
Volume 42
Issue 3 *SYMPOSIUM: ONE-HUNDREDTH
ANNIVERSARY OF THE CHARTER OF THE CITY
OF NEW YORK: PAST, PRESENT, AND FUTURE,
1898-1998*

Article 13

January 1998

THE BOROUGH PRESIDENT: COMMUNITY LEADER OR EXCESS POLITICAL BAGGAGE

Jonathan Holub

Irina Gonikberg-Dolinskiy

Follow this and additional works at: https://digitalcommons.nyls.edu/nyls_law_review



Part of the [Law Commons](#)

Recommended Citation

Jonathan Holub & Irina Gonikberg-Dolinskiy, *THE BOROUGH PRESIDENT: COMMUNITY LEADER OR EXCESS POLITICAL BAGGAGE*, 42 N.Y.L. SCH. L. REV. 1197 (1998).

This Note is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS.

THE BOROUGH PRESIDENT: COMMUNITY LEADER OR EXCESS POLITICAL BAGGAGE

I. INTRODUCTION

Although the borough presidency was retained after the abolishment of the powerful Board of Estimate on which the borough presidents sat, the future of the office, however, was not clear.¹ Stripped of most of its power in 1989, the borough presidency's role needed to be redefined.² Almost a decade later, there are those who believe the office, as reworked, is unnecessary.³ The borough presidency, however, remains an important and necessary political institution because it represents a distinct entity within New York City, serves important community needs, and balances power between the mayor and the boroughs.⁴

This Note explores the redefined role of the borough presidency in a post-Board of Estimate New York City.⁵ Part II reviews the history of the borough presidency from the time of consolidation to the demise of the Board of Estimate. Part III explains the Board of Estimate and the borough presidents' place on the board. Parts IV and V examine the rationales for retaining the borough presidency after the abolishment of the Board of Estimate. Part VI provides a brief overview of the new powers ascribed to the office under the 1989 Charter revision.⁶ Part VII explores the redefined role of the borough president. Finally, Part VIII concludes with reasons for retaining the borough presidency.

1. See Maurice Carroll, *Guy Molinari: Still Fighting City Hall*, NEWSDAY (N.Y.), Aug. 7, 1991, at 21 ("[The borough presidents] are struggling to prevent the . . . job from fading away.").

2. See *id.* ("Since they lost their votes on the now-defunct Board of Estimate, [the borough presidents] have had to redefine their roles.").

3. See Jonathan P. Hicks, *5 Presidents Without (Much) Portfolio; Doubts Are Raised About Largely Ceremonial Borough Chief Post*, N.Y. TIMES, May 12, 1996, at 29.

4. See *infra* notes 49-132 and accompanying text.

5. The Board of Estimate was abolished under the 1989 Charter revision. See N.Y. CITY CHARTER ch. 3 (1989).

6. See generally *id.* ch. 4 § 82 (1989).

II. HISTORY OF THE BOROUGH PRESIDENCY

Greater New York City consolidated into its present form on January 1, 1898.⁷ Before the consolidation there were no boroughs.⁸ Prior to 1898, Manhattan, Brooklyn (now Kings County), and Staten Island (now Richmond County) were counties of New York State.⁹ The consolidation of boroughs ushered in boroughs as geographic and political entities.¹⁰

At consolidation, Manhattan and Brooklyn were in their present forms.¹¹ Queens became a borough by the combination of Long Island City and Queens County.¹² The Bronx, part of which had constituted a portion of the old New York City, was combined with parts of Yonkers and some towns and villages of lower Westchester County.¹³

Consolidation gave rise to the borough presidency.¹⁴ Initially, the borough president, although an elected official, exercised little authority and was mainly a figurehead, merely representing former autonomy within a recently centralized system.¹⁵ This aspect of the consolidation compromise was intended to avoid appearances of overcentralization.¹⁶ However, the boroughs soon demanded a stronger, more substantial voice in the governance of their city to avoid the overcentralization of city services and political power, as envisioned by the initial compromise.¹⁷ In

7. See WALLACE S. SAYRE & HERBERT KAUFMAN, *GOVERNING NEW YORK CITY: POLITICS IN THE METROPOLIS* 11 (W.W. Norton & Co. 1965) (1960).

8. See generally *id.*

9. See *id.*

10. See CITIZENS UNION FOUNDATION OF THE CITY OF NEW YORK, *BOROUGH REPRESENTATION* 3 (1989).

11. See *id.* at 9.

12. See *id.*

13. See *id.*

14. See *id.* at 3 ("The borough was made a political subdivision of Greater New York . . . with its own elected 'mayor' or president . . .").

15. See *id.* at 1 ("[E]arly in the city's history . . . the borough presidents received very little power in the first Charter."); SAYRE & KAUFMAN, *supra* note 7, at 14 ("The new government of the new city was to be strongly centralized; power was to be concentrated in City Hall, although the five boroughs . . . were each to have a President with some governmental functions.")

16. See generally SAYRE & KAUFMAN, *supra* note 7.

17. See CITIZENS UNION FOUNDATION, *supra* note 10, at 3 ("Brooklyn aldermen argued immediately for increased local authority to protect their borough's own interests and that of the other outer boroughs."); SAYRE & KAUFMAN, *supra* note 7, at 16 ("[T]he

response to these concerns, the 1901 Charter, the city's second Charter, introduced sweeping changes to the structure of city governance.¹⁸ The most important, and long lasting of these changes was the reorganization of the Board of Estimate and Apportionment¹⁹ (discussed in Part III of this Note), and the appointment of the borough presidents to the Board. The appointment of the borough presidents to the Board marked the beginning of their shift from an executive function to a quasi-legislative function.²⁰ Although this transformation was relatively gradual, Charter changes made in 1938 and 1961 "effectively removed the executive power that the borough presidents enjoyed over city agencies."²¹ Initially, borough presidents were responsible for providing City services to their respective boroughs.²² Over time, this executive function diminished because of the centralization of these services.²³ By 1963, nearly all of the borough presidents' executive functions were relegated to City agencies.²⁴

As the borough presidents' executive powers in their respective boroughs diminished, their significance as members of the Board of

borough governments were enhanced [by the 1901 Charter revision] at the expense of power at City Hall . . .").

18. See SAYRE & KAUFMAN, *supra* note 7, at 16.

19. See *id.* ("The key institutional instrument in producing these changes was the creation of a newly designed Board of Estimate and Apportionment . . .").

20. See generally *id.*

21. Joseph P. Viteritti, *Municipal Home Rule and the Conditions of Justifiable Secession*, 23 FORDHAM URB. L.J. 1, 52 (1995).

22. See SAYRE & KAUFMAN, *supra* note 7, at 638.

23. See *id.* The borough presidents' responsibilities were:

primarily relat[ed] to the building and maintenance of the boroughs' local streets, roads, bridges, and tunnels, regulating certain uses of the streets, and control of borough sewers and drainage systems . . . [These powers have] steadily reduced in significance as borough streets bec[a]me arterial highways, as the bridges and tunnels [were] made part of larger systems, and other agencies . . . buil[t] parkways and expressways across their boroughs.

Id.

24. See GUIDE TO THE MUNICIPAL GOVERNMENT OF THE CITY OF NEW YORK 56 (Thelma E. Smith ed., 10th ed. 1973).

Estimate necessarily grew.²⁵ The Board of Estimate gave significance and power to the borough presidency until the constitutional legitimacy of the Board itself came into question.²⁶

III. THE BOARD OF ESTIMATE

"On the chessboard of the city's politics, the Moroguyor may be king, but the Board of Estimate is queen."²⁷ This quote summarizes the powerful role the Board of Estimate once played in the arena of New York City governance.²⁸ It also explains the understandable concern many expressed regarding the borough presidency once the Board was abolished.²⁹ However, before examining the effects of the Board's rather abrupt exit from city government, it is important to understand why the borough presidents' seats on that body were viewed as being so important.³⁰

The Board, established in 1901, consisted of the mayor, the comptroller, the president of the Council (now the public advocate), and the five borough presidents.³¹ It was considered the most powerful player in city governance because of the scope of its review and decision-making powers.³² The Board acted as both an upper chamber in a "pseudo-bicameral legislature"³³ and as a "quasi-executive body."³⁴ Its legislative powers stemmed from its broad grant of review over Council legislation,³⁵ and its executive functions were derived from its significant budget and

25. See SAYRE & KAUFMAN, *supra* note 7, at 638 ("It is in the Board of Estimate as representatives of the boroughs . . . that the Borough Presidents achieve their importance as officials.").

26. See generally Board of Estimate v. Morris, 489 U.S. 688 (1989) (holding that the Board of Estimate's voting structure violated the "one person-one vote" doctrine).

27. SAYRE & KAUFMAN, *supra* note 7, at 652.

28. See *id.*

29. See, e.g., Dennis Duggan, *BPs: The Appendix of City Politics*, NEWSDAY (N.Y.), Dec. 4, 1990, at 8 ("The five [borough presidents] were shorn of real power this year by the new City Charter, which abolished the Board of Estimate, where they each had a vote. It was like amputating San Francisco quarterback Joe Montana's throwing arm.").

30. See SAYRE & KAUFMAN, *supra* note 7, at 626 (The members of the Board of Estimate "are the most influential elected officials in the city government").

31. See generally *id.* ch. XVII.

32. See generally *id.*

33. See *id.* at 627 ("It [was] difficult for the Council to discover local laws which [did] not come within the [realm of Board of Estimate review].").

34. See *id.* at 631.

35. See *id.* at 627 (describing the broad grant of review over the most important legislative functions of the Council, including the power to amend the Charter and taxation).

administrative powers.³⁶ Accordingly, membership on the Board of Estimate was inherently significant.³⁷ “[I]ts eight members [were] the most influential elected officials in the city government.”³⁸ Thus, it is not difficult to understand the resonant effect eliminating the Board would have on its members’ position in city governance.³⁹ For some, like the mayor and comptroller, the end of the Board meant a boon in their power, because the executive authority the Board possessed was channeled to their offices.⁴⁰ For the borough presidents and the council president, however, the future of their power was uncertain.⁴¹ Perhaps, the very existence of their offices was at stake.⁴²

The challenge that led to the Board’s demise began with a lawsuit that culminated in a Supreme Court decision which held that the Board’s voting scheme violated the “one person-one vote” doctrine.⁴³ The “one person-one vote” doctrine is violated when a citizen in one district may vote for only one representative to a governmental body, while a citizen in another district, half the size, also votes for one representative to that same body.⁴⁴ The Board of Estimate violated the doctrine because only one representative, the borough president, was elected from the populous boroughs of Queens and Brooklyn, while Staten Island, the least populous borough, exercised the same voting power.⁴⁵

The Charter Revision Commission, meeting when the Supreme Court decision was handed down, considered many alternatives to the then

36. *See id.* at 628 (categorizing the Board’s powers, not shared with the Council, as: financial controls; control of City property; control of franchises; control of City personnel; and control of City planning and zoning).

37. *See generally id.*

38. *Id.* at 626.

39. *See* Bob Liff, *Golden Holding on to What’s Left*, *NEWSDAY* (N.Y.), Aug. 8, 1991, at 23 (“Their role in City Hall has effectively ended . . .”).

40. *See* Donald H. Elliot, *Changing the Rules of the Land Use Game: The New City Charter*, *N.Y. L.J.*, Nov. 14, 1989, at 1 (“[S]ome political observers have said that the new Charter will create an imperial mayor . . .”); Jennifer Preston, *Officials: We Want Some More*, *NEWSDAY* (N.Y.), Jan. 31, 1990, at 7 (explaining how the city comptroller requested 156 new hires “because of [the] additional responsibilities under the new City Charter”).

41. *See* William Murphy, *Borough Presidents Offer New Role; Seek Some Control of Money*, *NEWSDAY* (N.Y.), May 5, 1989, at 19 (“The vice chair of the Charter Revision Commission . . . said . . . the commission was hampered in its efforts by the lack of a clear sense from the borough presidents as to what their role should be.”); *see also* Liff, *supra* note 39.

42. *See* Alan Finder, *Borough Chief and Critics Split on the Charter*, *N.Y. TIMES*, June 8, 1989, at B3 (reporting vocal criticism of the borough presidency by those who wanted to see the office abolished during the Charter revision).

43. *See id.*; *see also* *Board of Estimate v. Morris*, 489 U.S. 688 (1989).

44. *See Board of Estimate*, 489 U.S. at 693-94.

45. *See id.* at 703.

current voting scheme,⁴⁶ but ultimately determined that the Board of Estimate was an unwieldy and undemocratic dinosaur that could not be restructured to comply with the "one-person, one-vote" doctrine and was best buried.⁴⁷ With the Board gone, the borough president's role in a post-Board of Estimate city was in question.⁴⁸

IV. POLITICAL MOTIVATIONS FOR RETAINING THE BOROUGH PRESIDENCY

According to Eric Lane, executive director and counsel to the Charter Revision Commission, there was never any doubt that the borough presidency would be retained.⁴⁹ Any moves to eliminate the office could have been disastrous for the Commission.⁵⁰ In the Commission's view, any attempt to dispense with the borough presidents would have met with such strong political opposition that the Charter revision would have failed at the polls in the November 1989 Charter referendum.⁵¹ This is one reason the possibility was never seriously considered by the Commission.⁵²

There was also a genuine commitment to redefining the borough presidents' role in a post-Board of Estimate government.⁵³ As described above, the borough president's role was drastically removed from its roots as borough executive and, instead, entrenched as a quasi-legislative

46. See Frank J. Mauro & Gerald Benjamin, *Voting Rights and the Board of Estimate: The Emergence of an Issue*, in *RESTRUCTURING THE NEW YORK CITY GOVERNMENT: THE REEMERGENCE OF MUNICIPAL REFORM* 62 (Frank J. Mauro & Gerald Benjamin eds., 1989) ("During the summer of 1987, concomitantly with the commencement of its studies of the board's major functions, the commission staff began analyzing the various proposals that had been advanced for complying with the one-person, one-vote principle by changing the board's voting structure, its composition, or both.").

47. See Todd S. Purdum, *Charter Panel Rejects Estimate Board and Turns to Council*, *N.Y. TIMES*, May 3, 1989, at B1.

48. See William Murphy, *Beep's Roles Remains up in the Air*, *NEWSDAY* (N.Y.), May 5, 1989, at 40 ("But neither the borough presidents nor the commission members can agree on a key issue—whether the borough presidents in their new incarnation should have either or both voting power or advisory power.").

49. See Interview with Professor Eric Lane, former Executive Director and Counsel, Ravitch and Schwarz Charter Revision Commissions, in New York, N.Y. (Oct. 16, 1997) (on file with the *New York Law School Law Review*) [hereinafter Lane Interview].

50. See Professor Eric Lane, remarks made at New York Law School during class, *The New York City Charter: Structure, Powers and Procedures* (Oct. 23 & Oct. 30, 1997) (on file with the *New York Law School Law Review*) [hereinafter Lane Remarks].

51. See *id.*

52. See *id.*

53. See *id.*

representative on the Board of Estimate.⁵⁴ The new Charter revision attempted to reassign the borough presidents to a role as mid-level executives.⁵⁵

In order for the borough presidents to achieve this transformation into mid-level executives, the Charter Revision Commission needed to reassign them powers that would reorient them to their new status.⁵⁶ The areas where the borough presidents were ultimately assigned their new powers and duties parallel the powers of the former Board of Estimate.⁵⁷ The most important of areas include budget modification, land use, and contract and service oversight.⁵⁸

V. MORAL CONSIDERATIONS FOR RETAINING THE BOROUGH PRESIDENCY⁵⁹

In 1900, only two years after the incorporation of Greater New York City, Brooklyn and Manhattan already had populations exceeding one million each.⁶⁰ The Bronx had over 200,000 inhabitants, and Queens and Staten Island had 152,999 and 67,021, respectively.⁶¹ The recognition of each borough as a distinct entity within New York City is well-founded and has perpetuated a sense of borough "pride."⁶² This pride cannot be ignored in the face of history and the perceptions of the city's populace.⁶³ In light of the communal feeling a borough engenders in its populace and the important historical place the boroughs have in the city's history, abolishing the borough presidency would have been an unwarranted

54. *See supra* notes 14-24 and accompanying text.

55. *See* Letter from Charter Revision Commission to Barry H. Weinberg, Esq., Acting Chief, Voting Rights Section, Civil Rights Division, United States Department of Justice 41 (Aug. 11, 1989) (on file with the *New York Law School Law Review*) ("[T]he proposed charter assigns certain new powers to the borough presidents as executives . . .").

56. *See id.*

57. *Compare* N.Y. CITY CHARTER ch. 3 (1989) (enumerating the powers of the Board of Estimate) *with* N.Y. CITY CHARTER ch. 4 (1989) (enumerating the new powers of the borough presidents).

58. *See* N.Y. CITY CHARTER REVISION COMM'N, SUMMARY OF FINAL PROPOSALS 13 (1989); *see also* N.Y. CITY CHARTER §§ 82, 245, 251, 333 (1989).

59. The concept that these reasons are "moral" was phrased by Professor Eric Lane.

60. *See* SAYRE & KAUFMAN, *supra* note 7, at 18.

61. *See id.*

62. *See* CITIZENS UNION FOUNDATION, *supra* note 10, at 16 (After social, racial, and ethnic identification, "the borough, as the most geographically and sociologically distinct governmental subdivision, is for most individuals the next strongest level of identification.").

63. *See id.*

infringement on perceived and actual borough autonomy and would have compromised the entire Charter revision.⁶⁴ Any attempt to abolish the borough presidency would have been met with such hostility that the Charter revision would have been rejected despite a great expenditure of time, effort, and financial resources.⁶⁵

VI. AN OVERVIEW OF THE BOROUGH PRESIDENTS' NEW POWERS

A. Budget Powers

The Board of Estimate's budget powers included the authority to change the expense budget during the fiscal year and to approve the capital budget.⁶⁶ These powers have been transferred over to the borough presidents via an apportionment mechanism that gives the borough presidents a discretionary five percent, in the aggregate, towards the expense and capital budgets.⁶⁷ The remaining portion of the budgeting power is vested with the mayor and City Council.⁶⁸ The five percent figure is based on an estimate of the proportional influence the borough presidents had wielded as members of the Board of Estimate.⁶⁹ The mayor must include the borough presidents' proposals in the executive budget and "may not disapprove any of these items if they are adopted by the council."⁷⁰

These expense and capital budget powers have significance in two ways. First, the figures presented by the borough presidents are substantial.⁷¹ In 1992, for example, the capital budget allocation for Brooklyn was forty-three million dollars.⁷² Second, according to former Manhattan Borough President Ruth Messinger, the old system created last minute negotiations among the members of the Board of Estimate.⁷³ Now, the process is much more level-headed for the boroughs, because each

64. See *supra* notes 49-52 and accompanying text.

65. See *id.*

66. See SAYRE & KAUFMAN, *supra* note 7, at 627.

67. See N. Y. CITY CHARTER REVISION COMM'N, FINAL REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION, JAN. 1989-NOV. 1989, at 32 (1990) [hereinafter FINAL REPORT].

68. See generally N.Y. CITY CHARTER chs. 1, 2, 6, 9 (1989).

69. See Lane Interview, *supra* note 49.

70. See FINAL REPORT, *supra* note 67, at 32.

71. See Alison Mitchell, *Howard Golden Sees Things He Doesn't Like*, N.Y. TIMES, Mar. 7, 1992, § 1, at 27.

72. See *id.*

73. See *id.*

borough is given a set amount to work with and may weigh budgeting options.⁷⁴

B. Land Use

Under the old Charter, the Board of Estimate had plenary control over the land-use decisions in the city.⁷⁵ This power was enormous considering that "land is what the city is about."⁷⁶ The new Charter transferred the Board's review powers on land use to the City Council.⁷⁷ However, the borough presidents' power is retained in two ways.⁷⁸ Each appoints one member to the twelve member City Planning Commission, and the borough presidents may compel review of certain City Planning Commission decisions by offering an objection.⁷⁹

The Brooklyn Borough President's Office has successfully used its objection powers to block construction of an annex for the New York State Supreme Court and used its influence to change the Port Authority's decision to sell piers on the Brooklyn waterfront.⁸⁰ It also gained approval for a plan to improve Brooklyn's Red Hook neighborhood, a region of Brooklyn neglected for many years.⁸¹

The borough of Queens provides additional examples of the type of work the borough presidents do to further land use decisions that affect their boroughs.⁸² In 1994, the Queens Borough President's Office worked on several land use and development projects, including Edgemere⁸³ and Arverne⁸⁴ urban renewal, increasing residential and retail opportunities in Downtown Flushing, and reviving the Willets Point area.⁸⁵

74. *See id.*

75. *See* FINAL REPORT, *supra* note 67, at 19.

76. Lane Interview, *supra* note 49.

77. *See* FINAL REPORT, *supra* note 67, at 20.

78. *See* N.Y. CITY CHARTER ch. 8 (1989).

79. *See id.*

80. *See* OFFICE OF THE BROOKLYN BOROUGH PRESIDENT, BROOKLYN STATE OF THE BOROUGH REPORT 140, 143 (1997).

81. *See id.*

82. *See* OFFICE OF THE QUEENS BOROUGH PRESIDENT, QUEENS STATE OF THE BOROUGH REPORT 21 (1994).

83. *See id.* ("This project will bring 400 New York City Partnership-sponsored, two-family homes as well as new parks, streets and sewers to the Rockaways.")

84. *See id.* at 22 ("[D]evelop[ment] [of] a marketable parcelization plan that maximizes benefits to the surrounding community and ensures successful realization of the approved plan.")

85. *See id.* at 23 (describing how this area will be converted from a "junk yard" into a business center).

C. Contract Oversight

Another important area in which the borough president has retained power is contract oversight. The standard procedure for the procurement of goods was not altered by the Charter revision.⁸⁶ This procedure consists of "competitive sealed bidding, with [the] award to the lowest responsible bidder . . ."⁸⁷ However, a large portion of the contracts were considered "special cases" that are not approved through the standard procedure.⁸⁸

"In practice, this approval came after the agency had chosen both an alternative method and a vendor."⁸⁹ The Commission found that this approval process: (1) had very little impact on city policy, since action by the Board of Estimate was limited to reviewing individual contracts and occurred at the end of the process, and (2) had undermined the integrity of the procurement process by diffusing accountability for procurement decisions among the eight members of the Board. "The 1989 revisions of the Charter replaced this process with one in which policy decisions are to be made by the legislative branch before implementation; and, accountability for implementation is clearly fixed with the city's chief executive."⁹⁰

The role of the borough president in this area, thus, has shifted from participating in the shortcomings of the Board to providing oversight for his or her respective borough. Thus, the borough presidents have retained some of the power they enjoyed as Board of Estimate members, allowing them to fulfill a portion of their responsibilities as borough-wide executives.⁹¹

D. OTHER POWERS AND RESPONSIBILITIES

The borough presidents' other powers and responsibilities include, but are not limited to: maintaining a topographical bureau;⁹² recommending capital projects;⁹³ holding public hearings "on matters of public interest;"⁹⁴ maintaining a borough planning office;⁹⁵ preparing a strategic policy

86. See FINAL REPORT, *supra* note 67, at 24.

87. *Id.*

88. *See id.*

89. *Id.*

90. *Id.*

91. *See infra* notes 109-18 and accompanying text.

92. *See* N. Y. CITY CHARTER ch. 4 § 82(3) (1989).

93. *See id.* § 82(4).

94. *Id.* § 82(5).

95. *See id.* § 82(9).

statement every four years;⁹⁶ and having the privilege of introducing legislation with the Council.⁹⁷ All of these powers give the borough presidency vestiges of its former power on the Board.⁹⁸ However, the majority of their duties involve oversight rather than actual policy.⁹⁹ This oversight fuels the debate over the significance of the borough presidency as it currently exists.

VII. THE REDEFINED BOROUGH PRESIDENCY

Understandably, the borough presidents' initial reaction to the elimination of the Board of Estimate was one of great concern for their future as key political participants.¹⁰⁰ The validity of the borough presidency in a post-Board city was in question.¹⁰¹ In fact, opponents of the office believed its legitimacy ended with the Board's demise.¹⁰² A new role for the borough presidents, however, has to be tolerated by politicians and pundits alike because their existence in city governance did not perish along with the Board.¹⁰³

In order to justify the continued existence of the borough presidency, the office must be viewed not only as a vestige of a defunct city body, but also as a significant office in its own right.¹⁰⁴ There are valid arguments that the elimination of the Board has thoroughly diminished the powers of the borough presidents to impotent irrelevancy.¹⁰⁵ Equally as tenable are arguments that the borough presidents, as executives, are throwbacks to a romanticized, nostalgic view of the boroughs as autonomous cities.¹⁰⁶

96. *See id.* § 82(14).

97. *See id.* § 82(11).

98. *See generally* N.Y. CITY CHARTER chs. 3-4 (1989).

99. *See generally id.*

100. Maurice Carroll, *Why Borough Power Must Be Preserved*, NEWSDAY (N.Y.), May 10, 1989, at 65 ("[Claire Shulman, borough president of Queens, said that she does] not see any specific role for the borough presidents in the [citywide] government loop. . .").

101. *See supra* note 29 and accompanying text.

102. *See* Alan Finder, *Pro & Con: Remaking the Government; Do New York's Borough Presidents Still Have Jobs Worth Paying For?*, N.Y. TIMES, July 9, 1989, at D5.

103. *See supra* notes 49-65 and accompanying text.

104. *See* Carol Bellamy & William Josephson, *About Politics; Chart a Course for Boroughs*, NEWSDAY (N.Y.), May 30, 1989, at 42.

105. *See* Maurice Carroll, *Ferrer Tries to Maintain His Clout*, NEWSDAY (N.Y.), Aug. 5, 1991, at 19 ("The Bronx borough president opposed the City Charter changes that abolished the Board of Estimate role and he noted in his City Club talk the persisting perception that he and his fellow borough presidents are not much municipal use anymore.").

106. *See supra* notes 7-13 and accompanying text.

These arguments, however, are often hyperbolic and fixated on the financial impact of the borough presidents' offices.¹⁰⁷ On the other hand, there is ample evidence that the borough presidency serves a valid role that far outweighs its economic effect and that representation at the borough level protects a number of genuine interests.¹⁰⁸

A. Borough President as Mid-Level Executive

New York City does not foster the type of government where legislative authority commands the greatest authority.¹⁰⁹ Because New York State oversees so many city functions, the authority to set agendas is what really governs New York City.¹¹⁰ Agenda-setting power is the ability to control the movement of policy in one direction or another.¹¹¹ As members of the Board of Estimate, borough presidents certainly had this power to a certain extent, but it focused more on immediate political demands.¹¹² Strategic planning was not a consideration.¹¹³ What the structure of the new Charter offers is an opportunity for borough presidents to be involved in the often overlooked, but all important, mid-term and long-term policy planning process.¹¹⁴ This function is realized through the borough presidents' mandate, set by the 1989 Charter, to produce a strategic planning statement every four years, in addition to making ongoing evaluations and recommendations on behalf of borough residents.¹¹⁵ It could be argued that all of these "powers" amount to nothing more than the right to critique and suggest.¹¹⁶ Even so, it could be counterargued that the

107. See, e.g., Hicks, *supra* note 3, at 29.

The city's five borough presidents each are paid \$114,000 a year. Collectively, they employ 466 workers, and their offices have a combined budget of \$32.5 million for the current fiscal year. In 1988, just before the new City Charter took away most of the offices' powers, the combined budget for the five chiefs was \$28.5 million. Thus, although their duties have diminished, their budgets have risen.

Id.

108. See generally *supra* notes 49-99 and accompanying text.

109. See Lane Remarks, *supra* note 50.

110. See *id.*

111. See *id.*

112. See *id.*

113. See *id.*

114. See *id.*

115. See N.Y. CITY CHARTER § 82(14) (1989).

116. See *supra* notes 66-99 and accompanying text.

onus to perform and accomplish is then placed on the borough president, and only those who fight for influence will gain the respect, trust, and vote of their constituents.¹¹⁷ If such a power base is achieved, as it must be under the new political conditions, then the agenda-setting power can have a very significant effect for a borough.¹¹⁸

B. Borough President as the Borough "Public Advocate"

In a city the size of New York, there is little argument that, for the average citizen, getting the ear of City Hall can be an overwhelmingly frustrating experience.¹¹⁹ Although the borough presidents may no longer be able to join in a voting block against the citywide elected officials, they can still act as a voice for borough concerns that will resonate louder than any single council member or community board.¹²⁰ Although a council member can curry political favor for his or her constituents by using legislative leverage against the executive, no single member will have as much of an impact as a borough president.¹²¹ Borough presidents carry the weight of an entire borough behind them. If the constituents are on his or her side, the mayor may be flirting with political disaster to ignore that weight.¹²² Therefore, the borough president has the de facto authority to act as a "public advocate" for his or her borough.

Comparing New York City to a state, it is easy to see why a "public advocate" is good for a borough. Any state has county authorities that exert legitimate political pressures on the state's centralized authority.¹²³ Given New York's size and complexity, it seems not only legitimate, but also politically advantageous, to grant the boroughs a voice as distinct entities. For this to work most effectively, a leader must speak for each

117. See Hicks, *supra* note 3 ("[The borough presidents] work hard to fight for our boroughs . . . [they] are the ones who fight for the welfare of their respective boroughs."); Ruth W. Messinger, *A Beep Bleeps Back*, NEWSDAY (N.Y.), Aug. 7, 1992, at 51.

118. See Lane Remarks, *supra* note 50.

119. See generally Jo Thomas, *Sludge Still Causes Stink in Sunset Park*, N.Y. TIMES, Oct. 3, 1994, at B1.

120. See Messinger, *supra* note 117 ("I serve as part of the governmental checks and balances between the citywide view of the mayor and the more parochial focus of the City Council members.").

121. See Robert Richards, *Can't Leave out the Borough Prez*, CRAIN'S N.Y. BUS., June 12, 1989, at 10; see also Alan Finder, *Puzzled About New Charter? There Are 2 Basic Questions*, N.Y. TIMES, Oct. 17, 1989, at B1.

122. See Hicks, *supra* note 3 ("The borough presidents still speak with strong voices, and mayors still sometimes seek their counsel.").

123. See generally James L. Arts & William L. Church, *Soil Erosion—The Next Crisis*, 1982 WIS. L. REV. 535 (1982).

entity. In the case of New York City, this voice comes from the boroughs through each respective president.

C. Borough President as Balancer of Power

The criticism that Manhattan wields too much influence has been a complaint of "outer" borough residents for many years.¹²⁴ The borough president can be viewed as a balance to real or perceived favoritism towards the borough of Manhattan.¹²⁵ As Queens' current Borough President Claire Shulman said: "My constituents are not protected from the enormous power that resides with . . . ManhattanManhattan has always had first crack at whatever resources were available."¹²⁶ The borough presidency is a counter to this "Manhattan-centrism."

The borough president's role as balancer of power was demonstrated in 1997 when former Manhattan Borough President Ruth Messinger challenged the mayor on his failure to release certain city documents to Borough President Messinger's office.¹²⁷ The dispute arose after Messinger's office received complaints about mayoral agencies not responding to Freedom of Information Law ("FOIL") requests.¹²⁸ Messinger approached the issue by requesting, under FOIL, data relating to agency responses to FOIL requests.¹²⁹ The mayor, through Corporation Counsel Paul Crotty, denied the FOIL requests.¹³⁰ Messinger brought suit to compel disclosure.¹³¹ Justice Omanksy of the New York State Supreme Court decided in favor of Messinger.¹³² This case illustrates the importance of a borough president in vindicating the rights of its constituents when centralized city forces overstep their powers.

124. See Lane Remarks, *supra* note 50.

125. See CITIZENS UNION FOUNDATION, *supra* note 10, at 13 (discussing the regularity of the discourse with regard to a dominant Manhattan).

126. Maurice Carroll, *Why Borough Power Must Be Preserved*, NEWSDAY (N.Y.), May 10, 1989, at 65.

127. See *Matter of Messinger v. Giuliani*, 218 N.Y. L.J., Sept. 2, 1997, at 29.

128. See *id.* FOIL was enacted to ensure "the people's right to know the process of governmental decision-making and to [allow] review [of] the documents and statistics leading to determinations Access to . . . information should not be thwarted by shrouding it with the cloak of secrecy or confidentiality." *Id.*

129. See *id.*

130. See *id.*

131. See *id.*

132. See *id.* (holding that "[t]he capacity of [Messinger] to invoke FOIL to obtain the City agency FOIL response data flows as a necessary implication of her duties and responsibilities under the Charter").

VIII. CONCLUSION

The borough presidency has undergone significant transformations in its role since the founding of Greater New York City in 1898.¹³³ Starting as a nearly powerless vestige of borough autonomy, it quickly grew into a powerful player in city governance at the expense of its role as borough executive.¹³⁴ With the demise of the Board of Estimate, the role had to be radically redefined in order to sustain its relevance. This was achieved.¹³⁵

Critics of the new status of the borough presidency fail to grasp its relative role in city governance. Admittedly, the Board of Estimate wielded enormous power.¹³⁶ However, each individual borough president only had one vote on the eleven-vote Board.¹³⁷ Additionally, the Board only became significant at the end of the political process when it would, in imperial fashion, grant or deny a benefit or impose a burden.¹³⁸ Now, the shift is away from last-minute, backroom dealings and towards out-in-the-open, long-term agenda settings.¹³⁹ The borough presidents are playing a significant role in this emerging paradigm.

Furthermore, now that the borough presidents have returned to their position as borough executives, they have the opportunity to reorient themselves to the needs of their constituents.¹⁴⁰ True, they do not exercise significant individual control over land, contracts, and City services.¹⁴¹ Nonetheless, their input is mandated by the Charter, and a politically bold borough president can certainly exercise his or her advisory power in a politically viable manner.¹⁴² In addition, some have discussed granting the borough presidents more substantive powers.¹⁴³ These proposed powers, unlike those previously held on the Board of Estimate, would not involve citywide administration; rather, they would involve the constituents whom they were always intended to serve in the first place—the borough populace.

133. See generally *supra* notes 1-26 and accompanying text.

134. See *supra* notes 14-26 and accompanying text.

135. See *supra* notes 66-132 and accompanying text.

136. See *supra* notes 27-48 and accompanying text.

137. See N.Y. CITY CHARTER ch. 3 (1976, as amended through 1988).

138. See Lane Remarks, *supra* note 50.

139. See *supra* notes 109-18 and accompanying text.

140. See *supra* notes 119-23 and accompanying text.

141. See N.Y. CITY CHARTER ch. 4 (1976, as amended through 1988).

142. See generally Alan Finder, *The Fight over Changing the Borough Presidents' Role*, N.Y. TIMES, Oct. 19, 1989, at B1.

143. See, e.g., Clifford J. Levy, *Borough Development Units Are Turned Down by Pataki*, N.Y. TIMES, Nov. 6, 1996, at B20.

There is borough pride in New York City.¹⁴⁴ There is also need for a localized administrative apparatus in a city of New York's size.¹⁴⁵ Just as a state uses the county system to achieve this end,¹⁴⁶ New York should not hesitate to use the borough system towards the same goal. Certainly, the borough, in its relationship to the city, has at least as great a claim on some level of civic autonomy as any county in the nation.

In sum, the role of the borough president has been redefined for the better. It has been returned to its place as mid-level executive and as advocate for its respective constituents. Undoubtedly, the debate on whether to retain the borough presidency will not expire and will certainly be an important issue for future Charter revisions.¹⁴⁷ Its fate at those junctures will be determined by the will of the people and their commitment to boroughwide representation and to those who occupy the office. It will be these two sets of political players and their tenacity or apathy that will determine what, if any, future the borough president has in New York City governance.

Jonathan Holub & Irina Gonikberg-Dolinskiy

144. See *supra* notes 60-65 and accompanying text.

145. See generally Editorial, *The Editorial Notebook: Requiem for At-Large*, N.Y. TIMES, July 4, 1983, at 18.

146. See Jeff LeJava, *The Role of County Government in the New York State Land Use System*, 18 PACE L. REV. 311, 317 (1998).

147. See Robert Polner, *Power Play over City Charter Change*, NEWSDAY (N.Y.), Feb. 17, 1998, at A20; Elizabeth Kolbert, *Charter Battle Is a Seriously Comic Matter*, N.Y. TIMES, Feb. 26, 1998, at B1.