

PRECLEARANCE ANALYSIS OF  
NEW YORK CITY CHARTER REVISION COMMISSION  
PROPOSALS UNDER NEW YORK VOTING RIGHTS ACT

Dated: June 24, 2025

PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Tel.: 212-373-3000

## **I. Introduction**

We were asked by the New York City Charter Revision Commission to analyze two potential changes to the voting laws of New York City under the preclearance standards of the New York Voting Rights Act, as it considers whether to propose amendments to the City Charter to New York City voters this fall.\* The two proposed changes analyzed are a shift from odd-year to even-year elections, which would also eliminate a periodic two-year City Council term, and a change from a closed primary with a major-party general election to an open primary with a top-two general election for local elections.

This report proceeds to describe the proposed measures to modify New York City voting procedures (Section II); describe the New York Voting Rights Act, its applicability, and its preclearance standards (Section III); analyze the shift from odd-year to even-year elections under the preclearance standards (Section IV); and analyze the shift from a closed primary with a major-party general election to an open primary with a top-two general election under the preclearance standards (Section V).

This report relies on an analysis of New York City’s voting data conducted by Dr. Lisa Handley. Dr. Handley is co-founder and principal of Frontier Electoral Consulting, and she holds a Ph.D. in political science from The George Washington University. Dr. Handley has over forty years of experience as a voting rights and redistricting expert, having worked with state and local jurisdictions, independent redistricting commissions, the U.S. Department of Justice, national civil rights organizations, and the United Nations.

## **II. Description of Proposed Measures**

### **A. Even-Year Elections**

Generally, local New York City elections are held in odd-numbered years and do not align with statewide or federal elections. The Commission is considering a Charter amendment that would redesignate municipal elections to even years, such that they align with presidential or gubernatorial/midterm elections. A move to “on-cycle” elections will affect City Council and mayoral races, as well as those for Public Advocate, Borough Presidents, and Comptroller, which must be run concurrently with the mayoral election pursuant to the New York City Charter.<sup>1</sup>

Section 25(a) of the New York City Charter further provides that City Councilmembers serve two 2-year terms every 20 years in connection with newly redistricted maps, which must be redrawn decennially.<sup>2</sup> As a switch to even-year elections

---

\* This report was prepared by a team of attorneys at Paul, Weiss, led by partner Loretta Lynch and associates Zayn Siddique and Anne Simons.

<sup>1</sup> New York City Charter § 24(a) (Public Advocate); New York City Charter § 81(b) (Borough Presidents); New York City Charter § 91 (Comptroller).

<sup>2</sup> New York City Charter § 25(a) (Election; term; vacancies); New York City Charter § 51(a) (Powers and duties of the commission; hearings; submissions and approval of plan).

would align local elections with federal presidential election years, the proposed shift to even-year elections would also eliminate these two 2-year terms.

## **B. Open Primaries (Top-Two)**

New York City currently employs a “closed” primary system with ranked-choice voting, followed by a general election.<sup>3</sup> In a closed primary, voters must be registered with a specific political party to be eligible to vote in that party’s primary, and cannot vote in another party’s primary.<sup>4</sup> Under the current system, voters that are not registered with any political party (unaffiliated voters) cannot vote in any primary.<sup>5</sup>

The Commission is considering a Charter amendment that would change the method of New York City primaries to a top-two “open” primary system. Under this system, all registered voters would be eligible to vote in a single open primary, regardless of party affiliation. Each candidate’s party affiliation would appear adjacent to their name. The two candidates garnering the most votes in the open primary would advance to a general election rather than the current major-party general election.

## **III. The New York Voting Rights Act and Preclearance Standard**

### **A. The New York Voting Rights Act**

The John R. Lewis Voting Rights Act of New York (“New York Voting Rights Act” or “NYVRA”) was signed into law on June 20, 2022<sup>6</sup> in the wake of the Supreme Court’s decision in *Shelby County v. Holder* limiting the scope of the federal Voting Rights Act (the “VRA”).<sup>7</sup> The NYVRA prohibits voter suppression, intimidation, deception, and obstruction and mandates preclearance of certain changes in voting laws by the Civil Rights Bureau (“CRB”) of the Office of the New York State Attorney General (the “Attorney General”) or by a designated court.<sup>8</sup> Proposals to change New York voting rights laws shall be precleared by the CRB only if it determines that the proposal will not diminish the ability of protected class members to participate in the political process or elect their preferred candidates to office.<sup>9</sup>

### **B. Applicability of Preclearance to the Commission’s Proposals**

Under the NYVRA, preclearance by the Attorney General is required when a “covered entity” seeks enactment or implementation of a “covered policy” as defined by

---

<sup>3</sup> N.Y. Elec. Law § 8-302(4); New York City Charter § 1057-g (Ranked choice voting for certain primary elections and elections for which nominations were made by independent nominating petitions).

<sup>4</sup> N.Y. Elec. Law § 8-302(4); N.Y. Elec. Law § 1-104(9).

<sup>5</sup> N.Y. Elec. Law § 8-302(4); N.Y. Elec. Law § 1-104(9).

<sup>6</sup> Legal Defense Fund, *The John R. Lewis Voting Rights Act of New York*, <https://www.naacpldf.org/new-york-voting-rights-act/#:~:text=In%20a%20big%20win%20for,law%20on%20June%2020%2C%202022> (last visited June 19, 2025).

<sup>7</sup> *Shelby County v. Holder*, 570 U.S. 529 (2013).

<sup>8</sup> N.Y. Elec. Law §§ 17-206(1), -210, -212.

<sup>9</sup> *Id.* § 17-210(4).

the statute.<sup>10</sup> Because New York City is considered a “covered entity” and the Charter Revision Commission’s proposals are “covered policies,” preclearance from the Attorney General will be required before the Commission’s proposals can take effect.

The Charter Revision Commission proposals are “covered policies” under the NYVRA. Section 17-210(2) defines covered policies as “any new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy” concerning a wide array of voting topics.<sup>11</sup> These topics include the “method of election” and any modified “practice, procedure, regulation, or policy” that may have the effect of denying or abridging the right to vote.<sup>12</sup> Here, both a shift from odd-year elections to even-year elections and from a closed to an open primary with a top-two general election qualify as “covered polic[ies]” under the statute, as both proposals would change the “method of election” for New York City elections, and both proposals involve changes to practices, procedures, and regulations pertaining to elections for various elected offices in New York.

New York City and the New York City Board of Elections are “covered entities” under the NYVRA. Section 17-210(3) defines “covered entity” broadly to include any political subdivision with a history of voting rights discrimination or where New York Division of Criminal Justice Services data shows disproportionate arrest rates for members of a protected class.<sup>13</sup> Per the preclearance guidance published by the Attorney General, New York City is a “covered entity” under NYVRA Section 17-210(3)(a), (b), (d), and (e)<sup>14</sup> and the New York City Board of Elections is a “covered entity” under NYVRA Section 17-210(3)(f) as a “board of elections that has been established in a political subdivision that is a covered entity.”<sup>15</sup>

Thus, because the Charter’s proposed changes qualify as “covered policies” and New York City and the New York City Board of Elections have been determined to be “covered entities” under the statute, the proposals are subject to preclearance.

### **C. NYVRA Preclearance Requirement**

The preclearance provision of the NYVRA was designed “[t]o ensure that the right to vote is not denied or abridged on account of race, color, or language-minority group.”<sup>16</sup> To obtain preclearance for a proposed change to a covered policy under the statute, a covered entity must submit the covered policy in writing to the Attorney

---

<sup>10</sup> *Id.* § 17-210(1).

<sup>11</sup> *Id.* § 17-210(2).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* § 17-210(3).

<sup>14</sup> New York Attorney General, *The New York Voting Rights Act: Preliminary Identification of Covered Entities and Covered Policies Subject to Preclearance* (Dec. 19, 2024), <https://ag.ny.gov/sites/default/files/regulatory-documents/nyvra-preliminary-identification-of-covered-entities-and-covered-policies-subject-to-preclearance.pdf>.

<sup>15</sup> New York Attorney General, *HANDBOOK FOR JURISDICTIONS SUBJECT TO NYVRA PRECLEARANCE* (Sept. 25, 2024), <https://ag.ny.gov/sites/default/files/2024-09/nyvra-precleanance-handbook-for-covered-entities.pdf>.

<sup>16</sup> N.Y. Elec. Law § 17-210.

General's Civil Rights Bureau ("CRB").<sup>17</sup> Upon submission, the CRB will publish the submission on its website for an opportunity for members of the public to comment on the submission.<sup>18</sup> Then, the CRB will review the covered policy submission and any public comments received. The CRB may request additional information from a covered entity at any time during its review to aid in developing its report and recommendation.<sup>19</sup> Failure to comply with reasonable requests for more information may be grounds for denial of preclearance.<sup>20</sup> When its review has been completed, the CRB will identify in writing whether it is approving or rejecting the covered policy.<sup>21</sup>

The NYVRA sets forth the following substantive standard for the preclearance review: "[t]he civil rights bureau shall grant preclearance only if it determines that the covered policy will not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office."<sup>22</sup> The NYVRA implementing regulations frame this analysis in terms of "retrogression."<sup>23</sup> Specifically, the regulations provide that a policy is not retrogressive if it "will not make members of [a protected class] worse off than they had been before the change[] with respect to their ability to participate in the political process and to elect their preferred candidates to office."<sup>24</sup>

On the issue of participation in the political process, the regulations further elaborate that "[a] change will be deemed retrogressive" where "(i) the individuals who will be burdened by the change are disproportionately likely to be members of one or more protected classes; and (ii) the change imposes a burden material enough that it will likely cause some members of such protected classes not to vote or otherwise participate in the political process."<sup>25</sup> In determining whether a policy is retrogressive, "[r]etrogression is assessed with respect to all impacted protected classes."<sup>26</sup>

The NYVRA permits coalition claims, that is, claims by members of two or more protected classes who can demonstrate that they have cohesive voting preferences as against the rest of the electorate.<sup>27</sup> To file jointly, the protected class members must demonstrate (1) that the multiple protected classes have combined voting preferences and (2) that these preferences are polarized against the rest of the electorate.<sup>28</sup> Thus, the CRB may consider whether two or more protected classes in New York City are sufficiently cohesive and polarized against the rest of the electorate to constitute a coalition for purposes of its retrogression analysis.

---

<sup>17</sup> *Id.* § 17-210(4)(a).

<sup>18</sup> *Id.* §§ 17-210(4)(b), (c).

<sup>19</sup> *Id.* § 17-210(4)(c).

<sup>20</sup> *Id.* § 17-210(4)(d).

<sup>21</sup> *Id.* § 17-210(4)(e).

<sup>22</sup> *Id.* § 17-210(4)(e)(i).

<sup>23</sup> 13 N.Y.C.R.R. 501.2(c)(2).

<sup>24</sup> *Id.* 501.2(c)(1).

<sup>25</sup> *Id.* 501.2(c)(2).

<sup>26</sup> *Id.* 501.2(c)(3).

<sup>27</sup> N.Y. Elec. Law § 17-206(8).

<sup>28</sup> *Id.*

In conducting retrogression analysis, the CRB is directed to compare the Commission’s proposal to a “benchmark” of the relevant voting qualifications, laws, ordinances, standards, practices, regulations, and policies in effect at the time of submission.<sup>29</sup> The party submitting a covered policy for preclearance review bears the burden of proof to establish that the policy will not result in retrogression for a protected class.<sup>30</sup> Accordingly, the party seeking to change a covered policy must provide “(i) sufficient information by which the [Civil Rights Bureau of the Office of the New York State Attorney General] can determine the benchmark against which to compare the proposed covered policy; and (ii) information sufficient to demonstrate that, as compared with that benchmark, the ability of any protected class present in the political subdivision to participate in the political process and to elect their preferred candidates to office will not be diminished as a result of enactment or implementation of the proposed change.”<sup>31</sup>

#### **D. Federal Precedents for Evaluating Retrogression**

Given the recency of the enactment of the NYVRA, there is limited precedent interpreting the NYVRA preclearance provisions. CRB determinations on proposals submitted for preclearance since that provision came into effect on September 22, 2024<sup>32</sup> number less than 50, do not consider proposals resembling those under consideration here, and rely largely on the language of the NYVRA and its implementing regulations without further explication.<sup>33</sup> Although not binding, the Attorney General may look to preclearance precedents under federal law.<sup>34, 35</sup> Consideration of federal precedent might be informative given the similarities between the NYVRA’s preclearance provision and the fact that the NYVRA suggests that it was designed to accomplish similar goals to the federal VRA.<sup>36</sup>

Before *Shelby County* invalidated the preclearance regime, federal voting rights law similarly focused on whether a policy change would be retrogressive, meaning

---

<sup>29</sup> 13 N.Y.C.R.R. 501.2(d).

<sup>30</sup> *Id.* 501.2(e).

<sup>31</sup> *Id.* 501.2(e)(2)(i), (ii).

<sup>32</sup> Memo from Letitia James, New York Attorney General, *The New York Voting Rights Act: Preliminary Identification of Covered Entities and Covered Policies Subject to Preclearance* (December 19, 2023), <https://ag.ny.gov/sites/default/files/regulatory-documents/nyvra-preliminary-identification-of-covered-entities-and-covered-policies-subject-to-precleanance.pdf>.

<sup>33</sup> *See generally* New York Voting Rights Act Portal, <https://nyvra-portal.ag.ny.gov/search> (last visited June 19, 2025) (Of the 48 decisions on the New York Voting Rights Act Portal, most are polling site relocations, and others consider simple administrative proposals including changes to early voting hours and the consolidation of polling sites.).

<sup>34</sup> The Supreme Court in *Shelby County* held that each state holds the authority to “prescribe . . . the manner in which [its officers] shall be chosen.” *Shelby County*, 570 U.S. at 543.

<sup>35</sup> On two prior occasions, New York City received preclearance from the United States Department of Justice for election changes that adopted nonpartisan elections to fill certain vacancies. *See* Preclearance Decision Letter from Assistant Att’y Gen., Civ. Rts. Div. Wm. Bradford Reynolds to Eric Lane (Oct. 11, 1988) (granting preclearance to charter amendments seeking to implement campaign finance reforms, establish voter education programs, and modify procedures for filling vacancies in various city government offices); Preclearance Decision Letter from Dep’t of Just., Chief, Voting Section, Joseph D. Rich to Jeffrey Friedlander (Mar. 24, 2003) (granting preclearance to a proposal to change vacancy procedures and elections scheduling).

<sup>36</sup> *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 22 (2d Dep’t 2025).

whether it would diminish “the ability of minority groups to participate in the political process and to elect their choices to office.”<sup>37</sup> The 2006 reauthorization of and amendments to the federal VRA—the most recent amendments before *Shelby County*—articulated this standard in language that resembles the NYVRA, providing that a covered policy change “that has the purpose of or will have the effect of diminishing the ability of any citizens of the United States on account of race or color, or [contravenes the guarantee] to elect their preferred candidates of choice denies or abridges the right to vote.”<sup>38</sup> Accordingly, the Attorney General’s retrogression analysis may bear some resemblance to comparable federal analysis under the pre-*Shelby County* Voting Rights Act, assessing whether a protected class will be worse off after a policy change than under the status quo benchmark.<sup>39</sup>

Under federal law, as with the NYVRA, a core element of the preclearance analysis is assessing what ability minority voters have to elect their preferred candidates, and whether the proposed change would diminish that ability. As a three-judge district court explained evaluating a redistricting proposal under Section 5: “‘being able’ or ‘having the power to elect’—in the past (the benchmark) and the future (a proposed redistricting plan)—is what matters under Section 5.”<sup>40</sup> “Determining where and how the ability to elect is present is a careful inquiry” that cannot be assessed with “simple voting-age population statistics.”<sup>41</sup> Among other factors, courts consider “whether there is cohesive voting among minorities and whether minority/White polarization is present in the jurisdiction submitting the plan.”<sup>42</sup> Where votes break down along racial lines and a particular racial group makes up a supermajority of the electorate (e.g., over 65%), the ability to elect of that group is apparent. By contrast, when there is no supermajority, “a Section 5 analysis must go beyond mere population data to include factors such as minority voter registration, minority voter turnout, election history, and minority/majority voting behaviors.”<sup>43</sup>

---

<sup>37</sup> *Shelby County v. Holder*, 811 F. Supp. 2d 424, 437 (D.D.C. 2011) (quoting *Beer v. United States*, 425 U.S. 130, 141 (1976), *abrogated by Shelby County*, 570 U.S. 529 (2013)).

<sup>38</sup> Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub. L. No. 109-246, § 5, 120 Stat. 577, 580–81 (2006). In comparison, the NYVRA provides preclearance will be granted only for changes that do not “diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office.” N.Y. Elec. Law § 17-210(4)(e)(i).

<sup>39</sup> *Cf.* 13 N.Y.C.R.R. 501.2(e). The federal analysis, like the NYVRA, places the burden of proof in a preclearance inquiry on the proponent of a change. *See Texas v. Holder*, 888 F. Supp. 2d 113, 115, 144 (D.D.C. 2012) (denying preclearance to a photo identification requirement where “Texas has failed to demonstrate that its particular voter ID law lacks retrogressive effect”). Thus, a proponent of any proposed change in voting laws will have to supply sufficient evidence that the proposal will not be retrogressive.

<sup>40</sup> *Texas v. United States*, 831 F. Supp. 2d 244, 261 (D.D.C. 2011) (quoting *Beer*, 425 U.S. at 141); *id.* at 262 (“A Section 5 claim requires a determination of how and where minority citizens’ ability to elect is currently present in a covered jurisdiction and how it will manifest itself in a proposed plan.”).

<sup>41</sup> *Id.* at 262.

<sup>42</sup> *Id.* (discussing *Georgia v. Ashcroft*, 539 U.S. 461, 485 (2003), *abrogation by statute on other grounds recognized by Alabama Legis. Black Caucus v. Alabama*, 575 U.S. 254, 276–77 (2015)).

<sup>43</sup> *Id.* at 263.

In addition to informing the assessment of “ability to elect,” federal precedent may also be instructive for evaluating the impact of a proposed change under the NYVRA on participation in the political process. In its preclearance review of a proposal to reduce the availability of early voting in Florida, another three-judge district court explained that the change would be retrogressive “if: (1) the individuals who will be affected by the change are disproportionately likely to be members of a protected minority group; and (2) the change imposes a burden material enough that it will likely cause some reasonable minority voters not to exercise the franchise.”<sup>44</sup> This analysis requires a “fact-intensive” inquiry in which the reviewing court must “carefully scrutinize the context in which the proposed voting changes will occur.”<sup>45</sup> The fact-intensive inquiry can take into account both the burdens imposed by a voting change as well as any offsetting or “ameliorative” aspects of a proposed change.<sup>46</sup> After applying this standard, the court denied the proposal preclearance, finding that “minority voters will be disproportionately affected by the changes in early voting procedures because they disproportionately use early in-person voting.”<sup>47</sup>

#### IV. Even-Year Elections Analysis

##### A. **Proposed Policy and Its Anticipated Impacts on the Electorate**

The even-year elections change before the Commission proposes to shift New York City’s odd-year elections to align with even, presidential-year elections. Voter turnout data from recent elections demonstrates that turnout is markedly lower in odd-year elections than even-year elections for all voters, but especially for minority group voters.<sup>48</sup> A shift to even-year elections is anticipated to lead to increased turnout for all voters and a greater increase in turnout by minority voters than by White voters.<sup>49</sup> As such, this policy will not diminish the ability of protected class members to participate in the political process and elect their preferred candidates to office.

Voter turnout is historically much lower in odd-year elections than even-year elections across all voting groups. In the 2021 New York City mayoral election, only 23% of voters turned out; in fact, across the last three New York City municipal general elections, which are held in odd years, only 23 to 26% of voters cast a ballot.<sup>50</sup> By contrast, in the last three presidential general elections, voter turnout in New York City hovered between 53 and 62%—more than twice as great a turnout rate as in the municipal odd-year elections.<sup>51</sup>

---

<sup>44</sup> *Florida v. United States*, 885 F. Supp. 2d 299, 312 (D.D.C. 2012).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 322.

<sup>48</sup> Lisa Handley, The Voting Rights Implications of Changing the Election Cycle and Adopting Open Primaries and Top-Two General Elections (hereinafter, the “Handley Report”) 12–14 (2025).

<sup>49</sup> *Id.* at 12–14.

<sup>50</sup> New York City Charter Revision Commission, *Preliminary Report* 57 (2025), <https://www.nyc.gov/assets/charter/downloads/pdf/2025/2025-Charter-Revision-Commission-Preliminary-Report-DIGITAL.pdf>.

<sup>51</sup> *Id.* at 57.



Voter turnout across the two-year City Council races is drastically lower than other odd-year elections, perhaps because they do not include other citywide elections.<sup>52</sup> For example, in 2023, Black voter turnout was only 3.4% and Hispanic voter turnout was only 3.8%.<sup>53</sup> Asian voters turned out at 7.6%, a similar level as other odd-year elections.<sup>54</sup>

Notably, this pattern holds true across state and city-wide races as well, suggesting that the discrepancy is not due simply to the salience of presidential general elections. State Assembly races, held in even years, often have higher turnout than City Council elections, held in odd years.<sup>55</sup> As just one example, in the competitive 2023 City Council District 13 race, only 13% of registered voters turned out, while 56% of registered voters turned out for the largely-overlapping 2024 Assembly District 82 election.<sup>56</sup>

The gap in voter turnout between even-year and odd-year elections is wider for minority groups. As compared to odd-year elections, the average turnout rate in recent even-year elections was almost five times greater for age-eligible Hispanic voters (30.0% versus 6.3%), triple for age-eligible Black voters (46.5% versus 15.5%), and triple for age-eligible Asian voters (23.5% versus 7.5%).<sup>57</sup>

Data from recent elections thus shows that a shift from odd-year to even-year elections is likely to significantly increase voter turnout, especially among minority groups.

## **B. Preclearance Analysis**

As described above, the preclearance evaluation of the shift to even-year elections and eliminating the periodic two-year term will turn on whether the change would diminish the ability of a protected class to participate in the political process or elect the candidate of their choice against the benchmark of odd-year elections.<sup>58</sup> As the Handley Report catalogues, voter turnout across racial groups is likely to be significantly higher in even-year elections than under the current odd-year elections.<sup>59</sup> While all racial groups will benefit, the data also suggest that Black, Hispanic, and Asian voters would see an even greater improvement in turnout.<sup>60</sup>

Preclearance analysis ultimately depends on analyzing the precise facts about how a proposed change would impact the benchmark in a given covered jurisdiction.

---

<sup>52</sup> Handley Report, *supra* note 48, at 13.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> New York City Charter Revision Commission, *supra* note 50, at 58.

<sup>56</sup> *Id.*

<sup>57</sup> Handley Report, *supra* note 48, at 12–13.

<sup>58</sup> N.Y. Elec. Law § 17-210(4)(e)(i).

<sup>59</sup> Handley Report, *supra* note 48, at 2. The elimination of the periodic two-year term is also likely subject to preclearance as a change in the “form of government.” *See* New York Attorney General, *supra* note 14, at 21. Removing the off-off year election associated with those terms and replacing it with even-year elections can also be expected to substantially increase voter turnout.

<sup>60</sup> Handley Report, *supra* note 48, at 12–14.

That said, the Attorney General may find relevant that the conclusions of the Handley Report accord with research in other jurisdictions finding that switching to “on-cycle” elections results in significantly higher turnout over a sustained period of time.<sup>61</sup> In Phoenix, Arizona, the city held a special mayoral election in 2018 with voter turnout of 54%, an increase from 20% in 2015.<sup>62</sup> In 2020, the city implemented its first regular on-cycle election, and voter turnout increased to 77.4% of registered voters.<sup>63</sup> Likewise, in Baltimore, Maryland, turnout grew 361%—from 13% in 2011 to 60% in 2016—after the city implemented on-cycle elections.<sup>64</sup> This increased participation continued in 2020, with 59% voter turnout in the mayoral race.<sup>65</sup> Finally, California’s switch to on-cycle elections has been studied extensively, with researchers consistently finding that on-cycle elections result in increased turnout.<sup>66</sup>

The only countervailing consideration that may arise is that even-year elections that are “on-cycle” with other elections involve lengthier ballots, which may result in some “voter roll-off” (voters failing to complete their ballots). The secondary literature on this change has strong evidence that any limited roll-off effect will likely be significantly outweighed by the additional voter turnout.<sup>67</sup> Thus, given the strong salutary effects on voter turnout of such a change, there appears to be a strong evidentiary basis for the CRB to grant preclearance because the proposal would “not diminish the ability of members of a protected class to participate in the political process” or “to elect their preferred candidates to office.”<sup>68</sup>

## V. Open Primaries

### A. Proposed Policy and Its Anticipated Impacts on the Electorate

The open-primary change before the Commission proposes to allow all registered voters to vote in a single primary, regardless of party affiliation. The two candidates garnering the most votes in the primary election—as determined by ranked-choice voting—would then advance to a general election, replacing the current major-party general election. This proposal would apply to every local elected office in New York

---

<sup>61</sup> Across the six largest cities in the U.S. that hold off-cycle municipal elections, average turnout for mayoral races was around 10% to 38%, while the six largest cities in the U.S. that hold on-cycle municipal elections experience turnout rates between 50% to 75%. Dan Kaminsky & Ben Weinberg, *Policy Report: Moving Municipal Elections to Even-Numbered Years* 1 (2022), [https://citizensunion.org/wp-content/uploads/2023/01/Moving-Municipal-Elections-to-Even-Numbered-Years-Citizens-Union-report\\_FINAL.pdf](https://citizensunion.org/wp-content/uploads/2023/01/Moving-Municipal-Elections-to-Even-Numbered-Years-Citizens-Union-report_FINAL.pdf) (analyzing elections in Baltimore, El Paso, and Phoenix and concluding that the “number of new voters gained in consolidated elections far exceeds the votes lost due to ballot-off” and further noting that in New York City, despite a longer ballot with more candidates after the implementation of ranked-choice voting, results showed “little confusion and no falloff in voting participation”).

<sup>62</sup> Zoltan Hajnal & Avi Green, *Big Cities – Tiny Votes? America’s Urban Voter Turnout* 10–11 (2024), [https://yankelovichcenter.ucsd.edu/\\_files/reports/Big-Cities-Tiny-Votes.pdf](https://yankelovichcenter.ucsd.edu/_files/reports/Big-Cities-Tiny-Votes.pdf).

<sup>63</sup> New York City Charter Revision Commission, *supra* note 50, at 58.

<sup>64</sup> *Id.* at 58.

<sup>65</sup> Kaminsky et al., *supra* note 61, at 29.

<sup>66</sup> See Hajnal et al., *supra* note 62, at 2–3.

<sup>67</sup> See Kaminsky et al., *supra* note 61, at 2, 29–31.

<sup>68</sup> 13 N.Y.C.R.R. 501.2(c)(1).

City, which includes the Mayor, Comptroller, Public Advocate, Borough Presidents, and City Council. The Handley Report has analyzed the potential implications of such changes on the outcomes of a variety of New York City primary and general elections, as described below.

### 1. Impact on Overall Political Participation

Under the NYVRA, a threshold inquiry involves assessing the benchmark ability of protected class members to participate in the political process. As a general matter, turnout rates are low across protected classes. To take the 2021 Democratic primary and general election as an illustrative example:

- White turnout was 26.8% in the primary and 32.1% in the general;
- Black turnout was 20% in the primary and 20.1% in the general;
- Hispanic turnout was 6.0% in the primary and 6.3% in the general;
- Asian turnout was 6.8% in the primary and 7.9% in the general.<sup>69</sup>

Under the status quo, a significant group of voters whose participation is further limited by closed primaries are the more than 1 million unaffiliated voters who cannot vote in party primaries. The racial distribution of unaffiliated voters is roughly in line with the racial distribution of all registered voters with two exceptions: they are a lower share of Black voters and a higher share of Asian voters. Specifically:

- 37.3% of unaffiliated voters are White compared to 37% of all registered voters;
- 12.2% of unaffiliated voters are Black compared to 22.8% of all registered voters;
- 23.1% of unaffiliated voters are Hispanic compared to 23.5% of all registered voters;
- 19.2% of unaffiliated voters are Asian compared to 11.4% of all registered voters.<sup>70</sup>

The main effect of moving to an open primary, followed by a top-two election, would be to give unaffiliated voters the ability to participate in the primary process and a greater incentive to participate in the general election because they will have had some say in whether a candidate moves forward from the primary to a general election. In New York City, these voters comprise just over 20% of the electorate.<sup>71</sup> Further, there is some evidence that this shift has a general positive effect on turnout.<sup>72</sup> There is also evidence suggesting that the shift would not diminish turnout among any particular protected class, given that the share of voters from any protected class is roughly comparable in the status quo between closed Democratic primaries and the general election

---

<sup>69</sup> Compare Handley Report, *supra* note 48, Table 2 with Table 5.

<sup>70</sup> Handley Report, *supra* note 48, Table 4.

<sup>71</sup> *Id.*, Table 3.

<sup>72</sup> See Campaign Finance Board, 2024 Voter Analysis Report, 81 (2024) [https://www.nycfb.info/pdf/2024\\_VoterAnalysisReport.pdf](https://www.nycfb.info/pdf/2024_VoterAnalysisReport.pdf); Joshua Ferrer et al., “The Effect of Open Primaries on Turnout and Representation,” Bipartisan Policy Center, 21 (Oct. 2024) [https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2024/10/BPC\\_Ferrer-Unite-America-Grant\\_R04.pdf](https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2024/10/BPC_Ferrer-Unite-America-Grant_R04.pdf).

(which have some similarities to an open primary in that all voters are eligible to participate).<sup>73</sup>

## 2. Impact on Ability to Elect

The other key threshold inquiry under the NYVRA involves assessing the ability of a protected class or a coalition of protected classes to elect the candidate of their choice under the status quo benchmark.<sup>74</sup> As is often the case, assessing that benchmark is not simple. It necessitates a “careful inquiry,” requiring the consideration of a number of factors, including the cohesion of voting patterns by protected classes and polarization of various voting groups in the electorate, relying not just on population data but election history and voting behaviors.<sup>75</sup>

In New York City, no individual protected class represents a supermajority of the electorate. In recent New York City elections, White voters have tended to represent at least a substantial plurality of voters in Democratic primaries (46.8%) and a slight majority in general elections (50.8%),<sup>76</sup> but both figures fall short of a supermajority. Neither Black nor Hispanic voters, nor Black and Hispanic voters together, represent a supermajority. In recent New York City elections, Black and Hispanic voters together have represented 38.1% of the voters in Democratic primaries and 38.0% of the voters in general elections.<sup>77</sup> As such, candidates will generally have to garner support from across racial groups in order to win an election, and no individual protected class has a clear ability to elect its preferred candidate on its own.

Considering the cohesion of voters of protected classes in recent New York City elections, the Handley Report shows that while cohesion often exists among minority groups, it is not consistently present.<sup>78</sup> Black, Hispanic, and Asian voters do not vote cohesively, as Asian voters tend not to support the same candidates as Black and Hispanic voters.<sup>79</sup> Black and Hispanic voters have shown more consistent cohesion in recent New York City general elections.<sup>80</sup> But Black and Hispanic voters are not always cohesive in Democratic primaries. For example, Black and Hispanic voters were cohesive in 75% of the citywide Democratic primaries analyzed, were cohesive more often than not in Democratic City Council primaries analyzed, but were not cohesive in at least three of the four 2021 Borough President primaries analyzed.<sup>81</sup>

Nor have recent New York City elections proven to exhibit consistent levels of racial polarization, though voting in Democratic primaries is more often polarized, while voting in general elections is not usually polarized. The Handley Report tracks the frequent polarization of Democratic primaries: 10 of 16 recent citywide Democratic primaries, 4 of

---

<sup>73</sup> Compare Handley Report, *supra* note 48, Table 2 with Table 5.

<sup>74</sup> See *supra* at 3–7.

<sup>75</sup> *Texas*, 831 F. Supp. 2d at 262–63.

<sup>76</sup> Handley Report, *supra* note 48, at 19.

<sup>77</sup> *Id.* at 19.

<sup>78</sup> *Id.* at 29–30.

<sup>79</sup> *Id.* at 15.

<sup>80</sup> *Id.* at 15, 22.

<sup>81</sup> *Id.* at 25–26.

4 recent statistically analyzable Borough President Democratic primaries, and 14 of 17 recent statistically analyzable City Council Democratic primaries were racially polarized.<sup>82</sup> By contrast, voting in the general election tends not to be racially polarized because a majority of all groups generally support the Democratic candidate in the race.<sup>83</sup>

Against this backdrop, the evidence demonstrates that a shift from a closed to an open primary system is unlikely to affect minority cohesion or the level of racially polarized voting in a way that diminishes the ability of a protected class to elect the candidates of their choice in the covered elections.

Beginning with minority cohesion, the primary question is the effect on the level of cohesion across groups of protected classes. As described in the Handley Report, the one coalition with some degree of cohesion is Black and Hispanic voters who vote cohesively in favor of Democrats in a subset of elections.<sup>84</sup> A shift from a closed primary to an open primary is unlikely to decrease the level of Black and Hispanic cohesion because there is no reason to expect the number of Democratic candidates running would increase and thus no reason to think that cohesion would decrease where it would have otherwise existed.<sup>85</sup> In the resulting top-two general election, the effect on cohesion depends on the party of the candidates. Where a Democrat and a Republican emerge, the level of cohesion would remain the same. Where two Democrats emerge, the level of Black and Hispanic cohesion might decrease.<sup>86</sup> Even if Black and Hispanic voter cohesion decreases significantly or collapses, the ultimate result of the election would be that either the Democrat preferred by Black voters or the Democrat preferred by Hispanic voters would necessarily emerge the winner.

As to racially polarized voting, the Handley Report determines that there is no reason to believe that voting in an open primary would be any more racially polarized than in a closed primary.<sup>87</sup> As with cohesion, the impact on racial polarization of a top-two election would depend on the party identification of the two candidates that emerged from the primary. Where the two candidates were both Democrats, the level of racially polarized voting might increase because such an election would more closely resemble a Democratic primary.<sup>88</sup>

The combined effect of these changes across the relevant elections likely would not diminish the ability of coalitions of protected classes to elect candidates of their choice across the relevant elections.

**City Council Elections.** In the vast majority of City Council elections, the shift to a top-two primary would either not change or improve the ability of a protected class to elect their preferred candidate. In general, in a district where Black, Hispanic,

---

<sup>82</sup> *Id.* at 23, 26–27.

<sup>83</sup> *Id.* at 30.

<sup>84</sup> *Id.* at 28.

<sup>85</sup> *Id.* at 29.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

Asian, or White voters comprised the majority of the district, they were also able to elect their candidate of choice.<sup>89</sup> The shift from a closed primary to an open primary would not diminish the ability of the candidate of choice to emerge from the primary, and that candidate would still be just as likely to win a top-two general election as a major-party election. In some instances, the ability to elect may improve.<sup>90</sup> For instance, in a majority Black district where Black voters divided their votes in a Democratic primary between two candidates and White voters supported a third candidate, there is a chance the third candidate would proceed to the general. Under this change, one of the Black-preferred candidates would still proceed to the top-two general and be able to prevail there.

**Borough President Primaries.** The key election for Borough Presidents in New York City is the primary. In these closed primaries, Black and Hispanic voters are typically not cohesive, but either Black or Hispanic voters were still able to elect the candidate of their choice, occasionally with crossover voters from other racial groups.<sup>91</sup> The Handley Report finds no reason to believe the dynamics of these races would change from a closed to an open primary.<sup>92</sup> Where a protected class had the ability to elect in a closed system, it would remain able to advance its preferred candidate in an open primary and then prevail in a top-two general election.

**Citywide Primaries.** Under the current system, citywide primaries are not characterized by consistent racial polarization or consistent levels of cohesion across protected classes. Of the 16 Democratic primaries, 10 had racially polarized voting; of those 10 primaries, only 6 had cohesive Black and Hispanic voters.<sup>93</sup> Against these variable outcomes, a shift to open primaries is unlikely to diminish the ability of protected classes to elect their preferred candidates. If Black and Hispanic voters are cohesive in citywide Democratic primaries, the candidates they support usually win even without White crossover support.<sup>94</sup> By contrast, when Black and Hispanic voters are not cohesive, they require White crossover support for their preferred candidate to prevail or could have their preferred candidate lose to a different candidate preferred by White voters.<sup>95</sup> A shift from closed to open primaries would not alter this dynamic and might on occasion improve the ability of Black or Hispanic voters to elect their preferred candidate. Where there is Black and Hispanic cohesion, the preferred candidate of those voters would likely still proceed to the top-two general election. Where there is no Black and Hispanic cohesion, a candidate preferred by one or the other group would, as in the benchmark, need crossover voters to proceed to the general election. At the margins, the fact that two candidates rather than one advance to the general may make it somewhat more likely the candidate preferred by either Black or Hispanic voters would advance to the general in an open rather than closed primary.

---

<sup>89</sup> *Id.* at 31.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 31–32.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 23.

<sup>94</sup> *Id.* at 25.

<sup>95</sup> *Id.*

**Citywide and Boroughwide General Elections.** In the status quo, citywide and boroughwide general elections are typically not racially polarized, with the prevailing candidate winning majorities across protected classes.<sup>96</sup> In the few racially polarized citywide general elections, the results were less uniform across the sample. White voters were able to elect their preferred candidate in two contests despite cohesive Black and Hispanic support for the Democratic candidate, and a cohesive Black and Hispanic coalition prevailed in one contest due to sufficient White crossover support.<sup>97</sup> Because White voters constitute a substantial plurality or majority of voters in citywide races, some degree of support is needed from them for a cohesive Black and Hispanic coalition to elect their preferred candidate in the status quo. That will remain the case in a top-two general election.<sup>98</sup>

As in some of the elections noted above, the precise impact of the proposal on voting patterns will depend somewhat on whether the resulting top-two general election involves two Democrats or one Democrat and one Republican. In the latter scenario, the Handley Report anticipates no change at all from the status quo.<sup>99</sup> In the case of two Democrats, the Handley Report describes a number of possibilities, but none appear to diminish the ability of a protected class to elect its preferred candidate as compared to the benchmark. As an initial observation, the winner of a two-Democrat general election would still be a Democrat, which, in the status quo, would be the consistent preference of a majority of Black and Hispanic voters.<sup>100</sup> If voting is not racially polarized, the candidate supported by Black, Hispanic, and White voters will easily be elected.<sup>101</sup> If voting is racially polarized, which may be more likely in a top-two general election since it is more likely to resemble a Democratic primary, Black and Hispanic cohesion and White crossover support would be necessary for a candidate preferred by Black and Hispanic voters to win.<sup>102</sup> White crossover is required in the status quo, but the amount of White crossover voting and minority cohesion may be lower in a race with two Democrats.<sup>103</sup> In the event Black and Hispanic voters are not cohesive at all and support different candidates, the candidate supported by one of these groups and White voters would win the general election.<sup>104</sup>

## **B. Preclearance Analysis**

As to the first prong of the analysis—participation in the political process—there is significant evidence that the proposal would not diminish the ability of any protected class member to participate in the political process and indeed may have small or significant salutary effects depending on the class. As noted, a significant benefit of the proposed change would be to give more voice to unaffiliated voters. These voters come

---

<sup>96</sup> *Id.* at 20.

<sup>97</sup> *Id.* at 20.

<sup>98</sup> *Id.* at 4.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 4, 33–34.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

from across protected classes; a majority of unaffiliated voters (54.5%) are minority voters, with more than a third (35.3%) consisting of Black and Hispanic voters; and the Asian share of unaffiliated voters is twice their share of all registered voters (19.2% versus 11.4%).<sup>105</sup> Furthermore, the change would not only enable more voters to participate in primaries but may have some beneficial impact on turnout, especially among young people.<sup>106</sup> Taken together, there is no basis for finding that this proposal would in any way diminish the ability of any protected class to participate in the political process, much less impose a disproportionate burden “material enough that it will likely cause some reasonable minority voters not to exercise the franchise.”<sup>107</sup>

As for the ability to elect, the basic question remains whether the proposal diminishes a protected class’s ability to elect its candidate of choice when compared to its ability to elect its candidate of choice within the current system. Under this standard, the proposal can be precleared if, for a given covered election, either (1) no protected class or coalition of protected classes has the ability to elect candidates of their choice in a particular election under the status quo or (2) a protected class or coalition of protected classes had the ability to elect candidates of their choice under the status quo and retains that ability under the Commission’s proposal. The proposal will only be denied preclearance if a protected class or coalition of protected classes has the ability to elect its preferred candidate and the proposal would remove that ability.

**Closed to Open Primaries.** Democratic primaries in New York City are often racially polarized.<sup>108</sup> Available data indicates that Black and Hispanic voters in New York City are often cohesive and form coalitions in support of the same candidate.<sup>109</sup> Additionally, a Black and Hispanic coalition would constitute a slight majority of registered Democrats (about 55.5%), though it typically makes up a smaller share of actual voters (~35–45%).<sup>110</sup> Accordingly, under the status quo, Black and Hispanic voters often have the ability to advance the candidate of their choice in City Council and boroughwide primaries and sometimes have the ability to advance their candidates of choice in citywide primaries.<sup>111</sup>

A shift to open primaries would not diminish that ability. Where Black and Hispanic voters are cohesive, they make up a sufficient percentage of the voting population as to be able to succeed in ensuring a candidate of their choice is likely in the top two of the open primary.<sup>112</sup> Black and Hispanic voters made up 35% of voters in the 2022 Democratic primary and 39.6% of voters in the 2024 general elections in New York City.<sup>113</sup> Accordingly, even if Black and Hispanic voters make up a smaller proportion in the open primary than in a closed Democratic primary, the candidate they support is still likely to

---

<sup>105</sup> *Id.* at 15, Table 4.

<sup>106</sup> Campaign Finance Board, 2024 Voter Analysis Report, 2024, at 6, [https://www.nycfb.info/pdf/2024\\_VoterAnalysisReport.pdf?](https://www.nycfb.info/pdf/2024_VoterAnalysisReport.pdf?).

<sup>107</sup> *Florida v. United States*, 885 F. Supp. 2d at 312.

<sup>108</sup> Handley Report, *supra* note 48, at 30.

<sup>109</sup> *Id.* at 2, 19, 22–23, 29.

<sup>110</sup> *Id.* at 15, Table 4, 18, Table 6.

<sup>111</sup> *Id.* at 3, 30–33.

<sup>112</sup> *Id.* at 18, 32.

<sup>113</sup> *Id.* at 18, Table 6.



proceed to the top-two general election, because it would be so difficult for two separate candidates to garner more votes than the Black and Hispanic coalition's preferred candidate.<sup>114</sup> And, where Black and Hispanic voters are not cohesive, they likely have their ability to advance one of their preferred candidates to the top-two general election, an improvement over the status quo, in which both those minority-preferred candidates might lose to a third candidate preferred by White voters. Thus, under both the status quo and the proposal, Black and Hispanic voters possess the ability to advance candidates of their choice in primary elections.

**Major-Party to Top-Two General Election.** In City Council elections, White, Black, and Hispanic voters have the ability to elect their preferred candidates in districts where they comprise the majority of voters.<sup>115</sup> The evidence shows that this ability would not be diminished in a top-two general election and may, in some cases, actually increase where the majority protected class might have divided their support across two candidates in the primary but still be able to coalesce in the general because one of their preferred candidates is still likely to advance to a top-two general election.<sup>116</sup>

In boroughwide and citywide general elections, the ability of various protected classes to elect their preferred candidate is more varied. In the status quo of major-party general elections, citywide elections typically involve one Democratic and one Republican candidate. Most of these citywide general elections were not racially polarized; rather, the candidate that won those elections was preferred by all voters, including Black and Hispanic voters.<sup>117</sup> In the few elections where voting was racially polarized, Black and Hispanic voters were unable to elect their preferred candidate even when cohesive without some White crossover support.<sup>118</sup>

The demographics of New York City reinforce these dynamics. In a general election, Black and Hispanic voters only make up 46.3% of eligible voters overall.<sup>119</sup> When voter turnout is taken into account, White voters make up 50.8% of voters in general elections on average compared to only 38.0% Black and Hispanic voters in general elections on average.<sup>120</sup> Unless turnout rates for Black and Hispanic voters increase substantially, White voters are likely to continue to be a substantial plurality, or even a majority, of the voters in citywide elections.<sup>121</sup> Accordingly, a cohesive coalition of Black and Hispanic voters does not possess the ability to elect a candidate of their choice without some crossover support from White voters under the status quo.

Against this benchmark where Black and Hispanic voters cannot elect candidates of their choice without crossover White support, the evidence suggests the shift to a top-two general election will not fundamentally alter this dynamic or diminish the

---

<sup>114</sup> *Id.* at 32.

<sup>115</sup> *Id.* at 27, 31.

<sup>116</sup> *Id.* at 31.

<sup>117</sup> *Id.* at 33.

<sup>118</sup> *Id.* at 33.

<sup>119</sup> *Id.* at 15, Table 4.

<sup>120</sup> *Id.* at 28.

<sup>121</sup> *Id.* at 28–29.

ability of a protected class to elect its preferred candidate as compared to the status quo. As the Handley Report details, there are two likely ways top-two general elections could play out: (1) a top-two general election involving a Democrat and a Republican and (2) a top-two general election involving two Democrats.<sup>122</sup> In neither scenario does the evidence show retrogression.

First, a top-two general election involving a Democrat and a Republican: In such an election, the evidence suggests that voting is unlikely to be racially polarized.<sup>123</sup> Rather, in general elections involving a Democrat and a Republican candidate, the prevailing candidate was typically a Democrat preferred by all voters, including Black and Hispanic voters.<sup>124</sup> In these elections, White voters constitute a plurality (and even sometimes a majority) of voters, meaning some support from White voters is needed to elect candidates supported by Black and Hispanic voters.<sup>125</sup> Accordingly, in this scenario, there would be no change in minority voters' ability to elect candidates of their choice, and thus, no retrogression from the shift to a top-two election.

Second, a top-two general election involving two Democrats: In such a scenario with no racial polarization, the candidate supported by Black, Hispanic, and White voters would easily win both the status quo major-party general election and the proposed top-two general election, and thus there would be no retrogression associated with the Commission's proposal.<sup>126</sup> For a race exhibiting racial polarization, the evidence suggests that even if Black and Hispanic voters were cohesive, some amount of White crossover support has been required to elect the candidate of choice of Black and Hispanic voters.<sup>127</sup> This dynamic is unlikely to change in a shift to a top-two general election, as White voters have made up the plurality, or even the majority, in New York City general elections since 2018.<sup>128</sup>

There is some evidence that a top-two general election with two Democrats might reduce the level of Black and Hispanic voter cohesion as compared to a major-party general election with a Republican and Democrat.<sup>129</sup> This is because the presence of two Democrats on the general election ballot might make it more likely that Black and Hispanic voters, able to choose between two Democrats, would not coalesce around a single candidate as typically happens in a general election between a Democrat and a Republican. But in such a scenario, a Democrat would still prevail, which in the benchmark would otherwise be the cohesive preference of Black and Hispanic voters. Further, the prevailing candidate would require some level of White crossover support, which is also the case in the status quo. And, like in the status quo, the amount of White crossover voting required to elect the candidate preferred by Black and Hispanic voters will vary depending on how

---

<sup>122</sup> *Id.* at 33–35.

<sup>123</sup> *Id.* at 33.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 33–34.

<sup>127</sup> *Id.* at 34–35.

<sup>128</sup> *Id.* at 18, Table 6.

<sup>129</sup> *Id.* at 34.

cohesively Black and Hispanic voters support their preferred candidate.<sup>130</sup> In preclearance terms, an election where a coalition of protected classes could not demonstrate ability to elect without crossover support in the benchmark remains so under the change. Further, to the extent that the two Democrats strongly divide Black and Hispanic support, such that there is no cohesion, the prevailing candidate would necessarily be preferred by one or the other group, thus perhaps enhancing a protected class's ability to elect in certain circumstances.<sup>131</sup>

There are also scenarios where a top-two general election may mitigate against the effects of diminished cohesion as compared to the current major-party general election, which permits more than two candidates to run in the general election and is performed without ranked-choice voting. A general election with more than two candidates may result in less cohesion between Black and Hispanic voters and allow a candidate preferred by neither protected class to prevail with only a fraction of the vote.<sup>132</sup> In such circumstances, a top-two general may improve the ability to elect of a coalition of Black and Hispanic voters because it necessarily limits the general election to two candidates and thus eliminates the possibility of reducing cohesion in this manner.

In sum, regardless of whether the general election involves a Democrat and a Republican or two Democrats and whether voting is polarized, the evidence shows there is no reason to expect that the ability of a coalition of voters in protected classes to elect the candidates of their choice—an ability they do not have under the status quo, without crossover support—will be retrogressed as a result of the proposal. Therefore, it appears to satisfy the preclearance standard under the NYVRA.

\* \* \*

The evidence demonstrates that the two changes to New York City voting laws under consideration by the City Charter Revision Commission—a shift from odd-year to even-year elections and a change from a closed primary with a major-party general election to an open primary with a top-two general election—are likely to increase voter participation and unlikely to result in retrogression. Therefore, the policy proposals appear to satisfy the preclearance standards under the NYVRA.

---

<sup>130</sup> *Id.* at 34–35.

<sup>131</sup> *Id.* at 35.

<sup>132</sup> *Id.* at 30, 35.