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January 15, 2009

Christopher Coates
Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Re: A local law to amend the New York city charter in relation to term limits

EXPEDITED CONSIDERATION REQUESTED

Dear Mr. Coates:

On behalf of the City of New York, this submission is being made under Section 5 of the Voting Rights Act for preclearance of Local Law 51 for the year 2008 ("Local Law 51"). Local Law 51 is entitled "A Local Law to amend the New York city charter, in relation to term limits for elected officials." In substance, the local law extends the term limits applicable to the City's elected officials from two to three full consecutive terms. A copy of Local Law 51 is attached hereto as Exhibit 1.

The submission consists of this letter and additional material that is organized into sections with accompanying exhibits and an appendix as noted within. In general, this submission describes the reasons why Local Law 51 is not retrogressive within the meaning of the Voting Rights Act. Most notably, the submission demonstrates the absence of a discriminatory purpose or effect, the diverse council member support for the local law, and the continued and undiminished opportunities for minority voters and indeed all voters in New York City to elect their preferred candidates given that Local Law 51 neither alters the boundaries of the City's existing, precleared election districts nor changes the method of election.

Section I. of the submission concerns the history of term limits in New York City and its initial effect on officials in the 2001 elections. Section II. summarizes changes made by Local Law 51 and briefly summarizes related legislative proposals. Section III. describes the public outreach and participation that occurred in connection with Local Law 51. Section IV. describes the enactment of the local law and its purpose with a brief discussion of the significant support

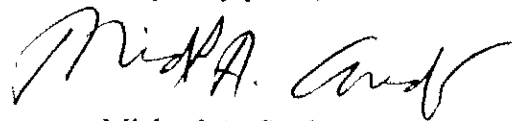
for the law from council members of diverse backgrounds. A letter from many of the council members who supported Local Law 51 accompanies this submission as Exhibit 2 and further details the reasons for the law's enactment. Sections V. and VI. describe media coverage of the law and related public debate with a specific emphasis on public discussion of the Voting Rights Act. Section VII. describes related litigations, none of which asserts claims under the Voting Rights Act. Sections VIII. and IX. consist of a legal discussion and a brief summary of data compiled in connection with the expert report of Dr. Lisa Handley, which is provided as Appendix 1 to this submission. Section X. consists of the submission's conclusion.

This submission is being made publicly available on the website of the New York City Law Department, and a reference copy is being made available at the City Hall Library, 31 Chambers Street, Room 112, New York, New York 10007.

As described in greater detail below, Local Law 51 was passed by the New York City Council (the "City Council" or "Council") on October 23, 2008, and signed by the Mayor on November 3, 2008. No election involving the changed eligibility criteria of the local law will be conducted prior to preclearance. However, City officials may be taking appropriate steps in preparation for the implementation of Local Law 51 and the 2009 election cycle.[1] Indeed, if the local law is precleared, it will take effect immediately, and apply to elections held on or after its effective date.

To provide candidates with clarity regarding the elected offices they may be permitted to seek, which will also facilitate the application of related campaign finance regulations, and to provide voters with as much notice as possible with respect to the choices of candidates in the upcoming election, we respectfully request expedited consideration of this submission. If further information is needed to review this submission, please contact Brad Snyder, Assistant Corporation Counsel, 212.442.9892, New York City Law Department, 100 Church Street, New York, New York 10007.

Very truly yours,



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[1] An independent City agency, the New York City Campaign Finance Board, has issued an advisory opinion (No. 2008-7) (attached hereto as Exhibit 3) to candidates describing the relationship between the new law and the New York City campaign finance program. Local Law 51 did not itself alter the City's campaign finance program.

I. Background

A. Justice Department Preclears Enactment of Term Limits in New York City.

Sections 1137 and 1138 of the Charter of the City of New York (the "City Charter" or "Charter"), which were added by a vote at a general election held on November 2, 1993, limited the terms of all elected officials of the City to two consecutive terms. In a decision upheld by the state's highest court, the New York State Supreme Court held that the City possessed the authority to enact term limits locally without any further State action.[2] The City sought and received preclearance for this change from the United States Department of Justice (the "Justice Department"). (Attached hereto as Exhibit 4 is a copy of the main portion of the City's initial term limits preclearance submission).

In 1996, the City Council passed a proposed local law changing the term limits provision from two to three terms. Although a referendum was not authorized by state law, the local law stated that it was subject to approval by voter referendum. The measure was included as a ballot proposal in the general election held on November 5, 1996, where it was defeated by a vote of 53.7 to 46.3 percent of those voting on the issue.[3]

B. Justice Department Preclears Legislative Changes to Term Limits in New York City.

In 2002, the City Council revisited the issue of term limits. Local Law 27 of 2002 was adopted by the City Council without a referendum. The local law enacted two changes relevant to the term limits provisions of the City Charter. Prior to enactment of Local Law 27, § 25 of the

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[2] *See Roth v. Cuevas*, 158 Misc. 2d 238 (N.Y. Sup. Ct. New York County 1993), *aff'd*, 197 A.D.2d 369 (1st Dep't 1993), *aff'd*, 82 N.Y.2d 791 (1993).

[3] As indicated in the City's previous preclearance submission in 1996, an analysis of the vote indicated that minority voters were more likely to favor extending term limits than non-minority voters. Indeed, in State Assembly districts within the City represented by African American Assembly Members, the proposal to extend term limits was *approved* by a vote in favor by 52.8 percent of those who voted on the issue to 47.2 percent against. Voters in State Assembly districts within the City represented by Latino Assembly Members, while not voting in favor of the proposal, were still more likely to support the term limits measure (47.7 percent in favor) than voters in State Assembly districts represented by non-minority Assembly Members (44.3 percent in favor).

City Charter provided that council members are elected to serve four-year terms, but that every twenty years, beginning in 2001, the four-year term for council members is replaced by two two-year terms.[4] City Charter § 1138 prohibited a council member from seeking re-election if the council member has served "two or more full consecutive terms, including at least one four year term." The result was that council members first elected in 1997 to a four-year term and re-elected in 2001 for a two-year term would be ineligible to run again in 2003, after having served only six years in office, rather than the eight years that would otherwise be allowed. Similarly, council members elected in 2003 for a two-year term and re-elected in 2005 to a four-year term would be limited to only six years in office.

Local Law 27 amended City Charter § 25 to provide that a two year term shall not be considered a full term for purposes of City Charter § 1138 but two consecutive two-year terms would constitute a full term. Thus, pursuant to Local Law 27, council members elected in 1997 (and every twenty years thereafter) were eligible to serve eight years rather than six years, and council members elected in 2003 (and every twenty years thereafter) could serve ten years rather than six years.

Local Law 27 was precleared in 2003. (Attached hereto as Exhibit 5 is a copy of the main portion of the City's preclearance submission regarding Local Law 27 accompanied by the Justice Department's preclearance letter). As a result of the law's implementation, eight council members who would otherwise have been term-limited in 2003 were eligible to run for re-election. A Council staff report relating to Local Law 27 noted that five of the eight council

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[4] Terms are shortened every twenty years in order to enable changes in Council district lines to be adopted sooner after the completion of the decennial census. This provision was adopted by the voters in 1989 on recommendation of a charter revision commission, and was precleared.

members who were eligible for re-election pursuant to the new law were members of racial or language minority groups. *See* Exhibit 6.

A lawsuit challenging Local Law 27 was filed prior to the City's preclearance submission. Opponents challenged the law on the grounds that it (i) violated City Charter § 38 and New York State Municipal Home Rule Law § 23, which requires a referendum for any local law that "changes the term of an elective office," or "abolishes, transfers or curtails any power of an elective officer" and (ii) changed by legislation a Charter amendment adopted by the voters. The opponents further alleged that because Local Law 27 would permit some council members to serve ten consecutive years in office, it contravened City Charter § 1137, which referred to a "public policy" that limited council members to "not more than eight consecutive years" in office.

The court rejected all of the opponents' claims, holding that the aforementioned statutes did not require referenda for term-limits legislation and that the City Council could amend a Charter provision governing term limits, even if enacted first by referendum, because:

> …laws proposed and enacted by the people under an initiative are subject to the same constitutional, statutory and charter limitations as those passed by the Legislature.

Golden v. New York City Council, et. Al., 305 A.D. 2d, 598, 600 (2d Dep't 2003), *appeal denied*, 100 N.Y. 2d 504 (2003) (internal citation omitted).

C. Application of Term Limits in New York City.

In the 2001 general election, term limits for the first time directly affected the City's elected officials.[5] Thirty six of the fifty-one members of the City Council were, by virtue of term limits, prohibited from seeking re-election. Local newspaper coverage of the turnover noted that the Council remained racially and ethnically similar even after the large turnover occasioned by

[5] The term limits provisions applied only to terms of office beginning on or after January 1, 1994. *See* Exhibit 7.

term limits. *See* Exhibit 8. Indeed, this coverage was essentially accurate: at the time of the general election in 2001, the Council included twenty-three minority council members; at the beginning of 2002, the post-term limits City Council included twenty-five minority council members, a growth that largely mirrored minority gains made in the two elections held prior to term limits having any effect on council members. The impact, or rather non-impact, of term limits on the backgrounds of City elected officials is discussed in greater detail in Section IX. below and in the expert report of Dr. Lisa Handley, submitted as Appendix 1 to this submission (the "Handley Report").

II. Summary of Changes Made by Local Law 51 and Related Proposals

Local Law 51 amends § 1138 of the City Charter to change the limit on the number of terms that elected City officials may serve consecutively from two to three four-year terms. *See* Exhibit 1. The law also amends Charter § 1137 to declare that the public policy underlying term limits is most appropriately served by limiting the time such officials can serve to not more than three full consecutive terms. *Id.* Mayor Bloomberg, council members and other supporters of the measure explained that Local Law 51 was intended to enhance the range of choices available to voters during a time of economic crisis. *See e.g.*, Exhibit 9 at 172, Lines 17-23; Exhibit 10 at 323, Lines 10-15.[6] Put another way, Local Law 51 provides voters who believe the City would be best served by maintaining continuity of leadership at least the *option* of choosing from among those experienced officials who may decide to seek re-election. Further, council members noted that many of the incumbents who would be impacted by Local Law 51 are themselves from communities that historically have been underrepresented and, with a change to term limits, might achieve the level of influence on behalf of their constituents often associated

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[6] All of the relevant transcripts of proceedings before the City Council and its Committee on Governmental Operations are attached hereto as exhibits and referred to within the text.

with greater experience. *See, e.g.*, Exhibit 11 at 15-17. Finally, there was testimony from supporters of the measure that three terms rather than two would enable council members and other City officials to acquire the experience necessary to best represent the City's residents. *See, e.g.*, Exhibit 10 at 112, 115; Exhibit 12 at 11-13. (As noted above, a letter from many of the council members who voted in favor of Local Law 51, which further explains their reasons for supporting the measure, is attached hereto as Exhibit 2).

In addition to Local Law 51, the City Council's Committee on Governmental Operations also considered three additional proposals relating to term limits:

Proposed Int. No. 850-A: Proposed Int. No. 850-A would amend Section 38 of the City Charter to require that any changes to Sections 1137 or 1138 of the charter be approved only by the electors in a referendum.

Preconsidered Introduction (later designated Int. No. 858): The preconsidered Introduction (now known as Int. No. 858) would provide for the creation of a charter revision commission appointed by the City Council. The bill's stated purpose in seeking to establish the commission is to provide an opportunity for a "vote by referendum at a special election in early 2009 on a proposal to amend the term limits provisions of Chapter 50 of the City Charter together with such other or further charter amendments or revisions that the Charter Revision Commission recommends."

Resolution 1640: Res. 1640 would call upon the State Legislature to adopt legislation amending the State Home Municipal Home Rule Law to give the City the authority to amend its charter in order to require that any change in the City's term limits law be subject to voter referendum.

In addition to the proposals listed above, which were debated publicly by the Council committee and the public (but never voted upon), the full Council considered an amendment to the Introduction (Int. 845-A) that was ultimately adopted as Local Law 51. The amendment, which would have required a referendum for the change to term limits, was defeated by a vote of 22 for and 28 against, with one abstention. *See* Exhibit 13 at 59. All of the proposals are attached hereto as Exhibit 14.

III. Public Outreach and Participation

Public hearings on Local Law 51 and the additional proposals were held before the City Council's Committee on Governmental Operations on October 16 and 17, 2008.

A. Day One of Public Hearings

The first day of public hearings occurred on October 16, 2008. Council Member Simcha Felder, Chair of the Committee on Governmental Operations, presided over the hearing that commenced at 1 p.m. and extended until 11:30 p.m to ensure that members of the public wanting to voice their opinions could be heard. *See* Exhibit 10. Extensive media coverage and communications from various organizations advised the public of the conduct of the hearing and that participation was fully open to the public. *See, e.g.,* Exhibit 15. The hearing was broadcast live on several local television stations and streamed over the Internet on numerous websites.

At this first day of hearings, approximately seventy-five individuals testified before the Council committee, including current and former elected officials, leaders and members of prominent nonprofits, unions, religious organizations, public interest groups and other members of the public. *See* Exhibit 10. Sentiment among the audience and council members was mixed. Much of the opposition focused on the process by which the extension of term limits was being achieved, while much of the support focused on providing voters with more choice at the polls.

Some of the debate also turned on the merits of the Mayor's performance in office. There was testimony both that term limits help and that they hurt minority voters. References to the Voting Rights Act (the "VRA") in particular are discussed in Section VI. below.

The first day of hearings concluded after more than ten hours of testimony.

B. Day Two of Public Hearings

A second day of public hearings, lasting nearly four and a half hours, occurred on October 17, 2008. The hearing again featured the testimony of various officials and interested organizations, comment from members of the public and a spirited debate among council members. *See* Exhibit 12.

Over the course of the two days of hearings, nearly one hundred fifty people testified on both sides of the debate. *See* Exhibits 10, 12.

IV. Enactment of Local Law 51 and Additional Public Forum

A. Committee and Council Vote on Local Law 51

On October 23, 2008, the City Council's Committee on Governmental Operations voted unanimously in favor of Local Law 51. *See* Exhibit 11. The full City Council then considered the bill in a proceeding which, like the committee's deliberations, was open to the public. The City Council passed the bill by a vote of 29 in favor and 22 opposed. *See* Exhibit 13.

B. Minority Council Member Support of Local Law 51

It bears acknowledging that council members and other elected officials support legislative initiatives for a host of different reasons. The City cautions against viewing legislative votes through the prism of a council member's individual racial or personal background. Nonetheless, in the Voting Rights Act context, relevant authorities have of course

considered the racial make-up of decision-making bodies and the related breakdown of legislative votes when assessing whether a change is retrogressive.[7] It is thus significant that seventeen of the twenty-five minority council members, or 68 percent, voted in favor of Local Law No. 51. *See* Handley Report at 9-10. This compares favorably with the 46 percent of non-minority council members (twelve of the twenty-six members) who also voted in favor of the law. *Id.* As detailed in the Handley Report, minority council members were more likely than non-minority council members to support Local Law 51 even when controlling for whether the council member was facing the prospect of being term-limited from office. *Id.* Indeed, 50 percent of minority council members who would be eligible for re-election without a change to term limits voted in favor of the measure compared with 17 percent of non-minority council members in the same situation. *Id.* Overall, of the twenty-nine council members who voted in favor of Local Law 51, seventeen or 59 percent were racial or ethnic minorities. *Id.* Accordingly, by any measure, minority council member support for the extension of term limits was strong, and the measure would not have been adopted without such support.

C. Mayor Bloomberg's Public Hearing and Bill Signing

Pursuant to Municipal Home Rule Law §20(5), the Mayor of the City of New York, before signing into law any measure adopted by the City Council, must hold a public hearing in which members of the public are given the opportunity to convey their views. On November 3, 2008, the Mayor, accompanied by several council members, held the hearing. The hearing lasted nearly four and a half hours and provided members of the public and elected officials two

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[7] *See Georgia v. Ashcroft*, 539 U.S. 461, 484 (2003) ("The representatives of districts created to ensure continued minority participation in the political process have some knowledge about...whether the proposed change will decrease minority voters' effective exercise of the electoral franchise"); *see also, e.g.*, Justice Department Objection Letter, dated September 12, 2006, to Randolph County, Georgia at 3 (noting as a factor for purposes of Section 5 the racial background of members of a local board of registrars who made a change that affected eligibility of black candidate) (attached as Exhibit 16).

minutes each to speak. The sentiments offered to the Mayor were again divided with some arguing that the change to term limits should be accomplished, if at all, by a referendum and others emphasizing that the law would merely give voters greater choice next November to return incumbents to office if they choose to do so. *See* Exhibit 9 at, *e.g.*, 37, Lines 10-18; 49, Lines 8-12. The Mayor signed the bill into law that afternoon after explaining to attendees at the hearing:

> I am going to sign the bill and the public is going to have a choice. They're going to have more choice than they would have if I didn't sign the bill, and if the City Council didn't act. Then, it's going to be up to everybody that's running to make their case as to why the public should return them or replace them, and I think that that really is the right balance for democracy.

Id. at 172, Lines 17-23.

V. Publicity Relating to Local Law 51

Extensive media coverage accompanied the lead-up to consideration of Local Law 51 and continued through its enactment and in the days and weeks following the Mayor's signing of the bill. The City has attached as Exhibit 17 representative news coverage from major area newspapers, including items from newspapers serving the City's diverse communities, and editorial and opinion pieces on the matter, including columns authored by opponents of the measure.

Characterizing the tenor of the coverage is of course a matter of some subjectivity. The change was plainly one that proved controversial and generated heated debate among citizens, interested organizations, journalists and elected officials. The editorial boards of the City's three newspapers with the largest circulations endorsed the change. *See* Exhibit 18. It is fair to say, however, that the coverage demonstrated a variety of opinions with respect to the *merits* of the extension as a matter of public policy – whether term limits are beneficial and, if so, whether two

terms or three terms or some other number is the appropriate limit. There was also considerable debate concerning the method by which Local Law 51 was enacted with many opponents arguing the change should have been accomplished, if at all, by a voter referendum. *See, e.g.*, Exhibit 10 at 125, Lines 6-24. Enactment of the law has also generated several litigations. *See* Section VII. below.

VI. Public Discussion and Communications Regarding the Voting Rights Act

The Voting Rights Act and the preclearance process were discussed publicly in connection with Local Law 51. For example, Council Member Joel Rivera, who voted for the legislation, said:

> Well, I believe in my humble opinion that the vote – the Justice Department will approve what we're doing here today. They will do so because changing the term limits issues from two terms to three terms is not, and I repeat, is not going to diminish the opportunity for members in the minority communities to exercise their vote in the ballot.

Exhibit 13 at 62, Lines 7-15. In contrast, Council Member Letitia James, who voted against the legislation, said:

> Recent data has indicated to me that in fact we have increasing numbers of people of color, particularly Latinos in the City of New York, and as a result of that all of the districts in this City Council will change to reflect the demographic shift in the City of New York. And therefore to do this change right now, in my opinion, in my humble opinion, is a flagrant and egregious disregard of the [ ] burgeoning black and Latino voting strength in the City of New York.

Exhibit 10 at 86-87, Lines 17-25; 4-6.[8]

Opponents of Local Law 51 have also publicly suggested that the extension of term limits from two terms to three terms will negatively impact minority representation in the future

[8] Additional references to the Voting Rights Act, among others, can be found at Exhibit 12 at pp. 274, 299; Exhibit 10 at 286. Although the argument with respect to Local Law 51's alleged negative impact on minority voters was not spelled out with great precision, the City specifically addresses such allegations in Sections VIII.-IX. below.

City Council and in citywide offices. The argument appears to be premised on a supposed link between the original enactment of term limits and increases in minority representation on the City Council. *See e.g., New York Times*, "The Future of Term Limits Is in Court," October 24, 2008 (*see* Exhibit 17) (quoting Randy Mastro, attorney for plaintiffs in a related litigation described below, as saying: "It's clear that term limits have worked to increase representation among minority groups.") The evidence for this supposed connection appears to consist, in major part, of the observation that "there are now more members of the minority groups serving on the council than there were before term limits were instituted." *Mastro*, "Third Time's the Harm," *New York Times*, Op-ed., October 8, 2008 (*see* Exhibit 17). However, as discussed at greater length in Section IX. below and in the Handley Report, these arguments lack support and redistricting and demographic changes are the primary explanatory factors for the increase in minority representation. *See* Handley Report at 10.

Finally, the City has received communications concerning its Section 5 submission from interested persons. For example, the City has received communications inquiring about the timing of the submission and its public availability. In addition, the City has received a letter from two members of the United States Congress requesting that the City delay its submission until after President-elect Obama takes office. As the City's letter in response indicates, this submission is being provided as promptly as possible, without regard to such political considerations. *See* Exhibit 19.[9]

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[9] The Voting Rights Act also was invoked during debate over the practicability of pursuing other means of legislating, such as appointment of a local charter revision commission. *See* Exhibit 10 at 69-70. For the reasons described in Section VIII.E. below, the means of enacting Local Law 51 were wholly lawful and are not relevant to whether it would have a retrogressive effect for purposes of Section 5.

VII. Litigation Concerning Local Law 51

One lawsuit filed before Local Law 51 was enacted has since been voluntarily withdrawn. *De Blasio & James v. Conflicts of Interest Board of the City of New York and the New York City Council*, Index No. 114189/08 (N.Y. Sup. Ct. N.Y. County) (filed October 22, 2008) (the "*de Blasio/James* Action"). In the *de Blasio/James* Action, New York City Council Members Bill de Blasio and Letitia James sought an order temporarily restraining the City Council from voting on the bill and overturning an opinion of the New York City Conflicts of Interest Board ("COIB"). The COIB had issued an opinion on October 15, 2008 explaining that council members would not be acting in contravention of the City's conflict of interest laws by deliberating and voting on the bill. *See* Exhibit 20. The Board, citing relevant authorities, noted that preventing council members from acting on any matters that could have an impact on their political prospects "would bring democratic government to a halt." *Id.* at 9.

The Court, ruling in favor of the City Council and the COIB, declined to issue a temporary restraining order because doing so would have constituted an undue interference with the legislative process. Plaintiffs voluntarily discontinued this action on November 3, 2008. Council Members de Blasio and James are now plaintiffs in one of the additional actions described below, the *Molinari* Action, and are represented by the same counsel that filed the *de Blasio/James* Action.

Three additional lawsuits (including the *Molinari* Action) have challenged the validity and/or legality of Local Law 51. One lawsuit was filed after the bill was signed into law on November 3, 2008. *Molinari v. Bloomberg*, Civ. No. 08-4539 (CPS) (JO) (E.D.N.Y.) (filed November 10, 2008, amended complaint filed November 17, 2008) (the "*Molinari* Action"). Two lawsuits were filed prior to the bill signing. *Cohen v. Bloomberg*, Index No. 114235/08

(N.Y. Sup. Ct. N.Y. County) (filed October 21, 2008) (the "*Cohen* Action"); *Scheiner v. Bloomberg*, Civ. No. 08-9072 (SHS) (S.D.N.Y.) (filed October 22, 2008) (the "*Scheiner* Action"). None of the lawsuits allege violations of the Voting Rights Act.

Molinari Action: The *Molinari* Action was filed by three council members, the City Comptroller, the Public Advocate, individual City voters and other interested organizations. It alleged that Local Law 51 violates the Due Process Clause and the First Amendment, contravenes the State's Municipal Home Rule Law (which requires that certain changes to the City Charter be made by referenda), and derives from a vote taken in violation of the City's conflict of interest laws. Plaintiffs sought a declaratory judgment that Local Law 51 is unconstitutional or otherwise invalid on these grounds. The *Molinari* Court denied Defendants' motion to transfer the case to the court hearing the *Scheiner* case. Defendants subsequently filed a motion to dismiss the action. Contemporaneously therewith, Plaintiffs moved for summary judgment. Oral argument for the pending motions was held on January 5, 2009.

By Memorandum & Order, dated January 13, 2008, a federal district court judge granted the City summary judgment and dismissed all of the *Molinari* plaintiffs' federal and state claims finding, in part:

> It is not unreasonable to maintain that government will be more effective and efficient if legislators are permitted to serve for longer periods of time. Longer-serving legislators have greater experience in solving problems, greater familiarity with the procedures and logistics of government, and more developed relationships with other actors in government that permit them to serve their constituents efficiently. In addition, permitting incumbents to run for reelection places the choice of leadership in the hands of voters, who must examine the records of legislators and determine if their prior service merits another term. Facilitating democratic choice over leadership is undeniably a legitimate purpose in a democracy.

See Exhibit 20A at 35 (*Molinari v. Bloomberg*, Civ. No. 08-4539 (E.D.N.Y. January 13, 2009)). In addition to rejecting the plaintiffs' constitutional claims, the Court held that under state law, the City Council was not required to conduct a referendum before adopting Local Law 51. The Court also rejected the plaintiffs' contention that the City's conflict of interest law was violated by the Council's adoption of the law.

Cohen Action: Plaintiffs in the *Cohen* Action are four residents of New York City who seek to represent a class of all "electors" in the City. The suit alleges that the Mayor and members of the City Council violated Chapter 68 of the City Charter (the City's conflict of interest laws) by voting to extend term limits. Plaintiffs seek a declaration that Local Law 51 is null and void or, alternatively, that the extension of term limits should only apply prospectively, *i.e.*, to City officials elected at the general election in November 2009 and thereafter. Defendants filed a motion to dismiss the complaint for legal insufficiency on December 15, 2008. It is expected that this motion will be fully briefed by January 26, 2009.

Scheiner Action: Plaintiffs in the *Scheiner* Action are ten New York City school teachers. They have sued the Mayor and the members of the City Council who voted in favor of Local Law 51, alleging that the passage of the law violated Defendants' oaths of office and Plaintiffs' right to vote since it modifies the City's term limit provisions without a voter referendum. Plaintiffs seek a declaratory judgment enjoining enforcement of the law and declaring that the law violates the federal and State constitutions. Defendants filed a motion to dismiss on November 7, 2008. By Order dated December 10, 2008, the Court noted that Plaintiffs had not filed opposition papers to Defendants' motion to dismiss, and that unless opposition was filed by December 12, 2008, the Court would either dismiss the action pursuant

to Fed R. Civ. P. 41(b) or determine the motion on the existing papers. Defendants have not yet received opposition papers from Plaintiffs.

The City believes that all of the lawsuits lack merit and is contesting each one vigorously. Given the need for the City's voters and candidates to have clarity with respect to the upcoming election, the City respectfully requests a determination with respect to this submission without regard to the status of the litigations.[10]

VIII. Legal Discussion

A federal court that rejected the claim that the imposition of term limits violated the U.S. Constitution provided words of caution that are equally applicable here:

> It is appropriate to begin with what this matter is not: a political philosophy debate about the merits and demerits of term limits. On this, reasonable minds have differed since the founding of the Republic.

Dutmer v. City of San Antonio, 937 F. Supp. 587, 588-589 (W.D. Tex. 1996) (upholding imposition of term limits in municipality as not violating Federal or State constitutional protections). Although some of the debate accompanying passage of Local Law 51 has understandably focused on the efficacy of terms limits, that is a recurring policy debate for the public and legislative fora. The outcome of such a debate is not dispositive in the Voting Rights Act context.

This is also not a controversy that pits one set of actors who value diversity against another set of actors who do not. To be clear, we can all agree that the City of New York derives many of its greatest strengths from the diversity of its residents. In turn, the diversity of its

[10] One additional lawsuit, which does not challenge Local Law 51, was filed in New York State Supreme Court by three first-time candidates for City Council in connection with the Campaign Finance Board's advisory opinion concerning the treatment of campaign expenditures by candidates who, prior to Local Law 51, had declared their candidacies for higher office. By Order dated January 1, 2009, the court granted the defendant's motion to dismiss the action for failure to state a cause of action.

elected officials has proven to be a major asset as the City confronts the myriad of challenges associated with managing a large, dynamic and complex municipality. Both supporters and opponents of Local Law 51 can share an equally strong dedication to the cause of civil rights and voter equality.

A. Standard of Review

Section 5, in relevant part, requires that the covered jurisdiction demonstrate:

> (a) ....that [any] qualification prerequisite, standard, practice, or procedure neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 4(f)(2) [42 USCS § 1973b(f)(2)]...

42 U.S.C. § 1973c(a). "A change affecting voting is considered to have a discriminatory effect under Section 5 if it will lead to a retrogression in the position of members of a racial or language minority group (*i.e.,* will make members of such a group worse off than they had been before the change) with respect to their opportunity to exercise the electoral franchise effectively." 28 C.F.R. 51.54(a) (citing *Beer v. United States*, 425 U.S. 130, 140-42 (1976)).

As the City demonstrates below, in the absence of discriminatory intent or other invidious circumstances not present here, Local Law 51 and other similar term limits laws are broadly applicable to all elected officials without regard to race or ethnicity, and neither their enactment nor subsequent amendment or repeal are retrogressive within the meaning of Section 5.[11]

B. Local Law 51 was enacted without any discriminatory purpose.

As demonstrated by the representative news coverage, City Council hearing transcripts, and related litigations, Local Law 51 has generated significant controversy in the City. It is

[11] For reasons that the City believes are self-evident from the nature of the term limits legislation, this submission does not focus on minority-language voters. The VRA protections afforded to such voters – *e.g.*, the printing of election-related materials in voters' native language – are not even arguably implicated by the changes discussed herein.

telling, however, that despite the heated debate on both sides, the City is unaware of any substantive allegation that passage of Local Law 51 was motivated by a discriminatory purpose. Moreover, no evidence exists that could ever support such an allegation. The significant minority council member support for Local Law 51 (*see* section IV., B. above) only reinforces the absence of a discriminatory purpose as does the fact that *all* two-term elected officials in the City, regardless of their backgrounds, are similarly affected by the change.

Because there is no discriminatory purpose, the only issue to address is whether Local Law 51 will result in a retrogression for minority voters within the meaning of Section 5.

C. As a matter of law, Local Law 51 does not diminish or even affect the opportunity or ability for minority voters to elect their preferred candidates or otherwise violate Section 5.

A change in term limits from two terms to three terms does not affect in any way the boundaries of the relevant election or council districts. The current districts resulted from extensive study by a commission to ensure that they were not retrogressive, were the subject of several rounds of public hearings, and were created pursuant to the strict procedures mandated by City Charter § 51. The districts were duly precleared under Section 5 and remain in effect. The change also has no impact on the number of majority-minority districts or the manner by which voters choose their representatives. Voters within each district will be eligible to participate and elect candidates of their choice in the upcoming election in precisely the same manner as existed in the last election. Minority voters, indeed all voters, thus stand in the same position as before the change.

The term limits change therefore is distinguishable from the types of practices or procedures that have not been precleared by the Justice Department. For example, in 2002, the Justice Department objected to a Florida redistricting plan that eliminated a county's lone

majority-Hispanic district. *See, e.g.*, Justice Department Objection Letter, dated July 1, 2002, to State of Florida at 3 ("Because the plan *eliminates that ability*, it is retrogressive.") (emphasis added) (attached as Exhibit 21 hereto). Likewise, the Justice Department has objected to changes from a single-member district system to at-large elections, *see, e.g.*, Justice Department Objection Letter, dated August 12, 2002, to Freeport, Texas (attached as Exhibit 22 hereto). These are practices that historically have proven detrimental to the ability of minority voters to participate effectively in the political process.

Ability or opportunity to elect candidates, to be sure, is not synonymous with being provided a safe seat or a guaranteed electoral result. The Supreme Court has, in fact, rejected the notion that Section 5 is directed at ensuring the success of minority-preferred candidates at the ballot box:

> Nonretrogression is not a license for the State to do whatever it deems necessary to ensure continued electoral success; it merely mandates that the minority's opportunity to elect representatives of its choice not be diminished, directly or indirectly, by the State's actions. We anticipated this problem in *Shaw I*, 509 U.S. at 655: 'A reapportionment plan would not be narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression.'

Bush v. Vera, 517 U.S. 952, 983 (1996); *see also* 42 U.S.C. § 1973(b) (Section 2 of the VRA) ("nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population."). The *Vera* decision is thus consistent with the plain language of the statute. *See* 42 U.S.C. § 1973c(b) ("ability of any citizens...to elect their preferred candidates of choice").

In light of the governing standard under Section 5 and its focus on retrogression, it is unsurprising that the City's research has disclosed no objection to a Section 5 submission that turned on issues relating to the imposition, amendment or abolition of term limits. *See* "Section

5 Objection Determinations," available at http://www.usdoj.gov/crt/voting/sec_5/obj_activ.php.[12] The apparently consistent record of preclearance of term limits-related changes cannot be explained away by assuming that such changes relate only to the *enactment* of term limits, as opposed to their extension or repeal. First, as explained in Section I. above, the City itself has received preclearance for both the initial enactment of term limits and subsequent changes affecting the term limits law.

Second, as evidenced by the precleared Section 5 submissions attached as exhibits hereto, the Justice Department has on a number of occasions precleared both the repeal of term limits and, like Local Law 51, an extension of the number of terms that can be served by elected officials. *See* Exhibit 24 (preclearance of term limits-related changes in eight jurisdictions throughout the United States, including seven jurisdictions that sought to repeal term limits entirely). For example, in late 1997, the suburb of Chandler, Arizona sought preclearance of a charter amendment that extended the term limit for the mayor and local council members from two, two-year terms to four, two-year terms. *Id.* The extension, which applied to incumbent elected officials there just as Local Law 51 applies to officials in New York City, was precleared by the Justice Department in February of 1998. *Id.* Likewise, the Justice Department has precleared the *repeal* of term limits applicable to a broad range of elected offices from mayors and city councils to local school boards and municipal bodies. *Id.*

This history reflects the apparent recognition that the enactment, repeal, or extension of term limits are simply not the type of voting change that, absent extraordinary circumstances not

[12] Although the City of Douglas, Arizona never received preclearance for a series of changes, one of which concerned term limits, it appears that the Justice Department's concern in that instance centered on the proposed change from a straight district system to a hybrid district/at-large system that could dilute minority voting strength. *See* Fischer, H., "Does Tucson Have A Better Idea," *Phoenix New Times*, dated April 5, 1989 (attached hereto as Exhibit 23) (referencing Douglas, Arizona); http://www.usdoj.gov/crt/voting/sec_5/az_obj2.php (1983 Douglas, Arizona submission). Likewise, a Dallas, Texas submission that appears to have included a term limits-related proposal, was objected to on the basis of a change to a so-called 10-4-1 method of election. *See* http://www.usdoj.gov/crt/voting/sec_5/tx_obj2.php (1991 Dallas, Texas submission).

present here, would result in a retrogression in the position of racial or ethnic minority voters to effectively exercise the franchise. Absent racially discriminatory intent, term limits by definition affect all candidates and their constituencies in precisely the same manner, and thus are not changes found to violate Section 5.[13]

Finally, at least one court has specifically rejected the notion that a term limits change that applies to all elected officials can be viewed as violating the Voting Rights Act or the U.S. Constitution. In *Lowe v. Kansas City Bd. of Election*, 752 F. Supp. 897 (W.D. Mo. 1990), plaintiffs sought to invalidate a newly enacted city charter amendment imposing term limits on council members. Limiting the terms to eight years left only four of the twelve incumbent council members eligible for re-election. All four still eligible were white; the disqualified council members included whites and blacks as well as a Hispanic member of the council. Plaintiffs therefore alleged a violation of the VRA and the equal protection clauses of the 14th and 15th amendments of the U.S. Constitution. The Court held:

> The charter amendment does not as a matter of law dilute or abridge minority group voting strength in a manner that differs from its effect in districts dominated by white voters. All council members of whatever race or national origin will be subject to the two-term limit.

Lowe v. Kansas City Bd. of Elections, 752 F. Supp. at 901. Although *Lowe* involved Section 2 of the VRA, the relevance for present purposes is the court's refusal to allow what it termed an "accident of history" – *e.g.*, the fact that the council members still eligible for re-election resided in white districts – to drive its Voting Rights Act analysis. *Id.* at 900. The same logic applies here: the potential changes in candidate eligibility occasioned by Local Law 51, which applies to

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[13] Whether a term limits-related initiative is enacted by voter referendum or by local law does not change the analysis for purposes of Section 5. The precleared submissions reviewed by the City included a repeal of term limits accomplished by local ordinance in addition to others accomplished by referendum. *See* Exhibit 24. The City addresses the irrelevance of the method by which Local Law 51 was enacted in Section VIII.E., below.

all of the City's elected officials regardless of their backgrounds, cannot constitute a retrogressive change within the meaning of Section 5.[14]

D. Legislative changes that potentially benefit incumbents do not diminish the ability of minority voters to elect their preferred candidates within the meaning of the VRA.

The legislative motivation for passage of Local Law 51, including the desire to provide voters with greater choices among candidates during a time of significant challenge, was already described in Section II. above and in the accompanying letter from City Council members. *See* Exhibit 2. Given the absence of discriminatory intent, some opponents of Local Law 51 have alleged another, supposedly impermissible motivation behind passage of the law: the desire to benefit incumbents. The allegations with respect to the motive of incumbency protection are accompanied by a prediction about future elections: Local Law 51 will result in virtually all incumbents deciding to seek re-election and then ultimately winning a third term. Even if such allegations that Local Law 51 was motivated by incumbency protection were true (and they are not), they would not form a basis for voiding the law pursuant to Section 5 of the Voting Rights Act.

The Section 5 retrogression standard does not turn on speculation or on the vagaries of individual candidates' decisions, nor does it turn on the strength of potential challengers to incumbents. The focus of the Voting Rights Act, of course, is on voters. The plain language of the VRA and relevant jurisprudence suggest that the presence of incumbents on the ballot, regardless of their alleged electoral strength, does not diminish the opportunities afforded to

[14] A number of elected officials of varied backgrounds have indicated their intention not to run for a third term and instead to seek a different elected office, or to retire, regardless of whether Local Law 51 is precleared. *See, e.g.*, "Betsy Gotbaum Says She Will Not Seek Re-election as the City's Public Advocate," *New York Times*, dated October 28, 2008, available at http://www.nytimes.com/2008/10/28/nyregion/28advocate.html; "Low-Key Comptroller Promises a Vigorous Run for Mayor," *New York Times*, dated December 9, 2008, available at http://www.nytimes.com/2008/12/09/nyregion/10thompson.html (noting that two-term Comptroller William Thompson will run for Mayor in 2009).

minority voters. Were the opposite true, the Voting Rights Act would be continually misused as an incumbency-mitigation device. Whatever the merits are of efforts to diminish the power of incumbency, it is clear that the VRA is not the means by which such changes are to be accomplished.[15]

The issue of alleged incumbency protection efforts has arisen frequently in the context of redistricting where it is not unusual for legislators to draw district lines in ways that minimize the electoral threat posed to incumbents. The U.S. Supreme Court has repeatedly recognized that incumbency protection efforts, without more, are not unlawful. *See e.g., Gaffney v. Cummings*, 412 U.S. 735, 753 (1973) ("Politics and political considerations are inseparable from districting and apportionment...The reality is that districting inevitably has and is intended to have substantial political consequences"); *Vieth v. Jubelirer*, 541 U.S. 267, 305-306 (2004) (plurality opinion stating that no judicially enforceable limit exists on the political considerations that the States and Congress may take into account when districting). Courts have appropriately drawn the line when race is used as a proxy for political characteristics or in similar circumstances such as when voters are specifically excluded from a district based upon race because of a likelihood of voting against a particular officeholder. *Clark v. Putnam County*, 293 F.3d 1261, 1271-72 (11th Cir. 2002) ("Incumbency protection achieved by using race as a proxy is evidence of racial gerrymandering"); *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440-442 (2006). Courts do not, however, enter the political sphere to mitigate the power of incumbency with judicial standards aimed at enhancing electoral competition or the odds for challengers. *See N.Y.*

[15] The City's recently amended campaign finance law may mitigate some of the success that incumbents have enjoyed: the public matching funds program now matches, subject to certain restrictions, each dollar a New York City resident gives, up to $175, with six dollars in public funds (an increase from four dollars), for a maximum of $1,050 in public funds per contributor. See "A Brief History of the CFB," at 2007, available at http://www.nyccfb.info/press/info/history.aspx. The upcoming election will be the first to utilize the $6- to-$1 matching fund provisions.

State Bd. of Elections v. Lopez Torres, 128 S. Ct. 791, 799 (2008) ("None of our cases establishes an individual's constitutional right to have a 'fair shot' at winning the party's nomination. And with good reason. What constitutes a 'fair shot' is a reasonable enough question for legislative judgment...")

Redistricting plans, unlike Local Law 51, alter the boundaries of districts and their demographics. The plans can therefore directly influence the ability of minority voters to elect their preferred candidates such as when existing minority voters within a district are diffused across districts or, alternatively, when all minority voters are packed into one district at the expense of opportunities enjoyed elsewhere. Redistricting plans, however, do not violate the Voting Rights Act simply because they may be (and frequently are) motivated, in part, by a desire to protect incumbents.

Again, the City has already detailed voter choice as the motivation for enacting Local Law 51 in Section II. above. However, even if Local Law 51 were viewed as motivated by a similar incumbency-protection goal, it does not violate Section 5 because, as already explained, it does not change the opportunities afforded minority voters to elect their preferred candidates. It is indeed unlikely that a retrogressive change could attract significant support from council members of such diverse backgrounds and representing such diverse constituencies. The point is that even if alleged motivations of incumbency protection were true, it would remain irrelevant for purposes of Section 5.

Further, the entire argument with respect to the power of incumbency and its connection to term limits neglects two additional points. First, the argument necessarily rests on the assumption that the incumbent cannot be the preferred candidate of minority voters. Voters of all backgrounds, however, may frequently choose to support an incumbent: as a reward for

previous good work by the elected official; in recognition of the relationships formed between the official and the community he or she represents; in the interest of continuity and stability; and to benefit from the increasing expertise and influence typically associated with more seasoned officials. Second, minority incumbents will enjoy the same *alleged* benefits as their non-minority counterparts. If incumbency is the unstoppable force some suggest, the extension of term limits would stand to preserve some of the gains made in minority representation over the last two decades.

More fundamentally, as noted in Section VIII.C. above, voters in precleared districts obviously retain the opportunity to coalesce around either an incumbent or challenger depending upon their preference. Local Law 51, merely by expanding the range of eligible candidates, has not diminished the opportunity for minority voters to elect their preferred candidates.

Finally, for examples of how quickly predictions of incumbent success can unravel, one needs to look no further than two cities in New York State – Buffalo and Troy – in which incumbents who supported legislation extending term limits were defeated in the next election. *See* "The political undead walk anew in Troy," *The Times Union*, dated November 11, 2001 (attached as Exhibit 25; *see also* "Through the Mayor's Eyes," available at http://www.buffalonian.com/history/industry/mayors/Sedita.htm (Mayor of Buffalo lost re-election bid after local council extended term limits). These examples reinforce the obvious: elections matter. Opponents of Local Law 51 who have invoked the Voting Rights Act implicitly ask the Justice Department to treat incumbency as a factor that transforms the change to term limits to a four-year extension of the term of office – in other words, they ask the Justice Department to ignore the key fact that an election will be held where all voters of all backgrounds from throughout the entire City will be able to vote in the same precleared election

districts and on the same terms as before Local Law 51. The argument that incumbency diminishes or even extinguishes the importance of elections, however, is really an argument against the American political system itself that goes well beyond the scope and purpose of Section 5.

For this and for all of the other reasons detailed above, allegations concerning an incumbency-protection motive or predictions of incumbents' electoral success do not change the validity of Local Law 51 under Section 5.

E. The fact that Local Law 51 was enacted by the City's legislative body, rather than by referendum, does not alter its validity under the Voting Rights Act.

The City Charter may be amended in three ways—by state law, voter referendum (brought about either through a petition initiative or a charter revision commission), or local law. None of the means for enacting a charter amendment without a change to state law is superior to the others. *See Golden v. New York City Council, et al.*, 305 A.D. 2d 598 (1st Dep't 2003), *appeal denied*, 100 N.Y.2d 502 (upholding City Council's modification of term limits provisions enacted by voter referendum). The Court of Appeals of New York has specifically upheld the action of the City Council of Buffalo when it abolished a one-term limit on the Mayor of Buffalo, even though the original term limits provision had been enacted by referendum. *Benzow v. Cooley*, 12 A.D. 2d 162 (4th Dep't 1961), *aff'd*, 9 N.Y.2d 888 (1961).

Given such clear authority, the City Council has on numerous occasions amended provisions of the City Charter that were originally enacted by referendum, including many provisions adopted by the voters upon the recommendations of the 1988 and 1989 charter revision commissions. The City has, for example, amended by local law without a referendum provisions of the City Charter that had been adopted by a petition initiative in 1966 that prohibited non-employees of the Police Department from sitting on a board to review complaints

of police misconduct by members of the public. *Matter of Caruso v. City of New York*, 136 Misc. 2d 892, 895-896 (N.Y. Sup. Ct. New York County 1988), *aff'd*, 134 A.D.2d 601 (1st Dep't 1989), *aff'd*, 74 N.Y2d 854 (1988). Further, existing law already embodies a policy decision as to which local enactments must be put to the voters for approval, and neither changes to laws enacted by petition initiative nor changes to term limits laws are among such enactments. N.Y. Mun. Home Rule Law § 23 (listing subject matters for local laws that require mandatory referendum); N.Y. City Charter § 38 (same). Making preclearance of Local Law 51 contingent upon the method by which the law was enacted would implicitly discard the import of the above holdings of New York State's highest court and many decades of State statutory and decisional law by, in effect, declaring an unprecedented federal "mandatory referendum" rule.[16]

Finally, the claim that another method for accomplishing the term limits change would have been more "democratic" or more "representative," a claim the City disputes, is not relevant to the required retrogression analysis under Section 5 and forms no basis for denying preclearance. Indeed, almost every local law, including many precleared amendments to the City's campaign finance law, could arguably have been adopted by referendum on recommendation of a charter revision commission. Adoption by means of legislation did not prevent preclearance in those instances nor should it have.[17]

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[16]Case law and opinions of the New York Attorney General have cast considerable doubt upon the ability of the local legislative body to hold a local law referendum on a subject such as term limits where such a referendum is neither authorized nor required. *See, e.g., Matter of Citizens for an Orderly Energy Policy (COEP) v. County of Suffolk*, 90 A.D.2d 522 (2d Dep't), *appeal dismissed*, 57 N.Y.2d 1045 (1982) (county could not provide for referendum regarding nuclear power plant); Ops. N.Y. Atty. Gen. (Inf.) Nos. 99-9, 98-5.

[17] The legislative scheme under which the Council acted by local law without a referendum on this and many prior occasions was enacted essentially in its current form in 1963, with the enactment of the modern Municipal Home Rule Law, and thus predates the enactment of the Voting Rights Act.

IX. Term Limits and Minority Representation in New York City

The City believes it has provided above and as exhibits to this submission all of the information required pursuant to 28 CFR §§ 51.27-28. Indeed, the precleared, term limits-related submissions reviewed by the City to date, as well as the City's own previous term limits submissions, do not contain any significant, supplemental data or analysis. This is not surprising given the nature of the changes occasioned by the imposition, abolition or extension of term limits as already described in Section VIII. above. Nonetheless, given the significant public interest in this submission, and to assist the Justice Department in its review, the expert report of Dr. Lisa Handley is provided as Appendix 1 to this submission.

As explained above, some opponents of Local Law 51 have premised their opposition, in part, on allegations of a conclusive link between term limits and minority representation and on the related theory that an extension of term limits will therefore undermine minority voting strength. With these allegations as context, the Handley Report undertakes a New York City-specific study of the factors contributing to the increased minority representation among the City's elected officials over the last three decades. The study evaluates the gains in minority representation that have occurred both before and after the imposition of term limits and demonstrates that demographic trends and redistricting, rather than term limits, are primarily responsible. For example, the report notes that nearly all of the non-minority council members who have been term-limited out of office have been replaced by non-minority newcomers. Handley Report at 6-7. Instances of term-limited, non-minority members being replaced by a minority newcomer occurred with the same frequency in the years assessed both before and after the imposition of term limits. *Id.* Further, the report notes that the two additional Hispanic

council members elected after the turnover occasioned by term limits have replaced black council members. *Id.*

In other words, the expectation of a causal link between term limits and an increase in minority representation is simply not borne out by the statistics. In contrast, minority gains after the creation of additional majority-minority districts were readily observable. *See* Handley Report at 4-5.[18]

The report also details the significant minority council member support for enactment of Local Law 51. *See* Handley Report at 9-10. Overall, as noted above, 68 percent of minority council members voted in favor of the law. *Id.* Based on all of these factors, including the fact that Local Law 51 does not alter election districts or their demographic make-up, the Handley Report concludes that the term limits extension does not lead to a retrogression in the opportunities afforded minority voters.

Finally, the report details the racial and ethnic diversity of the City Council and among other elected officials in New York City (*see* Handley Report), which only further reinforces why allegations about benefits accruing to incumbents from passage of Local Law 51 cannot control the application of the Section 5 retrogression standard. Simply put, many of the City's elected officials who would be eligible to seek re-election as a result of Local Law 51 are themselves preferred candidates elected from minority communities. It would be an ironic turn for the Voting Rights Act to block their ability to seek elective office for one more term.

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[18] Or, in the words of Council Member Larry Seabrook, who was among the 77 percent of African American council members who voted for Local Law 51:

> ...I think that people need to understand that term limits had nothing to do with increasing the number of minorities to this Council, a fair redistricting commission created fair lines that allowed that, not term limits.

See Exhibit 13 at 115, lines 8-21.

X. Conclusion

As the above discussion indicates, the City recognizes that Local Law 51 has been the subject of significant political debate and related legal proceedings. But political controversy and the existence of lawsuits do not change or inform the retrogression standard under Section 5 of the Voting Rights Act. Here, the relevant facts support preclearance: there can be no legitimate allegation that Local Law 51 was enacted with a discriminatory purpose; the change applies to all City officials regardless of background; minority council members supported the change and in greater numbers than their non-minority counterparts; both the imposition of term limits in the City and their subsequent legislative modification have been precleared; and, most important, Local Law 51 does not alter the City's precleared election districts, the method of voting or even the date of the election. As a result, minority voters, and indeed all voters, will continue to enjoy the same opportunities to elect their preferred candidates within the meaning of the Voting Rights Act.

In sum, Local Law 51 does not have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. As explained throughout this submission, and pursuant to 28 CFR § 51.27, it is therefore not anticipated that Local Law 51 will have any effect on members of racial or language minority groups. Accordingly, the City respectfully requests preclearance of Local Law 51.

Additional Information Pursuant to 28 CFR § 51.28

28 CFR § 51.28(h): As explained in the submission, many members of racial or language minority groups are familiar with Local Law 51 and were active in the political process with respect to the law. The individuals listed below, all members of the New York City Council, are familiar with the law:

Maria del Carmen Arroyo
Council Member, District 17
212-788-7384

Erik Martin Dilan
Council Member, District 37
212-788-7284

Robert Jackson
Council Member, District 7
212-788-7007

Larry Seabrook
Council Member, District 12
212-788-6873

APPENDIX

1. Expert Report of Dr. Lisa Handley

EXHIBITS

1. Local Law 51
2. Letter from City Council Members, dated January 15, 2008
3. New York City Campaign Finance Board Advisory Opinion No. 2008-7 (Nov. 3, 2008)
4. New York City Section 5 Preclearance Submission, dated December 19, 1996
5. New York City Section 5 Preclearance Submission, dated January 2, 2003
6. Report of the New York City Council entitled "Defining Qualification for Council Office: Addressing the Two Year Inequity" (2002)
7. Local Law 94 of 1993 (§§ 1138, 1137 of the New York City Charter)
8. *New York Times*, "New York City Council A Portrait Composed by Term Limits," dated November 11, 2001
9. Transcript of Bill Signing Hearing, dated November 3, 2008
10. Transcript of the Minutes of the City Council's Committee on Governmental Operations, dated October 16, 2008
11. Transcript of the Minutes of the City Council's Committee on Governmental Operations, dated October 23, 2008
12. Transcript of the Minutes of the City Council's Committee on Governmental Operations, dated October 17, 2008
13. Transcript of the Minutes of the Stated City Council Meeting, dated October 23, 2008
14. Proposed Int. No. 850-A; Int. No. 858; Res. No. 1640
15. Examples of media coverage (various sources)
16. Justice Department Objection Letter, dated September 12, 2006, to Randolph County, Georgia
17. Examples of media coverage (various sources)

EXHIBITS (continued)

18. Editorials regarding Local Law 51 (*New York Post, NY Daily News, New York Times*)

19. Correspondence between Michael A. Cardozo and Congress Members Weiner and Velazquez regarding Preclearance Submission

20. New York City Conflicts of Interest Board Advisory Opinion 2008-3

20A. *Molinari v. Bloomberg*, Civ. No. 08-4539 (E.D.N.Y. January 13, 2009)

21. Justice Department Objection Letter, dated July 1, 2002, to State of Florida

22. Justice Department Objection Letter, dated August 12, 2002, to Freeport, Texas

23. "Does Tucson Have A Better Idea," *Phoenix New Times*, dated April 5, 1989

24. Examples of Precleared Term Limits Section 5 Submissions from Eight Jurisdictions

25. "The political undead walk anew in Troy," *The Times Union*, dated November 11, 2001