voting practice. To limit the broad effect of this Section 5, Congress sought to cover only jurisdictions that had followed a practice thought to be used to discriminatory effect, such as a literacy test. Such a practice, known as a “tester device,” had been used in the City at the time the Act became effective.

Hebert noted that the Voting Rights Act would be up for renewal in 2007. At that time, Congress could change the coverage formula or let the requirements expire, thus eliminating preclearance altogether. Jurisdictions may seek to be relieved of coverage by asking the Justice Department or a Federal Court in Washington to review their performance under the Voting Rights Act for the last ten years. Only nine jurisdictions have successfully obtained this relief, known as a “bail out,” since the inception of the Voting Rights Act.

Hebert noted that proposed changes in the selection of school board members in New York were presently pending before the Justice Department. The Justice Department had, in the past, objected to a method of electing school board members passed by the New York Legislature. He hypothesized, therefore, that the Legislature had postponed seeking preclearance of a change in the procedure for selecting school boards members, so that other changes could be reviewed first and separately by the Justice Department. Moreover, he noted that the formation of a task force or committee to review school board selection was the only limited issue now pending before the Justice Department.

Hebert then explained that both the timing of the referendum and the substantive voting change required preclearance. Hebert estimated that the Justice Department had objected to the holding of a referendum only in a very small percentage of its voting change reviews. In most cases, Hebert explained, the reason for the objection was that the date of the referendum could somehow limit minority involvement. In fact, it was noted that the holding of the previous referenda on Charter revisions had received preclearance from the Justice Department.

The Justice Department may reach out to minority leaders to get their views as part of its process. Nonetheless, after a jurisdiction receives preclearance, any group may bring suit claiming a violation of the Voting Rights Act.

**Bill McKoy, August 13, 2002, President of the City Council of Paterson , NJ.;
Member of the Board of Directors of the Paterson Education Fund⁶⁴**

Mr. McKoy provided expert testimony to the Commission on the topic of nonpartisan elections, sharing his experiences with the electoral process. Mr. McKoy explained that Paterson has 72 different ethnic communities, and is 50 percent Hispanic and approximately 40 percent black.⁶⁵ Paterson changed to nonpartisan elections on July 1, 1974. The State

⁶⁴ Aug. 13, 2002, Transcript, at 10.

⁶⁵ *Id.* at p. 11.

Supreme Court had found Paterson's system of government unconstitutional. Paterson selected the Faulkner Form D, municipal government with a strong Mayor and Council format.⁶⁶

Mr. McKoy explained that there are both pluses and minuses to both the partisan and nonpartisan systems. One advantage is that nonpartisan allows for easier access to the electoral process, and easier access to the ballot. In the City of Paterson, a candidate must obtain signatures of valid registered voters from the city equaling at least one percent of the entire city to run at large or for Mayor, or one percent of registered voters in the relevant community to gain ballot access.⁶⁷ Voters may sign once for each office. The first signature is valid and subsequent signatures for other candidates would be denied. Mr. McKoy explained that the signature requirement is so low that candidates usually significantly exceed the minimum requirement.

Nonpartisan elections require voters to pay attention not only to general issues but to the individual candidates, their qualifications and their experiences.⁶⁸ The result has been that a number of non-profit organizations, church groups, grass roots organization, and others sponsor public forums for the public to meet and hear the candidates. In response to a question from Chairman McGuire concerning whether nonpartisan elections encourage community groups other than political parties to get involved in the political process, Mr. McKoy stated that he believed they did.⁶⁹ He further explained that this result cannot be gained as readily through the political party in a partisan election because "the selection has already taken place to some degree, in that candidates have been selected to head the party or to be on the ticket and you're now debating among those that have already been selected."⁷⁰ In contrast, "with a nonpartisan process, the entry is wide-open, individuals have better access and more personal choice as to whether or not they feel they meet the qualifications to run for office and have something to offer in terms of City government."⁷¹

With respect to whether political parties continue to play a role with candidates, even though candidates do not officially identify themselves with a political party, Mr. McKoy indicated that, in Paterson, political parties do not play a significant role, except that "the issue of fundraising and access to campaign contributions is significant and the party may play a role in that way." With nonpartisan elections, the Mayor and other individuals support a slate or a particular individual, as do the newspapers, which endorse candidates.

When a Commissioner asked how turnout relates to partisan and nonpartisan elections, Mr. McKoy stated that, while he did not have evidence or empirical documentation on turnout, he believed that "individuals that would normally not turn out or not participate are now doing so because they can more directly align themselves or identify with a particular candidate of their choosing."⁷² Upon further questioning from the Commission on the issue of how turnout compares in nonpartisan elections for Mayor and the Council with that in partisan elections, Mr. McKoy indicated that while turnout is affected on a seasonal and issue basis, there is a "steady even keel of participation so far with the nonpartisan race" and that at the City Council level, there is a slightly higher level of participation than in the broader

⁶⁶ Id.

⁶⁷ Id. at p. 12

⁶⁸ Id. at p. 13.

⁶⁹ Id. at p. 14.

⁷⁰ Id.

⁷¹ Id.

⁷² Id. at p. 18.

elections.⁷³ In response to whether there has been a shift in the outcome of elections as a result of nonpartisan elections, Mr. McKoy indicated that five years ago was the first time an African-American candidate was elected Mayor. As of July 1, Paterson has had its first Hispanic Mayor.⁷⁴

Gus Garcia, August 13, 2002, Mayor, Austin, Texas

Mayor Garcia explained that the City of Austin has always had nonpartisan elections, which means that candidates do not have to rely on party leaders to run for office.⁷⁵ “The candidates offer themselves, lay out the platforms, the people can vote on the platform and support the candidates.”⁷⁶ The Commission asked Mayor Garcia to describe Austin’s experience with nonpartisan elections, making the case both for it and against it. Mayor Garcia informed the Commission that the disadvantage of nonpartisan elections in Austin is that, in Austin, the elections are at dates other than the party elections, which affects turnout, noting that he was elected based on a 13% voter turnout.⁷⁷

Austin is covered by the Voting Rights Act. Many kinds of accommodations are made so that people can vote. Examples cited include using absentee ballots, early voting and locations all over the City. When questioned by the Chairman on data on voter turnout, Mayor Garcia responded that for gubernatorial elections, turnout can be as high as 40 percent, while in a Presidential election, the turnout is even higher, reaching 50 or 55 percent. In response to the Chairman’s question as to whether it is Austin’s experience that nonpartisan elections open the process to more individuals, particularly minorities, Mayor Garcia explained that even without single member districts, there was African-American representation. Now, two out of seven Council members are Hispanic. Mayor Garcia stated that the fact that Austin uses a nonpartisan election system “has not affected opportunities for minorities to serve on the Council. But then again, Austin is a city that has a great deal of diversity.”⁷⁸

On the topic of whether there are campaign finance implications with nonpartisan elections, Mayor Garcia commented that their campaign finance laws are in their Charter and are restrictive with respect to the amounts that may be donated.⁷⁹ He further explained that this is not an issue in the nonpartisan elections, and that “name identification and the positive to negative incumbency advantages make it very difficult for people to run with these kinds of campaign finance provisions.”⁸⁰

In Austin, nonpartisan elections have resulted in a large number of candidates getting on the ballot.

Glenda Hood, August 15, 2002, Mayor, Orlando Florida⁸¹

Mayor Hood is the first woman elected as mayor of Orlando. She is in her third term. As mayor, she is the chief executive officer and is responsible for a workforce of

⁷³ *Id.* at p. 20.

⁷⁴ *Id.* at p. 34.

⁷⁵ *Id.* at p. 21.

⁷⁶ *Id.*

⁷⁷ *Id.* at p. 24.

⁷⁸ *Id.* at p. 27.

⁷⁹ *Id.* at p. 28.

⁸⁰ *Id.* at p. 29.

⁸¹ Aug. 15, 2002, Transcript at p. 9.

approximately 3,200 employees and an annual budget of \$526 million. Prior to serving as mayor, she also served as an Orlando City Council member and was the president of her own public relations firm. She is a past president of the National League of Cities and the Florida League of Cities. She has also served as Chair of Links, the regional transportation authority, and is currently chair of Partners for Livable Communities.

Mayor Hood testified in support of nonpartisan elections. According to Mayor Hood, the issues that she faces as a local elected official have very little to do with partisan politics. She stated that nonpartisan elections allowed public officials to make good public policy without what may be characterized the disruptive interference from political parties.⁸²

According to Mayor Hood, nonpartisan elections permits a more provision-oriented approach to the challenges of state and local government, as opposed to the a political issues oriented approach. She stated that with nonpartisan elections, public officials stay focused on the issues.

Mayor Hood testified that the community is benefited in three areas with nonpartisan elections: neighborhoods, businesses, and government.⁸³ She stated that neighborhoods become a center of political influence and power, rather than a party machine or party official. She testified that business benefits from nonpartisan elections because nonpartisan elections allow business organizations and business leaders to build the credibility and influence to support their arguments. Nonpartisan elections, according to Mayor Hood, also allow business to create alliance with neighborhoods and with nonprofit organizations.⁸⁴

Mayor Hood testified that the government receives benefits from nonpartisan elections, because it allows for good public policy and good government without party labels. She noted that nonpartisan elections make it tougher for political parties to rise politically.⁸⁵

According to Mayor Hood, party registration still matters, even with nonpartisan elections. She noted that there has never been a movement to eliminate them and that the Orlando model has been utilized by Orange County, Florida, as well as the School Board.⁸⁶

When questioned by the Commission, Mayor Hood stated that she has had conversations with other chief executive officers of other cities on the issue of whether nonpartisan elections help or hinder minority representation in public office. She stated that, in Florida, only Jacksonville has partisan elections. She noted that there is diversity on various levels in local government across the state. Mayor Hood testified that minorities and women have not only been able to run for office, but also have achieved success as candidates.⁸⁷

Mayor Hood disagreed with the argument that nonpartisan elections favored wealthy candidates or disenfranchised the poor, who would not have resources other than what was contributed by the party. She stated that in Orlando, the Mayor is elected citywide and that there are single member districts and that the elected representatives of those districts represent those districts, as well as the economies of those districts.⁸⁸ Lastly she stated that Orlando does not have public funding of candidates.

⁸² Id.

⁸³ Id.

⁸⁴ Id. at p. 10.

⁸⁵ Id. at p. 11.

⁸⁶ Id.

⁸⁷ Id. at p. 12.

⁸⁸ Id. at p. 13.

Dr. Alan Lichtman, August 15, 2002⁸⁹

Dr. Lichtman stated that he had been asked by the Commission to examine whether a switch to nonpartisan elections and special elections for Mayoral succession would violate the Voting Rights Act by resulting in the retrogression of minority opportunities.⁹⁰

Lichtman testified that he had completed preliminary studies of the Voting Rights implications for New York City, for both issues of shifting to nonpartisan citywide elections and establishing nonpartisan special elections with runoff provisions to fill Mayoral vacancies. He noted that in conducting these studies, he addressed the theoretical arguments that have been raised and that what he endeavored to do is test with empirical analyses and empirical studies whether or not those theoretical arguments were supported.⁹¹ Lichtman stated that he analyzed evidence external to the City of New York, a database of elections systems and the Mayoral election results for the nation's 100 largest cities. He said he also analyzed racial patterns of voting turnout and party identification for citywide Democratic primary and general elections from 1989 to 2001, with a focus on minority versus white contests.⁹² He examined both exit poll results and statistical methodologies that are standard in the field and have been approved by the United States Supreme Court. Lastly, he also examined patterns of minority and white turnout in special elections for legislative positions. He advised that these studies supplement and expand the studies he conducted for previous Commissions in 1998 and 1999.

As a result of his studies, Lichtman reached four central conclusions: (1) based on his analysis of electoral results and both the partisan and nonpartisan electoral systems in the nation's 100 largest cities, nonpartisan elections are not an impediment to the election of mayors from members of minority demographic groups; (2) citywide elections and voting within New York show that standard explanations for how partisan elections might help minority voters elect candidates of their choice for multiple reasons do not apply to the circumstances of citywide elections in New York City; (3) a change from partisan to nonpartisan elections of citywide officials in New York city might enhance the prospects for minority candidates of choice of minority voters to compete in elections for citywide offices; (4) the use of nonpartisan special elections with a runoff provision for filling vacancies in the office of Mayor should not undermine the Voting Rights Act by impeding the opportunities for minority voters to participate fully in the electoral process and elect candidates of their choice.⁹³

Lichtman's findings regarding the 100 largest cities in the nation were similar to those identified in the staff report regarding the 50 largest cities. Lichtman looked at systems that were partisan in their election of mayor, as compared to systems that were nonpartisan, to see if there were differences in the percentage of minority mayors. In particular, he looked to see if nonpartisan elections appeared initially to be an impediment by having a smaller percentage of minority mayors. He noted that 82 of the nation's 100 largest cities use nonpartisan elections for office of mayor.⁹⁴

⁸⁹ Aug. 15, 2002, Transcript at p.18.

⁹⁰ Id.

⁹¹ Id. at p. 19.

⁹² Id.

⁹³ Id. at pp. 19-20.

⁹⁴ Id. at p. 21.

The data shows that nonpartisan systems do not appear to be an impediment to the election of minority mayors. Twenty-seven percent of cities with nonpartisan systems have minority mayors, including both African-Americans and Hispanics, while only 22 percent of the cities with partisan election of mayors have minority mayors.⁹⁵

As part of Lichtman's analysis, he looked at cities with white majorities and compared for those cities the percentage of cities with minority mayors and partisan elections and the percentage of cities with minority mayors and nonpartisan elections. He found that none of the 11 cities with white majorities and partisan elections elected minority mayors. The four African-American mayors under the partisan systems come from cities with non-white majorities: Washington, D.C., Philadelphia, and Rochester.⁹⁶ Eighteen percent of the 45 cities with nonpartisan elections and white majorities elected minority mayors. Controlling statistically for the demographics of these cities, the slight lead in terms of minority mayors for nonpartisan elections systems widens quite substantially. Lichtman stated that these results hold up over time.

Lichtman also analyzed whether nonpartisan elections result in a diminution of voter turnout and consequently, a diminution of minority voter turnout as well. Lichtman analyzed the City of Chicago, which recently switched to nonpartisan elections. The voter turnout in Chicago after nonpartisan elections were instituted was comparable to what it was with partisan elections.⁹⁷

He also gathered data on voter turnout in the top largest cities and concluded that voter turnout is really low in municipal elections and that this was true regardless of whether the elections were partisan or nonpartisan. Lichtman stated that he did not have information on minority voter turnout.⁹⁸

Lichtman testified that insofar as Justice Department preclearance and the issue of retrogression was concerned, the Justice Department would look at whether it was extremely likely that a switch from partisan to nonpartisan elections would depress turnout, depress minority turnout more than white turnout, and whether that in turn would have an effect on the ability of minority voters to elect candidates of their choice. According to Lichtman, a change in turnout per se would not be a cause to raise an objection with respect to retrogression. He noted that the Justice Department would rely on the same type of analysis that he was conducting in order to determine retrogression.⁹⁹ When questioned about the validity of studies from the 1960's and 1970's that suggest that voter turnout drops after a switch to nonpartisan elections, he stated that he would be loath, as a political analyst, to rely on studies that were thirty to forty years old. He noted that there are more recent studies that reach different conclusions.¹⁰⁰

According to Lichtman, New York City's voting age population is very diverse. Its plurality is non-Hispanic white, at 39 percent, with a substantial representation of African-Americans at 23 percent. Lichtman stated that Hispanics, at 25 percent, have now become the predominate minority in the voting age population. He also stated that there is a very substantial Asian representation at 10 percent and various others at 3 percent.¹⁰¹

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id. at p. 24.

⁹⁸ Id. at pp. 24-26.

⁹⁹ Id. at pp. 26-28.

¹⁰⁰ Id. at pp. 28-30.

¹⁰¹ Id. at pp. 33-36.

Lichtman testified that 26 percent of whites in New York City are Republican. Six percent of Blacks, 14 percent of Hispanics, and 29 percent of Asians are Republican. Whites are a substantial plurality in New York City, even of those who identify themselves as Democrats. According to Lichtman, the phenomenon of minorities being able to dominate Democratic primaries, and the phenomenon of major differences between minority and white voting strengths in Democratic primaries and general elections, do not apply in New York.¹⁰²

Lichtman stated that, according to the 2001 exit polls, there is not a great deal of difference between white voting strength in Democratic primaries and runoffs and in general elections. In the 2001 Democratic primary, whites were 48 percent of voters; in the Democratic runoff, whites were 47 percent; and in the general election they were 52 percent. Lichtman noted that the big fall-off in the general elections is for Hispanic voters, who seemed to have turned out for a Hispanic candidate in the Democratic primary runoff and did not have that candidate to vote for in the general election.¹⁰³ He stressed again that for these reasons, the argument that a partisan system helps minorities does not apply in New York City.

Lichtman again noted that there are three predominant minority groups in New York City, and that while one minority group might unite in overwhelming numbers in primaries behind a candidate of its race to nominate that candidate, that does not necessarily occur among the different minority groups in New York City in Democratic primaries.¹⁰⁴ Lichtman noted that in 1989 when David Dinkins, the African-American candidate, was nominated, African-American support for Dinkins was overwhelming while it was much lower with Hispanics.¹⁰⁵

Lichtman stated that there was a real divergence between the African-American and Hispanic vote with respect to African-American candidates in the 1997 Mayoral primary. In the 1997 primary, the two African-American candidates collectively received three quarters of the African-American vote in the Democratic primary. A great bulk of the Hispanic vote went to the white candidate.¹⁰⁶ The reverse occurred in the 2001 primary for Mayor: the Hispanic candidate received the overwhelming support of Hispanics, but only 44 to 52 percent of the African-American vote. Lichtman pointed out that, even in the runoff, the Hispanic candidate received substantially less of the African-American vote than of the Hispanic vote.¹⁰⁷ In addition, there was greater divergence with respect to Asian votes for the Hispanic candidate, who received only 21 percent of the Asian vote in the primary and 42 percent in the runoff.¹⁰⁸

Lichtman believes that the phenomenon of Democrats necessarily voting for Democratic candidates in general elections does not necessarily occur in New York City.¹⁰⁹ He cited the facts that Dinkins won the 1989 Mayoral election with approximately 21-29 percent of the white vote, even though whites are majority Democratic in New York City, and that, when Dinkins lost four years later, he did so again with only 20-21 percent of the white vote. He concluded that in a general election, neither a white Democrat nor an African-

¹⁰² Id. at p. 37.

¹⁰³ Id. at p. 38.

¹⁰⁴ Id.

¹⁰⁵ Id.

¹⁰⁶ Id. at p. 39.

¹⁰⁷ Id.

¹⁰⁸ Id. at pp. 39-40.

¹⁰⁹ Id. at pp. 41-42.

American or Hispanic Democrat can count on votes from white Democrats in the primary or general election.¹¹⁰

Lichtman next stated that, in New York City, it is possible that a minority candidate may be more likely to advance to a general election under a nonpartisan system than a partisan system, because under a nonpartisan system two candidates from the field advance to the general election. Under a partisan system, in contrast, there is one Democrat and one Republican. Since white voters dominate the Republican primary and are the dominant force in the Democratic primary, white candidates generally advance to the general election in New York City.¹¹¹

Lichtman stated that in a nonpartisan system, all candidates would be competing together and therefore the white Republicans would be cutting into the votes of the white Democrats and, with only two candidates advancing, there would be enhanced opportunity for minority candidates to advance to the general election. He noted that since 1989, only two minority candidates in Citywide elections have ever advanced to a general election—Dinkins in 1989 and Thompson in 2001.¹¹² [They were the only two minority group members elected to Citywide office in the City's history.]

Lichtman then shifted his discussion to mayoral succession and the use of nonpartisan special elections for mayoral succession. He stated that he believed that having such a feature in the succession scheme would not raise serious voting rights problems.¹¹³

Lichtman discussed the issue of diminution of minority versus white voter turnout in special elections. He stated that there are theoretical arguments to the effect that in special elections, as opposed to regularly scheduled elections, overall turnout is generally depressed but that minority turnout might be depressed relative to white turnout.¹¹⁴ Lichtman testified that, given these theoretical arguments, he first analyzed data from 1992 to 1998 to see where voter fall-off was greatest. He stated that fall-off was sometimes greater in minority election districts and sometimes greater in white election districts. Lichtman testified that there was one pattern of significance in this data occurring in two special elections that took place in majority-minority districts: Bronx Senate District 33 and Queens Congressional District 6.¹¹⁵ He stated that, in both of these districts, the fall-off was substantially greater in white election districts than in the minority election districts, whereas in other districts the fall-off is greater in the minority election districts as opposed to the white election districts, which suggested that there were competitive minority candidates with a chance to win. He further stated that when there are competitive minority candidates with a chance to win, there is minority turnout and without it, there is none.¹¹⁶

Lichtman stated that he analyzed citywide special elections in Washington, D.C., Memphis, and Chicago, and that none of these cities showed a consistent pattern of lower minority than white turnout or greater minority fall-off than white fall-off. He stressed that it was the competitiveness of the elections that mattered and not the nature of the elections. He

¹¹⁰ *Id.* at p. 42.

¹¹¹ *Id.* at p. 43.

¹¹² *Id.* at p. 43.

¹¹³ *Id.* at p. 44.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at pp. 44-45.

¹¹⁶ *Id.* at p 45.

stated that if there is a hotly contested election with a strong minority candidate there will be minority turnout.¹¹⁷

Finally, Lichtman addressed the issue of the runoff provision for special elections for succession for Mayor. He stated that a 40 percent runoff provision might undermine minority opportunity because a minority candidate could be elected with less than 40 percent if the white vote splits. On the other hand, a white candidate could be elected with less than 40 percent, if the minority vote splits. According to Lichtman, an argument could be made that, with either result, a mayor could be elected that represents a small fraction of the city and therefore the Voting Rights concerns cut in both directions.¹¹⁸

When questioned by the Commission in regards to whether there was a similarity in minority diversity between New York and any of the next largest fifty cities in the country, Lichtman stated that Chicago was similar. Chicago instituted nonpartisan elections between 1995 and 1999.¹¹⁹

Mr. Francis Barry, August 20, 2002, NYU Taub Urban Research Center¹²⁰

Barry testified that there have been three trends in the debate over nonpartisan elections. Originally it was believed that nonpartisan elections would improve the performance of government by removing party bosses and allowing elected officials to make decisions based on the merits rather than on party demands.

In the 1950s, political scientists began to examine the impact of nonpartisan elections on the electoral rather than governance process, and they developed three major critiques. Specifically, nonpartisan elections: (1) advantage Republicans because, without party support, low and middle income candidates have trouble getting their campaigns financed; (2) depress turnout, because without a party cue, voters more often lack sufficient information to cast a ballot; and (3) favor incumbents, because, in the absence of a party label, name recognition acquires added importance.

These hypotheses held sway for ten to twenty years, until the conclusions were reevaluated by scholars who performed studies that sought to control for certain variables that vary from city to city (i.e., city size, government structure, partisanship, and date of election).

Barry briefly reviewed a 1986 study by Susan Welch and Timothy Bledsoe that found Republican advantage only in towns with a population between 50,000 and 100,000, with lower than average income, and with at-large elections.¹²¹ He stated that the literature is largely inconclusive and that cities need to examine their own unique characteristics in evaluating election structures.

Barry went on to say that New York may be uniquely well-suited to hold nonpartisan elections because of three recent reforms: the Campaign Finance Program, which provides public money to candidates; the Voter Guide, which provides information to voters; and term limits, which weaken the power of incumbency.

Regarding the first critique that under nonpartisan elections, that non-wealthy candidates will lack access to funding, Barry noted that New York's Campaign Finance Program distributed \$41 million in public funds for the 2001 elections, far more money than

¹¹⁷ *Id.*

¹¹⁸ *Id.* at p. 46.

¹¹⁹ *Id.* at pp. 47- 48.

¹²⁰ Aug. 20, 2002, Transcript, p. 35.

¹²¹ *Id.* at p. 37.

parties provided to candidates. Candidates in New York City, he said, rely much more on public funds than on party funds.

Nonpartisan elections may also correct several imbalances, according to Barry, that exist in the Campaign Finance Program. First, Democrats have an advantage because they usually run in both a primary and general election, and therefore have the opportunity to receive public funds for both elections. Other parties' candidates, however, often do not have a primary election. Mr. Barry noted that in District 19's recent City Council election, the Democratic candidate received \$150,000 for the primary and general elections while the Republican candidate received only \$75,000 for the general election. The Republican lost by 16 votes.¹²² In a nonpartisan system, every candidate would have the same opportunity to qualify for the same amount of funds.

Second, Barry noted that candidates in the 2001 general election who faced no serious challengers still were qualifying for large amounts of public funds. He noted several examples, including District 8, where the Democratic candidate received \$75,000 for a general election in which his opponent spent less than \$3,000. The Democrat won with 83 percent of the vote.

Third, Barry said that in the 2001 general elections, candidates running on third party lines received large amounts of public funds despite having little chance of victory. He noted that examples of this are detailed in his written testimony.

Regarding the second critique, that under a nonpartisan system voters will lack sufficient information to make informed choices, Mr. Barry suggested that both the Campaign Finance Program, whose public funds are intended to help candidates more effectively communicate with voters, and the City's Voter Guide, which is mailed to every household with a registered voter, would help enable voters to distinguish between candidates despite the lack of party labels, just as voters currently do in primary elections. Like the Campaign Finance Program, few other cities have a Voter Guide, which, according to Mr. Barry, lowers the cost of information to voters.

Regarding the third critique, that nonpartisan elections favor incumbents, Barry noted that the scholarship is mixed, with evidence supporting both sides. He suggested that the City's Campaign Finance Program strengthens challengers and its term limits law weakens the power of incumbency, and that together they would significantly diminish any advantage, whether it exists or not, that accrues to incumbents under nonpartisan elections.

Professor Richard Flanagan, August 20, 2002, Professor of Political Science, Staten Island College¹²³

Professor Flanagan began by warning the Commissioners not to listen to political scientists regarding nonpartisan elections because political scientists love political parties. Professor Flanagan noted that the arguments proffered against nonpartisan elections are premised on the assumption that there is a working two-party system. Professor Flanagan stated that this was not the case in New York City. He agreed with Barry that studies about the impact of nonpartisan elections were ultimately inconclusive.

Professor Flanagan opined that nonpartisan elections could help to introduce competition into New York's political system, because only six or seven Council seats and the

¹²² *Id.* at p. 41.

¹²³ Aug. 20, 2002, Transcript, at p. 50.

Mayor's office are competitive now. Otherwise the election essentially occurs in the primary. This means that 2.5 million Democrats are making the entire decision and 1 million or so Republicans, third party members and an increasing number of independents are completely locked out. Barry noted that as competitiveness decreases the case for nonpartisan elections increases. Professor Flanagan then stated that parties will continue to play a role in New York's government and elections.

Professor Flanagan's final comment was to ask the Commissioners to consider at least a nonpartisan primary, which would allow all registered voters to vote for whom they wish in a primary election.

Professor Jonathan Sassi, August 20, 2002, Professor of History, specializing in Early American Politics, College of Staten Island¹²⁴

Professor Sassi provided expert testimony on the topic of nonpartisan elections, in particular in relation to the intent of framers of the United States Constitution. He explained that the United States Constitution does not mention political parties, and in fact the Framers meant for the Constitution to be an antidote to parties.¹²⁵ Nonetheless, within ten years after the ratification of the Constitution, national political parties began to form¹²⁶ and extended down to the ward level. Professor Sassi suggested that their rapid growth was facilitated by the explosion of newspapers, which at that time were explicitly partisan.¹²⁷ In those places where people and the press made politics a hotly debated issue, and in contested areas with sharp competition, voter turnout was as high as 70 to 80 percent.¹²⁸ One more reason for the high voter turnout in the late 19th century was the collapse of the final impediments to universal white, male suffrage.¹²⁹

In response to the Commission's question on whether early proponents of parties expected such parties to function down to the ward level, he indicated that they did. In fact "until the Jacksonian era . . . the parties were local rather than national in their effective operation."¹³⁰ Although a cabinet-level argument between Hamilton and Jefferson precipitated the creation of the party system, the true functioning mechanisms of the parties occurred at the state and local level from the outset. The parties at that time were "geared to the State legislatures as that was more the locus of power."¹³¹ In fact the first *national* party convention did not take place until the mid-19th century.

In response to a question from the Commission asking for his observations about the experience of New York City where an overwhelming majority of the citizens are in the Democratic Party, Professor Sassi stated that "someone like . . . Jefferson would view that as a perfectly acceptable outcome of democracy."¹³² He further stated that someone like

¹²⁴ August 20, 2002, Transcript at p. 9.

¹²⁵ Id.

¹²⁶ Id. at p. 10.

¹²⁷ Id. at p. 12.

¹²⁸ Id. at p. 13.

¹²⁹ Id.

¹³⁰ Id. at p.14.

¹³¹ Id.

¹³² Id. at p.19.

Jefferson would consider this to be “just the popular will, and if the popular will favors one party over another, so be it.”¹³³

Professor Clayton Gillette, August 20, 2002, Professor of Law, N.Y.U. Law School¹³⁴

Providing testimony on the topic of nonpartisan elections, Professor Gillette addressed the question of “whether it’s in the public interest to have a broader scope of candidates from which the electorate can choose for Mayor or whether the party filter is the best means to advance candidates.”¹³⁵ It seems that the electorate will never have the time to deeply study every candidate who runs for office in any give election. It is therefore useful to have a filter, proxy or surrogate for a candidate’s position that allows the electorate to readily identify the candidates’ positions.

Professor Gillette further stated that “it’s important that the proxy to be used is effective given what we expect in terms of city governments.”¹³⁶ He explained that the economic and political roles played by cities are quite different than the roles played by the Federal government.¹³⁷ In addition, the issues that “city officials must deal [with] are not necessarily issues with which parties have traditionally been concerned, and if that is the case then when parties decide who it is that they want to groom . . . it is not necessarily the case that they are making decisions about who to start out at the local level that has in effect . . . the concerns of the city electorate.”¹³⁸

The benefit of nonpartisan elections is that “it breaks away from the notion that those who are advanced in partisan elections by parties may not necessarily have in mind . . . the very same issues that are of most importance to the city or the regional economy.”¹³⁹ A “general benefit of nonpartisanship may be that the qualities for which the parties select a particular candidate may not be identical with the ideal qualities for mayoral office.”¹⁴⁰ Also “nonpartisanship puts a premium on the ability of individual candidates to articulate their messages to the public.”¹⁴¹

Professor Gillette further pointed out that it is important to keep in mind that “nonpartisanship does not translate into dismissing the role of parties from elections.”¹⁴² There would not be a disconnect between candidates and parties, as the parties would continue to provide support and funding for particular candidates.¹⁴³ Professor Gillette stated that breaking party dominance in a particular locality would be a good idea.¹⁴⁴

¹³³ Id. at p. 20.

¹³⁴ Id.

¹³⁵ Id.

¹³⁶ Id. at p. 21.

¹³⁷ Id.

¹³⁸ Id. at p. 23.

¹³⁹ Id. at p. 23.

¹⁴⁰ Id. at p. 25.

¹⁴¹ Id. at p. 27.

¹⁴² Id. at p. 28.

¹⁴³ Id.

¹⁴⁴ Id. at p. 29.

Dr. Alan Lichtman, August 22, 2002¹⁴⁵

Dr. Lichtman testified regarding statistical findings relevant to elections for City Council and Borough Presidents. He analyzed how the data may be applied by the Justice Department when it renders a ruling under the Voting Rights Act. Specific to the Act, Dr. Lichtman was concerned with any possibility of retrogression, defined as a reduction in opportunities for minority voters to participate fully in the electoral process and elect candidates of their choice.

Dr. Lichtman began by indicating that his review of the statistical data of voting patterns in New York City led him to conclude that a move to nonpartisan elections would not, in his view, be a violation of the Voting Rights Act.¹⁴⁶ Reviewing the relevant data, Dr. Lichtman noted that the two largest minority groups in New York are African-Americans and Hispanics, while Asian-Americans represent 10 percent of the voting population.¹⁴⁷ Dr. Lichtman testified that all boroughs, with the exception of Staten Island, have populations which are composed of 50 percent or more minorities. Voting age populations are also 50 percent or more minority in all boroughs but Staten Island, which is approximately 75 percent white.¹⁴⁸ Manhattan is 50 percent white, with various minorities constituting the other half. The Bronx is only 18 percent white and thus overwhelmingly minority.

Dr. Lichtman noted that the four boroughs other than Staten Island have very low registration percentages in the Republican Party. The percentages range from 8 percent (Bronx) to 15 percent (Queens) and 31 percent in Staten Island. Dr. Lichtman described the participation in Republican primaries in the four boroughs, other than Staten Island, as “minimal.”¹⁴⁹

Dr. Lichtman used the election of Manhattan Borough President C. Virginia Fields as an example of New York City voting patterns that produced a successful minority candidate. Dr. Lichtman noted that Fields was elected with overwhelming support from black voters and significant support from both white and Hispanic voters. Dr. Lichtman then contrasted Fields’s successful candidacy with the candidacy of Jeannette Gadsen. Jeannette Gadsen was an African-American candidate for Brooklyn Borough President in the Democratic primary in 2001.

Dr. Lichtman noted that Gadsen had solid but not overwhelming support from both black and Hispanic voters. It was Dr. Lichtman’s opinion that, had the election been nonpartisan, Gadsen’s support would have probably remained at the same level but that the support for the two white Democrats could have been spread between other contenders on the ballot from other parties. Therefore, the result could have been that the black candidate Gadsen would have competed against Marty Markowitz (the candidate who in fact won the election) in the final election.

Dr. Lichtman reviewed the primaries in the other boroughs as well, noting that the results would have, in all probability, been unchanged had they occurred under a nonpartisan election scheme.

¹⁴⁵ Transcript, Aug. 22, 2002, p. 10.

¹⁴⁶ *Id.* at p. 11.

¹⁴⁷ *Id.* at p.12.

¹⁴⁸ *Id.* at p.13-14.

¹⁴⁹ *Id.* at p.16.

A review of Council District elections revealed what Dr. Lichtman described as striking results.¹⁵⁰ In all instances but one, Dr. Lichtman concluded that council district under the present partisan system produced successful minority candidates only when a district contained more than 70 percent minority voting age composition. The striking failure of the present partisan system to produce successful minority candidates led Dr. Lichtman to conclude that there was no conceivable basis for the Justice Department to find that any retrogression would occur should New York change to nonpartisan elections.

Dr. Lichtman went on to note that there were only a small number of minority versus white contested, council primaries and virtually no minority versus white, contested council general elections. Dr. Lichtman concluded that there are really very few “battleground” council districts in New York City.¹⁵¹ He noted that the minority versus white contests are generally between whites and Asian Americans or whites and Hispanics.

Dr. Lichtman noted that Asian Americans had succeeded in producing representation in Queens District 20 but not in Manhattan District 1. District 20 is more than 70% minority and almost half of the population is Asian according to Dr. Lichtman.¹⁵² However, Manhattan District 1 is 40% Asian-American and has not produced a successful Asian-American candidate.

Dr. Lichtman stated that generally minorities will tend to split their support when two different minority groups have produced a candidate. Generally the minority support is for candidates of their own race.¹⁵³

Dr. Lichtman pointed out that the difference between the general electorate and Democratic general electorate is very small, especially in areas of heavy minority population. Dr. Lichtman opined that this fact helped to reduce real election contests in those areas.¹⁵⁴

In reference to the coming election, Dr. Lichtman noted that it included a gubernatorial election known as a “top of the ticket” election, which is a draw from a larger office such as president or governor.¹⁵⁵ Well publicized elections tend to produce higher voter turnout. Generally, minority turnout is higher for “top of the ticket” elections. Dr. Lichtman pointed out that 2004 is a presidential election year and therefore has a “top of the ticket” draw but the 2003 election does not.

In contrast Dr. Lichtman described the phenomenon known as “fall off.”¹⁵⁶ Generally voters vote only for the higher offices which are better publicized and refuse to vote for candidates with whom they are not familiar. Fall off is an equalizing factor in municipal elections because the elections that produce greater turnout do not necessarily translate into more votes cast in lower municipal contests.

Dr. Lichtman went on to explain that the Justice Department is not concerned with voter turnout per se, but rather with the opportunity of minorities to participate. Therefore, lower turnout in general would not affect the Justice Department’s decision.¹⁵⁷

In the context of mayoral succession, Dr. Lichtman noted that an interim mayor for a short period would probably not raise concerns in the Justice Department.¹⁵⁸ However, if an

¹⁵⁰ *Id.* p. 20.

¹⁵¹ *Id.* p. 23.

¹⁵² *Id.* p. 23.

¹⁵³ *Id.* at p. 4.

¹⁵⁴ *Id.* at p. 5.

¹⁵⁵ *Id.* at p. 8.

¹⁵⁶ *Id.* p. 29-30.

¹⁵⁷ *Id.* p. 31.

appointed individual were to hold such an office for a longer period of time, the Justice Department might become concerned about the lack of minority participation in the selection of a governing official.

Don Borut, Executive Director, National League of Cities, Aug. 22, 2002¹⁵⁹

Don Borut introduced himself noting that the League of Cities effectively represented 18,000 local governments, 80% of whom hold nonpartisan elections, and that almost all local partisan elections are in the East or Northeast.¹⁶⁰ Other parts of the country, especially the West, have a tradition of nonpartisan local elections.

The League of Cities has no data indicating that either partisan or nonpartisan elections increase voter turnout. Of the 50 largest cities, those that have nonpartisan elections have 34% non-white mayors while those that have partisan elections have 22% non-white mayors. Mr. Borut specifically cited Houston and Dallas as examples of cities that have majority white populations yet produced successful minority mayoral candidates in nonpartisan elections.¹⁶¹

The present mayor of Wichita, Kansas was elected as an independent after failing to win an election as a Republican. The Wichita mayor's campaigns centered on issues of resolving racism and cooperation with minorities. Mr. Borut theorized that the Republican Party label had held the mayor back because those issues were not commonly associated as strengths of the Republican Party. He concluded that nonpartisan elections could be helpful to evaluating candidates who do not fall clearly into categories delineated by parties.

Mr. Borut believes that, in general, nonpartisan elections could produce candidates who are motivated by a belief that they have something to offer and are not inhibited by a party screening process.¹⁶² Nonpartisan elections generally focus on substantive issues of direct relevance to the constituencies. Mr. Borut quoted one mayor from South Carolina who asserted that "Many people don't strongly identify with political parties. Therefore, [in] the partisan political system, many potential candidates are discouraged from running. Neighborhood leaders, teachers, and others whom you know who may be wonderful potential candidates for public office, but never become candidates, are not active, and don't find themselves drawn to a partisan political system."¹⁶³

Regarding succession, Mr. Borut knows of no city that has a vice mayor that ran with the mayor as the vice president or lieutenant governor does.¹⁶⁴ Mr. Borut said that cities that had the city manager form of government often had a mayor pro tem.¹⁶⁵

¹⁵⁸ Id. p. 35.

¹⁵⁹ Transcript, Aug. 22, 2002, at p. 38.

¹⁶⁰ T. 39.

¹⁶¹ Id. at p. 41.

¹⁶² Id. at p. 43.

¹⁶³ Id. at p. 44.

¹⁶⁴ Id. at p. 46.

¹⁶⁵ Id.

Gerry Hebert, August 23, 2002, former Chief of the Voting Rights Section, Department of Justice¹⁶⁶

Hebert testified that there have been approximately 1,800 requests under the Voting Rights Act including a change to nonpartisan elections, 152 of which were limited to that issue. The Justice Department has approved all 152 of those requests. One submission, by a jurisdiction in South Carolina, was denied because the request included a rule prohibiting party endorsement in the campaign.

Hebert stated that the Justice Department does have a mechanism for expedited preclearance. The Justice Department is generally allotted 60 days to pre-clear but endeavors to supply expedited preclearance whenever requested pursuant to 28 CFR § 5134.

Responding to a previous question, Hebert explained that approximately one half of submissions request preclearance prior to holding a referendum and the other half hold the referendum and then request clearance prior to the institution of the voting change. Changes submitted for preclearance in New York have been done in both ways.

Hebert indicated that there have been only a few occasions where the Justice Department has objected to a change of the succession scheme for an elected official and thousands where the Department has cleared the change. The issue for the Justice Department would be whether the change created an additional burden for minorities to elect the candidate of their choice.

In Hebert's view, the Justice Department would not be concerned whether the vote on the referendum occurred in a year with a general election or not. The date of the vote on the referendum would have to occur at a time that placed an additional burden on minorities to raise an objection. Hebert indicated that Justice Department response to preclearance usually occurred within 44 days. The Justice Department may ask for more information one time after receiving the preclearance submission; in that event, the 60 days allotted begins to run only after the additional information is received by the Justice Department.

Jurisdictions covered under the Voting Rights Act may seek to be excluded from coverage, a process known as a bailout. New York contested its coverage under the Act in the period between 1968 and 1972. However, New York's claim was that it should not have been covered in the first place; New York was not seeking a bailout.

Describing the effect of U.S. Supreme Court decisions in the last 15 to 20 years, Hebert said that the Justice Department's focus under the preclearance provisions has been whittled down to the specific question of whether the voting change would make minority voters worse off.

Finally Hebert noted that, after approving a switch to nonpartisan elections, the Justice Department has never found that the switch from partisan to nonpartisan elections had resulted in retrogression for minority voters.

¹⁶⁶ Transcript Aug. 23, 2002, at p. 7.

APPENDIX F
PUBLIC OUTREACH
2003

The Commission staff met with the following groups and individuals concerning nonpartisan elections:

Asian American Legal Defense and Education Fund
Asian Americans For Equality
Brennan Center
Center for Law & Social Justice, Medgar Evers College/ Voting Rights Coalition
Center for Governmental Studies
Citizens Union
Conservative Party
Democratic Club of Flushing
Editorial Boards (News, Times, Newsday, Sun, El Diario, Hoy, Amsterdam News)
Green Party
Independence Party
Los Angeles City Ethics Commission
NAACP & NAACP Legal Defense Fund
New York Foundation
New York City Campaign Finance Board
New York Public Interest Research Group
Puerto Rican Legal Defense and Education Fund
LeRoe Gill, Central Brooklyn Churches
Dr. Bernard Grofman
Professor Gerald Hebert
Peter Kiernan, Chair, Subc.on Charter Revision, Assn. Bar of the City of New York
C. Vernon Mason, New York Theological Seminary
Professor Doug Muzzio, Baruch College, CUNY
Rev. Simpson, Concord Baptist Church
Professor Phil Thompson, M.I.T.
Professor, Alan Lichtman, American University
Working Families Party

APPENDIX G
BALLOT QUESTIONS
AND
ABSTRACTS

BALLOT QUESTIONS

NEW YORK CITY CHARTER REVISION COMMISSION

August 25, 2003

Question 3: City Elections

This proposal would amend the City Charter to establish a new system of city elections for the offices of Mayor, Public Advocate, Comptroller, Borough President, and Council member. The September primary election would be open to all voters and all candidates, regardless of party membership or independent status. The top two vote getters would compete in the November general election. In both elections, candidates could indicate their party membership or independent status on the ballot. Candidates participating in the voluntary campaign finance program, which provides public campaign funding, could not accept contributions from political parties or party committees. The new system would replace the current system of political party nominations through primary elections in which only party members may vote. The changes would take effect after the 2005 Citywide election. Shall this proposal be adopted?

Question 4: City Purchasing

This proposal would amend the City Charter to:

- remove from the Charter detailed requirements for specific purchasing methods;
- increase qualifications for City purchasing officials;
- provide for citywide coordination to enhance opportunities for small businesses and minority and women-owned businesses;
- reduce required procedures for security-related contracts;
- reduce impact on City contractors, including not-for-profit organizations, of delays in contracting and payment; and
- consolidate financial audit requirements for City contractors.

Shall this proposal be adopted?

Question 5: Government Administration

This proposal would amend the City Charter to:

- authorize the Mayor to issue rules governing the professional conduct of administrative law judges and hearing officers in the City's administrative tribunals, require the coordination of such tribunals, and expand the authority of the administrative tribunal of the Department of Consumer Affairs to hear all matters within the agency's jurisdiction;
- enhance the enforcement authority of the Conflicts of Interest Board by allowing increased penalties for violations of the City's ethics laws;
- replace the current sixteen member Voter Assistance Commission with a seven member panel, which would include the Public Advocate; an appointee of the Council Speaker; and five appointees (one from each borough) of the Mayor, with Council advice and consent. The coordinator of voter assistance would be appointed by the Mayor, with Council advice and Consent, instead of by the Commission; and
- require annual publication only of the Mayor's Management Report. The Preliminary Mayor's Management Report would no longer be required.

Shall this proposal be adopted?

2003 ABSTRACTS

NEW YORK CITY CHARTER REVISION COMMISSION

Question 3: City Elections

Abstract

This proposal would make changes to the way the City conducts its elections for the offices of Mayor, Public Advocate, Comptroller, Borough President, and City Council Member. The proposal would provide for a single September primary election open to all eligible voters and candidates, and the top two vote getters in that election would compete in the November general election. The changes would take effect after the 2005 citywide election and apply to all elections, including special elections to fill vacancies in office.

How it Works—Currently, candidates who are running for elected office compete against each other in party primary elections (followed in certain instances by runoff primaries). In these elections, which are held in September, each party's members cast ballots to decide the general election nominee of that party. Candidates may also be nominated for the general election through an independent nominating petition process. Under the proposed system, all candidates for an office would run against each other in the September primary election. Voters would be eligible to vote for any candidate, including a candidate who belongs to a different political party or is registered as an independent. Only the top two finishers in the primary election, regardless of their party or independent registration status, would compete in the November general election.

Who is Eligible to Vote—Currently, only registered voters who are enrolled in political parties may vote in primary elections. Voters registered as independents cannot participate until the general election. Under the proposed system, all voters, including independent voters not enrolled in any party, would be eligible to participate in the primary election.

Ballot Access—Currently, registered voters who carry or sign a petition to place a candidate on the ballot generally must be enrolled in the same party as the candidate petitioning to get on the ballot. Under the proposed system, all eligible registered voters, regardless of their party enrollment or independent status, would be permitted to carry

and sign a petition to place a candidate on the ballot. In addition, the maximum number of petition signatures required would generally be the same maximum number that is currently provided for candidates to be placed on the primary election ballot. The new signature requirements would also apply to candidates in special elections to fill vacancies.

The Ballot—Currently, the ballot lists a candidate's party affiliation. Under the proposed system, candidates would be permitted, but not required, to list their party registration or independent status on the ballot.

Political Party Campaign Contributions—Currently, all candidates, including those who participate in the City's voluntary campaign finance program, which provides money from the City treasury to help fund candidates' campaigns, are permitted to accept campaign contributions from political parties, up to specified limits, but candidates may not accept contributions from corporations or unregistered political committees. Under the proposed system, candidates who participate in the campaign finance program would also be prohibited from accepting campaign contributions from political parties. In addition, the Campaign Finance Board would have the authority to address party expenditures in relation to candidates participating in the City's campaign finance program in order to protect the contribution and spending limits of the program under the new system of elections.

Voter Guide—Currently, all candidates may place biographical summaries, campaign information, and a picture of themselves in the printed Voter Guide. This proposal would create a video Voter Guide that broadcasts candidates making brief statements on a municipal cable television channel.

Vacancies in Nominations

Currently, if a candidate dies or a nomination otherwise becomes vacant, the candidate's committee to fill vacancies generally chooses a successor to run in his or her place, if time allows. Under the new system, the next eligible top vote getter in the primary election could fill the vacancy and advance to the general election accordingly. If the vacancy could not be filled in that manner, then a committee to fill vacancies would fill it.

Question 4: City Purchasing

Abstract

Chapter 13 of the Charter establishes many of the rules by which the City may purchase (or procure) goods and services. The proposal would make changes to Chapter 13 and to several related sections.

Administrative flexibility—Currently, the Charter contains provisions governing a variety of purchasing methods. The proposal would delete a number of these provisions and would require the Procurement Policy Board (“PPB”) to issue rules on most of the deleted topics. In addition, the proposal would authorize the PPB to issue rules for all alternative purchasing methods.

Currently, the Charter generally requires that purchases of goods be made by the Department of Citywide Administrative Services (“DCAS”). This proposal would allow the commissioner of DCAS to delegate a specific purchase of a specific good to another agency, for direct purchase by that agency, provided that the DCAS commissioner could not make this delegation for goods to be generally used by City agencies.

Currently, the Charter authorizes the Mayor to designate DCAS to perform specified administrative functions for certain specified City agencies. This proposal would permit the Mayor to designate additional agencies for which DCAS could perform procurement services.

Currently, the Charter requires proposed contractors and subcontractors for contracts above a certain monetary value to submit reports on workplace employment issues. This proposal would eliminate Charter provisions governing the content and review of these employment reports, and would require the commissioner of the Department of Small Business Services (“DSBS”) to issue rules on these topics.

Qualifications for City purchasing officials—Currently, the Charter contains no provisions governing the training or qualifications of City purchasing officials. This proposal would require the PPB to issue rules setting forth training and professional standards for these purchasing officers, taking into account the volume and complexity of agency contracting activities.

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Small businesses and minority and women-owned businesses—Currently, the Charter requires the Department of Small Business Services (“DSBS”) to take steps relating to the promotion of equal opportunities for minority and women-owned businesses. This proposal would require citywide agency coordination by the Mayor to enhance opportunities for vendors.

Security-related contracts—Currently, the Charter generally requires public notice and hearing of contracts for the purchase of goods and services. This proposal would provide an exception to this requirement where the Mayor determines that the notice or hearing would disclose sensitive information that, if made public, could be detrimental to the security of the City or its citizens.

Timeliness of contracting and payment—Currently, the Charter requires that the PPB issue rules for the prompt payment of vouchers, including rules for the payment of interest to vendors whose vouchers are not paid on time. This requirement would be modified to require uniform interest for all vendors. In addition, this proposal would require the PPB to issue rules: mandating timetables for the completion of purchasing steps and remedies for failure to meet such timetables; providing for expedited renewal or extension of existing human services contracts in certain circumstances; and requiring the development of annual contract plans by the City’s human services agencies. This proposal would also establish an annual mayoral procurement report, which would include not only procurement activity indicators (as currently required to be included in the Mayor’s management report) but also indicators on agency performance relative to the timeliness of agencies’ procurement actions.

Financial audits—Currently, the Charter does not provide for financial audits of vendors by agencies. This proposal would require the PPB to issue rules governing City agency requirements for annual financial audits of vendors, including rules providing for consolidated audits across multiple contracts held by vendors with one or multiple agencies.

VENDEX—Currently, the Charter does not contain any provisions regarding VENDEX, the City’s computerized vendor integrity data system, which was created pursuant to the City’s Administrative Code. This proposal would require the Mayor and Comptroller to jointly issue rules necessary to maintain the VENDEX system. The

proposal would not limit the power of the Council to legislate with respect to the VENDEX system.

Effective Date—The proposal would generally take effect immediately after approval by the voters. However, the employment report and VENDEX provisions would take effect nine months after such approval.

Question 5: Government Administration

Abstract

The proposal would make the following changes to the Charter in areas related to government administration and accountability.

The City's Administrative Justice System—Currently, Administrative Law Judges and Hearings Officers who preside over cases in the City's administrative tribunals are generally not subject to a uniform code of professional conduct. This proposal authorizes the Mayor to issue rules governing the professional conduct and training and development of the City's Administrative Law Judges and Hearing Officers.

In addition, these Administrative Law Judges and Hearing Officers currently conduct thousands of administrative hearings annually in a variety of specialized tribunals, many of which are housed at specific agencies. There is no centralized mechanism to coordinate the operational policies and management practices of these tribunals. The proposal would create the new position of Coordinator of Administrative Justice, in the Office of the Mayor, to coordinate such policies and practices.

Finally, the proposal would expand the authority of the Department of Consumer Affairs (DCA) to hear more cases in its own tribunal. Currently, DCA cannot adjudicate many of the violations it issues in that tribunal. Instead, DCA has to take legal action in the State Courts. The proposal would authorize the Department to: (1) conduct administrative hearings to adjudicate violations of any law within the Department's jurisdiction; and (2) impose civil penalties of up to \$500 per violation (except to the extent that penalties are otherwise provided).

Penalties for Violations of the City's Ethics Laws—The City's ethics law, known as the Conflicts of Interest Law, is enforced by the Conflicts of Interest Board

(COIB). The proposal raises the maximum penalty allowed from \$10,000 to \$25,000. COIB would continue to have discretion in determining the appropriate penalty. In addition, the proposal authorizes COIB to commence a civil forfeiture action to recover moneys from those who have profited from a violation of the law.

Voter Assistance Commission—The Voter Assistance Commission (VAC) facilitates voter registration. Currently, VAC is comprised of sixteen members: the Public Advocate, the Budget Director, the Corporation Counsel, the President of the Board of Education, the Chair of the Campaign Finance Board, the First Deputy or another Deputy Mayor; the Executive Director of the Board of Elections; six members of the public appointed by the Council and three appointed by the Mayor. The chair is elected by the members from the membership. Appointed members serve for a term of three years. On recommendation of the Mayor, VAC appoints the Coordinator of Voter Assistance.

The proposal reduces VAC from sixteen to seven members. Of the seven members, five (one from each borough) would be appointed by the Mayor with the advice and consent of the Council, one would be appointed by the Council Speaker in consultation with the Mayor, and the Public Advocate would also serve. One of the appointed members would be designated to serve as chair by the Mayor, in consultation with the Speaker of the Council. Appointed members would serve for four-year terms. The Coordinator of Voter Assistance would be appointed by the Mayor with the advice and consent of the Council.

The Preliminary Mayor's Management Report—The Preliminary Mayor's Management Report (PMMR) reports on the performance of City government in the first four months of each fiscal year. It is followed by a final Mayor's Management Report (MMR) that evaluates the full fiscal year. The proposal eliminates the requirement that the City produce a PMMR.

Effective Date—The proposal would generally take effect immediately after approval by the voters. However, the provisions concerning VAC would take effect on April 1, 2004, after such approval.

APPENDIX H

**RESOLUTION OF THE NEW YORK CITY
CHARTER COMMISSION,
DATED AUGUST 25, 2003**



NEW YORK CITY

CHARTER REVISION COMMISSION

2 Lafayette Street, 14th Floor, New York, New York 10007 Fax (212) 676-2069 Tel. (212) 676-2060
www.nyc.gov/charter

Frank J. Macchiarola
Chair

Cecilia Norat, *Vice Chair*
Patricia L. Galling, *Secretary*
Jerry E. Garcia
Mohammad Khalid, D.D.M.
William Lynch, Jr.
Steven Newman
Father Joseph A. O'Hare, S.J.
Katheryn C. Patterson
Fred Siegel
Veronica Y. Tsang

Alan Gartner
Executive Director

Anthony W. Crowell
Chief Counsel

RESOLUTION OF THE

NEW YORK CITY CHARTER REVISION COMMISSION

dated August 25, 2003, in relation to the filing with the City Clerk of proposals revising the city charter and questions therefor for the purpose of having the same submitted to the electors of the City at the general election held on November fourth, two thousand and three and the adoption of a report relating thereto.

Resolved, that pursuant to Section 36 of the Municipal Home Rule Law, ~~the~~ proposals to amend the charter of the City of New York with the appropriate ballot questions and the amendments to be effected upon the approval of such questions are attached hereto, to be filed with the City Clerk of the City of New York before September fourth, two thousand and three; and be it further

Resolved, that the City Clerk of the City of New York shall take such action as may be required by law to provide for the submission of the said revisions to the electors of the City of New York at the general election to be held on November fourth, two thousand and three; and be it further

Resolved, that the Commission hereby adopts the report that is attached hereto, and be it further

Resolved, that the Commission hereby authorizes and delegates to the Chair and the Executive Director and Chief Counsel the duty and power to take all necessary and/or appropriate actions to effectuate the placement of the questions on the ballot in accordance with section 36 of the Municipal Home Rule Law, including but not limited to inclusion of non-substantive technical changes to the documents attached hereto, preparation of other material to be appended to the final report including documentation memorializing the commission's meetings and public hearings, summaries of public and expert testimony, and appendices of

other materials made public during the commission's deliberations, the preparation of an abstract pursuant to law, the defense or commencement of litigation to effectuate such placement on the ballot, and to provide for such publication and other publicity as may be appropriate to ensure that the public is adequately informed about the proposals.

The foregoing resolution was adopted by the New York City Charter Revision Commission by a vote of 7, with 1 not present,

George E. Harris
, Commissioner

Fred Siegel
, Commissioner

Cecilia Norat
, Commissioner

, Commissioner

Arthur L. Gattley
, Commissioner

, Commissioner

Muhammad Ali
, Commissioner

, Commissioner

John A. ...
, Commissioner

, Commissioner

Frank ...
, Commissioner



NEW YORK CITY
CHARTER REVISION COMMISSION
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Frank J. Macchiarola
Chair

Cecilia Norat, *Vice Chair*
Patricia L. Gatling, *Secretary*
Jerry E. Garcia
Mohammad Khalid, D.D.M.
William Lynch, Jr.
Steven Newman
Father Joseph A. O'Hare, S.J.
Katheryn C. Patterson
Fred Siegel
Veronica Y. Tsang

September 4, 2003

Anthony Crowell, Chief Counsel
NYC Charter Revision Commission
2 Lafayette Street, 14th Floor
New York, NY 10007

Re: Resolution of the New York City
Charter Revision Commission, dated August 25, 2003

Alan Gartner
Executive Director

Anthony W. Crowell
Chief Counsel

Dear Mr. Crowell:

I am writing to express my approval of the above referenced Resolution of the New York City Charter Revision Commission. Although I cannot formally sign the resolution since it is dated August 25, 2003, I nonetheless write to add my support to the resolution and of the work the staff has been authorized by the Commission to perform between now and Election Day. I also concur in the adoption of the final report of the Commission.

Sincerely,

Steven Newman, Commissioner
New York City
Charter Revision Commission

APPENDIX I

COMPETITIVENESS OF THE 2001 GENERAL ELECTION

AN OVERVIEW OF THE COMPETITIVENESS OF THE 2001 GENERAL ELECTION*

City Council

Margin of Victory	# of Races	Result
<5	1	Highly Competitive
5-10	0	Competitive
10-19.9	6	Marginally Competitive
20-29.9	2	Largely Uncompetitive
30-39.9	7	Landslide
40-49.9	4	Landslide
50-59.9	4	Landslide
60-69.9	6	Landslide
70-79.9	15	Landslide
80-89.9	4	Landslide
90-100	2	Landslide

- 42 of 51 (82%) City Council general elections in 2001 were landslides.
- Two candidates ran unopposed in the general election and won 100% of the vote.
- Council candidates who won landslide general elections received public matching funds for the general election totaling \$1.8 million.
- In many instances, candidates who lost in the Democratic primary ran in the general election as third party candidates. Such candidates received significant amounts in public funds – more than \$800,000 in total – while rarely garnering many votes.
- Of the total public funds paid to candidates in the general election (\$4.2 million), 62% (\$2.6 million) was paid to candidates who won landslide elections or who lost in the Democratic primary election.
- In the only competitive general election, the Democratic candidate outspent his Republican opponent by \$155,303 and won by 415 votes out of more than 34,000 cast. The Democratic candidate had faced a primary election and thus received double the amount in public funds (\$150,520) as his Republican opponent (\$75,350).

Boroughwide

Margin of Victory	# of Races	Result
<5	0	Highly Competitive
5-10	1 (SI)	Competitive

30-39.9	1 (Q)	Landslide
50-59.9	1 (M)	Landslide
60-69.9	2 (BK & BX)	Landslide

- Four of five general elections for Borough President were landslides.
- Candidates who won general elections in landslides received more than \$1 million in public funds. This includes the \$518,944 in general election public funds paid to Marty Markowitz, who, after winning the primary with 39.6% of the vote, faced no serious opposition in the general election. Ken Fisher remained on the ballot in the general election as the Liberal Party candidate but spent less than \$50,000.

Citywide

Margin of Victory	# of Races	Result
<5	1 (Mayor)	Highly Competitive
70-79.9	1 (Comptroller)	Landslide
80-89.9	1 (Public Advocate)	Landslide

- Of the three Citywide offices, only the general election for Mayor was competitive; the other two elections were landslides.
- Candidates who won general elections in landslides received one-third of a million dollars.

TOP TWO

OFFICE	CANDIDATES	% VOTE	MARGIN OF VICTORY
Mayor	Bloomberg Green	50.3% 47.9%	2.4
PA:	Gotbaum: Dubowski:	86.2% 5.8%	80.4
Comp:	Thompson: Berman:	83.9% 6.7%	77.2
BK BP:	Markowitz: Maslow	76.4% 16.0%	60.4
M BP:	Fields: Maio:	72.8% 20.5%	52.3
Q BP:	Marshall Stabile	68.0% 30.8%	37.2
SI BP:	Molinaro O'Donovan	49.5% 44.0%	5.5
BX BP:	Carrion Aarron Justice	79.3% 16.8%	62.5
CD 1:	Gerson Chin, M.	47.2% 16.1%	31.1
CD 2:	Lopez Golub	73.2% 26.8%	46.4
CD 3:	Quinn Bouchard	74.7% 25.3%	49.4
CD 4:	Moskowitz Viest	64.3% 33.9%	30.4
CD 5:	Miller Strougo	67.5% 31.5%	36.0

CD 6:	Brewer Herz	74.8 20.8%	54.0
CD 7:	Jackson Sipra	82.7% 8.3%	74.4
CD 8:	Reed De Martino	83.2% 11.1%	72.1
CD 9:	Perkins Walker	86.9% 7.8%	79.1
CD 10:	Martinez Rexach	76.5% 12.7%	63.8
CD 11:	Koppell Imprescia	79.4% 20.6%	58.8
CD 12:	Seabrook Taylor	83.1% 12.1%	71.0
CD 13:	Provenzano Wilson	66.1% 33.9%	32.2
CD 14:	Baez Draper	81.3% 10.9%	70.4
CD 15:	Rivera Malavolta	82.3% 10.0%	72.3
CD 16:	Foster Agosto	84.0% 6.8%	77.2
CD 17:	Serrano Perez	89.2% 9.7%	79.5
CD 18:	Diaz	80.9%	67.4

	Murphy	13.5	
CD 19:	Avella Saffran	48.8% 47.6%	1.2
CD 20:	Liu Walsh	55.2% 32.9	22.3
CD 21:	Monserrate	100%	100
CD 22:	Vallone Vassos	57.1% 29.3%	27.8
CD 23:	Weprin Sica	69.1% 30.9%	38.2
CD 24:	Gennaro Grodenschik	88.0% 10.0%	78.0
CD 25:	Sears Schultheis	82.7% 7.4%	75.3
CD 26:	Gioia Eagan	93.3% 6.7%	86.6
CD 27:	Comrie Jenkins	82.3% 8.2%	74.1
CD 28:	Jennings Andrews	70.0% 15.6%	54.4
CD 29:	Katz Lobo	66.0% 29.3%	36.7
CD 30:	Gallagher Crowley	58.9% 40.2%	18.7

CD 31:	Sanders Brown	85.4% 10.3%	75.1
CD 32:	Addabbo Ariola	55.1% 41.9%	13.2
CD 33:	Yassky Seaman	75.2% 10.8%	64.4
CD 34:	Reyna Miranda	85.8% 8.7%	77.1
CD 35:	Davis James	55.6% 41.4%	14.2
CD 36:	Vann Kinard	92.8% 4.2%	88.6
CD 37:	Dilan Alonso	86.7% 7.5%	79.2
CD 38:	Rodriguez Silver	70.5% 16.2%	64.3
CD 39:	DeBlasio Bell	71.0% 16.8%	54.2
CD 40:	Clarke Poisson	87.2% 8.2%	79.0
CD 41:	Boyland	100%	100
CD 42:	Barron Moseley	90.4% 6.4%	84.0

APPENDIX J

COMPETITIVENESS OF THE 2001 PRIMARY ELECTION

**AN OVERVIEW OF THE COMPETITIVENESS
OF THE 2001 PRIMARY ELECTION**

City Council

Margin of Victory	# of Races	Result
<5	13	Highly Competitive
5-10	5	Competitive
10-19	12	Marginally Competitive
20-29	5	Largely Uncompetitive
30-39	3	Landslide
40-49	4	Landslide
50-59	4	Landslide
60-69	1	Landslide
	4	No primary races occurred.

- 64% of all primary races were highly competitive to marginally competitive.
- 26% of all primary races were landslides.
- Landslide winners received more than \$600,000 in primary election public funds.

Borough President

Margin of Victory	# of Races	Result
<5	1 (BX)	Highly Competitive
5-10	1 (BK)	Competitive
10-19	0	
20-29	1 (Queens)	Largely Uncompetitive
30-39	1 (Staten Island)	Landslide
	1	No primary race for Manhattan B.P.

- The margin of victory in campaigns for Borough President in the Bronx and Brooklyn was four and six points, respectively, with both winning candidates receiving about 40% of the vote.
- In Queens, many observers predicted a close race, but Helen Marshall won by twenty-one points. In Staten Island, James Molinaro won handily.

Citywide

Margin of Victory	# of Races	Result
<5	1 (Dem-M)	Highly Competitive
5-10	2 (PA and Comp.)	Competitive
40-50	1 (Repub-M)	Landslide

- Campaigns for each of the three Citywide offices featured competitive Democratic primary elections.

TOP TWO

OFFICE	CANDIDATES	% VOTE	MARGIN OF VICTORY
Mayor	Ferrer	35.8	4.7
	Green	31.1	
	Bloomberg	72.2	44.4
	Badillo	27.8	
Pub Ad.	Gotbaum	24.4	7.9
	Siegel	16.5	
Comp.	Thompson, Jr.	54.2	8.4
	Berman	45.8	
BP BK	Markowitz	39.6	6.0
	Gadson	33.6	
BP Q	Marshall	52.7	21.8
	Gresser	30.9	
BP BX	Carrion	40.8	4.0
	Espada, Jr.	36.8	
BP SI	Molinaro	65.9	31.8
	Straniere	34.1	
CD 1:	Gerson:	21.5	4.4
	Hoylman	17.1	
CD 2:	Lopez	81.4	62.8
	Wilson	18.6	
CD 4:	Moskowitz	79.8	59.6
	Doukas	20.2	
CD 6:	Brewer	58.5	39.1
	Lewis	19.4	
CD 7:	Jackson	30.5	9.3
	Levine	21.2	
CD 8:	Reed	51.8	3.6
	Luciano	48.2	

CD 9:	Perkins Allen	67.5 16.3	51.2
CD 10:	Martinez Lizardo	27.7 25.4	2.3
CD 11:	Koppell Spalter	60.1 21.9	38.2
CD 12:	Seabrook Saunders	48.3 47.7	0.6
CD 13:	Provenzano Sementilli	71.4 28.6	42.8
CD 14:	Baez Ruiz	39.0 27.4	11.6
CD 15:	Rivera Ortiz	67.9 32.1	35.8
CD 16:	Foster Benjamin	41.8 31.2	10.6
CD 17:	Serrano Espada	60.8 39.2	21.6
CD 18:	Diaz Montano	62.6 18.8	43.8
CD 19:	Avella Frank	29.7 24.3	5.4
CD 20:	Liu Chen, E.	30.9 28.6	2.3 (202 votes)
CD 21:	Monserate Rosero	41.1 27.2	13.9
CD 22:	Vallone Ciafone	55.6 33.8	21.8
CD 23:	Weprin Thakral	78.1 21.9	56.2

CD 24:	Gennaro Grodenschik	40.7 36.0	4.7
CD 25:	Sears Van Bramer	31.6 22.5	9.1
CD 26:	Gioia Farrell	43.2 18.3	24.9
CD 27:	Comrie Cooper-Gregory	29.0 27.9	1.1 (177 votes)
CD 28:	Jennings Andrews	34.8 31.3	3.5
CD 29:	Katz Schulman	72.3 27.7	44.6
CD 30:	Crowley Sansivieri	45.9 32.3	13.6
CD 31:	Sanders Blake	28.1 15.6	12.5
CD 32:	Addabbo Simon	43.6 22.7	20.9
CD 33:	Yassky Cohn	43.6 30.7	12.9
CD 34:	Reyna Martinez	45.7 41.6	4.1
CD 35:	Davis James	37.4 32.1	5.3
CD 36:	Vann Taylor	70.8 29.2	41.6
CD 37:	Dilan Mateo	32.6 20.9	11.7
CD 39:	DeBlasio Banks	32.1 22.0	10.1

CD 40:	Clarke Purcell	36.2 17.4	18.8
CD 42:	Barron Jackson	33.2 31.4	1.8 (269 votes)
CD 43:	Seminara Scissura	55.0 33.3	21.7
CD 44:	Felder Miller	43.4 32.8	10.6
CD 45:	Stewart Palmer	20.8 16.9	3.9
CD 46:	Fidler Levy	40.8 22.7	18.1
CD 47:	Recchia Lasher	34.8 23.2	11.6
(Repub)	Gutnik Amato	50.6 49.4	1.2 (17 votes)
CD 49:	McMahon Rose	38.9 37.6	1.3 (170 votes)
CD 50:	Hikund Wein	52.9 47.1	5.8
CD 51:	Lanza DeMarco	76.7 23.3	53.4

APPENDIX K

EXAMINING THE 2001 CITY COUNCIL RACES

EXAMINING THE 2001 CITY COUNCIL ELECTIONS*

MANHATTAN

CD 1

Alan Gerson won the Democratic primary election with 21.5% of the vote, beating out his nearest rival by 4.4 points. According to the Asian American Legal Defense and Education Fund, more than one-third of Asian-American voters are registered Independents – twice the Citywide rate. Under a nonpartisan system, one of the two candidates – or both – advancing to the general election may have been an Asian American and would have run either without party label or as a Democrat. Instead, three Asian Democrats who lost in the primary but ran on third party ballot lines received a total of \$201,060 for the general election, while Gerson received \$74,450 and won handily (31 points).

CD 8

Phil Reed, the incumbent Council member, defeated Felipe Luciano 51%-48% in the Democratic primary election and then won the general election with 83.2%, beating two opponents who raised little money. Under a nonpartisan system, all voters, and not just Democrats, would have been able to participate in the Luciano-Reed contest and the general election re-match that was likely to follow.

CD 10

Miguel Martinez won the Democratic primary with 27.7% of the vote, edging out Robert Lizardo who received 25.4% and Ydanis Rodriguez who received 20.9%. In the general election, Martinez won 76.5% of the vote and received \$53,936 in public funds. Rodriguez, who remained on the ballot as the candidate of the Working Families Party, won 8.0% of the vote and received \$45,838 in public funds. Under a nonpartisan system, Lizardo or Rodriguez – or fourth place finisher Victor Morisete-Romero – would have faced Martinez in a general election, and would have run either without party affiliation or as a Democrat.

* Public fund and vote totals come from Appendices B, C, and G of the New York City Campaign Finance Board's 2002 report on the 2001 elections, "An Election Interrupted...An Election Transformed." Also, the discussion of nonpartisan elections supposes that the top two primary election finishers will advance to the general election.

BRONX

CD 12

In 2001's tightest race, Larry Seabrook edged out Shirley Saunders 48.3% to 47.6% in the Democratic primary election. In the general election, Seabrook won 83.1% of the vote against two candidates running on the Republican and Conservative-Independence lines. Under a nonpartisan system, all voters, and not just Democrats, would have been able to vote in the Seabrook-Saunders election and the re-match that likely would have resulted.

CD 16

Helen Foster defeated Michael Benjamin 41.8% to 31.2% and both received the maximum (\$75,000) in public funds. In the general election, Foster won 84% of the vote and received \$56,448 in public funds. Benjamin ran on the Green and Working Families Parties' lines, won 5.4% of the vote, and received \$32,946 in general election public funds. Under nonpartisan elections, Benjamin would have run in the general election either without party affiliation or as a Democrat.

QUEENS

CD 19

Tony Avella defeated Dennis Saffran by 415 votes in the only competitive City Council general election (defined as a margin of victory of less than ten points). Avella ran in a primary election while Saffran did not. As result, Avella received \$75,000 more in public funds than Saffran and outspent Saffran by \$155,000. Under a nonpartisan election, Saffran and Avella would have been eligible for the same amount in public funds.

CD 20

John Liu defeated Ethel Chen in the primary by 202 votes (30.9% to 28.6%). In the general election, Liu received \$75,170 and defeated Republican-Conservative candidate Ryan Walsh by 22 points. Under nonpartisan elections, Chen may have defeated Walsh in the primary, allowing her to advance to the general election – resulting in the City's first general election to feature two Asian-American candidates as the leading contenders.

CD 21

Hiram Monserrate won the primary election with 41.1%, defeating three other candidates, including the runner-up, Luis Rosero, who received 27.2%. In the general election, Monserrate ran unopposed and won 100% of the vote. Under a nonpartisan system, all voters would have had a choice; voters not registered as Democrats were entirely shut out of the process.

CD 24

James Gennaro beat out Barry Grodenchik 40.7% to 36.0% in the primary election. Grodenchik remained on the general election ballot as the candidate of the Working Families Party. He received \$72,276 in public funds for the general election but won only 10% of the vote. Gennaro received \$58,264 in general election public funds and won with 88% of the vote. Under a nonpartisan system, Grodenchik would have run either without party label or as Democrat.

CD 25

Helen Sears defeated James Van Bramer 31.6% to 22.5% in the primary election, and both received the maximum in public funds (\$75,000). In the general election, Sears received an additional \$42,544 and won 82.7% of the vote. Van Bramer, running as a Working Families Party candidate, received \$57,976 in additional public funds and won 7.1% of the vote, finishing just behind fellow Democrat Magdalena Schultheis, who ran on the Independence Party line after losing in the Democratic primary election. Under nonpartisan elections, Van Bramer (or Schultheis) would have run either without party label or as a Democrat.

CD 27

Leroy Comrie defeated Helen Cooper-Gregory by 177 votes (29.0% to 27.9%) in the Democratic primary election, and won the general election with 82.3%. Under a nonpartisan system, all voters, and not just Democrats, would have had a chance to vote in the primary election and the hotly contested general election that would have resulted.

CD 28

Alan Jennings edged out Anthony Andrews, Jr. 34.8% to 31.1% in the primary election and then captured 70.0% of the vote in the general election. Andrews and Garth Marchant, who finished fifth (last) in the Democratic primary election, appeared on the general election ballot as the Liberal and Fusion Party candidates, respectively. Andrews received \$20,156 in general election public funds and Marchant received \$75,350 – though he won only 1.9% of the vote. Under nonpartisan elections, Andrews would have run in the general election either without party label or as a Democrat.

BROOKLYN

CD 34

Diana Reyna edged out Juan Martinez 45.7% to 41.6% in the Democratic primary election. In the general election, Reyna received \$75,350 while winning 85.8% of the vote. Under a nonpartisan system, all voters could have participated in the Reyna-Martinez primary, not just Democrats, as well as the re-match that likely would have resulted.

CD 35

James Davis defeated Letitia James 37.4% to 32.1%. In the general election, James received 41.3% of the vote as the candidate of the Working Families Party, while Davis won with 55.6%. Under a nonpartisan system, James would have run either without party affiliation or as a Democrat.

CD 42

Charles Barron defeated Gregory Jackson by 265 votes (33.2% to 31.4%) and then won the general election with 90.4% of the vote while also receiving \$12,660 in public funds. Under a nonpartisan system, all voters could have participated in the primary, not just Democrats, as well as the competitive general election that would have resulted.

CD 45

Kendall Stewart won the Democratic Primary election with 20.8% of the vote, beating out Samuel Palmer's 16.9%. In the general election, Stewart won 90.8% of the vote. Under a nonpartisan system, a second round likely would have pitted Stewart against another black Democrat – Palmer, third place finisher Vaughan Toney (16.4%), fourth place finisher Samuel Taitt (15.4%), or fifth place finisher Kevin Parker (14.9%).

STATEN ISLAND

CD 49

Michael McMahon defeated Deborah Rose by 170 votes (38.9% to 37.6%) and his general election opponent, Joseph Cammarata, by 15.7 points (50.1% to 34.4%). In the general election, Rose ran as the Liberal party's candidate and won 15.1% of the vote. McMahon received \$75,350 in general election public funds, Rose received \$57,116, and Cammarata received \$73,866. Under a nonpartisan system, Cammarata would have faced Rose and McMahon in the first round, allowing him to compete on equal footing in terms of public funds (McMahon received twice the amount in public funds as Cammarata and outspent him by \$235,671). In addition, Rose may have finished first or second in such a race and advanced to the general election.

APPENDIX L

**A COMPARISON OF VOTER TURNOUT
IN PARTISAN AND NONPARTISAN SPECIAL
ELECTIONS
IN NEW YORK CITY**

A Comparison of Turnout in Partisan and Nonpartisan Special Elections (1995-2002)

Between 1995 and 2002, there were eighteen “special” elections, i.e. an election to replace a member who left office in mid-term.¹⁶⁷ In general, turnout in nonpartisan (NPE) special elections was greater than in partisan special elections.

Between 1995 and 2002:

- There were 12 special elections where turnout was less than 10%. Of these, only 1 was a NPE Council special election. Thus, less than 10% turnout in 11 of the 13 partisan elections but only 1 of the 5 NPEs; and
- There were 6 special elections where turnout was greater than 10%. Of these, 4 were NPE Council special elections. Thus, greater than 10% turnout in 4 of the 5 NPEs but only in 2 of the 13 partisan elections.

¹⁶⁷ Five of the elections were nonpartisan elections for City Council, while the remainder were partisan elections: 8 for assembly, 4 for Senate and one for a Congressional seat.

APPENDIX M

JACKSONVILLE CASE STUDY

ELECTION REFORM IN JACKSONVILLE: LEGISLATIVE HISTORY AND ELECTORAL EXPERIENCE*

LEGISLATIVE HISTORY

Jacksonville, Florida is the nation's 14th largest city, with a population (735,000) greater than Baltimore, Boston, and Washington D.C. and approximately the size of San Francisco. Jacksonville elects a mayor, five constitutional (citywide) officers, and a 19-member city council, which includes five at-large and fourteen district seats. Municipal elections are held in April and May. In addition, Jacksonville, unlike most cities, has a consolidated county-city government, which means that city government is responsible for the delivery of social services and the negotiation of their contracts, as in New York City.

In 1988, the Jacksonville Community Council Inc. conducted a study entitled, "Local Election Process." The Jacksonville Community Council (JCCI) is a "nonpartisan civic organization that engages diverse citizens in open dialogue, research, consensus building, and leadership development to improve the quality of life and build a better community in Northeast Florida and beyond." A team of 50 community leaders and volunteers, including academics, conducted the study, with research and support provided by JCCI.

The study came in response to several concerns, including: "Voter turnout in Duval County is low, especially in local elections. In addition, the number of candidates for local office has decreased, and the number of unopposed elections has increased." The report followed a 1987 citywide election in which 34 percent of registered voters participated in the (April) primary election and 41 percent participated in the (May) general election. These participation rates were typical of previous elections and even somewhat higher. (Participation rates for the 1979 primary and general elections were 36 percent and 37 percent, respectively, and in 1983, they were 35 percent and 28 percent, respectively.) The authors of the report asked a fundamental question: "How can our local elections process be improved to increase active participation of citizens as voters and as candidates?"

According to David Swain, a former Associate Director of JCCI and the director of the study, the group's early focus was on nonpartisan elections. Opposition from party leaders, however, along with concerns raised in the academic literature, led the participants in the JCCI study to examine a third approach: a nonpartisan election structure (i.e., no party primaries) that places a candidate's party affiliation on the ballot.

The study examined Jacksonville's political landscape and the potential impact of reform "Historically, Duval County has not had a strong two-party system to bolster its partisan election process. A one-party, Democrat-dominated system emerged as a result of the voting restrictions imposed at the turn of the century. The same party still remains dominant in local politics. The

* This report was prepared by Francis Barry, Research Director, with invaluable assistance provided by Jeff Clements, Director of Research for the Jacksonville City Council.

lack of balance and competitiveness in this party system lends credence to the arguments of those favoring a nonpartisan system.”

“However, Democrat domination now is being eroded rapidly by increases in Republican registration and victories at the polls. Although in 1962 only 5.6 percent of registered voters in Duval County declared for the Republican Party, today 23.7 percent are registered as Republicans. Despite these increases, the feeling remains that many important local races, especially countywide contests, are decided in the Democratic primary elections. A truly competitive two-party system does not yet exist in Duval County, but current trends seem to indicate that such a system may be developing. Given this possibility, plus the evidence of national voting patterns, the potential may be greater for increasing voter turnout in Duval County through a more competitive [hybrid] partisan system than through shifting to a [purely traditional] nonpartisan system.”

The report concluded: “It is possible for the two major parties to continue to act as organizing vehicles in a nonpartisan system. This is the case in Minneapolis, where the parties endorse and support candidates who nevertheless appear on a nonpartisan ballot. This hybrid approach is similar to a partisan system with wide-open primary elections. It seems to work in Minneapolis, where voter turnout is quite high, although many factors contribute to the high level of political participation there.”

To continue to allow party activity, but to enhance participation and competitiveness, the report recommended that “The City Council should amend the local election law to replace the existing closed primary system with a unitary primary system for City of Jacksonville elections. Under this system, a single primary election would be held with a single ballot for all voters within each electoral district. Candidates would appear on the ballot with party labels and campaign as party candidates. Any candidate winning a majority of votes in the primary would be elected; if no candidate for a position wins a majority, the general election serves as a runoff between the top two vote getters, regardless of party. The unitary primary system holds the greatest promise for expanding participation by increasing competitiveness of the local political parties, while reducing the negative partisanship of the closed primary system.”

The unitary election system addressed one of major problems identified by the report’s authors: “Closed primary elections and weak political parties inhibit voting and running for office in local elections.” At the same time, placing party labels on the ballot allowed them, according to Swain, “to reach consensus” with all involved, including party leaders.

The report’s recommendation gained publicity and support following the 1991 citywide elections, when the winner of the Democratic primary ran in an uncontested general election in which only 21 percent of voters participated. News reports and editorials expressed voters’ sense of frustration at being denied a choice (See attached: “Primary system boxes many out of mayoral balloting;” “Some in GOP surprised that they couldn’t vote;” “Tuesday’s outcome has spurred interest in unitary primary vote;” “Now is the best time to end 2-party city vote;” “GOP, independent voters miffed at being excluded;” “’92 voters to rule on primaries”). Jeff Clements, Director of Research for the Jacksonville City Council, said of the uncontested general election, “Voters felt that that’s just not the way it ought to be.” Indeed, Councilman Harry Reagan,

described in newspaper reports as a liberal Democrat, sponsored a proposal to put the issue of unitary elections to the voters in a referendum. In November 1992, voters passed the proposal 73 percent to 27 percent. The adoption of unitary elections did not change Jacksonville's election dates (April and May), but under the new system, a candidate winning 50 percent of the vote in the April election is elected to office and no second election occurs. Under the partisan system, three rounds of elections often occurred: if no candidate received 50 percent in a primary election, a primary runoff election was held, followed by a general election. A unitary system of elections reduced the number of elections from three to two, which was touted for reasons of cost savings and convenience.

ELECTORAL EXPERIENCE

Voter Participation

In 1991, prior to the uncontested mayoral general election, a fiercely competitive Democratic mayoral primary, decided by a vote of 50.9% to 49.1%, drew large numbers of Democrats to the polls. Republican primaries were held in only two council districts, however, and so the number of eligible voters was limited. Of eligible voters, almost all Democrats, 50% participated, but overall participation was only 35 percent, comparable to April elections in 1987 (34%), 1983 (35%), and 1979 (36%). In 1995, the first election held under the unitary system, voter participation increased in the April election to 51 percent – a small increase (1 point) in the rate of eligible voters participating, a large increase (16 points) in the rate of overall participation, a large increase in the raw number of voters participating, and *the highest rate of voter participation in any local election in at least twenty years*. The number of voters casting ballots (173,263) was more than 50 percent higher than in each of the three previous April elections (109,201 in 1991, 103,440 in 1987, and 95,260 in 1983).

The May 1995 election resulted in a participation rate of 46 percent, *the highest rate for any May election in at least 20 years* (21 percent in 1991, 41 percent in 1987, 28 percent in 1983, and 37 percent in 1979). In addition, the percent of the total population casting ballots, which includes both registered and unregistered voters, rose substantially in both elections: 24 percent in the April election (compared with 16 percent in the three elections previous) and 22 percent in the May election (compared with a previous high of 19 percent in 1987).

In 1999, Jacksonville's incumbent mayor ran in an uncontested primary election and voter participation was light: 23 percent in the April election. In May, with no mayoral candidates on the ballot, participation dipped further to 16 percent. (As a point of comparison, in New York City's 1991 citywide elections for the newly expanded city council, voter participation in the general election was less than 20 percent.) In the 2003 elections, however, which featured a competitive mayoral race, participation returned to 1995 levels: 41 percent of voters participated in the April election and 50 percent participated in the May election, in which, for the first time in at least twenty years, more than a quarter (29%) of all Jacksonville residents cast ballots.

Impact on the Black Community

Jacksonville's residents are predominantly White (66%), but there is a substantial Black minority (29%) and small Hispanic (4%) and Asian (3%) minorities. Jacksonville has more

registered Democrats than Republicans, but increasingly, as in many Southern cities and states, voters have favored Republicans in local, state, and national elections. Nevertheless, *more Black candidates are being elected under unitary elections than under partisan elections: In 1991, White candidates won all five citywide offices; in the 1995 unitary elections, one of the offices, Sheriff, which is second only to the mayoralty, was won by a Black candidate. It was the first time in Jacksonville's history that a Black candidate was elected to one of its five constitutional offices, as well as the first time in Florida's post-Reconstruction history that a black candidate was elected to the office of Sheriff.* Similarly, at the Council level, Black candidates won 4 of the 19 seats on the City Council in 1991, while Whites won the 15 others. In the 1995 unitary elections, Blacks won 5 of the 19 seats, and in 2003, Blacks won six of the 19 seats. Of the six Blacks who won council seats in 2003, two were Republicans; one defeated a black Republican and one defeated a White Democrat – in an overwhelmingly White district. (See attached, “Black Republicans make voter inroads: Victories hint focus on issues, not race,” *The Florida Times-Union*, April 21, 2003.)

In conversations with observers of Jacksonville's elections, including Professors Joan Carver and Stephen Baker of Jacksonville University, as well as Dr. Richard D. Danford, Jr., President of the Jacksonville Urban League, there has never been a suggestion that the switch to unitary elections has had any negative impact on the Black community, nor is there any evidence to suggest this is the case. Said Dr. Danford, who mentioned the success of black candidates in the 2003 elections, “*It hasn't had an adverse impact on the African-American community.*” When asked how unitary elections have been received by Jacksonville residents, all responded that voters are generally satisfied with the way the new system has worked. It should be noted that the parties, too, have been generally, albeit passively, supportive of the system and did not fight against it in the 1992 referendum. (This information was confirmed in various conversations and can be found in the attached article, “Some in GOP surprised that they couldn't vote,” *The Florida Times Union*, April 12, 1991.)

Election Competitiveness

In the April 2003 mayoral election, the three major Republican candidates (all White) split 66% of the vote, while the one major Democratic candidate (Black) won 28%. In a spirited runoff (general) election, the Republican defeated the Democrat 58 percent to 42 percent. In the six races for City Council that featured more than two candidates, five resulted in runoff (general) elections. Of the five, two were within 10 points, two within 15 points, and one was a landslide.

In the most hotly contested Council election, seven candidates ran in the April election, with the top two receiving 23.4% and 21.7% of the vote. In the runoff (general) election, the second place finisher won, 50.3% to 49.7%, and participation increased by nearly 2,000 voters.

All of the runoffs featured increased voter participation. All were held between a Democrat and a Republican, except one city council race, which pitted two Democrats against each other. That election saw the biggest jump in voter participation (34%) among the runoff elections.

CONCLUSION

The community-based Jacksonville Community Council and the voters of Jacksonville were dissatisfied with a partisan election system that was too uncompetitive, offered voters too few choices, and resulted in too little voter participation. The remedy recommended by JCCI eventually won bi-partisan support on the City Council, editorial support from the media, passive support from the parties, and overwhelmingly support at the polls.

In all municipal elections, the major factor that drives voter participation is competitiveness, particularly of mayoral elections. *Since switching to a unitary system, far more Jacksonville voters participate in both rounds of elections, voter choice has broadened, and Black candidates have made gains.* There are no doubt many factors that have contributed to these results; however, the data suggest, and observers confirm, that Jacksonville's change to unitary elections has worked well. Professor Carver expressed some concern for the livelihood of Jacksonville's political parties, but also said, after noting that voters are increasingly identifying themselves as independents, "People don't like parties as much as political scientists. It seems to me that it's worked well."

The current executive director of JCCI, Lois Chepenik, is also supportive: "It makes so much sense."

**VOTER PARTICIPATION IN JACKSONVILLE'S
PARTISAN AND UNITARY ELECTIONS**

Partisan Election	# Voting	% Reg. Voting/ (% Eligible Voting)	% Pop. Voting
April 1979	85,614	35.7% (42.8%)	15.0%
May 1979	88,765	37.0%	15.5%
April 1983	95,260	35.3% (37.2%)	16.1%
May 1983	75,479	28.0%	12.7%
April 1987	103,440	34.4% (36.6%)	16.0%
May 1987	124,834	41.5%	19.3%
April 1991	109,201	34.7% (49.7%)	16.0%
May 1991*	64,957	20.6%	9.5%

Unitary Election	# Voting	% Reg. Voting (% Eligible Voting)	% Pop. Voting
April 1995	173,263	50.6%	24.1%
May 1995	160,760	46.2%	22.4%
April 1999*	95,433	22.8%	12.5%
May 1999**	65,965	15.8%	8.6%
April 2003	188,011	40.6%	23.3%
May 2003	230,954	49.6%	28.7%

* No contested mayoral campaign.

** No mayoral election.

APPENDIX N

REVIEWING GLOBALLY AND ANALYZING LOCALLY:

**THE IMPACT OF NONPARTISAN ELECTION ON
DEMOCRACY IN NEW YORK CITY**

**REVIEWING GLOBALLY,
ANALYZING LOCALLY**

**THE IMPACT OF NONPARTISAN ELECTIONS
ON DEMOCRACY IN NEW YORK CITY**

Staff Report

August 13, 2003

**New York City
Charter Revision Commission**

EXECUTIVE SUMMARY

Two papers submitted to the New York City Charter Revision Commission have fueled criticisms of nonpartisan elections.¹⁶⁸ What findings are cited in the papers, what are their sources, and how relevant are they to New York City? Most importantly, do the papers examine the evidence in the context of local considerations?

STUDIES CITED BY THE TWO PAPERS

1. To suggest that there is evidence of reduced voter turnout in nonpartisan elections, data are drawn from studies of:
 - a 1967 election in Toledo, OH;
 - a comparison of elections in Champaign and Urbana, IL, in the early 1980s;
 - the turnout in a Michigan election for the Board of a state university compared with that for the state's highest court; and
 - Chicago's mayoral election when Richard Daley ran for the fifth time against virtually nonexistent competition.

Data Omitted

Actual voter turnout results from big cities show comparable turnout levels between partisan and nonpartisan cities, with nonpartisan cities holding the highest rates. In fact, ten nonpartisan cities (Albuquerque, Atlanta, Cleveland, Colorado Springs, Jacksonville, New Orleans, Omaha, Seattle, Minneapolis, and San Francisco) had higher rates of turnout in their most recent elections than New York City.

2. **To suggest that nonpartisan elections may have an adverse impact on poor and non-White voters, data are drawn from studies of:**
 - the 1967 Toledo, Ohio election; and
 - the 1973 municipal elections in Atlanta, Georgia.

Data Omitted

Discussion of the 1973 municipal elections in Atlanta, GA fails to note that the complained about nonpartisan contest resulted in the election of the city's first Black mayor. In addition, a 1993 study concluded, "ballot type is not related to the election of women and minorities" and "Hispanics [fare] a little better in nonpartisan elections." So, too, both reports fail to note that the Department of Justice in its preclearance review of changes from partisan to nonpartisan elections approved the change in nearly 100% of the time.

¹⁶⁸ Deborah Goldberg, Director, Democracy Program, Brennan Center for Justice at NYU School of Law, on Nonpartisan Elections. Presented to the 2003 New York City Charter Revision Commission at its July 24, 2003 hearing. Douglas Muzzio, Professor, School of Public Affairs, Baruch College, CUNY: *Nonpartisan Elections: Arguments, Evidence, and Impacts*. Presented to the 2003 Charter Revision Commission at its May 22, 2003 hearing.

3. To suggest that nonpartisan elections may promote fringe candidates, the papers cite:
- a French presidential election;
 - a Louisiana gubernatorial election.

Data Omitted

Any relevant comparisons.

LOCAL DATA AND REALITIES

Criticisms of nonpartisan elections rest on a body of academic literature that is inconclusive and inapplicable. It is puzzling, and indeed disappointing, that little effort has been made to square conceptual critiques with New York City's concrete political realities. Neither paper presented to the Commission engaged in a rigorous consideration of the characteristics that define New York City and its electoral process.

Missing are current data pertinent to New York City and its elections. For example:

- Nearly 700,000 registered New Yorker voters who select no party affiliation are precluded from voting in the September primary, which is almost always the determinative election.
- An additional 700,000 registered New York voters who belong to a party other than the Democratic party are precluded from participating in the September primary. In total, greater than 1.3 million registered New York voters are effectively disenfranchised.
- In City Council special elections, which are conducted on a nonpartisan basis, turnout is greater than in comparable partisan elections to fill vacancies for state offices.
- In the 2001 general election, only 1 of the 51 City Council races was competitive (where a candidate won with a margin of victory less than 10 percentage points). In 42 of the races (82%), the winning candidate's margin of victory was 30 percentage points or greater.
- Candidates easily win general elections despite winning only narrow margins of support in the primary – sometimes only 3 percent of the total electorate.
- Minority candidates are squeezed out. For example, District 1, which includes Chinatown, was crafted by the Districting Commission to enable Asian-American voters to elect a candidate of their choice. In 2001, a non-Asian candidate won the Democratic primary with 21.5 percent of the vote and then easily won the general election. In a nonpartisan election, it is likely that one and perhaps two Asian American candidates would have run in the general election.
- Nearly two-thirds of the campaign finance funds paid to City Council candidates in the 2001 general election went to those who won landslide victories (i.e., a margin greater than 30 percentage points) or to those who lost in the Democratic primary and ran as third party candidates in the general election (and then lost again, by a landslide).

Nonpartisan elections are intended to reform the failings of New York City's electoral process by including those currently excluded from participating in the primary election and its petition process, increasing voter choice and participation, creating more competitive elections, and producing election results that are more democratic. Criticisms have focused on remote, out-of-date, and irrelevant data having little to do with the reality of New York City or its governing and election system.

REVIEWING GLOBALLY, ANALYZING LOCALLY: THE IMPACT OF NONPARTISAN ELECTIONS ON DEMOCRACY IN NEW YORK CITY*

The Charter Revision Commission has heard public testimony and received written public comment at sixteen public events in May, June, and July. The purpose of the public hearings is to solicit feedback on the issues under consideration by the Commission, and on the specific analysis conducted by the Commission staff in its preliminary reports. The great bulk of public comment has been on the issue of nonpartisan elections. The Commission has heard from a broad diversity of New Yorkers. This includes members of the Democratic, Green, Independence, Republican, and Working Families parties, as well as many of the City's civic groups, including the Asian American Legal Defense and Education Fund, The Brennan Center for Justice at New York University, Citizen's Union, Common Cause New York, the New York chapter of the NAACP, and the New York Public Interest Research Group.

Two papers¹⁶⁹ submitted to the Commission outlined criticisms of nonpartisan elections, many of which were echoed by witnesses at the public hearings. Each paper cites studies to support its arguments. Commission staff has reviewed these papers and the sources cited. Guided by the values set forth by the Commission – increasing access for voters and candidates, enhancing participation among all groups, and forging greater governmental accountability – the staff has reviewed the criticisms, examined their empirical basis, and analyzed their validity. The criticisms focus on the impact of nonpartisan elections on:

- Voter information
- Voter turnout
- Republican and third parties
- Poor and non-White voters and candidates
- Voting factors such as name recognition and ethnicity
- The professional status of elected officials
- The power of political parties
- Fringe candidates
- Voter choice
- New York City's Campaign Finance Program

¹⁶⁹ Deborah Goldberg, Director, Democracy Program, Brennan Center for Justice at NYU School of Law, on Nonpartisan Elections. Presented to the 2003 New York City Charter Revision Commission at its July 24, 2003 hearing. Douglas Muzzio, Professor, School of Public Affairs, Baruch College, CUNY: *Nonpartisan Elections: Arguments, Evidence, Impacts*. Presented to the 2003 Charter Revision Commission at its May 22, 2003 hearing.

*This study was prepared by Alan Gartner, Executive Director, and Francis Barry, Research Director, with assistance from Anthony Crowell, Chief Counsel.

1. VOTER INFORMATION

The chief criticism leveled against nonpartisan elections, indeed, the criticism from which nearly every other criticism flows, holds that party labels provide important information to voters and “cue” them where information is lacking.

Discussion

The Commission staff has not proposed, nor has the Commission considered, any restrictions on candidates’ abilities to identify their party affiliation in their electioneering messages, nor any restrictions on parties’ ability to make endorsements. (This is in keeping with U.S. Supreme Court decisions.) In light of the public testimony presented to the Commission regarding the value of party labels, however, and in recognition of its merit, the Commission is considering additionally allowing candidates to identify their party membership on the ballot. If party labels appear on the ballot, the criticism that nonpartisan elections deprive voters of useful information would become moot, as would the other arguments, including those outlined below, that flow from it. *It is important to emphasize this point: should the Commission opt to allow party labels to appear on the ballot, findings of previous studies on nonpartisan elections cited by critics and supporters alike become moot.*

2. VOTER TURNOUT

The argument that nonpartisan elections may lead to reduced voter turnout is predicated on two ideas: first, that party competition draws voters to the polls; and second, that absent party labels, the cost of information gathering increases and more voters choose not to go to the polls. No studies exist on the impact of nonpartisan elections that allow candidates to identify their party membership on the ballot; the academic evidence is limited to nonpartisan elections that are held without party labels, and it is inconclusive and of highly limited value. Both papers cite a study (Schaffner, Streb, and Wright, 2001) of elections in the 1980s, comparing the cities of Champaign and Urbana, Illinois; the former conducted nonpartisan elections and the latter partisan elections.¹⁷⁰ The study also included an examination of Asheville, North Carolina, comparing turnout before and after a change from partisan to nonpartisan elections. The authors conclude that the data from Asheville (Pop: 61,000) did not prove the hypothesis as to lesser turnout in a nonpartisan system. As to the Champaign/Urbana comparison, one must raise a question as to the pertinence of a study of an election greater than a decade and a half ago, in cities with a combined population (90,000) barely half that of a Council district in New York City. Indeed, Muzzio acknowledges, in understatement, “Clearly, the small number of cases is problematic.”¹⁷¹ Also problematic is that the study does not control for the fact that Champaign and Urbana have different government structures: nonpartisan Champaign has a Council-manager form of government, which scholars generally agree does not promote voter turnout, while partisan Urbana, like New York City, does not.

Goldberg cites a study of a 1967 election in Toledo, Ohio that took as a given that turnout in municipal nonpartisan elections was low, as compared with presidential elections,¹⁷² as well as

¹⁷⁰ Schaffner, Brian F., Matthew Streb and Gerald Wright. “Teams Without Uniforms: The Nonpartisan Ballot in State and Local Elections.” *Political Research Quarterly*, Volume 54, No. 1 (March 2001), p. 7-29.

¹⁷¹ Muzzio, p. 20.

¹⁷² Hamilton, Howard D., *The Municipal Voter: Voting and Nonvoting in City Elections*, *American Political Science*

a study that found that the choice between partisan and nonpartisan elections did not effect voter turnout.¹⁷³ The text of her paper buries the second study – with its contradictory conclusion – in a footnote. Two other studies are cited: the first compares turnout in a partisan election for seats on a state university board in Michigan with a nonpartisan election for seats on the state’s highest court. One need not point out that the elections under consideration in New York City are neither those for university boards of trustees nor for the judiciary to find the datum of dubious relevance. Goldberg herself acknowledges, in a footnote, that the level of press attention focused on the partisan races was far greater than that for the nonpartisan judicial races.¹⁷⁴ The second study cites other studies in the 1960s and 1970s that found that turnout in nonpartisan cities was lower than in partisan cities, but also noted that the studies do not control for the impact of other reform features, including council-manager forms of government and an off-season election date, both of which are associated with the nonpartisan ballot.¹⁷⁵ Generally, elections held in the winter and spring, which are more likely to be nonpartisan than partisan, result in lower turnout. The staff recognizes this and therefore has proposed that nonpartisan elections be held at the same time of the year as traditional fall elections. As to holding elections at the same time as state and federal elections, as suggested by the cited study, it is prohibited by the New York State constitution.

Goldberg also suggests, citing the Schaffner examination of Nebraska and Kansas, that the absence of party labels may increase the “roll-off” from the top of the ticket on down.¹⁷⁶ If party labels are allowed to appear on the ballot this point is moot. However, there is good reason to believe that nonpartisan elections, by resulting in more competitive general elections that provide voters with two viable candidates, rather than one, may diminish voter roll-off, which is in part a function of an election’s competitiveness. In many general elections in 2001, the number of unrecorded (roll-off) votes far surpassed the number of votes cast for the runner-up. In the City Council races, the highest percentage of unrecorded votes, 50 percent, occurred in a district where the candidate won 100% of the recorded votes; the second highest total (45 percent) occurred in a district where the candidate won 93 percent of the recorded votes. Districts 25 and 24, which had the third (42 percent) and fourth (41 percent) highest levels of voter roll-off, featured candidates that won with 83 percent and 88 percent of the recorded votes, respectively. This brief review of the data supports the idea that voter roll-off is a function, at least in part, of competitiveness.

One paper submitted to the Commission cites Chicago as an example of nonpartisan elections leading to lower turnout, noting the drop in turnout between the city’s first (1999) and second (2003) nonpartisan elections for mayor.¹⁷⁷ The paper concludes, “What effect nonpartisanship may have had on this decline is unknown.”¹⁷⁸ What is known, however, and

Review, Volume 65, p.1135-1140.

¹⁷³ Lublin, David Ian and Katherine Tate, *Racial Group Competition in Urban Elections*, in *Classifying by Race* (Paul E. Peterson, ed.: 1995).

¹⁷⁴ Goldberg, p. 4.

¹⁷⁵ Cassel, Carol A, *The Nonpartisan Ballot in the United States in Electoral Laws and Their Consequences* (Bernard Grofman and Arend Lijphart, ed.: 1986).

¹⁷⁶ Goldberg, p. 5

¹⁷⁷ Muzzio, p.21

¹⁷⁸ Muzzio, p. 21.

which the author fails to point out, is that in 2003 Mayor Daley was running for his fifth term against virtually nonexistent competition.¹⁷⁹

DISCUSSION

The data provides no basis for any conclusion about the impact of nonpartisan elections on voter turnout in New York City, and certainly bears no relevance to elections in New York City with party labels. Examining New York City's unique circumstances, there are at least five reasons to believe that nonpartisan elections, including those with party labels permitted on the ballot, would increase voter turnout:

- 1) Approximately 700,000 independents who are currently shut out of primary elections would become eligible to participate in the determinative election. In addition, Republican and third party primaries are extremely rare, which means that these voters, too, would become eligible to participate in the determinative election. In total, independents, third party members, and Republicans account for more than 1.3 million voters, or a full one-third of the electorate.¹⁸⁰
- 2) Turnout in nonpartisan special elections held for New York City Council have generally been higher than turnout in partisan special elections for the State legislature.¹⁸¹
- 3) Big cities with nonpartisan elections have comparable, and in many cases higher, rates of turnout than partisan cities. For instance, ten nonpartisan cities (Albuquerque, Atlanta, Cleveland, Colorado Springs, Jacksonville, New Orleans, Omaha, Seattle, Minneapolis, and San Francisco) had higher rates of turnout in their most recent elections than New York City.¹⁸²
- 4) As suggested by Nicole A. Gordon, executive director of the Campaign Finance Board, competitive City Council races help drive up voter turnout.¹⁸³ Under nonpartisan elections, it is highly likely that the number of competitive general elections for City Council as well as for boroughwide and citywide office would increase substantially. In 2001, 42 of 51 general elections for City Council were landslides (margin of victory of greater than 30 points), while only one was competitive (margin of victory of less than ten points). Races for Comptroller and Public Advocate were essentially uncontested in the general election – a remarkable result given that both were open seats.¹⁸⁴
- 5) Finally, New York City, unlike most nonpartisan cities studied by scholars, has a long tradition of active and well-organized party politics. Under nonpartisan elections, parties will continue to perform their traditional education and get-out-the-vote activities – perhaps, in fact, owing to more competitive elections, with even greater intensity.

3. REPUBLICANS AND THIRD PARTIES

¹⁷⁹ Associated Press, February 28, 2003.

¹⁸⁰ See Appendix B, New York City Voter Registration Totals: 1993 & 2003

¹⁸¹ See Appendix B, Voter Turnout in New York City Special Elections: 1995-2002

¹⁸² See Appendix B, Voter Turnout in the Nation's Largest Cities

¹⁸³ Testimony of Nicole A. Gordon, Executive Director of the New York City Campaign Finance Board, before the 2003 New York City Charter Revision Commission, July 21, 2003.

¹⁸⁴ See Appendix B, An Overview of the Competitiveness of the 2001 Primary and General Elections.

Muzzio's paper cites a 1973 study of 88 cities in the San Francisco Bay area that conducted at-large rather than district elections, a 1960 study of other elections in California, and a 1992 study of county supervisor elections in California to suggest that nonpartisan elections are more likely to elect Republicans.¹⁸⁵ (No evidence suggests that this argument applies to nonpartisan elections with party labels allowed on the ballot.) The relevance of studies conducted more than thirty years ago of elections in small California cities with different election structures than New York City and for different offices goes unquestioned. Nor does the paper cite an early study by Charles Gilbert of large cities, one of the few that has ever been conducted, which concludes that, "in the postwar period, Republicans have been elected in nonpartisan cities only in circumstances in which they might equally have been elected in partisan elections."¹⁸⁶ Gilbert suggests that the appearance of a Republican or conservative advantage is largely a function of regional differences: West coast nonpartisan cities are located in states where party lines and loyalties are traditionally weak and split-ticket voting is common; Western cities generally have a lower proportion of nonwhite and foreign born than in partisan cities, suggesting some weakness in the traditional urban Democratic base; and labor organizations are weaker, and conservative traditions stronger, in the West than the East.¹⁸⁷ A later study by Welch and Bledsoe confirmed Gilbert's findings, concluding that Republican bias "surfaces only in small cities, in those of moderate incomes, and in cities with at-large elections."¹⁸⁸

Discussion

Muzzio refers to the Welch and Bledsoe study but still concludes by suggesting that the evidence points to "A Republican (or at least minor party) bias." Given the mixed and highly inconclusive findings in the literature, and particularly in light of Welch and Bledsoe's findings, the conclusion lacks empirical validity. To the extent that a nonpartisan election, including those with party labels, broadens voter choice, it is not unreasonable nor undemocratic to expect that more political independents – the second largest block of registered voters, as well as Republican and third party candidates, will have a better chance to gain representation in municipal offices by virtue of a more competitive system.

On an anecdotal level, it is worth noting that Democratic and Republican party leaders alike have expressed partisan concerns that nonpartisan elections will advantage the other party. In fact, neither party is likely to gain advantage, though partisan arguments will continue. Elites in each party have a stake in the status quo and fear of change runs strong. Indeed, the intended beneficiaries of nonpartisan elections are not the elites of either party. Rather, it is voters and insurgent candidates from all parties, as well as independents, who will benefit.

4. POOR AND NON-WHITE VOTERS

As previously stated, the argument that nonpartisan elections may reduce voter turnout is predicated largely on the idea that party competition draws candidates to the polls and that if the cost of information gathering increases, voters, particularly those who are less likely to search

¹⁸⁵ Muzzio, p. 22

¹⁸⁶ Gilbert, Charles E. "Some Aspects of Nonpartisan Elections in Large Cities." *Midwest Journal of Political Science*, Volume 6, Issue 4 (Nov., 1962), p. 350.

¹⁸⁷ Gilbert, p. 357.

¹⁸⁸ Welch, Susan and Timothy Bledsoe. "The Partisan Consequences of Nonpartisan Elections and the Changing Nature of Urban Politics." *American Journal of Political Science*, Volume 30, Issue 1 (Feb., 1986), p. 137.

out additional information, are more likely to stay home on election day. Once again, it is critical to note that the academic evidence, which overall is of highly limited value, addresses only nonpartisan elections that are held without party labels. There is no evidence, and it is hard even to posit a credible theoretical basis, to suggest that a nonpartisan system that allows party labels to appear on the ballot, in a City with a strong tradition of party activity, would have any adverse impact on voter turnout among any group, including poor and non-White voters. In fact, it bears repeating that more competitive elections may result in stronger party efforts to get-out-the-vote. Finally, it should be noted that some minority witnesses at public hearings have denounced the argument as patronizing and condescending.

The primary evidence cited by Goldberg is the previously noted 1967 study of Toledo, Ohio; a study of municipal elections in Atlanta, Georgia in 1973¹⁸⁹ is cited to support the following statement: “The decrease in participation that comes with nonpartisan elections is concentrated among less educated and less affluent communities.”¹⁹⁰ As a general rule, when turnout declines, so too does the influence of less educated and less affluent communities. Yet Goldberg fails to offer any evidence to suggest that nonpartisan elections will depress turnout in New York City. In fact, the study she cites, itself, concludes by noting that the evidence suggests “that the relationship between race and nonpartisanship is somewhat more involved than has been suggested in past analyses. Race does not appear to operate as a salient or uniform factor in nonpartisan races.”¹⁹¹ The irrelevance of the Toledo study has been noted; if an election in Atlanta from thirty years ago has any pertinence, surely it is also worth noting that in that election, Atlanta voters elected the city’s first Black mayor, and have ever since, a feat not accomplished in New York City until sixteen years and four mayoral elections later.

Goldberg states that “If the Mayor and Charter Revision Commission were genuinely interested in increasing overall voter participation,” it should propose a system of proportional representation.¹⁹² Referring to the use of proportional representation in New York City Council elections in the 1930s and 1940s, the paper does not take note of the minimal turnout in local school board elections, which also used proportional representation, nor the scant experience that American municipalities have had with proportional representation. The legislatively established Task Force on Community School Board Elections in New York City found the use of proportional representation, including voter confusion, one of many factors that led to minimal turnout in these elections. Proportional representation may indeed contain commendable features, but it does not accomplish two of nonpartisan elections’ chief goals: opening the ballot to the city’s fastest growing group of voters and diminishing the power that party leaders continue to wield over voters’ ballot choices.

DISCUSSION

In addressing the issue of the election of minority candidates, Goldberg dismisses data from other cities that do not support her argument. These data show that in cities using nonpartisan elections, as compared with those using partisan elections, there is a fifty percent

¹⁸⁹ Collins, William P., *Race as a Salient Factor in Nonpartisan Elections*, Western Political Quarterly, Volume 33 (1980), p. 330-335.

¹⁹⁰ Goldberg, p.5

¹⁹¹ Collins, p. 335.

¹⁹² Goldberg, footnote on p. 6.

greater likelihood that they have elected a minority person as mayor.¹⁹³ These cities include Los Angeles, Houston, Detroit, Dallas, San Francisco, Cleveland, Denver, El Paso, Kansas City, Memphis, Minneapolis, Miami, New Orleans, Newark, Sacramento, and others. In her discussion of City Council elections, Goldberg, in a puzzling omission, fails to acknowledge a national survey examining City Council members' race, gender, and ballot type, which found that ballot type was not related to the election of women and minorities, and that Hispanic candidates for city council fared a little better in nonpartisan elections.¹⁹⁴

In testimony before the Commission, Glenn Magpantay, staff attorney to the Asian American Legal Defense and Education Fund, pointed to what he characterized as a decline in the number of registered independents among Asian Americans, from 37% in 2001 to 35% in 2003.¹⁹⁵ This small decline may in fact be real, but the fact remains, based on AALDEF's numbers, that more than one third of Asian Americans register as political independents – twice the rate of the citywide voters. The Asian-American community is growing at the fastest rate of the City's minority groups, and under nonpartisan elections, the percent of Asian-Americans eligible to participate in the determinative election would increase substantially, both in absolute and relative terms. In fact, it is not difficult to imagine that, had the 2001 election been nonpartisan, voters in Council District 1 may have sent one – or even two – Asian American candidates into a highly competitive general election. Instead, a non-Asian American candidate who received only 21.5 percent of the primary election vote won the general election by more than thirty points.¹⁹⁶

According to Hispanic Federation surveys, Hispanics, too, register as independents and members of third parties, though at a rate slightly less than the Citywide average. (According to the surveys, the percent of Hispanic voters who are registered as Democrats or Republicans ranges from 84 to 86 percent, which is larger than, although still in the same range, as the Citywide rate of 79.4 percent.¹⁹⁷) Many observers have speculated that had the 2001 election been nonpartisan, Fernando Ferrer may have advanced to the November election. In the 2001 race for Brooklyn Borough President, a black woman, Jeannette Gadson, was the runner-up in the Democratic primary. Under nonpartisan elections, Gadson may have advanced to the general election; instead, the primary winner, who captured less than 40 percent of the primary vote, faced no real opposition in the general election (while receiving more than \$500,000 in general election matching funds). In Council races, too, there were instances where a nonpartisan system likely would have resulted in two Black candidates, or a Black and Hispanic candidate, competing in a general election, rather than just one candidate waltzing to victory.¹⁹⁸

¹⁹³ Overall, the racial composition of the two sets of cities, those that conduct NPE and those that do not, is roughly comparable.

¹⁹⁴ MacManus and Bullock, 1993.

¹⁹⁵ Glenn Magpantay, staff attorney with the Asian American Legal Defense and Education Fund, in testimony before the New York City Charter Revision Commission, July 22, 2003.

¹⁹⁶ For more examples, see Appendix A, The 2001 City Council Elections: Imagining the Impact of Nonpartisan Elections.

¹⁹⁷ The 11th Annual Survey of Hispanic New Yorkers on Nueva York, The Hispanic Federation, June, 2003.

¹⁹⁸ For more examples, see Appendix A, The 2001 City Council Elections: Imagining the Impact of Nonpartisan Elections.

5. VOTING FACTORS SUCH AS NAME RECOGNITION AND ETHNICITY

Again, with party labels allowed on the ballot, the criticism that nonpartisan elections benefit incumbents and the rich and famous is moot. Goldberg's memo cites one source to support her claim that nonpartisan elections benefit incumbents: the previously noted Schaffner, Streb, & Wright study. No sources are offered to support the argument that the rich and famous are further advantaged by nonpartisan elections. As for enhancing the importance of ethnicity, she cites two studies: the first is a study of Newark's 1962 municipal election. The study, in addition to being long outdated, suggests that partisan elections are better at "managing ethnicity" and do so chiefly through a "balanced ticket," a slate of candidates comprising members of all ethnic groups. Yet candidates in New York City, unlike Newark and other jurisdictions, do not run and are not elected on tickets. What relevance this study, more than forty years old, has for New York City is questionable, at best. In addition, in another buried footnote is the point from a more recent study that white candidates are more likely to use race-based appeals in partisan elections.¹⁹⁹

Discussion

The criticism that nonpartisan elections elevate the importance of wealth and fame is a rhetorical argument that has no empirical basis; the argument that nonpartisan elections elevate the importance of race and incumbency rests on scant evidence. In fact, Goldberg ignores other, more extensive studies that show that incumbents fare better under partisan elections than nonpartisan elections. Karnig and Walter's 1977 study of municipalities found that mayoral incumbents were re-elected at a rate of 75 percent in partisan cities and 61 percent in nonpartisan cities, "probably as a consequence of the stabilizing influence party identification has on structuring electoral choices"²⁰⁰

More importantly, Goldberg takes no cognizance of New York City's local institutions that serve to limit the power of incumbency, as well as the power of wealth and fame: term limits is the most important factor, but the campaign finance program, too, helps level the playing field between incumbents and challengers, rich and poor. Challengers are also helped by the extensive information available to voters through the City's Voter Guide, the mandatory debate program for citywide candidates, the five daily newspapers, the dozens of community newspapers, the plethora of civic and community groups, and the many television stations, both over-the-air and cable. It may be fairly said, in fact, that no other big city can compete with the amount of candidate information that is available to voters in New York City, through government sponsored initiatives such as the campaign finance program and voter guide, union and nonprofit sponsored educational communications, and news reports that flow from the world's most active and dynamic media center. In addition, the Commission is examining new ways to expand the informational opportunities available to City voters.

6. PROFESSIONAL STATUS OF ELECTED OFFICIALS

¹⁹⁹ Goldberg, p. 5.

²⁰⁰ Karnig, Albert K. and Walter B. Oliver, *Municipal Elections: Registration, Incumbent Success, and Voter Participation*, in the *Municipal Yearbook* (1977), p.68, Washington, D.C.: International City Management Association.

One paper cites studies that suggest that nonpartisan elections advantage high status occupations: two from the 1950s, two from the 1960s, and several from the 1970s, including the previously noted study of the 88 towns in the Bay Area.²⁰¹ Some of these studies contain an obvious flaw, comparing nonpartisan at-large seats to partisan district seats. A 1985 survey of city councils in all U.S. cities with populations of 2,500 and above found no difference between the two systems regarding age. As to occupation, there were no differences with regard to the number of attorneys but some differences did exist with other, high-status occupations.

DISCUSSION

These studies of city councils, most long outdated and none pertaining to big cities, bear little if any relevance to New York and its City Council. The argument rests on the premise that, absent party structures to support non-professionals, high-status occupations will be advantaged, particularly since most city councils are part-time positions that pay their members very little, if anything. In New York City, however, the Council is a full-time position for many of its members, and it pays like one. Furthermore, New York's party structure is one of the most highly developed in the nation; its unions are some of the largest and most powerful in the nation; and its campaign finance program, which provides extraordinary financial support to candidates, is the most generous in the nation. Taken together, these factors level the playing field between candidates from all occupational levels. None of the cited studies bears relevance to the deliberation of nonpartisan elections in New York City, and it is curious that discussion of them takes place in an academic vacuum, rather than in the context of New York City's political realities.

7. THE POWER OF POLITICAL PARTIES

Goldberg affirmatively notes that nonpartisan elections would succeed in weakening political parties and then she argues that this would not be a good thing because parties are useful organizations.

Discussion

The Commission staff agrees that parties are useful organizations that perform important functions. Nonpartisan elections, on the other hand, reduce the party elite's lock hold on the primary process, opening to all registered voters both the primary ballot box and the petition process (both as signators and carriers). Under nonpartisan elections, nearly one in five voters, or seven hundred thousand persons (i.e., those registered to vote but not enrolled in a party), who are effectively disenfranchised by the current system, would be allowed to participate in the election process where it matters. Further, the argument fails to recognize that by reducing the power of party leaders, other groups, such as community organizations, unions, tenant groups, etc., will have the opportunity to organize into coalitions and build support for their own candidates who do not originate in party clubhouses.

8. FRINGE CANDIDATES

The only data presented to support the assertion that nonpartisan elections may promote fringe candidates are hardly pertinent to New York: a French presidential election and a

²⁰¹ Muzzio, p.21-22.

Louisiana gubernatorial election.²⁰² Nothing else. On the other hand, it is generally understood that nonpartisan elections, by broadening the electorate eligible to vote, benefit candidates with the widest appeal, rather than the most narrow.

Discussion

In addition to having vastly different politics from New York City, both jurisdictions that Goldberg cites, unlike New York City, have competitive multi-party systems. Goldberg cites the recent Louisiana gubernatorial campaign, “when the four major candidates received at least 18% of the vote, [and] the two that advanced to the run-off were the most extreme on the right and left.”²⁰³ Left unstated, however, is the fact that the second place finisher was a Black state legislator – the first Black candidate to appear in a Louisiana gubernatorial run-off election in state history. It is worth noting that in the 2001 mayoral race, Fernando Ferrer was the candidate considered “most extreme on the left” and may have, under a nonpartisan system, advanced to the general election, becoming the first Hispanic mayoral candidate to do so. Is Ferrer the type of “fringe” candidate that Goldberg fears would succeed under nonpartisan elections? In a footnote, Goldberg grants that “[t]his tendency toward extremism is not a necessary consequence of nonpartisan elections.”²⁰⁴

Conventional wisdom holds that party primaries force candidates to appeal to, or at least appease, the ideological extremes of their party’s base, while in the general election, candidates move back toward the middle. Nonpartisan elections, by including the one in three voters who are independent or belong to a non-majority party, require candidates to broaden their base of support. It is likely that this would have a moderating effect on campaigns, rewarding those who are most skilled at building coalitions, which is also an important skill in the legislative process.

In a City where one party is assured victory in all but a few races, and where a candidate can win office by capturing votes from only 3 percent of the total electorate (by winning the Democratic primary), it is the current system, on the contrary, that may promote fringe candidates. Here, candidates can appeal to a narrow constituency in the primary without having to fear facing the broader electorate. Again, only one of the recent 51 City Council general election contests was competitive, i.e., the winner’s margin of victory was less than 10 percentage points, while forty-two of the races were won with margins of victory 30 percentage points or greater.²⁰⁵

9. VOTER CHOICE

Muzzio includes a reference to a case in the early 1980s when “activists in Sarasota [*sic*] Springs, New York, forced a referendum that resulted in a change from a long established nonpartisan to a partisan electoral system” because the absence of party primaries “narrowed choice too much, too soon.”²⁰⁶ On the other hand, there is no discussion of the lack of choice that currently results under New York City’s partisan system.

²⁰² Goldberg, p. 9.

²⁰³ Goldberg, p. 9

²⁰⁴ Goldberg, p. 9

²⁰⁵ See Appendix B, An Overview of the Competitiveness of the 2001 Primary and General Elections.

²⁰⁶ Muzzio, p.23

Discussion

The paper fails to reflect an important point: Saratoga Springs has two fairly competitive parties. New York City, on the other hand, does not. The City's current partisan system usually features many viable primary election candidates but only one viable general election candidate, which does indeed narrow choice too much, too soon. Nonpartisan elections would expand voter choice by transforming many of the City's general elections from coronations into contests. Muzzio does not mention the level of party competition in Saratoga Springs, nor its size (approximately 20,000), nor the fact that, prior to 1982, voters had rejected the change to partisan elections in three separate referendums. In addition, a former independent City Council member opposed the change, raising concerns that independent voters would lose their voice. Also opposing the change was the lone Democrat on the five member Council, who said, "I want to be able to make appointments without having to run to some political boss to get things done."²⁰⁷ In addition, two of the Council's four Republicans, who had not been backed by party leaders in the previous election, also opposed the switch, which was viewed by some as an attempt by the majority (Republican) party to consolidate control. Finally, the question that appeared before voters on the ballot gave little indication as to the change being proposed. It read, "Shall the City Charter be amended to provide that future elections of all city officials occupying elective positions be governed by the terms of the State Election law?" None of these issues are mentioned or discussed. Instead, the Saratoga Springs example is presented as "evidence" of an inherent tendency in nonpartisan elections to "narrow choice."

10. NEW YORK CITY'S CAMPAIGN FINANCE PROGRAM

Goldberg raises three points: the first concerns the Campaign Finance Board's rule developed in the context of partisan elections of imputing to candidates spending by the party that nominated them. Just as the CFB crafted this imputation scheme in the context of partisan elections, it can develop by rule an imputation design for a nonpartisan system should the voters adopt it. It is only to state the obvious to note that the campaign finance program must be crafted to support the broader election system chosen by the voters, not vice-versa. Pertinent are reports from six large cities that have both campaign finance programs and nonpartisan elections indicating that they have been able to develop means to do just that. The Commission staff is confident, as it has been advised by the Corporation Council, that nothing in the proposed electoral design precludes the development of such rules.

The crux of the issue is coordinated spending. Currently, the CFB charges party spending that it establishes as coordinated with a candidate's campaign to the candidate's spending and contribution limits. Under nonpartisan elections, this practice of regulating coordinated expenditures would remain in effect, and parties that spend on behalf of candidates would risk, just as they do now, putting the candidate in jeopardy of contribution and spending limit violations, as well as creating the negative press that accompanies such violations, both of which serve as important disincentives to outside spending.

The second point concerns whether nonpartisan elections would increase incentives for candidates of wealth not to participate in the campaign finance program. Of course, in the

²⁰⁷ Jeff Wise, "Partisan Election Referendum Rejected by Spa City Council," *Saratoga Gazette*, July 7, 1982.

current partisan election systems candidates of wealth have been free to choose not to participate and, in some elections, both citywide and district, they have done so. Nonpartisan elections have no material impact on the incentives, which will remain great, to join the campaign finance program, nor the disincentives, which will remain small, not to join. Candidates will continue to join at the high rates they do today, and the benefits of doing so will continue to outweigh the costs many times over.

The third point seems puzzling, for it finds problematic what one would think is desirable, namely that “nonpartisan elections would substantially reduce uncontested primaries..”²⁰⁸ More democracy is desired, even if the consequence, as the paper posits, may be increased campaign finance costs. Whether the cost of the campaign finance program is appropriate should be considered in light of its funding formulas, and not, it seems obvious to point out, whether its elections should be competitive.²⁰⁹ In addition, the charge of increased costs, when explored further, leads to some startling revelations about the disbursement of public funds under the current system. In the 2001 City Council general elections, \$2.6 million dollars – nearly two-thirds of the total public funds paid to Council candidates in the general election – went to those who won landslide elections (i.e., won by a margin of thirty percent or greater) or to those who had lost in the Democratic primary and ran as a third party candidate in the general election. In general elections for borough president, landslide winners received over a million dollars.²¹⁰ Taxpayers are investing heavily for competitive elections but millions are being spent on landslides. Under a nonpartisan system, the return on investment – competitive general elections – would increase substantially.

Discussion

While overlooking the gains in the “productivity” of matching funds that nonpartisan elections would bring, Goldberg examines the issue of fairness. She finds problematic the following scenario: “Some primary races will involve a single candidate from one party, who is a well-identified as a partisan, running against several candidates from the other major party. The system would then fund all of the candidates, despite the fact that the candidate who does not face same party opposition will functionally be campaigning only for the general election.” Democrats, however, outnumber Republican by a margin of nearly 5-to-1. If Goldberg’s hypothetical race is between three, four, or even five Democrats and a single Republican, what is there to suggest, as Goldberg does, that the Republican essentially has a pass to the general election? Indeed, there are more registered independents in the City than Republicans, and all candidates will need to fight to gain entry to the general election. In some races, Republicans, independents, and third party candidates will succeed; in many more, the top two finishers advancing to the general election likely will be Democrats.

Goldberg’s concern for a fair distribution of public funds somehow overlooks the inequities that result from the partisan system. Currently, candidates who run in party primaries

²⁰⁸ Goldberg, p. 10

²⁰⁹ The Campaign Finance Board recommended, in its 2001 post-election report (*An Election Transformed...An Election Interrupted*), reducing the public funds matching rate to \$3-to-\$1 from \$4-to-\$1, while increasing the bonus paid to candidates who face non-participants to \$6-to-\$1 from \$5-to-\$1. The bill amending the Campaign Finance Act passed by the City Council in February, 2003 did not include either of these changes.

²¹⁰ See Appendix B, An Overview of the Competitiveness of the 2001 Primary and General Elections.

may receive two rounds of public fund payments: one for the primary election and one for the general election. As a rule, however, only Democrats run in party primaries, and, as a result, Democrats are able to qualify for twice the amount in public funds as their general election opponents. This inequity does not rate a mention in the author's discussion of fairness, but its consequences are real: in the only competitive general election for City Council, the Democratic candidate received \$75,000 more in public funds than his Republican opponent, outspent him by more than \$155,000, and won by 415 votes out of more than 34,000 cast.²¹¹ Under nonpartisan elections, all candidates, regardless of party, would be eligible to receive the same amount in public funds.

Finally, it is curious that neither paper refers to the shared goals of the campaign finance program and nonpartisan elections: enhancing voter participation, broadening voter choice, and improving the competitiveness of election. Both laud the program for its success but do not acknowledge that its goals would be well served – and much advanced – by a system of nonpartisan elections.

CONCLUSION

The studies cited, and others that the Commission staff has examined, present mixed and inconclusive evidence, mostly from jurisdictions with little in common with New York City, to support the revisionist-theories of political scientists who have argued that nonpartisan elections are, in general, less democratic than partisan elections. Central to this argument is that party cues are meaningful and important, an argument that the Commission, at least preliminarily, has found persuasive. Between the inconclusive evidence, the comparisons to vastly different jurisdictions, and the centrality of party cue to the argument, these studies bear little if any relevance New York City's consideration of nonpartisan elections, and no relevance whatsoever if party labels are allowed to appear on the ballot.

As noted in the staff's preliminary report, the best advice on whether to adopt nonpartisan elections comes from one of its early critics, Eugene C. Lee, who recommended that municipalities examine their own "problems, needs, and resources" in determining which electoral system best promotes democratic values:

Which system [partisan or nonpartisan] will do most to enhance the twin factors of competition and consensus essential to the democratic process? Which system will best promote freedom and equality of access to public office and political activity by all groups in the community? Which system will best encourage the presentation of alternative viewpoints on key issues facing the community and relate these views to candidate choice? And finally, which system will best lead to the recruitment and election of men and women of ability and integrity without whom the community will fail to reach its potential as a vital force in the life of its citizens? In answering these questions, each community will have to examine its own problems, needs and resources. Important and helpful as they are in raising the question for debate, the generalizations of both the

²¹¹ Ibid.

partisan and nonpartisan advocates can never be an adequate substitution for the thoughtful individual consideration. The size of the city, the character of its population, the quality of its civic institutions, the integrity of its press – these and countless other matters will determine which type of ballot and what kind of politics will result in the most vital political life for the community and its citizenry.²¹²

The Commission staff has been engaged in an intensive examination of the questions raised by Lee and other scholars, grounding its analysis in the realities of New York City's electoral landscape. Criticisms of nonpartisan elections, on the other hand, have been argued largely in an academic vacuum; little or no attempt has been made to square criticisms with the realities of New York City's politics. The Commission, however, is not evaluating nonpartisan elections in the abstract, but rather in the context of the political characteristics that define the City – including, but not limited to, the campaign finance program, term limits, the voter guide, the debate program, one party dominance, strong unions, innumerable local media outlets, a strong mayor form of government, increasing numbers of registered independents, uncompetitive general elections, restrictive ballot access laws, powerful party bosses, and candidates who win office with a narrow – as little as 3 percent of the total electorate – base of support.

Consideration of nonpartisan elections cannot focus on abstract, ethereal ideas or be sidetracked by irrelevant, inapplicable, and inconclusive studies. It must focus on concrete, local realities. Over the next several weeks, the Commission staff will continue its analysis of the impact of a nonpartisan system on local elections, and with nearly three months before any potential referendum, there is still time for others to do the same.

²¹² Lee, Eugene C. *The Politics of Nonpartisanship: A Study of California City Elections*, Berkeley: University of California Press, 1960.

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APPENDIX O

REPORT BY J. GERALD HEBERT

ON VOTING RIGHTS ACT SECTION 5 PRECLEARANCE

MEMORANDUM BY J. GERALD HEBERT,
FORMER CHIEF, U.S. DEPARTMENT OF JUSTICE,
VOTING RIGHTS SECTION,
OF THE PROPOSAL SWITCH TO NON-PARTISAN ELECTIONS
IN NEW YORK CITY

AUGUST 24, 2003

J. Gerald Hebert, P.C.

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MEMORANDUM

To: Anthony Crowell

From: J. Gerald Hebert

Subject: Section 5 Preclearance of Switch to Non-Partisan Elections

Date: August 24, 2003

This is to provide you with a legal analysis of the possible change from partisan to non-partisan elections for all elective offices in NYC. I have limited the scope of this memorandum to those issues arising under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. There are other legal issues implicated by this change, such as the possible effect on the rights of political parties discussed in such cases as *Eu*. I have included some explanation of the *Eu* decision so that commission members can have a working knowledge of that decision and the holding of the Court.

The Section 5 (Preclearance) Legal Standard

In general, New York City will be required to obtain Section 5 preclearance of any changes it makes to the method of electing any of the city offices. A switch from partisan to non-partisan elections is change within the meaning of Section 5 that must be precleared. To obtain preclearance of any change, the City is required to show that any changes it proposes are free of a retrogressive purpose or retrogressive effect. *Reno v. Bossier Parish School Board*, and *Georgia v. Ashcroft*. In other words, to obtain preclearance, NYC would have to show that its change to nonpartisan elections is not intended to make minority voters worse off than they were under the current partisan election scheme, and that the proposed change to non-partisan elections will not have the effect of making minority voters worse off than they are under the current electoral system.

Preclearance

In the past, the City and the Charter Review Commission have usually sought preclearance in a two-step process. First, it submits the holding of a referendum on the proposed changes to the city charter to the Department of Justice for Section 5 preclearance. The Department of Justice has sixty days to make its Section 5 determination from the time it receives a complete submission from the City. See 42 U.S.C. 1973c. During this initial preclearance process, the Department of Justice would review the merits of any changes that would be voted on in the referendum.

Once preclearance is obtained for the holding of the referendum, the election may then be conducted. If the charter revisions are approved in the referendum, whatever changes are approved by the voters that relate to voting or elections must then be submitted for preclearance review under the Voting Rights Act.

If the City pursues the two-step preclearance process, as it has done in the recent past, then it would simply submit to DOJ for preclearance the holding of a referendum on a possible change to nonpartisan elections now; and then, if the referendum passes, the City would then submit the “merits” of the change to nonpartisan elections. Under this two-step preclearance process, the election results under the referendum, the publicity surrounding the referendum, and any election day issues that might arise, would be relevant information to DOJ in assessing whether to grant Section 5 preclearance to the proposed change on the merits.²¹³

Assessing the “Merits” of the Change to Nonpartisan Elections

The election process for city offices in New York has been historically a partisan one. Candidates compete in partisan primary elections for the nomination of their party, and the successful nominees then compete in a general election where the party label or affiliation is attached to each candidate’s name. This is the “benchmark” system for the City against which the change to nonpartisan elections will be compared. For this reason, success of minority-preferred candidacies under this system must be considered and measured against the likely success minority-supported candidates would have under a non-partisan system. Studies conducted for the City thus far show that, insofar as citywide offices are concerned, party affiliation has not been a necessary or critical factor for minority-preferred candidates to be elected to city offices. In fact, the use of nonpartisan elections would actually improve the chances of minority-preferred

²¹³ The DOJ Regulations provide, in part that: “For submissions involving controversial or potentially controversial changes, evidence of public notice, of the opportunity for the public to be heard, and of the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place.” 28 C.F.R. § 51.28(f). Thus, the extent to which minority voters turned out in the referendum and how they voted would be deemed by DOJ to be relevant since it tends to show “the opportunity for interested parties to participate in the decision to adopt the proposed change and an account of the extent to which such participation, especially by minority group members, in fact took place.” *Id.*

candidates because they would have an easier time of making it to the general election ballot, something that has proven difficult in partisan elections.

Election studies in NYC have also shown that the voting patterns of blacks and Hispanics tend to lack cohesion in partisan primary elections. Indeed, it has been over a decade (*i.e.*, 1989) where blacks and Hispanics in NYC voted together for a candidate of choice in a primary election for citywide office. This lack of cohesion in primaries is critical, because it tends to show that the benchmark system in NYC is not all that strong. Indeed, because minority voters tend to coalesce behind candidates in general elections, the switch to nonpartisan elections would be an ameliorative change in their political effectiveness.

Dr. Lichtman's analyses from 2002, which he has now updated and reissued, shows the following: in NYC, about half of the white voters vote Democrat; blacks tend to be overwhelmingly Democratic; and Hispanics are strongly Democratic. What this means is that whites are the dominant voting group in Democratic primaries. According to Dr. Lichtman, this means that whites comprise anywhere from 43-45% of the electorate in a Democratic primary. Since blacks and Hispanics do not tend to vote cohesively in such elections, minority voters do not gain any special advantage or benefits from having a partisan primary. Indeed, it has proven to be an insuperable barrier to their electoral success.

Conversely, blacks and Hispanics tend to vote cohesively in general elections. It would appear the presence of a nonpartisan election may enable minority-preferred candidates to emerge onto the general election ballot more easily than under the partisan primary scheme that is in place now. Moreover, a candidate could still tout party credentials/endorsement in a nonpartisan, general election. Even the absence of a party label or designation on the general election ballot would not be critical because the place where minority-preferred candidates have suffered their biggest hurdle is in the Democratic primary, not the general election. The switch to nonpartisan elections would ease their ability make it on to the general election ballot. Indeed, Dr. Lichtman has cited the fact that a switch to nonpartisan elections will likely increase the field of candidates in primaries, making it quite possible that minority-preferred candidates could emerge from those elections to make it onto the general election ballot.

It is also important to the Section 5 analysis to examine how candidates under the current system make it onto the primary election ballot. Under the current scheme, if a person desires to run in the Democratic Party primary, that candidate must file the requisite number of signatures but only from those voters eligible to vote in that election (*i.e.*, Democrats). This allows party insiders to have a real advantage. Some have said that such rules allow the political parties to act as gatekeepers in deciding who may run. The benchmark scheme, therefore, would be improved from the standpoint of opening up the political process if the switch to nonpartisan elections also incorporated a change in the candidate signature requirements. If changes also are made to the candidate qualifying procedures (*e.g.*, permitting voters to sign petitions of any candidate even if that person is running with the endorsement or affiliation of a party), then the switch

could significantly enhance, not retrogress, the ability of minority-preferred candidates to run for city office.

Section 5 Law

The recent decision in *Georgia v. Ashcroft*, 123 S. Ct. 2498 (U.S., June 27 2003), regarding how to define retrogression under Section 5 of the Voting Rights Act, is of great import in assessing the change from partisan to nonpartisan elections in NYC. In *Georgia v. Ashcroft*, the Supreme Court examined a state senate redistricting plan to determine if the plan was retrogressive to the State's black population. A lower court had held Georgia's plan to be retrogressive. The Supreme Court vacated the lower court's ruling on the grounds that it had improperly applied the retrogression standard.

In reaching its decision, the Court established for the first time some important factors for courts and DOJ to consider in measuring retrogression. To begin with, "[t]o determine the meaning of 'retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise,' *Beer v. United States, supra*, at 141, the entire statewide plan must first be examined as a whole[.]" What this means, according to the Court, is that in assessing a new proposal under Section 5, "the diminution of a minority group's effective exercise of the electoral franchise violates §5 only if the [covered jurisdiction] cannot show that the gains in the plan as a whole offset the loss in a particular district." Thus, in any submission NYC makes to DOJ under the Voting Rights Act, the City's proposal *in toto* will be examined to assess the entire nonpartisan election scheme. In that way, even if some advantages to partisan primaries are perceived, the City's switch to nonpartisan elections would still be entitled to preclearance if it can be shown that "the gains in the plan as a whole offset the loss" in other aspects of the proposal.

The Supreme Court's *Georgia v. Ashcroft* decision also made clear that a "totality of circumstances" approach should be employed in measuring retrogression under Section 5: "All of the relevant circumstances must be examined, such as minority voters' ability to elect their candidate of choice, the extent of the minority group's opportunity to participate in the political process, and the feasibility of creating a non-retrogressive plan." Thus, the very issues that Dr. Lichtman has studied in the past in assessing a possible change to nonpartisan elections in NYC, are deemed under *Georgia v. Ashcroft* to be of critical importance in the retrogression analysis.

For NYC, the critical question under Section 5 will be to examine the extent to which the change to nonpartisan elections will affect the ability of minority voters to participate in the political process. As the Court said in *Georgia v. Ashcroft*: "[T]he other highly relevant factor in a retrogression inquiry [is] the extent to which a new plan changes the minority group's opportunity to participate in the political process[.]" It is clear that the City will be afforded great flexibility in deciding how best to achieve and protect minority voting rights in choosing its election scheme. In *Georgia*, the Court made it clear that "Section 5 does not dictate that the [covered jurisdiction] must pick one of these [] methods over the other. *Id.*

There have been numerous instances (at least 150) in which the Department of Justice has precleared changes to non-partisan elections over the last couple of decades. My search of DOJ records has revealed only one instance in which the change from partisan to nonpartisan elections was deemed objectionable by the Department of Justice. A preclearance objection would follow only in those instances in which minority voters are made worse off by the proposed change. Such retrogression would likely occur where the elimination of the partisan primary and party nomination would eliminate a political advantage that minority supported candidates enjoyed. From the information I have reviewed in the analysis of this issue by Dr. Lichtman, no such advantage exists and an objection to a change to nonpartisan elections would seem unlikely.

Free Speech and Associational Rights Under the U.S. Constitution

A decision that must be considered in assessing the change from partisan to non-partisan elections is *Eu v. San Francisco County Democratic Central Committee*, 489 U.S. 214 (1989). In *Eu*, the Supreme Court held that certain provisions of the California Election Code violated the United States Constitution. The provisions at issue in *Eu* barred the governing bodies of political parties from endorsing candidates in party primaries, and dictated the organization, leadership and composition of those governing bodies. California's Election Code intruded deeply into the internal affairs of the political parties. It regulated the size of central committees, set forth rules on how party committee officials would be selected, regulated the rotation of party chairs, and even specified the times and places of committee meetings, to name just a few.

As a general proposition, the Government (state and local governments included) have broad powers to regulate the time, place and manner of elections. But if a state or local government burdens the rights of political parties or its members, it can "survive constitutional scrutiny only if the State shows that it advances a compelling state interest and is narrowly tailored to serve that interest." *Eu, supra*.

The Court in *Eu* struck down the ban on primary endorsements by governing bodies of political parties because it directly hindered the ability of the party to spread its message and limited the information that voters could obtain about candidates and campaign issues. Because partisan political organizations enjoy freedom of association rights under the First and Fourteenth Amendments, see *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986), California's decision to bar political parties from endorsing candidates or opposing candidates burdened their freedom of speech and association. To be constitutional, California had to show a compelling state interest that was narrowly tailored, and it was unable to do so. An interest in "stable government" and "party stability" was deemed insufficient, as was the interest in protecting primary voters "from confusing and undue influence."

The Supreme Court has not yet had occasion to rule on the issue of whether a ban on party endorsements in nonpartisan primaries violates the First Amendment. While the Ninth Circuit struck down such a ban in *Renne v. Geary*, 911 F. 2d 280 (9th Cir. 1990), the Supreme Court reversed that decision on procedural grounds. *Renne v. Geary*, 501 U.S. 312 (1991).

CONCLUSION

For the reasons set forth above, it is my legal opinion that the switch to nonpartisan elections for city offices would gain Section 5 preclearance.

APPENDIX P

REPORT OF ALLAN J. LICHTMAN

**THE VOTING RIGHTS IMPLICATIONS OF NONPARTISAN
CITYWIDE, BOROUGH PRESIDENT, AND CITY COUNCIL
ELECTIONS**

**REPORT OF ALLAN J. LICHTMAN
THE VOTING RIGHTS IMPLICATIONS OF NONPARTISAN CITYWIDE, BOROUGH
PRESIDENT, AND CITY COUNCIL ELECTIONS**

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August 2003

INTRODUCTION

I have been asked by the 2003 New York City Charter Revision Commission to review and confirm my work for the 2002 Charter Revision Commission analyzing whether changing from partisan to nonpartisan elections of citywide officials, borough presidents, and city council members would likely violate the Voting Rights Act by restricting the ability of minority voters to elect candidates of their choice and to participate fully in the political process. This analysis does not consider the broader question of whether such changes are justified on policy grounds. Rather, the analysis is narrowly focused on the voting rights implications of such a change in electoral procedures.

SUMMARY OF FINDINGS

As described below in detail, my study of nonpartisan elections for citywide contests reaches the following conclusions:

- The analysis of election results and electoral systems in the nation's 100 largest cities indicates that nonpartisan elections are not an impediment to the election of mayors from members of minority demographic groups.
- The analysis of citywide elections and voting within New York City shows that standard explanations for how partisan elections help minority voters elect candidates of their choice do not apply to citywide elections in New York.
- A change from partisan to nonpartisan elections of citywide officials in New York might well enhance the prospects for minority candidates of choice of minority voters to compete successfully in primary and general elections for citywide offices.
- These findings for citywide elections are confirmed by the analysis of borough president and city council positions.

BACKGROUND

I am a Professor of History at American University in Washington, D.C. Formerly, I served as Chair of the History Department and Associate Dean of the College of Arts and Sciences at American University. I received my BA in History from Brandeis University in 1967 and my PhD in History from Harvard University in 1973, with a specialty in the mathematical analysis of historical data. My areas of expertise include political history, voting analysis, and historical and quantitative methodology. A copy of my curriculum vitae, which accurately sets forth my professional qualifications and experience, is attached as Appendix II of this detailed report.

I am the author of numerous scholarly works on quantitative methodology in social science. This scholarship includes articles in such academic journals as Political Methodology, Journal of Interdisciplinary History, and Social Science History. I have also coauthored with Dr. Laura Langbein Ecological Inference, a standard text on the subject of inferring the behavior of population groups from data collected for political units. In addition, I have published articles on the application of social science analysis to the Voting Rights Act. This work includes articles in such journals as Journal of Law and Politics, La Raza Law Journal, Evaluation Review, and National Law Journal.

My scholarship also includes the use of quantitative and qualitative techniques to perform political and historical studies of voting, published in such academic journals as The Proceedings of the National Academy of Sciences, The American Historical Review, and The Journal of Social History. Quantitative and historical analyses also ground my books, Prejudice and the Old Politics: The Presidential Election of 1928, The Thirteen Keys to the Presidency (co-authored with Ken DeCell), and The Keys to the White House.

I have worked as a consultant or expert witness for both plaintiffs and defendants in more than sixty federal voting rights and redistricting cases. I have been admitted as an expert witness in voting rights, political history, political systems, statistical methodology, quantitative analysis of voting, and socioeconomic analysis, among other matters, in more than fifty federal court cases in which I have presented oral

or written testimony. I have worked on more than a dozen cases for the United States Department of Justice and have also worked for such civil rights organizations as the Mexican-American Legal Defense and Education Fund, the Puerto-Rican Legal Defense and Education Fund, the NAACP, the LDF, the Lawyer's Committee for Civil Rights Under Law, the ACLU, and the Southern Poverty Law Center.

METHODOLOGY AND DATA

The database for this study consists of information internal to New York City as well as data on the results of mayoral elections for the nation's 100 largest cities. For citywide elections from 1989 to 1997, the New York City data includes returns at the Assembly District level. For citywide elections in 2001 the data includes returns at the voter tabulation district (VTD) level. The data also includes returns at the VTD level for city council elections and for borough president elections held in 1997 and 2001. In addition, the New York City data also includes the racial composition of Assembly districts and VTDs and exit poll findings. The 2001 exit polls covered all primary, runoff, and general elections for citywide offices. For earlier years the exit polls covered all citywide general elections as well as the 1989 mayoral primary.²¹⁴ Exit polls for 2001 and prior years also included the party identification of voters. External data included information on whether cities elected their mayors through partisan or nonpartisan elections, the racial composition of the city, and the racial identity of the mayors. I utilized for this study standard statistical methods to analyze the aggregate election returns in order to assess the candidate choices made by Anglo and minority voters as well as the turnout in elections of Anglo and minority voters. The analysis follows procedures recognized by the Supreme Court in Thornburg v. Gingles, 478 U.S. 30 (1986).

The voting behavior of whites, blacks, and Hispanics is estimated by comparing the racial composition of the various voting precincts to the division of the vote among competing candidates in each precinct. Ecological regression, the standard method for inferring the behavior of population groups from data collected for aggregate units, was used to estimate the voting behavior of blacks and whites. The ecological regression procedure is based on a comparison of the racial composition of each Assembly District or VTD within New York City and the votes cast for competing candidates. The regression procedure generates a prediction equation that indicates how changes in voting across Assembly Districts or VTDs respond to changes in the racial composition of each Assembly District. The parameters of that equation are then used to measure the voting of each racial group on average for all Assembly Districts. Given the presence of several distinct racial groups in New York City, I employed a multivariate regression model that included in the regression equation the percentage of both voting age Hispanics and blacks in each Assembly District or VTD in New York City.²¹⁵

²¹⁴ Exit poll data was not available for non-mayoral primaries in 1989 or the primaries of 1993 and 1997.

²¹⁵ Asian-Americans were not sufficiently concentrated in assembly districts to provide a separate estimate of voting for this demographic group. For the aggregate-level statistical analysis, therefore, the category "white" includes Asians and others. In some cases, however, exit polls measured separately the voting of Asians and of other races.

The ecological regression procedure for analyzing the behavior of voter groups is set forth in my book, Ecological Inference (Sage Series on Quantitative Applications in Social Science, 1978: with Laura Irwin Langbein) and analyzed, in depth, in my December, 1991 article in Evaluation Review.

White and minority voting can also be examined through a technique termed extreme case analysis that examines the actual choices of voters in the most heavily white, black and Hispanic Assembly Districts or VTDs. For purposes of the analysis reported here, a cutoff of 80 percent was used for the extreme case analysis for each demographic group. The extreme case results will not correspond exactly with the results of ecological regression analysis, given that it does not include all Assembly Districts or VTDs and the chosen districts are not completely homogeneous. Unlike ecological regression, extreme case analysis involves no inferential procedures. It simply tallies the votes actually cast for candidates in the heavily white, black and Hispanic precincts.

PARTISAN VERSUS NONPARTISAN ELECTIONS

The main voting rights concern raised by the adoption of nonpartisan elections is that such elections might deprive minority voters of electoral advantages built into the system of partisan primaries and general elections. In principle, partisan elections are alleged to facilitate the election of candidates of choice of minority voters through the following process:

1. A minority group, even though it constitutes less than a majority of all voters, overwhelmingly affiliates with the Democratic Party.
2. Whites are divided between Democrats and Republicans.
3. The minority group constitutes a majority of voters in the Democratic Party and selects a nominee of its choice, presumably a member of the minority group.
4. The minority candidate prevails in the general election through virtually unanimous support from minority voters and sufficient votes from white Democrats, who place partisanship above race in their voting decisions.

There is support for this model in the experience of legislative districts in the south and east which have elected minority representatives with substantial, but less than majority, black populations. However, for citywide municipal elections, the model is neither supported by the analysis of partisan versus nonpartisan city elections nationwide nor by the analysis of citywide

elections in New York City. Indeed, analysis of citywide elections in New York indicates that nonpartisan elections may well enhance the opportunities for minority voters to elect candidates of their choice to citywide positions.

EXPERIENCE OF CITIES NATIONWIDE WITH PARTISAN AND NONPARTISAN ELECTIONS

If New York City were to switch from partisan to nonpartisan elections for citywide officials it would join with the great majority of large cities that currently elect their mayors through nonpartisan elections. According to data provided in 2002 by the National League of Cities, updated by municipal web sites, 83 percent of the nation's 100 largest cities currently elect their mayor through nonpartisan elections.²¹⁶ Of the nation's 10 largest cities, only New York and Philadelphia continue to use partisan systems for electing their mayor. Chicago recently switched to nonpartisan elections and held its first nonpartisan election for mayor in 1999, reelecting white incumbent mayor Richard Daley.

A comparison of the cities using partisan and nonpartisan systems fails to demonstrate that the use of a partisan system facilitates the election of a minority mayor. To the contrary, there is a negative, although not a statistically significant, relationship between maintaining a partisan election system and electing a minority mayor among the nation's 100 largest cities. As indicated in Table 1, the 17 cities with partisan election of the mayor include 14 Anglo and 3 minority mayors (all black), for a minority percentage of 18 percent. Table 1 also shows that the 83 cities with nonpartisan election of the mayor include 59 Anglo and 24 minority mayors (both black and Hispanic), for a minority percentage of 29 percent.

²¹⁶ Virtually all of these major cities have a mayor/council form of government in which the mayor is the key executive official.

This negative relationship between partisan elections and the election of a minority mayor holds when examining only cities with a non-Hispanic white majority population according to the Census of 2000.²¹⁷ As indicated in Table 2, the 11 white-majority cities that elect their mayors through partisan elections include 11 Anglo mayors and no minority mayors. Thus

TABLE 1			
RACE OF MAYOR & ELECTION TYPE, 100 LARGEST U. S. CITIES, 2000 CENSUS*			
PARTISAN ELECTION OF MAYOR			
ALL CITIES	CITIES WITH ANGLO MAYORS	CITIES WITH MINORITY MAYORS	% OF CITIES WITH MINORITY MAYORS
17	14	3	18%
NONPARTISAN ELECTION OF MAYOR			
ALL CITIES	CITIES WITH ANGLO MAYORS	CITIES WITH MINORITY MAYORS	% OF CITIES WITH MINORITY MAYORS
83	59	24	29%
* SOURCE: NATIONAL LEAGUE OF CITIES, UPDATED WITH MUNICIPAL WEB SITES. ALL MINORITY MAYORS CURRENTLY ELECTED IN THE 100 LARGEST US CITIES ARE EITHER AFRICAN-AMERICAN OR HISPANIC.			

TABLE 2			
RACE OF MAYOR AND ELECTION TYPE, 100 LARGEST U. S. CITIES			
CITIES WITH NON-HISPANIC WHITE POPULATION MAJORITY ONLY			
2000 CENSUS			
PARTISAN ELECTION OF MAYOR			
ALL CITIES	CITIES WITH ANGLO MAYORS	CITIES WITH MINORITY MAYORS	% OF CITIES WITH MINORITY MAYORS
11	11	0	0%
NONPARTISAN ELECTION OF MAYOR			
ALL CITIES	CITIES WITH ANGLO MAYORS	CITIES WITH MINORITY MAYORS	% OF CITIES WITH MINORITY MAYORS
45	37	8	18%

²¹⁷ In this case, the negative relationship between partisan election systems and the election of a minority mayor is statistically significant.

all three of the cities with partisan election systems and a minority mayor are majority-minority in their population. These cities include Philadelphia, Washington, DC, and Rochester. Table 2 also shows that the 45 white-majority cities without a black or Hispanic or other-race majority and nonpartisan election of the mayor include 37 Anglo and 8 minority mayors for a minority percentage of 18 percent.

Likewise, a negative, but not statistically significant, relationship between partisan elections and the election of a minority mayor emerges when examining equations that statistically control for the minority percentage of cities. Equations that predict the race of the mayor (white versus minority) based on the minority percentage of the city and whether the city elects the mayor through partisan or nonpartisan elections, yield negative, but not statistically significant coefficients for the variable measuring partisan elections.²¹⁸

Thus, the examination of America's 100 largest cities reveals a negative, not a positive, relationship between partisan elections and the election of a minority mayor. The analysis does not demonstrate with a high degree of confidence that partisan system election systems impede the election of minority mayors. However, the analysis provides no support for the contrary proposition that conversion from a partisan to a nonpartisan system would impede the opportunity for minority voters in a city to elect minority candidates of their choice.

THE NEW YORK CITY EXPERIENCE

For several reasons the standard model of how partisan elections allegedly benefit minority voters does not apply to New York City.

²¹⁸ The analysis examined equations that combined minority groups and considered groups separately. All equations included a variable that took on a value of 1 for partisan elections and 0 for non-partisan elections. The racial composition of a jurisdiction is the most important determinant of whether the jurisdiction elects minorities to office.

- First, whites, not minorities, are the strongest voting bloc in Democratic primary elections.
- Second, the current voting strength of minorities is similar in Democratic primaries and general elections.
- Third, distinct minorities in New York City do not necessarily vote together cohesively.
- Fourth, a minority candidate nominated in a Democratic primary will not necessarily win enough white votes to carry the general election.

I. WHITES ARE THE STRONGEST VOTING BLOC IN DEMOCRATIC PRIMARIES

As indicated in Table 3, the 2000 Census discloses that minorities of voting age are a larger percentage of New York City’s population than whites of voting age. However, unlike legislative districts in the south there is no dominant minority group in New York City. Black and Hispanics each constitute about a quarter of the voting-age population, with Asians accounting for about 10 percent of the voting-age population. Whites are the plurality group by a significant margin with 39 percent of the city’s voting-age population. Whites combined with Asians and others constitute about 52 percent of the voting-age population.

As revealed by the 2001 Exit Poll data presented in Tables 4 and 5, blacks and Hispanics are more Democratic in their party affiliation than whites. Asians and others are about

TABLE 3 NEW YORK CITY VOTING AGE POPULATION, 2000 CENSUS				
% WHITE	% BLACK	% HISPANIC	% ASIAN	% OTHER
39%	23%	25%	10%	3%

TABLE 4					
PARTY IDENTIFICATION OF RACIAL GROUPS, RACIAL COMPOSITION OF PARTIES, NEW YORK CITY, EXIT POLL, 2001 GENERAL ELECTION*					
PARTY IDENTIFICATION BY RACE					
	WHITES	BLACKS	HISPANIC	ASIAN	OTHER
DEMOCRATS	55%	85%	74%	50%	53%
REPUBLICANS	26%	6%	14%	29%	21%
OTHERS	18%	9%	12%	21%	26%
RACIAL COMPOSITION OF PARTIES					
	DEMOCRATS	REPUBLICA NS	OTHERS		
WHITES	44%	71%	62%		
BLACKS	30%	8%	13%		
HISPANICS	20%	13%	14%		
ASIANS	3%	5%	5%		
OTHERS	3%	4%	6%		
* EXIT POLLS CONDUCTED BY EDISON MEDIA RESEARCH OF SOMMERVILLE, MASSACHUSETTS, WITH 1458 INTERVIEWS FOR THE FIRST DEMOCRATIC PRIMARY, 1665 FOR THE DEMOCRATIC RUNOFF, AND 2036 FOR THE GENERAL ELECTION.					

TABLE 5			
RACIAL COMPOSITION OF VOTERS, 2001 CITYWIDE DEMOCRATIC PRIMARIES & GENERAL ELECTION, EXIT POLLS			
	FIRST DEM. PRIMARY	DEMOCRATIC PRIM. RUNOFF	GENERAL ELECTION
WHITES	48%	47%	52%
BLACKS	24%	23%	23%
HISPANICS	23%	24%	18%
ASIANS	2%	1%	3%
OTHERS	3%	4%	3%

equal to whites in their Democratic Party affiliation. As a result, for voters in the 2001 New York City general election, the percentage of whites among Democrats is 44 percent, lower than the white percentage of 52 percent for all general election voters. Still, by a significant margin, whites are the plurality group within the Democratic Party, with blacks second at 30 percent of Democrats and Hispanics third with 20 percent of Democrats.

Among voters participating in 2001 Democratic primary elections for citywide office, Whites are likewise the plurality group. According to Table 5, in the 2001 Democratic primary elections for citywide positions, whites comprised 48 percent of voters, blacks 24 percent, Hispanics 23 percent, Asians 2 percent and others 3 percent.

II. MINORITY VOTING STRENGTH IS NOT MARKEDLY GREATER IN NEW YORK CITY DEMOCRATIC PRIMARIES THAN GENERAL ELECTIONS

As a result of the lack of substantial Republican Party affiliation among any of New York City's demographic groups, primary voters from all groups participate mainly in Democratic primaries for citywide offices. Thus, minority versus white voting strength in Democratic primaries is not markedly greater than in general elections. The comprehensive Exit Polls of 2001 that cover the citywide Democratic primaries as well as the citywide general election provide a comparison of white and minority voting strength in Democratic primaries and general elections, based on the current demography of New York City. According to results reported in Table 5, whites constituted 48 percent of citywide voters in the first Democratic primary in 2001, 47 percent of citywide voters in the Democratic runoff, and 52 percent of citywide voters in the general election.

III. BLACKS AND HISPANICS IN NEW YORK CITY DO NOT NECESSARILY VOTE TOGETHER AS A BLOC IN CITYWIDE ELECTIONS

Voting is usually, but by no means universally, racially polarized in New York City:

white voters usually prefer to vote for white candidates in citywide primary and general elections and black and Hispanic voters usually prefer to vote for candidates from their racial groups. There have not been any politically significant citywide Asian candidates or candidates from another minority group. If minority voters within New York City united as a bloc for a single minority candidate, they could nominate that candidate in a Democratic primary despite concerted opposition from whites. However, black and Hispanic voters in citywide primary elections do not exhibit such cohesive behavior. Appendix I of this report provides detailed analyses of all white versus minority citywide primary and general elections from 1989 to 2001. The analysis of mayoral Democratic primary elections from 1989 to 1997 (Table 1 of Appendix I) discloses significant disparities in black and Hispanic voting. For example, in the 1989 Democratic primary for mayor, 90 percent or more of black voters voted for black candidate Dinkins, compared to about 55 to 60 percent of Hispanic voters. Even in the relatively uncontested 1993 Democratic primary for mayor, a minor Hispanic candidate challenged Dinkins and garnered about 20 percent of the Hispanic vote, but virtually none of the black vote. In the 1997 Democratic primary for mayor, blacks voted overwhelmingly for the two black candidates (mainly Sharpton), whereas less than a third of Hispanic voters supported the black candidates. Hispanic voters in the 1997 primaries actually preferred white candidate Messinger to either of the black candidates or even the Hispanic candidate (Melendez). In the 2001 first Democratic primary for mayor, according to Appendix I Table 2, about 70 percent or more of Hispanic voters supported Ferrer -- the only minority candidate competing with 4 white candidates -- compared to 44 to 52 percent of black voters. Moreover, Asian and Other voters cast the great majority of their votes for white candidates, with Ferrer winning only 21 percent of the Asian vote and 27 percent of the Other vote. Even in the 2001 Democratic runoff primary, with a choice between a single white candidate (Green) and a single minority candidate (Ferrer), Appendix I Table 2 shows that

Hispanic support for Ferrer (77 percent to 100 percent) was substantially higher than black support for Ferrer (65 percent to 71 percent). Asian voters favored Green over Ferrer by 58 percent to 42 percent and Other voters favored Green over Ferrer by 59 percent to 41 percent.

Similar disparities in the preferences of voters from different minority groups emerged in the several minority versus white primary elections for citywide offices other than Mayor. Appendix I Table 3 shows that in the 1989 primary for Council President, black voters surprisingly gave majority support to the Hispanic candidate Mendez, whereas Hispanic voters preferred the white candidate Stein. In the 1993 primary for Comptroller, Appendix I Table 3 reveals that Hispanic voters supported the Hispanic candidate Badillo, whereas black voters supported the white candidate Holtzman and provided just token support for Badillo. In the 1993 primary for Public Advocate, Appendix I Table 3 shows that black voters preferred black candidate Patterson and also provided significant support to white candidate Green, but virtually no support for Hispanic candidate Ramirez. Hispanic voters in this primary preferred Ramirez, who, in turn, received virtually no support from black voters. In the 1997 primary for Public Advocate, all voter groups favored white candidate M. Green over black candidate R. Green, according to Appendix I Table 3.

In 2001 there were multiracial primaries for both Public Advocate and Comptroller. In the First Democratic primary for Public Advocate, Appendix I Table 4 reveals that Hispanic candidate Colon – the only minority candidate competing against 6 white candidates – finished clearly in first place among Hispanic voters, while finishing in fourth place among black voters. Colon, who failed to advance to the Democratic runoff primary, received none of the Asian vote and 22 percent of the Other vote. In the First Democratic primary for Comptroller, Appendix I Table 4 reveals that black candidate Thompson – competing against a single white candidate – received majority support from all minority groups. However, Thompson, who won the primary

and advanced to the general election, won much greater support from black voters (more than 80 percent) than from Hispanic voters (52 percent to 66 percent), Asian voters (61 percent), or Other voters (72 percent).

Although minorities have comprised the majority of New York City's population and voting-age population for more than a decade, only two minority candidates from 1989 to 2001 have won the Democratic nomination for a citywide office: Dinkins for mayor in 1989 and 1993 and Thompson for Comptroller in 2001.

IV. A MINORITY DEMOCRATIC NOMINEE WILL NOT NECESSARILY WIN THE WHITE VOTES NEEDED TO CARRY A CITYWIDE GENERAL ELECTION

White voters in New York City, despite their Democratic proclivities, may still not provide sufficient support for a minority Democratic nominee to win a general election. This may hold even if the minority candidate gains considerable white support. In 1989, despite overwhelming support from blacks and strong support from Hispanics, Dinkins barely carried the general election, winning only 21 to 26 percent of the white vote. In 1993, although he continued to gain overwhelming black and strong support from Hispanics, he lost the general election as his support among whites slipped to 20 to 21 percent. Thus, in both of these elections, the Republican candidate won the overwhelming majority of the white vote, even though only about 25 percent of white voters were Republicans. In 2001, black nominee Thompson for Comptroller faced only token opposition in the general election and easily prevailed with the overwhelmingly majority of the votes cast. Since Dinkins' victory in 1989, Thompson is the only minority elected to a citywide position in New York.

POTENTIAL ADVANTAGES OF NONPARTISAN CITY ELECTIONS FOR MINORITY VOTERS IN CITYWIDE ELECTIONS

It should be noted that a nonpartisan system of electing citywide officials might increase the prospects for minority candidates of choice of minority voters to compete in general

elections or runoff elections. Given that whites in New York City are only 39 percent of the voting-age population, the white percentage of voters in a nonpartisan primary election, although greater than the white percentage of voters in a partisan Democratic primary, will not be nearly large enough for whites to control the nomination of two candidates. As indicated in Table 5 above, the 2001 percentage of white voters in the general election where all voters participate is about 52 percent. Even assuming highly polarized voting between whites and minorities, this percentage would be generally sufficient for whites to control the nomination of only a single candidate. Moreover, this white percentage is not great enough to ensure that a white candidate wins a majority of a nonpartisan general election, given political divisions among whites. Not only are there political divisions in New York City between white Democrats, Republicans, independents, and members of other parties, but white Democrats are divided as well. As demonstrated in Appendix I, whites in Democratic primaries often split their vote among two or more candidates. Thus openings may be created for a minority candidate to win sufficient votes to be one of the top two finishers in a nonpartisan primary and even to prevail in a nonpartisan general election.

The experience of other cities with a white voting-age population plurality and divided minority groups demonstrates that minority candidates have the potential to prevail in a nonpartisan runoff or nonpartisan general election against a single white opponent. In the most recent election in San Jose, for example, Hispanic candidate Ron Gonzales beat a white opponent one-on-one as did black candidate Lee Brown in Houston. San Jose is 4 percent black, 30 percent Hispanic, and 27 percent Asian. Houston is 25 percent black, 37 percent Hispanic, and 5 percent Asian. In San Francisco, the current African-American mayor Willie Brown defeated the previous white incumbent Frank Jordan in a one-on-one contest. San Francisco is 8 percent black, 14 percent Hispanic, and 31 percent Asian. In the 3 cities with partisan elections and minority

mayors, all the mayors are black. One was elected in Washington D.C., where blacks are the majority group, and two were elected in majority-minority cities where blacks are the predominant minority group (Philadelphia which is 43 percent black and Rochester which is 39 percent black).

Some have argued that any potential advantages of nonpartisan elections could be negated by a decline in voter turnout, especially for minorities, which might come with the abrogation of party labels. Examination of the experience with cities that use partisan and nonpartisan election systems provides no support for the proposition that nonpartisan elections depress turnout. I was able to ascertain turnout data for recent mayoral elections in 81 of the nation's 100 largest cities. There is no systematic relationship in these cities between turnout and election systems, with turnout about equally low in cities with nonpartisan and partisan elections for mayor. In 66 cities with nonpartisan elections, the turnout averaged about 25 percent of the voting age population, as compared to 26 percent in 15 cities with partisan elections. Likewise there is no statistically significant relationship between turnout and partisan elections when estimating turnout from an equation that controls for the racial composition of a city and the percentage of its population that is of voting age.

CONFIRMATION OF CITYWIDE FINDINGS IN BOROUGH PRESIDENT AND CITY COUNCIL ELECTIONS

The findings detailed above for citywide elections are confirmed by the analysis of borough president and city council elections.

1. BOROUGH PRESIDENT ELECTIONS

As indicated in Table 6, 4 of 5 boroughs (all but Staten Island) in New York City are

50 percent or more minority in their voting-age populations according to the 2000 Census. Only 3 out of these four boroughs have minority Borough Presidents (Bronx, Manhattan, and Queens). Thus, partisan elections to this point in New York City have not produced minority Borough Presidents in all boroughs with substantial concentrations of minority populations. Thus, there is

	RACIAL COMPOSITION OF BOROUGH					RACE OF BOROUGH PRES
	% NH WHITE	% BLACK	% HISP	% ASIAN	% OTHER	
MANHATTAN	50%	14%	24%	10%	2%	BLACK
BRONX	18%	31%	45%	3%	3%	HISPANIC
BROOKLYN	37%	33%	18%	8%	4%	WHITE
QUEENS	36%	18%	23%	17%	6%	BLACK
STATEN ISLAND	74%	8%	11%	6%	1%	WHITE

	PARTY REGISTRATION			2001 EXIT POLL SELF ID			2001 PRIMARY VOTING		
	% DEM	% REP	% OTH	% DEM	% REP	% OTH	% DEM	% REP	% OTH
MANHATTAN	68%	12%	21%	63%	16%	21%	92%	8%	NA
BRONX	75%	8%	17%	78%	12%	9%	96%	4%	NA
BROOKLYN	71%	10%	19%	69%	18%	13%	94%	6%	NA
QUEENS	64%	15%	21%	NA	NA	NA	89%	11%	NA
STATEN ISLAND	46%	31%	23%	NA	NA	NA	68%	32%	NA

only a limited basis for any diminution of minority voter opportunities to elect Borough Presidents of their choice through a change from partisan to nonpartisan elections. As indicated in Table 7, in the four boroughs that are 50 percent or more minority in their voting-age populations, there is minimal representation of Republicans, measured by party registration, the self-identification of voters participating in the 2001 general elections, and participation in the 2001 primary elections. In addition, there have not been any seriously contested general elections in the four majority-minority boroughs, as election in the Democratic primary is tantamount to election. Thus, as with citywide elections, standard arguments about distinctions between Democratic primaries and general elections do not apply to elections for Borough President in the four boroughs that are 50 percent or more minority in their voting-age populations.

Tables 8 and 9 provide detailed analysis of contested white versus minority Borough President elections during the past decade. There were no such elections in 1993, one in 1997 (Democratic primary, Manhattan), and three in 2001 (Democratic primary, Bronx, Brooklyn, and Queens). In the 1997 Manhattan election, black candidate Fields easily prevailed over a racially large and diverse group of candidates, with overwhelming support from blacks and some support from the other demographic groups. In the 2001 election in the Bronx, where whites are less than 20 percent of the voting-age population, Hispanic candidate Carrion prevailed with strong support from blacks and Hispanics. In Queens, where whites are less than 40 percent of the voting-age population, black candidate Marshall prevailed with overwhelming support from blacks and Hispanics and significant support from whites. In Brooklyn, where whites are likewise less than

TABLE 8						
ESTIMATES OF VOTER BEHAVIOR IN NYC BOROUGH PRESIDENT ELECTIONS, ECOLOGICAL REGRESSION, EXTREME CASE ANALYSIS DEMOCRATIC PRIMARIES, 1997 MINORITY V. WHITE *						
	% OF WHT VOTERS		% OF BLK VOTERS		% OF HISP VOTERS	
	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE
1997 PRIMARY MANHATTAN						
FIELDS (B)	31%	32%	77%	78%	12%	34%
POWELL (B/H)**	1%	4%	17%	14%	51%	39%
PAGAN (H)	7%	7%	1%	1%	23%	15%
FAGER (W) GLICK (W) SPITZ (W)	61%	57%	5%	7%	14%	13%
* GIVEN LOW TURNOUT, IT WAS NOT POSSIBLE TO ESTIMATE SEPARATELY ASIAN-AMERICAN VOTING IN THIS ELECTION						
** POWELL HAS BLACK & HISPANIC ANCESTRY						

TABLE 9									
ESTIMATES OF VOTER BEHAVIOR IN BOROUGH PRESIDENT ELECTIONS, ECOLOGICAL REGRESSION, EXTREME CASE ANALYSIS DEMOCRATIC PRIMARIES 2001 ELECTIONS, MINORITY V. WHITE									
	% OF WHT VOTERS		% OF BLK VOTERS		% OF HISP VOTERS		% OF ASIAN VOTERS		
	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE	
BROOKLYN									
GADSDEN (B)	9%	13%	54%	51%	41%	27%	NA	NA	
FISHER (W) MARKOWITZ (W)	91%	87%	46%	49%	59%	73%	NA	NA	
BRONX									
CARRION (H) ESPADA (H)	6%	25%	80%	85%	100%	93%	NA	NA	
EISLAND (W)	94%	25%	20%	15%	0%	7%	NA	NA	
QUEENS									
MARSHALL (B)	32%	35%	75%	76%	100%	72%	0%	NA	
LEFFLER (W) GRESSER (W)	68%	65%	25%	24%	0%	28%	100%	NA	

40 percent of the voting-age population, black candidate Gadsden lost to white candidate Markowitz. Gadsden, was the candidate of choice of African-Americans, with slightly more than a majority of the vote, and won substantial, but not majority support from Hispanics. He was much less successful with other demographic groups in Brooklyn. However, under a nonpartisan system of elections, it is extremely likely that black candidate Gadsden would have qualified for a general election in competition with Markowitz, giving African-Americans a second opportunity to elect a candidate of their choice.

2. CITY COUNCIL ELECTIONS

As indicated in Table 10, 25 of 51 City Council districts have white voting-age populations of less than 30 percent white and correspondingly have combined minority voting-age populations of greater than 70 percent. Likewise 26 of 51 districts have white voting-age populations that are greater than 30 percent and correspondingly have combined minority voting-age populations of less than 70 percent. As indicated in Table 10 and the accompanying bar graph, minority city council members have almost exclusively been elected from the districts that are greater than 70 percent minority. Specifically, 24 of 25 of 70%+ minority districts have a minority city council member in 2002, compared to just 1 of 26 districts with less than a 70 percent minority voting-age population. Given that minority members are currently elected only when minorities are overwhelmingly dominant in a Council district, there is virtually no basis in the current partisan elections of City Council elections for retrogression of minority voter opportunities to elect candidates of their choice to City Council positions. Also, there is minimal

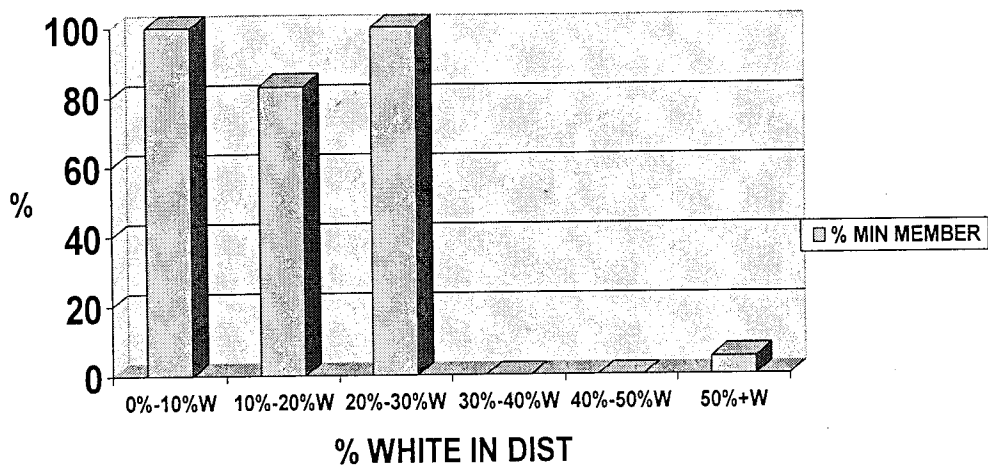
TABLE 10: CITY COUNCIL DISTRICTS, VOTING-AGE POPULATION, RACE OF 2002 MEMBER

	DIST	PWHITE	PBLACK	PHISP	PASIAN	RACE
1	16	1.3	45.5	49.9	.8	black
2	36	1.3	84.6	10.1	.9	black
3	41	1.6	85.9	9.2	.6	black
4	17	1.8	31.3	64.3	.9	hisp
5	42	2.4	75.2	18.6	.9	black
6	27	3.5	78.5	8.3	3.7	black
7	28	4.2	54.7	19.1	9.5	black
8	37	4.2	28.3	56.8	5.2	black
9	14	4.3	25.3	64.3	3.4	hisp
10	40	5.5	73.8	13.1	3.4	black
11	18	5.6	28.6	58.2	4.0	hisp
12	15	6.2	26.4	62.0	2.5	hisp
13	45	7.3	80.2	7.1	2.0	black
14	10	8.3	6.4	82.1	1.8	hisp
15	21	8.3	10.3	66.1	12.7	hisp
16	12	9.3	66.7	18.9	1.5	black
17	34	10.2	21.8	61.3	4.1	hisp
18	31	12.5	68.2	13.3	1.6	black
19	7	17.1	33.0	44.3	3.0	black
20	35	17.6	62.3	13.2	3.2	black
21	8	18.2	24.5	51.0	3.9	black
22	25	20.0	6.6	36.2	33.4	white
23	9	23.4	54.7	14.5	4.5	black
24	38	23.9	8.5	50.7	13.3	hisp
25	20	28.8	3.8	17.1	47.1	asian

TABLE 10 CONTINUED, CITY COUNCIL DISTRICTS

	DIST	PWHITE	PBLACK	PHISP	PASIAN	RACE
26.00	26	38.0	6.2	31.3	20.3	white
27.00	1	39.1	4.5	12.5	41.3	white
28.00	24	43.5	10.6	16.6	23.8	white
29.00	11	44.9	15.7	29.8	6.3	white
30.00	23	47.9	12.0	11.9	22.4	white
31.00	22	49.1	8.2	23.7	11.6	white
32.00	46	51.0	33.7	7.7	5.0	white
33.00	32	52.0	5.0	22.8	10.6	white
34.00	49	54.9	19.0	17.1	6.1	white
35.00	13	57.0	8.8	26.2	5.1	white
36.00	30	58.3	1.7	28.8	7.5	white
37.00	39	60.6	4.3	13.5	17.0	white
38.00	29	61.1	2.9	15.0	16.9	white
39.00	2	61.4	6.3	18.9	10.9	hisp
40.00	47	67.0	8.6	10.7	11.0	white
41.00	19	68.1	1.5	10.6	18.0	white
42.00	33	70.5	6.2	14.4	4.2	white
43.00	3	70.7	5.3	12.9	8.4	white
44.00	43	71.0	.5	9.0	15.5	white
45.00	44	72.6	2.3	8.0	14.0	white
46.00	6	75.6	5.9	10.3	6.3	white
47.00	48	75.8	3.3	6.3	12.3	white
48.00	50	77.4	1.9	8.2	10.6	white
49.00	4	81.2	3.1	5.9	8.2	white
50.00	5	82.7	3.0	5.5	7.1	white
51.00	51	88.0	1.0	5.8	4.4	white

% MINORITY COUNCIL MEMBERS & % WHITE IN DIST



Republican representation in the heavily minority City Council districts in New York City.

Detailed electoral analysis of city council elections reported in Appendix II of this report indicates that there have been very few significantly contested white versus minority elections from 1993 through 2001. Specifically, there were three such elections in 1993, four in 1997, and six in 2001. Although Asian-Americans represent only 10 percent of New York City's voting-age population, Asian-American candidates were the main source of opposition to white candidates in 6 of these 13 elections (46 percent). Despite heavily contesting City Council elections, an Asian-American candidate has been elected only in City Council 23, which is greater than 70 percent combined minority in its voting-age population and nearly half Asian-American in its voting-age population. As indicated by the analysis reported in Appendix II, Asian-American candidates have usually garnered overwhelming support from Asian-American voters, but only limited support from other voter groups.

Hispanics have contested more of the remaining elections reported in Appendix II and have been successful in overwhelmingly minority District 38 (76 percent voting-age minority) and in District 2, which is majority white and is the one exception to the pattern of minority candidates prevailing only in districts that are 70 percent or more minority in their voting-age populations. In the few contested elections involving African-American candidates, an African-American has prevailed only in overwhelmingly minority District 7 (83 percent voting-age minority).

CONCLUSIONS: BOROUGH PRESIDENT AND CITY COUNCIL ELECTIONS

Assessment of nonpartisan elections for Borough President and City Council does not differ fundamentally from the assessment for citywide elections in New York. Given the racial demography and partisan breakdowns of New York City Boroughs and City Council Districts,

current patterns of success and failure for minority candidates of choice of minority voters, and divisions among minority groups in their choices of candidates, analysis indicates that a shift from partisan to nonpartisan elections of Borough Presidents and City Council members would produce the retrogression of minority voter opportunities.

OVERALL CONCLUSIONS

In sum, neither the analysis of the broad electoral experience of America's major cities nor of elections and voting within New York City sustains the proposition that a change from partisan to non-partisan elections would impede the opportunity for minority voters to participate fully in the political process and elect candidates of their choice to citywide offices. To the contrary, both external and internal evidence indicates that a system in which two non-partisan candidates advance to a non-partisan general election might well enhanced the prospects for minority candidates of choice of minority voters to compete successfully for public office in New York.

**APPENDIX I: DETAILED ANALYSIS OF MINORITY V. WHITE CITYWIDE
ELECTIONS**

APPENDIX I, TABLE 1									
ESTIMATES OF VOTER BEHAVIOR IN NYC MAYORAL ELECTIONS, ECOLOGICAL REGRESSION, EXTREME CASE ANALYSIS, EXIT POLLS, 1989-1997									
MINORITY VERSUS WHITE ELECTIONS									
DEMOCRATIC PRIMARIES AND GENERAL ELECTIONS									
	% OF WHITE VOTERS			% OF BLACK VOTERS			% OF HISP VOTERS		
	REG	EXT CASE	EXIT POLL	REG	EXT CASE	EXIT POLL	REG	EXT CASE	EXIT POLL
1989 PRIMARY MAYOR									
DINKINS (B)	21%	20%	29%	92%	89%	93%	58%	61%	NA
KOCH (W)	70%	71%	61%	4%	7%	3%	30%	35%	NA
OTHERS (W)	8%	9%	10%	4%	2%	4%	11%	10%	NA
1989 GENERAL MAYOR									
DINKINS (B)	23%	21%	26%	97%	95%	91%	93%	73%	64%
GIULIANI (W)	75%	77%	71%	2%	5%	7%	6%	26%	35%
OTHERS (W)	8%	9%	10%	1%	0%	2%	1%	1%	1%
1993 PRIMARY MAYOR									
DINKINS (B) INNIS (B)	94%	92%	NA	100%	97%	NA	77%	87%	NA
MELENDEZ (H)	6%	8%	61%	0%	3%	NA	23%	13%	NA
1993 GENERAL MAYOR									
DINKINS (B)	20%	20%	21%	100%	93%	95%	94%	72%	60%
GIULIANI (W)	78%	71%	77%	0%	6%	5%	25%	27%	37%
OTHERS (W)	3%	9%	2%	0%	1%	0%	6%	1%	3%

APPENDIX I, TABLE 1, CONTINUED

	% OF WHITE VOTERS			% OF BLACK VOTERS			% OF HISP VOTERS		
	REG	EXT CASE	EXIT POLL	REG	EXT CASE	EXIT POLL	REG	EXT CASE	EXIT POLL
1997 PRIMARY MAYOR									
SHARPTON (B) ROGERS (B)	4%	9%	NA	75%	71%	NA	23%	32%	NA
ALBANESE (W)	46%	45%	NA	3%	5%	NA	5%	9%	NA
MESSINGER (W)	50%	45%	NA	21%	22%	NA	55%	46%	NA
MELENDEZ (H)	1%	2%	NA	2%	2%	NA	17%	12%	NA
1997 GENERAL MAYOR									
MESSINGER (W)	18%	19%	21%	87%	79%	79%	80%	59%	57%
GIULIANI (W)	80%	79%	76%	12%	20%	20%	20%	40%	43%
OTHERS (W)	2%	2%	3%	1%	0%	2%	1%	1%	1%

**APPENDIX I, TABLE 2
ESTIMATES OF VOTER BEHAVIOR IN NYC MAYORAL ELECTIONS,
ECOLOGICAL REGRESSION, EXTREME CASE ANALYSIS, EXIT POLLS, 2001
MINORITY VERSUS WHITE ELECTIONS ***

	% OF WHITE VOTERS			% OF BLACK VOTERS			% OF HISPANIC VOTERS			% OF ASIAN VOTERS			% OF OTHER VOTERS		
	REG	EXT CSE	EXIT	REG	EXT CSE	EXIT	REG	EXT CSE	EXIT	REG	EXT CSE	EXIT	REG	EXT CSE	EXIT
2001 PRIMARY MAYOR															
FERRER (H)	0%	11%	7%	44%	44%	52%	90%	69%	72%	NA	NA	21%	NA	NA	27%
GREEN (W)	41%	38%	40%	39%	40%	34%	2%	18%	12%	NA	NA	33%	NA	NA	39%
HEVESI (W)	23%	21%	20%	7%	6%	9%	0%	3%	5%	NA	NA	13%	NA	NA	8%
VALLONE (W)	35%	28%	31%	8%	9%	4%	7%	9%	12%	NA	NA	27%	NA	NA	18%
SPITZ (W)	1%	1%	0%	1%	1%	1%	1%	1%	0%	NA	NA	0%	NA	NA	3%
2001 RUNOFF MAYOR															
FERRER (H)	0%	19%	17%	65%	65%	71%	100%	77%	84%	NA	NA	42%	NA	NA	41%
GREEN (W)	100%	81%	83%	35%	35%	29%	0%	23%	16%	NA	NA	58%	NA	NA	59%
* IN THE 2001 GENERAL ELECTION WHITE DEMOCRATIC CANDIDATE GREEN COMPETED AGAINST WHITE REPUBLICAN CANDIDATE BLOOMBERG.															

APPENDIX I, TABLE 3
ESTIMATES OF VOTER BEHAVIOR IN NYC OTHER CITYWIDE
ELECTIONS, ECOLOGICAL REGRESSION, EXTREME CASE
ANALYSIS, EXIT POLLS, 1989-1997
WHITE V. MINORITY ELECTIONS
DEMOCRATIC PRIMARIES AND GENERAL ELECTIONS

	% OF WHITE VOTERS			% OF BLACK VOTERS			% OF HISP VOTERS		
	REG	EXT CASE	EXIT POLL	REG	EXT CASE	EXIT POLL	REG	EXT CASE	EXIT POLL
1989 PRIMARY COUN PRES									
STEIN (W)	66%	62%	NA	47 %	38 %	NA	68%	51%	NA
MENDEZ (H)	34%	38%	NA	53 %	62 %	NA	32%	49%	NA
1993 PRIMARY COMPTROLLER									
BADILLO (H)	29%	36%	NA	8%	15 %	NA	82%	54%	NA
HEVESI (W)	50%	42%	NA	28 %	22 %	NA	0%	15%	NA
HOLTZMAN (W)	21%	22%	NA	63 %	63 %	NA	18%	31%	NA
1993 PRIMARY PUBLIC ADV									
ALTER (W)	20%	19%	NA	8%	11 %	NA	0%	7%	NA
GREEN (W)	64%	57%	NA	31 %	33 %	NA	11%	26%	NA
PATTERSON (B)	1%	3%	NA	50 %	43 %	NA	11%	17%	NA

RAMIREZ (H)	0%	3%	NA	5%	7%	NA	79%	44%	NA
OTHERS (W)	15%	17%	NA	6%	6%	NA	0%	5%	NA
1993 GENERAL COMPTROLL ER									
HEVESI (D, W)	42%	40%	42 %	98 %	90 %	91%	56%	59%	43%
BADILLO (R & L, W)	56%	58%	56 %	2%	9%	5%	42%	39%	55%
OTHERS (W)	2%	2%	2%	1%	1%	3%	2%	2%	1%

APPENDIX I, TABLE 3, CONTINUED

	% OF WHITE VOTERS			% OF BLACK VOTERS			% OF HISP VOTERS		
	REG	EXT CASE	EXIT POLL	REG	EXT CASE	EXIT POLL	REG	EXT CASE	EXIT POLL
1997 PRIMARY PUBLIC ADV									
M. GREEN (W)	89%	87%	NA	71%	70%	NA	72%	73%	NA
R. GREEN (B)	11%	13%	NA	29%	30%	NA	28%	27%	NA
1997 GENERAL COMPTROLL ER									
HEVESI (D, W)	71%	69%	70%	95%	91%	90%	95%	84%	86%
MCAVOY (R & L, W)	28%	33%	31%	3%	7%	8%	0%	13%	11%
TORRES (I, H)	31%	4%	2%	2%	2%	2%	5%	3%	3%

APPENDIX I, TABLE 4
ESTIMATES OF VOTER BEHAVIOR IN NYC OTHER CITYWIDE ELECTIONS,
ECOLOGICAL REGRESSION, EXTREME CASE ANALYSIS, EXIT POLLS, 2001
WHITE V. MINORITY ELECTIONS
DEMOCRATIC PRIMARIES

	% OF WHITE VOTERS			% OF BLACK VOTERS			% OF HISPANIC VOTERS			% OF ASIAN VOTERS			% OF OTHER VOTERS		
	REG	EXT CSE	EXIT	REG	EXT CSE	EXIT	REG	EXT CSE	EXIT	REG	EXT CSE	EXIT	REG	EXT CSE	EXIT
2001 PRIMARY PUBLIC ADVOCATE															
COLON (H)	1%	4%	3%	10%	12%	14%	60%	37%	50%	NA	NA	0%	NA	NA	22%
DIBRIENZA (W)	20%	16%	17%	11%	12%	11%	3%	5%	10%	NA	NA	21%	NA	NA	15%
FLAXMAN (W)	2%	2%	3%	5%	6%	4%	4%	3%	4%	NA	NA	5%	NA	NA	2%
FREED (W)	12%	10%	8%	8%	9%	7%	6%	7%	5%	NA	NA	16%	NA	NA	7%
GOTBAUM (W)	33%	32%	33%	25%	24%	24%	1%	17%	14%	NA	NA	23%	NA	NA	17%
SIEGEL (W)	14%	15%	17%	26%	24%	22%	11%	14%	11%	NA	NA	19%	NA	NA	31%
STRINGER (W)	19%	20%	18%	14%	13%	19%	15%	18%	6%	NA	NA	16%	NA	NA	5%
2001 PRIMARY COMPT															
THOMPSON (B)	34%	39%	36%	80%	80%	81%	66%	57%	52%	NA	NA	61%	NA	NA	72%
BERMAN (W)	66%	61%	64%	20%	20%	19%	34%	43%	48%	NA	NA	39%	NA	NA	28%

* THERE WERE NO SIGNIFICANTLY CONTESTED WHITE V. MINORITY RUNOFFS OR GENERAL ELECTIONS IN 2001.

**APPENDIX II: DETAILED ANALYSIS OF MINORITY V. WHITE CITYWIDE
ELECTIONS**

**APPENDIX II: TABLE 1
ESTIMATES OF VOTER BEHAVIOR IN NYC CITY COUNCIL
ELECTIONS, ECOLOGICAL REGRESSION, EXTREME CASE
ANALYSIS
DEMOCRATIC PRIMARIES, 1993-97 MINORITY V. WHITE**

1993 DEM PRIM ELECTIONS	% OF WHT VOTERS		% OF BLK VOTERS		% OF HISP VOTERS		% OF ASIAN VOTERS	
	REG	EXT CSE	REG	EX T CSE	RE G	EXT CSE	RE G	EXT CSE
DISTRICT 1 MANHATTAN								
CHIN (A)	8%	10%	5%	NA	47%	NA	100 %	72%
FREED (W) JOICE (W)	92%	90%	95%	NA	53%	NA	0%	28%
DISTRICT 2 MANHATTAN								
PAGAN (H)	45%	50%	17%	NA	82%	NA	NA	NA
FRIEDLANDER (W) FRIEDMAN (W)	55%	50%	83%	NA	18%	NA	NA	NA
DISTRICT 38 BROOKLYN								
RIVERA (H)	0%	14%	65%	NA	71%	68%	0%	NA
MCCABE (W) O'HARA (W)	100%	86%	35%	NA	29%	32%	100 %	NA

APPENDIX II: TABLE 1, CONTINUED
ESTIMATES OF VOTER BEHAVIOR IN NYC CITY COUNCIL
ELECTIONS

	% OF WHT VOTERS		% OF BLK VOTERS		% OF HISP VOTERS		% OF ASIAN VOTERS	
	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE
1997 DEM PRIM ELECTIONS								
DISTRICT 1 MANHATTAN								
LIM (A)	15%	15%	6%	NA	57%	NA	94%	65%
DORTMUTH (W) FREED (W)	85%	85%	94%	NA	43%	NA	6%	35%
DISTRICT 2 MANHATTAN								
LOPEZ (H)	23%	34%	41%	NA	64%	NA	100%	NA
FABOZZI (W) RAPFOGEL (W)	77%	66%	59%	NA	36%	NA	0%	NA
DISTRICT 20 QUEENS								
CHU (A) LIU (A)	32%	NA	23%	NA	NA	NA	52%	49%
HARRISON (W) MARKELL (W)	68%	NA	77%	NA	NA	NA	48%	51%
DISTRICT 38 BROOKLYN								
CASTELL (H) HAGGERTY (H) RODRIGUEZ (H)	31%	NA	84%	NA	94%	83%	NA	NA
LOEB (W) MCDERMOTT (W)	69%	NA	16%	NA	6%	17%	NA	NA

**APPENDIX II: TABLE 1, CONTINUED
ESTIMATES OF VOTER BEHAVIOR IN NYC CITY COUNCIL
ELECTIONS,**

	% OF WHT VOTERS		% OF BLK VOTERS		% OF HISP VOTERS		% OF ASIAN VOTERS	
	REG G	EXT CSE	REG	EXT CSE	REG G	EXT CSE	REG G	EXT CSE
2001 DEM PRIM ELECTIONS								
DISTRICT 1 MANHATTAN								
CHIN M (A) CHIN R (A) HUI (A)	13%	18%	76%	NA	47%	NA	100%	81%
FRATTA (W) GERSON (W) HOLYMAN (W) POSNER (W)	87%	82%	24%	16%	53%	NA	0%	19%
DISTRICT 2 MANHATTAN								
LOPEZ (H)	75%	78%	NA	NA	92%	NA	NA	NA
WILSON (W)	25%	22%	NA	NA	8%	NA	NA	NA

**APPENDIX II: TABLE 1, CONTINUED
ESTIMATES OF VOTER BEHAVIOR IN NYC CITY COUNCIL
ELECTIONS,**

	% OF WHT VOTERS		% OF BLK VOTERS		% OF HISP VOTERS		% OF ASIAN VOTERS	
	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE
2001 DEM PRIM ELECTIONS								
DISTRICT 7 MANHATTAN								
ADAMS (B) BLOODSAW (B) DOTSON (B) JACKSON (B) SPENCER (B)	51%	NA	90%	67%	14%	21%	NA	NA
BERNACE (H) MORILLA (H) TORRES (H)	2%	NA	5%	16%	71%	58%	NA	NA
LEVINE (W)	47%	NA	5%	17%	15%	20%	NA	NA
DISTRICT 20 QUEENS								
CHEN (A) LIU (A) PARK (A)	80%	NA	61%	NA	NA	NA	98%	96%
JANNACCIO (W)	20%	NA	39%	NA	NA	NA	2%	4%

**APPENDIX II: TABLE 1, CONTINUED
ESTIMATES OF VOTER BEHAVIOR IN NYC CITY COUNCIL
ELECTIONS,**

	% OF WHT VOTERS		% OF BLK VOTERS		% OF HISP VOTERS		% OF ASIAN VOTERS	
	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE	REG	EXT CSE
2001 DEM PRIM ELECTIONS								
DISTRICT 23 QUEENS								
THAKRAL (A)	7%	6%	78%	NA	NA	NA	0%	NA
WEPRIN (W)	93%	94%	22%	NA	NA	NA	100%	NA
DISTRICT 49 STATEN ISLAND								
ROSE (B)	5%	9%	92%	NA	NA	NA	NA	NA
DEL GIOMO (W) MCMAHON (W)	95%	91%	8%	NA	NA	NA	NA	NA

APPENDIX Q

**TEXT OF STATEMENTS OF
COMMISSION CHAIRMAN FRANK J. MACCHIAROLA
COMMISSIONER VERONICA TSANG**

August 20, 2003

<<Personal Address Omitted>>

Dr. Frank Macchiarola
Chairman
New York City Charter Revision Commission
2 Lafayette Street, 14th Floor
New York, NY 10007

Dear Chairman Macchiarola:

I write to congratulate to you, my fellow Commissioners and the Commission staff for the excellent work we have undertaken on the issue of nonpartisan elections, procurement reform and agency reorganization and government accountability. Indeed, the scope of our study and engagement of the public on these important reforms highlights the greatness of our democracy and the civic pride we hold as Americans and New Yorkers.

Although I cannot be with you on Monday to vote on which proposals should be placed on the ballot, I would nonetheless like to express my support. First, I fully support the Commission placing the issue of nonpartisan elections on the ballot. It is clear to me that the City's current partisan system of elections is deeply flawed and that nonpartisan elections would provide a breath of fresh air in the voting booth. This reform is critical to ensuring that our candidate pool is reflective of the diverse communities and perspectives of our City, and that our elections are competitive and conducted with integrity.

Second, I fully support the Commission placing the issue of procurement reform on the ballot. I believe our proposals to streamline the procurement process would allow more businesses to compete on a level playing field, and ensure at the same time that only those with the highest integrity be allowed to participate. I am also aware that changes need to be made to the City's internal processes to allow agencies to interact with each other and vendors more efficiently, so that goods and services can be effectively used and delivered. I believe that our proposals meet many of the needs expressed by the City's vendors and agencies.

Third, I fully support the Commission placing issues of agency reorganization and government accountability on the ballot. The proposal to provide for coordination of administrative tribunals, and to require that administrative judges and hearing officers abide by ethics rules, just makes plain sense. These tribunals employ hundreds of people and handle thousands of cases each year. The public deserves every assurance that the City's tribunals remain accountable and free from corruption, especially at a time when the State courts are under fire. I also support reducing the size of the Voter Assistance Commission, allowing technological advances in tracking and reporting performance measurement to replace the PMMR, and making meaningful campaign finance reforms.

Thank you again and I look forward to working with you in the fall.

Sincerely,

Veronica Tsang

STATEMENT OF CHAIRMAN MACCHIAROLA
ON THE COMMISSION'S NONPARTISAN ELECTIONS PROPOSAL
MADE AT THE AUGUST 25, 2003 MEETING

I would like to express my support for the questions that we have here, both affirmatively. It seems to me there have been a number of arguments that have been quite persuasive and arguments that convince me even further.

I must confess I came to this process with a belief having offered the 1988 Charter provisions regarding non-partisan elections with special elections for the city council. That it was a good thing, provided access for more people. I think the elections we have had since that time have demonstrated it.

But I think a number of things should be emphasized. First, the tremendous number of people, fully one-third of the people who are enrolled, to vote do not participate in the primary elections that really matter in this city, the primary elections of the party to which I belong, Democratic party, and to which I would welcome additional voices into that party process.

The second thing that I think it would do would be to make sure that access is available to more candidates. When we see so many ballot -- people being thrown off the ballot for technical reasons, for reasons that they have not properly filled out forms or had the appropriate people sign forms, expanding the pool of who can collect signatures and expanding the pool who can vote in those elections, just simply increases the opportunity for people to compete in those elections.

I think it will also ensure that we have had party elections. There is nothing more frustrating in going to the polls and in seeing the election is already foreclosed because a primary process would put a person on the ballot with 20 percent. 25 percent of the vote in a party primary is tantamount to an election in the general election. The result of that is we do not have as many representatives, truly representative of the communities. This ensures that no one represents any district unless that person has received a majority vote of the people in that district who came to the polls on Election Day. It will represent a broadening of the legitimacy of the people who presently hold those positions.

Finally, it is for the Campaign Finance Board, one of the most frustrating things, I think has to be that two-thirds of the money that's given by the Campaign Finance Board in elections in the City of New York are given to candidates who have no election. Candidates who are put on the ballot and are elected in most instances with a significant number of a significant margin. 42 out of the last 51 councilmanic races in this city were decided by margins of over 30 percent. That huge amount of margin money is invested from the Campaign Finance Board on the theory that these aren't competitive elections. They are not competitive elections and the money is really spent by candidates who have no chance of losing.

Rather than do what they're intended to do, which is to provide access, what they simply do is provide a slush fund for people who are already elected to get on that ballot. So it seems to me that this opportunity to put this before the voters, and again hats off to the Mayor for doing this for 2009 because it was the Mayor who felt -- and convinced a number of us that he should not be the beneficiary of this, and, therefore, we should await 2009.

I would love to see it happen tomorrow, because I think it will bring democracy to the city in ways that the city sorely needs. So I am pleased to cast an affirmative vote and also am pleased the members of the Commission by a significant margin have voted to endorse it.

APPENDIX R

**STATEMENT OF
COMMISSIONER WILLIAM LYNCH, JR.**

MINORITY REPORT

New York City Charter Revision Commission

William Lynch, Jr., Commissioner

August 26, 2003

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i. Introduction

I accepted an appointment to serve on this Charter Revision Commission because I strongly believe in its stated goals: "1) increasing access for voters and prospective candidates; 2) enhancing and promoting participation in the electoral process among racial and political groups whose participation heretofore has been limited or precluded; and 3) forging greater government accountability." I resigned my position as Vice-Chairman of the Democratic National Committee in order to serve.

After months of hearings and meetings, I found myself in the minority on most of the issues that we have considered. I offer this Minority Report because I believe that the proposed changes to our City's elections will harm our electoral system. I am concerned with both the process that we followed and the content of the commission's proposals. I believe that putting out these kinds of proposals in this way hurts the cause of change and makes it much harder to do when it is really needed.

ii. EXECUTIVE SUMMARY

This Charter Revision Commission has proposed a radical change to our election system, one that I hope the voters of New York City will reject.

1. Let's Pursue Proven Ways to Enhance Voter Participation

Changes in the election system such as same-day registration, extended voting days, and non-federal citizen voting, may or may not be able to be proposed for the ballot by this Commission, but we should have taken the time to see how we could have implemented these ideas because they have been proven to enhance voter participation. Instead, we spent all the commission's time pursuing a rarely used hybrid system whose impact on New York has not been assessed.

2. Ballot Language Is Less than Clear

The language that appears on the ballot representing these changes must be plain, clearly explaining to the voters what they are eliminating and what they are substituting. While some progress was made on this issue, the language is still misleading.

3. Concerns on Voting Rights Act Issues

Voting Rights experts were not brought to the commission until the very day that we had to vote the ballot proposals up or down. We were not consulted on the choices of experts, nor did they satisfactorily resolve whether the proposed hybrid system—used in only three U.S. jurisdictions—would dilute the votes of people of color. The commission should have spent more time on these issues.

4. Merits of Current System, Deficits of the Substitute

There are merits to the City's current partisan system that need to be considered before ending it, including the values of fusion, the accountability of groups in government, and the way parties act as the major vehicles of engagement in the political process.

There are deficits to the hybrid free-for-all system being proposed that have not been explored, including the empowerment of extremists and the potential destruction of the City's Campaign Finance Law.

5. Commission's Process and Research Is of Concern

There have been serious problems with the process this Commission has followed and the research it has done (and not done), especially in terms of crossing the line from education to advocacy in its reports and public statements.

6. Procurement Issues Generally Do Not Belong on the Ballot

The many proposals for revising the Charter on procurement issues belong in a negotiation between the Mayor, Comptroller, and City Council, not on the ballot unless those negotiations break down.

I. PROVEN WAYS TO EXPAND THE ELECTORATE

I joined the Charter Revision Commission with several changes in mind that would go a long way toward addressing the Commission's goals:

1. Same-day voter registration;
2. Non-federal citizen voting;
3. Extended voting days; and
4. Bringing ex-offenders into the electoral process.

During the hearing and meeting process since May, I have heard virtually no opposition and a good deal of support for these proposals from the public, civic leaders, and my fellow commissioners. We have heard legal opinion from Commission staff that these changes cannot be a part of the Charter Revision process. But if these are the changes needed to bring more people into the political process, this is what should be recommended to the governmental bodies that can make them.

At our August 21, 2003 meeting, we inserted language into a procurement proposal qualifying it, "as far as state law allows." I believe this could have been done with the four proposals that I proposed. While it is clear to me that implementing same-day voter registration and extended voting days requires a change in the New York State Constitution, I still do not see why we cannot propose a Charter revision allowing for these things "as far as state law allows." In Massachusetts, this is exactly what Cambridge and Amherst have done, i.e., enacted such laws in anticipation of the day that the state lets its municipalities allow non-federal citizens to vote in municipal elections.

On the merits, **same-day or Election Day registration has proven to expand the electorate by double-digit percentages.** Many people do not tune in to an election until the final weeks by which time it is too late to register to vote.

We heard testimony repeatedly that limiting election day to one Tuesday is hard on working people, some of whom have to work two jobs to survive. Austin, Texas allows ballots to be deposited over a five-day period. Even extending voting by one day would help. This does not have to entail keeping every voting place open all day. We should look at places where this is working and adopt a method of extended voting days that makes sense for New York City.

Non-federal citizen voting is an idea whose time has come again. It was the practice in most of the country until World War I. New York City has done it more recently, including letting non-citizen parents vote in school board elections until they were recently disbanded. New York State's constitution (Appendix A, article II) states: "*Suffrage*: Every citizen shall be entitled to vote at every election for all officers elected by the people... provided such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election." This does not refer to federal citizens and can be interpreted to mean citizens of the state.

The Commission's own June 26, 2003 report, in citing legal grounds for the city modifying its election procedures, cited Municipal Home Rule Law § 10(1), which says that cities have the power to adopt local laws relating to the "powers, duties, qualifications, number [and] mode of

selection of its officers and employees,” provided that such local law is not inconsistent with the state constitution or any general state law.”

New York City’s population is 40 percent non-federal citizens. They fight for our country, pay taxes, enrich our communities, and make our city what the great one that it is. It is time to enfranchise as many of them as we reasonably and prudently can.

I appreciate the fact that the Commission has expressed some sympathy for these proposals and plans a vote on whether to recommend them to the Governor, Mayor, and City Council. But I believe that they could be voted on by the electorate in such a way that does not constitute a “poll,” which we have been advised would be contrary to law.

II. BALLOT LANGUAGE MUST BE PLAIN

We did not see actual ballot language until a few hours before our final vote on August 25, 2003 on the issue of what language to put on the ballot. This left no time for public and expert testimony on the crucial issue of ballot language. **The actual words used to describe these changes to the public via the ballot should not have been left to such a rushed process.**

The previous New York City Charter Revision Commission in 2002 cited testimony that said that Florida’s “municipalities all have non-partisan elections except for Jacksonville.” Since Jacksonville’s inclusion of party registration on ballot makes it partisan, it is imperative that we do not use the word “non-partisan” in describing what we are proposing. It does not appear on the ballot proposal, but it continues to be used throughout the report and in the changes to the Charter.

The actual ballot language used by Duval County in proposing their hybrid system for Jacksonville in 1992 was as follows:

UNITARY ELECTIONS ORDINANCE 91-178-146

AN ORDINANCE AMENDING CHAPTER 67-1320, LAWS OF FLORIDA, AS AMENDED;
CREATING A NEW SECTION 15.02 OF THE CHARTER OF THE CITY, TO PROVIDE FOR
GENERAL CONSOLIDATED GOVERNMENT ELECTIONS AND FOR UNITARY
PRIMARY ELECTIONS; CREATING A NEW SECTION 15.03 OF THE CHARTER,
RELATING TO AMENDMENT OR REPEAL OF SECTION 15.02.

“Pursuant to current City ordinances whenever there is an election for Council Members, the Mayor, the Sheriff, the Tax Collector, the Property Appraiser, the Supervisor of Elections, and Civil Service Board Members, the City conducts nominating primaries for political parties to select single candidates from each party. Ordinance 91-17B-146 would amend the Charter to eliminate such primaries and substitute therefore open, unitary general elections and runoff elections in which all qualified candidates are placed on the general election ballot with party reference. Shall Ordinance 91-176-146 become effective?”

This language tells voters both what they are replacing and what they are implementing. It does not use the word “nonpartisan.” It does use the word “unitary primary.” Since we are losing party primaries, we could call them “unitary two-round elections” to convey a whole new approach.

The use of plain language and not legalese is imperative. New Yorkers have had the opportunity to participate in government-run party primaries since 1911. **The phrase “eliminating party primaries” should have been put in the first sentence of the ballot proposal, not in less direct language in the second to last sentence.** And I object to continuing to refer to the September

“primary” election under the new system, since people understand “primary” to mean “party primary.” **This will be confusing to voters.** I also object to candidates listing their “independent” status on the ballot. Since we already have a recognized “Independence” Party, candidates in no party should list no affiliation or list themselves as “unaffiliated.”

We should have told people what they’re going to get if they vote for this change as simply and directly as possible. Some progress was made on this score, but not enough.

III. VOTING RIGHTS ACT ISSUES

As we are all aware, significant concern and debate exists about the impact of electoral changes on people of color in New York City. **Voting Rights experts were not brought before the commission until our final meeting on August 25.** We were not prepared for their appearance nor were we given the opportunity to have input into the selection of the experts. And the experts we did hear from did not produce any studies on the three jurisdictions that use the hybrid system that the commission has put on the ballot.

While these experts did assert that people of color candidates would be more likely to get into a runoff under the proposed system, they did not address the likelihood that they would prevail more often under the current system nor did they exhibit proof that minority voter participation would be increased under this new system.

Marilyn Charles of the Working Families Party testified on August 19, “Since African Americans and working people are more likely to be Democrats, Democratic primaries are the one place where their votes are closer to their proportion in the population. In other words, Democratic primaries help compensate for all the other obstacles and barriers faced by minority voters. It’s a mathematical certainty that eliminating primaries would reduce the weight of black and Latino voters.”

Flora Huang said at our August 19 hearing, “People say primaries unfair, because if you’re not registered as a Democrat, you can’t vote. I’ll tell you as a person of color, I’m glad that in Democratic primaries our votes count for a little more, since the rest of the time they count for less... **With nonpartisan elections, I would count for less.**”

And on July 22, Glenn D. Magpantay, staff attorney at the Asian American Legal Defense and Education Fund, testified, “**The Commission has not demonstrated any benefit nonpartisan elections will have on the political participation or representation of Asian American voters.**” He noted, “Under Section 5 of the Voting Rights Act, the City has the burden of proving that nonpartisan elections will not place Asian Americans in a worse position in their ability to elect candidates of their choice.”

IV. “NONPARTISAN” ELECTIONS vs. PARTY PRIMARIES

Instead of the proven changes that I have outlined above, this Commission has focused almost exclusively on what they call “non-partisan” elections, but is effectively a system in which party

primaries, a hard-won change instituted in 1911 so that party members could pick their candidates instead of party bosses, will be eliminated and a radically different two-round election system substituted.

For months, the focus was on having all candidates for citywide offices, borough president, and City Council run without party labels in a September first round with a runoff between the top two vote getters in the November general election. In the June 26, 2003 staff report "Non-Partisan Elections: Preliminary Options and Recommendations," the current electoral system was ridiculed with phrases such as "phantom choices," "disenfranchised voters," "narrowed public discourse," and "machine" politics. In the report, "non-partisan elections" are described as ones in which "candidates do not run in party nominating elections and ballots do not denote a candidate's party affiliation."

Then on July 17, Mayor Bloomberg wrote to the commission chair Frank Macchiarola indicating that under the new system, candidates should have the option of listing the party in which they are registered. This hybrid system, used only in the cities of Jacksonville, FL, Minneapolis, MN, and New Orleans, LA (as well as the whole state of Louisiana), has not been researched to prove what effect it would have on any of our stated goals.

After the first round of relatively ill-attended hearings, staff reported that "80 percent of witnesses testified in support of nonpartisan elections." That line continues to be used in the final report despite objections from myself and Commissioner Father Joseph O'Hare SJ. My observation was that **the vast majority of these witnesses were from one group, the Independence Party**, which traveled from hearing to hearing making the same points and they were vehement about the imperative of not listing party affiliation on the ballot. I admire the tenacity of this group, but their dedication does not make them representative of the majority of New Yorkers. In fact, a New York Times poll this June found that **64 percent of voters in the city want to retain a system where they can vote in party primaries.**

Many of the other supporters of no-party elections were failed candidates for public office with demonstrably little in the way of constituencies.

In the first round of hearings, of those who testified against changing the city's election system, as the June 26 report stated, "many were elected officials." These leaders are indeed arguably invested in the current system, but they ranged from insurgents to party regulars and from those running with Working Families Party endorsement to those on the Conservative line. **Virtually every good government group from whom we have heard has testified against the change.**

The Commission's final report states: "After receiving extensive public and expert commentary indicating that voters need party labels, or cues, to determine candidate values and ideologies, to make an informed choice in the voting booth, the Commission considered a suggestion offered by Mayor Bloomberg, in a letter dated July 16, 2003, that candidates be allowed to list their party of registration on the ballot if the Commission proposed a new system of elections." But those arguing for the inclusion of party labels on the ballot were clearly referring to labels that meant the candidate is the nominee of his or her party. **Virtually no one argued in favor of this hybrid**

system, used in only three jurisdictions. It is perverse and confusing to let multiple candidates from the same party list their affiliations on the ballot. It renders the meaning of those labels meaningless. It allows stealth candidates to enroll in a party at the last minute for perceived political advantage.

The main argument made in the Commission reports for changing our system of elections is, according to the June 26 report, that "700,000 registered voters are relegated to a Class B voter status because they currently have no say in who will appear on the November ballot because they cannot participate in a partisan primary." But there was no research presented on why these voters are unaffiliated or on their voting behavior in elections. Do they stay home? Ratify the choice of the majority party? Cast protest votes? Do these voters use party labels in their vote choice? **There is no indication that this hybrid system is what would bring them out to vote** or that the results are more likely to please them, especially when they may likely only have a choice between two Democrats in the November runoffs under it.

New York is described in the staff report as a "one-party" town. The Democratic Party does have a substantial edge in party registration. But that has not stopped the voters of New York from electing Republican mayors in the last three elections. Democrats David Dinkins in 1993, Ruth Messinger in 1997, and Mark Green in 2001 were defeated by Republican rivals in the general election. And three of the last four mayoral elections were extremely close.

The City also has had very competitive Democratic primaries for City Council that produce the kinds of candidates that are often elected by 70-80 percent of voters in the general election, even when the same voters are going for a Republican mayor or for a Republican US Senator, Governor, or President in another election. The report looks at the lopsided results of Council general elections and concludes that something is wrong, but the same kinds of results occurred in the last Chicago no-party election for mayor. Richard Daley got 79 percent of the vote, virtually unheard of in a New York mayoral election, even when a popular incumbent is running.

It seems that **the real effect of the proposed new system is to destroy, or at least seriously weaken, parties.** At present, candidates for their party's nomination go through a rigorous process of winning support from the party's rank-and-file, defining their candidacies along the way. This produces candidates who stand for much more than the slogans and generalities we can expect in a free-for-all election, much like we are witnessing in the California governor's race right now.

The Commission's final report states, "The objective is not to eliminate the role of political parties in the electoral process, but rather to ensure the removal of the exclusionary gatekeeper role that parties play in the current system of partisan elections." With party primaries, the party leaders are not the gatekeepers, the party members are. **Under the proposed system, a smaller group of party members is sure to select their party's designee** in the absence of a government-run party primary.

The current party system also produces group responsibility in the legislature. We have recent examples of Republicans being turned out in the Nassau County legislature and Democrats losing their longtime control of the United States House of Representatives. Voters understood that in order to effect broad changes, they needed to replace the ruling group with another set of legislators. The proposed system of candidates running as individuals will lead to less group

responsibility. But primarily, it dilutes what being a Democrat or Republican has come to mean. It lets candidates use those party labels when they may disagree almost entirely with the mainstream of the party's platform. And it practically eliminates the role of the city's many smaller parties who will no longer be able to indicate their cross endorsement on the ballot, a useful tool for many voters who either want to embrace or reject candidates who align themselves with liberal or conservative factions. When candidates get to run without designating their party affiliation or without winning their party's nomination, they get to distance themselves from the problems they create while in office.

The June 26 Commission staff report says, "The objective is not to eliminate the role of political parties in the electoral process," but **the Commission made a late hit** by passing a proposal to ban political parties from making direct or indirect donations to the candidates that they endorse, **a proposal that may doom the City's well-regarded Campaign Finance law** and is certainly designed to severely limit the role of parties in elections. Even before the voters approve of the new system that is to take effect in six years time, the commission is proposing a change in the Campaign Finance law in anticipation of that approval. If the voters do approve of the new scheme, there will be plenty of time for an appropriately lengthy consideration of what adjustments might have to be made in Campaign Finance.

The staff's final report states that "prohibiting party spending on behalf of a CFP participating candidate would address decisively any concerns that party spending in a nonpartisan primary would undermine the Campaign Finance System." If parties cannot publicize their endorsements in the way that any other advocacy group is permitted to, their free speech rights are being infringed and their role in elections is being thwarted.

Let me be clear. **I believe that parties are a valuable, indeed essential, part of our electoral system** and that the answer to the problems in the city's electoral process is not diminishing the role of parties but invigorating the parties to make them more competitive. The founders of the Republic did not put parties into the Constitution, but they quickly formed, led by the very same founders. When elected officials enter the legislature, they organize a majority and minority (or minorities) by party. In a city with a strong mayor such as New York, this attempt to weaken the influence of parties means that the City Council will have less of a chance to balance the power of the mayor.

People who join parties also tend to be the most active and engaged members of the electorate. They are among the people most likely take the time to hear directly from candidates, survey them on their views, and work in campaigns. Why denigrate the very people who contribute so much to informed political debate in the city? Is there some indication that by weakening the role of parties and ending party primaries that a massive group of independent voters is read to rise up and play these kinds essential roles in elections?

As William E. Hudson wrote in "American Democracy in Peril" (conveyed by testifier Al Jordan at our August 19 hearing), "Political parties need the support of ordinary people to prosper; so, in a system of strong parties, ordinary citizens are empowered. Despite their current unpopularity, **revitalization of political parties and labor unions is needed to counteract the power of privilege.**"

Finally, Douglas Kellner, chair of the Rules Committee of the New York County Democratic Committee, testified on July 24, "By eliminating the direct primary election for Democratic Party candidates for municipal office, **the Charter Revision Commission may unwittingly be**

handing back very substantial power to the party leadership at the expense of the rank and file members of the party.”

V. DANGERS OF PROPOSED SYSTEM

1. Skewed Results

With or without party labels, we are proposing a radically new system that will leave us with less well-defined candidates. It will increase the power of individual wealth and, according to the Campaign Finance Board, allow the political parties to engage in unregulated spending on behalf of candidates.

Under the new system, **we can end up with a variety of very skewed results.** In a council race, five Democrats and two Republicans could run against each other. The Democrats, even in a predominately Democratic district, could knock each other off and the two Republicans could get in the runoff. In many cases, two Democrats will get into the runoff leaving voters no other choice in a general election.

2. Empowering Extremists

We have heard testimony that the proposed system favors extremist candidates doing their best to attract enough votes from a segment of the population to get into a runoff. The commission has been dismissive of the example of Ku Klux Klan leader David Duke getting into a 1991 runoff for Governor of Louisiana where they use the very system this commission is proposing. In “David Duke and the Politics of Race” (Vanderbilt University Press, 1995) John C. Kuzenski writes in his chapter, “The Early Duke and Louisiana's Nonpartisan System,” that **“there is a link among the state's primary system, party identification, and Duke's meteoric rise** to the status of serious candidate and offers a caveat to the dismissal ‘it can't happen here’ that became common among non-Louisianians as they learned of Duke's success on the morning following the primary.”

As R.H. Sager wrote in the New York Sun (“The Logic of Parties,” August 15, 2003), parties “serve as a moderating force against faction.” He continued, “Though the Constitution did not itself contemplate parties, its writers formed America’s first ones, right here in New York City, the first capital of the Republic: Hamilton the Federalist Party, Madison the Republican Party.”

3. Fusion Would Be Lost Under New System

William F. Henning, Jr., Vice-President of the Communication Workers of America, Local 1180, testified on August 19, **“Fusion allows third parties to be successful in New York...** We have thriving third parties like the Conservatives and WFP. It would be a tragedy if, in the name of opening up the process, we wiped out all this political diversity.” He also stated, “The state constitution guarantees the right of candidates to run on more than one ballot line. We need to be sure that whatever comes out of this commission, it obeys that law.”

4. Proposed System Is More Confusing To Voters

By adopting this new system, the commission is asking voters to engage in a whole new and daunting process of discerning what candidates stand for. How is the individual voter supposed to obtain this information? Through the self-representation of the candidate in ads and the voter guide?

5. New System Endangers Campaign Finance Law

We heard from Nicole Gordon, executive director of the New York City Campaign Finance Board, at two hearings, including our last on August 21 where she said that the hybrid system that the commission is proposing presents enormous “challenges” to the board in limiting party spending by connecting it to a candidate, since the candidate cannot indicate on the ballot that he or she is the designee of a party. She said that the commission’s proposal to ban spending by parties or party committees directly or indirectly on behalf of candidates raised **serious constitutional questions** that the commission has failed to address.

“The Campaign Finance Board’s concern about a change to nonpartisan elections is that it could open the door to unregulated soft money spending by political parties that would no longer be constrained by the provisions of State law or by the board’s rules,” Gordon testified. “The Commission staff has not provided the Commission with an analysis of Constitutional law to support an assertion that political party spending can be controlled in the context of non-partisan elections.”

Gordon said, “The Commission staff report cites no data—and the Campaign Finance Board is aware of none—that support the notion that other large cities that have both campaign financed programs and nonpartisan elections have been able to impute to candidates spending by parties in nonpartisan elections. Indeed, on July 21, 2003, there were contrary testimony and data presented to this Commission by me and by another expert witness.” Gordon cited Los Angeles as a city where “uncontrolled party spending has emerged in the context of nonpartisan elections to the detriment of the Los Angeles program.”

VI. PROBLEMS WITH COMMISSION’S PROCESS

I have been concerned with the process that the commission has followed from the beginning. We were given until September of next year to come up with proposals, but are moving precipitously, mostly in summer months, on some proposals that have not been fully researched to get them on the ballot this November.

I have taken this process very seriously and I raised my concerns about it privately in memos to Commission Chairman Macchiarola on July 2 and to my fellow Commissioners on June 23, July 12, August 12, and August 20. I met with the Commission staff on June 10 and 17 to be briefed by them and present my concerns. I saw myself in this process as representing not myself, but a

whole community and solicited the support of many in the community to help me think these issues through including Denise Poché-Jetter and Andy Humm of my staff as well as the advice and counsel of many others around the City.

We have been told that these issues have been thoroughly researched and vetted by past Charter Revision Commissions, but have not considered language on proposals sometimes until less than a few hours before we voted on them. Indeed, the August 13 staff report repeatedly made the point that there are no studies that address the two-tiered, party-affiliation-on-the ballot system that the Commission is proposing.

We had a staff that was publicly arguing for no-party elections in the media and at forums before the Commission had taken a single vote on any issues before us. Staff reports read more like advocacy for pre-determined proposals than dispassionate research. They were sometimes shared with the media before they were shared with the Commission. The title of the final report—“Enhancing Access, Opportunity and Competition: A Blueprint for Reform”—is inappropriate under the law that prohibits advocacy of adoption of the charter proposals. That title and the tone of advocacy throughout the report should be changed.

The staff wrote in their reports that this Charter Revision Commission was “the most diverse in the City’s history.” There certainly was a diverse mix in terms of race, ethnicity, and sex. But there was also a lack of the kind of political diversity on the panel to make all or at least most segments of our body politic feel that they were represented on this panel and to give the Commission the kind of political credibility it needs to make such important changes.

The state’s Municipal Home Rule Law on Charter Revision (p. 154) clearly states, “a city charter commission may not expend funds for the purposes of urging adoption of the proposed charter; expenditures for publicity should be solely for the purpose of educating the public as to the content of the proposed charter. Op. State Compt. 78-682.” I believe that many staff reports and activities have crossed the line from education to advocacy, even before this commission adopted new charter proposals. **I hope that Commission staff will cease its advocacy activities and do what is required by law, educating the public about the content of the ballot proposals in a dispassionate and neutral way.**

Deborah Goldberg, Democracy Project Director at the Brennan Center for Justice at New York University Law School testified, “The Staff has done nothing to address concerns about the Charter revision process. Indeed, the *ad hominem* attacks in the most recent report suggests that fair-minded evaluation of the merits of non-partisan elections (or an open primary system) is not on the Staff’s agenda. We hope that it *is* on the Commission’s agenda and that the Commission members will look past the straw men set up by the Staff to the serious issues that we and others have raised. We include among those issues the Commission’s legitimate argument that many voters now have no meaningful influence on City Council races. But we reiterate our view that the proposed solution to that problem – whether the original plan or the new one – leaves a trail of unanswered questions.”

Harry Kresky of the Independence Party, who served on the last Charter Commission, is now supporting this commission’s proposal for a unitary two-round election. But on August 12, 2003, he sent a memo to us commissioners saying “the Commission will surely face a great deal of criticism if it places a proposition on the ballot that would establish a system that has never been used in a major city and that, until less than a month ago, was not even on the radar screen. It plays right into the hands of those who have already accused the commission of lacking independence and not having taken sufficient time to study the possible consequences of what it is

proposing. This argument is much more difficult to make if the proposal is the kind of nonpartisan election that has been used in major American cities for almost 100 years. Perhaps the mayor hoped his proposal would attract the support of Democratic Party leaders who were so adamantly opposed to nonpartisan elections. The hearings subsequent to its submission to the Commission on July 17, 2003 do not give any indication that this has occurred.” **Mr. Kresky is correct. Virtually no one testified in favor of the particulars of the system that this Commission is now proposing.**

Susan Stetzer of the Coalition for a District Alternative said at our August 19 hearing, “I am again testifying against this process of a last minute summer Charter Revision Commission. The last real Charter Commission took two and a half years and held 29 public meetings and hundreds of meetings with public interest groups... This is the fifth Commission in six years... Again, we have only three minutes of input for this important issue—an impossible task. How many people are even aware of the procurement policy issues being put on the ballot and really understand these issues?”

Council Speaker Gifford Miller testified on July 24, “I have repeatedly said that **the Commission’s commitment to non-partisan elections represents a set of solutions in search of a problem.**” He also noted, “We’re in the midst of a relatively new and bold experiment with public campaign financing and term limits, an experiment which I think that this City Council and the last election for Mayor and other Citywide offices provides proof positive that running for office here is indeed an extremely competitive process as it should be.”

I am only speaking for myself in this report and trying to give voice to the many New Yorkers from diverse communities who spoke out against this change. No commissioner has joined me in this minority report, but I want to share the public comments of Commissioner Father Joseph O’Hare, the former chair of the City’s Campaign Finance Board, in voting against this change in our election procedures. He said on August 25: “After reflecting on the testimony we have heard over the past several months, and particularly in the last ten days, I have decided to vote against putting on the ballot the recommendations for changes in the city elections contained in the ballot proposals under consideration this evening and more fully described in the full staff report, part of which I was able to read in draft form this morning on my computer.

“The staff has pointed out that academic research done on the different election schemes that we have considered and the experience of other jurisdictions is inconclusive regarding New York City. I understand this to mean that the academic research presently available cannot support confident predictions about either the negative or the positive consequences of the elimination of party primaries in New York City. It is not clear to me what kind of new research could provide persuasive evidence that the elimination of party primaries would promote the important goals of greater voter participation and citizen engagement that are the rationale behind what its proponents see as an electoral reform.

“Against the backdrop of inconclusive research, and after considering the testimony we have heard from many citizens and groups over the past several months, I remain concerned about the possible negative unintended consequences of such a fundamental change. In particular, I am concerned about the possible damage done to third parties and fusion tickets cited by several of those who testified in public hearings; I am concerned about the great irony against which Douglas Kellner warned in July 24 testimony that the elimination of party primaries could actually increase the power of party bosses by stripping away the right of party rank and file to vote in party primaries; and most of all, I am concerned about the dangers which the staff of the Commission may not understand but certainly do not appreciate.

“I am bothered by the assertion in the staff report that 80 percent of the testimony we heard supported the elimination of party primaries. In fact, two groups consistently (and repeatedly) spoke in favor of this change, representatives of the Independence Party and the New Era Democrats. While it is true that elected public officials and Democratic Party leaders were vehement in their opposition to this proposal, and it could be argued that they have a vested interest in the present system, it is also true that every good government group that appeared before us argued against putting this proposal on the ballot, at least at this time. I refer to the Citizens Union, NYPIRG, Common Cause, Working Families Party and the Brennan Center. Finally, representatives of the Independence Party, the strongest and most consistent advocate of the elimination of party primaries, have expressed their fundamental disagreement with the proposal we are actually considering, namely one that would allow candidates to indicate their party affiliation, or lack thereof, if they so chose, on the ballot.

“For these reasons, I have concluded that I must vote against putting the changes in City Elections described in these ballot proposals on the ballot in this November’s election.”

VII. PROBLEMS WITH RESEARCH

At our July 30 meeting, I called attention to the need for research on Jacksonville, Florida, which was identified as the only city that allowed party labels on the ballot in so-called “nonpartisan” elections. Subsequently, I learned that of the 50 largest cities, Minneapolis and New Orleans conduct “hybrid” elections in which candidates do not run in party primaries but do list their party affiliations on the ballot. In addition, Louisiana uses the system for all levels of government, except presidential elections.

As commissioners prepared to vote on putting issues forward for final public comment, no information on any of these cities or Louisiana was provided. The staff, however, did find the time to issue a 42-page report on August 13, 2003 to rebut criticism of its initial staff report. Then on Thursday, August 21, 2003, at the commission’s last meeting before our critical vote, the staff issued a report on the Jacksonville experience. I respectfully suggest that having staff fully brief and inform the Commission about the new system under consideration should have been the priority, not defending the staff’s previous work to the media.

Significantly, the August 21st report only provides an analysis on the Jacksonville experience. It does not provide any research or analysis on the experiences of Minneapolis and New Orleans, or Louisiana. Jacksonville is the most recent of the three jurisdictions to adopt the hybrid system and, thus, the one with the least experience. Specifically, Jacksonville adopted the system through ballot initiative in 1992, Minneapolis adopted it through ballot initiative in 1983, and Louisiana adopted it through legislative action in 1975.

The report offers no explanation as to why Jacksonville was singled out for analysis.

Significantly, Minneapolis conducts two mandatory rounds of election and requires candidates to list their party affiliation or a political principle of no more than three words on the ballot. **Structurally, in terms of requiring a mandatory runoff, Minneapolis’s system is most similar to what the commission is proposing.** Conversely, Jacksonville, New Orleans and other cities in Louisiana have a first round election and if no candidate gets 50 percent of the vote, then there is a runoff.

Of particular interest to me, Minneapolis has Election Day registration. Yet, we have been provided no analysis of its experience with Election Day registration or the hybrid election system.

The Commission is proposing an election system to voters that it knows little about. When I proposed instant runoff voting (IRV) as a way to resolve our elections, the June 26 staff report dismissed it as having “been adopted in the U.S. by a handful of jurisdictions” (“Nonpartisan Elections,” p. 57), mentioning San Francisco and Cambridge, Massachusetts. It was also used in 2000 to elect the first directly elected mayor of London, Ken Livingstone, a popular Labour insurgent who had been denied his party’s nomination by party insiders. Ireland has used it for decades. New York used it in school board elections. My point is that it is at least as comprehensible as (and much more widespread than) the system being proposed by this commission, but was given short shrift.

Deborah Goldberg testified, “It is irresponsible to make so fundamental a change in the City’s electoral processes as a move to non-partisan elections would be without first undertaking serious, methodologically defensible, empirical analysis of its probable impact.”

Goldberg also said, “We applaud the Commission’s response to concerns about the loss of political party cues on the ballot, but the new proposal—to abolish political party primaries in favor of a single election including all candidates for an office, while allowing each candidate to list on the ballot the political party in which he or she is enrolled—has been the subject to even *less* study, and there is far less experience with it available for analysis.”

Professor Doug Muzzio, of the Baruch College School of Public Affairs, CUNY, said, “**The staff never addressed the issues of accountability—the implications for governance and for public policy and performance.** There is information on cities’ performance produced by the Maxwell School at Syracuse University that should be examined. The need for a rigorous, objective study on all three of the values the commission lists as goals cannot be overemphasized. This process is being done on the fly. There is no rationale here. They just seem to be trying to get it on the ballot.

“If less than two weeks before the commission’s vote,” Muzzio continued, “they are saying, ‘Over the next several weeks, the Commission’s staff will continue its analysis of a non-partisan system on local elections, and with nearly three months before any potential referendum, there is still time for others to do the same.’ This is an admission of failure. They are asking for others to help them to make the case for the voters that they haven’t made themselves.”

VIII. PROCUREMENT ISSUES ARE BEST RESOLVED BY ELECTED GOVERNMENT

In the case of the procurement proposals, we have ignored the better and more democratic way to effect those changes and taken it upon ourselves to make intricate adjustments to a complex and arcane system. We then expect average voters to be able to figure out what is best for the city in this area by voting on ballot proposals. This is a gross misuse of a Charter Revision Commission. We have an elected full-time legislature in the City Council that has the power and expertise to make needed adjustments in procurement policy, not to mention Campaign Finance law.

I have urged again and again that the Mayor, Comptroller, and Council be consulted on procurement changes. While there has been some consultation, as late as August 21, City

Comptroller William Thompson submitted testimony that “the improvements we pursue do not necessarily need to be addressed at the Charter level.”

Council Speaker Gifford Miller testified on July 24, “**Solutions to these areas of concern should not be provided through Charter Revision** when in fact they are being addressed through the legislature’s and the executive’s existing powers. And where a change in the Charter is necessary, I believe the staff’s recommendations represent an ill-conceived and unfair shifting of power to the Mayor.”

If and only if one or more of the Mayor, Comptroller, or City Council leadership refuses to act or they reach an impasse on a particular issue should the Charter Revision Commission step in with a ballot proposal to resolve the impasse. Instead, the commission has undertaken a wholesale revision of procurement policy. Council leaders have also testified in opposition to this usurpation and denigration of their powers and responsibilities.

X. CONCLUSIONS

NO TO ELIMINATING PARTY PRIMARIES

I urge that my fellow New Yorkers vote “no” on the proposal to change “City Elections”

which will eliminate party primaries. The proposal changed several times over the course of the three months of meetings and hearings. The end result is a ballot proposal for a hybrid election system that virtually no one was pressing for. What little “research” that was done on the hybrid system was dumped on the commission at our last meeting before our final vote. And there was no research on whether the proposed system is either desired by the non-Democrats who the staff report says are shut out of the electoral process or a solution that will yield greater government accountability.

YES AND NO ON GOVERNMENT REORGANIZATION

The ballot proposal on “Government Accountability” is a grab bag of four ideas, three of which I support. I do not approve, however, of the section that would no longer require the publication of the Preliminary Mayor’s Management Report and only require an annual Mayor’s Management Report. The preliminary report is an opportunity at mid-year to catch falling indicators and do something about them. Of course there are other ways to track indicators on a constant basis, but

these two reports command the attention of the City Council, press, and public. Once a year is not enough.

THE FUTURE OF CHARTER REVISION COMMISSIONS

The next time the City decides to address improving our system of municipal elections through Charter revision, let the commission engage in a more objective assessment of the many options open to it, instead of pushing all research and inquiry toward a pre-determined outcome. The next time a Charter Revision Commission is appointed, let's hope that it is in response to a broad call for change and revision that cannot be addressed through the normal channels of our elected government.

TABLE 1

VOTER REGISTRATION IN NEW YORK CITY:

1993 & 2003

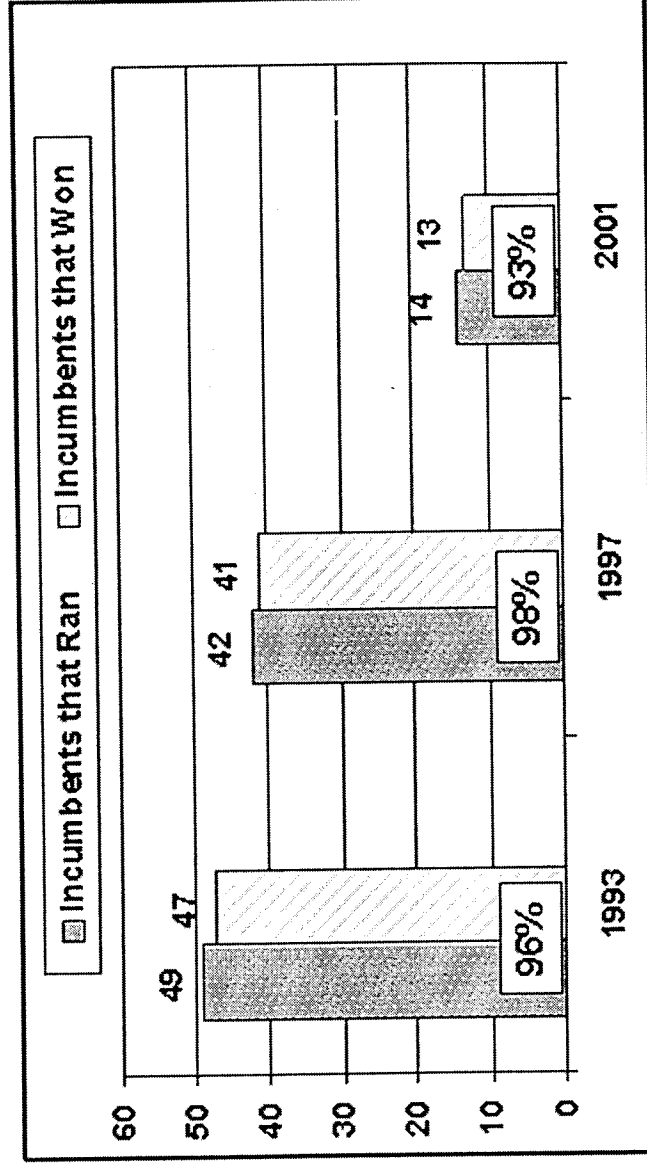
	1993		2003		Change	
	Total	%	Total	%	Total	%
Democrat	2,258,410	68.5	2,693,962	66.7	435,552	19.3
Republican	464,524	14.1	512,388	12.7	47,864	10.3
Conservative	22,961	0.7	23,667	0.6	706	3.1
Liberal	26,683	0.8	25,706	0.6	-977	-3.7
Right-to-Life	9,204	0.3	11,500	0.3	2,296	24.9
Unaffiliated (BVM)	516,127	15.7	670,362	16.6	154,235	29.9
Independence	(Not Recognized)		82,124	2.0		
Green	(Not Recognized)		11,103	0.3		
Working Families	(Not Recognized)		6,674	0.2		
TOTAL	3,297,909	100.1	4,037,486	100	639,676	19.4

TABLE 2

INCUMBENT PERFORMANCE IN NEW YORK CITY:

1993 – 2001

Incumbent Performance



- Since 1993, only 4 City Council incumbents have lost re-election,
- Three consecutive incumbents lost primary elections in the same Bronx District.
- One incumbent lost in a general election in 1993.

TABLE III

2000 CENSUS DATA FOR THE NATION'S 50 LARGEST CITIES

50 Largest Cities, 2000 Census Data

City	Total Population	White	Black	Hispanic	Asian	Am. Indian and Native Alaskan	Native Hawaiian and Pacific Islander	W	B	H	A	AI/NA	NH/PI
New York, NY	8,008,278	3,376,385	2,129,762	2,160,554	787,047	41,289	5,430	42%	27%	27%	10%	1%	0%
Los Angeles, CA	3,694,820	1,734,036	415,195	1,719,073	369,254	29,412	5,915	47%	11%	47%	10%	1%	0%
Chicago, IL	2,896,016	1,215,315	1,065,009	753,644	125,974	10,290	1,788	42%	37%	26%	4%	0%	0%
Houston, TX	1,953,631	962,610	494,496	730,865	103,694	8,568	1,182	49%	25%	37%	5%	0%	0%
Philadelphia, PA	1,517,550	683,267	655,824	128,928	67,654	4,073	729	45%	43%	8%	4%	0%	0%
Phoenix, AZ	1,321,045	938,853	67,416	449,972	26,449	26,696	1,766	71%	5%	34%	2%	2%	0%
San Diego, CA	1,223,400	736,207	96,216	310,752	166,968	7,543	5,853	60%	8%	25%	14%	1%	0%
Dallas, TX	1,188,580	604,209	307,957	422,587	32,118	6,472	590	51%	26%	36%	3%	1%	0%
San Antonio, TX	1,144,646	774,706	78,120	671,394	17,934	9,584	1,067	68%	7%	59%	2%	1%	0%
Detroit, MI	951,270	116,599	775,772	47,167	9,268	3,140	251	12%	82%	5%	1%	0%	0%
San Jose, CA	894,943	425,017	31,349	269,989	240,375	6,865	3,584	47%	4%	30%	27%	1%	0%
Indianapolis, IN	791,926	549,100	200,257	30,759	11,283	1,998	326	69%	25%	4%	1%	0%	0%
San Francisco, CA	776,733	385,728	60,515	109,504	239,565	3,458	3,844	50%	8%	14%	31%	0%	0%
Jacksonville, FL	735,617	474,307	213,514	30,594	20,427	448	2,474	64%	29%	4%	3%	0%	0%
Columbus, OH	711,470	483,332	174,065	17,471	24,495	367	2,090	68%	24%	2%	3%	0%	0%
Austin, TX	656,562	429,100	65,956	200,579	30,960	469	3,889	65%	10%	31%	5%	0%	1%
Baltimore, MD	651,154	205,982	418,951	11,061	9,965	222	2,097	32%	64%	2%	2%	0%	0%
Memphis, TN	650,100	223,728	399,208	19,317	9,462	239	1,217	34%	61%	3%	1%	0%	0%
Milwaukee, WI	596,974	298,379	222,933	71,646	17,571	301	5,212	50%	37%	12%	3%	0%	1%
Boston, MA	589,141	320,944	149,202	85,089	44,284	366	2,365	54%	25%	14%	8%	0%	0%
Washington DC	572,059	176,101	343,312	44,953	15,180	4,775	785	31%	60%	8%	3%	1%	0%
Nashville-Davidson, TN	569,891	381,783	147,696	26,091	13,275	1,679	403	67%	26%	5%	2%	0%	0%
El Paso, TX	563,662	413,061	17,586	431,875	6,321	4,601	583	73%	3%	77%	1%	1%	0%

Seattle, WA	563,374	394,889	47,541	29,719	73,910	5,659	2,804	70%	8%	5%	13%	1%	0%
Denver, CO	554,636	362,180	61,649	175,704	15,611	7,290	648	65%	11%	32%	3%	1%	0%
Charlotte, NC	540,828	315,061	176,694	39,800	18,418	1,863	283	58%	33%	7%	3%	0%	0%
Fort Worth, TX	534,694	319,159	108,310	159,368	14,105	3,144	341	60%	20%	30%	3%	1%	0%
Portland, OR	529,121	412,241	35,115	36,058	33,470	5,587	1,993	78%	7%	7%	6%	1%	0%
Oklahoma City, OK	506,132	346,226	77,810	51,368	17,595	17,743	360	68%	15%	10%	3%	4%	0%
Tucson, AZ	486,699	341,424	21,057	173,868	11,959	11,038	796	70%	4%	36%	2%	2%	0%
New Orleans, LA	484,674	135,956	325,947	14,826	10,972	991	109	28%	67%	3%	2%	0%	0%
Las Vegas, NV	478,434	334,230	49,570	112,962	22,879	3,570	2,145	70%	10%	24%	5%	1%	0%
Cleveland, OH	478,403	198,510	242,939	34,728	6,444	1,458	178	41%	51%	7%	1%	0%	0%
Long Beach, CA	461,522	208,410	68,618	165,092	55,591	3,881	5,605	45%	15%	36%	12%	1%	1%
Albuquerque, NM	448,607	321,179	13,854	179,075	10,068	17,444	452	72%	3%	40%	2%	4%	0%
Kansas City, MO	441,545	267,931	137,879	30,604	8,182	2,122	493	61%	31%	7%	2%	0%	0%
Fresno, CA	427,652	214,556	35,763	170,520	48,028	6,763	583	50%	8%	40%	11%	2%	0%
Virginia Beach, VA	425,257	303,681	80,593	18,720	8,046	705	173	71%	19%	4%	5%	0%	0%
Atlanta, GA	416,474	138,352	255,689	87,974	67,635	5,300	3,861	33%	61%	4%	2%	0%	0%
Sacramento, CA	407,018	196,549	62,968	87,467	60,851	2,655	2,002	48%	15%	22%	17%	1%	1%
Oakland, CA	399,484	125,013	142,460	87,467	60,851	2,655	2,002	31%	36%	22%	15%	1%	1%
Mesa, AZ	396,375	323,655	9,977	78,281	5,917	6,572	932	82%	3%	20%	1%	2%	0%
Tulsa, OK	393,049	275,488	60,794	28,111	7,150	18,551	202	70%	15%	7%	2%	5%	0%
Omaha, NE	390,007	305,745	51,917	29,397	6,773	2,616	228	78%	13%	8%	2%	1%	0%
Minneapolis, MN	382,618	249,186	68,818	29,175	23,455	8,375	289	65%	18%	8%	6%	2%	0%
Honolulu, HI	371,657	73,093	6,038	16,229	207,588	689	24,457	20%	2%	4%	56%	0%	7%
Miami, FL	362,470	241,470	80,858	238,351	2,376	810	130	67%	22%	66%	1%	0%	0%
Colorado Springs, CO	360,890	291,095	23,677	43,330	10,179	3,175	764	81%	7%	12%	3%	1%	0%
St. Louis, MO	348,189	152,666	178,266	7,022	6,891	950	94	44%	51%	2%	2%	0%	0%
Wichita, KS	344,284	258,900	39,325	33,112	13,647	3,986	198	75%	11%	10%	4%	1%	0%

TABLE IV
ELECTION OF BLACK MAYORS
IN PARTISAN AND NONPARTISAN CITIES

	All Cities	Cities with White Mayors	Cities with Black or Hispanic Mayors	% of Cities with Black or Hispanic Mayors
Partisan	9	7	2	22%
Nonpartisan	41	26	15	37%

	39 Largest Cities without either Black or Hispanic Majorities	Cities with White Mayors	Cities with Black or Hispanic Mayors	% of Cities with Black or Hispanic Mayors
Partisan	6	5	1	17%
Nonpartisan	33	25	8	24%

	31 Largest Cities without Black and Hispanic Majorities	Cities with White Mayors	Cities with Black or Hispanic Mayors	% of Cities with Black or Hispanic Mayors
Partisan	4	4	0	0%
Nonpartisan	27	20	7	26%

TABLE V

VOTER PARTICIPATION

IN PARTISAN AND NONPARTISAN MUNICIPAL ELECTIONS

City	1st Election	Turnout	City	2nd Election	Turnout
Colorado Springs, CO	April, 2003	57.61%	Jacksonville, FL	May, 2003	49.59%
Boston, MA	September, 1993	50.33%	San Francisco, CA	December, 1999	48.80%
New Orleans, LA	February, 2002	45.70%	Cleveland, OH	November, 2001	47.00%
San Francisco, CA	November, 1999	44.90%	Omaha, NE	May, 2001	44.88%
Albuquerque, NM	October, 2001	42.39%	Seattle, WA	November, 2001	41.30%
Atlanta, GA	November, 2001	41.36%	Minneapolis, MN	November, 2001	41.00%
Memphis, TN	October, 1999	40.78%	Houston, TX	December, 2001	40.04%
Jacksonville, FL	April, 2003	40.61%	Miami, FL	November, 2001	38.28%
Miami, FL	November, 2001	34.97%	Los Angeles, CA	June, 2001	37.67%
Denver, CO	May, 2003	34.20%	Wichita, KS	April, 2003	36.60%
Nashville-Davidson, TN	August, 1999	33.98%	Boston, MA	November, 2001	36.28%
Chicago, IL	February, 2003	33.71%	Detroit, MI	November, 2001	33.04%
Los Angeles, CA	April, 2001	33.53%	Denver, CO	June, 2003	32.55%
Mesa, AZ	March, 2000	32.04%	Columbus, OH	November, 1999	32.00%
Cleveland, OH	September, 2001	32.00%	Atlanta, GA	November, 1997	29.51%
Wichita, KS	February, 2003	29.00%	San Antonio, TX	May, 1991	29.32%
Houston, TX	November, 2001	28.30%	Las Vegas, NV	June, 1999	28.55%
Minneapolis, MN	September, 2001	27.00%	New Orleans, LA	March, 2002	27.30%
Virginia Beach, VA	May, 2000	26.67%	Dallas, TX	February, 2002**	21.82%
Omaha, NE	April, 2001	25.50%	Long Beach, CA	June, 2002	21.20%
Seattle, WA	September, 2001	25.21%	El Paso, TX	May, 2001	20.50%
Detroit, MI	September, 2001	22.61%	Kansas City, MO	March, 2003	18.40%
Dallas, TX	January, 2002**	21.68%	Nashville-Davidson, TN	September, 1999	18.25%
Long Beach, CA	April, 2002	18.80%	Austin, TX	June, 1994	16.00%
Las Vegas, NV	April, 2003	18.25%	Mesa, AZ	April, 1996	14.78%
Phoenix, AZ	September, 1999	17.56%	Albuquerque, NM	One election only	N/A
Columbus, OH	May, 1999	16.40%	Virginia Beach, VA	One election only	N/A
El Paso, TX	May, 2003	15.83%	Colorado Springs, CO	One election only	N/A
Austin, TX	May, 2003	14.93%	Fort Worth, TX	N/A	N/A
San Antonio, TX	May, 2001	14.75%	Phoenix, AZ	N/A	N/A
Fort Worth, TX	May, 2003	14.00%	Chicago, IL	N/A	N/A
Kansas City, MO	February, 2003	9.37%	Memphis, TN	N/A	N/A
Oklahoma City, OK†	March, 2002	N/A	Oklahoma City, OK†	April, 2002	N/A

** Dallas held a special election to fill a mayoral vacancy
†Oklahoma City does not keep accurate records of registered voters

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*The data was collected from Boards of Elections or equivalent entities in each of the cities. Where possible, information was verified by official Web page postings and published newspaper articles. Election data for municipal offices is notoriously difficult to collect, and the data presented here represent the best efforts of the Commission staff to collect data from reliable sources. When inconsistencies arose, staff attempted to verify and/or correct the data, a process that involved requesting written verification of city election officials and verification through official sources.

City	1st Election	Turnout	City	2nd Election	Turnout
St. Louis, MO	March, 2001	45.60%	Philadelphia, PA	November, 1999	44.83%
Baltimore, MD	September, 1999	42.12%	Tuscon, AZ	November, 1999	41.21%
Philadelphia	May, 199	34.94%	New York, NY	November, 2001	40.87%
Washington, DC	September, 1999	34.48%	Indianapolis, IN	November, 1999	36.98%
New York, NY	September, 2001	23.09%	Washington, DC	November, 2002	36.70%
Tuscon, AZ	September, 1999	19.17%	Baltimore, MD	November, 1999	32.55%
Tulsa, OK	February, 2002	19.00%	Tulsa, OK	March, 2002	27.00%
Indianapolis, IN	May, 1999	15.61%	Charlotte, NC	November, 2001	27.00%
Charlotte, NC	September, 2001	6.00%	St. Louis, MO	April, 2001	24.91%

*The data was collected from Boards of Elections or equivalent entities in each of the cities. Where possible, information was verified by official Web page postings and published newspaper articles. Election data for municipal offices is notoriously difficult to collect, and the data presented here represent the best efforts of the Commission staff to collect data from reliable sources. When inconsistencies arose, staff attempted to verify and/or correct the data, a process that involved requesting written verification of city election officials and verification through official sources.

TABLE VI

**ELECTION PROCESS AND THRESHOLDS
IN NONPARTISAN CITIES**

**50 LARGEST U.S. CITIES BY THRESHOLD FOR
CANDIDATES' VICTORY**

Name of City Population Form of Election 50% Needed
To Win First Election Top 2 Advance
Regardless of % of Votes Plurality Wins In
Single Election

Name of City	Population	Form of Election	50% Needed To Win First Election	Top 2 Advance Regardless of % of Votes	Plurality Wins In Single Election
New York	8,008,278	Party Primary			
Los Angeles	3,694,820	Other	Yes		
Chicago	2,896,016	Other	Yes		
Houston	1,953,631	Other	Yes		
Philadelphia	1,517,550	Party Primary			
Phoenix	1,321,045	Other	Yes		
San Diego	1,223,400	Other	Yes		
Dallas	1,188,580	Other	Yes		
San Antonio	1,144,646	Other	Yes		
Detroit	951,270	Other		Yes	
San Jose	894,943	Other	Yes		
Indianapolis	781,870	Party Primary			
San Francisco	776,733	Other	Yes		
Jacksonville	735,617	Other	Yes		
Columbus	711,470	Other		Yes	
Austin	656,562	Other	Yes		
Baltimore	651,154	Party Primary			
Memphis	650,100	Other	Yes		
Milwaukee	596,974	Other		Yes	
Boston	589,141	Other		Yes	
Washington DC	572,059	Party Primary			
El Paso	563,662	Other	Yes		
Seattle	563,374	Other		Yes	
Denver	554,636	Other	Yes		
Nashville	545,524	Other	Yes		
Charlotte	540,828	Party Primary			
Fort Worth	534,694	Other	Yes		
Portland	529,121	Other	Yes		
Oklahoma City	506,132	Other	Yes		
Tucson	486,699	Party Primary			
New Orleans	484,674	Other	Yes		
Las Vegas	478,434	Other	Yes		
Cleveland	478,403	Other		Yes	
Long Beach	461,522	Other	Yes		
Albuquerque	448,607	Other			Yes
Kansas City	441,545	Other		Yes	
Fresno	427,652	Other	Yes		
Virginia Beach	425,257	Other			Yes
Atlanta	416,474	Other	Yes		
Sacramento	407,474	Other	Yes		
Oakland	399,484	Other	Yes		
Mesa	396,375	Other	Yes		
Tulsa	393,049	Party Primary			
Omaha	390,007	Other		Yes	
Minneapolis	382,618	Other		Yes	
Honolulu	371,657	Other	Yes		
Miami	362,470	Other	Yes		
Colorado Springs	360,890	Other			Yes
St. Louis	348,189	Party Primary			
Wichita	344,284	Other		Yes	
Totals			28	10	3

Of the ten cities that advance the top two candidates, only two hold a preliminary election if there are less

TABLE VII

TERM LIMITS, PUBLIC FINANCING, AND VOTER GUIDES

IN THE NATION'S 50 LARGEST CITIES

<u>Name of City</u>	<u>Population</u>	<u>Term Limits</u>	<u>Candidate Voter Guides</u>	<u>Public Funding</u>
New York	8,008,278	Yes	Yes	Yes
Los Angeles	3,694,820	Yes	No	Yes
Chicago	2,896,016	No	No	No
Houston	1,953,631	Yes	No	No
Philadelphia	1,517,550	Yes	No	No
Phoenix	1,321,045	Yes	No	No
San Diego	1,223,400	Yes	No	No
Dallas	1,188,580	Yes	No	No
San Antonio	1,144,646	Yes	No	No
Detroit	951,270	No	No	No
San Jose	894,943	Yes	No	No
Indianapolis	781,870	No	No	No
San Francisco	776,733	Yes	Yes	Yes
Jacksonville	735,617	Yes	No	No
Columbus	711,470	No	No	No
Austin	656,562	Yes	No	Yes
Baltimore	651,154	No	No	No
Memphis	650,100	No	No	No
Milwaukee	596,974	No	No	No
Boston	589,141	No	No	No
Washington DC	572,059	No	No	No
El Paso	563,662	Yes	No	No
Seattle	563,374	No	Yes	No
Denver	554,636	Yes	No	No
Nashville	545,524	Yes	No	No
Charlotte	540,828	Yes	No	No
Fort Worth	534,694	No	No	No
Portland	529,121	No	Yes	No
Oklahoma City	506,132	No	No	No
Tucson	486,699	No	No	No
New Orleans	484,674	Yes	No	No
Las Vegas	478,434	Yes	No	No
Cleveland	478,403	No	No	No
Long Beach	461,522	Yes	Yes	Yes
Albuquerque	448,607	Yes	Yes	No
Kansas City	441,545	Yes	No	No
Fresno	427,652	Yes	No	No
Virginia Beach	425,257	No	No	No
Atlanta	416,474	Yes	No	No
Sacramento	407,474	No	No	No
Oakland	399,484	Yes	No	Yes
Mesa	396,375	Yes	No	No
Tulsa	393,049	No	No	No
Omaha	390,007	No	No	No
Minneapolis	382,618	No	No	No
Honolulu	371,657	Yes	No	No
Miami	362,470	Yes	No	Yes
Colorado Springs	360,890	Yes	No	No
St. Louis	348,189	No	No	No
Wichita	344,284	Yes	No	No
TOTAL		27	6	7

TABLE VIII

POLL HOURS IN THE NATION'S 50 STATES

State	Polls Open	Polls Close
Alabama	No later than 8am.	6/8pm
Alaska	7am.	8pm.
Arizona	6am.	7pm.
Arkansas	7:30am.	7:30pm.
California	7am.	8pm.
Colorado	7am.	7pm.
Connecticut	6am.	8pm.
Delaware	7am.	8pm.
D.C.	7am.	8pm.
Florida	7am.	7pm.
Georgia	7am.	7pm.
Hawaii	7am.	6pm.
Idaho	8am.	8pm.
Illinois	6am.	7pm.
Indiana	6am.	6pm.
Iowa	7am.	9pm.
Kansas	6/7am.	7/8pm.
Kentucky	6am.	6pm.
Louisiana	6am.	8pm.
Maine	6/10am. *	8pm.
Maryland	7am.	8pm.
Massachusetts	No Later than 7am.	8pm.
Michigan	7am.	8pm.
Minnesota	7am.	8pm. *
Mississippi	7am.	7pm.
Missouri	6am.	7pm.
Montana	7am./12Noon *	8pm *
Nebraska	7/8am.	7/8pm.
Nevada	7am.	7pm.
New Hampshire	11am.	7pm. at the earliest
New Jersey	7am.	8pm.
New Mexico	7am.	8pm.
New York	6am.	9pm.
North Carolina	6:30am.	7:30pm.
North Dakota	7/9am.	7/9pm. *
Ohio	6:30am.	7:30pm.
Oklahoma	7am.	7pm.
Oregon	7am.	8pm.
Pennsylvania	7am.	8pm.
Rhode Island	7am./12Noon	9pm.
South Carolina	7am.	7pm.
South Dakota	7/8am.	7/8pm.
Tennessee	6/8am.	7/8pm. **
Texas	7am.	7pm.
Utah	7am.	8pm.
Vermont	6/10am.	7pm.
Virginia	6am.	7pm.
Washington	7am.	8pm.
West Virginia	6:30am.	7:30pm.
Wisconsin	7/9am.	8pm.
Wyoming	7am.	7pm.

