



## A ROADMAP TO RANKED CHOICE VOTING IN NEW YORK CITY

Proposals for Moving Forward: Draft by FairVote, May 2008

### Overview

America's greatest city and one of its most diverse, New York presents important opportunities to improve its elections and establish a model for other communities. In January 2008 FairVote commissioned Lynne Serpe to analyze potential roadmaps for advancing ranked choice voting in the city, with a particular focus on instant runoff voting for citywide primary elections and the choice voting method of proportional representation for city council elections. Lynne interviewed dozens of New Yorkers, analyzed past elections and wrote a report about potential roadmaps for moving forward in the coming year. Serpe outlined three potential roadmaps, from modest steps to ambitious ones.

- *Vacancies, absentee voters and voting equipment, pp. 3- 5*: Adoption of instant runoff voting for city election vacancies, use of instant runoff ballots for overseas absentee voters in citywide primary elections and ensuring ranked choice voting elections can be run on the city's next generation of voting equipment
- *Majority voting for citywide primaries, pp 5 –9*: Adoption of instant runoff voting to replace the current two-round system for citywide primaries
- *Proportional voting for city council elections, pp. 9 - 20*: Adoption of choice voting for elections for the New York city council, as used in 1937-1945

We are sharing this report with New York activists, reformers, civil rights leaders, civic engagement groups and elected officials in May and plan to release a public version of this document in June 2008. We will discuss it at an event at Demos at 5 pm on Thursday, May 29. Please send any comments you have by June 3, 2008 to Amy Ngai at [amyn@fairvote.org](mailto:amyn@fairvote.org)

### FairVote's New York City Analysis

FairVote is a national electoral reform organization that develops and promotes strategies to improve elections at the local, state and national levels in the service of a simple vision: more Americans should vote, have real choices and earn representation of their views in government. Although involved in several significant reform efforts such as the National Popular Vote plan for president and universal voter registration, our signature reform proposal is ranked choice voting in the form of choice voting and instant runoff voting. Applied in multi-seat legislative districts, choice voting can achieve proportional representation for like-minded voters. Applied in single-winner elections, instant runoff voting elects majority winners even with increased voters. FairVote is a nonpartisan organization, but change-focused: for example, we have played an important role in instant runoff voting's victories in 13 of its last 14 ballot measures in 2004-

2008, including landslide wins in such cities as Oakland (CA), Minneapolis (MN), Sarasota (FL) and Santa Fe (NM).

Since its founding in 1992, FairVote has had periodic involvement in New York City elections. In part through his connection to his great uncle George Hallett (long-time Citizen's Union mainstay and advocate of ranked choice voting), FairVote's executive director Rob Richie has periodically explored bringing choice voting back to New York and supervised a 1995-1996 project funded by the Rockefeller Brothers Fund designed to assist implementation of choice voting for the city's Community School Board elections. FairVote joined the Asian American Legal Defense and Education Fund in providing information to the Department of Justice in 1998-1999 that led to the DOJ's denying preclearance to the proposed shift away from choice voting for the local schools boards. More recently, FairVote helped generate attention to the potential of instant runoff voting as an alternative to the traditional runoff system used in primaries for citywide offices and worked with local reformers on the goal of ensuring new voting equipment would be ready to run ranked choice voting elections.

This year, FairVote hired Amy Ngai, a former program associate with Citizens Union to run FairVote's Program for Representative Government, with a particular goal of researching and advocating the choice voting system of proportional voting. FairVote commissioned Lynne Serpe to evaluate the current potential to advance ranked choice voting in New York, assessing the opportunities and challenges in the short-term. Serpe is well-suited to this task, having been:

- communications coordinator for the Ontario Citizens Assembly referendum in 2007 on the mixed member form of proportional representation;
- deputy director of the Political Reform Program at the New America Foundation, where she played a pivotal role in the winning 2006 campaign for instant runoff voting in Oakland and in laying the groundwork for a prospective campaign for instant runoff voting in Los Angeles (<http://www.irvinla.org>);
- consultant with the British Columbia's Citizens Assembly referendum in 2005 on choice voting that won 58% support among voters;;
- manager of the Ohio recount of the presidential vote in 2004;
- consultant for the New Zealand Parliament hired to raise awareness in localities about proportional voting and ranked ballot election methods in 2002-2003, contributing to the adoption of choice voting and instant runoff voting in cities like Wellington.

Serpe interviewed more than sixty New Yorkers reflecting a wide range of perspective and experience in City politics. She reviewed the history of voting system reform in the City, analyzed past elections and looked at upcoming potential vehicles for reform like the City's newly formed charter revision commission. Ultimately she produced roadmaps for how one would move forward if choosing to advance ranked choice voting in the New York City. These roadmaps could be pursued individually or collectively. This document presents them in order of perceived difficulty in winning reform and likely need for resources.

## Roadmap #1: Incremental Steps toward Ranked Choice Voting

### Instant Runoff Voting for Filling Vacancies

Instant runoff voting is ideally suited to special elections for single-member seats. Currently, special elections in New York City are nonpartisan: there are no party primaries, and each candidate makes up their own party name. In off-cycle special elections, the winning candidate often receives significantly less than majority support. Since voter turnout is traditionally very low in special elections, and the number of candidates very high (since there is no primary to narrow the selection), the actual number of voters electing the winner is very small. IRV guarantees majority winners and eliminates worry about spoilers or vote splitting.

**Background:** Vacancies occur in New York City with regularity, with nearly 10% (five members) of the current city council first elected in a special election. Turnout is often low in these elections, and winners can take office with a relatively low share of the vote. Current city council members first elected in a special election are:

- Mathieu Eugene, 2007 Special Election: 40<sup>th</sup> Council District, 34%
- Maria Del Carmen Arroyo, 2005 Special Election: 17<sup>th</sup> Council District, 50%
- Vincent Gentile, 2003 Special Election: 43<sup>rd</sup> Council District, 30%
- Sara Gonzales, 2002 Special Election: 38<sup>th</sup> Council District, 33%
- Joel Rivera, 2001 Special Election, 15<sup>th</sup> Council District, 56%

**Opportunities:** Mayor Michael Bloomberg announced that a special election for council district 30 would be held on June 3, 2008 to fill the seat vacated by Republican Dennis Gallagher. The week preceding and immediately after the special election is an excellent time to raise awareness – especially important for when the idea of instant runoff voting to fill vacancies is raised during the Charter Revision Commission process.

Provisions for filling vacancies are outlined in the New York City Charter. A1988 Charter Revision Commission chaired by Richard Ravitch proposed an amendment on filling vacancies,

*“Proposal 5 provides for an orderly process to replace a disabled mayor. Another section would sensibly democratize the filling of vacancies on the City Council and in the offices of Council president, comptroller and borough president by requiring prompt special elections. Replacements are now chosen either by a vote of colleagues or by appointment.”<sup>1</sup>*

Instant runoff voting to fill vacancies could be presented as a pilot program, a way to introduce instant runoff voting into city elections before a first citywide election with IRV in 2013. Potentially it could be combined with an all vote-by-mail election; since turnout in special elections can be so low, election administration officials might be convinced to hand-count ballots after counting first choices on machines.

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<sup>1</sup> “Vote 'Yes' for Charter Revision” -New York Times, October 19, 1988

Citizens Union already has come out with a policy paper on “*Filling Vacancies in Elected Offices and Residency Requirements*” which advances instant runoff voting for vacancy elections as a solution.

### **Instant Runoff Ballots for Overseas/ Military Voters**

New York City uses a two-round runoff system for its citywide primaries for Mayor, Public Advocate and Comptroller. When no candidate earns over 40% of the vote in the primary, the top two vote getters advance to a runoff two weeks later. Unfortunately, this short turnaround makes it very difficult to print and mail a ballot overseas and have it completed and returned within the two-week timeframe. Indeed, the general recommendation for overseas voters is to send out absentee ballots to overseas voters more than five weeks before an election.

One increasingly popular solution to this problem is to allow overseas voters to rank the candidates on their ballot or to return a ranked ballot along with their first-round ballot. If a runoff is needed, the ranked ballot is counted towards their highest ranked candidate who has advanced to the runoff.

**Background:** With record numbers of military personnel stationed overseas, there is a growing problem of voter disenfranchisement of our armed forces. According to the General Accounting Office (GAO) there are approximately 6 million uniformed and overseas citizens absentee voters. In New York City, absentee and military voter turnout dropped by more than 36% in the second-round mayoral runoff in 2001, in stark contrast to overall turnout.

Instant runoff ballots comply with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and an increasing number of jurisdictions are using ranked ballots to ensure that overseas absentee voters are able to have their votes counted in every election round. IRV ballots are used by overseas voters in Louisiana, South Carolina and Arkansas who might otherwise not be able to cast a runoff ballot – Arkansas in 2007 extended this practice to all overseas voters after in 2005 approving it only for overseas military voters. The legislature voted unanimously for this change, and the Secretary of State touted it as one of his 2007 legislative achievements. In 2007, 91% of voters in Springfield (IL) supported a ballot measure to establish this practice in its city to “preserve democracy for those who protect it.”

**Opportunities:** While New York City has a City Charter that includes the method of electing local officeholders, any change to military and overseas absentee voting procedures would require a change in state law. Military voting in a runoff is mention in section § 10-108:

*“A voter who submits a military ballot application shall be entitled to a military ballot thereafter for each subsequent election through and including the next two regularly scheduled general elections held in even numbered years, **including any run-offs which may occur**; provided, however, such application shall not be valid for any election held within seven days after its receipt.” (emphasis added)*

NYPIRG is among those particularly interested in this reform.

## **Voting Equipment Readiness to Run Ranked Voting Elections**

New York City's decades-old lever machines did not allow voters to rank candidates. Previous ranked choice voting elections for city council (five elections from 1937 to 1945) and local school boards (1970 to 1999) required a paper ballot, and a hand count. Most jurisdictions implementing instant runoff voting are doing so on optical scan equipment like the equipment New York is poised to purchase within the next several months.

**Background:** The Board of Elections in the City of New York chose ballot marking devices and optical scan equipment in February 2008 in order to comply with HAVA requirements for disability access. The Board of Elections has until November 2008 to make a decision about which equipment to purchase for use by all voters in the September 2009 primary.

IRV has been successfully administered on optical scan equipment, with voters marking their candidate preferences on a paper ballot. In San Francisco and Vermont, election reform advocates also took advantage of the opportunity of introducing a new voting system to require that the digital image of the scanned ballots be posted on the city's website. Currently San Francisco and Pierce County (WA) plan to run their November 2008 IRV elections on Sequoia optical scan equipment, while older ES&S optical scanning equipment has been used for IRV elections in San Francisco and Cary (NC) and older Premier optical scanning equipment has been used for ranked choice elections in Cambridge (MA) and Burlington (VT).

**Opportunity:** If New York City chooses to purchase optical scan equipment, the ideal scenario would be for the contract to require any equipment is truly ranked choice voting compatible. In the coming months, the staff and commissioners of the Board of Elections will need to be educated about the potential for instant runoff voting. A joint letter urging ranked choice voting compatibility, co-signed by a number of organizations, is a necessary first step.

## **Roadmap Two: Instant Runoff Voting for Citywide Primaries**

Since 1972, New York City has used a two-round runoff system for its citywide primaries for Mayor, Public Advocate and Comptroller. When no candidate earns over 40% of the vote in the primary, the top two vote getters advance to a runoff held two weeks later. These runoff elections cost approximately \$12-\$15 million to administer<sup>2</sup> with a maximum exposure of another \$7 million in public matching funds. Historically, they have often been very negative and polarizing, as in the mayoral runoff in 2001.

Even if based on the sensible goal of ensuring nominees have substantial support in their party, two-round runoffs are a waste of time and taxpayer money. Instant runoff voting is a ranked choice voting method that allows voters to rank candidates in order of preference. It would elect majority winners in a single election, saving the cost and difficulty of a separate runoff election. Candidates, community groups and voters could focus attention and resources on maximizing

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<sup>2</sup> Figure based on 2005 estimate by Board of Elections, using the lever machines

turnout for a single election. Candidates within the same party would have incentives to tone down divisive attacks.

**Background on runoffs:** The change from a plurality primary (the person with the most votes wins) originated from the 1969 mayoral race where Mario Procaccino won the Democratic primary with 32.8% of the vote in a five-way race that included former Mayor Robert Wagner (29%).<sup>3</sup> Procaccino was a more conservative Democrat who went on to lose in the general election to John Lindsay, who ran as a Liberal.<sup>4</sup>

There have been six citywide runoffs since the election law was changed. In four cases, the winner of the first round was victorious in the runoff. However, results between primary rounds changed in 1977 for Council President (now Public Advocate<sup>1</sup>) and in 2001 for Mayor.<sup>1</sup> Mayoral runoffs were narrowly avoided in both 1997 (Messinger) and 2005 (Ferrer) crossing the 40% threshold after the final canvass of votes, each time spurring some controversy and confusion. In both instances, the Democratic nominee lost to the Republican nominee, as did Mark Green in 2001. A more inclusive, quickly determined primary might allow candidates to compete more effectively in the general election.

A voting rights lawsuit was brought against the runoff system in the 1980s due to the burdens on candidates of color in mounting two citywide campaigns in two weeks, but lost on appeal after a lower court victory. Instant runoff voting would address the issues raised in this past litigation by decreasing the impact of money in citywide elections (candidates who have access to quick cash have a fundraising advantage in the current two-round system) and discouraging racially polarizing campaigns.

A summarized history of citywide runoff elections in 1973-2005:

- 1973, Four-way split for Mayor: Beame was ahead of Badillo with 34.5% in the first round and won the runoff with 61%.
- 1977, Seven-way split for Mayor: Koch (20%) and Cuomo (19%) advanced to the runoff, even though more than 60% of the voters cast a ballot for one of the five other candidates in the primary. Koch won the runoff with 55% support.
- 1977, Five-way split for Council President: Incumbent O'Dwyer was ahead in the first round with 31%, but Carol Bellamy won the runoff election with 59%.
- 1993, Three-way split for Comptroller: Hevesi (35.3%) was ahead of incumbent Holtzman in the first round (33.4%) and won the runoff.
- 2001, Five-way split for Mayor: Ferrer (36%) led Green (31%) in the first round, but Green won the runoff with 52%.
- 2001, Seven-way split for Public Advocate: Gotbaum (24.4%) led Siegel (16.5%) in the first round (with three other candidates also winning 16%), and won the runoff.

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<sup>3</sup> The remaining candidates were Bronx Borough President Herman Badillo (28%), James Scheur (5%) and Norman Mailer (5%).

<sup>4</sup> Lindsay received 42% in a three-way general election with Procaccino (36%) and Republican State Senator John Marchi (22%).

***Background on instant runoff voting:*** Instant runoff voting would allow voters to rank the candidates in their order of preference (1, 2, 3) in one trip to the polls rather than selecting a single candidate and being asked to return to the polls two weeks later for a runoff election between the top-two vote getters. Voters each have one vote, but their rankings make it more likely that one vote will count in the decisive round. If a candidate receives a majority of voters' first choice rankings, he or she wins. If there is no immediate winner, the candidate with the fewest votes is eliminated. Ballots cast for that candidate are then added to those of the remaining candidates according to which candidate is ranked next on that ballot.

The simple change of giving voters an opportunity to indicate their preferences has important consequences:

- *IRV means one election, not two.* IRV eliminates the need for a second, costly election by using the rankings voters have already provided on the initial ballot. Candidates and organizations can maximize their get-out-the-vote efforts for a single election, which is especially important in communities of color. Voters who have difficulties getting to the polls due to limited mobility, childcare, or other reasons will also benefit from a single election.
- *IRV saves millions in taxpayer dollars.* Based on estimates using the old lever machines, a runoff election costs approximately \$12-\$15 million to administer with a maximum exposure of another \$7 million in matching funds.
- *IRV eliminates the problem of vote-splitting.* In the current system, the first round is a plurality election where only the top-two vote getters advance to the runoff (if no one receives 40% of the vote). It's common for there to be more than five candidates in a primary, which means votes may be split among similar minority or like-minded candidates in the race, allowing a less popular candidate to advance to the runoff. One of the best examples is the 2001 Democratic primary for Public Advocate, where the first-place finisher Betsy Gotbaum won some 24%, but four candidates each remarkably won about 16%, with Norman Siegel edging the others to earn a place in the runoff.
- *IRV reduces negative campaigning.* IRV provides an incentive for candidates to reduce negative campaigning because candidates may need the second ranking of their opponents' supporters to win. Candidates win by building coalitions and finding common ground. Negative campaigning can be particularly divisive in runoffs when the two finalists are of different races, as evidenced by mayoral runoffs in 2001 in Los Angeles, Houston and New York City.
- *IRV helps absentee voters:* Two weeks is a very short time to determine who has made the runoff, print absentee ballots, mail them and have absentee voters return the completed ballot – particularly challenging for overseas voters like those serving in the military. IRV means one decisive election.
- *IRV determines majority winners.* If no candidate receives a majority of first choice rankings, the candidate with the least support is eliminated. Voters who ranked that

candidate now have their vote counted for their second choice, and all ballots are recounted in an "instant" runoff. This process repeats until one candidate has majority support (over 50%). That means a candidate who is strongly opposed by a majority of voters will never earn the nomination, unlike the current system with a 40% threshold.

- *IRV saves money – and trees.* A second-round runoff wastes more than just time and money. Huge amounts of paper are used in every election, such as multiple campaign mailers and materials sent out by candidates or organizations in support of one candidate or against another. While these uses of paper are important and necessary educational tools in an election, IRV could drastically reduce the toll elections take on the environment by ensuring majority winners in a single round.

IRV is gaining momentum across the country, and around the world in local, state and national elections. Here in the United States, it has been used for several successful elections in San Francisco, Burlington (VT), Takoma Park (MD) and in multiple cities in North Carolina – all of which held exit polls showing high and broad support for the new IRV system over their prior system. It will be used this November in Pierce County (MD) has been passed overwhelmingly by voters in cities like Oakland (CA), Minneapolis (MN), Ferndale (MI), Saratoga (FL) and Santa Fe (NM). IRV is used for overseas military voters in Louisiana, South Carolina and Arkansas who might otherwise not be able to cast a runoff ballot.

***Opportunity – Charter Review Commission:*** In January, Mayor Michael Bloomberg announced that he would be forming another Charter Revision Commission to look at placing charter amendments on the ballot in 2009 (also leaving open the possibility of 2008). Mayor Bloomberg has been vocal in his desire to reform the electoral process, and for government to be efficient and effective. His appointees will likely share a similar philosophy. IRV will change the dynamics of citywide elections, and save money. It's a win-win situation.

It is unclear how open and transparent this charter revision process will be, however, but there certainly will be opportunity for public comment. Instant runoff voting has held up well under scrutiny by charter commissions in many other jurisdictions, including earning a place on the November 2008 ballot in Memphis, Tennessee (a majority African American city that is the second largest city in the southeastern United States) by a unanimous charter commission vote.

Even if IRV earns charter review commission support, it will be important to see if it is presented as a stand-alone option or packaged with other proposals. FairVote and other supportive organizations should provide testimony and offer itself as a resource to the Commission, but also to local organizations that would like to either learn more or make an effective presentation themselves.

***Potential Timeline for Ballot Measure for Instant Runoff Voting:*** Due to term limits, there will be open seats for Mayor, Public Advocate, and Comptroller in 2009. Several Republicans and several Democrats have already declared their intention to run for the three positions. With no clear front-runner, more than one expensive primary runoff in September is a near certainty. If advocates are successful in convincing the Charter Revision Commission to place an instant runoff voting measure on the ballot in November 2009, it could possibly appear just weeks after



voters were asked to vote a second time in the runoff.

In those jurisdictions where IRV went to the polls, it passed with an average of more than 65% support. There was significant labor and multi-racial support in San Francisco and Oakland: the idea of one election, not two was very compelling to those organizations involved with get-out-the-vote activities. Very positive voter response and effective use of the system by voters of all races and educational backgrounds in IRV elections only strengthens the case for reform. And fiscal conservatives liked the fact that IRV saves millions of taxpayer dollars by eliminating an unnecessary runoff.

***Initial Assessment of needs for a ballot measure:*** There are almost 4.2 million registered voters in New York City. Voter turnout in the 2009 general election will likely be close to 1.5 million voters. Turnout drops down-ticket but based on recent election results at least 600,000 people would be likely to vote on any charter amendment proposals, even more if there is a significant interest in the issue or a strong campaign to impact turnout. For example 974,990 voted on term limits in 1993.

Instant runoff voting is still a relatively unknown reform in New York City. While there is momentum for ranked choice voting around the country, there has not been a serious, sustained, local effort focused on education and outreach. Voter education takes time, people and money. FairVote can provide educational materials and has significant (and successful) experience with similar ballot measures, but does not have a strong presence in New York City nor a large, active local membership. FairVote looks forward to partnering with local and civic organizations in presenting the case for reform. IRV ballot measures have relied on strong organizational endorsements from a wide range of good government, multi-ethnic community, business and environmental organizations, political parties, unions, and elected officials.

### **Roadmap Three: Choice Voting for City Council Elections**

New York City is the largest city in the United States with an estimated population of 8.3 million, of which 12% are Asian, Native Hawaiian and Other Pacific Islander; 24% are African American; 28% are Latino; and 34% are white<sup>5</sup>. There are approximately 4.2 million registered voters in New York City. In order for the council to reflect the full diversity of its population, FairVote believes that New York City ultimately should return to the choice voting system of proportional representation, known as choice voting (or the single transferable vote), that was used successfully in five City Council elections from 1937-1945, and for local school board elections from 1970-1999.

Following is roadmap for how choice voting could be won in New York City. There are five stages to a ballot reform effort, each with their own timeframe and resource needs. This report will attempt to address some of the opportunities and challenges of advancing proportional voting in New York City as broken down into several stages:

- Stage 1: Doing the research

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<sup>5</sup> According to the NYC Department of City Planning in 2006, <[www.nyc.gov/html/dcp](http://www.nyc.gov/html/dcp)>

- Stage 2: Building support
- Stage 3: Getting on the ballot
- Stage 4: Winning at the ballot
- Stage 5: Implementation

## Step 1: Doing the Research

### Problems with the Current System

A strong Mayor, a Comptroller, a Public Advocate and a 51-member City Council preside over this incredibly diverse city. Council members are elected in single-member districts in partisan, plurality elections (the winner receives the most votes). Ethnic communities are geographically dispersed across the five boroughs, with the high cost of housing leading to rapid gentrification in many neighborhoods.

- ***Asian American representation:*** With a population close to one million, the level of Asian Pacific Americans represented on the City Council (1 member) is disproportionately low. John Liu became the first Asian American ever elected to the New York City Council in 2001. At the time, District 20 was 37% white, 35% Asian, 22% Hispanic and 6% Black. Councilmember Liu will be term-limited out in 2009.
- ***Representation of Latino diversity:*** Latino representation in the council is heavily weighted towards Puerto Rican representation but there are growing and engaged communities with origins from Latin American nations like Dominican Republic and Mexico, among others.
- ***Representation of women:*** The population of New York City is 52% female, yet only one-third (17) of the 51 council members are women and no woman has ever been elected Mayor.
- ***Representation of political diversity:*** Although just 65% of voters are registered in the Democratic Party, more than 92% of the seats are held by Democrats (47 in all).
- ***A role for independents and Republicans voters:*** Unaffiliated voters comprise 17.6% of registered voters, but are ineligible to vote in local partisan primaries that determine the great majority of council winners. Republican Party registration is 12.1% but Republicans hold only 2 seats in the city council<sup>6</sup> even though Republicans won mayoral elections in 1993, 1997, 2001 and 2005.
- ***A role for minor parties:*** One minor party member holds a seat: Letitia James of the Working Families Party was elected to District 35 on the Working Families Party in 2003 and re-elected in 2005 (running on both the WFP and Democratic Party lines). In recent City Council elections, Green Party candidates have won 13% (District 26 in 2005), 19% (District 39 in 2003) and 20% (District 22 in 2003), but hold no seats.

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<sup>6</sup> Republican Dennis Gallagher recently resigned from District 30. A special election will be held June 3, 2008 to fill the vacancy.

## **Solution: The Choice Voting Method of Proportional Voting**

The goal of proportional representation voting systems is to provide better representation of the diverse voters of New York City. Choice voting is a ranked choice voting system where voters rank the candidates in their order of preference (1, 2, 3...) but they do so in multi-member districts. The percentage of the vote needed to win a seat depends on the number of seats. In Cambridge, Massachusetts, there are nine city council seats elected at large, the threshold to win a seat is just over 10% of the vote. In Ireland's parliamentary elections, there are between three and five seats per district, with the victory threshold varying from just over 25% in a three-seat to about 17% in a five-seat district.

Choice voting is sometimes called the "single transferable vote" or "preference voting," both of which help explain the system. Voting is literally as easy as 1, 2, 3, but tabulating ballots is more complicated. Each voter has a single vote, but ranking candidates in order of preference gives voters more chances to cast an "effective vote" (one that elects someone). Your vote "transfers" to your next choice – meaning that it counts for that choice – if your vote for your first choice does not help that candidate win.

Choice voting eliminates wasted votes because ballots are neither "wasted" on "sure winners" nor on "sure losers." To determine winners, the minimum number of votes necessary for a candidate to earn office is established – this "victory threshold" is the same as the threshold of inclusion as provided by cumulative voting and the one vote system. After tallying voters' first choices, candidates who have reached the victory threshold are elected. Any votes beyond that threshold do not remain with that candidate, however, as doing so would lead to votes being "wasted." (For example, imagine a very popular candidate winning 51% of first choices in an election for five seats. If all those votes remained with that one candidate, then a majority of voters would have only elected one seat, and the remaining 49% of voters would have elected the other four seats in violation of the principle of majority rule.) Thus, "surplus" votes beyond the winning threshold are allocated to second choice candidates as indicated on each voter's ballot (there are different methods of allocating these surplus votes).

If there are more seats to elect and all remaining candidates are below the winning threshold, then the candidate with the fewest votes is eliminated. All of his or her ballots are distributed among the remaining candidates based on which candidate is ranked next on each ballot. This process of redistributing ballots and tallying votes continues until all seats are filled.

Note that ranking a candidate after one you like can in no way affect the electoral opportunities of your preferred candidate. Choice voting thus creates incentives for voters to consider "the best of the rest" and form coalitions across racial, ethnic and neighborhood lines. In addition, choice voting avoids any incentive to "suppress" the candidacy of someone who doesn't have a strong chance to win. Such a candidate can give it their best and mobilize as many voters as possible; if he or she ends up losing, then votes cast for that candidate will move to the next best choice.

## History of Choice Voting in New York City

New York City was one of nearly dozen cities across the US to use choice voting in the first half of the 20<sup>th</sup> century. In the 1930s and 1940s, choice voting was successful in achieving the goals of increased diversity in New York. In its first election in 1937, choice voting resulted in Democrats winning only half of seats after having had a 62-5 stranglehold on the council in 1935. Adam Clayton Powell was the first African-American elected to the New York City Council under the system, and several members of smaller parties won seats, including Ben Davis, an African-American Communist.<sup>7</sup>

New York voters adopted choice voting in a landslide win as a stand-alone ballot measure in 1936 at the recommendation of a charter commission, with the quiet support of President Franklin Roosevelt who had had many battles with the old Tammany Hall political machine. In a unique approach to the system, council members were elected borough-wide, one member per every 75,000 votes won. That meant the number of seats would fluctuate based on turnout, with Staten Island having one seat and other boroughs far more. City elections were partisan, but without primaries.

Choice voting's very success in opening up city politics created strong political enemies, however. Opponents failed in two repeal attempts, but in 1947, formerly dominant machine-oriented Democrats led a successful "red scare" campaign that overturned PR over the opposition of the League of Women Voters, Citizens Union and many other civic leaders. In 1949, the very first election without choice voting, Democrats won 24 of 25 seats.

From 1969-2002, choice voting was used in the 32 community school board elections held in conjunction with non-citizen voting. The promise of increased diversity in representation was upheld: a significant number of Asian Americans were elected to their local school board, including South Asians. The system elected the nation's first Dominican officeholder, Guillermo Linares, who later became a city councilor and is the current Commissioner of the Mayor's Office of Immigrant Affairs. Long hand ballot counts, low turnout in springtime elections and perception problems tied to most parents wanting representation that reflected student population rather than voter population contributed to some frustration with the system, however. In 1998, the state passed a law to move to a less proportional system that could be counted on lever machines, but the Department of Justice refused to preclear the change in the parts of the City covered by Section Five of the Voting Rights Act – a highly unusual step that shows just how well choice voting was working in providing fair representation of racial minorities in the choice voting elections. Ultimately, elected school boards were abolished in 2003 by state legislation and control of the school system was given to the Mayor, although this law will expire in 2009.

## Arguments for Choice Voting in New York

Looking to the future, arguments for choice voting include:

- ***Choice voting is fair.*** Choice voting requires multi-member seats so you are not just

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<sup>7</sup> Appendix: Choice Voting in New York City Council Elections 1937-1947

electing a single representative, but several representatives. Each candidate must receive a certain threshold of support. Seats are won in proportion to the level of support so that under-represented communities are more likely to gain their fair share.

- ***Choice voting means better representation.*** If you want someone from your local neighborhood, rank that candidate as your first choice. But if you want someone who is the same gender, or ethnicity or sexual orientation or political ideology, you can rank that person as well. It's entirely up to you.
- ***Choice voting means greater voter choice.*** Voters are free to rank candidates without fear of vote splitting. If your first choice doesn't have enough support, your vote will transfer to your next choice. Voters may rank as few or as many candidates as they like. Under no circumstances can a later choice count against an earlier choice.
- ***Choice voting will give voters more independence.*** In the general election, voters can rank candidates within a party or across party lines or vote for an independent.

### **Background: A Brief History of Methods of Elections in New York City**

A charter city, New York City has used several methods of electing its representative bodies in the last century, including alternatives to other winner-take-all elections such as limited voting:

- **Limited voting for city council:** In the early 1960s, New York employed a single-member district system for the city council, and all members were Democrats. The City in 1963 adopted an element of multi-member limited voting by restricting political parties to only one nomination for two newly created at-large council positions in the city's five boroughs and by allowing voters only one vote for these positions.

The system was adopted to ensure that a Republican candidate would be elected in each of the five boroughs. In 1969, however, Liberal Party candidates, running on the same ticket as Mayor John V. Lindsay, were elected council members at-large at the expense of Republican candidates in three boroughs. The system subsequently was invalidated on the grounds that the system violated the U.S. Supreme Court's one-person, one-vote dictum because of the varying populations of the boroughs.

- **Single-Member plurality for council:** Before the 1991 election, a newly adopted City Charter increased the size of the Council from 35 members elected in single-member districts to 51 members elected in single-member districts. Districts were redrawn in 1991 and contributed to a significant rise in representation of people of color.

Currently, there are 51 single-member council districts. The candidate with the most votes (a plurality) wins – which means we often elect candidates who received less than 30% in the primary. Elections are held in the fall of odd-numbers years, with party primaries in September and the general election in November. Staggered terms are not statutory requirements but term limits have created de facto staggered terms, with roughly 35 open seats in 2009.

- **Two-round runoffs for primaries for citywide offices:** There are three citywide races (Mayor, Public Advocate, Comptroller). If no candidate receives at least 40% of the vote in the September primary, the top two vote getters advance to a runoff two weeks later. The two-term limit applies to citywide offices as well. All three positions will be open in 2009.

### **Elements for Choice Voting Proponents to Consider**

New York City has been willing to try different voting methods, recognizing there are several options available. As one of the most diverse cities in the world, New York has every reason to consider a proportional voting system in order to ensure diverse views and voices are elected to public office. Choice voting indeed worked particularly well for city council elections in the LaGuardia era from most contemporary reformers' perspective, but at the same time, the values of a community need to be considered, and those can change over time.

***Fair representation:*** Today the council is overall perceived as more representative than at times in the past. Just over half of the council members are either African American, Latino or Asian American. Speaker Christine Quinn is openly gay. There are several young council members, who were elected when in their 20s and early 30s. While there is only one Asian representative, these numbers theoretically might warrant only one or two more seats – there are 220,453 active Asian voters in New York City (with another 190,610 eligible for enrolment) or 5.3% of the overall 4.2 million registered voters.

***Recommendation:*** *Choice voting proponents should consult closely with voting rights organizations and representatives of racial and ethnic minorities who would be affected by adoption of choice voting.*

***District size:*** Choice voting requires at least some multi-seat districts that are larger than one-seat districts –e.g., you can't "proportionally" allocate a single seat. In the 1930s and 1940s, districts were borough-wide with a set victory threshold of 75,000 voters per seat. In the school board races, there were 32 different community school boards with 9-members each, and a threshold of just over 10% (as with the Cambridge City Council choice voting elections and Cincinnati city council elections from 1925 to 1955). There are several potential options for district size, all of which offer advantages and disadvantages depending on priorities and values:

- *3-member districts would have a threshold of 25%.* Three-seat districts would retain a high level of neighborhood, or geographic, connection so redistricting would be closely monitored - indeed a candidate would be very likely to win if gaining more than half the votes in one of the current one-seat districts within the new three-seat district. The 25% threshold means that the goals of increased diversity may not be met, however, depending on how district lines are drawn. The "transferable vote" feature of choice voting would allow people to vote freely for candidates who might short of that 25% threshold, and the higher threshold would allay concerns that "fringe" elements might get elected. The council could remain the same size if there were 17 districts of 3 members each.

- *5-member districts with a threshold of approximately 16.7%.* Five-seat districts would maintain a fairly high barrier to representation, but one that is achievable given New York City's public financing system. If there were 10 districts of 5 members each, council size would drop to 50. Possibly there could be nine five-seat districts and two three-seat districts if it was seen that Staten Island or another area in the city might want smaller districts.
- *7-member districts would have a threshold of 12.5%:* Seven-seat districts would provide greater opportunity for currently under-represented communities. If there were seven districts of 7 members each, council size would drop to 49.
- *Borough-wide districts / Mixed systems:* Although used back in five elections from 1937 to 1945, we suspect they would be seen as problematic today if used for all seats, although they offer the greatest opportunity for diversity. Not only are they reminiscent of the Board of Estimates (eliminated by the courts in the 1980s), there are dozens of neighborhoods in each borough, culturally and geographically distinct. The boroughs have different populations, so the threshold to get elected would vary depending on borough.

Borough-based districts was floated by former council member Henry Stern: the biggest four boroughs would be divided in half (Western and Eastern Queens, North and South Brooklyn, etc). One possible variation would be to have a certain number of at-large seats elected by choice voting in these districts that varied according to population in a mixed system with a certain number of single-member district – for example, there could be 36 single-member districts, and 25 seats elected by choice voting allocated into borough/half-borough districts.

*Recommendation: Develop sample district maps to illustrate variations in district magnitude*

***Voting equipment:*** As discussed in the section on incremental steps toward ranked choice voting, decades-old lever machines do not allow voters to rank candidates. If New York City chooses to purchase optical scan equipment, the ideal scenario would be for the request for proposal (RFP) and subsequent contract to require any equipment is truly ranked choice voting compatible. In the coming months, Commissioners of the Board of Election need to be educated about the potential for instant runoff voting.

*Recommendation: FairVote should draft a letter urging and explaining ranked choice voting compatibility, co-signed by a number of organizations and sent by August 2008.*

***Term limits and incumbent terms:*** A two-term limit was imposed on City Council members and citywide elected officials after a 1993 referendum backed by Ronald Lauder. According to the *New York Times*, Lauder spent \$1 million to get term limits on the ballot and another \$2 million promoting the reform. Almost 975,000 voters cast a ballot on the topic, which passed with 60% support.

Voters rejected a City Council proposal (led by then Council Speaker, Peter F. Vallone) to extend term limits to three consecutive terms, or twelve years, in 1996. Term limits first had an impact in 2001, when more than 300 candidates competed in 35 newly vacated seats. While newcomers have made their way on to the City Council in recent years, there are several familiar surnames still on office doors. Choice voting would continue to provide new voices and new ideas to City Hall, while maintaining the two-term limit.

Note that council members who were elected in 1997 were term-limited out in 2005 and their replacements will be ineligible to run in 2013 even if, as expected, most if not all win re-election in 2009. Staggered terms of service are not statutory requirements, of course, but currently there is a de facto stagger that allows the council to maintain a degree of institutional memory. If choice voting were implemented, it would cover each entire multi-member district. Likely there would be some “open seats” and some candidates running for re-election in all districts.

*Recommendation: Due to term limits, a new wave of council members will take office in 2009, most of whom then would be well-positioned to win re-election in 2013. This may impact people’s perceptions of the city council. FairVote should be ready to analyze these elections and their impact as the City heads toward redistricting in 2011.*

**Campaign finance reform and larger districts:** The Campaign Finance Board (CFB) was created in 1988 by city charter amendment, in response to corruption scandals. In 2007, the matching rate on contributions was increased from 4:1 up to the first \$250 per contribution to 6:1 up to the first \$175, to allow candidates to focus on receiving smaller contributions. With choice voting, candidates would be competing in larger districts but studies have shown that bigger districts don’t necessarily mean more expensive campaigns.<sup>8</sup>

*Recommendation: Choice voting advocates and the CFB may want to look at requirement thresholds, and the overall impact on dollars dispersed.*

**Partisan Primaries:** The current primary system disenfranchises those who are registered outside the major two political parties, in particular the 35% of voters registered outside the Democratic Party. Choice voting can be used in both partisan and nonpartisan elections, with or without primaries. When it was used in 1937-1945, there were no primaries and all voters were able to vote for all candidates who were listed with their party affiliation (they could rank as few or as many as they liked).

If primaries were eliminated entirely today, all voters would be able to cast a meaningful ballot on the full array of candidate choices. However, voters rejected a ballot proposal for nonpartisan elections in 2003 and the established political parties almost certainly would be loath to give up the control of the candidate selection process of the primary.

If primaries are retained, political parties possibly could decide how many candidates to put on the general ballot (choice voting would be used in the primary as well, to allow several candidates from each party to advance to the general). It might also create a situation where the

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<sup>8</sup> FairVote conducted a study on the impact of multi-seat state legislative districts on campaign fundraising in Vermont in North Carolina. See: <[www.fairvote.org/library/money/seats\\_costs.htm](http://www.fairvote.org/library/money/seats_costs.htm)>



threshold to get elected in a primary is different depending on the district, which might raise legal issues. However, it likely could be done, as was true when Illinois used the related system for cumulative voting in state legislative races from 1870 to 1980, and parties often decided to limit nominations to two positions in the primaries.

There is another option to consider as well. Parties could control their ballot line, but do it without taxpayers paying for their primary and administering their election. They could hold conventions, caucuses or some privately administered process. Pierce County (WA) is doing this for its new instant runoff voting elections starting in November 2008, with the major parties taking different approaches to how they nominate candidates.

*Recommendation: Advocates should talk to political party leaders and civic leaders about options that both address voter needs and politically pragmatic calculations.*

**Working within fusion voting:** In ranked choice voting systems, voters are traditionally instructed to rank candidates in their order of preference, only one ranking per candidate. But with fusion voting, New York City candidates are listed on a ballot multiple times with a different political party designation next to their name.

If choice voting were implemented, voters still would continue to rank one candidate for each choice even if that candidate appears on the ballot more than once. First choices would be aggregated by candidate and treated as a single candidate for the purposes of determining a winner, just as they are in the current system. Observers would see what share of the vote a particular candidate won on each ballot line, but after that treat the candidate would be treated as a single candidate.

That means voters would typically would want to ignore other listings of their first choice, meaning as an example a voter might rank Joe Smith on the Working Families Party line as her number 1 choice, then not rank Smith on the Democratic Party line. Doing so would just be throwing away a ranking. This is not inherently a problem and almost certainly was part of the choice voting elections for city council in 1937 to 1945. But it will require voter education to make sure voters use their rankings effectively.

Another option is to aggregate party listings, but we would not recommend it. Fusion supporters are generally not keen on that option, as it does not allow the parties to demonstrate the strength of their support.

*Recommendation: Choice voting advocates will need to develop a sensible ballot design and ballot instructions to encourage effective voting within a fusion system. City council ballots from the 1940s may provide an example of what was done in the past.*

## **Stage 2: Building support: Coalition-Building and Voter Education**

Despite its history in New York City, choice voting is relatively unknown reform among city residents. Some senior citizens may remember choice voting for council elections, but their numbers are small, and turnout was too small for local school board elections to have resonated

with most New Yorkers. While there is momentum for ranked choice voting around the country and growing use of choice voting in other nations' elections (Scotland being the latest to adopt choice voting for all its local elections), the bulk of American success and debate has focus on instant runoff voting in single member districts.

There almost certainly needs to be a serious, sustained, local effort focused on education and outreach. Voter education takes time, people and money. A national organization like FairVote can provide educational materials and has significant (and successful) experience with similar ballot measures, but does not have a strong presence in New York City nor a large, active local membership. FairVote must partner with city organizations for this educational outreach or ideally find a local organization ready to take the lead in prioritizing this reform. At this point a wide range of good government and voting rights groups are generally sympathetic to choice voting in general, but are not moving to make it a priority.

The major and minor parties in the city will need particular outreach. There is a history of choice voting being won in cities politically, but at least one of the major parties typically opposes it. There may be configurations of choice voting, however, that are able to draw consensus support.

*Recommendation: If there is interest in moving toward choice voting, a full-time staffer needs to work on building understanding of the need for choice voting in the City, probably over a period of year. FairVote or a city-based group will need to identify resources to make this possible.*

### **Stage 3: Getting on the Ballot**

#### **Getting on the Ballot Via Voter Petition**

Changes to the City Charter must be decided in public referendums. There are two paths to charter reform in New York City – by Charter Revision Commission or by voter petition. There are three paths to a Charter Revision Commission: the Mayor can call one, the City Council can pass a local law to have one and voters can petition for one under state law, Municipal Home Rule, section 36. Voters can also petition to have their reform placed on the ballot directly. There are two different sets of requirements for signature gathering, depending on the type of law being changed, spelled out in the City Charter and in Municipal Home Rule, section 37.

The number of signatures required to place a charter amendment on the ballot is 50,000 valid signatures in the City Charter, but a minimum goal should be 100,000 signatures in this highly transient city with a large number of non-citizens (130,000 were collected for term limits). Under state law, a charter-related question takes precedence over other ballot questions. Mayors in recent years have hastily called a Charter Revision Commissions to create charter questions in order to kick a voter petition off the ballot. Reformer Charles Juntikka was able to gather signatures for his campaign finance reform measure in the 1990s, but it was ultimately knocked off.

A volunteer signature effort is unlikely to succeed. Referenda are rare in New York City, so there are not many organizations with trained petition gatherers. Some efforts use a combination of paid and volunteer efforts. Smaller class size petitions were circulated – twice - but they were

able to tap into a large, geographically diverse network that was inspired by their children not getting enough time and attention at school. There was a clear problem to solve; with many people agreeing with smaller class sizes, or at least believing it should be on the ballot.

On the logistics of gathering signatures, paying signature-gathers per signature is illegal in New York State, and paying per hour makes paid signature gathering a potentially expensive endeavor. For example, Ron Lauder spent approximately \$1 million to get his term limits amendment on the ballot in 1993. Professional signature gatherers should be able to gather at least 20 signatures per hour. Full-time staff (paid or volunteer) will be needed to coordinate the petitioning effort and other campaign activities.

Past efforts to pass choice voting have included support by well-known individuals, such as Mayor Fiorello La Guardia in the winning 1936 ballot measures and Franklin D. Roosevelt, Jr. and U.S. Senators Jacob Javits and Robert F. Kennedy in a 1965 petition effort. There are problems to be solved with choice voting, and finding the face(s) to deliver that message is crucial. Still, the 1965 effort failed to gather sufficient signatures. At end of the day, all the effort for choice voting is only worth doing if victory is likely once on the ballot. For that to be true, there will need to be a civic consensus that the current system should be replaced with choice voting – certainly a broader consensus than we have today.

*Recommendation: Attempt the voter petition route only if significant financial resources are possible and there is a strong civic consensus that choice voting is needed*

### **Getting on the Ballot Via Charter Revision Commission**

In January, Mayor Bloomberg announced that he would be forming another Charter Revision Commission to look at placing charter amendments on the ballot in 2009 (also leaving open the possibility of 2008).

Although the Charter Revision Commission is being established by the Mayor, rather than by petition or motion of the City Council, there is opportunity for public input. Some good government groups are concerned that the Mayor's appointees may generally follow his lead and not engage in open inquiry. Voters are far more likely to reject Charter recommendations when the process is not seen as independent. The more reformers can contribute to an open and transparent process, the more likely voters will see any charter recommendations as legitimate. Mayor Bloomberg is interested in leaving a legacy and likely has certain goals in mind, but he also presumably does not want a repeat of the landslide defeat of his proposal for nonpartisan elections in 2003.

There easily could be momentum developed on an open-minded charter commission at least for the use of instant runoff voting for citywide primaries. Charter commissions recommending ranked choice voting in recent years include Davis, California (where choice voting then won as an advisory measure), Santa Fe, New Mexico (where instant runoff voting then won and should be implemented in future elections), Pierce County, Washington (where instant runoff voting then won and will be implemented this year) and Memphis, Tennessee (where instant runoff voting will go before the voters in November 2008.)

*Recommendation:* Use the opportunity of the Charter Revision Commission to introduce ranked choice voting for city council, using the winning 2006 Minneapolis model of ranked choice voting for all seats whether they are single-member or multi-member. The commission may be most receptive to more incremental changes involving instant runoff voting outlined above, but it makes sense to have them consider the city's history with choice voting for council as well.

### **Stages 4-5: Winning at the Ballot and Implementation**

Rather than discuss these parts of a process here, suffice it to say that winning a ballot measure can take significant resources unless there is clear consensus that the system must be changed. Instant runoff voting has a terrific track record on the ballot in recent elections, winning 13 of its last 14 it has gone before voters around the country, but campaigns require serious preparation and follow-through.

Winning reform is not enough. It needs to be implemented in a reasonable timeframe and a cost-sensitive manner. In addition to election administration issues (ballot design, poll worker training, voting equipment, etc), a major area of effort will be voter education on the new system, particularly focused on communities protected under the Voting Rights Act. Advocate must work with groups with experience doing voter engagement work with English-language learners.

The implementation stage will not be reached unless stages 1-4 are successful, but time and energy must be given to planning for implementation or else all the efforts could be for naught.

### **Moving Forward: Initial Activities for Ranked Choice Voting in New York**

Here is an example of initial activities that ideally would be done in the coming months in the wake of this analysis.

- Present this report to civic leaders in the City and solicit comment. Once a clear path of action is known through, prioritize arranging a meeting with the Mayor's Office
- Send information about ranked choice voting methods to the Charter Revision Commission, the NYC Board of Elections, the City Council and Mayor's Office
- Communication with a coalition of good government organizations who ideally will co-sign a letter to the New York City Board of Elections about including ranked choice voting-compatibility in any voting equipment contract. If a similar letter could be sent to all BOEs in the state, even better.
- Begin attending the Charter Revision Commission meetings (if they have started)
- Work with Citizens Union and other local organizations to develop a position on instant runoff voting for citywide primaries.
- Work with groups like NYPIRG to develop a position on IRV for overseas voters
- Use the special election for city council District 30 on June 3, 2008 to highlight the value of instant runoff voting in vacancies, to guarantee majority winners in a single election without fear of vote-splitting.