



***THE CITY IN TRANSITION:
INTERIM SUCCESSION
AND
THE MAYORALTY***

REPORT OF
THE NEW YORK CITY
CHARTER REVISION COMMISSION

September 3, 2002

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THE CITY IN TRANSITION: INTERIM SUCCESSION AND THE MAYORALTY

PART I

Executive Summary

The Commission proposes the following ballot proposition:

Mayoral Succession

This proposal would provide that a special election generally be held in sixty days after a mayoral vacancy occurs in order to fill the vacancy. The procedure would be similar in format to the procedure already set forth in the Charter to fill vacancies in the Offices of Public Advocate, Comptroller, Borough President and City Council member, except that in the special election for the Office of the Mayor, where no candidate receives forty percent or more of the vote, the two candidates receiving the most votes would advance to a run-off election to be held on the second Tuesday following the special election. Pending the result of the election, the Public Advocate would act as Mayor. In order to implement the proposal consistent with State law, this proposal would confer upon the Speaker of the City Council the responsibility to preside over meetings of the City Council, instead of the Public Advocate having that duty. The Public Advocate would remain a nonvoting member of the City Council, and have all other powers arising from that position. This proposal would take effect immediately, and would apply to vacancies in the Office of the Mayor occurring after September 20, 2002.

PART II

Introduction

A. 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 215 year history, the Charter has been amended more than 100 times since 1989.

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 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 State or City 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. 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).

B. The Commission's Membership

In July 2002, Mayor Michael R. Bloomberg appointed 13 civic, community and business leaders to serve on the Charter Revision Commission.

Robert J. McGuire, Chair. At 41 years old, Mr. McGuire was the youngest Police Commissioner in New York City history, a position he held from 1978 to 1983. Mr. McGuire is currently Counsel to the law firm Morvillo, Abramowitz, Grand, Iason, and Silberberg. He is President of the Police Athletic League and a former President of Kroll Associates, Inc., an international corporate investigations and security consulting firm. Mr. McGuire is a graduate of Iona College and Saint John's University Law School. He resides in Manhattan.

Marlene Springer, Vice-Chair. Dr. Springer is the President of the College of Staten Island of the City University of New York. Prior to her appointment, she was Vice Chancellor for Academic Affairs at East Carolina University. A specialist in nineteenth century British and American literature and women's literature, Dr. Springer earned her Ph.D. in English Literature and her M.A. in American Literature from Indiana University in Bloomington. Dr. Springer is a member of the Board of Directors of the American

Council on Education and numerous other professional and civic organizations. She resides in Staten Island.

Cecilia E. Norat, Secretary. Ms. Norat is Director of State Relations for the American International Group, Inc. Prior to that, she served as Executive Director of the New York State Insurance Fund. She has received numerous professional awards including the Social Issues Award of the Public Employee Federation of the AFL-CIO. In 2000, Business Insurance selected her as one of the 100 women leaders in the insurance industry. Ms. Norat is a graduate of Fordham University and Fordham Law School. She resides in Manhattan.

Herman Badillo. Mr. Badillo has an extensive career in public service, having served the citizens of New York City as Commissioner of Housing Relocation under Mayor Robert F. Wagner and subsequently as Bronx Borough President. Mr. Badillo made history as the first Puerto Rican Member of Congress and later as Deputy Mayor for Management under Mayor Edward I. Koch. As Special Counsel for the Fiscal Oversight of Education to Mayor Rudolph W. Giuliani, Mr. Badillo was an outspoken advocate of education reform. Governor George E. Pataki later appointed him Chairman of the City University of New York Board of Trustees. Mr. Badillo, a founding partner in the New York City law firm Fischbein, Badillo, Wagner, Harding, is a graduate of City College and Brooklyn Law School and a Certified Public Accountant.

Richard I. Beattie. Mr. Beattie has a long record of public service on the City and national level. In the 1980's, Mr. Beattie served on the New York City Board of Education. During the administration of President Jimmy Carter, he was General

Counsel at the Department of Health, Education and Welfare, and, as Director of the Transition and Counsel to the Secretary of Education, he led the effort to organize the U.S. Department of Education. Mr. Beattie is the Chairman of the Executive Committee of Simpson, Thacher, and Bartlett, as well as Chairman of the Board and founder of New Visions for Public Schools, a not-for-profit organization that develops and implements programs to affect system-wide improvements in public education in New York City. He is a graduate of Dartmouth College and the University of Pennsylvania School of Law. He resides in Manhattan.

Wellington Z. Chen. Mr. Chen is Senior Vice President of TDC Development Corporation, a design and building firm in Queens. He started his career with the architectural firm I.M. Pei & Partners and later served as a Commissioner of the New York City Board of Standards and Appeals. Mr. Chen was also the first Chinese-American ever to serve on a Queens Community Board (7) and held that position for 13 years. He is a Trustee of City University of New York and serves on the Board of Directors of the Flushing YMCA. He resides in Queens.

Jerry E. Garcia. Mr. Garcia is Vice President of Investor Services at J.P. Morgan Chase & Co., where he manages a staff of over 200 professionals and has global client management responsibilities. Mr. Garcia is a graduate of the City University of New York and received an Executive MBA from Columbia University. He resides in Brooklyn.

Patricia L. Gatling. Ms. Gatling is Commissioner and Chair of the New York City Commission on Human Rights. Prior to that, she was First Assistant District Attorney in Kings County, where she was in charge of the Major Narcotics Investigations Bureau,

Community Relations Bureau, Legal Hiring, Inter-Agency Training, and Governmental Affairs. She is also a former President of the National Black Prosecutors Association. Ms. Gatling is a graduate of Johns Hopkins University and the University of Maryland School of Law. She resides in Manhattan.

Judah Gribetz. Mayor Bloomberg is the sixth New York City Mayor to call on Mr. Gribetz for public service. Mayor Robert F. Wagner appointed him Buildings Commissioner, and he later served as Regional Administrator of the U.S. Department of Housing and Urban Development during President Lyndon B. Johnson's administration. During Mayor John V. Lindsay's administration, Mr. Gribetz was Impartial Chairman of the Conciliation and Appeals Board. He was also Deputy Mayor for Governmental Relations under Mayor Abraham D. Beame and Mayor Edward I. Koch appointed him to the New York City Charter Revision Commission. Mayor David N. Dinkins selected him for the Distribution Committee of the New York City Community Trust. In 1975, Governor Hugh L. Carey selected Mr. Gribetz as his Counsel. From 1979 to 1989, he was a member of the State Law Revision Commission of New York and served as President of the Jewish Community Relations Council of New York from 1992 to 1995. Mr. Gribetz is a lawyer with Bingham McCutchen, LLP. He resides in Queens.

Patricia M. Hynes. Ms. Hynes served as law clerk to Joseph C. Zavatt, Chief Judge of the United States District Court for the Eastern District of New York, and was an Assistant United States Attorney in the Southern District from 1967 to 1982. Ms. Hynes is a lead trial lawyer at the firm Milberg, Weiss, Bershad, Hynes, and Lerach, LLP. She has served on the Advisory Committee to the Federal Judicial Code Revision Project, currently chairs the Merit Selection Panel for Magistrate Judges for the Southern District

of New York, and has also served on the Commission on Government Integrity. Ms. Hynes has been included in the list of "Best Lawyers in America" since 1993 and has been included in the National Law Journal's "Survey of The Fifty Most Influential Women Lawyers in America." She received her law degree from Fordham Law School, where she was a member of the Law Review. She resides in Manhattan.

Harry Kresky. Mr. Kresky is a lawyer specializing in election, employment, and criminal law. He is Counsel to the New York County and State Independence Party. Mr. Kresky is a graduate of Columbia Law School, where he served on the Board of Editors of the Columbia Law Review. He has been in private practice since 1972. He resides in Manhattan.

Loretta Lynch. From 1999 to 2001, Ms. Lynch served as U.S. Attorney for New York's Eastern District. She is currently Chair of the Association of the Bar of the City of New York's Criminal Law Committee. Ms. Lynch is a Partner in the New York office of Hogan and Hartson, LLP, and a member of the firm's Litigation Group. Ms. Lynch is a graduate of Harvard College and Harvard Law School, where she was a member of the Legal Aid Bureau and the Harvard Black Law Student Association. She resides in Brooklyn.

Herbert Sturz. Mr. Sturz is a Trustee of the Open Society Institute, a member of the Soros Foundations Network that supports an array of activities dealing with educational, social, legal, and health care reform. He is the Chairman of the After-School Corporation and served as Founding Director of the Vera Institute of Justice. Mr. Sturz also served New York City as Deputy Mayor for Criminal Justice and Chairman of the New York City Planning Commission under Mayor Edward I. Koch. Mr. Sturz received a

B.A. from the University of Wisconsin and an M.A. from Columbia University. He resides in Manhattan.

C. The Commission's Staff

The Commission is staffed by career public servants with considerable expertise in City government and knowledge of the Charter and the charter revision process. They are as follows.

Anthony Crowell, Co-Executive Director, has been a City attorney for five years including having served in the Division of Legal Counsel at the New York City Law Department. He served as General Counsel and staff counsel to the 2001 and 1999 Charter Revision Commissions. Prior to joining the City, he managed government affairs and policy at the International City/County Management Association in Washington, D.C.. He is an adjunct professor at Brooklyn Law School where he teaches *State and Local Government Law*.

Jan English, Co-Executive Director, has over 23 years of City service. She directed administration for the 1999 and 2001 Charter Revision Commissions. Currently, she serves as Deputy Commissioner at the Department of Juvenile Justice; she has also served in that capacity at the Departments of Probation and the Trade Waste Commission.

Bradley Tusk, Co-Executive Director, recently rejoined City government after serving as a senior aide to Senator Charles E. Schumer. Prior to that, he served as a senior aide to former Parks Commissioner Henry Stern. An attorney, he has served as an Adjunct Professor at Fordham University.

Howard Friedman, General Counsel, has been a City attorney for 7 years, serving currently as Senior Counsel at the Law Department. He has served as staff counsel to the 1999 and 2001 Charter Revision Commissions. He has extensive City legal experience and has served in executive level capacities at the Loft Board. He also served as a Legal Aid attorney.

Other members of the staff are from the City's Law Department (which is a professional, independent law office that has represented, among others, the Mayor, the Public Advocate, the Comptroller, and the City Council), the Departments of Finance, Probation, Parks and Recreation and City Planning, the Business Integrity Commission and the Mayor's Office. They include: Deputy General Counsel Elisabeth Palladino; Special Counsels Dara Jaffee and Florence Hutner; Assistant General Counsels Mark Tyler and Coleen Chin; Research Director Anne Fitzgibbon; Community Affairs Director Sara Vidal; Deputy Research Directors Eathan Davidson, Owen Stone, and John Mattera; Analyst Talya Sheinkman; and Administrative Aides Renee Wortham, Ivonne Sierra and Oscar Camacho. Many of these staff members served on the staffs of the 1999 and 2001 Charter Revision Commissions.

Special thanks are extended to Francis Barry, a researcher from the NYU Taub Urban Research Center, and former staffer of the City's Campaign Finance Board, who prepared for the Commission detailed abstracts of the scholarship on nonpartisan elections, and provided great insight into the relationship between nonpartisan elections, term limits and the City's campaign finance system.

D. Scope of Review

On July 25, 2002, the Commission held its initial public meeting. At that meeting, 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 three Charter Revision Commissions: the 1998 Powers Commission, and the 1999 and 2001 Mastro Commissions. Among the numerous issues addressed by those Commissions, all three of them studied the issues of mayoral succession and nonpartisan elections.

At that initial meeting, the Commission Chair directed staff to review the entire Charter. Further, he asked staff to review the preliminary and final reports of the 1998, 1999 and 2001 Charter Revision Commissions, and Commission member and public inquiries, comments and proposals. Finally, he requested that the staff draft preliminary options reports on the topics of nonpartisan elections and mayoral succession, and provide summaries of other proposals submitted by City agencies and the public.

At the August 6, 2002, public meeting, the staff presented the Commission with three reports. The first two reports were extensive in scope and provided a detailed analysis of the options for the Commission to consider on the issues of mayoral succession and nonpartisan elections. The third report presented summaries of the proposals and issues submitted to the Commission from the public and various City agencies, including the Departments of Investigation, Housing Preservation and Development, Finance and Parks and Recreation, as well as the Conflicts of Interest Board and the Office of Administrative Trials and Hearings. The staff reports were released to the public and posted on the Commission's website for public review and comment.

Between August 13 and 22, 2002, the Commission held a series of expert briefings and public hearings concerning the options and proposals in all five boroughs.¹ Both expert briefings and public hearings were held on August 13, 2002 in Brooklyn, August 15, 2002 in Queens, August 20, 2002 in Staten Island, August 21, 2002 in Manhattan, and August 22, 2002 in the Bronx. On the topics of nonpartisan elections and mayoral succession, the Commission heard expert testimony and received comments from elected officials and the public. The Commission also received proposals for changes to the Charter on a wide range of issues from City agencies and from members of the public. On August 21, 2002, the staff made a second presentation to the Commission on additional proposals submitted by agencies as well as proposals submitted by members of the public.

Both the substantive and process-based comments from the public were of enormous value to the Commission in helping it determine whether to put before the voters any proposals on the November 2002 ballot. Indeed, although the Commission received substantive comments on the issues of mayoral succession and nonpartisan elections, members of the public also criticized the Commission, its process and work. Principally, these comments centered on two points: that the Commission's public hearings were held during August, a time when many people are on vacation; and the issues required further review and public comment.

¹ The Queens hearing, held at LaGuardia Community College, was directly accessible by four major subway lines as well as bus lines. The Brooklyn hearing at Metro-Tech Center was within a short walk from the borough's downtown hub and accessible by eleven subway lines as well as numerous bus lines. Manhattan's public hearing at the Adam Clayton Powell State Office Building was easily reached by subway as well as by bus. The hearing at Eugenio de Hostos Community College in the Bronx was accessible both by subway and bus. The Staten Island hearing, held at the College of Staten Island, was accessible by a bus line and by car, a principal means of transportation for Staten Islanders. All of these facilities were fully handicap accessible and equipped to accommodate more than 200 persons.

In reviewing the substantive proposals, the Commission found that some of them could be accomplished legislatively, and therefore did not require a referendum immediately, while others required further study and comment from the public and other City agencies that also would be affected by the proposals. Although the Commission believes that many of the agency and public proposals would greatly enhance the operations of City government, it determined ultimately, at its August 23, 2002, public meeting, that it would defer consideration of these issues, and the remaining issues in the reports of the 1999 and 2001 Commissions, to another election cycle. At the same time, the Commission determined that it would focus on the issues of mayoral succession and nonpartisan elections for possible inclusion on the ballot.

After further consideration of the issues and the opinion expressed publicly by Mayor Bloomberg, the Commission concluded, at its September 3, 2002, meeting that it would defer the issue of nonpartisan elections to another election cycle to afford the public more opportunity for comment and debate on this important issue. The Commission nonetheless determined that it would put forth a proposal to the voters providing for a nonpartisan special election within sixty days of a vacancy in the Office of the Mayor which, by virtue of State law, would necessitate that the Speaker of the Council be placed in the role of presiding officer of the Council instead of the Public Advocate. The 13 member Commission unanimously approved the proposal.²

E. The Commission's Public Outreach and Proceedings

The Commission developed its proposals for the November 2002 ballot by: (1) initiating a public outreach campaign to solicit proposals for Charter revision from the

² It should be noted that Commissioner Badillo was not physically present at the meeting to vote, but cast his vote on the proposal symbolically by telephone. Thus the total vote of the Commission is legally 12 members in the affirmative and 1 member not present.

public and City agencies; (2) requesting that staff meet with numerous constituency groups to gather their substantive input on Charter revision; (3) distributing to the public staff reports setting forth options and rationales for Charter revision; (4) holding three public meetings, and five public hearings (one in each of the City's five boroughs), to receive public comment on Charter revision; (5) providing for five briefings of the Commission by many experts concerning Charter revision; (6) televising repeatedly the public meetings, hearings and expert briefings over Crosswalks, the City's cable access television station; (6) deliberating publicly the merits of the proposals and deciding what issues to put before the voters on the November 2002 ballot; and (7) distributing to the public a summary of the final proposals in English, Spanish, Chinese and Korean.

The public was afforded the opportunity to submit proposals for Charter revision before the staff made its preliminary 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.

On July 22, 2002, Commission Chair Robert J. McGuire issued a "Solicitation of Proposed Revisions to the New York City Charter." A Notice announcing the first public hearing also was issued on July 22, 2002. On August 5, 2002, a second notice was issued with the complete listing of all upcoming public meetings and hearings. These notices were published in the City's newspapers, as well as the language newspapers of the Spanish, Chinese, Russian and Korean speaking communities.³ The notices

³ The advertisements were placed in the New York Times, the World Journal, the Daily News, the New

were also published on a daily basis in the *City Record*, and on the Web. Finally, the notices were sent by mail to approximately 2,300 interested persons.⁴ In response to the Chair's solicitation, the Commission's staff received many letters, telephone calls and e-mails either requesting information on, or containing proposals for, Charter revision. In six weeks, from July 22 through August 30, 2002, there was a heavy volume of "hits" on the Commission's Web-site by people seeking Commission reports, notices, and other information, checking the meeting, and hearing schedule.

At the August 6, 2002 public meeting, the Commission's staff presented three reports to the Commission, entitled *Preliminary Options for Mayoral Succession*, *Preliminary Options for Nonpartisan Elections*, and *City Agency and Public Proposals*. Chairman McGuire 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 McGuire further emphasized that the Charter review process would be held in a fair and non-judgmental way and that all meetings, hearings and forums conducted by the Commission would be open to the public.

The Commission held public hearings on the issues before it on August 13, 2002 in Brooklyn, August 15, 2002 in Queens, August 20, 2002 in Staten Island, August 21, 2002 in Manhattan, and August 22, 2002 in the Bronx. All of the hearings were scheduled to begin at 7:00 p.m.. Many elected officials and members of the public, including former candidates for public office, spoke. All elected officials and members

York Post, El Diario, the Korean Times, Sing Tao, Hoy, and Novoye Russkoye Slovo.

⁴ Interpretation in American Sign Language was provided at the first meeting and was made available for all public meetings, hearings and forums.

of the public were urged to limit their remarks to three minutes as a courtesy to the other speakers. Although many of the speakers spoke for more than their allotted time, all were nonetheless permitted to conclude their remarks. All of the hearings were televised repeatedly on Crosswalks.

The Commission's Chair also held briefings on August 13, 15, 20, 21 and 22, 2002, for the purpose of hearing expert testimony from many invited speakers, including experts on the Voting Rights Act implications associated with the issues of mayoral succession and nonpartisan elections, and the Justice Department's Voting Rights Act preclearance process. These experts addressed the main issues reported on by the Commission's staff and considered by the Commission. These five briefings also were repeatedly televised on Crosswalks.

On September 3, 2002, the Commission held its final public meeting and voted to propose that a single ballot question be submitted to the voters on November 5, 2002, and to issue this report. The proposal would provide for a special election to be held to fill a vacancy in the Office of the Mayor within sixty days of the vacancy, and would give the Speaker of the City Council the ceremonial role to preside over meetings of the City Council rather than the Public Advocate. The Public Advocate would remain a nonvoting member of the City Council, and have all other powers arising from that position. This proposal would take effect immediately, and would apply to vacancies in the Office of the Mayor occurring after September 20, 2002.

The Commission asked the staff to issue, as soon after September 3, 2002, as possible, a summary of its proposals, for publication in various newspapers, including the *City Record*, and in foreign language papers, as required by law. It also asked the

staff to post this information on the Web and mail it to interested persons in English, Spanish, Chinese and Korean.

THE CITY IN TRANSITION: INTERIM SUCCESSION AND THE MAYORALTY

PART III

Proposal

The Commission determined that it will place one issue before the voters on the November 5, 2002, ballot whether Charter § 10(b) should be amended to require a special election within 60 days of a mayoral vacancy, with a runoff election if no candidate receives at least 40 percent of the vote.

The merits of this proposed change are clear. As detailed in Part IV(A) of this report, Charter § 10(b) currently provides that, upon a permanent vacancy (i.e., failure to qualify, resignation, removal, death, or permanent inability to discharge powers and duties), the powers and duties of the Mayor devolve upon the Public Advocate, the Comptroller, or a person selected by the Council, in that order of succession, until a new Mayor is elected. If the vacancy occurs prior to September 20 in any year, it is filled at the general election of that year. If the vacancy occurs on or after September 20 in any year, it is filled at the general election held the following calendar year. The result of this provision is that, if a vacancy were to occur on or after September 20 in any year of the Mayor's term (except the last), the interim successor (e.g., the Public Advocate) could potentially serve as Acting Mayor for more than 15 months before an elected Mayor takes office. This system contrasts sharply with the election system for filling vacancies in other elected offices, where voters are given the opportunity to elect a successor in short order.

The Office of the Mayor is obviously a crucial one. It is the seat of executive power in the City's governmental structure and is the focal point of policies affecting the lives of City residents. As the City's chief executive officer, the Mayor is most responsible for the effectiveness and integrity of City government and is the City's most politically accountable elected official. Providing for the prompt selection of a new Mayor by the voters in the event of a mayoral vacancy is closely related to issues of democracy, stability, and effective government.

In light of these considerations, the Commission has determined that changing Charter § 10(b) to provide for a prompt election for a new Mayor is a change that is in the best interest of all New Yorkers. In addition to being good policy, such a change also appears, as set forth in Part IV(A) of this report, to be legal, and within the mainstream of practice on this topic.

Furthermore, as indicated by the description of the public comment on this issue contained in Part IV(A) (particularly the comments of elected officials), a change to prompt elections is broadly accepted by the citizens of this City; there were very few dissenting voices.⁵

The Commission has determined, however, that the other main issue relating to mayoral succession—which official should be first in the line of succession in the event of a vacancy—should not be placed on the ballot this year. As indicated by the discussion in Part IV(A), there are serious arguments on both sides of the question of whether the Public Advocate should be the first in the line of succession. Furthermore, even if one were to conclude that it was more appropriate to have a different official be

⁵ The Public Advocate has publicly supported the institution of a sixty day special election in the succession system to the mayoralty. See below.

the first interim successor, the question of who that official should be (e.g., a deputy mayor) would need to be resolved. Therefore, the Commission defers a determination on this issue, and recommends that it be considered by a future Commission.

The Commission also defers a determination on the other major issue it considered, the institution of nonpartisan elections. As indicated by the discussion in Part IV(B) of this report, this issue raises profound questions of representative democracy, and has raised considerable passion among the public and the members of the Commission. As with the issue of the line of mayoral succession, a cogent argument has been made that nonpartisan elections would best serve the members of minority communities in the City, as well as the public in general, by allowing for a greater range of candidates and expertise to be presented to the voters. However, counter-arguments have also been made concerning the effect of nonpartisan elections on minority communities in the City, as well as the effect such elections could have on voter turnout and informed voter participation. In light of all these arguments, the Commission has determined that this issue requires further public review and comment, and recommends that it be considered by a future Commission.⁶

The Commission defers a determination on the other issues it has studied, which are set forth in Part V of this report. As stated in the Scope of Review section of Part II, the Commission has found that some of these issues could be accomplished legislatively, and therefore did not require a referendum immediately, while others required further study and comment from the public and other City agencies that also would be affected by the proposals. Although the Commission believes that many of

⁶ Commissioner Harry Kresky made a statement on the record regarding the decision to defer a consideration of nonpartisan elections at the Commission's September 3, 2002 public meeting. His statement is contained in Appendix I.

the agency and public proposals would greatly enhance the operations of City government, it determined ultimately, at its August 23, 2002, public meeting, that it would defer consideration of these issues, and the remaining issues in the reports of the 1999 and 2001 Commissions, to another election cycle.

The Commission notes that it has reviewed the entire Charter. In addition to the reasons stated in connection with the issues above, the Commission has determined not to propose amendments to other sections of the Charter for several reasons. First, the Charter was extensively amended in 1989, only 13 years ago, and has been reviewed by three subsequent Charter Revision Commissions, with changes adopted by the public in 1998 and 2001. Furthermore, in light of recent events, the Commission decided to prioritize a consideration of the issue of mayoral succession, i.e., how the City should fill a mayoral vacancy. Finally, in light of the time constraints, the Commission decided to prioritize only one other issue, i.e., nonpartisan elections.

PART IV(A)

Mayoral Succession

Issue: Should the Charter's provisions governing the filling of mayoral vacancies be revised?

Relevant Charter Provisions: Mayoral succession is governed by Charter § 10. Other provisions that are relevant to a discussion of mayoral succession are Charter §§ 8(f) (mayor's power to delegate functions, power, and duties), 24 (powers of the public advocate and succession), 25 (council member election and vacancies), 81 (borough president election and vacancies), and 94 (comptroller vacancies).

Discussion:

1. Introduction

The issue of "mayoral succession" really consists of two major issues: who should serve as the Acting Mayor when a vacancy first occurs, and how, if at all, elections should be scheduled to choose the person or persons who will complete the remainder of the term. In considering whether to amend the Charter's mayoral succession provisions, the Commission has reviewed the following issues:

- Who should be the first in the line of succession?
- Who should be the next person(s) in the line of succession?
- If the Commission chooses not to keep the portion of the current system relating to elections, whether or not it removes the Public Advocate's office from the line of succession, should the Acting Mayor serve for the remainder of the unexpired term, or should a special election be held for someone to succeed the Acting Mayor?

- If a special election is provided for, should it be partisan or nonpartisan?
- If a special election is provided for, what should the timing of that election be (i.e., 45, 60, 90, or 120 days after the vacancy)?
- If a special election is provided for, should a runoff election be held if the winner of that election does not get a high enough percentage of the vote?
- If a runoff election is provided for, what should the trigger percentage be and how many candidates would qualify for the runoff?
- Does the person elected at a special election serve for the remainder of the unexpired term, or should a general election be held following the special election?
- If such a general election is held, should it be partisan or nonpartisan?
- What is the proper relationship between the choice of the person who will serve as the Acting Mayor and the choices about the election system? For example, if a Deputy Mayor would be Acting Mayor, should a special election be held more or less quickly than if it were, for example, the Public Advocate?

Elections to complete the term

While the City has a consistent system for filling vacancies in almost every elected City office, the office of the Mayor is the exception. Voters are currently empowered to fill a vacancy in any other elected office by, in the usual circumstance, special election within 45 days of the vacancy.⁷ The City now has over a decade of experience with these special elections, which were established by the 1988 Charter Revision Commission.

Section 10(b) of the Charter currently provides that, upon a permanent vacancy (i.e., failure to qualify, resignation, removal, death, or permanent inability to discharge powers and duties), the powers and duties of the Mayor devolve upon the Public Advocate, the Comptroller, or a person selected by the Council, in that order of

⁷ Regarding succession to the office of the Public Advocate, see footnote 17.

succession, until a new Mayor is elected. If the vacancy occurs prior to September 20 in any year, it is filled at the general election of that year. If the vacancy occurs on or after September 20 in any year, it is filled at the general election held the following calendar year.⁸ The result of this provision is that, if a vacancy were to occur on or after September 20 in any year of the Mayor's term (except the last), the interim successor (e.g., the Public Advocate) could potentially serve as Acting Mayor for more than 15 months before an elected Mayor takes office. This system contrasts sharply with the election system for filling vacancies in other elected offices, where voters are given the opportunity to elect a successor in short order.

The office of the Mayor is crucial. It is the seat of executive power in the City's governmental structure and the focal point of policies affecting the lives of City residents. As the City's chief executive officer, the Mayor is most responsible for the effectiveness and integrity of City government and is the City's most politically accountable elected official. Providing for the prompt selection of a new Mayor by the voters in the event of a mayoral vacancy appears closely related to issues of democracy, stability, and effective government.⁹

Who should serve as Acting Mayor pending an election?

The other major issue is whether the Public Advocate should remain first in line to be interim successor to the Mayor. As identified by the staff and as reflected in public comment to this Commission, there are benefits and drawbacks to having the Public

⁸ The person elected at a general election would then serve until the end of the original mayoral term.

⁹ A special election to select an interim Mayor within 90 days of the vacancy has been suggested by The New York Times (Editorial, July 9, 2002). In a subsequent editorial, the Times stated that "[i]t makes sense to shorten the time to three months when voters can choose a mayoral replacement." (Editorial, August 17, 2002). Furthermore, as described below, there appears to be widespread support for the idea of changing the Charter to provide for the prompt election of a new Mayor. For example, Betsy Gotbaum, the Public Advocate, has supported such a change.

Advocate be the first interim successor. The benefits are that the office of the Public Advocate is an elected office and has a Citywide constituency. The drawbacks are that, in the event of a vacancy, particularly in times of crisis, the Public Advocate would often be someone who lacked sufficient executive knowledge of the City's operations to ensure stability in the City, simply because the day-to-day role played by the Public Advocate is that of ombudsperson.

2. Background and History

For over 25 years charter revision commissions have considered the issue of mayoral succession. The 1989 Charter Revision Commission's discussions on succession are particularly relevant to the issue of who the first successor should be, because that Commission had to address the issue within the larger context of the abolition of the Board of Estimate ("the Board") and its replacement with the City government structure we have today.

For most of this century, the Board was the most powerful and important governing body of the City. At the time of its abolition in 1989, the Board was comprised of eight members: the Mayor, the City Council President, and the Comptroller, each of whom had two votes, and the five Borough Presidents, each of whom had one vote. Membership on the Board was the most significant source of power for the office of the Council President.

The Board exercised authority over some of the City's most important functions and responsibilities. It participated in the budget process, granted leases of City property, and maintained final authority over the use, development and improvement of City land, including through zoning regulations. It also had final approval of all capital

projects and City contracts that were not awarded through competitive sealed bids. While the Council had the power to pass local laws and participate in the budget process, and the Mayor was responsible for implementing the City's programs, the Board possessed authority over important policy decisions that affected the City on a daily basis.

In 1989, however, the United States Supreme Court, in Board of Estimate v. Morris, 489 U.S. 688 (1989), declared the Board's voting scheme unconstitutional, holding that it violated the principle of "one person, one vote." Because Borough Presidents held equal amounts of power on the Board, the Court held that residents of some less populous boroughs, such as Staten Island, were over-represented, while residents of relatively more populous boroughs, such as Brooklyn, were under-represented. The Court ordered the City either to reorganize the Board or abolish it. Between March 22 and August 2, 1989, the 1989 Charter Revision Commission worked to comply with the Court's ruling.

The 1989 Charter Revision Commission proposed to abolish the Board and create a new governance structure for the City that would receive the Board's powers. The Commission wanted to continue the City's tradition of a strong mayoralty and, therefore, it transferred many of the Board's functions to the Mayor. The Commission also decided that the Council, as the legislative branch, should be the primary check on the mayoralty. The Commission expanded the Council's membership from 35 to 51 members, and granted it power to approve the budget and authority over land use decisions.

The 1989 Commission continued the offices of the Comptroller and the Borough Presidents but with significantly different powers than they had enjoyed by virtue of their seats on the Board. The Comptroller retained certain executive-like functions including the duty to audit every City agency at least once every four years. Borough Presidents lost a significant amount of power with the end of the Board, but retained appointment powers with respect to community boards and were given some control over funding for their boroughs.

The City Council President's role in government underwent a major transformation as a result of the 1989 Charter revision, which eliminated the Board of Estimate and, of course, the Council President's votes on the Board. Like the Mayor and Comptroller, the Council President enjoyed two votes on the Board and thus had the ability to exercise significant influence over budgetary issues, land use decisions, approval of contracts, and zoning regulation changes. The duties of the Council President outside of the Board, however, were limited. As the Council's presiding officer, the Council President could cast a vote to break a tie but was not permitted to vote under any other circumstance. The Vice-Chair of the Council (predecessor to the position of the Speaker) was the person who effectively led the Council, not the Council President.

Although the Council President had little input regarding the day-to-day workings of the legislative body, he was the immediate successor to the mayoralty. This arrangement was rational because the Council President had the same number of votes on the Board as the Mayor and was involved in the day-to-day executive decisions of the Board.

With the elimination of the Board came a heated debate over whether to redefine the Council President's responsibilities or whether instead to eliminate that office altogether. It is widely understood that the 1989 Commission ultimately retained that office as part of a political compromise: certain Commissioners did not want then-Council President Andrew Stein to be ousted from City government. Indeed, Commission Chair Frederick A. O. Schwarz, Jr. has since acknowledged that the office was kept, in part, to keep the Commission's majority coalition from falling apart; he noted that this issue aroused "puzzling passion."¹⁰

In the 1989 Commission's "Summary of Final Proposals," the Council President is described as "the city's 'Public Advocate' . . . charged with receiving, investigating and attempting to resolve individual citizen complaints."¹¹ The Public Advocate has been described as the country's only elected ombudsman.¹² In 1993, the City Council passed Local Law 19, officially changing the title of that office from "President of the Council" to "Public Advocate." In passing that law, the Council acknowledged that "the most important duty of the President of the City Council is to serve as the public advocate for the citizens of New York City."¹³

In short, it appears that while the provision empowering the Council President, now the Public Advocate, to succeed to the mayoralty has remained constant, the nature of the Public Advocate's office has been radically transformed, and now bears little resemblance to that of its predecessor under the Board of Estimate system.

¹⁰ Frederick A. O. Schwarz, Jr. & Eric Lane, The Policy and Politics of Charter Making, 42 N.Y.L. Sch. L. Rev. 723, 818, 820 (1998).

¹¹ Summary of Final Proposals, New York City Charter Revision Commission, August 1989, at 19.

¹² Mark Green & Laurel Eisner, The Public Advocate for New York City: An Analysis of the Country's Only Elected Ombudsman, 42 N.Y. L. Sch. L. Rev. 1093, 1095 (1998).

¹³ Memorandum in Support, Local Law 19 of 1993.

3. Review by Previous Commissions

Both the 1999 and the 2001 Charter Revision Commissions reviewed the issue of mayoral succession. These Commissions analyzed different options for an appropriate interim successor in the event of a mayoral vacancy as well as the need to hold a special election following the vacancy.

1999 Charter Revision Commission

The 1999 Commission reviewed whether the Charter's provisions for filling mayoral vacancies should be amended to provide for a special election or a different successor or both. In its report to the Commission, issued July 22, 1999, the staff analyzed these issues, considering factors such as the need for stability and continuity in the event of a vacancy, succession systems in major cities throughout New York State and the country, and the legal issues implicated by a change in the City's mayoral succession system.

One such legal issue was the question of whether a change to a system of special elections to fill mayoral vacancies would violate the federal Voting Rights Act. The Commission retained Dr. Allan J. Lichtman, Chair of the History Department at American University and a noted voting rights expert, to provide a detailed analysis of this issue. Dr. Lichtman ultimately concluded that there was no evidence that special elections for Citywide offices would disadvantage minority voters or result in relatively larger reductions in minority voter turnout. Based on this and other expert testimony, the 1999 Commission concluded that its proposal for filling mayoral vacancies with special elections would not violate the Voting Rights Act.¹⁴

¹⁴ This Commission also retained Dr. Lichtman to study this issue. As described below, Dr. Lichtman has concluded that the use of special elections with a runoff provision for filling mayoral vacancies would not

The Commission's ultimate proposal regarding special elections, contained in its September 1, 1999, final report, provided, in essence, that a nonpartisan special election would be held within 45 days after the occurrence of a vacancy, with a runoff election held if no candidate received at least 40 percent of the vote. A partisan general election would then be held to fill the remainder of the unexpired term.

In addition to the special elections issue, the 1999 Commission also analyzed options regarding who could serve as the interim successor to the Mayor in the event of a vacancy. The offices of Public Advocate, Comptroller, Council Speaker, a (newly created) Vice Mayor, and Deputy Mayor were identified as possible successors. The Commission concluded, however, that it would not propose any change to the line of succession.

The issue of mayoral succession received much public comment. A summary of the comments that were received by the Commission is attached in Appendix D.

2001 Charter Revision Commission

The 2001 Charter Revision Commission also considered the issue of mayoral succession. Ultimately, while the Commission stated that the City should adopt special elections to fill mayoral vacancies and should remove the Public Advocate from the line of succession, it concluded that such Charter reform should not be proposed to the voters "on the eve of elections for every citywide office."

A summary of the public comment on succession issues received by the 2001 Commission is attached in Appendix D.

violate the Voting Rights Act.

4. Succession in Other Major Cities

A comparison of the mayoral succession provisions for other cities in New York State and across the United States shows the wide variety of approaches cities have taken to address the issue of succession to the mayoralty.

Other Cities in New York

Under General City Law § 2-a(1), where the mayor and the presiding officer of the local legislative body are elected at the same time, for the same term, by the electors of the entire city, the presiding officer becomes mayor for the remainder of the term in the event of a vacancy. As discussed below, New York City's existing mayoral succession provision, Charter § 10(b), which differs significantly from Section 2-a(1), is given effect as a grandfathered exception to that section. See General City Law § 2-a(3)(b). Of the other cities in New York State described in this section, some are governed by Section 2-a(1), while others are not so governed, because the conditions set forth in that section are not met.¹⁵

Albany. A vacancy in the office of the Mayor is filled by the City Council President, who serves as Mayor for the remainder of the unexpired term.

Buffalo. The vacancy is filled by the City Council President for the remainder of the unexpired term.

Rochester. The Council appoints a successor, who must be registered in the same party as the vacating Mayor. An interim Mayor is then elected for the remainder of the unexpired term at the next general election for which there is time to file nominating petitions. If the Council fails to appoint a successor within 30 days of the vacancy, a

¹⁵ Any change to the City's current system would require that the Charter be harmonized with General City Law § 2-a(1). See discussion of State law issues, below.

special election must be held within 90 days of the vacancy to elect a successor to serve for the remainder of the unexpired term. As the President of the Council is selected from among the members of the Council, the succession rule set forth in General City Law § 2-a(1) does not apply.

Syracuse. The Council President succeeds to the mayoralty for the remainder of the unexpired term.

Yonkers. A vacancy in the office of the Mayor is filled by the City Council designating a deputy mayor, commissioner, or department head as acting Mayor. A special election to fill the remainder of the term is then held 90 days after the vacancy or as soon thereafter as legally possible. If the vacancy occurs within 180 days of the regular mid-term municipal election, the special election is held concurrently with that election. If the vacancy occurs within 180 days of a regular mayoral election, no special election is held. As the Mayor has a four-year term and the City Council President has a two-year term, the succession rule set forth in General City Law § 2-a(1) does not apply.

Mayoral Succession in Other Selected United States Cities

The succession provisions for major cities throughout the United States fall into three main categories: (a) cities where the mayor appoints the person who is the successor; (b) cities where the City Council President becomes the Mayor; and (c) cities where the City Council chooses the successor. Details of the various succession systems vary by city. Such details include the qualifications of the interim successor, whether a special election is held to fill the remainder of the term, and the length of time before such an election is held.

A number of major cities throughout the U.S. hold special elections in the event that a Mayor leaves office. These cities include: Atlanta, Boston, Chicago, Cincinnati,

Cleveland, Dallas, Denver, Kansas City, Los Angeles, Miami, Minneapolis, Philadelphia, Portland, Oregon, Orlando, Phoenix, Providence, Sacramento, San Diego, San Francisco, Seattle, Tampa, and Washington, D.C. Furthermore, many cities have endorsed the designation of a mayoral appointee as the interim mayor. These cities include: Cleveland (Law Director), Denver (Deputy Mayor), and Cincinnati (Vice-Mayor; member of Council selected by Mayor), Houston (Mayor pro tem, member of Council nominated by the Mayor, confirmed by Council) and Kansas City (Mayor pro tem; member of Council appointed by Mayor). On the other hand, many cities take other approaches.¹⁶

Charts summarizing various approaches taken by major U.S. cities are attached in Appendix D.

5. Related State and Federal Law Issues

State Law

While the options regarding changes to the mayoral succession system implicate provisions of State law, a change to the City's system appears completely consistent with State law.

For example, a change to the system of mayoral succession elections to provide for prompt nonpartisan special elections, as is provided for in the Charter for vacancies in all other City elective offices, would be legal. See Charter §§ 24 (public advocate), 25 (council members), 81 (borough presidents), and 94 (comptroller). This existing Charter procedure was upheld in City of New York v. Board of Elections, Index No. 41450/91 (Sup. Ct. New York Co.), aff'd ___ A.D.2d ___ (1st Dep't), lv. den., 77 N.Y.2d 938 (1991),

¹⁶ One factor that may affect the approach a city takes is whether the city's form of government follows a "strong mayor" model, like New York City, or instead a "council/city manager" model, like Kansas City. A chart analyzing this issue is attached in Appendix D.

on municipal home rule grounds, against a claim that the Charter provisions were preempted by inconsistent provisions of the State Election Law. See State Constitution, Article IX; Municipal Home Rule Law § 10; Election Law § 1-102; and Bareham v. City of Rochester, 246 N.Y. 140 (1927).¹⁷

Any change to the terms of mayoral succession, whether as to the interim successor or the form of elections would implicate General City Law § 2-a(1). Under this provision, where a city's mayor and the presiding officer of the local legislative body are elected at the same time for the same term by the voters of the entire city, the presiding officer of the legislative body becomes the mayor for the remainder of the unexpired term. Currently, as the Public Advocate "presides over" the Council, Charter § 24(e), and is elected at the same time as the Mayor, for the same term as the Mayor, by the voters of the entire City, the terms of Section 2-a(1) appear to apply. However, the City's current mayoral succession provision, Charter § 10(b), is "grandfathered" as an exception to Section 2-a(1) by General City Law § 2-a(3)(b).

Because this exemption from application of the provisions of Section 2-a(1) arguably would not continue, however, after modification of any of the current mayoral succession provisions, it would be necessary to eliminate the Public Advocate's

¹⁷ It should be noted that the special election provision intended to be triggered by a vacancy in the office of Public Advocate has never been precleared by the Department of Justice. While the provision must be precleared before it can be implemented, the 1988 Charter Revision Commission recommended that State law be changed prior to the City seeking preclearance. Specifically, that Commission was concerned that General City Law ("GCL") § 2a(2) might preempt the Charter's provisions regarding Public Advocate vacancies, because it mandates that the vice-chairman of the local legislative body, i.e., the Speaker of the Council, becomes the presiding officer of the Council, i.e., the Public Advocate, for the remainder of the unexpired term. However, any change to the current succession system would necessitate that the Public Advocate be switched out of the now ceremonial role of presiding over the Council, see Charter § 24(e). Thus, the concern of the 1988 Commission will become moot because the terms of GCL § 2-a(2) would, on their face, no longer apply. See discussion of GCL §§ 2-a(1) and 2-a(3). The provisions regarding who shall be the interim successor to the Public Advocate pending a special election, in the event of a vacancy, are therefore clarified in the proposed Charter changes.

ceremonial right to “preside” over the Council—or transfer the right to a public official who is elected on a different election cycle, or for a different term, or not by all the citizens of the City—so that the terms of Section 2a(1) would not apply in the first place.¹⁸ While one could, alternatively, amend the starting point of the Public Advocate’s term, so that it would not run concurrently with the term of the Mayor, this approach might create additional complications regarding, for example, the application of term limits. Under either approach, the Public Advocate’s authority to introduce legislation in the Council would not need to be changed.

Federal Voting Rights Act

A change in the rules governing mayoral succession could arguably be considered a change in a “standard, practice, or procedure with respect to voting.” Such a change could require the City to seek preclearance from the Justice Department pursuant to the Voting Rights Act.

Under the Voting Rights Act, a State or political subdivision may not impose a “standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” 42 U.S.C. § 1973(a). In establishing whether such an abridgement has occurred, one must determine whether, “under the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected] class [i.e., race or color] in

¹⁸ Under Charter § 24(e), a major power of the Public Advocate that relates to the power to preside over the Council is the ability to break a tie vote. However, under Municipal Home Rule Law § 20(1), passage of a local law requires a majority affirmative vote of the total voting power of the legislative body. See also Charter § 34 (passage of local law or resolution requires majority affirmative vote of all the council members). Thus, 26 affirmative votes are needed in the Council to pass any local law. In light of this fact, a meaningful tie vote is extremely unlikely.

that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 42 U.S.C. § 1973(b).

Whenever the City seeks, in general, to change a “standard, practice, or procedure with respect to voting,” it seeks preclearance from the Justice Department as to whether the change will have the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. § 1973c. The change may not take effect until the City receives 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.

As to preclearance of a change such as one to the Charter’s mayoral succession provisions, which would require approval by referendum, see Municipal Home Rule Law §23(d), Charter §38(3), 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.

It thus appears that the Justice Department could, but would not be required to, consider for preclearance any change to the Charter's mayoral succession provisions prior to approval by the voters at referendum.

In 1999, the Charter Revision Commission's consultant, Dr. Allan J. Lichtman, analyzed whether establishing a system of special elections to fill mayoral vacancies would have a detrimental impact on voting power or representation of the City's minority communities and thus violate the Voting Rights Act. He analyzed recent special elections in the City and other municipalities with high minority populations. Specifically, he analyzed data for seven special elections for State Assembly and Senate, Congressional and Council positions between 1992 and 1998. Dr. Lichtman also reviewed special elections in Washington, D.C., Chicago and Memphis. He found no evidence to support a conclusion that New York City mayoral special elections would be likely to disadvantage minority voters by producing large reductions in minority turnout relative to the reductions in white turnout. Indeed, he inferred from the data that in a Citywide special election minority turnout would likely be high relative to white turnout if a minority candidate or choice of minority candidates was competing for office. The Commission also consulted on this issue with Gerald Hebert, a legal expert on the Voting Rights Act, who worked at the Department of Justice for over 20 years and served as Acting Chief, Deputy Chief, and Special Litigation Counsel in the Voting Rights Section of the Civil Rights Division at the Justice Department. After reviewing the opinions of Professor Lichtman and Mr. Hebert, the Commission concluded that filling a mayoral vacancy through a special election (using the procedure proposed by the 1999 Commission) would not violate the Voting Rights Act.

Dr. Lichtman was retained by this Commission to again review this issue. He concluded that the use of nonpartisan special elections, with a runoff provision for filling vacancies in the mayoralty, should not impede the opportunity for minority voters in the City to participate fully in the electoral process and elect candidates of their choice. Dr. Lichtman noted that, while the 40 percent runoff provision might undermine minority voting opportunity, because a minority candidate could have received a plurality (but under 40 percent) of the vote if the white vote split, the same was true for a white candidate, who could receive a plurality (but under 40 percent) of the vote if the minority vote split. In either event, the runoff provision would prevent that candidate with the under 40 percent plurality from winning the office. Thus, the runoff provision itself did not present a Voting Rights Act problem.

Dr. Lichtman's analysis of citywide special elections in Washington, D.C., Memphis, and Chicago did not show any 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 stated that if there is a hotly contested election with a strong minority candidate there would be minority turnout.

6. Policy Considerations

Prompt Elections

As described above, while the City has a consistent system for filling vacancies in almost every elected City office, the office of the Mayor is the exception. Under Charter § 10(b), the Public Advocate could potentially serve as Acting Mayor for more than 15 months before an elected Mayor takes office. In light of this situation, the

Commission has studied whether it would be appropriate to provide for prompt elections for the person who would next be Mayor.

The Commission received extensive comment on this issue, both from elected officials and from the public. Elected officials expressed a range of opinions with regard to the timing of elections for mayoral succession, with suggestions ranging from 45 days to the current 15-month period. A number of officials favored a 90-day period. Some officials believed that a shorter period of time might not afford candidates sufficient time to establish a campaign or give voters sufficient time to make an informed decision.

However, while the exact suggestions varied, the testimony of the elected officials was notably in favor of instituting a system of prompt elections for mayoral succession. For example, Betsy Gotbaum, the Public Advocate, while stating her belief that the Commission should take more time to deliberate, stated that she “would support a change in the Charter that allowed a special election to take place at some point after a successor takes office, whether it’s 45, 60, or 90 days. That’s what I’ve always said and what I truly believe.” (Public Hearing, August 13, 2002, Transcript p. 40)¹⁹ Similarly, Bill Thompson, the Comptroller, C. Virginia Fields, the Manhattan Borough President, and Fernando Ferrer, the former Bronx Borough President, stated that they supported a special election being held within 90 days of a mayoral vacancy. See Thompson (Public Hearing, August 22, 2002, Transcript p. 49), Fields (Public Hearing, August 21, 2002, Transcript p. 41), and Ferrer (Public Hearing, August 21, 2002, Transcript p. 86). Helen Marshall, the Queens Borough President, thought that a

¹⁹ In a letter to the editor of the New York Times dated January 20, 2002, Gotbaum stated that “[w]hat she did promise in [her] campaign was to propose legislation toward a swifter special election for the new mayor. Under the current system, in the event of the elected mayor’s inability to serve, the public advocate could have the job as long as 15 months. We can probably arrange an opportunity for the people to choose their own new mayor in significantly less time than that.”

special election within 90 days was a possibility. (Public Hearing, August 15, 2002, Transcript p. 69) Both Denny Farrell, a Member of the New York State Assembly, and Leroy Comrie, a New York City Council Member, testified in favor of shortening the period before an election is held. See Farrell (Public Hearing, August 21, 2002, Transcript p. 102) and Comrie (Public Hearing, August 15, 2002, Transcript p. 59). Steven Fiala, the County Clerk of Richmond County and a former New York City Council Member and Minority Whip, thought the election should occur within 60 days. Only Scott Stringer, a New York State Assembly Member, and G. Oliver Koppel, a New York City Council Member, opposed substantially shortening the period before an election; Stringer (a former candidate for Public Advocate, who evidently thought that the Public Advocate served automatically for 12 to 15 months as successor) thought Charter § 10(b) should remain as is, and Koppel thought there should be “a substantial period of time” before an election took place. See Stringer (Public Hearing, August 13, 2002, Transcript p. 51), and Koppel (Public Hearing, August 13, 2002, Transcript p. 69). Marty Markowitz, the Brooklyn Borough President, thought more time was needed to study this issue. (Public Hearing, August 13, 2002, Transcript p. 59)²⁰

Public comment was consistent with the implementation of prompt elections.

Line of Mayoral Succession

A. Staff analysis

In its August 5, 2002, report, the staff analyzed various options for which City office was appropriate as first in the line of succession. The offices considered included

²⁰ Elected officials who supported special elections in testimony before the 1999 Commission included Comptroller Alan Hevesi, Queens Borough President Claire Shulman, Staten Island Borough President Guy Molinari, Council Member Noach Dear, Council Member Martin Golden, Council Member James Oddo, Council Member Priscilla Wooten, State Senator Guy Velella, and Congressman Vito Fosella.

the Public Advocate, the Comptroller, the Speaker of the Council, a newly created Vice Mayor, and a Deputy Mayor. This analysis follows:

Public Advocate—The Public Advocate is currently the immediate successor to the mayoralty in the event of a vacancy. Charter § 10(b).²¹ The most significant power of the office is that of an ombudsperson, i.e., an officer that monitors government operations and investigates complaints. See Charter § 24. Though the Public Advocate maintains a seat on a limited number of boards, the office performs virtually no executive functions other than managing a small staff. As the prior discussion of the history of the office indicates, the powers and responsibilities of the Public Advocate are not of the magnitude of those exercised formerly by the Council President on the Board of Estimate.

This analysis can lead to the conclusion, as it did for the 2001 Commission, that the Public Advocate is not the appropriate choice as first in line to succeed to the mayoralty in the event of a vacancy.²² It may be argued that, in a time of crisis, the person who immediately becomes Acting Mayor should be someone who has an intimate knowledge of the daily workings of the executive function performed by the Mayor. Either a Deputy Mayor or arguably the Comptroller would meet this criterion.

In fact, it may be argued that the Public Advocate, exercising an ombudsperson function, is particularly unsuited to be first in the line of succession to the City's most important executive office. The "ombuds" concept originated in Sweden in the early 1700s; by the 1800s, "the Swedish Ombudsman had evolved into an administrative

²¹ For a comprehensive description of the office of the Public Advocate, see Mark Green & Laurel Eisner, The Public Advocate for New York City: An Analysis of the Country's Only Elected Ombudsman, 42 N.Y.L. Sch. L. Rev. 1093 (1998).

²² See Making Our City's Progress Permanent: Report of the New York City Charter Revision Commission, at 112 (Sept. 5, 2001).

body appointed by the Parliament to protect individuals against the excesses of the bureaucracy.”²³ Even today, the accepted definition of ombudsperson is “a public official appointed by the legislature to receive and investigate citizen complaints against administrative acts of government.”²⁴ While the office of the Public Advocate is elective rather than appointive, its powers under the Charter remain largely within the classic ombudsperson model. Therefore, one could argue that the Public Advocate does not gain the experience necessary to step immediately into the mayoralty, particularly in a time of crisis. Furthermore, the Public Advocate’s ombudsperson role may put the office institutionally at odds with the mayoralty; in the event of succession, this fact may create a blurring of institutional separation of powers.

On the other hand, it is significant that the office of the Public Advocate is an elected, Citywide office. One could argue that it is more democratic, even when considering an office that may be filled for only a relatively short period of time (assuming that a special election will be held), to have the person who is first in the line of succession to be someone who has been elected to public office. Furthermore, considering that the Public Advocate has been chosen by the entire electorate of the City, it would not be inappropriate for the Public Advocate to be the interim successor for another, elected Citywide office.

An alternative between either keeping the Public Advocate as first in line of succession or simply replacing that office with another one could be made along the lines of Charter § 10(a), the provision governing mayoral suspension, absence, or temporary inability to discharge powers. Under that section, the Public Advocate or the

²³ Green & Eisner, Public Advocate, at 1104.

²⁴ See the website of the United States Ombudsman Association, at www.usombudsman.org.

Comptroller, in that order, acts as mayor with certain limited powers until the suspension, absence, or inability ceases. While so acting, the Public Advocate or Comptroller may not appoint or remove from office, and may not exercise any power lawfully delegated by the Mayor to a Deputy Mayor prior to the suspension or inability, or before or after the commencement of the absence. Furthermore, the Public Advocate or Comptroller may not, as a general matter, sign, approve, or disapprove any local law or resolution until the suspension, absence, or temporary inability has continued for at least nine days. While the Deputy Mayor may exercise many powers during this period, he or she may not act on local laws or resolutions of the Council, act as a magistrate, or appoint or remove officials. Thus, while the Public Advocate or Comptroller may assume certain functions, the operational functions are retained by a deputy mayor.

The advantages of such an approach for the vacancy situation is that would not necessarily involve removing the Public Advocate from the line of succession, and it would be familiar.²⁵ The disadvantage is that it might result in a tension between the Acting Mayor and the Deputy Mayor, even if they were officially exercising different powers.

Comptroller—The Comptroller performs several significant functions and is responsible for the fiscal integrity of the City. The Charter vests the Comptroller with the power to audit all City agencies and all matters relating to the City's finances, and to settle and adjust all claims against the City. Furthermore, under Charter § 8(c), the Comptroller participates in the issuance of City debt. In addition, the Comptroller is

²⁵ This bifurcated approach would be possible with either the Comptroller or the Public Advocate as the Acting Mayor.

responsible for the registration of contracts for the procurement of goods, services and construction. Hence, the Comptroller, unlike the Public Advocate, exercises certain functions that may be viewed as “executive” in nature. Conversely, the responsibility to audit and monitor the executive branch may put the Comptroller institutionally at odds with the executive branch on various issues. This could create, at a minimum, an awkwardness in how the Comptroller, as Acting Mayor, would act in relation to the Comptroller’s office. Furthermore, as the Comptroller’s responsibilities are largely post-action audits and approvals, and not service delivery or the implementation of legislative mandates, some might see the Comptroller’s executive experience as limited.

Speaker of the Council—The Speaker of the City Council is the leader of the City Council, and is elected by its members. The Speaker does not possess an executive function and is not a Citywide elected official but, as the leader of the City’s legislative body, is a powerful player in the affairs of the City. This role could give the Speaker the experience necessary to exercise the powers and duties of the Mayor until there is an election to fill the remainder of the unexpired mayoral term. On the other hand, the Charter, like the State and federal constitutions, contains a framework based on a separation of powers, which could be compromised by allowing the Speaker to succeed to the mayoralty. The Charter’s separation of powers is manifested in a number of ways that would be compromised if the Speaker became the Acting Mayor. For example, the Mayor provides a check on the Council by approving or vetoing local laws passed by the Council. Conversely, the Council has an oversight role in relation to the activities of mayoral agencies. If the Speaker succeeded to the mayoralty, even on an interim basis, these checks could be lost.

A possible variation on the idea of Speaker as first in the line of succession is to have a person chosen by the Council be the interim successor. This is currently the third possibility for succession under Charter § 10(b), which is the provision governing the order of succession in the event of a mayoral vacancy.

Vice Mayor—As discussed above, the 1989 Charter Revision Commission considered establishing an office of the Vice Mayor, who would be elected along with the Mayor. The Vice Mayor proposal was designed by its sponsors as a vehicle to help minority candidates win election to Citywide office based on the theory that mayoral candidates would choose to run with Vice Mayor candidates who came from a community other than their own, in order to create a broad-based coalition. Opponents of the proposal, however, argued that the creation of a Vice Mayor position would relegate minorities to a secondary role beholden to the Mayor. Others maintained that the Council President could have the ability, even after the reorganization of the government, to serve as a check on the Mayor, but that, if the position of Vice Mayor replaced that of Council President, such a check would be lost. After considerable debate, the Commission rejected a motion to abolish the Council President's office and create a Vice Mayor who would succeed to the mayoralty. Bill Thompson, the current Comptroller, stated this year that the concept of a Vice Mayor would be a "prescription for disaster." Transcript, August 22, 2002, p. 54. Creating the office would represent a significant alteration of the City's electoral structure, with possible legal consequences, and would require framing the specific powers and duties of that office.

Deputy Mayor—The Charter provides that the Mayor may appoint Deputy Mayors, as appropriate, with powers and duties as the Mayor determines. Of the various existing options for who should be the interim successor, a Deputy Mayor is

most likely to subscribe to the views of the vacating Mayor and would be the person most likely to continue the Mayor's policies. In addition, a Deputy Mayor would be intimately familiar with the operation of City government and the role played by the executive branch, an asset that would be critical in a period of crisis and transition. A vacancy in the office of Mayor would inevitably create the possibility of significant volatility in the City. It would therefore be valuable to guarantee that someone with knowledge of the City's operations, such as a Deputy Mayor, become the Acting Mayor to ensure and facilitate stability in the City. Furthermore, if an act of war, natural disaster or other disaster in the City claimed the life of the Mayor, the need for stability and experienced leadership would be essential.

The tragic events of September 11th have demonstrated the need for continuity in a time of grave crisis. As is widely known, Mayor Giuliani was able to develop a comprehensive emergency response plan immediately after the attack. The execution of that plan was possible because the Mayor had extensive knowledge of the operation of City government and a close working relationship with the City officials responsible for executing the emergency response plan. It is arguable that, had there been a vacancy in the mayoralty related to the sudden attacks, a Deputy Mayor would have been best able to replicate the Mayor's knowledge and working relationships. Additionally, someone who is already in the chain of command to the Mayor, such as a Deputy Mayor, would likely be one of the only persons who could effectively command and deploy police, fire, and other resources necessary to respond in a time of crisis.

On the other hand, it may be argued that the fact that a Deputy Mayor is not an elected official makes a Deputy Mayor inappropriate to become the interim mayoral

successor. In addition to the general democracy concerns that would be raised, making a Deputy Mayor the interim successor could be perceived as giving him or her an unfair advantage in any election to fill out the remainder of the term, assuming that the Deputy Mayor were inclined to run in such an election. Therefore, if a future Commission were to consider proposing that a Deputy Mayor be first in the line of succession, it might want to consider barring that person from running in such an election to fill the unexpired term. Furthermore, the concerns about the Deputy Mayor being Acting Mayor become more significant the longer the period of time for which he or she would serve as Acting Mayor. Therefore, if a future Commission decides to consider proposing a change to Deputy Mayor in the line of succession, it needs to consider closely the amount of time before an election is held.

B. Public Comment

The elected officials who spoke at the public hearings believed it would be best if the successor to the Mayor were an elected official. In support of this position, some stated that elected officials have experience dealing with citywide issues, are aware of the public's concerns, and have a relationship with the commissioners. Others cited a concern that a mayor removed for illegal conduct should not be succeeded by that person's appointee. Some officials believed that the average individual does not know who the deputy mayors are, thus making it inappropriate to appoint one of them to the highest level of municipal government. Others believed that the current succession model works and should be retained, that it is undemocratic to have the Mayor's hand-picked assistant run the City, or that mayoral appointees may not have sufficient public experience.

Many elected officials believed that the Public Advocate should succeed the Mayor, while others endorsed the concept of an elected Vice-Mayor. A few officials specifically supported abolishing the position of Public Advocate; on the other hand, some of those in favor of succession by the Public Advocate believed that the position should be given a budget line or subpoena power. Those supporting mayoral succession by the Public Advocate believed that the Public Advocate is familiar with City government and that the public is familiar with that person through a citywide election process. Some officials were influenced by the belief that the voters elected the Public Advocate knowing that the position is designated to succeed the Mayor in the event of a vacancy.

Some elected officials were concerned that an interim successor should be focused on running the City, not on the next special election, and that any interim mayor would have an advantage in the subsequent election. Some concluded that the interim mayor should not be permitted to run at the next mayoral election.

Public comment at the public hearings both supported and opposed changing the line of succession. Of those in support of a change, some commented that a deputy mayor would be best suited to be the interim mayor because that person would be familiar with the operations of City government. Some speakers expressed the view that the Public Advocate's office should not be the next in line for succession. In fact, some speakers expressed their opinion that the office should be eliminated. Some speakers noted that, due to the nature of the Public Advocate's role as ombudsperson, the Public Advocate often takes positions counter to the Mayor, and that it would therefore not be proper for the Public Advocate to succeed the Mayor.

On the other hand, many members of the public spoke in support of retaining the current line of succession. Some supported this position because the Public Advocate is a Citywide elected official. Others were concerned that the Mayor should not be able to designate a successor who is not an elected official.

Options Considered for Charter Change:

This section contains two sets of proposed Charter revisions regarding mayoral succession: one in which (A) the election system is shortened by requiring, in the usual case, a special election within 60 days of a vacancy, but in which the line of succession is unchanged from the current Charter provision; and one in which (B) a deputy mayor is substituted for the Public Advocate as the interim successor and the subsequent election system would provide, in the usual case, for a special election within 60 days of a vacancy. Each set of proposed changes is followed by a discussion of its provisions. The Commission has decided to put proposal “A” before the voters on the November 2002 ballot, and defer proposal “B” for consideration by another Commission.

A. The Line of Succession Remains Unchanged, but a Prompt Election is Required

Section one. Subdivision b of section 10 of the New York city charter, as amended by local law number 19 for the year 1993, is amended to read as follows:

b. In the case of a failure of a person elected as mayor to qualify, or a vacancy in the office caused by the mayor’s resignation, removal, death or permanent inability to discharge the powers and duties of the office of mayor, such powers and duties shall devolve upon the public advocate, the comptroller or a person selected pursuant to subdivision c of section twenty-eight, in that order of succession, until a new mayor shall

be elected as provided herein. [If the vacancy shall occur before the twentieth day of September in any year, such vacancy shall be filled in the general election held in that year, otherwise it shall be filled in the general election held in the following year. The term of the person then elected mayor shall begin on January first after such election and shall expire on the date when the term of the mayor originally elected would have expired.] Upon the commencement of the term of the [thus] person first elected mayor pursuant to the provisions of subdivision c of this section, the [public advocate or the comptroller] person then acting as mayor pursuant to the provisions of this subdivision, if an elected official, shall complete the term of the office to which such person was elected if any remains.

§ 2. Subdivision c of section 10 of the New York city charter is re-lettered subdivision d, and a new subdivision c is added to read as follows:

c. 1. Within three days of the occurrence of a vacancy in the office of the mayor, the person acting as mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the city.

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, as provided in section 6-116 of the election law. 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 of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of the term and on or before the last day 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, as provided in section 6-116 of the election law, 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, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day 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, as provided in section 6-116 of the election law, but not less than ninety days before the date of the 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.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: a special election to fill the vacancy shall be held on the first Tuesday at least sixty days after the occurrence of the vacancy, provided that the person acting as mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day not more than ten days after such Tuesday and not less than forty days after such proclamation if the person acting as mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before September twentieth in any year and the first Tuesday at least sixty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election or between a primary and a general election, the vacancy shall be filled at such general election; and

(b) if the vacancy occurs before September twentieth in any year and the first Tuesday at least sixty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after September twentieth in any year and the first Tuesday at least sixty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. 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.

8. A person elected to fill a vacancy in the office of the mayor at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the office of the mayor at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the 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.

10. If at any election held pursuant to this subdivision for which nominations were made by independent nominating petitions, no candidate receives forty percent or more

of the vote, the two candidates receiving the most votes shall advance to a runoff election which shall be held on the second Tuesday next succeeding the date on which such election was held.

§ 3. Subdivision e of section 24 of the New York city charter, as amended by local law number 19 for the year 1993, is amended as follows:

e. The public advocate [shall preside over the meetings of the council and] shall have the right to participate in the discussion of the council but shall not have a vote [except in case of a tie].

§ 4. Section 44 of the New York city charter, as amended by local law number 68 for the year 1993, is amended to read as follows:

§ 44. Speaker. The council shall elect from among its members a speaker and such other officers as it deems appropriate. The speaker shall preside over the meetings of the council. During any period when the public advocate is acting as mayor, or when a vacancy exists in the office of the public advocate, the speaker shall act as public advocate pending the filling of the vacancy pursuant to subdivision c of section twenty-four, and shall be a member of every board of which the public advocate is a member by virtue of his or her office.

§ 5. Section 1152 of the New York city charter is amended by adding a new subdivision i to read as follows:

i. 1. The amendments to the charter, amending sections ten, twenty-four, and forty-four, approved by the electors on November fifth, two thousand two, shall take effect immediately, provided that any vacancy that occurs in the office of the mayor on or after September twentieth, two thousand two, and before the effective date of the

amendments referenced in this subdivision, shall be governed by such amendments, and any such vacancy shall be deemed to have occurred on such effective date.

2. Notwithstanding the provisions of section 1153, in the event that the amendment set forth in paragraph 10 of the new subdivision c of section 10 is finally adjudicated to be invalid or otherwise cannot be implemented, all of the amendments referenced in this subdivision shall be without any further force and effect and, at such time, sections ten, twenty-four, and forty-four as they existed immediately prior to the effective date of such amendments shall be reinstated and shall be deemed to have always remained in full force and effect and unamended by such amendments.

Discussion

The proposed changes in section one, regarding Charter § 10(b), eliminate the current election system for filling a vacancy in the mayoralty with someone who will serve for the remainder of the term after the initial successor.

Section two of the proposal establishes a new election system, which would be contained in a new Charter § 10(c). The proposal takes the basic approach that currently exists for filling vacancies in other City offices, in which nonpartisan special elections are promptly held and general elections generally follow. The benefits of this approach are that it is convenient (because familiar) for the public and the Board of Elections, and it has been upheld in court. It should be noted, however, that this approach creates the possibility that a number of people could serve as Mayor within too short a period of time.²⁶

²⁶ Using the Charter's current provision for filling vacancies in the office of the Comptroller, Charter § 94(c), as an example for how a mayoral special election system might work, here is an example: Mayor Number One vacates the office on January 10 of the second year of his or her term. Mayor Number Two then immediately takes office as the Acting Mayor, pending a special election. Mayor Number Three wins

As provided in paragraph 1 of new subdivision (c), the person acting as mayor in the event of a vacancy (i.e., the interim successor) must proclaim the date for the election or elections required by the subdivision, provide notice of the proclamation to the City Clerk and the Board of Elections, and publish notice in the City Record. The City Clerk and the Board of Elections must then also publish or provide notice.

The next step is that an election would be held. In the usual case, it would be a special election held on the first Tuesday at least sixty days after the occurrence of the vacancy. See paragraph 6 of new subdivision (c). The date of the special election could be varied somewhat if the mayor determined that rescheduling was necessary to maximize voter participation, id., or if the special election would occur too soon after the general election, see id. at subparagraph (c). In addition, the vacancy could be filled at the general election (rather than a special election) if it occurred in the summer or early fall, to avoid an excess of elections. See id. at subparagraphs (a) and (b).

A special election would be required to occur approximately sixty days after the vacancy for several reasons. First, it should be noted that this sixty-day period is longer than the 45 days provided for in the Charter succession provisions for other elected offices. A longer period of time prior to the special election is appropriate for the choice of someone to be Mayor, considering that the City might be facing a crisis situation that would complicate its ability to hold an election in less than two months after the vacancy. However, a longer period of time was not chosen because of the need to

a special election, see Charter §94(c)(4), scheduled for late February, Charter § 94(c)(6), and takes office immediately upon qualification. Charter § 94(c)(8). He or she then serves until December 31 of that of that year. Id. Meanwhile, a general election is held to elect someone to fill the remainder of the term. Charter § 94(c)(2). The winner of that election, Mayor Number Four, takes office on January 1 of the next year. Charter § 94(c)(3).

have an elected person serving as mayor as soon after the vacancy as would likely be practicable.

Furthermore, the timing of the vacancy would affect whether the person elected would serve for the remainder of the unexpired term or only on an interim basis. If a vacancy occurs in the first three years of the mayoral term, and on or before the last date in that year when vacancies may be filled at a general election through party nomination of candidates at a primary election, pursuant to Election Law § 6-116, and if the vacancy occurs at least 90 days before that year's primary, then the election would be held to fill the vacancy on an interim basis, see paragraph 4, and would be followed by a general election in that year to fill the remainder of the term. See paragraph 2. In the same situation, but where the vacancy occurs less than 90 days before the primary but with enough time to conduct a partisan primary and general election, no interim election is held; if there is not enough time to use the general election, a special election is held. See paragraphs 2, 4, and 5. If the vacancy occurs after the last day in the third year of the term when vacancies may be filled at a general election through party nomination of candidates at a primary election, pursuant to Election Law § 6-116, but not less than 90 days before the date of the primary in the fourth year of the term, the election is to fill the vacancy for the remainder of the unexpired term. See paragraph 5.

Elections held under paragraph 4 for filling a mayoral vacancy on an interim basis, and under paragraph 5 for filling the vacancy for the remainder of the term in basically the last year of a term, are nonpartisan elections. See paragraph 7. General elections to fill a vacancy for the remainder of a term that follow a special election are partisan elections. See paragraph 2. As with the existing Charter provisions for vacancies in other elected offices, the paragraph 4 and paragraph 5 elections are

nonpartisan elections (through the independent nominating petition process) in order to allow ballot access to a broad range of candidates where use of a primary is not possible. See Election Law § 6-116. This is the rationale that was used by the 1988 Charter Revision Commission when it instituted nonpartisan elections for vacancies in the other City offices.

The provisions set forth exactly when a person elected under this system takes office and until when he or she serves. A person elected under paragraph 4 to fill a vacancy on an interim basis takes office immediately upon qualification and serves until December 31 of the year when the vacancy is filled for the remainder of the term at a general election under paragraph 2. See paragraph 8. The person elected at that general election then takes office on January 1 of the next year (i.e., the next day), and serves until the term expires. See paragraph 3. Similarly, a person elected under paragraph 5 to fill the remainder of the unexpired term takes office immediately upon qualification and serves until the term expires. See paragraph 8. In addition, if no election has been held pursuant to paragraph 4 to fill the vacancy on an interim basis (if, for example, the timing requirements of paragraph 4 are not met), the person elected at a general election to fill the remainder of the unexpired term takes office immediately upon qualification and serves until the term expires. See paragraph 3. Finally, if the vacancy occurs less than 90 days before the date of the primary election in the last year of the term, the person elected at the general election for the next term shall take office immediately upon qualification (as opposed to the next January 1), and fill the vacancy for the remainder of the unexpired term (and then begin his or her own term). See paragraph 9.

Under paragraph 10 of new subdivision (c) of Charter § 10, when a nonpartisan election is held for succession (i.e., under paragraphs 4 or 5), and no candidate receives 40 percent or more of the vote, the two candidates receiving the most votes advance to a runoff election held approximately two weeks later. Such a runoff election may be appropriate since special elections tend to produce a crowded field. Considering that the winner of this election will be mayor, he or she should be required to demonstrate a substantial level of support from the electorate. Moreover, such a runoff provision would be analogous to the Election Law, which requires runoff elections for primary elections prior to general elections, for the offices of the Mayor, Comptroller and Public Advocate, in the event no candidate receives forty percent of the vote. Election Law § 6-162.

Under sections three and four of the proposal, regarding Charter §§ 24(e) and 44, the power to preside over the meetings of the Council is moved to the Speaker from the Public Advocate. As explained above, any change to the Charter's mayoral succession provision implicates General City Law § 2-a(1). Under this provision, where a city's mayor and the presiding officer of the local legislative body are elected at the same time for the same term by the voters of the entire city, the presiding officer of the legislative body, after a vacancy occurs in the mayoralty, becomes the mayor for the remainder of the unexpired term. Currently, the Public Advocate "presides over" the Council, Charter § 24(e), and is elected at the same time as the Mayor, for the same term as the Mayor, by the voters of the entire City. Thus, the terms of Section 2-a(1) would seem to apply. However, the City's current mayoral succession provision, Charter § 10(b), is "grandfathered" as an exception to Section 2-a(1) by General City Law § 2-a(3)(b).

Because this exemption from application of the provisions of Section 2-a(1) arguably would not continue, however, after modification of any of the current mayoral succession provisions, the law requires that the Public Advocate's ceremonial right to "preside" over the Council be moved to another official, so that the terms of Section 2-a(1) would not apply in the first place.²⁷ Note that the Public Advocate's authority to introduce legislation in the Council would not be changed, nor would the Public Advocate's other powers be affected in any way.

The Speaker of the Council was selected to be the presiding officer in this proposal for two reasons: (1) The Speaker is the logical choice given his or her prominent operational role in the Council; and (2) The Speaker is not a Citywide elected official, unlike the Public Advocate, and thus he or she would not, in any event, qualify to succeed to the mayoralty under GCL § 2-a(1).

Finally, section five of the proposal, regarding Charter § 1152, provides an effective date for the amendments.

B. Deferred Option: Deputy Mayor as Interim Successor and a Prompt Election is Required

Section one. Subdivision b of section 10 of the New York city charter, as amended by local law number 19 for the year 1993, is amended to read as follows:

b. In the case of [a failure of a person elected as mayor to qualify, or] a vacancy in the office of mayor caused by the mayor's resignation, removal, death or permanent inability to discharge the powers and duties of the office of mayor, such powers and

²⁷ Under Charter § 24(e), a major power of the Public Advocate that relates to the power to preside over the Council is the ability to break a tie vote. However, under Municipal Home Rule Law § 20(1), passage of a local law requires a majority affirmative vote of the total voting power of the legislative body. See also Charter § 34 (passage of local law or resolution requires majority affirmative vote of all the council members). Thus, 26 affirmative votes are needed in the Council to pass any local law. In light of this fact, a meaningful tie vote is extremely unlikely.

duties shall devolve upon [the public advocate,] a deputy mayor designated by the mayor before the commencement of such vacancy, the comptroller or a person selected pursuant to subdivision c of section twenty-eight, in that order of succession, until a new mayor shall be elected as provided herein. Designation of a deputy mayor pursuant to this subdivision shall be by executive order filed with the city clerk. In the case of a vacancy caused by a failure of a person elected as mayor to qualify, the powers and duties of the mayor shall devolve upon the comptroller, or a person selected pursuant to subdivision c of section twenty-eight, in that order of succession, until a new mayor shall be elected as provided herein. [If the vacancy shall occur before the twentieth day of September in any year, such vacancy shall be filled in the general election held in that year, otherwise it shall be filled in the general election held in the following year. The term of the person then elected mayor shall begin on January first after such election and shall expire on the date when the term of the mayor originally elected would have expired.] Upon the commencement of the term of the [thus] person first elected mayor pursuant to the provisions of subdivision c of this section, the [public advocate or the comptroller] person then acting as mayor pursuant to the provisions of this subdivision, if an elected official, shall complete the term of the office to which such person was elected if any remains.

§ 2. Subdivision c of section 10 of the New York city charter is re-lettered subdivision d, and a new subdivision c is added to read as follows:

c. 1. Within three days of the occurrence of a vacancy in the office of the mayor, the person acting as mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of

elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the city.

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, as provided in section 6-116 of the election law. 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 of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the

remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of the term and on or before the last day 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, as provided in section 6-116 of the election law, 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, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day 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, as provided in section 6-116 of the election law, but not less than ninety days before the date of the 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.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: a special election to fill the vacancy shall be held on the first Tuesday at least sixty days after the occurrence of the vacancy, provided that the person acting as mayor, in the proclamation required by paragraph one of this

subdivision, may schedule such election for another day not more than ten days after such Tuesday and not less than forty days after such proclamation if the person acting as mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before September twentieth in any year and the first Tuesday at least sixty days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election or between a primary and a general election, the vacancy shall be filled at such general election; and

(b) if the vacancy occurs before September twentieth in any year and the first Tuesday at least sixty days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after September twentieth in any year and the first Tuesday at least sixty days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. 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.

8. A person elected to fill a vacancy in the office of the mayor at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the office of the mayor at an election

held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the 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.

10. If at any election held pursuant to this subdivision for which nominations were made by independent nominating petitions, no candidate receives forty percent or more of the vote, the two candidates receiving the most votes shall advance to a runoff election which shall be held on the second Tuesday next succeeding the date on which such election was held.

11. If the person acting as mayor pursuant to the provisions of subdivision b of this section is a deputy mayor designated by the mayor, such deputy mayor shall not be qualified to be a candidate in any election held pursuant to paragraphs 2, 4, or 5 of this subdivision.

§ 3. Subdivision e of section 24 of the New York city charter, as amended by local law number 19 for the year 1993, is amended as follows:

e. The public advocate [shall preside over the meetings of the council and] shall have the right to participate in the discussion of the council but shall not have a vote [except in case of a tie].

§ 4. Section 44 of the New York city charter, as amended by local law number 68 for the year 1993, is amended to read as follows:

§ 44. Speaker. The council shall elect from among its members a speaker and such other officers as it deems appropriate. The speaker shall preside over the meetings of the council. During any period [when the public advocate is acting as mayor, or] when a vacancy exists in the office of the public advocate, the speaker shall act as public advocate pending the filling of the vacancy pursuant to subdivision c of section twenty-four, and shall be a member of every board of which the public advocate is a member by virtue of his or her office.

§ 5. Section 1152 of the New York city charter is amended by adding a new subdivision i to read as follows:

i. 1. The amendments to the charter, amending sections ten, twenty-four, and forty-four, approved by the electors on November fifth, two thousand two, shall take effect immediately, provided that any vacancy that occurs in the office of the mayor on or after September twentieth, two thousand two, and before the effective date of the amendments referenced in this subdivision, shall be governed by such amendments, and any such vacancy shall be deemed to have occurred on such effective date.

2. Notwithstanding the provisions of section 1153, in the event that the amendment set forth in paragraph 10 of the new subdivision c of section 10 is finally adjudicated to be invalid or otherwise cannot be implemented, all of the amendments referenced in this subdivision shall be without any further force and effect and, at such time, sections ten, twenty-four, and forty-four as they existed immediately prior to the effective date of such amendments shall be reinstated and shall be deemed to have always remained in full force and effect and unamended by such amendments.

Discussion of Deferred Proposal

In this approach, the changes in section one of the proposed changes, regarding Charter § 10(b), not only eliminate the current election system for mayoral succession after the initial successor, but also change the initial successor from the Public Advocate to a deputy mayor. The rest of the line of succession (Comptroller, person chosen by the Council) is unchanged. The line of succession is broken into two parts—one in the event of a vacancy and one in the event that the person elected as mayor fails to qualify—because it would not make sense to have a deputy mayor succeed to the mayoralty when the mayor-elect did not qualify for office in the first place.

The remainder of the proposed changes in this version are the same as in the first one, except for the addition of a new Charter § 10(c)(11). Under paragraph 11, if the deputy mayor has initially succeeded to be the interim mayor, prior to any election, he or she may not run in any of the elections under Charter § 10(c) to act as mayor on an interim basis or to fill out the remainder of the term. Such a provision prevents the deputy mayor from getting an unfair advantage in such an election, so that elected officials and others who may wage a campaign to fill the vacancy will have a level playing field.

PART IV(B)

Nonpartisan Elections

This issue has been deferred by the Commission for consideration in another election cycle.

Issue: Should elections for City elective offices be conducted on a nonpartisan basis?

Relevant Charter Provisions: While the Charter provides for nonpartisan special elections to fill vacancies in the offices of Public Advocate, Council member, Borough President, and Comptroller, Charter §§ 24(c), 25(b), 81(e), 94(c), the Charter does not provide for nonpartisan elections to fill those offices, or the office of the Mayor, during the regular Citywide election cycle.

Discussion:

1. Introduction

The electoral process for City elective offices, like those for federal and state offices, is a partisan one; 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 primaries and ballots do not denote a candidate's party affiliation. Instead, all candidates for a particular office run together in a nonpartisan primary. Typically, the two candidates who receive the most votes in the primary advance to the general election.

In considering whether to propose a system of nonpartisan elections, the Commission has looked at the following issues:

- **Issue:** Should elections for City elective office be conducted in a nonpartisan manner?
- **Issue:** If nonpartisan elections are appropriate for any City elective office, should they be held for all City elective offices, or only for some?
- **Issue:** If the Commission proposes nonpartisan elections, what should the effective date of the change be?

Arguments regarding nonpartisan elections made prior to this Commission's study

As outlined by the Commission's staff in its August 6, 2002, report to the Commission, advocates of nonpartisan elections had identified several potential benefits. First, candidates would be freer to offer voters competing ideologies and visions. Candidates would no longer be forced to tailor their positions to appeal mainly to the insiders within their own parties who tend to vote in primaries. Instead, candidates would be challenged, from the outset of the campaign, to articulate a vision that resonates with a broad spectrum of voters. By having to appeal to the electorate as a whole, candidates would be forced to offer ideas on actual issues and problems likely to arise during their terms in office, rather than focusing on the more esoteric and ideological concerns of the vocal few who tend to vote in partisan primaries.

Furthermore, adherents argued that a nonpartisan system would create the opportunity for people from outside of a party's machinery to compete on a more equal footing with party insiders and loyalists. Many candidates' fates, especially in partisan primaries, hinge on whether they can successfully convince party insiders to support them. Newcomers, and people with careers outside of politics, often find it difficult to run for elective office because of their lack of access to party organizations. Adherents argued that by controlling access to the ballot with an iron fist, the party bosses perform a far larger role in selecting the City's leaders than the voters themselves, making the

current system inaccessible to all but the chosen few. With real world example after example of backroom dealing, corruption and patronage, supporters argued that nonpartisan elections are the only way to remove the system from the control of the party bosses, and produce elected officials chosen by the people for their ability rather than candidates selected by the party for their utility.

“Supporters of nonpartisan elections envision direct representation of citizens rather than indirect representation through party intermediaries. They seek to make local government more businesslike and less political. The ultimate goal is to create a more responsive and effective local government system.”²⁸ When coupled with the City’s voluntary campaign finance program, which provides public matching dollars to participating candidates, a nonpartisan system could allow far more people to compete and win. Moreover, nonpartisan elections, when combined the campaign finance program, could allow people with more limited means to compete, whereas the current system often is hinged on party donations and fundraising. See Title 3, Chapter 7 of the Administrative Code of the City of New York. In particular, see Administrative Code § 3-705, the public financing section of the New York City Campaign Finance Act, which details the circumstances under which candidate may receive matching funds, including “four-to-one” matching funds.²⁹

Opponents of nonpartisan elections, on the other hand, have argued that partisan elections are necessary to a democratic system, because they force candidates to make commitments that result in political accountability, and they allow

²⁸ “Local Nonpartisan Elections, Political Parties and the First Amendment” 87 Columbia Law Review 1677, 1679 (1987).Id.

²⁹ For a general discussion of spending by political parties in campaigns, see “Party Favors: A Report of the New York City Campaign Finance Board” (Jan. 1995).

voters to affiliate themselves with a cause. Opponents further questioned the impact of nonpartisan elections on voter turnout. In addition, opponents argued that, in the absence of party identification, nonpartisan elections may lead to ethnic block voting, because voters may have nothing but ethnic identity on which to base their vote. This concern is highlighted in races for less high profile offices, where voters may not have been sufficiently exposed to the candidates' messages. Finally, opponents argued that the current system should not be changed at this time, when minorities are becoming a force within the parties, because the change might splinter minority voting power.

Following the staff's August 6, 2002, presentation, the Commission received extensive commentary on whether the City should change to a system of nonpartisan elections. As described below, the Commission received comments from elected officials and members of the public. In addition, the Commission received the benefit of testimony from a number of experts.

2. Background and History

The use of nonpartisan elections has been considered in recent years by the 1998, 1999 and 2001 Charter Revision Commissions, which both studied the issue itself 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 Appendix E. The efforts of the 1998 Commission culminated in a comprehensive staff report.

The report noted, among other things, that 60 of the 75 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. 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.³⁰ 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."³¹

The 1998 Commission's staff report explored the potential benefits of nonpartisan elections. Statistical data revealed that nonpartisan elections foster diversity, while partisan elections do the opposite. For example, the report examined data from the 48 largest American cities. In the 11 cities using partisan elections, only two had minority mayors. In comparison, of the 37 cities that used nonpartisan elections, 15 had minority mayors.

The 1998 staff 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 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, Chair of the Department of History at American University and an expert in voting rights, to conduct

³⁰ 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)). However, as discussed above, see footnote 17, the succession provision for Public Advocate has never been precleared.

³¹ The New York Times, July 11, 1990 at B2.

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. As summarized in Appendix E, Dr. Lichtman testified that his statistical analysis showed that party identification is not necessary for minority candidates to be elected.

As to the mechanics of nonpartisan elections, the 1998 report explored various possibilities for the ballot layout, as well as solutions to the problem of conducting both partisan and nonpartisan elections on the City's older voting machines.

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.³² He further stated that removing party affiliation would highlight race as a factor in elections.³³ Dr. Bailey further explained that by removing party, "you in a

³² Transcript of 1999 Charter Revision Commission Expert Forum, August 6, 1999 ("1999 Expert Forum Transcript") at p. 114.

³³ Id.

sense are eliminating one filter or one other umbrella identity that could mitigate some racial voting patterns in this city.”³⁴

Dr. Lichtman performed extensive statistical analysis of citywide elections within the City from 1989 through 1997.³⁵ He emphasized the uniqueness of the City’s voting patterns, and concluded that, in the primaries, blacks and Hispanics do not vote cohesively to form a single minority block.³⁶

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... .”³⁷

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.³⁸ He noted that it could be problematic for a partisan primary election to be held

³⁴ *Id.*

³⁵ *Id.* at pp. 121-122.

³⁶ *Id.* at pp. 118-143.

³⁷ *Id.* at p. 103.

³⁸ *Id.* at pp. 92-94.

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.

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

3. 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").³⁹ In Bareham v. City of Rochester, 246 N.Y.

³⁹ 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

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.⁴⁰

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 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.”

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.

⁴⁰ 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).

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.

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).

Description of Nonpartisan Elections in New York State

Nonpartisan election systems have in 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.⁴¹

As discussed above, 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.⁴²

The City of Sherrill's nonpartisan primary system was instituted by the State Legislature in 1916.⁴³ In creating this scheme, the Legislature effectively superseded various provisions of the then-applicable Election Law as it applied to Sherrill.⁴⁴ 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

⁴¹ Other cities in New York that have had nonpartisan primary elections at some point in their history include Buffalo, Saratoga Springs, Long Beach, Jamestown, Mechanicville, Auburn, New Rochelle, Rome, and Batavia.

⁴² 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).

⁴³ Laws of 1916, Chapter 172.

⁴⁴ In 1985, the Election Law was reenacted into its current form.

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.⁴⁵

The City of Watertown's nonpartisan primary system was instituted by the State Legislature in 1920.⁴⁶ Like for Sherrill, the Legislature effectively superseded various provisions of the Election Law as it applied to Watertown.⁴⁷

The Legislature amended Watertown's nonpartisan election system in 1993,⁴⁸ 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.⁴⁹ As amended in 1993, Watertown's legislation effectively superseded various provisions of the modern Election Law.⁵⁰

⁴⁵ 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).

⁴⁶ Laws of 1920, Chapter 276.

⁴⁷ 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).

⁴⁸ Laws of 1993, Chapter 247.

⁴⁹ 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.

⁵⁰ 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); 2120 (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).

Federal Voting Rights Act

A change to nonpartisan elections could arguably be considered a change in a “standard, practice, or procedure with respect to voting.” Such a change could require the City to seek preclearance from the Justice Department pursuant to the Voting Rights Act.

Under the Voting Rights Act, a State or political subdivision may not impose a “standard, practice, or procedure . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color” 42 U.S.C. § 1973(a). In establishing whether such an abridgement has occurred, one must determine whether, “under the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected] class [i.e., race or color] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 42 U.S.C. § 1973(b).

Whenever the City seeks, in general, to change a “standard, practice, or procedure with respect to voting,” it seeks preclearance from the Justice Department as to whether the change will have the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. § 1973c. The change may not take effect until the City receives 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.

As to preclearance of a change such as one to nonpartisan elections, which would require approval by referendum, see Municipal Home Rule Law §23(d), Charter §38(3), 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 mayoral succession provisions prior to approval by the voters at referendum.

As stated above, Dr. Lichtman, the expert on voting rights for the 1998 and 1999 Commissions, concluded that a change to nonpartisan elections for Citywide offices would not violate the Voting Rights Act. Dr. Lichtman’s 1998 statistical analysis showed that party identification is not necessary for minority candidates to be elected. This Commission retained Dr. Lichtman to conduct a new Voting Rights Act analysis. As described below, Dr. Lichtman has again concluded that a change to nonpartisan elections for Citywide offices would not violate the Voting Rights Act. Dr. Susan Welch, the Dean of the College of Liberal Arts and a professor of political science at

Pennsylvania State University, was also retained by the Commission, for the purpose of examining Dr. Lichtman's analysis. She agreed with this conclusion.⁵¹ Dr. Lichtman has also concluded that a change to nonpartisan elections for Borough Presidents and City Council members would not violate the Voting Rights Act.

4. Policy Considerations

Use throughout the United States

Nonpartisan elections are used by the overwhelming majority of municipalities across the nation, including Los Angeles, Chicago, Houston, San Diego, Detroit, Dallas, Phoenix, San Antonio, San Francisco, Boston, and Seattle. Attached in Appendix E is a chart that identifying the type of election system used in the 50 largest cities in the United States, their mayors and the mayors' ethnicity over the last decade, and whether those cities use runoff elections. According to the U.S. Conference of Mayors, as of the 2000 census, 41 of the nation's 50 largest cities elected their mayors using nonpartisan elections. Of those 41 cities, 34 percent elected black or Hispanic mayors. Of the nine cities that used partisan elections, only two cities (22 percent) elected a black or Hispanic mayor. Attached in Appendix E is a chart of 2000 Census data for the 50 largest cities. A chart summarizing these race statistics is attached in Appendix E.

According to data from the National Conference of Black Mayors, based on U.S. Census Bureau data, 41 cities in the United States with populations of 50,000 or more have black mayors. Of the mayors in these 41 cities, 30 were elected through nonpartisan elections, while 11 were elected with partisan elections, a difference of almost three to one (73% in cities with nonpartisan elections compared to 27% in cities

⁵¹ As described below, Dr. Welch stated other concerns that political scientists would have about a change to nonpartisan elections.

with partisan elections). A chart listing details of these 41 cities is attached in Appendix E.

Arguments in favor of nonpartisan elections

The Commission received extensive comments from elected officials and the public both for and against nonpartisan elections. These comments are summarized below and in detail in Appendix A (summary of comments from elected officials). Appendix B (the summary of public proposals) also has, among other things, a summary of comments related to nonpartisan elections. Elected officials who supported nonpartisan elections cited their own ability to be elected without party support as evidence that partisan elections were unnecessary. Some officials identified the unwillingness of certain minorities to belong to political parties as proof that voter participation would increase with nonpartisan elections. Certain officials expressed the opinion that nonpartisan elections would elevate the quality of the candidates and electoral debate, and that nonpartisan elections would increase access to the ballot. Another sentiment in favor of nonpartisan elections was that persons elected through the nonpartisan process would feel accountable to their constituencies, as opposed to partisan elected officials who are accountable to the party that helped them get elected. The concern was also expressed that incumbent elected officials oppose nonpartisan elections because they want to maintain the status quo.

Members of the public supporting nonpartisan elections expressed the belief that such elections would limit the power of political parties to control who actually is able to become a candidate for office. Some speakers recounted their own attempts to run for office, emphasizing that they spent an inordinate amount of time gathering signatures

and in court, defending themselves against challenges brought by party lawyers in efforts to keep them off the ballot.

Some speakers indicated that a nonpartisan system would better represent the true preferences of voters because, under the current primary system, candidates with the broadest appeal may not have the opportunity to actually run for office. According to some speakers, this problem was particularly acute in New York City, where there is one dominant party and the outcome of the elections is often effectively decided in the primary. It was noted that the current party-driven process compels unions, PAC's, and other organizations to back the party hierarchy's candidate. Failure to do so risks incurring the wrath of the hierarchy, which can retaliate by thwarting or delaying the legislative and funding priorities of these organization's constituencies. In a similar vein, speakers suggested that nonpartisan elections, by diminishing the power of the party bosses, would increase the diversity of candidates and allow more minority participation. Some speakers cited the fact that large cities with nonpartisan elections have been more successful in electing minority mayors than cities with partisan mayoral elections.

Some speakers noted that a nonpartisan system would enable voters to focus on the ideas and qualifications of candidates, rather than solely on a party label. Speakers stated that they believed that, with a nonpartisan system, candidates would be more accountable to the public rather than to a party machine. The Commission also heard testimony that a nonpartisan system would improve the performance of government in that it would create a system that is more open and fair and less subject to corruption by political parties.

The comments received by this Commission built on prior testimony and analysis of nonpartisan elections. As outlined in the staff's August 6, 2002, report, supporters of nonpartisan elections have argued that such elections produce a system aimed at allowing citizens to seek elected office directly without first having to win approval from local party bosses. Nonpartisan elections have been seen as having the benefit of forcing candidates to address issues facing the population as a whole, rather than the narrow group of insiders who tend to vote in partisan primaries, and offering an opportunity for candidates whose positions may not fit with the party machines. Potential candidates who might not otherwise run for office would have the opportunity to do so without modifying their beliefs.⁵²

Instituting a system of nonpartisan elections could mean an end to a system where only candidates approved by the party system and with views that do not offend the party leaders receive the financial support often necessary to mount an effective campaign. When coupled with the City's voluntary campaign finance program, nonpartisan elections could widen the electoral field to a broader group of candidates, and offer voters more choices in their leaders and policies. This point was discussed by NYU researcher Francis Barry at the August 20, 2002 expert briefing on Staten Island.

See below.

Nonpartisan elections also could encourage diversity of candidates. The analysis performed by the 1998 Commission, and the statistics discussed above,

⁵² See generally "Local Nonpartisan Elections, Political Parties and the First Amendment," cited in footnote 1, at p. 1679 ("[N]onpartisan systems give qualified candidates of the minority party or independents a better chance to succeed. These systems...permit voters to analyze local issues independently on their merits and to focus on the intelligence and experience of the candidates themselves rather than on their political affiliations.") (citations omitted)

indicate that minority group candidates in cities with nonpartisan elections have outperformed minority group candidates in cities with partisan elections.

Nonpartisan elections may also increase minority voter turnout. The 2001 Commission heard testimony regarding the need for nonpartisan elections, particularly for City Council positions, in order to increase minority voter participation, because such elections would help counter the perception that minority needs were not met by nominees selected through a partisan process.⁵³

Supporters of nonpartisan elections also argue that since City government is mainly operational, as opposed to ideological, the value of the party banner and the ideals it represents is minimal at best.

Arguments against nonpartisan elections

The Commission received testimony from elected officials and the public against nonpartisan elections. Elected officials opposing nonpartisan elections expressed the concern that voters would be less aware of candidates' positions, since party affiliation sends a message about the issues to the voters. They were also concerned that

⁵³ According to Michelle McCleary, a candidate for the City Council in the 9th District, "In a one party borough like Manhattan, the winner of the Democratic primary is the winner of the elections. So our elected officials are chosen by a very small percentage of eligible voters. ...This leads to elected officials who are more responsive to the Democratic Party than to the voters. It also tends to discourage many talented members of [the African-American] community from running for public office. And it turns our young people away from the electoral process altogether. The voter turnout among African-American youth ranges between the single digits and the teens." Transcript, Aug. 15, 2001, at pp. 9-11.

Similarly, Alex Cox, a candidate for the City Council in the 7th District, stated, "In the Harlem community where I am running, for example, as in many black communities across the country, young black voters are increasingly choosing to not identify themselves with a party label. A recent poll conducted by the Joint Center for Political and Economic studies found that 42.6 % of African-Americans between the ages of 18-25 view themselves as politically independent. Young black voters' interests are not represented in a partisan election where a local Democratic party machine dominates. This is particularly troubling in a district like mine because it means that more and more potential voters will become disillusioned with the voting process and pull out altogether. In 1999, only 20% of eligible voters cast their ballots for a City Council candidate." Transcript, Aug. 15, 2001, at pp. 11-12.

nonpartisan elections would favor incumbents and the wealthy because lower income candidates could not raise enough money to run without the support of established political parties. Minority communities and candidates could thus be hurt because of the loss of funding and, in the opinion of some, because minority candidates who had started to establish themselves through the party system would lose the advantages they had earned. Certain officials believed that the election of Republicans in the most recent mayoral elections indicated that the process was working well. Some believed in general that the current system was functioning properly and that there was therefore no benefit to altering it. Concern was also expressed that instituting nonpartisan elections might violate the federal Voting Rights Act. Conflicting studies were cited concerning whether nonpartisan elections would increase voter turnout or minority participation. Concern was expressed that new voting machines would be required to conduct partisan and nonpartisan elections at the same time.

Members of the public opposing nonpartisan elections focused not only on the substance of the issue but also on the process of study undertaken by this Commission. The prime criticism centered on the time frame for review, as well as on the fact that the hearings were being held over the summer when some people would be on vacation. Many speakers commented that the Commission should not propose a change to nonpartisan elections this year, and should study the matter further. Concerns were raised that there would be an insufficient amount of time for voters to be educated on this topic.

On the merits, several speakers expressed the belief that a change to nonpartisan elections would result in voter confusion. Speakers commented that, because candidates would not be identified as being members of a particular political

party, voters would not know what a candidate stood for. Another concern raised was the impact of nonpartisan elections on minority candidates. Speakers were concerned that nonpartisan elections would benefit wealthy candidates who could afford to make themselves known and gain media exposure. Some speakers also feared that nonpartisan elections would result in lower voter turnout because, without party affiliation, voters would be less aware of particular candidates (except those with wealth and thus exposure to the media), and would therefore be less interested in the elections.

Members of the public commented that we have now reached a point where minorities have had success within the Democratic Party, and that a change to nonpartisan elections would serve to undo this success. Others questioned whether a change to nonpartisan elections would violate the Voting Rights Act. New York's long history of partisan elections and of political parties was also raised as a reason to not change to nonpartisan elections. Finally, the concern was expressed that the City's voting machines would not be capable of handling nonpartisan elections.

The comments received by this Commission built on prior testimony and analysis of nonpartisan elections. As outlined in the staff's August 6, 2002, report, opponents of nonpartisan elections have argued that such elections frustrate democracy and lead to political gridlock.⁵⁴ "Part[y politics] force candidates to make choices, take stands, and make commitments to groups of people with long collective memories and high collective standards."⁵⁵ As one writer notes:

⁵⁴ See July 29, 1998 Forum on Nonpartisan Citywide Elections, at p. 71.

⁵⁵ Susan Reefer, "No to Nonpartisan Elections, available at www.gothamgazette.com/elections/jun.02.shtml.

What do politicians do? They get up meetings, circulate handbills and pamphlets, blaze away in the newspapers, send ships about the streets on wheels with flags and sailors, and send conveyances all over town, with handbills, to bring people to the polls – all to gain attention to their cause and elect their candidate. All these are these are their measures,” and for their end they are wisely calculated. The object is to get up an excitement, and bring the people out.⁵⁶

It is argued that the party system gives voters a chance to affiliate themselves with a cause; and that cause, is bigger than any candidate could be.”⁵⁷

Opponents have also argued that nonpartisan elections discourage informed citizen participation. They argue that when party labels for the City’s highest offices are removed, it disadvantages vast numbers of voters and deprives them of the historical perspective needed to project the nature of an administration.⁵⁸ This could harm those with low income and low education who have strong party identification. Loss of party identity is believed to make it more difficult for the voters to keep track of candidates.⁵⁹

According to opponents, a person in a partisan system who lacks personal wealth can rely on party or organizational support not only to start campaigning, but also to move up the political ladder. Nonpartisan elections would give advantages to persons with personal wealth or with close ties to persons and institutions with great wealth.⁶⁰

⁵⁶ See Jeff Pasley, Party Politics, Citizenship, and Collective Action in Nineteenth Century America: A Response to Stuart Blumin and Michael Schudson (“Party Politics”) available at www.mtsu.edu/~seig/pdf/pdf_response_pasley.pdf.

⁵⁷ See Reefer, “No to Nonpartisan Elections,” available at www.gothamgazette.com/elections/june.02.shtml.

⁵⁸ See July 29, 1998 Forum on Nonpartisan Citywide Elections, at p. 90.

⁵⁹ *Id.* at p. 70.

⁶⁰ *Id.* at p. 91.

Finally, opponents have argued that nonpartisan elections encourage extremism and discourage moderation.⁶¹ Opponents also argue that voter turnout may decline with nonpartisan elections because a lack of party identification could make it more difficult for voters to keep track of candidates.⁶²

Expert testimony

As summarized in Appendix C, the Commission received extensive expert opinion on the issue of nonpartisan elections. Much of that opinion was from Dr. Lichtman, who was retained by the Commission to study whether a change to nonpartisan elections for City elective offices would violate the Voting Rights Act. His analysis for the Commission expanded upon the work that he performed for the 1999 Charter Revision Commission.

Based on his analysis of electoral results and of partisan and nonpartisan electoral systems in the nation's 100 largest cities, 82 percent of which have nonpartisan mayoral 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. Lichtman stated that these results hold up over time.

⁶¹ Id. at p. 92.

⁶² Id. at p. 72.

Dr. Lichtman's analysis indicated that voter turnout is not reduced after the institution of 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. Thus elections that produce greater turnout do not necessarily translate into more votes cast in lower municipal contests.

Dr. Lichtman also concluded that citywide elections and voting within the City shows that standard explanations for how partisan elections might help minority voters elect candidates of their choice do not apply to citywide elections in New York City for multiple reasons. For example, there is a big fall-off from the primary to the general election not for white Democrats but for minority voters whose candidate is defeated in the primary. Additionally, the phenomena of minorities being able to dominate Democratic primaries and of major differences between minority and white voting strengths in Democratic primaries and general elections do not apply in the City, perhaps because of the diversity of significant minority populations in New York City and 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 in New York City might enhance the prospects for minority candidates or voters to compete in elections for citywide offices because, under a nonpartisan system, two candidates from the field, rather than one candidate from each party—generally white candidates—advance to the general election.

Finally, Dr. Lichtman found 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 produce a retrogression of minority opportunities to participate fully in the political process and elect candidates of their choice.

Dr. Susan Welch, who was also retained by the Commission to help its study of nonpartisan elections, submitted written testimony dated August 22, 2002. Dr. Welch was retained to review Dr. Lichtman's current analysis. She analyzed his conclusions regarding the effect of a change to nonpartisan mayoral elections. Dr. Welch agreed with Dr. Lichtman's conclusion that "nonpartisanship does not violate the Voting Rights Act," and stated that "[i]t would be hard to argue a race bias in its voter impact." Dr. Welch further noted that Dr. Lichtman's conclusions agreed with previous findings "that neither type of election [partisan or nonpartisan] facilitates or hinders the election of African-American mayors (or Latino mayors either)."

Apart from Voting Rights Act considerations, however, Dr. Welch expressed that nonpartisan elections could have adverse impacts. According to Dr. Welch, political science research has shown that political parties play an important role in "linking people to the political system," by increasing participation, providing information to voters, and promoting accountability.

Francis Barry, from the New York University Taub Urban Research Center, described the development of the debate over nonpartisan elections, concluding that the current literature has undermined old concerns that nonpartisan elections advantage Republicans, depress turnout, and favor incumbents. He stated that New York may be uniquely well-suited to hold nonpartisan elections because of three recent reforms: the campaign finance system, which provides public money to candidates, thus reducing reliance on party funds and better equalizing funding available to each candidate; the Voter Guide, which is mailed to every household with a registered voter and provides

information in a low-cost manner to enable voters to distinguish between candidates without the help of party labels; and term limits, which weaken the power of incumbency. Barry suggested that the City's campaign finance system strengthens challengers and its term limits law weakens the power of incumbency, and that together they would significantly diminish any advantage that might accrues to incumbents under nonpartisan elections.

Although Richard Flanagan, Professor of Political Science at the College of Staten Island, agreed with Mr. Barry that studies about the impact of nonpartisan elections were inconclusive, he did believe that such elections could increase competitiveness in New York City, because of the high ratio of Democrats to Republicans in the City.

Clayton Gillette, a Professor of Law at New York University Law School, approved of party affiliation as a proxy for voter knowledge of individual positions, but he warned that political parties may not focus on the concerns of the City electorate in selecting candidates for local office. Nonpartisan elections could thus have the benefit of advancing candidates who were well qualified for municipal office although not necessarily in line with national party positions, as well as breaking party dominance in a particular locality. He also opined that introducing nonpartisan elections would not eliminate the role of political parties, which would continue to support particular candidates.

Elected officials of three jurisdictions that hold nonpartisan elections also testified about their experience. They were Bill McKoy, President of the Paterson, New Jersey City Council; Gus Garcia, Mayor of Austin, Texas; and Glenda Hood, the first woman to be elected Mayor of Orlando, Florida. In the last five years, Paterson elected its first

African-American and Hispanic mayors. Mr. McKoy believed that nonpartisan elections and a relatively low signature requirement render access to the ballot easier. A range of nonprofit organizations have sponsored public forums for candidates, broadening involvement in the political process, while political parties have remained somewhat involved in funding. In Austin, nonpartisan elections have successfully contributed to the election of minority candidates to various positions, although voter turnout is greater when there is a statewide or national election as well, and can be depressed when nonpartisan elections take place on different dates from the party elections. Nonpartisan elections have resulted in a large number of candidates getting on the ballot, leading to the election of many minority candidates. Mayor Hood testified that nonpartisan elections allow public officials to make good public policy and remain focused on the issues without disruptive interference from political parties. She believed that nonpartisan elections also permit neighborhoods and businesses to be more involved in the political process and to develop valuable alliances with one another and with nonprofits. Minority candidates have achieved success throughout Florida, whose municipalities all have nonpartisan elections except for Jacksonville.

Ballot and voting machine issues

A. The 1998 Commission

The 1998 Commission identified a number of practical problems with conducting nonpartisan elections, particularly problems relating to the ballots and voting machines. The 1999 and 2001 Commissions identified the same issues.

As to the form of the ballot, the 1998 Commission noted that, pursuant to Election Law § 7-104(5), the names of candidates of a particular party must appear on

voting machines in the same column or row containing generally the names of candidates of such party,⁶³ and that, generally, the ballots as they appear on the voting machines already face space limitations. The Commission proposed several options as to how to structure ballots so that they could accommodate nonpartisan and partisan elections, and still meet these constraints. These options included the use of a bifurcated ballot, double column bifurcation, or use of the final column. Attached in Appendix E is the 1998 Commission's description of these options.

Regarding the voting machines themselves, the 1998 Commission noted that, as a practical matter, it is more difficult to conduct a nonpartisan primary than it is to conduct the general election following such a primary, because of the presence of a "lockout" mechanism on each voting machine. Where nonpartisan and partisan primaries are being held simultaneously, all registered voters must be allowed to vote in the nonpartisan elections, while only voters registered for a particular party may be allowed to vote in that party's primaries. That Commission noted that the City's voting machines have a lockout mechanism that prevents a voter who is not the member of a particular party from voting for candidates of that party; when a voter enters the booth, the inspector flips a switch that allows the voter to select candidates from his or her party.

While the 1998 Commission recognized that the City did not have a sufficient number of voting machines to devote some to nonpartisan primaries and others to partisan primaries, it believed that there were other viable solutions using the existing machines. For example, the Commission identified setting a separate nonpartisan

⁶³ Election Law § 1-104(3) defines a "party" as a "any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor."

primary date, using paper ballots, and using electronic voting machines as potential solutions to the lockout problem.

It is also true that elections for City officials do not occur in the same year as State or federal elections, a fact that would tend to minimize the voting machine problem. For example, the 2003 elections will primarily be for elections to the City Council; there are no State or federal elections scheduled for next year.

B. Electronic voting machines

Federal legislation: Legislation is now pending in Congress to assist state and local governments nationwide in an effort to upgrade voting machines. The Senate bill, known as The Bipartisan Election Reform Bill (S. 565), will, among other things, provide \$3.5 billion through grants to states and localities to improve voting systems. The sponsors of the legislation in the Senate estimate that \$3.5 billion will enable every locality in the nation to upgrade every voting machine, replacing older machinery with state of the art technology. These grants would be an 80%-20% federal-state match. Regardless of whether a state or locality uses the grant, states would have an obligation under the bill to meet certain standards regarding the quality of their voting systems. For example, by 2006 states must have voting systems in place that allow voters to verify their votes and to correct them before the votes are cast. The voting system must also conform to the error standards issued by the Federal Election Commission.

The Senate bill mandates that, by 2004, states must be able to permit a voter who appears at the polls on election day to vote provisionally, even if there is no registration on file or it is alleged that the voter is ineligible.

This bill, and one passed by the House, are currently before a conference committee, and is expected to pass the full Congress in September. President Bush has already said he will sign the legislation.

New York State Task Force on Electronic Modernization: In February 2001, Governor Pataki signed an executive order creating the New York State Task Force on Election Modernization, a bipartisan panel charged with examining methods for conducting and administering elections and making recommendations designed to ensure the accuracy and fairness of elections held throughout the State.⁶⁴ The seven-member task force issued its final report to the Governor on June 18, 2002.⁶⁵ The report contains 64 recommendations and calls for dramatic reforms to modernize the State's election processes.

The report recommends that each local board of elections, in consultation with the State Board, develop a plan, due by June 30, 2003, to gradually transition to full accessible electronic voting equipment, with a goal of substantial implementation in time for the 2004 presidential election. According to the report, the plans should include strategies for maintaining existing equipment during the transition, comprehensive voter outreach, and education and training of election personnel. Over the next several years, modernizing the State's voting systems and election process is expected to require more than \$200 million in new resources and will require a federal, State and local partnership. Under the federal legislation currently pending before Congress, New York may be eligible for more than \$135 million over the next several years to replace its voting machines and modernize its elections process. The report recommends that

⁶⁴ www.state.ny.us/governor/electionmodernization.

⁶⁵ www.state.ny.us/governor/electionmodernization/PDFS/nystaskforce.pdf.

the State create an Election Modernization Capital Fund to leverage anticipated federal assistance.⁶⁶

The report also recommends amending State law to allow the use in New York State of voting technologies that do not use full-face ballots, that is, where a full ballot is displayed on a single surface.⁶⁷ New York State is one of only two states to require a full-face ballot.⁶⁸

C. Other Practical Considerations

The staff conveyed to the Commission its understanding that, if nonpartisan elections were adopted for the City, resources to procure new voting machines would be made available for implementing such a change. In addition, the staff compiled statistics relating to various voting machine issues.

Draft Charter Provisions:

This section contains a draft Charter chapter instituting nonpartisan elections for City elective offices. The draft is followed by a discussion of the provisions.

1. Draft Nonpartisan Elections Chapter

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

⁶⁶ The City's Board of Elections developed a plan for an electronic voting system more than a decade ago, and entered into a contract for that system's development and implementation in 1993. A dispute arose, however, with a subcontractor developing some of the necessary software. The dispute led to a lawsuit, which was settled in only in the past few years. No contract is currently in place for electronic voting machines or an electronic voting system.

⁶⁷ See 9 N.Y.C.R.R. § 6209.2.

⁶⁸ *Id.* at pp. 18-29.

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. The number of signatures required for such petitions shall be as set forth in section 6-142 of the election law.

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; not through partisan primary; 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 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 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.

<u>Public Office</u>	<u>Political Unit or Unit of Representation</u>
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_____	_____
_____	_____

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 partisan primary or 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 they are a resident.

§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 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 four 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. No vacancy in a nomination may be filled pursuant to this subdivision where prohibited by section 6-150 of the election law. 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.

§ 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.

§69. Nonpartisan ballot. 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.

§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, general election, or runoff election shall be deemed to refer to a nonpartisan primary, general, or runoff election held pursuant to this chapter. Notwithstanding any inconsistent provision of law, the campaign finance board shall promulgate such rules 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 applicable therein.⁶⁹

§ 73. 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 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

⁶⁹ If a system of nonpartisan elections were chosen, conforming amendments to these sections would be needed, because they refer to partisan primaries.

(designation and nomination; restrictions); section 6-136 (designating petitions; number of signatures); subdivision three of section 6-138 (section relating to independent nominations; rules); 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); section 6-160 (primaries); section 6-162 (primary; new york city, run-off); 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); the second undesignated paragraph of section 9-122 (section relating to proclamation of result); and the last sentence of subdivision one of section 9-200 (section relating to canvass of primary returns). In addition, any other section that may be added to the election law from time to time and that relates 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.

§ 74. 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; and (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-two of this chapter has been filed.

b. Subdivisions 1 and 4 of section 6-138 shall apply except as specified in section sixty one of this chapter.

c. Subdivisions 1 and 3 of section 6-140 shall apply except as specified in section sixty two of this chapter.

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

e. 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. Vacancies in nominations shall be filled in accordance with section sixty-seven of this chapter.

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

g. 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. 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.

h. Subdivision three of section 8-100 shall be deemed to include nonpartisan primary elections and non partisan general elections held pursuant to this chapter.

i. 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.

j. Section 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.

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

2. Discussion

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.

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 § 6-142 for the number of signatures needed to get on the ballot for the nonpartisan primary election. Consistent with the general approach of analogizing to the independent nominating petition system, Section 6-142 is the provision for the number of signatures needed on an independent nominating 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 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).

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.

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.

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. 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.

Section 69: This is the section that makes the nonpartisan primary and general election ballots nonpartisan. It prohibits the placement of any partisan, party, or independent body identification, symbol, or emblem on the ballot or voting machine at any such elections for offices covered by the Chapter.

Section 70: This section sets forth the order of names on ballots for nonpartisan primary elections and nonpartisan general elections, and is necessary in light of Election Law § 7-116, which takes party strength into account in determining the placement of names on the ballot. This section also sets forth the requirement that the nonpartisan elections should be separated on the ballot from partisan elections.

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.

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 and 74: 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.

PART V

City Agency Submissions And Public Proposals

Agency Submissions

The Commission also considered proposals submitted by City agencies. The Commission staff made two oral presentations on those proposals it received prior to August 21, 2001 at public meetings of the Commission. The Commission considered both the written and oral testimony that it received on these issues. At a public meeting on August 23, 2002 the Commission determined that it would not submit the proposals submitted by City agencies or the public for referendum this year. As many of these proposals would make important changes to the Charter to enhance significantly the operations of City agencies, the Commission recommends that the following proposals 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.

DEPARTMENT OF BUILDINGS

- **Clarify DOB's Subpoena Power**

Issue: Should the Charter be amended to clarify the Department of Building's ("DOB") subpoena power so that it is not limited only to cases "where the public safety is involved"?

Relevant Charter Provision: § 646.

Discussion: Charter § 646 provides that the Buildings Commissioner "shall have the power and duty to conduct such inquiries as may assist him or her in the performance of

the functions of the department where the public safety is involved and for such purpose he shall have subpoena power to compel the attendance of witnesses, to administer oaths, examine witnesses and to compel the production of books, papers and documents.” The Department of Buildings has proposed removing the requirement that the subpoena power be available to the Commissioner only when performing the functions of the Department that involve public safety.

Under the current Charter provision, subpoenaed parties have questioned DOB’s authority to demand certain records which, on their face, do not appear to relate to public safety. For example, the Department’s Investigations and Discipline Unit may seek to subpoena the telephone records of a contractor or professional in the course of an investigation. While this may not at first appear to be a public safety issue, where the underlying investigation concerns unsafe or illegal work, there may in fact be important public safety issues and concerns that exist. To address such concerns, DOB has proposed removing the public safety limitation to allow it to perform its investigations without unnecessary delay and without being subject to legal challenges concerning subpoena authority.

CONFLICTS OF INTEREST BOARD

- **Assured Funding**

Issue: Should the Charter be amended to assure funding for COIB?

Relevant Charter Provision: § 2602.

Discussion: The City’s Conflicts of Interest Board (“COIB”), established in Charter Chapter 68, proposes 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.

Likely, the most desirable option for COIB would be an option that provides for submission of the Board's proposed budget to the Council, without amendment by the administration. 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 COIB Member Nomination Process**

Issue: Should the Charter be amended to give the City Council and the Mayor more parity in the nomination process for the members of the Conflicts of Interest Board?

Relevant Charter Provision: § 2602.

Discussion: To further insure impartiality and independence COIB has addressed the issue that the City Council and the Mayor be given parity in the nomination process for

COIB members. Presently the Mayor appoints the five members of the Board “with the advice and consent of the council” (§ 2602 (a)).

It should be noted that the former Council Speaker recommended that the Council make some of the appointments to the Board. However, split appointments – some by the mayor and some by the Council - present the danger of politicizing Board appointments and undermining accountability, a charge often leveled at the Board of Education prior to the recent amendments, largely as a result of its split appointment process.

As an alternative, appointments could be made only upon the recommendation of an independent body, similar to a judicial screening committee. For example, commissioners of the Hawaii State Ethics Commission are appointed by the governor from a panel of ten persons nominated by the judicial council, an advisory body appointed by the Hawaii Supreme Court. See Hawaii Revised Statutes §§ 84-21(a) and 601-4. Such a screening committee could be established for appointments to the Board and to other similar non-mayoral boards and commissions; the members of such a body could be appointed by each citywide elected official (mayor, speaker, comptroller and public advocate), perhaps with two mayoral appointments, one of whom would be the chair.

- **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 proposes 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 proposes 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, 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.

DEPARTMENT OF FINANCE

- **Uniform Right to Appeal from Determinations of the Tax Appeals Tribunal**

Issue: Should the Charter be amended to permit appeals from the Tax Appeals tribunal by both the taxpayers and the Commissioner of Finance?

Relevant Charter Provision: § 171.

Discussion: Charter § 168 provides for an independent Tax Appeals Tribunal within the Department of Finance. The Charter specifies that the “powers, functions, duties and obligations of the tribunal shall be separate from and independent of the authority of the commissioner of finance.” The Charter establishes that the Tribunal has jurisdiction to hear and determine cases initiated by the filing of petitions protesting notices issued by the Finance Commissioner for which taxpayers have the right to a hearing, including “any notice of determination of a tax due, a tax deficiency, or a denial of a refund or credit application” that relate to excise taxes, vault charges and taxes other than taxes on real property such as the City’s business taxes.

Charter §171 provides that decisions of the Tribunal are final and specifies that such Tribunal decisions are subject to judicial review pursuant to Article 78 of the Civil Practice Law and Rules. However, this right to judicial review is inequitably afforded

only to the taxpayer and not to the Commissioner of Finance. Specifically, Charter §171(b) provides that “each decision of the tribunal, shall finally and irrevocably decide all the issues raised in the proceedings before it, unless the petitioner who commenced the proceeding seeks judicial review of any such decision in the manner provided in article seventy-eight of the civil practice law and rules within four months after the giving of the notice of such decision.” (emphasis added).

Because the Charter specifies that the opportunity to appeal is limited to the petitioner who commenced the proceeding, which in such proceedings is the taxpayer, the City is left without any opportunity to challenge decisions of the independent tribunal. As the Tribunal is an independent entity, and in order to ensure fairness, both parties should have the same right to appeal. The ability to appeal such decisions is necessary for the Department of Finance to fairly administer and properly implement the City’s tax laws on behalf of all taxpayers. To remedy this inequity, the Department of Finance has proposed amending Charter § 171 to provide that both the Commissioner of Finance as well as the petitioner may seek judicial review of determinations.

It is important to note that when the voters originally approved the creation of the Tax Appeals Tribunal to hear City excise tax appeals in the 1988 referendum, Charter § 171 as approved explicitly permitted both the Commissioner of Finance and the taxpayer to appeal tribunal decisions. In 1992, however, when the Tribunal’s jurisdiction was expanded to include City business taxes, Charter § 171 was legislatively amended to limit the right to appeal to the petitioner who commenced the proceeding, thus preventing the Commissioner of Finance from appealing Tribunal determinations (Ch. 808 L. 1992). The Commission’s staff believes that there may be issues concerning

whether this proposed change would require State law. When this proposal is considered by a future Commission, the staff recommends reviewing that issue.

- **Administration and Enforcement of the Payment made by Non-Resident City Employees as a Condition of City Employment**

Issue: Should the Charter be amended in relation to the administration and enforcement of the payment that nonresident City employees make as a condition of their employment?

Relevant Charter Provision: § 1127.

Discussion: Charter § 1127 provides in relevant part that “every person seeking employment with the city of New York or any of its agencies regardless of civil service classification or status shall sign an agreement as a condition precedent to such employment to the effect that if such person is or becomes a nonresident individual . . . during employment by the city, such person will pay to the city an amount by which a city personal income tax on residents computed and determined as if such person were a resident individual, as defined in such section, during such employment, exceeds the amount of any city earnings tax and city personal income tax imposed on such person for the same taxable period.”⁷⁰ This amount is not a tax but a contractual obligation from which the City derived more than \$60 million in revenue in 2001.

Since the Department of Finance has administered the § 1127 program, it has been the subject of much debate, confusion and litigation in a number of areas including its applicability to certain classes of public servants. Further study of whether a clarification of this Charter provision is needed should be done by another Commission.

⁷⁰ Added by Local Law No. 2 of 1973, employees hired prior to and continuously employed since January 4, 1973 are exempt from the requirement.

- **Require Delinquent Taxpayers to pay the City's Collection Costs**

Issue: Should the Charter be amended to ensure that the City's collection costs for the enforcement of judgments and tax warrants are paid by the delinquent taxpayers, instead of by all taxpayers?

Relevant Charter Provision: § 1527.

Discussion: Charter §1527(1) permits the "[Finance] commissioner [to] enter into contracts with collection agencies for the collection of (i) any or all tax warrants and judgments for all city taxes subject to collection by the department, other than real property taxes, or (ii) city water and sewer charges, or both". Such contracts are necessary to ensure that where there is an outstanding tax warrant or judgment against a delinquent taxpayer, the City is actually able to collect the amounts due. The Department of Finance has entered into such contracts, which have successfully enabled the City to recover amounts due from delinquent taxpayers.

Charter §1527(3) specifies that "[t]he consideration to be paid to such collection agency may be a percentage or percentages of the amount collected by such agency, or as otherwise provided in the contract, but shall be within the amount appropriated and available for such purpose." The result is that all City taxpayers, rather than the delinquent taxpayer, pay these costs of collection. To ensure that the collection agency costs are paid by the responsible parties whose failure to pay the amounts due required the City to incur such additional collection costs, the Department of Finance proposes passing such costs on to the debtors. These additional collection costs would be collected in the same manner in which the underlying delinquent taxes are collected. The Department of Finance estimates that this would provide a savings of approximately \$3 million per year.

This proposal also would place more fairly the cost for the City's collection efforts on the tax delinquents, and not on the many City taxpayers who fully and responsibly pay their taxes. Charging the taxpayer for the increased collection costs would serve as an incentive for the taxpayer to pay the Department of Finance, as it will cost the taxpayer more to wait and ultimately pay the collection agency.

It should be noted that where the City sells tax liens on real property to enforce the payment of qualifying delinquent real property taxes and/or water and sewer charges and other related charges, Administrative Code §11-332 specifically permits the tax lien certificate holder "to receive and retain a surcharge" on the lien. The Code also specifies that the sold tax lien will include, in addition to unpaid charges "the costs of any advertisements and notices given pursuant to this chapter [and] any surcharge pursuant to § 11-332 . . ." Therefore, with respect to delinquent real property taxes and related charges, the local law already provides that certain increased collection costs resulting from additional collection efforts incurred by the City will be charged to the delinquent taxpayer. This proposal would similarly serve as an important incentive for delinquent taxpayers against whom tax warrants and judgments have been issued for unpaid taxes to pay the Department of Finance, rather than waiting and paying the collection agency.

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

- **Establish a Consistent Uniform Maximum Penalty for the Enforcement of Violations of the Various Public Health Laws**

Issue: Should the Charter be amended to establish uniform maximum penalties for violations of the various public health laws and regulations by increasing from \$1,000 to

\$2,000 the maximum penalty that may be imposed by the Commissioner of Health and Mental Hygiene for the violation of any provision of Chapter 22 of the Charter or any notice, order or regulation issued pursuant such provision?

Relevant Charter Provision: § 555(b)(2).

Discussion: There does not currently exist a uniform maximum penalty applicable to the various provisions of law enforced by the Commissioner of Health and Mental Hygiene. Pursuant to § 12(1) of the New York State Public Health Law, violations of the New York State Sanitary Code, much of which is enforced in the City by the Commissioner of Health and Mental Hygiene, may be penalized by fines up to a maximum amount of \$2,000. Pursuant to Section 3.12(a) of the New York City Health Code, as amended by a resolution of the Board of Health on April 26, 1994, violations thereunder may also be penalized by fines up to a maximum amount of \$2,000.

However, Charter §555(b)(2) provides that the regulations promulgated by the Commissioner of Health and Mental Hygiene to implement requirements found in the Charter and the New York City Administrative Code may only be enforced by penalties of up to \$1,000. The regulations of the Commissioner of Health and Mental Hygiene, which currently number more than twenty, are set forth in Title 24 of the Rules of the City of New York and relate to subjects as varied as window guard enforcement, enforcement of the Smoke Free Air Act and mobile food vendors. To create uniform maximum penalties applicable to the various laws and regulations enforced by the Commissioner of Health and Mental Hygiene, the Department of Health and Mental Hygiene has proposed amending Charter § 555(b)(2) to increase from \$1,000 to \$2,000 the maximum amount which may be imposed for the violation of regulations promulgated by the Commissioner to implement requirements of the Charter and the

New York City Administrative Code. The \$1,000 maximum has been in effect since 1977 (Local Law 25 of 1977).

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

- **Deputy Commissioners**

Issue: Should the Charter be amended to provide HPD the authority to appoint deputy commissioners as needed?

Relevant Charter Provision: § 1801.

Discussion: Charter § 1801 limits to five the number of deputy commissioners that may be appointed at HPD. HPD proposes that the language be made less limiting to reflect the flexibility needed to operate a large agency with many discrete functions. HPD would like to appoint deputy commissioners “as may be necessary.”

- **Jurisdiction**

Issue: Should the Charter be amended to clarify HPD’s jurisdiction?

Relevant Charter Provision: § 1802.

Discussion: Charter § 1802(3) gives HPD “all powers, rights and duties as provided by any federal, state or local law or resolution, relating to slum clearance . . . urban renewal . . . (and) public housing.” HPD proposes that its Charter language be clarified by cross-referencing specifically General Municipal Law Article 16 which authorizes HPD to sell property, make loans and grant tax exemptions.

HPD also requests clarification concerning its authority to administer tax exemption and abatement programs. Presently, Charter § 1802 (6)(b) authorizes HPD to administer these programs pursuant to the following language:

administer laws authorizing tax exemption or tax abatement or both, including but not limited to, section 11-243 of the administrative code of the city of New York and section four hundred twenty one of the real property tax law [RPTL], which are in aid of construction, rehabilitation, alteration or improvement of residential buildings and structures . . .

HPD would like the specific references to RPTL § 421 and Administrative Code § 11-243, in this section removed because they no longer reflect accurately HPD's authority and obligations regarding tax incentive programs.

First, the reference to RPTL § 421 is erroneous because that section is now blank. Second, HPD's authority to administer tax programs has expanded beyond Administrative Code § 11-243; HPD now administers tax programs set forth in Administrative Code §§ 11-241 through 11-245. HPD would like to replace the inaccurate and outdated references with broad, open-ended, language regarding its mandate to administer tax programs generally that would permit HPD to create and administer new tax incentive programs as needed. Additionally, HPD proposes that Charter §1802 state specifically that HPD may administer loan programs.

- **Reducing Approval Requirements for Small Emergency Purchases**

Issue: Should the Charter be amended to exempt small purchases, which are also emergency purchases, from approval by the Corporation Counsel and the Comptroller?

Relevant Charter Provision: § 315.

Discussion: Charter Chapter 13 governs procurement. Section 315 provides for “[e]mergency procurement” and requires approval for emergency purchases from the Comptroller and Corporation Counsel regardless of the dollar amount at stake. HPD proposes to eliminate the requirement for approval by the Comptroller and the Corporation Counsel in situations involving small dollar amounts. The dollar amount threshold for small

purchases is established by the Procurement Policy Board (“PPB”) pursuant to Charter § 314. The current small purchase limit is \$25,000 for goods, \$50,000 for services and \$100,000 for construction and construction-related services and information technology.

Presently, the Charter requires approval from the Corporation Counsel and the Comptroller for all emergency purchases. HPD’s proposal would authorize PPB to establish small emergency purchase rules eliminating the current approval requirement and making them apply only in specific circumstances, such as for purchases that do not exceed the small purchase limits.⁷¹

- **Clarifying that the Requirement to Obtain an Appraisal for the Disposition of Real Property is Limited in its Scope**

Issue: Should the Charter be amended to clarify specifically when appraisals are required as a predicate to disposition of city property?

Relevant Charter Provision: § 384.

Discussion: Presently, Charter Chapter 15, entitled “Property of the City” sets forth § 384 as follows:

Disposal of the property of the City. a. No real property of the city may be sold, leased, exchanged or otherwise disposed of except with the approval of the mayor and as may be provided by law unless such power is expressly vested by law in another agency.

b. Except as otherwise specifically provided by law: . . .

3. Real property of the city may be sold only after appraisal made within six months prior to the authorization of the sale and after a review of such appraisal by the department of citywide services within thirty days prior to the authorization of the sale, provided that advertisement for the public auction for such sale shall be commenced within sixty days of such authorization.

⁷¹ HPD submitted the text of what it states is a former PPB rule: Section 3-08(i) once provided that “[e]mergency purchases shall be made in accordance with Section 3-06 of these Rules, except that the approval of the Comptroller and the Corporation Counsel is not required for emergency purchases which are less than or equal to the small purchase limits.” This rule was repealed by current Charter § 315. HPD contends that the rule worked well and should be readopted.

HPD finds the provision ambiguous because the final clause of subsection “3,” quoted above, appears to limit the provision to auction sales. However, the provision may be read as a general requirement. HPD seeks language that would eliminate the ambiguity. HPD presents a proposed amendment to § 384 which clarifies that the provision does not create a general requirement for an appraisal. The new language makes clear that only in instances where the property is disposed of by auction, pursuant to the provision itself, is an appraisal required.

HPD no longer disposes of property pursuant to Charter § 384. The proposed change would make clear that HPD is not required to obtain a prior appraisal, which can often be very costly for the City, in all circumstances.

- **Updating Provisions Relating to the Prohibition of Certain City Employees from Participating in Public Auctions, Sealed Bids, and Negotiated Sales of City-Owned Real Property**

Issue: Should the Charter be amended to (1) make clarifying amendments reflecting accurately the administrative structure of HPD; and (2) prohibit employees of another division of HPD from participating in negotiated sales of City-owned residential buildings containing six or less dwelling units if such employees participated in decisions affecting the property?

Relevant Charter Provisions: § 2604(c).

Discussion: Charter § 2604 is part of the Conflicts of Interest Law and imposes various restrictions on the activities of City employees. Section 2604(c)(7) prohibits certain City employees from bidding on and purchasing City-owned real property at a public auction or sealed bid sale, or purchasing any City-owned residential building

containing six or less dwelling units through a negotiated sale, if such employees participated in decisions affecting the property.

HPD suggests a division of HPD, the Office of Development, be added to the groups of employees prohibited from participating in negotiated sales because that division handles such transactions. Furthermore, the reference to HPD's Office of Property Management ("OPM") relating to auctions or sealed bids in § 2604(c)(7) is outdated and should be omitted because OPM no longer exists and the auction sales program it administered was discontinued a decade ago.

HPD also recommends that the prohibition regarding negotiated sales be separated from the prohibition relating to buying City-owned property at a public auction or sealed bid sale in § 2604(c)(7) and moved to its own separate section succeeding the public auction/sealed bid section.

- **Demolition of Buildings Pursuant to DOB Emergency Orders**

Issue: Should the Charter be amended to authorize the Department of Design and Construction ("DDC") to perform demolitions and related actions in response to Department of Buildings ("DOB") emergency orders?

Relevant Charter Provisions: § 1202(a).

Discussion: Currently, HPD or the Department of Citywide Administrative Services ("DCAS") may demolish buildings pursuant to the precept process. In that process DOB notifies a landlord of the hazardous condition(s) on a property and a survey is conducted and presented at court. The court then determines the remedial action to be taken which may include demolition. DOB also can issue emergency orders to mandate the immediate demolition of a building. Although there are currently no provisions that identify the agency responsible for such demolition in an emergency situation, HPD has

effectively taken the sole responsibility for such demolitions despite their complicated nature. DDC, however, which is responsible for street, sewer, water main and most non-housing building construction, funded by the capital budget, has more architectural expertise and technical skills to demolish buildings on an emergency basis, particularly with regard to buildings with complex structures. Because DDC has greater expertise than HPD in this area, HPD contends it would be more efficient for DDC to be authorized to handle these demolitions. In order to recoup the costs of this demolition, HPD recommends that the DDC Commissioner be permitted to impose and collect charges for the work, and file liens for these costs.

DEPARTMENT OF INVESTIGATION (“DOI”)

Issue: Should the Charter be amended to incorporate and expand the provisions of the City’s Whistleblower Law to protect all City employees, including employees of quasi-municipal agencies?

Relevant Charter Provision: Chapter 49.

Discussion: The City’s Whistleblower Law is codified at Administrative Code § 12-113 and prohibits certain City agencies from taking an adverse retaliatory personnel action against an officer or employee who reports information to DOI concerning conduct which he or she knows or reasonably believes to involve corrupt or criminal activity or a conflict of interest.

The law is limited in its applicability to officers or employees of “an agency of the city, the head or members of which are appointed by the mayor.” Thus, employees of the Comptroller, the Borough Presidents, the City Council, the Public Advocate or any quasi-City agency such as the Economic Development Corporation (“EDC”), the

Housing Development Corporation (“HDC”), Off-Track Betting Corporation (“OTB”), and Business Improvement Districts (“BIDs”), are not afforded whistleblower protection under City law. However, all City employees play an essential role in providing information about fraud, corruption and mismanagement, including those who work in the offices of elected officials, as well as those who work in government-created entities that perform municipal functions. Accordingly, DOI proposes that the Commission amend the current law and recodify it in the Charter.

First, DOI proposes that the requirement that covered individuals be employed by an agency of the City, “the head or members of which are appointed by the mayor,” be deleted, and that the term “agency” be expanded to include not only mayoral agencies, but also the offices of elected officials and quasi-City agencies, including BIDs.

Second, DOI proposes that the scope of the type of information that may be reported (e.g., criminal activity, etc.) by an individual that would enable him or her to claim whistleblower protection be expanded to include “gross mismanagement” and “abuse of authority” in order to conform the scope of whistleblower protections found in Executive Order 78 of 1984.

Finally, DOI suggests that its proposals be recodified in Charter Chapter 49 because that chapter already includes several provisions relating to employee integrity. In particular, Charter § 1116, *inter alia*, makes fraud by a council member, officer, or employee of the City a misdemeanor and bars anyone convicted from office or employment. Charter § 1128 prohibits interference with any investigation pursuant to the Charter and demands full cooperation with DOI by every officer and employee of the City.

OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

The Office of Administrative Trials and Hearings (“OATH”) was established by Executive Order No. 32 in 1979, and was codified in Charter Chapter 45-A by the 1989 Charter revision. As stated in Mayor Koch’s memorandum accompanying the executive order, administrative trials in the City had previously “too often been characterized by procedural shortcomings and inconsistent, judicially reversible results.” The Mayor’s goal, therefore, was to establish OATH as a centralized tribunal, in order “to reform the due process trial system.” As an alternative to litigation, administrative trials are invaluable as a means of dispute resolution, because they provide, in comparison to litigation in court, a relatively quick and simple means of resolving disputes. See generally “Alternative Dispute Resolution: Panacea or Anathema?” 99 Harv. L. Rev. 668 (1986).

The keys to OATH’s structure are its impartiality and independence. In Executive Order No. 32, Mayor Koch mandated that all of OATH’s administrative law judges (“ALJs”) “maintain the standard of, and preside over administrative trials and hearings in accordance with the Canons of the Code of Judicial Conduct of the American Bar Association.” OATH was made a Charter agency pursuant to the 1989 Charter revision. Part of that Charter Revision Commission’s goal was to establish OATH as “an independent adjudicative body that [could] be a resource to agencies 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.” Report of the Charter Revision Commission, Vol. 2 at p. 103 (April 1989).

Since that time, OATH has become an integral part of City government. It hears over 2,000 cases per year, on behalf of numerous mayoral and non-mayoral agencies.

In most cases, OATH prepares findings of fact plus a recommendation as to the proper determination of the case. The agency involved in the adjudication then determines whether to accept, reject, or modify the recommendation. The agency's determination is subject to challenge in court under Article 78 of the Civil Procedure Law and Rules. In addition to the obvious value that OATH's role plays in City government, perhaps one measure of its success is that many agencies have chosen to hold their administrative trials and hearings at OATH.

Despite its success, OATH's experience has shown that its current Charter provisions may not give it the administrative flexibility it requires to best serve the needs of the City's agencies and employees. Therefore, OATH has proposed changes to Chapter 45-A that would enable this flexibility.

Issue: Should the Charter be amended to provide OATH with administrative flexibility to allow it to best serve the needs of the City?

Relevant Charter Provisions: Chapter 45-A.

Discussion: Under Charter §1049(1), each OATH ALJ must be an attorney admitted to practice in New York State for at least five years. In addition, each ALJ is appointed for a term of five years, and is removable only for cause after notice and an opportunity to be heard. These provisions help ensure the quality and independence of the ALJs. The five-year term, in particular, helps ensure independence, because it shields the ALJs from immediate retribution for unpopular findings or recommendations. However, the five-year term also has limited the administration of OATH, perhaps in unnecessary ways.

OATH has submitted two major proposals regarding the five-year term. The first is to allow the Chief ALJ to appoint temporary ALJs (who would not have the fixed term), in addition to the staff of full-time ALJs. In addition to the Chief and the Deputy Chief, OATH currently has eight ALJs hearing cases. Because this is not a large corps of ALJs, any temporary drop in staffing (e.g. sick leave or maternity leave) results in an assignment of new cases and redistribution of older cases that has a relatively large impact on the remaining ALJs. These temporary problems could be efficiently dealt with if the Chief ALJ had the ability to appoint temporary ALJs to handle these uncovered cases.

Furthermore, the ability to appoint temporary ALJs would allow OATH to more efficiently handle unexpected or seasonal influxes of cases. For example, the City, State, and Board of Education are currently considering whether OATH should hear certain Board cases involving special education. Should OATH be designated to hear these cases, its caseload would more than double and there would be a particularly difficult seasonal spike in the late spring and summer. Considering the importance of these cases and the need to resolve them within a short period of time, the ability to hire temporary ALJs is crucial.

OATH's other proposal regarding the five-year term involves creating a one-year term to which a newly appointed ALJ would be appointed, followed by an appointment to the five-year term. While an ALJ, in either type of term, would be removable only for cause, creation of an initial one-year term would allow OATH to determine, based on actual experience with the work of the new ALJ, whether his or her work was of sufficiently high caliber to merit reappointment. This process of an initial one-year term,

with subsequent longer terms, is presently used by the New Jersey Office of Administrative Law, New Jersey's central administrative hearings office.⁷²

When OATH was established, Executive Order No. 32 required that its Administrative Law Judges comply with the Canons of Judicial Conduct. While OATH's judges adhere currently to the highest levels of ethical judicial conduct, OATH requests that that requirement be codified symbolically in the Charter.

Finally, OATH requests that the Charter provision which establishes its adjudicatory standard be more clearly stated. Presently the provision governing its adjudicatory standards (Chapter 45-A, § 1049 (2)) references OATH's adjudicatory standard as that contained in Chapter 45 of the Charter. That Chapter contains the entire City Administrative Procedures Act ("CAPA"). Section 1146 therein governs adjudication standards. OATH requests that the specific section regarding adjudication be the reference rather than all of CAPA.

DEPARTMENT OF PARKS AND RECREATION

- **Retention of Funds Generated by Fees, Permits, Environmental Control Board ("ECB") Penalties, and Litigation Regarding Tree Damage**

Issue: Should the Charter be amended to permit the Parks Department ("Parks") to deposit into a Parks account rather than the City's General Fund the following: 1) concession fees and special events payments; and 2) money collected from penalties resulting from ECB summonses for violations of Parks rules and affirmative litigation awards regarding tree damage or similar cases?

Relevant Charter Provision: § 109.

⁷²See New Jersey Permanent Statutes, Title 52, Section 52:14F-4.

Discussion: The operation of concession services and special events requires a significant amount of management. In addition, the operation of special events ultimately contributes to the deterioration of Parks property. In order to provide Parks the incentive to increase concessions revenue and to effectively prevent special events from causing long-term damage to Parks property, such concession fees and special events payments could be specifically earmarked to pay for the enhanced maintenance and upkeep of Parks property, such as re-sodding grass and replacing plantings.

In addition, the money collected from summonses and litigation relating to damage to City trees could be expressly given to Parks for forestry related expenses, such as replanting trees and maintenance of City trees. Such an amendment would provide greater incentives for Parks to generate revenue and would enable Parks to more immediately see the financial impact of enforcement efforts (i.e. tree damage cases). If this exception to §109 is viewed as too broad, then Parks proposes that a certain percentage of the above revenue be retained by Parks. Moreover, Parks could dedicate all or a portion of these dedicated funds to specific Mayoral priorities, including developing waterfront parks or extending the service hours at playgrounds.

Registration of Concession Agreements

Issue: Should the Charter be amended to exempt Parks concession agreements from the City contract registration process?

Relevant Charter Provision: § 375.

Discussion: Parks contends that its revenue and administrative functions would be made more efficient if all concession agreements, or at least concessions which earn less than \$100,000 in revenue for the City, were exempt from the registration process. Registering concession agreements, where the City receives money, does not present

the same oversight concerns as those present in contracts where the City expends money. Moreover, the administrative expense and aggravation involved in registering every pushcart or other small concession far exceeds any benefit from the Comptroller's oversight of this large volume of concessions through the registration process. For example, Parks managed approximately 188 small concession agreements, 90 temporary use concession agreements, and 170 special event vending permits in 2001. For many of these contracts, the City gets as little as \$50-\$1,000 in fees.

The Comptroller's Office requires such concession agreements to be submitted 30 days before the implementation of the agreement. However, the registration process is extremely time-consuming because it requires the input of a large amount of data. Required strict compliance with the registration process will likely delay the City's receipt of this revenue source.

This proposed amendment would purportedly lower administrative and bureaucratic costs only with a slight concomitant decrease in financial oversight. Further, Parks is already charged with reporting regularly the revenue earned by such concession agreements to the Comptroller's Office, and therefore the Comptroller's Office would retain its ability to monitor these contracts. In addition, the Comptroller's Office would also still be able to conduct audits of such contracts.

In the alternative, Parks proposes that such concession agreements be subject to self-registration, whereby Parks inputs the relevant information to register a contract into the Comptroller's Office database, and the contract is deemed to be automatically registered. Although inputting such data would usually take about an hour, self-registration still would stream-line the current 30 day registration process and eliminate unproductive delays.

- **Use of Board of Education Property When Property is not in Use**

Issue: Should the Charter be amended to give Parks jurisdiction to maintain and program activities on playgrounds and playing fields that are currently under the control of the Board of Education at those times when school programs are not taking place (i.e., weekends and school vacation periods)?

Relevant Charter Provisions: §§ 521, 533.

Discussion: The demand for Parks to provide youth athletic programs and playing fields is extremely high, particularly during the summer. However, many of the playgrounds and playfields of the Board of Education are not in use in the summer, and Parks' use of this property would expand its ability to provide youth athletic programs and playing fields for permitted activities throughout the City.

- **Authority to Value and Sell Parks Memorabilia and/or Artifacts**

Issue: Should the Charter be amended to authorize the Department of Citywide Administrative Services' ("DCAS") to issue waivers regarding the salvage process to other City agencies?

Relevant Charter Provision: § 811.

Discussion: Currently, DCAS is responsible for receiving unwanted equipment from other agencies and for determining whether the equipment should be auctioned, reassigned or destroyed. However, Parks has the expertise necessary to assign the appropriate value for a variety of memorabilia or artifacts that are not otherwise easy to value under the DCAS salvage process, such as old stadium seats, signs, and statutes, etc. Such objects have value for collectors and often can generate a much higher revenue than what the City receives through the DCAS salvage process. Therefore, in order to ease the significant burden the salvage responsibility imposes on DCAS and to

generate more revenue for the City by capitalizing on Parks' expertise of specialty items, DCAS should be provided with the authority to issue waivers of its responsibility to salvage equipment to other City agencies.⁷³ In this way, other agencies, such as Parks, with specialized expertise in specific items, would be able to value and sell the objects at a more competitive rate. Under these proposals, all revenue generated by the sale of such specialty items would be placed in the City's General Fund.

- **Adding the Parks Commissioner to the Environmental Control Board**

Issue: Should the Charter be amended to add the Parks Commissioner to the Environmental Control Board ("ECB")?

Relevant Charter Provisions: § 1404.

Discussion: The ECB has the authority to issue rules and regulations regarding many environmental topics, including air and water pollution, hazardous materials, defacement of City property. It also serves as an administrative tribunal for various environmental violations. Parks plays an important role in enforcing and helping to promulgate rules and regulations answerable through ECB summonses⁷⁴, and therefore Parks contends that it is logical for the Parks Commissioner to be included with the Commissioners of Environmental Protection, Sanitation, Buildings, Health, Police, Fire, and Consumer Affairs on the Board. Further, it would be useful to have the Parks Commissioner on the board since the ECB has the authority to adopt and amend regulations relating to the use and regulation of all property subject to Parks' jurisdiction.

⁷³ With this revision, Parks is not suggesting that it be given the authority to sell non-unique items. For example, Parks would not seek authority to sell old office furniture, computer equipment, vehicles, etc.

⁷⁴ For example, Parks employs Parks Enforcement Police officers to issue ECB summons for the violation of Parks rules and requires these officers to be present at the hearings of these violations.

LAW DEPARTMENT

- **Bankruptcy Court Decisions Not Precedential for the Tax Appeals Tribunal**

Issue: Should the Charter be amended to provide that the Tax Appeals tribunal is not required to follow as precedential decisions rendered by the United States Bankruptcy Court.

Relevant Section: §170(d)

Discussion: Charter section 170(d) presently requires the Tax Appeals Tribunal to follow as precedent the prior precedential decisions of the State Tax Appeals Tribunal, or of any federal or New York State Court or the U.S. Supreme Court. Where a taxpayer is in bankruptcy, the debtor/ trustee may move the bankruptcy court for an order determining that taxpayer's liability for New York City taxes. 11 U.S.C. § 505. While the City can move, pursuant to 28 U.S.C. §1334, for the bankruptcy court to abstain from hearing such local tax questions and permit them to proceed before the City Tax Appeals Tribunal, the decision of whether or not to abstain is within the court's discretion, and there is no assurance that the motion will be granted in a particular case.

Bankruptcy courts are courts of equity, and the objectives of the Bankruptcy Code, e.g., to effectuate a viable plan of reorganization and balance the competing interests of the various classes of creditors of the debtor's estate, are not necessarily consistent with the fair adjudication, from a precedential standpoint, of sensitive local tax issues. See, e.g., Matter of Avien, Inc., 532 F.2d 273 (2nd Cir. 1976) (affirming a decision of the bankruptcy court holding that the amount of the net operating loss that can be carried back to earlier tax years for purposes of the City's general corporation tax was not, as provided in the City statute, limited to the amount of the federal tax

loss). But see Matter of Royal Indemnity Company v. Tax Appeals Tribunal, 75 NY2d 75 (1989) (where the Court of Appeals refused to follow Avien). Under the present Charter § 170(d), there is a possibility that the Tax Appeals Tribunal would be bound by such decisions of the federal courts (including the U.S. Supreme Court) in bankruptcy cases. To remedy this, it is proposed that Charter § 170(d) be amended as follows:

The tribunal shall follow as precedent the prior precedential decisions of the tribunal (but not of its small claims presiding officers), the New York State Tax Appeals Tribunal or of any federal or New York state court or the U.S. Supreme Court (except for determinations rendered by any court pursuant to 11 U.S.C. § 505(a) in cases under title 11 of the United States Code) insofar as those decisions pertain to any substantive legal issues currently before the tribunal.

DEPARTMENT OF CONSUMER AFFAIRS

- **Revocable consent approval for sidewalk cafes**

Issue: Should the Charter be amended to streamline the process for approving a petition for a revocable consent to operate an unenclosed sidewalk café?

Relevant Charter Sections: Chapter 14.

Discussion: The Department of Consumer Affairs (“DCA”) now processes such petitions for revocable consent to operate an unenclosed sidewalk cafe through the approval process set forth in the City Charter. Under current law, DCA issues a license to operate a sidewalk café after the petition for a revocable consent is approved by DOT which occurs after review by various agencies and the City Council.

DCA proposes amending the City Charter to streamline this process by authorizing the Department of Transportation to issue a temporary approval for a petitioner to operate an unenclosed sidewalk café after the petitioner has certified to

DCA that the plans for a café comply with all siting requirements and the Community Board has been given an opportunity to comment on the petition, but before the remaining steps in the formal approval process are completed. Conforming amendments to the sidewalk café licensing law would then need to be enacted to authorize DCA to issue a temporary license to operate a sidewalk café. The temporary authorization would automatically lapse and become void on a date certain that is keyed to the maximum time provided for completing the approval process. The temporary authorization to operate should be made contingent on the applicant submitting to DCA a complete truthful application for a license and a revocable consent and a complete truthful certification of compliance with applicable siting requirements.

PROCUREMENT

Issue: Should the Charter be amended in relation to procurement?

Relevant Charter Provision: Chapter 13.

Discussion: Both the 1999 and 2001 Charter Revision Commissions examined the City's procurement system because of concerns expressed both by City agencies and members of the public, including the contracting community, that the system was inefficient. The primary criticism of the procurement process was that it caused the City to take too long to enter into contracts.

The proposals made by the 1999 Commission—including proposals to raise the small purchase limit and to make it easier to procure goods, services or construction from another governmental entity—were defeated as part of the single question that was submitted to the voters.

The 2001 staff recommendations included increasing the small purchase limits, allowing DCAS to delegate to user agencies the authority to purchase certain goods, raising the dollar threshold for holding public hearings on contracts, streamlining the registration process, and providing for centralized vendor integrity assessment. The Commission ultimately chose to propose to the voters only the centralized vendor integrity assessment provision. That proposal was adopted at referendum, resulting in the repeal of the then-existing Charter § 335, and its replacement with the current § 335.

Procurement continued to be an important topic in 2002. In February 2002, the Citizens Budget Commission issued a report on the City's procurement process, suggesting that the City could realize significant budget savings if it streamlined the process, introduced strategic procurement methods, and applied technology to the process. In both the Preliminary and Executive Budgets, the Mayor included significant savings in the out-years of the Financial Plan from a Procurement Reform Initiative. As the representatives of the Mayor's Office commenced work on the Procurement Reform Initiative in the Spring of 2002, the City Council adopted many reforms, summarized below, that had been proposed during the past several years.

First, the Council raised small purchases limits. Prior to amendment of the limits, small purchases had been defined as procurements in value of not more than \$25,000 for goods and services, not more than \$50,000 for construction and construction-related services, and not more than \$100,000 for information technology. Effective July 8, 2002, the limits were raised, by concurrent action of the Procurement Policy Board ("PPB") and the Council, see Charter § 314, to purchases in value of not more than

\$25,000 for goods, \$50,000 for services, and \$100,000 for construction, construction-related services, and information technology.

A second example of procurement reform enacted by the Council in 2002 was in the area of public hearings on contracts. Section 326 of the Charter basically requires public hearings for all non-bid contracts valued over \$100,000. By Local Law No. 8 (2002), however, the Mayor and the Council amended Charter § 326 to somewhat address the perceived burden of this requirement. While Local Law No. 8 did not change the \$100,000 threshold, it added a provision that allowed an agency to not hold an otherwise necessary hearing in certain circumstances. Specifically, Charter § 326(a) provides that if, within a period of time to be set by the PPB, “no individual requests an opportunity to speak at such a public hearing with respect to any such proposed contract the value of which does not exceed five hundred thousand dollars, then such public hearing need not be conducted.”

Representatives of the Mayor have met, and continue to meet, with important stakeholders in the procurement community, including the City Council, the Comptroller, vendors and Agency Chief Contracting Officers. The Procurement Reform Initiative is an effort to comprehensively examine the City’s procurement system, in order to achieve large-scale reforms that will make the system more competitive, effective, and efficient, and thereby benefit the City, its contractors, and the public. In light of the Initiative, it has been recommended to the Commission that the issue not be studied at this time as a source for possible reform, so as to not duplicate the current effort.

COMBINED AGENCY PROPOSAL

Issue: Whether the Charter should be amended to establish an Internal Consulting Unit within the Mayoralty to work on special government operations projects and aimed simultaneously at generating significant cost savings annually for the City by obviating the need to hire expensive outside consultants?

Relevant Charter Provision: Chapter 1.

Discussion: This proposal was developed and submitted by a group of City administrators from various agencies within the Executive Branch. The Agencies of the City of New York have processes which have not been streamlined for decades. Technology has improved over the last forty years, but most agencies are not maximizing the capabilities of the technology they've been given. Examples include agencies still using data entry clerks, or duplicating data entry among different divisions of agencies. Agencies are also hindered by employee job descriptions, which no longer fit the needs of agency's processes.

Because of the sheer size of some agencies and the high turnover due to changes in administrations, commissioners have not had the chance to scrutinize daily operations and to improve their agency's day to day operations. Streamlining these processes would save the City millions of dollars annually and result in improved services provided to the public. Creating an internal consulting unit to analyze processes, assist commissioners with developing agency strategy and help effectuate change, is the fastest way to bring the City Agencies in line with modern business practices and will empower commissioners to do more with less funding. Finally, the City will also save millions of dollars by having an in-house consulting unit as opposed

to outsourcing work for projects that do not require truly unique and highly specialized skills.

- **Internal Consulting Unit**

As part of the Mayor's Office of Operations, the City should create an internal consulting unit with recent College and MBA graduates as well as people with business and technology consulting experience. Another option is for the technology consultants to report to DOITT and the process, strategy, and change enablement people to report to the Mayor's Office of Operations or a new office within the Mayoralty. The Internal Consulting Unit ("ICU") would develop their own methodology for improving the operations of City agencies. The City could contract with recent graduates and people with consulting experience for a specified period, such as two years, to ensure fresh perspectives on City Operations as well as enable the City to adjust staffing as needed. After a two-year stint, the ICU could retain these people for another short-term contract, or these people could assume managerial roles in City agencies. On the flip-side, experts from City agencies could join the ICU staff for short periods of time as well. In order to hire the highest quality of people, salaries should be competitive with the private sector.

- **Project Staffing**

ICU staff could be assigned to projects at the request of agency commissioners. Each commissioner would either have an annual budget to hire ICU staff at a bill rate that would cover salary costs (such as \$50 per hour), or at the request of the Mayor, ICU staff could be assigned to address troubled areas within the City. As the Mayor's

internal consulting unit, ICU would have the power to truly effectuate change Citywide. ICU could also serve as a less expensive alternative to hiring consulting firms that bill out at \$150-250+ per hour. Forcing ICU to compete with consulting firms will ensure the quality of ICU's work, and will provide consulting firms with an incentive to lower hourly rates.

Comparative Cost Analysis Private Consultants			
	Hourly Rate	40 hrs/wk	45 Weeks/Yr
Technology Analyst	\$175	\$7,000	\$315,000
Technology Manager	\$250	\$10,000	\$450,000
Process Analyst	\$125	\$5,000	\$225,000
Process Manager	\$175	\$7,000	\$315,000
Project Manager	\$200	\$8,000	\$360,000
		Annual Total	\$1,665,000
Proposed Internal Consulting Unit			
	Annual Salary	Fringe 30%	@ Annual Cost
Technology Analyst	\$85,000	\$25,500	\$110,500
Technology Manager	\$110,000	\$33,000	\$143,000
Process Analyst	\$45,000	\$13,500	\$58,500
Process Manager	\$85,000	\$25,500	\$110,500
Project Manager	\$100,000	\$30,000	\$130,000
		Annual Total	\$552,500

- **Feasibility of Attracting Quality ICU Staff**

Due to the recent downturn in the economy, the City has been able to attract top candidates. In the wake of September 11th, there is also a feeling of civic pride with

several residents wanting to make a contribution to their City. Additionally, consulting firms have historically high turnover rates due to the rigorous travel involved however, ICU employees will rarely be required to travel because their sole client will be the City of New York. With proper marketing, ICU will be a prestigious program and will attract top candidates from top business school worldwide.

- **Current and Past City Initiatives Similar to ICU**

The Mayor's Office of Operations recently disbanded their internal consulting unit. At its maximum, the unit consisted of 10 internal consultants, most of whom had public administration backgrounds and no consulting experience. DOITT also has a small unit called Insource, which contracts out to independent consultants. Insource provides administration and project management for agency projects and generally charges \$60/hour for consultants with basic technology skills such as database design. Because they hire consultants on an as needed basis, it often takes 2+ months to get the resources available to staff a project. DOITT also assists agencies with large technology projects using DOITT project managers and staff.

BROOKLYN BOROUGH PRESIDENT

Uniform Land Use Review Procedure ("ULURP")

Issue: Should the Charter be amended to require review of any contract by the City for the operation or use of a facility when a contractor, and not the City, is the lessee or owner of the proposed site?

Relevant Charter Provisions: §§ 197-c and 203(a).

Discussion: The “fair share” provision of the ULURP process should be amended to permit review of any and all contracts in which a City contractor is the record owner or lessee of the underlying property. Currently, review of such contracts would only apply if the City were the record owner or lessee of the underlying property. Such an amendment would allow for more meaningful community participation regarding land use. Public review of such proposals would satisfy the letter and spirit of the ULURP process.

Issue: Should the Charter be amended to exclude from ULURP certain matters that can be more appropriately handled at the local level by the Borough Board?

Relevant Charter Provisions: §§ 197-c (1), (2), (6).

Discussion: The ULURP process is time-consuming and expensive for both the applicant and affected agency. Many of the local reviews, including the review of the City map, maps of divisions or plattings, and revocable consents, should occur at the borough level, where the affected communities that have the most at stake will have the greatest input. This will both speed up the process and make it less costly for applicants. Such proposals should be subject to approval by the Borough Board of the affected borough by a majority vote.

- **Land Use**

Issue: Should the Charter be amended to permit all community boards within a borough to vote on all issues being reviewed by the Borough Board regardless of whether the community board is directly affected by the issue?

Relevant Charter Provisions: § 85(a).

Discussion: This proposed amendment would mirror existing provisions of the Charter that permits all Council members to vote on all issues, regardless of whether the issue

pertains to their district. The amendment would increase community board participation in Borough Board activities, including reviewing important land disposition proposals when a quorum of Council members is not easily available.

- **Borough Allocations of Expense and Capital Budget Funds**

Issue: Should the Charter be amended to require the Comptroller to certify the specific dollar amounts allocated for expense and capital budget funds to each borough within 15 days of the publication of the executive budget and any subsequent revision?

Relevant Charter Provisions: §§ 197-c and 203(a).

Discussion: Currently, the allocations of expense and capital budget funds for the boroughs are reported to be problematic for the Borough Presidents. This proposal would encourage a more open budget allocation process to the boroughs and would also mandate that the Comptroller report such allocations more expeditiously.

- **Franchise Services**

Issue: Should the Charter be amended to remove Council approval for the awarding of franchises?

Relevant Charter Provisions: § 363.

Discussion: Currently, requiring all franchises to be awarded in accordance with the provisions of an authorizing resolution adopted by the Council often delays franchise proposals from going forward. The business terms by which a designated agency seeks to solicit proposals for a franchise service should be reviewed and approved by the Council's subcommittee on Franchise and Concession Review. This process, where Borough Presidents have input, would expedite the process and make it more responsive to local needs.

STATEN ISLAND BOROUGH PRESIDENT

- **Conflicts of Interest**

Issue: Should the Charter provision prohibiting public servants with substantial policy discretion from raising funds for candidates for city elective office be repealed?

Relevant Charter Provision: Charter § 2604(b)(12).

Discussion: This proposal to repeal § 2604(b)(12) of Chapter 68 of the Charter was submitted to the Charter Revision Commission by the Deputy Borough President of Staten Island Daniel Donovan. This section sets forth prohibited conduct of public servants. Subdivision 12 prevents deputy mayors, agency heads and public servants with substantial policy discretion as defined by the rules of the Conflicts of Interest Board, other than elected officials, from directly or indirectly requesting that any person make or pay any political assessment, subscription or contribution for any candidate for a city elective office or for any elected official who is a candidate for office. Section 2604 provides, in relevant part:

b. Prohibited Conduct

12. No public servant, other than an elected official, who is a deputy mayor, or head of an agency or who is charged with substantial policy discretion as defined by rule of the board, shall directly or indirectly request any person to make or pay any political assessment, subscription or contribution for any candidate for an elective office of the city or for any elected official who is a candidate for any elective office; provided that nothing contained in this paragraph shall be construed to prohibit such public servant from speaking on behalf of any such candidate or elected official at an occasion where a request for a political assessment, subscription or contribution may be made by others.

With this submission, Conflicts of Interest Board Advisory Opinion 2001-1 (January 30, 2001) in which the Board considered the issue where a high ranking public servant requested the Board's advice concerning soliciting contributions in support of

the public servant's campaign for elective office of the City was submitted for the Commission staff's review. In this opinion, the Board answered the question of whether Charter § 2604(b)(12) applies when the public servant is the candidate and, if so, precisely what conduct is prohibited by that provision. In that opinion, the Board concluded that Charter § 2604 prohibited appointed public servants with substantial policy discretion from requesting contributions for candidates for City elective office even where the public servant is the candidate. The Board stated that pursuant to § 2604(b)(12) when a public servant with substantial policy discretion is a candidate for City elective office, "§ 2604(b)(12) essentially limits his or fundraising to the acceptance of unsolicited contributions."

Public Proposals

The Commission received a wide range of proposals for changes to the Charter from members of the public. The proposals were presented to the Commission through public testimony and written submissions. Many of these submissions were described by the staff to the Commission at the briefing held on August 21, 2002.

These public proposals concerned a broad range of topics, and included proposals relating to the Borough Presidents and various Borough related issues, campaign finance, City contracting, the City Council, the Police Department, the Public Advocate, nonpartisan elections, and mayoral succession. Other topics included proposals relating to economic development, the environment, the Commission on Public Information and Communication, the Community Boards, document disclosure, representational voting, the Comptroller, the pension system and the Board of Standards and Appeals. These public proposals are summarized in Appendix B.

The Commission has determined that it will not submit these proposals for referendum this year. Because many of these proposals would make important changes to the Charter to affect significantly the operations of City agencies, the Commission recommends that these proposals be considered by a future Commission.

APPENDIX A

Summary Of Testimony By Current And Former Elected Officials

Summary of Testimony by Current and Former Elected Officials

Carl Andrews, New York State Senator

(Public Hearing, August 13, 2002, Transcript p. 39)

Nonpartisan Elections

- Believes that current process of partisan elections is fair and adequate.
- Believes that the last two mayoral elections, in which Republicans were elected in an overwhelmingly Democratic city, indicate that the process works fine.

Process

- Expressed displeasure with the manner in which Charter Revision Commission was formed and the timing of the process.

Jim Brennan, New York State Assembly Member

(Public Hearing, August 22, 2002, Transcript p. 62)

Nonpartisan Elections

- Believes the attempt to create nonpartisan elections is a “blatant effort to undermine the Democratic Party in New York City.”
- Quoted statistics to show that New Yorkers are best represented by Democratic candidates because New Yorkers are overwhelmingly members of the Democratic Party.

Process

- Complained that the 1999 Charter Revision proposals were packaged together on the ballot, requiring voters to vote yes or no for all of the points at once. He suggested that the commission separate proposals into separate questions.
- Noted that, compared to the number of people who come to vote in a given election, the number of those people who take the time to also vote on the referendums is much smaller.

Gale Brewer, New York City Council Member

(Public Hearing, August 21, 2002, Transcript p. 139)

Nonpartisan Elections

- Opposes nonpartisan elections.

Mayoral Succession

- No need to alter the succession scheme because the deputy mayors will remain in place to assist the Public Advocate.

Process

- Process flawed because timing is short.

Adolfo Carrion, Jr., Bronx Borough President (by Earl Brown)

(Public Hearing, August 22, 2002, Transcript p. 56)

Nonpartisan Elections

- Believes removing party affiliation will degrade the philosophical integrity of the Mayor's Office.

Mayoral Succession

- Considers a non-elected substitute for the mayor to be undemocratic.

Process

- Expressed concern about a lack of time.
- Noted that no one on the Commission is currently a resident of the Bronx.

Louisa Chan, Member, Community School Board, District 24

(Public Hearing, August 15, 2002, Transcript p. 137)

Nonpartisan Elections

- Ms. Chan stated that she was the first minority elected to Community School Board, District 24 Queens.
- Party has negative connotations for Chinese, as a result of the Communist Party, and so Chinese will tend not to register in a party. In District 24, where Ms. Chan ran, there were approximately 10,500 voters who did not choose a party.
- "[O]ne candidate after another was knocked off the ballot by the party machine, in the mostly minority Council district."
- The propriety of Ms. Chan's ballot was "challenged by the party." "[N]o matching funds will be given out if you were challenged off the ballot, my campaign was

stalled for almost three weeks. By the time I won the Supreme Court battle, my chances for winning the election [were] substantially reduced.”

- The primary gives a small group of special interest political party control over elections.
- The primary election only encourages corruption.

Barbara Clark, New York State Assembly Member

(Public Hearing, August 15, 2002, Transcript p. 109)

Mayoral Succession

- Concerned that there might be opposition to having a woman become mayor.

Process

- Opposed to both proposals. Believes in the democratic process, but thinks that this discussion should go on in a manner where people can participate, be involved at a grass roots level, and be more aware of issues by the date of the election.
- We should not rush into making a decision as important as this. Especially in minority communities, people who do not know about the issues at least know what party is more likely to support the issues that concern them. Most people of color believe that the Democratic Party is more in tune to the issues that affect them.
- Did not want to be distracted by Commission’s study of nonpartisan elections, because wanted “to organize people to vote for Carl McCall.”

Yvette Clark, New York City Council Member

(Public Hearing, August 13, 2002, Transcript p. 77)

Nonpartisan Elections

- Minority candidates are gaining power in the current election system and therefore system should not be changed.
- Elected without party support.
- Nonpartisan elections would favor wealthy candidates.

Mayoral Succession

- Interim Mayor should be an elected official.

Process

- Believes that more time is needed to consider the issues.

Leroy Comrie, New York City Council Member

(Public Hearing, August 15, 2002, Transcript p. 59)

Nonpartisan Elections

- Nonpartisan elections are complex, therefore need more time to study.
- Dr. Lichtman's analysis is flawed because he does not have statistics on increased minority participation, and does not have complete statistics on why still lower turnout, even in areas that have nonpartisan elections now.
- National League of Cities Report, which is on the Internet, is contrary to Dr. Lichtman's analysis. It states that nonpartisan elections cause a decrease in voter turnout and have confused voters to a point where they do not want to vote.
- Problem in New York City is that not enough people interested in elections.
- Campaign finance ruins elections, which should be about ability to go out and talk with neighbors and transmit message. This does not happen now with four to one financing, have whole new crop of professional campaign people who want that money. Have to spend time raising \$147,000 for campaign financing.
- Should get rid of ballot challenges. Would increase participation. Anyone who gets five times amount of signatures should get on ballot.

Mayoral Succession

- Mayoral successor should be an elected official.
- In favor of having special elections sooner.

Process

- Against time period and substance of proposals.
- The process is a mystery to public.

- Agency proposals are complex and need scrutiny, but there is not enough time to consider.
- 1989 Charter referendum debated for 32 months. 1975 Charter reform deliberated for 35 months.
- Eight weeks in summer is too short a period for process.

Bill DiBlasio, New York City Council Member

(Public Hearing, August 15, 2002, Transcript p. 94)

Nonpartisan Elections

- As campaign manager for now Senator Hillary Rodham Clinton, and an observer of politics, on the question of party machinery, of course it has an impact. Argues that money and incumbency have a greater impact. Fears that nonpartisan elections would exaggerate that impact in favor of money and incumbency in a negative manner.
- Must look at the impact of this change in a city with so many different constituencies that have found an effective voice through the party system. Voters were so independent that they voted for a Republican for Mayor three times in a row in an overwhelmingly Democratic city. Despite the problems, we have a system that works by and large.
- Some evidence of the impact nonpartisan elections has had on voter impact is troubling. Gerald Benjamin and Douglas Muzzio, professors of political science at CUNY wrote that the nonpartisan ballot alone, independent of other reform factors, depresses voter turnout when elections are held in off years. They cite a North Carolina study showing that without the partisan ballot, politics became racially polarized.
- Professor Muzzio also wrote that nonpartisan elections will dilute minority voting, and that participation is skewed to residents of higher socioeconomic status. Finally Professor Muzzio argued that voters rely more on incumbency in voting decisions in nonpartisan elections. Given these findings, we need time to study other options.
- The Commission should think carefully about how nonpartisan elections would affect the workings of the City Council. Party affiliation affects everything from Speaker selection and assignments to committee. If we move to nonpartisan elections, this could seriously jeopardize progress made in checks and balances.

Mayoral Succession

- The Office of Mayor should always be a role filled by someone elected by the voters and not a mayoral appointee. The role should be filled by the Public Advocate, a citywide elected official.

Process

- Given the sorry state of media coverage of civic affairs and democratic process, it is unlikely that, in the eight allotted weeks, there would be a full debate on this issue. We need to ensure that grass roots organizations really get involved in advocating for a position. Those organization may not be able to organize effectively in eight weeks. That fact ensures a skew towards more money and powerful interests.
- Reforms that have worked and have opened up the system immensely are campaign finance reform four-to-one matches and term limits. For those reforms, there was a lengthy debate that created acceptance by the populace.
- Hopes that when there is a longer and more thorough Charter reform process, the Commission will consider changes giving the Council broader authority over the City budget. This will establish proper checks and balances and ensure that the budget truly reflects what voters want.

Andrew Eristoff, Candidate for New York State Senator, former Council Member and Commissioner of Finance

(Public Hearing, August 21, 2002, Transcript p. 125)

Nonpartisan Elections

- Believes voter participation would increase with nonpartisan elections.
- Nonpartisan elections would increase access to the ballot because the unstated purpose of ballot access laws is “to protect candidates with party organizational support and exclude all others.”
- Nonpartisan elections will elevate the quality of the candidates and electoral debate.
- Those elected through a nonpartisan process will feel accountable to their constituents, as opposed to partisan elected officials, who are accountable to the party that helped them get elected.

Mayoral Succession

- Supports the abolition of the office of the Public Advocate.

Pedro Espada, New York State Senator

(Public Hearing, August 22, 2002, Transcript p. 102)

Nonpartisan Elections

- Supports nonpartisan elections. Explained that when he entered into independent politics in the Bronx, it came with a large penalty. Cited being knocked off the ballot, having programs and finances come under incredible scrutiny, and found the “full use of the political infrastructure was used to prevent me from being on the ballot and available to the people of the South Bronx.”
- Stated that giving the people the opportunity to vote for nonpartisan elections is something that we must do to preserve democracy.
- “There is no more noble or laudable thing this Commission can do” than to put the issue of nonpartisan elections before the public and live with its results. “We ought to trust the people, because it is the people that the constitution is written for.”

Herman (Denny) Farrell, New York State Assembly Member

(Public Hearing, August 21, 2002, Transcript p. 102)

Nonpartisan Elections

- Contends that switching to nonpartisan elections may undo one of the greatest Populist advances of the early 20th Century: direct primary elections, adopted in 1911. Until that time there was no secret ballot and no primaries, parties merely selected their candidate internally.
- Also explained that local voting machines have not improved since the original 1892 voting machines. Thus, in order to have nonpartisan elections at the same time with partisan elections, the City would have to buy new voting machines.

Mayoral Succession

- Noted his opposition to an appointed successor to the Mayor, but added that changing the time until a special election would not be problematic.

Fernando Ferrer, former Bronx Borough President

(Public Hearing, August 21, 2002, Transcript p. 86)

Nonpartisan Elections

- Contends parties help a voter know what a candidate stands for.
- Without that guide, the elections will increasingly be decided by money and media.

Mayoral Succession

- Opposes having an appointed official succeed the mayor.
- A more appropriate change would be to shorten the period for a special election to 90 days.

Process

- Short time period limits public involvement and, therefore, proposing any but a mundane change at this time is wrong.
- Unfair to disqualify any interim mayor who is otherwise entitled to participate in an election from being qualified to run for office.

Steven Fiala, County Clerk of Richmond County, former Member and Minority Whip of New York City Council

(Public Hearings, August 13, 2002, Transcript p. 66, and August 20, 2002, Transcript p. 54)

Nonpartisan Elections

- Campaign finance has a bearing on nonpartisan elections and the two issues should not be independent of one another.

Mayoral Succession

- Was one of prime authors of bill to abolish the Office of Public Advocate while he was a Council Member.
- If office of Public Advocate is kept, it should be given a budget line. Responsibilities that it should not have, such as presiding over the City Council or casting a tie breaking vote, should be taken away.

- Any mayoral succession plan should include the notion that executive policy and operations continue, for continuity. Any successor should be a citywide elected official. Preference is for an elected Vice Mayor.
- In the alternative, supports maintaining the existing system of the Public Advocate assuming the office.
- Whatever change is made should be done after the expiration of the existing citywide terms, thus not harming current officials.

Process

- Commission should deliberate for a longer period of time and analyze larger issues.
- Encourages the Commission to issue a report stating that the Commission wants to come back and spend 12 or 24 months looking at the issues as a whole, because there are many considerations.

C. Virginia Fields, Manhattan Borough President

(Public Hearing, August 21, 2002, Transcript p. 41)

Nonpartisan Elections

- Nonpartisan elections would blur the candidates' positions and render the race a personality contest, thus favoring wealthy candidates or candidates backed by special interests.
- Change to nonpartisan elections could violate the Voting Rights Act.
- Parties provide funding to candidates.

Mayoral Succession

- The person next in line to the mayor should be elected.
- In the event a mayor becomes incapacitated, a special election should be held in 90 days.

Process

- Believes the term of the Commission should be extended until November 2003.

Betsy Gotbaum, Public Advocate

(Public Hearing, August 13, 2002, Transcript p. 40)

Nonpartisan Elections

- There is conflicting evidence about nonpartisan elections. Some believe that it will reduce voter turnout, favor wealthy candidates and hurt minority communities because low income candidates cannot raise enough money to run without the support of established political parties.
- In addition, Charter expert Eric Lane has stated that taking away partisan elections is a very serious change because that deprives people of one of the chief ways of making determinations on candidates.
- Some argue that cities with nonpartisan elections may have a slightly better record in electing minority mayors, but this is misleading. Many of those cities have African-American or Latino majorities. Therefore, electing minority mayors in those cities may be due more to demographics than nonpartisan elections.

Mayoral Succession

- Would support special elections within 45, 60 or 90 days. Thinks that it is not problematic for the Public Advocate as interim Mayor to gear up for elections within those time periods while running the City, because such a process has worked before. It is preferable to have special elections within a relatively short time frame in order to “leave in place what’s there,” but also have a “relatively calm hand at the helm continuing what’s going on.”
- Opposes mayoral succession proposal regarding interim successor.
- Undemocratic to have the Mayor’s hand-picked assistant run the City instead of an elected official.
- Logical to have Public Advocate succeed the Mayor because public is familiar with that person though a citywide election process. Because the Public Advocate is the citywide official responsible for resolving complaints of New Yorkers and is the independent watchdog over City services, the Public Advocate is intended to be a counterweight to a very powerful Mayor.
- Believes that the Public Advocate gains familiarity of City government by serving as the City’s ombudsperson. Such a familiarity is critical to act as interim Mayor. Does not believe that the Public Advocate’s role to serve as a watchdog of City agencies would make it more difficult to succeed the Mayor and operate such City agencies.

Process

- Opposes Mayor's rush to revise the Charter.
- Charter is the City's constitution and should be amended sparingly and only after full and open debate. Should also review experiences of other jurisdictions and consider historical precedents.
- Proposed changes would radically alter the landscape of the City.
- Forty days is not enough time to consider the issues and hear from the public, especially during August.
- This Commission is similar to the past three commissions of 1998, 1999, and 2001 in that all commissions were widely criticized for what should have been a careful deliberative process.
- This Commission has less time to analyze the issues than the previous three commissions.
- Believes that Commission should follow the model of the 1975, 1988, and 1989 commissions. The 1975 Goodman Charter Revision Commission took two and a half years to deliberate, held two rounds of public hearings in each borough and issued 40 reports. The Ravitch and Schwarz Commissions of 1988 and 1989 collectively took over two years and conducted community outreach before voting on their recommendations.
- Any changes would require preclearance by the U.S. Department of Justice under § 5 of the Voting Rights Act. The Justice Department will determine whether nonpartisan elections and a change in the line of mayoral succession will dilute the minority vote and whether the Commissioners ran an inclusive, fair and open process. Doubts that the Commission's work will withstand the Justice Department's review.

Robert Jackson, New York City Council Member
(Public Hearing, August 21, 2002, Transcript p. 81)

Nonpartisan Elections

- Believes that "there is substantial evidence that nonpartisan elections may favor the wealthy. Other evidence points to a reduction in minority voting power."
- The burden lies on the Commission to prove that changes to the system will enhance, and not diminish, the power of all groups in the city to have their voices heard.

Mayoral Succession

- The public voted for the Public Advocate with “full knowledge and understanding” that Public Advocate would become mayor in the event of a vacancy.

Process

- Believes that Mayor Bloomberg is trying to change the City’s constitution quickly, in the heat of summer, while the public is away and too distracted to pay attention to his proposals.
- Asked the commission not to be used as a “rubber stamp”

Ed Koch, Former Mayor

(Public Hearing, August 21, 2002, Transcript p. 44)

Nonpartisan Elections

- Against nonpartisan elections, which obscure candidates’ political beliefs.

Mayoral Succession

- Succession scheme should remain as is, unless the proposal is drafted to create a vice-mayor position, a proposal he would support.

Oliver Koppel, New York City Council Member

(Public Hearing, August 13, 2002, Transcript p. 69)

Nonpartisan Elections

- Partisan elections have worked so there is no reason to change the election system.
- The party system has allowed minority candidates to move up. For example, a minority candidate came very close to becoming the Democratic candidate for Mayor.
- Nonpartisan elections would benefit the wealthy.

Mayoral Succession

- Successor to the Mayor should be an elected official.
- Establishing an Office of the Vice Mayor may be a viable option.

- A special election within 60 days may not afford candidates, particularly the interim mayor, enough time to establish a campaign. Also will not provide voters enough time to make an informed decision.
- Chosen as interim Attorney General in January 1994. Believes that it was difficult to raise money for campaign and get statewide visibility for the fall election while fulfilling responsibilities as interim Attorney General. Did not win the primary election.
- Interim mayor would have an advantage at the special election.
- Even if interim mayor would not be permitted to run in special election, wealthy candidates would have advantage.
- An elected official is a better choice for interim mayor because that person has experience dealing with citywide issues, is aware of the public's concerns, and has a relationship with the Commissioners.

Process

- Need more time to consider the issues.
- More time needed to deliberate the issues; the Commission should consider the issues for a year and a half.
- Term limits were considered by the Council for 6 months, but did not eliminate term limits, just changed the limits for a limited number of Council members.

Carolyn Maloney, Representative, United States Congress

(Public Hearing, August 22, 2002, Transcript p. 68)

Mayoral Succession

- Believes that the mayor's replacement should be an elected official, and the Public Advocate is the right position for that replacement.
- Opposes the concept of Vice-Mayor.

Marty Markowitz, Brooklyn Borough President

(Public Hearing, August 13, 2002, Transcript p. 59)

Nonpartisan Elections

- Ran for the Senate in 1978 and ran for City Council in 1973 without party support. It is possible to run for office without party support.

Mayoral Succession

- Interim mayor should be an elected official. More time is needed to consider which elected official should be designated as interim mayor and when a special election should take place. Succession models in other cities should be considered.
- Should delay issue of mayoral succession until 2005, when the current Public Advocate's term ends.
- Disagrees with argument that voters did not fully recognize that Public Advocate is designated to succeed the Mayor.

Process

- Need extensive deliberation before Charter can be amended. Not enough time now. There should be no proposed Charter amendments on the ballot.
- Issues are complex and there are many considerations so more time is needed to analyze such issues. For example, Democrats have a five-to-one majority in the City, and many minority candidates and candidates of modest financial means have advanced upwards through the Democratic party and have had the party support their candidacy. Furthermore, wealthy and Republican candidates may gain power with nonpartisan elections.
- Commissions in the past have been criticized for not having enough time to consider the issues.
- Issues to be considered next year should include: reforming the Charter's Uniform Land Use Review Procedure ("ULURP") and fair share review processes; amending the budget process; amending the voting rights of Community Boards; eliminating the need for City Council approval for authorizing resolutions for franchises; and amending the Charter to prohibit Charter amendments unless the dates of the public hearings on proposed changes are announced at least nine months before Election Day, and the hearings are held at least three months before the ballot submission.

Helen Marshall, Queens Borough President

(Public Hearing, August 15, 2002, Transcript p. 69)

Nonpartisan Elections

- Nonpartisan elections will not result in a more fair and democratic process; it may be a step backwards for minority communities.
- May undermine the federal Voting Rights Act.

- Should conduct more research.
- Nonpartisan elections make it harder for others to know candidate's position and may favor the wealthy.

Mayoral Succession

- Mayoral successor should be an elected official. Mayoral appointee may not have public experience.
- Supports special elections possibly 90 days after vacancy.

Process

- Speaking on behalf of 2.2 million people.
- Objects to timing of process—44 days is not enough time.
- As a longtime member of New York State Assembly, member of City Council, and Borough President of Queens, has always been a strong advocate for good government.
- Participated in the Charter revision process in the past as a member of the Selection Committee of the City Council and testified before previous Charter Revision Commissions.

Gregory W. Meeks, Representative, United States Congress

(written statement submitted August 15, 2002)

Nonpartisan Elections

- Changing to nonpartisan elections is a radical shift that needs careful evaluation. Questions whether nonpartisan elections undermines the democratizing effect of campaign finance reform, which has made primaries more competitive for candidates lacking wealth or corporate support. Also questions whether, in the absence of party designation and the broad issue-identification voters associate with parties, wealthy candidates will overwhelm community-based candidates.
- There are voting rights implications. Questions whether nonpartisan elections will weaken gains in representation that minorities have achieved through partisan elections, often by party primaries against candidates supported by the party establishment; and whether nonpartisan elections will lead to retrogression in minority political representation. Also, questions whether nonpartisan elections will strengthen the prospects for wealthy candidates over the rest of New Yorkers.

Mayoral Succession

- Substituting an unelected appointee for the Citywide elected Public Advocate undermines the principle of consent of the governed. A person who has not been given a mandate to govern should not succeed the Mayor.
- What if a Mayor is removed for malfeasance? Would we want a First Deputy to take over. What if a Mayor dies or is incapacitated soon after appointing the Deputy Mayor? Do we want a new staffer to run the City?
- The Public Advocate is elected Citywide and is mandated by the Charter to act on the People's complaints about City agencies. The Public Advocate introduces legislation and presides at Council stated meetings, providing unique insights into how City government functions. From the standpoint of preparation, having the Public Advocate succeed makes as much sense as the Vice President succeeding the President and the Lieutenant Governor succeeding the Governor.

Process

- The Charter is the City's constitution. Changing the Charter is serious, requires serious deliberation and dialogue, and should involve the broader public, which will have to live with the consequences.
- The pace the Commission must keep to have a proposal on the ballot in November, and having five hearings in just nine days in August, gives the impression that the Commission is less than serious or "trying to pull a fast one." Not the case, but the first impression is often the most lasting.
- Until there is time to research, debate and reach broad consensus on issues, the City will be better off if this Commission abandons the notion of placing Charter revision on the ballot this November.

Bill Perkins, New York City Council Member

(Public Hearing, August 21, 2002, Transcript p. 73)

Nonpartisan Elections

- Does not believe that the goal of greater democracy will be served effectively by a nonpartisan system.
- Although this measure would remove the traditional role of political parties, it would do nothing to take down the barriers that contribute to the chronically low levels of voter turnout.

- If the goal is participation, suggests same-day voter registration; six states have such a policy and that their voter participation is higher than that of New York.
- Eliminating the Democratic Party's official role could have serious effects for Latino and African-American voters who are a growing force within the party.
- Expressed fear that, as with the \$8 million advertising campaign for term limits, an individual rich person might use his or her own fortune to influence the outcome of this issue.
- Stated that if a person felt Democratic Party did not reflect his or her principles, he or she could find a party that did and work to make it an effective voice for his or her concerns.

Process

- Contends that more time would allow the Commission to consider the issues at hand, as well as others which might come about as a result of public hearings.

Joel Rivera, New York City Council Member and Majority Leader

(Public Hearings, August 15, 2002, Transcript p. 127, and August 22, 2002, Transcript p. 86)

Nonpartisan Elections

- Stated that as "a student of history . . . a student of life," he believed the move to a two-party system was a move forward.
- Likened candidates running without a party to a means of hiding, such as companies that have recently been accused of hiding their losses.
- Argues that party affiliation is one of the best indicators a voter has as to the attitude and opinions of a candidate.
- Since there is usually little free media coverage for City Council elections, the candidate who has the most funding for media will be the one the people know the most about.

Mayoral Succession

- For succession, the Public Advocate is there to help oversee and be the watchdog of all the City agencies to insure that the City is performing as it is supposed to. Betsy Gotbaum is a Citywide elected official.

- The average individual does not know who the Deputy Mayors are. How can we appoint someone to the highest level of municipal government if we do not know who they are and what they stand for. We need a Citywide elected official.

Process

- The Commission has a very difficult task at hand and very minimal time to contact constituent groups. The Commission has not advertised this process on television, as should be done. This discussion should be in a very large auditorium, with thousands of people from the City to hear the testimony being presented.

José Serrano, Representative, United States Congress

(Public Hearing, August 22, 2002, Transcript p. 73)

Nonpartisan Elections

- Our democratic process of electing officials (and their successors) is one of the things that defines us as Americans.
- Hispanics and African-Americans have struggled within the Democratic Party to promote an agenda, and removing the party influence will take away that which enabled these groups to have a local and national voice.
- There truly is a difference between the Democratic and Republican way to reform welfare, legislate the rights of immigrants, provide government services, fund education, and provide medical care to the poor and seniors, and the voters deserve to know in advance which philosophy the candidate they choose will follow.
- It will cost more to run for office in a nonpartisan election; because there is no label to identify with, the person with the most money will win.
- Stated that fellow members of Congress from districts that have nonpartisan elections have said that the elections are confusing, because people do not know in advance the party philosophy of the candidate whom they elect. Has also been told that nonpartisan elections do not improve voter turnout.

José Serrano Jr., New York City Council Member

(Public Hearing, August 22, 2002, Transcript p. 84)

Nonpartisan Elections

- Party labels allow the voter to know what the candidate stands for.

Henry Stern, former New York City Council Member at Large; former Parks Commissioner

(Public Hearing, August 13, 2002, Transcript p. 82)

Nonpartisan Elections

- Previous speakers [elected officials] are against nonpartisan elections because they are incumbents and therefore want to keep the status quo. Even officials who did not have party support do not want change because they have developed a certain fondness for established order.
- Thinks that partisan elections are a travesty. Last three elections have been won on the Republican Party line and they are a tiny minority. The Republican candidates are people who recently became Republicans and were Democrats all of their lives. Therefore, the idea that this is the election of one party or another is ridiculous. In fact, these are personal elections and personal judgments as to who the voters want and the nominal existence of parties is a retarding factor in democracy.

Mayoral Succession

- Interim mayor should not be able to use that office as a stepping stone to become the next Mayor.
- Believes that there are two separate issues related to mayoral succession: who will govern the City the best and who should run for the mayoralty? Does not think that the mayoral successor should be appointed because it would be problematic if the Mayor was forced to resign because of corruption, criminal conduct, etc., and then that Mayor's appointee became interim mayor. Interim mayor should also not be permitted to take advantage of office to run for Mayor. Therefore, either the Public Advocate, the Comptroller or the Speaker of the Council should succeed the Mayor, but not be permitted to run at the next mayoral election.

Process

- Commission should be able to consider nonpartisan elections and mayoral succession in current time frame. These issues have been discussed extensively.
- Thinks that there is enough time for the Commission to consider this issue and let the voters decide. Other issues have been decided more quickly. Furthermore, the Charter can be amended again if these proposed changes do not work.

Scott Stringer, New York State Assembly Member

(Public Hearing, August 13, 2002, Transcript p. 51)

Nonpartisan Elections

- Switching to nonpartisan elections would disrupt the momentum built by various communities.
- The Campaign Finance Law already ensures competitive democratic elections.

Mayoral Succession

- Believes that the time scheme for mayoral succession should remain at 15 months.
- Interim successor should be focused on running the City, and not on next special election.
- When Mayor Moscone was shot and killed in San Francisco, his successor, Diane Feinstein, had one full year to serve as Mayor before the next election.
- Proposes that the role of the Public Advocate be strengthened by, for example, providing the position with subpoena power and a fixed budget.

Process

- Need more time for deliberation, especially since considering whether to weaken the role of the Public Advocate, who is a check to the strong office of the Mayor.
- Believes that there is not enough time to consider nonpartisan elections.

Bill Thompson, City Comptroller

(Public Hearing, August 22, 2002, Transcript p. 49)

Nonpartisan Elections

- The Commission should not put proposed changes before voters if the Justice Department might subsequently disallow them; should wait for substantive preclearance.
- Contends that New York's size and demographics make it unique from all other cities that currently have nonpartisan elections; comparison to them is therefore invalid.
- Disagrees with the premise that party politics control election outcomes.

- Election finance reform has already leveled the playing field a great deal.

Mayoral Succession

- Supports a special election within 90 days, but cites the historical precedent for having an elected official serve as Mayor in the interim.
- Stated belief that an interim mayor would not get an unfair advantage in the course of 90 days.
- Stated that concept of Vice-Mayor is a “prescription for disaster.”

Process

- Since 1901 there have been nine successful charter revisions [by referendum], and each took about two years of deliberating. Believes that “[w]e are rushing to meet the current election cycle rather than the fundamentals of a democratic process.”

David Weprin, New York City Council Member

(Public Hearing, August 15, 2002, Transcript p. 82)

Nonpartisan Elections

- Nonpartisan elections would deny effective citizen participation. New Yorkers have always been able to form coalitions over political ideology.
- In an overwhelmingly Democratic city, some suggest that nonpartisan elections would allow greater representation of other political parties. But the election of the last three mayors disproves that theory.
- Already have a system that allows people to participate.
- If a nonpartisan election system results in a phenomenal amount of candidates, with voters unable to identify candidates, an election becomes a beauty contest, based on name recognition and money spent.
- Expected chaotic election in 2001 because of term limits, but it was a very smooth election.

Mayoral Succession

- Mayoral successor should be an elected official.

Process

- Does not think that this Charter revision process should be on an urgent time schedule.
- Other Commissions have considered these proposals and rejected them.
- Does not think that there will be substantial turnout for a referendum and believes that is an argument against putting this issue before the voters.

Keith Wright, New York State Assembly Member

(Public Hearing, August 21, 2002, Transcript p. 51)

Nonpartisan Elections

- Political parties reduce the requirement of wealth to run for office.
- A switch to nonpartisan elections will certainly violate the Voting Rights Act.

Process

- The Charter revision process requires more time.

David Yassky, New York City Council Member

(Public Hearing, August 13, 2002, Transcript p. 74)

Nonpartisan Elections

- Switching to nonpartisan elections is a substantial change that warrants greater public consideration.
- Does not think nonpartisan elections would reduce the role of the parties.
- Elected without party support.
- Parties can play two roles, one constructive and one not. Parties can be the organizers of ideology and constructors of agendas to which people adhere. However, parties can also serve a non-helpful role as patronage organizations. Nonpartisan elections would strengthen party patronage but not allow parties to play their role of assembling ideological coalitions.

Mayoral Succession

- Believes that current mayoral succession model works and that the interim successor should be an elected official.

Process

- Entire Charter should be examined.
- Believes that Commissioners should be appointed by the Mayor and confirmed by the Council in order to establish a check and balance of the Mayor's power to appoint Commissioners.

APPENDIX B

Summary Of Public Proposals

Summary of Public Proposals

The following represents a summary of proposals that the Commission received from the public through testimony at the public hearings, through written testimony, and through letters sent to the Commission.

Borough Presidents

- Give Borough Presidents more authority in their respective boroughs as they are more knowledgeable about local needs.
- Eliminate Borough Presidents—Such a move would save \$38 million and personnel could be transferred to the City Council representatives with liaisons at each Community Board.
- Create a bicameral legislature in which the Borough Presidents lead a smaller house delegation.
- Eliminate the Office of the Borough President and transfer its responsibilities to the Council's borough delegation.
- Any effort to further centralize power (especially in land use) could result in a call for borough secession. Instead, the public should be given a greater role in land use decisions.
- Give Borough Presidents oversight of budget allocation and delivery of services.
- Eliminate the Office of the Borough President and transfer its functions to the Borough Works Commission, consisting of each Borough's City Council delegation and the heads of Community Boards.
- Commission should appoint a committee to determine how the Borough Presidents' functions could be incorporated into the existing functions of government so that a referendum to eliminate the borough president could be put before the public before the current borough presidents' terms expire.
- The Borough President's office should not be abolished, nor should its powers be diminished. The need for a Borough President is very clearly illustrated in a borough like Staten Island. The Borough President is an elected official who serves as a focal point for the needs and concerns of all Staten Islanders.
- Borough secession and home rule: Staten Island currently cannot pursue a path of secession because of a home rule requirement by the State Assembly. Staten Island should be able to secede. The remainder of New York City should be able to vote on whether or not Staten Island can have secession. There should be a mandatory citywide referendum in the event any borough wishes to secede from New York City. Therefore, the option of secession must be made available to Staten Island. Staten Island did voluntarily elect to join the consolidated New York City.

- Each Borough needs a Landmarks representative.

Campaign Finance

- In order to save the City as much as \$50 million in the next City election, provide candidates with interactive time on City cable stations, instead of simply handing out campaign finance funds, which goes to election lawyers, consultants, poll takers and advertisements. This approach has been taken in Boston.
- The Commission could make it easier and cheaper to run for office by eliminating challenges to petitions and substituting a nominal filing fee, refundable for any candidate who obtains 10 percent of the vote, or by reducing the number of signatures on petitions to a reasonable amount, such as 50.
- Allow candidates on the ballot once they have satisfied the matching funds requirement based on contributions.
- Have “clean elections” as in Maine and Massachusetts.
- Campaign Finance Board should ensure that election experts and attorneys to campaigns provide are qualified.
- The government should pay all campaign expenses, so that all candidates are on an equal footing and do not owe anything to any group or individual, but only to the voters who elected them.

City Contracts

- Amend Charter § 1064 regarding centralized contract and contractor information.
- Maintain all information regarding contracts and contractors in a manner that facilitates public review. All information should be stored on computer and available for printing by the public, with two computer terminals dedicated to this purpose.
- Amend the Charter to make the following agencies subject to Chapter 13 regarding procurement: Police Pension Fund; BERS; Fire Department Pension Fund; NYCERS; NYCTRS; and the NYC Variable Supplements funds.
- All City agencies should be subject to Charter Chapter 13.
- Use a City Manager. This would take contracting out of political hands and into a financial management system that is depoliticized.

City Council

- The position of City Council member should be a full-time job.

- City Council power should be strengthened with respect to budgetary issues. The budget process is too dominated by the Mayor.

Police Department and Related Agencies

- **Amendments to Charter Chapter 18 (Police Department)**

Section 436 relating to powers over certain trades should be reviewed concerning whether cart men are still under the regulation of the police department. The speaker believes that they are now under the regulation of the Trade Waste Commission. [This agency is now called the Business Integrity Commission.]

Section 437 relating to detail to attend court should be reviewed, because at the present time the Police Department has the Legal Bureau, the Deputy Commissioner of Legal Matters and the Criminal Justice Bureau, thus requiring the amendment of the words “one person” who is “who is intelligent and experienced.”

Section 438 relating to the maintenance and operation of telegraph and telephone lines requires review, because there are not at the moment any telegraph lines connected with the Police Department. This could be verified by contacting the Communications Division and the deputy commissioner for technological development. It is further suggested that the Commission obtain a copy of the Organization Guide of the New York City Police Department and review it page by page, comparing the functions in it with the current Charter. The Charter contains many functions that are omitted in the Organization Guide.

Section 440 of Chapter 18A, entitled “Public complaint against members of the Police Department,” should be reviewed.

- **Commission to Combat Police Corruption:** Revise Charter Chapter 18-B to create a truly independent police oversight agency. Needs a mechanism to create an internal investigation, as the present “whistle blower law” is ineffective within the police force.
- **Probation Department** should be made a charter agency.

Public Advocate

- Eliminate the Public Advocate’s Office.
- Give the Public Advocate a set percentage of the budget.
- Require the Public Advocate or Borough Presidents to provide support for Community Boards.
- Require the Public Advocate as chair of the Commission on Public Information and Communication (“COPIC”) to obtain information Community Boards require.

- Require the Public Advocate to create an information system to be shared by the Community Boards.
- If we keep the Public Advocate's Office, it should be strengthened.
- If the Public Advocate's Office were to be retained, it should be separated into five offices, with each borough having its own representative.

Proposals Relating to Nonpartisan Elections

- The proposal for nonpartisan elections could be improved by adding proportional representation, which will make it easier for members of ethnic groups now left out of the selection process for elective office by Democratic Party bosses and their allies to get elected.
- Change the number of signatures required to get on the ballot as an independent candidate for City Council from 2,700 to 900, the same number required when running with a party.
- Eliminate petitions altogether as a qualification to get on the ballot. Instead, adopt the reasonable alternatives used in other states.
- Amend the Charter so that all election inspectors are nonpartisan.
- Adopt nonpartisan elections because the current party-driven process compels unions, PACs, and other organizations to back the party hierarchy's candidate. Failure to do so risks incurring the wrath of the hierarchy, which can retaliate by thwarting or delaying the legislative and funding priorities of these organization's constituencies.
- The Commission should study a way to eliminate the runoff that would be the inevitable consequence of a nonpartisan election. The Commission should consider a single, nonpartisan election for City public offices using approval voting. Approval voting is a process where voters approve as many candidates as they wish. Each candidate approved of receives one vote and the candidate with the most votes wins.

Proposals Relating to Mayoral Succession

- Deputy Mayor should be the Interim Mayor because that person is familiar with City government.
- Interim Mayor should not be able to use that office as a stepping stone to become the next Mayor. Either the Public Advocate, the Comptroller, or the Speaker of the Council should succeed the Mayor and not be permitted to run at the next mayoral election.

- First Deputy Mayor should succeed the Mayor but also be an elected office.
- The revised Charter should stipulate the presiding officer of City Council should succeed the Mayor and the special election for Mayor should be required within 90 days of succession followed by a general election within 30 days.
- No Mayor should be able to designate a bureaucrat who is not publicly elected and accountable to an office. Believes the line of succession as it is established is perfectly acceptable and it should remain the same.
- Have a Vice Mayor who could be a chief deputy, paralleling the federal system. The Vice Mayor would be part of the Executive Branch.

Other Proposals

- **Economic Development**: Reinstate the Minority and Women-Owned Business Enterprise Certification Program in its entirety. This provision sets goals for MBE and WBE contracting, reporting requirements and targeted utilization plans.
- **Gambling**: The Land Use Commission should designate certain areas for development of gambling. Income from gambling would replace income lost from the repeal of the commuter tax and would provide jobs for the unemployed. New Jersey and Connecticut benefit from such revenue.
- **Environment**: Amend the Charter to provide for testing for toxicity of all vacant lots.
- **Mayors Office**: Amend the Charter to make the Mayor's Office of Construction a Charter entity.
- **Pay Raises**: There should not be pay raises for the Mayor or City Council within the same term.
- **Commission on Public Information and Communication**: Require the Commission to annually review all city information policies, and hold an additional seven public hearings each year on City information policies.
- **Community Boards**: Amend Charter § 2800 concerning the appointment of members to Community Boards. Specifically, amend the Charter to prevent the City Council from nominating candidates for community board membership when the community board in question employs a close relative of the City Council member.
- **Decentralization**: Believes that government should be decentralized and that the public should be empowered.
- **Document Disclosure**: Allow general access to all City documents and the right to obtain an ex parte order enforcing this right. The Charter should require document delivery within five days.

- **Landmarks Preservation Commission and the Arts Commission:** These agencies should be put under the jurisdiction of the Land Use Commission or the Parks Department.
- **Promoting Charter Change:** Mayor has stated that willing to use own funds in support of proposed changes, but that is not democratic.
- **Residency of Uniformed Personnel:** Revise the Charter to add Dutchess County to the list of counties where uniform personnel may reside.
- **Comptroller:** Require the Comptroller to be a Certified Public Accountant.
- **Pension System:** The Charter should require that the pension funds be placed under the control of a financial analyst represented by the Mayor.
- **Board of Standards and Appeals:** Remove City Planning powers from the Board of Standards and Appeals or reorganize it into a Department of City Planning.

Summary of Proposals by George Spitz, former Candidate for Mayor

- The Comptroller should be required to be a certified public accountant and the City' pension system should be reformed.
- From 1993 to the current budget, New York City contract costs have risen from \$2.8 billion to \$6 billion with virtually no protest from the Comptroller.
- Questionable investments of the New York City pension fund, a major if not exclusive duty of the Comptroller, are responsible for a considerable portion of Mayor Bloomberg's budget problems.
- Last year, Mayor Giuliani found it necessary to place \$701,000,000 in the budget of fiscal years 2002 though 2005 to cover the disappointing performance of the New York City Employee Relations System (NYCERS).
- The situation has become worse: two years ago, a projected \$817 million contribution to the pension funds for the 2002 fiscal year has risen to more than \$2 billion, nearly \$1.2 billion higher than expected.
- It is problematic to have a Comptroller without a background in auditing, accounting, or financial analysis.
- Historical background is dispositive. For example, in 1993, according to the *New York Times*, the City's Conflict of Interest Board fined then Comptroller Elisabeth Holtzman for a series of questionable dealings involving Fleet Bank, which was seeking a share of the City's well paid bond underwriting business. Last year, *The Observer* pointed out that then Comptroller Alan Hevesi approved \$130 million of the City's pension fund to be invested in a private equity fund controlled by one of his top financial supporters in 1998. However, this company was only three years old,

had short track record, and had a prospectus that listed only two private equity investments, one of which had stock that fell drastically.

- It is not unusual for Comptrollers, such as Holtzman and Hevesi, to obtain donation funds from potential contributors with an interest in profiting from pension funds or other government business, such as bond issues.
- Therefore:
 - The Comptroller should be a Certified Public Accountant.
 - Management of pension funds should be removed from the Comptroller's duties and should be placed under the control of the Mayor, who will be required to name a Chartered Financial Analysis.
 - New York City pension funds should purchase City Borrowings at one percent below the present market rate of roughly five percent for municipal bonds. By following this practice every year and gradually transferring all pension fund investments to municipal bonds, the City treasury could save billions. There is sound reason that City pension funds could purchase municipal bonds at a lower than market rate. Unlike the Social Security Trust Fund, the City does not have to worry about so-called baby boomers retiring in droves in 2041.
- The City Council Should be Democratized by Minimizing the Petition Process, Eliminating Candidate Challenges and Stipends for Committee Chairpersons, and Mandating Equal Time on Cable Television for All Candidates.
- Proportional representation should be reintroduced, in a model slightly similar to the School Board elections, although that system has its flaws.
- Number of signatures required to be placed on the ballot should be reduced.
- The campaign finance law does not level the playing field. Certain incumbents running for City Council have been able to raise more money because they chair special interest committees.
- Public officials should be prohibited from receiving contributions from persons doing business with the City.
- The campaign finance law should be changed to replace matching funds with equal interactive time of the nine cable channels that the City has control of.
- The Speaker of the City Council should no longer be permitted to grant stipends keeping the salary at \$90,000 a year.

APPENDIX C

Summary Of Expert Testimony Received At Public Meetings

Summary of Expert Testimony Received at Public Meetings

Nonpartisan Elections

Dr. Alan Lichtman, August 6, 2002, Professor of History, American University¹

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 Justice²

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

¹ Aug. 6, 2002, Transcript, at p. 17.

² Aug. 6, 2002, Transcript at p. 25.

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.³ However, it would be necessary for the City to update all analyses based on 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,

³ Id. at p. 29.

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 Fund⁴

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.⁵ Paterson changed to nonpartisan elections on July 1, 1974. The State 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.⁶

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.⁷ Voters may sign once for each office. The first signature is valid and subsequent signatures for other

⁴ Aug. 13, 2002, Transcript, at 10.

⁵ Id. at p. 11.

⁶ Id.

⁷ Id. at p. 12

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.⁸ 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.⁹ 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.”¹⁰ 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.”¹¹

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

⁸ Id. at p. 13.

⁹ Id. at p. 14.

¹⁰ Id.

¹¹ Id.

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.”¹² 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 elections.¹³ 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.¹⁴

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.¹⁵ “The candidates offer themselves, lay out the platforms, the people can vote on

¹² Id. at p. 18.

¹³ Id. at p. 20.

¹⁴ Id. at p. 34.

¹⁵ Id. at p. 21.

the platform and support the candidates.”¹⁶ 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.¹⁷

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.”¹⁸

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.¹⁹ He

¹⁶ *Id.*
¹⁷ *Id.* at p. 24.
¹⁸ *Id.* at p. 27.
¹⁹ *Id.* at p. 28.

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.”²⁰

In Austin, nonpartisan elections have resulted in a large number of candidates getting on the ballot

Glenda Hood, August 15, 2002, Mayor, Orlando Florida²¹

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 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.²²

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

²⁰ Id. at p. 29.

²¹ Aug. 15, 2002, Transcript at p. 9.

²² Id.

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.²³ 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.²⁴

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.²⁵

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.²⁶

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

²³ Id.

²⁴ Id. at p. 10.

²⁵ Id. at p. 11.

²⁶ Id.

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.²⁷

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.²⁸ Lastly she stated that Orlando does not have public funding of candidates.

Dr. Alan Lichtman, August 15, 2002²⁹

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.³⁰

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

²⁷ Id. at p. 12.

²⁸ Id. at p. 13.

²⁹ Aug. 15, 2002, Transcript at p.18.

³⁰ Id.

with empirical analyses and empirical studies whether or not those theoretical arguments were supported.³¹ 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.³² 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

³¹ Id. at p. 19.

³² Id.

Rights Act by impeding the opportunities for minority voters to participate fully in the electoral process and elect candidates of their choice.³³

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.³⁴

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.³⁵

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.³⁶ 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

³³ Id. at pp. 19-20.

³⁴ Id. at p. 21.

³⁵ Id.

³⁶ Id.

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.³⁷

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.³⁸

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.³⁹ 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

³⁷ Id. at p. 24.

³⁸ Id. at pp. 24-26.

³⁹ Id. at pp. 26-28.

forty years old. He noted that there are more recent studies that reach different conclusions.⁴⁰

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.⁴¹

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.⁴²

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

⁴⁰ Id. at pp. 28-30.

⁴¹ Id. at pp. 33-36.

⁴² Id. at p. 37.

primary runoff and did not have that candidate to vote for in the general election.⁴³ 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.⁴⁴ 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.⁴⁵

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.⁴⁶ 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.⁴⁷ In addition, there was greater

⁴³ Id. at p. 38.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id. at p. 39.

⁴⁷ Id.

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.⁴⁸

Lichtman believes that the phenomenon of Democrats necessarily voting for Democratic candidates in general elections does not necessarily occur in New York City.⁴⁹ 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-American or Hispanic Democrat can count on votes from white Democrats in the primary or general election.⁵⁰

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.⁵¹

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

⁴⁸ *Id.* at pp. 39-40.

⁴⁹ *Id.* at pp. 41-42.

⁵⁰ *Id.* at p. 42.

⁵¹ *Id.* at p. 43.

since 1989, only two minority candidates in Citywide elections have ever advanced to a general election—Dinkins in 1989 and Thompson in 2001.⁵² [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.⁵³

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.⁵⁴ 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 6.⁵⁵ 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

⁵² Id. at p. 43.

⁵³ Id. at p. 44.

⁵⁴ Id.

⁵⁵ Id. at pp. 44-45.

that when there are competitive minority candidates with a chance to win, there is minority turnout and without it, there is none.⁵⁶

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 stated that if there is a hotly contested election with a strong minority candidate there will be minority turnout.⁵⁷

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.⁵⁸

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 1999.⁵⁹

⁵⁶ Id. at p 45.

⁵⁷ Id.

⁵⁸ Id. at p. 46.

⁵⁹ Id. at pp. 47- 48.

Mr. Francis Barry, August 20, 2002, NYU Taub Urban Research Center⁶⁰

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.⁶¹ 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,

⁶⁰ Aug. 20, 2002, Transcript, p. 35.

⁶¹ Id. at p. 37.

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 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.⁶² 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.

⁶² Id. at p. 41.

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 College⁶³

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.

⁶³ Aug. 20, 2002, Transcript, at p. 50.

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 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 Island⁶⁴

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.⁶⁵ Nonetheless, within ten years after the ratification of the Constitution, national political parties began

⁶⁴ August 20, 2002, Transcript at p. 9.

⁶⁵ Id.

to form⁶⁶ 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.⁶⁷ 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.⁶⁸ 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.⁶⁹

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."⁷⁰ 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."⁷¹ 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."⁷² He further stated that

⁶⁶ Id. at p. 10.

⁶⁷ Id. at p. 12.

⁶⁸ Id. at p. 13.

⁶⁹ Id.

⁷⁰ Id. at p.14.

⁷¹ Id.

⁷² Id. at p.19.

someone like Jefferson would consider this to be “just the popular will, and if the popular will favors one party over another, so be it.”⁷³

Professor Clayton Gillette, August 20, 2002, Professor of Law, N.Y.U. Law School⁷⁴

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.”⁷⁵ 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.”⁷⁶ He explained that the economic and political roles played by cities are quite different than the roles played by the Federal government.⁷⁷ 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.”⁷⁸

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

⁷³ Id. at p. 20.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id. at p. 21.

⁷⁷ Id.

⁷⁸ Id. at p. 23.

mind . . . the very same issues that are of most importance to the city or the regional economy.”⁷⁹ 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.”⁸⁰ Also “nonpartisanship puts a premium on the ability of individual candidates to articulate their messages to the public.”⁸¹

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.”⁸² There would not be a disconnect between candidates and parties, as the parties would continue to provide support and funding for particular candidates.⁸³ Professor Gillette stated that breaking party dominance in a particular locality would be a good idea.⁸⁴

Dr. Alan Lichtman, August 22, 2002⁸⁵

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

⁷⁹ Id. at p. 23.

⁸⁰ Id. at p. 25.

⁸¹ Id. at p. 27.

⁸² Id. at p. 28.

⁸³ Id.

⁸⁴ Id. at p. 29.

⁸⁵ Transcript, Aug. 22, 2002, p. 10.

would not, in his view, be a violation of the Voting Rights Act.⁸⁶ 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.⁸⁷ 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.⁸⁸ 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.”⁸⁹

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.

⁸⁶ Id. at p. 11.

⁸⁷ Id. at p.12.

⁸⁸ Id. at p.13-14.

⁸⁹ Id. at p.16.

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.

A review of Council District elections revealed what Dr. Lichtman described as striking results.⁹⁰ 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.⁹¹ He noted that the minority

⁹⁰ Id. p. 20.

⁹¹ Id. p. 23.

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.⁹² 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.⁹³

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.⁹⁴

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.⁹⁵ 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.

⁹² Id. p. 23.

⁹³ Id. at p. 4.

⁹⁴ Id. at p. 5.

⁹⁵ Id. at p. 8.

In contrast Dr. Lichtman described the phenomenon known as “fall off.”⁹⁶ 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.⁹⁷

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.⁹⁸ However, if an 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, 2002⁹⁹

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.¹⁰⁰ 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

⁹⁶ *Id.* p. 29-30.

⁹⁷ *Id.* p. 31.

⁹⁸ *Id.* p. 35.

⁹⁹ Transcript, Aug. 22, 2002, at p. 38.

¹⁰⁰ T. 39.

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.¹⁰¹

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.¹⁰² 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."¹⁰³

¹⁰¹ Id. at p. 41.

¹⁰² Id. at p. 43.

¹⁰³ Id. at p. 44.

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.¹⁰⁴ Mr. Borut said that cities that had the city manager form of government often had a mayor pro tem.¹⁰⁵

Gerry Hebert, August 23, 2002, former Chief of the Voting Rights Section, Department of Justice¹⁰⁶

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

¹⁰⁴ *Id.* at p. 46.

¹⁰⁵ *Id.*

¹⁰⁶ Transcript Aug. 23, 2002, at p. 7.

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.

Summary of Expert Testimony: Mayoral Succession

Joshua Filler, August 21, 2002, former Chief of Staff to Deputy Mayor Joseph Lhota, Giuliani Administration¹⁰⁷

Mr. Filler testified that he believes that the current structure of having a Public Advocate succeed to the Mayoralty puts too much of a strain on the continuity of the executive branch, especially in an emergency.

The Public Advocate oftentimes has little or no working knowledge of how the City administration operates on a day-to-day basis. Such knowledge is crucial in a crisis situation. Mr. Filler, having worked in the aftermath of September 11th, knows firsthand that there is no learning curve in a crisis. Mr. Filler explained that a crisis can require, among other things, “having to deal with getting rescue workers bathroom facilities, keeping streets open, making sure the public is informed, dealing with state and federal officials, policing the city, putting out fires, making sure that the city, with a \$40 billion budget and 8 million person population, is still functioning on a day-to-day basis.” Mr. Filler emphasized that such broad responsibilities could not be assumed on literally a moment's notice.

Mr. Filler advocated that the Charter be changed and recommended that the Deputy Mayor for Operations succeed the Mayor in the event of a vacancy for a specified period of time, and then have a special election take place subsequently.

Professor Gillette, August 20, 2002, College of Staten Island¹⁰⁸

In addition to providing expert testimony on nonpartisan elections, the Professor was also asked to comment on the issues relating to mayoral succession.

¹⁰⁷ Transcript, Aug. 21, 2002 at p. 11.

¹⁰⁸ Transcript, Aug. 20, 2002 at p. 21.

Professor Gillette indicated that he had been asked who would serve the public interest best as an Acting Mayor until a special election is held. He stated that this “question can’t be answered without tying it somewhat to the interim period.” The issue of mayoral succession “cannot be segregated from the question of process of Mayoral succession.”¹⁰⁹ Under the current scheme, if there is a fifteen-month period before a general election is held for a new Mayor, that a “Public Advocate who starts out not knowing a lot could . . . by the end of that fifteen month period be the best qualified person to be Mayor of the City of New York.”¹¹⁰ Thus, Professor Gillette suggests that the two questions of the appropriate period of time until a general election is held, and who is the most qualified candidate, are not necessarily completely separate questions.

¹⁰⁹ *Id.* at p. 32.
¹¹⁰ *Id.*

APPENDIX D

Supplemental Materials On Mayoral Succession

Supplemental Materials On Mayoral Succession

1. Summary Of Comments Received By 1999 Charter Revision Commission Regarding Mayoral Succession

CITY ELECTED OFFICIALS

Public Advocate Mark Green

(August 5, 1999: Transcript p. 16)

Believes that the special election proposal would repudiate the precedent of five Charter revision commissions retaining the current system of succession and would risk a disruptive series of campaigns and transitions.

Opposes the special election provision and urges that the Commission withdraw its proposals.

(August 26, 1999: Transcript p. 4)

Opposes special election provision and believes it is wrong to change the rules midterm.

Comptroller Alan Hevesi (Written Testimony Submitted August 12, 1999)

Supports special elections.

City Council Speaker Peter Vallone (August 5, 1999: Transcript p. 29)

Believes that the mayoral line of succession should be clarified. The Speaker proposes that after the 2001 election, a Vice Mayor position be created. The Vice Mayor would serve as the Mayor's successor, be elected in a general election with the Mayor and hold office for the same term.

Queens Borough President Claire Shulman (August 5, 1999: Transcript p. 8)

Supports the idea of a Vice-Mayor.

Supports special election proposal.

Staten Island Borough President Guy Molinari (August 9, 1999: Transcript p. 4)

Supports the special election proposal because it gives the citizens of New York the power to vote on whom they want to succeed the mayor.

Bronx Borough President Fernando Ferrer (August 26, 1999: Transcript p. 31)

Proposes delaying special election proposal until the next election cycle.

Council Member Noach Dear (August 9, 1999: Transcript p. 27)

Supports the proposal that election be held within 60 days should the Mayor's office be vacated during his or her term.

Council Member Stephen Dibrienza (August 5, 1999: Transcript p.66)

Criticizes the fact that the special election proposal would go into effect immediately.

Council Member June Eisland (August 10, 1999: Transcript p. 5)

With respect to succession, nothing should be done until after the 2001 election.

Council Member Stephen Fiala (August 9, 1999: Transcript p. 11)

Supports proposal to hold a special election within 60 days of a mayoral vacancy, because it would bring mayoralty into line with all the other City elected offices.

Supports the abolition the Office of Public Advocate. He would like to make the first deputy mayor or a vice-mayor next in the line of succession, then have a special election in 60 days.

Council Member Kenneth Fisher (August 11, 1999: Transcript p. 48)

Believes there would be too many elections and/or Mayors in one year under the proposed scenario. (One Mayor ends in December, another from January to February; an election in March then in November.)

Council Member Katherine Freed (August 11, 1999: Transcript p. 68)

Criticizes the special election proposal because she believes that it would change the rules in the middle of the game.

Council Member Martin Golden (August 11, 1999: Transcript p. 23)

When a vacancy occurs, the voters should determine person the best qualified to fill the vacant office. Therefore, he believes that the Charter should be revised to provide that a special election be held within 60 days to fill any vacancy that may occur in the office of the Mayor, Public Advocate, Comptroller, Borough President and members of the City Council.

Council Member Stanley Michels (August 12, 1999: Transcript p. 20)

Believes that special elections have historically produced low turnouts. The Mayor should not be elected with a low turnout.

The Public Advocate is elected on a citywide basis. He has popular support and people are aware that he is the person next in line to become Mayor.

Council Member James Oddo: (August 9, 1999: Transcript p.20)

Supports the special election proposal.

He also supports the abolition of the Office of the Public Advocate.

Council Member Angel Rodriguez (August 11, 1999: Transcript p.114)

Opposes changes to the succession rules.

Council Member Archie Spigner (August 5, 1999: Transcript p. 79)

Succession should not be changed.

Council Member Larry Warden (August 10, 1999: Transcript p. 31)

States that the Public Advocate or the President of the City Council has been in the line of succession for 168 years.

Council Member Priscilla Wooten (August 11, 1999: Transcript p. 37))

Supports the special election in the event of a mayoral vacancy.

STATE ELECTED OFFICIALS

Senator Vincent Gentile (August 9, 1999: Transcript p. 23)

Opposes any changes proposed by this Charter Commission.

Senator Carl Kruger (August 11, 1999: Transcript p. 61)

Recommends that the Office of the Public Advocate be enhanced.

Senator Guy Velella (August 10, 1999: Transcript p. 50)

Supports a special election to fill mayoral vacancy.

Assembly Member Jeffrey Dinowitz (August 10, 1999: Transcript p. 25)

Believes that mayoral succession, if approved, should apply only in the next election cycle.

Assembly Member Herman Farrell (August 12, 1999: Transcript p. 27)

Any action taken by the Commission should be delayed until the 2001 election cycle.

Assembly Member Joan Millman (August 11, 1999: Transcript p. 42)

Opposes the special election proposal.

Assembly Member John Ravitz (August 12, 1999: Transcript p. 7)

Supports Commission's decision not to change the line of mayoral succession.

Supports the special election proposal.

Assembly Member Scott Stringer (August 11, 1999: Transcript p. 53)

Believes sixty days after a mayoral vacancy occurs is not enough time for an election.

Believes that the role of the Office of the Public Advocate should be strengthened.

FEDERAL ELECTED OFFICIALS

**Congressman Vito Fosella (August 9, 1999: Transcript p. 34)
(Testimony read into the record by Sherry Diamond)**

Supports the special election proposal.

Summary Of Comments Regarding Mayoral Succession Received During August 6, 1999 Expert Panel

Lawrence Mandelker - Kantor, Wolf, Mandelker & Cass (Represented various elected officials during campaigns over the past 30 years, including Mayors Edward Koch and Rudolph Giuliani; was a Law Chairman for the New York City Democratic Party and as of 1999 represented the New York State Republican Committee)

He believes that the issue of mayoral succession should be deferred until the voters have determined whether they want vacancies to be filled for a period of 60 days to be followed by a special election. If vacancies could be filled in 60 days rather than as long as 15 months, having a citywide official become interim mayor would not be a concern. (Transcript p. 89).

The Public Advocate incorrectly claimed that he was nominated and elected in 1997, because, among other things, the voters considered him to be the better person to succeed the mayor in the case of a vacancy. (Id.).

He supports the idea of filling a vacancy in the office of the Mayor by special election. (Transcript pp. 89, 108).

Summary Of Public Proposals Regarding Mayoral Succession Received By The 1999 Commission

The 1999 Commission received many public comments between June 30, 1999 and August 31, 1999. Many of the letters and e-mail received contained general issues for investigation by the Commission as well as substantive proposals for Charter revision. All public proposals were reviewed and considered by the Commission. They are summarized as follows:

- The line of mayoral succession should be changed, but not be effective immediately.
- A Mayor who is unable to serve his or her full term should be succeeded by another elected official from the same political party.
- An office of Vice-Mayor should be created, and should succeed to the mayoralty.
- The will of the people, as shown in an election, should be continued through to the end of the term. This could be implemented by having the First Deputy Mayor as first in line for mayoral succession.

2. Summary Of Comments Received By 2001 Charter Revision Commission Regarding Mayoral Succession

SUMMARY OF COMMENTS OF ELECTED OFFICIALS

Council Member And Speaker Peter Vallone

(By written submission dated August 15, 2001)

Proposes that the position of "Vice Mayor" be created. States that with this proposal, the Vice Mayor would run in both the general and primary elections on a ticket with the Mayor and would be elected at the primary and general elections jointly with the Mayor by the casting by each elector of a single vote applicable to both offices. The persons having the highest number of votes cast jointly for them for Mayor and Vice-Mayor respectively would be elected. States that the Vice-Mayor would be the assistant chief executive office of the City with such duties and powers as delegated by the Mayor. The Vice Mayor would preside over meetings and would succeed to the Office of the Mayor in case of an emergency. The proposed local law would become effective for the November, 2005 election and every election thereafter.

Summary Of Public Proposals Regarding Mayoral Succession Received By The 2001 Charter Revision Commission

The Commission received many public comments between from the time the Commission was appointed on June 15, 2001, to the time the Commission voted on the proposals on August 24, 2001. Indeed, the Commission received many letters containing general issues for investigation by the Commission, in addition to substantive proposals for Charter revision. All public proposals were reviewed and considered by the Commission.

- The Public Advocate's office should be removed from the line of succession.
- The Public Advocate's office should be eliminated.
- A position of Vice-Mayor should be created within the Charter.
- There is a need for continuity of executive policy when a vacancy arises that the Public Advocate cannot provide.

3. Summary Of Approaches To Succession Taken By Major U.S. Cities

Succession in Other Cities: Successor Appointed by the City Council

City	How are Appointments Made?	Is there a Special Election?	When is the Special Election held?	District
Chicago	Vice Mayor is appointed by the City Council until the Council appoints an Acting Mayor.	Yes. If a vacancy occurs at least 28 months before the end of the term and at least 130 days before the next municipal election, then a mayor will be elected at that municipal election; otherwise the Acting Mayor serves until next general municipal election.	At the next municipal election.	District
Dallas	The Council appoints Mayor pro tem from its own members.	Yes, unless general election is less than 120 days after vacancy.	At least 60 days after vacancy.	District
Los Angeles	No specification as to who the Council may appoint. The City Council can also call a special election by ordinance.	Successor can serve to June 30 of an odd-numbered year. If part of the term then remains, Council can hold a special election. If the vacancy occurs after the filing deadline for the Mayoral primary, the appointee may hold office for remainder of unexpired term.	At time of next primary election.	District
Miami	Must be elected by majority of the Council within 10 days of vacancy. If not, the Council calls a special election 38-45 days after the expiration of the 10 day period and 5 day qualifying period.	Yes	Whichever occurs first: odd-year general city election or even numbered county, state, or national election.	District
Orlando	Elect from Council 2 Mayors pro tem (in case first Mayor pro tem can't serve).	Yes, if more than 1 year remains in the term, the Council calls a special election within 10 days of vacancy; if less than 1 year remains, the Council makes an appointment within 40 days.	Within 45 days after Council calls for election or at next regularly scheduled election if within 90 days of call for election.	District
Phoenix	The successor is Vice Mayor, also known as Vice Chairman (elected by Council).	Yes, if more than 1 year before the term ends; if less than 1 year before the term ends but more than 90 days before the general election, the council appoints a member to finish the term; if it is less than 90 days before the general election for the last year of the term, Council can leave office vacant or make an appointment.	After 10 day period to declare candidacy, Council calls for election in not less than 120 days after 10 days after expiration of 10 day period.	District
Richmond	Successor is a Vice Mayor, elected by Council.	No, serves for remainder of term.	N/A	District

City	How are Appointments Made?	Is there a Special Election?	When is the Special Election held?	District
Rochester	Must be the same party as vacating mayor.	Yes. If no appointment is made within 30 days, a special election will be held within 90 days to elect mayor for remainder of unexpired term.	Elected at next general election at which there is time to file nominating petitions.	Both citywide and by district
Sacramento	Successor is a Vice Mayor; selected by City Council.	Yes, if more than 1 year until next general mayoral election. If there is less than one year until the next general election, the Council appoints interim mayor.	Council calls election when the vacancy occurs, and not later than 14 days after the vacancy. The election is held at the next general election or a date designated by Council.	District
San Diego	Council appoints interim mayor after holding at least one public hearing at which candidates make presentations regarding their candidacy. The person appointed interim mayor is not permitted to run for mayor at the next election.	Yes, if Council does not appoint an interim mayor within 30 business days of the vacancy.	Within 90 calendar days after the Council calls for election (Council to call for election immediately if they do not appoint the mayor within 30 business days after the vacancy). If there is a regular municipal, statewide, or countywide election scheduled to be held within 180 calendar days of the vacancy, the council may hold special election at that time.	District
Yonkers	City Council appoints deputy mayor, commissioner or executive branch head. No specification as to who Council may appoint.	Yes, if more than 180 days left in Mayor's term.	Within 90 days after vacancy. If the election is not permissible under state law, a special election will be held as soon as permissible. Special election held concurrent with regular non-mayoral election if election would occur less 180 days after vacancy. No special election if the regular mayoral election is less than 180 days after vacancy. Then this interim mayor serves until a mayor is elected at the regular election.	Both citywide and by district

Succession in Other Cities: Successor is the City Council President

City	<i>Is there a Special Election?</i>	<i>When is the Special Election Held?</i>	<i>How are Council Members Elected?</i>
Albany, NY	No, serves until the term expires.	N/A	District
Atlanta	Yes, if the term has more than a year left.	Within 15 days after vacancy, Council calls for special election.	Both citywide and district
Baltimore	No, serves until the term expires.	N/A	District
Boston	Yes, if the vacancy occurs within 16 weeks before a non-mayoral general election or within 16 months from a mayoral general election.	The Council adopts an order calling for special election on a Tuesday, not less than 120 days nor more than 140 days after the adoption of such an order.	Both citywide and district
Buffalo	No, serves until the term expires.	N/A	Both citywide and district
Detroit	No, serves until the term expires.	N/A	Entire city
Minneapolis	Yes, if the vacancy occurs before March 1st of the year of the mayoral election. Otherwise, the Council President serves for rest of term.	Within 75 days	District
Philadelphia	Yes, but if the vacancy is in the term's last year, the Council selects the Mayor.	At the next general election, unless vacancy occurs less than 30 days before next general election (presumably the special election occurs in the municipal or general election in the following year).	Both citywide and district

City	Is there a Special Election?	When is the Special Election Held?	How are Council Members Elected?
Portland, OR	Yes	If the vacancy occurs more than 100 days before a regular primary to be held in the 4th term or less than 71 days before a regular general election that year, the special election is 90 days after vacancy. If the vacancy occurs between the 70th and 101st days before the primary election in 4th year of term, then special election conducted not more than 45 days after primary (the winner of the special election serves remainder of term and is elected to next term). If vacancy occurs less than 71 days before primary but more than 70 days before regular election in 4th year of term, then: if the person who ran against the incumbent in the prior election received the majority of votes in the primary, that person is Interim Mayor until the regular general election, otherwise a special election is called; if incumbent ran unopposed in last election, the Council calls for special primary election; if incumbent did not run in the last mayoral primary, the person with majority of votes cast in primary becomes Interim Mayor. If no one has majority of votes, special election is called.	Entire city
Providence	Yes	If the vacancy occurs more than 180 days before the next regular election, the special election will be within 90 days of the vacancy. If the vacancy occurs less than 180 days before the next regular election, the Council calls a special election within 90 days of vacancy on demand in writing signed by at least 1/3 of all Council members. It must be filed with the board of canvassers and city clerk at least 100 days before the next regular election. If a regular city or state election is scheduled within those 90 days, then Council can hold election at same time as city or state election.	District
San Francisco	Yes, unless less than 1 year remains before next general election.	120 days after vacancy	District
Seattle	Yes	At next regular municipal general election or at special election held in concert with next state general election, whichever occurs first. If the filing date for elective office has passed for the next such election, then the election held in the following year at the next regular municipal general election or at special election held in concert with next state general election, whichever occurs first.	Entire city
Syracuse	No, serves until the term expires.	N/A	Both citywide and district
Tampa	Yes, if more than 15 months of term remains.	4th Tuesday following deadline for qualifying to run in election (which is 4 days after Council calls for special election).	Both citywide and district

City	<i>Is there a Special Election?</i>	<i>When is the Special Election Held?</i>	<i>How are Council Members Elected?</i>
Washington, D.C.	Yes	The first Tuesday after 114 days after the vacancy occurs unless it is more practical to hold the special election on the same day as the next general election occurring within 60 days of the date the special election would otherwise be held.	Both citywide and district

Succession in Other Cities: Successor is a Mayoral Appointee

City	Successor	How are Appointments Made?	Is there a Special Election?	When is the Special Election Held?
Cincinnati	Vice Mayor	Mayor selects from City Council; Council members elected by entire city.	Yes, if vacancy occurs before June 1st in regular election year for Council members, but not a regular election for mayor occurs; otherwise, Vice Mayor serves for rest of unexpired term.	Date of regular municipal election for Council members.
Cleveland	Director of Law Department	Appointed by Mayor	Yes, if vacancy occurs more than one year before next regular municipal election for Mayor; otherwise Director of Law Department serves for remainder of unexpired term.	Nonpartisan primary is held the first Tuesday after 60 days of vacancy. The general election is the fifth Tuesday after primary.
Denver	Deputy Mayor	Mayor appoints a member of Cabinet.	Yes, if vacancy occurs more than 6 months before the end of the mayor's term.	Between 120-130 days of vacancy if the regular election is not scheduled to be held within 160 days of vacancy.
Houston	Mayor Pro Tem	Mayor nominates member of Council, confirmed by Council; Council consists of citywide and district members.	Yes	Within 30 days of vacancy.
Kansas City, MO	Mayor Pro Tem	Mayor appoints member of Council; Council consists of citywide and district members.	Yes, if vacancy occurs before October 10 of 3rd year of term; otherwise Council appointee serves for remainder of term.	At time called by Council.

Type of Government in Cities in Which Mayoral Successor Appointed by the City Council

City	Type of Government	Source
Chicago	Strong Mayor	www.legis.state.il.us/ilcs/ch65/ch65act20articles/ch65act20Sub2.htm
Dallas	Council-Manager	www.municode.com
Los Angeles	Strong Mayor	www.codesite.com/LACC/CTOC.HTM
Miami	Council-Manager	www.municode.com
Orlando	Strong Mayor	www.municode.com
Phoenix	Council-Manager	www.municode.com
Richmond	Council-Manager	www.municode.com
Rochester	Strong Mayor	gcp.esub.net/cgi-bin/om_isapi.dll?clientID=671295&infobase=rochestr.nfo&softpage=Browse_Frame_Pg42
Sacramento	Council-Manager	ordlink.com/codes/sacramento/_DATA/CHARTER/City_Of_Sacramento_Charter_/index.html
San Diego	Council-Manager	clerkdoc.sannet.gov/Website/city-charter
Yonkers	Strong Mayor	www.cityofyonkers.com/code

Type of Government in Cities in Which Mayoral Successor is the City Council President

<i>City</i>	<i>Type of Government</i>	<i>Source</i>
Albany, NY	Strong Mayor	www.albanyny.org
Atlanta	Strong Mayor	www.municode.com
Baltimore	Strong Mayor	www.ci.baltimore.md.us/government/municipal.html
Boston	Strong Mayor	www.cityofboston.gov
Buffalo	Strong Mayor	www.ci.buffalo.ny.us/document_544.html
Detroit	Strong Mayor	www.municode.com
Minneapolis	Strong Mayor	www.municode.com
Philadelphia	Strong Mayor	www.amlegal.com/philadelphia_pa/
Portland, OR	Commissioner form of Government	www.bpcnet.com/codes/portland.htm
Providence	Strong Mayor	www.providenceri.com/home_rule_charter/index.html
San Francisco	Strong Mayor	www.amlegal.com/sanfran/viewcode.htm
Seattle	Strong Mayor	clerk.ci.seattle.wa.us
Syracuse	Strong Mayor	www.syracuse.ny.us/default.asp
Tampa	Strong Mayor	www.municode.com
Washington, D.C.	Strong Mayor	dccode.westgroup.com/home/dccodes/default.wl

Type of Government in Cities in Which Mayoral Successor is a Mayoral Appointee

<i>City</i>	<i>Type of Government</i>	<i>Source</i>
Cincinnati	Council-Manager	www.municode.com
Cleveland	Strong Mayor	www.city.cleveland.oh.us/index1.html
Denver	Strong Mayor	www.municode.com
Houston	Strong Mayor	www.municode.com
Kansas City, MO	Council-Manager	www.municode.com

APPENDIX E

Supplemental Materials On Nonpartisan Elections

Supplemental Materials On Nonpartisan Elections

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 Siegal, 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

¹ Transcript, New York City Charter Revision Commission, July 29, 1998 Nonpartisan Citywide Elections Forum ("Transcript 1998 Nonpartisan Forum"), at p. 7.

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

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

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.

⁹ Id. at p. 11.

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

¹⁰ Id. at pp. 11-12.

¹¹ Id. at p. 12.

¹² Id.

¹³ Id. at p. 13.

¹⁴ Id. at p. 14.

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.

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

¹⁵ Id.

¹⁶ Id. at p. 15.

¹⁷ Id.

¹⁸ Id. at p. 17.

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

¹⁹ Id.

²⁰ Id. at p. 18.

²¹ Id.

²² Id. at p. 19.

²³ Id. at p. 22.

²⁴ Id.

²⁵ Id.

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 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

²⁶ Id. at p. 23.

²⁷ Id.

²⁸ Id. at pp. 23-24.

²⁹ Id. at pp. 24-25.

³⁰ Id. at pp. 27-28.

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 Siegal, spoke regarding the failure of New York City's present electoral system. Professor Siegal noted that the present system resulted in officials too comfortable with the disastrous and long term decline of New York City.³⁶ Professor Siegal opined that, should such a downturn happen again, the political system now in place would once again fail to react. Professor Siegal 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

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.

elections cases; and (4) the present system is a political monopoly which eliminates competition and accountability.³⁷

Professor Siegal 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 Siegal 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 Siegal stated that 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

³⁷ Id. at p. 36-42.
³⁸ Id. at pp. 41-45.
³⁹ Id. at p. 42.
⁴⁰ Id. at p. 43.
⁴¹ Id. at pp. 44-45.
⁴² Id. at p. 46.
⁴³ Id. at p. 47-48.

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

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.

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 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

⁵¹ *Id.* at pp. 63-64.

⁵² *Id.* at pp. 81-83.

⁵³ *Id.* at pp. 84.

⁵⁴ *Id.* at pp. 85-93.

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

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. 50 Largest Cities: Partisan/Nonpartisan Elections and Ethnicity of Mayor

City	Mayor/Ethnicity	Partisan (P) or Nonpartisan (N)	Runoffs, Primaries, or Other
New York, NY	Mike Bloomberg (White) Rudy Giuliani (White) David Dinkins (Black)	P	Runoff between top two in party if nobody receives a majority vote in the primary. Party nominees advance to general election.
Los Angeles, CA	James K. Hahn (White) Richard Riordan (White) Tom Bradley (Black)	N	Top two advance to a runoff if nobody receives a majority in an election.
Chicago, IL	Richard Daley (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Houston, TX	Lee P. Brown (Black) Bob Lanier (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Philadelphia, PA	John F. Street (Black) Ed Rendell (White)	P	No runoffs in the primary. Party nominees advance to a general election.
Phoenix, AZ	Skip Rimsza (White) Paul Johnson (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
San Diego, CA	Dick Murphy (White) Susan Golding (White) Maureen O'Connor (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Dallas, TX	Laura Miller (White) Mary Poss (acting) (White) Ron Kirk (Black) Steve Bartlett (White) Annette Strauss (White)	N	Top two advance to a runoff if nobody receives a majority in an election.

San Antonio, TX	Ed Garza (Hispanic) Howard W. Peak (White) William Thornton (White) Nelson Wolff (White) Henry Cisneros (Hispanic)	N	Top two advance to a runoff if nobody receives a majority in an election.
Detroit, MI	Kwame Kilpatrick (Black) Dennis W. Archer (Black) Coleman A. Young (Black)	N	Top two advance to a runoff if nobody receives a majority in an election.
San Jose, CA	Ron Gonzales (Hispanic) Susan Hammer (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Indianapolis, IN	Bart Peterson (White) Stephen Goldsmith (White)	P	Most votes wins an election. No primaries.
San Francisco, CA	Willie L. Brown, Jr. (Black) Francis Michael Jordan (White)	N	Top two advance to a runoff if nobody receives a majority in an election. <i>* San Francisco has voted to institute Instant Runoff Voting, but will not implement it until 2003.</i>
Jacksonville, FL	John Delaney (White) Ed Austin, Jr. (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Columbus, OH	Michael B. Coleman (Black) Greg S. Lashutka (White) Dana G. Rinehart (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Austin, TX	Gus Garcia (Hispanic) Kirk Watson (White) Bruce Todd (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Baltimore, MD	Martin O'Malley (White) Kurt L. Schmoke (Black)	P	Most votes wins a primary. Party nominees advance to a general election
Memphis, TN	Willie. W. Herenton (Black)	N	Most votes wins an election. No primaries.

Milwaukee, WI	John O. Norquist (White)	N	Top two candidates from primary advance to a general election. (Primaries are only held if there are more than two candidates)
Boston, MA	Thomas Menino (White) Raymond L. Flynn (White)	N	Top two candidates always advance from the primary.
Washington DC	Anthony Williams (Black) Marion Barry (Black) Sharon Pratt Kelly (Black)	P	Most votes wins an election. No primaries.
Nashville-Davidson, TN	Bill Purcell (White) Philip Bredesen (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
El Paso, TX	Raymond C. Caballero (Hispanic) Carlos M. Ramirez (Hispanic), Larry Francis (White) William S. Tilney (Hispanic) Suzanne S. Azar (Hispanic)	N	Top two advance to a runoff if nobody receives a majority in an election.
Seattle, WA	Greg Nickels (White) Paul Schell (White) Norman B. Rice (Black)	N	Top two candidates from primary advance to a general election. (Primaries are only held if there is more than two candidates)
Denver, CO	Wellington Webb (Black) Federico F. Peña (Hispanic)	N	Top two advance to a runoff if nobody receives a majority in an election.
Charlotte, NC	Pat McCrory (White) Richard Vinroot (White) Sue Myrick (White)	P	Top two advance to a runoff if nobody receives 40% in an election.
Fort Worth, TX	Kenneth Bar (White) Kay Granger (White)	N	Most votes wins an election. No primaries.
Portland, OR	Vera Katz (White) Bud Clark (White)	N	Most votes wins an election. No primaries.
Oklahoma City, OK	Kirk Humphreys (White) Ronald J. Norick (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Tucson, AZ	Robert B. Wallrup (White) George Miller (White)	P	Top two advance to a runoff if nobody receives a majority in an election.

New Orleans, LA	Ray Nagin (Black) Marc H. Morial (Black) Sidney J. Barthelemy (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Las Vegas, NV	Oscar Goodman (White) Jan Lavery Jones (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Cleveland, OH	Jane Campbell (White) Michael R. White (Black)	N	Top two candidates from primary advance to a general election. (Nobody with less than 1% of the vote can advance to the general election)
Long Beach, CA	Beverly O'Neill (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Albuquerque, NM	Martin Chavez (Hispanic) Jim Backa (White) Martin Chavez (Hispanic) Louis Saavedra (Hispanic)	N	Most votes wins an election. No primaries.
Kansas City, MO	Kay Barnes (White) Emanuel Cleaver II (Black)	N	Top two candidates from primary advance to a general election.
Fresno, CA	Alan Autry (White), James Patterson (White) Karen Humphrey (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Virginia Beach, VA	Meyera E. Oberndorf (White)	N	Most votes wins an election. No primaries.
Atlanta, GA	Shirley Franklin (Black) Bill Campbell (Black) Maynard Jackson (Black)	N	Top two advance to a runoff if nobody receives a majority in an election.
Sacramento, CA	Heather Fargo (White) Jimmie R. Yee (Asian) Joe Serna, Jr. (Hispanic)	N	Top two advance to a runoff if nobody receives a majority in an election.
Oakland, CA	Jerry Brown (White) Elihu Harris (Black) Lionel Wilson (Black)	N	Top two advance to a runoff if nobody receives a majority in an election.

Mesa, AZ	Keno Hawker (White) Wayne Brown (White) Willie Wong (Asian)	N	Top two advance to a runoff if nobody receives a majority in an election.
Tulsa, OK	Bill LaFortune (White), M. Susan Savage (White)	P	Runoff between top two in party if nobody receives a majority vote in the primary. Party nominees advance to general election.
Omaha, NE	Michael Fahey (White), Hal Daub (White) Sebastian Anzaldo (Hispanic) Paul J. Morgan, Jr. (White)	N	Top two candidates from primary advance to a general election.
Minneapolis, MN	R. T. Rybak (White) Sharon S. Belton (Black) Donald M. Fraser (White)	N	Top two candidates from primary advance to a general election. (Primaries are only held if there are more than two candidates)
Honolulu, HI	Jeremy Harris (White) Frank Francis Fasi (White)	N	Top two advance to a runoff if nobody receives a majority in an election.
Miami, FL	Manuel A. Diaz (Hispanic) Joe Carollo (Hispanic)	N	Top two candidates from primary advance to a general election.
Colorado Springs, CO	Mary Lou Makepeace (White) Robert M. Isaac (White)	N	Most votes wins an election. No primaries.
St. Louis, MO	Francis G. Slay (White) Clarence Harmon (Black) Vincent Schoemehl (White)	P	Runoff between top two in party if nobody receives a majority vote in the primary. Party nominees advance to general election.
Wichita, KS	Bob Knight (White)	N	Top two candidates from primary advance to a general election.
Santa Ana, CA	Miguel A. Pulido (Hispanic)	N	Most votes wins an election. No primaries.

3. 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	17,770	20,869	1,619	416	71%	19%	4%	5%	0%	0%
Atlanta, GA	416,474	138,352	255,689	18,720	8,046	765	173	33%	61%	4%	2%	0%	0%
Sacramento, CA	407,018	196,549	62,968	87,974	67,635	5,300	3,861	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%

4. RACE OF MAYOR AND ELECTION SYSTEM, 50 LARGEST CITIES, 2000 CENSUS

Partisan Election of Mayor

All Cities	Cities with Anglo Mayors	Cities with Black or Hispanic Mayors	% of Cities with Black or Hispanic Mayors
9	7	2	22%

Nonpartisan Election of Mayor

All Cities	Cities with Anglo Mayors	Cities with Black or Hispanic Mayors	% of Cities with Black or Hispanic Mayors
41	27	14	34%

5. BLACK MAYORS REPRESENTING CITIES WITH POPULATIONS OVER 50,000

NAME	TERM EXPIRES	CITY	POPULATION	% BLACK	Partisan/Nonpartisan (P/N)
Lee Brown	5-Jan	Houston, TX	1,660,533	27	N
John Street	4-Jan	Philadelphia, PA	1,452,300	40	P
Kwame Kilpatrick	6-Nov	Detroit, MI	1,027,974	63	N
Willie Brown	4-Jan	San Francis co, CA	723,959	11	N
Michael Coleman	4-Jan	Columbus, OH	657,100	23	N
W.W. Herenton	4-Nov	Memphis, TN	610,337	55	N
Anthony A. Williams	4-Jan	Washington, DC	606,909	70	P
C. Ray Nagin	6-May	New Orleans, LA	496,938	55	N
Wellington E. Webb	3-Jun	Denver, CO	467,610	13	N
Shirley Franklin	6-Jan	Atlanta, GA	394,017	67	N
Jack Ford	6-Jan	Toledo, OH	313,619	24	N
Sharpe James	6-Jun	Newark, NJ	275,221	58	N
Bernard Kincaid	4-Nov	Birmingham, AL	265,968	56	N
Elzie Odom	3-May	Arlington, TX	261,721	8.4	N
Glenn D. Cunningham	5-Jun	Jersey City, NJ	240,055	28	N
William Johnson	6-Jan	Rochester, NY	231,636	32	P
William E. Ward	5-May	Chesapeake, VA	199,184	29	N
Harvey Johnson	5-Jun	Jackson, MS	196,637	56	P
Preston Daniel	4-Jan	Des Moines, IA	192,000	8.1	N
William V. "Bill" Bell	6-Jan	Durham, NC	187,035	44	P
Martin G. Barnes	4-Jan	Paterson, NJ	148,394	36	N
Mamie E. Locke	4-May	Hampton, VA	146,437	45	P
Woodrow Stanley	4-Nov	Flint, MI	140,761	48	N
Floyd Adams	4-Dec	Savannah, GA	137,560	51	N
Marshall B. Pitts, Jr.	6-Jan	Fayetteville, NC	121,015	42	N
Roosevelt F. Dorn	4-Apr	Inglewood, CA	109,602	52	N
Jack Ellis	4-Dec	Macon, GA	106,612	52	P

NAME	TERM EXPIRES	CITY	POPULATION	% BLACK	Partisan/Nonpartisan (P/N)
James Holley	4-Jun	Portsmouth, VA	103,907	47	N
Eric J. Perrodin	6-Jun	Compton, CA	90,454	55	N
Douglas Palmer	2-Jun	Trenton, NJ	88,675	50	N
Gwendolyn A. Faison	6-Jan	Camden, NJ	79,904	53	N
Robert L. Bowser	6-Jan	East Orange, NJ	77,690	90	P
Robert Jones	3-Nov	Kalamazoo, MI	77,145	21	N
Willie Payne	6-Jan	Pontiac, MI	72,800	37	N
James M. Baker	4-Nov	Wilmington, DE	72,664	56	P
Lorraine Morton	5-Apr	Evanston, IL	74,239	23	N
Wilmer Jones -Ham	2-Mar	Saginaw, MI	69,100	41	N
Ernest D. Davis	4-Apr	Mt. Vernon, NY	67,153	49	P
Wayne Smith	6-May	Irvington, NJ	61,018	55	N
James E. Mayo	4-Jun	Monroe, LA	53,107	61	N

Source: Census Bureau, U.S. Department of Commerce
Revised: 6/17/02 by NCBM

Note: Dayton, Ohio recently elected a black mayor in a nonpartisan election.
Details will be added to chart when available

6. 1998 Commission Ballot options

A. The General Election

Currently, the names of candidates of a particular party must appear on voting machines in the same column (vertical) or row (horizontal) containing generally the names of candidates of such party.¹⁵ Election Law § 7-104(5). In the last mayoral election, there were seven parties and, therefore, seven pre-occupied columns. There are eight party columns on a machine and, in the last election, independent candidates were listed in the eighth column. A ninth column exists for placement of ballot questions and propositions. Hypothetically, even without switching to nonpartisan elections, these voting machines would have difficulty in a partisan election where more than eight parties claimed the right to columns on the ballot.¹⁶ Following are options for structuring the ballot:

1. Bifurcated Ballot

The top portion of the ballot would provide for the nonpartisan offices. At the most left-hand portion would be printed the office, and candidates would be listed horizontally. For example, the top of the machine at the left corner would be printed "Mayor" and horizontally (in the same row), the names of the candidates would be printed without party affiliation, column by column. This construction would allow for up to eight candidates for a citywide office. In the row below "Mayor" would be printed "Comptroller" with candidates' names listed horizontally across, and so on. Underneath

¹⁵ Election Law § 1-104(3) defines a "party" as "any political organization which at the last preceding election for governor polled at least fifty thousand votes for its candidate for governor."

¹⁶ Indeed, the Election Law anticipates that the number of parties may exceed the number of rows and columns available on voting machines. Election Law § 7-200(4).

the nonpartisan offices would begin the columns for partisan offices. A sample bifurcated ballot follows this page.

The Commission can anticipate that candidates for citywide office looking to identify with the Democratic party would want to be in the left-most column, which the Democratic party has traditionally occupied. Rotating names in the nonpartisan section of the ballot throughout election districts could mitigate this concern.

2. Double Column Bifurcation

This structure is similar to the first scheme in that the top portion of the ballot provides for nonpartisan offices while the remaining portion provides for partisan offices. In this scheme, however, candidates for citywide office are listed by column, with the Mayor on the left, Comptroller in the middle and Public Advocate on the right. For example, the top two left-hand columns would both list mayoral candidates (rotating names throughout election districts). To the right of the Mayor, would be the Comptroller and Public Advocate columns (once again names would be rotated).

3. Final Column

In this structure, candidates would be listed vertically in the ninth column where the propositions usually appear. Propositions and ballot questions would appear directly above candidacy listings. However, there should be a clear partition between the candidate listings and the ballot proposals, as Election Law § 7-110 requires that ballot proposals "appear on the voting machine or ballot in a separate section." Once again, this scheme may engender concern since candidates will appear on the right-hand side of the ballot, where voters do not traditionally "look first."

APPENDIX F

Ballot Question

Ballot Question

Proposal Recommended by the New York City Charter Revision Commission

Mayoral Succession

Shall the Charter be amended to require a special election in about 60 days after a mayoral vacancy (in addition to the later general election to fill the vacancy), with a runoff election if no candidate receives at least 40 percent of the vote, and to make the Speaker of the Council responsible for presiding over meetings of the City Council instead of the Public Advocate?

APPENDIX G

Resolution Of The New York City Charter Revision Commission



NEW YORK CITY CHARTER REVISION COMMISSION

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Patricia M. Hynes
Harry Kresky
Loretta Lynch
Cecilia E. Norat
Marlene Springer
Herbert Sturz

RESOLUTION OF THE NEW YORK CITY CHARTER REVISION COMMISSION

dated September 3, 2002, in relation to the filing with the City Clerk of a proposal revising the city charter and question therefor for the purpose of having the same submitted to the electors of the City at the general election held on November fifth, two thousand and two and the adoption of a report relating thereto.

Resolved, that pursuant to Section 36 of the Municipal Home Rule Law, one proposal to amend the charter of the City of New York with the appropriate ballot question and the amendments to be effected upon the approval of such question are attached hereto, to be filed with the City Clerk of the City of New York before September sixth, two thousand and two; 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 fifth, two thousand and two; 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 Staff the duty and power to take all necessary and/or appropriate actions to effectuate the placement of the question on the ballot, including but not limited to inclusion of non-substantive technical corrections to the documents attached hereto and the preparation of an abstract pursuant to law, 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 _____, with _____not present.

, Commissioner

APPENDIX H

Ballot Question Abstract Recommended By The New York City Charter Revision Commission

Ballot Question Abstract Recommended By The New York City Charter Revision Commission

Currently, the Charter provides that, in the event of a mayoral vacancy, the Public Advocate acts as the Mayor until a general election can be held to fill the vacancy. For the Offices of Public Advocate, Comptroller, Borough President and City Council member, the Charter generally provides for a special election without party nomination in about forty-five days after the vacancy to fill a vacancy, with nominations by independent nominating petitions, and with a subsequent party primary and general election to be held later to fill the vacancy.

This proposal would provide generally that a special election be held in about sixty days after the vacancy to fill a mayoral vacancy, similar in format to the procedure already set forth in the Charter to fill vacancies in the Offices of Public Advocate, Comptroller, Borough President and City Council member, except that in the special election for the Office of the Mayor, where no candidate receives forty percent or more of the vote, the two candidates receiving the most votes would advance to a run-off election to be held on the second Tuesday following the special election. Pending the result of the election, the Public Advocate would act as Mayor. In order to implement the proposal consistent with State law, this proposal would confer upon the Speaker of the City Council the ability to preside over meetings of the City Council, instead of the Public Advocate having that ability. The Public Advocate would remain a nonvoting member of the City Council, and have all other powers arising from that position. This

proposal would take effect immediately, and would apply to vacancies in the Office of the Mayor occurring after September 20, 2002.

APPENDIX I

Statement Of Commissioner Harry Kresky

STATEMENT OF HARRY KRESKY
MEMBER, NYC CHARTER REVISION COMMISSION
September 3, 2002

Over the past two months this City has gone through a remarkable exercise in democracy – a wide ranging discussion of how we want to govern ourselves. Hats off to our Mayor, Michael Bloomberg, for initiating this process and hats off to the thousands of New Yorkers from all across our city who participated in this dialogue.

I think it important that the public record of our proceedings today reflect what, in my opinion, the Commission learned regarding the issue of non-partisan municipal elections.

First, on the matter of timing. Opponents of this reform came to our hearings and said, “don’t rush to judgment; the issue needs more study.” But, they had actually made up their minds and, in some cases, I might add, without very much study. It is hard to escape the conclusion that many of the opponents were speaking from the vantage point of what is best for their party, not what is best for the City. But isn’t this, after all, what the issue is about.

I am pleased to report that the members of the Charter Revision Commission did study the issue. We heard testimony of experts and read materials assembled and prepared by our very hard working and talented staff. The experts assured us that a shift to non-partisan elections would not impact negatively on minority empowerment. Voting rights expert Gerald Hebert told us that of the some 150 times the Justice Department has considered the issue of a change to non-partisan municipal elections, on only one occasion has it been found to negatively impact on minority voters, and that situation was in a small rural county in the south and involved peculiar circumstances not applicable here.

Hundreds of New Yorkers – including many who had never testified at a government hearing – testified at these hearings. This was a very positive dimension of the Commission’s process. The issue on the table was to consider non-partisan elections as a means to bring new voices into politics, and, in my opinion, we saw something of how the issue – not to mention the reform itself – does that.

Supporters stressed the need to open up the electoral process so that access to the ballot is not confined to party loyalists, and all voters can participate in choosing who the finalists will be in the general election regardless of how they are registered. In this regard it is important to note that some 850,000 New Yorkers are enrolled into a party other than the two major parties or are registered without party enrollment. In my opinion these witnesses made a convincing case that both the quality of candidates and the quality of our governmental process would benefit from non-partisan elections.

The majority of elected officials who testified spoke against the reform, arguing that the present system should not be changed when the influence of minorities within

the Democratic Party is increasing. Several Democratic office holders stressed the competitive nature of Democratic Party primaries in light of term limits and the City's campaign finance program, and cautioned against changing a system that works. Some warned that voter turnout would be reduced, but no evidence was presented that demonstrated this. Some stressed the need to have party labels on the ballot so that voters have a "cue" as to the ideological orientation of candidates.

The need for cues was vehemently rejected by others as insulting to voters and a practice which keeps minority communities politically underdeveloped and overly dependent on the Democratic Party.

A consensus has been reached to defer placing this matter before the voters. I respect that consensus and trust that over the months to follow our dialogue will continue. Clearly non-partisan elections is an idea whose time has come – even to New York. I, for one, do not agree with opponents of this reform who argued, "if it ain't broke, don't fix it." In my view there is much in our political system that needs fixing.

Our City Charter is a living document. Living organisms must continue to grow and develop, or they die. This Commission has, by facilitating two months of intensive dialogue and study, contributed to that growth. I urge the Mayor to move quickly to ensure that the Charter revision process continues so that our mission of placing this reform before the voters, while deferred, is not denied.