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To be submitted

Supreme Court of the State of New York
Appellate Division – Second Department

No. 2024-04378

ORAL CLARKE, et al.,

Plaintiffs-Respondents,

v.

TOWN OF NEWBURGH AND TOWN BOARD OF THE TOWN OF NEWBURGH,

Defendants-Appellants.

BRIEF FOR OFFICE OF THE ATTORNEY GENERAL AS AMICUS CURIAE IN SUPPORT OF AFFIRMANCE

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INTRODUCTION AND INTERESTS OF AMICUS CURIAE

The New York State Attorney General submits this memorandum of law as amicus curiae in support of plaintiffs-appellees, who are residents of the Town of Newburgh and 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-appellants Town of Newburgh and the Town Board moved to dismiss the complaint as premature, contending that the Town was entitled to the benefit of a 90-day safe harbor from litigation pursuant to Election Law § 17-206(7)(b). Supreme Court, Orange County (Vazquez-Doles, J.) denied the Town's motion. This Court should affirm.

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, including voters, to bring judicial actions against political subdivisions, including 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.

STATEMENT OF THE CASE

A. Statutory Background

For decades, the federal Voting Rights Act of 1965 provided critical protections for the franchise nationwide. However, after a series of U.S. Supreme Court decisions that weakened the federal statute's protections, *see, e.g.*, *Shelby County v. Holder*, 570 U.S. 529 (2013), multiple States adopted "state-level enactments that provide more protection against racial discrimination in voting than does federal law." Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 Emory L.J. 299, 299 (2023). The NYVRA, enacted in 2022, was "the most ambitious"

state voting rights act in the nation at the time of its enactment, and has since been used as a model for subsequent state laws. *Id*. at 301.

Among other protections, the NYVRA allows voters, advocacy organizations, and other parties, *see* Election Law § 17-206(4), to file suit against political subdivisions in New York that have electoral systems or voting procedures that operate to deny or abridge the right of members of a protected class to vote, *id*. § 17-206(1), or that impair 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, *id*. § 17-206(2). In such cases of vote suppression or dilution, the NYVRA mandates an appropriate remedy to ensure the affected protected class has equitable access to the electoral process, such as a change in the method of election, redistricting, or otherwise. *Id*. § 17-206(5). In accordance with the Legislature's broad remedial goals, the Election Law provides that the NYVRA and all other electoral statutes "shall be construed liberally in favor of," among other aims, "ensuring voters [in protected classes] have equitable access to fully participate in the electoral process in registering to vote and voting." *Id*. § 17-202.

At issue in this appeal are provisions of the NYVRA aimed at affording political subdivisions the opportunity to "make necessary amendments to proposed election changes without needing to litigate in court." (Record on Appeal (R.) 127 (reproducing Senate Introducer's Memorandum).) 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(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*. The resolution must satisfy all three requirements to benefit from the 90-day extension to the initial 50-day safe harbor. *Id*.

If a political subdivision complies with the statutory requirements to obtain an extension of the safe harbor, it must use that period to "enact and implement such remedy" proposed in the resolution. *Id*. In certain circumstances—for example, the political subdivision lacks authority to unilaterally enact and implement the "remedy identified in [the] resolution"—it may submit a proposed remedy to the Office of the Attorney General for review, which can then, upon approval, order the remedy into effect. *Id*. § 17-206(7)(c).

The political subdivision and a prospective plaintiff may agree to extend the 90-day period by an additional 90 days, for a total of 180 days. *Id*. § 17-206(7)(d). The agreement must "include a requirement that either the political subdivision shall enact and implement a remedy that complies with this title" or the political subdivision shall 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 of commencing an action, or (ii) a political subdivision is scheduled to conduct any election within 120 days of commencing an action. *Id.* § 17-206(7)(f). In such circumstances, plaintiffs may file an action, 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. (R. 79-81.)

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." (R. 85 (§ 1).) The resolution directed that the findings of such review be reported to the Town Board within 30 days and further provided that, "[i]f, after considering the findings and evaluation 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)." (R. 85-86 (§ 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 ten days, with public hearings to follow. (R. 86 (§§ 3-4).)

On March 26, 2024, plaintiffs filed this action in Supreme Court, Orange County. (R. 45-78.) 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 plaintiffs' suit were dismissed. *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 moved to dismiss the action in Supreme Court, contending that the March 15 resolution triggered the 90-day safe harbor following the initial 50-day safe harbor under § 17-206(7)(b) of the NYVRA, and, therefore, plaintiffs' suit was premature, as it was filed prior to 90 days after the March 15 resolution. (R. 20-41.) At the same time, defendants acknowledged that the Town had "suspend[ed]" any pursuit of a voluntary remedy for plaintiffs' claims. (R. 33.)

On May 17, 2024, Supreme Court (Vazquez-Doles, J.) denied the motion. (R. 5-19.) Supreme Court held that the March 15 resolution failed to "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 the implementation." (R. 5.) As Supreme Court explained, the resolution was "bereft of any remedy" whatsoever. (R. 5-6.) "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." (R. 6.)

Defendants appealed Supreme Court's order (R. 2-3) and moved this Court, by order to show cause, to stay all trial court proceedings pending the appeal and to expedite the appeal. (Order to Show Cause

(June 10, 2024), 2d Dep't NYSCEF No. 3.) This Court denied the request for a stay but expedited the appeal. (Decision & Order (July 5, 2024), 2d Dep't NYSCEF No. 7.) In the meantime, defendants answered the complaint, asserting six affirmative defenses, including a constitutional challenge to the validity of the NYVRA. (Answer (May 28, 2024), Sup. Ct. NYSCEF No. 34.)

ARGUMENT

SUPREME COURT CORRECTLY DENIED NEWBURGH'S MOTION TO DISMISS THE COMPLAINT

Supreme Court correctly held that the March 15 resolution did not satisfy the statutory requirements for an additional 90-day safe harbor under the NYVRA. Specifically, defendants did not affirm any actual intent to enact and implement a remedy for the potential violation plaintiffs asserted in their notification letter, much less outline specific steps or a timetable for doing so. Instead, defendants merely affirmed an intent to investigate the alleged violation, with no indication that they used any of the initial 50-day safe harbor to do so. Allowing a political subdivision to delay resolution of a potential voting rights violation in such circumstances contravenes the NYVRA's text and increases the risk of unremedied

discriminatory conditions in elections contrary to the Legislature's express intent.

A. Supreme Court Correctly Held That 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 being sent a presuit notification letter. Election Law § 17-206(7)(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 a remedy for a potential violation of this title" and details "specific steps the political subdivision will undertake to facilitate approval and implementation of" and a "schedule for enacting and implementing such a remedy." *Id.* § 17-206(7)(b).

Defendants' 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 § 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, let alone specific steps or a schedule for enacting and implementing any such specific remedy.

As Supreme Court correctly held, the March 15 resolution calls for an "investigative act," not a "remedial act." (R. 15.) By its plain terms, the resolution commits defendants 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." (R. 85 (§ 1).) The resolution makes no effort to explain why defendants failed to conduct this review and investigation in the initial 50-day safe harbor period.

A commitment to "review and investigat[e]" (R. 85) is not a resolution "to enact and implement a remedy," as required to trigger the 90-day safe harbor. *See* Election Law § 17-206(7)(b). The NYVRA makes no reference to "investigating" a remedy in detailing the required elements of a resolution.

See id. "The absence of this word" or similar ones must be considered "meaningful and intentional" because "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 Is. v. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 60 (2013); *see also* Statutes § 74, 1 McKinney's Cons. Laws of N.Y. (Westlaw).

Other provisions of the safe harbor scheme underscore that a qualifying resolution must specify a particular remedy that the political subdivision intends to enact and implement. For example, § 17-206(7)(c) provides that, "within ninety days after the passage of the NYVRA resolution," a political subdivision that "lacks the authority . . . to enact or implement a remedy identified in a NYVRA resolution" may submit a proposed remedy to the Attorney General. Section 17-206(7)(c) therefore plainly contemplates that the resolution actually enumerate a particular remedy for enactment and implementation, given that a jurisdiction cannot possibly determine whether it "lacks authority" to implement an unidentified remedy to potentially be considered only later.

It is immaterial that Newburgh's March 15 resolution separately states that defendants intend "to enact and implement the appropriate

remedy(ies)" if they later conclude that there "may be" a violation of the NYVRA. (R. 85-86 (§ 2).) As Supreme Court correctly explained, the conditional nature of this promise "means that Defendants do *not* intend to enact and implement the 'appropriate remedy(ies)' unless they [later] conclude . . . that there 'may be' a violation of the NYVRA." (R. 15.) While the Legislature could have written the statute to permit a party to act solely upon a conditional intention, *see, e.g.*, *Holloway v. United States*, 526 U.S. 1, 7-12 (1999), affirming *United States v. Arnold*, 126 F.3d 82 (2d Cir. 1997), neither the text of the NYVRA nor its context or legislative history support such a reading. To the contrary, the text, context, and history of the NYVRA show that the Legislature sought to require an actual commitment to take action and not merely a commitment to take action if further investigation warranted it.

For example, *People v. Alexander* 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 to admit the statement into evidence. Ind. No. 03-28035, 2003 WL 21169075 (Poughkeepsie City Ct. May 12, 2003). The court held that the statute does not apply when a prosecutor merely expresses an intent to

potentially use the statement for impeachment purposes depending on the defendant's testimony in defense, 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*. at *5 (footnote omitted). The NYVRA's plain language likewise unambiguously requires that the political subdivision's intention to enact and implement a remedy, as reflected in a resolution passed within the first 50 days following a notification of a potential violation, be meaningful, and not so conditional as to be entirely illusory, for the political subdivision to receive the benefit of the additional 90-day safe harbor. *See* Election Law § 17-206(7)(b)-(c).

Moreover, the March 15 resolution fails to identify the "specific steps" or the "schedule" for a remedy that defendants intend to enact and implement. 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." (R. 85 (§ 1).) While the resolution provides that the Town will "enact and implement the appropriate remedy(ies)" upon the finding of a potential violation (R. 85-

86 (§ 2)) and makes a passing reference to "the composition of proposed new election districts" as a potential remedy (R. 86 (§ 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. Supreme Court correctly concluded that these open-ended promises are not sufficient under the plain text of the NYVRA. (R. 17-18.)

None of defendants' arguments to the contrary has merit.

First, defendants mistakenly contend that the NYVRA authorizes a political subdivision to unilaterally obtain a 90-day safe harbor without committing to a particular remedy because the statute requires the resolution to affirm an "intention to enact and implement a remedy for a *potential* violation." Br. for Appellants at 20 (quoting § 17-206(7)(b)(i)). The Legislature's use of the term "potential violation" merely indicates that, in the presuit posture of the safe harbor, no court has yet made a finding of an NYVRA violation. Indeed, the purpose of the presuit safe harbor is to allow political subdivisions to voluntarily remedy "potential

violations" without the predicate judicial finding of an actual violation. The statute does not, as defendants suggest, allow a political subdivision to affirm a "potential intention" to enact and implement a remedy following investigation. *See id.* at 20-21.

Second, defendants miss the mark in attempting to draw a contrast between § 17-206(7)(b), which authorizes the 90-day safe harbor upon the passage of a qualifying resolution, and § 17-206(7)(d), which allows a political subdivision and prospective plaintiff to enter an agreement to extend that safe harbor for an additional 90 days. *See* Br. for Appellants at 21-22. Defendants contend that, because § 17-206(7)(d) mandates any agreement authorizing a second 90-day extension to "include a requirement that either the political subdivision shall enact and implement a remedy that complies with this title or . . . pass a NYVRA proposal and submit it to" the Attorney General, it would be irrational to interpret § 17-206(7)(b) to contain a comparable guarantee. *See* Br. for Appellants at 21-22. Defendants fail to explain how Supreme Court's interpretation of (b) renders (d) "superfluous." *See id.* at 22. To the contrary, the provisions are entirely harmonious.

Section 17-206(7)(b) allows a political subdivision to unilaterally obtain a 90-day safe harbor (even over the objection of a potential plaintiff) by affirming in a resolution an intent to enact and implement a remedy for a potential violation. Section 17-206(7)(c) contemplates that "within ninety days after the passage" of this resolution, the political subdivision will either enact and implement a remedy or submit a proposed remedy to the Attorney General. Section 17-206(7)(d), by contrast, does not allow a political subdivision to act unilaterally and requires the consent of the potential plaintiff. Subsection (d)'s additional requirement that the political subdivision agree with the potential plaintiff to enact or implement a remedy or submit a proposal to the Attorney General in this time period is merely a way of extending the enactment and implementation process that would already be underway during § 17-206(7)(b)'s initial 90-day window.

Third, defendants mistakenly argue that the NYVRA requires a political subdivision to only set forth "specific steps" and a "schedule" for investigating a potential violation and remedy. Br. for Appellants at 25-27. To the contrary, the NYVRA requires a political subdivision to affirm its "intention to enact and implement a remedy for a potential violation

of this title," Election Law § 17-206(7)(b)(i), and to enumerate the "specific steps" and "schedule" for implementing "such a remedy," *id.* § 17-206(7)(b)(ii)-(iii). Requiring the political subdivision to enumerate remedy-specific steps and schedules makes sense because the framework and timetable for implementation differs based on the chosen remedy. 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. As Supreme Court explained, "[t]here 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." (R. 17.)

B. Defendants' Interpretation of the Safe Harbor Subverts the Purposes of the New York Voting Rights Act.

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 subdivisions 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 could 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 enact and implement a remedy. If such resolutions were deemed sufficient, it would transform the 90-day safe harbor extension 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 proceedings, Election Law § 17-216. *See* *Bank of Am., N.A. v. Kessler*, 39 N.Y.3d 317, 325 (2023) (statutory construction must "harmonize[]" a statute's "interlocking provisions").

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 safe harbor 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)." (Compl. (Jan. 9, 2024), Ex. B, NYVRA Resolution (Aug. 25, 2023), *Serratto v. Town of Mount Pleasant*, Index No. 55442/2024 (Sup. Ct. Westchester County), NYSCEF No. 3 (emphasis added).) After Mount Pleasant passed the resolution, no lawsuit was filed for more than 90 days. Yet, Mount 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* Compl., *Serratto*, NYSCEF No. 1.) And like defendants here (see *supra* at 9), Mount Pleasant has taken the position that it need not comply with the NYVRA at all because the statute is purportedly unconstitutional (*see* Answer (Jan. 29, 2024), *Serratto*, NYSCEF No. 8; Notice of Constitutional Question (Jan. 30, 2024), *Serratto*, NYSCEF No. 9), which further delayed relief and called into question whether a voluntary remedy was ever likely.

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 postelection 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 6), 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 § 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 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 [in protected classes] 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.

In response to these policy concerns, defendants respond only that it may take time for a political subdivision to investigate alleged violations and determine whether to implement a voluntary remedy or litigate. *See* Br. for Appellants at 22-23. That may be true, but defendants are wrong to claim that it is unfair to leave political subdivisions "out of luck" if they cannot complete this investigation within the 50-day safe harbor. *See id.* at 23. Any litigant facing a lawsuit faces the same burden of investigating a claim and determining how to proceed. The Legislature in fact 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, then 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, as Supreme Court did here, honor the Legislature's determination to treat the 50-day and 90-day safe harbors as distinct periods serving different purposes.

In any event, nothing in the NYVRA precludes a political subdivision from negotiating with putative plaintiffs to refrain from filing suit for any period of time beyond the 50-day safe harbor that every political subdivision automatically receives. If a political subdivision is pursuing a voluntary remedy in good faith, putative plaintiffs would have little reason to commence an action that may soon be mooted. And nothing in the NYVRA precludes the political subdivision from enacting and implementing a voluntary remedy during the pendency of a lawsuit either unilaterally or in connection with a settlement with the plaintiffs. Indeed, defendants here have had seven months to investigate plaintiffs' allegations and determine what, if any, remedy was appropriate. Instead, defendants unilaterally suspended such efforts and chose to pursue this motion instead. It is defendants' own action and not the NYVRA that leaves them "out of luck."

CONCLUSION

This Court should affirm Supreme Court's decision.

Dated: New York, New York
August 15, 2024

Respectfully submitted,

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