



DEBORAH GOLDBERG
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July 23, 2003

Alan Gartner
Executive Director
New York City Charter Revision Commission
2 Lafayette Street, 14th Floor
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Dear Mr. Gartner:

Enclosed please find the Statement of the Brennan Center for Justice at NYU School of Law on Nonpartisan Elections in New York City. We appreciate the opportunity to share our views with the Charter Revision Commission. For the reasons set forth in the Statement, we oppose introduction of nonpartisan elections at this time.

As you will see, we have not addressed your request for our perspectives on the “how” of conducting nonpartisan elections. In our view, the Commission has not developed an adequate empirical basis for determining “whether” to introduce nonpartisan elections. Until that question receives more than peremptory consideration, the Commission’s focus on the mechanics of nonpartisan elections is premature at best.

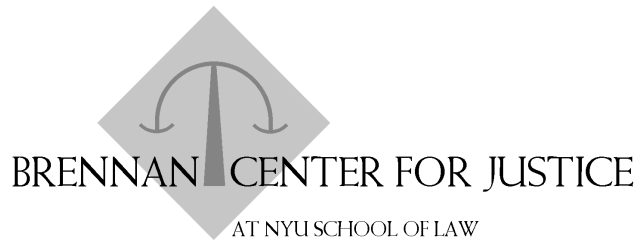
Serious questions remain about the merits of nonpartisan elections, which can fairly be answered only by commissioning up-to-date, independent, and methodologically defensible research that examines the potential impacts of nonpartisan elections on voter participation and representation in New York City. Because the Commission has declined to obtain such a study, the available scholarly literature suggests that nonpartisan elections will have a number of adverse effects on democracy in the City, including most importantly:

- depressing participation in elections;
- reducing the ability of communities of color to elect candidates of their choice; and
- increasing the importance of candidates’ wealth and fame.

Until these and the other concerns discussed in our Statement are allayed, the Brennan Center cannot support adoption of nonpartisan elections in New York City.

Sincerely,

Deborah Goldberg



STATEMENT OF
DEBORAH GOLDBERG
DIRECTOR, DEMOCRACY PROGRAM
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW

SUBMITTED TO THE
NEW YORK CITY CHARTER REVISION COMMISSION

ON
NONPARTISAN ELECTIONS IN NEW YORK CITY

July 24, 2003

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Statement of

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Brennan Center for Justice at NYU School of Law¹**

on Nonpartisan Elections in New York City

The voters of New York City may soon have to decide whether or not to switch from the current system of partisan elections to a system of nonpartisan elections for all City offices. The nonpartisan system under consideration would involve two rounds of elections for each office: the “primary” would include all candidates on a single ballot, and the “general” would be a run-off between the top two candidates from the first round. In neither case, would the political party affiliations of the candidates appear on the ballot.

The Brennan Center for Justice at NYU School of Law has concluded that nonpartisan elections should not be adopted – and that the question whether or not to adopt the change should not even be placed on the ballot – without substantial additional study. Our conclusion reflects the following principal concerns:

- There is inadequate evidence to support a move to nonpartisan elections.
- What evidence there is suggests that nonpartisan elections may cause a decline in voter participation.
- The impact that nonpartisan elections would have on the ability of communities of color to elect representatives of their choice is unclear.
- Nonpartisan elections elevate the importance of name recognition, rather than focusing voters on issues or candidate qualifications.
- Nonpartisan elections generally reduce the power of political parties, while increasing the influence of celebrity and wealth.
- Extremist candidates are likely to fare better under nonpartisan elections.
- The Charter Revision Commission has not presented an adequate plan for how to implement nonpartisan elections without undermining New York City’s campaign finance system.
- The process initiated by the Mayor and carried out by the Charter Revision Commission does not provide confidence that the issue has been considered fully and objectively.

In light of the unanswered substantive questions and the absence of adequate study, the Brennan Center opposes the adoption of nonpartisan elections at this time.

¹ Frederick A. O. Schwarz, Jr., Interim President of the Brennan Center and Chair of the New York City Campaign Finance Board, took no part in the formation of the Center’s position on this issue.

I. The Charter Revision Commission Has Not Conducted Adequate Research to Support Nonpartisan Elections in New York City.

The evidence supporting claims in favor of nonpartisan elections is inconclusive at best. Political scientists have studied the effects of nonpartisan elections in some jurisdictions, but the studies are few in number and of limited value. In most cases, the research is based on a small sample set or fails to control well for other factors that might influence elections. In addition, most of the research on nonpartisan elections is old. Old research is particularly questionable with respect to the interaction between nonpartisan elections and race. If people vote for or against candidates on the basis of race at different rates than they once did, or if candidates make racially oriented appeals to a different degree than in prior decades, old research may be inapplicable to contemporary circumstances.

The Charter Revision Commission has the resources to commission an independent study of the likely impact of nonpartisan elections on political participation and representation in New York City. But the Commission has shown no inclination to undertake methodologically defensible research that would provide the basis for objective evaluation of the merits of nonpartisan elections. All indications are that the Commission assumed from the outset that it would recommend a move to nonpartisan elections and that the only question it would seriously consider was not *whether* to implement the proposal, but *how*.

The Commission staff released “Nonpartisan Elections: Preliminary Options and Recommendations” on June 26, 2003, a mere three months after the selection of the Commission’s first member. The document devotes negligible attention to the question whether nonpartisan elections ought to be adopted. While the staff did assemble a few statistics about the numbers of cities that use nonpartisan elections and frequencies with which cities elect mayors of color, the report made no effort to control for the demographics of those cities. In addition, the brief discussion of the academic literature focuses principally on a superficial review article,² the analysis of which is skewed to justify the staff recommendations. Instead of seizing the opportunity to develop a systematic and comprehensive study of the relevant issues involved, the Commission appears to be rushing as quickly as possible towards a preordained conclusion.

II. The Existing Evidence Suggests That Nonpartisan Elections Will Not Further Desirable Objectives.

A variety of arguments have been mounted in favor of nonpartisan elections. As we explain below, nonpartisan elections appear unlikely to achieve objectives that we support and may in fact produce counterproductive effects upon democracy in New York City.

² See Carol A. Cassel, *The Nonpartisan Ballot in the United States*, in *Electoral Laws and Their Political Consequences* 226 (Grofman and Lijphart, eds.: 1986).

A. Nonpartisan elections are likely to reduce voter participation.

Proponents of nonpartisan elections argue that they will increase the number of people who participate in the election of officeholders. In districts of New York City that are overwhelmingly Democratic, partisan elections virtually guarantee that victorious candidates in the Democratic primary will also win in the general election. Supporters of nonpartisan elections contend that switching to nonpartisan elections will allow independents, Republicans, and members of minor political parties a meaningful opportunity to select representatives, while preserving Democrats' incentive to participate. Expanding opportunities to affect elections, it is said, will encourage more voters to come to the polls.

But New York City's mayoral races have been extremely competitive under its partisan system, allowing all voters a fair opportunity to participate. Notwithstanding the majority Democratic registration, City voters have repeatedly elected Republican mayors. At this level, this argument for switching to nonpartisan elections – probably the strongest available – is especially weak.

City Council elections, on the other hand, do tend to be dominated by a single party. Almost no Council races are competitive in the general election. In the last election, only one race out of 51 was decided by a margin smaller than 10 percent, and only another five races had margins smaller than 20 percent. In the remaining 45 Council races, voters who were not members of the majority party could not meaningfully influence the election at all.

But there is reason to fear that a move to nonpartisan elections would nevertheless *reduce* overall participation in City elections. Studies of jurisdictions that have switched from partisan to nonpartisan elections, and comparisons of paired jurisdictions with similar political characteristics other than whether elections are partisan, generally show lower voter participation under nonpartisan systems.³ Even at a single point in time within a single jurisdiction, partisan elections have produced more participation than nonpartisan elections. For example, in the 2002 general election in Michigan, 5.3 million votes were cast in a partisan race for two seats on the Wayne State University Board of Governors, but only approximately 4.4 million votes were cast in a nonpartisan race for two seats on the state's highest court.⁴

³ See, e.g., Brian F. Schaffner, Matthew Streb, and Gerald Wright, *Teams Without Uniforms: The Nonpartisan Ballot in State and Local Elections*, 54 *Political Research Quarterly* 1:7 (March 2001) (showing a substantial decline in some cases where nonpartisan elections were adopted and an insubstantial decline in other cases); Howard D. Hamilton, *The Municipal Voter: Voting and Nonvoting in City Elections*, 65 *Amer. Poli. Sci. Rev.* 4:1135 (Dec. 1971). But see David Ian Lublin and Katherine Tate, *Racial Group Competition in Urban Elections*, in *Classifying by Race* 245, 255 (Paul E. Peterson, ed.: 1995) (finding that choice between partisan and nonpartisan elections does not affect voter turnout). One possible explanation for the inconsistent results is that noncompetitive partisan races may have the same low turnout as competitive nonpartisan races. Further research is needed to verify this hypothesis.

⁴ See 2002 Official Michigan General Election Results, <http://miboecfr.nicusa.com/election/results/02GEN/> (last visited July 10, 2003). High-profile partisan races attracted many more votes than the low-profile Board of Governors election.

Even the sources that the Commission staff cites indicate that adopting nonpartisan elections will substantially reduce voter turnout. The staff report quotes a scholar's conclusion that scheduling municipal elections at the same time as state and national elections is a more effective way to increase turnout than using partisan elections. But New York City's elections are held at different times than state and federal elections, and the staff omits the very same scholar's conclusion about nonsynchronized elections: "The evidence seems clear that nonpartisanship depresses municipal turnout at least a few percentage points when city elections are held independently. This conservative estimate represents 15% to 20% of the municipal voting electorate."⁵

Moreover, measurements of voter participation must include not only turnout rates but also the extent of "roll-off" (the number of people who vote in the top race but not in races listed lower on the ballot). Even if turnout were to improve under nonpartisan elections in New York City, and there is no reliable evidence that it will, overall voter participation could drop. The demonstrated roll-off that occurs when the electorate lacks partisan cues on the ballot could counteract any improvement in turnout among minor party voters.

B. Nonpartisan elections may have adverse impacts on poor voters and communities of color.

To make matters worse, the decrease in participation that comes with nonpartisan elections is concentrated among less educated and less affluent communities.⁶ Because of racial disparities in socioeconomic status, nonpartisan elections may have a disproportionate negative effect on participation by voters of color and the concomitant influence of their communities.

Even if participation does not suffer under nonpartisan elections, eliminating partisan affiliation from the ballot may have other adverse effects on communities of color. Without party information, voters will seek other information cues, such as the perceived ethnicity, race, or gender of candidates, based solely on their names.⁷ Using such cues may increase racial or ethnic bloc voting, which potentially contributes to an "us versus them" mentality, increases tensions between ethnic groups, and harms efforts to produce a multicultural politics. While the amount of ethnically or racially motivated voting caused by nonpartisan elections undoubtedly varies by jurisdiction, the risk of increased bloc voting adds yet another factor militating against changing New York City's electoral system.

⁵ Cassel, *The Nonpartisan Ballot in the United States*, *supra* n.2, at 228.

⁶ William P. Collins, *Race as a Salient Factor in Nonpartisan Elections*, 33 *Western Political Quarterly* 3:330 (1980); Hamilton, *The Municipal Voter*, *supra* n.3, at 1138-39.

⁷ See Gerald Pomper, *Ethnic and Group Voting in Nonpartisan Municipal Elections*, 30 *Public Opinion Quarterly* 1:79 (Spring 1966) (concluding that nonpartisan elections increase the importance of racial and ethnic cues in voting). *But see* David Haywood Metz & Katherine Tate, *The Color of Urban Campaigns*, in *Classifying by Race* 262 (Paul E. Peterson, ed.: 1995) (finding that white candidates are more likely to use race-based appeals in partisan elections). These two results are not necessarily contradictory. Voters may be more likely to vote on the basis of ethnicity or race in nonpartisan elections, while candidates may make more racially based pitches for votes in partisan elections.

Nonpartisan elections may also reduce the rate at which minority candidates are elected.⁸ First, as a general matter, racial bloc voting hurts the election chances of any candidate who is not from the largest racial bloc. Second, when members of an ethnic or racial minority constitute a majority of the dominant political party, even substantial levels of racially polarized voting will not prevent members of the minority from being elected, because minority candidates will be able to win primary elections based only on votes from members of the same race or ethnicity and then draw votes from party members of other races in the general election. Third, some parties will seek to promote minority candidates in general in the hopes of maintaining minority support for the party as a whole.

These three factors increase the risk that nonpartisan elections will cause “retrogression” of minority voting rights – a reduced opportunity for voters of color to elect candidates of their choice, when compared with the current partisan system. To our knowledge, there has been only one study conducted of the potential retrogressive impact of nonpartisan elections. That study (commissioned by a prior Charter Revision Commission) focused only on the mayoral race, and, to our knowledge, the underlying data has not been made available to independent experts nor has the study been replicated.

Both the prior Commission and the current Commission presented some evidence purporting to show that nonpartisan elections increase opportunities for minority mayoral candidates. But comparing the overall percentage of minority mayors who were elected under nonpartisan elections and partisan elections is meaningless without comparing the number of cities with nonpartisan elections and the racial make-up of cities in each category. Further research on the racial consequences of nonpartisan elections for executive offices is needed.

At the City Council level, partisan elections have been reasonably successful in providing diverse representation reflecting the racial and ethnic composition of the City as a whole. We cannot say with confidence that nonpartisan elections would reduce minority representation on the Council, but it would be foolish to switch to nonpartisan elections without better study of the likely effects on minority election opportunities.⁹

C. Nonpartisan elections do not focus voters on issues or candidate qualifications but do elevate the importance of name recognition.

⁸ Richard L. Engstrom & Michael D. McDonald, “Enhancing” Factors in At-Large Plurality and Majority Systems: A Reconsideration, 12 Electoral Studies 4:385 (1993); see also Devin Bent, *Partisan Elections and Public Policy: Response to Black Demands in Large American Cities*, 12 Journal of Black Studies 3:291 (Mar. 1982) (arguing that partisan elections result in substantially higher gains for substantive minority goals).

⁹ If the Mayor and the Charter Revision Commission were genuinely interested in increasing overall voter participation, including by allowing political minorities more meaningful opportunities to influence electoral outcomes, those goals would be better served by adopting a system of proportional representation. Although proportional representation systems have not been widely used in the United States, New York City used one such system to elect its City Council in the 1930s and 1940s.

Supporters of nonpartisan elections make two competing and inconsistent claims. Some argue that removing party designations from the ballot will encourage voters to focus on campaign issues rather than on partisan labels. Others contend that nonpartisan elections are desirable because they focus attention away from issues in local races, where what counts is the administrative competence of the individual candidates. Proponents in both camps sometimes suggest that nonpartisan elections produce a better informed electorate because voters who cannot simply rely on party affiliation will work harder to educate themselves about the merits of the candidates.

What the limited evidence actually shows is that nonpartisan elections heighten the value of name recognition, rather than focusing attention on issues or candidate qualifications. By removing partisan cues from the ballot, nonpartisan elections reduce the total amount of information about candidates available to the average voter.¹⁰ Because most voters lack the incentive or resources necessary to compensate for this loss of information, nonpartisan elections are more likely to turn on which candidate the voters have heard of, rather than the candidates' views on pressing matters of policy. Nonpartisan elections therefore tend to favor incumbents or celebrities, who are more likely to be recognized by voters, and wealthy candidates, who can pay to build public recognition, even more than partisan elections do. While incumbency, celebrity, and wealth are always advantages in politics, increasing their importance undermines democratic values.

Moreover, it may be true that “there’s no Democratic or Republican way to fill a pothole,” as some supporters of nonpartisan elections are wont to say, but the Brennan Center rejects the idea that a political platform is irrelevant in municipal elections. Many real and important issues do come up in city government, including decisions about schools, parks, crime prevention, and public transportation, to name just a few. By focusing elections away from issues, nonpartisan elections inhibit the ability of voters to influence policy-making on matters of great concern.

D. Nonpartisan elections generally reduce the power of political parties.

Supporters of nonpartisan elections frequently seek to curb the power of political parties. By making elections nonpartisan, they hope to reduce the ability of party leaders to exercise influence over local elections. The proponents of nonpartisan elections argue that eliminating party labels will allow qualified individuals who do not have backgrounds in politics and are not cozy with party bosses to run for office. According to this argument, bringing in less politically connected candidates promotes meritocracy and increases electoral competition.

In some cases, nonpartisan elections do succeed in weakening political parties. Removing the candidate’s party affiliation from the ballot unquestionably makes it more difficult for political leaders to mobilize a loyal constituency. Candidates must rely more heavily upon their own resources to get out their message and get out the vote, so they ultimately owe less to party bosses. Because party allegiance offers little return,

¹⁰ See Schaffner, Streb, & Wright, *Teams Without Uniforms*, *supra* n.3, at 11; Collins, *Race as a Salient Factor in Nonpartisan Elections*, *supra* n.6, at 330; Pomper, *Ethnic and Group Voting in Nonpartisan Municipal Elections*, *supra* n.7, at 84.

candidates with no political connections and even with no political base, have better prospects for success.

Although nonpartisan elections may encourage candidates without political connections to throw in their hats, most such candidates will find that the costs of campaigning are daunting. New York's current campaign finance system certainly makes competing easier than in prior years, but new candidates still need a base of supporters to provide the contributions that qualify for matching funds. In practice, the candidates who are likely to do well without some political party support are wealthy candidates who can pay for their own campaigns or candidates with widespread name recognition. The Brennan Center has serious doubts that replacing the power of political parties with the power of money and celebrity is a move in the right direction.

Transferring power from parties to wealthy candidates and celebrities is thus by no means an unmitigated blessing. Even if the shift were a desirable goal, however, it is not clear that truly nonpartisan elections can be achieved in New York City. Although parties play no role in some jurisdictions with nonpartisan elections, and voters cannot even determine a candidate's party membership, in others, political parties endorse candidates and continue to play a major role in structuring the elections. The power and vitality of New York's current parties suggest that their influence would remain significant. In practice, the most informed voters would still be able to rely heavily on party endorsements in determining whom to support, while name-based cues (including name recognition) would acquire greater importance for the rest of the electorate.

E. Nonpartisan elections are susceptible to capture by fringe candidates.

In addition to reducing the power of political party leaders, many nonpartisan election supporters also hope to reduce what they see as the disproportionate power of activists within political parties. In many urban areas, the Democratic Party is so dominant that the primary is the only race that matters. Because primaries typically have lower turnout than general elections, and voters in Democratic primaries tend to be less centrist than Democratic voters in general elections, supporters of nonpartisan elections argue that partisan elections hurt moderate candidates who would have broad-based support in the general election but do not appeal to party activists who vote in the primaries. Nonpartisan elections are thus said to produce more moderate results, which proponents frequently view both as inherently desirable and as a better means of representing voters' diverse views.

But there is little evidence to support the claim that nonpartisan elections foster moderate candidates. In fact, some evidence suggests that nonpartisan elections may increase the risk of electing fringe candidates or at least of seeing them benefit from the high level of publicity that accompanies candidates who advance to the general election.

Under nonpartisan elections, a candidate who has a small but highly energized base of support can advance to the general election, as long as the primary candidates split the vote widely. The French presidential elections (which are not nonpartisan but are structured like nonpartisan elections, with an open first-round election followed by a run-off for the top two candidates) showed that this risk is not merely hypothetical. In 2002,

a substantial majority of the votes were cast for socialist or left-leaning candidates. But the top two candidates were Jacques Chirac, a right-leaning candidate, and Jean-Marie Le Pen, a candidate who has been tied to neo-Nazism. Even though they received only slightly more than a third of the vote combined, and Le Pen received only about 17 percent of the vote, they advanced to the general election. Chirac easily defeated Le Pen, resulting in a relatively moderate president with a substantial bloc of support, but Chirac is significantly to the right of the median French voter, and the election showed the potential dangers of systems built around run-off elections.

Where the primary is open to all comers, and the general takes the form of a run-off, two cohesive groups supporting extremist candidates are all it takes to allow highly unpopular candidates to become seriously competitive. It is not coincidental that David Duke, a former leader of the KKK, became the Republican gubernatorial nominee in Louisiana, which uses such a system. Moreover, in the next election, when the four major candidates each received at least 18 % of the vote, the two that advanced to the run-off were the most extreme on the right and the left.¹¹ The run-off elected Mike Foster, a Republican who inherited much of Duke's base.

Beyond the structural reasons to worry that nonpartisan elections will produce extremist candidates, rather than moderates, nonpartisan elections also reduce the ability of the electorate to judge whether they are voting for an extreme candidate. By making campaigns more about money and fame and less about issues and values, nonpartisan elections increase the likelihood that voters will support a candidate who represents an extreme position.

¹¹ This tendency towards extremism is not a necessary consequence of nonpartisan elections. The risk could be greatly reduced in nonpartisan elections using Instant Run-off Voting ("IRV"), an election system that simulates an extended series of run-offs by allowing voters to rank candidates. The Charter Revision Commission's staff rejected Instant Run-off Voting because of concerns about voter confusion and the potential creation of "perverse incentives for voters." *Nonpartisan Elections: Preliminary Options and Recommendations* 59. But it is only in rare circumstances that IRV makes it rational for voters to give their first-place ranking to a candidate who is not their first choice. In contrast, ordinary run-off elections routinely require voters to make exactly the same sort of "perverse" choices, but with much less information and much greater consequences when making the wrong guess.

F. Nonpartisan elections may undermine the efficacy of New York City's campaign finance system.

New York City has a highly successful, voluntary campaign finance system. While it is unclear precisely how nonpartisan elections would affect the campaign finance system, a few points are worth mentioning.

First, the current system imputes to candidates spending by their party in the general election and prohibits party spending in the primaries. In a nonpartisan election format, it is unclear whether party spending could be regulated in a similarly effective way. Without such regulation, party expenditures in support of their favored candidates could undermine the efficacy of the candidates' voluntary spending limits. The problem of how to control party money in nonpartisan elections has been the primary issue raised by the Campaign Finance Board.

Second, by increasing the importance of money, nonpartisan elections increase incentives for candidates with access to wealth to refuse to participate in the campaign finance system. While the system has some features to protect candidates who participate from being overwhelmed by candidates who do not, including raising the expenditure limits and increasing the amount of matching funds available, these safeguards are of limited efficacy against a candidate who can substantially outspend participating opponents. City voters should think long and hard before introducing a form of elections that carries a substantial risk of tilting the playing field in favor of candidates who can buy name recognition.

Third, the current system prevents candidates from receiving public funds in primaries where they are not opposed. If parties retain a role in City elections, some primary races will involve a single candidate from one party, who is well-identified as a partisan, running against several candidates from the other major party. The system would then fund all of the candidates, despite the fact that the candidate who does not face same-party opposition will functionally be campaigning only for the general election. Unfortunately, this problem cannot be easily fixed because any rule that prevented this would eliminate the ability of a candidate who is not well-known from running in the primary without same-party opponents. For this reason, and because nonpartisan elections would substantially reduce uncontested primaries, switching systems might increase the amount of funding necessary for the system as a whole.

The Commission staff recognized that nonpartisan elections threaten the current campaign finance system, but essentially asserted that the Campaign Finance Board adjusts to changing circumstances and can be relied on to adjust to nonpartisan elections. The Brennan Center shares the staff's great confidence in the abilities of the Board, but the responsible approach is not to propose nonpartisan elections without a comprehensive solution to the problems they raise for New York City's campaign finance system.

III. The Commission's Substantive Recommendations Are Clouded by a Questionable Charter Revision Process.

Quite apart from the serious substantive issues identified above, questions must be raised about the procedure under way to revise the Charter. The Charter is the constitution for New York City. Subject to the requirements of state and federal law, it defines the fundamental structure and operation of New York City government. The Mayor or the City Council may create a charter commission to draft "a new or revised city charter,"¹² but when a commission is created, it is supposed to review the charter in its entirety.¹³ There is no evidence that the current commission has sought to fulfill that responsibility. To the contrary, the record suggests that Mayor Bloomberg handpicked the Commission to ensure that it would consider only the issues he wanted and reach the conclusions he supported. The Commission was announced in March, had its first organizational meeting in April, convened public hearings in May, and by June had staff recommendations for structuring nonpartisan elections. Even before the full Commission had been selected, Commission Chair Frank J. Macchiarola announced that, with respect to nonpartisan elections, "there will be a ballot question when the charter commission concludes its work. . . . It is not a question of whether, it is a question of how."¹⁴ The outcome appears to have been rigged from the start.

The Commission has discussed the possibility of presenting nonpartisan elections to voters in November 2004, instead of November 2003. While the additional time might allow civic groups to study the issue more thoroughly and to present their findings to the public, delaying the vote fails to address the basic problem. The Commission is moving too fast towards a foregone conclusion and has refused to devote the resources needed for a full and fair study of the likely effects of nonpartisan elections. The question should be whether, not when.

There are also persistent rumors that Mayor Bloomberg may personally finance a campaign promoting nonpartisan elections when the ballot question is before the voters. Although the Mayor has denied that he intends to use his personal fortune to bankroll the campaign, he has also strenuously argued that he should be permitted to do so. In addition, because Mayor Bloomberg is a wealthy Republican mayor in a heavily Democratic city, his chance of re-election is likely to be substantially higher in a nonpartisan election.¹⁵ Serious problems of concentration of power arise when a mayor initiates Charter revision, carefully chooses Commission members to ensure a desired result, and funds a campaign to ensure adoption of a ballot proposal from which he could be the principal beneficiary.

¹² New York Mun. Home Rule § 36. New York City's Charter may also be amended via an initiative and referendum or by an act of the City Council. When the City Council seeks to amend many important sections of the Charter, it is required to submit the amendments to the voters for a referendum.

¹³ New York Mun. Home Rule § 36(5)(a).

¹⁴ Michael Cooper, *For City Charter Commission, First a Goal, Then the Members*, New York Times, D3 (Mar. 27, 2003).

¹⁵ Though the Mayor has said that nonpartisan elections, if adopted, would not be in effect for the 2005 mayoral campaign, the timetable for implementation remains uncertain.

Conclusion

The benefits of nonpartisan elections are unproven, and the risks are great. The limited studies now available show that nonpartisan elections depress overall voter participation, with disproportionate negative effects on people of color, low-income communities, and less educated voters. Because they reduce information available to the electorate, nonpartisan elections may encourage racially and ethnically polarized voting and will enhance the power of money, fame, and incumbency in elections. Nonpartisan elections create the risk that a small but energized group of supporters will make a fringe candidate with extreme views seriously competitive.

Rather than treating a ballot question on nonpartisan elections as a foregone conclusion, the Commission should be questioning whether to move forward with such a proposal. With more research, some of the concerns discussed above might be allayed, but in the absence of systematic evidence supporting nonpartisan elections, New York City voters should not adopt them.

July 24, 2003

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