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THE PARTY'S OVER: ESTABLISHING NONPARTISAN MUNICIPAL ELECTIONS IN NEW YORK CITY

*Karen I. Chang**

INTRODUCTION

Over the course of the last century, cities across the United States have increasingly been adopting nonpartisan local election systems.¹ Today, a majority of the nation's cities utilize nonpartisan elections,² and sixty of the seventy-five largest U.S. cities have elected their mayors in nonpartisan elections.³ New York City is considering joining the majority by changing to a

* Brooklyn Law School Class of 2004; B.A., Wellesley College, 2000. The author would like to thank her parents, Morgan and Eileen, her sister Gloria, Steve Wu and Hae Jin Shim for their love, support and encouragement. She would also like to thank the editors of the *Journal of Law and Policy* for their invaluable comments and guidance.

¹ WILLIS D. HAWLEY, *NONPARTISAN ELECTIONS AND THE CASE FOR PARTY POLITICS* 14 (1973).

² See NEW YORK CITY CHARTER REVISION COMM'N, *PRELIMINARY OPTIONS: NONPARTISAN ELECTIONS* 14 (2002) [hereinafter *PRELIMINARY OPTIONS*]. Of the fifty largest cities, only nine utilize partisan systems, including New York, N.Y.; Phila., Pa.; Indianapolis, Ind.; Baltimore, Md.; Washington, D.C.; Charlotte, N.C.; Tucson, Ariz.; Tulsa, Okla. and St. Louis, Mo. NEW YORK CITY CHARTER REVISION COMM'N, *THE CITY IN TRANSITION: INTERIM SUCCESSION AND THE MAYORALTY*, at E-12 to E-15 (2002) [hereinafter *CITY IN TRANSITION*].

³ *PRELIMINARY OPTIONS*, *supra* note 2, at 14. Cities currently using nonpartisan elections include Boston, Mass.; Houston, Tex.; Dallas, Tex.; Detroit, Mich.; Los Angeles, Cal.; Phoenix, Ariz.; San Antonio, Tex.; San Diego, Cal.; San Francisco, Cal.; and Seattle, Wash. *See id.*

nonpartisan process for local elective offices.⁴ In July 2002, New York City's Mayor Michael Bloomberg appointed a thirteen-member commission—including civic, community and business leaders—to review the election format change.⁵ On September 3, 2002, the Commission decided to defer proposing the nonpartisan issue as a 2002 ballot referendum.⁶

New Yorkers, political officials and policy analysts have voiced various and divergent opinions as to whether such a change to the local election system will benefit New York City.⁷ The argument against nonpartisan elections typically focuses on the concern that nonpartisan elections would reduce voter turnout—primarily among minorities and those of lower socioeconomic backgrounds—by discouraging one of the primary “institutional mechanisms through which individuals organize their political decision making.”⁸ In contrast, advocates believe that in New York, where one political party heavily dominates, “the outcome of the elections is often effectively decided in the primary,” in which only a narrow subsection of eligible voters participate.⁹ They believe nonpartisan elections would open the decision-making process to the entire population and stimulate competition, which would compel candidates to address at the outset issues facing the broad constituency.¹⁰

⁴ CITY IN TRANSITION, *supra* note 2, at 68. Local elective offices include those for mayor, public advocate, council member, borough president and comptroller. *See id.*

⁵ *Id.* at 4.

⁶ *Charter Revisions to Establish a Nonpartisan Local Election System: Hearing on Proposed New York City Charter Chapter 3 Before the New York City Charter Revision Commission (Sept. 3, 2002)* [hereinafter *Hearing (Sept. 3, 2002)*] (statement of Robert Maguire, Chair of the 2002 Charter Revision Commission).

⁷ *See* CITY IN TRANSITION, *supra* note 2, at 11-13 (summarizing the scope of the commission's charter revision review, including the public hearings held, expert testimony heard and public comments solicited).

⁸ HAWLEY, *supra* note 1, at 64. *See also, infra* Part III (describing the potential harm to voters of lower socioeconomic background as a primary argument against use of a nonpartisan election system).

⁹ CITY IN TRANSITION, *supra* note 2, at 84-85.

¹⁰ PRELIMINARY OPTIONS, *supra* note 2, at 26 (reviewing arguments in

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Structurally, nonpartisan elections eliminate the preferential position given to political parties in local elections; they do not, however, prohibit their participation in electoral campaigning.¹¹ Beyond the influence of a candidate's party affiliation, other mechanisms that inform the local electorate enhance and influence the mental framework voters construct in making voting decisions.¹² Part I of this note describes the historical background of nonpartisan elections in the United States, including the originating principles for nonpartisan elections and the structural changes implemented under a nonpartisan election format. Part II describes statutory and case law support for the election format change, highlighting underlying policy goals. Part III describes the current arguments for maintaining New York City's current election format and the concerns regarding possible detrimental effects nonpartisan elections would have on the city's electorate. Part IV argues that nonpartisan elections would reinvigorate New York City's local electorate because the role of political parties in local elections is fundamentally different than those at the state or national level. Moreover, a nonpartisan system would significantly increase competition in New York City's local elections and break down the conclusive role political parties play in the city's effectively single-party system. Part V suggests supplemental actions and legislation that should be taken if and when voters decide to give nonpartisan

favor of nonpartisan elections, including that they would "force candidates to address issues facing the population as a whole, rather than the narrow group of insiders who tend to vote in partisan primaries"); Joseph Mercurio, *Nonpartisan Elections: Can Bloomberg Extend His Success to Another Campaign Promise?*, Nat'l. Pol. Serv., Inc., at <http://www.nationalpolitical.com/column126.htm> (June 21, 2002) [hereinafter Mercurio, *Bloomberg's Campaign Promise*] (discussing the benefits of a competitive election).

¹¹ EUGENE C. LEE, *THE POLITICS OF NONPARTISANSHIP* 97 (1960). See *infra* Part I.B.1 (discussing the structures of existing nonpartisan election laws).

¹² See HAWLEY, *supra* note 1, at 53 (explaining that the mass media is a primary source of political information, particularly when political parties are inactive). Other informative mechanisms include the media and the government-produced Voter Guide. See *infra* Part V.C.3.d (discussing the various sources of electoral information available to voters in New York).

elections a chance.

I. BACKGROUND AND STRUCTURE OF NONPARTISAN ELECTIONS

The history of the national and local trends toward nonpartisan municipal elections, as well as the variety of possible nonpartisan electoral structures, provide the background necessary to understand the policy and legal concerns at issue today. The current rationales for implementing nonpartisan elections are similar to the original motives in some respects while dissimilar in others, due to development within differing historical contexts. Understanding the different structures should inform New York City's legislative drafters in the structure the city chooses to implement, should it decide to establish nonpartisan elections.

A. Historical Background

As the nation's election systems formalized and increased in complexity at the turn of the twentieth century, state and local governments gained greater independence and flexibility to modify their election laws, which in turn stimulated the parallel development of nonpartisan and partisan election systems.¹³

1. The National History of Nonpartisan and Partisan Elections

Both partisan and nonpartisan local election systems grew out of the initial shift from voice voting to a paper ballot system in the late nineteenth century.¹⁴ The first paper ballot forms in the United States, distributed in Kentucky in 1888, tracked Australian and British ballots by not including party designation.¹⁵ A variety of nonpartisan primary election systems

¹³ See LEE, *supra* note 11, at 31 (discussing the link between municipal home rule and the freedom of local politics from national parties); *infra* Part II.A (explaining the purpose and structure of municipal home rule laws).

¹⁴ LEE, *supra* note 11, at 20.

¹⁵ *Id.* (describing Kentucky's new statutory requirement that paper ballots be printed and distributed at the state's expense).

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developed in different cities, similar to the diverse systems that exist today.¹⁶ While nonpartisan election systems were under development, election reformers advocated two other related measures: (1) separating city elections from state and national elections, either by varying the date or by scheduling them for odd-numbered years; and (2) creating a “short ballot,” which entailed changing many administrative positions from elective to appointive positions.¹⁷ Alternating election years facilitated the implementation of nonpartisan elections, which required different ballot structures, but also reflected the general belief that municipal issues were reasonably separate from national partisanship.¹⁸ The short ballot was considered an essential feature in conjunction with nonpartisan elections.¹⁹

Cities like Boston, Massachusetts, and Berkeley, California, began revising their election laws to implement nonpartisan elections in the first decade of the twentieth century.²⁰ At the same time, there was movement to apply the nonpartisan ballot to judicial elections.²¹ California and Arizona were the first to adopt

¹⁶ *Id.* at 21-22. The nonpartisan election structures that developed included a runoff of the top two primary candidates, no runoff if a candidate received a majority primary vote, or no primary and a simple plurality win. *Id.*; see also Part I.B (listing current nonpartisan election structures used in cities across the United States).

¹⁷ LEE, *supra* note 11, at 22. Some nonpartisan advocates have stressed that nonpartisan elections necessitate the short ballot. *Id.* at 32 (noting the position held by leading nonpartisan supporter Richard Childs, Executive Committee Chairman of the National Municipal League in the 1950s).

¹⁸ *Id.* at 22; ERNEST S. GRIFFITH, *A HISTORY OF AMERICAN CITY GOVERNMENT: THE CONSPICUOUS FAILURE, 1870-1900* 283 (1974). A similar problem has been discussed recently with regard to the ability of voting machines to handle nonpartisan and partisan election formats simultaneously. See *CITY IN TRANSITION*, *supra* note 2, at 95-96. The Charter Revision Committee’s staff members, however, have stated that available federal and state funding sources will provide sufficient resources to procure new machines capable of implementing this change. *Id.* at 98.

¹⁹ LEE, *supra* note 11, at 22.

²⁰ *Id.* at 22-23 (describing the earliest movement to nonpartisan systems, and noting that “[o]ther California cities quickly followed suit”).

²¹ LEE, *supra* note 11, at 23 n.11 (indicating that in 1950, seventeen states held nonpartisan judicial elections).

this system, and other states soon followed.²²

In 1888, the same year that Kentucky implemented a nonpartisan ballot, Massachusetts adopted a ballot that included party designation.²³ Massachusetts's decision to use a partisan ballot sought to resolve the problem voters experienced in elections that utilized laundry list ballots—ballots including a dozen or more offices with no identifiable party affiliation or endorsement.²⁴ Adding party affiliation to the ballot created the need to legally define “political party” and to recognize party nominations of candidates at the primary level.²⁵ State, district and local governmental regulation followed the development of formalized party activity, and nominating conventions became their regulatory focus.²⁶ Nominating convention laws made way for state-wide direct primary laws, in which party candidates are elected by the general party membership.²⁷

Nonpartisan elections became a major municipal reform issue during the Progressive Era, a movement at the turn of the twentieth century that sought to combat the corruption within city governments controlled by political party bosses.²⁸ The municipal reform movement was premised on the lack of trust in political

²² *Id.* at 23.

²³ *Id.* at 21.

²⁴ *Id.* In 1909, however, Boston became the first large city to establish nonpartisan elections. Doug Muzzio, Editorial, *Nonpartisan Elections and Charter Revision*, GOTHAM GAZETTE, Jan. 1, 2003 [hereinafter Muzzio, *Charter Revision*], available at <http://www.gothamgazette.com/article/voting/20030122/17/196>.

²⁵ LEE, *supra* note 11, at 21. A political party was defined as “an organization casting a certain percentage of the aggregate vote.” *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See Nancy Northup, *Local Nonpartisan Elections, Political Parties and the First Amendment*, 87 COLUM. L. REV. 1677 (1987) (reviewing the origins of the widespread establishment of nonpartisan elections). See also HAWLEY, *supra* note 1, at 8 (offering analysis of the “elitist origins of nonpartisanship in city politics”). Besides “elite” reformers, the progressives also included journalists and civic and religious leaders angered by increasing urban poverty and poor living and working conditions. *Id.* at 9. As Hawley explains, the motives that drove activists were often contradictory. *Id.*

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parties and politicians and the belief that “[c]ity government is largely a matter of ‘good business practice’ . . . or . . . ‘municipal housekeeping,’” in which the issues of a city council are only minimally political in nature.²⁹ Thus, the municipal progressive movement emphasized efficiency and economy as its leading objectives.³⁰

Since the Progressive Era, most cities have established nonpartisan municipal elections.³¹ As of 1991, approximately three-fourths of all municipalities in the United States utilized nonpartisan elections.³² Although the massive municipal corruption that fueled the nonpartisan movement during the Progressive Era is no longer an articulated premise for switching to a nonpartisan election format,³³ advocacy for nonpartisan

²⁹ LEE, *supra* note 11, at 28.

³⁰ HAWLEY, *supra* note 1, at 9. Some went as far as analogizing the city to a corporation. *Id.* at 10 (quoting Andrew D. White, a leading reformer and the President of Cornell University in 1890). At the same time, White and other reformers also shared the elitist notion that a partisan system was dangerous in that it would theoretically allow the city to be controlled by the urban poor and new immigrants. *Id.*

³¹ *See id.* at 14 (describing the increase in the number of cities establishing nonpartisan municipal elections between the 1930s and 1960s); CITY IN TRANSITION, *supra* note 2, at 82 (describing the current use of nonpartisan elections by “an overwhelming majority of cities across the nation”).

³² *See* Schaffner et al., *Teams Without Uniforms: The Nonpartisan Ballot in State and Local Elections*, 54 POL. RES. Q. 1 (Mar. 2001).

³³ For example, Chicago, Ill., was among five of the ten largest cities that were notoriously corrupt at the end of the nineteenth century. GRIFFITH, *supra* note 18, at 10 (describing the extent of corruption across the country and noting that political parties were usually involved in the municipal corruption). When Chicago established nonpartisan elections for citywide public offices for the 1999 elections, however, its primary impetus was not to rectify corrupt government practices but to improve cost-efficiency in light of the hybrid election systems used between aldermen and citywide officeholders and the reality that the primary became the more important election due to the dominance of Democratic voters. *See* Scott Fornek, *The Party’s Over: Mayoral Primaries Get the Ax*, CHI. SUN-TIMES, July 8, 1995, at 1 (discussing the elimination of party primaries in Chicago’s mayoral elections). Moreover, because of the party’s historical dominance over Chicago’s local elections, a majority of Chicago Republicans had chosen to vote in Democratic

elections continues under a broader set of rationales. Some continue to support the nonpartisan format on the historical view of local governance as more operational than political.³⁴ Others, however, view the political party hierarchy as having too much control over the outcome of elections, causing candidates to be more accountable to the party institution than to the public.³⁵ Supporters of nonpartisan elections consider the nonpartisan structure as returning candidate accountability to the people and their community issues.³⁶

2. *The History of Nonpartisan Elections in New York City*

New York City was a paradigm of the corruption that fueled the Progressive movement. In the 1860s and 1870s, New York City was under the control of the “Tweed Ring,” the political machine that exercised political dominance through combined acts of charity and patronage.³⁷ Under the control of Party “Boss” William Marcy Tweed, the city was, among other things,

primaries, a sign that the existing party primary system was not effective. Steve Neal, *Established Candidates Benefit from New Rules*, CHI. SUN-TIMES, Dec. 21, 1998, at 9. The Illinois General Assembly passed the election law in 1995, thereby unifying their system of electing aldermen (analogous to New York’s city council members) and citywide officeholders. *Id.*; Thomas Hardy, *Edgar is Set To End City Partisan Votes*, CHI. TRIB., July 7, 1995, at 3.

³⁴ PRELIMINARY OPTIONS, *supra* note 2, at 28 (summarizing supporters’ belief that because city government is largely operational, “the value of the party banner and the ideals it represents is minimal at best”).

³⁵ *See, e.g.*, Neal, *supra* note 33 (pointing out that the Democratic Party has owned Chicago’s City Hall since 1931).

³⁶ CITY IN TRANSITION, *supra* note 2, at 84 (summarizing comments from public officials and the public in support of nonpartisan elections); *e.g.*, *Id.* at E-7 (summarizing Professor Fred Siegal’s contention that the existing election system in New York City fails to ensure that officials are accountable to the public).

³⁷ *See* GRIFFITH, *supra* note 18, at 71-73. The political machine gained the loyalty of new immigrants by assisting them in obtaining employment and pre-election citizenship. *Id.* at 72-73. The new immigrants expressed their thanks through their votes, overlooking electoral fraud and financial abuses. *Id.*

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defrauded of millions of dollars.³⁸ The efforts of reformers and the New York Times in exposing the Tweed Ring corruption finally brought an end to their control in 1871.³⁹ Yet, unlike cities whose corruption led to implementation of nonpartisan elections, the corruption in New York City at that did not result in a change in its electoral system.

In the early 1960s, a task force was appointed to review New York City government.⁴⁰ The task force examined nonpartisan mayoral elections in large cities of comparable size.⁴¹ They decided not to implement them in New York, however, because they found that in other large cities, voters were still well aware of the party backings of candidates, and if the premise for changing to nonpartisan elections was to remove the party from the election process, nonpartisan elections would fail to do so.⁴²

In 1986, New York City voters approved special nonpartisan elections through a referendum, which amended certain provisions of the City Charter, including the method of filling vacancies for City Council or Borough President.⁴³ Under the post-referendum provisions, special election candidates are nominated by independent petitions rather than by party committee, and party affiliation may not be included on the ballot.⁴⁴ In 1991, the New York City Board of Elections refused to comply with the new charter provisions, claiming that the provisions contradicted New York State Election Law, which allows party labels, and arguing that city rules must yield to state

³⁸ *See id.*

³⁹ *See id.* at 69, 74.

⁴⁰ *See* Edward Costikyan, Editorial, *The Case Against Bloomberg's Charter Revisions on the Mayor's First Major Misstep—A Plan That Calls For a 'Well-Deserved Death,'* N.Y. SUN, July 29, 2002, at 6. Costikyan was appointed by former governor Nelson Rockefeller to head this task force. *Id.*

⁴¹ *See id.*

⁴² *See id.*

⁴³ *See* Dick Zander, *Minority Challenge to Charter Change,* NEWSDAY, Nov. 28, 1988, at 20.

⁴⁴ *See* Cerisse Anderson, *Party Designation Barred in Special Council Election,* N.Y. L.J., Apr. 4, 1991, at 1.

law.⁴⁵ Thomas J. Manton, Chairman of the Democratic Executive Committee of Queens County, intervened and contended that the nonpartisan provisions violated his party's First Amendment right to free speech.⁴⁶ The Supreme Court of New York upheld the charter revisions, and the Appellate Division affirmed, finding no contradiction between the state law and the charter revision and no First Amendment violation.⁴⁷

New York's Municipal Home Rule Law provides for appointment of a charter revision commission in New York City through, among other methods, mayoral action.⁴⁸ The Commission is charged with reviewing the City Charter and proposing a new charter or revising the existing one.⁴⁹ Former Mayor Rudolph Giuliani began researching the possibility of implementing nonpartisan elections for all municipal offices in 1998.⁵⁰ The New York City Charter Revision Commission has since annually examined the possible benefits and disadvantages of such a procedural change.⁵¹ The 1998, 1999 and 2001 Commissions examined the possibility of establishing nonpartisan

⁴⁵ *City of New York v. New York City Bd. of Elections*, No. 41450/91, at 3 (N.Y. Sup. Ct. Apr. 3, 1991), *aff'd*, __ A.D.2d __ (1st Dept.), *appeal denied*, 572 N.E.2d 50 (Mem.) (Apr. 10, 1991). In *New York City Board of Elections*, the city sued to enjoin the Board of Elections from including the party affiliation of a Queens County City Council candidate on the special election ballot, pursuant to the newly established nonpartisan rules. *Id.* See *infra* Part II.C (detailing the court's holding regarding this contradiction).

⁴⁶ *New York City Bd. of Elections*, No. 41450/91, at 6 (citing *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214 (1989)). The court distinguished *Eu*, however, noting that the statute in *Eu*, prohibiting political parties from endorsing candidates in the primaries, was much more severely restrictive than was the case at issue. *Id.*; see also CAL. ELEC. CODE § 29430 (2003) (stating that the official governing bodies "shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election"); *Eu*, 489 U.S. at 217 (citing section 29430 of California's Election Code).

⁴⁷ *New York City Bd. of Elections*, No. 41450/91, at 6.

⁴⁸ N.Y. MUN. HOME RULE LAW § 36 (2002).

⁴⁹ *Id.*

⁵⁰ See NEW YORK CITY CHARTER REVISION COMM'N, MAKING OUR CITY'S PROGRESS PERMANENT 104 (2001) [hereinafter CITY'S PROGRESS].

⁵¹ *Id.*

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elections.⁵² Although concluding that nonpartisan elections would be beneficial to New York City, the Commissions deferred the issue for further studies.⁵³ Giuliani's 2001 Commission believed that one reason for the lack of spirited, substantive policy debate about the city's future, even as the 2001 primary election approached, was that the city's partisan election system "tend[ed] to foster uniformity, rather than diversity of ideas."⁵⁴ They pointed out that this homogeneous perspective was perpetuated by the overwhelming dominance of the Democratic Party among the New York City electorate.⁵⁵ The Commission's findings were not considered full and fair because the members were widely seen as Giuliani's personal political tools, chosen to advocate Giuliani's position in support of nonpartisan elections rather than conduct an independent evaluation of the policy benefits and burdens of such a change.⁵⁶

In 2002, Mayor Bloomberg, perhaps recognizing the lack of credibility given to the Giuliani commissions, appointed diverse, independent members.⁵⁷ The thirteen members began examining

⁵² PRELIMINARY OPTIONS, *supra* note 2, at 14-18 (summarizing the 1998, 1999 and 2001 commissions' findings and actions).

⁵³ CITY'S PROGRESS, *supra* note 50, at 104.

⁵⁴ *Id.* at 105.

⁵⁵ *Id.* More than sixty-five percent of all registered voters are members of the Democratic Party. See New York State Bd. of Elections, Voter Enrollment for November 2002, at <http://www.elections.state.ny.us/enrollment/enroll.htm> (last visited Apr. 2, 2003). About eighty percent of voters who are registered with a party are registered Democrats. *Id.*

⁵⁶ Douglas Muzzio, Editorial, *Bloomberg Jumps the Gun on Charter Reform*, NEWSDAY, July 25, 2002, at A35 [hereinafter Muzzio, *Bloomberg Jumps Gun*] (noting that Giuliani appointed three commissions, all chaired by close associates who had served as deputy mayors). See also Eric Lipton, Editorial, *From Giuliani, a Pitch to Put Parties Aside*, N.Y. TIMES, June 16, 2001, at B3 (describing the connections between various Charter Revision Commission members and Giuliani and his administration).

⁵⁷ Muzzio, *Bloomberg Jumps Gun*, *supra* note 56. See also Editorial, *Charter Reform, Slowly*, N.Y. DAILY NEWS, Aug. 31, 2002, at 22 ("Bloomberg's panel . . . has proved to be as independent as he said it would be"); Michael Cooper, *Mayor Calls Charter Panel's Rejection of His Plan Proof of Its Independence*, N.Y. TIMES, Sept. 4, 2002, at B7 (noting that the commission's decision to defer proposing a ballot referendum, which he

nonpartisan elections but again deferred making a decision.⁵⁸ In doing so, the Commission considered input from local community leaders and members of the general public, as well as information from a staff with expertise in city government and the charter revision process.⁵⁹ The Commission's decision largely reflected concerns voiced by the public—that the review process required further public comment and review and that the hearings were held during August, when many people are on vacation.⁶⁰

3. Mayor Bloomberg's Premises for Establishing Nonpartisan Elections

Nonpartisan elections were among the leading proposals promoted by Mayor Bloomberg at the outset of his mayoral campaign.⁶¹ Bloomberg stated that he did not believe the role political parties play is as central to local governance as it is to national governance.⁶² He described the current partisan elections as allowing “a very small group of people [to] determine who gets elected” because a proportionately small number of voters actually participate in the primary.⁶³ He expressed hope that nonpartisan elections would increase the competitiveness of the city's local elections⁶⁴ and believed the nonpartisan system would

disagreed with, showed their independence); Dan Janison, *Mayor's Charter Panel a Varied Crew*, NEWSDAY, July 13, 2002, at A11 (describing the varied backgrounds of the 2002 Charter Revision Commission members, which include members who have had ideological and political conflicts with Mayor Bloomberg).

⁵⁸ *Hearing (Sept. 3, 2002)*, *supra* note 6 (statement of Robert Maguire, Chair of the 2002 Charter Revision Commission).

⁵⁹ CITY IN TRANSITION, *supra* note 2, at 11-13 (discussing the review procedures used by the 2002 Charter Revision Commission).

⁶⁰ *Id.* at 12.

⁶¹ Adam Nagourney, *Bloomberg Says Elections Should Be Nonpartisan*, N.Y. TIMES, June 8, 2001, at B4. Bloomberg is a quintessential nonpartisan advocate, as a Democrat-turned-Republican, whose election received the support of the Independent Party. *See id.*

⁶² *Id.*

⁶³ Muzzio, *Charter Revision*, *supra* note 24 (quoting Mayor Bloomberg).

⁶⁴ *Id.* (noting a suggestion made by a Bloomberg advisor).

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increase opportunities for candidates to run for an elected position without submitting to the party hierarchy.⁶⁵ Bloomberg also speculated that by taking parties out of their current position of power more people would participate in the political process.⁶⁶

B. The Structure of Nonpartisan Elections: What It Is and What It Isn't

One of the primary misconceptions about nonpartisan elections is that they absolutely restrict political parties from playing any role in the campaign and election process.⁶⁷ Understanding the various ways in which nonpartisan elections are, or are not, structured illuminates the purposes underlying the current nonpartisan movement.

1. Existing Nonpartisan Election Structures

In cities with nonpartisan elections, candidates are placed on the general election ballot either by nominating petition or by advancing from a nonpartisan primary.⁶⁸ In nonpartisan cities that

⁶⁵ Adam Nagourney, *Bloomberg Says Elections Should Be Nonpartisan*, N.Y. TIMES, June 8, 2001, at B4 (quoting Bloomberg, who stated, "You've got to get rid of the partisan politics and party bosses who really limit the public's choice").

⁶⁶ Muzzio, *Charter Revision*, *supra* note 24 (quoting Bloomberg's advisor).

⁶⁷ *See, e.g.*, Press Release, New York State Democratic Committee, Statement from State Chair Herman "Denny" Farrell, Jr., Reports That Mayor Bloomberg Will Try to Reduce the Role of Major Political Parties in New York City Elections (June 17, 2002) [hereinafter "Press Release, Denny Farrell"] (opposing nonpartisan elections by emphasizing the benefits political parties provide to the electoral process), *available at* <http://www.nydems.org/press/pr-06-17-02.html>.

⁶⁸ Northup, *supra* note 28, at 1683. Independent nominations are used to reduce the number of candidates eligible to be placed on the primary ballot or on the general election ballot when primaries are not used. *See, e.g.*, ALBUQUERQUE CITY CHARTER art. 2 § 3 (1971) (requiring a candidate to submit a petition with a specified number of signatures to be placed on the ballot), *available at* http://www.amlegal.com/albuquerque_nm/; L.A. CITY CHARTER § 422 (2000) (using nominating petitions "to qualify a candidate for

do not hold primaries, the candidate who wins the most votes wins the election.⁶⁹ In cities that utilize primaries, all candidates run in a nonpartisan primary in which all qualified voters are eligible to participate.⁷⁰ In some cities, a runoff election is held only if no candidate receives a majority of votes.⁷¹ In such cases, the primary usually becomes the deciding election. Several cities, on the other hand, always advance two candidates to the general election, regardless of whether any candidate receives a majority.⁷²

Independent petitions are used to nominate candidates either to the general ballot or to the primary ballot.⁷³ The petitions require candidates to obtain a threshold number of signatures before their name can be placed on the ballot.⁷⁴ Party affiliation

placement on the primary nominating ballot), *available at* <http://www2.lacity.org>.

⁶⁹ See CITY IN TRANSITION, *supra* note 2, at E12 to E15. Those cities include Memphis, Tenn.; Fort Worth, Tex.; Portland, Ore.; Albuquerque, N.M.; Virginia Beach, Va.; Colorado Springs, Colo. and Santa Ana, Cal. *Id.*

⁷⁰ PRELIMINARY OPTIONS, *supra* note 2, at 68. See also CITY IN TRANSITION, *supra* note 2, at 104 (proposing a draft of a city charter amendment to provide for nonpartisan elections and requiring that “[e]very qualified voter shall be entitled to vote at such nonpartisan primary election”).

⁷¹ See CITY IN TRANSITION, *supra* note 2, at E12 to E15. Those cities include Los Angeles, Cal.; Chicago, Ill.; Houston, Tex.; Phoenix, Ariz.; San Diego, Cal.; Dallas, Tex.; San Antonio, Tex.; Detroit, Mich.; San Jose, Cal.; Jacksonville, Fla.; Columbus, Ohio; Austin, Tex.; Milwaukee, Wis.; Nashville-Davidson, Tenn.; El Paso, Tex.; Denver, Colo.; Oklahoma City, Okla.; New Orleans, La.; Las Vegas, Nev.; Long Beach, Cal.; Fresno, Cal.; Atlanta, Ga; Sacramento, Cal.; Oakland, Cal.; Mesa, Ariz.; and Honolulu, Haw. *Id.*

⁷² *Id.* Those cities include Boston, Mass.; Seattle, Wash.; Cleveland, Ohio (only if the top two candidates each received over one percent of the vote); Kansas City, Kan.; Omaha, Neb.; Miami, Fla.; Minneapolis, Minn. and Wichita, Kan. *Id.*

⁷³ See Northup, *supra* note 28, at 1683.

⁷⁴ See, e.g., L.A. CITY CHARTER § 422 (2000) (requiring any candidate for mayor, city attorney, controller and member of the city council to collect signatures of 500 registered voters to be placed on the primary nominating ballot), *available at* <http://www2.lacity.org>; 65 ILL. COMP. STAT. ANN. § 20/21-28 (West 2003) (requiring candidates for city alderman in Chicago to collect signatures aggregating “not less than 2% of the total number of votes

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is not included in any of the nomination papers, nor is it included on the ballot.⁷⁵

2. New York City's Proposed Nonpartisan Election Structure

In the nonpartisan election structure considered by the 2002 Charter Revision Commission, candidates' party affiliations, if any, are not denoted on the ballot.⁷⁶ The charter revision draft

cast for mayor at the last preceding municipal election divided by the number of wards").

⁷⁵ Northup, *supra* note 28, at 1683. The most common attribute of nonpartisan elections is the elimination of party designation or support from election ballots. *See* CITY IN TRANSITION, *supra* note 2, at 68 (noting that the essential difference between partisan and nonpartisan elections is whether a candidate's party affiliation is denoted on the ballot). The structural change of listing candidates on the ballot without respective party affiliation labels has only an incidental legal effect upon political parties in terms of their right to participate. *See* Pl.'s Reply Mem. of Law at 4, *City of New York v. New York City Bd. of Elections*, No. 41450/91, (N.Y. Sup. Ct. Apr. 3, 1991), *aff'd*, __ A.D.2d __ (1st Dept.), *appeal denied*, 572 N.E.2d 50 (Mem.) (Apr. 10, 1991). Under the nonpartisan format, parties may still "circulate independent nominating petitions; they may endorse candidates; they may encourage people to vote for particular candidates; they may, in short, carry on all their normal functions except that of directly nominating a candidate." *Id.* (explaining the various functions that political parties may still conduct as part of the campaign process).

⁷⁶ PRELIMINARY OPTIONS, *supra* note 2, at i. The removal of the party label from election ballots is the hallmark of nonpartisan elections. *See, e.g.*, L.A. CITY CHARTER § 424 (2000) (stating that "[t]here shall be nothing on any ballot indicative of the party affiliation, source of candidacy or support of any candidate"), *available at* The Official Web Site of The City of Los Angeles, <http://www2.lacity.org>. *See also* CITY IN TRANSITION, *supra* note 2, at 104 (setting forth section sixty-nine of the "Draft Nonpartisan Elections Chapter").

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

Id.

provided for a primary election and specified that the two candidates receiving the most votes would always advance to a runoff election in November.⁷⁷

The proposed election format for New York City would not prohibit political parties from endorsing, supporting or opposing candidates.⁷⁸ Unlike nonpartisan elections, which attempt to statutorily eliminate party activism, the nonpartisan structure proposed by the city would modify only the formal roles parties currently play in the various stages of the election process, including the implementation of the closed party primary and placement of party labels on the ballot.⁷⁹ In effect, the political

⁷⁷ CITY IN TRANSITION, *supra* note 2, 104 (providing section sixty-eight of the “Draft Nonpartisan Elections Chapter”). This structure is similar to that in place in Boston and Seattle. *See id.* at E12 to E15 (briefly describing the election systems in Boston and Seattle).

⁷⁸ The proposed nonpartisan election system does not establish “absolute” nonpartisan elections, which the Ninth Circuit held unconstitutional. *See Geary v. Renne*, 911 F.2d 280 (9th Cir. 1990). In *Geary*, an official prohibition of party endorsements, approved by referendum, was held to unconstitutionally violate the First Amendment right of political parties to free expression, as well as the right of party members to receive an unrestricted flow of political information. *See id.* at n.4 (citing the provisions of the California Elections Code banning party primaries and party labels). California’s nonpartisan statutes removed the statutory role of political parties by banning the use of party primaries and party labels on the ballot, but they did not prohibit political party endorsements. *Id.* at 282. Nevertheless, due to the ambiguous legal status of party endorsements in electoral campaigns, political parties did not endorse candidates in the majority of California counties. *Id.* Similarly, the Supreme Court has held that election laws prohibiting political parties from making primary endorsements violated the First Amendment freedom of speech and association and failed to serve any compelling interest. *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 229 (1989).

Unlike in California, New York’s proposed system would merely remove party labels from election ballots and allow all qualified voters to vote in the primary; it would not prohibit political parties from endorsing candidates during the campaign process. *See CITY IN TRANSITION, supra* note 2, at 102-04 (providing, *inter alia*, “Draft Nonpartisan Elections Chapter” sections sixty-five and sixty-nine, which establish a nonpartisan primary and prohibit any partisan designations from being placed on the ballot).

⁷⁹ *See CITY IN TRANSITION, supra* note 2, at 68 (describing the statutory

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party would be reduced to the same legal status in the political arena as all other groups in the local community, whether social, religious, economic or geographical.⁸⁰

II. NEW YORK STATE AND LOCAL AUTHORITY FOR NONPARTISAN ELECTIONS

The legal authority for states and municipalities to conduct nonpartisan elections includes state, local and federal statutes and regulations, as well as judicial determinations interpreting the statutes. These authorities define the extent and limit the scope of state and local power in establishing their election formats.

A. State and Local Statutory Authority for Nonpartisan Elections

Nonpartisan elections have existed in New York State since the early twentieth century under New York State's Home Rule Law, which implicitly authorizes cities to adopt nonpartisan elections by charter amendment.⁸¹ Section 10 of New York State's Municipal Home Rule Law authorizes cities to adopt local laws related to "the powers, duties, qualifications, number, [and] *mode of selection . . . of its officers . . .*"⁸² The purpose of

differences between a partisan and nonpartisan system).

⁸⁰ LEE, *supra* note 11, at 97.

⁸¹ N.Y. MUN. HOME RULE LAW § 10 (2002); N.Y. CONST. art. IX, § 2 (2000). See CITY IN TRANSITION, *supra* note 2, at 76. New York's Municipal Home Rule Law was established in 1924. See *Bareham v. Rochester*, 158 N.E. 51, 53 (1927).

⁸² § 10 (emphasis added). This Home Rule Law directly derives from Article IX, section 2(c) of the New York State Constitution. N.Y. CONST. art. IX, § 2 (2000) (providing that local governments have the power to "adopt and amend local laws [regarding the] . . . mode of selection . . . of its officers . . ."). Local election structures may differ from those codified in New York's state election laws, which provide 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 this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law." N.Y. ELEC. LAW § 1-102 (McKinney 2003); see

home rule is “to prevent centralization of power in the state, and to continue, preserve, and expand local self-government.”⁸³

The cities of Sherrill and Watertown instituted nonpartisan primary systems in 1916 and 1920, respectively.⁸⁴ Under their original nonpartisan election procedures, the two candidates receiving the most votes in the nonpartisan primary advanced to the general election, regardless of party affiliation.⁸⁵ Party labels remained on the ballot, but the law effectively allowed two candidates from the same party to compete in the general election.⁸⁶

B. The Federal Voting Rights Act

The United States Department of Justice (DOJ) examines whether changes in voting procedures, including a change to nonpartisan elections, will result in “a denial or abridgement of the right of any citizen of the United States to vote on account of race or color”⁸⁷ Such denial or abridgment is found:

[I]f, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of

CITY IN TRANSITION, *supra* note 2, at 76.

⁸³ People *ex rel.* Metro. St. Ry. Co. v. State Bd. of Tax Comm’rs, 67 N.E. 69, 72 (1903). *See also* City of New York v. New York City Bd. of Elections, No. 41450/91, at 4 (N.Y. Sup. Ct. Apr. 3, 1991), *aff’d*, __ A.D.2d __ (1st Dept.), *appeal denied*, 572 N.E.2d 50 (Mem.) (Apr. 10, 1991) (explaining that New York State Election Law confers upon municipalities the power to establish their own local laws).

⁸⁴ *See* CITY IN TRANSITION, *supra* note 2, at 78.

⁸⁵ *Id.* at 79.

⁸⁶ *Id.* Sherrill’s current city charter, however, removes the party label from all ballots for local elective offices. SHERRILL CITY CHARTER, tit. XIV § 206 (Sept. 2001) (requiring that “[a]ll ballots [including primary, regular and special election ballots] used in all elections held under authority of this act shall . . . be without party mark or designation”), *available at* <http://www.sherrillny.org>.

⁸⁷ 42 U.S.C. § 1973(a) (2003). The DOJ is the federal agency charged with enforcing the Voting Rights Act. 28 C.F.R. § 51.3 (2003).

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citizens protected by [42 USC 1973(a)] . . . in that *its members have less opportunity* than other members of the electorate to participate in the political process and *to elect representatives of their choice*.⁸⁸

Under the Federal Voting Rights Act, New York City must obtain preclearance from the DOJ before officially amending its election laws.⁸⁹ The 2002 Charter Revision Commission hired an expert in voting rights, Dr. Allan Lichtman, to examine whether any such violations would arise if New York City were to implement nonpartisan elections.⁹⁰ Dr. Lichtman analyzed New

⁸⁸ § 1973(b) (emphasis added).

⁸⁹ See § 1973(c) (codifying section 5 of the Federal Voting Rights Act); 28 C.F.R. § 51 app. (2003) (listing the jurisdictions covered under the preclearance section of the Voting Rights Act, including Bronx, Kings and New York Counties). The DOJ reviews any voting procedure changes made in cities subject to preclearance to ensure they do not discriminate on account of race or color. See app. to 28 C.F.R. § 51.1(a) (2003). If the procedural change will be decided by referendum, jurisdictions may seek prospective review. See 28 C.F.R. § 51.22 (2003):

With respect to a change for which approval by referendum . . . is required, the [U.S.] 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.

Id. According to Gerry Hebert, former chief of the Voting Rights Section of the DOJ, among the 152 requests for preclearance, in which review was limited to their change to nonpartisan elections, all were approved. *Charter Revisions to Establish a Nonpartisan Local Election System: Hearing on Proposed New York City Charter Chapter 3 Before the New York City Charter Revision Commission (Aug. 23, 2002)* [hereinafter *Hearing (Aug. 23, 2002)*] (statement of Gerry Hebert). Hebert explained that the only time the DOJ denied preclearance was for a change in school board elections in Georgetown County, South Carolina in 1994, where the new rule prohibited party endorsement during the campaign. *Id.*; CITY IN TRANSITION, *supra* note 2, at C-31.

⁹⁰ CITY IN TRANSITION, *supra* note 2, at 81. Dr. Lichtman was hired by the 1998, 1999 and 2002 commissions to perform statistical analyses. *Id.* Dr. Lichtman has served as an expert witness for many minority civil rights organizations, including the NAACP, the Puerto Rican Legal Defense and Education Fund and the Mexican Legal Defense and Education Fund. *Charter Revisions to Establish a Nonpartisan Local Election System: Hearing on*

York City's voting patterns from the 1989, 1993 and 1997 general elections, examining whether nonpartisan elections would violate the Voting Rights Act by reducing minority turnout or harming minorities' ability to elect their candidate of choice and concluded that the nonpartisan format would not violate the Act.⁹¹ He also examined voting patterns in other cities using partisan and nonpartisan systems for comparison.⁹²

1. *Minority Turnout*

To evaluate whether minority voter turnout was harmed more by nonpartisan elections disproportionately, Dr. Lichtman examined voter turnout patterns in New York City's nonpartisan special elections between 1992 and 1998.⁹³ The statistics showed that changes in minority and white turnout depended on whether the election district had a larger minority or white population.⁹⁴ Moreover, minority turnout increased when there was a competitive minority candidate on the ballot.⁹⁵ His results showed no particular detriment to minority voter turnout in New York City's special elections in comparison to white voter turnout.⁹⁶

Proposed New York City Charter Chapter 3 Before the New York City Charter Revision Commission (Aug. 15, 2002) [hereinafter Hearing (Aug. 15, 2002)] (statement of Dr. Lichtman, chair of the History Department at American University and noted Voting Rights expert).

⁹¹ CITY IN TRANSITION, *supra* note 2, at 81. See 28 C.F.R. § 51.58(b)(2) (2003) (stating that the Attorney General, in reviewing changes in electoral systems, will consider as a factor "the extent to which minorities have been denied an equal opportunity to influence elections and the decisionmaking of elected officials in the jurisdiction").

⁹² CITY IN TRANSITION, *supra* note 2, at 90 (describing the extent of Dr. Lichtman's study, which included an examination of the partisan and nonpartisan electoral systems of the nation's 100 largest cities and their effect on minority voting power).

⁹³ *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman).

⁹⁴ *Id.*

⁹⁵ *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman). See *infra* Part II.B.3 (explaining the correlation between minority candidate competitiveness and increased minority turnout).

⁹⁶ *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman explaining that minority voter turnout patterns in New York City's special

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Similar to these findings, the special elections held in other major cities—including Washington, D.C., Memphis, Tennessee and Chicago, Illinois—showed no divergent pattern of minority turnout compared to white turnout, based on whether the system was nonpartisan or partisan.⁹⁷ The primary factor affecting minority voter turnout in those cities was the competitiveness of the election, not the partisan or nonpartisan nature of the election system.⁹⁸

2. Minorities' Ability to Elect Their Candidates of Choice

Dr. Lichtman also analyzed the success of minority candidates under nonpartisan election systems as a gauge to determine whether the election format change would diminish opportunities for minorities to elect their candidate(s) of choice.⁹⁹ Minority candidate success gives a fair approximation of the electoral success of minority voters because of their tendency to vote for candidates of their race.¹⁰⁰

In his examination of election results in the fifty largest cities, Dr. Lichtman found not only that party identification was unnecessary for minority candidates to be elected, but also that a positive correlation exists between nonpartisan systems and the election of black and Hispanic mayors.¹⁰¹ Of those fifty cities,

elections from 1992 to 1998 varied based on whether the district was a majority-minority district, not based on the use of a nonpartisan election system). In fact, he found that the same voter turnout patterns existed in white voter turnout during those elections, i.e., that white voter turnout decreased in majority-minority districts. *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ CITY IN TRANSITION, *supra* note 2, at E-2; see 28 C.F.R. § 51.58(b)(2) (2003).

¹⁰⁰ CITY IN TRANSITION, *supra* note 2, at E-2. Dr. Lichtman's analysis of minority voter turnout in New York City special elections between 1992 and 1998 also indicates this tendency. See *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman).

¹⁰¹ CITY IN TRANSITION, *supra* note 2, at 82. Dr. Susan Welch, a professor of political science at Pennsylvania State University, was also retained by the commission to examine Dr. Lichtman's analysis, and she

forty-one utilized nonpartisan elections and nine administered partisan elections.¹⁰² Of the forty-one cities holding nonpartisan elections, thirty-four percent have elected minority mayors, compared with twenty-two percent in the cities using partisan elections.¹⁰³ Moreover, cities that do not have majority-minority populations have also elected minority mayors under nonpartisan systems.¹⁰⁴

Dr. Lichtman also examined minority vote cohesiveness to see whether partisan systems, which are generally unifying structures,¹⁰⁵ would help New York City's minorities elect candidates of their race.¹⁰⁶ He found that although the three major minority groups in the city—black, Hispanic and Asian—each have greater membership in the Democratic Party than the Republican Party, whites constitute a substantial plurality in the Democratic Party.¹⁰⁷ Moreover, the different minority groups in the city do not tend to unite behind a single candidate and thus

agreed with his conclusion. *Id.* at 92. On the other hand, she also expressed concerns that voters would lose the benefits commonly associated with partisan election systems. *See, e.g., infra* Part III (discussing the benefits that political parties bring to elections).

¹⁰² PRELIMINARY OPTIONS, *supra* note 2, at D-1.

¹⁰³ *Id.*

¹⁰⁴ *Charter Revisions to Establish a Nonpartisan Local Election System: Hearing on Proposed New York City Charter Chapter 3 Before the New York City Charter Revision Commission (Aug. 22, 2002)* [hereinafter *Hearing (Aug. 22, 2002)*] (statement of Don Borut). For example, Houston and Dallas both currently have African American mayors, but their minority populations do not comprise a majority of their populations. *Id.*

¹⁰⁵ *See* Kenneth Sherrill, *The Dangers of Non-Partisan Elections to Democracy*, 2 SOC. POL'Y 15, 17 (1998) (explaining that parties "provide for collective behavior [and] collective responsibility" based on rational expectations that "if a party . . . nominates a candidate, citizens have a reasonable expectation that . . . the candidate shares the party's general perspective").

¹⁰⁶ CITY IN TRANSITION, *supra* note 2, at C-15.

¹⁰⁷ *Id.* at C-14. Within the Democratic Party, non-Hispanic whites constitute forty-four percent, blacks thirty percent, Hispanics twenty percent, Asians three percent and others three percent. *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman citing statistics from 2001 exit polls in New York City).

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dominate neither the Democratic primary nor the final election results.¹⁰⁸ The statistics regarding minority voting in cities administering nonpartisan elections, together with broader analyses of voting patterns in New York City, indicate that nonpartisan elections will not violate the Voting Rights Act and may in fact enhance minority voting power.

C. State and Local Judicial Authority for Nonpartisan Elections

Courts have upheld local nonpartisan election systems in New York.¹⁰⁹ In *Bareham v. City of Rochester*, the New York Court of Appeals reviewed various local legislative amendments passed by Rochester's City Council.¹¹⁰ Among other things, the court examined the council's revisions to local provisions that abolished the party primary and prohibited placing party labels on the ballot.¹¹¹ Finding the provisions statutorily and constitutionally valid,¹¹² the court resolved a question regarding the validity of local election laws that are inconsistent with the state election law.¹¹³ The court found that municipalities were

¹⁰⁸ CITY IN TRANSITION, *supra* note 2, at C-14.

¹⁰⁹ See *infra* notes 110-22 (summarizing judicial authority for nonpartisan elections in New York).

¹¹⁰ *Bareham v. City of Rochester*, 158 N.E. 51 (1927).

¹¹¹ *Id.* at 148.

¹¹² *Id.* at 145 ("The local law springs from the Home Rule statute and that statute descends from the [State] Constitution.").

¹¹³ *Id.* Article 2, section 10 of the State Constitution required all municipal officers whose election was not provided for within the Constitution to be elected by the electors of such cities. *Id.*; N.Y. CONST. art. IX, § 2 (2000). The State electors' method utilized party primaries to elect such officers, in contradiction to Rochester's new local election laws, which abolished the party primary and removed the party label from the ballot. *Bareham*, 158 N.E. at 54. The court determined that the state and local laws were not fatally inconsistent, but that the state's Municipal Home Rule Law creates a specific method for cities to supercede the general state election law with regard to its method of electing local officers. *Id.*; NY MUN. HOME RULE LAW §11 (1924), *cited in Bareham*, 158 N.E. 51 at 53. Moreover, the Municipal Home Rule Law from which the local election laws were derived descended from the State Constitution, making both the Municipal Home Rule

empowered to modify their local election laws in so far as the laws affect the election of local officials.¹¹⁴

Bareham states that “[t]he term ‘mode of selection’ expresses an intent to allow a city to determine not only that it shall cause its officers either to be elected or appointed but connotes also that a municipality may define the precise method by which either an election or appointment shall be effected.”¹¹⁵ The court thus held that cities in New York possess the authority to establish nonpartisan elections.¹¹⁶ The decision emphasized that Section 10 of New York’s Municipal Home Law Rule left the decision of local election format to the city.¹¹⁷ Moreover, the state election law granted local municipalities legislative deference in structuring election procedures.¹¹⁸

New York City’s authority to adopt nonpartisan elections was upheld in *City of New York v. New York City Board of Elections*.¹¹⁹ There, the New York County Supreme Court upheld New York City Charter Section 25(b)(7), which removed party labels from nonpartisan special election ballots for City Council

Law and the local election laws valid under state law. *Id.* The court stated that as long as the city’s laws do not overstep their bounds (e.g., by attempting to regulate other cities’ election methods) such city laws will be upheld. *Id.* at 55.

¹¹⁴ *Bareham*, 158 N.E. at 54.

¹¹⁵ *Id.* at 146. *See supra* Part II.A (discussing New York’s Municipal Home Rule Law).

¹¹⁶ *Id.* at 144. The court stated that the revised provisions of the City Charter that provide for nonpartisan local elections “do not conflict with the [State] Constitution and that no fatal inconsistency exists between them and the Election Law.” *Id.* The holding in *Bareham* struck down the Rochester law, however, due to the legislature’s failure to cite the election law provisions being superceded, as required by municipal statute. *Id.* at 149.

¹¹⁷ *Id.* at 144.

¹¹⁸ *City of New York v. New York City Bd. of Elections*, No. 41450/91, at 4 (N.Y. Sup. Ct. Apr. 3, 1991), *aff’d*, ___ A.D.2d ___ (1st Dept.), *appeal denied*, 572 N.E.2d 50 (Mem.) (Apr. 10, 1991).

¹¹⁹ *New York City Bd. of Elections*, No. 41450/91. The court’s holding granted the city’s motion to preliminarily enjoin the Board of Elections from violating charter section 25(b)(7) by either giving reference to a City Council candidate’s party affiliation or giving recognition to the Democratic Party’s certificate of nomination on behalf of a candidate. *Id.*

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and Borough President and changed the candidate nomination process.¹²⁰ The case arose when the Board of Elections encountered a conflict between New York State Election Law Section 6-114, which provides that “[p]arty nominations for an office to be filled at a special election shall be made in the manner prescribed by the rules of the party,”¹²¹ and the voter-approved City Charter Section 25(b)(7), which established a nonpartisan nominating process by providing for “nomination by [independent] petitions rather than nomination by party committee whenever nominations cannot be made by primary election.”¹²²

The 1988 Charter Revision Commission’s objective in changing special elections to a nonpartisan format was to “create a more open and democratic process for filling City Council vacancies so that Council members can be selected directly by the people they represent and potential candidates can have equal access to the ballot.”¹²³ The new nominating process intended to replace one that gave political party leaders an overly powerful role in nominating candidates in special elections.¹²⁴ To fulfill this objective of enhancing access to the ballot, the Commission emphasized implementing independent nominating petitions more

¹²⁰ *New York City Bd. of Elections*, No. 41450/91. See also Cerisse Anderson, *Party Designation Barred in Special Council Election*, N.Y. L.J., Apr. 4, 1991, at 1.

¹²¹ *New York City Board of Elections*, No. 41450/91 at 3; N.Y. ELEC. LAW § 6-114 (McKinney 2003).

¹²² *New York City Bd. of Elections*, No. 41450/91 at 7 (quoting the 1988 report of the New York City Charter Revision Commission) (citation omitted). See also Nathaniel Persily, *Candidates v. Parties: The Constitutional Constraints on Primary Ballot Access Laws*, 89 GEO. L.J. 2181 (2001). In recognizing that primary ballot access laws could undermine voters’ opportunity to cast a meaningful vote, Persily examined how the party primary structure, essentially determined by the two major political parties, could serve as a barrier to access to the general election ballot. *Id.*

¹²³ Pl.’s Reply Mem. of Law at 4, *New York City Bd. of Elections*, No. 41450/91.

¹²⁴ Pl.’s Mem. of Law in Supp. of Mot. for Prelim. Inj. at 18-19, *New York City Board of Elections*, No. 41450/91.

than creating nonpartisan elections per se.¹²⁵

The court concluded that there was no conflict between the charter and the election law because the State Constitution conferred upon municipalities the power to establish their own local election law provisions.¹²⁶ Thus, Section 25(b)(7) was upheld notwithstanding New York State Election Law Section 6-114, which allows parties to place their candidates' party labels on the ballot.¹²⁷

III. ARGUMENTS AGAINST NONPARTISAN ELECTIONS

Opponents of nonpartisan elections point to purported successes of the current partisan system for local elections and highlight concerns that a nonpartisan format might be detrimental to the city.¹²⁸ Partisan advocates claim that parties provide a cohesive ideology, ensure accountability, inform voters, fund candidates and increase minority electoral influence.¹²⁹ They express concern that a nonpartisan system would not only lead to a loss of these benefits, but also depress voter turnout, increase dependence on less informative voter cues and lead to an unfair Republican advantage.¹³⁰

Supporters of the current partisan election system argue that political parties should maintain their role in local elections because of their critical function in connecting people to the political system.¹³¹ Political parties, unlike narrowly-focused,

¹²⁵ *Hearing (Sept. 3, 2002)*, *supra* note 6 (statement of Howard Friedman, Senior Counsel, New York City Law Department, noting that the statutory provisions do not use the words "non-partisan election" to describe the special election but do refer to independent nominating petitions).

¹²⁶ *New York City Bd. of Elections*, No. 41450/91 at 3.

¹²⁷ *Id.* at 4. *See* Anderson, *supra* note 120.

¹²⁸ *See infra* notes 131-52 and accompanying text (outlining the arguments of nonpartisan opponents).

¹²⁹ *See infra* notes 131-41 and accompanying text (highlighting the benefits political parties bring to the electoral system).

¹³⁰ *See infra* notes 144-51 and accompanying text (discussing the concerns of partisan supporters with regard to the effects of nonpartisan election systems).

¹³¹ *See* CITY IN TRANSITION, *supra* note 2, at 82; *see infra* notes 132-44

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single-issue organizations, play an important role in “assembling ideological coalitions” and uniting voters across a spectrum of issues based on a common policy perspective.¹³² To that extent, political parties are useful signals of candidates’ policy differences.¹³³ Furthermore, party affiliation promotes accountability of the candidate to a party’s policy orientation, both as a candidate and as an elected official.¹³⁴

Political parties also assist voters and candidates by providing funding and distributing candidate information.¹³⁵ A party’s multi-issue, policy-oriented structure makes it an efficient mechanism to disseminate a candidate’s viewpoint on a broad

and accompanying text.

¹³² See *Charter Revisions to Establish a Nonpartisan Local Election System: Hearing on Proposed New York City Charter Chapter 3 Before the New York City Charter Revision Commission (Aug. 13, 2002)* [hereinafter *Hearing (Aug. 13, 2002)*] (statement of David Yassky, City Council member representing the 33rd District in Brooklyn, that “[p]arties can be organizers of ideology and constructors of agenda to which people adhere”). See also Press Release, Denny Farrell, *supra* note 67 (discussing the role political parties play in financially supporting candidates and in offering citizens a way to participate in public service).

¹³³ See Amy Bridges, Editorial, *In Elections, Parties Matter*, N.Y. TIMES, Aug. 30, 2002, at A18 (discussing the benefits that political parties bring to elections). *But see infra* note 178 and accompanying text (noting the divergence of broad national political ideology from localized needs).

¹³⁴ See CITY IN TRANSITION, *supra* note 2, at 70 (stating a nonpartisan opponent view that parties “force candidates to make commitments that result in political accountability”); Sherrill, *supra* note 105, at 17 (noting that the collective behavior and responsibility facilitated by political parties promotes candidate accountability). *But see infra* Part IV.C.1 (discussing how the context of New York’s current partisan system eliminates public official accountability).

¹³⁵ CITY IN TRANSITION, *supra* note 2, at 92 (summarizing Dr. Susan Welch’s support for political parties and the benefits they bring to the political system); Bridges, *supra* note 133 (noting the role parties play in distributing information); *Charter Revisions to Establish a Nonpartisan Local Election System: Hearing on Proposed New York City Charter Chapter 3 Before the New York City Charter Revision Commission, (Aug. 21, 2002)* [hereinafter *Hearing (Aug. 21, 2002)*] (statement of Professor Clayton Gillette, Professor of Law, New York University School of Law, noting various benefits provided by parties).

range of issues,¹³⁶ and information about a candidate's position can only be effectively disseminated to voters if they obtain adequate funding.¹³⁷ Partisan advocates argue that, under the partisan structure, parties support candidates by playing a significant role in funding their campaigns.¹³⁸ Political parties' financial support also helps candidates efficiently convey their platform through various media.¹³⁹ In addition to funding candidates, political parties also "help recruit, train, and support candidates."¹⁴⁰

Adherents of the current partisan process also cite the successes that minorities have made within the party structure,

¹³⁶ See Sherrill, *supra* note 105, at 17 (describing the historical role of political parties as a "structured alliance" between a candidate and his supporters, who support his or her policy issues); Bridges, *supra* note 133 (noting that political parties "are the only devices thus far invented which generate power on behalf of the many).

¹³⁷ Sherrill, *supra* note 105, at 18 (explaining that "candidates running without the advantage of . . . party identification will have to raise and spend much more money to achieve desired levels of name recognition"); CITY IN TRANSITION, *supra* note 2, at C-20 (acknowledging partisan advocates' contention that nonpartisan elections will make it difficult for non-wealthy candidates to obtain sufficient campaign funds); David Seifman, *Betsy: Nonparty Votes Help Rich*, N.Y. POST, Aug. 1, 2002, at 22 (noting Public Advocate Betsy Gotbaum's view that Bloomberg's implementation of nonpartisan elections will "only help wealthy candidates like himself").

¹³⁸ See Sherrill, *supra* note 105, at 19 (arguing that without partisan elections, candidates will spend too much of their time in fundraising); *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of Keith Wright, New York State assemblyman, 70th District). *But see infra* Part IV.C.3.c (discussing the New York City Campaign Finance Board's unique efforts to financially support candidates and reduce wealth advantages in elections).

¹³⁹ *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Margaret Groarke, assistant professor of government, Manhattan College, discussing various ways that political parties contribute to electoral campaigns). *But see infra* Part IV.C.3.d (discussing the variety of electoral informational sources available to New York City voters).

¹⁴⁰ *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Margaret Groarke). *But see infra* notes 202-205 (discussing how the current system creates incentives for elected officials to be more responsive to their party's national goals than to their constituents' local interests).

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particularly in becoming a solid voice in the Democratic Party.¹⁴¹ Within the Democratic Party, blacks constitute thirty percent, Hispanics constitute twenty percent and Asians constitute three percent.¹⁴² In contrast, in the Republican Party blacks constitute six percent, Hispanics constitute four percent and Asians constitute twenty-nine percent.¹⁴³ Opponents of nonpartisan elections fear that removing party labels from the ballot will amount to a setback to minorities in the development of their political clout.¹⁴⁴

Opponents of nonpartisan elections also fear that such a system would be detrimental to campaigns and the overall election process. They contend that the reduced role of the party and the subsequent loss of information typically distributed by political parties will make it more difficult for the average citizen

¹⁴¹ See, e.g., *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Yvette Clark, City Council Member, 40th District in Brooklyn, that “[m]any of our communities are just coming of age with respect to the exercising of their voting rights”); *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of William (Bill) Perkins, City Council Member, 9th District in Manhattan, asserting that “[e]liminating the Democratic Party’s official role could have serious effects for Latino and African American voters who are a growing force within the party”). See also *supra* note 90 (delineating the percentage of minorities enrolled in the Democratic Party in New York City, based on 2001 exit polls).

¹⁴² *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman).

¹⁴³ *Id.* The increase in minority participation was largely a result of passage and enforcement of the Voting Rights Act. *Id.* (stating that “urban politics have largely been transformed over the past several [decades], in part by the Voting Rights Act”).

¹⁴⁴ *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Yvette Clark, City Council Member, 40th District in Brooklyn, expressing her belief that the “proposal flies in the face of those of us at the grass roots of our communities who have labored to register extremely disenfranchised communities to become active participants in the political process and now stand to face the rolling back of many of those gains”); *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Oliver Koppel, City Council Member, 11th District in the Bronx, that “it will disadvantage minority voters to shift from a system that has allowed one minority to get elected and last year a minority representative to come very close to becoming the Democratic candidate for Mayor”). *But see infra* Part IV.C.3.b (discussing how the nonpartisan system will benefit minority voters).

to evaluate competing candidates.¹⁴⁵ If political parties no longer retain their preferred status in local elections, their involvement may diminish, denying people informational benefits.¹⁴⁶ The feared result is that the reduction in substantive information contributed by parties to campaigns will depress voter turnout.¹⁴⁷

Additionally, some people fear that nonpartisan elections would leave non-ideological factors like incumbency and name recognition as the primary cues for voter choice.¹⁴⁸ Nonpartisan opponents contend that nonpartisan elections are less centered on ideology, and instead turn the electoral process into a “personality contest.”¹⁴⁹

Lastly, a key underlying concern is that nonpartisan elections will give Republicans an unfair advantage.¹⁵⁰ The phenomenon

¹⁴⁵ Sherrill, *supra* note 105, at 20 (stating that removing the party label will deprive voters “of the historical perspective needed to project the nature of an administration”); *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Dorothy Siegel, a community activist from Brooklyn, that “without party affiliation voters will have no idea who they’re voting for or what candidates stand for”).

¹⁴⁶ See HAWLEY, *supra* note 1, at 64 (stating that removing the party label from the ballot will discourage party involvement, consequently “placing greater demands on [voters’] ideology; cognitive capacity; experience; and nonparty sources of political communication and mobilization”). *But see* notes 276-280 and accompanying text (discussing why political parties need not and, in fact, should not reduce their informal role in the political process).

¹⁴⁷ See CITY IN TRANSITION, *supra* note 2, at 87 (noting that “[c]onflicting studies were cited concerning whether nonpartisan elections would increase voter turnout or minority participation”). *But see supra* Part I, notes 93-98 and accompanying text (discussing voter turnout). *But see* IV.C.3.a (discussing the inapplicability of lower voter turnout concerns).

¹⁴⁸ Schaffner et al., *supra* note 32, at 4 (describing alternative voter cues used when political parties are removed from the ballot); Margaret Groarke, Written Testimony Before The New York City Charter Revision Commission, Brooklyn (Aug. 13, 2002) (on file with author) (citing incumbency, name familiarity, ethnicity and gender as alternative voter cues).

¹⁴⁹ See *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of Virginia Fields, Borough President of Manhattan, that “by cloaking all candidates under a non-partisan blur, major ideological differences that exist between the parties are no longer apparent and the process becomes the personality contest”).

¹⁵⁰ HAWLEY, *supra* note 1, at 77-99 (summarizing studies confirming the

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was found in several studies conducted in the 1960s and 1970s examining voting patterns in nonpartisan elections and was found to exist based on the disproportionate likelihood for Republican candidates to win, compared with the proportional number of Republican Party registrants in the respective regions.¹⁵¹ The rationale offered to explain this phenomenon is that Democrats, who are often members of lower socioeconomic classes, depend more on parties for information than Republicans.¹⁵²

The concerns raised are legitimate and should be taken into account in deciding whether to implement nonpartisan elections

Republican advantage in nonpartisan elections in California between the 1950s and 1960s). The Republican advantage is also described as a wealth advantage. See Edward L. Lascher, Jr., *The Case of the Missing Democrats: Reexamining the "Republican Advantage" in Nonpartisan Elections*, 44 W. POL. Q. 656, 657 (1991) (hypothesizing that Republicans' likelihood of having greater financial means with which to increase name recognition and improve candidate image is a possible explanation for the Republican advantage). *But see infra* Part IV.C.3.e (discussing the inapplicability of the Republican advantage to New York City).

¹⁵¹ See Lascher, *supra* note 150, at 663 (discussing Lascher's study, which surveyed California county supervisors elected by nonpartisan elections, where county supervisor positions are functionally comparable to city council offices). The Republican advantage was found at all but very high levels of Democratic voter registration. *Id.*; HAWLEY, *supra* note 1, at 33 (discussing the implications of a study showing a partisan bias in nonpartisan elections for city council and mayoral positions in eighty-eight cities in California between 1957 and 1966). Interestingly, arguments raising concerns of a "Republican advantage" were missing from hearing testimonies, but were prevalent in daily newspaper editorials. See, e.g., Michael Cooper, *For City Charter Commission, First a Goal, Then the Members*, N.Y. TIMES, Mar. 27, 2003, at D3 (suggesting that nonpartisan elections could benefit Mayor Bloomberg as a Republican in a city that is five-to-one Democratic); David Seifman, *Bloomy Charter Vote Chills Pataki*, N.Y. POST, July 27, 2002, at 2 (warning of a potential Republican advantage if New York implemented nonpartisan elections). Concerns of a wealth advantage were more commonly raised by public officials. See, e.g., *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Betsy Gotbaum, New York City Public Advocate, that "nonpartisan elections certainly favor wealthy candidates").

¹⁵² See HAWLEY, *supra* note 1, at 63. *But see infra* Part IV.C.3.e (discussing why the Republican advantage would not apply in light of New York's particular demographics and circumstances).

in any city. Such an evaluation, however, will be unique in every municipality, based on city-specific “problems, needs and resources” that may confirm or diminish the relevance of the various contentions.¹⁵³

IV. REINVIGORATING NEW YORK CITY’S LOCAL ELECTIONS

Understanding the distinct rationale for nonpartisan elections at the local level requires examining the rationale of political party involvement in national and state electoral campaigns. Political parties play distinctly different roles at local levels and therefore warrant independent consideration. Nonpartisan elections do not dismiss ideology, public policy and political parties as irrelevant.¹⁵⁴ To the contrary, studies have shown that political party organizations remained active in nonpartisan local elections in large cities.¹⁵⁵ Moreover, nonpartisan elections bring competitiveness to local elections, empower all registered voters

¹⁵³ See LEE, *supra* note 11, at 184. Lee explains that examination of these community-specific characteristics should be undertaken with the goal of answering the following questions:

[W]hich system will do most to enhance the twin factors of competition and consensus essential to the democratic process[?]
Which system will best promote freedom and equality of access to public office and political activity by all groups in the community?
Which system will best encourage the presentation of alternative viewpoints on key issues facing the community and relate these views to candidate choice? And finally, which system will best lead to the recruitment and election of 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?

Id.

¹⁵⁴ See Joseph Mercurio, Editorial, *Non-Partisan Elections: Mayor’s First Misstep?*, National Political Services, Inc., at <http://www.nationalpolitical.com/column133.htm> (August 2, 2002) [hereinafter Mercurio, *Mayor’s Misstep?*] (stating that, contrary to views that nonpartisan elections are intended to remove party activity in elections, “adopting non-partisan elections is not a plot to eliminate political parties”).

¹⁵⁵ See LEE, *supra* note 11, at 149 (stating that “[r]espondents from the larger cities more often reported that political party *organizations* were active in city elections”).

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to determine the outcome of the election and create incentives for candidates to put local concerns at the forefront of their campaign platform and during their term of office. Of course, each municipality must make its own determination as to the value of a nonpartisan system by examining local factors such as the size and diversity of population, financial resources available to candidates, the vigor and variety of local news and informational sources and the competitiveness of the local party system.¹⁵⁶ The particular characteristics of New York City, however, indicate that the time has come for the city to switch to nonpartisan elections.¹⁵⁷

A. The Roles of Political Parties

Although political parties are not mentioned in the Constitution, the growth and survival of the two-party system throughout American history and the unique statutory roles of parties in the electoral process have made them the primary structure for collective action.¹⁵⁸ Political parties facilitate three major electoral functions: participation, representation and competition.¹⁵⁹ Because of their large constituencies, political

¹⁵⁶ See *Id.* at 29-30.

¹⁵⁷ See *infra* Part IV.C for a full discussion on the characteristics of New York City that support the establishment of nonpartisan elections; see also, Lenora Fulani, Editorial, *The Right Time*, NEWSDAY, July 30, 2002, at A28 (arguing that “when Democratic Party Professionals argue that more time is needed to study the issue, they mean that more time is needed to recapture control of the black vote, one-third of which escaped its grasp last year”); Michael Kramer, Editorial, *Mike’s Voting Reform on the Money*, N.Y. DAILY NEWS, Aug. 7, 2002, at 14 (stating that Mayor Bloomberg’s proposal for nonpartisan elections is “long overdue”).

¹⁵⁸ See LEE, *supra* note 11, at 113 (arguing that “[e]ffective local government depends on organized political action by organized groups. Party organization may not be the best, but it is better than no organization”); see also Persily, *supra* note 122, at 2188 (describing the different functions that political parties play, which largely exist by virtue of their roles as “state actor-private association hybrids”); *supra* Part I.A.1 (describing the historical need to define political parties statutorily, in order to give them official roles in state and local elections).

¹⁵⁹ See Persily, *supra* note 122, at 2188 (outlining the various functions of

parties can organize individuals to take collective action at a “massive scale.”¹⁶⁰ They also have the unique opportunity to enhance participation through party primaries,¹⁶¹ which provide voters the opportunity to select candidates that they believe will best represent the party and execute the goals of the party’s platform.¹⁶² Partisan election systems, in which political parties are granted preferred organizational status, are also beneficial as formalized mechanisms for generating competition, one of the vital forces behind a thriving democracy.¹⁶³ One political sociologist explained the coexistence of competition and cohesion, stating that “[a] stable democratic system requires sources of cleavage so that there will be struggle over ruling positions, challenges to parties in power, and shifts of parties in office; but without consensus—a system allowing a peaceful ‘play’ of power—there can be no democracy.”¹⁶⁴ Parties not in

party primaries).

¹⁶⁰ See *id.*; Sherill, *supra* note 136, at 16 (noting that political parties facilitate collective behavior).

¹⁶¹ Persily, *supra* note 122, at 2189.

¹⁶² *Id.* at 2189; see also *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Margaret Groarke, an assistant professor of government at Manhattan College, that party candidates will “carry out their program if elected”).

¹⁶³ LEE, *supra* note 11, at 161. In fact, successful partisan elections are largely premised on the existence of a competitive two-party system. *Charter Revisions to Establish a Nonpartisan Local Election System: Hearing on Proposed New York City Charter Chapter 3 Before the New York City Charter Revision Commission (Aug. 20, 2002)* [hereinafter *Hearing (Aug. 20, 2002)*] (statement of Richard Flanagan, a professor of political science with Staten Island College). The very rise of political parties in the United States in the nineteenth century raised voter participation levels to extremely high levels. *Id.* Joseph Mercurio, *Non-partisan Municipal Elections – An Idea Whose Time Has Come*, National Political Services, Inc., at <http://www.nationalpolitical.com/column121.htm> (May 16, 2002) [hereinafter Mercurio, *Time Has Come*] (stating that contested elections encourage “responsive government”).

¹⁶⁴ LEE, *supra* note 11, at 157 (quoting political sociologist Seymour Martin Lipset) (citation omitted). Interestingly, partisan advocates often emphasize the importance of parties in creating cohesion but fail to mention its critical counterpart role of generating competition when advocating for partisan elections in an uncompetitive city. See Sherrill, *supra* note 105, at 18

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power can fuel “political innovation” and seek “to implement relatively major changes in efforts to attract large segments of the electorate to its support.”¹⁶⁵ In a partisan election system, parties create competition by establishing frequent and consistent channels to air and oppose viewpoints.¹⁶⁶

Nevertheless, “[t]hat meaningful competition and opposition are more plentiful under a partisan system has not yet been established, . . . and any such generalization must be seriously qualified by the existence of many cities in which one party has a preponderant majority and cannot be effectively challenged.”¹⁶⁷ As even one political scientist opposed to nonpartisan elections recognized, partisan election systems are “less likely to be responsive to needs for social change” in the absence of inter-party competition.¹⁶⁸

Today’s national political party committees establish annual party platforms to articulate their broad policy directions.¹⁶⁹ Even as they attempt to create a cohesive objective, however, one of the most difficult problems for parties at the national level is “building and maintaining electoral coalitions,” due to the need to unite communities with very different social, economic and political concerns.¹⁷⁰ “Uniting diverse and sometimes latently antagonistic population subgroups into a single and successful voting coalition has required subordinating inter-group tensions

(noting, in his article opposing nonpartisan elections in New York City, that parties encourage cohesiveness in politics).

¹⁶⁵ HAWLEY, *supra* note 1, at 164.

¹⁶⁶ LEE, *supra* note 11, at 161. *See* Persily, *supra* note 122, at 2190 (explaining that “regulation of the [party] primary can determine the probability for turnover in government, the number of candidates actively pursuing voter support, and the chance that challenges to incumbents will arise at some point of the electoral process”).

¹⁶⁷ LEE, *supra* note 11, at 161.

¹⁶⁸ HAWLEY, *supra* note 1, at 164.

¹⁶⁹ *See* The Democratic National Committee, 2000 Democratic National Platform, <http://www.democrats.org/about/platform.html>; The Republican National Committee, Republican Platform 2000, <http://www.rnc.org/gopinfo/platform> (last visited Apr. 24, 2002).

¹⁷⁰ *See* PAUL KLEPPNER, *Critical Realignments and Electoral Systems, in THE EVOLUTION OF AMERICAN ELECTORAL SYSTEMS* 4 (1981).

to party objectives.”¹⁷¹ In fact, holding a broadly cohesive platform together often “exclude[s] any sustained concern by parties for policy articulation.”¹⁷²

B. The Nonpartisan Format is Useful and Legitimate at the Local Level

The reality of the looser national and state units contrasts starkly with the ability of candidates to articulate specific community commitments at the local level. Local candidates, by virtue of the geographically “local” nature of the community and its more unified interests, can engage directly with the community, listen to their constituency and articulate their responsive commitments, rather than relying on party affiliation as a primary vehicle to espouse political ideology.¹⁷³ This distinct opportunity, compared with those running for state or national offices, undermines the argument that political party preferential status is a prerequisite to informed participation.¹⁷⁴

Some argue that local governance is distinct from federal governance inasmuch as it tends to be more managerial and provision-oriented than party politics-oriented.¹⁷⁵ Cities deal with

¹⁷¹ *Id.*

¹⁷² *Id.* Political parties’ priority to amass the support of large numbers of constituents consequently forces them to “couch their platform planks in vague generalities.” JEWELL CASS PHILLIPS, MUNICIPAL GOVERNMENT AND ADMINISTRATION IN AMERICA 216 (1960).

¹⁷³ See *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of Michelle Bouchard, a former city council candidate for the third district in Manhattan, stating her view that partisan politics at the local level creates dividing lines and ideological war, and because important issues are not partisan, they should not be “claimed by either party”); *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Orlando Mayor Glenda Hood expressing her belief, based on her mayoral experience, that more important than party politics is the importance of responsiveness of local officials to neighborhood residents’ concerns).

¹⁷⁴ See *supra* Part III (citing arguments by partisan proponents of the importance of political party activity in distributing candidate information and encouraging voter participation).

¹⁷⁵ *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of Professor Clayton Gillette, a law professor with New York University School of Law).

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resource redistribution at a much more local and regional scope, compared with higher federal offices.¹⁷⁶ The problems local officials address include low-income housing, urban redevelopment, local crime, social welfare services, environmental control and land use planning.¹⁷⁷ Although the state and national governments deal with similar problems on a larger scale, the policy objectives that a national party seeks to achieve, by virtue of the broader jurisdiction they seek to encompass, often diverge from the specific needs to which a local official must respond.¹⁷⁸

Studies have shown that, as the population of a city increases, the likelihood of a local government official running for state and federal government offices increases.¹⁷⁹ Larger population also enhances the likelihood of a party attempting to “groom” local leaders for higher office, and in doing so, would implicate the higher state or national policy agenda, rather than the interests of a particular district.¹⁸⁰ The danger of compromised local

See also Hearing (Aug. 15, 2002), supra note 90 (statement of Orlando Mayor Glenda Hood explaining that in her experience as Mayor of Orlando, the issues she has encountered are only minimally related to partisan politics).

¹⁷⁶ *Hearing (Aug. 21, 2002), supra* note 135 (statement of Professor Clayton Gillette).

¹⁷⁷ *See HAWLEY, supra* note 1, at 182.

¹⁷⁸ *Hearing (Aug. 21, 2002), supra* note 135 (statement of Professor Clayton Gillette contrasting local and national “economic and political environment” and the significant differences in objectives sought in resource distribution and development of the respective local versus national economy).

¹⁷⁹ *See LEE, supra* note 11, at 107 tbl.38 (California “Cities Reporting Local Officials Having Run for State or National Office”).

¹⁸⁰ *See id.* at 106 (discussing the results of a survey of party chairmen throughout the state of California, asking the chairmen, “Have you or your predecessor *in the past four years* looked to the ranks of city, county, or school officeholders to seek candidates for state or national office?”). The survey results indicated that “42 per cent of the chairmen in counties under 50,000 and 62 per cent of those from the larger counties replied they had often or sometimes looked to the local ranks.” *Id. See Hearing (Aug. 21, 2002), supra* note 135 (statement of Professor Clayton Gillette explaining the possibility that when political parties select candidates with the intention of promoting them to state or national offices, the candidate’s agenda, by virtue of his obedience to the party’s agenda, may not be aligned with those of

commitment is evident when juxtaposing the dichotomous agendas of local governance and national policy objectives with the desire of the national party to begin preparing local officials for higher offices.¹⁸¹

Despite the differences in local versus state and national campaigning and governance, voters should take candidates' policy preferences seriously when assessing a municipal candidate. Studies have shown correlations between a municipal candidate's party affiliation and their actions once elected.¹⁸² The correlation is found primarily when examining an elected official's willingness to use governmental power actively to solve problems—Democrats are generally more willing to use governmental power while Republicans generally seek more limited government involvement.¹⁸³ The belief that candidates affiliated with a certain party publicly uphold certain policy attitudes, indeed, underlies the fundamental importance of partisanship.¹⁸⁴ The claim that there is “no Republican or Democratic way to pave a street” fails to acknowledge that policy attitudes are found in the details of the project.¹⁸⁵

Nonpartisan elections are not geared towards hiding candidate policy leanings, but seek to make local elections more accessible and competitive, as seen in the rationales that underlie New York City's nonpartisan special elections. Moreover, officials, once elected, remain aware of the party affiliations and policy perspectives of fellow elected officials and are thus able to form

importance to the city economy).

¹⁸¹ *See id.*

¹⁸² HAWLEY, *supra* note 11, at 118-19.

¹⁸³ *See id.*

¹⁸⁴ Sherrill, *supra* note 105, at 17 (stating that people rationally “associate political parties with competing philosophies of government”).

¹⁸⁵ HAWLEY, *supra* note 1, at 111; Josh Shipper, *The Party's Not Over*, GOTHAM GAZETTE, Aug. 15, 2001 (stating that the premise for nonpartisan systems is based on the idea that “[y]ou don't need to be Republican or Democrat to pave a road”), available at <http://www.gothamgazette.com/searchlight2001/archives/arch.feature.html>. In reality, there are important policy issues not found in the technical details of paving the street, but in deciding which streets in which neighborhood to pave, or which streets to give maintenance priority. HAWLEY, *supra*.

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alliances when the need arises.¹⁸⁶

C. Nonpartisan Elections Will Reinvigorate the Vote in New York City

The partisan electoral system in New York City has failed to inspire competition and accountability, and allows election of public officials by the few rather than by the many. Nonpartisan elections would reinvigorate the campaign process by opening primary access to voters and candidates, bringing back the meaningfulness of voting in a competitive general election, promoting a broader examination of candidate merits and perhaps encouraging a more informed vote.

1. New York's Current Local Election System Harms All Its Voters

With Democrats comprising more than sixty-five percent of all registered voters in the city, and about eighty percent of all registered party members, New York City is effectively a single-party system.¹⁸⁷ In New York City, 4,237,103 people are currently registered to vote.¹⁸⁸ Of that number, 2,819,414 are enrolled as Democrats.¹⁸⁹ Yet, only 785,365 Democrats, less than one-third of all Democrats, voted in the 2001 mayoral primary, with even lower numbers voting for their city council members.¹⁹⁰ Among minority voters, these numbers are

¹⁸⁶ *Hearing, supra* note 90 (statement of Orlando Mayor Glenda Hood).

¹⁸⁷ New York State Board of Elections, Enrollment Statistics in November 2002, <http://www.elections.state.ny.us/enrollment/enroll.htm> (last visited Mar. 31, 2003) [hereinafter Enrollment Statistics]. See Mercurio, *Bloomberg's Campaign Promise, supra* note 10 (citing similar party enrollment statistics in New York City in 2001). See also Persily, *supra* note 122, at 2224 (noting that political parties have a legitimate interest in creating restrictive primary ballot access laws to produce a candidate with enough party support to be competitive in the general election).

¹⁸⁸ Enrollment Statistics, *supra* note 187.

¹⁸⁹ *Id.*

¹⁹⁰ Board of Elections in the City of New York, Election Results, <http://vote.nyc.ny.us/pdf/results/2001/primaryElection/> (Oct. 11, 2001). See

proportionally lower.¹⁹¹

At the same time, over 880,000 voters, approximately twenty percent of the electorate, are affiliated with neither the Republican nor Democratic Party.¹⁹² These numbers indicate that the current primary system allows the narrow population of party primary voters to determine the candidates that participate in the runoff election.¹⁹³ In almost all municipal offices, the Democratic Party primary winner claimed victory in a virtually uncontested general election.¹⁹⁴ Thus, with the race practically concluded

Mercurio, *Bloomberg's Campaign Promise*, *supra* note 10 (citing similar statistics). As an example of the differential in voter participation between citywide and district council elections, in the 2001 primary, in the 1st District of Manhattan, 51,799 voters participated in the mayoral Democratic primary, while only 15,483, less than one-third, voted in the Democratic councilmanic primary. *Id.*

¹⁹¹ See Mercurio, *Bloomberg's Campaign Promise*, *supra* note 10.

¹⁹² Enrollment Statistics, *supra* note 187.

¹⁹³ *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Louisa Chan, a member of the community school board in district 24 that the city's primary system gives a small group of special interest groups control of the entire election). See CITY IN TRANSITION, *supra* note 2, at 88 (summarizing comments by nonpartisan supporters that candidates will be forced to address issues facing the entire population and not merely those issues voiced by the "narrow group of insiders who tend to vote in partisan primaries").

¹⁹⁴ Board of Elections in the City of New York, Election Results, <http://vote.nyc.ny.us/pdf/results/2001/generalElection/> (Nov. 28, 2001). For example, in the election for Public Advocate, the Democratic candidate won with 845,924 votes, with the closest runner-up receiving only 56,647 votes, a difference of 789,277 votes. *Id.* Similarly, the Democratic candidate won the seat for Comptroller with 768,700 votes, the runner-up receiving 705,357 votes less. *Id.* In the eighth council district in the Bronx, the Democratic candidate won in the general election with 16,678 votes, while the runner-up candidate only received 2,342 votes. Board of Elections in the City of New York, Election Results, http://vote.nyc.ny.us/pdf/results/2001/generalElection (Nov. 28, 2001). In the twenty-second council district in Queens, the Democratic candidate won with 11,354 votes, while the runner-up received only 6,133 votes. *Id.* The mayoral election is arguably an exception, as evidenced by the election of two Republican mayors during the last decade. See *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of former New York City Mayor Koch); *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Professor Richard Flanagan that "only six or perhaps seven Council seats, and I'm being generous here, and the Mayor's office are competitive in the general

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during the primary in favor of the dominant party and the candidate selected by this narrow subgroup of dominant party primary voters, unaffiliated voters and members of other parties are effectively disenfranchised.¹⁹⁵

The ills of our current system afflict all voters, Democrats included. Supporters of the partisan system encourage voters to use a candidate's party affiliation as a proxy for evaluating a candidate's policy positions.¹⁹⁶ Political scientists particularly emphasize that voting purely based on party affiliation is a rational decision made by voters.¹⁹⁷ The typical rebuttal is that insisting on party labels on the ballot sends a message that voters cannot vote intelligently without the party cue.¹⁹⁸ But, as the

election"). Mayor Bloomberg won the 2001 general election with 685,666 votes, only 35,489 votes more than Democratic candidate Mark Green. Board of Elections in the City of New York, Election Results, <http://vote.nyc.ny.us/pdf/results/2001/generalElection> (Nov. 28, 2001). That the mayoral seat is actually competitive, however, is arguable because in fact, only four Republican mayors have been elected in the last century. *See* Shipper, *supra* note 185 (quoting former Mayor Giuliani, who stated that he was "only the third Republican mayor in 100 years"). *See also* Mercurio, *Time Has Come*, *supra* note 163 (explaining the uncontested nature of the majority of the city's elections).

¹⁹⁵ *See* Persily, *supra* note 122, at 2215-16 (explaining that the meaningfulness of the vote "derives from its power to determine winners and losers of elections," which forms a purpose distinct from those of "voting booth expression and association" that are fulfilled when voters exercise their right to vote).

¹⁹⁶ Sherrill, *supra* note 105, at 17 (explaining that voting based on party affiliation is rational because parties are associated with "competing philosophies of government").

¹⁹⁷ *See, e.g., id.*; Schaffner et al., *supra* note 32, at 2 (stating that political scientists are "informed by rational actor theories of behavior" and believe that while "many citizens are going to be poorly informed about, and only moderately interested in politics, . . . they are able to achieve a 'collective rationality' through 'information short cuts' such as party labels"). "Party labels, in this perspective, provide important cognitive information. They convey generally accurate policy information about candidates and their low cost and accessibility help voters to reach reasonable decisions." *Id.*

¹⁹⁸ *See, e.g., Hearing (Aug. 21, 2002)*, *supra* note 135 (statement by Peter Holoman; *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement by Dr. Jessie Fields, a former Republican and Independence Party candidate for the

Supreme Court stated:

To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise. Appellant's argument depends upon the belief that voters can be "misled" by party labels. But "[o]ur cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues."¹⁹⁹

Party labels are not an inherently wrong way to inform voters of a candidate's party affiliation. But, the lack of competition within a single party system combined with the statutory preference given to a candidate's party affiliation create a disincentive for candidates to address the concerns of their constituency, since the victory will be won as long as they have the appropriate party label on the ballot and have made it past the primary.²⁰⁰ The possibility for patronage and corruption also increases when a single party dominates and has no viable

United States Congress).

¹⁹⁹ *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 220 (1986). In *Tashjian*, the State Republican Party Committee brought a federal action challenging the constitutionality of Connecticut's closed primary law, which restricted party primary voting such that only party members could vote in the party primary. *Id.* at 211. The Court found that the law impermissibly interfered with the political party's First Amendment right to define its associational boundaries. *Id.* at 225.

²⁰⁰ See Anthony Champagne, *Political Parties and Judicial Elections*, 34 LOY. L.A. L. REV. 1411, 1413 (2001). In his symposium presentation examining the role of political parties in judicial elections, Champagne, while recognizing that party labels provide "a clue" into the attitudes and values of judges, also noted that a highly qualified judicial candidate could also be harmed by bearing the wrong party label. *Id.* Champagne highlighted, as an example, the judicial elections in Houston, Tex., where Republican straight ticket voting led to the defeat of nineteen Democratic judges in Harris County and cited a comment from a law school dean that "if Bozo the Clown had been running as a Republican against any Democrat, he would have had a chance." *Id.*

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competition in the general election.²⁰¹

Moreover, the noncompetitive system creates an incentive for victorious candidates to remain more loyal to the party that secured the victory than to their constituency, especially when a potential future in politics at higher state or national offices may rest in the hands of the party hierarchy.²⁰² Officials whose loyalties lie primarily with the party hierarchy will be less responsive to the public in situations where unified local needs and preferences diverge from state and national policy objectives.²⁰³

The importance of garnering the party hierarchy's support also presents an obstacle for candidates who may have good ideas to improve their community but whose views and interests may not conform to the party line.²⁰⁴ The harm of the party label derives less from its presence on the ballot on election day than from the perpetuation of a process controlled by party hierarchy entrenched in the partisan local election structure.²⁰⁵

The party-controlled process may have deeper implications upon the minority community, most of which are Democrats.²⁰⁶ The Democratic Party includes many of the most zealous nonpartisan election opponents, who often argue that minorities will be harmed under a nonpartisan system and benefit under the

²⁰¹ See Northup, *supra* note 28, at 1681.

²⁰² See CITY IN TRANSITION, *supra* note 2, at 84. See also *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Rabbi Lieb Blantz of Brooklyn).

²⁰³ See *supra* Part IV.A regarding the importance of competitive elections in ensuring responsive government.

²⁰⁴ See *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of Michelle Bouchard, former candidate for city council from Manhattan). See also Shipper, *supra* note 185 (describing how a team of a dozen lawyers working for the Queens County Democratic Organization worked to disqualify one-third of the city council candidates in one Queens County district for technical errors in their ballot petition signatures).

²⁰⁵ See Persily, *supra* note 122 (examining the problem of the party-controlled process, in the context of party-constructed primary ballot access laws). Persily particularly highlighted how primary ballot access laws have been used to guarantee "that only the party establishment's favored nominee could get on the ballot." See *id.* at 2206.

²⁰⁶ See *infra* notes 207-211 and accompanying text.

current partisan system.²⁰⁷ At the local level, city council elections are determined by racial demographics, not by partisanship.²⁰⁸ Harry Kresky, co-chair of the Rules Committee of the Independence Party of New York, argued that structural racism within political parties exists not in the city council races, but in the city statewide races.²⁰⁹ By examining the failure of various minority candidates to win the Democratic ticket, Kresky posited that the Democratic Party, rather than empowering blacks and Latinos, “ensures their status as the most loyal constituencies whose votes are vitally needed to elect white Democrats to citywide, statewide and national office.”²¹⁰ He suggested that minorities would be more empowered if they acted as a nonpartisan swing vote, ensuring the election of the best candidate, regardless of race or party.²¹¹

The current partisan election process deprives voters of a meaningful vote in the election by restricting access where the final decision is effectively determined, weakens public official accountability and creates an election system that allows the party hierarchy to exert too much control.²¹² Only when New York

²⁰⁷ *Supra* Part III (stating partisan proponents’ belief that the partisan system benefits minority voters).

²⁰⁸ Harry Kresky, Editorial, *Green Shows the Democrats’ One True Color*, NEWSDAY, Oct. 25, 2001, at A47 (contending that structural racism exists within the Democratic Party).

²⁰⁹ *Id.* See also *Charter Revisions to Establish a Nonpartisan Local Election System: Hearing on Proposed New York City Charter Chapter 3 Before the New York City Charter Revision Commission (Aug. 6, 2002)* [hereinafter *Hearing (Aug. 6, 2002)*] (statements of Harry Kresky, Charter Revision Commissioner, and Dr. Lichtman, a professor of history with American University, discussing the hypothesis that due to the effect of demographics in determining many majority-minority district city council races, the change to nonpartisan elections would have a marginal effect on the results of those races).

²¹⁰ Kresky, *supra* note 208 (noting the lack of success of minority Democratic candidates in citywide elections, and pointing out the racist tactics used by Democratic mayoral candidate Mark Green in his 2001 primary campaign against Hispanic Democratic candidate Herman Badillo).

²¹¹ *Id.*

²¹² See *supra* notes 193-211 and accompanying text (describing how the current restrictive system de incentivizes official accountability while

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City returns the decision-making power to the broader population of registered voters will it achieve a genuinely representative democracy and responsive government.

2. Nonpartisan Elections Will Increase Electoral Access and Competition

Responsive governments exist when voters determine the results in contested elections.²¹³ In contrast to the accepted, expected role of political parties in engendering electoral competition, the single party system divests parties of any incentive to use their preferred status to create the competition necessary to safeguard voters' choices.²¹⁴ New York's municipal elections are anything but competitive, and this creates accountability problems.²¹⁵ The majority of winners in the city's local elections face no significant competition in the general elections, and the critical decisions that determine the election results are made by a narrow subset of majority party members, cued by the party hierarchy.²¹⁶ Often, less than five percent of

effectively increasing party influence).

²¹³ See Mercurio, *Time Has Come*, *supra* note 163 (stating that "when voters have a say in the outcome of elections and there are genuinely contested elections, the government is more responsive and less corrupt"); see also William Grady, *In a GOP County, 2nd Party Would Be Nice; Poll Shows Democrat Competition Favored*, CHI. TRIB., Aug. 31, 1997, at 1 (noting that even a local official supported by the dominant party in a one party city favored competitive elections). "The thing that keeps us all honest philosophically is when you know there's somebody out there who wants to take you out. That's the inherent beauty of the democratic system." *Id.*

²¹⁴ See *supra* Part IV.A (discussing the roles of political parties in electoral campaigns).

²¹⁵ CITY IN TRANSITION, *supra* note 2, at E-7 (summarizing Cooper Union Professor Fred Siegal's reasons for making all of the city's elections nonpartisan). Professor Siegal noted that "[t]he present system is a political monopoly which eliminates competition and accountability." *Id.* See *supra* note 194 (delineating statistics from New York City 2001 elections showing large voting differentials between winning candidates and runners-up).

²¹⁶ For example, while Public Advocate Betsy Gotbaum won the 2001 general election by a difference of 789,277 votes, her competition was much narrower in the primary. See Board of Elections in the City of New York,

Democratic Party members—those who voted in the primary for the eventual winner—make the determination because partisan elections encourage straight ticket voting.²¹⁷ Some voters may choose not to participate in elections in which their candidate of choice has virtually no chance of winning.²¹⁸ Others are proscribed from meaningful participation due to restrictive ballot access laws such as the party primary.²¹⁹ In the case of New York City's electoral system, these conditions perpetuate the retention of control in the hands of the few.²²⁰ Nonpartisan elections would open up access at both the candidate selection and voting phases of the electoral process and put the election into the broader

Election Results, <http://vote.nyc.ny.us/pdf/results/2001/generalElection> (Nov. 28, 2001). Gotbaum won the primary with 156,832 votes, but the four closest runners-up received 105,985; 102,338; 101,424; and 99,914 votes, respectively. See Board of Elections in the City of New York, Election Results, <http://vote.nyc.ny.us/pdf/results/2001/primaryElection> (Oct. 11, 2001). Similarly, while Comptroller William C. Thompson won the 2001 general election with a 705,357 vote lead over his runner-up candidate, his margin in the Democratic primary was much narrower, receiving 309,032 votes compared to his runner-up, who received 261,637 votes. Compare Board of Elections in the City of New York, Election Results, <http://vote.nyc.ny.us/pdf/results/2001/generalElection> (Nov. 28, 2001) with <http://vote.nyc.ny.us/pdf/results/2001/primaryElection> (Oct. 11, 2001). See *supra* Part IV.C.1 (discussing the uncontested nature of New York City local elections).

²¹⁷ See Mercurio, *Bloomberg's Campaign Promise*, *supra* note 10 (arguing that under our current partisan system, "a tiny portion of [eligible voters] . . . chose the winner"); Elizabeth Garrett, *The Law and Economics of "Informed Voter" Ballot Notations*, 85 VA. L. REV. 1533, 1536 (1999) (observing that "parties have worked to convince states to adopt the party-column ballot, which encourages straight ticket voting").

²¹⁸ See, e.g., *supra* Part II.B.1 (noting statistics that show that white voters do not participate in the election of district city council members in majority-minority districts and vice versa).

²¹⁹ See Persily, *supra* note 119, at 2189 (stating how party primaries "exist as a major avenue for political participation [in a] system [that] provides few opportunities for the average citizen to play a role in the workings of the democracy").

²²⁰ See Mercurio, *Bloomberg's Campaign Promise*, *supra* note 10 (discussing how few voters actually participate in the primary, the effective election).

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public's control.

a. Broader Public Access in Candidate Selection

Increasing public control over the results of the election is fundamental to a direct democracy.²²¹ Nonpartisan elections allow all voters to cast a ballot at the primary stage.²²² Just as the Voting Rights Act was enacted to give racial minorities greater access to the electoral decision-making process, nonpartisan elections give all voters, regardless of party affiliation, equal access to candidate selection.²²³

When access to the primary is widened, the voices and votes of nonmajority party members and nonparty voters become a factor in nonpartisan elections.²²⁴ In elections with genuine

²²¹ See PRELIMINARY OPTIONS, *supra* note 2, at 12 (noting nonpartisan supporters' desire for a more direct democracy); *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Jonathan Sassi, a professor of history with College of Staten Island, reviewing the history of American politics, which has moved from a more "elitist or deference kind of politics" in the Federalist days to a more participatory model in the "post-Jeffersonian world"). Ironically, partisan advocates contend that nonpartisan elections will strip away the direct democracy that arrived with partisan primaries. See *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of State Assemblyman Herman Denny Farrell, New York State Democratic Committee State Chair, warning that "the proposal to have nonpartisan elections for New York officers may have the unintended effects for eliminating one of the greatest populis advances of the earliest 20th century, the nomination of party candidates for public office by direct primary elections adopted in New York in 1911").

²²² See CITY IN TRANSITION, *supra* note 2, at 102 (setting forth section sixty-five of the "Draft Nonpartisan Elections Chapter"). Some cities, however, including Washington, D.C.; Portland, Or.; and Indianapolis, Ind., do not hold a primary. See PRELIMINARY OPTIONS, *supra* note 2, at app. B.

²²³ See 42 U.S.C. § 1973(b) (2003) (stating that "a violation of [the Voting Rights Act] . . . is established if . . . it is shown that the political processes leading to nomination or election . . . are not equally open to participation by members of a class of citizens protected [under this statute] . . ."). See *supra* Part II.B (discussing the purpose of the Voting Rights Act).

²²⁴ Mercurio, *Mayor's Misstep?*, *supra* note 154. See also Lenora Fulani, Editorial, *The Right Time*, NEWSDAY, July 30, 2002, at A28 (noting that the African American community is increasingly independent minded rather than

competition, all voters, whether members of the majority party or not, can have a stake in the elections.²²⁵ In noncompetitive partisan elections, however, this segment of the voting population is virtually excluded.²²⁶ The merits assessed in 1988, when voters approved special nonpartisan elections, should be considered, and voters in New York City, including minorities, should recognize that change would enhance their ability to make their vote count.²²⁷

The new system would give potential candidates equal access to the ballot, just as they already do in the city's nonpartisan special elections.²²⁸ The same problems that the nonpartisan format change intended to resolve in 1988 are at issue—candidate access to the ballot and voter access to the candidate selection process.²²⁹ In single party jurisdictions where the primary is the “dispositive election,” primary ballot access rules can be the sole determinant of whether voters will have a chance to choose among candidates or whether the rule-makers, i.e., the parties,

being Democratic Party loyalists, as has historically been the case).

²²⁵ Mercurio, *Bloomberg's Campaign Promise*, *supra* note 10 (explaining how one-third of all voters, which are not part of the dominant party, have no real opportunity to vote meaningfully). *See* Enrollment Statistics, *supra* note 187 (showing that, as of November, 2001, 1,417,689 of the 4,237,103 registered voters, about one-third, are not members of the Democratic Party in New York City).

²²⁶ *See, e.g.*, Fornek, *supra* note 33 (describing the minority Republican Party's mayoral primary as “little more than a political ‘Gong Show’ because of the virtual impossibility of a Republican candidate winning in the general election).

²²⁷ *See infra* notes 228-230 and accompanying text (describing the relationship between the purposes of establishing nonpartisan special elections and those of establishing general nonpartisan municipal elections).

²²⁸ *See* City of New York v. New York City Bd. of Elections, No. 41450/91, at 1 (N.Y. Sup. Ct. Apr. 3, 1991), *aff'd*, ___ A.D.2d ___ (1st Dept.), *appeal denied*, 572 N.E.2d 50 (Mem.) (Apr. 10, 1991) (stating that “the charter [establishing special nonpartisan elections] would tend to widen rather than restrict the political process”). *See also* Part I.A.2 (discussing the motives behind the establishment of nonpartisan special elections).

²²⁹ *See* PRELIMINARY OPTIONS, *supra* note 2, at 26 (discussing the potential to increase opportunities for candidates whose views “may not fit with the party machines”).

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will make that choice for them.²³⁰ Open access to the primary may be the most beneficial change because whereas support for nonpartisan elections based on “provisional versus political” distinctions,²³¹ or expectations that nonpartisan elections eliminate party influence,²³² cannot be guaranteed, increasing ballot access is an objective that is guaranteed, because allowing all voters to participate in the primary is a structural change that widens voter access at a crucial electoral juncture.²³³

b. Broader Candidate Access to the Ballot

Removing political parties’ favored status in the election structure increases opportunities for candidates whose views may not be synchronized with the party line, but whose ideas may be equally, if not more, beneficial to the community.²³⁴ If New York implements nonpartisan elections, local representatives would have greater freedom to serve the specific needs within their community, particularly on issues where a conflict of interest

²³⁰ Persily, *supra* note 122, at 2190 (discussing the potential negative effects of constructing restrictive ballot access laws).

²³¹ See *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Orlando Mayor Glenda Hood supporting the idea of local governance as more provision-oriented than politics-oriented). Mayor Hood, however, also stated that the policy preferences and party affiliations of elected officials are still recognized informally and have been useful in forming alliances when the need arises. *Id.*

²³² Costikyan, *supra* note 40 (explaining that a Task Force charged with reviewing New York City government decided not to implement nonpartisan elections because their examination of such elections in other large cities showed that they did not eliminate the party from the election process).

²³³ The 2002 Draft Charter aptly provides that all qualified voters are qualified to vote in the primary. See *CITY IN TRANSITION*, *supra* note 2, at 102 (providing section sixty-five of the “Draft Nonpartisan Elections Chapter”).

²³⁴ *PRELIMINARY OPTIONS*, *supra* note 2, at 26 n.24 (stating that “nonpartisan systems give qualified candidates of the minority party or independents a better chance to succeed . . . [and] permit voters to analyze local issues independently on their merits and to focus on the intelligence and experience of the candidates themselves rather than on their political affiliations”).

exists with broader state or national party objectives.²³⁵ By facilitating broader candidate access to the ballot at the municipal election level, nonpartisan elections also encourage their localized commitment.²³⁶

3. New York City Demographics Facilitate Nonpartisan Elections

Additional factors specific to New York City both allay concerns of those wary of nonpartisan elections and support such a change. Specifically, the political and social conditions in the city will allow nonpartisan elections to offer fair minority representation, adequate candidate funding and sufficient candidate information without fear of a Republican advantage.

a. Lower Voter Turnout: A Misplaced Fear

Some studies suggest that nonpartisan elections reduce voter turnout.²³⁷ This projected consequence has raised repeated concerns that weigh against changing to nonpartisan elections.²³⁸ These concerns, however, do not consider the particular local variables contributing to differential turnout.²³⁹ Although these

²³⁵ See *supra* note 180 (discussing the risk of compromised commitments by candidates).

²³⁶ See *supra* Part IV.C.1 (describing how the current partisan system creates incentive for candidates to remain loyal to the party hierarchy above their constituency, which can create conflicts of interest when the state and national party objectives diverge from localized interests).

²³⁷ See, e.g., LEE, *supra* note 11, at 136-38 (generally finding lower voter turnout from elections in six cities in California in 1955, compared with turnout at the 1954 general election); Schaffner et al., *supra* note 32, at 8 (finding lower voter turnout in the mayoral elections in Urbana in 1985 and Champaign in 1987 than in the turnout in each city for the 1986 Illinois general election for the U.S. House of Representatives).

²³⁸ See, e.g., Sherrill, *supra* note 105, at 16; Margaret Groarke, Written Testimony Before The NYC Charter Revision Commission, Brooklyn (Aug. 13, 2002) (on file with author).

²³⁹ See *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Professor Frank Barry, a researcher with New York University Taub Urban Research Center and a former staff member with New York City's Campaign Finance

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concerns may be legitimate, they are largely inapplicable in New York.

First, low voter turnout is evident in municipal elections across the country, regardless of whether the system is partisan or nonpartisan.²⁴⁰ Low turnout, moreover, occurs in local elections that are not held simultaneously with the election of officials to state and national offices, in which higher profile campaigns tend to draw a larger voter turnout.²⁴¹

Second, conclusions from studies done in the mid-twentieth century may not be applicable today in light of changing urban conditions in the last few decades, particularly driven by the enactment of the 1965 Voting Rights Act.²⁴² Moreover, findings in other studies have differed, and variances existed even within studies, which attenuate the applicability and validity of the sweeping conclusion that nonpartisan elections reduce voter turnout.²⁴³

Third, reduced voter turnout is unlikely to occur in New York because of variables unique to the city, including population and competitiveness of the elections.²⁴⁴ Studies have shown that larger cities tend to exhibit more political activity.²⁴⁵

Board, noting that studies showing lower voter turnout did not control for various demographic factors).

²⁴⁰ CITY IN TRANSITION, *supra* note 2, at C-13 (summarizing Dr. Lichtman's testimony at the August 15, 2002 public hearing).

²⁴¹ *Id.* at 91.

²⁴² See *Hearing (Aug. 15, 2002)* *supra* note 90 (statement of Dr. Lichtman that the Voting Rights Act "dramatically increased participation and involvement of minorities in the political process"); Voting Rights Act, 42 U.S.C. § 1973 (2003) (federally criminalizing the use of any voting standards, practices or procedures that abridged the right to vote on account of color).

²⁴³ See, e.g., LEE, *supra* note 11, at 138 (finding "variations in turnout in local races during a 25-year period" in three cities in California and noting that variables such as "the absence of competition, or the irregular intensity of some civic issue" may explain the fluctuations); Schaffner et al., *supra* note 32, at 8 (finding that while their reduced turnout hypothesis held for Urbana and Champaign, it did not hold in Asheville).

²⁴⁴ *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Professor Frank Barry).

²⁴⁵ See, e.g., LEE, *supra* note 11, at 117. For example, Los Angeles and Chicago both administer nonpartisan elections, yet, parties have remained

Similarly, in light of the role of political parties as a major generator of electoral competition, political parties are more closely tied to competitive elections and less competitive elections might justify the use of nonpartisan elections.²⁴⁶

New York City is the largest city in the nation, with a population of more than eight million, in contrast to the much smaller cities that showed lower voter turnout.²⁴⁷ The majority of cities examined in those studies also had competitive elections,²⁴⁸ while many of New York City's elections are largely noncompetitive.²⁴⁹ In light of the city's characteristics and the limited applicability of findings from studies showing that nonpartisan elections reduce voter turnout, low voter turnout should not be an obstacle to considering nonpartisan elections as a viable means of reinventing the city's municipal elections.

politically active. *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Professor Frank Barry). When Chicago held its first nonpartisan election in 1999, voter turnout was comparable to its turnout under their former partisan system. *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman).

²⁴⁶ See *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Professor Frank Barry, explaining that whereas two-party systems exist largely to create competition, in single party systems, the "competition gets pushed into the primary system," effectively excluding approximately one-third of all voters from the decisive election, who are not majority party members.). Nonpartisan systems would bring the excluded one-third back into the decision-making process. See *id.*

²⁴⁷ POPULATION DIV., DEP'T OF CITY PLANNING, POPULATION BY MUTUALLY EXCLUSIVE RACE & HISPANIC ORIGIN, NEW YORK CITY & BOROUGH, 1999 AND 2000 (indicating that the total population in the city is 8,008,278), <http://www.nyc.gov/html/dcp/html/census/popdiv.html> (last visited Apr. 20, 2003); LEE, *supra* note 11, at 189-94 (noting that the populations of the six cities studied varied from 15,000 to 133,000).

²⁴⁸ See, e.g., LEE, *supra* note 11, at 61.

²⁴⁹ *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Professor Frank Barry). A competitive election is distinguishable from a noncompetitive one in its ability "to present contests to the voters in which the winners are not predetermined." Persily, *supra* note 122, at 2190. New York elections are not competitive in that the winners typically win in a landslide victory at the general election, while the results are much closer in the primary election. See *id.*; Mercurio, *Time Has Come*, *supra* note 163.

NONPARTISAN MUNICIPAL ELECTIONS IN NYC 631*b. Minority Voters Would Benefit*

Nonpartisan elections strengthen the ability of minorities to elect candidates.²⁵⁰ In the fifty largest cities in the country, more minority mayors have been elected through nonpartisan than partisan elections.²⁵¹ Moreover, New York City minority voting patterns in nonpartisan special elections have shown no consistent decrease in minority voter turnout compared to white turnout.²⁵² Competitive minority candidates, however, tend to increase minority voter turnout.²⁵³

Nonpartisan elections would increase participation by minority voters because voters that join the ranks of parties other than the Democratic Party or choose not to join a political party would be able to vote in a nonpartisan primary.²⁵⁴ Moreover, all minority voters stand to benefit. Blacks and Hispanics constitute twenty-three percent and twenty-five percent of the voting age population, respectively.²⁵⁵ With such a high percentage of the voting population, their votes are significant enough for any candidate to seek their support.²⁵⁶

²⁵⁰ See *supra* Part II.B (discussing minorities' ability to elect candidates of their choice within nonpartisan systems).

²⁵¹ See *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman); *supra* notes 101-104 and accompanying text (discussing the success of minority candidates in nonpartisan elections compared with partisan elections).

²⁵² See *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman, reviewing the results of his statistical research of nonpartisan special election voter turnout between 1992 and 1998).

²⁵³ *Id.*; see *supra* Part II.B.2 (discussing the inclusion of minority turnout concerns in the Department of Justice's review process under Section 5 of the Voting Rights Act); *supra* Part II.B.3 (discussing the correlation between minority candidates and minority turnout).

²⁵⁴ See *Hearing (Aug. 13, 2002)*, *supra* note 132 (statement of Genevieve Torres, a political activist from Brooklyn) (stating that "if you look in the black and Latino community, a majority of youth is deciding that they'd like to opt out of deciding on a party or they'd rather vote as independents").

²⁵⁵ See *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman).

²⁵⁶ See Kresky, *supra* note 208 (noting that minority voters' support is essential to any local electoral victory).

c. Candidates Would Receive Adequate Funding

New York City provides financial assistance to candidates for municipal office through an innovative campaign finance program.²⁵⁷ In 2001, the program provided forty-one million dollars to candidates, far more than any funding provided by parties.²⁵⁸ The city's purposes for implementing the program included "[making] candidates and elected officials more responsive to citizens, rather than special interests; . . . [helping] credible candidates who may not have access to 'big money' to run competitive campaigns; [and leveling] the political playing field by enabling all serious candidates, whether challengers or incumbents, to compete on more equal footing."²⁵⁹ The city's public financing system is the most generous and comprehensive reform program among American cities.²⁶⁰ Indeed, the policy goals of nonpartisan elections—encouraging competition, access and political responsiveness—closely resemble those that motivated passage of the city's campaign finance reform and are equally legitimate.²⁶¹

²⁵⁷ See The New York City Campaign Finance Board, *For Candidates*, at http://www.cfb.nyc.ny.us/for_candidates/index.htm (last visited Apr. 24, 2003) (generally describing the types of financial assistance given to candidates).

²⁵⁸ *Hearing (Aug. 15, 2002)*, *supra* note 90 (statement of Dr. Lichtman citing statistics compiled by the Campaign Finance Board).

²⁵⁹ The New York City Campaign Finance Board, *The Program and the Law*, at http://www.cfb.nyc.ny.us/program_law/index.htm (last visited Apr. 24, 2003).

²⁶⁰ *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Frank Barry). See also New York City Campaign Finance Board, Message from the [Campaign Finance Program] Chairman, at http://www.cfb.nyc.ny.us/about/chairman_statement.htm (last visited Apr. 24, 2003) (describing the purposes of the Program, and noting that its comprehensiveness makes it the "vanguard of the [campaign finance] reform movement"). In contrast, many cities have no public financing at all. See, e.g., *Hearing (Aug. 15, 2002)* *supra* note 90 (statement of Orlando Mayor Glenda Hood that candidates in Orlando do not receive public funds to assist in their campaigns).

²⁶¹ *Supra* Part I.A.3 (highlighting Mayor Bloomberg's premises for establishing nonpartisan elections).

NONPARTISAN MUNICIPAL ELECTIONS IN NYC 633*d. New York Has a Wealth of Political Information*

Sufficient sources of information are available in New York City to fill in the gaps in the event that parties decided to reduce their informational role in elections. New York City has an undeniably active, “aggressive” and opinionated press.²⁶² In addition, the Campaign Finance Board is required to inform voters about municipal candidates via the Voter Guide.²⁶³

Historically, newspapers have been an important part of the election and political process.²⁶⁴ Today, press activity remains a significant variable in the election results of large cities.²⁶⁵

²⁶² *Hearing (Aug. 20, 2002)*, *supra* note 163 (statement of Professor Frank Barry). Consider the variety of perspectives available in the *New York Times*, *New York Post*, *New York Daily News*, *Wall Street Journal*, *Newsday* and the recently arrived *New York Sun*. See, e.g., Scott McConnell, Editorial, *We're Trying to Save Right Wing from Itself*, WALL ST. J., Jan. 23, 2003, at A15 (noting “hefty neoconservative influence” over a few publications, including the *New York Sun* and the *Wall Street Journal*); Sridhar Pappu, *As Blix Unloads, News Comes Back to U.N. Bureaus*, N.Y. OBSERVER, Feb. 3, 2003, at 3 (referring to the liberal leanings of the *New York Times*); Monty Phan, *NY Sun Seeks Circulation Rise*, NEWSDAY, Nov. 1, 2002, at A59 (explaining that the *New York Sun's* slogan, “‘Expect a different point of view’ . . . refers to the philosophy that a reader interested in the style of news provided by the New York Times would value a ‘second point of view’ provided by the Sun”); David Ward, Editorial, *Remain a Coveted Voice for News Analysis*, PR WEEK, Mar. 31, 2003, at 10 (positing that the *N.Y. Times* is generally conservative); Tony Blankley, *Watch This Election's Wheel of Fate*, WASH. TIMES, Oct. 30, 2002, at A19 (referring to the *N.Y. Daily News* as liberal); Warren Strugatch, *Manhattan Law Firm Makes a Successful Foray*, N.Y. TIMES, Mar. 16, 2003 (describing a *Newsday* columnist as a “liberal foul”).

²⁶³ NEW YORK CITY CHARTER tit. 52 § 10 (2002); N.Y.C. R. & REGS. tit. 52, § 10-02 (2002) (listing information that statutorily must be included in the Voter Guide).

²⁶⁴ HAWLEY, *supra* note 1, at 53 (nothing that “[t]he primary sources of political information regarding local elections, especially where parties are inactive, are community organizations and the mass media”); LEE, *supra* note 11, at 78 (listing local newspapers as one of the important influences in election politics).

²⁶⁵ LEE, *supra* note 11, at 78 (explaining that local newspapers are valued more highly for their candidate endorsements in cities with larger

According to studies of municipal judicial elections, in ninety-five percent of the cities with populations above 50,000 in which the press was active, “supported candidates were reported as winning ‘many times’ or ‘always.’”²⁶⁶ Therefore, New York City’s diverse, active press is a significant alternative to partisanship for informing the vote.

The city’s Campaign Finance Board also provides the Voter Guide, required by the City Charter.²⁶⁷ The guide provides biographical information about each local candidate, including the name, political party enrollment, previous and current public offices held, current occupation, prior employment and positions, experience in public service, educational background and major organizational affiliations.²⁶⁸ It also includes “concise statements on the candidate’s principles, platform or views, for each candidate in the election who has submitted, in a timely manner, a candidate Voter Guide statement”²⁶⁹ This program is unique to New York City and ensures that the city’s electorate will not be uninformed in the event that political parties diminish their activity.²⁷⁰ In addition to the Voter Guide, the Campaign Finance Board funds candidates to further the candidate’s own efforts to produce and distribute information.²⁷¹

e. Republican Advantage? Not Here.

There would be no Republican advantage in New York City

populations). *See also* Champagne, *supra* note 200, at 1421 (describing how the mass media can even be critical to the success of a judicial election). Judicial elections are comparable to many of the local elections such as city council elections because both are considered low-visibility races. *See id.* at 1412; *see also* text accompanying note 240 (discussing the issue of low voter turnout in municipal elections, which generally corresponds to the low-visibility nature of an election).

²⁶⁶ LEE, *supra* note 11, at 148.

²⁶⁷ NEW YORK CITY CHARTER tit. 52 § 10 (2002).

²⁶⁸ *Id.* at § 10(b)(1).

²⁶⁹ *Id.* at § 10(b)(2).

²⁷⁰ *See* NEW YORK CITY CHARTER tit. 52 § 10 (2002).

²⁷¹ *See supra* Part IV.C.3.c (discussing the Campaign Finance Board’s efforts in assisting candidates financially).

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because the conditions that create such an advantage are absent. Belief in the universal existence of a Republican advantage in nonpartisan elections is based on the misunderstanding that nonpartisan elections eliminate political party involvement.²⁷²

Studies in the 1960s as well as a more recent study showed a Republican advantage in nonpartisan elections.²⁷³ Those findings are repeated in media even today without proper consideration of the funding resources uniquely available in New York City, which were established specifically to reduce the influence of wealth in elections.²⁷⁴ This concern continues to be espoused in anti-Republican circles, though occasionally the arguments are dressed in sheep's clothing.²⁷⁵

Among the bases for fearing a Republican advantage is the concern that nonpartisan elections end party involvement and issue awareness.²⁷⁶ Common arguments regarding the Republican advantage combine the three additional concerns, i.e., candidate

²⁷² See *supra* Part I.B (explaining that structurally, nonpartisan elections still allow political parties to carry on most of their campaign activities).

²⁷³ See, e.g., HAWLEY, *supra* note 1, at 33 (discussing the results and implications of his study, which showed the partisan bias of nonpartisanship in city council and mayoral positions in eighty-eight cities in California between 1957-1966); Lascher, *supra* note 150 (discussing his study published in 1991, which surveyed California county supervisors elected by nonpartisan elections; county supervisor positions are functionally comparable to city council offices).

²⁷⁴ See, e.g., Muzzio, *Bloomberg Jumps Gun*, *supra* note 56 ("Nonpartisan systems, especially in large cities, seem to engender a Republican bias."); see also *supra* Part IV.C.3.c (discussing why wealth, a proxy argument for the Republican advantage, is inapplicable).

²⁷⁵ See, e.g., HAWLEY, *supra* note 1, at 33; Press Release, Denny Farrell, *supra* note 67 (emphasizing the benefits that political parties bring to elections, rather than stating any belief that Republicans may benefit from the change).

²⁷⁶ This presumption can be inferred from the numerous comments that have been made by partisan advocates who emphasize the benefits that political parties bring to the electoral process in general as if parties will not choose to provide them under a nonpartisan system. See, e.g., CITY IN TRANSITION, *supra* note 2, at 92; Amy Bridges, Editorial, *In Elections, Parties Matter*, N.Y. TIMES, Aug. 30, 2002, at A18; Press Release, Denny Farrell, *supra* note 67.

wealth, reduced voter turnout and reduced candidate information.²⁷⁷ These are not problems in New York City.²⁷⁸ Recent evidence from large, highly political cities like Chicago indicates that parties continue to play an active role in local nonpartisan elections.²⁷⁹ If parties remain committed to the results in local elections, they must also remain dedicated to informing the voters on their local issue positions in spite of the loss of the spoils system inherent in “formalized politics.”²⁸⁰

In fact, there is a strong possibility that a nonpartisan primary would result in New Yorkers choosing two Democratic candidates to face off in a general election.²⁸¹ As of November 2002, the Republican Party had only 536,000 New Yorkers, whereas the Democratic Party had 2.8 million.²⁸² With such lopsided numbers, candidates that face off in the current general

²⁷⁷ See *supra* Parts IV.C.3.a-d (describing these concerns but also explaining why conditions in New York City would not create significant turnout, funding or informational problems if nonpartisan elections were established).

²⁷⁸ See Lascher, *supra* note 150 (contending that Republicans’ greater financial means with which to increase name recognition and improve candidate image may explain why Republican candidates have done better in nonpartisan elections relative to their share of registered Republican Party voters, as he found in his study of elections of California municipal officials);

²⁷⁹ See Rick Pearson, *Daley Triumphs in Landslide*, CHI. TRIB., Feb. 24, 1999, at 1 (noting that in Chicago’s first nonpartisan municipal election, “[Mayor] Daley . . . used his powerful political organization” to win the election).

²⁸⁰ See Northup, *supra* note 28, at 1680 (describing the political party as an institution not only of policies, but of patronage and personnel as well); see also *Hearing (Aug.13, 2002)*, *supra* note 132 (statement of City Council member David Yassky acknowledging that “parties can . . . serve a non-helpful role as patronage organizations”).

²⁸¹ For example, in Los Angeles’s 2001 nonpartisan mayoral primary, two Democrats faced off in the runoff election. *L.A. Mayoral Race Heads to Runoff*, CHI. SUN-TIMES, April 12, 2001, at 24. In cities where one party is dominant, competition like that in two-party contests is possible if there is lively debate over controversial local issues, thus providing more of the checks and balances that party contests normally offer. PHILLIPS, *supra* note 172, at 207.

²⁸² Enrollment Statistics, *supra* note 187.

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election system, which advances only one candidate from each party, hardly represents the majority of New Yorkers' views. Nonpartisan elections have greater potential to more accurately represent the public's policy perspectives, create a more competitive election and keep candidates accountable.

V. DRAFTING THE NONPARTISAN ELECTION LAW: STRUCTURAL CONSIDERATIONS

If and when the Charter Revision Commission decides to propose establishing nonpartisan elections, they will have the flexibility to structure the nonpartisan election law in a way that best suits the New York City context. In drafting the charter sections, the Commission may determine the scope of the nonpartisan laws, whether to use a primary and the number of voter signatures required to be placed on a ballot.²⁸³

A. The Commission's 2002 Draft Proposal: The Contents

The commission included a draft charter chapter establishing nonpartisan elections for local elective offices in the September 3, 2002 report.²⁸⁴ As set forth in this draft, candidates would be nominated by nonpartisan designating petitions, with a specified number of registered voters' signatures required for placement on the primary ballot.²⁸⁵ The signature requirements for candidates using the nonpartisan designating petition derive from State Election Law § 6-142, which governs independent nominating

²⁸³ See *infra* Parts V.A-B and accompanying text (summarizing the various nonpartisan election laws utilized in Chicago, Ill.; Houston, Tex.; Los Angeles, Cal.; and Seattle, Wash.).

²⁸⁴ See CITY IN TRANSITION, *supra* note 2, at 98.

²⁸⁵ CITY IN TRANSITION, *supra* note 2, at 99 (setting forth section sixty-one of the "Draft Nonpartisan Elections Chapter"). "Nonpartisan designating petitions are analogous to independent nominating petitions." *Id.* at 109 (discussing section sixty-one of the "Draft Nonpartisan Elections Chapter"). New York State Election Law currently determines the number of signatures that must be collected on an independent nominating petition to be placed on the ballot. N.Y. ELEC. LAW § 6-142 (McKinney 2003).

petitions and which requires a higher number of signatures than does a partisan designating petition.²⁸⁶ The offices that would utilize the nonpartisan election system would include mayor, comptroller, public advocate, city council member and borough president.²⁸⁷ Every qualified voter would be entitled to vote in the nonpartisan primary election.²⁸⁸ The candidates receiving the largest and second largest number of votes would advance to a general runoff election.²⁸⁹ No party labels or symbols would be

²⁸⁶ N.Y. ELEC. LAW § 6-142. When using a independent nominating petition to qualify to be placed on a ballot, the state election law requires 7,500 signatures for any citywide public office and 4,000 signatures for any county or borough office, the same numbers needed when using a partisan designating petition. *Compare* N.Y. ELEC. LAW § 6-142 and N.Y. ELEC. LAW § 6-136 (McKinney 2003). For any city council district office, however, two thousand seven hundred signatures are needed when using a nonpartisan designating petition compared with only nine hundred signatures needed when using a partisan designating petition. *Id.*

²⁸⁷ CITY IN TRANSITION, *supra* note 2, at 99 (providing section sixty-one of the “Draft Nonpartisan Elections Chapter”).

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 103 (setting forth section sixty-six of the “Draft Nonpartisan Elections Chapter,” which requires that “[t]he board of elections shall certify the names of the persons who received the largest and next largest number of votes for mayor, comptroller, public advocate, member of the city council, and borough president, respectively”). Rather than hold a runoff election with only the top two candidates, as provided in the draft charter chapter, Dr. Lichtman suggests that by having the top three candidates who obtain over twenty-five percent of the vote move into the runoff, minorities would enhance their opportunity to be effective in the primary and general election. PRELIMINARY OPTIONS, *supra* note 2, at A-4. He contends that the significant size and strength of minority groups might make a three-way split beneficial because it would allow a candidate to be elected with a plurality of votes. *Id.* He argues that because studies of minority electoral patterns in New York City show that minorities do not consistently vote cohesively, minorities are generally not able to control the party vote despite their strong affiliation with the Democratic Party. *See Hearing (Aug. 15, 2002), supra* note 90 (statement of Dr. Lichtman). Ensuring an “equal opportunity to participate meaningfully in the political process in the jurisdiction,” 28 C.F.R. § 51.58(b)(1) (2003), and “influence elections and the decisionmaking of elected officials in the jurisdiction,” 28 C.F.R. § 51.58(b)(2) (2003), are of primary concern in rewriting the election rules. A runoff election with two candidates, however, will ensure that these opportunities are safeguarded, while additionally

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allowed on the ballot or voting machine at the primary or general election.²⁹⁰

B. Reflections on the Commission's 2002 Draft Proposal

In considering how the City Charter should be revised, the policy goals of nonpartisan elections should be evident in the construction of the revisions. First, cities may designate the scope of nonpartisan elections by applying an election system to all, or only selected, municipal offices.²⁹¹ Although the charter could be revised to apply only to those offices that repeatedly suffer from lack of competition, structural consistency and efficiency would be furthered by applying a nonpartisan system to all municipal elections.²⁹² New York City voting patterns indicate that there is virtually no competition at the general

producing a winner that has received majority support from the electorate. Blacks and Hispanics constitute a substantial proportion of the voting population—twenty-three percent and twenty-five percent, respectively. CITY IN TRANSITION, *supra* note 2, at C-14. These proportions are significant enough for candidates to rationally desire to secure their support, even if the minority groups do not vote cohesively.

²⁹⁰ CITY IN TRANSITION, *supra* note 2, at 104 (providing section sixty-nine of the “Draft Nonpartisan Elections Chapter”).

²⁹¹ For example, Chicago, Ill.; Los Angeles, Cal.; Seattle, Wash.; and Houston, Tex., have established nonpartisan elections for both mayor and members of city council. 65 ILL. COMP. STAT. ANN. § 20/21-5 (2003); L.A. ELEC. CODE §§ 424, 426 (2000); SEATTLE CITY CHARTER art. XIX § 1 (2002), HOUSTON CITY CHARTER § 5 (2001). Chicago and Los Angeles also extend nonpartisan elections to the comptroller and city treasurer offices. 65 ILL. COMP. STAT. ANN. § 20/21-5 (2003); L.A. ELEC. CODE § 424, 426 (2000). Houston also extends nonpartisan elections to city controller. HOUSTON CITY CHARTER § 5 (2001). Los Angeles and Seattle also extend nonpartisan elections to the city attorney office. L.A. ELEC. CODE § 424, 426 (2000); SEATTLE CITY CHARTER art. XIX § 1 (2002).

²⁹² A hybrid partisan-nonpartisan local election system was used in Chicago prior to 1995, in which a nonpartisan system was used to elect aldermen, while a partisan system was used to elect its citywide offices, including mayor, city clerk and treasurer. Fornek, *supra* note 33. The state legislature voted to change the citywide office elections to the nonpartisan format for structural efficiency purposes. *Id.* The costs of running a single system are lower than that for the hybrid system. *Id.*

election for city council, comptroller, public advocate, and borough president.²⁹³ Even if a nonpartisan format would not necessarily enhance the competitiveness of the mayoral race, utilizing the nonpartisan system for all offices would provide a more efficient administrative approach.²⁹⁴

Of the forty-one largest cities administering nonpartisan elections, the majority only require a general runoff election if no candidate receives a majority of votes in the primary.²⁹⁵ Contingent runoff elections were created in response to the inefficiencies of holding two elections that produced the same result, which is particularly common in cities where voters are heavily registered with one party.²⁹⁶ The 2002 Draft Charter does not provide for this contingency,²⁹⁷ but the commission should

²⁹³ Mercurio, *Bloomberg's Campaign Promise*, *supra* note 10. *See supra* note 216 (describing voting statistics for the 2001 primary and general election, showing major disparities in votes between the winners and the runners-up in municipal general elections).

²⁹⁴ *See supra* note 292 (discussing Chicago's streamlined nonpartisan system). The mayoral office has seen more competition, as evidenced by the Republican Party affiliation of the current and last mayor in the Democratic Party-dominated city. *See supra* note 194 (citing voting statistics for the 2001 mayoral election and comparing them to those in other citywide and councilmanic offices). *See also* *Hearing (Aug. 21, 2002)*, *supra* note 135 (statement of former New York City Mayor Koch noting that the current structure offers sufficient checks and balances, reflected in the city's voting pattern, which has "been to elect a Republican every 30 years when the Democrats have really screwed it up bad"). *But see* Shipper, *supra* note 185 (quoting former Mayor Giuliani, who disagreed with the belief that the mayoral race was competitive, stating that he was "only the third Republican mayor in 100 years").

²⁹⁵ *See* CITY IN TRANSITION, *supra* note 2, at E12-E15. *See supra* note 71 (listing those cities that do not hold a general election if a candidate has received a majority of votes in the primary).

²⁹⁶ *See* Fornek, *supra* note 33 (explaining that the primary reason for establishing this contingent general election format was "to simplify elections and save taxpayers money"); *see also* Hardy, *supra* note 33 (observing that in Democratic Party-dominated Chicago, "Republicans haven't won a Chicago mayoral race since 1927").

²⁹⁷ *See* CITY IN TRANSITION, *supra* note 2, at 102 (setting forth section sixty-five of the "Draft Nonpartisan Elections Chapter," which establishes a nonpartisan primary); *id.* at 104 (setting forth section sixty-eight of the "Draft

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consider its potential benefits. Contingent runoff elections could provide financial benefits to the city.²⁹⁸ Moreover, since the nonpartisan primary would be open to all qualified voters,²⁹⁹ the runoff would not be essential to ensure equal voting access.

The signature requirement for independent nominating petitions also implicates ballot access issues. The experience with nonpartisan elections in Chicago revealed that an onerously high signature requirement threatened to render their mayoral election uncontested.³⁰⁰ Candidate ballot access problems harm not only potential candidates, but also voters, who may not have the opportunity to vote for candidates of their choosing.³⁰¹ This attenuates the representative nature of the democracy.³⁰²

Nonpartisan Elections Chapter,” which provides that “nominees . . . *shall* advance to the general election”) (emphasis added).

²⁹⁸ See Fornek, *supra* note 33 (quoting a spokesman for the Chicago Board of Elections who stated that “[t]he city could save \$2 million to \$2.5 million if no runoffs were required for the citywide offices”). More likely than not, however, the larger number of candidates typically on a primary ballot, the division of votes among those candidates, and the numerous offices being filled at each election will inevitably require a runoff for at least one office. *Id.* (noting that “those savings would disappear if even one race required a runoff”).

²⁹⁹ See CITY IN TRANSITION, *supra* note 2, at 102-03 (setting forth section sixty-five of the “Draft Nonpartisan Elections Chapter,” which states that “[e]very qualified voter shall be entitled to vote at such nonpartisan primary election”).

³⁰⁰ Steve Neal, Editorial, *Change Unfair Petition Rules: Candidates for City Offices Need 25,000 Signatures to Run*, CHI. SUN-TIMES, July 29, 2002 (describing the problems candidates faced with access to the ballot due to the high signature requirement for Chicago’s citywide elective offices). The nonpartisan legislation failed to specify the number of signatures needed for a candidate to gain access to the ballot. *Id.* The Chicago Board of Elections thus imposed a legacy rule upon all citywide offices, which required all candidates to collect 25,000 signatures, a rule previously imposed only on candidates running as an independent or new party candidate. *Id.* In contrast, only 5,000 signatures are required to run for statewide offices. *Id.*

³⁰¹ See Persily, *supra* note 122, at 2188-89 (explaining that “ballot access laws . . . hinder . . . political participation by restricting the voter’s opportunity to cast a ballot for the candidate of their choice”).

³⁰² *Id.* at 2189 (noting that the distinctive trait of democratic participation in elections from Communist systems is “the existence of some meaningful

In a typical partisan contest, the signature requirements are significantly higher for candidates not endorsed by a party, which has raised concerns that “the primary becomes little more than a state-sponsored endorsement of the candidate of the party leadership.”³⁰³ The differential signature requirement does not appear to be an issue under a nonpartisan system because all candidates would have to collect the same number of signatures, regardless of party endorsements.³⁰⁴ Implementing the higher signature requirement for all candidates, however, could potentially recreate the partisan system bias in the nonpartisan structure if only those candidates supported by the dominant political party are able to attain the signature threshold.³⁰⁵ Therefore, the Commission should consider the broader ballot access concern that derives from an overly high signature requirement in general and counterbalance the need for a signature requirement that is high enough to avoid the use of laundry list ballots.³⁰⁶

CONCLUSION

The problematic reality of New York City’s current local election system becomes evident when the invalid assumptions and their supposed negative effects on voter turnout, minority power and the Republican advantage are laid aside. As a system overwhelmingly dominated by one party across a majority of local elective offices, the current system fails to create the competition necessary to keep candidates and officials locally

range of choices for which a voter can express a preference”).

³⁰³ Persily, *supra* note 122, at 2201. For example, New York State’s current election law requires three times as many signatures for city council candidates who lack party backing. N.Y. ELEC. LAW § 6-142 (McKinney 2003).

³⁰⁴ See CITY IN TRANSITION, *supra* note 2, at 99-100 (setting forth section sixty-one of the “Draft Nonpartisan Elections Chapter,” which provides for uniform petition signature requirements).

³⁰⁵ See *id.*

³⁰⁶ See *supra* Part I.A.1 (discussing the problems of laundry list ballots, and the movement to implement short ballots, particularly in nonpartisan elections).

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accountable and does not open the election process to all voters in the primary, where the vote really matters. The city's partisan system restricts access to candidates that could bring positive change. Nonpartisan elections would pave the way to return the electoral decision to all of New York City's voters and ensure a responsive government.