



NONPARTISAN ELECTIONS

PRELIMINARY OPTIONS AND
RECOMMENDATIONS

STAFF REPORT TO
THE NEW YORK CITY
CHARTER REVISION COMMISSION

June 26, 2003

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NON PARTISAN ELECTIONS: PRELIMINARY OPTIONS AND RECOMMENDATIONS¹

EXECUTIVE SUMMARY

The City elects its political leaders in a partisan fashion; candidates compete in party nominating primaries and their party affiliation appears with their name on the ballot. In a nonpartisan election system, candidates do not run in party nominating primaries and ballots do not list a candidate's party affiliation. Instead, all candidates for a particular office run together, whether from the same party or an opposing one, in a nonpartisan primary. Typically, the two candidates who receive the most votes in that primary advance to the general election.

New York City currently holds nonpartisan elections to fill vacancies in all City offices from the Mayor to the City Council. The issue of using nonpartisan elections as the central system for electing leaders in New York City was studied by the Charter Revision Commissions of 1998, 1999, 2001 and 2002. Their collective research and findings provide a substantial historical, statistical and legal record of the issue, which

¹ This report was prepared by Anthony Crowell, Chief Counsel, and Francis Barry, Research Director, with the assistance of Mark Tyler, Chief of Staff/Deputy Chief Counsel. It reflects the contributions and perspectives of the Commission's Executive Director Alan Gartner, City legal advisors including Spencer Fisher, Howard Friedman and Stephen Louis, and many staff members from Charter Revision Commissions, past and present, including Mary Rose O'Connell, Elaine Reiss, Jonathan Rosenbloom, Dana Shonk, Owen Stone, Sara Vidal, Richard Wager and Jimmy Yan. Special thanks are extended to the legal research and data collection efforts of the Commission's interns: Rebecca Adams, Justin Bernstein, Krystal Castle, Shawn Clark, Ralph Consentino, Tom Donohoe, Ariel Dvorkin, Matt Elkin, Shakima Figuera, Brian Kaszuba, Kryzstof Lach, Allicia Lam, Tiffany Leyseth, Tucker McKee, Jinja Murray, Jae Woo Park, Erick Payton, Ingrid Rodriguez, David Shyer, Harold Thompson, and Chris Watson.

includes reports from the nation's preeminent Voting Rights Act experts and transcripts of numerous public hearings.

In 2003, as in years past, the issue of nonpartisan elections has stirred a great deal of public debate. At the Commission's recent hearings, 80 percent of witnesses testified in support of nonpartisan elections, and of those who testified in opposition, many were elected officials. Opponents argued that the current system works but generally did not address how the City should resolve the serious problems that proponents of nonpartisan elections raised, which include the following:

- The percentage of registrants who choose not to designate a party membership is rapidly increasing, particularly among young and immigrant registrants. Approximately 700,000 registered voters are relegated to a Class B voter status because they currently have no say in who will appear on the November ballot because they cannot participate in a partisan primary.
- Voter participation in municipal elections continues to decline and incumbent re-election rates approach 100%.
- Many candidates win Democratic Party primary elections with less than a third of the vote, a result that fails to express the majority preference of even a small segment of the population (Democratic Party primary election voters). Many such candidates face little or no competition in the general election.
- The procedures for getting on the ballot are overly burdensome and the process of staying on the ballot famously difficult due to fierce litigation over petitions.
- Party bosses still seek to stifle competition and exact patronage.

The Commission staff developed core principles to guide both its analysis of these and other issues and its recommendations:

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

Following are the nine structural variables (questions) that the staff identified in an analysis of a possible shift to a system of nonpartisan elections. The recommendations attached to them, reached after significant inquiry and study, are exclusively those of the staff for consideration and evaluation by the Commission and the public:

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

Recommendation: Nonpartisan elections should be proposed for all City elective offices.

2. How Should Candidates Get On The Ballot?

Recommendation: The Commission should not consider proposing any signature requirements that exceed the current PDP maximums.

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

Recommendation: There should be two rounds of elections.

4. When Should Nonpartisan Elections Be Conducted?

Recommendation: The Commission should solicit opinions from the Campaign Finance Board, and the public, on the benefits and drawbacks of September and October primary election dates.

5. How Should The Winners To Be Determined?

Recommendation: In recognition of the complexities of the discussion, the Commission should consider proposing a nonpartisan primary be held with the top two vote-getters, regardless of percentage of votes received, advancing to a run-off election to be held on the general election day.

6. How will votes be counted?

Recommendation: There should be no change in the method of counting votes.

7. What Is The Role Of The Political Parties?

Recommendation: The Commission should design a system of nonpartisan elections that ensures full ballot access for all candidates wishing to run for office while, at the same time, allowing candidates to continue to affiliate themselves with political parties (the ballot excepted), and of political parties to endorse candidates running in a nonpartisan election.

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

Recommendation: There are arguments for both a 2005 and a 2009 implementation date. The topic should be a subject of discussion at the public hearings.

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

Recommendation: A forum should be held to discuss the opportunities and challenges that nonpartisan elections may present to the Campaign Finance Program and the Voter Guide. Expert witnesses from the Campaign Finance Board and other organizations should be invited to participate.

PREFACE

An Overview Of The Charter Revision Process

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

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; however; 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. In addition to appointing members, the Mayor designates the chair, vice-chair and secretary of the commission pursuant to MHRL §§ 36(4) and (6)(d).

Charter commissions are not permanent commissions. MHRL § 36(6)(e) limits the term of a charter commission. A commission expires on the day of the election at which a proposed new charter or amendments prepared by a commission are submitted to the voters. However, if a commission fails to submit a new charter or any amendments to the voters, the commission expires on the day of the second general election following the commission’s creation. There are no prohibitions against the reappointment of a commission or appointment of a new commission upon the expiration of an existing commission.

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

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

The Commission Membership

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

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

Cardozo Law School, Yeshiva University; as Professor and Assistant Vice President, Columbia University; as Professor and Assistant Vice President, at Baruch College and The Graduate School and University Center, The City University of New York.

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

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

Jerry Garcia is Vice President and Global Business Manager at J.P. Morgan Investor Services and was a member of 2002 Charter Revision Commission. He is a resident of Brooklyn.

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

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

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

Father Joseph O’Hare, S.J. is President of Fordham University, the former Chair of the New York City Campaign Finance Board, and was a member of the 1988 Charter Revision Commission. He is a Bronx resident.

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

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

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

The Commission Staff

The Commission is staffed mainly by career public servants and pro bono attorneys and is led by its Executive Director, Alan Gartner, and Chief Counsel, Anthony Crowell.

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

from his position as Research Director in the Office of Dennis Walcott, Deputy Mayor for Policy.

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

Members of the staff include: Francis Barry, Research Director; Paul Elliott, Communications Director; Howard Friedman, Special Counsel; Mary Rose O'Connell, Deputy Chief Counsel; Elaine Reiss, Pro Bono Counsel; Jonathan Rosenbloom, Special Counsel; Owen Stone, Deputy Director for Communications and Research; Dana Shonk, Special Assistant; Mark Tyler, Chief of Staff and Deputy Chief Counsel; Sara Vidal, Director of Community Affairs; Richard Wager, Senior Advisor; and Jimmy Yan, Deputy Chief Counsel. The Commissions legal and research interns include: Rebecca Adams, Justin Bernstein, Krystal Castle, Shawn Clark, Ralph Constantino, Tom Donohoe, Ariel Dvorkin, Matt Elkin, Shakima Figuera, Brian Kaszuba, Kryzstof Lach, Allica Lam, Tiffany Leyseth, Tucker McKee, Jinja Murray, Jae Woo Park, Erick Payton, Ingrid Rodriguez, David Shyer, Harold Thompson and Chris Watson.

Scope of Review

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

Between May 14 and June 2, 2003, the Commission held nine meetings, including public hearings and expert forums, in all five boroughs which received extensive public participation.² These events were held on May 13 and May 27 in Manhattan; May 22 and May 28 in Queens; May 20 in Staten Island, May 14 and May 29 in Brooklyn; and May 19 and June 2 in the Bronx. All members of the public were given three minutes to speak at the public hearings, but many spoke for more than the allotted time.

² 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 DeKalb Branch of the Brooklyn Public Library, was accessible by 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 Curtis High School, was accessible by the Staten Island ferry 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. Additionally, sign-language or translation services in Chinese, Korean and Spanish were made available.

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

NONPARTISAN ELECTIONS

I. INTRODUCTION

Elections for City offices, like those for federal and state offices, are conducted in a partisan fashion; candidates compete in party nominating elections and a candidate's party affiliation appears with his or her name on the ballot. Under a typical nonpartisan election system, candidates do not run in party nominating elections and ballots do not denote a candidate's party affiliation. Instead, all candidates for a particular office run together in a nonpartisan election, alternatively called a "preliminary" or "general" election. Typically, the two candidates who receive the most votes in that election advance to a second election, alternatively called a "general" or "run-off" election.

The Origins of Nonpartisan Elections

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

The outrage that fueled progressive era social welfare reforms also fueled its electoral reforms. The industrial age spawned enormous wealth, and corrupt government

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

II. THE STUDY OF NONPARTISAN ELECTIONS

Academic Studies

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

Early studies on nonpartisan elections had significant limitations. They largely ignored highly conditional variables, such as population, partisanship, form of government, and regional location. Subsequent studies sought to control for these variables and have presented evidence challenging the initial wave of scholarship. Such studies, beginning with Charles E. Gilbert's examination of twenty of the nation's largest cities³, suggested that the case against nonpartisan elections was overdrawn. A 1986 study by Susan Welch and Timothy Bledsoe⁴ found that once a city's partisan electoral environment was taken into account, "Republican advantage" appeared only in smaller cities, in those of moderate incomes, and in those with at-large elections. Large cities

³ Gilbert, Charles E. "Some Aspects of Nonpartisan Elections in Large Cities." *Midwest Journal of Political Science*, Vol. 6, p. 345-362, Nov., 1962.

⁴ Welch, Susan and Timothy Bledsoe. "The Partisan Consequences of Nonpartisan Elections and the Changing Nature of Urban Politics." *American Journal of Political Science*, Vol. 30, Feb., 1986, p. 128-139.

(over 100,000) with district elections showed no Republican advantage. Welch and Bledsoe also raised concerns about the sustained validity of studies that were performed within a narrow geographic focus (California) and prior to radical demographic and political changes that have occurred in urban areas since the 1960s and 1970s.

In a 1986 article⁵ reviewing the literature on nonpartisan elections since Adrian's first paper in 1952, Carol A. Cassel noted that "scholars generally have turned only recently from studies of one or several communities to comprehensive comparative analyses," which have challenged some of the findings of the earlier empirical studies. Cassel's review of the literature, focusing on several key areas – turnout, incumbent advantage, Republican advantage and social background of elected officials, and the election of Blacks, is summarized below.

Voter Turnout

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

⁵ Grofman, Bernard and Arend Lijphart, Ed. Electoral Laws and Their Political Consequences. New York: Agathon Press, 1986, p. 226-241 (Cassel, Carol A. "The Nonpartisan Ballot in the United States.")

Incumbent Advantage

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

Both Lee (1963) and Karnig (1977) found that at the municipal level, incumbent candidates for mayor fare better in partisan elections. Their conclusions are noteworthy since both studies are based on surveys of all U.S. cities with populations of 25,000 and above. In 1975, the incumbent success rate for mayors was 75 percent in partisan cities and 61 percent in nonpartisan cities 'probably as a consequence of the stabilizing influence party identification has on structuring electoral choices' (Karnig and Walter, 1977)...Incumbent council members also appear to be helped in their re-election efforts by the partisan ballot, although the advantage is modest. It appears that the incumbent electoral advantage increased in partisan cities in recent years, creating the relative advantage for partisan incumbents. In 1975, 82 percent of partisan and 76 percent of nonpartisan incumbent council members who sought reelection were successful (Karnig and Walter); whereas in 1962, 76 percent of partisan and 75 percent of nonpartisan incumbent council members who sought reelection were successful (Lee, 1963).

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

Social Background and Republican advantage

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

Election of Minorities

In reviewing the literature on Black representation in partisan and nonpartisan systems, Cassel cites studies by Robinson and Dye (1978) and Karnig and Welch (1980) that conclude that nonpartisan elections contribute to the under-representation of Blacks. She also notes that the Karnig and Welch study “did not find the positive association between partisan elections and black candidate access to be statistically significant.” The same Karnig and Welch study concluded that black mayoral candidates were more likely to be successful under a nonpartisan system than a partisan one: in the 1970s, 8 percent of partisan and 21 percent of nonpartisan cities elected a black mayor. “In summary,” Cassel writes, “it appears that the nonpartisan system of election inhibits the election of black council members but promotes the election of black mayors. On balance, since the office of mayor is more important, the nonpartisan system seems beneficial to blacks.” Six years after Cassel’s article, a 1991 International City/County Management Association survey, while suggesting that ballot type is not a determinative factor in the election of women and minorities to city councils, found that Hispanic city council candidates fared better in nonpartisan than in partisan elections.

Past Charter Revision Commissions

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

1998 Charter Revision Commission

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

The 1998 report examined data from the 48 largest American cities. In the 11 cities using partisan elections, only two (18%) had minority mayors. In comparison, of the 37 cities that used nonpartisan elections, 15 (41%) had minority mayors. In addition, the report noted that, in 1988, New York City adopted nonpartisan elections for special elections to fill vacancies in City elective offices other than the Mayor's office.⁶ 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."⁷

⁶ 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, it should be noted that this provision for 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.

⁷ The New York Times, July 11, 1990 at B2.

The 1998 report conducted a thorough analysis of the legality of establishing nonpartisan elections for citywide offices in New York City, focusing on considerations arising from the requirements of the New York State Election Law and the federal Voting Rights Act. The 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 an analysis of whether the establishment of nonpartisan elections would violate the federal Voting Rights Act. Dr. Lichtman analyzed statistics concerning race, voting patterns, and election results. He concluded that the change from partisan to nonpartisan elections would not violate the Act. Dr. Lichtman testified that his statistical analysis showed that party identification is not a necessary pre-condition for minority candidates to be elected.

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

1999 Commission

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

The 1999 Commission held an expert forum on election issues on August 6, 1999. Lawrence Mandelker, an election lawyer, had favorable views on nonpartisan elections, as did Dr. Lichtman, based on his research. Stanley Schlein, counsel to the State

Assembly Election Law Commission, and Professor Robert Bailey of Rutgers University, disagreed with nonpartisan elections.

Dr. Bailey stated that party affiliation and race are the two main predictors of voting patterns.⁸ He further stated that removing party affiliation would highlight race as a factor in elections.⁹ Dr. Bailey further explained that by removing party, “you in a sense are eliminating one filter or one other umbrella identity that could mitigate some racial voting patterns in this city.”¹⁰

Dr. Lichtman performed extensive statistical analysis of citywide elections within the City from 1989 through 1997.¹¹ 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.¹²

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

⁸ Transcript of 1999 Charter Revision Commission Expert Forum, August 6, 1999 (“1999 Expert Forum Transcript”) at p. 114.

⁹ Id.

¹⁰ Id.

¹¹ Id. at pp. 121-122.

¹² Id. at pp. 118-143.

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... .”¹³

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.¹⁴ He noted that it could be problematic for a partisan primary election to be held simultaneously with a nonpartisan election, because of the lockout mechanism used to ensure that primary voters vote in the primary for party in which they are registered. Mr. Mandelker proposed solutions such as buying new voting machines, requesting the Legislature’s approval to conduct partisan and nonpartisan primaries on different days, or using paper ballots, an alternative he disfavored.

2001 Commission

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

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

¹³ *Id.* at p. 103.

¹⁴ *Id.* at pp. 92-94.

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

The 2002 Commission

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

Dr. Lichtman's analysis indicated that voter turnout is not reduced by nonpartisan elections, but rather that voter turnout tends to be low in municipal elections that do not occur simultaneously with elections for higher office such as governor or president. Minority turnout is generally higher for such elections, and voting in general is higher for higher offices. Dr. Lichtman also concluded that voting patterns in citywide elections show that standard explanations of how partisan elections help minority voters elect their preferred candidates do not apply to citywide elections in New York City. Dr. Lichtman noted that the phenomena of minorities being able to dominate Democratic primaries, and

of major differences between the voting strength of minorities and whites in Democratic primaries and general elections, does not apply in New York City, perhaps because of the diversity of significant minority populations in the City and of the failure of minority voters to coalesce in support of candidates from other minority groups.

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

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

The scholarship performed and data collected by social scientists on nonpartisan elections is far from conclusive. Applying mixed and tempered conclusions that reflect marginal differences in electoral outcomes while ignoring highly conditional variables

should be done with the highest degree of caution. This is particularly true in the case of New York City, which is fundamentally different from the small towns that are the focus of most of the academic literature. This need for extreme caution does not, of course, prevent opponents and proponents of nonpartisan elections from making sweeping claims, even when no empirical data exists. For instance, opponents argue that nonpartisan elections are personality driven rather than issue-oriented, while proponents argue that nonpartisan elections reduce patronage and government waste. These are appropriate subjects for political debate, but have thus far been beyond the scope of political science.

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

Which system [partisan or nonpartisan] will do most to enhance the twin factors of competition and consensus essential to democratic process? Which system will best promote freedom and equality of access to public office and political activity by all groups in the community? Which system will best encourage the presentation of alternative viewpoints on key issues facing the community and relate these views to candidate choice? And finally, which system will best lead to the recruitment and election of those men and women of ability and integrity without whom the community will fail to reach its potential as a vital force in the life of its citizens? In answering these questions, each community will have to examine its own problems, needs and resources. Important and helpful as they are in raising the question for debate, the generalizations of both the partisan and nonpartisan advocates can never be an adequate substitution for the thoughtful individual consideration. The size of the city, the character of its population, the quality of its civic institutions, the integrity of its press – these and countless other matters will determine which type of ballot and what kind of politics will result in the most vital political life for the community and its citizenry.¹⁵

¹⁵ Lee, Eugene C. *The Politics of Nonpartisanship: A Study of California City Elections*. Berkeley: University of California Press, 1960.

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

III. ELECTIONS IN NEW YORK CITY

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

New York City is the largest, most ethnically diverse city in the nation. Its unions are strong, its press aggressive, its neighborhoods organized, its immigrant population

large, its media outlets – print, radio, electronic and television (cable and otherwise) – vast, and its political machines, and its Mayor, are powerful. These factors alone distinguish New York City from most of the cities that scholars have studied. Indeed New York’s vibrant field of third parties, its Council district -- rather than at-large elections, and its volatile campaigns, which discuss policies and programs of enormous economic and social significance, further distinguish City elections.

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

Recent Reforms

In the mid-1980s, a series of municipal corruption scandals linked top ranking government officials to Democratic Party bosses in the Bronx (Stanley Friedman) and

Queens (Donald Manes).¹⁶ To help restore the public's trust, open up politics to those who would challenge the machine, and minimize the influence, and the appearance of influence, of money on elections, Mayor Edward I. Koch (1978-1990) supported the creation of a voluntary public financing system for candidates who run for office. The 1988 Charter Revision Commission placed the reform, along with a Citywide Voter Guide, on the ballot, and the referendum passed with strong support.

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

The impact of the two term limit for City office holders was first realized in 2001, when 36 of 51 Council Members, four of five Borough Presidents, the Comptroller, Public Advocate, and Mayor all were barred from seeking re-election. In the same election, another new law went into effect: the campaign finance program's public funds matching rate had been changed to \$4-to-\$1, for up to the first \$250 contributed by a city

¹⁶ Bronx Democratic Leader Stanley Friedman and Queens Borough President and County Democratic Leader Donald Manes were involved in a series of political scandals during the 1980s. Initial investigation into a bribery case at the Parking Violations Bureau implicated Manes in other crimes, and he committed suicide before being indicted. The PVB scandal also involved Friedman, who was convicted and sentenced to twelve years in jail.

resident. (Previously, the rate had been \$1-to-\$1, up to the first \$1,000 contributed.) Together, term limits and the new matching rate produced the busiest and most competitive primary election in the City’s history. However, with the exception of the races for Mayor, Staten Island Borough President, and a handful of City Council seats, the general election was largely uncompetitive.

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

Problems With The Present Election System

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

Phantom Opponents, Phantom Choices

The overwhelming majority of the City’s current office holders won election with roughly 90 percent of the general election vote. With the exception of several City

Council seats, the Office of Staten Island Borough President, and the Office of Mayor, candidates who win the Democratic primary wage general election campaigns that are typically devoid of any organized opposition. The one-third of city voters who are not registered Democrats are left to rubber stamp the party's nominee.

Disenfranchised Voters, Derailed Preferences

Under the current system, registered independents are prohibited from participating in primary elections. Yet winning the primary is tantamount to election for all but a few races. Without participating in the primary, independents, the fastest growing block of registered voters, are effectively disenfranchised. As a result, New York has two classes of voters: those who select general election candidates and those who are prohibited from taking part in that selection. Both classes pay taxes that are used for managing and running the general election selection process, but voters not enrolled in a party cannot participate in the selection. Neither the Constitution, which makes no reference to political parties, nor the laws governing voting rights, contemplate a second class of voters.

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

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

Narrowed Public Discourse, Narrowed Candidate Pool

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

Faux Democratic Voters, Faux Democratic Candidates

In a bow to reality, it is not uncommon for Republicans and others who may not feel at home in the Democratic Party to register as Democrats nonetheless, recognizing

that the Democratic primary provides the only real opportunity to participate meaningfully in the City's electoral process. In addition to feeling less than at home in the Democratic Party, Republican-turned-Democratic voters disqualify themselves from voting in Republican primaries for statewide and presidential elections. And just as voters may feel compelled to register as Democrats so that their voices may be heard, candidates who hope to win office may run as Democrats even if they have little interest in party ideology.

Protecting the Machine, Protecting Incumbents

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

When considering the impact of nonpartisan elections on the problems outlined above, the discussion must begin with the acknowledgement of one undisputable fact: Nonpartisan elections will enfranchise the fastest growing group of voters, independents, who now number approximately 700,000. The rhetorical arguments offered in opposition to nonpartisan elections must be weighed against whether the benefits of partisan elections are sufficiently great, or the unintended consequences of nonpartisan elections

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

Public Testimony Highlights The Problems

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

With but one exception, elected officials, the great majority of those who testified spoke in support of nonpartisan elections. One elected official, Council Member Erik Martin Dilan (D-BK), stated that although he opposed nonpartisan elections, he believed that the public should be given the opportunity to decide the issue itself. Those who spoke in support of nonpartisan elections cited many of the grievances outline above, including:

- Voter participation in municipal elections continues to decline and incumbent re-election rates approach 100%.

- The percentage of registrants who choose not to designate a party membership is rapidly increasing, particularly among young and immigrant registrants.
- Many candidates win Democratic Party primary elections with less than a third of the vote in a primary election, which fails to express the majority preference of even a small segment of the population (Democratic Party primary election voters), and then coast to victory in the general election.
- The procedures for getting on the ballot are famously burdensome, and the process of staying on the ballot famously difficult.
- Party bosses still seek to stifle competition, particularly from new immigrant groups, and exact patronage.

Witnesses also raised other election reform issues, including instant runoff voting, proportional representation, candidate access to cable television, and the number of signatures required for ballot petitions.

Expert Witnesses Debate The Issue

On May 22, 2003, the Commission held a forum on nonpartisan elections. The two experts who testified were Doug Muzzio, professor of Political Affairs at Baruch College, and Phil Thompson, professor at the Massachusetts Institute of Technology.

Professor Muzzio, reviewing an article he had written on nonpartisan elections, listed the three arguments in favor of nonpartisan elections: 1) weakening or destroying political parties; (2) broadening the candidate field; and (3) and providing candidates, and, by extension, elected officials, with a broader view of the electorate. He also cited

claims that nonpartisan elections increase minority turnout, increase the number of minorities elected to office, and have a minimal or nonexistent impact on policy. He summarized the arguments against nonpartisan elections by citing academic claims of a class/socioeconomic bias, partisan bias, and public policy bias. He also noted an additional bias: political scientists generally support the role of parties in elections. Muzzio further stated that when the party label is no longer available, some scholars have argued that other cues such as incumbency and race and ethnicity tend to dominate. Claims have also been made that nonpartisan elections promote governmental gridlock and extremism.

Professor Muzzio stated that although nonpartisan elections have existed since the early part of the 20th Century in municipalities throughout the country, there is great ambiguity and lack of determinativeness in the social science literature. He argued, however, that some findings, although they contain weaknesses, are suggestive of “possible/plausible/probable” consequences that he found troubling: voter turnout tends to be lower in nonpartisan elections; voter participation in nonpartisan elections is skewed against those of lower socioeconomic status; race and ethnicity and incumbency replace party cues in non-partisan systems for less engaged voters; and non-partisan elections appear to have a Republican or at least a minor party bias. Nevertheless, according to Muzzio, the literature suggests that nonpartisan elections generally achieve their primary purpose – reducing parties' holds over nominations and elections, but also produce a series of negative results.

Stating that he is not a Voting Rights Act expert, Muzzio addressed the Voting Rights Act and questioned how nonpartisan elections would affect its notion of dilution

or retrogression of minority voters. After agreeing with the conclusion reached by past Charter Revision Commissions that the City may, under the Municipal Home Rule law, adopt nonpartisan elections, Muzzio raised questions about how balloting would be conducted and noted that new voting machines will arrive in 2006. In addition, he stated that the Commission should address two important questions: how nonpartisan elections would affect the number of signatures required for candidates' ballot petitions, and whether a runoff election is necessary.

Currently, there is a difference between the number of signatures required for a party primary election, an independent nomination to the general election, and a nonpartisan special election. Regarding the runoff, Muzzio noted that most jurisdictions set the threshold for victory at 50 percent, and if no candidate receives 50 percent, the top two vote-getters advance to the final round. Muzzio noted that New York City currently has a 40 percent threshold for primary elections and any change to it could have voting rights implications. Muzzio believed that the higher the threshold the more difficult it would be for a minority group to elect a representative of its choice, all other things being equal. He also discussed the timing of the elections, noting that different jurisdictions hold nonpartisan elections at different points in the year.

Muzzio's chief recommendation to the Commission was to adopt values and criteria with which to judge proposals on all topics (non-partisan elections, procurement, and agency consolidation). He argued that the criteria for nonpartisan elections should be equity of voting representation, maximal voter participation and enhanced electoral responsiveness and accountability. Muzzio concluded by stating that before trying to build a better mouse trap, be sure that there are mice to catch.

Professor Thompson offered a different view of the academic literature on nonpartisan elections. He testified social science findings regarding nonpartisan elections are limited, inconclusive, and often ignore critical variables. For instance, Thompson stated the relative strength of a city's African-American churches impacts voter turnout, as does the strength of the City's unions. He noted that New York City has three politically active, predominantly African –American and Latino unions with close to 500,000 members that, accounting for family members, represent approximately one million people. Their impact on local politics, according to Thompson, is incomparable to other cities. Even in cities where unions are strong, most have a decentralized system of service delivery where unions negotiate with county, rather than municipal, governments.

- In New York City, Thompson noted, there is both a highly centralized delivery of service and a highly centralized municipal power structure, concentrating authority, including authority to negotiate union contracts, in the Office of the Mayor. Thompson testified that nonpartisan elections tend to be held in jurisdictions that have highly fragmented systems for delivering social services, with county and independently elected authorities (e.g., school boards) delivering many services. According to Thompson, this accounts for elections where voter turnout among minorities is low. In New York, which has a highly centralized system of service delivery, a strong Mayor and strong civic organizations, nonpartisan elections would not, said Thompson, reduce turnout or reduce the level of information available to voters. In noting other differences between New York and other cities, Prof. Thompson noted that some cities are racially polarized and

would skew a national study of elections. These and other local factors and nuances, he said, are not accounted for in any social science study.

Professor Thompson stated that the political science literature argues that parties increase voter participation among minorities and the poor and therefore, political scientists conclude that political parties should not be weakened. Thompson said that the literature failed to account for circumstances such as in New York, where strong civic actors, such as third parties, churches, unions, and community organizations, are active participants in politics and elections.

Professor Thompson offered a theory on this that he believes is consistent with urban political research: nonpartisan elections link electoral outcomes more closely to the underlying civic structure of cities than do partisan voting systems. Nonpartisan elections tend to open the political process more than partisan elections, which means that if a city has strong civic organizations, nonpartisan voting makes it easier for them to have an impact on electoral politics. He gives two examples of this from the nonpartisan cities of Los Angeles and Oakland, California: 1) In his 2001 campaign for Mayor of Los Angeles, Antonio Villaraigosa formed a citywide civic coalition to contest the party leaders' favorite son, James Hahn, and he was nearly victorious; and 2) The Black Panther Party was the electoral apparatus that elected Lionel Wilson as Mayor of Oakland. Thompson stated that in many Southern cities, black churches and students from the civil rights movement were the driving force in mayoral elections. Only if a city does not have these strong civic organizations, Thompson suggested, would candidates with a lot of money and name recognition have an easier time getting elected.

According to Professor Thompson, nonpartisan elections would have a large, positive impact at the City Council level, while having a negligible impact at the mayoral level. He testified that low income and minority communities, especially immigrant communities that are not well-represented in the Council, would be the prime beneficiaries. The dominant political parties have had a negative effect on these communities, said Thompson, because strong civic organizations have become competitors with the party in these communities and this has turned the party into an incumbent protection program. Nonpartisan elections would make it easier for new immigrant groups to participate in local politics and this may indirectly result in a “bubble up” effect at the Council level by increasing local voter turnout.

Professor Thompson also spoke in favor of same day voter registration and non-citizen voting. He touched on the appropriate level for a first round threshold, suggesting that minority candidates would benefit from setting the threshold for a runoff election at a relatively low level.

Professors Muzzio and Thompson were asked questions by the Commissioners. Commissioner Garcia asked both experts what they thought the City would lose by going from a partisan to a nonpartisan system. Muzzio said that party labels on the ballot provide a cue for voters and that parties provide voters with a great deal of information about ideology, programs and policy that may not be offered through a nonpartisan election system. Thompson stated that he held a different view: party competition is anemic and the Democratic Party doesn't offer a real party program in relation to the Republican Party. Also, political information is provided by individual candidate's

campaigns and that the candidates raise money individually; therefore, information is not so much a function of the party as it is of candidates and their campaigns.

In response to Commissioner Siegel’s question about the relationship between electoral structure and fiscal governance, Thompson stated that one of the goals of the Commission should be to increase voter participation as a means of putting pressure on the State government to help with the City’s fiscal crisis. They were both asked about the Voting Rights Act; Muzzio stated that it raises some difficult questions, while Thompson reminded the audience that there are many more minorities, not just Blacks and Latinos.

IV. STATE AND FEDERAL LEGAL ISSUES

State Law Issues

The City’s authority to enact local legislation creating nonpartisan elections for local offices derives from Article IX of the New York State Constitution and Section 10 of the Municipal Home Rule Law (“MHRL”).¹⁷ In Bareham v. City of Rochester, 246 N.Y. 140 (1927), the Court of Appeals considered whether Rochester had the authority, under the State’s home rule provisions, to adopt nonpartisan elections in light of the inconsistent provisions of the Election Law. Although the Court struck down the Rochester law at issue because of its technical failure to cite the Election Law provisions

¹⁷ Under MHRL § 10(1), cities have the power to adopt local laws relating to the “powers, duties, qualifications, number, [and] mode of selection . . . of its officers and employees,” provided that such local law is not inconsistent with the State Constitution or any general State law, and provided that the State Legislature has not restricted the adoption of such a local law on a matter of State concern. See MHRL §10(1)(ii)(a)(1) (emphasis added). This provision derives directly from Article IX, § 2(c), of the State Constitution.

that were being superseded, it nonetheless held that cities in New York State possess the authority to establish nonpartisan election systems.¹⁸

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.”

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

¹⁸ 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).

amendment, accepted the party nomination of a candidate and attempted to place that candidate's name and party affiliation on the ballot in a special election to fill a Council vacancy. The Board of Elections claimed that Election Law § 6-114, which provides that party nominations for an office to be filled at a special election be made in accordance with party rules, preempted the Charter. Relying on Bareham, MHRL § 10, and Election Law § 1-102, the Court ruled that New York City had the right to adopt nonpartisan elections in its Charter, notwithstanding the Election Law. Specifically, the Court held that although the Election Law allowed party labels in elections, “the Election Law gives way to inconsistent local law provisions.” This decision was affirmed unanimously by the Appellate Division, First Department.

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

In light of Bareham and City of New York, it appears clear that cities in New York State possess the home rule authority to adopt nonpartisan elections by amending their charters. See also Steinberg v. Meisser, 291 N.Y. 685 (1943) (upholding the denial of an injunction against the City of Long Beach placing before the voters a proposed

local law amending its charter to provide, inter alia, for nonpartisan elections for City Council).

Nonpartisan Elections in New York State

Nonpartisan election systems have existed in New York State for over 80 years. For example, in addition to Rochester, the cities of Sherrill and Watertown have had nonpartisan elections since 1916 and 1920, respectively.¹⁹

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.²⁰

The City of Sherrill's nonpartisan primary system was instituted by the State Legislature in 1916.²¹ In creating this scheme, the Legislature effectively superseded various provisions of the then-applicable Election Law as it applied to Sherrill.²² At its most basic, Sherrill's system of nonpartisan elections modified the method by which a candidate qualified for the general election. While the Election Law at that time provided

¹⁹ 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.

²⁰ 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).

²¹ Laws of 1916, Chapter 172.

²² In 1985, the Election Law was reenacted into its current form.

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.²³

The City of Watertown's nonpartisan primary system was instituted by the State Legislature in 1920.²⁴ Like for Sherrill, the Legislature effectively superseded various provisions of the Election Law as it applied to Watertown.²⁵

The Legislature amended Watertown's nonpartisan election system in 1993,²⁶ 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.²⁷ As amended in 1993, Watertown's legislation effectively superseded various provisions of the modern Election Law.²⁸

²³ 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).

²⁴ Laws of 1920, Chapter 276.

²⁵ 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).

²⁶ Laws of 1993, Chapter 247.

²⁷ 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.

²⁸ Watertown's legislation varies from the following sections of the Election Law as it existed in 1993: 1-104 (defining a primary as a party-based election); 2-120 (statement of party positions to be filled at primary); 4-118 (party designation on notices of primary election); 6-119 and 6-132 (designating petition to include party); 6-128 (first nominations for new party); 6-136

Federal Voting Rights Act

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

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,”

(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); 9200 (selection of candidates to run at general election); and 9210 (statements of canvassing results to include political parties).

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

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

As stated above, Dr. Lichtman, the expert on voting rights for the 1998, 1999 and 2002 Commissions, concluded that a change to nonpartisan elections for Citywide offices would not violate the Voting Rights Act.

V. OPTIONS AND STAFF RECOMMENDATIONS FOR STRUCTURING NONPARTISAN ELECTIONS

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

Prevalence (Appendix C)

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

Offices Covered

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

Election of Minorities (Appendix C)

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

Reforms (Appendix C)

- Of the fifty cities, 27 have laws limiting the number of terms that elected officials may serve.
- Of the fifty cities, seven have some form of public financing of campaigns.
- Of the fifty cities, six have municipal voter guides that are mailed to every registered voter.
- Of the fifty cities, only three (Long Beach, New York, and San Francisco) have public financing of campaigns, a citywide voter guide, and term limits.

Runoff Elections (Appendix C)

- Of the 41 nonpartisan cities, 38 have run-off elections. (C)

- Of the 38 nonpartisan cities with run-off elections, 31 hold a runoff if no candidate receives 50% of the vote, and 7 hold a runoff for the top two finishers regardless whether a candidate wins 50 percent in the first election. (Appendix C)

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

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

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

In developing the following recommendations, the Commission staff was cognizant of the Voting Rights Act and aware of the preclearance provision. The

particular recommendations comport with the advice of Voting Rights Act experts with whom the Commission staff has consulted.

Where the matter does not violate the principles enunciated above, we favor less change (i.e., retaining the practices as present). We do so for three reasons: First, to present fewer changes to the voters to absorb; Second, to present fewer changes to the Department of Justice for its Voting Rights Act analysis, where each proposed change requires separate analysis and justification. (Once the particulars of the nonpartisan election design are set, the Commission staff and consultants will conduct a complete Voting Rights Act analysis, which will be made publicly available.) And third, while establishing the features of nonpartisan elections, we are mindful of the legal advantages that exist for adhering to the current design set forth in the Election Law.

After its review, the Commission staff concluded that there are nine core variables that the Commission must address. They are as follows: (1) the offices to be covered; (2) petitioning; (3) election rounds; (4) timing of the election cycle; (5) threshold for victory; (6) counting the votes; (7) the impact on the Campaign Finance Program and Voter Guide; (8) the role of political parties; and (9) the effective date of nonpartisan elections.

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

Nonpartisan elections are not a new concept in the City's electoral system. Although the City uses a partisan system of elections to choose candidates to serve a full term of office, it uses a system of special elections to fill vacancies, or unexpired terms, in those offices through the use of a nonpartisan system. This use of the "nonpartisan special election" was adopted initially by the voters in 1988 and applied to vacancies in

the Offices of Comptroller, Public Advocate, Borough President and Council Member. See Charter §§ 94(c), 24(c), 81(e) and 25(b). In 2002, the voters approved the use of a nonpartisan system to fill vacancies in the Office of the Mayor. Charter § 10. Thus, vacancies in all City offices are authorized to be filled in a nonpartisan manner. (drop note)

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

In an effort to embrace an approach consistent with that which already exists in the Charter, the 2002 Commission recommended that another Commission consider a proposal that elections for the Offices of Mayor, Comptroller, Public Advocate, Borough President, and Council Member be conducted using a nonpartisan system. The 2003 staff agrees with this recommendation and, accordingly, recommends nonpartisan elections for all City elective offices.

Recommendation: Nonpartisan elections should be proposed for all City elective offices.

2. How Should Candidates Get On The Ballot?

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

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

Election Law § 6-138 governs independent nominating petitions (“INPs”) and requires that they contain signatures of registered voters, regardless of party, who are eligible to vote in the political unit for which a nomination is made. Election Law § 6-142(2) sets the minimum number of signatures required for a petition at 5 percent of the total number of votes cast for governor at the last gubernatorial election in the political unit (excluding blank and void votes). The maximum number of valid signatures required to get on the ballot is set at the following: 7,500 signatures for Citywide office

(§ 6-142(2)(b)); 4,000 signatures for Borough office (§ 6-142(2)(c)); and 2,700 signatures for Council district office (§ 6-142(2)(d-1)).

Individuals eligible to sign both a partisan designating petition (“PDP”) and an independent nominating petition (“INP”) may only sign one petition per elective office.

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

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

In addition to reviewing the 2002 Commission’s recommendation, the Commission staff reviewed recent public testimony and comment on the issue. Although

there was support for the adoption of the 2002 Commission’s recommendation, there also was support for applying the current maximum signature requirements under the PDP system to the proposed system of nonpartisan elections. The concern was that the maximum signature requirements for an INP and a PDP are significantly different for the office of Council Member: the INP maximum is 2,700 signatures, while the PDP maximum is 900 signatures. It was suggested that the PDP’s maximum requirement of 900 signatures was already too difficult for some (typically Democratic Party) candidates to meet, and that increasing it to 2,700 signatures could have the unintended consequence of limiting ballot access –especially as the number of potential candidates increased – regardless of the expanded universe of potential signators.

It was suggested that using the PDP maximum signature requirements for a new system of nonpartisan elections could be detrimental to otherwise typical Republican and third party candidates, many of whom under current law would only need a few hundred signatures to get on the ballot for Citywide office, and much less for Borough or Council office, because of their lower party enrollments. Indeed, the Election Law now provides that petitions must be signed by at least 5 percent of the enrolled voters of a party residing within the political unit. See supra. Thus, a candidate from a third party with a Citywide enrollment of, for example 11,000, would currently need only 550 signatures to access the ballot, not 7,500 signatures.

The Commission staff has considered proposing an open signatory system to allow registered voters to sign more than one petition for each elective office, thereby lifting the current restriction of just one petition. Although some argued that such an approach could lead to “mischief” in the petitioning process, others argued that this

approach would institute safeguards against well organized party machines who would likely seek to invalidate the petitions of lesser organized independent candidates in an effort to eliminate competition.

The Commission staff also considered the proposal to require a filing fee from candidates in place of ballot petitions. A number of legal arguments were presented against this suggestion, and it was concluded that such a system could either encourage nuisance candidates if fees were set too low, or limit ballot access if fees were set too high.

Recommendation: The Commission staff recommends that the Commission not consider proposing any signature requirements that exceed the current PDP maximums.

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

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

In New York's fiercely competitive political arena, a second election offers several important benefits, including: (1) avoiding the current problem of candidates winning office with only a small fraction of the total votes cast; (2) allowing voters the opportunity to take a closer look at the top two contenders; and (3) sharpening the

choices presented to voters by extending the debate and limiting the participants. The two chief costs of a second election – the monetary cost of staging the election and the cost to voters of a second trip to the polls – are ones New York currently incurs. The difference, however, is that under nonpartisan elections, the second election is competitive.

Recommendation: There should be two rounds of elections.

4. When Should Nonpartisan Elections Be Conducted?

New York City primary elections are held in the September of an odd-numbered year with a general election required to follow on the Tuesday following the first Monday in November.²⁹ See Const. Art. 13, § 8. Although New York City represents the dominant approach to the timing of party primary and general elections in the United States, there is less commonality among municipalities that use nonpartisan elections to elect their city offices. The 2002 Commission’s draft proposal on nonpartisan elections called for a nonpartisan primary in September with a run-off election on the November general election day.

Of the 41 largest nonpartisan cities surveyed by the Commission staff, many hold “off-season” elections in the winter and spring, including Los Angeles and Chicago. To separate nonpartisan local campaigns from partisan state campaigns occurring in the same year, elections in Los Angeles are held in April and June. Off-season elections

²⁹ State Constitution Article 13, § 8, entitled "City and county officers, election and term of office," provides in pertinent part that: "All elections of city officers, including supervisors, elected in any part of a city, and of any county officers elected in any county wholly included in a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year" (emphasis added).

have been shown to result in reduced voter turnout, but for many nonpartisan cities, including Los Angeles, they are the only option. Additionally, several cities hold elections in November followed by a runoff two weeks later (Atlanta), within thirty days (Houston), or in early December (San Francisco).

Because New York City holds state and federal elections in even-numbered years, and local elections in odd-numbered years, it does not have the same problem as Los Angeles. A switch to nonpartisan elections in New York City would not require voters to vote on days other than a “regular” election day in an effort to avoid the possible confusion between competing partisan and nonpartisan formats. Furthermore, because the State Constitution requires all elections for local office be decided dispositively on the November general election date, nonpartisan systems that decide an office holder after that date, like Atlanta, Houston or San Francisco, could not be used as a model for New York City. Cities with November elections hold their first elections in a variety of months, including June and October.

In New York City, an October election could offer several benefits. An oft-stated political maxim holds that voters do not pay attention to campaigns during the summer, and only after Labor Day does the real campaign begin. And one of the chief complaints of candidates who participate in the campaign finance program is that they do not receive public funds until early-to-mid August, or sometimes later, which can present cash-flow problems to campaigns, particularly those grass-roots campaigns reliant on public funds from small contributions. (The Campaign Finance Board, to protect the public purse, does not distribute public funds until the Board of Elections has certified the ballot, typically by early August).

By extending the period between ballot petitioning and the first election, candidates arguably would be able to make better strategic use of public funds. And voters would be given a few weeks, rather than a few days, to make their post-Labor Day assessments of candidates. Some experts, including Professor Thompson, have suggested that a shortened second election is advantageous to minority and grassroots candidates because it reduces the need for financial resources and narrows the opportunity for wealthy candidates to outspend their opponent. In addition to reducing candidate spending in the general election and allowing candidates more time to spend public funds in the primary election, the condensed time period between an October and November election could generate more intense public interest, leading both to higher turnout and more free media coverage. Many countries, including Great Britain, conduct national elections within a five week time span. After a first round of local elections conducted over several months, voters and candidates both might benefit from a condensed general election.

A potential drawback to an October nonpartisan primary is the potential for additional costs should the City be required to administer a September election for judicial and district attorney offices, which are created pursuant to State law but held during the City election years.

Recommendation: The Commission staff recommends that the Commission solicit opinions from the Campaign Finance Board, and the public, on the benefits and drawbacks of September and October primary election dates.

5. How Should The Winners Be Determined?

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

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

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

The 2002 Commission recommended that a nonpartisan primary be held with the top two vote-getters, regardless of percentage of votes received, advancing to a run-off election to be held on the general election day. The top vote-getter in the general election

would win with a majority of the total votes cast. This approach is followed in 8 of the 41 largest nonpartisan cities – Detroit is the largest – and maximizes the ability of candidates to use their campaign resources efficiently by not forcing the candidates to plan for the possibility of an interim runoff.

Several other options for defining the threshold required for victory are as follows (For the purposes of this report, the McGuire Commission’s proposal is known as Option A):

- B. Advance the top two candidates to the general election. If no candidate gets at least 40 percent of the vote, hold a runoff election between the top three (or four) candidates to determine who advances to the general election. This formula comes closest to the City’s current election structure, although it also presents the challenge of administering three elections.
- C. Advance the top two candidates to the general election if no candidate receives a majority of the votes, as is done in 30 of the 41 largest nonpartisan cities.
- D. Advance the top two candidates to the general election if no candidate receives a super-majority (three-fifths or two-thirds), thus controlling for the lower level of turnout that is likely in the first round of elections.

Option B, by creating a two-tiered runoff, may be excessively burdensome on candidates and voters. Currently, runoffs for the September elections exist only for Citywide offices; extending runoffs to all offices would result in three elections for many

City Council campaigns. In addition to taxing voters and candidates, the scheme would require additional public funds for candidates in the campaign finance program.

The Commission must also consider, if only two candidates are on the ballot, whether a first election should be held, or whether the two candidates should automatically advance to the second election (e.g., Boston).

Determining the appropriate threshold structure requires the Commission to balance the needs of voters and candidates, as well as the importance of establishing an election structure that adequately results in the preferred choice of the majority. In doing so, the Commission's guiding principles – increasing access, enhancing participation, and improving accountability – are of particular importance.

Recommendation: The Commission staff recommends Option A: holding a nonpartisan primary with the top two vote-getters, regardless of percentage of votes received, advancing to a run-off election to be held on the general election day.

6. How will votes be counted?

During its first round of public hearings, the Commission heard public testimony urging that any proposal for the adoption of nonpartisan elections contain provisions to change the way votes are counted in the City. Many of those who testified suggested that instant runoff voting (“IRV”) be implemented, and one witness, Professor Steven Brams of New York University, argued for approval voting. (No municipality has approval voting.)

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

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

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

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

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

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

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

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

Instant runoff voting is untested in major municipalities and its full effects, including the concern that it creates perverse incentives for voters, are still unknown. San Francisco will conduct instant runoff voting for the first time in its November, 2003 election, which will provide New York City, and jurisdictions of all sizes, with an opportunity to observe its implementation, evaluate its performance, and gauge voter reaction.

Recommendation: The Commission staff recommends no change in the method of counting votes.

7. What Is The Role Of The Political Parties?

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

Consistent with U.S. Supreme Court decisions³⁰, previous Commissions reviewing the issue of nonpartisan elections have not sought to limit the ability of candidates to affiliate themselves with a political party (except on the ballot), nor have they sought to thwart the ability of a party to indicate their preference for a candidate, for example in private campaign literature, running in a nonpartisan election.

³⁰ See e.g., Eu v. San Francisco County Democratic Central Committee et al., 489 U.S. 214 (1989) (The First Amendment provides political parties the right endorse candidates in a nonpartisan election).

Recommendation: The Commission staff recommends the design a system of nonpartisan elections that ensures full ballot access for all candidates wishing to run for office while, at the same time, allowing candidates to continue to affiliate themselves with political parties (the ballot excepted), and of political parties to endorse candidates running in a nonpartisan election.

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

The Commission has at least two options to consider for the effective date of nonpartisan elections: the Citywide elections either of 2005 or 2009. There are various considerations in determining the effective dates. The most compelling justification for a 2005 implementation date rests on the axiom that democracy delayed is democracy denied. Opening up access to the ballot sooner rather than later will permit the immediate realization of two chief purposes of nonpartisan elections: (1) to eliminate the “Class B” status of nearly 700,000 City voters who are currently shut out of determining November ballot candidates because they are not enrolled in a party; and (2) to prevent many party affiliated candidates from being excluded from the ballot by party machinery.

Critics of nonpartisan elections have suggested that if a Commission referendum on the issue is approved by the voters, the new system should not take effect until the 2009 Citywide election. These criticisms are driven by the contention that nonpartisan elections may benefit the Mayor in his 2005 reelection bid. Other political observers have noted that nonpartisan elections may actually benefit opponents of the Mayor. Leaving aside partisan prognostications, it would be highly unusual, though not impermissible, for the implementation of significant electoral reform to be delayed for

five years after enactment. The absence of any precedent, however, is telling. Indeed, imagine if opponents of President Johnson suggested that the implementation of the federal Voting Rights Act of 1964 be delayed until 1968 so as to prevent him from gaining any advantage that might result from the enfranchisement of Southern Blacks.

Recommendation: The Commission staff recognizes the arguments for both a 2005 and a 2009 implementation date. It recommends that the issue be a subject of discussion at the public hearings.

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

Charter Chapter 46 establishes New York City's Campaign Finance Program ("Program"). It is the most comprehensive local campaign finance reform program in the nation, and has been held up as a model for New York and other States, as well as for the federal government. As the Commission examines a nonpartisan election system, careful consideration must be given to its impact on the performance of the Program.

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

Challenges

Commission staff is engaged in a comprehensive exploration of the nexus between nonpartisan elections and the Campaign Finance Program. Nicole Gordon, Executive Director of the Campaign Finance Board, has cautioned the Commission to

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

Commission staff has reviewed reports analyzing the performance of both New York City's and Los Angeles's public financing programs and has had conversations with experts on Los Angeles's system, including Lee Ann Pelham, Executive Director of the Los Angeles City Ethics Commission, the agency charged with administering the city's public financing program. In the lifespan of Los Angeles's program, originating in 1990, Ms. Pelham stated that party spending has not been a problem. Although a spike in party spending did occur in the 2001 mayoral election, it was dwarfed by spending from independent groups, particularly unions. The Commission staff will continue to consult with the Campaign Finance Board and experts from other jurisdictions to address this issue, and any other challenge that nonpartisan elections might create for the Campaign Finance Program.

Opportunities

The long-term success of the campaign finance program is attributable to its continuing evolution. After each citywide election, the Charter requires the Campaign

Finance Board to evaluate the Program's performance and recommend changes to the law as needed. The many legislative changes resulting from this process reflect the Program's ability to adapt to an always changing political environment. The establishment of nonpartisan elections would signal a significant change in the electoral landscape. Given the overlapping goals of the two reforms, nonpartisan elections may offer naturally occurring benefits to the Campaign Finance Program. And given the Program's history of adaptation, nonpartisan elections may present the opportunity to enhance further the Program's performance either by rule or by local law.

The Commission should also consider, in consultation with the CFB, how the City's Voter Guide, a companion to the ballot, might be affected by nonpartisan elections. Currently, as mandated by the Charter, the Campaign Finance Board publishes and distributes a Voter Guide prior to both the primary and general election. Even if candidates appear in both the primary and general election guides, their statements remain the same. A second guide is necessary because many general election candidates do not run in primary elections and thus do not appear in the primary election Voter Guide.

Under nonpartisan elections, voters would receive statements from all candidates in the Voter Guide published and distributed for the first round of elections. Nonpartisan elections may obviate the need for two Voter Guides in the same election cycle, bringing considerable cost savings to the City. To inform voters of candidates on the November ballot, it may be proposed that the CFB mail to each voter a postcard or a sample ballot. Discussion of the Voter Guide should also include whether, as a companion to a nonpartisan ballot, it should exclude references to party affiliation, either in the Guide's

various categories of biographical information or in the candidates' statements. The availability of the Voter Guide on the CFB's Web site offers an additional source of information to voters.

At the Commission's public hearings, former mayoral candidate George Spitz suggested that the Commission adopt a video voter guide, allowing candidates to make statements for broadcast on cable television, and, if possible, streaming on-line on the CFB's Web site. The City does not control over-the-air broadcast channels, but it does have its own governmental cable channels, i.e. "NYC TV," formerly known as Crosswalks," by way of cable franchise agreements. These channels can be directed to carry governmental programming and, in fact, the current Charter provides for coverage of Council hearings and other governmental proceedings. Charter § 1072(e). Based on this model, the City could require that for a period before elections, NYC TV dedicate programming time for airing campaign statements, or stump speeches, by local candidates. Increasing voter access to candidate information, and enhancing candidate access to free media, would complement the aims of nonpartisan elections.

Recommendation: The Commission staff recommends that a forum be held to discuss the opportunities and challenges that nonpartisan elections may present to the Campaign Finance Program and the Voter Guide. Expert witnesses from the Campaign Finance Board and other organizations should be invited to participate.

VI. RELATED ISSUES

In the public hearings, individual speakers recommended that the Commission study a variety of other election reforms that, along with nonpartisan elections, could be

useful providing increased access to the ballot for candidates and voters under a new system of nonpartisan elections. These reform ideas are significant and worthy of a thorough examination and debate by the Commission, even though some may be impossible to accomplish legally through a local Charter revision.

Election Day/Same-Day Voter Registration

Election Day Registration (“EDR”), also known as same-day voter registration, permits eligible citizens to register and vote on election day. Its purpose is to increase voter participation by reducing the barriers between voters and polls. Six States (ID, ME, MN, NH, WI, WY) currently allow for EDR, and one, North Dakota, has no voter registration requirement at all. North Dakota’s elections are conducted in small precincts where election board members know the voters who come to the polls and easily detect those who should not be voting in the precinct. If a voter’s name is not on the list of those who voted in the previous election, he or she may be asked to sign an affidavit swearing that he or she is a qualified elector.

Before individuals can register and vote in the six states with EDR, they must show proof of identity and residency through various forms of documentation, which vary by state: Wisconsin and Minnesota do not mandate the use of picture identification, while Idaho has amended its laws to require that potential registrants provide picture identification as well as a document providing proof of residency.³¹ Other acceptable forms of documentation include a driver’s license, passport, residential lease, and utility bill.

³¹ Rapoport, M. & Tarricone, J., *Election Reform’s Next Phase: A Broad Democracy Agenda and the Need for Movement*, 9 Geo. J. Poverty Law & Policy 379, 386-87 (2002).

Three of the of the six EDR States (WI, MN, & ME) have used Election Day Registration since the 1970's, and three States (WY, NH, ID) adopted EDR in 1993 and 1994 in an effort to avoid the requirements of the National Voting Registration Act ("NVRA"), also known as the 1993 Motor Voter Act. The Act requires that states allow eligible citizens to register to vote by mail, at the DMV, or at state or local government agencies, and limits their ability to remove voters from the voting rolls.³²

The issue of fraud is often raised in discussions of ballot access reform. Historically, cases of election fraud involve organized efforts by partisan election officials, party leaders, and politicians rather than by the voters themselves. The election day registration system in Wisconsin came under attack following the 2000 election amid claims of fraud in Milwaukee.

In that case, a student at Marquette University told ABC News that he had registered under his own name and voted four times on election day, but after an investigation, no cases of fraudulent voting were found at the precincts at the university. Weeks later, the student recanted his story, stating that he had invented the story to bring attention to the fact that voter fraud could occur, not that it had. Nevertheless, opponents of EDR in Wisconsin have aggressively trumpeted the 2000 allegations in an effort to repeal the EDR law. To date, these efforts have been unsuccessful. A study of New Hampshire's 2000 election found that of the more than 1.5 million ballots cast, there was only one case of substantiated fraud.³³ Wyoming has not had any formal complaints but there have been some alleged violations on the state's borders with Idaho and South

³² See http://www.usdoj.gov/crt/voting/nvra/activ_nvra.htm.

³³ Rapoport, M. & Tarricone, J. at 386-87.

Dakota. It is alleged that out-of-state residents are crossing state lines and voting in Wyoming, a charge which has not been substantiated.³⁴

In recent years, no State has enacted EDR, largely because of concerns remain about fraud, as well as the administration and cost of EDR. In 2002, California and Colorado voters rejected ballot referendums on same-day registration. In California, Proposition 52, the Election Day Voter Registration Initiative, lost at the polls by a margin of 59 percent to 40 percent, and in Colorado, 61 percent of voters rejected Amendment 52.³⁵ In 2003, the South Dakota house voted down a bill that would allow for EDR.

In New York State, six Senators and eighteen members of the Assembly, all Democrats, have co-sponsored joint bills authored by Assembly Member Scott Stringer. The legislation would amend the State Constitution to remove the requirement that registration be completed at least ten days prior to an election and provide that qualified persons who have never previously registered to vote may register on any day including election day. Under the State's Election Law, in order to qualify to register to vote in the City of New York, one must be: (1) a citizen of the United States³⁶; (2) at least 18 years old before the next election; and (3) a New York City resident for at least 30 days.³⁷ Under the State Constitution, Article 2, § 5, in order to vote in the upcoming election, registration must be completed at least ten days before the election.³⁸ Consistent with the State Constitution, Election Law § 5-210(3) requires that voter registration be completed

³⁴ See <http://www.cga.state.ct.us/2002/olrdata/gae/rpt/2002-R-0431.htm>

³⁵ *Id.*

³⁶ Includes those persons born in Puerto Rico, Guam and the U.S. Virgin Islands

³⁷ See also Election Law § 5-102, one must not be serving a jail sentence or be on parole for a felony conviction, be adjudged mentally incompetent by a court, or claim the right to vote outside the City of New York.

and mailed at least twenty-five days prior to the next primary or general election, and ten days before a special election. Accordingly, adoption of same day voter registration in New York City does not fall within the purview of the Charter. Rather, it appears that adoption of same day voter registration would require a Constitutional amendment.

Lawful Permanent Resident Voting

Currently, lawful permanent residents (often referred to as Green Card holders), who are not United States citizens, are not permitted to vote in elections for City office. However, State Law permits parents of public school children in New York City the right to vote in Community School Board elections regardless of the parent's U.S. citizenship or immigration status. Education Law § 2590-c.

Proponents of granting the franchise to legal permanent residents argue that such a right is supported by the fundamental democratic principle that the government rests on the consent of the governed. They also argue that lawful permanent residents should be entitled to vote because they have the same civic obligations as citizens, pay taxes, and have a vested interest in local affairs. New York City has the largest foreign-born population of any city in the U.S. constituting approximately 40 percent of the City's residents according to the 2000 U.S. Census. Some estimate that granting lawful permanent residents the right to vote may expand the city's electorate by one third. Opponents of enfranchising lawful permanent residents argue that such persons do not have a sufficient stake in government affairs, and may dilute the votes of U.S. citizen voters. The Commission staff recommends further legal and historical analysis to of this issue.

Convicted Felon Voting

New York is one of forty-eight states in the U.S. that currently prohibit felons from voting in some manner. Nationally, African American men are estimated to account for over one-third of the total disenfranchised felon population. See Fellner & Mauer, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (1998). Many of those state laws governing felony disenfranchisement, including New York's, have been challenged in court as unlawfully violating the voting and civil rights of racial minorities under the U.S. Constitution's Equal Protection Clause, the Federal Voting Rights Act, and State Constitutions and laws.

Currently, State law prohibits convicted felons from voting until they have been discharged from parole or their maximum sentence of imprisonment has expired. See Constitution, Article 2, §3; Election Law § 5-106. The constitutionality of different state laws regarding felony voting prohibitions have varied according to their specific provisions. New York State's Election Law has withstood constitutional challenges on this issue. See *Baker v. Cuomo*, 58 F.3d 814 (2d Cir. 1995).

The Commission staff recommends further legal and historical analysis of this issue.

Election Administration and Monitoring

At the Commission's public hearings, issues were raised concerning the ability of the bi-partisan Board of Elections to administer effectively a nonpartisan election in a nonpartisan manner. Questions raised included the appointment of poll watchers and poll

inspectors³⁹. Another issue regarding election administration concerns extending voting hours beyond the current hours of 6 a.m. to 9 p.m., as recognized by State Election law, either to a longer day or to multiple days. The Commission staff believes that further examination of the relationship between the administration of nonpartisan elections and the bi-partisan Board of Elections is warranted. The staff recommends that the Commission hold a forum, with participation from the Board of Elections and the public, to consider what opportunities and challenges may exist for administering nonpartisan elections in a nonpartisan manner. The Commission staff recommends that the forum also include discussion of the Voter Assistance Commission and how it may better serve as a resource to the City's voters.

³⁹ A Poll Watcher is a representative of a candidate, political party or independent group who observes the election to confirm its fairness and get early unofficial results. An Inspector/Poll Clerk is generally responsible for the operations in the ED, including opening the polls, serving voters and closing the polls including accuracy of canvass.

APPENDIX A

SUMMARY OF TESTIMONY BY CURRENT ELECTED OFFICIALS ON NONPARTISAN ELECTIONS

Summary of Testimony by Current Elected Officials on Nonpartisan Elections

Keith Wright, New York State Assembly Member and Chairman of New York State Assembly Committee on Election Law (Statement read by Terrence Tolbert)

(Public Hearing, May 27, 2003)

- Assemblyman Wright opposes non-partisan elections out of fear that the process would amplify any current problems with the electoral process, which he claims are modified by the two-party system. Councilman Wright purports that the party system is necessary to maintain the integrity of the election process in New York City. Without party oversight, candidates will be more vulnerable to the influence of special interests.
- Confronts the issue of voter knowledge. Without the moderating effect of partisan politics the public will be subject to the exploitation of stereotypical cues because they will lack the knowledge of the candidate's core political values that party affiliation indicate. Nonpartisan process will result in a less informed voting population.
- Worries that without a political party system, minority groups may face disenfranchisement. He feels that citizens will have more difficulty organizing and mobilizing without a party behind them.

Virginia C. Fields, Manhattan Borough President

(Public Hearing, May 27, 2003)

- Opposes nonpartisan elections because the public does not oppose the current process.
- Asserts that parties serve a vital function in the political process and that they provide a framework around which persons can organize causes and ideologies and rally around candidates with similar values. Fields notes that no evidence exists indicating that higher voter turn-out will result from non-partisan elections.
- Expresses concern about financing and the fact that the non-partisan system may favor those with greater financial resources since without parties to fund campaigns. She also fears that the non-partisan election process may have an adverse impact on minority voters, violating the Voting Rights Act.
- Urges the Commission to leave the system as is at least until the 2005 election cycle to avoid the appearance of perhaps supporting any incumbent citywide elected person, but prefers that the partisan system stay in place regardless due to lack of public opposition to the current process.

Bill Perkins, New York City Council Member (Deputy Majority Leader)

(Public Hearing, May 27, 2003)

- Opposes non-partisan elections because the initiative lacks public support, the current system works well, and that eliminating party primaries will limit access to the political process. He claims that the Charter Commission is serving as a rubber stamp for the mayor.
- Cites possible problems with financing campaigns, a function currently served by parties.
- Fears that doing away with party primaries will limit minorities' access to public office by diluting minority voting strengths and mentions the Voting Rights Act, claiming that taking away party labels will leave voters confused as to where the candidates stand on certain issues.

David Weprin, New York City Council Member (Chair New York City Council Finance Committee)

(Public Hearing, May 27, 2003)

- Opposes non-partisan elections because eliminating parties to fund candidates' campaigns will result in a process where the outcome is determined by the ability to finance a campaign.
- Expresses concern about voter turnout, especially by those of lower socioeconomic status.
- Cites to the tradition of the party system in New York City's history and the lack of public opposition to the current process and mentions that lack of party affiliation may leave voters with less information about the candidate.
- Commission should conduct research into the possible affect of non-partisan elections on voter and voter's needs.

William Thompson, New York City Comptroller

(Public Hearing, May 28, 2003)

- Opposes nonpartisan elections because it would favor people with large personal wealth and would confuse voters.

Betsy Gotbaum, New York City Public Advocate

(Public Hearing, May 22, 2003)

- Opposed to nonpartisan elections.
- Party labels convey a message.
- Eliminating party labels will give the very rich an advantage in elections.
- The primary system helps minority candidates.
- Disputes the claim that party leaders determine who gets nominated and elected.
- Feels it is a waste of money to continue having Commissions dealing with this issue.

- Eliminating primaries would create confusion and cause there to be less informed voters.

Herman D. Farrell, Jr., New York State Assembly Member

(Public Hearing, May 22, 2003)

- Opposes nonpartisan elections.
- Party labels provide valuable information and nonpartisan elections would hide that information.
- Disorder would result from making the system nonpartisan.

Michael Cohen, New York State Assembly Member

(Public Hearing, May 22, 2003)

- Opposes nonpartisan elections and asserts that the Commission is ignoring empirical evidence that is against nonpartisan elections.

Michael A. Benjamin, New York State Assembly Member (statement read by Kenneth Augusto)

(Public Hearing, May 19, 2003)

- Opposes non-partisan elections because the current political allows grass roots political activists to be heard.
- He believes that non-partisan elections will elevate private ambition, individual goals and vanity over the needs of the electorate.
- Non-partisan elections will further erode the socializing functions that political parties provide at the grass roots level.

Joel Rivera, New York City Council Member

(Public Hearing, May 19, 2003)

- Opposes the idea of non-partisan elections because it will decrease voter participation and voter turnout and in many instances has been proven across the United States of America, such as Illinois and other entities that have already enacted similar procedures within the electoral process.
- Claims that non-partisan elections would lead to wealthy people with no connections to the community to be elected because they can buy air time and market themselves.
- He also proposed that the issue should not be put on the ballot this year, instead there should be a longer review of up to a year to supposedly better inform people.

David Yassky, New York City Council Member

(Public Hearing, May 14, 2003)

- Opposes non-partisan elections because parties can play an important role in building ideological coalitions.
- If elections are non-partisan, parties will just play the role of patronage dispensers and will not use their role as ideological congregations.

Pedro Espada, Jr., New York City Council Member

(Public Hearing, May 14, 2003)

- Supports non-partisan elections because it opens up the race and removes monopoly power from the entrenched political machine.
- These elections encourage alliances of voters over issues, not party loyalty.
- The elections increase voter turnout by allowing people to vote who wouldn't otherwise because of the party primaries. Candidates have incentives to reach out to voters after the first round of elections who have been previously ignored by the parties.

Erik Martin Dilan, New York City Council Member

(Public Hearing, May 14, 2003)

- Opposes the idea of non-partisan elections, but believes it should be offer on the ballot as a referendum.
- He will campaign against this, however, because the city was founded and is based on the party system and people vote for ideas that are represented by particular parties.

Marty Markowitz, Brooklyn Borough President (Statement read by Seth Cummins)

(Public Hearing, May 14, 2003)

- Opposes non-partisan elections because New York City is home to a collection of small ethnic groups that can only have their interests represented by parties.
- Abandoning parties will prevent citizens and others without special means to gain the representation they deserve.

- Party labels also insure that voters who do not know much about individual candidates can at least choose top vote for a candidate from a party that represents their values. Voters who are less informed are less inclined to vote.
- New York City is also at the whim of a Republican dominated state legislature that needs to balance out with a Democratically strong City that can put pressure on the state.

Robert Stranieri, New York State Assembly Member (Statement Read by Raymond Fasano)

(Public Hearing, May 20, 2003)

- Supports nonpartisan elections because candidates should run on qualifications, not arbitrary political labels.
- According to him, running City Government depends more on one's ability to effectively manage the delivery of municipal services than on one's political ideology.
- Nonpartisan elections would increase the pool of qualified candidates who might not otherwise run because of their own personal political affiliation.
- Another benefit is that it would eliminate costly primary elections; instead there would be a general election and a runoff for candidates receiving at least 40 percent of the vote.

APPENDIX B:

Summary of Public Testimony on Nonpartisan Elections

There was a split between elected officials and members of the public on whether nonpartisan elections should be adopted. The majority of public officials opposed the idea, while an overwhelming majority of the public supported it. The arguments provided in favor of nonpartisan elections were that it would open up the political process and eliminate the influence of the political party machine on deciding who appears on the ballot. Arguments against the proposal include the possibility that political party labels are important cueing devices for voters, it would create chaos in the voting process, and gives an advantage to wealthy candidates.

Those in support of the reform felt it would increase minority participation and overall turnout while the ones speaking out against it argued the opposite, saying that it would decrease voter turnout and minority participation. Common proposals among proponents of nonpartisan elections included the idea of alternative voting, such as instant runoffs and proportional representation: and reducing the number of signatures required for petitions for candidates so they can qualify to be on the ballot.

Testimony:

- Nonpartisan elections should be used for all elected offices in New York City.
- The issue of nonpartisan elections should not be put on the ballot this year; instead there should be a longer review of up to a year to better inform people.
- To win a nonpartisan election, a candidate should have 51% of the vote.
- The proposal for the elections should be put on this year's ballot because it would save money since there will be a voter guide for all the City Council elections. If delayed until next year, then it will double to cost to put a voter guide out on the subject.
- Non-partisan elections should be in the form of instant runoff voting where the candidate with a majority of first-choice votes wins.
- There should be a single runoff election with all candidates that received at least 40% of the vote.
- The system of nonpartisan elections could be strengthened 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.
- The Commission should study a way to end the runoff that would be the inevitable consequence of 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 receives one vote and the candidate with the most votes wins.
- To encourage turnout in a non-partisan election, there should be a candidate night out, debates, and literature going out to constituents
- Non-partisan elections would eliminate the political party's ability to protect incumbents from primary challengers.
- Nonpartisan elections will be more inclusive of all ethnic groups and minorities and increase the voter turnout. The elections will also encourage greater accountability to the people rather than to a particular political party.
- Making statistical and empirical data regarding non-partisan elections (from other cities) available to the public before they vote on the issue.
- Establishing open primaries instead of non-partisan elections.

APPENDIX C

41 Largest U.S. Cities Using Non-Partisan Elections By Threshold For Candidates' Victory

<u>Name of City</u>	<u>Population</u>	<u>50% Plus Needed</u>	<u>Top 2 Vote Getters</u>	<u>Plurality Wins In</u>
		<u>To Win NPE Primary</u>	<u>In NPE Advance Regardless</u>	<u>Single NPE Election</u>
			<u>Of Percentage of Votes</u>	<u>(i.e., No 2nd Round)</u>
Los Angeles	3,694,820	Yes		
Chicago	2,896,016	Yes		
Houston	1,953,631	Yes		
Phoenix	1,321,045	Yes		
San Diego	1,223,400	Yes		
Dallas	1,188,580	Yes		
San Antonio	1,144,646	Yes		
Detroit	951,270		Yes	
San Jose	894,943	Yes		
San Francisco	776,733	Yes		
Jacksonville	735,617	Yes		
Columbus	711,470		Yes	
Austin	656,562	Yes		
Memphis	650,100	Yes		
Milwaukee	596,974		Yes	
Boston	589,141		Yes	
El Paso	563,662	Yes		
Seattle	563,374		Yes	
Denver	554,636	Yes		
Nashville	545,524	Yes		
Fort Worth	534,694	Yes		
Portland	529,121	Yes		
Oklahoma City	506,132	Yes		
New Orleans	484,674	Yes		
Las Vegas	478,434	Yes		
Cleveland	478,403		Yes	
Long Beach	461,522	Yes		
Albuquerque	448,607			Yes
Kansas City	441,545		Yes	
Fresno	427,652	Yes		
Virginia Beach	425,257			Yes
Atlanta	416,474	Yes		
Sacramento	407,474	Yes		
Oakland	399,484	Yes		
Mesa	396,375	Yes		
Omaha	390,007		Yes	
Minneapolis	382,618		Yes	

Honolulu	371,657	Yes		
Miami	362,470	Yes		
Colorado Springs	360,890			Yes
Wichita	344,284		Yes	
Totals		28	10	3

Of the ten cities that advance the top two candidates, only two hold a preliminary election if there are less than three candidates on the ballot.

APPENDIX D

Implications of the Help America Vote Act (HAVA) of 2002

Congress passed and the President signed the Help America Vote Act (HAVA) on October 29, 2002 to reform voting processes and systems across the nation. The Act provides federal funds to states to: (1) adopt new voting technologies and non-discriminatory standards that expand the opportunities to vote; and (2) implement measures to protect against voter fraud and misrepresentation. The following is an outline of HAVA's key provisions.

A. Improving Election Administration (Title I) (42 U.S.C. §15301)

Authorizes \$325 million to be distributed immediately to states for any of a number of election reform goals such as voter education, training poll workers, improving or replacing voting systems, improving the accessibility and quantity of polling places for disabled voters and limited English proficient (LEP) voters, establishing a toll free hotline for voters, and complying with Title III nondiscriminatory election requirements (see Section IV below).

B. Replacing Lever Voting Machines (Title I) (42 U.S.C. §15302)

Authorizes \$325 million to states for replacing lever voting systems with new, technologically updated systems that comply with Title III voting system non-discriminatory requirements (see Section IV below). New systems must be in place by the November 2004 federal election unless the state requests a waiver until January 1, 2006. New York State will likely seek the waiver.

C. Improving Accessibility of Polling Places for Individuals with Disabilities (Title II) (42 U.S.C. §§15421-15425)

Authorizes \$50 million in FY 2003, \$25 million in FY 2004, and \$25 million in FY 2005 to states for making polling places accessible to individuals with disabilities, providing information to voters on such accessibility, and training election officials and poll workers on how to promote the access of individuals with disabilities to elections. States must apply for these funds through the Department of Health and Human Services.

D. Implementing Uniform and Nondiscriminatory Election Requirements (Title III)

Authorizes \$1.4 billion in FY 2003, \$1 billion in FY 2004, and \$600 million in FY 2005 to states to ensure that their voting systems comply with the election requirements in sections A-D below:

Voting System Standards (effective 1/1/06)(42 U.S.C. §15481)

1. Permit the voter to verify their vote in a private and independent manner
2. Provide the voter an opportunity to correct his or her ballot
3. Notify the voter of selections of more than one candidate for a single office
4. Produce a permanent paper record of each vote with a manual audit capacity
5. Ensure accessibility for individuals with disabilities
6. Include at least one voting system equipped for voters with disabilities at each polling place

7. Provide access to LEP voters according to the 1965 Voting Rights Act
8. Minimize error rates in counting ballots
9. Adopt a uniform and nondiscriminatory standard that defines what constitutes a vote

Provisional Voting and Voting Information Requirements (*effective 1/1/04*)(42 U.S.C. §15482)

1. Allow an individual who claims to be a registered voter but does not appear on the rolls to cast a provisional ballot that will be counted upon verification of the voter's registration.
2. Create a free access system such as a toll free line or website that allows a voter to ascertain whether the provisional vote was counted and, if not, the reason the vote was not counted.
3. Post voting information at each polling place providing: (a) sample ballot (b) hours of polling place (c) voting instructions (d) instructions for mail-in registrants and first time voters (e) general voting rights information including how to complain about voting rights violations.

Computerized Statewide Voter Registration List (*effective 1/1/04*)(42 U.S.C. §15483(a))

1. The State shall implement "a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter."
2. The list "shall be coordinated with other agency databases within the State."
3. All election officials must be able to "obtain immediate electronic access to the information contained in the computerized list" and immediately and electronically enter voter registration information into the computerized list.

Voter Registration, Verification, and Identification (*applies to registrations after 12/31/02*)(42 U.S.C. §§15483(b)-(c))

1. Applicants for voter registration must provide their driver's license number or the last four digits of their social security number. If an applicant has not been issued such numbers, the State shall process the applicant and assign the applicant a unique identifying number.
2. The State shall verify the accuracy of registration information provided by the applicant using other state databases, including but not limited to those of the Department of Motor Vehicles and the Social Security Administration.
3. First-time voters in federal elections who *register by mail* must show the following identification at the poll only in a federal election:

- a. A current and valid photo identification; or
 - b. A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.
4. First-time voters in federal elections do not have to show identification at the polls if they:
- a. Submit with their registration form a copy of one of the above forms of identification.
 - b. Submit a driver license number or last four digits of a social security number and have that information verified by the State shall not have to show identification at the poll.
 - c. Do not register by mail.

V. Creating a State Administrative Complaint System (Title IV) (42 U.S.C. §15512)

States shall establish state-based administrative complaint procedures to remedy violations of HAVA's Title III requirements.

VI. Election Assistance Commission (42 U.S.C. §15321-15330)

HAVA requires the establishment of a federal Election Assistance Commission to serve as a clearinghouse for election reform information, develop voluntary guidance for states, conduct testing and certification of voting systems, and conduct certain studies.

VII. State HAVA Plan and Committee (42 U.S.C. §15405)

States must form a committee consisting of election officials, stakeholders, and other citizens to develop and submit a plan implementing HAVA requirements.

Key HAVA Issues

While HAVA applies only to federal elections, many of its reforms will have implications for state and local elections. Pursuant to HAVA, New York State has convened a HAVA Implementation Task Force that is developing a draft plan that will be subject to public comment, including public hearings, during the summer of 2003. The following are key HAVA issues that may affect the voting process and voter participation in New York State and City.

1. HAVA provides funds to states for replacing lever voting machines with technologically updated voting machines that are uniform, reliable, and accessible. New York State will have these new machines in place no later than January 1, 2006. The introduction of technologically updated voting machines are likely to affect accessibility for disabled voters and LEP voters, voting system integrity, and the implementation of nonpartisan elections, should such elections be adopted.
2. HAVA provides funds for voter education and poll worker training, creating opportunities to inform voters and poll workers about election reforms and issues.
3. HAVA provides funds for poll worker recruitment to increase the numbers of poll workers who are competent and multilingual.

4. HAVA provides funds for improving access to LEP voters and voters with disabilities, including providing voter education to such populations. While specific money is earmarked for improving accessibility for disabled voters, states have broad discretion in whether to use money for translating materials and providing interpreters for voters.
5. HAVA requires states to allow a person to cast a provisional ballot if his or her name does not appear on the registration list or if an election official asserts that the person is not eligible. New York State already allows for such voting through its affidavit ballot system. Some voter rights advocacy groups propose that provisional ballots also serve as voter registration forms, as is the case in Georgia and Maryland. Advocates argue that this procedure would streamline the process of correcting registration information and allow voters to immediately correct errors that may prevent poll workers from properly identifying the voter's name on the rolls.
6. HAVA requires that person registering to vote submit driver's license or social security numbers, previously not required in New York. Some advocacy groups argue that this may deter some people from registering, particularly in New York City, where 52.1% of city residents have driver's licenses compared to 91% of residents in the rest of the state.
7. ***HAVA requires that first time voters in federal elections show identification at the polls. Prior to HAVA, no voters in New York were required to show identification. Some advocacy groups argue that this may prevent some people from voting when they do not have proper identification or when poll workers incorrectly, improperly, or discriminatorily enforce the requirement. Some propose that the State adopt an expansive and clear list of identification forms that will be accepted at polling places to prevent potential disenfranchisement. In New York, no voters will have to show identification until the Presidential Elections of 2004 unless there is a special federal election that is earlier.***

APPENDIX G: OUTREACH

The Commission staff met with the following groups and individuals concerning nonpartisan elections:

Asian American Legal Defense and Education Fund

Asian Americans For Equality

Brennan Center

Center for Law & Social Justice, Medgar Evers College/ Voting Rights Coalition

Center for Governmental Studies

Citizens Union

Democratic Club of Flushing

Editorial Boards (News, Times, Newsday, Sun, El Diario, Hoy, Amsterdam News)

Los Angeles City Ethics Commission

NAACP & NAACP Legal Defense Fund

NYPIRG

New York Foundation

New York City Campaign Finance Board

Puerto Rican Legal Defense and Education Fund

LeRoe Gill, Central Brooklyn Churches

Dr. Bernard Grofman

Professor Gerald Hebert

Peter Kiernan, Chair, Subc.on Charter Revision, Assn. Bar of the City of New York

C. Vernon Mason, New York Theological Seminary

Professor Doug Muzzio, Baruch College, CUNY

Rev. Simpson, Concord Baptist Church

Professor Phil Thompson, M.I.T.