

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ORAL CLARKE, ROMANCE REED, GRACE
PEREZ, PETER RAMON, ERNEST TIRADO, and
DOROTHY FLOURNOY

Plaintiffs,

- against -

TOWN OF NEWBURGH and TOWN BOARD OF
THE TOWN OF NEWBURGH,

Defendants.

Index No. EF002460-2024

**AFFIRMATION IN OPPOSITION
TO MOTION TO DISMISS**

ROBERT A. SPOLZINO, an attorney duly admitted to practice in the court of the State of New York, affirms the following to be true under the penalties of perjury:

1. I am a member of the law firm of Abrams Fensterman, LLP, counsel to plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramón, Ernest Tirado, and Dorothy Flournoy (collectively, “plaintiffs”) in this action brought under the New York Voting Rights Act (“NYVRA”) against the defendants the Town of Newburgh and the Town Board of the Town of Newburgh (the “Town Board” and, collectively with the Town of Newburgh, the “Town”).

2. I submit this affirmation based upon my review of the file for this matter maintained by this office in opposition to the Town’s motion to dismiss the complaint pursuant to CPLR 3211. For the reasons more fully set forth below and in the accompanying memorandum of law, the Town’s motion has no merit and should be denied in its entirety.

3. The newly enacted NYVRA is historic legislation which expands remedies available to disenfranchised voters beyond what is available under the Federal Voting Rights Act. A true and correct copy of NYVRA’s Legislative Bill Jacket is attached as Exhibit A. Although based on similar legislation from other states such as California and Washington, NYVRA goes further in protecting voters against methods of election which impair their ability to elect candidate

of their choice.

4. Plaintiffs are Hispanic and Black voters residing in the Town who, for decades have been unrepresented on the Town Board. In this action, plaintiffs allege that this lack of representation is the result of an unlawful, at-large method of election which dilutes the votes of minority voters.

5. As a prerequisite to bringing an action, NYVRA requires prospective plaintiffs to send a notification letter to the clerk of a political subdivision alleged to be in violation of the law. *See* Election Law § 17-206(7). A plaintiff must wait 50 days from that letter before commencing a lawsuit. It is undisputed that Plaintiffs, through their attorneys, sent a notification letter dated January 26, 2024 to the Town Clerk.

6. NYVRA allows municipalities which commit to remedying NYVRA violations in response to a notification letter an opportunity to avoid costly litigation by availing itself of the “safe harbor” provision. *See* Election Law § 17-206(7). This requires the municipality to pass a resolution affirming three things: “(i) the political subdivision’s intention to enact and implement a remedy for a potential violation of [NYVRA]; (ii) specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy; and (iii) a schedule for enacting and implementing such a remedy.” *Id.* § 17-206(7)(b). If a municipality passes an appropriate resolution, it gets another 90 days to enact and implement a remedy before a plaintiff may sue.

7. On March 15, 2024—one day before the initial 50-day period expired—the Town Board apparently held a special meeting and passed what the Town claims is a NYVRA resolution sufficient to avail itself of the safe harbor. A true and correct copy of the Town’s March 15, 2024 resolution is attached as Exhibit B. However, as addressed in detail below, the resolution was

insufficient to trigger the safe harbor.

8. Plaintiffs commenced this lawsuit by filing a Summons and Complaint (the “Complaint”), NYSCEF Doc. No. 1, on March 26, 2024. The Complaint acknowledges the Town’s March 15 resolution, but alleges that it was “insufficient to require the plaintiffs to wait an additional 90 days before commencing this action.” Complaint, ¶ 65. This was because the Town’s resolution did not commit the Town to enacting and implementing a remedy or provide a schedule for doing so, and because the resolution was void and of no effect because “it was not duly adopted at a duly called meeting of the Town Board.” *Id.* ¶¶ 60, 61, 63.

9. The Town now moves to dismiss the complaint, arguing that the action is premature because the Town availed itself of the safe harbor.

10. The Town’s motion does not address any substantive issues at all and is a transparent attempt to stall plaintiffs’ lawsuit for as long as possible. If the Town is successful, future elections will be tainted by the same unlawful conditions which plaintiffs seek to remedy.

11. On the merits, the Town’s argument must be rejected for three reasons. First, the Town’s resolution does not satisfy the requirements of the safe harbor provision, Election Law § 17-206(7)(b). Second, the Town’s resolution is void and of no legal effect because it was not duly adopted at a properly called and noticed meeting. Finally, the Town has since rescinded the schedule for implementing remedies which it purported to create in its resolution, rendering the motion academic.

12. The Town Board’s resolution does not meet the requirements of Election Law § 17-206(7)(b) because it does not commit the Town to implement a remedy, it does not identify specific steps that the Town will take to implement that remedy, and it does not provide a schedule for doing so. The plain text of the resolution commits the Town only to investigate whether it is in

violation of NYVRA, not to remedy that violation. It is therefore insufficient to trigger NYVRA's safe harbor. And because the Town has not made any commitment, it also has not identified specific steps or created a schedule for implementing a remedy.

13. Moreover, the Town's resolution is void and of no effect because the special meeting at which the Town claims it was adopted was not duly noticed. Town Law § 62(2) clearly provides that a special meeting may only be called by giving notice, in writing, to all members of the board at least two days before the special meeting is scheduled. Despite Plaintiffs' allegation in the complaint that the special meeting was not duly called, *see* Complaint ¶ 63, the Town did not address the issue of notice at all in its motion papers.

14. But even if the resolution were sufficient and had been properly adopted, the Town's subsequent actions have rendered this motion academic. By "suspending" the schedule for implementing a remedy which it purported to create, the Town has eliminated any possibility of implementing a remedy within 90 days of its resolution. It would be futile to force Plaintiffs to wait when the Town has made clear it has no intention of taking any actions within the safe harbor period.

15. The Town's sole purpose is delay. This Court must prevent the safe harbor provision of NYVRA from being used in a manner that is contrary to both the text and purpose of NYVRA.

WHEREFORE, plaintiffs respectfully request that the Court deny the Town's motion in its entirety and grant such other relief as the Court deems just.

I affirm this 25th day of April, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: White Plains, New York
April 25, 2024



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CERTIFICATION OF COMPLIANCE WITH UNIFORM RULE 202.8-B

I, Steven Still, an attorney at law licensed to practice in the State of New York, certify that this document contains 1,184 words, as calculated by the Microsoft Word processing system, inclusive of point headings and footnotes, and exclusive of pages containing the table of contents, table of citations, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules and regulations, etc.

/s/ Steven Still
Steven Still