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Working Toward a Better-Functioning Government: Re actions on the 2010 Charter Revision Commission

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MATTHEW GOLDSTEIN

Working Toward a Better-Functioning Government: Reflections on the 2010 Charter Revision Commission

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ABOUT THE AUTHOR: Matthew Goldstein served as Chancellor of the City University of New York (CUNY) from September 1999 to June 2013. Under Dr. Goldstein's leadership, CUNY—which comprises twenty-four colleges and professional schools throughout New York City—experienced a widely lauded transformation. Prior to serving as Chancellor, Dr. Goldstein held several senior academic positions, as well as a number of faculty positions in mathematics and statistics. By appointment of Governor Andrew M. Cuomo, he is Chair of the New York City Regional Economic Development Council and a member of the New NY Education Reform Commission. At the appointment of Mayor Michael R. Bloomberg, he served as Chair of the 2010 New York City Charter Revision Commission.

EDITOR'S NOTE: This article is an edited version of remarks Chancellor Goldstein delivered on October 22, 2010 at the CityLaw Breakfast Series hosted by the Center for New York City Law at New York Law School. His remarks were followed by a question and answer dialogue with attendees. *See* Matthew Goldstein, Chancellor, City University of New York, Remarks on the 2010 NYC Charter Revision Commission Recommendations (Oct. 22, 2010), *available at* <http://nyls.mediasite.com/Mediasite/Play/3c820e4762704ea6aa6f526e8031fd451d>. The citations to some of the information referenced by Chancellor Goldstein in his remarks were provided by the *New York Law School Law Review*.

WORKING TOWARD A BETTER-FUNCTIONING GOVERNMENT

*Introduction of Matthew Goldstein
by Ross Sandler, Professor of Law and Director of the Center
for New York City Law:*

The upcoming vote on the changes to the New York City Charter, proposed by the 2010 New York City Charter Revision Commission chaired by Matthew Goldstein, now Chancellor of the City University of New York, is a very important vote.¹ Charter revision votes are exceedingly important because they write into our Charter, or do not write into our Charter, important and needed changes. For Mayor Michael Bloomberg, among the more important decisions is who is going to chair a Charter Revision Commission because the chair lends the personal dignity and the leadership to a Commission, and that is exceedingly important in getting results through the referendum process. And Mayor Bloomberg could not have made a better choice than Chancellor Goldstein.

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I. INTRODUCTION

I'd like to walk through the accelerated journey that all of us on the 2010 Charter Revision Commission went through for about seven months to give a sense of the compressed time that we had to review the Charter and propose revisions, and how we came to some of the decisions that New York City voters will be reacting to on November 2, 2010.

Most important, I will leave you with three words: turn it over. You have been reading about the ballots, and we are a little concerned about them. It is a new modality for voting. When you turn the ballot over, you will see that the fonts are quite small. So if you have a little extra thickness in your reading glasses, it will help, and make sure you use the magnifying glass that is made available to you.

So let me begin by going back to a phone call that I received from Mayor Bloomberg in early February 2010. I speak to the Mayor on a fairly frequent basis, and I thought this was just another call about me asking him for money and his saying no. But it was not. He said he would like me to chair the Commission.

I was delighted to help the Mayor. He appointed, in my estimation, a very distinguished group of women and men—fifteen of us, a diverse, highly committed group of Commissioners—and then let us do our job independently and without

1. See N.Y.C. CHARTER REVISION COMM'N, FINAL REPORT OF THE 2010 NEW YORK CITY CHARTER REVISION COMMISSION, at i (2010), available at http://www.nyc.gov/html/charter/downloads/pdf/final_report_of_the_2010_charter_revision_commission_9-1-10.pdf (“The 2010 Charter Revision Commission was appointed by Mayor Michael R. Bloomberg in March 2010. Dr. Matthew Goldstein, Chancellor of the City University of New York (CUNY), was appointed chair of the Commission, which consists of 14 other distinguished New Yorkers. The first act of the Commission was to hold five public hearings in the City's five boroughs and to conduct an analysis of the public testimony. Based on this analysis, the commissioners resolved to further explore five broad areas: term limits, voter participation, public integrity, government structure, and land use.”).

interference. I want to again publicly commend the Mayor for doing that. When he called me, he said, “you need to be independent; you know the areas of concern to the voters and the areas of concern to me, but do what you need to do.” I think that shows the dignity and commitment of our Mayor to a very important task.

We had a very truncated time frame in which to do our work. I said very early to my fellow Commissioners that I believed it was essential that we bring something to the ballot in early November 2010. So, working back from there, we knew that we had a maximum of six months to do a thorough review of the Charter and then to bring forward proposed revisions that we thought were appropriate.

We started our work with five public hearings in April, and then five issue forums in May and June. We brought in experts on term limits from around the country, including Richard Niemi² and Patrick Egan.³ We wanted to look at voter participation, which is a systemic problem in New York; not enough people are coming out to vote. We heard from Jerry Goldfeder⁴ and Phil Thompson.⁵ We asked Eric Lane⁶ and Doug Muzzio⁷ to help us sift through the very difficult and changing landscape around government structure.

We also felt that we needed to have some expert testimony on the issue of public integrity, which was an area that we had particular interest in. We asked Richard Rifkin⁸ and Richard Briffault⁹ to assist us in sifting through the substantive ideas. We got to land use and asked David Karnovsky¹⁰ and Paul D. Selver¹¹ for guidance.

We also solicited expert reports to help guide our work. The preliminary staff report was submitted to the Commission and released to the public in July, and it tried to encapsulate the essence of what we heard from hundreds and hundreds of people as we traversed the five boroughs.

After that preliminary report was made public, we had open meetings in all five boroughs, which I thought was critically important, along with a special hearing of former Commissioners. There was an unprecedented outreach effort, and I think that if there is one defining principle for this Commission, it is that we utilized technological platforms that were not available to previous Charter Revision

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2. Richard Niemi is a Distinguished Professor of Political Science at the University of Rochester.
 3. Patrick Egan is an Assistant Professor of Politics and Public Policy at New York University.
 4. Jerry Goldfeder is Special Counsel for Stroock & Stroock & Lavan LLP.
 5. Phil Thompson is an Associate Professor at MIT.
 6. Eric Lane was the Executive Director of the 1989 Charter Revision Commission and is the Dean and Eric J. Schmertz Distinguished Professor of Public Law and Public Service at the Maurice A. Deane School of Law at Hofstra University.
 7. Doug Muzzio is a Professor at the City University of New York.
 8. Richard Rifkin is Special Counsel to the New York State Bar Association.
 9. Richard Briffault is a Professor at Columbia University Law School.
 10. David Karnovsky is General Counsel to the New York City Department of City Planning.
 11. Paul D. Selver is a Partner and Co-Chair of the Land Use Department at Kramer Levin Naftalis & Frankel LLP.

WORKING TOWARD A BETTER-FUNCTIONING GOVERNMENT

Commissions, including webcasts, webinars, Twitter, and Facebook. We did public service announcements in several languages, which were provided with the help of CUNY TV and Jay Hershenson.¹² We really reached deep into communities, in a way that had never been done before.

II. FOUR PRINCIPLES FOR THE 2010 CHARTER REVISION COMMISSION

Early on, I laid out four very basic operating principles that I thought were essential to give some structure to our deliberations. First, did we have enough time to study the issues? For me, due diligence was an operable principle. Did we have enough time to drill down deeply into the bedrock of the issues? If the answer was no, it was my view that we should put that issue aside and wait until we did have the time.

Second, would we have enough time to educate the public? Today's event is yet another step in educating the public. I spent many days with editorial boards and on television shows, radio programs, at interviews, and at public speaking engagements. This is the education phase of the Commission's work. We were not advocating—nor should we advocate—but we are obligated to educate, and if we can't educate properly on an issue, then it's not the right thing to bring to the ballot.

Third, what was the likelihood of success? If we're going to bring something to the ballot, we want to maximize the probability that we will be successful in gaining voter approval. This was probably the hardest part of the process because there's a lot of judgment that we needed to depend upon.

Last, will these results lead to a better-functioning government? I think this was the most overarching aspect of our work.

Those were our four guiding principles. Remember, we had to finish our work by the end of August or the very beginning of September 2010 in order to meet the legal requirement of sixty days between the time we delivered our recommendations to the City Clerk and the vote on November 2, 2010.

III. ISSUES ADDRESSED BY THE 2010 CHARTER REVISION COMMISSION

By August 2010, the Commission had agreed on a set of proposals to place before the voters. First, term limits. We knew *de novo* that term limits was going to be a lead result for us. It was not something that was debatable. We knew the voters expected us to address this, and we did. Never was there contentiousness, never was there acrimony, but spirited debate and passion were very much a hallmark of our discussions about the components of term limits. There were many on the Commission who were opposed to term limits. There were many who wanted to inoculate—and that was a word that I used—the Charter from intrusion. That is, how can we inoculate the Charter from behavior that we may not be supportive of? And the thing that surprised us all concerned implementation. Should there be immediate implementation of term limits or should there be a more gradual path toward implementation? Those issues were debated professionally and with great spirit.

12. Jay Hershenson is the Senior Vice Chancellor for University Relations at the City University of New York.

On the ballot in November we will have a term-limit question that has three components. First, it includes a limit of two four-year terms for elected officials applicable to officials first elected to office on or after November 2, 2010. Second, it also includes what I think is the most important part of the whole term-limit proposal: it prohibits on a going-forward basis the City Council from altering the term limits of elected officials then serving in office. We refer to that component of the term-limit provision as “prospectivity.” Never have we seen this before in the history of Charters in the City of New York. Third, it provides that the proposed two-term limit would apply to officials first elected to office on or after November 2, 2010.

We also had to address a number of issues that were deferred by prior Commissions, and others that popped up that we thought we had sufficient time to address and satisfied our four principles. They all fall under a heading that I would call government transparency, efficiency, and integrity.

There are seven of these that are bundled together, and I will talk in a moment about why we decided to bundle them.

First, require disclosure of independent campaign expenditures in order to provide the public with more information about those expenditures. For example, require disclosure of which groups and individuals support or oppose certain candidates and political causes.

Second, reduce the signature requirements for petitions, thereby expanding ballot access and increasing voter choice.

Third, reconstitute the Voter Assistance Commission within the Campaign Finance Board—which has greater funding and an operating framework—in order to increase its impact, and rename the Voter Assistance Commission the Voter Assistance Advisory Committee and reduce it to nine members.

Fourth, strengthen the city’s conflicts of interest law¹³ to establish mandatory training for public servants and increase penalties for violations from the current \$10,000 to \$25,000.

Fifth, consolidate administrative tribunals into the city’s Office of Administrative Trials and Hearings in order to streamline operations.¹⁴

Sixth, review reporting requirements and advisory bodies to ensure their usefulness, through a report and Advisory Board Review Commission.

And last, amend the Fair Share Law¹⁵ to increase transparency of decisions by expanding the map showing the location and use of all city-owned real estate property to include the location of certain transportation or waste management facilities operated by the state or federal government. When I heard over and over again from people pleading with us—saying they are in communities overburdened by these kinds of facilities, that their children are sick, their elderly neighbors are

13. N.Y.C. CHARTER §§ 2600–07.

14. Deputy Mayor Carol Robles-Román was very helpful to us as an expert in this field and really clarified the issues for the Commission.

15. N.Y.C. CHARTER §§ 203, 204.

WORKING TOWARD A BETTER-FUNCTIONING GOVERNMENT

having respiratory and eye problems—I felt we needed to do something to disclose these locations in a much better way.

IV. PREPARING THE VOTER BALLOTS

In its deliberations, the Commission considered that the city would be using new ballot machines in November 2010. I know that some of you are interested in why we bundled the questions.¹⁶ We did so—especially question number two, which has seven discrete and non-overlapping provisions—because when you go to the polls on November 2, 2010 and turn that ballot over, you’re going to see a very small amount of space allotted to text. The font is going to be very, very small. So in order for us to include on the ballot the issues that we thought were important, we had to operate within physical constraints that we had no power to change. We wanted to have another page, but we were told early on that would not be possible. So we were left with a very, very small amount of space and had to make a judgment call.

The literature is mixed on the propriety of bundling questions like this. Some say there’s no problem with it; others say there are correlation effects and that a voter’s answer to one component of the question may influence and bleed over to how the voter answers another component. It’s not a perfect system, but we made the judgment that we would move forward within the physical constraints we had.

On the first question, about term limits, we deliberately put those three components together because we felt that term limits needed to be presented as a package, rather than as individual questions.

That was not the case with question number two. Many of you probably thought we should have included non-partisan elections or “top two”¹⁷ on the ballot. I was very interested in moving ahead with non-partisan elections and having a really thorough discussion about it. I read every piece of literature and had certain concerns about the analytics of the literature—that is, the empirical evidence and how it would relate to New York City. I probably looked at more regression analyses than I have looked at since I taught regression analysis more than twenty years ago.

There are really two essential reasons that we did not put non-partisan elections on the ballot this year. One, the Commission, almost unanimously, believed that it violated two of our operating principles. We didn’t have enough time to study the material; we couldn’t drill deep enough into the bedrock of the issue. Two, we thought the probability of success was going to be very small and, as another Commissioner said, even putting that aside, the negativity around the issue may affect people’s reaction to the other ideas that we had on the ballot.

In addition, we had commissioned an expert on the matter of non-partisan elections to get the data that I thought was necessary for an analysis of the potential

16. N.Y.C. CHARTER REVISION COMM’N, 2010 BALLOT QUESTIONS (2010), *available at* www.nyc.gov/html/charter/downloads/pdf/final_ballot_questions_combined.pdf.

17. N.Y.C. CHARTER REVISION COMM’N, *supra* note 1. A nonpartisan/top-two election is a primary election that allows voters to choose from all candidates for an office, regardless of the party affiliation of the voter or the candidate. The two candidates who receive the most votes face each other in the general election.

effect on minority communities around the city. I was also deeply concerned about that, and felt that it was essential to have the data to inform this decision. But we could not get the data in time and that is why the issue of non-partisan elections is not on the ballot.

Regarding land use, the only thing on the ballot is a very small component. We did not discuss the Uniform Land Use Review Procedure (ULURP). We did not discuss the 197A provisions and all of the other provisions that I thought were important. We ran out of time. We did not want to bite off more than we could chew—that was an admonishment that we made very early on. We did not want to be too cavalier and assume that we knew an issue and accelerate our due diligence, when indeed we may not have understood the issues thoroughly.

Another area that created great interest was government structure. The Commission instructed our executive director and staff to create a body of material about these three issues to hand over to the next Commission.

So we asked the staff to put some work into these issues.¹⁸ Commissions are like relay races. You are given a task. You run as fast as you can with integrity and honesty and professionalism, and then, as those of you who are runners know, you run out of glucose. You stop, but you hand the baton to the next Commission, and for us the hand-off was non-partisan elections, government structure, and land use. We hope that the next Commission, whoever it is, will look at those three areas.

* * * *

QUESTION AND ANSWER SESSION

Question: Why did you allow for the newly elected members of the Council, the Public Advocate, and the Comptroller, if the question passes, to be permitted to serve for three terms and not two? It seems to be rewarding them for the bad acts of the Mayor and the former Council.

Chancellor Goldstein: That is a great question and I'll answer it very directly in two ways. First, none of us believed that our job was to affect policy based on punitive judgments that may or may not be entirely accurate. Some people have very strong views on what happened in 2008 when the City Council extended term limits, which permitted Mayor Bloomberg to seek re-election the following year, reversing prior voter referenda that had passed a limit of two four-year terms.¹⁹ We know that nothing was illegal and nothing was unethical. So while some may believe that we ought to punish people—and there's a whole movement now to "throw the bums

18. Chancellor Goldstein thanked Executive Director Lorna Goodman and her staff: Counsel Matthew Gordon, Trustee Judah Gribetz, General Counsel Frederick Schaffer, Senior Vice Chancellor Jay Hershenson, and Research Director Joseph Viteritti from the City University of New York; and Commissioners Carlo Scissura and Hope Cohen.

19. Edith Honan, *NY Council Extends Term Limit So Bloomberg Can Run*, REUTERS, Oct. 23, 2008, <http://www.reuters.com/article/2008/10/23/us-newyork-bloomberg-idUSTRE49M70J20081023>.

WORKING TOWARD A BETTER-FUNCTIONING GOVERNMENT

out”—we didn’t operate that way, and I insisted that we would not operate that way. We were not about punitive work.

I am more interested in long-term structural reform. Whether somebody has an interest in running for another term is, for me, trumped by the much bigger question about focusing on long-term structural reform.

There was very passionate and spirited debate about the effective date of any term-limits law, and whether it should happen immediately or whether it should be a gradual change. I suggested a compromise, which somebody referred to as the Goldstein theorem—though I do not think I would want to be known for that theorem. The hybrid approach we suggested was really meant to serve as a bridge to bring together people who wanted a full grandfathering (whereby the term limits would not apply to anyone currently in office) as well as those who wanted immediate implementation (which would impose term limits prospectively as well as on anyone currently in office). At the end of the day, after many votes and lots of discussion, the Commission reported out unanimously, and that’s where we are.

Question: One of the serious arguments against any term limits has been the lack of development of experience on the part of the City Council Members engendered by the revolving door of only two or three terms. Did the Commission at any point consider term limits only for either citywide officers or the chief executive as we indeed have in the federal government, where the term limits apply to the President but not Congress?

Chancellor Goldstein: Yes, there was a lot of discussion about differentiation between terms for the executive branch (that is, people elected for city government overall, including the Public Advocate, Borough President, and certainly the Mayor) and terms for the City Council: three terms for City Council, two terms for the executive branch officials.

The most interesting thing about the term-limit debate was that the vast majority of the members of the Commission are publicly opposed to term limits. They believe it limits voter choice and that we should not do it. But we understood that, by accepting to sit on this Commission, we would bring back for referendum the question of whether voters want to go back to the term limits that were in place before 2008. That is what we did, and that is what you are going to be voting on.

Question: I would like to speak to you about a question involving term limits that I do not think has been the focus of much attention. I would like to examine the proposal through the lens of your fourth principle: Will it lead to a better-functioning government? One of the most difficult things to get public officials to do is to think about the long term, especially when it relates to budgetary matters. Rather, their instinct is to accelerate revenues and postpone expenditures. It is the worst possible instinct, and it seems to me that term limits institutionalize the worst instincts of public officials.

Chancellor Goldstein: Let me use a metaphor that I think answers your question. I viewed term limits as an infinite series that does not converge. For those of you who

remember pre-calculus, you may understand this. I think that if I come back here in twenty years we will still be having the same arguments about term limits. It is an argument that is not going to converge. People are not going to be happy about anything we do because they have such strong views. I have my own personal views. I am not a supporter of term limits, but I am going to vote for this provision because I feel that this is the right thing for city governance at this particular time. But I can debate the other view just as eloquently, and that is why I do not think we will ever get a final answer that will satisfy the vast majority of the people. There are very strong views on all sides of this question. If this passes,²⁰ we will live with it for a while, and then I would not be surprised if in a few years people will ask to revisit and reshape it. That is part of what is wonderful about living in a democracy.

Question: Let me ask a follow-up on that. According to the provision as I understand it, the Council can still change the term-limits law. So you did not actually change that. How did the Commission think about this? Were there some who thought that the Council should never have the power to amend any term-limits law?

Chancellor Goldstein: Here's where I have to defer to the lawyers. Yes, even with the prospectivity component that we included in the ballot question, the Council can still change the term limits, but it is going to be much more difficult for the Council to do that given what we have provided in the Charter. Does the proposed Charter revision inoculate itself against the Council changing term limits in the future? No, but the lawyers told us that any inoculation would not stand up to a legal challenge. That said, I think it will be difficult for members of the City Council to change the term-limits provision if indeed it passes in November.

Question: I was curious about your discussion regarding research because it has always struck me that many of these issues—and term limits is perhaps one of the best examples—are very difficult to research. So the question on some of these issues really is whether you could give some indication of the kind of research that the Commission had access to and that informed some of the recommendations that you were making.

Chancellor Goldstein: This is a great question. I come from a world where, when research is done, it is done. You know that the theorem was proven, and that is it. In social science research, there is never a final answer, and that is why I say that there is no convergence. You do your best by looking at the data at a certain point in time. But those sands are constantly shifting. So you cannot come up with a definitive decision in 2008 and assume that it is going to be applicable a few years later because so many of the variables are shifting. That is the nature, excitement, and beauty of

20. The Commission's term limits proposal passed. *See* N.Y.C. CHARTER REVISION COMM'N, <http://www.nyc.gov/html/charter/html/home/home.shtml> (last visited July 3, 2013) ("The 2010 Charter Revision Commission has concluded its work after successful approval by the voters of its two ballot proposals on November 2, 2010.").

WORKING TOWARD A BETTER-FUNCTIONING GOVERNMENT

social science research: it allows you to constantly refresh what you are doing and take a better look.

The best social science research is that which enables you to make conclusions that have as long a time span as possible. We believe in the research that we examined in order to make our recommendations. The time span was maximized, but it will not last forever. In contrast, we all know Fermat's last theorem was proven.²¹ We know it's over.

Question: Because of the grandfathering component of the term-limits law, many of the revisions discussed today are not going to take effect until 2021 and will ultimately benefit just thirty-three elected officials. Addressing that seems to be the reason that this Charter Commission was put together in the first place—that is, the public felt strongly that the Mayor and the City Council had done an end-run around the will of the people when they overturned referenda that the people passed in 1993 and 1996. I don't feel that this grandfathering addresses the underlying reason why this Charter Commission was put together in the first place.

Chancellor Goldstein: It takes effect *fully* in 2021, but in two years about nineteen members of the Council are going to have completed their terms independent of what we did. Just a couple of years after that, another group will leave. The group that it primarily affects is the group of people who were elected in 2009 because, after they complete their first term, they will have an opportunity for two additional terms.

I think it is better if you think of this as a gradual path, rather than concluding that it does not take effect until 2021. That is an incorrect statement. It takes effect fully by 2021, but, long before you get there, a large number of City Council Members will have exhausted their opportunity to run for re-election.

21. See David Hart, *350 Years Later, Fermat's Last Theorem Finally Proved*, NAT'L SCIENCE FOUND. (Sept. 21, 2004), http://www.nsf.gov/discoveries/disc_summ.jsp?cntn_id=100029&org=NSF.