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# Foreword: The One-Hundredth Anniversary of the Charter of the City of New York (Symposium: One-Hundredth Anniversary of the Charter of the City of New York: Past, Present, and Future, 1898–1998)

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FOREWORD: THE ONE-HUNDREDTH ANNIVERSARY OF THE  
CHARTER OF THE CITY OF NEW YORK

ROSS SANDLER\*

During the centennial celebration of the New York City Charter, City political players hotly debated, as they often have before, the issue of the allocation of power among the major players in City government. When the dust settled on this latest controversy, the mayor had won another skirmish in a century-long struggle. The specific controversy involved the possibility of relocating Yankee Stadium from 161st Street in the Bronx to a platform above the Long Island Railroad rail yards on Manhattan's West Side. Mayor Rudolph W. Giuliani appeared willing to entertain the relocation idea, which triggered opposition throughout the city, especially in the Bronx. Peter Vallone, the speaker of the City Council and a candidate for governor, sought to channel the popular sentiment opposing the Manhattan location into a vote of no confidence in the mayor and, not incidentally, to embrace a popular issue that could bring out Democratic voters at the November 1998 election. He engineered a Council resolution that passed over the mayor's veto, which put the stadium issue to the voters in a referendum.

Mayor Giuliani countered by creating a charter revision commission of his own.<sup>1</sup> Under an obscure provision of state law, a charter revision commission could have removed Vallone's or any referendum from the ballot merely by proposing a Charter referendum of its own.<sup>2</sup> Mayor Giuliani appointed the commission in June; the commission held meetings in July and August, and, just before the ballot deadline, proposed four amendments to the City's campaign finance program, the most important of which banned corporate contributions.<sup>3</sup> The Council, supported by most of the City's "good government" groups, sued to keep the Yankee Stadium referendum on the ballot and the Charter Commission's referendum off it, but the Council was rebuffed by the state courts.<sup>4</sup> In November, only the

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1. See OFFICE OF THE MAYOR, NEW YORK, N. Y., CERTIFICATE OF APPOINTMENT TO CHARTER REVISION COMMISSION (June 5, 1998).

2. See N. Y. MUN. HOME RULE LAW § 36(5)(e) (McKinney 1994).

3. See N. Y. CITY CHARTER REVISION COMM'N, REPORT OF THE NEW YORK CITY CHARTER REVISION COMMISSION (Aug. 20, 1998).

4. See *Council of New York v. Giuliani*, No. 2496, 1998 N. Y. App. Div. LEXIS 11001 (Oct. 16, 1998).

Charter amendment was printed in the last column of the ballot, and it passed by a vote of nearly sixty percent to forty percent.

The Yankee Stadium dispute cannot be understood in isolation. Since 1989, when voters approved the vastly changed Charter (as described in the article by Frederick A. O. Schwarz, Jr., and Eric Lane), many disputes have tested whether the Charter's allocation of power reflected political reality. In 1995, for example, the Council and Mayor Giuliani fought over who would have the last word on mid-year budget modifications. Faced with falling revenues, the mayor wanted to allocate reduced funds without Council involvement, while the Council demanded that it make the choices. The Supreme Court of New York County left the issue partially in limbo;<sup>5</sup> both sides claimed victory, and a political compromise was developed.

A similar dispute arose over the authority to investigate police corruption. The Council, responding to the revelations of the Mollen Commission,<sup>6</sup> passed a bill that would have established an independent commission to investigate police corruption.<sup>7</sup> The Council's commission had five members, of whom the mayor only had a say in the appointment of three. The Council approved the creation of the commission over Mayor Giuliani's veto; the mayor sued and won a ruling that the Council had overstepped its Charter authority by unlawfully reducing the mayor's responsibility for managing the police department.<sup>8</sup> Meanwhile, the mayor established his own version of the commission by executive order.<sup>9</sup> The Council, not to be outdone by the mayor, passed a second version of its commission.<sup>10</sup> The mayor's version is functioning, but the Council's second commission remains a dead letter and is being reviewed by the courts.<sup>11</sup>

In other disputes, the city comptroller derailed the mayor's proposal to sell the City's water system to the City's independent Water Board.<sup>12</sup> Several public officials including the Manhattan borough president, the

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5. See *Council of New York v. Giuliani*, 621 N.Y.S.2d 832 (Sup. Ct. N.Y. County 1994).

6. See REPORT OF THE COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT 1-109 (July 7, 1994) (Milton Mollen, chairman of the Commission).

7. See NEW YORK, N.Y., LOC. L. NO. 13 (1995).

8. See *Mayor of New York v. Council*, 651 N.Y.S.2d 531 (App. Div. 1997).

9. See New York, N.Y., Mayor Rudolph Giuliani, Establishment of Commission to Combat Police Corruption, Exec. Order No. 18 (Feb. 27, 1995).

10. See NEW YORK, N.Y., LOC. L. NO. 91 (1997).

11. See Symposium, *Police Corruption, Municipal Corruption: Cures at What Cost?*, 40 N.Y.L. SCH. L. REV. 1 (1995).

12. See *Giuliani v. Hevesi*, 681 N.E.2d 326 (N.Y. 1997).

public advocate, and the state comptroller successfully challenged the mayor's refusal to make information available about agency performance.<sup>13</sup> The Council stopped the mayor from selling Health and Hospitals Corporation hospital facilities without obtaining Council permission.<sup>14</sup> In addition, both the Council and the mayor, this time standing on the same side of an issue, lost a court battle over their refusal to fund the independent budget office,<sup>15</sup> a reform authorized by the 1989 Charter.<sup>16</sup>

These battles did not occur solely in the Giuliani administration. Mayor David N. Dinkins and Comptroller Elizabeth Holtzman had a stormy relationship over the registration of City contracts, with Holtzman invoking the comptroller's Charter power more than forty times to temporarily block Dinkins' administration contracts. They battled over the authority to decide such issues as the level of integrity required of City contractors and the accuracy of City certifications of vendors as woman- or minority-owned enterprises.

Other battles merely await an initiating incident. The borough presidents chafe under their limited land-use and budget powers. The public advocate lacks substantive Charter duties and has had to invent a role in city government (as described in the article by Public Advocate Mark Green and his general counsel, Laurel Eisner). In addition, developers and communities have not been fully heard from on opposing reforms in land-use decisions.

The City Charter is often likened to a constitution. It is similar to a constitution in that it sets forth the structure of the government; however, the City Charter is much easier to amend. Depending on the section involved, the Charter can be amended by passing a local law, a state statute, or a referendum initiated by the Council or the public; by having a charter commission recommendation and referendum; or by initiating a combination of these methods. This establishes fundamental power relationships not envisioned under the federal or state constitutions, each of which is protected by an arduous, and usually deflating, amendment process.

The ease of amending the City Charter makes it possible for the mayor and the Council to transform their political conflicts into a competition over

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13. See *Messinger v. Giuliani*, 218 N.Y. L.J., Sept. 2, 1997, at 29 (Sup. Ct. N.Y. County Sept. 2, 1997); *Green v. Safir*, 664 N.Y.S.2d 232 (Sup. Ct. N.Y. County 1997), *aff'd as modified*, 679 N.Y.S.2d 383 (App. Div. 1998); *McCall v. Barrios-Paoli*, 671 N.Y.S.2d 974 (App. Div. 1998).

14. See *Council of New York v. Giuliani*, 621 N.Y.S.2d 832 (Sup. Ct. N.Y. County 1994).

15. See *In re New York Pub. Interest Research Group v. Giuliani*, 644 N.Y.S.2d 38 (App. Div. 1996).

16. See N.Y. CITY CHARTER ch. 11 § 259 (1989).

the Charter. We are likely to see more conflict rather than less as the City begins to feel the effect of term limitations. Charter disputes since 1989 have been fewer in number than one might expect due to the presence of holdover elected officials who participated in the 1989 Charter debates and enjoyed collegial deference from prior relationships. The borough presidents in the Bronx, Brooklyn, Queens, and Staten Island are today the same individuals that were in office on January 1, 1990. The speaker of the Council has not changed. The Council's composition also remains much the same because reelection of incumbents provided stability. This picture will radically change, however, as term limits force these officials out of office on January 1, 2002. New faces will then test the strength and balance of the Charter that the 1989 Charter Revision Commission consciously built to reflect and empower emerging populations and interests. How well it accomplishes its goal will be tested most strongly when new leaders with new ideas and new constituencies emerge. This double issue of the *New York Law School Law Review*, and the symposium from which it grew, provide the best history and explanation of the City's current Charter. Until now, there has been no similar attempt to describe comprehensively the political and governmental ideas embraced by the Charter Commission that informed its recommendations and supported its allocation of power and responsibilities. The efforts by the two editorial boards of the *New York Law School Law Review* who have worked on this issue have contributed enormously toward a better understanding of the government of the City of New York. The issue and the articles will be read, saved, and recognized as the starting point to understanding the 1989 Charter and to formulating the next century's debates over the Charter's allocation of power.