

# Exhibit B

At a special meeting of the Town Board of the Town of Newburgh, held at the Town Hall, 1496 Route 300, in the Town of Newburgh, Orange County, New York on the 15th day of March, 2024 at 12:00 o'clock p.m.

PRESENT:

Gilbert J. Piaquadio, Supervisor

Paul I. Ruggiero, Councilman

Anthony R. LoBiondo, Councilman

RESOLUTION OF THE TOWN BOARD OF THE  
TOWN OF NEWBURGH PERTAINING TO  
NEW YORK STATE ELECTION LAW 17-206

Councilman LoBiondo presented the following resolution which was  
seconded by Councilman Ruggiero.

**WHEREAS**, the Town of Newburgh is a diverse community of people from rural, suburban, and urban cultures and the Town Board recognizes that the Town's diversity makes our community more resilient and adaptable, and promotes tolerance, empathy and cohesion among our citizens; and

**WHEREAS**, on January 30, 2024, the Town Clerk of the Town of Newburgh received a letter dated and postmarked January 26, 2024 from the law firm Abrams Fensterman LLP on behalf of certain voters in the Town, alleging a violation of the recently enacted John R. Lewis Voting Rights Act of New York, Chapter 226 of the Laws of 2022 of the State of New York (hereinafter referred to as the "NYVRA") and of their intent to commence an action if the Town does not cure the alleged violation (hereinafter referred to the "NYVRA Notification Letter") (Exhibit A); and

**WHEREAS**, as with most towns in the State of New York, the Town Board of the Town of Newburgh is comprised of four members, elected at-large to serve a four-year term, and a duly elected Supervisor, who serves a two-year term; and

**WHEREAS**, the NYVRA Notification Letter broadly alleges that the voting patterns of members of protected classes within the Town are racially polarized and that under the totality of the circumstances, the ability of members of protected classes to elect candidates of their choice or influence the outcome of Town elections is impaired; and

**WHEREAS**, while the NYVRA Notification Letter claims a statistical analysis has been performed of election data and demographic patterns in the Town of Newburgh, Abrams Fensterman LLP has failed and refused to provide the Town with any data or information tending to support the broad allegations made in the NYVRA Notification Letter; and

**WHEREAS**, notwithstanding the foregoing, the Town Board of the Town of Newburgh recognizes that it is the public policy of the State of New York and the Town of Newburgh to encourage participation in the elective franchise by all eligible voters to the maximum extent; and to ensure that eligible voters who are members of racial and language-minority groups have an equal opportunity to participate in the political processes of the State of New York, and especially to exercise the elective franchise; and

**WHEREAS**, evidence concerning the intent on the part of the voters, elected officials, or the Town to discriminate against a protected class is not required for there to be a potential violation of the NYVRA; and

**WHEREAS**, the Town Board of the Town of Newburgh intends to proactively review the Town's current at-large election system for members of the Town Board in order to ensure that the aforementioned public policy is achieved and to enact or apply for approval, as the case may be, and implement remedies for any potential violation of the NYVRA that may exist; and

**WHEREAS**, the Town Board of the Town of Newburgh has heretofore authorized the retention of the law firm of Sokoloff Stern, LLP to provide legal services to the Town in connection with the review of Town's compliance with the NYVRA and the allegations contained in the NYVRA Notification Letter and the implementation of any necessary remedies, and to retain experts approved by the Town Board who are necessary and appropriate for the performance of those services.

**NOW, THEREFORE, BE IT RESOLVED** by the Town Board of the Town of Newburgh as follows:

Section 1: The Town Supervisor and the Attorney for the Town are hereby directed to work with Sokoloff Stern, LLP and the authorized experts it retains in the review and investigation of the current at-large election system employed by the Town for members of the Town Board, to determine whether any potential violation of the NYVRA may exist and to evaluate potential alternatives to bring the election system into compliance with the NYVRA should a potential violation be determined to exist. The Town is availing itself of the "Safe Harbor Provision" under the NYVRA. See NYS Election Law 17206(7).

Section 2: The findings and evaluation directed in Section 1 shall be reported to the Town Board within thirty (30) days of the date of this Resolution. If, after considering the findings and

evaluation and any other information that may become available to the Town — including, without limitation, any analysis that Abrams Fensterman may provide following the adoption of this Resolution, the Town Board concludes that there may be a violation of the NYVRA, the Town Board affirms that the Town intends to enact and implement the appropriate remedy(ies).

Section 3. Following a Town Board finding that there may be a violation of the NYVRA, and in consultation with Sokoloff Stern, LLP and the experts it retains, the Town Board shall cause a written proposal of the selected remedy(ies) that comply with the NYVRA (the “NYVRA Proposal”) to be prepared and presented to the Town Board within ten (10) days of the Town Board’s finding of the potential violation.

Section 4. Within thirty (30) days of the presentation of the NYVRA Proposal, the Town Board shall conduct at least two (2) public hearings within a thirty (30) day timeframe at which the public shall be invited to provide input regarding the NYVRA Proposal and the proposed remedy(ies) set forth therein believed to be necessary and appropriate by the Town including, without limitation, the composition of proposed new election districts and shall undertake such amendments to NYVRA Proposal based upon the public input received as the Town Board determines appropriate

Section 5. Following the close of the last Town Board public hearing and within ninety (90) days of date of this Resolution, the Town Board shall approve the completed NYVRA Proposal and submit the NYVRA Proposal to the Civil Rights Bureau of the Office of the New York State Attorney General.. The Town Board’s schedule for enacting and implementing the proposed remedy(ies) shall in any event comply with NYS Election Law 17-206.

Section 6. This Resolution shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

<u>Elizabeth J. Greene, Councilwoman</u>	voting	<u>ABSENT</u>
<u>Paul I. Ruggiero, Councilman</u>	voting	<u>AYE</u>
<u>Scott M. Manley, Councilman</u>	voting	<u>ABSENT</u>
<u>Anthony R. LoBiondo, Councilman</u>	voting	<u>AYE</u>
<u>Gilbert J. Piaquadio, Supervisor</u>	voting	<u>AYE</u>

The resolution was thereupon declared duly adopted.

**Exhibit "A"**

**NYVRA Voting Rights Notification Letter**



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.

<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



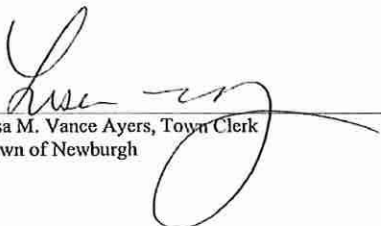
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Robert A. Spolzino Esq.  
81 Main Street, Suite 400  
White Plains, New York 10601  
(914) 607-7010



I, Lisa M. Vance Ayers, the duly elected and qualified Town Clerk of the Town of Newburgh, New York, do hereby certify that the following resolution was adopted at a special meeting of the Town Board duly held March 15, 2024 and is on file and of record and that said resolution has not been altered, amended or revoked and is in full force and effect.



  
Lisa M. Vance Ayers, Town Clerk  
Town of Newburgh