

Treasurer and Secretary of the parent associations and PTAs will participate along with their President in voting for the parent members of the Council.

3. High School Council

In response to public comments received at the hearings on the proposed regulations to implement Chapter 123, the Chancellor has announced that he will be creating a Citywide High School Council. Although this Council is not mandated by State law, it will serve to ensure that all parents, including high school parents, are represented in the new governance system. It will be comprised of nine parents selected in a citywide process by the presidents of each high school parent association or PTA. The process will ensure that each borough has representation and that no more than one parent from the same school is selected. In addition, the High School Council will include two high school students selected by the Chancellor's Student Advisory Council. The Council's duties will include advising and commenting on education and instructional policies involving high schools, issuing an annual report on the effectiveness of high school education and holding regular meetings for the public to discuss issues of importance to high school parents.

VIII. CHAPTERS 91 AND 123 HAVE NEITHER THE PURPOSE NOR THE EFFECT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE, COLOR OR MEMBERSHIP IN A LANGUAGE GROUP

Section 5 of the Voting Rights Act of 1965, and implementing regulations adopted by the Department of Justice, require that before a new voting "standard, practice or procedure" is implemented in the counties of the Bronx, Kings, and New York ("covered counties"), it must be precleared by either the Attorney General or a federal court to ensure that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. §1973c.

In its most recent case interpreting section 5 of the Voting Rights Act, the U.S. Supreme Court stated that the analysis should "encompass the entire ... plan as a whole" and "depends on an examination of all the relevant circumstances, such as the ability of minority voters to elect their candidate of choice, the extent of the minority group's opportunity to participate in the political process, and the feasibility of creating a nonretrogressive plan." Georgia v. Ashcroft, 123 S. Ct. 2498, 2511 (2003)(emphasis added, citations omitted). The Court further explained:

[W]hile the diminution of a minority group's effective exercise of the electoral franchise in one or two districts may be sufficient to show a violation of § 5, it is only sufficient if the covered jurisdiction cannot show that the gains in the plan as a whole offset the loss in a particular district.

Second, any assessment of the retrogression of a minority group's effective exercise of the electoral franchise depends on an

examination of all the relevant circumstances, such as the ability of minority voters to elect their candidate of choice, the extent of the minority group's opportunity to participate in the political process, and the feasibility of creating a nonretrogressive plan. See, e.g., *Johnson v. De Grandy*, 512 U.S. 997, 1011-1012, 1020-1021, 129 L. Ed. 2d 775, 114 S. Ct. 2647 (1994); *Richmond v. United States*, 422 U.S. 358, 371-372, 45 L. Ed. 2d 245, 95 S. Ct. 2296 (1975); *Thornburg v. Gingles*, *supra*, at 97-100, 92 L. Ed. 2d 25, 106 S. Ct. 2752 (O'Connor, J., concurring in judgment). "No single statistic provides courts with a shortcut to determine whether" a voting change retrogresses from the benchmark. *Johnson v. De Grandy*, *supra*, at 1020-1021, 129 L. Ed. 2d 775, 114 S. Ct. 2647.

In assessing the totality of the circumstances, a court should not focus solely on the comparative ability of a minority group to elect a candidate of its choice. While this factor is an important one in the § 5 retrogression inquiry, it cannot be dispositive or exclusive. The standard in § 5 is simple -- whether the new plan "would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S., at 141, 47 L. Ed. 2d 629, 96 S. Ct. 1357.

Id.

The "purpose" prong of section 5 of the Voting Rights Act "covers only retrogressive dilution." *Reno v. Bossier Parish School Bd.*, 528 U.S. 320, 328 (2000). Chapters 91 and 123 have no such purpose. To the contrary, their purpose is to replace a broken system which has failed our school children miserably, with a new system that empowers public school children's parents, a group that is predominantly minority.

The "effect" prong of the section 5 test requires us to demonstrate that the proposed changes "do not lead to retrogression in the position of racial minorities." *Beer v. United States*, 425 U.S. 130, 141 (1976). Chapters 91 and 123 eliminate the current elective system and create a new system for selecting members of the local school governance bodies. This change should be reviewed in light of previous cases which have involved a shift away from an elective system. In a change from an elective to an appointive system, "retrogression can be evaluated by examining the power of minority voters to elect the officials who appoint the members ..." *State of Texas v. United States*, 866 F. Supp. 20 (D. D.C. 1994). The U.S. Supreme Court, in holding that a change from an elective to an appointive system is subject to preclearance review, acknowledged that "Such a change could be made either with or without a discriminatory purpose or effect...." *Allen v. State Bd. of Elections*, 393 U.S. 544, 569-70 (1969). In the new scheme created by Chapter 123, overall minority strength for electing the persons who will select

the parent members is enhanced relative to the strength of minority voters in the community school board elections under existing law.¹¹⁴

There is no evidence in the record of any intent whatsoever to diminish the effectiveness of people of color in local school governance. Nor is there evidence that such will be the effect of the new legislation. All the evidence points to the conclusion that Chapters 91 and 123 have both purpose and effect consonant with the Voting Rights Act. They are meant to be a key part of a larger reform effort that is parent-centered, and by virtue of the demographics of our school system this means that minorities will have an enhanced opportunity to influence the membership of the new local school governance bodies.

A. Purpose

The purpose of Chapters 91 and 123 is to improve the public school system -- in which a majority of the students and parents are persons of color -- by installing a new local governance structure giving a greater voice to parents.

Statements of the legislators described at Part VI A of this submission, and testimony from the public at the hearings of the Task Force described at Part VI C, dramatically demonstrate the failure of the existing community school board system. While some community school boards have served their districts well, too many are known for corruption, ineptitude, ineffectiveness, and over-politicization. Too often they are perceived by the public to serve the self-interests of their members rather than the needs of our 1.1 million public school students. This system clearly has lost not only public confidence, but also public interest, as manifested by the lack of a full slate of candidates for some districts in the 1999 elections, and the appallingly low voter turnout in all districts.¹¹⁵ The provisions of Chapter 91 submitted here for preclearance respond to public demand for reform by eliminating the community school boards. Chapter 123 was developed on the basis of the recommendations of a multi-racial Task Force, based in turn on public hearings at which a clear message emerged: parents must have a stronger voice in local school governance.

Both Chapters 91 and 123 passed the Legislature by large margins. Six of the City's nine minority members of the Senate, and 21 of the 23 minority members of the Assembly supported Chapter 91. The vote of City Senators in favor of Chapter 91 was 21 to 3 and the vote of City members of the Assembly in favor of Chapter 91 was 51 to 4. Chapter 123 garnered the support of nearly all the minority members of both houses of the Legislature, including a member who

¹¹⁴ It is also worth noting that the City's high schools have been governed by an appointed body, the City's Board of Education, for years. The school district of Yonkers, immediately to the north of New York City, is also governed by an appointed body. Educ. L. §2553(3).

¹¹⁵ Information about voter turnout and candidate participation is discussed in Part VI B of this submission.

had previously voted against the elimination of community school boards. In fact, all members of the Senate (including City members and “upstate” members), and all but 5 of the City’s 64 Assembly members voted in favor of the bill. Cf. Georgia v. Ashcroft, *supra* at 2513 (“[I]t is also significant, though not dispositive, whether the representatives elected from the very districts created and protected by the Voting Rights Act support the new districting plan. *** The representatives of districts created to ensure continued minority participation in the political process have some knowledge about how ‘voters will probably act’ and whether the proposed change will decrease minority voters’ effective exercise of the electoral franchise.”) Georgia v. Ashcroft also teaches that the evidence of how elected representatives voted on the plan under review is relevant to the determination of both purpose and effect of a change in voting. Id.

The effectuation of Chapter 123 will correlate with the plans developed by the Mayor and the Chancellor to increase parental involvement in all facets of the school system. The City and the City School District are investing significant resources toward this goal. The “Children First” reforms, described in Part V B of this submission, include as one of four priorities the empowerment of parents. The Parent Academy will work to develop parent leadership. Communications with parents, such as the Parent Guide broadly distributed at the beginning of this school year, will urge them to become involved in their children’s schools and participate in leadership opportunities. As the Mayor stated in his speech for Dr. King’s birthday, principals will be held accountable for parent involvement. The new impact of elections by parent associations and PTAs – selecting officers who will in turn select the parent members of the councils – will provide an additional incentive for parents to become active in these organizations. Chapter 123 should thus have a beneficial impact over time on the strength of the parent associations and PTAs.

Chapter 123 reserves two places on each CDEC for persons appointed by the borough presidents who need not be parents. It thereby entrusts persons who have been chosen by borough-wide election subject to section 5 of the Voting Rights Act to select persons who can bring appropriate expertise to the new councils.

Chapter 123 also empowers a new community by creating the Citywide Council on Special Education. As demonstrated in the next section, the parents of students in District 75 schools are predominantly minority. And again, two seats are reserved for persons who need not be parents, and who will be chosen by the Public Advocate who is elected by citywide election subject to section 5 of the Voting Rights Act.

The Borough Presidents and the Public Advocate are elected at the same time as the Mayor. As demonstrated by the data in Exhibit 43, voter turnout for these elections (40.9% in 2001; 40% in 1997; 57% in 1993) is considerably higher than has been turnout for community school board elections, reported in Exhibit 29 (3.2% in 1999; 5.3% in 1996). Thus, while Chapter 123 particularly empowers parents represented through their school PTAs and parent associations, it also gives voice to the broader electorate who have had the opportunity to participate in community school board elections in the past (and who, in large proportions, have failed to do so), represented by their elected officials.

B. Effect

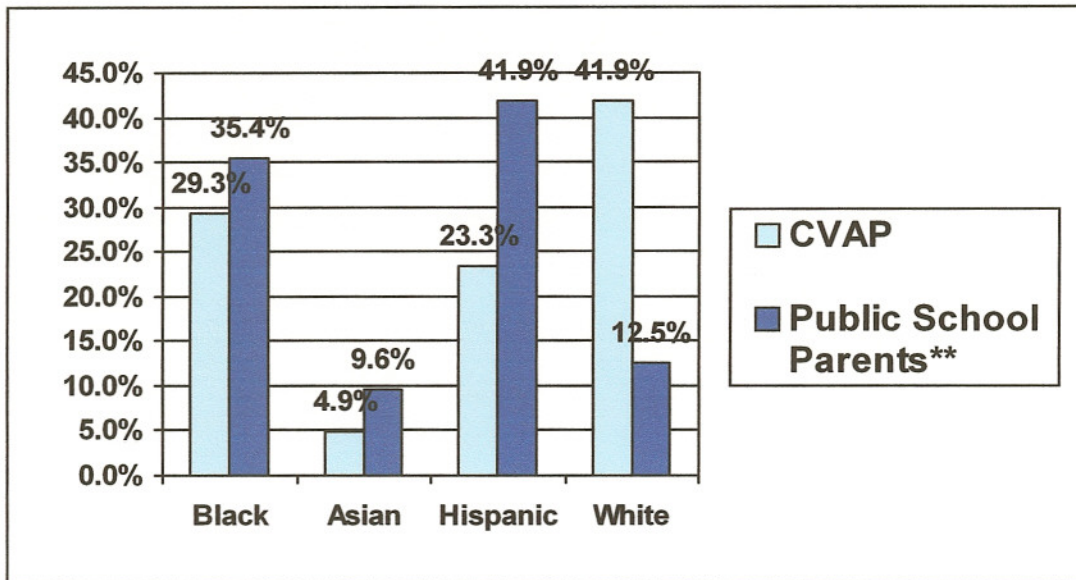
1. Impact of the change from the electorate for the 9 member community school boards to the new system of selection of 9 parent members by parent association and PTA officers elected by parents of public school children in grades K through 8, with 2 additional Borough President appointees

The City retained Dr. John Hull Mollenkopf,¹¹⁶ an expert in the area of statistical analysis of census data, to analyze the effect of Chapter 123 on protected class members in the covered counties. Dr. Mollenkopf prepared the report and accompanying tables and charts that are annexed hereto as Exhibit 66. The City also retained Dr. Bernard Grofman, an expert in redistricting and voting rights, to assist in evaluating methods for implementing the selection of the parent members of the Councils. Dr. Grofman's resume and report are attached hereto as Exhibits 61 and 62.

In his report, Dr. Mollenkopf compares the demographics of voters eligible to participate in the old community school board election system to those eligible to elect the parent association and PTA officers who will select the parent members of the Councils in the new system under Chapter 123. Dr. Mollenkopf's study clearly shows that in the covered counties, protected class members make up the overwhelming proportion of those eligible to vote for officers of the parent associations and PTAs. This result is dramatically illustrated by the chart below, which uses data drawn from Dr. Mollenkopf's report:

¹¹⁶ A copy of Dr. Mollenkopf's resume is provided in Exhibit 65.

**COMPARISON OF CVAP POPULATION TO
POPULATION OF PARENTS OF PUBLIC SCHOOL STUDENTS IN GRADES K – 8
IN THE THREE COVERED COUNTIES**



** Public school parent ethnicity data in this chart is based on records in the Department of Education’s Automate the Schools (ATS) system, and uses the assumption that the parents have the same ethnicity as their children. Throughout this section, “CVAP” is used as a measure of the electorate for the community school boards. In fact, as noted above, in addition to citizens, parents of children attending a public school within a community school district have been eligible to vote for community school board members. Parent voters represent less than 1% of the electorate under current law. Dr. Grofman has stated that CVAP data is “the best available proxy for the eligible electorate under the procedures formerly used to elect members to the community school boards.” Exhibit 62, p. 3.

On a citywide basis and with respect to the counties subject to section 5 of the Voting Rights Act individually (New York, Kings and the Bronx), the percentage of minority group members among the public school parent population who have children in Kindergarten through eighth grade, and are thereby eligible to join parent associations and PTAs and participate in

their elections within the community school districts (hereafter, the “parent population”) is higher than the percentage of minority group members in the citizen voting age population (hereafter, “CVAP”). Looking at the three covered counties together, representation of non-Hispanic Blacks increases 6.1 percentage points; representation of Hispanics increases 18.6 percentage points, representation of Asians increases 4.7 percentage points. Representation of Whites decreases 29.4 percentage points.

Dr. Grofman’s report states that “for each of the three protected groups, as well as for protected minorities as a whole, the change to a(n) (indirect) parent-based electorate would, *ceteris paribus*, significantly increase the prospects for minority selection to the Community School District Education Councils over what had been found in the previous elections for Community School Boards.” Exhibit 62 at 3-4. His report includes the following table, which as he states, “shows clear evidence in support of this proposition at the aggregate level (the twenty-four school districts that are located in the three boroughs covered by Section 5 of the VRA).

**Estimated (Eligible) Racial Composition of Old (CSB)
and New (CDEC) Electorates and of the
Actual Composition of Community School Boards Elected under STV
for the Three Covered Counties**

	CVAP%	CSB members elected in 1999 under STV	Parent %
White	41.9	34.3	12.5
Black	29.3	36.1	35.4
Hispanic	23.3	27.3	41.9
Asian	4.9	2.3	9.6

Exhibit 62, p. 5. Dr. Grofman comments:

As can be seen from Table 1, each of the three protected groups makes up a larger proportion of the (indirect) electorate for the new CDECs than it did of the potential electorate for the old Community School Boards, with the improvements particularly marked for Hispanics and for Asian-Americans. When we look at the overall impact of the change, we see that the proportion white goes down dramatically, from 41.9% to 12.5%, a reduction of more than 2/3rds. Moreover, when we look at the actual black, Asian-American and Hispanic composition of the Community School Boards elected under the single transferable vote at the

most recent election held under that rule, we see that those proportions closely mirror the CVAP proportions in the CSBs, and are lower than the proportions of these groups among parents. Moreover, under the STV rules previously used, the white proportion of elected members is even higher than the white proportion of CVAP; indeed, white membership on the present Community School Boards elected under STV is more than three times the white percentage among parents of public school children. In contrast, we would expect that the composition of the new CDECs would much more closely mirror the racial and Hispanic proportions among parents.

Exhibit 62 at p. 6.

Looking at the covered counties and minority groups individually, representation for each minority group within each of the three counties increases, with one exception. The following data is extrapolated from data provided by Dr. Mollenkopf:

Kings County

	CVAP	%	Parents	%
Total	1,386,079		318,115	
Black	504,606	36.4%	136,597	42.9%
Asian	72,460	5.2%	38,613	12.1%
Hispanic	229,216	16.5%	87,472	27.5%
White	570,762	41.2%	53,726	16.9%

New York County

	CVAP	%	Parents	%
Total	1,019,155		131,339	
Black	166,943	16.4%	30,495	23.2%
Asian	65,917	6.5%	16,316	12.4%
Hispanic	192,584	18.9%	65,445	49.8%
White	589,090	57.8%	18,189	13.8%

In Kings and New York Counties, representation of each minority group shows increases from the CVAP to the parent population, some of which are very significant:

- Asian representation in Kings County rises from 5.2% to 12.1%
- Hispanic representation in New York County rises from 18.9% to 49.8%
- Black representation in New York County rises from 16.4% to 23.2%

Bronx County

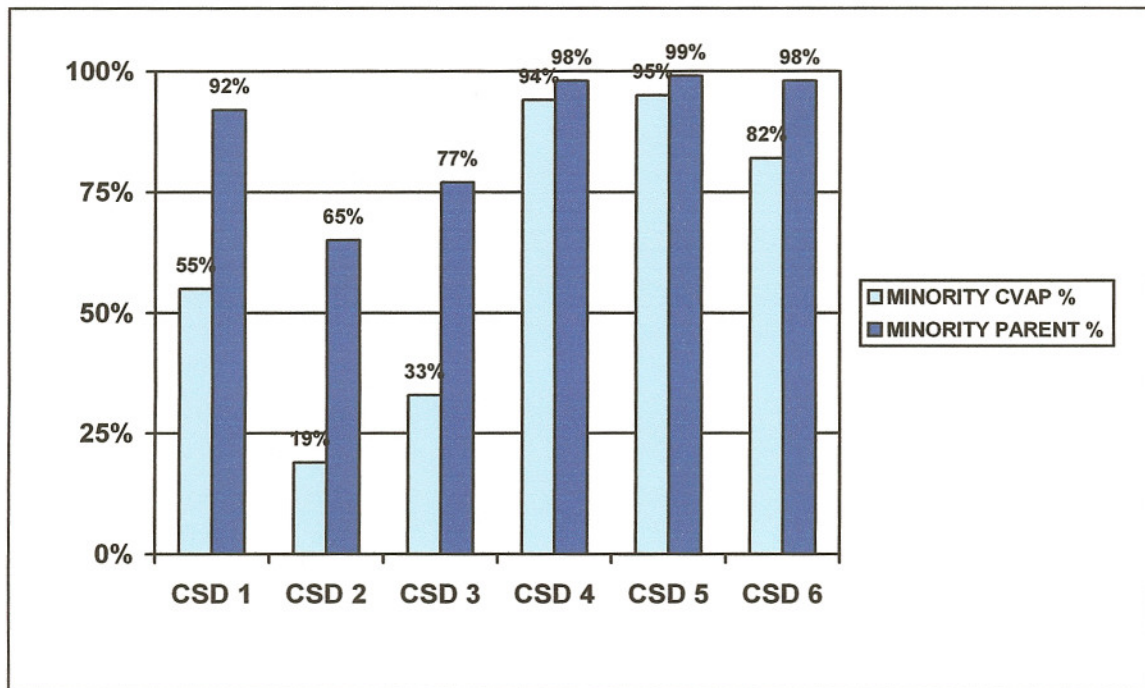
	CVAP	%	Parents	%
Total	730,571		199,409	
Black	245,722	33.6%	62,310	31.2%
Asian	15,339	2.1%	7,188	3.6%
Hispanic	309,973	42.4%	118,638	59.5%
White	154,611	21.2%	9,003	4.5%

In Bronx County, Black representation decreases slightly from 33.6% to 31.2%. However, there is an increase in Asian representation and a substantial increase in Hispanic representation:

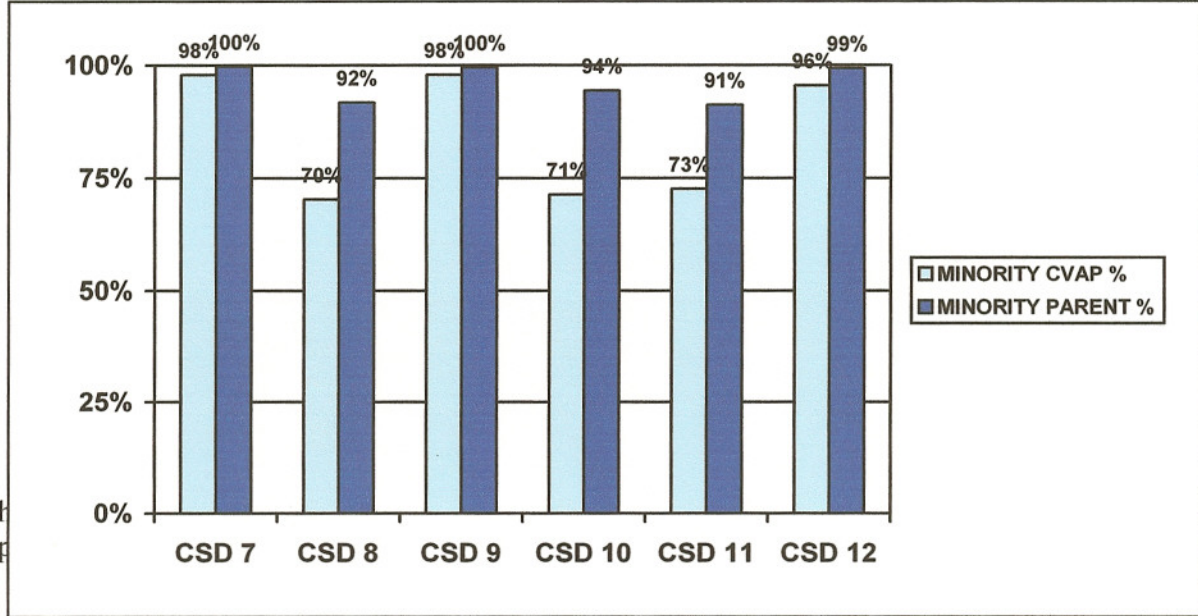
- Asian representation rises from 2.1% to 3.6%
- Hispanic representation rises from 42.4% to 59.5%

The following charts, which contain information extrapolated from Dr. Mollenkopf's work, illustrate the rise in overall minority representation from CVAP to the parent population on an individual district basis:

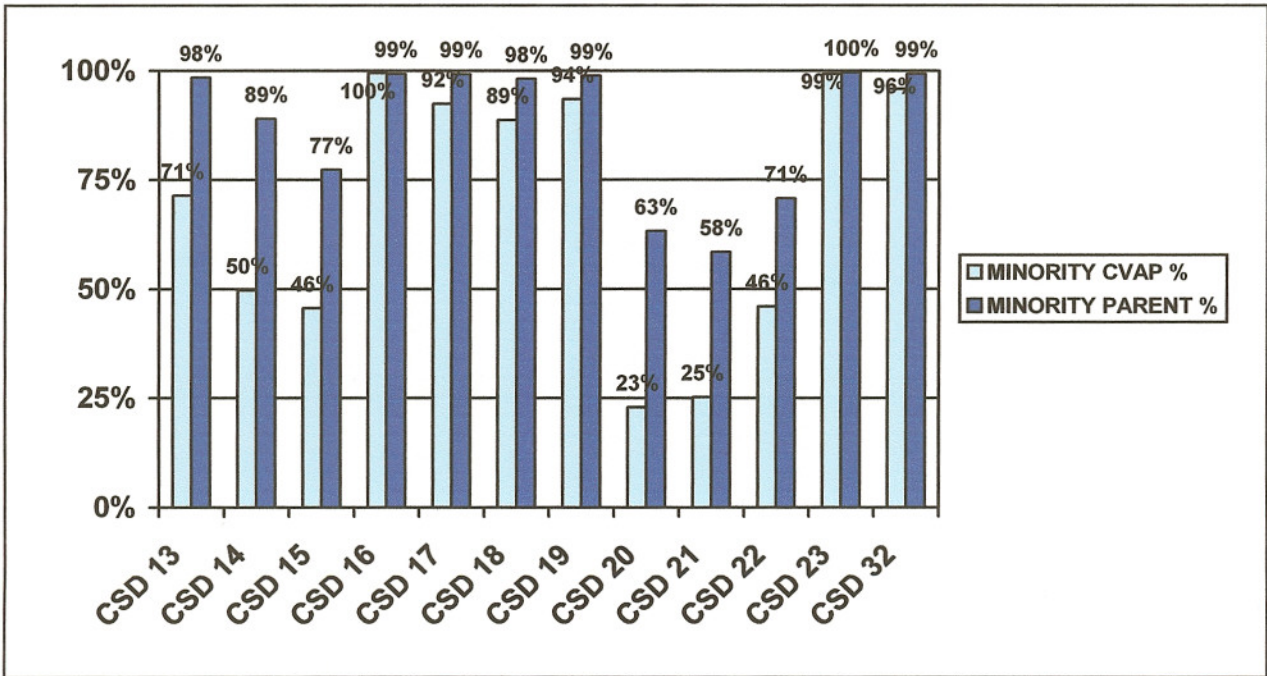
NEW YORK COUNTY



BRONX COUNTY



KINGS COUNTY



With one exception, the minority percentage of parent population is higher than the minority percentage of CVAP in every district within the covered counties. (The one exception is in District 16, where minority representation among the CVAP, which is at 99.5%, decreases by a mere fraction of a point to 99.3% of the parent population.)

As shown in the following table, all seven districts in the covered counties where the CVAP is majority white have parent populations that are majority minority:

DISTRICT	White %	
	CVAP	PARENTS
2	81.47	34.59
3	66.96	22.85
14	50.31	10.96
15	54.40	22.68
20	77.09	36.85
21	74.78	41.61
22	54.10	29.31

The next set of charts illustrates the impact of the proposed change for individual protected classes in individual districts within each covered county:

New York County

CSD	White %		Black %		Hispanic %		Asian %	
	CVAP	Parents	CVAP	Parents	CVAP	Parents	CVAP	Parents
1	45.05	8.18	11.70	15.98	27.14	55.83	16.11	18.88
2	81.47	34.59	4.38	10.12	6.70	17.43	7.45	37.32
3	66.96	22.85	17.85	36.98	11.99	34.41	3.20	4.87
4	6.18	1.67	46.25	33.31	46.12	62.09	1.44	1.78
5	5.01	.69	74.32	66.60	19.55	31.56	1.13	.77
6	17.82	2.00	21.38	7.34	59.29	89.26	1.51	.95

As this chart shows, in New York County Whites always represent less of the parent population than of the CVAP. Conversely, Hispanics always represent more of the parent population than of CVAP. Asians are generally more prevalent among the parent population than among CVAP, especially in districts with substantial Asian populations. Representation of Blacks among the parent population in Districts 2 and 3 is more than double the representation in the CVAP, and is also higher than the representation in the CVAP in District 1. In Districts 4, 5 and 6, the representation of Blacks in the parent population declines from the representation in the CVAP, most sharply in District 6.

Bronx County

CSD	White %		Black %		Hispanic %		Asian %	
	CVAP	Parents	CVAP	Parents	CVAP	Parents	CVAP	Parents
7	2.10	.34	37.94	28.71	59.44	69.22	.52	.64
8	29.73	8.16	26.84	27.05	42.17	60.56	1.26	3.36
9	2.11	.54	45.35	34.03	51.75	63.17	.79	1.50
10	28.63	5.60	23.57	20.06	44.77	68.36	3.03	5.09
11	27.44	8.83	46.33	48.48	23.62	34.17	2.60	6.30
12	4.54	.71	35.75	31.10	58.04	65.14	1.68	2.09

This chart shows that in Bronx County Whites always represent less of the parent population than of the CVAP. Hispanics and Asians always represent more of the parent population than of CVAP. In several districts, the Black percentage of the parent population is lower than in the CVAP, but these decreases are slight, and Blacks continue to represent a substantial proportion the parent population in each case.

Kings County

CSD	White %		Black %		Hispanic %		Asian %	
	CVAP	Parents	CVAP	Parents	CVAP	Parents	CVAP	Parents
13	28.65	1.61	54.81	76.94	14.62	18.43	1.93	1.95
14	50.31	10.96	13.05	16.79	34.46	68.12	2.18	3.95
15	54.40	22.68	8.98	14.98	28.88	49.13	7.73	12.64
16	.55	.70	87.71	84.90	11.13	11.61	.60	1.03
17	7.62	.79	81.82	88.10	9.58	9.31	.98	.91
18	11.32	1.92	79.89	89.88	6.92	5.89	1.87	1.97
19	6.55	1.23	55.85	51.66	34.73	40.86	2.87	5.66
20	77.09	36.85	1.34	3.90	9.52	23.30	12.04	35.69
21	74.78	41.61	7.38	14.12	8.52	18.24	9.31	25.73
22	54.10	29.31	34.53	43.96	6.77	12.85	4.59	13.43
23	.69	.43	80.75	81.51	17.82	16.84	.75	.40
32	4.17	.66	30.40	29.64	62.85	67.16	2.57	2.20

This chart shows that in Kings County, Whites almost always have smaller representation in the parent population than in the CVAP. Only in District 16 (Bedford-Stuyvesant), where Whites are a tiny fraction of the population, is there an increase from CVAP to the parent population. With regard to the Hispanic population, the change in electorate results in a large positive shift in 9 of the 12 districts, with very strong gains in Districts 14, 15, 20 and 21. In Districts 17, 18, and 23 there is a small diminution in the Hispanic proportion of the parent population as compared to

the CVAP, but this decrease is approximately 1 percentage point and is therefore not significant. Asians are generally more prevalent among the parent population than in CVAP, especially in Districts 15, 20, 21 and 22 which have substantial Asian populations. For Blacks, representation in the parent population is larger than in CVAP for 9 out of 12 cases, and in some of these cases substantially larger (e.g. Districts 13, 21 and 22). In Districts 16, 19 and 32 the Black representation is lower in the parent population than in the CVAP, but not by large amounts.

Dr. Grofman commented on the impact of the proposed change at the level of individual districts as follows:

With only a small number of exceptions, each protected group's proportion of the new potential electorate (as measured by the racial/ethnic heritage composition of school parents) is higher than their proportion of the old potential electorate (as measured by the group's share of CVAP), or is essentially unchanged.¹¹⁷ Moreover if we look at white proportions, we see that in each and every district where whites make up at least 1% of the CVAP, the white percentage of parents is lower (often much lower) than the white percentage of CVAP.¹¹⁸ Similar findings hold when we look at the actual racial and Hispanic composition of the present Community School Boards elected under STV. Thus, from this data, **I find that the shift to a parent-based (s)electorate can be expected to improve overall minority influence, and can be expected to increase each of the protected minority's effective exercise of the electoral franchise. Moreover, for minorities as a whole, this conclusion holds essentially regardless of what electoral**

¹¹⁷ This footnote is from Dr. Grofman's report: "For example, while there are technically three districts where Hispanics make up a smaller share of parents than of CVAP, in these districts the differences between the two percentages are so minuscule (less than 1 percent) as to be irrelevant; similarly, technically there are five districts where the Asian-American share of CVAP is higher than its share of parents, but again the difference are all trivial (less than 1 percent) and generally in districts with very low Asian-American percentages to begin with.. While there are ten districts where blacks make up a smaller share of parents than of CVAP, in several of these the differences between the two percentages are not that great, and, in any case, to compensate, there are fourteen districts where blacks make up a higher share of parents than of CVAP."

¹¹⁸ This footnote is from Dr. Grofman's report: "There are three probable reasons for these differences. First, whites are more likely to send their children to private schools than are minorities. Second, a higher proportion of whites is of an age eligible to vote than is the case for minorities. Third, a higher proportion of age-eligible whites are citizens than is the case for age-eligible minorities."

rule is used within the new parent-based electorate to select members of the Community District Education Councils, since we would now have a potential electorate which is 87% minority (black plus Asian-American plus Hispanic) in character, as compared to an estimated minority electorate under STV of only 58% percent, and an actual minority composition of the Community School Boards elected under under STV of only sixty-six percent.

Exhibit 62 at pp. 6-7 (emphasis in original)

2. Impact of change from single transferable vote method to limited voting

This section examines the impact of moving from the single transferable vote (STV) method in effect prior to the enactment of Chapter 123 to the method of voting adopted in Chancellor’s Regulation D-140. As Professor Grofman concludes in his Report (Exhibit 62), the use of LV2 (*i.e.*, “limited voting 2,” an election method where each voter casts two votes) is not retrogressive for any minority group, when viewed in conjunction with the change to parent population.

There is a significant increase in the opportunity for Hispanic parents to influence the selection of parent members throughout the three covered counties. There are 21 cases where the percentage of representation for Hispanics is higher in the parent population than in the CVAP. The most significant increases occur as illustrated in the following chart:

DISTRICT	% CVAP	% PARENT POPULATION
1 – NY	27.14	55.83
3 – NY	11.99	34.41
4 – NY	46.12	62.09
5 – NY	19.55	31.56
6 – NY	59.29	89.26
8 – BRONX	42.17	60.56
9 – BRONX	51.75	63.17
10 – BRONX	44.77	68.36
14 – KINGS	34.46	68.12
15 – KINGS	28.88	49.13
20 – KINGS	9.52	23.30
21 – KINGS	8.52	18.24

For all of these cases, Hispanic representation in the parent population is well above the 18% threshold of exclusion applicable in LV2 elections. In 2 cases, Hispanic representation in the

CVAP is below the 10% threshold of exclusion applicable in an STV election, but above the 18% threshold for LV2 among parents.¹¹⁹

There are 19 cases where the percentage of representation for Asians is higher in the parent population than in the CVAP. The most significant increases in opportunity for Asian parents to influence the selection of parent members are in three districts:

DISTRICT	% CVAP	% PARENT POPULATION
2 – NY	7.45	37.32
20 – KINGS	12.04	35.69
21 – KINGS	9.31	25.73

For these cases, Asian representation in the parent population is well above the 18% threshold of exclusion applicable in LV2 elections. In two cases, Asian representation in the CVAP is below the 10% threshold of exclusion applicable in an STV election. In addition, the Asian parent population in District 1 is 18.88%, which is above the 18% LV2 threshold.

There are 14 cases where the percentage of representation for Blacks is higher in the parent population than in the CVAP. The most significant increases in opportunity for Black parents to influence the selection of parent members are in four districts:

DISTRICT	% CVAP	% PARENT POPULATION
3 – NY	17.85	36.98
13 – KINGS	54.81	76.94
18 – KINGS	79.89	89.88
22 – KINGS	34.53	43.96

¹¹⁹ Dr. Grofman’s report explains the “threshold of exclusion” as follows: “The threshold of exclusion can be thought of as the ‘worst case’ scenario. It is defined as the smallest percentage of the electorate sufficient to guarantee that a minority group can elect at least one candidate of choice if the group votes cohesively, even if it is faced with an opposing group consisting of all the remaining voters who vote cohesively for the majority’s preferred slate of candidates. *** In this worst case scenario, the majority slate is posited not to include the candidate of choice of the minority group.” Exhibit 62 at p. 7 (emphasis in original).

There is a decline in representation of Blacks from the CVAP to the parent population in ten districts. The most significant of these are the following:

DISTRICT	% CVAP	% PARENT POPULATION
4 – NY	46.25	33.31
6 – NY	21.38	7.34
9 – BRONX	45.35	34.03

However, in two of these districts, Black representation in the parent population remains well above the 18% threshold for LV2. In addition, in each of these districts, the decrease in Black percentage is accompanied by a corresponding large increase in the Hispanic percentage.

There are five cases in the covered counties where a particular minority group's representation in the CVAP would meet the 10% threshold for STV, but its representation in the parent population comes below the 18% threshold for LV2. In three of these cases (Blacks in District 14 and Hispanics in Districts 16 and 23), a member of a minority group with a population above the threshold of exclusion in an STV system was not elected in 1999. Also, in two of these districts, while Blacks will be below the 18% threshold of exclusion for LV2, they are at or above 16% of the parent population, a level which should still allow a strong influence on the CDEC parent selection.

- In District 1, the Black representation among CVAP is 11.7% and among the parent population is 16%, close to the 18% threshold. 2 Black community school board members were elected in this District in 1999; with 16% of the parent population this trend may be expected to continue. Hispanic representation rises from 27.14% of the CVAP to 55.83% of the parent population. (3 Hispanic candidates were elected in this district in 1999.) Asian representation rises and remains above the threshold of exclusion, from 16.11% of CVAP to 18.88% of the parent population. (No Asian candidate was elected in this district in 1999).
- In District 6, the Black representation among CVAP is 21.38% and among the parent population is 7.34%. This District is located in Washington Heights in Manhattan and the parent population is largely Dominican. Hispanic representation rises from 59.29% of the CVAP to 89.26% of the parent population.
- In District 14, the Black representation among CVAP is 13.05% and among the parent population is 16.79%, again close to the 18% threshold. In this District, Hispanic representation rises from 34.46% of the CVAP to 68.12% of the parent population. In 1999, this District elected three Hispanic and six white candidates, even though Blacks were above the 10% STV threshold.
- In District 16, the Hispanic representation among CVAP is 11.13% and among the parent population is 11.61%. This district elected 9 Black candidates in 1999, even though Hispanic representation met the applicable threshold of exclusion.

- In District 23, the Hispanic representation among CVAP is 17.82% and among the parent population is 16.84%, close to the 18% LV2 threshold. This District elected 9 Black candidates and no Hispanics in 1999.

Dr. Grofman's report emphasizes that "in three of these five districts, the parent percentages are not very far from 18%, so that, if the minority group in question were not faced with a perfectly unified opposition, it is almost certain that if they voted cohesively for a single candidate, they would get that candidate elected. Note also that, in three of these five districts there is a dramatic decrease from white CVAP to white parent population (45.1% to 8.2%, 17.8% to 2.0%, and 50.3% to 11.0%). Thus, in these latter districts, we would expect that, regardless of the negative findings of the threshold of exclusion test for one particular minority group, minorities as a whole would, in fact, be much better off." Exhibit 62, p. 8.

There are four cases among the districts in covered counties where a particular group's representation in the CVAP would not meet the 10% threshold for STV, but its representation in the parent population is above the 18% threshold for LV2:

- In District 2, the Asian representation among CVAP is 7.45% and among the parent population is 37%, above the threshold to elect 3 candidates.
- In District 20, the Hispanic representation among CVAP is 9.52% and among the parent population is 23.30%. In this district, 9 white candidates were elected in 1999.
- In District 21, the Hispanic representation among CVAP is 8.52% and among the parent population is 18.24%. In this district, 8 white candidates and 1 Black candidate were elected in 1999.
- Also in District 21, the Asian representation among CVAP is 9.31% and among the parent population is 25.73%, meeting the threshold for electing 2 candidates of choice. This district elected no Asian candidates in 1999.

It is also noteworthy that in District 1, where no Asian candidate was elected in 1999, the threshold of exclusion continues to be met: the Asian representation rises from 16.11% of CVAP to 18.88% of the parent population.

With respect to these four districts, Dr. Grofman's report comments:

[T]here are four instances, where, for any of the three minority groups, CVAP is under 10% but the minority parent percentage is greater than 18%: One of these is district #2 (where we have an Asian-American CVAP of 7.5%% and a parental percentage of 37.3%). Another is district #20 (an Hispanic CVAP of 9.5% and parental percentage of 23.3%). Another two instances are found in district #21 (an Hispanic CVAP of 8.5% and an Hispanic parental percentage of 18.2%, and an Asian-American CVAP of 9.3% and a parental percentage of 25.7%). Because the shift in district 2 is

sufficient to elect three Asian-American candidates in the district under LV2 as compared to none under STV under the “worst case” scenario, and because this district has an Hispanic parent population (17.4%) closer to the LV2 18% threshold than the 6.7% Hispanic CVAP is to the 10% STV threshold, and because the shift in composition of the electorate in district 21 is sufficient to create an opportunity for Asian-Americans to elect two candidates of choice under LV2 as compared to none under STV, I view the positive and negative consequences for minorities in the shift from STV to LV2 as essentially a wash under the threshold of exclusion test (with perhaps a minuscule advantage to the positive effects). Moreover, there are eight instances where whites are made worse off by the change in franchise rules and no instances where whites are made better off. When we take into account the drops in white percentages as we shift from CVAP to parent population, on balance, I would expect that minorities as a whole would do better under LV2 under the new franchise rules than they did under STV under the old franchise rules.

Exhibit 62, p. 8 (footnotes omitted).

The dramatic impact of the shift from CVAP to a parent population is also made evident by examining the thresholds of exclusion for electing more than one candidate of choice. The following table shows how many times out of a possible 72 (24 districts in the 3 covered counties multiplied by 3 minority groups) the shift results in a net gain for minority groups:¹²⁰

<u>Electorate</u>	<u>Voting Rule</u>	<u># of cases where threshold is met to...</u>								
		<u>Elect 1</u>	<u>Elect 2</u>	<u>Elect 3</u>	<u>Elect 4</u>	<u>Elect 5</u>	<u>Elect 6</u>	<u>Elect 7</u>	<u>Elect 8</u>	<u>Elect 9</u>
		CVAP	STV	40	30	24	18	12	6	5
Parents	LV2	39	36	30	21	17	15	6	5	4
<i>Net difference</i>		<i>-1</i>	<i>6</i>	<i>6</i>	<i>3</i>	<i>5</i>	<i>9</i>	<i>1</i>	<i>2</i>	<i>4</i>

¹²⁰ These calculations use the following thresholds of exclusion for both STV and LV2: 20% to elect 2 candidates; 30% to elect 3 candidates; 40% to elect 4 candidates; 50% to elect 5 candidates; 60% to elect 6 candidates; 70% to elect 7 candidates; 80% to elect 8 candidates; and 90% to elect 9 candidates under STV, and 82% to elect 9 candidates under LV2.

Dr. Grofman presents further support for the advantages of the new system in the following table:

**Plurality and Majority Racial/Hispanic Composition
of Old (CSB) and New (CDEC) (S)electorates**

district	plurality CVAP	majority CVAP	plurality parents	majority parents
1	White		Hispanic	Hispanic
2	White	White	Asian	
3	White	White	Black	
4	Black		Hispanic	Hispanic
5	Black	Black	Black	Black
6	Hispanic	Hispanic	Hispanic	Hispanic
7	Hispanic	Hispanic	Hispanic	Hispanic
8	Hispanic		Hispanic	Hispanic
9	Hispanic	Hispanic	Hispanic	Hispanic
10	Hispanic		Hispanic	Hispanic
11	Black		Black	
12	Hispanic	Hispanic	Hispanic	Hispanic
13	Black	Black	Black	Black
14	White	White	Hispanic	Hispanic
15	White	White	Hispanic	
16	Black	Black	Black	Black
17	Black	Black	Black	Black
18	Black	Black	Black	Black
19	Black	Black	Black	Black
20	White	White	White	
21	White	White	White	
22	White	White	Black	
23	Black	Black	Black	Black
32	Hispanic	Hispanic	Hispanic	Hispanic

Exhibit 62, p. 10. He explains,

We see from [this table] that there are eight instances where whites are a plurality of the CVAP, but only two instances where whites are a plurality of the parent population,¹²¹ and while there are

¹²¹ This footnote is from Dr. Grofman's report: "In three of the six instances where there is a shift from a white CVAP plurality to a minority group plurality among parents, it is Hispanics who gain; African-Americans benefits [sic] from the change in (indirect) electorate in two instances; in the remaining instance Asian-Americans are the group which benefits from the change."

seven instances where whites are a majority of the CVAP, there are no instances where whites are a majority of the parent population. These shifts from a white plurality or majority among the CVAP to a minority group having the plurality or majority among the parents in the district benefit each of the three covered groups (three instances involving gains for Hispanics, two instances involving gains for African-Americans, and one instance involving a gain for Asian-Americans¹²²). Moreover, with only one exception, where a protected minority group is a plurality or majority of the CVAP it remains a plurality or majority of the parent population; and the only exception is one where a black plurality is replaced with an Hispanic majority in a district that is overwhelmingly Hispanic in its student population. Furthermore, in addition to the changes from CVAP to parent populations that create shifts from white pluralities or white majorities to minority pluralities or minority majorities, we also see two instances where an Hispanic CVAP plurality becomes an Hispanic parental majority.

Exhibit 62, p. 12.

Dr. Grofman sums up as follows:

I would conclude on the basis of the threshold of exclusion test that as compared to the previous use of STV, use of LV2 is not retrogressive for any covered minority group when the shift to LV2 is viewed in conjunction with the change simultaneously being made in the nature of the electoral franchise,¹²³ especially when we take into [account] that the latter change creates in the covered boroughs a potential (indirect) electorate for the nine elected seats that can be estimated at almost 90% non-white.

Exhibit 62, p. 8 (emphasis in original).

¹²² This footnote is from Dr. Grofman's report. "However, we would also note that there is a more than doubling of the Asian-American proportion as we move from CVAP to parent population."

¹²³ This footnote is from Dr. Grofman's report. "Only for African-Americans is there any potential question about this conclusion. Even there, practically speaking, there is only one real instance of a change for the worse (taking into account results that are the functional equivalent of 18%). Moreover, for Asian Americans, we have two instances of changes for the better (both quite substantial and no changes for the worse, while for Hispanics we have the same number of changes (two) in each direction."

In addition to the parents represented through their parent association and PTA officers, Borough Presidents have a role in selecting members of the CDECs. For each CDEC they appoint two persons who have “extensive business, trade, or education experience and knowledge, who will make a significant contribution to improving education in the district.” Educ. L. §2590-c(1)(b). As illustrated in Exhibit 59, past and current borough presidents are themselves a racially diverse group, and have historically appointed a racially diverse group of members to the City Board of Education. This is a strong indication that they can be expected to do the same with respect to their appointments under Chapter 123. But even without making assumptions about how reflective the borough presidents’ choices will be of minority preferences, the likely additional minority representation in the CDEC membership resulting from the selection of parent members will probably still represent a larger percentage than the prior minority representation in the community school boards.

This analysis strongly supports the conclusion that Chapter 123 does not violate the Voting Rights Act because it would not deny or abridge the right to vote on account of race, color, or membership in a language minority group. As Georgia v. Ashcroft teaches, retrogression analysis must encompass the entire plan as a whole, viewed in light of the totality of the circumstances. 123 S. Ct. at 2511. The shift from the electorate eligible to vote for community school board members to the population eligible to participate in parent association and PTA elections in the community school districts in the covered counties results in a very substantial increase in representation of minority groups as a whole and for each minority group individually. This shift is responsive to public demand for a parent-centered governance system voiced at the public hearings of the Joint Task Force, and is supported by a large majority of the Legislature, including nearly all of the minority members from the City.

Chapter 123 also gives a new voice to parents of children attending schools in District 75. That district, like the school system overall, serves a predominantly minority population.

District 75 Students		
Non-Hispanic White	3,129	14.1%
Non-Hispanic Black	10,234	46.1%
Asian	956	4.3%
Hispanic	7,647	34.5%
American Indian, Alaskan native	213	1.0%
Unknown	18	0.1%
Total minority		85.8%
Total	22,197	

Taken as part of the whole scheme of Chapter 123, this new Council further increases the voice of minority parents in school governance.

IX. ADDITIONAL INFORMATION

A selection of press reports about the failings of community school boards, and the enactment of Chapters 91 and 123, is attached hereto as Exhibit 60.

The Memorandum in Support for the legislation which became Chapter 123, submitted to the Governor on behalf of the City School District, is attached hereto as Exhibit 61.

A list of organizations to whom information about this submission will be distributed is attached as Exhibit 63.

We are not aware of any pending litigation relating to the matters submitted. As described in Part III A of this submission, prior to the enactment of Chapter 123, there was litigation challenging the Chancellor's plans to create regional superintendencies. The stipulation of settlement in that case, which reaffirmed the continuation of the 32 community school districts and the responsibilities of their local superintendents, is attached hereto as Exhibit 20.

X. CONCLUSION

There is no evidence of any retrogressive purpose or effect in the new scheme of parent-centered councils. To the contrary, all the evidence, including statements of legislators and members of the public who testified to the Task Force, and the abysmal rate of voter participation in the existing community school board system, points to the conclusion that Chapters 91 and 123 are intended to empower parents as a central part of a strategy of education reform.

As we have demonstrated above, Chapters 91 and 123 have neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or membership in a language group. We respectfully request that the Department of Justice expedite its review of these submissions so that we may implement the laws at the earliest possible time consistent with the requirements of federal and state law.