

# Exhibit A



**White Plains**  
81 Main Street, Suite 400  
White Plains, NY 10601  
914.607.7010 | P

Long Island • Brooklyn • White Plains • Rochester • Albany • Manhattan

January 26, 2024

**VIA CERTIFIED MAIL**

Lisa M. Vance-Ayers, Newburgh Town Clerk  
1496 Route 300  
Newburgh, NY 12550

**Re: Violation of the New York State Voting Rights Act**

Dear Town Clerk Vance-Ayers:

We are writing on behalf of our clients Oral Clarke, Romance Reed, Grace Perez, Peter Ramos, Ernest Tirado, and Dorothy Flournoy, who are Hispanic and African American voters in the Town of Newburgh, to advise you that the Town's current method of electing Town Council Members, by at-large elections, violates the John R. Lewis Voting Rights Act of New York, also known as the New York State Voting Rights Act ("NYVRA"). If the Town does not cure that violation, we intend to commence an action under NYVRA to compel the Town to elect Council Members by district, cumulative voting, ranked choice voting, or other alternative voting systems.

**The New York State Voting Rights Act**

NYVRA specifically forbids the use of at-large methods of election where the voting patterns of members of a protected class or classes within the political subdivision are racially polarized or where, under the totality of the circumstances, the ability of members of the protected class or classes to elect candidates of their choice or to influence the outcome of elections is impaired. N.Y. Elec. Law § 17-206(2)(b)(i). Members of different protected classes may file an action jointly where the combined voting preferences of multiple protected classes are polarized against the rest of the electorate. N.Y. Elec. Law § 17-206(8).

The Town of Newburgh's at-large voting system clearly violates NYVRA under these statutory standards. An analysis of election data and demographic patterns in the Town of Newburgh utilizing Bayesian Improved Surname Geocoding (among other statistical methods) reveals significant and persistent patterns of racially polarized voting with respect to African American and Hispanic voters and demonstrates that the voting preferences and choices of African American and Hispanic voters differ markedly from those of white voters within the jurisdiction. These disparities have persisted across multiple elections and are not attributable to chance or isolated incidents.

In addition, under the totality of the circumstances, the African American and Hispanic communities are less able to elect candidates of their choice and their ability to influence the outcome of elections is impaired. Among other things, not once has Newburgh ever elected an African American or Hispanic candidate to Town office, despite the fact that African Americans

and Hispanics represent 14.6% and 23.6% of the Town's population respectively. The absence of African American and Hispanic candidates for Town office is further evidence of vote dilution.

### **The Town of Newburgh May Cure Its Violation**

NYVRA provides a safe harbor against judicial action if the Town takes certain actions to remedy its violation. Specifically, if, within 50 days of the mailing of this letter, the Town Board adopts a resolution affirming: (i) its intention to enact and implement a remedy for its NYVRA violation; (ii) the specific steps it will undertake to facilitate the approval and implementation of such a remedy; and (iii) a schedule for enacting and implementing such a remedy, the Town will fall within the safe harbor provided by NYVRA. N.Y. Elec. Law § 17-206(7). If the Town Board does so, it will have 90 days from the date of the resolution to enact and implement a remedy. If the Town Board concludes that it does not have authority to adopt a remedy, it may submit the proposed remedy to the New York Attorney General's office for approval.

You should be aware that if the Town Board fails to satisfy these statutory requirements in its resolution, especially the requirement that the resolution include the Town's "intention to enact and implement a remedy for a potential violation," it will have failed to avail itself of the NYVRA's safe harbor provision and immediate litigation to enforce the requirements of NYVRA could result.

### **Consequences of Failure to Cure**

If the Town does not voluntarily cure its violation of the NYVRA, our clients are prepared to commence litigation against the Town to enforce the NYVRA. If our clients are successful in that litigation, the Town will be required to pay our clients' legal fees as well as its own. N.Y. Election Law § 17-218. The Town can limit its exposure for legal fees significantly by acting promptly to cure the NYVRA violation. N.Y. Elec. Law. § 17-206(7)(e).

Voting rights litigation can be extremely expensive. In *NAACP v. East Ramapo Central School District*, No. 2017-CV-8943 (S.D.N.Y.), the NAACP sued the East Ramapo Central School District under the federal equivalent of NYVRA and forced the School District to draw individual districts for school board elections. East Ramapo ultimately paid at least \$7.2 million in its own fees<sup>1</sup> and \$5.4 million to the plaintiffs for their legal fees.<sup>2</sup>

The City of Santa Clara, California, paid over \$5.8 million to its own attorneys and to plaintiffs' counsel in a California Voting Rights Act ("CVRA") case.<sup>3</sup> Similarly, the City of Palmdale paid out \$4.6 million in attorneys' fees.<sup>4</sup> In the 20 years the CVRA has been in effect, no California municipality has ever successfully defended itself against a CVRA claim.

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<sup>1</sup> Thomas C. Zambito, JOURNAL NEWS, *East Ramapo wants to cut NAACP legal fees to \$1, if not teachers could be fired* (Jan. 13, 2021), <https://www.lohud.com/story/news/local/rockland/2021/01/13/east-ramapo-wants-trim-naacp-legal-fees-warns-firings/4148743001/>.

<sup>2</sup> Nancy Cutler, JOURNAL NEWS, *Voting rights lawyers blast how East Ramapo wants to pay court-demanded \$5.4M payment* (July 8, 2021), <https://www.lohud.com/story/news/local/rockland/2021/07/08/naacp-school-board-diversity-lawsuit/7887398002/>.

<sup>3</sup> Carolyn Schuk, THE SILICON VALLEY VOICE, *Final Verdict: Twice-Lost Voting Rights Lawsuit Cost City Nearly \$5.8 Million* (Apr. 21, 2021), <https://www.svvoice.com/final-verdict-twice-lost-voting-rights-lawsuit-cost-city-nearly-5-8-million/>.

<sup>4</sup> Perry Smith, SCV NEWS, *Palmdale Out \$4.6 Mil. To Settle Voting Rights Lawsuit* (May 7, 2015), <https://scvnews.com/palmdale-out-4-6-mil-to-settle-voting-rights-lawsuit/>.

**Conclusion**

Given the historical lack of African American and Hispanic representation on the Newburgh Town Council, the presence of racially polarized voting, and other indicia of the disenfranchisement of the African American and Hispanic communities, we urge the Town to change its at-large system voluntarily. Our goal is to bring about the fair electoral process in the Town of Newburgh that the NYVRA act requires. To that end, we will be happy to work with the Town to bring it into compliance. If the Town does not take voluntary steps to achieve compliance, however, we will have no choice but to seek judicial relief. Please advise us no later than February 29, 2024, as to the Town's decision.

**ABRAMS FENSTERMAN, LLP**

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Robert A. Spolzino Esq.  
81 Main Street, Suite 400  
White Plains, New York 10601  
(914) 607-7010

**SENDER: COMPLETE THIS SECTION**

■ Complete items 1, 2, and 3.  
 ■ Print your name and address on the reverse so that we can return the card to you.  
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

LISA M. VANCE-AYERS  
 Town Clerk  
 1496 Route 300  
 Newburgh, NY 12550

9590 9402 7001 1225 2783 86

2. Article Number (Transfer from service label)  
 7019 1120 0002 0747 1983

PS Form 3811, July 2020 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

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Sent To Lisa M. VANCE-AYERS Town Clerk  
 Street and Apt. No., or PO Box No. 1496 Route 300  
 City, State, ZIP+4® Newburgh, NY 12550

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

INDEX NO. EF002460-2024  
RECEIVED NYSCEF: 03/26/2024