New York Supreme Court

APPELLATE DIVISION — SECOND DEPARTMENT

Docket No.
2024-04378

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

Plaintiffs-Respondents,

against

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

Defendants-Appellants.

RECORD ON APPEAL

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Orange County Clerk's Index No. EF002460/2024

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STATEMENT PURSUANT TO CPLR 5531

New York Supreme Court

APPELLATE DIVISION — SECOND DEPARTMENT

Docket No.
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ORAL CLARKE, ROMANCE REED, GRACE PEREZ, PETER RAMON, ERNEST TIRADO, and DOROTHY FLOURNOY,

Plaintiffs-Respondents,

against

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

Defendants-Appellants.

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1. The index number of the case in the Court below is EF002460/2024.
2. The full names of the original parties are set forth above. There has been no change to the caption.
3. The action was commenced in the Supreme Court, Orange County.
4. This action was commenced on or about March 26, 2024, by the filing of a Summons and Verified Complaint. Issue was joined by service of an Answer on or about May 28, 2024.
5. The nature and object of the action: to enforce the requirements of the John R. Lewis Voting Rights Act of New York.
6. The appeal is from the Decision and Order of the Honorable Maria S. Vazquez-Doles, dated May 17, 2024.
7. This appeal is being perfected with the use of a fully reproduced Record on Appeal.

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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,

Index No.: EF002460-2024

v.

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

Defendants.

NOTICE OF APPEAL

PLEASE TAKE NOTICE that, Defendants-Appellants Town of Newburgh and Town Board of the Town of Newburgh (collectively, "Defendants-Appellants"), by their attorneys, Troutman Pepper Hamilton Sanders LLP, hereby appeal to the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, from the Decision and Order of Hon. Maria S. Vazquez-Doles, J.S.C. of the Supreme Court of the State of New York, Orange County, dated May 17, 2024, and entered in the office of the Orange County Clerk on May 17, 2024. This appeal is taken from each and every portion of said Decision and Order. Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy served a Notice of Entry on Defendants-Appellants on May 17, 2024, a copy of which is attached.

An Information Statement pursuant to 22 NYCRR 1250.3 is also attached.

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Dated: New York, New York
May 24, 2024

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Decision and Order of the Honorable Maria S. Vazquez-Doles, dated May 17, 2024, Appealed From, with Notice of Entry [pp. 4 - 19]

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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.

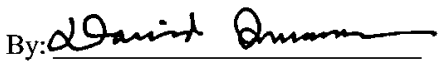
Index No. EF002460-2024

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true copy of an order of the Supreme Court, Orange County (Vazquez-Doles, J.) dated May 17, 2024 and entered in the office of the Orange County Clerk on May 17, 2024.

Dated: White Plains, New York
May 17, 2024

ABRAMS FENSTERMAN, LLP
Attorneys for Plaintiffs

By: 

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At a term of the IAS Part of the Supreme Court of the State of New York, held in and for the County of Orange located at 285 Main Street, Goshen, New York 10924 on the 17th day of May 2024

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

ORAL CLARKE et al.,

Plaintiffs,

-against-

TOWN OF NEWBURGH et al.,

Defendants.

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, on all parties.

DECISION & ORDER
Index No.: EF002460-2024
Motion date: 5/2/2024
Motion Seq. No.: 1

VAZQUEZ-DOLES, J.S.C.

The following papers were read on this motion by Defendants to dismiss the Complaint pursuant to CPLR §3211(a)(1) and (7):

Notice of Motion/Memo of Law/Affirmation/Ex. 1.....1-4
Opposition Affirmation/Memo of Law/Ex. A-B.....5-8
Amicus Brief of the NY Attorney General.....9
Reply Memo of Law.....10

Summary of the Decision

Defendants failed to establish that Plaintiffs' Complaint does not set forth a claim for a violation of the John Lewis Voting Rights Act of NY ("NYVRA" or "the Act"). Defendants' challenge to the Complaint is based only upon whether the instant lawsuit was filed prematurely. Had Defendants passed a timely resolution that satisfied the requirements of the Act, it would have triggered the Act's 90 day "safe harbor" during which Plaintiffs could not file suit.

However, the resolution that Defendants passed does not satisfy the three elements in the Act because it lacks the intention to enact and implement specific remedies, the steps to accomplish that process, and a timetable for implementation. Defendants' resolution is bereft of

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any remedy, specific or otherwise, for Plaintiffs' claims. Instead, Defendants enacted only a plan to investigate whether a violation of the Act is ongoing, a process that the Act does not authorize and that does not satisfy the requirements to trigger the 90-day safe harbor.

Therefore, the lawsuit is not premature. The Complaint states a claim for a violation of the Act. Defendants' motion to dismiss is DENIED.

Facts Underlying the Complaint

Plaintiffs are residents of the Defendant Town of Newburgh ("the Town"). They are members of the Black and Hispanic communities, which comprise a minority of the population of the Town. Plaintiffs assert that the two communities combined comprise 40 percent of the population.

The Town holds elections on a periodic basis for voters to choose members of Defendant Town Board of Town of Newburgh ("the Board"). The election process provides for voters living anywhere in the Town to vote for each of the open Board seats in each election. Plaintiffs assert that no member of their two communities has ever been elected to the Board, dating to the Town being founded in 1788. They also assert that no members of their communities have been candidates for election in the Town since 2011 because of the alleged impracticability of becoming elected. Plaintiffs allege that most of the population will not vote for Black or Hispanic candidates.

As discussed in greater detail, infra, New York passed the Act as a means by which an aggrieved person can petition their municipality to make changes to the voting system to enhance the potential for the election of members of a qualifying minority population. The first step in that process is sending a letter to assert violations of the Act. The receiving municipality then has 50 days in which to take action on the letter, during which time no lawsuit can be filed. If

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the municipality passes a resolution within those 50 days that includes certain elements, the claimants cannot file a lawsuit for an additional 90 days.

Plaintiffs sent a letter to the Town and the Board on January 26, 2024. The letter notified the Town and the Town Board of Plaintiffs' intention to file a lawsuit for violations of the Act in order to seek remedies that would change the current voting system. An excerpt reflects the following text:

> **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

The Board passed a resolution concerning the letter from Plaintiffs on the 49th day thereafter, March 15, 2024 ("the Board Resolution"). The Board Resolution contained a number of initial "whereas" clauses, followed by these action items:

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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.

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After the Board Resolution was enacted, less than 90 days passed before Plaintiffs filed the instant lawsuit on March 26, 2024.

Procedural History

Plaintiffs commenced the instant lawsuit by filing a Summons and Complaint on March 26, 2024. The Complaint consists of 160 paragraphs and asserts detailed allegations as to the composition of the Town population, voting history and trends, community issues that have established a pattern of racially motivated behavior by the Defendants, and other data related to alleged disenfranchisement. For purposes of this motion, most of the alleged facts are not relevant to deciding if the instant lawsuit was filed prematurely, in contravention of the 90-day safe harbor that can be available pursuant to the Act.

In sum, the Complaint pleads two causes of action. Both causes of action allege illegal "vote dilution" in a Town that employs "at-large" voting for the Board. The first cause of action asserts that "racial polarization" creates dilution. The second cause of action asserts that under the totality of the circumstances, the ability of Plaintiffs to elect candidates of their choice is impaired. Plaintiffs also pled that the Board Resolution did not satisfy the Act and therefore the lawsuit was timely filed.

Defendants filed the instant motion in lieu of an Answer. The instant motion asserts that the claims in the Complaint are conclusively refuted by documentary evidence, to wit, the Board Resolution. Alternatively, Defendants assert that the Complaint fails to state a claim. The sole predicate for the motion to dismiss is that Plaintiffs allegedly were prohibited by the Act from filing this lawsuit until the expiration of the aforementioned 90-day safe harbor.

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Purpose of the NYVRA

The New York State Senate proposed a bill in the 2021-2022 session that provided for changes in the voting systems of political subdivisions, in certain enumerated circumstances, to address lack of representation among elected officials from certain specified populations. Senate Bill 2021-S1046E. The bill was amended five times, passed by both the Senate and Assembly, and signed into law by the Governor in 2022. That series of statutes that were passed as part of the NY Election Law 17-200 et seq. comprise the Act. The Act became effective in July 2023.

The Act states that its purposes are:

> 1. Encourage participation in the elective franchise by all eligible voters to the maximum extent; and
> 2. Ensure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise.

NY Election Law 17-200. The Act provides a broad mandate as to the interpretation of any other New York law that concerns the right to vote:

> [A]ll statutes, rules and regulations, and local laws or ordinances related to the elective franchise shall be construed liberally in favor of (a) protecting the right of voters to have their ballot cast and counted; (b) ensuring that eligible voters are not impaired in registering to vote, and (c) ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process in registering to vote and voting.

NY Election Law 17-202.

The legislative history of the Act corroborates these goals and the means to achieve them:

> PURPOSE:
>
> The purpose of the act is to encourage participation in the elective franchise by all eligible voters to the maximum extent, to ensure that eligible voters who are members of racial, ethnic, and language-minority groups shall have an equal opportunity to participate in the political processes of the State of New York, and especially to exercise the elective franchise; to improve the quality and availability

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> of demographic and election data; and to protect eligible voters against intimidation and deceptive practices.

Senate Bill 2021-S1046E, Sponsor (Myrie) Memorandum (Version E – final).

Prohibitions Created by the NYVRA

The Act prohibits certain actions, or the effects of such actions, on the voting process in a "political subdivision". NY Election Law 17-206(1). "Political subdivision" is defined to include any town in New York. NY Election Law 17-204(4). Plaintiffs assert that Defendant Town is a "political subdivision" encompassed by the Act.

One such prohibition of the Act is a bar to any law, regulation, etc. that "results in a denial or abridgement of the right of members of a protected class to vote" ("Unlawful Abridgment"). NY Election Law 17-206(1)(a). A "protected class" is defined as "members of a race, color or language-minority group". NY Election Law 17-204 (5). The Complaint asserts that Plaintiffs are Black and Hispanic residents who comprise less than a majority of the population of the Town, even when combined, and are therefore a "protected class".

A plaintiff can establish an Unlawful Abridgment by showing that 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". NY Election Law 17-206(1)(b). Plaintiffs herein allege in the First Cause of Action that Defendants' historic and continuing process for voting constitutes an Unlawful Abridgement.

The Act also makes it unlawful for a town, etc. to "use any method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution" ("Unlawful Vote Dilution"). NY Election Law 17-206(2)(a). One means to prove Unlawful Vote Dilution is where a town:

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> (i) used an at-large method of election and either: (A) voting patterns of members of the protected class within the political subdivision are racially polarized; or (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired; . . . .

NY Election Law 17-206(2)(b). "At-large" method of election includes "a method of electing members to the governing body of a political subdivision: (a) in which all of the voters of the entire political subdivision elect each of the members to the governing body; . . . ." NY Election Law 17-204(1). Plaintiffs assert, and the Town admits in its motion, that the Town employs "at-large" voting.

"Racially polarized voting" means voting in which "there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate." NY Election Law 17-204(6). The Act specifies nine ways in which a reviewing court must weigh and consider evidence of Unlawful Vote Dilution. NY Election Law 17-206(2)(c)(i)-(ix). Plaintiffs assert in their Complaint that racially polarized voting has occurred in the Town elections.

Regarding an allegation of either Unlawful Abridgment or Unlawful Vote Dilution, the Act lists 11 factors that a court may consider when deciding whether a violation of the Act has occurred. NY Election La w 17-206(3)(a)-(k). This list is not exclusive. Id. Plaintiffs allege in their Complaint that some of the circumstances described in these factors have occurred in the Town.

Timing of a Lawsuit for Violation of the NYVRA

The Act requires that a person or group claiming a violation of the Act must, before filing a lawsuit, satisfy certain requirements. First, the prospective plaintiff(s) must "send by certified mail a written notice to the clerk of the political subdivision, or, if the political subdivision does

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not have a clerk, the governing body of the political subdivision, against which the action would be brought, asserting that the political subdivision may be in violation of [the Act]". NY Election Law 17-206(7). That written notice is referred to as a "NYVRA notification letter". Id. Plaintiffs herein completed this requirement by sending the certified mail letter to the Town and the Board on January 26, 2024.

The Act also prohibits a prospective plaintiff from filing a lawsuit against a political subdivision within fifty days of sending a NYVRA notification letter. Id. The Act allows the receiving entity to pass an "NYVRA resolution" either before receiving the NYVRA notification letter or within fifty days of it having been mailed. NY Election Law 17-206(7)(b). Here, the Board Resolution was passed on March 15, 2024. The parties do not dispute that the Board Resolution was timely passed within 50 days after Plaintiffs mailed a NYVRA notification letter.

If the Board Resolution qualifies as a "NYVRA resolution", the Town and the Board would be afforded 90 days thereafter "to enact and implement such remedy". Id. During those additional 90 days, the prospective plaintiffs cannot file a lawsuit. Id.

For the Board Resolution to qualify as a "NYVRA resolution", it must satisfy the following criteria:

> (i) the political subdivision's intention to enact and implement a remedy for a potential violation of this title; (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. Here, the Defendants asserts that the Board Resolution meets the three criteria. Plaintiffs disagree.

Instant Motion to Dismiss

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Plaintiffs filed the instant lawsuit less than 90 days after Defendants passed the Board Resolution. On the instant motion, Defendants assert that the Board Resolution qualifies pursuant to the Act and therefore this lawsuit would not be timely to file until 90 days after the Board Resolution was passed on March 15, 2024. Plaintiffs oppose on the basis that the lawsuit is timely because Defendants never passed a qualifying NYVRA resolution.

To prevail on a motion to dismiss based on documentary evidence, CPLR 3211(a)(1), the data must "conclusively dispose of the [party's] claim". *Fontanetta v Doe*, 73 AD3d 78 (2d Dept 2010). Thus, the evidence that Defendants submit in the form of the Board Resolution must conclusively establish that they met all three elements for an NYVRA Resolution and are thereby entitled to the 90-day safe harbor.

On a motion to dismiss for failure to state a cause of action, CPLR 3211(a)(7), the court must accept the facts alleged in the pleading as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314 (2002); *Leon v. Martinez*, 84 NY2d 83 (1994). A complaint is legally sufficient if the court determines that a plaintiff would be entitled to relief on any reasonable view of the facts stated. *Campaign for Fiscal Equity v. State of New York*, 86 NY2d 307 (1995). Thus, if the Board Resolution does not satisfy the Act as Plaintiffs have pled, upon "any reasonable view" of their Complaint, then the motion must be denied.

"It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent." *Affiliated Brookhaven Civic Org. v Planning Board of Town of Brookhaven*, 209 AD3d 854 (2d Dept. 2022) (citations omitted). "[T]he clearest indicator of legislative intent is the statutory text". Id. Therefore, the starting point in any case of interpretation must always be the

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language itself, giving effect to the plain meaning thereof. Id. The plain meaning of the language of a statute must be interpreted 'in the light of conditions existing at the time of its passage and construed as the courts would have construed it soon after its passage". Id.

The wording of Subsection 7 of Section 17-206 describes three elements for a resolution to qualify for the 90-day safe harbor moratorium on a potential plaintiff filing a lawsuit. All three elements are required because the word "and" is used to join them.

Intention to Enact and Implement a Remedy.

The first element for an NYVRA resolution is "the political subdivision's intention to enact and implement a remedy for a potential violation of this title". NY Election Law 17-206(7)(b). Defendants assert that the Board Resolution satisfies the Act:

> **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).**

However, the "If" at the beginning of that sentence means that Defendants do *not* intend to enact and implement the "appropriate remedy(ies)" unless they conclude "after considering the findings and evaluation … including, … any analysis that Abrams Fensterman may provide …that there "may be" a violation of the NYVRA. The Board resolution calls for an investigative act not an intentional or remedial act. The Board Resolution's delay of an intention to enact and implement -- past the 50 days -- finds no support in the plain wording of the Act. The plain wording of the Act requires an expression of intent to enact and implement the appropriate remedies by Defendants within the 50 days, not on some date after that 50-day window expires.

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Defendants do not cite to any wording in the Act that allows them to investigate and determine whether a violation of the Act "may be occurring". First, they lack any authority to make such a finding. Defendants are not authorized by law to determine if a person or entity has violated a New York statute. Only the judiciary branch of government has that authority.

Moreover, Defendants' use of the present tense ("there may be") in the Board Resolution is misplaced and finds no support in the Act. A current and ongoing violation of the Act is not a prerequisite for a violation. For example, Unlawful Vote Dilution is based in part on a defendant having "used" at-large voting, i.e. employing that system *in the past*. Additionally, one means to prove Unlawful Vote Dilution is by voting "patterns" of members of the protected class. NY Election Law 17-206(2)(a). A "pattern" in this context can only refer to *past* votes of members of that class. Thus, whether the Defendants "may be" currently violating the Act is not a sine qua non for a violation.

Had the Legislature decided that a political subdivision such as Defendants need not express their intention to act within 50 days unless it makes its own finding as to a violation of the Act, the Legislature would have so stated in the Act. The Legislature would have provided the process for Defendants to make such findings. It did neither.

The Court finds the wording of the first element in the Act to be clear and unambiguous. Neither party has cited to any decision of any court applying the Act to any dispute. The Court is not aware of any such decision. Thus, no contrary precedent appears to exist that would conflict with this Court's analysis, rationale, and conclusion herein.

If any ambiguity did exist in the wording of the Act, the Court could examine the legislative history. NY Statutes, Section 125; *Affiliated Brookhaven Civic Org. v Planning Board of Town of Brookhaven*, 209 AD3d 854 (2d Dept. 2022). That history can include the

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memorandum prepared by the sponsor of the bill. *E.g., Cohen v Bd. of Appeals*, 297 AD2d 38 (2d Dept 2002); *Matter of Emmanuel S. v Joseph E.,* 161 AD2d 83 (2d Dept 1990). Here, the sponsor's memorandum on Subsection 7 is brief and provides little guidance:

> The bill also contains notification requirements and provides a safe harbor for judicial actions. So that political jurisdictions can make necessary amendments to proposed election changes without needing to litigate in court.

Senate Bill 2021-S1046E, Sponsor (Myrie) Memorandum (Version E – final). If any insight into intent exists in that very summary, the sponsor's reference to "amendments" to proposed election changes indicates that the Legislature intended parties to use the 90 days to modify proposed remedies *already passed* in a NYVRA resolution within the first 50 days.

For these reasons, Defendants have not satisfied the first element of the Act's requirements for a NYVRA resolution. On that basis alone, their assertion that the instant lawsuit is premature fails. However, even assuming arguendo that Defendants did indeed satisfy the first element, the Court examines whether Defendants satisfied the other two elements.

Specific Steps to Facilitate Approval and Implementation of a Remedy.

The second element requires a NYVRA resolution to state "specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy". NY Election Law 17-206(7)(b). Examples of 16 different types of a "remedy" are set forth in the Act. NY Election Law 17-206(5). The list is not exhaustive. Id.

The only "remedy" as required by the second element that would comport with the purpose of the Act generally, and with the other two requirements, is an actual, defined remedy. There would be no means by which the political subdivision could state "specific" steps for implementation of a remedy if it had not resolved what comprises the remedy. The Act alone lists 16 types of remedies, and more options exist. Defendants cannot state their "specific steps"

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unless they already decided which of those 16 options (or some other remedy) they have resolved to implement.

Defendants assert they have provided the "specific steps" required by the Act because the Board Resolution provides certain actions that Defendants will undertake to investigate if a violation of the Act occurred. Those steps in the Board Resolution do *not* relate to implementing a remedy, which is what the Act requires. Therefore, the Board Resolution does not satisfy the second element of the Act.

Schedule for Enacting and Implementing a Remedy

The third element of a NYVRA resolution requires "a schedule for enacting and implementing such a remedy". The Board Resolution provides a schedule -- but not regarding enacting and implementing a remedy. The schedule concerns the Defendants' timetable for investigating whether a violation of the Act may be occurring.

For the reasons already set forth as to why the Board Resolution does not satisfy the second element, the same reasoning applies to the third required element. Defendants cannot create a schedule for a remedy if they have not yet decided upon the remedy. The Act requires that Defendants create the schedule within the 50 days after Plaintiffs mailed their NYVRA letter. Defendants failed to satisfy this third requirement.

Thus, regarding each of the three elements, the Board Resolution does not "conclusively" show that they complied with the Act. Therefore, the motion to dismiss as based upon Subsection (a)(1) of CPLR 3211 fails. If the Court accords the Plaintiffs the benefit of every possible favorable inference as required on a motion to dismiss, Plaintiffs would be entitled to their relief upon any reasonable view of the facts pled. *Goshen v. Mutual Life Ins. Co. of N.Y.*, 98

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NY2d 314 (2002); *Leon v. Martinez*, 84 NY2d 83 (1994). Therefore, the motion to dismiss as based upon Subsection (a)(7) of CPLR 3211 also fails.

Further Proceedings in Accordance With the Act

The Act requires that "actions brought pursuant to this title shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference". NY Election Law 17-216. This is required "[b]ecause of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials." Id. In light of these requirements, the parties will appear as already ordered on May 29, 2024, to address how they intend to comply with the mandated expedited timing for resolution of the lawsuit.

Upon the foregoing, it is hereby

ORDERED that Defendants' motion to dismiss is **DENIED,** and it is further

ORDERED that the parties will appear for a status conference on May 29, 2024, at 9:15 a.m. to discuss the expedited schedule for the completion of discovery and setting of a trial date that complies with NY Election Law 17-216.

The foregoing constitutes the Decision and Order of this Court.

Dated: May 17, 2024
Goshen, New York

ENTER:

HON. MARIA S. VAZQUEZ-DOLES, J.S.C.

**Notice of Motion by Defendants to Dismiss,
dated April 16, 2024
[pp. 20 - 21]**

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

----------X

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.

----------X

Index No. EF002460-2024

(Mot. Seq. 001)

NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE that, upon the supporting Memorandum of Law, the affirmation of Bennet J. Moskowitz dated April 16, 2024 and accompanying exhibits, Defendants Town of Newburgh and Town Board of the Town of Newburgh will move this Court, at the Supreme Court of the State of New York, Orange County, 285 Main Street, Goshen, New York, Motion Part, on May 2, 2024 at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order pursuant to CPLR §§ 3211(a)(1) and (7) to dismiss the Verified Complaint filed by Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy, and granting such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 2214(b), answering papers and cross-motions, if any, are demanded to be served upon the undersigned at least seven (7) days prior to the return date of this motion; and reply papers, if any, must be served upon all parties at least one (1) day before the return date of this motion.

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Respectfully submitted,

Dated: New York, New York
April 16, 2024

TROUTMAN PEPPER HAMILTON SANDERS LLP

/s/ Bennet J. Moskowitz

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Attorneys for Defendants Town of Newburgh and Town Board of the Town of Newburgh

**Memorandum of Law by Defendants in Support of Motion,
dated April 16, 2024
[pp. 22 - 41]**

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

----------X

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

Index No. EF002460-2024

Plaintiffs,

(Mot. Seq. 001)

-against-

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

Defendants.

----------X

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS
TOWN OF NEWBURGH AND TOWN BOARD OF THE TOWN OF NEWBURGH'S
MOTION TO DISMISS THE COMPLAINT**

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Defendants Town of Newburgh (the "Town") and Town Board of the Town of Newburgh (the "Town Board"), by and through their undersigned counsel, pursuant to CPLR 3211 (a)(1) and 3211(a)(7), respectfully submit this Memorandum of Law in support of their Motion to Dismiss the Complaint filed by Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (collectively, "Plaintiffs"). NYSCEF No.1 (attached as Exhibit 1 to Affirmation of Bennet Moskowitz ("Moskowitz Aff.")).

PRELIMINARY STATEMENT

The John R. Lewis Voting Rights Act of New York ("NYVRA") gives voters powerful tools to challenge certain voting practices and procedures, but only after voters first give the localities notice of the alleged violation and an opportunity to examine and, if needed, modify the challenged provisions. When a political subdivision receives a NYVRA notice, it has the right to take certain steps to avoid a NYVRA lawsuit. A political subdivision may pass a resolution affirming its intent to remedy any potential NYVRA violation; identifying specific steps that it will undertake to do so; and set forth a schedule for implementing and enacting any potential remedy. If the political subdivision passes such a resolution within 50 days of receiving notice of the potential NYVRA violation, it is entitled to an additional 90 days in which to implement any remedy, during which time a prospective plaintiff may not sue.

Plaintiffs here upended this scheme by filing a premature lawsuit in violation of the NYVRA's mandatory 90-day safe harbor. On January 26, 2024, Plaintiffs sent the Town of Newburgh a letter alleging that the Town's at-large method of electing Town Board members violates the NYVRA. In light of Plaintiffs' allegations and pursuant to the NYVRA's terms, the Town Board passed a resolution on March 15, 2024, which explicitly affirmed the Town Board's intent to remedy any potential NYVRA violation; identified the specific steps that the Town Board

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would take to investigate Plaintiffs' allegations and implement a remedy for any potential violation; and set forth a specific schedule for implementing and enacting any such remedy. Pursuant to the NYVRA, the Town Board's passage of this resolution entitled it to 90 days to implement a remedy for any potential NYVRA violation without having to defend against a lawsuit. Plaintiffs filed a lawsuit prematurely anyway, undermining the NYVRA's carefully crafted regime.

This Court should thus dismiss this premature lawsuit. Given Plaintiffs' violation of the NYVRA's safe harbor, if they still want to bring their lawsuit, they must wait until 90 days after dismissal of this lawsuit to have any lawful ability to sue.

STATEMENT OF FACTS

A. Legal Background

The NYVRA prohibits the enactment or use of voting practices and procedures that "result[ ] in a denial or abridgement of the right of members of a protected class to vote," N.Y. Elec. Law § 17-206(1), and the use of "any method of election" that "impair[s] the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections," *id.* § 17-206(2). The NYVRA provides specific instructions about the evidentiary standard required, as well as the "factors that may be considered," *id.* § 17-206(3), to establish a violation, *id.* § 17-206(1)(b), (2)(c), (3). The law also enumerates a list of "appropriate remedies" that a court may implement "to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process," *id.* § 17-206(5), and specifies the "[p]rocedures" a political subdivision must take to "implement[] new or revised districting or redistricting plans" if a NYVRA violation exists, *id.* § 17-206(6). A plaintiff who prevails in

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NYVRA litigation against a political subdivision may recover reasonable attorneys' fees and litigation expenses. *Id.* § 17-218.

The NYVRA imposes a mandatory notification requirement on plaintiffs who intend to file a lawsuit under the statute, so that the political subdivision can avoid a potentially costly NYVRA lawsuit. *Id.* § 17-206(7). "Before commencing a judicial action against a political subdivision . . . , a prospective plaintiff shall send" a "NYVRA notification letter" to "the governing body of the political subdivision . . . asserting that the political subdivision may be in violation of" the NYVRA. *Id.* A plaintiff may not commence a lawsuit premised on a potential NYVRA violation "within fifty days of sending" the NYVRA notification letter. *Id.* § 17-206(7)(a). A political subdivision that receives a NYVRA notification letter may, "within fifty days of [the] mailing of a NYVRA notification letter," pass a "NYVRA resolution" affirming: (1) "the political subdivision's intention to enact and implement a remedy for a potential violation of this title"; (2) "specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy"; and (3) "a schedule for enacting and implementing such a remedy." *Id.* § 17-206(7)(b).

When a "political subdivision passes a NYVRA resolution," it is entitled to a 90-day "safe harbor" from any judicial action premised on the potential NYVRA violation. *Id.* Specifically, the political subdivision has "ninety days" after passing a resolution "to enact and implement such remedy, during which a prospective plaintiff shall not commence an action." *Id.* During that 90-day period, the political subdivision may "enact and implement" a remedy to cure the alleged violation. *Id.* If the subdivision "lacks the authority" to "enact and implement" a remedy, *id.* § 17-206(7)(c), it may "approve a proposed remedy that complies with" the NYVRA—that is, a "NYVRA proposal," *id.* § 17-206(7)(c)(i)—after holding "at least one public hearing, at which the

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public shall be invited to provide input regarding the" proposed remedy, *id.* § 17-206(7)(c)(ii), "and submit such proposed remedy to the" Civil Rights Bureau of the Office of the Attorney General, for the Bureau's ultimate approval, *id.* § 17-206(7)(c)(i). A prospective plaintiff may not bring suit to assert potential NYVRA violations until this 90-day safe-harbor period is over. *See id.* § 17-206(7)(b). The political subdivision and prospective plaintiff may agree to extend this 90-day safe harbor for an additional 90 days, so long as the political subdivision agrees to "enact and implement a remedy" or "pass a NYVRA proposal and submit it to the civil rights bureau" within this extended time period. *Id.* § 17-206(7)(d).[1]

B. Litigation Background

1. Plaintiffs Send The Town A Letter Alleging Violations Of The NYVRA And The Town Board Adopts A Resolution Under The NYVRA

The Town of Newburgh is a political subdivision of the State of New York. Verified Complaint[2] ("Compl.") ¶¶ 5–6. The Town Board is the Town's legislative and policy-making authority. *See* N.Y. Town Law § 60; Div. of Loc. Gov't Servs., N.Y. Dep't of State, *Local Government Handbook* 72–73 (7th ed. 2018) ("*Loc. Gov't Handbook*").[3] Like "almost all towns" in the State of New York, N.Y. Dep't of State, *Loc. Gov't Handbook* 74–75, the Town uses an at-large voting system to elect the Town Board's four members and its Supervisor, pursuant to which

[1] The statute provides just one exception to the 90-day safe harbor, inapplicable to this case. If either (i) "the first day for designating petitions for a political subdivision's next regular election to select members of its governing board has begun or is scheduled to begin within thirty days," or (ii) "a political subdivision is scheduled to conduct any election within" 120 days, a plaintiff may bring suit without waiting for the 90-day safe harbor to expire, "provided that the relief sought by such a plaintiff includes preliminary relief for that election." *Id.* § 17-206(7)(f).

[2] A copy of Plaintiff's Verified Complaint, including Exhibits A and B thereto, is attached as Exhibit 1 to the Affirmation of Bennet J. Moskowitz, dated April 16, 2024, submitted herewith.

[3] Available at https://dos.ny.gov/system/files/documents/2023/06/localgovernmenthandbook_2023.pdf (all websites last visited Apr. 15, 2024).

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"all of the voters of the entire political subdivision elect each of the members to the governing body," who each represent the subdivision "at-large," rather than a limited geographic area therein. N.Y. Elec. Law § 17-204.

On January 30, 2024, Plaintiffs here sent a letter to the Town dated and postmarked January 26, 2024 (the "Notification Letter"). *See* Compl., Ex. A. The Notification Letter alleged that the Town Board's at-large method of election violates the NYVRA because certain "statistical methods" "reveal[ ] . . . patterns of racially polarized voting with respect to African American and Hispanic voters and demonstrates that the voting preferences . . . of African American and Hispanic voters differ markedly from those of white voters within the jurisdiction," and because "the African American and Hispanic communities are less able to elect candidates of their choice." Compl., Ex. A, at 1. The Notification Letter also alerted the Town of Plaintiffs' intent to commence a legal action if the Town did not cure the alleged violations. *See generally* Compl., Ex. A.

On March 15, 2024—49 days after Plaintiffs mailed their letter—the Town Board adopted the Resolution of the Town Board of the Town of Newburgh Pertaining to New York State Election Law 17-206 (the "Resolution"). The Town Board adopted the Resolution in response to the Notification Letter at a "special meeting of the Town Board," and after the Resolution was "duly put to a vote on roll call." *See* Compl. Ex. B at 1, 3. With two Town Board Councilmen and the Town Supervisor voting in favor, "[t]he resolution was thereupon declared duly adopted." *Id.* at 3. As the Resolution explains, "it is the public policy" of both the State of New York and the Town "to encourage participation in the elective franchise by all eligible voters to the maximum extent." *Id.* at 2. That "public policy" includes "ensur[ing] that eligible voters who are members of racial and language-minority groups have an equal opportunity to participate in the political

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processes of the State of New York, and especially to exercise the elective franchise." *Id.* To achieve this public policy, the Resolution provides that the Town Board will "proactively review the Town's current at-large election system for members of the Town Board," and will "implement remedies for any potential violation of the NYVRA that may exist." *Id.*

The Resolution calls for the Town Board to, within 90 days, take a series of specific, detailed steps to investigate and remedy the potential NYRVA violation alleged in Plaintiffs' Notification Letter: First, the Town Board must work with a law firm and experts to (i) investigate the at-large voting system, (ii) "determine whether any potential violation of the NYVRA may exist," and (iii) "evaluate potential alternatives to bring the election system into compliance with the NYVRA" if a "potential violation [is] determined to exist." *Id.* § 1. Second, the investigative findings and evaluation must be reported to the Town Board within 30 days of the date of the Resolution, at which time the Town Board must consider this information—as well as any information provided by Plaintiffs' legal counsel—and determine whether "there may be a violation of the NYVRA." *Id.* § 2. Third, if the Town Board finds "that there may be" a NYVRA violation, it must "cause a written proposal of the selected remedy(ies) that comply with the NYVRA to be prepared and presented to the Town Board" within the next 10 days. *Id.* § 3. Fourth, within the next 30 days, the Town Board must (i) conduct at least two public hearings on the proposed remedies, providing the public an opportunity "to provide input" on the NYVRA Proposal as well as "the proposed remedy(ies) set forth therein," and (ii) amend those proposed remedies "based upon the public input received" during the public hearings. *Id.* § 4. Finally, within 90 days of the date of the Resolution, the Town Board must "approve the completed NYVRA Proposal" and submit it to the Civil Rights Bureau of the State Attorney General's office for final approval. *Id.* § 5.

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C. Plaintiffs File This Lawsuit Challenging The Town's At-Large Method Of Election And Alleging That The Town Board's Resolution Is Insufficient, Without Honoring The 90 Day Safe Harbor

On March 26, 2024—just 11 days after the Town Board adopted its Resolution—Plaintiffs filed their Complaint, alleging that the Town's at-large method of voting violates the NYVRA. *See* Compl., ¶¶ 145–160. Plaintiffs are six Town residents, *id.* ¶¶ 24–29, and are the same individuals named as clients in the Notification Letter from law firm Abrams Fensterman, LLP, *compare id.*, *with id.*, Ex. A, at 1. Plaintiffs allege two causes of action. First, they assert that the Town Board's at-large method of election violates Section 17-206(2)'s prohibition against vote dilution because "Black and Hispanic voters consistently support certain candidates different from the candidates supported by non-Hispanic white voters," such that "Black and Hispanic voting preferences are polarized against the rest of the electorate." Compl., ¶ 151; *see also id.* ¶¶ 66–76. Second, Plaintiffs present an alternative argument as to why the Town Board's at-large method of election violates Section 17-206(2)—namely, that "under the totality of the circumstances, [the at-large] system impairs the ability of Black and Hispanic voters residing within the Town to elect candidates of their choice or influence the outcome of elections." Compl., ¶ 159; *see also id.* ¶¶ 77–135. Plaintiffs ask this Court to "declar[e] that the use of an at-large system to elect members of the Newburgh Town Board violates" Section 17-206, and "order[ ] the implementation . . . of a new method of election for the . . . Town Board." *Id.* at 29 (Prayer for Relief). Plaintiffs also seek to recover attorneys' fees and litigation expenses under Section 17-218. *Id.* (Prayer for Relief).

With respect to the timing of their lawsuit, Plaintiffs allege that the Resolution was not a "NYVRA resolution" under Section 17-206(7)—and therefore did not trigger Section 17-206(7)'s 90-day safe harbor period—for three reasons: (1) it did not "commit[ ] the Town Board to any action other than to consider [the] findings" concerning a potential violation, *id.* ¶ 60; (2) although it requires the "evaluation of the at-large system" to be submitted to the Board "within 30 days"

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of the Resolution's passage, the Resolution "contains no 'schedule' by which the Town Board must act on" that evaluation and "instead giv[es] the Town Board an indefinite deliberation period," *id.* ¶ 61; and (3) the Resolution was "not duly adopted at a duly called meeting of the Town Board," *id.* ¶ 63. Plaintiffs thus allege that the Town "took no other action purporting to respond to the NYVRA notification letter within the 50-day period." *Id.* ¶ 62. Therefore, Plaintiffs contend they were entitled to sue the Town on March 18, 2024—the first Monday following 50 days after sending the Notification Letter on January 26, 2024. *Id.* ¶¶ 62, 64, 65.

On April 8, 2024, the Town Board adopted a new resolution in response to this lawsuit. *See* Resolution Of The Town Board Of The Town Of Newburgh Pertaining To New York State Election Law 17-206 And Commencement Of Litigation (Apr. 8, 2024) (the "April 8 Resolution");[4] *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 20 (2d Dep't 2009) ("[M]aterial derived from official government Web sites may be the subject of judicial notice."). The April 8 Resolution reiterates the Town's "intention to enact and implement a remedy or remedies for a potential violation of the NYVRA." *Id.* However, Plaintiffs' allegation in this lawsuit that the March 15 Resolution was invalid, the April 8 Resolution suspends the Town Board's schedule for implementing any remedy pending a determination from this Court as to whether the March 15 Resolution complies with the NYVRA. *Id.*

STANDARD OF REVIEW

While allegations in a pleading are generally accepted as true in the context of a motion to dismiss, "bare legal conclusions," or factual claims that contradict documentary evidence, receive no such deference. *22-50 Jackson Ave. Assocs., L.P. v. County of Suffolk*, 216 A.D.3d 943, 945 (2d

[4] Available at https://townofnewburgh.org/uppages/Resolution%20Pertaining%20to%20NYew%20York%20State%20Election%20Law%2017-206%20and%20Commencement%20of%20Litigation.pdf

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Dep't 2023) (citation omitted). Under CPRL 3211(a)(7), the court may dismiss a claim if the plaintiff fails to allege a legally cognizable cause of action. *Monroe v. Monroe*, 50 N.Y.2d 481, 484 (1980) (citing *Rovello v. Orofino Realty*, 40 N.Y.2d 633, 635 (1976)).

ARGUMENT

A. The goal of statutory interpretation "is to ascertain the legislative intent and construe the pertinent statute[ ] to effectuate that intent." *In re M.B.*, 6 N.Y.3d 437, 447 (2006). Because "the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself." *People v. Golo*, 26 N.Y.3d 358, 361 (2015). To that end, courts "construe words of ordinary import with their usual and commonly understood meaning," *Walsh v. New York State Comptroller*, 34 N.Y.3d 520, 524, 122 N.Y.S.3d 209, 144 N.E.3d 953 (2019) (citation omitted), "unless the Legislature by definition or from the rest of the context of the statute provides a special meaning," *Lohan v. Take–Two Interactive Software, Inc.*, 31 N.Y.3d 111, 121 (2018). Statutes must be construed "so as to give meaning to each word," *Skanska USA Bldg. Inc. v. Atl. Yards B2 Owner, LLC*, 146 A.D.3d 1, 9 (1st Dep't 2016), *aff'd*, 31 N.Y.3d 1002 (2018), and to "avoid an unreasonable or absurd application of the law," *Bank of Am., N.A. v. Kessler*, 39 N.Y.3d 317, 324 (2023) (citation omitted).

B. Here, the Town Board passed a NYVRA resolution that fully complied with Section 17-206(7)'s safe-harbor provision, and Plaintiffs were therefore statutorily prohibited from filing this lawsuit until 90 days after the Town Board passed its Resolution on March 15, 2024. Plaintiffs' lawsuit is thus premature under the NYVRA and must be dismissed and can only be re-filed 90 days after such dismissal.

As relevant here, Section 17-206(7)(a) prohibits a plaintiff from filing suit "within fifty days of sending" a potential defendant a NYVRA notification letter. N.Y. Elec. Law § 17-206(7)(a). Section 17-206(7)(b), in turn, provides that, if the defendant "pass[es] a resolution

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affirming: (i) the political subdivision's intention to enact and implement a remedy for a potential violation of this title; (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," the defendant "shall have ninety days after such passage to enact and implement such remedy." *Id.* § 17-206(7)(b). During these 90 days, a "prospective plaintiff shall not commence an action to enforce this section against the political subdivision." *Id.*

Here, the Town Board availed itself of this 90-day safe harbor period by timely passing a NYVRA resolution that fully complied with Section 17-206(7).

Initially, the Town Board timely passed the Resolution within 50 days of receiving Plaintiffs' Notification Letter, thereby triggering the NYVRA's 90-day safe-harbor period. *See* N.Y. Elec. Law § 17-206(7)(a). Plaintiffs sent the Notification Letter to the Newburgh Town Clerk on January 26, 2024, *see* Compl. ¶ 59 & Ex. A, at which point Plaintiffs were subject to an automatic 50-day waiting period before they could file suit. *See* N.Y. Elec. Law § 17-206(7)(a). On March 15, 2024, before that 50-day period expired and in direct response to the Notification Letter, the Town Board held a special meeting and adopted the Resolution. *See* Compl. ¶ 60 & Ex. B; N.Y. Town Law § 63 (requiring resolutions to be adopted by "the affirmative vote of a majority of all members of the town board").

The Resolution contained everything required to trigger Section 17-206(7)(b)'s 90-day safe harbor period. *See* N.Y. Elec. Law § 17-206(7)(b).

The Resolution "affirm[s]" the Town Board's "intention to enact and implement a remedy for a potential violation of" the NYVRA. *Id.* § 17-206(7)(b)(i). The Resolution states that the Town Board "intends to proactively review the Town's current at-large election system for members of the Town Board in order to . . . enact or apply for approval, as the case may be, and

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implement remedies for any potential violation of the NYVRA that may exist." Compl. Ex. B at 2. Per Section 17-206(7)(b), the Resolution confirms that, should a violation be deemed to exist, the Town Board "intends to enact and implement the appropriate remedy(ies)." Compl. Ex. B § 2.

The Resolution then sets forth several "specific steps" the Town Board "will undertake to facilitate approval and implementation of such a remedy." N.Y. Elec. Law §17-206(7)(b)(ii). Specifically, the Resolution requires the Town's counsel and experts to investigate the at-large election system for Town Board members "to determine whether any potential violation of the NYVRA may exist," and "to evaluate potential" remedies "should a potential violation be determined to exist." Compl. Ex. B § 1. The investigative findings and evaluation must then be presented to the Town Board. *Id.* § 2. If the Town Board concludes, based on those findings, that the current voting system is unlawful, it "shall" cause a NYVRA Proposal to be prepared and presented to the Board. *Id.* § 3. The Town Board must then hold at least two public hearings concerning the NYVRA Proposal, during which hearings the public "shall be invited to provide input regarding" the proposal and, specifically "the composition of proposed new election districts." *Id.* § 4. Following these hearings, the Town Board must amend the NYVRA Proposal as appropriate to account for public input. *Id.* If the Town Board finds that the at-large voting system violates the NYVRA, the Resolution commits the Town Board to "approv[ing] the completed NYVRA Proposal" and submitting it to the Civil Rights Bureau of the Office of the New York State Attorney General for final approval. *Id.* § 5.

Finally, the Resolution provides a "schedule for enacting and implementing . . . a remedy" for any NYVRA violation. N.Y. Elec. Law §17-206(7)(b)(iii). A "schedule" is a "time-table," including "a programme or plan of events, operations, etc." *Schedule*, Oxford English Dictionary

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Online (Dec. 2022).[5] In context, then, Section 17-206(7)(b)(iii)'s requirement that NYVRA resolutions contain "a schedule for enacting and implementing" a proposed remedy, N.Y. Elec. Law § 17-206(7)(b)(iii), calls for the "program[ ]" of "operations"," *Schedule*, Oxford English Dictionary Online, necessary "for enacting and implementing" a remedial measure, N.Y. Elec. Law § 17-206(7)(b)(iii). The Resolution here contains such a schedule: if the Town Board makes a "finding that there may be a violation of the NYVRA," a NYVRA Proposal must be presented to the Town Board within 10 days of that finding. Compl. Ex. B § 3. The Town Board then has 30 days to conduct public hearings and amend the NYVRA Proposal based upon public input. *Id.* § 4. Following the public hearings and any amendments, the Town Board must "approve the completed" NYVRA Proposal if it finds any legal violation and submit it to the Civil Rights Bureau for final approval within 90 days of the date on which the Resolution is issued. *Id.* § 5.

Because the Resolution contains everything required to trigger Section 17-206(b)'s 90-day safe harbor period, Plaintiffs could not file this lawsuit for 90 days after the passage of the Resolution on March 15, 2024. *See* N.Y. Elec. Law § 17-206(7)(b). Plaintiffs did not wait for this 90-day statutory safe-harbor period to expire and instead filed their Complaint on March 26, 2024, in violation of the NYVRA. *See id.* Accordingly, Plaintiffs lawsuit should be dismissed. And given Plaintiffs' violation of the NYVRA's safe harbor, if they still want to bring their lawsuit, they must wait until 90 days after dismissal of this lawsuit and can only bring suit if the Town does not remedy any claimed violation before the 90-day safe-harbor period ends. Requiring Plaintiffs to re-commence the NYVRA process in this manner is necessary to respect the Town's right to the statutory safe harbor period and prevent plaintiffs from gutting that provision by filing premature

[5] Available at https://www.oed.com/dictionary/schedule_n?tab=meaning_and_use#24189809.

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lawsuits that interrupt and distract from diligent efforts to investigate the allegations raised in NYVRA notification letters. *See Bank of Am.*, 39 N.Y.3d at 324; Compl. Ex. B.

C. The Complaint suggests three reasons why Plaintiffs believe the Resolution was insufficient to trigger the NYVRA's 90-day safe-harbor period, *see* Compl. ¶¶ 60–63, but each is belied by the law and the Resolution's plain text, *see In re M.B.*, 6 N.Y.3d at 447; *Golo*, 26 N.Y.3d at 361; *Walsh*, 34 N.Y.3d at 524.

According to Plaintiffs, the Resolution does not "commit[ ] the Town Board to any action other than to consider" the Town Supervisor and Town counsel's findings concerning whether the at-large voting system violates the NYVRA. Compl. ¶ 60. Plaintiffs are wrong as to the Resolution's plain terms, but even if they were correct, this point would be legally irrelevant. The Resolution's text both states the Town Board's intent to remedy a "potential [NYVRA] violation" and commits the Town Board to initiating multiple "specific steps" to remedy such potential violation. Those "specific steps" involve more than just "consider[ing]" the investigative findings. *Contra* Compl. ¶ 60. The Town Board must make an express "finding" as to whether "there may be a violation of the NYVRA." Compl., Ex. B § 3. If the Board finds a violation of law, it must undertake to prepare an NYVRA Proposal, hold public hearings, amend the proposal if appropriate, approve the completed proposal, and submit it to the Civil Rights Bureau for approval. *Id.* §§ 4–5. And, in any event, while Section 17-206 requires a NYVRA Resolution to explain the "specific steps" a defendant "will undertake" to remedy a potential NYVRA violation, N.Y. Elec. Law §17-206(7)(b), it does not dictate what those "specific steps" must entail. Thus, even if the Resolution did not "commit[ ]" the Town Board to do anything beyond "consider[ing]" the findings concerning a potential NYVRA allegation, as Plaintiffs assert contrary to the Resolution's plain text, Compl. ¶ 60, that would not render the Resolution legally deficient.

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Plaintiffs next assert that the Resolution is insufficient because it "contains no 'schedule' by which the Town Board must act on" the "evaluation of the at-large system," Compl. ¶ 61, but as with Plaintiffs' first argument, this assertion is both wrong as to the Resolution's text and legally irrelevant. The Resolution *does* contain a schedule, mandating that the Town Board consider a NYVRA Proposal within 10 days of finding a potential NYVRA violation, Compl., Ex. B § 3, and hold at least two public hearings within 30 days to solicit public input on the NYVRA Proposal, *id.* § 4. The Town Board must submit the completed NYVRA Proposal to the Civil Rights Bureau by 90 days after the date of the Resolution. *Id.* § 5. The Resolution thus provides a "schedule" for "enacting and implementing" a remedy for any potential NYVRA violation. N.Y. Elec. Law § 17-206(b)(iii). In any event, the NYVRA does not require political subdivisions to impose a schedule governing their deliberations on whether a proposed NYVRA violation exists to be entitled to the safe harbor. *See id.* § 17-206(7)(b). The statute only requires that a NYVRA resolution contain a "schedule for *enacting and implementing*" a "*remedy*" for the proposed violation, *id.* (emphases added), which the Resolution plainly does. Notably, in the Resolution here, the Town Board's "finding that there may be a violation of the NYVRA" triggers the remedial "enact[ment] and implement[ation]" schedule in the Resolution, in full compliance with the NYVRA. *See id.* § 17-206(7)(b)(iii).

Finally, Plaintiffs allege that the Resolution "is void and of no effect because, upon information and belief, it was not duly adopted at a duly called meeting of the Town Board," but they offer no facts to support this conclusory allegation, and, in any event, the Resolution *was* properly "adopted" by the Town Board. *See* Compl. ¶ 63. In fact, the Resolution states that it was "duly put to a vote on roll call," and that it was thereafter "declared duly adopted" during "a special meeting of the Town Board" held on "the 15th day of March, 2024 at 12:00 o'clock p.m.," with

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the three out of five members of the Town Board present at the meeting voting in the Resolution's favor. Ex. B. Thus, in "pass[ing]" the Resolution via the affirmative vote of three out of five members of the Town Board, the Town Board fully complied with N.Y. Town Law § 63, which provides that a resolution's adoption "shall require . . . the affirmative vote of a majority of all the members of the town board." N.Y. Town Law § 63.

CONCLUSION & RELIEF REQUESTED

This Court should grant Defendants' Motion To Dismiss The Complaint.

Respectfully submitted,

Dated: New York, New York
April 16, 2024

TROUTMAN PEPPER HAMILTON SANDERS LLP

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum of Law in Support of Defendants Town of Newburgh and Town Board of the Town of Newburgh's Motion to Dismiss the Complaint complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum uses Times New Roman 12-point typeface and contains 4,730 words, excluding parts of the document exempted by Rule 202.8-b. As permitted, the undersigned has relied on the word count feature of this word-processing program.

By: _____
BENNET J. MOSKOWITZ

**Affirmation of Bennet J. Moskowitz, for Defendants,
in Support of Motion, dated April 16, 2024
[pp. 42 - 44]**

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

----------X

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.

----------X

Index No. EF002460-2024

(Mot. Seq. 001)

AFFIRMATION OF BENNET J. MOSKOWITZ

BENNET J. MOSKOWITZ, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am a Partner at Troutman Pepper Hamilton Sanders LLP, counsel for Defendants Town of Newburgh and Town Board of the Town of Newburgh.

2. I submit this Affirmation solely to present to the Court certain materials cited in Defendants' Memorandum of Law in Support of Defendants' Motion to Dismiss Plaintiffs' Verified Complaint, which materials are attached hereto as described below.

3. Attached hereto as Exhibit 1 is a copy of Plaintiffs' Summons and Complaint and Exhibits A and B thereto (NYSCEF Nos. 1, 2, 3).

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Respectfully submitted,

Dated: New York, New York
April 16, 2024

TROUTMAN PEPPER HAMILTON SANDERS LLP

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Affirmation complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Affirmation uses Times New Roman 12-point typeface and contains 113 words, excluding parts of the document exempted by Rule 202.8-b. As permitted, the undersigned has relied on the word count feature of this word-processing program.

By: _____
Bennet J. Moskowitz

Exhibit 1 to Moskowitz Affirmation -
Summons and Verified Complaint, dated March 26, 2024
[pp. 45 - 78]

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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.

Date Summons Filed:

Basis for venue is Plaintiffs' Residence, CPLR 503(a)

SUMMONS

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on plaintiffs' attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: White Plains, New York
March 26, 2024

ABRAMS FENSTERMAN, LLP
Attorneys for Plaintiffs

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

Defendants' Address:
Town of Newburgh
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Newburgh, NY 12550
(845) 564-4554

Town of Newburgh Town Board
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(845) 564-4554

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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. Date Summons Filed: **VERIFIED COMPLAINT**

Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy, by their attorneys, Abrams Fensterman, LLP, as and for their complaint against the defendants, allege as follows:

NATURE OF THE ACTION

1. This is an action to enforce the requirements of the John R. Lewis Voting Rights Act of New York ("NYVRA") in the Town of Newburgh, County of Orange (the "Town").

2. NYVRA was enacted by Chapter 226 of the Laws of 2022. It establishes the policy of the State of New York to (i) encourage participation in the elective franchise by all eligible voters to the maximum extent; and (ii) ensure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise. The NYVRA specifically allows lawsuits challenging municipal at-large elections.

3. The Town's "at-large" voting system violates NYVRA because it has for many years systematically prevented members of the Town's minority Black and Hispanic communities from electing any candidates of their choice to the Newburgh Town Board, thus denying the members of that community their most basic rights. Lacking any representation on the Town Board,

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members of the Town's Black and Hispanic communities have been demoted to second class citizens whose concerns are ignored by the Town Board. Among other things, the Town Board has commenced litigation as part of its effort to prevent the housing of migrants in the Town and rejected calls to oppose a power plant whose emissions would disproportionately impact communities of color.

4. NYVRA requires that the Town's at-large voting system be promptly changed to remedy the inequitable treatment of Newburgh's Black and Hispanic communities and ensure that the members of those communities are no longer denied the adequate electoral representation they are guaranteed by law.

THE DEPRIVATION OF VOTING RIGHTS BY THE TOWN OF NEWBURGH

5. The Town was established in 1788.

6. The Town is a political subdivision of the State of New York that has its principal office at 1496 Route 300, Newburgh, Orange County, New York 12550

7. The Town Board is the Town's legislative and policy-making authority.

8. The Town's population has risen dramatically in recent decades. Nearly 32,000 individuals now call Newburgh home.

9. Much of that increase is attributable to a rapidly expanding Black and Hispanic communities which now comprise approximately 25 percent and 15 percent, respectively, of the Town's population.

10. The presence of the Black and Hispanic communities is particularly notable in areas immediately adjoining the City of Newburgh.

11. Despite the Town's significant Black and Hispanic populations, every person ever elected to the Newburgh Town Board, which is the Town's governing body, has, to plaintiffs'

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knowledge, been white.

12. Voting in the Town is racially/ethnically polarized: Black and Hispanic voters together and non-Hispanic white voters consistently support different candidates and the candidates supported by non-Hispanic white voters usually prevail in Town elections.

13. It is no coincidence that the Town Board is unanimously white. It is the result of the Town's at-large voting system, under which every member of the Town Board is elected by vote of the entire voting population of the Town, and the presence of racially polarized voting. Black and Hispanic voters are politically cohesive and white voters are politically cohesive, but the Black and Hispanic voters typically prefer candidates other than the candidates preferred by white voters. Because white voters make up a majority of the electorate, racially polarized voting within Newburgh's at-large system invariably denies the Town's Black and Hispanic voters an opportunity to elect candidates of their choice to the Town Board.

14. "Slating" – the selection of candidates by party insiders – also contributes to the lack of electoral success by candidates preferred by Black and Hispanic voters. Upon information and belief, Republican candidates for Town Board are selected by the Town of Newburgh Republican Committee. Its approval is a golden ticket onto the ballot and, in almost all cases, onto the Town Board. Favored candidates are well-known to members of the committee, who have invariably been white. Because of the Town's racial polarization, prospective Black and Hispanic candidates are not able to develop the political connections that appear to be necessary to obtaining the nomination of the Republican party for Town office.

15. There has been no candidate of color for Town Board since 2011 because the at-large election system has created an environment in which the Black and Hispanic communities have lost hope that they will ever have a voice in Town government.

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16. Because there is no Black or Hispanic representation on the Town Board, the Town routinely neglects the interests of the Black and Hispanic communities. Most recently, in response to the arrival of sixty asylum seekers from New York City, the Town Board sought an injunction preventing the housing of asylum seekers in the Town. This litigation has cost the Town's taxpayers substantial sums of money and continues to this day. *See Town of Newburgh, New York v. Newburgh EOM LLC, et al.*, Orange County Index No. EF003105-2023.

17. Meanwhile, the arrival of the asylum seekers set off a baseless media fire storm when a local not-for-profit group claimed that the migrants were displacing homeless veterans. It later came to light that these claims were false, and that the local not-for-profit had hired homeless men to pose as displaced veterans. This information came to light, however, only after local elected officials had sent out fundraising appeals for their campaigns attempting to capitalize on the false incident.

18. In addition to overt racial and ethnic hostility, the numerical advantage white voters enjoy under the at-large system forces the Town Board to favor the interests of predominantly white sections of the Town at the expense of communities of color. For example, in 2018 the Danskammer Power Plant attempted to expand its facility in the Town of Newburgh, an expansion that would have potentially emitted nearly two million tons of carbon emissions per year. In 2011, the Danskammer power plant was the third worst polluter in the entire state.[1] Unlike multiple surrounding municipalities, the leaders of the Town of Newburgh supported expansion of the Plant, despite the fact that the area around the power plant is disproportionately Black and Hispanic and that these populations generally suffer high rates of asthma and other similar diseases stemming

[1]Adam Bosch, RECORDONLINE.COM, *Danskammer Plant in Town of Newburgh is New York State's 3rd worst polluter*, https://www.recordonline.com/story/business/2011/01/05/danskammer-plant-in-town-newburgh/51324876007/.

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from emissions.[2] Racial minority groups came out against the plant,[3] but the Town's leadership ignored them and continued to support the plant's expansion.[4] As a result, Black and Hispanic populations were not heard in opposing the power plant expansion.

19. Plaintiffs are members of the Town's Black and Hispanic communities who seek by this action to remedy this situation in which they are unable to elect candidates of their choice and denied an equal opportunity to elect candidates of their choice compared to the white majority because voting in the Town is racially polarized, preventing Black and Hispanic candidates from being elected to the Town Board.

20. At-large voting systems, like the one utilized by the Town, are illegal in one of two circumstances: either "voting patterns of members of the protected class within the political subdivision are racially polarized; or … under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." N.Y. Elec. Law § 17-206(2)(b)(i).

21. That is exactly the situation in the Town of Newburgh.

22. There are several potential effective remedies for the dilution of Black and Hispanic voting strength that results from the at-large system. The Town Board could draw single-member districts or institute a modified at-large system, such as proportional ranked-choice voting or cumulative voting, in combination with expanding or "unstaggering" the membership of the Town Board.

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[2] Hiroko Tabuchi & Nadja Popovich, THE NEW YORK TIMES, *People of Color Breach More Hazardous Air. The Sources are Everywhere*, https://www.nytimes.com/2021/04/28/climate/air-pollution-minorities.html.

[3] Arvind Dilawar, HUDSON VALLEY VIEWFINDER, *Danskammer Threatens Valley's Health and Environmental Justice*, https://www.scenichudson.org/viewfinder/danskammer-threatens-valleys-health-and-environmental-justice/.

[4] Gil Piaquadio, TIMES HERALD-RECORD, *My View: Danskammer Repowering the Clear Option to Meet Energy Needs*, https://web.archive.org/web/20201023092617/https://www.recordonline.com/opinion/20190616/my-view-danskammer-repowering-clear-option-to-meet-energy-needs.

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23. The Town Board has done nothing to implement any of these remedies.

THE PLAINTIFFS

24. Plaintiff Oral Clarke is a Black citizen and registered voter residing in the Town of Newburgh, New York.

25. Plaintiff Romance Reed is a Black citizen and registered voter residing in the Town of Newburgh, New York.

26. Plaintiff Grace Perez is a Hispanic American citizen and registered voter residing in the Town of Newburgh, New York.

27. Plaintiff Peter Ramon is a Hispanic American citizen and registered voter residing in the Town of Newburgh, New York.

28. Plaintiff Ernest Tirado is a Hispanic American citizen and registered voter residing in the Town of Newburgh, New York.

29. Plaintiff Dorothy Flournoy is a Black citizen and registered voter residing in the Town of Newburgh, New York.

JURISDICTION AND VENUE

30. The Court has jurisdiction over this matter by virtue of Election Law § 17-206(4).

31. Venue is proper in Orange County under Election Law § 17-206(4), CPLR 504(2), because the Town is situated in Orange County, and CPLR 503(a), because the plaintiffs reside in Orange County.

FACTS RELEVANT TO PLAINTIFFS' NYVRA CLAIMS

32. According to the most recent census, the racial composition of the Town's population is approximately 61 percent white, 25 percent Hispanic, and 15 percent black.[5]

[5] 2020 Census, Town of Newburgh, https://www.census.gov/quickfacts/fact/table/newburghtownorangecountynewyork/PST045223

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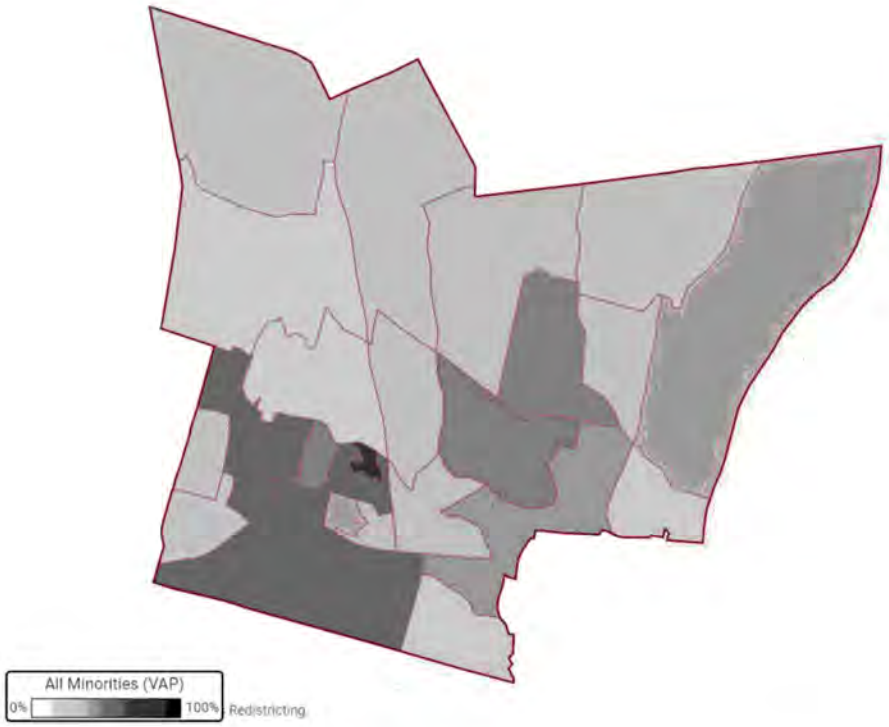
33. Much of the Black and Hispanic population is concentrated in the southwest and eastern parts of the Town.

34. The map below shows the areas in which racial minorities are concentrated:



Source: https://davesredistricting.org

35. The Town has "at-large" elections, which means that every registered voter residing within the Town is eligible to vote for each Town office in every Town election.

36. The Town Board comprises five individuals: the Town Supervisor and four members of the Town Board.

37. The Town Supervisor is the chief elected official of the Town and serves a two-year term. Gil Piaquadio is the current Town Supervisor. Among other duties, the Town Supervisor sits as chairman of the Town Board.

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38. The four Town Board members are elected to staggered, four-year terms. Thus, every two years, two seats on the Town Board are on the ballot. Betty Greene, Paul Ruggiero, Scott Manley, and Anthony LoBiondo are the current members of the Town Board.

39. The current members of the Town Board are all white Republicans.

40. The plaintiffs are not aware of any person of color who has ever been elected to the Town Board.

A. The John R. Lewis Voting Rights Act of New York.

41. NYVRA unequivocally declares that it is the public policy of the State of New York to "[e]ncourage participation in the elective franchise by all eligible voters to the maximum extent" and "[e]nsure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise." Election Law § 17-200.

42. To achieve that policy, the Legislature further provided that "all statutes, rules and regulations, and local laws or ordinances related to the elective franchise shall be construed liberally in favor of (a) protecting the right of voters to have their ballot cast and counted; (b) ensuring that eligible voters are not impaired in registering to vote, and (c) ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process in registering to vote and voting." Election Law § 17-202.

43. Under the NYVRA, an "at-large" method of election refers to "a method of electing members to the governing body of a political subdivision: (a) in which all of the voters of the entire political subdivision elect each of the members to the governing body; (b) in which candidates are required to reside within given areas of the political subdivision and all of the voters of the entire political subdivision elect each of the members to the governing body; or (c) that combines at-

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large elections with district-based elections, unless the only member of the governing body of a political subdivision elected at-large holds exclusively executive responsibilities." Election Law § 17-204(1).

44. A "political subdivision" is defined to include "a county, city, town, village, school district, or any other district organized pursuant to state or local law." Election Law § 17-204(4).

45. The Town is a political subdivision under the NYVRA.

46. Because all voters in the Town elect the Town Supervisor and all four Town Board members, the Town utilizes an at-large method of election as defined in NYVRA.

47. The Town Board has the authority to change the Town's at-large voting system but has thus far chosen not to do so.

48. Among other protections for voters, the NYVRA prohibits any political subdivision from using any method of election "having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution." Election Law § 17-206(2)(a).

49. The Town's Black residents are a "protected class" because they are "a class of eligible voters who are members of a race, color, or language-minority group." Election Law § 17-204(5).

50. The Town's Hispanic residents are a "protected class" because they are "a class of eligible voters who are members of a race, color, or language-minority group." Election Law § 17-204(5).

51. A political subdivision utilizing an at-large method of election violates the prohibition against vote dilution where "(A) voting patterns of members of the protected class within the political subdivision are racially polarized; or (B) under the totality of the circumstances,

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the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." Election Law § 17-206(2)(b)(i).

52. "Racially polarized voting" is defined as "voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate." Election Law § 17-204(6).

53. Racially polarized voting "refers only to the existence of a correlation between the race of voters and the selection of certain candidates." *Thornburg v. Gingles*, 478 U.S. 30, 74 (1986). "[E]vidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class is not required." Election Law § 17-206(2)(c)(v).

54. Election Law § 17-206(8) states: "Coalition claims permitted. Members of different protected classes may file an action jointly pursuant to this title in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate." Thus, Black and Hispanic voters (who have voting preferences polarized against the rest of the electorate) bring this joint action.

B. NYVRA's notification requirement.

55. Before commencing an action against a political subdivision under NYVRA, a prospective plaintiff must send a notification letter to the clerk of the political subdivision, asserting that the political subdivision may be in violation of NYVRA. Election Law § 17-206(7).

56. A prospective plaintiff cannot commence an action under NYVRA for at least 50 days after sending the notification letter. Election Law § 17-206(7)(a).

57. During that 50-day period, the governing body of the political subdivision may adopt a resolution affirming: "(i) the political subdivision's intention to enact and implement a remedy for a potential violation of [the NYVRA]; (ii) specific steps the political subdivision will

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undertake to facilitate approval and implementation of such a remedy; and (iii) a schedule for enacting and implementing such a remedy." Election Law § 17-206(7)(b).

58. If the political subdivision timely adopts a resolution in response to a notification letter, the political subdivision has another 90 days to enact and implement a remedy before the prospective plaintiff may commence an action under the NYVRA. *Id.*

C. Plaintiffs' notification letter.

59. On January 26, 2024, counsel for the plaintiffs sent a NYVRA notification letter by certified mail to Lisa Vance-Ayers, Newburgh Town Clerk, at the Town Clerk's Office located at 1496 Route 300, Newburgh, New York 12550. A true and correct copy of the notification letter as well as the return receipt is attached as Exhibit A.

60. On March 15, 2024, within the 50-day period, the Town Board purportedly adopted a resolution providing that the Town Supervisor and the Town's counsel will review and investigate the current at-large election system to "determine whether any potential violation of the NYVRA may exist" without committing the Town Board to any action other than to consider those findings. A true and correct copy of the resolution is attached as Exhibit B.

61. Furthermore, while directing that an evaluation of the at-large system be provided to the Town Board within 30 days, the March 15 resolution contains no "schedule" by which the Town Board must act on such an evaluation, instead giving the Town Board an indefinite deliberation period.

62. The Town took no other action purporting to respond to the NYVRA notification letter within the 50-day period which expired on March 18, 2024.

63. The Town Board's March 15, 2024 resolution is void and of no effect because, upon information and belief, it was not duly adopted at a duly called meeting of the Town Board.

64. The Town Board's March 15, 2024 does not satisfy the requirements of Election

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Law § 17-206(7).

65. The Town Board's March 15, 2024 resolution was insufficient to require the plaintiffs to wait an additional 90 days before commencing this action.

THE TOWN'S AT-LARGE ELECTION STRUCTURE VIOLATES NYVRA

A. The Town's voting patterns demonstrate racially polarized voting.

66. The Town's at-large method of electing members of the Town Board violates NYVRA's prohibition against vote dilution because it causes candidates or electoral choices preferred by Black and Hispanic voters to usually be defeated and "voting patterns of members of the protected class within the political subdivision are racially polarized." Election Law § 17-206(2)(b)(i).

67. Racially polarized voting occurs when there is a divergence in the electoral choices of members of a politically cohesive racial or language-minority group from the rest of the electorate.

68. Under the NYVRA, where multiple racial or language-minority groups are both internally politically cohesive and politically cohesive with each other, those groups may be combined for purposes of analyzing whether voting is racially polarized and for determining appropriate remedies.

69. Voting is consistently racially polarized in the Town of Newburgh.

70. Black voters in the Town of Newburgh consistently vote cohesively for the same candidates.

71. Hispanic voters in the Town of Newburgh consistently vote cohesively for the same candidates.

72. Black and Hispanic voters in the Town of Newburgh are also politically cohesive with each other.

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73. White voters in the Town of Newburgh consistently vote cohesively for the same candidates, who are not the candidates preferred by Black and Hispanic voters.

74. The preferred candidates of Black and Hispanic candidates are usually defeated by the preferred candidates of a cohesive bloc of white voters.

75. No candidate preferred by Black and Hispanic voters has been elected to Town Office in recent memory.

76. Because Newburgh's Black and Hispanic communities are politically cohesive and because voting is racially polarized, the Town's at-large system violates the NYVRA's protections against racial vote dilution.

B. Under the totality of the circumstances, the Town violates the NYVRA.

77. The Town also violates NYVRA if "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." Election Law § 17-206(2)(b)(i)(B).

78. The totality of the circumstances demonstrates the presence of vote dilution in the Town.

79. Election Law § 17-206(3) sets forth a non-exhaustive list of factors to be considered in determining vote dilution claims but also states that "[n]othing in this subdivision shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that such a violation has occurred." *Id., see also Gingles*, 478 U.S. at 45 ("[T]here is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.") (internal quotation marks omitted).

80. When evaluating whether the ability of a minority community to participate in the political process has been impaired, courts must look beyond discrimination within the political

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subdivision to consider history, socioeconomic factors, and discrimination not directly attributable to the political subdivision itself. *See Goosby v. Town Bd. of Town of Hempstead*, 180 F.3d 476, 488 (2d Cir. 1999) (considering effect of discriminatory voting laws enacted by Nassau County and New York State on Town elections); *Gomez v. City of Watsonville*, 863 F.2d 1407, 1418 (9th Cir. 1988) ("The district court apparently believed that it was required to consider only the existence and effects of discrimination committed *by the City of Watsonville itself.* That conclusion is incorrect") (emphasis in original), *cert. denied* 489 U.S. 1080 (1989).

81. Considering the factors defined in NYVRA, Black and Hispanic voters in the Town are not able to participate equally in the political process.

a. The history of discrimination in the subdivision.

82. There is a long history of discrimination against the Black and Hispanic communities in the Town.

83. Most recently, on May 8, 2023, the Town of Newburgh Town Board voted to launch a lawsuit in an attempt to halt the housing of migrants or asylum seekers at the Crossroads Hotel in the Town of Newburgh.[6] Though ostensibly based on a zoning dispute specific to the Crossroads Hotel, the Town's complaint also invokes an unrelated State of Emergency Order issued by the Orange County Executive prohibiting the housing of "asylum seekers" generally.[7] Ultimately, approximately sixty migrants were housed at the Crossroads Hotel.

84. The two-page executive order refers to migrants not less than nineteen times. Among other things, it states that "there is no reason to believe that these migrants or asylum seekers will leave Orange County," "there is reasonable apprehension of immediate danger of

[6] *Town of Newburgh, New York v. Newburgh EOM LLC et al.*, Orange County Index No. EF003105-2023 dkt. 1, Paragraph 24.

[7] *Id.* paragraph 23.

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public emergency of potentially thousands of persons being transported to Orange County," and that there is "reasonable apprehension of immediate danger thereof that public safety is imperiled thereby, for not only the migrant and asylum seekers, but also to the other affected residents of. Orange County."[8]

85. The Town of Newburgh also declared a State of Emergency in response to the housing of migrants in the Town[9] and sought an injunction preventing the arrival of migrants in the Town.[10] The litigation is still ongoing and has cost the Town substantial legal fees thus far.

86. After the Town filed its case seeking to prevent migrants from seeking shelter in the Town, sensational news stories emerged claiming that homeless veterans in Newburgh were being displaced to make room for asylum seekers.[11] The story quickly went viral, with State. Assemblyman Brian Maher actively promoting the story. Local elected officials blasted the evictions. State elected officials introduced a bill in the New York State Legislature to outlaw the evictions. And Congressman Michael Lawler sent out a mass text attempting to raise money based on the allegations that veterans were being displaced by "unvetted migrants."[12]

87. But the story was a complete fabrication. The alleged veterans were not veterans at all, but were simply homeless men who had been approached at a separate homeless shelter in

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[8] Orange County Government, Office of County Executive Steven M. Neuhaus, News Release dated May 8, 2023, https://www.townofwoodbury.com/document-center/supervisor-s-office/town-of-woodbury-coronavirus-updates/2447-oc-executive-neuhaus-orange-county-newburgh-emergency-order-5-8-2023/file.html.

[9] HUDSONVALLEYTIMES.COM, *Asylum Seekers Arrive in Town of Newburgh*, https://www.timeshudsonvalley.com/stories/asylum-seekers-arrive-in-town-of-newburgh,80253.

[10] *Town of Newburgh, New York v. Newburgh EOM LLC et al.*, Orange County Index No. EF003105-2023 dkt. 1.

[11] Bernadette Hogan & Kate Sheehy, NEW YORK POST, *Homeless Vets are Being Booted from NY Hotels to Make Room for Migrants: Advocates*, https://nypost.com/2023/05/12/homeless-vets-are-being-booted-from-ny-hotels-to-make-room-for-migrants-advocates/.

[12] Chris McKenna, LOHUD, *Assemblyman Recants Tale that Newburgh Hotel Evicted Homeless Vets to Board Asylum Seekers*, https://www.lohud.com/story/news/2023/05/18/crossroads-hotel-newburgh-ny-evicted-veterans-for-asylum-seekers-questioned/70230243007/.

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Poughkeepsie, in Dutchess County, and paid $100 and a bag of toiletries each to pose as veterans displaced by migrants.[13]

88. Despite this stunning admission that local elected officials had touted a completely fabricated story used to inflame passions against migrants, the Town made no statement of contrition or apology. The Town instead continued to press its litigation to attempt to oust the migrants from the Town, an effort that continues to this day.

89. The decision to spend taxpayers' money in an active attempt to displace a mere sixty asylum seekers from the Town is an example of discrimination perpetrated by the Town government.

90. Black and Hispanic voters were also disenfranchised in the Town's decision not to oppose a $500 million expansion of the Danskammer Power Plant. The Danskammer Power Plant is in the Town of Newburgh. The area around the Plant has a higher proportion of racial minorities than the region as a whole. The Danskammer Plant historically has been one of the state's top polluters. In 2000, the Plant was one of the state's top ten air polluters,[14] in 2005 the plant was ranked one of the state's top releasers of mercury.[15] And in 2009 the plant was ranked the third worst polluter in the entire state.[16]

91. In 2019, the owners of the Danskammer Power Plant filed an application to construct and operate an expanded natural gas fired power plant on the site. The proposal would

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[13] Corey Kilgannon, THE NEW YORK TIMES, *Ugly Tale of Migrants Displacing Veterans Makes Waves and Then Dissolves*, https://www.nytimes.com/2023/05/20/nyregion/migrants-veterans-ny.html.

[14] Wayne A. Hall, TIMES HERALD-RECORD, *Newburgh Plant One of N.Y.'s Top 10 Polluters*, https://www.recordonline.com/story/news/2002/07/11/newburgh-plant-one-n-y/51179462007/.

[15] John Ferro, POUGHKEEPSIE JOURNAL, *Danskammer: An Old Plant Breeds New Controversies,* https://www.poughkeepsiejournal.com/story/tech/science/environment/2014/11/22/danskammer-riverkeeper-hudon-environment/19419773/.

[16] Bosch, *supra* note 1, https://www.recordonline.com/story/business/2011/01/05/danskammer-plant-in-town-newburgh/51324876007/.

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have increased the emissions of harmful chemicals by over twenty-five times.[17] Black and Hispanic groups quickly opposed the expansion, arguing that increased emissions would adversely impact disproportionately minority communities around the plant.[18] Historically, Black and Hispanic populations on a national level suffer higher rates of asthma and other respiratory diseases due to higher levels of exposure to environmental pollutants.[19] In the region, Newburgh City residents already currently visit the emergency room at higher rates for asthma than the statewide average.[20]

92. However, despite this opposition from Black and Hispanic representatives, the Town openly supported the expansion of the Danskammer Power Plant. In June 2019, Newburgh Town Supervisor Gil Piaquadio authored an opinion piece in the Times Herald-Record supporting the expansion of the plant.[21] The piece has only one line concerning emissions concerns and says nothing about the Black or Hispanic communities either in the Town or the surrounding communities, demonstrating an indifference to the groups that would bear the environmental and health costs from the expansion of the power plant.

93. Meanwhile, over twenty communities in the area around the plant opposed its expansion including the Cities of Newburgh and Poughkeepsie.[22]

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[17] SCENICHUDSON.ORG, *What's Wrong with Danskammer in 9 Simple Words,* https://www.scenichudson.org/news/whats-wrong-with-danskammer-in-9-simple-words/.

[18] Dilawar, *supra* note 3, https://www.scenichudson.org/viewfinder/danskammer-threatens-valleys-health-and-environmental-justice/.

[19] Lara Morales, THE NEW PALTZ VOICE, *Hudson Valley Pushing Back Against a New Power Plants,* https://www.newpaltzvoice.com/blog/laras-capstone.

[20] SCENICHUDSON.ORG, *supra* note 17, https://www.scenichudson.org/news/whats-wrong-with-danskammer-in-9-simple-words/.

[21] Gil Piaquadio, TIMES HERALD-RECORD, *My View: Danskammer Repowering the Clear Option to Meet Energy Needs*, https://web.archive.org/web/20201023092617/https://www.recordonline.com/opinion/20190616/my-view-danskammer-repowering-clear-option-to-meet-energy-needs.

[22] MID HUDSON NEWS, *Communities Oppose Danskammer Fracked Gas Plant,* https://midhudsonnews.com/2020/06/29/communities-oppose-danskammer-fracked-gas-plant/.

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94. The New York State Department of Environmental Conservation ultimately rejected the power plant expansion because of, among other things, the high emissions that would result from the plant.[23]

95. In sum, the Town's decision to publicly support expansion of the power plant even though expansion would disproportionately impact communities of color is an example of the Town's failure to address the needs of its minority residents.

b. The extent to which members of the protected class have been elected to office in the political subdivision.

96. No Black or Hispanic person has ever been elected to Town office.

97. The absence of Black or Hispanic candidates seeking election to Town office is further evidence of vote dilution. *See Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1209 n.9 (5th Cir. 1989) ("While the district court seems to reject the argument that black candidates 'don't run because they can't win' as a basis for considering evidence drawn from nonaldermanic elections, it is precisely this concern that underpins the refusal of this court and of the Supreme Court to preclude vote dilution claims where few or no black candidates have sought offices in the challenged electoral system. To hold otherwise would allow voting rights cases to be defeated at the outset by the very barriers to political participation that Congress has sought to remove"). "The Court will begin its totality of the circumstances consideration with the two Senate factors identified by the Supreme Court as most important: (1) the "extent to which minority group members have been elected to public office in the jurisdiction" and (2) the "extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 48 n. 15, 106 S.Ct. 2752 (citing Senate Report at 28–29, U.S.C.C.A.N.1982, p. 206). If those factors

[23] Chris McKenna, RECORDONLINE.ORG, *DEC Rejects Key Permit for Proposed Danskammer Power Plant in Newburgh*, https://www.recordonline.com/story/news/local/2021/10/27/dec-rejects-crucial-permit-new-danskammer-power-plant-newburgh/8566737002/.

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are present, the other factors "are supportive of, but not essential to, a minority voter's claim." *United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 277 (D.S.C. 2003), *aff'd sub nom. United States v. Charleston Cnty., S.C.*, 365 F.3d 341 (4th Cir. 2004)

c. The use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme.

98. The at-large method of election utilized by the Town ensures that the votes of the Black and Hispanic communities are diluted by those of the white majority.

99. This system prevents members of the Black and Hispanic communities in areas where they are more heavily concentrated from pooling their voting power to elect a candidate.

d. Denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election.

100. Republican and Democratic candidates for the Town Board are nominated by, respectively, the Newburgh Republican Committee and the Newburgh Democratic Committee.

101. Typically, the party approaches potential candidates for office or interested residents approach a member of a local party.

102. Black and Hispanic residents, many of whom are relative newcomers to the Town, do not have the institutional and political ties which many of the white residents enjoy, especially in the Newburgh Republican Committee.

103. Without those connections, potential Black and Hispanic candidates for public office are not even considered by the local parties for nomination.

104. The sentiment that it is not possible for a Black or Hispanic candidate even to be nominated for public office in the Town suppresses participation in government at the Town level, further decreasing the likelihood that Black or Hispanic residents will be considered for nomination in the future.

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e. The extent to which members of the protected class contribute to political campaigns at lower rates.

105. The substantial barriers already identified prevent Black and Hispanic residents from fully participating in the Town's political process.

106. Upon information and belief, Black and Hispanic residents contribute to Town political campaigns at lower rates than their White counterparts.

f. The extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate.

107. Upon information and belief, due to the substantial barriers already identified and the sense of futility caused by the at-large system, the Town's Black and Hispanic population votes at a substantially lower rate than the white population.

g. The extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection.

108. Across a wide array of socioeconomic factors, the Town's Black and Hispanic residents are worse-off than their white counterparts.

109. Upon information and belief, Black and Hispanic residents are more likely to work in the service industry or in other blue-collar occupations than white residents of the Town.

110. Black and Hispanic residents of Newburgh have lower educational outcomes than their white counterparts.[24]

111. Similarly, Hispanic residents are more likely to have received food stamps than their white counterparts.[25]

112. Black and Hispanic residents were particularly disadvantaged by the Town Board's

[24] ACS Educational Attainment, UNITED STATES CENSUS BUREAU (2021).

[25] ACS Receipt of Food Stamps/SNAP in the Past 12 Months by Race of Household, UNITED STATES CENSUS BUREAU.

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support of expanding the Danskammer Power Plant, despite concerns raised by the Black and Hispanic communities that this would have a deleterious environmental impact particularly on minority groups which are highly concentrated near the plant.

h. The extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process.

113. Black and Hispanic residents are disadvantaged compared to white residents in areas affecting their ability to participate in the elective franchise.

114. Because of their disadvantaged economic status, Black and Hispanic residents are often not able to take time off work to vote.

115. In addition, information concerning political and other events in the Town is disseminated primarily through the Town's website, with which many Hispanic residents are unfamiliar.

116. Notices posted on the Town's website or sent via email are exclusively in English, and not in Spanish.

117. Upon information and belief, there are no Spanish speaking Town employees who work in Town Hall even though 25 percent of the Town's population is Hispanic.

118. For all of these reasons, Black and Hispanic voters, on average, receive less information concerning the issues at stake in Town elections and the candidates on the ballot than white voters.

i. The use of overt or subtle racial appeals in political campaigns.

119. Racial appeals are extremely common in the region's political campaigns.

120. As discussed, in response to the ultimately false reports that homeless veterans had been displaced by migrants in the Town of Newburgh, Congressman Michael Lawler sent

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fundraising appeals attempting to exploit the incorrect claims.[26]

121. Similarly, as recently as March 2024, in the nearby Village of Montgomery, the village board declared itself an "un-sanctuary community" with regards to migrants.[27] The village board took this action mere days before the village elections, at the behest of a board member who was also a candidate for mayor. The candidate said the resolution was necessary so residents would not "wake up in the morning and find out that our senior center or our teen center or our elementary school is filled with migrants."

j. A significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class.

122. The Town Board has shown little regard for the particularized concerns of the Black or Hispanic communities.

123. Upon information and belief, the Town routinely ignores concerns raised by Hispanic residents that the Town does not employ enough Spanish-speaking employees.

124. Upon information and belief, the Town has no Spanish speaking staff working in Town Hall even though 25 percent of the Town's population is Hispanic.

125. Upon information and belief, Black and Hispanic residents make up a smaller portion of the Town's boards and committees than their share of the Town population.

126. As discussed, Black and Hispanic groups openly opposed the Danskammer Power Plant expansion in part because of the expansion's disproportionate impact on their communities, but despite this Town Board supported the expansion.

127. Similarly, as discussed, the Town has incurred substantial litigation expenses

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[26] McKenna, *supra* note 12, https://www.lohud.com/story/news/2023/05/18/crossroads-hotel-newburgh-ny-evicted-veterans-for-asylum-seekers-questioned/70230243007/.

[27] Blaise Gomez, NEWS12, *Montgomery Mayoral Candidates at Odds Over 'Un-sanctuary" Resolution,* https://westchester.news12.com/montgomery-mayoral-candidates-at-odds-over-un-sanctuary-resolution.

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attempting to block the housing of migrants in the Town.

k. Whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy.

128. NYVRA requires that any burden on the right to vote be "narrowly tailored" and supported by a "compelling policy justification that must be supported by substantial evidence." Election Law §17-202.

129. Upon information and belief, there is no compelling policy justification for maintaining the Town's current at-large method of election.

130. Instead, it appears that the Town Board and its supporters cling to the current system because it preserves their stranglehold over Town government.

C. Remedies.

131. NYVRA requires that where the court finds that a political subdivision has engaged in vote dilution under the NYVRA, the court "shall implement appropriate remedies to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process." Election Law § 17-206(5)(a).

132. Those remedies may include, but are not limited to: "(i) a district-based method of election; (ii) an alternative method of election . . . ." Election Law § 17-206(5)(a).

133. Here, a district-based method of election or alternative method of election would best serve to correct the ongoing vote dilution in the Town.

134. A single-member districting plan would curtail the ongoing disenfranchisement of Black and Hispanic voters. It is possible to draw a map that adheres to traditional districting principles and includes a compact, single-member district (or districts). That district (or districts) would provide the Town's Black and Hispanic voters the opportunity to elect a candidate of their

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choice or influence the outcome of elections.

135. Cumulative or ranked choice voting would also remedy the violation and allow the members of the Black and Hispanic populations to elect a candidate of their choice.

D. The urgency of these proceedings and the need for expedited judicial review.

136. NYVRA specifically provides for expedited judicial proceedings: "Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials, actions brought pursuant to this title shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference." Election Law § 17-216.

137. The plaintiffs' claim of vote dilution, which is brought subject to Election Law § 17-206(2), is accordingly entitled to expedited pretrial and trial proceedings as well as an automatic calendar preference.

138. Without expedited review, the plaintiffs, together with all Black and Hispanic voters in the Town, face the threat of irreparable harm.

139. The next scheduled election in the Town will take place in November 2025.

140. Under the existing system, the nomination process for candidates for Town office in November 2025 will begin in or around February 2025.

141. If the plaintiffs prevail in this action, the Court may order the Town to implement a districting plan.

142. Any districting plan would need to be implemented before the nomination process begins.

143. This action, including any appeals, must be decided with sufficient time to allow any court-ordered remedies to be implemented before February 2025.

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144. If this action is not given expedited review, the 2025 election will continue to be tainted by the same NYVRA violations that are the subject of this action.

AS AND FOR PLAINTIFFS' FIRST CAUSE OF ACTION

Vote dilution in violation Election Law § 17-206(2) by reason of racially polarized voting

145. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth here.

146. Election Law § 17-206(2)(a) prohibits every political subdivision from using any method of election that has the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections as a result of vote dilution.

147. Election Law § 17-206(2)(b)(i)(A) provides that a violation of Election Law § 17-206(2)(a) by a political subdivision which utilizes an at-large method of election is established by evidence demonstrating that "voting patterns of members of the protected class within the political subdivision are racially polarized."

148. The Town utilizes an at-large method of electing members of the Town Board.

149. Black and Hispanic voters residing within the Town, including Plaintiffs, are members of a protected class within the meaning of Election Law § 17-206(2)(a).

150. Election Law § 17-207(8) states: "Coalition claims permitted. Members of different protected classes may file an action jointly pursuant to this title in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate."

151. The facts as set forth in this complaint establish the existence of racially polarized voting in that Black and Hispanic voters consistently support certain candidates different from the candidates supported by non-Hispanic white voters. Thus, Black and Hispanic voting preferences are polarized against the rest of the electorate.

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152. Candidates or electoral choices preferred by members of the Black and Hispanic communities in the Town would usually be defeated as a result of racially polarized voting in the Town.

153. Pursuant to Election Law § 17-206(2)(b)(i), the Town's at-large method of electing Town Board members, combined with the presence of racially polarized voting in the Town, establishes vote dilution that is prohibited by NYVRA.

154. Plaintiffs are entitled to the relief provided for in Election Law §§ 17-206(5) and 17-218 for the Town's violation of NYVRA.

155. There are alternative methods of election which would enfranchise the Black and Hispanic communities in the Town.

AS AND FOR PLAINTIFFS' SECOND CAUSE OF ACTION

Vote dilution in violation of Election Law § 17-206(2) under the totality of the circumstances

156. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth here.

157. Election Law § 17-206(2)(b)(i)(B) provides that a violation of Election Law § 17-206(2)(a) by a political subdivision which utilizes an at-large method of election is established by evidence that "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." Election Law § 17-206(2)(b)(i)(B).

158. The Town utilizes an at-large method of electing members of the Town Board.

159. The facts as set forth in this complaint establish that the Town's at-large system of election for members of the Town Board violates NYVRA because, under the totality of the circumstances, that system impairs the ability of Black and Hispanic voters residing within the

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Town to elect candidates of their choice or influence the outcome of elections.

160. Plaintiffs are entitled to the relief provided for in Election Law §§ 17-206(5) and 17-218 for the Town's violation of NYVRA.

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PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request judgment:

(a) declaring that the use of an at-large system to elect members of the Newburgh Town Board violates Election Law § 17-206;

(b) ordering the implementation for the 2025 Town election of a new method of election for the Newburgh Town Board as authorized by Election Law § 17-206(5)(a) that includes either a districting plan or an alternative method of election for the 2025 Town election that remedies the Town's violation of NYVRA;

(c) awarding Plaintiffs' the reasonable attorneys' fees and litigation expenses incurred in asserting the claims in this complaint, including, but not limited to, expert witness fees and expenses pursuant to Election Law § 17-218;

(d) retaining jurisdiction to render any and all further orders that this Court may deem appropriate; and

(e) granting such other and further relief that the Court deems just and appropriate.

ABRAMS FENSTERMAN, LLP
Attorneys for Plaintiffs

By: _____

Robert A. Spolzino, Esq.
Jeffrey A. Cohen, Esq.
David T. Imamura, Esq.
Steven Still, Esq.
81 Main Street, Suite 400
White Plains, NY 10601
(914) 607-7010

Dated: White Plains, New York
March 26, 2024

FILED: ORANGE COUNTY CLERK 03/26/2024 06:00 PM INDEX NO. EF002460-2024
NYSCEF DOC. NO. 11 RECEIVED NYSCEF: 03/26/2024

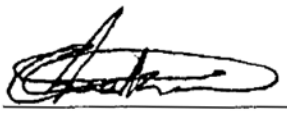
VERIFICATION

State of New York)
) cc.:
County of Orange)

ORAL CLARKE, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 22nd day of March, 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.



ORAL CLARKE

FILED: ORANGE COUNTY CLERK 03/26/2024 06:00 PM INDEX NO. EF002460-2024
DOC. NO. 11 RECEIVED NYSCEF: 03/26/2024

VERIFICATION

State of New York)
) ss.:
County of Orange)

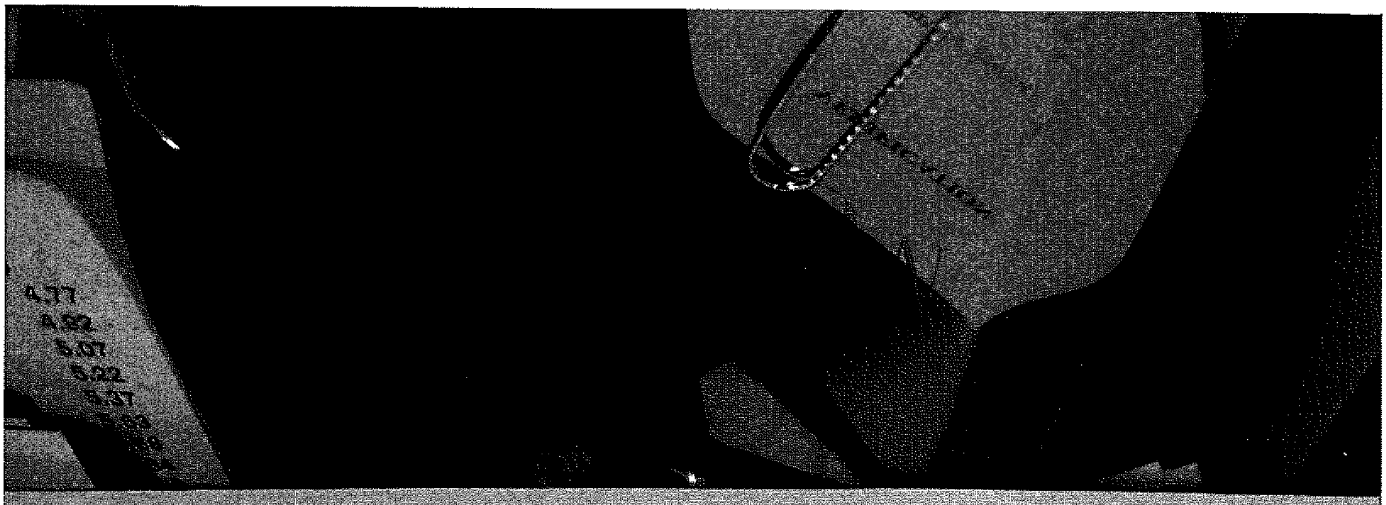
ROMANCE REED, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 24 day of March, 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.

3/24/24
ROMANCE REED

FILED: ORANGE COUNTY CLERK 03/26/2024 06:00 PM INDEX NO. EF002460-2024
NYSCEF DOC. NO. 11 RECEIVED NYSCEF: 03/26/2024



VERIFICATION

State of New York)
) cc.:
County of Orange)

PETER RAMÓN, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 26 day of March, 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.

Peter Ramón

PETER RAMÓN

FILED: ORANGE COUNTY CLERK 03/26/2024 06:00 PM INDEX NO. EF002460-2024
NYSCEF DOC. NO. 11 RECEIVED NYSCEF: 03/26/2024

VERIFICATION

State of New York)
) cc.:
County of Orange)

ERNEST TIRADO, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 23 day of March, 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.

Ernest Tirado

ERNEST TIRADO

FILED: ORANGE COUNTY CLERK 03/26/2024 06:00 PM INDEX NO. EF002460-2024

[redacted]2024

VERIFICATION

State of New York)
) ss.:
County of Orange)

DOROTHY FLOURNOY, hereby affirms the following to be true under penalty of perjury, pursuant to CPLR 2106:

I am one of the plaintiffs in this action. I have read the foregoing complaint and know its contents, and same is true to my knowledge, except for matters stated to be upon information and belief, which matters I believe to be true.

I affirm this 26 day of March, 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.

Dorothy J. Flournoy
DOROTHY FLOURNOY

Exhibit A to Verified Complaint -
Letter from Robert A. Spolzino to Lisa M. Vance-Ayers,
dated January 26, 2024, with Receipts
[pp. 79 - 83]

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NYSCEF DOC. NO. 21 RECEIVED NYSCEF: 03/26/2024

ABRAMS FENSTERMAN, LLP
ATTORNEYS AT LAW

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

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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[1] and $5.4 million to the plaintiffs for their legal fees.[2]

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.[3] Similarly, the City of Palmdale paid out $4.6 million in attorneys' fees.[4] In the 20 years the CVRA has been in effect, no California municipality has ever successfully defended itself against a CVRA claim.

---

[1] 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/.

[2] 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/.

[3] 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/.

[4] 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/.

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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

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

FILED: ORANGE COUNTY CLERK 03/26/2024 06:00 PM INDEX NO. EF002460-2024
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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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ 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

3. Service Type

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

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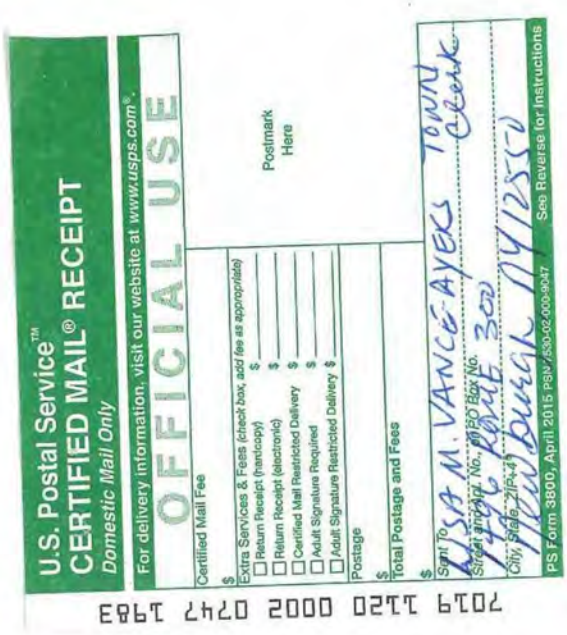
er $500)

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



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OFFICIAL USE

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☐ Adult Signature Required $
☐ Adult Signature Restricted Delivery $

Postage $

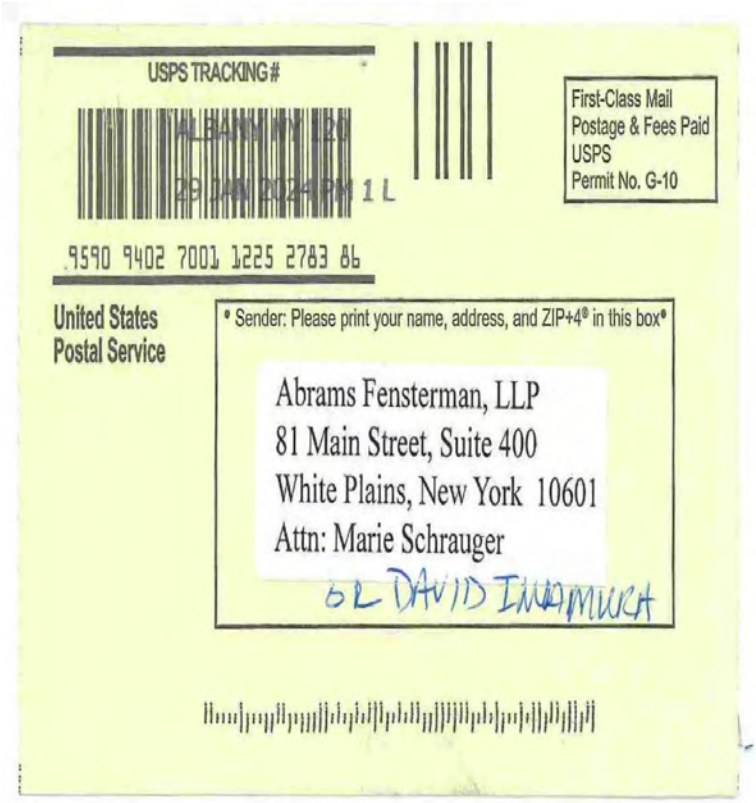
Total Postage and Fees $

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

Postmark Here

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

7019 1120 0002 0747 1983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First-Class Mail
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USPS
Permit No. G-10

United States
Postal Service

* Sender: Please print your name, address, and ZIP+4® in this box*

Abrams Fensterman, LLP
81 Main Street, Suite 400
White Plains, New York 10601
Attn: Marie Schrauger

BL DAVID INDEMUCK

**Exhibit B to Verified Complaint -
The Town Board of the Town of Newburgh Resolution,
dated March 15, 2024, with Exhibit A
[pp. 84 - 91]**

FILED: ORANGE COUNTY CLERK 03/26/2024 06:00 PM INDEX NO. EF002460-2024
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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

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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

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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:

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

The resolution was thereupon declared duly adopted.

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Exhibit "A"

NYVRA Voting Rights Notification Letter

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ABRAMS FENSTERMAN, LLP
ATTORNEYS AT LAW

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

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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[1] and $5.4 million to the plaintiffs for their legal fees.[2]

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[1] 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/.

[2] 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/.

[3] 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/.

[4] 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/.

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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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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

**Memorandum of Law by Plaintiffs in Opposition to Motion,
dated April 25, 2024
[pp. 92 - 113]**

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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.

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PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

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PRELIMINARY STATEMENT

Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramón, Ernest Tirado, and Dorothy Flournoy (collectively, "Plaintiffs") respectfully submit this memorandum of law in opposition to the motion by Defendants Town of Newburgh and Town Board of the Town of Newburgh to dismiss the complaint pursuant to CPLR 3211.

SUMMARY OF ARGUMENT

This lawsuit is among the first filed under the newly enacted John R. Lewis Voting Rights Act of New York, or New York Voting Rights Act ("NYVRA"). *See* Election Law § 17-200 *et seq*. It seeks to remedy the longstanding disenfranchisement of minority communities residing within the Town of Newburgh resulting from the Town's at-large system of electing Town Board members. NYVRA expressly prohibits vote dilution through the use of at-large voting systems where there is racially polarized voting or "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." Election Law § 17-206(2)(b)(i). Such systems have been struck down in other jurisdictions under similar statutes. *See Portugal v. Franklin Cnty*., 530 P.3d 994, 1004 (Wash. 2023), *cert. denied sub nom. Gimenez v. Franklin Cnty., WA*, No. 23-500, 2024 WL 1607746 (U.S. Apr. 15, 2024); *Higginson v. Becerra*, 786 F. App'x 705, 706 (9th Cir. 2019), *cert. denied* 140 S. Ct. 2807 (2020); *Sanchez v. City of Modesto*, 145 Cal.App.4th 660, 667 (2006), *cert. denied* 552 U.S. 974 (2007). The complaint here alleges, and Plaintiffs are prepared to prove, both species of illegal vote dilution.

NYVRA requires that these proceedings be expedited. The Town has chosen, however, to pursue delay by moving to dismiss the complaint on the ground that Plaintiffs have failed to abide the "safe harbor" provision of NYVRA, which prohibits a party from suing over a NYVRA

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violation for 90 days if the political subdivision adopts a resolution committing to cure the violation. The resolution on which the Town bases its argument, however, was not duly adopted, is substantively insufficient to invoke the "safe harbor" provision, and has since been "suspended" by the Town Board.

The Town did not do what the statute requires to invoke the safe harbor provision. The statute gives the Town the benefit of the safe harbor provision if it passes a resolution affirming three things: "(i) the political subdivision's intention to enact and implement a remedy for a potential violation of this title; (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." Election Law § 17-206(7)(b). The Town, however, did none of these things. It committed merely *to study* whether the minority communities in the Town were illegally disenfranchised. Committing to study the problem is not committing to fix it.

The statute gives the Town the benefit of the safe harbor only where the Town commits to fix NYVRA violations. Since the Town did not do that, Plaintiffs were within their rights to commence this proceeding before the safe harbor period had run and the motion to dismiss must be denied. In any event, the Town Board has now "suspended" even its commitment to study the situation. Because it did so, its motion to dismiss should be denied as academic.

STATEMENT OF FACTS

A. NYVRA.

NYVRA is historic legislation which safeguards the rights of minority voters to participate in the democratic process. Dissatisfied with the limitations of the Federal Voting Rights Act, the New York State Legislature adopted NYVRA in 2022, following and expanding upon voting rights legislation enacted by states such as California and Washington in proactively expanding the remedies available to disenfranchised voters. *See* Affirmation of Robert A. Spolzino ("Spolzino

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Aff.") Exhibit A, Introducer's Memorandum in Support at p. 8-9. NYVRA formally declares that it is the public policy of the State of New York to "[e]ncourage participation in the elective franchise by all eligible voters to the maximum extent" and "[e]nsure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise." Election Law § 17-200. NYVRA provides that "all statutes, rules and regulations, and local laws or ordinances related to the elective franchise shall be construed liberally in favor of (a) protecting the right of voters to have their ballot cast and counted; (b) ensuring that eligible voters are not impaired in registering to vote, and (c) ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process in registering to vote and voting." Election Law § 17-202.

Among other things, NYVRA prohibits a "political subdivision," including a town, from utilizing a method of election which "impair[s] the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution." Election Law §§ 17-204, 17-206(2)(a). A "protected class" is defined as "a class of eligible voters who are members of a race, color, or language-minority group." Election Law § 17-204(5). NYVRA specifically provides that the use of at-large system of electing Town Board members, such as the electoral system used by the Town, constitute illegal vote dilution where there is racially polarized voting or "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." Election Law § 17-206(2)(b)(i).

Recognizing the irreparable harm to voters resulting from holding elections under unlawful conditions, actions brought pursuant to NYVRA are subject to expedited pretrial and trial

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proceedings as well as an automatic calendar preference, Election Law § 17-216, to ensure that incumbent officials who benefit from the unlawful conditions challenged in the lawsuit do not expend public funds to delay correcting the disenfranchising conditions. *See id.*

NYVRA does recognize, however, a brief opportunity for local governments that want to end disenfranchising voters to do so without the cost of defending litigation. NYVRA requires that before commencing a lawsuit under NYVRA against a political subdivision, such as a town, a prospective plaintiff must send a notification letter to the clerk of that political subdivision asserting that the political subdivision may be in violation of NYVRA. Election Law § 17-206(7). The prospective plaintiff must wait 50 days before suing. *Id.* § 17-206(7)(a). If, during those 50 days, the political subdivision adopts a "NYVRA resolution" which affirms "(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), the political subdivision is given the benefit of a "safe harbor" during which the political subdivision has another 90 days to enact and implement a remedy before the prospective plaintiffs may commence a lawsuit. *See id.* § 17-206(7).

B. The Town of Newburgh.

The Town of Newburgh is a political subdivision located in Orange County with a population of approximately 32,000. *See* Complaint ¶¶ 6, 8. The Town Board, consisting of one supervisor and four councilmembers, is the legislative and policy-making authority within the Town.[1] *See id.* ¶¶ 7, 36. Members of the Town Board are elected in "at-large" elections, meaning

[1] The Town Supervisor is Gil Piaquadio. At this time, only three seats on the Town Board are occupied because former Town Board member Betty Greene passed away after this lawsuit was

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that every registered voter residing within the Town is eligible to vote for every office which is up for election. *See* Election Law § 17-204(1). The four members are elected to staggered, four-year terms held every two years, so that at each town election there are two Town Board seats on the ballot. Complaint ¶ 38.

According to the most recently available census data, the Town's racial composition is approximately 61 percent White, 25 percent Hispanic, and 15 percent Black. *Id.* ¶ 32. Hispanic and Black voters of the Town both qualify as a "protected class" which NYVRA protects. *See* Election Law § 17-204(5). Despite the substantial and growing diversity among the Town's residents, however, all current members of the Town Board are White. Complaint ¶ 39. In fact, it does not appear that there has ***ever*** been any person of color elected to the Town Board. *Id.* ¶ 40.

C. Plaintiffs give notice to the Town of its violation of NYVRA and the Town's March 15, 2024 resolution.

Plaintiffs are Hispanic and Black voters in the Town who, for years, have been without any voice in Town government due to the at-large system of electing Town Board members. As required by NYVRA, Plaintiffs gave the Town notice of their allegations and intent to commence a lawsuit by letter dated January 26, 2024. *See* Complaint Exhibit A. The Town Board held regular meetings on February 13th and March 11th but made no mention of Plaintiffs' notice letter or Plaintiffs' claim that the Town is violating NYVRA. At noon on March 15, 2024, however, one day before the 50-day waiting period for Plaintiffs to commence an action under NYVRA expired, the Town Board apparently held a special meeting to pass what it claims is a NYVRA resolution.

The resolution states that the Town is availing itself of NYVRA's safe harbor provision

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commenced. Paul Ruggiero, Scott Manley, and Anthony LoBiondo are the current members of the Town Board.

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and directs the Supervisor and Town Attorney to work with outside counsel and "authorized experts it retains" to review and investigate the Town's at-large election system "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." Spolzino Aff. Exhibit B § 1. The resolution requires the findings of the investigation to be reported to the Town Board within 30 days and provides that if after considering those findings "and any other information that may become available to the Town . . . 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)." *Id.* § 2. The resolution sets forth no schedule by which Town Board must make its determination, providing only that if the Town Board finds that "there may be violation of the NYVRA . . . the Town Board shall cause a written proposal of the selected remedy(ies) ... to be prepared and presented to the Town Board within ten (10) days of the Town's finding of the potential violation." *Id.* § 3. Within 30 days thereafter, 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." *Id.* § 4. Following the last public hearing, "the Town Board shall approve the completed NYVRA Proposal" within 90 days of the March 15, 2024 resolution. *Id.* § 5.

D. Plaintiffs commence this lawsuit, and the Town moves to dismiss.

Plaintiffs commenced this lawsuit by filing a complaint with this Court on March 26, 2024. The complaint acknowledges that the Town Board purportedly adopted the March 15, 2024 resolution but asserts that the resolution was insufficient to trigger NYVRA's safe harbor provision because it did not commit the Town Board to do anything other than consider the findings of its investigation and did not contain an adequate "schedule" for acting on the evaluation, and because

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the resolution "is void and of no effect because, upon information and belief, it was not duly adopted at a duly called meeting of the Town Board." Complaint ¶¶ 60-65. On April 8, 2024, the Town suspended its investigation. *See* Memorandum of Law in Support of Defendants Town of Newburgh and Town Board of the Town of Newburgh's Motion to Dismiss the Complaint ("Town's Brf.") at p. 8.

The Town now moves to dismiss the complaint pursuant to CPLR 3211.

ARGUMENT

"On a motion to dismiss pursuant to CPLR 3211, the pleading is be afforded a liberal construction." *Leon v. Martinez,* 84 N.Y.2d 83, 87 (1994). The motion court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory." *Id.* at 87-88. The motion must be denied "if from the pleadings' four corners 'factual allegations are discerned which taken together manifest any cause of action cognizable at law.'" *511 West 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 152 (2002), quoting *Polonetsky v. Better Homes Depot, Inc.*, 97 N.Y.2d 46, 54 (2001) (additional citations omitted). "[T]he standard is whether the pleading states a cause of action, not whether the proponent of the pleading has a cause of action." *Thaw v. North Shore Univ. Hosp.*, 129 A.D.3d 937, 938 (2d Dep't 2015) (internal quotation marks omitted), and "the burden of establishing that the complaint fails to state a cause of action" is on the defendants. *Connolly v. Long Is. Power Auth.*, 30 N.Y.3d 719, 728 (2018).

This motion does not challenge substantive allegations in the complaint of voter disenfranchisement. Rather, the Town's argument is that the complaint should be dismissed as premature because the resolution purportedly passed by the Town Board at a special meeting on March 15, 2024 was sufficient to invoke NYVRA's safe harbor provision. *See* Election Law § 17-

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206(7)(b). The Town's argument has no merit for three reasons. First, the Town Board's resolution fails to satisfy NYVRA's requirement for invoking the safe harbor provision because it fails to commit the Town to remedy the violation. Second, the resolution was not duly adopted because the meeting at which the Town Board voted to adopt it was not duly called. Finally, the Town Board has since suspended the resolution, so an argument for dismissal based on the resolution is academic. The motion is nothing more than a blatant attempt to delay these proceedings for as long as possible which should not be countenanced by this Court. The motion should be denied.

A. The Town's resolution is not sufficient to trigger NYVRA's safe harbor provision.

The Town Board's March 15, 2024 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 safe harbor.

"The primary consideration of courts in interpreting a statute is to ascertain and give effect to the intention of the Legislature." *Riley v. Cnty. of Broome*, 95 N.Y.2d 455, 463 (2000) (internal quotation marks omitted). "'[W]hen the statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used.'" *People v. Williams*, 19 N.Y.3d 100, 103 (2012), quoting *People v. Finnegan*, 85 N.Y.2d 53, 58 (1995) (additional citations omitted), *reargument denied* 85 N.Y.2d 968 (1995), *cert. denied* 516 U.S. 919 (1995). A court may consider extrinsic evidence of the legislature's intent, such as legislative history, only where the legislative intent cannot be discerned from the plain language of a statute. *See People v. Cypress Hills Cemetery*, 208 A.D.2d 247, 251 (2d Dep't 1995). The same rules apply to resolutions adopted by local governments. *See Town of Massena v. Niagara Mohawk Power Corp.*, 45 N.Y.2d

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482, 490 (1978) ("Words employed in the resolution will be construed according to their ordinary and plain meaning in the absence of a clear intent to the contrary expressed in the enactment").

The Legislature's intent in enacting NYVRA clear. Recognizing that among all the rights secured to citizens of the United States, the right to vote is unique because it is "'preservative of all rights,'" *Katzenbach v. Morgan*, 384 U.S. 641, 652 (1966), quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886), the statute unequivocally states that the public policy of the state is both to "[e]ncourage participation in the elective franchise by all eligible voters to the maximum extent" and "[e]nsure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise." Election Law § 17-200.

To achieve its purpose, NYVRA expressly requires expedited proceedings. *See* Election Law § 17-216. This is because, as the Legislature recognized, disenfranchised voters are irreparably harmed every time an election is held under unlawful conditions. *Id.* Another reason for expedited proceedings is that because public officials often benefit from unlawful conditions, they may expend significant public resources defending unlawful conditions and delay the litigation for as long as possible. *See id.* ("Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials, actions brought pursuant to this title shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference). The Legislature thus included the notification letter and safe harbor procedure in NYVRA not to delay the determination of NYVRA claims, but to facilitate the avoidance of protracted and costly litigation where a local government has committed in response to the notice letter to remedy the disenfranchisement that has been brought to its attention.

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See Election Law § 17-206(7). The safe harbor procedure must be construed in that light, as the canons of construction require.

The safe harbor provision requires the political subdivision to pass a resolution affirming three things: "(i) the political subdivision's intention to enact and implement a remedy for a potential violation of this title; (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). A NYVRA safe harbor resolution must, therefore, be a commitment "to enact and implement a remedy." It is not sufficient, contrary to what the Town argues here, for a municipality to commit only to investigate whether a violation has occurred.

The Town's March 15, 2024 resolution does not comply with any of the three requirements. First, the resolution does not actually commit the Town "to enact and implement a remedy." Rather, it commits the Town only "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." Spolzino Aff. Exhibit B § 1. Second, because the Town has not actually committed to implementing a particular remedy, or any remedy at all, it does not identify specific steps the Town will take to implement a remedy. Third, for the same reason, the resolution does not establish a schedule for implementing a remedy.

1. The resolution does not declare the Town's intention to enact and implement a remedy.

The plain text of the March 15, 2024 resolution demonstrates that the Town has not declared its "intention ***to enact and implement a remedy*** for a potential violation of [NYVRA]." Election Law § 17-206(7)(b) (emphasis added). All the resolution says is that the Town will investigate the allegations and ***might*** implement a remedy after conducting an "investigation" of

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its at-large method of election. *See* Spolzino Aff. Exhibit B § 1. What that investigation would entail, or who the "authorized experts" are who would carry out that investigation, are not specified. *See id.* Then, the resolution states:

> **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).

See id. § 2 (emphasis added).

This language is not a commitment to remedy the NYVRA violation. It is, at most, a conditional statement of the Town's Board's intention to implement any remedy if the Town Board first finds that there may be a violation of NYVRA. By retaining unfettered discretion to determine whether a violation of NYVRA may exist and, consequently, whether the Town will do anything about it, the Town Board has carefully avoided making the actual commitment to remedy the faulty election system that NYCRA requires for the safe harbor. If the resolution were a contract, it would be unenforceable because the promise it purports to contain is illusory. *See Chiapparelli v. Baker, Kellog & Co.*, 252 N.Y. 192, 200 (1929) ("Where a promisor retains an unlimited right to decide later the nature or extent of his performance, the promise is too indefinite for legal enforcement. The unlimited choice in effect destroys the promise and makes it merely illusory"), citing Williston on Contracts, § 43; *cf. Matter of Brown & Guenther v. North Queensview Homes, Inc.*, 18 A.D.2d 327, 330 (1st Dep't 1963) ("A promise that is too uncertain in terms for possible enforcement is an illusory promise") (internal quotation marks omitted).

Courts should not allow local governments to avoid prompt compliance with NYVRA by making illusory promises. Because the Town's commitment to enact and implement a remedy is made wholly contingent on the Town Board first finding that a violation of NYVRA may exist,

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the Town has not actually made any commitment at all and is not entitled to the safe harbor NYVRA provides to those who seek to comply.

2. The resolution does not identify specific steps the Town intends to take to implement a remedy.

Nor can the Town claim that it has identified in the resolution any "specific" steps for implementing remedies. Because, as previously stated, the resolution commits the Town only to investigate whether a violation of NYVRA exists, and not to remedying the violation, the resolution does not specify anything that the Town Board is required to do to effectuate a remedy. Those later steps, which are conditioned upon the Town Board first finding that a violation may exist, are also not nearly specific enough to trigger the safe harbor. Because the Town Board did not undertake any proactive analysis of its method of election prior to the March 15, 2024 resolution, the resolution does not even suggest what remedies might be considered or identify experts to assist in developing remedies. And the only specific steps for which the resolution provides are the hearings that NYVRA already requires. *See* Election Law § 17-206(6). Essentially, the resolution provides only that if the Town Board finds that there might be a violation of NYVRA, the Town intends to follow the procedure set forth by statute.[2] Such empty platitudes are not the "specific steps" to comply with the law that the Town is required to take to receive the benefit of NYVRA's safe harbor.

3. The Town's purported schedule does not comply with NYVRA.

Finally, the schedule provided in the Town's purported NYVRA resolution does not satisfy Election Law § 17-206(7)(b). To begin with, because the Town has made no genuine commitment

[2] Nonetheless, as discussed in the next section, the Town's stated timeframe for holding public hearings would be untimely if the remedy chosen involved drawing districts.

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to implementing a remedy, the Town has no obligation to act in accordance with the timeline specified in the March 15, 2024 resolution. But even if the Town had made that commitment, the schedule still would not satisfy the requirements of NYVRA. NYVRA gives the Town 90 days from the date of the resolution to implement the remedy. The resolution does not come close to requiring a resolution within that time. It provides, first, that the findings and evaluations of the Town's investigation into NYVRA claim must be reported to the Town Board within 30 days. *See* Spolzino Aff. Exhibit B § 2. No time frame is then specified, however, for the Town Board to evaluate those findings, along with any other information, and reach a conclusion about whether there may be a violation of NYVRA. Then, if the Town Board determines that there may be such a violation, a NYVRA proposal would have to be submitted to the Town Board within 10 days, *see id.* § 3, and, within 30 days of receiving that proposal, the Town Board would hold at least two public hearings on the proposal. *See id.* § 4.

This schedule is completely unrealistic. It provides that 70 days will be taken up to investigate the claims, prepare and submit a NYVRA proposal, and conduct public hearings. It fails to account for any time necessary for the Town Board to consider the results of the investigation and determine whether there is a possible violation of NYVRA. It also does not leave any time or create any mechanism for the Town Board to modify NYVRA proposal based on issues raised by voters during the public hearings. Deliberations on both the initial determination of whether there is a potential NYVRA violation and modifications to NYVRA proposal after the public hearings would almost certainly require more than 20 days. If not, there would surely be no time for additional public hearings on a modified proposal.

Drawing districts, a potential remedy for NYVRA's violations arising from at-large election systems, would not just be unlikely under the Town's schedule, it would be impossible.

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When a political subdivision implements a new or revised districting plan as a remedy under NYVRA, four public hearings are required as opposed to two. *See* Election Law § 17-206(6). Before drawing a districting plan, "the political subdivision shall hold at least two public hearings over a period of no more than thirty days." *Id.* § 17-206(6)(a). A political subdivision must then publish at least one plan and "hold at least two additional hearings over a period of no more than forty-five days, at which the public shall be invited to provide input." *Id.* § 17-206(6)(b). If there are any revisions, the revised plan must be published at least seven days before it is adopted. *Id.* The Town's schedule does not account for or allow any time to hold two meetings both before and after drawing a districting plan. Therefore, the Town's schedule would never be able to implement a districting plan within 90 days of the resolution.

The 90-day period is not for the purpose of a preliminary investigation. Preliminary investigation into the merits of allegations raised in a notification letter should be carried out during the initial 50 days a municipality has to avail itself of the safe harbor. Otherwise, that initial 50 day waiting period would be meaningless as every municipality could simply pass a noncommittal resolution in response to every NYVRA notification letter. The only reading of NYVRA's safe harbor provision which is consistent with the statute's clear legislative purpose is one which requires a firm commitment from the municipality to enact a remedy within 50 days after the receipt of a notification letter. *See* Spolzino Aff. Exhibit A, Introducer's Memorandum in Support, at p. 8 ("The bill also contains notification requirements and provides a safe harbor for judicial actions[so] that political jurisdictions ***can make necessary amendments to proposed election changes*** without needing to litigate in court") (emphasis added). Doing so encourages municipalities to be proactive in their responses to allegations of voter disenfranchisement, with the incentive of avoiding litigation if they do so. By further requiring that political subdivision

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identify specific steps it will take and create a schedule for implementing a remedy, the statutory scheme forces municipalities to be diligent in their efforts.

Ultimately, the inherently unreasonable timeline set forth in the Town's NYVRA safe harbor resolution only establishes its intention not to remedy NYVRA violations that are the subject of this lawsuit. The conditional nature of the resolution, the absence of any specific remedial measures and the schedule that makes it impossible to adopt any remedy within the statutory time frame all evidence the Town's intent not to comply with NYVRA. This is not at all the scenario the Legislature contemplated when it enacted the safe harbor provision of NYVRA. The purpose of the safe harbor provision is to give a political subdivision time within which to remedy the violation. It was not intended merely as an additional delay. A 90-day safe harbor here would have served that purpose if the Town had already conducted its investigation and committed to implementing a remedy. But it is simply not feasible both to investigate and implement a remedy in 90 days. It is, therefore, insufficient to invoke the safe harbor provisions of NYVRA.

B. The Town's resolution purporting to avail itself of NYVRA's safe harbor provision is void and without effect because it was never duly adopted.

Even if the substance of the resolution were sufficient to satisfy NYVRA's safe harbor provision, the resolution is void and of no effect, and cannot serve that purpose, because the March 15, 2024 meeting at which the resolution was adopted was not duly noticed.

1. The resolution passed at the special meeting was null and void because the Town failed to give the notice required by Town Law § 62(2).

Town Law § 62(2) permits a town supervisor to "call a special meeting of the town board by giving ***at least two days' notice*** in writing to members of the board of the time when and the place where the meeting is to be held." (emphasis added). Where less than two days' notice of the special meeting is provided, a resolution passed at that meeting is null and void. *See McGovern v. Tatten*, 213 A.D.2d 778, 780 (3d Dep't 1995) ("Only one day's notice of the special meeting was

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given. Accordingly, the resolution to resume maintenance of the disputed road is null and void"); *Plumley v. Oneida Cnty.*, 57 A.D.2d 1062, 1062 (4th Dep't 1977) (meeting called with insufficient notice "was a nullity and legislation passed at the meeting was void"). The exception to this general rule where all council members had actual notice of the special meeting, attended, and participated, *see Philips v. Cnty. of Monroe*, 18 Misc.3d 1127(A), at *1 (Sup. Ct. Monroe Cnty. [Kenneth R. Fisher, J.] 2007), is clearly not applicable here where the March 15, 2024 resolution identifies that two councilmembers were absent from the meeting. *See* Spolzino Aff. Exhibit B.

The complaint expressly alleges that the March 15, 2024 resolution was void because "it was not duly adopted at a duly called meeting of the Town Board." Complaint ¶ 63. The Town submitted no documentary evidence in support of its motion to establish that due notice was given. Accepting the allegation in the complaint as true, as the Court is required to do on this motion to dismiss, *see Leon*, 84 N.Y.2d at 87-88, the Town's motion to dismiss must be denied.

C. The Town's motion is academic because the Town Board has effectively rescinded its resolution.

Even if the Town Board's resolution had been duly adopted and sufficient to invoke NYVRA's safe harbor provision, it is no longer sufficient for that purpose now that the Town Board has "suspended" it, eliminating any chance there might have been of implementing a remedy within the 90-day safe harbor period. The Town's April 8, 2024 resolution expressly suspending the schedule set forth in the resolution eliminated any possibility whatsoever that the Town will implement a remedy by June 13—90 days after the March 15 resolution. Under these circumstances, it is futile to force Plaintiffs to wait until a deadline which the Town has made clear it has no intention of honoring. *See East End Resources, LLC v. Town of Southold Planning Bd.*, 135 A.D.3d 899, 901 (2d Dep't 2016) (property owner need not pursue a variance application where they can establish that an application would be futile); *Kaplan v. Madison Park Group*

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Owners, LLC, 94 A.D.3d 616, 619 (1st Dep't 2012) (party to a contract may sue if the other party repudiates their obligations "without having to futilely ... wait for the other party's time for performance to arrive"); *Papandrea-Zavaglia v. Arroyave*, 75 Misc.3d 541, (Civ. Ct. Kings Cty. [Bruce E. Scheckowitz, J.] 2022) ("Requiring landlord to wait 180 days ... is an unnecessary exercise in futility"). This would be an absurd application of NYVRA, which must be avoided. *People v. Schneider*, 37 N.Y.3d, 187, 196 (2021), *cert. denied* 142 S. Ct. 344 (2021). Accordingly, the Town's resolution does not satisfy any of the three conditions necessary to invoke the safe harbor and, therefore, cannot force Plaintiffs to wait before vindicating their rights.

CONCLUSION

NYVRA's safe harbor provision is not just a means to stall for time. It is an opportunity for a political subdivision that recognizes the faults in its electoral system to cure those faults without having to defend litigation at the same time. The Town of Newburgh could have taken that opportunity but instead has chosen delay. The prompt resolution of voter disenfranchisement claims envisioned by NYVRA should not be allowed to be derailed by a legally insufficient resolution that was not duly adopted and has since been "suspended." The Town's motion to dismiss should be denied in its entirety.

ABRAMS FENSTERMAN, LLP
Attorneys for Plaintiffs

By: _____
Robert A. Spolzino, Esq.
David Imamura, Esq.
Steven Still, Esq.
81 Main Street, Suite 400
White Plains, NY 10601
(914) 607-7010

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 5,614 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

**Affirmation of Robert A. Spolzino, for Plaintiffs,
in Opposition to Motion, dated April 25, 2024
[pp. 114 - 119]**

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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

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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

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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

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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.

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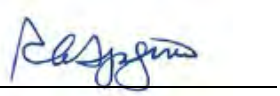
WHEREFORE, plaintiffs respectfully request that the Court deny the Town's motion in its entirety and grant such other relief as the Court deems just.

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

**Exhibit A to Spolzino Affirmation -
Legislative Bill Jacket
[pp. 120 - 177]**

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JN

CHAPTER 226

LAWS OF 2022 W/APPROVAL #8

SENATE BILL 1046E ASSEMBLY BILL _____

STATE OF NEW YORK

1046--E

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. MYRIE, BAILEY, BIAGGI, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, FELDER, GAUGHRAN, GIANARIS, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MANNION, MAY, MAYER, PARKER, RAMOS, REICHLIN-MELNICK, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and

AN ACT to amend the election law, in relation to establishing the John R. Lewis Voting Rights Act of New York, establisning rights of action for denying or abridging of the right of any member of a protected class to vote, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation

A6678E/Walker

DATE RECEIVED BY GOVERNOR:

6/11/2022

ACTION MUST BE TAKEN BY:

6/29/2022

DATE GOVERNOR'S ACTION TAKEN:

6/20/22

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SENATE VOTE ____Y ____N HOME RULE MESSAGE ____Y ____N

DATE_____

ASSEMBLY VOTE ____Y ____N

DATE_____

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06/02/22 S1046-E Assembly Vote Yes: 106 No : 43

05/31/22 S1046-E Senate Vote Aye: 43 Nay: 20

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Floor Votes:

06/02/22 S1046-E Assembly Vote Yes: 106 No : 43

Yes	Abbate	Yes	Abinanti	Yes	Anderson	No	Angelino
No	Ashby	Yes	Aubry	No	Barclay	Yes	Barnwell
Yes	Barrett	Yes	Benedetto	Yes	Bichotte Hermelyn	No	Blankenbush
No	Brabenec	Yes	Braunstein	Yes	Bronson	No	Brown E
No	Brown K	Yes	Burdick	Yes	Burgos	Yes	Burke
Yes	Buttenschon	No	Byrne	No	Byrnes	Yes	Cahill
Yes	Carroll	Yes	Chandler-Waterman	Yes	Clark	Yes	Colton
Yes	Conrad	Yes	Cook	Yes	Cruz	Yes	Cunningham
Yes	Cusick	Yes	Cymbrowitz	Yes	Darling	Yes	Davila
Yes	De Los Santos	No	DeStefano	Yes	Dickens	Yes	Dilan
Yes	Dinowitz	No	DiPietro	No	Durso	Yes	Eichenstein
Yes	Englebright	Yes	Epstein	Yes	Fahy	Yes	Fall
Yes	Fernandez	No	Fitzpatrick	Yes	Forrest	No	Friend
Yes	Frontus	Yes	Galef	Yes	Gallagher	No	Gallahan
No	Gandolfo	Yes	Gibbs	No	Giglio JA	No	Giglio JM
Yes	Glick	Yes	Gonzalez-Rojas	No	Goodell	Yes	Gottfried
Yes	Griffin	Yes	Gunther A	No	Hawley	Yes	Hevesi
Yes	Hunter	Yes	Hyndman	Yes	Jackson	Yes	Jacobson
Yes	Jean-Pierre	No	Jensen	Yes	Jones	Yes	Joyner
Yes	Kelles	Yes	Kim	No	Lalor	Yes	Lavine
No	Lawler	No	Lemondes	Yes	Lucas	Yes	Lunsford
Yes	Lupardo	Yes	Magnarelli	Yes	Mamdani	No	Manktelow
Yes	McDonald	No	McDonough	Yes	McMahon	Yes	Meeks
No	Mikulin	No	Miller B	Yes	Mitaynes	No	Montesano
No	Morinello	Yes	Niou	Yes	Nolan	No	Norris
Yes	O'Donnell	Yes	Otis	No	Palmesano	Yes	Paulin
Yes	Peoples-Stokes	Yes	Pheffer Amato	Yes	Pretlow	Yes	Quart
No	Ra	Yes	Rajkumar	Yes	Ramos	No	Reilly
Yes	Reyes	Yes	Rivera J	Yes	Rivera JD	Yes	Rosenthal D
Yes	Rosenthal L	Yes	Rozic	No	Salka	ER	Santabarbara
Yes	Sayegh	No	Schmitt	Yes	Seawright	Yes	Septimo
Yes	Sillitti	Yes	Simon	No	Simpson	No	Smith
No	Smullen	Yes	Solages	Yes	Steck	Yes	Stern
Yes	Stirpe	No	Tague	No	Tannousis	Yes	Tapia
Yes	Taylor	Yes	Thiele	Yes	Vanel	No	Walczyk

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Yes	Walker	Yes	Wallace	No	Walsh	Yes	Weinstein
Yes	Weprin	Yes	Williams	Yes	Woerner	Yes	Zebrowski K
Yes	Zinerman	Yes	Mr. Speaker				

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Floor Votes:

05/31/22 S1046-E Senate Vote Aye: 43 Nay: 20

Aye	Addabbo	Nay	Akshar	Aye	Bailey	Aye	Biaggi
Nay	Borrello	Nay	Boyle	Aye	Breslin	Aye	Brisport
Aye	Brooks	Aye	Brouk	Aye	Cleare	Aye	Comrie
Aye	Cooney	Aye	Felder	Nay	Gallivan	Aye	Gaughran
Aye	Gianaris	Aye	Gounardes	Nay	Griffo	Aye	Harckham
Nay	Helming	Aye	Hinchey	Aye	Hoylman	Aye	Jackson
Nay	Jordan	Aye	Kaminsky	Aye	Kaplan	Aye	Kavanagh
Aye	Kennedy	Aye	Krueger	Nay	Lanza	Aye	Liu
Aye	Mannion	Nay	Martucci	Nay	Mattera	Aye	May
Aye	Mayer	Aye	Myrie	Nay	Oberacker	Nay	O'Mara
Nay	Ortt	Nay	Palumbo	Aye	Parker	Aye	Persaud
Aye	Ramos	Nay	Rath	Aye	Reichlin-Melnick	Nay	Ritchie
Aye	Rivera	Aye	Ryan	Aye	Salazar	Aye	Sanders
Aye	Savino	Aye	Sepulveda	Nay	Serino	Aye	Serrano
Aye	Skoufis	Aye	Stavisky	Nay	Stec	Aye	Stewart-Cousins
Nay	Tedisco	Aye	Thomas	Nay	Weik		

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STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

APPROVAL #8
CHAPTER #226

June 20, 2022

MEMORANDUM filed with Senate Bill 1046-E, entitled:

"AN ACT to amend the election law, in relation to establishing the John R. Lewis Voting Rights Act of New York, establishing rights of action for denying or abridging of the right of any member of a protected class to vote, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation "

APPROVED

The John R. Lewis New York Voting Rights Act reaffirms New York State's commitment to ensuring that voters, particularly voters of color who have been more frequently disenfranchised, have free and unimpeded access to the polls. It builds upon years of progressive voting reforms in New York, and ensures that the state continues to move toward being a national leader in voting rights. As the federal government fails to fulfill its duty to uphold voting rights across the nation, it is now incumbent upon states to step-up and step-in, and this legislation ensures voting rights will be protected in New York.

This legislation requires that voting regulations, local laws and ordinances throughout the state must be construed liberally by courts in favor of protecting the right of voters to have their ballot cast and counted. The legislation creates new prohibitions against voter intimidation, deception or obstruction.

The legislation also provides several important new protections for eligible voters who are members of any race, color, or language-minority group. Language-minority groups are defined as people who are American Indian, Asian American, Alaskan Natives or of Spanish heritage. These voters will be protected under this legislation from voter dilution and voter suppression. Vote dilution is prohibited under this legislation when a method of election impairs the ability of members of a protected class to elect the candidate of their choice or influence the outcome of an election. Voter suppression is prohibited when a policy is enacted or implemented in a manner that results in a denial or abridgement of the right of members of a protected class to vote.

The legislation further requires language-assistance be provided to language-minority groups, greatly expanding on the requirements of the federal Voting Rights Act.

It also builds upon the federal Voting Rights Act's vital preclearance scheme, which was gutted by the U.S. Supreme Court in Shelby County v. Holder. Now in New York, certain covered localities will be required to clear changes to election law practices before they can proceed to implementation.

Several provisions of this legislation as drafted are effective immediately, giving local governments and election officials no opportunity to prepare for implementation before certain requirements set in. Additionally, the legislation will impose new financial obligations on the counties, towns, villages and boards of education to comply with the legislation, as well as on the Office of the Attorney General, who will be primarily responsible for implementing the complex provisions of this legislation, and for enforcing the legislation's new voting rights protections.

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Therefore, I have reached an agreement with the Legislature to modify the effective date of this legislation until July 1, 2023. Postponing the effective date will give the state and localities the opportunity to identify implementation and financial challenges, and ensure that state and local units of government can properly turn this legislation into a law that fully benefits all New York's voters when it becomes active.

Based upon that agreement, I am pleased to sign this historic piece of legislation into law.

Kathy Hochul

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NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S1046E

SPONSOR: MYRIE

TITLE OF BILL:

An act to amend the election law, in relation to establishing the John R. Lewis Voting Rights Act of New York, establishing rights of action for denying or abridging of the right of any member of a protected class to vote, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation

PURPOSE:

The purpose of the act is to encourage participation in the elective franchise by all eligible voters to the maximum extent, to ensure that eligible voters who are members of racial, ethnic, and language-minority groups shall have an equal opportunity to participate in the political processes of the State of New York, and especially to exercise the elective franchise; to improve the quality and availability of demographic and election data; and to protect eligible voters against intimidation and deceptive practices.

SUMMARY OF PROVISIONS:

§§ 17-200 through 17-204 contains the legislative purpose and statement of public policy, interpretation of laws related to elective franchise and definitions. It recognizes that the voting protections provided by the Constitution of the State of New York "substantially" exceed those provided by the Constitution of the United States and conjoins those protections with the constitutional guarantees of equal protection, freedom of expression, and freedom of association and sets itself against the denial or abridgment of the voting rights of members of a race, color, or language-minority group.

Additionally, the bill clarifies the standard of review for policies, practices, and laws which burden the right to vote and states that any statutes related to the elective franchise shall be construed liberally in favor of protecting the right to cast an effective ballot. The bill also establishes definitions. Those include methods of election (such as At-large, District-based, and Alternative) and electoral terms (such as "political subdivision," "protected class," "racially polarized voting," "Government enforcement action," "preclearance commission," and "deceptive or fraudulent device, contrivance, or communication").

The bill also creates two new rights of action for vote suppression and vote dilution and provides clarity on how these can be proven in court. It provides standards to evaluate the "totality of the circumstances" and establishes that justifications for challenged policies must be supported by substantial evidence. Remedies will be fashioned by court. A non-exhaustive list of suggested remedies includes a new method of

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elections, increasing the size of the governing body, moving the dates of elections(unless the budget in such political subdivision is subject to direct voter approval pursuant to Article 5 or Article 41 of the Education Law), additional voting hours or days, additional polling locations, or additional means of voting such as voting by mail.

The bill also contains notification requirements and provides a safe harbor for judicial actions. So that political jurisdictions can make necessary amendments to proposed election changes without needing to litigate in court.

The NYVRA ensures that language assistance will be provided in areas with large enough populations of minority language groups who are limited English proficient.

The NYVRA sets out two mechanisms for seeking preclearance, including administrative, and judicial preclearance. This section also establishes which policies are covered by the bill, and how jurisdictions would qualify for preclearance coverage. Jurisdictions covered under this section must preclear all voting and election law changes through either the Attorney General's Civil Rights Bureau or a specified State Supreme Court.

The bill also creates a right of action against voter intimidation, deception and obstruction, setting out prohibited conduct, who has standing to sue, and the remedies for a violation of this section.

The NYVRA grants the Attorney General the authority to issue subpoenas and to hold fact-finding hearings to enforce this act. It also provides for expedited judicial proceedings and recovery of attorney's fees.

Finally, this bill establishes that it applies to all elections for any elected office in New York State or New York's political subdivisions; provided, however, that school districts and libraries shall continue to conduct their elections under the Education Law, subject to and not inconsistent with the provisions of this title, to ensure voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process.

JUSTIFICATION:

The John R. Lewis New York Voting Rights Act provides an opportunity for this state to provide strong protections for the franchise at a time when voter suppression is on the rise, vote dilution remains prevalent, and the future of the federal voting rights act is uncertain due to a federal judiciary that is increasingly hostile to the protection of the franchise.

Although its record on voting has improved recently, New York has an extensive history of discrimination against racial, ethnic, and language minority groups in voting. The result is a persistent gap between white and non-white New Yorkers in political participation and elected representation. According to data from the U.S. census bureau, registration and turnout rates for non-Hispanic white New Yorkers led Asian, Black, and Hispanic New Yorkers-the latter two groups by particularly wide margins.

New York will not be the first state to pass its own voting rights act. California has had a state voting rights act since 2001 and over the past two decades, the CVRA has been highly effective at increasing opportunities for minority voters to elect their candidates of choice to local government: bodies and to elect more minority candidates to local offices. In 2018, Washington state also passed its own voting rights

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act. But both the Washington and California state voting rights acts are limited to addressing vote dilution in at-large elections. The New York Voting rights act builds upon the demonstrated track record of success in California and Washington, as well as the historic success of the federal voting rights act by offering the most comprehensive state law protections for the right to vote in the United States. The law will address both a wide variety of long-overlooked infringements on the right to vote and also make New York a robust national leader in voting rights at a time when too many other states are trying to restrict access to the franchise.

LEGISLATIVE HISTORY:

Senate: 2021: Died in Elections Committee
2020: S7528A (Myrie) - Died in Elections Committee
Assembly: 2021: A6678A (Walker) - Died in Elections Committee.
2020: New Bill. A10841A (Walker) - Died in Elections Committee.

FISCAL IMPLICATIONS:

To be determined.

LOCAL FISCAL IMPLICATIONS:

To be determined.

EFFECTIVE DATE:
This act shall take effect immediately; provided, however, that sections 17208 and 17-210 of the election law as added by section four of this act shall take effect three years after it shall have become a law; and provided further, however, that section 17-212 of the election law, as added by section four of this act, shall take effect one year after the attorney general certifies that the office of the attorney general is prepared to execute the duties assigned in section four of this act, if after the expiration of one year the attorney general requires more time to certify that the office of the attorney general is prepared to execute the duties assigned in section four of this act, the attorney general, may, for good cause shown, apply to the governor for such an extension of time. The governor may grant or deny an extension of up to one year according to his or her discretion. The attorney general shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section four of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

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C226

DIVISION OF THE BUDGET BILL MEMORANDUM

Session Year 2022

SENATE:
No. S1046E

ASSEMBLY:
No. A6678E

Primary Sponsor: MYRIE

Sponsor: WALKER

Law: Election Law

Sections: Various

Division of the Budget recommendation on the above bill:

APPROVE: __ **NO OBJECTION: X**

1. Subject and Purpose:

This bill would amend Election Law as it relates to voter suppression and dilution. Specifically, it would establish protections against voter intimidation and deception, improves language access for non-English speaking citizens, and requires local boards of elections to obtain pre-clearance from the Attorney General before changing any policies or procedures related to elections administration.

This bill will take effect July 1, 2023 (per a Chapter Amendment negotiated by Chamber and the Legislature).

2. Budget Implications:

The Attorney General (AG) would need an additional $3 million in operational resources to cover the cost of 15-20 FTEs and various nonpersonal service expenses to effectively administer a pre-clearance program as obligated in this bill. This cost would be a hit to the State's Financial Plan. It is also likely local boards of elections will see increased costs associated with language access provisions, submission of pre-clearance requests to the AG, and legal defense costs should legal action be brought by voters claiming voting rights violations.

3. Recommendation:

Additional resources would need to be added to the AG's FY 2024 budget to accommodate this legislation. Pending the addition of these funds, the Division of the Budget has no objection to this bill.

Validation: Document ID: 1656336397941-39428-37519
Robert Mujica, Director of the Budget
By LoGiudice, Maria
Date: 06/27/2022 09:26AM

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THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Counsel and Deputy Commissioner for Legal Affairs
Tel. 518-474-6400
Fax 518-474-1940

June 3, 2022

TO: Counsel to the Governor

FROM: Daniel Morton-Bentley

SUBJECT: S.1046E

RECOMMENDATION: No Objection

REASON FOR RECOMMENDATION:

The State Education Department (SED) has no objection to this bill, which, among other things, amends the Election Law to establish rights of actions for denying or abridging the right of any member of a protected class to vote. While primarily directed at entities governed by the Election Law, it also includes school districts and school district libraries.

Additional clarification regarding the effect of this bill on school and library district elections and votes may be necessary. School and library district elections and school district budget, capital and merger/consolidation votes are primarily governed by the Education Law. Unlike most elections, they operate on a unique statutory timeline and are non-partisan (except for two large city school districts).

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nysut
A Union of Professionals
800 Troy-Schenectady Road, Latham, NY 12110-2455 ■ (518) 213-6000 ■ www.nysut.org

Andrew Pallotta
President
Jolene T. DiBrango
Executive Vice President
Ronald Gross
Second Vice President
J. Philippe Abraham
Secretary-Treasurer

June 17, 2022

Ms. Elizabeth Fine, Esq.
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: S.1046-E (Myrie) AN ACT to amend the election law, in relation to establishing the John R. Lewis Voting Rights Act of New York, establishing rights of action for denying or abridging of the right of any member of a protected class to vote, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation.

Dear Ms. Fine:

On behalf of NYSUT, I am writing to express my opposition to the above referenced legislation.

While the intent of this legislation is commendable, as written, it could negatively impact students and school districts outside of New York City. For this reason, NYSUT opposes this legislation in its current form. However, to address these issues, NYSUT recommends including chapter amendments to this bill to remove school districts from being subject to its provisions.

A system governing school elections was established in education law, which currently prescribes voting processes for school board elections, budget votes and other electoral activities as they relate to the operation of a school district. These elections are administered and overseen by the New York State Commissioner of Education, which ensures that they are free from political influence and interference.

While amendments to the bill included on the eve of its passage sought to mitigate the impact it would have on school districts, there remain several unanswered questions as to how school budgets and operations could be impacted if a complaint is filed. This legislation seeks to apply remedies to school votes outside of the education law, which already provides a system by which complaints are to be addressed and resolved. This bill fails to take into consideration the impact a complaint to a school budget vote could have on the start of a new fiscal year, which could negatively impact student services and academics.

School districts outside of the Big 5 School Districts — New York City, Yonkers, Rochester, Buffalo and Syracuse — hold their school board elections and school budget votes on the same day and on the same ballot. Syracuse, Rochester, Buffalo and Yonkers vote only for their school boards. If there is a challenge to a school board election in one of the 700+ districts outside of the Big 5 School Districts, that would also apply to the school budget vote, as the vote is cast on the same ballot.

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NYSUT has a long history of supporting the expansion and protection of voting rights and voter access. Working in New York State and across the country, NYSUT has supported the expansion of voter access, worked to increase voter education and assisted with voter registration drives throughout New York and beyond. Our support for greater voter access and increased protections for the electoral process is without question.

However, NYSUT's analysis of this legislation has determined that if schools were subjected to the remedies outlined in this proposal, it would be immensely disruptive to the students by potentially upending school board elections, school budget votes, referendums for school mergers and votes for school capital projects. Additionally, under this proposal, school districts across the state could be required to completely undo their board election processes, including changing voting dates for school boards and school budgets, and be forced into a school district election ward system. This would be highly problematic for schools in every corner of the state, including areas that have no history voter suppression or issues of any kind with their current system of electing school board representatives or locally funding school operations.

As this bill relates to school districts, it is a solution looking for a problem, while failing to recognize the existing processes under which school elections must adhere. Primarily, school board elections fall under the state education law, not the state election law. These elections are non-partisan, with the candidates running for volunteer, unpaid positions for the sole purpose of ensuring that the students in their communities receive the quality education they are guaranteed under the State Constitution.

If there are actual, recognized instances of voter suppression, irregularities or anomalies in school districts in New York — other than the unique case in East Ramapo — which has been remedied by exercising the existing process in law used to handle such matters, NYSUT would support legislation tailored for specific school districts on a case-by-case basis. However, placing all schools in a "one-size-fits-all" proposal, especially when it upends the existing system that has been working well, and relocates schools into a section of law under which they have never been, is the wrong approach and will have far-reaching consequences for students, their families, educators and school districts throughout the state.

For the above-mentioned reasons, New York State United Teachers urges the Governor to veto this legislation in its current form or seek chapter amendments to hold school districts harmless from its provisions.

Sincerely,

Alithia Rodriguez-Rolon
Director of Legislation

PS/AB/
6/17/2022

New York State School Boards Association
Better School Boards Lead to Better Student Performance

24 Century Hill Drive, Suite 200
Latham, New York 12110-2125
Tel: 518.783.0200 | Fax: 518.783.0211
www.nyssba.org

June 18, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS Capitol Building
Albany, NY 12244

Re: S.1046-E, Myrie / A.6678-E, Walker
Relates to the John Lewis Voting Rights Act

Dear Governor Hochul,

The New York State School Boards Association ***opposes*** the current version of the above referenced legislation and urges your veto.

If enacted, this bill would establish rights of action for denying or abridging of the right of any member of a protected class to vote, provide assistance to language-minority groups, require certain political subdivisions to receive preclearance for potential violations and create civil liability for voter intimidation. The bill would apply to counties, cities, towns, villages, school districts or any other district organized pursuant to state or local law.

NYSSBA has no objection to the broader goal of the legislation, which is to help ensure a voting system in our state that is free, fair and provides for equal opportunities and access for all voters. School boards are among the closest elected positions to our local communities, compromised of volunteers dedicated to improving the educational outcomes of millions of students throughout the state. With school budgets that are also subject to voter approval, school boards and school districts are amongst the most direct public participation systems in our state.

School board elections and school budget votes are governed by state Education Law. This structure has been in place for generations, reflecting the inherent differences between school votes and those for local and state offices, which are governed by state Election Law. Generally, elections under Election Law are conducted by county boards of elections, while elections and votes under Education Law are conducted by school districts themselves, following strict rules and procedures.

NYSSBA appreciates some of the late amendments that were made to the bill prior to its passage, which attempted to address questions raised around school vote dates and general level of turnout in our elections. However, under its current version, the bill still creates numerous conflicts, ambiguities and inconsistencies for school districts. The bill makes clear that school district votes and elections would still be governed by state Education Law, but continues to include a plethora of potential actions and requirements within Election Law that have no basis, or authority, under state Education Law. These issues were noted on the floor when the bill was voted on by both the Senate and the Assembly.

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The bill provides that a violation of any single provision of the act would require an appropriate remedy or remedies to be applied. The bill includes a list of 16 specific potential remedies. While the bill provides for these potential remedies under Election Law, school board elections and budget votes are authorized and directed under Education Law. At a minimum, this could require remedies that do not have a clear process for implementation under Education Law. At a maximum, there would be inherent conflict when a remedy would require an action that is not authorized, or is prohibited, under Education Law.

While the current version of the bill states that school district votes would continue to be conducted under Education Law, it further states that a court "...shall have the power to require a political subdivision to implement remedies that are inconsistent with any other provision of law..." There are a number of listed remedies where this would seem to create inherent conflict between Election Law and Education Law. One remedy would require a new or revised redistricting (i.e., ward) plan. School districts and school boards generally do not have the authority to use or operate under districting of any kind. The purpose of election districts under the Education Law is only to create additional polling locations. Another remedy would increase the size of the governing body (school board). The size of the school board - either three, five, seven or nine seats - is specifically set in Education Law, based on the type of school district and changes are subject to voter approval. Another remedy would require transferring authority for conducting school district elections to the respective county board of elections. However, scores of school districts across the state span at least two different counties, making the perspectives of administration, and voting, unknown.

Further, Education Law does not require all school districts to provide for "personal registration." For districts with personal registration, a qualified voter can register to vote in the school election through either the district or through the board of elections. However, for districts without personal registration (sometimes referred to as "poll registration") voters need only to present themselves at the district poll location with proof of residence and qualification to vote. This presents potential conflicts with multiple provisions within the bill. First, one potential remedy would require additional polling locations. However, school districts without personal registration have no legal authority, through Education Law, to create multiple polling locations (as there would be no system to protect against multiple votes by an individual). Second, for districts without personal registration, and for districts with personal registration where a voter registers directly with the school district, it is not clear how voter demographic information (i.e., protected class status) would be determined in a consistent way, if at all.

Lastly, while the bill seemingly focuses on school board elections, all school districts outside of the Big 5 (New York City, Buffalo, Rochester, Syracuse and Yonkers) also must place their annual budget before voters, per Education Law. That vote is held concurrently with the school board elections on the third Tuesday in May. It is not clear how, or if, the bill contemplates the necessity of that vote. The date for that vote is important by itself, as the school district fiscal year begins July 1. The prospects of moving that vote date would create serious problems for school district budgets.

While NYSSBA sees multiple challenges and complications with regard to the implementation and application of this bill for school districts, we commend the sponsors for their efforts to make New York a nationwide leader in protecting the right to vote and equal access to the franchise. We stand ready to work with all parties to ensure voters in all of our school districts can, and do, exercise that right and responsibility.

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Therefore, NYSSBA ***opposes*** the above referenced legislation in its current form and urges your veto. For additional information, please contact NYSSBA Governmental Relations at 518-783-0200.

Sincerely,

Brian C. Fessler
Director of Governmental Relations

CC:

Senator Zellnor Myrie
Assembly Member Latrice Walker
Elizabeth Fine
Terrance Pratt
Dan Fuller
Michael Mastroianni
Michael Smingler

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June 13, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: **Support the Enactment of the John R. Lewis Voting Rights Act Of New York (S.1046E/ A.6678E)**

Dear Governor Hochul:

On behalf of the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, LatinoJustice PRLDEF, and Dominicanos USA (DUSA), we are writing to express our strong support for the John R. Lewis Voting Rights Act of New York (NYVRA), a bill that would strengthen New York's democracy by helping to ensure that Latinos and all of New York's electorate would have a fair opportunity to make their voices heard at the ballot box. If enacted, this measure would build on the successful state voting rights acts already enacted in California, Washington, Oregon, and Virginia to provide underserved communities and voters of color the most comprehensive voter protections in the country. For these reasons, we urge you to sign the NYVRA into law.

While the New York State's Constitution recognizes political participation as the bedrock of our democratic system of governance, the state has often failed to protect the voting rights of underrepresented populations. The NYVRA includes several important and effective approaches to protecting Latinos and other voters of color from discrimination in the electoral process.

I. The NYVRA's Preclearance Requirement

The NYVRA has several components that are particularly essential given the current policy climate and the barriers to political participation faced by Latino New Yorkers. First, it adopts a state "preclearance" process modeled after that set forth in the federal Voting Rights Act (VRA), but which was significantly weakened by the U.S. Supreme Court's 2013 Shelby v. Holder decision. Before the decision, Bronx, Kings, and New York Counties were required to submit changes to voting laws and practices for federal review before implementationElsewhere around the state, jurisdictions were on notice that repeated or egregious discriminatory action could attract a request that a court order similar systematic monitoring. The preclearance process also deterred discriminatory voting changes from being proposed in the first place, and in sum, it proved very successful, halting thousands of problematic proposals and helping to achieve significant advances toward parity in voter participation and electoral outcomes.

The Shelby decision essentially invalidated the VRA coverage formula for determining which jurisdictions were subject to the preclearance process, and left millions of New Yorkers and voters of color throughout the country without the ability to stop voting discrimination before it occurred. For example, ahead of the presidential primary in the spring of 2016, the New York City Board of Elections engaged in two separate

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voter purges that lead to the removal of voters from the registration rolls, including more than 117,000 voters in Brooklyn. By some reports, this purge had a disproportionate impact on Latino voters. Federal preclearance protections under the VRA would have likely prevented the implementation of this detrimental practice.

Congress has failed to pass legislation restoring the federal VRA to its full strength, and the NYVRA's preclearance process would help provide many of the safeguards against discriminatory practices once provided by the VRA, in a targeted manner. The NYVRA would require certain New York jurisdictions to obtain state preclearance for any changes to specific election and voting laws, policies, or practicesThe measures requiring preclearance are generally those which have been historically used to discriminate against voters of color in the state, or which have a significant potential for such discriminationJurisdictions can obtain preclearance from certain state courts, or from a state commission, which must obtain a recommendation from the New York Attorney General's Civil Rights Bureau. Given the absence of strong federal voting rights protections, the NYVRA's state preclearance process would provide New York with a much-needed tool to deter or block discriminatory measures against Latinos and other voters of color in the state.

II. Strengthening Language Assistance

The NYVRA would strengthen the language assistance provided to eligible New Yorkers throughout the voting and registration process. According to the U.S. Census Bureau's 2020 American Community Survey (5-year estimates), 1.2 million New York voting-age citizens are not yet fully fluent in English. From research and our work with New York voters, we know that many are new to the electoral process, or otherwise face language barriers to full participation in the state's elections. For example, NALEO Educational Fund and its partners in the Election Protection Coalition received voters' reports on Election Day in 2018 of missing or inadequate in-language materials and interpreters at multiple locations in Queens and Brooklyn, following a pattern we observed in the 2016 general election and previous cycles. In subsequent elections, NALEO Educational Fund has continued to receive reports of problems with language assistance, including shortages of Spanish-language interpreters at poll sites in New York City. While the federal VRA includes some language assistance requirements for jurisdictions, the NYVRA would strengthen the scope of the assistance required, and help ensure that the required assistance is actually provided.

III. Combatting Discriminatory Election Systems

The NYVRA would also make it easier to combat election systems (such as at-large elections) which as a result of vote dilution, impair the ability of voters of color to choose accountable and responsive elected representativesWhile these systems can be challenged under the federal VRA, this litigation can be extremely expensive and time-consuming. The NYVRA enables challenges to be brought under circumstances which allow those fighting discriminatory practices to surmount some of the obstacles in the VRA. In New York, at-large election systems have prevented many Latinos from having a meaningful voice in the electoral process, and the NYVRA would provide a remedy for this discrimination.

IV. Other Voting Rights Protections

The NYVRA includes several other voting rights protections for Latinos. By making private citizens civilly liable for intimidation or deception of voters, this bill extends the reach of and fills a critical gap in existing voting rights law. The legislation also brings New York in line with many other states by providing for a canon of liberal judicial construction of election laws in favor of voter enfranchisement, which will ensure that in any circumstances, the law favors the ability of qualified voters to cast valid, meaningful ballots and have them counted whenever possible.

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Ultimately, the NYVRA contains a comprehensive set of protections that would help ensure equitable access to the fundamental right to vote for Latinos and other electorates of color in New York. Latinos are New York's second-largest population group, and the state cannot have a robust and vibrant democracy if discriminatory policies and measures create unfair barriers to Latino participation. According to data from the U.S. Census Bureau, Latino participation rates have persistently lagged behind those of non-Hispanic Whites; in November 2020, slightly over half (55 percent) of eligible Latinos cast ballots, compared to over two-thirds (69 percent) of eligible non-Hispanic Whites. Discriminatory practices contribute to this disparity, and the NYVRA would be a major step forward to help close the participation gap.

The enactment of the NYVRA would provide an unprecedented opportunity for New York to demonstrate unparalleled leadership in safeguarding the right to vote, fighting unfair voting practices and election systems, and promoting an inclusive treatment of Latinos in the electoral process. For these reasons, we support the NYVRA and urge you to sign it into law.

Sincerely,

Dominicanos USA (DUSA)

LatinoJustice PRLDEF

NALEO Educational Fund

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June 17, 2022

The Honorable Kathy Hochul
Governor of New York State
New York State Capitol Building
Albany, NY 12224

RE: The John R. Lewis Voting Rights Act of New York (S.1046B/A.6678B)

Dear Governor Hochul:

LatinoJustice PRLDEF ("LatinoJustice") respectfully urges you to immediately sign the John R. Lewis Voting Rights Act of New York ("NYVRA") as approved by the state legislature earlier this month. With an increasing number of voter suppression efforts being enacted across the country, New York stands in a unique and opportune moment to lead in enacting legislation that will expand and protect the voting rights of all New Yorkers, and particularly Latino voters.

Since the November 2020 elections, we have seen states across the nation enact restrictive voting laws that impose additional barriers and hurdles for voters of color who want to exercise their constitutional right. Between regressive legislation and the dismantling of the federal voting rights by the courts, voters across the country now have fewer protections. The NYVRA will stand as a beacon to fight against these antidemocratic practices and will create protections far stronger than those that exist on a federal level. The NYVRA will ensure that New York voters are not encumbered by policies or practices that seek to hamper their ability to vote.

Of particular interest to LatinoJustice, and the Latino communities we serve, are provisions to expand *language access* included in the current version of the NYVRA. While New York shares in a rich diversity of culture and language, language minorities have long faced an inadequate number of bilingual poll site workers, and mistranslation of election materials. The NYVRA's expansion of language access beyond the provisions of the federal Voting Rights Act will further protect voters who are not fluent English speakers from practices that ultimately prevent their ability to cast a vote. For these non-English-speaking voters, signing the NYVRA into law as written will mean that language will no longer be an additional barrier to the ballot.

We would like to respectfully remind you that in your State of the State address, you made a commitment to "advance legislation establishing a state-level voting rights act that will…improve language access for voters.[1]" Recognizing that language access is vital to New Yorkers, you pledged to

> …build on and improve language access services for limited English proficient New Yorkers…will establish a permanent Office for Language Access — just the second such

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> office in the country, to Hawaii - that will be charged with coordinating and overseeing implementation of the statewide language access policy… will also commit to the codification of a statewide language access policy, and the new Office for Language Access will provide important assistance in developing and implementing a strongest-in-the-nation language access law.

The NYVRA's language access provision furthers your stated public goal of guaranteeing language access at every intersection of the lives of New Yorkers not fluent in English. As the Supreme Court highlighted in *Wesberry v. Sanders*, "no right is more precious in a free country than that of having a voice in the election of those who make the laws…other rights, even the most basic, are *illusory* if the right to vote is undermined. Our Constitution leaves no room for *classification of people* in a way that unnecessarily abridges this right."

Language should no longer serve to classify who gets *access to the franchise* in New York. As such, LatinoJustice PRLDEF calls upon you to immediately sign and enact the John R. Lewis Voting Rights Act of New York without amendment or further delay.

Fulvia Vargas-De Leon
Associate Counsel
LatinoJustice PRLDEF
212.219.3360
fvargasdeleon@latinojustice.org

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UNITED NEIGHBORHOOD HOUSES
45 Broadway, 22nd Floor, New York, NY 10006
212-967-0322 | www.unhny.org

June 8, 2022

The Honorable Kathy Hochul
Governor of New York State
Capitol Building
Albany, NY 12224

Dear Governor Hochul,

On behalf of United Neighborhood Houses (UNH), a policy and social change organization that represents 45 neighborhood settlement houses in New York, I write to respectfully ask you to sign several bills into law that will have a positive impact on settlement houses and the people they serve. UNH advocates for policies and practices that support settlement houses and strengthen neighborhoods, including on topics such as neighborhood affordability, child care access, youth development, and the justice system, among others.

With the conclusion of the 2022 legislative session, UNH urges you to sign the following four bills into law:

- **Decouple Work Hours from Hours of Care: S.6655A (Brisport) / A.7661 (Hevesi)** - Decouples hours a parent must work from the hours child care can be provided, allowing access for people who work part time or have rotating work schedules.

- **24 Month Eligibility: S.9029A (Ramos) / A.10209A (Lunsford)** - Permits local social service districts to authorize families to receive child care assistance for up to 24 months between eligibility determinations.

- **NYCHA Eligibility for NICIP: S.3520 (Bailey) / A.7831 (Anderson)** - Makes community centers located in NYCHA developments eligible to apply for and receive funds from the Nonprofit Infrastructure Capital Improvement Program (NICIP). This year's State Budget included $50 million for NICIP.

- **John R. Lewis Voting Rights Act of New York: S.1046E (Myrie) / A.6678E (Walker)** - Establishes rights of action for denying or abridging the right of any member of a protected class to vote, establishes and maintains a statewide database of voting and election data, provides assistance to language-minority groups, and creates civil liability for voter intimidation.

In addition, we thank you for swiftly signing the package of gun violence prevention bills, especially S.4116A (Hoylman) / A.7926A (L. Rosenthal) to require semiautomatic pistols sold in the State to be capable of microstamping technology, which helps identify the source of the firearm when a bullet cartridge is found at a crime scene.

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I am respectfully including memos of support on each of these bills with more details and the settlement house perspective.

Thank you for your consideration.

Sincerely,

Susan Stamler

Susan Stamler
Executive Director

CC: Elizabeth Fine, Counsel to the Governor

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NYSCEF DOC. NO. 20 RECEIVED NYSCEF: 04/25/2024

UNITED NEIGHBORHOOD HOUSES
45 Broadway | 22nd Floor | New York, NY 10006
(212) 967-0322 | www.unhny.org

Memorandum in Support
S.1046E (Myrie) / A.6678E (Walker)
The John R. Lewis Voting Rights Act of New York

United Neighborhood Houses (UNH) supports the John R. Lewis Voting Rights Act of New York, S.1046E (Myrie) / A.6678E (Walker), which would protect the voting rights of New Yorkers and serve as the most comprehensive state law to combat voter suppression in the nation.

Since the November 2020 election, at least 49 states have proposed more than 400 laws that would restrict voting rights by limiting mail-in voting, creating stricter ID requirements, reducing voting hours, and more. These proposed changes disproportionately affect racial minorities, low-income communities, and individuals and families with limited English proficiency. The John R. Lewis Voting Rights Act of New York would fight back against these racist and xenophobic policies by establishing protections for voter registration, casting ballots, ballot counting, and more.

This bill would ensure that all eligible voters are encouraged to participate in the political process to the fullest extent, and will not be denied these rights based on belonging to a race, color, or language-minority group. This includes registering to vote, casting a ballot, and ensuring that votes are counted. It also ensures equitable access to the process of registering to vote. The bill aims to fight voter suppression by prohibiting the implementation of any type of voting qualifications, prerequisite to voting, ordinance, law, or policy that would cause unequal opportunity for some members of a community. It prohibits the use of methods of election that would hinder the ability of all eligible members of a community to vote in the way of their choosing, or would impact the outcome of an election. In order to ensure that all political subdivisions are consistently practicing these policies, the state would create a statewide database to track and evaluate the extent to which they are following policy guidelines, and investigate any infringements of voting rights. The bill includes several rights of action if any parts of the bill are violated, including lining out specific remedies the courts may implement in the case of a violation.

UNH has led efforts to expand and protect the franchise for decades, most recently supporting State reforms such as early voting and automatic voter registration, and in New York City leading the campaign to allow legal permanent residents to vote in municipal elections. UNH also leads extensive nonpartisan Get Out The Vote efforts with settlement houses each year, working to register and turnout more individuals. All of these efforts are rooted in a philosophy that civic engagement strengthens communities. With strong voter participation we can elect the people who develop policies that more accurately represent the interests of their communities. With the national political climate threatening the right to vote, the John R. Lewis Voting Rights Act of New York will ensure that for years to come all New Yorkers will be represented equally and be heard in government.

Contact: Tara Klein at tklein@unhny.org

UNH is a policy and social change organization representing 45 neighborhood settlement houses that reach 765,000 New Yorkers from all walks of life. A progressive leader for more than 100 years, UNH is stewarding a new era for New York's settlement house movement. We mobilize our members and their communities to advocate for good public policies and promote strong organizations and practices that keep neighborhoods resilient and thriving for all New Yorkers. UNH leads advocacy and partners with our members on a broad range of issues including civic and community engagement, neighborhood affordability, healthy aging, early childhood education, adult literacy, and youth development.

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June 16, 2022

The Honorable Kathy Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: THE JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK (S.1046 / A.6678)

Dear Governor Hochul:

We write to urge you to immediately sign into law as written the John R. Lewis Voting Rights Act of New York (NYVRA).

The legislature has delivered the nation's strongest and most comprehensive state voting rights act to date. Now it is time for you to honor the commitment you made in your State of the State policy book to root out discrimination against voters of color in New York and make the state a national leader on voting rights. Both New York and the nation need your leadership at this pivotal moment for our democracy.

Today, voters of color across the country face the greatest assault on their rights since Jim Crow. Dozens of states have moved backwards since voters of color made their voices heard in 2020. But the Senate and the Assembly have bucked this trend by passing the NYVRA, positioning New York to be a beacon of hope. The NYVRA offers a model for how states can protect the "precious, almost sacred" right to vote, as the late Rep. John Lewis has described it.

You recognized the need and the opportunity for New York to lead, and you committed to do so, in your ***State of the State 2022: A New Era for New York***:[1]

> In contrast to [the] troubling [national] trend, New York State has made significant progress in expanding voting rights in recent years…but more work remains to be done. Practices that suppress voter turnout can still be found in our elections, and the legacy of voter suppression can be seen in the persistent gap between white and non-white New York voter participation: in the November 2020 general election, approximately 69 percent of eligible non-Hispanic white voters cast their ballots, compared to approximately 63 percent of eligible Black voters, 55 percent of eligible Hispanic voters, and 52 percent of eligible Asian voters.

[1] Governor Kathy Hochul, *State of the State 2022: A New Era for New York* (January 2022) at 221-22, available at https://www.governor.ny.gov/sites/default/files/2022-01/2022StateoftheStateBook.pdf.

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> While other states around the country continue their efforts to block access to the ballot box, **Governor Hochul will cement New York State's position as a national leader on voting rights protections. This year, she will advance legislation establishing a state-level voting rights act** that will enhance protections against voter suppression and vote dilution, establish new protections against voter intimidation and deception, improve language access for voters, and require boards of elections in jurisdictions with a history of civil rights violations to obtain preclearance for changes to election-related policies and practices.

The NYVRA does exactly what you described. The legislature has taken up your call to action. We urge you to ask for the strong and comprehensive NYVRA the legislature passed to be delivered for your signature without delay, and to fulfill the promise you made to New Yorkers in January.

Since this landmark legislation is a top New York voting rights priority for the undersigned civil and voting rights organizations, we look forward to celebrating a historic victory for civil and voting rights with you when you sign the NYVRA into law.

Now is New York's time to lead.

Sincerely,

ADL NY/NJ (Anti-Defamation League)
A Little Piece of Light
Asian American Legal Defense and Education Fund
Bethlehem Morning Voice Huddle
Brennan Center for Justice at NYU School of Law
Brooklyn Voters Alliance
Campaign Legal Center
Center for Law and Social Justice at Medgar Evers College
Central Queens Independent Democrats (CQuID)
Centro Corazon de Maria
Chinese-American Planning Council (CPC)
Citizen Action of New York
Citizens Union
College and Community Fellowship
CommonCause/NY
Community Service Society of New York
Concerned Families of Westchester
Demos
Downstate New York ADAPT
Dutchess County Progressive Action Alliance

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Empire State Indivisible
End Citizens United / Let America Vote Action Fund
FairVote Action
Faith in New York
FPWA
Generation Vote
Hope's Door
J Street New York
LatinoJustice PRLDEF
League of Women Voters of NYS
Let NY. Vote
March On / Future Coalition
NAACP Legal Defense and Educational Fund, Inc. (LDF)
NALEO Educational Fund
National Action Network
National Association of Social Workers, New York State
National Council of Jewish Women New York
New York Civic Engagement Table
New York Civil Liberties Union
New York County Lawyers' Association
New York Democratic Lawyers Council
New York Immigration Coalition
North American Climate, Conservation and Environment(NACCE)
People For the American Way
Progressive Schenectady
Reinvent Albany
Rockland Women's Political Caucus
SMART Legislation
Stand Up America
The Leadership Conference on Civil and Human Rights
The Workers Circle
True Blue New York
UAW Region 9A
Unity Fellowship of Christ Church-NYC
VOCAL-NY
Westchester for Change
Women Creating Change
YMCA of Greater New York

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NYSCEF DOC. NO. 20 RECEIVED NYSCEF: 04/25/2024

Megan Meyers

From: Andrew Gardner <Andrew_Gardner/NYEC@chamber.state.ny.us>
Sent: Friday, June 3, 2022 9:56 AM
To: Legislative Secretary
Subject: Correspondence [Sylvester, Yolanda] #1064163C

*** Please Do Not Reply to this e-mail Message.***
*** Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. ***

Ms. Yolanda Sylvester
[redacted]
Addressed to: Governor

Email Subject: S.01046E Relates to the John R Lewis Voting Rights Act of New York

Issue 1 82022 Legislation

Correspondence Number: 1064163C
Date Of Correspondence: 06/02/2022
Date Received: 06/02/2022
Date Entered: 06/02/2022
Referred To: Legislative Secretary
Date Referred:

Routing History:

06/03/2022 09:56 AM (Routed By --> Andrew Gardner) (Routed Via Outside Agency Email to --> Legislative Secretary) For Your Information

Incoming Correspondence:

Hi Governor Hochul,

I encourage you to not sign this bill. Why not support New York's right to vote that is already on the books? As

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a Black American, I have no problem with 1 vote, 1 candidate and know the outcome on the same day. This legislation overhauls our local election. Please Governor, maintain our republic.

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C216

Megan Meyers

From: Andrew Gardner <Andrew_Gardner/NYEC@chamber.state.ny.us>
Sent: Monday, July 18, 2022 1:45 PM
To: Legislative Secretary
Subject: Correspondence [JOYCE, Eleanor] #1075700C

CAUTION: This email originated from outside of the Executive Chamber. Do not click links or open attachments unless you recognize the sender and know the content is safe.

*** Please Do Not Reply to this e-mail Message.***
*** Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. ***

Ms. Eleanor JOYCE
[redacted]
Addressed to: Governor

Email Subject: Support S1046A/A6678 (Myrie/Walker)

Issue 1 82022 Legislation

Correspondence Number: 1075700C
Date Of Correspondence: 07/16/2022
Date Received: 07/16/2022
Date Entered: 07/16/2022
Referred To: Legislative Secretary
Date Referred:

Routing History:

07/18/2022 01:44 PM (Routed By --> Andrew Gardner) (Routed Via Outside Agency Email to --> Legislative Secretary) For Your Information

Incoming Correspondence:

Governor Hochul,

I am writing you today to urge you to support S1046A/A6678 (Myrie/Walker), which would protect free and

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NYSCEF DOC. NO. 20 RECEIVED NYSCEF: 04/25/2024

fair elections in New York State.

The federal government has abdicated its responsibility to protect free and fair elections, at a time when voter intimidation and suppression seem to be increasingly prevalent in the United States.

Free and fair elections constitute the foundational bedrock of our democracy and deserve protection. This should not constitute partisan debate but be a clarion call for all lawmakers.

Further the enactment of protections will instill in the people of New York, confidence about the viability of the system.

California has enacted state level voter protections which have been effective and valuable. So, there should be no concern about state-level efforts.

I urge you to support the John R. Lewis Voting Rights Act of New York, S1046A/A6678 (Myrie/Walker).

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Denise Gagnon C226

From: Andrew Gardner <Andrew_Gardner/NYEC@chamber.state.ny.us>
Sent: Wednesday, June 22, 2022 9:48 AM
To: Legislative Secretary
Subject: Correspondence [Solmazer, Omer] #1068530C

*** Please Do Not Reply to this e-mail Message.***
*** Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. ***

Mr. Omer Solmazer
[redacted]
Addressed to: Governor

Email Subject: Support S1046A/A6678 (Myrie/Walker)

Issue 1 82022 Legislation

Correspondence Number: 1068530C
Date Of Correspondence: 06/20/2022
Date Received: 06/20/2022
Date Entered: 06/20/2022
Referred To: Legislative Secretary
Date Referred:

Routing History:

06/22/2022 09:47 AM (Routed By --> Andrew Gardner) (Routed Via Outside Agency Email to --> Legislative Secretary) For Your Information

Incoming Correspondence:

Governor Hochul,

I'm a human being who is losing hope after decades of inaction.

FILED: ORANGE COUNTY CLERK 04/25/2024 04:47 PM INDEX NO. EF002460-2024
NYSCEF DOC. NO. 20 RECEIVED NYSCEF: 04/25/2024

I am writing you today to urge you to support S1046A/A6678 (Myrie/Walker), which would protect free and fair elections in New York State.

The federal government has abdicated its responsibility to protect free and fair elections, at a time when voter intimidation and suppression seem to be increasingly prevalent in the United States.

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I urge you to support the John R. Lewis Voting Rights Act of New York, S1046A/A6678 (Myrie/Walker).

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C226

Denise Gagnon

From: Andrew Gardner <Andrew_Gardner/NYEC@chamber.state.ny.us>
Sent: Tuesday, June 28, 2022 10:40 AM
To: Legislative Secretary
Subject: Correspondence [Blaskowitz, Frank] #1070724C

*** Please Do Not Reply to this e-mail Message.***
*** Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. ***

Mr. Frank Blaskowitz
[redacted]
Addressed to: Governor

Email Subject: Support S1046A/A6678 (Myrie/Walker)

Issue 1 82022 Legislation

Correspondence Number: 1070724C
Date Of Correspondence: 06/25/2022
Date Received: 06/25/2022
Date Entered: 06/25/2022
Referred To: Legislative Secretary
Date Referred:

Routing History:

06/28/2022 10:39 AM (Routed By --> Andrew Gardner) (Routed Via Outside Agency Email to --> Legislative Secretary) For Your Information

Incoming Correspondence:

Governor Hochul,

I'm a father who just wants a livable future for me and my generation.

FILED: ORANGE COUNTY CLERK 04/25/2024 04:47 PM INDEX NO. EF002460-2024
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The federal government has abdicated its responsibility to protect free and fair elections, at a time when voter intimidation and suppression seem to be increasingly prevalent in the United States.

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California has enacted state level voter protections which have been effective and valuable. So, there should be no concern about state-level efforts.

I urge you to support the John R. Lewis Voting Rights Act of New York, S1046A/A6678 (Myrie/Walker).

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Denise Gagnon C226

From: Andrew Gardner <Andrew_Gardner/NYEC@chamber.state.ny.us>
Sent: Thursday, June 30, 2022 10:06 AM
To: Legislative Secretary
Subject: Correspondence [Meenan, Brandon] #1071794C

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*** Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. ***

Mr. Brandon Meenan
[redacted]
Addressed to: Governor

Email Subject: The John R. Lewis Voting Rights Act

Issue 1 82022 Legislation

Correspondence Number: 1071794C
Date Of Correspondence: 06/29/2022
Date Received: 06/29/2022
Date Entered: 06/29/2022
Referred To: Legislative Secretary
Date Referred:

Routing History:

06/30/2022 10:05 AM (Routed By --> Andrew Gardner) (Routed Via Outside Agency Email to --> Legislative Secretary) For Your Information

Incoming Correspondence:

Dear Gov. Hochul

New York has an extensive history of voter suppression and discriminatory practices that leave racial, ethnic, and language minority groups disenfranchised. These practices include barriers to registration and voting, racial

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gerrymandering and other forms of vote dilution, voter purges, moving and/or closing poll sites, limited access to language assistance, and more.

We must ensure that every New Yorker's right to vote is protected and strengthened.

The John R. Lewis Voting Rights Act (S1046/A6678) will:

?Make taking legal action against voter suppression and racial vote dilution more possible and more effective;

?Require local boards of election to get preclearance from the state attorney general before making changes that could limit voter access;

?Expand language assistance for languageminority voters;

?Make election data clearer and more accessible;

?Strengthen every New Yorker's right to vote; and

?Strengthen laws against voter intimidation

The federal Voting Rights Act of 1965 is landmark achievement for civil rights that has expanded and protected access to the ballot across the country, but it is under attack by a U.S. Supreme Court that is stocked with Trump appointees. In the face of this threat at the federal level, and given the disenfranchisement taking place in New York to this day, our state needs its own Voting Rights Act.

Voting is the foundation of democracy. It is the right we exercise to protect all others.

I urge you to pass the John R. Lewis Voting Rights Act to ensure every New Yorker has the right to a fair vote.

Sincerely,

Brandon Meenan

[redacted]

[redacted]

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Denise Gagnon C224

From: Andrew Gardner <Andrew_Gardner/NYEC@chamber.state.ny.us>
Sent: Wednesday, August 10, 2022 11:34 AM
To: Legislative Secretary
Subject: Correspondence [Ellis, Stephanie] #1081707C

*** Please Do Not Reply to this e-mail Message.***
*** Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. ***

Ms. Stephanie Ellis
[redacted]
Addressed to: Governor

Email Subject: Support S1046A/A6678 (Myrie/Walker)

Issue 1 82022 Legislation

Correspondence Number: 1081707C
Date Of Correspondence: 08/09/2022
Date Received: 08/09/2022
Date Entered: 08/09/2022
Referred To: Legislative Secretary
Date Referred:

Routing History:

08/10/2022 11:33 AM (Routed By --> Andrew Gardner) (Routed Via Outside Agency Email to --> Legislative Secretary) For Your Information

Incoming Correspondence:

Governor Hochul,

I'm a small business owner who is angry about the lack of action on climate.

FILED: ORANGE COUNTY CLERK 04/25/2024 04:47 PM INDEX NO. EF002460-2024
NYSCEF DOC. NO. 20 RECEIVED NYSCEF: 04/25/2024

I am writing you today to urge you to support S1046A/A6678 (Myrie/Walker), which would protect free and fair elections in New York State.

The federal government has abdicated its responsibility to protect free and fair elections, at a time when voter intimidation and suppression seem to be increasingly prevalent in the United States.

Free and fair elections constitute the foundational bedrock of our democracy and deserve protection. This should not constitute partisan debate but be a clarion call for all lawmakers.

Further the enactment of protections will instill in the people of New York, confidence about the viability of the system.

California has enacted state level voter protections which have been effective and valuable. So, there should be no concern about state-level efforts.

I urge you to support the John R. Lewis Voting Rights Act of New York, S1046A/A6678 (Myrie/Walker).

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Denise Gagnon C226

From: Andrew Gardner <Andrew_Gardner/NYEC@chamber.state.ny.us>
Sent: Tuesday, August 2, 2022 3:44 PM
To: Legislative Secretary
Subject: Correspondence [CULLEN, MICHELLE] #1079789C

*** Please Do Not Reply to this e-mail Message.***
*** Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. ***

Mr. MICHELLE CULLEN
[redacted]
Addressed to: Governor

Email Subject: Support S1046A/A6678 (Myrie/Walker)

Issue 1 82022 Legislation

Correspondence Number: 1079789C
Date Of Correspondence: 08/01/2022
Date Received: 08/01/2022
Date Entered: 08/01/2022
Referred To: Legislative Secretary
Date Referred:

Routing History:

08/02/2022 03:43 PM (Routed By --> Andrew Gardner) (Routed Via Outside Agency Email to --> Legislative Secretary) For Your Information

Incoming Correspondence:

Governor Hochul,

I'm a grandmother who fears for my family in a warming world.

FILED: ORANGE COUNTY CLERK 04/25/2024 04:47 PM INDEX NO. EF002460-2024
NYSCEF DOC. NO. 20 RECEIVED NYSCEF: 04/25/2024

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I urge you to support the John R. Lewis Voting Rights Act of New York, S1046A/A6678 (Myrie/Walker).

FILED: ORANGE COUNTY CLERK 04/25/2024 04:47 PM INDEX NO. EF002460-2024
NYSCEF DOC. NO. 20 RECEIVED NYSCEF: 04/25/2024

Denise Gagnon

From: Andrew Gardner <Andrew_Gardner/NYEC@chamber.state.ny.us>
Sent: Tuesday, August 2, 2022 3:43 PM
To: Legislative Secretary
Subject: Correspondence [CULLEN, MICHELLE] #1079788C

*** Please Do Not Reply to this e-mail Message.***
*** Any questions regarding this correspondence should be directed to the staff person listed below as the 'Please Respond To' contact. ***

Mr. MICHELLE CULLEN
[redacted]
Addressed to: Governor

Email Subject: Support S1046A/A6678 (Myrie/Walker)

Issue 1 82022 Legislation

Correspondence Number: 1079788C
Date Of Correspondence: 08/01/2022
Date Received: 08/01/2022
Date Entered: 08/01/2022
Referred To: Legislative Secretary
Date Referred:

Routing History:

08/02/2022 03:43 PM (Routed By --> Andrew Gardner) (Routed Via Outside Agency Email to --> Legislative Secretary) For Your Information

Incoming Correspondence:

Governor Hochul,

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FILED: ORANGE COUNTY CLERK 04/25/2024 04:47 PM INDEX NO. EF002460-2024
NYSCEF DOC. NO. 20 RECEIVED NYSCEF: 04/25/2024

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I urge you to support the John R. Lewis Voting Rights Act of New York, S1046A/A6678 (Myrie/Walker).

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STATE OF NEW YORK

1046--E

2021-2022 Regular Sessions

IN SENATE

January 6, 2021

Introduced by Sens. MYRIE, BAILEY, BIAGGI, BRESLIN, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, FELDER, GAUGHRAN, GIANARIS, GOUNARDES, HINCHEY, HOYLMAN, JACKSON, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, LIU, MANNION, MAY, MAYER, PARKER, RAMOS, REICHLIN-MELNICK, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Elections -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Elections in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the election law, in relation to establishing the John R. Lewis Voting Rights Act of New York, establishing rights of action for denying or abridging of the right of any member of a protected class to vote, providing assistance to language-minority groups, requiring certain political subdivisions to receive preclearance for potential violations of the NYVRA, and creating civil liability for voter intimidation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "John R. Lewis Voting Rights Act of New York (NYVRA)".

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 2. Sections 17-100 through 17-170 of article 17 of the election law are designated title 1 and a new title heading is added to read as follows:

VIOLATIONS OF THE ELECTIVE FRANCHISE

§ 3. The article heading of article 17 of the election law is amended to read as follows:

[~~VIOLATIONS OF~~] PROTECTING THE ELECTIVE FRANCHISE

§ 4. Article 17 of the election law is amended by adding a new title 2 to read as follows:

TITLE 2

JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK

§ 17-200. Legislative purpose and statement of public policy. In recognition of the protections for the right to vote provided by the constitution of the state of New York, which substantially exceed the protections for the right to vote provided by the constitution of the United States, and in conjunction with the constitutional guarantees of equal protection, freedom of expression, and freedom of association under the law and against the denial or abridgement of the voting rights of members of a race, color, or language-minority group, it is the public policy of the state of New York to:

1. Encourage participation in the elective franchise by all eligible voters to the maximum extent; and

2. Ensure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise.

§ 17-202. Interpretation of laws related to the elective franchise. In further recognition of the protections for the right to vote provided by the constitution of the state of New York, all statutes, rules and regulations, and local laws or ordinances related to the elective franchise shall be construed liberally in favor of (a) protecting the right of voters to have their ballot cast and counted; (b) ensuring that eligible voters are not impaired in registering to vote, and (c) ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process in registering to vote and voting. The authority to prescribe or maintain voting or elections policies and practices cannot be so exercised as to unnecessarily deny or abridge the right to vote. Policies and practices that

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burden the right to vote must be narrowly tailored to promote a compelling policy justification that must be supported by substantial evidence.

§ 17-204. Definitions. For the purposes of this title:

1. "At-large" method of election means a method of electing members to the governing body of a political subdivision: (a) in which all of the voters of the entire political subdivision elect each of the members to the governing body; (b) in which the candidates are required to reside within given areas of the political subdivision and all of the voters of the entire political subdivision elect each of the members to the governing body; or (c) that combines at-large elections with district-based elections, unless the only member of the governing body of a political subdivision elected at-large holds exclusively executive responsibilities. For the purposes of this title, at-large method of election does not include ranked-choice voting, cumulative voting, and limited voting.

2. "District-based" method of election means a method of electing members to the governing body of a political subdivision using a districting or redistricting plan in which each member of the governing body resides within a district or ward that is a divisible part of the political subdivision and is elected only by voters residing within that district or ward, except for a member of the governing body that holds exclusively executive responsibilities.

3. "Alternative" method of election means a method of electing members to the governing body of a political subdivision using a method other than at-large or district-based, including, but not limited to, ranked-choice voting, cumulative voting, and limited voting.

4. "Political subdivision" means a geographic area of representation created for the provision of government services, including, but not limited to, a county, city, town, village, school district, or any other district organized pursuant to state or local law.

5. "Protected class" means a class of eligible voters who are members of a race, color, or language-minority group.

5-a. "Language minorities" or "language-minority group" means persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.

6. "Racially polarized voting" means voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate.

7. "Federal voting rights act" means the federal Voting Rights Act of 1965, 52 U.S.C. § 10301 et seq., as amended.

8. The "civil rights bureau" means the civil rights bureau of the office of the attorney general.

9. "Government enforcement action" means a denial of administrative or judicial preclearance by the state or federal government, pending litigation filed by a federal or state entity, a final judgment or adjudication, a consent decree, or similar formal action.

10. "Deceptive or fraudulent device, contrivance, or communication" means one that contains false information pertaining to: (a) the time, place, and manner of any election; (b) the qualifications or restrictions on voter eligibility for such election; or (c) a statement of endorsement by any specifically named person, political party, or organization.

§ 17-206. Prohibitions on voter disenfranchisement. 1. Prohibition against voter suppression. (a) No voting qualification, prerequisite to

voting, law, ordinance, standard, practice, procedure, regulation, or policy shall be enacted or implemented by any board of elections or political subdivision in a manner that results in a denial or abridgement of the right of members of a protected class to vote.

(b) A violation of paragraph (a) of this subdivision shall be established upon a showing 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.

2. Prohibition against vote dilution. (a) No board of elections or political subdivision shall use any method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution.

(b) A violation of paragraph (a) of this subdivision shall be established upon a showing that a political subdivision:

(i) used an at-large method of election and either: (A) voting patterns of members of the protected class within the political subdivision are racially polarized; or (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired; or

(ii) used a district-based or alternative method of election and that candidates or electoral choices preferred by members of the protected class would usually be defeated, and either: (A) voting patterns of members of the protected class within the political subdivision are racially polarized; or (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired; or

(c) For the purposes of demonstrating that a violation of paragraph (a) of this subdivision has occurred, evidence shall be weighed and considered as follows: (i) elections conducted prior to the filing of an action pursuant to this subdivision are more probative than elections conducted after the filing of the action; (ii) evidence concerning elections for members of the governing body of the political subdivision are more probative than evidence concerning other elections; (iii) statistical evidence is more probative than non-statistical evidence; (iv) where there is evidence that more than one protected class of eligible voters are politically cohesive in the political subdivision, members of each of those protected classes may be combined; (v) evidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class is not required; (vi) evidence that voting patterns and election outcomes could be explained by factors other than racially polarized voting, including but not limited to partisanship, shall not be considered; (vii) evidence that sub-groups within a protected class have different voting patterns shall not be considered; (viii) evidence concerning whether members of a protected class are geographically compact or concentrated shall not be considered, but may be a factor in determining an appropriate remedy; and (ix) evidence concerning projected changes in population or demographics shall not be considered, but may be a factor, in determining an appropriate remedy.

3. In determining whether, under the totality of the circumstances, a violation of subdivision one or two of this section has occurred, factors that may be considered shall include, but not be limited to: (a) the history of discrimination in or affecting the political subdivision;

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(b) the extent to which members of the protected class have been elected to office in the political subdivision; (c) the use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme; (d) denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election; (e) the extent to which members of the protected class contribute to political campaigns at lower rates; (f) the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate; (g) the extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection; (h) the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process; (i) the use of overt or subtle racial appeals in political campaigns; (j) a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and (k) whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy. Nothing in this subdivision shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that such a violation has occurred.

4. Standing. Any aggrieved person, organization whose membership includes aggrieved persons or members of a protected class, organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by a violation of this section, or the attorney general may file an action against a political subdivision pursuant to this section in the supreme court of the county in which the political subdivision is located.

5. Remedies. (a) Upon a finding of a violation of any provision of this section, the court shall implement appropriate remedies to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process, which may include, but shall not be limited to:

(i) a district-based method of election;

(ii) an alternative method of election;

(iii) new or revised districting or redistricting plans;

(iv) elimination of staggered elections so that all members of the governing body are elected on the same date;

(v) reasonably increasing the size of the governing body;

(vi) moving the dates of regular elections to be concurrent with the primary or general election dates for state, county, or city office as established in section eight of article three or section eight of article thirteen of the constitution, unless the budget in such political subdivision is subject to direct voter approval pursuant to part two of article five or article forty-one of the education law;

(vii) transferring authority for conducting the political subdivision's elections to the board of elections for the county in which the political subdivision is located;

(viii) additional voting hours or days;

(ix) additional polling locations;

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(x) additional means of voting such as voting by mail;
(xi) ordering of special elections;
(xii) requiring expanded opportunities for voter registration;
(xiii) requiring additional voter education;
(xiv) modifying the election calendar;
(xv) the restoration or addition of persons to registration lists; or
(xvi) retaining jurisdiction for such period of time on a given matter as the court may deem appropriate, during which no redistricting plan shall be enforced unless and until the court finds that such plan does not have the purpose of diluting the right to vote on the basis of protected class membership, or in contravention of the voting guarantees set forth in this title, except that the court's finding shall not bar a subsequent action to enjoin enforcement of such redistricting plan.

(b) The court shall consider proposed remedies by any parties and interested non-parties, but shall not provide deference or priority to a proposed remedy offered by the political subdivision. The court shall have the power to require a political subdivision to implement remedies that are inconsistent with any other provision of law where such inconsistent provision of law would preclude the court from ordering an otherwise appropriate remedy in such matter.

6. Procedures for implementing new or revised districting or redistricting plans. The governing body of a political subdivision with the authority under this title and all applicable state and local laws to enact and implement a new method of election that would replace the political subdivision's at-large method of election with a district-based or alternative method of election, or enact and implement a new districting or redistricting plan, shall undertake each of the steps enumerated in this subdivision, if proposed subsequent to receipt of a NYVRA notification letter, as defined in subdivision seven of this section, or the filing of a claim pursuant to this title or the federal voting rights act.

(a) Before drawing a draft districting or redistricting plan or plans of the proposed boundaries of the districts, the political subdivision shall hold at least two public hearings over a period of no more than thirty days, at which the public is invited to provide input regarding the composition of the districts. Before these hearings, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to explain the districting or redistricting process and to encourage public participation.

(b) After all draft districting or redistricting plans are drawn, the political subdivision shall publish and make available for release at least one draft districting or redistricting plan and, if members of the governing body of the political subdivision would be elected in their districts at different times to provide for staggered terms of office, the potential sequence of such elections. The political subdivision shall also hold at least two additional hearings over a period of no more than forty-five days, at which the public shall be invited to provide input regarding the content of the draft districting or redistricting plan or plans and the proposed sequence of elections, if applicable. The draft districting or redistricting plan or plans shall be published at least seven days before consideration at a hearing. If the draft districting or redistricting plan or plans are revised at or following a hearing, the revised versions shall be published and made available to the public for at least seven days before being adopted.

(c) In determining the final sequence of the district elections conducted in a political subdivision in which members of the governing

body will be elected at different times to provide for staggered terms of office, the governing body shall give special consideration to the purposes of this title, and it shall take into account the preferences expressed by members of the districts.

7. Notification requirement and safe harbor for judicial actions. Before commencing a judicial action against a political subdivision under this section, a prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision, or, if the political subdivision does not have a clerk, the governing body of the political subdivision, against which the action would be brought, asserting that the political subdivision may be in violation of this title. This written notice shall be referred to as a "NYVRA notification letter" in this title. For actions against a school district or any other political subdivision that holds elections governed by the education law, the prospective plaintiff shall also send by certified mail a copy of the NYVRA notification letter to the commissioner of education.

(a) A prospective plaintiff shall not commence a judicial action against a political subdivision under this section within fifty days of sending to the political subdivision a NYVRA notification letter.

(b) Before receiving a NYVRA notification letter, or within fifty days of mailing of a NYVRA notification letter, the governing body of a political subdivision may pass a resolution affirming: (i) the political subdivision's intention to enact and implement a remedy for a potential violation of this title; (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. Such a resolution shall be referred to as a "NYVRA resolution" in this title. If a political subdivision passes a NYVRA resolution, such political subdivision shall have ninety days after such passage to enact and implement such remedy, during which a prospective plaintiff shall not commence an action to enforce this section against the political subdivision. For actions against a school district, the commissioner of education may order the enactment of a NYVRA resolution pursuant to the commissioner's authority under section three hundred five of the education law.

(c) If the governing body of a political subdivision lacks the authority under this title or applicable state law or local laws to enact or implement a remedy identified in a NYVRA resolution, or fails to enact or implement a remedy identified in a NYVRA resolution, within ninety days after the passage of the NYVRA resolution, or if the political subdivision is a covered entity as defined under section 17-210 of this title, the governing body of the political subdivision shall undertake the steps enumerated in the following provisions:

(i) The governing body of the political subdivision may approve a proposed remedy that complies with this title and submit such a proposed remedy to the civil rights bureau. Such a submission shall be referred to as a "NYVRA proposal" in this title.

(ii) Prior to passing a NYVRA proposal, the political subdivision shall hold at least one public hearing, at which the public shall be invited to provide input regarding the NYVRA proposal. Before this hearing, the political subdivision may conduct outreach to the public, including to non-English-speaking communities, to encourage public participation.

(iii) Within forty-five days of receipt of a NYVRA proposal, the civil rights bureau shall grant or deny approval of the NYVRA proposal.

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(iv) The civil rights bureau shall only grant approval to the NYVRA proposal if it concludes that: (A) the political subdivision may be in violation of this title; (B) the NYVRA proposal would remedy any potential violation of this title; (C) the NYVRA proposal is unlikely to violate the constitution or any federal law; (D) the NYVRA proposal would not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office; and (E) implementation of the NYVRA proposal is feasible.

(v) If the civil rights bureau grants approval, the NYVRA proposal shall be enacted and implemented immediately, notwithstanding any other provision of law, including any other state or local law.

(vi) If the political subdivision is a covered entity as defined under section 17-210 of this title, the political subdivision shall not be required to obtain preclearance for the NYVRA proposal pursuant to such section upon approval of the NYVRA proposal by the civil rights bureau.

(vii) If the civil rights bureau denies approval, the NYVRA proposal shall not be enacted or implemented. The civil rights bureau shall explain the basis for such denial and may, in its discretion, make recommendations for an alternative remedy for which it would grant approval.

(viii) If the civil rights bureau does not respond, the NYVRA proposal shall not be enacted or implemented.

(d) A political subdivision that has passed a NYVRA resolution may enter into an agreement with the prospective plaintiff providing that such prospective plaintiff shall not commence an action pursuant to this section against the political subdivision for an additional ninety days. Such agreement shall include a requirement that either the political subdivision shall enact and implement a remedy that complies with this title or the political subdivision shall pass a NYVRA proposal and submit it to the civil rights bureau.

(e) If, pursuant to a process commenced by a NYVRA notification letter, a political subdivision enacts or implements a remedy or the civil rights bureau grants approval to a NYVRA proposal, a prospective plaintiff who sent the NYVRA notification letter may, within thirty days of the enactment or implementation of the remedy or approval of the NYVRA proposal, demand reimbursement for the cost of the work product generated to support the NYVRA notification letter. A prospective plaintiff shall make the demand in writing and shall substantiate the demand with financial documentation, such as a detailed invoice for demography services or for the analysis of voting patterns in the political subdivision. A political subdivision may request additional documentation if the provided documentation is insufficient to corroborate the claimed costs. A political subdivision shall reimburse a prospective plaintiff for reasonable costs claimed, or in an amount to which the parties mutually agree. The cumulative amount of reimbursements to all prospective plaintiffs, except for actions brought by the attorney general, shall not exceed forty-three thousand dollars, as adjusted annually to the consumer price index for all urban consumers, United States city average, as published by the United States department of labor. To the extent a prospective plaintiff who sent the NYVRA notification letter and a political subdivision are unable to come to a mutual agreement, either party may file a declaratory judgment action to obtain a clarification of rights.

(f) Notwithstanding the provisions of this subdivision, in the event that the first day for designating petitions for a political subdivision's next regular election to select members of its governing board

has begun or is scheduled to begin within thirty days, or in the event that a political subdivision is scheduled to conduct any election within one hundred twenty days, a plaintiff alleging any violation of this title may commence a judicial action against a political subdivision under this section, provided that the relief sought by such a plaintiff includes preliminary relief for that election. Prior to or concurrent with commencing such a judicial action, any such plaintiff shall also submit a NYVRA notification letter to the political subdivision. In the event that a judicial action commenced under this provision is withdrawn or dismissed for mootness because the political subdivision has enacted or implemented a remedy or the civil rights bureau has granted approval of a NYVRA proposal pursuant to a process commenced by a NYVRA notification letter, any such plaintiff may only demand reimbursement pursuant to this subdivision.

8. Coalition claims permitted. Members of different protected classes may file an action jointly pursuant to this title in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.

§ 17-208. Assistance for language-minority groups. 1. Political subdivisions required to provide language assistance. A board of elections or a political subdivision that administers elections shall provide language-related assistance in voting and elections to a language-minority group in a political subdivision if, based on data from the American community survey, or data of comparable quality collected by a public office, that:

(a) more than two percent, but in no instance fewer than three hundred individuals, of the citizens of voting age of a political subdivision are members of a single language-minority group and are limited English proficient.

(b) more than four thousand of the citizens of voting age of such political subdivision are members of a single language-minority group and are limited English proficient.

(c) in the case of a political subdivision that contains all or any part of a Native American reservation, more than two percent of the Native American citizens of voting age within the Native American reservation are members of a single language-minority group and are limited English proficient. For the purposes of this paragraph, "Native American" is defined to include any persons recognized by the United States census bureau or New York as "American Indian" or "Alaska Native".

2. Language assistance to be provided. A board of elections or political subdivision required to provide language assistance to a particular language-minority group pursuant to this section shall provide voting materials in the covered language of an equal quality of the corresponding English language materials, including registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots. Any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, in a covered political subdivision, shall be provided in the language of the applicable language-minority group as well as in the English language, provided that where the language of the applicable language-minority group is historically oral or unwritten, the board of elections or political subdivision shall only be required to furnish oral instructions, assistance, or other information relating to registration and voting.

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3. Action for declaratory judgment for English-only voting materials. A board of elections or political subdivision subject to the requirements of this section which seeks to provide English-only materials may file an action against the state for a declaratory judgment permitting such provision. The court shall grant the requested relief if it finds that the determination was unreasonable or an abuse of discretion.

4. Standing. Any aggrieved persons, organization whose membership includes aggrieved persons or members of a protected class, organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by a violation of this section, or the attorney general may file an action pursuant to this section in the supreme court of the county in which the alleged violation of this section occurred.

5. This section shall not apply to special districts as defined by section one hundred two of the real property tax law.

§ 17-210. Preclearance. 1. Preclearance. To ensure that the right to vote is not denied or abridged on account of race, color, or language-minority group, the enactment or implementation of a covered policy by a covered entity, as defined in subdivisions two and three of this section respectively, shall be subject to preclearance by the civil rights bureau or by a designated court as set forth in this section.

2. Covered policies. A "covered policy" shall include any new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning any of the following topics:

(a) Method of election;

(b) Form of government;

(c) Annexation of a political subdivision;

(d) Incorporation of a political subdivision;

(e) Consolidation or division of political subdivisions;

(f) Removal of voters from enrollment lists or other list maintenance activities;

(g) Number, location, or hours of any election day or early voting poll site;

(h) Dates of elections and the election calendar, except with respect to special elections;

(i) Registration of voters;

(j) Assignment of election districts to election day or early voting poll sites;

(k) Assistance offered to members of a language-minority group; and

(l) Any additional topics designated by the civil rights bureau pursuant to a rule promulgated under the state administrative procedure act, upon a determination by the civil rights bureau that a new or modified voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy concerning such topics may have the effect of denying or abridging the right to vote on account of race, color, or language-minority group.

3. Covered entity. A "covered entity" shall include: (a) any political subdivision which, within the previous twenty-five years, has become subject to a court order or government enforcement action based upon a finding of any violation of this title, the federal voting rights act, the fifteenth amendment to the United States constitution, or a voting-related violation of the fourteenth amendment to the United States constitution; (b) any political subdivision which, within the previous twenty-five years, has become subject to at least three court orders or government enforcement actions based upon a finding of any violation of

any state or federal civil rights law or the fourteenth amendment to the United States constitution concerning discrimination against members of a protected class; (c) any county in which, based on data provided by the division of criminal justice services, the combined misdemeanor and felony arrest rate of members of any protected class consisting of at least ten thousand citizens of voting age or whose members comprise at least ten percent of the citizen voting age population of the county, exceeds the proportion that the protected class constitutes of the citizen voting age population of the county as a whole by at least twenty percent at any point within the previous ten years; or (d) any political subdivision in which, based on data made available by the United States census, the dissimilarity index of any protected class consisting of at least twenty-five thousand citizens of voting age or whose members comprise at least ten percent of the citizen voting age population of the political subdivision, is in excess of fifty with respect to non-Hispanic white citizens of voting age within the political subdivision at any point within the previous ten years. If any covered entity is a political subdivision in which a board of elections has been established, that board of elections shall also be deemed a covered entity. If any political subdivision in which a board of elections has been established contains a covered entity fully within its borders, that political subdivision and that board of elections shall both be deemed a covered entity.

4. Preclearance by the attorney general. A covered entity may obtain preclearance for a covered policy from the civil rights bureau pursuant to the following process:

(a) The covered entity shall submit the covered policy in writing to the civil rights bureau. If the covered entity is a county or city board of elections, it shall contemporaneously provide a copy of the covered policy to the state board of elections.

(b) Upon submission of a covered policy for preclearance, as soon as practicable but no later than within ten days, the civil rights bureau shall publish the submission on its website.

(c) After publication of a submission, there shall be an opportunity for members of the public to comment on the submission to the civil rights bureau within the time periods set forth below. To facilitate public comment, the civil rights bureau shall provide an opportunity for members of the public to sign up to receive notifications or alerts regarding submission of a covered policy for preclearance.

(d) Upon submission of a covered policy for preclearance, the civil rights bureau shall review the covered policy, and any public comment, and shall, within the time periods set forth below, provide a report and determination as to whether, under this title, preclearance should be granted or denied to the covered policy. Such time period shall run concurrent with the time periods for public comment. The civil rights bureau shall not make such determination until the period for public comment is closed. The civil rights bureau may request additional information from a covered entity at any time during its review to aid in developing its report and recommendation. The failure to timely comply with reasonable requests for more information may be grounds for the denial of preclearance. The civil rights bureau's reports and determination shall be posted publicly on its website.

(e) In any determination as to preclearance, the civil rights bureau shall identify in writing whether it is approving or rejecting the covered policy; provided, however, that the civil rights bureau may, in its discretion, designate preclearance as "preliminary" in which case

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the civil rights bureau may deny preclearance within sixty days following the receipt of submission of the covered policy.

(i) The civil rights bureau shall grant preclearance only if it determines that the covered policy will not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office. If the civil rights bureau grants preclearance, the covered entity may enact or implement the covered policy immediately.

(ii) If the civil rights bureau denies preclearance, the civil rights bureau shall interpose objections explaining its basis and the covered policy shall not be enacted or implemented.

(iii) If the civil rights bureau fails to respond within the required time frame as established in this section, the covered policy shall be deemed precleared and the covered entity may enact or implement such covered policy.

(f) The time periods for public comment, civil rights bureau review, and the determination of the civil rights bureau to grant or deny preclearance on submission shall be as follows:

(i) For any covered policy concerning the designation or selection of poll sites or the assignment of election districts to poll sites, whether for election day or early voting, the period for public comment shall be five business days. The civil rights bureau shall review the covered policy, including any public comment, and make a determination to deny or grant preclearance for such covered policy within fifteen days following the receipt of such covered policy.

(ii) Upon a showing of good cause, the civil rights bureau may receive an extension of up to twenty days to make a determination pursuant to this paragraph.

(iii) For any other covered policy, the period for public comment shall be ten business days. The civil rights bureau shall review the covered policy, including any public comment, within fifty-five days following the receipt of such covered policy and make a determination to deny or grant preclearance for such covered policy. The civil rights bureau may invoke up to two extensions of ninety days each.

(iv) The civil rights bureau is hereby authorized to promulgate rules for an expedited, emergency preclearance process in the event of a covered policy occurring during or imminently preceding an election as a result of any disaster within the meaning of section 3-108 of this chapter or other exigent circumstances. Any preclearance granted under this provision shall be designated "preliminary" and the civil rights bureau may deny preclearance within sixty days following receipt of the covered policy.

(g) Appeal of any denial by the civil rights bureau may be heard in the supreme court for the county of New York or the county of Albany in a proceeding commenced against the civil rights bureau, pursuant to article seventy-eight of the civil practice law and rules, from which appeal may be taken according to the ordinary rules of appellate procedure. Due to the frequency and urgency of elections, actions brought pursuant to this section shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference on appeal.

5. Preclearance by a designated court. A covered entity may obtain preclearance for a covered policy from a court pursuant to the following process:

(a) The covered entity shall submit the covered policy in writing to the following designated court in the judicial department within which

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the covered entity is located: (i) first judicial department: New York county; (ii) second judicial department: Westchester county; (iii) third judicial department: Albany county; and (iv) fourth judicial department: Erie county. If the covered entity is a county or city board of elections, it shall contemporaneously provide a copy of the covered policy to the state board of elections.

(b) The covered entity shall contemporaneously provide a copy of the covered policy to the civil rights bureau. The failure of the covered entity to provide a copy of the covered policy to the civil rights bureau will result in an automatic denial of preclearance.

(c) The court shall grant or deny preclearance within sixty days following the receipt of submission of the covered policy.

(d) The court shall grant preclearance only if it determines that the covered policy will not diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office. If the court grants preclearance, the covered entity may enact or implement the covered policy immediately.

(e) If the court denies preclearance, or fails to respond within sixty days, the covered policy shall not be enacted or implemented.

(f) Appeal of any denial may be taken according to the ordinary rules of appellate procedure. Due to the frequency and urgency of elections, actions brought pursuant to this section shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference on appeal.

6. Failure to seek or obtain preclearance. If any covered entity enacts or implements a covered policy without seeking preclearance pursuant to this section, or enacts or implements a covered policy notwithstanding the denial of preclearance, either the civil rights bureau or any other party with standing to bring an action under this title may bring an action to enjoin the covered policy and to seek sanctions against the political subdivision and officials in violation.

7. Rules and regulations. The civil rights bureau may promulgate such rules and regulations as are necessary to effectuate the purposes of this section.

§ 17-212. Prohibition against voter intimidation, deception or obstruction. 1. (a) No person, whether acting under color of law or otherwise, may engage in acts of intimidation, deception, or obstruction that affects the right of voters to access the elective franchise.

(b) A violation of paragraph (a) this subdivision shall be established if:

(i) a person uses or threatens to use any force, violence, restraint, abduction or duress, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation that causes or will reasonably have the effect of causing any person to vote or refrain from voting in general or for or against any particular person or for or against any proposition submitted to voters at such election; to place or refrain from placing their name upon a registry of voters; or to request or refrain from requesting an absentee ballot; or

(ii) a person knowingly uses any deceptive or fraudulent device, contrivance or communication, that impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any person, or that causes or will reasonably have the effect of causing any person to vote or refrain from voting in general or for or against any particular person or for or against any proposition submitted to voters at such election; to place or refrain from placing their name upon a registry of voters; or to request or refrain from requesting an absentee ballot; or

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(iii) a person obstructs, impedes, or otherwise interferes with access to any polling place or elections office, or obstructs, impedes, or otherwise interferes with any voter in any manner that causes or will reasonably have the effect of causing any delay in voting or the voting process, including the canvassing and tabulation of ballots.

2. Standing. Any aggrieved persons, organization whose membership includes aggrieved persons or members of a protected class, organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by a violation of this section, or the attorney general may file an action pursuant to this section in the supreme court of the county in which the alleged violation of this section occurred.

3. Remedies. Upon a finding of a violation of any provision of this section, the court shall implement appropriate remedies that are tailored to remedy the violation, including but not limited to providing for additional time to cast a ballot that may be counted in the election at issue. Any party who shall violate any of the provisions of the foregoing section or who shall aid the violation of any of said provisions shall be liable to any prevailing plaintiff party for damages, including nominal damages for any violation, and compensatory or punitive damages for any intentional violation.

§ 17-214. Authority to issue subpoenas. In any action or investigation to enforce any provision of this title, the attorney general shall have the authority to take proof and determine relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

§ 17-216. Expedited judicial proceedings and preliminary relief. Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials, actions brought pursuant to this title shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference. In any action alleging a violation of this section in which a plaintiff party seeks preliminary relief with respect to an upcoming election, the court shall grant relief if it determines that: (a) plaintiffs are more likely than not to succeed on the merits; and (b) it is possible to implement an appropriate remedy that would resolve the alleged violation in the upcoming election.

§ 17-218. Attorneys' fees. In any action to enforce any provision of this title, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorneys' fee, litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs. A plaintiff will be deemed to have prevailed when, as a result of litigation, the defendant party yields much or all of the relief sought in the suit. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

§ 17-220. Applicability. The provisions of this title shall apply to all elections for any elected office or electoral choice within the state or any political subdivision. The provisions of this title shall apply notwithstanding any other provision of law, including any other state law or local law; provided, however, that school districts and libraries shall continue to conduct their elections under the education law, subject to and not inconsistent with the provisions of this title, to ensure voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process.

§ 17-222. Severability. If any provision of this title or its application to any person, political subdivision, or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

§ 5. This act shall take effect immediately; provided, however, that paragraph (c) of subdivision seven of section 17-206 of the election law as added by section four of this act shall take effect one year after it shall have become a law; and provided further, however, that section 17-208 of the election law as added by section four of this act shall take effect three years after it shall have become a law; and provided further, however, that section 17-210 of the election law, as added by section four of this act, shall take effect one year after the attorney general certifies that the office of the attorney general is prepared to execute the duties assigned in section four of this act, if after the expiration of one year the attorney general requires more time to certify that the office of the attorney general is prepared to execute the duties assigned in section four of this act, the attorney general, may, for good cause shown, apply to the governor for such an extension of time. The governor may grant or deny an extension of up to one year according to his or her discretion. The attorney general shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in section four of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.

Exhibit B to Spolzino Affirmation -
The Town Board of the Town of Newburgh Resolution,
dated March 15, 2024, with Exhibit A
(Reproduced Herein at pages 84 to 91)

Memorandum of Law by New York State Attorney General as *Amicus Curiae* in Opposition to Motion, dated April 30, 2024 [pp. 179 - 193]

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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 Hon. Maria S. Vazquez-Doles Mot. Seq. 1

MEMORANDUM OF LAW OF *AMICUS CURIAE* ATTORNEY GENERAL OF THE STATE OF NEW YORK IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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PRELIMINARY STATEMENT AND INTERESTS OF AMICUS CURIAE

The New York State Attorney General submits this memorandum of law as *amicus curiae* in opposition to the motion to dismiss filed by defendants, Town of Newburgh and Town Board of the Town of Newburgh. Plaintiffs are Newburgh residents who allege that the Town's at-large voting system for municipal elections prevents Black and Hispanic voters from electing candidates of their choice to the Town Board in violation of the John R. Lewis Voting Rights Act of New York ("NYVRA"). Defendants contend that plaintiffs filed this suit prematurely because the Town is entitled to the benefit of a 90-day safe harbor from litigation pursuant to Section 17-206(7)(b) of the NYVRA. The Attorney General submits this brief to explain why defendants' interpretation of the NYVRA is incorrect and why the motion to dismiss should therefore be denied.

The NYVRA is aimed at ensuring that "eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise." Election Law § 17-200(2). To that end, the statute authorizes the Attorney General and certain private parties, such as voters, to bring judicial actions against political subdivisions, such as counties, cities, towns, and villages, that have electoral schemes with discriminatory effects, so that courts may impose judicial remedies. *Id*. § 17-206. The Attorney General therefore has a strong interest in the proper interpretation and application of the statute. Further, consistent with the Attorney General's important role in defending access to the elective franchise for New York voters, the Attorney General is interested in ensuring that the NYVRA's safe harbor provisions are not erroneously construed in a manner that would frustrate the statutory aim of ensuring that unlawful conditions in voting and elections are remedied expeditiously.

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BACKGROUND

A. Statutory Background

The NYVRA contains detailed pre-suit provisions aimed at affording political subdivisions the opportunity to "make necessary amendments to proposed election changes without needing to litigate in court." Senate Mem. in Support of Bill No. S1046-E (2021-22) (NYSCEF Doc. No 20 at 8). Prior to filing suit, a prospective plaintiff must provide written notice of a potential NYVRA violation to the political subdivision. Election Law § 17-206(7). The political subdivision then has 50 days from the mailing of the notification letter to consider the matter and determine whether to pursue a remedy for a potential violation, during which time the statute prohibits the prospective plaintiff from filing suit. *Id*. § 17-206(7)(a).

If the political subdivision decides within these 50 days to voluntarily enact and implement a remedy for the potential violation alleged in the notice, the statute provides an additional 90-day safe harbor from litigation. *Id.* § 17-206(a)(7)(b). To receive the protection of this separate safe harbor, a political subdivision must pass a resolution within the initial 50-day period that "affirm[s]": (i) "the political subdivision's intention to enact and implement a remedy for a potential violation of this title;" (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*.

During this 90-day period, the political subdivision would then "enact and implement such remedy" proposed in the resolution. *Id.* § 17-206(7)(b). In certain circumstances, such as if the political subdivision lacks authority to unilaterally enact and implement the "remedy identified in [the] resolution," it may submit a proposed remedy to the Attorney General for her review, who can then, upon approval, order the remedy into effect. *Id.* § 17-206(7)(c). The parties may agree to

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extend the 90-day period by an additional 90 days, for a total of 180 days. *Id*. § 17-206(7)(d). However, any such agreement must "include a requirement that either the political subdivision shall enact and implement a remedy that complies with this title" or submit a proposal to the Attorney General. *Id.*

The safe harbor provisions do not apply if (i) the time for designating petitions for the political subdivision's next regular election to select members of its governing board has begun or is scheduled to begin within 30 days, or (ii) a political subdivision is scheduled to conduct an election within 120 days. *Id.* § 17-206(7)(f). In such circumstances, plaintiffs may file suit in court, so long as they also seek preliminary relief for the upcoming election and submit a notification letter concurrently. *Id.*

B. This Lawsuit

According to the complaint and attached exhibits, plaintiffs sent a letter to the Newburgh Town Clerk on January 26, 2024, alleging that the Town's at-large method of electing Town Board members, combined with the presence of racially polarized voting in the Town, operated to dilute the votes of Black and Hispanic voters, who have been systematically prevented from electing preferred candidates for the Town Board. (NYSCEF Doc. No. 2.)

On March 15, 2024, 49 days after the date of the notification letter, Newburgh's Town Board passed a resolution directing town officials to work with legal counsel and retained experts "to determine whether any 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." (NYSCEF Doc. No. 3 § 1.) The resolution directed that the findings of such review be reported to the Town Board within 30 days, and provided that, "if, after considering the findings and evaluation and any other information that may become available to the Town . . ., the

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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)." (*Id*. § 2.) The resolution did not propose any specific remedy, but instead stated that, if the Town Board determined a potential violation of the NYVRA may exist, it would direct a proposal of remedies to be prepared within 10 days, with public hearings to follow. (*Id.* §§ 3-4.)

On March 26, 2024, plaintiffs filed this action. (NYSCEF Doc. No. 1.) On April 8, the Town Board responded by adopting a new resolution which (i) suspended the schedule set forth in the March 15 resolution; and (ii) provided that the Town's evaluation of the potential NYVRA violation would recommence only if this Court dismisses plaintiffs' suit. *See Resolution of The Town Board of The Town of Newburgh Pertaining to New York State Election Law 17-206 and Commencement of Litigation* (Apr. 8, 2024). On April 16, defendants filed the instant motion to dismiss. (Mot. Seq. No. 1.)

ARGUMENT

I. The March 15 Resolution Does Not Satisfy the Statutory Requirements For a 90-Day Safe Harbor.

As explained above, the NYVRA affords every political subdivision a mandatory 50-day safe harbor from litigation upon receipt of a pre-suit notification letter. Election Law § 17-206(a). The purpose of this 50-day period is to allow a political subdivision to investigate the allegations, assess whether there is a potential violation, and if so, determine whether to voluntarily remedy the potential violation or face litigation.

The purpose of the NYVRA's separate 90-day safe harbor is different: it gives a political subdivision that has confirmed a potential violation time to implement a remedy without fear of litigation. *Id*. § 17-206(7)(b). Accordingly, a political subdivision receives the benefit of the 90-day safe harbor only if it enacts a resolution that "affirm[s]" its "intention to enact and implement

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a remedy for a potential violation of this title" and details "specific steps the political subdivision will undertake to facilitate approval and implementation" and a "schedule for enacting and implementing" such a remedy. *Id*. § 17-206(7)(b).

Newburgh's March 15 resolution mistakenly treats the 90-day safe harbor as a routine extension of the 50-day safe harbor. In so doing, the resolution fails to meet the requirements of Section 17-206(7)(b) in at least two respects: (i) the resolution does not meaningfully affirm that Newburgh actually intends to enact and implement a remedy; and (ii) the resolution does not propose any specific remedy.[1]

First, the March 15 resolution commits the Town only to a "review and investigation of the current at-large election system . . . to determine whether any potential violation of the NYVRA may exist and to evaluate potential alternatives . . . should a potential violation be determined to exist." (NYSCEF Doc. No. 3 at § 1.) The resolution makes no effort to explain why the Town failed to conduct this review and investigation in the initial 50-day safe harbor. In any event, a commitment to "review and investigat[e]" is not a resolution "to enact and implement a remedy." *See* Election Law § 17-206(7)(b). Indeed, the statute makes no reference to "investigating" a remedy in detailing the required elements of a resolution. "The absence of this word" or similar ones must be considered "meaningful and intentional[,] as . . . the failure of the legislature to include a term in a statute is a significant indication that its exclusion was intended." *Commonwealth of N. Mariana Islands v. Canadian Imperial Bank of Com.*, 21 N.Y.3d 55, 60 (2013); *see also* Stat. Law § 74.

[1] The Attorney General takes no position on whether the March 15 resolution was "void and of no effect" because it allegedly "was not duly adopted at a duly called meeting of the Town Board." (Compl. ¶ 63.)

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It is immaterial that the resolution separately states that the Town "intends to enact and implement the appropriate remedy(ies)" on condition that the Town Board later "concludes that there may be a violation of the NYVRA." (NYSCEF Doc. No. 3 at § 2.) An "intention" to take an action only upon the hypothetical contingency that the actor later decides after further deliberations that the action is warranted is not an "intention" to take any action at all. *Cf. People v. Alexander*, No. 03-28035, 2003 WL 21169075, at *5 (Poughkeepsie City Ct. May 12, 2003). *Alexander*, for example, concerned the proper interpretation of Criminal Procedure Law § 710.30, which requires a prosecutor to give pretrial notice of intent to use a defendant's statement in order to admit the statement into evidence. The court held that the statute does not apply when a prosecutor merely says that he intends to use the statement for impeachment purposes, because that intent "is really no more than an expression of contingency, at best an illusory promise, vastly different than a prosecutor's stated intent to use a particular statement as evidence in chief," as CPL § 710.30 requires. *Id.* The NYVRA's plain language likewise unambiguously requires that the political subdivision's intention to enact and implement a remedy, as reflected in the resolution, be meaningful, and not so conditional as to be entirely illusory, for the political subdivision to receive the benefit of the 90-day safe harbor. *See* Election Law § 17-206(7)(b), (c).

Second, the March 15 resolution fails to identify with any specificity the remedy that the Town intends to enact and implement to address the NYVRA violation alleged in the notification letter. Instead, the resolution commits only to "evaluat[ing] potential alternatives to bring the election system into compliance with the NYVRA should a potential violation be determined to exist." (NYSCEF Doc. No. 3 § 1.) While the resolution provides that the Town will "enact and implement the appropriate remedy(ies)" upon the finding of a violation (*id.* § 3) and makes a passing reference to "the composition of proposed new election districts" as a potential remedy

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(*id.* § 4), the resolution does not explain the "specific steps" or "schedule" that would be used to implement that remedy or any other alternative, as required by Election Law § 17-206(7)(b)(ii) and (iii). And, as noted above, the selection of any remedy is itself contingent on a speculative future finding of a potential violation by the Town Board.

Contrary to defendants' argument (NYSCEF Doc. No. 9 at 13–14), the NYVRA requires a political subdivision to set forth "specific steps" and a "schedule for enacting and implementing" a *particular* remedy to receive the benefit of the 90-day safe harbor. Election Law § 17-206(7)(b)(ii), (iii); *see also id.* § 17-206(7)(c) (addressing the political subdivision's "enact[ment] or implement[ation] [of] *a remedy identified in* [the] resolution" during the 90-day safe harbor or the submission of a remedy to the Attorney General) (emphasis added). Requiring such specificity makes sense because different remedies require different steps and timetables. For example, the process of designating new poll sites is dramatically different from the process for increasing the number of representatives within a governing body. *See id*. § 17-206(5)(a) (listing remedial options). It would be illogical for the Legislature to require political subdivisions to detail "specific steps" and a "schedule" without also identifying the specific remedy that will be achieved at the end of the process. In other words, a political subdivision cannot comply with the statutory requirements for a resolution by merely invoking the term "remedy"; the subdivision must instead propose a specific remedy if it wishes to retain the benefit of the 90-day safe harbor. And, of course, the requirement that the subdivision must identify a specific remedy and specific steps to be taken toward that remedy would make no sense if the subdivision were not required to affirm its intent to provide a remedy in the first place.

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II. Defendants' Interpretation of the Safe Harbor Subverts the Purposes of the NYVRA.

The NYVRA's safe harbor provisions strike a careful balance between the political subdivision's interest in investigating and remedying a potential violation outside of litigation and the prospective plaintiff's interest, as well as the broader public interest, in a speedy resolution of a potential denial or abridgment of a fundamental right. To that end, every political subdivision has 50 days after a notification letter to decide whether and how to remedy a potential NYVRA violation. However, any subsequent delay in judicial proceedings can happen only if the political subdivision meaningfully commits itself to pursuing the enactment and implementation of a specific remedy. Without reasonable assurance that a remedy for the NYVRA violation *will in fact* be enacted and implemented, the additional 90-day safe harbor risks causing unjustifiable delays in judicial remedies, even when time is of the essence. Such an interpretation would be inconsistent with the NYVRA's remedial purposes and would undermine the statute's operation.

First, adopting defendants' interpretation of the NYVRA would incentivize routine delay in voting rights cases, both by political divisions seeking to delay relief in bad faith and political subdivisions that intend, in good faith, to investigate potential violations after the initial 50-day safe harbor. Political subdivisions acting entirely in good faith may pass resolutions, like the one at issue here, that commit to no more than further investigation and consideration, even if their review and deliberations during the first 50 days have not yet progressed to the point that the political subdivision has decided it is, in fact, likely to pursue a remedy. If such resolutions were deemed sufficient, it would transform the 90-day safe harbor from a benefit provided to political subdivisions only when there is reasonable assurance of a voluntary remedy to an almost automatic entitlement irrespective of the existence of such reasonable assurance. The routine delays created by this outcome would be utterly at odds with the NYVRA's mandate for expedited judicial

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proceedings. *See* Election Law § 17-216; *Bank of Am., N.A. v. Kessler*, 39 N.Y.3d 317, 325 (2023) (statutory construction "must . . . harmonize[] all [of a statute's] interlocking provisions").

To be sure, it may take time for certain political subdivisions to investigate alleged violations and determine whether to implement a voluntary remedy or litigate. But the same is true for any litigant facing a lawsuit. Indeed, the Legislature gave favorable treatment to political subdivisions by granting them a 50-day window *not* afforded to other litigants to resolve disputes on a voluntary basis. If the Legislature had intended to give political subdivisions more than 50 days to complete this process, it could have readily done so. And if the Legislature intended for both the 50-day and the 90-day safe harbors to serve the same purpose, it could have created a single 140-day safe harbor. Political subdivisions and courts should honor the Legislature's determination to treat the safe harbors as distinct periods serving different purposes.[2]

Second, the possibility that a political subdivision might use such a resolution to obtain delay without ultimately enacting a remedy is not speculative. Last year, for example, the Town of Mount Pleasant passed a resolution substantially similar to Newburgh's, stating in almost identical terms that Mount Pleasant's Town Board intended to use the 90-day extension to the initial 50-day stay to "review and investigate" Mount Pleasant's electoral system, and "*[i]f*, after [the review], the Town concludes that there may be a violation of the NYVRA, the Town intends to enact and implement" some unspecified "appropriate remedy(ies)." (NYSCEF Doc. No. 3 in *Serratto v. Town of Mount Pleasant*, Index No. 55442/2024 (Sup. Ct., Westchester Cnty.) (emphasis added).). After Mount Pleasant passed the resolution, no lawsuit was filed for more than 90 days. Yet, Mount

[2] If a political subdivision is interested in pursuing a remedy voluntarily but requires more than 50 days to reach that decision, it may enact and implement a remedy during the pendency of a subsequent lawsuit, either unilaterally, which may moot the lawsuit, or as a settlement with the plaintiffs. Thus, faithfully applying the Legislature's safe harbor scheme would not operate to impose any unfair hardship upon political subdivisions acting in good faith.

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Pleasant never enacted and implemented a voluntary remedy during that time, leading the prospective plaintiffs to sue after having been delayed in their pursuit of a judicial remedy for months. (*See* NYSCEF Doc. No. 1 in *Serratto*.) And after the lawsuit was filed, Mount Pleasant asserted the position that it need not comply with the NYVRA on the purported basis that the statute was unconstitutional, delaying any relief further and potentially calling into question whether a voluntary remedy was ever likely. (*See* NYSCEF Doc. Nos. 8, 9 in *Serratto*.) The March 15 resolution offers no protection against Newburgh's decision to engage in similar tactics, and its April 8 resolution strongly indicates a lack of desire to resolve the issues raised in plaintiffs' notification letter expeditiously.

Third, routine 90-day delays in NYVRA lawsuits would undermine the imposition of timely judicial remedies in cases where discriminatory barriers must be quickly addressed before upcoming elections. *Cf., e.g.*, *Flores v. Town of Islip*, 382 F. Supp. 3d 197, 247 (E.D.N.Y. 2019) (in challenge to town's method of elections, denying motion for preliminary injunction because there was "simply not enough time" to implement a remedy "in time for the upcoming elections" that were "less than six months away"). And, given this delay, voters may be forced to vote in electoral systems later deemed illegal. *Cf., e.g.*, *Flores v. Town of Islip*, No. 18-CV-3549, 2020 WL 6060982, at *4 (E.D.N.Y. Oct. 14, 2020) (following denial of preliminary relief close to election, court approved post-election consent decree reflecting voting rights violation admission).

Although Election Law § 17-206(7)(f) allows plaintiffs to file suits without regard for the safe harbor in certain circumstances (see *supra* at 3), this exception does not adequately address the risk posed by misuse of resolutions. Even if certain remedies can be judicially implemented in close proximity to an election, as Section 17-206(7)(f) contemplates, that is not likely to always be so, and routine 90-day delays in NYVRA litigation may have the effect of pushing some

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remedies past the point of feasibility. The NYVRA, like all "statutes . . . related to the elective franchise," must "be construed liberally in favor of . . . ensuring that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process in registering to vote and voting." Election Law § 17-202. Any interpretation of the statute's safe harbor provisions that would increase the risk of unremedied discriminatory conditions in elections would be violative of this interpretive mandate.

CONCLUSION

The Court should deny the motion to dismiss.

Dated: April 30, 2024
New York, New York

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CERTIFICATION

In accordance with Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court, I hereby certify that the Memorandum of Law of *Amicus Curiae* Attorney General of the State of New York in Opposition to Defendants' Motion to Dismiss contains 3,336 words, exclusive of caption, cover page, and signature block, as established using the word count function of Microsoft Word.

/s/ Derek Borchardt
Derek Borchardt
Assistant Attorney General

Reply Memorandum by Defendants in Further Support of Motion, dated May 1, 2024 [pp. 194 - 208]

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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

Index No. EF002460-2024

Plaintiffs,

(Mot. Seq. 001)

-against-

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

Defendants.

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REPLY IN SUPPORT OF DEFENDANTS TOWN OF NEWBURGH AND TOWN BOARD OF THE TOWN OF NEWBURGH'S MOTION TO DISMISS THE COMPLAINT

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Defendants Town of Newburgh (the "Town") and Town Board of the Town of Newburgh (the "Town Board"), by and through their undersigned counsel, pursuant to CPLR 3211(a)(1) and 3211(a)(7), respectfully submit this Reply in support of their Motion to Dismiss the Complaint filed by Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (collectively, "Plaintiffs").

PRELIMINARY STATEMENT

This lawsuit is an unlawful attempt to undermine the 90-day safe harbor from litigation provided to localities under the John R. Lewis Voting Rights Act of New York ("NYVRA"), applicable when those localities have adopted a resolution affirming their intention to remedy a potential NYVRA violation. That is precisely what the Town Board did here. After receiving Plaintiffs' NYVRA notification letter, the Town Board adopted a Resolution that affirmed its intent to remedy any potential violation, identified specific steps for facilitating a remedy if any violation actually occurred, and set forth a schedule for enacting and implementing a remedy. Plaintiffs' primary response is to read into the NYVRA a nonsensical provision found nowhere in the statutory text: that the NYVRA mandates that a locality pre-commit to changing its election system *even if it determines, after expert study, that the system is entirely lawful*. Because nothing in the NYVRA supports such an absurd reading of the statutory text, and given that Plaintiffs' remaining arguments are similarly meritless, this Court should dismiss the Complaint.

ARGUMENT

A. As Defendants explained in their Motion, Plaintiffs filed their lawsuit in violation of the NYVRA's 90-day safe harbor provision. Dkt.9 ("Op.Br.") at 9–13. The Town Board passed a NYVRA Resolution within the statutorily prescribed time period, and that Resolution contained each of the three elements necessary to entitle the Town to a 90-day safe harbor from litigation.

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Id. First, the Resolution "affirm[s]" the Town Board's "intention to enact and implement a remedy for a potential violation of" the NYVRA. N.Y. Elec. Law § 17-206(7)(b)(i); *see* Op.Br.10–11. Second, the Resolution details the "specific steps" that the Town Board "will undertake to facilitate approval and implementation of such a remedy." N.Y. Elec. Law § 17-206(7)(b)(ii); *see* Op.Br.11. Finally, the Resolution provides a "schedule for enacting and implementing . . . a remedy," N.Y. Elec. Law § 17-206(7)(b)(iii), requiring that the NYVRA Proposal be presented to the Town Board within 10 days of the Town Board's finding that there may be a NYVRA violation, that the Town Board conduct public hearings and amend the Proposal based on public input within 30 days of that presentation, and that the Town Board approve the NYVRA Proposal and submit it to the State Attorney General within 90 days of the issuance of the Resolution. Op.Br.11–12. The NYVRA thus prohibited Plaintiffs from filing this lawsuit until the end of the 90-day statutory safe-harbor period. *See* N.Y. Elec. Law § 17-206(7)(b). They instead filed this action just 11 days after the Town Board adopted the Resolution, requiring dismissal of their lawsuit. *See* Op.Br.9–15.

B. Plaintiffs make a series of counterarguments, each of which is meritless.

First, Plaintiffs' primary argument is that the Resolution is insufficient because it "does not declare the Town's intention to enact and implement a remedy," Dkt.18 ("Resp.Br.") at 10, but Plaintiffs are legally wrong. The NYVRA requires that the resolution affirm "the political subdivision's intention to enact and implement a remedy for a *potential* violation of this title." N.Y. Elec. Law § 17-206(7)(b)(i) (emphasis added). The Resolution here complies with that requirement by expressly stating that the Town Board "intends to proactively review the Town's current at-large election system . . . and implement remedies for any potential violation of the NYVRA that may exist," Compl. Ex. B at 2, and "affirm[ing] that the Town intends to enact and implement the appropriate remed[ies]" if "the Town Board concludes that there may be a violation

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of the NYVRA," Compl. Ex. B § 2. These statements fully accord with Section 17-206(7)(b)(i)'s plain text—indeed, the Resolution uses the same language as the NYVRA. *See* Op.Br.9–13.

Plaintiffs' position appears to be that the Resolution is insufficient because the Board did not affirm that it would enact a remedy *even if the Board's retained experts conclude that there is no NYVRA violation to remedy at all*, but that is atextual and nonsensical. It is atextual, first, because the statute requires only that a political subdivision's affirmation of intent be related to a "remedy for a *potential* violation." *Id.* § 17-206(7)(b)(i) (emphasis added). The meaning of "potential" is "possible if the necessary conditions exist." *Potential*, Black's Law Dictionary (11th ed. 2019). Thus, the NYVRA only requires that a Town Board affirm its intent to implement a remedy "if the necessary conditions exist," *id.*, that is, only if the Town Board determines that the current election system is *actually* unlawful. So, it is plainly appropriate for the Resolution to premise the Town Board's intention to launch the remedial process on the outcome of its initial investigation. *See* N.Y. Elec. Law § 17-206(7)(b)(i). The rest of the NYVRA's provisions confirm that a NYVRA resolution need not definitively "commit[ ]" to remedying an alleged NYVRA violation to trigger the 90-day safe-harbor period. *Contra* Resp.Br.8, 10. The statute's provision relating to extending the statutory safe-harbor period conclusively demonstrates that there is no such requirement when a political subdivision first undertakes to adopt a NYVRA resolution. *See* N.Y. Elec. Law § 17-206(7)(d). Section 17-206(7)(d) permits a "political subdivision that has passed a NYVRA resolution [to] enter into an agreement with the prospective plaintiff providing that" the plaintiff will not commence litigation "for an additional ninety days" beyond the initial 90-day safe harbor, but only so long as the agreement "***include[s] a requirement*** that either the political subdivision ***shall*** enact and implement a remedy . . . or the political subdivision ***shall*** pass a NYVRA proposal and submit it to the civil rights bureau." *Id.* (emphases added). Put another

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way, a political subdivision is only "require[d]" to enact and implement a remedy for an alleged NYVRA resolution to avoid litigation for an "additional" 90 days. *Id.*[1] Accordingly, Plaintiffs' argument—echoed by the Attorney General in her *amicus* brief—that a NYVRA resolution must contain some "assurance" that the locality "*will in fact*" enact and implement a remedy, *see* Dkt.24 ("Amicus Br.") at 8, is meritless.

Plaintiffs' effort to rewrite the NYVRA as requiring political subdivisions to pre-commit to remedying an alleged violation, even before the subdivision has decided whether the prospective plaintiff's allegations are meritorious, is unreasonable. *See Ruttenberg v. Davidge Data Sys. Corp.*, 626 N.Y.S.2d 174, 177 (1995) (courts should avoid "unreasonable interpretation[s]" of contracts (citation omitted)). Their interpretation would, if adopted, require political subdivisions to obtain counsel and other experts, analyze the factual and legal validity of a prospective plaintiff's alleged NYVRA violation(s), determine whether a violation may exist, decide whether the political subdivision plans to remedy the alleged violation, evaluate the potential remedies available, decide on a remedy, and adopt a NYVRA resolution—all in under 50 days. *See* N.Y. Elec. Law § 17-206(7)(b) (giving political subdivisions 50 days from the date on which the NYVRA notification letter is mailed to pass a NYVRA resolution). Plaintiffs' unreasonable reading of the NYVRA

[1] The Town's interpretation of Section 17-206(7) is also perfectly consistent with the NYVRA's expedited procedure provisions. *Contra* Resp.Br.9 (citing N.Y. Elec. Law § 17-216). The NYVRA allows a prospective plaintiff to avoid the 90-day statutory safe harbor in certain limited situations not applicable here, such as where an election is scheduled to occur within the next 120 days. *See* N.Y. Elec. Law § 17-206(7)(f). Relatedly, the statute provides for expedited judicial proceedings where a plaintiff properly "seeks preliminary relief with respect to an upcoming election." *Id.* § 17-216. But in this case, Plaintiffs were statutorily required to wait until the end of the 90-day safe-harbor period to challenge the Town's response to their alleged NYVRA violation. *See id.* § 17-206(7)(b). The Attorney General's argument that adopting the Town's interpretation of Section 17-206(7)(b) would "incentivize routine delay in voting rights cases," *see* Amicus Br.8–10, is overblown; the statute merely gives localities a first shot at fixing alleged violations, while also ensuring expedited judicial review is available when time is of the essence. The Attorney General provides no support at all for her assertion that "routine 90-day delays in NYVRA litigation may have the effect of pushing some remedies past the point of feasibility." Amicus Br.10–11.

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would allow prospective plaintiffs to disrupt a political subdivision's affairs merely by mailing a NYVRA notification letter, where such letters may demand a substantial change to a locality's voting system without offering factual support for why such a change is necessary or how it might be accomplished. *See* Compl., Ex. A. So, while Plaintiffs claim that this Court "should not allow local governments to avoid prompt compliance with NYVRA by making illusory promises," Resp.Br.11, it is not at all illusory for a municipality to commit to remedy a violation if it determines there is actually a violation of the NYVRA. Rather, the Legislature reasonably determined that a political subdivision must "affirm[ ]" its "intent[ ] to enact and implement a remedy for a potential violation," N.Y. Elec. Law § 17-206(b)(i), which the Town Board did here in expressly so stating in the Resolution.[2]

The Attorney General, too, would have this Court read into the NYVRA a burdensome requirement that is nowhere suggested in the statute's plain text—namely, that a political subdivision "decide whether and how to remedy a potential NYVRA violation" within 50 days of the date on which a NYVRA notification letter is mailed. Amicus Br.8. According to the Attorney General, a locality's stated intent to remedy any potential violation is not "meaningful[ ]" absent such an implicit requirement. *Id.* at 5. Like Plaintiff, the Attorney General fails to grapple with the unreasonable burden such an implicit requirement would place on localities, where the clock will have started ticking before the town even receives the NYVRA notification letter, and where

[2] Plaintiffs' citation to contract law for its assertion that the Resolution's commitment to resolve any NYVRA violation is "illusory" is misguided. *See* Resp.Br.11. They supply no basis for relying on the substantive principles of contract law here, where this case does not involve a contract and the Town has instead asked this Court to interpret and apply the NYVRA's statutory provisions. The Attorney General's reliance on *People v. Alexander*, 2003 WL 21169075, at *5 (Poughkeepsie City Ct. May 12, 2003), is similarly inapt. *See* Amicus Br.6. That court interpreted CPL § 710.30, which requires a prosecutor to provide a criminal defendant advanced notice when it "intend[s] to offer at trial" certain evidence or testimony, holding that such notice was not required where evidence was used merely for impeachment purposes. *See Pope*, 2003 WL 21169075, at *1–5. This decision has no relevance here.

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the towns themselves may not hold any records at all relating to past elections. *See supra* pp.4–5. It could conceivably take several weeks for a town to even collect the data necessary to begin evaluating a prospective plaintiff's allegations—let alone determine the validity of those allegations and decide on a remedy. *Contra* Amicus Br.8. The NYVRA contains no extension for this less-than-50-day safe harbor; so, under the Attorney General's reading, if a locality cannot decide whether and how to remedy an alleged NYVRA violation in under 50 days, it is simply out of luck. By contrast, the Attorney General would give localities up to 180 days merely to enact and implement a predetermined remedy. *See* N.Y. Elec. Law § 17-206(7)(b), (d). That cannot be how the statute works. The fact that the Resolution allows the Town Board time to investigate Plaintiffs' allegations prior to deciding whether to enact a particular remedy does not make its intent to enact and implement a remedy for any violation any less "meaningful[ ]," *contra* Amicus Br.5, but rather ensures that any remedy is responsive to a plausible NYVRA violation.

Second, Plaintiffs' concern that the Resolution did not "identify specific steps the Town intends to take to implement a remedy," Resp.Br.12, does not call the Resolution's legality into doubt. The Resolution sets forth the "specific steps" the Town Board "shall" take to "facilitate approval and implementation" of a NYVRA remedy, one of which is to determine whether a NYVRA violation exists in the first place. *See* N.Y. Elec. Law § 17-206(7)(b)(ii); Compl. Ex. B § 12. To "facilitate" means "to assist in bringing about (a particular end or result)." *Facilitate*, Oxford English Dictionary Online (Dec. 2022).[3] A political subdivision, in turn, cannot "bring[ ] about," *id.*, a remedy without first determining whether a violation exists. If the Town Board here decides there is a violation in need of a remedy, the Resolution then commits the Town Board to several more "specific steps" intended to "facilitate" that remedy: the Town Board must prepare a

[3] Available at https://www.merriam-webster.com/dictionary/facilitate (subscription required).

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NYVRA Proposal, solicit feedback on the Proposal at public hearings, amend the Proposal as necessary, approve the completed Proposal, and submit it to the State for final approval. *See* N.Y. Elec. Law § 17-206(7(b)(ii); Compl. Ex. B. §§ 4–5. The NYVRA does not dictate what "specific steps" must entail, Op.Br.13, and each of the "steps" set forth in the Resolution are tailored to "bring[ ] about" a remedy for any potential NYVRA violation, *see Facilitate*, Oxford English Dictionary Online (Dec. 2022). And so, contrary to the Attorney General's position, the fact that the NYVRA does not expressly mention "investigating" an alleged NYVRA violation is of no moment. *See* Amicus.Br.5. The statute instead gives political subdivisions discretion to decide what "specific steps" they will take to "facilitate" a "remedy." *See* N.Y. Elec. Law § 17-206(7)(b)(ii). Although Plaintiffs suggest that the Town Board's investigation and determination as to whether a NYVRA violation exists cannot be a "specific step" under Section 17-206(7)(b)(ii) because the Town was required to conduct a "proactive analysis of its method of election prior to the March 15, 2024 resolution," Resp.Br.12, they offer no support for this purported requirement.

Plaintiffs further complain that the Resolution's post-investigation steps are "not nearly specific enough to trigger the safe harbor" for a variety of reasons, Resp.Br.12, all of which are misplaced. Plaintiffs argue that the Resolution "does not even suggest what remedies might be considered or identify experts to assist in developing remedies," Resp.Br.12, and the Attorney General echoes this position, claiming that the "the NYVRA requires a political subdivision" to identify "a *particular* remedy to receive the benefit of the 90-day safe harbor," Amicus.Br.6–7, but the NYVRA requires *no such specificity*. Section 17-206(7)(b) exclusively governs the contents of NYVRA resolutions, and nowhere does it even purport to require that the Resolution set forth what specific remedies the political subdivision may intend to consider. *See* N.Y. Elec. Law § 17-206(7). Of course, had the Legislature intended to require a political subdivision to identify the

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particular remedy it intends to implement, it would have said so.[4] Further, Plaintiffs complain that "the only specific steps for which the resolution provides are the hearings that the NYVRA already requires," Resp.12, but the NYVRA calls for a political subdivision's remedial process to involve preparing proposed remedies, holding public hearings on those remedies, revising those remedies to reflect public feedback, and submitting those remedies for state approval, N.Y. Election Law § 17-206(7)—which steps the Resolution commits the Board to undertaking here. *See* Compl. Ex. B §§ 1–5.

Relatedly, Plaintiffs contend that the Resolution's "schedule does not comply with the NYVRA" for several reasons, Resp.Br.12, but this argument also fails. The NYVRA requires a NYVRA resolution to contain "a schedule for enacting and implementing . . . a remedy" for "a potential violation" of the NYVRA. N.Y. Elec. Law 17-206(7)(b)(iii). The Resolution here complies with that requirement by providing specific deadlines for each step of the remedial process and requiring that the entire process be completed within 90 days of the Resolution's passage. Op.Br.11–12. That the Resolution does not put a specific deadline on the deliberation component is irrelevant because the NYVRA only asks that a schedule be in place for the "enact[ment] and implement[ation]" of a remedy, N.Y. Elec. Law § 17-206(b)(iii)—a process that, by definition, occurs *after* the political subdivision's deliberation has concluded. *See* Op.Br.11–12, 14. The Resolution sets forth deadlines to allow the Town Board to "enact[ ] and implement[ ]" a remedy for any potential NYVRA violation, which is all that the NYVRA requires. Compl. Ex. B § 1–5; N.Y. Election Law 17-206(7)(b).

[4] Section 17-206(7)(c) does not help the Attorney General's position, *see* Amicus Br.7, where that section contains no requirement that NYVRA resolutions identify any "specific" remedies and instead merely provides additional procedures if a political subdivisions does not remediate a NYVRA violation within 90 days following adoption of a NYVRA resolution. *See* N.Y. Elec. Law § 17-206(c).

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Plaintiffs claim that the Resolution's 90-day "schedule is completely unrealistic," Resp.13–14, but their subjective belief on this score is immaterial to Section 17-206(7)(b). In any event, the NYVRA itself recognizes that a political subdivision may need additional time to implement a remedy after determining that such a remedy is necessary, and so provides a mechanism for the political subdivision and prospective plaintiffs to agree to an "additional" 90-day safe-harbor period so long as the political subdivision definitively commits at that time to "enact and implement a remedy." N.Y. Elec. Law § 17-206(7)(d). Plaintiffs' quibbles with the specific schedule adopted in the Resolution—including that the Resolution "does not leave any time or create any mechanism for the Town Board to modify [a] NYVRA proposal based on" public input or provide enough time to draw new districts, Resp.Br.13—have no bearing on whether the Resolution complies with Section 17-206(b)(iii). These complaints are also misplaced: the Resolution calls for the Town Board to "amend[] the NYVRA Proposal based upon the public input received," as appropriate, during the 30-day public hearing period prior to the final submission of the proposal to the State, and redistricting is only one of numerous remedial options available to a political subdivision to remedy a NYVRA violation, N.Y. Elec. Law § 17-206(6).

Third, Plaintiffs argue that the Resolution is void because the Town adopted it at a meeting that was not "duly called" pursuant to Town Law § 62(2), Resp.Br.15–16, but this contention is irrelevant. Plaintiffs' argument overlooks the fact that the Town, consistent with its Home Rule power, superseded and amended Town Law § 62 to enact Chapter 27 of the Municipal Code, which governs procedures related to calling special meetings. *See* Town of Newburgh Municipal Code, § 27-1.[5] In enacting Chapter 27, the Town Board "declar[ed] its intent to regulate and amend the powers of the Supervisor to call special meetings" otherwise governed by "the Town Law of the

[5] Available at https://ecode360.com/9609548#9609548.

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State of New York, § 62," and indicated that it was exercising this authority pursuant to Municipal Home Rule Law, § 22. *See id.* Chapter 27 of the Municipal Code provides that the Supervisor of the Town Board can call a "[s]pecial meeting[ ], limited to one action item . . . by causing a written notice, specifying the time and place thereof, to be served upon each member of the Board personally at least one hour prior to the meeting," among other methods not relevant here. *Id.* § 27-3. Because Town Law § 62 does not govern the Town's notice procedures for special meetings, Plaintiffs' contention that the Resolution was not "duly noticed" under Town Law § 62 is irrelevant and should be rejected.

In any event, Plaintiffs' Complaint fails to include any factual allegations supporting their "bare legal assertion[ ]" that the special meeting at issue here was not adopted at a duly called meeting of the Town Board. *See Isnady v. Walden Preservation, L.P.*, 173 N.Y.S.3d 586, 588 (2022). The Complaint contains no factual allegations suggesting that the Supervisor of the Town Board did not serve written notice on all Town Board members at least one hour prior to the special meeting at issue, in accordance with Chapter 27. *See generally* Compl. And while Plaintiffs' response brief vaguely suggests that the Supervisor did not provide Town Board members at least two days' notice under Town Law § 62(2) prior to the special meeting, *see* Resp.Br.15, that factual allegation appears nowhere in the Complaint. So, even were the provisions of Town Law § 62(2) relevant here (which they are not), Plaintiffs fail to plead sufficiently any violation of that law or any other notice provision. *See Isnady*, 173 N.Y.S.3d at 588.

Finally, Plaintiffs argue that the Resolution "is no longer sufficient" to trigger the safe-harbor period because "the Town Board has 'suspended it,' eliminating any chance there might have been of implementing a remedy" within that period. Resp.Br.16. But this argument overlooks that it is *Plaintiffs*' action in filing this lawsuit—not the Town Board's action in

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defending it—that has disrupted the safe-harbor period to which the Town Board was statutorily entitled, stripping the Town Board of its rights under the NYVRA. *See* Op.Br.12–13. Plaintiffs cannot have it both ways: they cannot challenge the validity of the Resolution and force the Town to defend that Resolution in this Court, while at the same time demanding that the Town continue the steps detailed in the Resolution without the benefit of Section 17-206(7)'s safe harbor. *See id.* Rather, as the Town has explained, the 90-day safe harbor must start anew following the Court's dismissal of this lawsuit, to ensure the Town has a litigation-free opportunity under Section 17-206(7) to investigate the alleged NYVRA violation and enact any necessary remedy. *See id.*

CONCLUSION & RELIEF REQUESTED

This Court should grant Defendants' Motion To Dismiss The Complaint.

Respectfully submitted,

Dated: New York, New York
May 1, 2024

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum of Law in Support of Defendants Town of Newburgh and Town Board of the Town of Newburgh's Motion to Dismiss the Complaint complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum uses Times New Roman 12-point typeface and contains 3,634 words, excluding parts of the document exempted by Rule 202.8-b. As permitted, the undersigned has relied on the word count feature of this word-processing program.

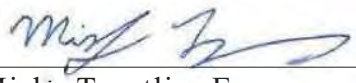
By: _____
BENNET J. MOSKOWITZ

CERTIFICATION PURSUANT TO CPLR § 2105

I, Misha Tseytlin, an attorney at law admitted to practice before the courts of the State of New York, hereby certify pursuant to Section 2105 of the CPLR that the foregoing papers constituting the Record on Appeal have been personally compared by me with the originals on file in the office of the Clerk of the Supreme Court, County of Orange, and have been found to be true and complete copies of said originals.

Dated: July 17, 2024

TROUTMAN PEPPER HAMILTON SANDERS LLP

By: 

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