

December 3, 2024

Committee on Governmental Operations, State & Federal Legislation  
The New York City Council  
City Hall Park  
New York, NY 10007  
testimony@council.nyc.gov

*By Email*

**Re: Support for Resolution No. 189-A, Amendment to the New York State Constitution to Move New York City Elections To Even-numbered Years**

Dear Council Members:

The Election Law Clinic at Harvard Law School offers the following information as you consider proposed Resolution 189-A-2024 (Ung), which would call on the New York State Legislature to pass legislation to move the timing of New York City municipal elections to even-numbered years, on the same cycle as federal and state elections. As explained below, New York City's current practice of holding local elections "off-cycle" in odd years dilutes the voices of Black and Brown voters and young voters. Off-cycle elections exacerbate racial and age disparities in political participation and lead to under-representation of voters of color and young voters in local governments across the state. The proposed Resolution provides a critical opportunity to support eliminating the off-cycle elections that produce these discriminatory effects.

**I. Background**

In recent years, New York lawmakers began addressing the effects of election timing on voter turnout, voting disparities, and voter confusion. The John R. Lewis Voting Rights Act of New York, which passed in 2022, provided the court with the power to move the dates of local elections to remedy voter disenfranchisement of a protected class and ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process.<sup>1</sup>

In 2023, the Legislature passed and Governor Hochul signed a law that moves nearly all local county and town elections across the state to even-numbered years, in an effort to combat persistent low turnout rates and voter confusion produced by the off-year local election calendar.<sup>2</sup> The Election Law Clinic at Harvard Law School provided voter turnout

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<sup>1</sup> N.Y. Elec. Law § 17-206(5)

<sup>2</sup> Chapter 741 of the Laws of 2023

analysis covering 16 New York counties before the bill was signed.<sup>3</sup> To move the date of city elections, including for New York City elected offices, the New York State Constitution must be amended. Earlier this year, lawmakers introduced a constitutional amendment that would move elections of city and other offices to even-numbered years,<sup>4</sup> and the bill was considered before the end of the legislative session.<sup>5</sup>

The largest jurisdiction to be impacted by the proposal is New York City, but because of constitutional constraints, the shift in election calendar cannot be accomplished through a local law. The New York City Council is thus considering approving a resolution that would call on the Legislature to pass, and the voters to approve, an amendment to the New York State Constitution that would move New York City elections to even-numbered years.

Resolution 189-A states that “voters in even-numbered year elections tend to be more demographically representative of the electorate as a whole” and that “turnout would increase the most for younger voters and voters of color if municipal elections were to be moved to even-numbered years”. This memorandum is intended to provide lawmakers with new data and information about this topic, the impact of election year on racial and age-based disparities in New York City voter participation.

## **II. Off-Cycle Elections Can Exacerbate Racial Disparities in Voting**

### *a. Off-cycle elections have been shown to contribute to significant racial and age-based disparities in political participation*

Studies have consistently shown that off-cycle elections significantly depress voter turnout,<sup>6</sup> and in doing so disproportionately suppress the ability of young people and people of color to participate in the democratic process.<sup>7</sup> Off-cycle elections increase the cost of participation—including arranging time off work, learning where and when to vote, and traveling to the polls—which, as research has shown, often makes voting burdensome or impossible for “occasional voters (who are generally younger, more likely to be minorities,

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<sup>3</sup> December 11, 2023 letter from voting rights groups to Governor Kathy Hochul regarding Support for the Election Alignment Bill (A4282B/S3505B) <https://www.naacpldf.org/wp-content/uploads/2023.12.11-Letter-to-Gov.-Hochul-in-Support-of-A.4282B-S.3505B-Civil-and-Voting-Rights-Organizations.pdf>

<sup>4</sup> S9126/A10466

<sup>5</sup> Bill Mahoney, Politico New York, 05/02/2024, *Moving New York City elections to even years enters end-of-session talks*. <https://subscriber.politicopro.com/article/2024/05/new-york-elections-even-years-00155743>

<sup>6</sup> See generally, e.g., Zoltan L. Hajnal, Vladimir Kogan, & G. Agustin Markarian, *Who Votes: City Election Timing and Voter Composition*, 116 AM. POL. SCI. REV. 374, (2022) [hereinafter Hajnal et al., *Who Votes*]; SARAH ANZIA, *TIMING AND TURNOUT: HOW OFF-CYCLE ELECTIONS FAVOR ORGANIZED GROUPS* (2014); Christopher Berry & Jacob E. Gersen, *The Timing of Elections*, 77 U. CHI. L. REV. 37 (2011).

<sup>7</sup> See, e.g., Joseph T. Ornstein, *Municipal Election Timing and the Politics of Urban Growth* 8 – 9 (Apr. 30, 2018) (on file with University of Michigan) (“The most prominent consequence of holding elections off-cycle is lower voter turnout...[b]ut this decrease in turnout is not uniform.”) [hereinafter, Ornstein, *Municipal Election Timing*].

and poorer).”<sup>8</sup> Aligning local elections with state and national elections “greatly reduces [that] cost of participation”<sup>9</sup> for less habitual voters to engage in local democracy, without reducing habitual voters’ opportunities to participate.<sup>10</sup> In stating support for holding these elections alongside national contests, the proposed resolution takes a meaningful step—heralded by some scholars as “the single most important change”<sup>11</sup>—to both increase voter turnout and ensure that the electorate is truly representative of the communities that New York City officials serve.

The impact of off-cycle election timing is starkly demonstrated in the disparity between younger and older voter turnout. In fact, one study examining election timing and voter turnout for school districts noted that one of the “most substantial difference[s]” in voter share between on-cycle and off-cycle elections was for elderly voters.<sup>12</sup> While older Americans are vastly overrepresented in off-cycle contests (sometimes representing “more than 2 times as many voters as they do . . . residents”), younger Americans are “substantially better represented in on-cycle contests” to create a more representative voting population.<sup>13</sup>

The same holds true for voters of color. A study of recent local elections demonstrated that the proportion of racial and ethnic minority voters increases substantially when local elections are held concurrently with state and federal contests.<sup>14</sup> In areas with high minority populations, this shift is even more consequential, and can lead to nearly doubling turnout among minority voters.<sup>15</sup> Local elections provide perhaps the clearest example that every vote matters, where even a small differences in turnout can translate into different election outcomes; aligning election dates with federal contests ensures that voters more easily have a say in the matters that affect them on a day-to-day basis.<sup>16</sup>

The vast majority of academic research points to the same conclusion: aligning election timing is the single most effective election regulation one can take to increase voter turnout. Aligning local and national contests decreases the cost of voter participation, providing easier access to the vote for significant portions of the electorate. In addition, because research shows that both voting and non-voting are self-reinforcing—or “habit-forming”—behaviors, this important change can create long-term benefits in civic

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<sup>8</sup> Hajnal et al., *Who Votes* at 374.

<sup>9</sup> *Id.*

<sup>10</sup> Vladimir Kogan, Stephane Lavertu, Zachary Peskowitz, *Election Timing, Electorate Composition, and Policy Outcomes: Evidence from School Districts*, 62 AM. J. POL. SCI. 637, 644 (2018) [hereinafter Kogan et al., *Election Timing*].

<sup>11</sup> Hajnal et al., *Who Votes* at 374.

<sup>12</sup> Kogan et al., *Election Timing*, at 645.

<sup>13</sup> Hajnal et al., *Who Votes*, at 379; *see also* Ornstein, *Municipal Election Timing*, at 9 – 10.

<sup>14</sup> Hajnal et al., *Who Votes*, at 377 – 381.

<sup>15</sup> Melissa Marschall & John Lappie, *Turnout in Local Elections: Is Timing Really Everything*, 17 Election L.J. 221 (2018). Zoltan Hajnal & Jessica Troustine, *Where Turnout Matters: The Consequences of Uneven Turnout in City Politics*, Journal of Politics, 67 J. POL. 515, 521 – 523 (2005).

<sup>16</sup> Hajnal & Troustine, *Where Turnout Matters* at 521 – 523.

participation among eligible New Yorkers.<sup>17</sup> Establishing on-cycle municipal elections would decrease age and racial disparities in political participation, help make local democracy more inclusive, and City Government more representative.

*b. Off-cycle elections result in severe racial and age disparities in participation in New York City elections.*

A preliminary study of voter turnout by age and race/ethnicity performed by the Election Law Clinic at Harvard Law School demonstrates the starkly suppressive effects of off-cycle elections.<sup>18</sup>

The methodology used for this analysis was as follows: Bayesian-Inference Surname Geocoding (BISG)<sup>19</sup> was applied to voter files from 2016-2022<sup>20</sup> for both the entirety of New York City and the five boroughs/counties separately. Based on this data, the following conclusions can be drawn.

There is reduced turnout in off-cycle elections in general across New York city. Figure 1 shows the average turnout in each collection of elections (Presidential, Congressional, and odd-year) for New York City and individual boroughs. In Presidential election years average voter turnout is approximately 61.5% across New York City. In Congressional years turnout drops to 41.8%. And in odd-year elections, average New York City voter turnout is just 20.6%.<sup>21</sup> While this pattern varies in severity across the five New York City boroughs studied, the trend holds across the counties studied. Odd-year elections result in significantly lower voter turnout compared to Presidential and Congressional (even-year) elections.

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<sup>17</sup> Alan S. Gerber, Donald P. Green & Ron Shachar, *Voting May Be Habit-Forming: Evidence from a Randomized Field Experiment*, 17 Amer. J. Pol. Sci. 540, 549 (2003). These long-term benefits can be expected in part because the “habit” of voting is “an outgrowth of changed self-perception” about one’s own voting behavior. *Id.* While, according to one study’s authors, “the schedule of frequent and often low-salience elections typical of the United States contributes to the breakdown of voting habits by offering many opportunities for abstention,” aligning election schedules can have the opposite effect, “increas[ing] the proportion of the electorate who describe themselves as ‘voters,’ a self-perception that would be expected to persist over time and to predict subsequent voting rates.” *Id.*

<sup>18</sup> The conclusions of this study are reported in this letter, and the underlying code and data are on file with the Election Law Clinic at Harvard Law School.

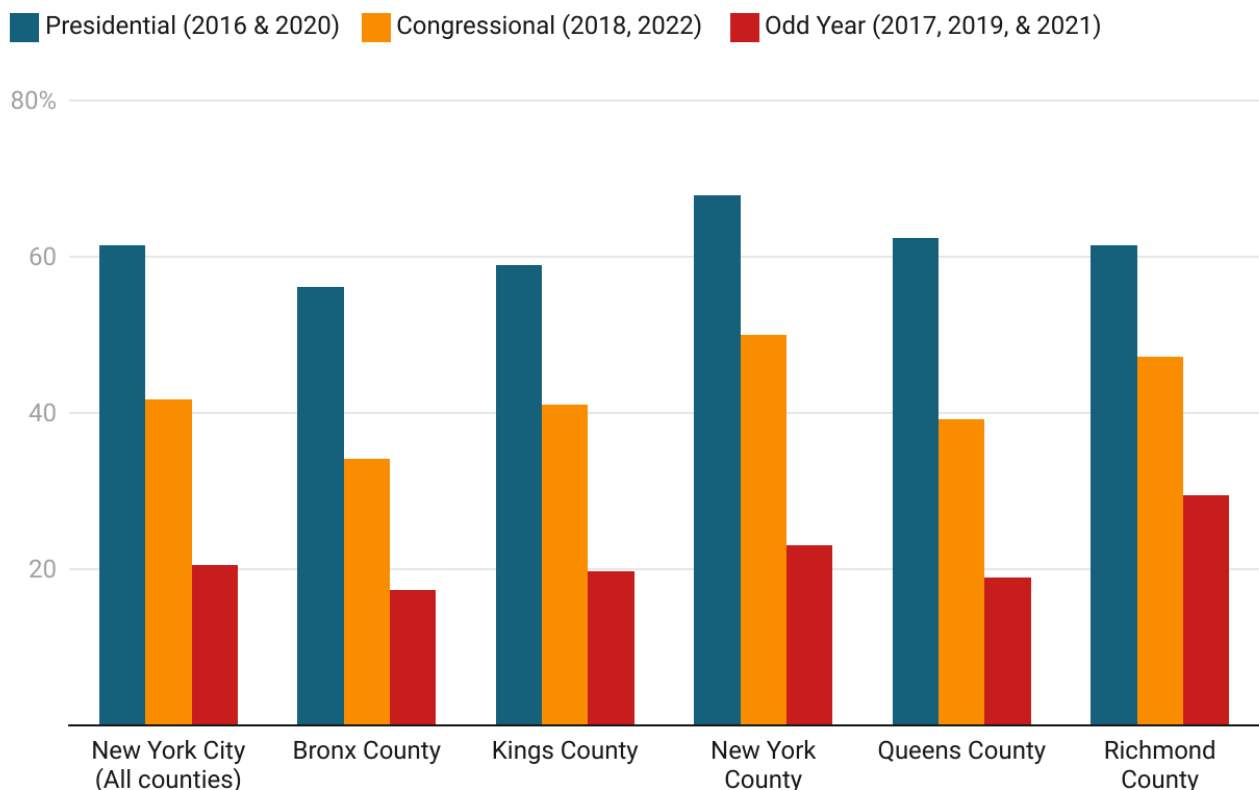
<sup>19</sup> BISG data uses estimation methods based on geocoded address and surname to refine Census data and provide predictive estimates of race and ethnicity. See e.g. *Nat’l Ass’n for Advancement of Colored People, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 382 (S.D.N.Y. 2020), *aff’d sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021).

<sup>20</sup> Please note that 2019 was an unusual city election year. Only one citywide office was on the ballot, so its utility is limited. Further information can be provided on request.

<sup>21</sup> The New York City Board of Elections’ total turnout aggregates differ slightly from the turnout aggregates reported here because this analysis is based on voter files mostly extracted in April following an election.

## Congressional and odd year elections reduce turnout compared to Presidential year elections

New York City as a whole shows a significant decrease in turnout from presidential election years to Congressional and odd year elections. This pattern holds, but varies in severity, across the individual counties studied.



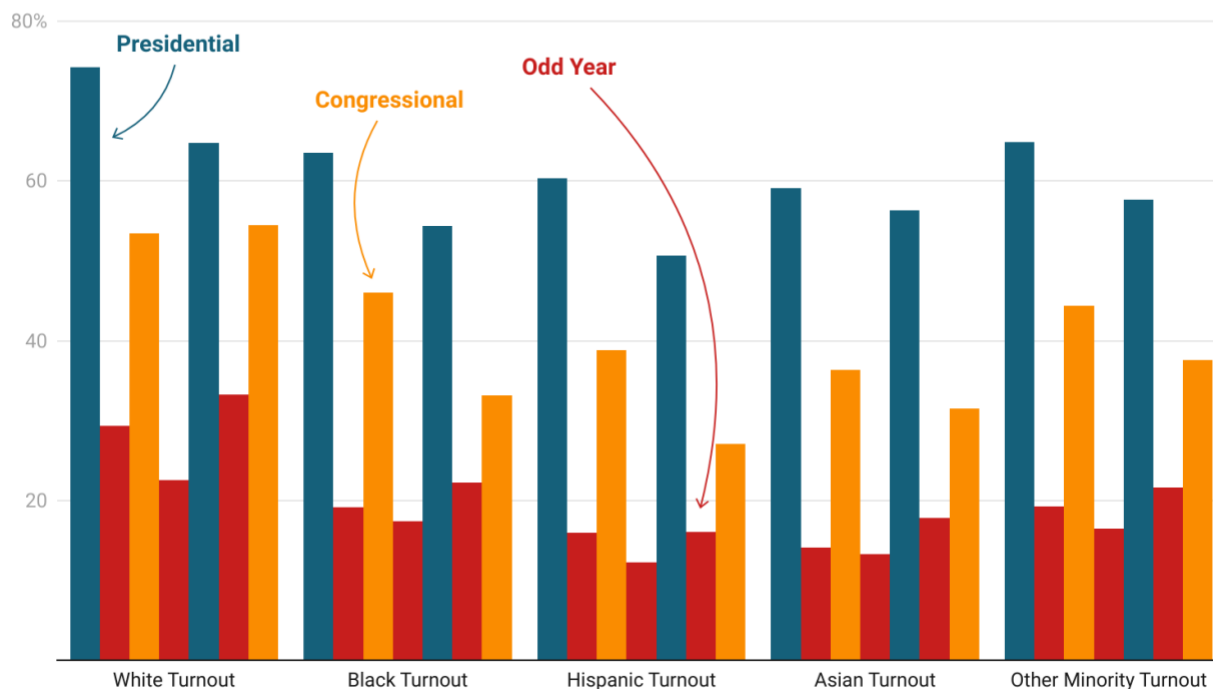
*Figure 1. Average Turnout in New York City (all counties), Bronx County, Kings County, New York County, Queens County, and Richmond County*

Off-cycle elections reduce turnout in New York City general elections for all racial groups. Figure 2 below shows turnout across racial groups for all New York City voters between 2016 and 2022. Voters of every race turn out at a significantly higher rate in Presidential years as compared to Congressional and odd year elections. The decrease in turnout is especially dramatic for minority voters in odd year elections. For example, between 2016 and 2017, Black turnout fell from 63.5% to 19.2%; Hispanic turnout fell from 60.3% to

16.0%; and Asian turnout fell from 59.1% to 14.1%. While white turnout also fell, it remained significantly higher than minority turnout. Between 2016 and 2017, White turnout fell from 74.2% to 29.3%.

## New York City Voters of all races turn out less in off-cycle elections.

The figure below shows estimated turnout rates (%) for voters of all races across elections in city-wide elections between 2016 and 2022.

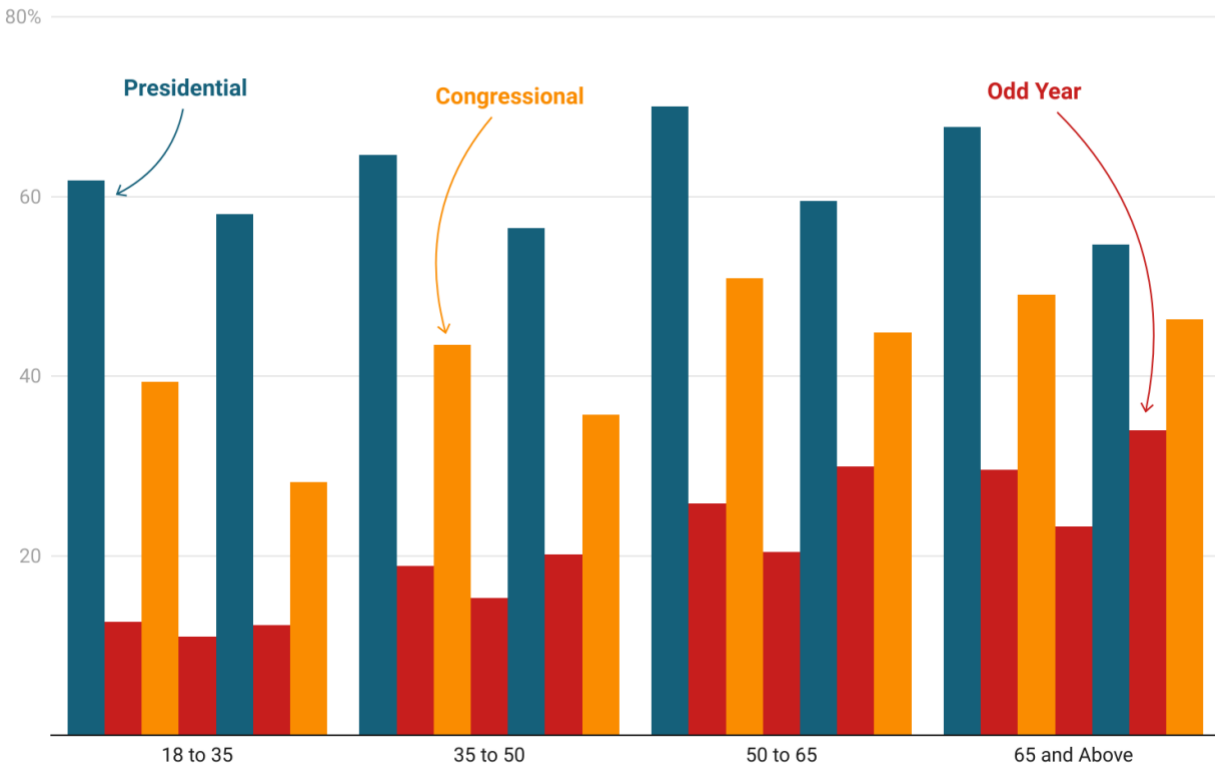


*Figure 2. Average turnout by racial group in Presidential (2016, 2020), odd year (2017, 2019, 2021), and congressional (2018, 2022) election years.*

Figure 3 shows that the same trend holds across age groups. Every age group shows significant decreases in turnout in Congressional and odd-year elections compared to Presidential election years. But that disparity is more pronounced among younger voters compared to older voters. Between 2016 and 2017, 18 to 35 turnout fell from 61.8% to 12.6%. In the same timeframe, 65 and above turnout fell from 67.8% to 29.5%.

## New York City Voters of all ages turn out less in off-cycle elections.

The figure below shows estimated turnout rates (%) for voters of all ages across elections in city-wide elections between 2016 and 2022.

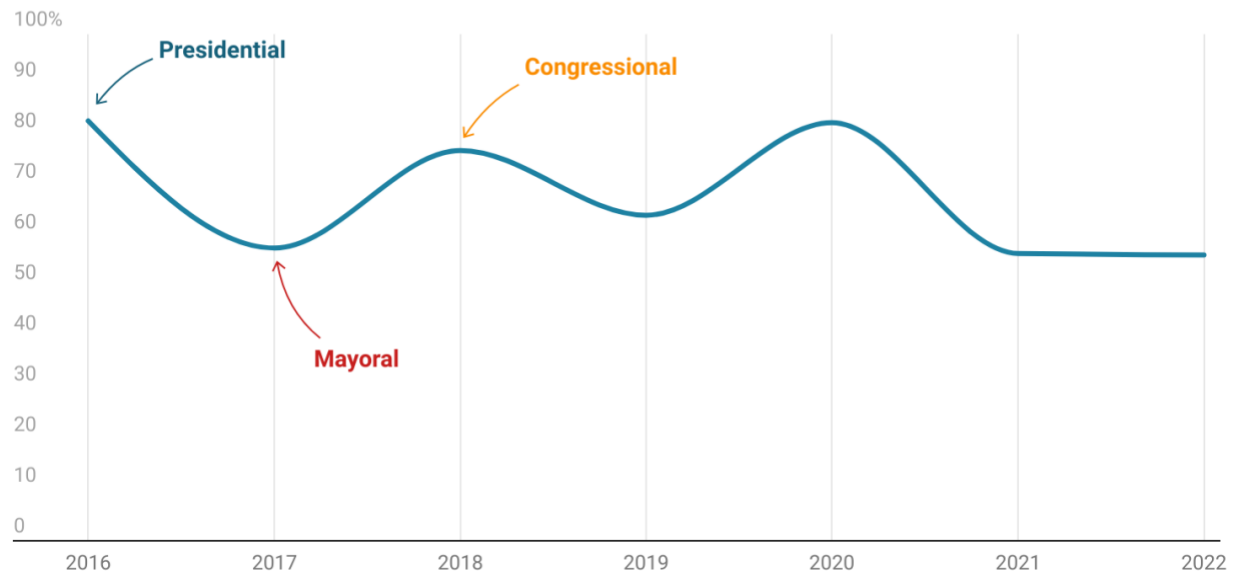


*Figure 3. Average turnout by age group in Presidential (2016, 2020), odd year (2017, 2019, 2021), and congressional (2018, 2022) election years.*

Because of the disparity in off-cycle election effects and preexisting turnout disparities, turnout among both young voters and among voters of color, expressed as a proportion of elder and white turnout respectively, is significantly lower in off-year elections, as shown in Figures 4 and 5. This means that off-cycle electorates are disproportionately whiter and older than on-cycle electorates. In 2016 and 2018, minority turnout was 82.9% and 77.1% of white turnout, respectively. But in 2017 during New York's mayoral election, minority turnout was just 57.8% of white turnout. Similarly, in 2016 and 2018 youth turnout was 91.2% and 80.3% of elder turnout, respectively. In 2017, the ratio of youth turnout to elder turnout was just 42.6%.

## New York City's odd-year elections depress minority turnout relative to white turnout.

This figure shows the ratio of minority turnout over white turnout rate. Turnout is the number of group members who voted over the number of group members who are registered to vote in a given year. Minority turnout relative to white turnout is regularly lower in odd-year elections compared to Presidential and Congressional elections.

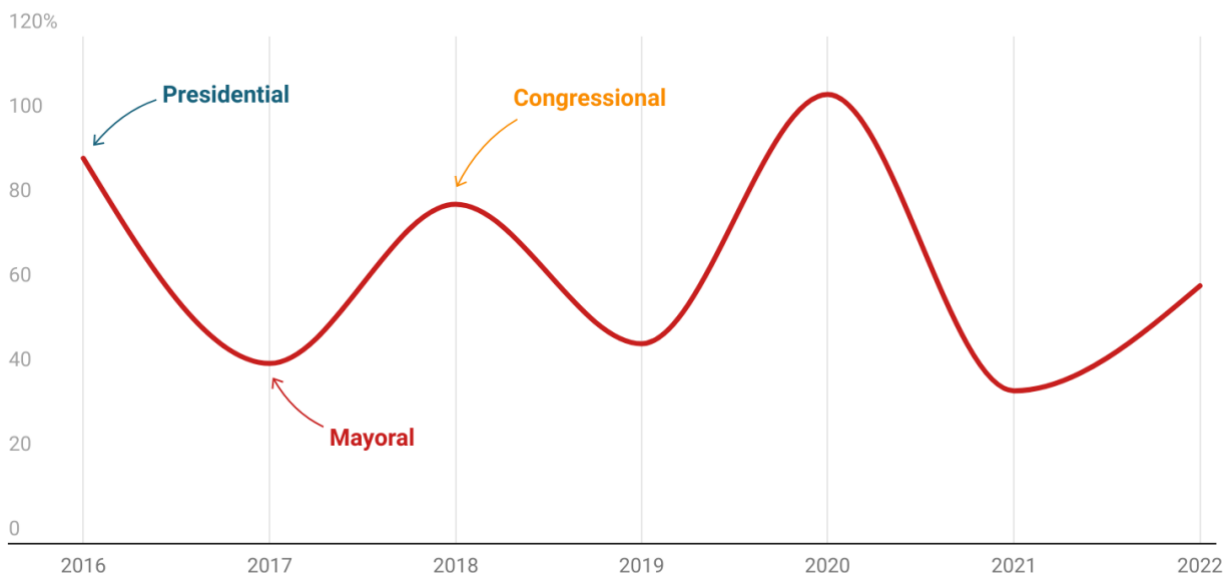


*Figure 4: Average Ratio of Minority Voters to White Voters in Elections, 2016-2022, in New York City.*



## New York City's odd-year elections depress youth turnout relative to elder turnout.

This figure shows the ratio of youth turnout (18 to 35) over elder turnout (65+). Turnout is the number of members of a group who vote over the number of registered voters from that group in a given year. Youth turnout relative to elder turnout drops significantly in odd-year elections compared to Presidential and Congressional elections.



*Figure 5: Average Ratio of 18-35 Year Old Voters to Over 65 Year Old Voters in Elections, 2014-2022, in the Sixteen Studied Counties*

Ultimately, all voters lose when city elections are held off-cycle. Voters of every race and age turn out less in off-cycle elections. But decreases in turnout are more pronounced among minority and younger voters. As a result, New York City's off-cycle elections dilute the voices of minority and youth voters relative to on-cycle elections.

### III. Moving New York City's Municipal Elections Year Will Promote Compliance with Federal and State Law

Shifting New York City's election calendar to align with statewide elections will prevent potential violations of federal and state law. It is unlawful for states and local governments to maintain off-cycle elections if they have a racially disparate effect. The federal Voting Rights Act prohibits practices—including off-cycle elections—that “result[] in a denial or abridgement of the right of any citizen of the United States to vote on account of race, color, [or language-minority status],” and a violation of the statute exists when “it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of [protected classes] in that [their] members have less opportunity than other members of the electorate to participate in

the political process and to elect representatives of their choice.”<sup>22</sup> Similarly, the John R. Lewis Voting Rights Act of New York (the “NYVRA”) prohibits practices—including off cycle elections—whenever it is shown that “based on the totality of the circumstances, members of a protected class have less opportunity than the rest of the electorate to elect candidates of their choice or influence the outcome of elections.”<sup>23</sup> By shifting City elections “on-cycle” to even years, New York will facilitate compliance with federal and state law.

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For the above reasons, we encourage you to approve Resolution 189-A-2024, supporting moving New York City’s municipal elections to even-numbered years. Please feel free to contact Ruth Greenwood ([rgreenwood@law.harvard.edu](mailto:rgreenwood@law.harvard.edu)) with any questions or to discuss these issues in more detail.

Sincerely,

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<sup>22</sup> See 52 U.S.C. § 10301; see, e.g. Compl., *Citizens Project v. City of Colorado Springs*, No. 22-cv-1365 (D. Colo. Jun. 1, 2022), ECF No. 1

<sup>23</sup> N.Y. Elec. Law § 17-206(1).