Court of Appeals Docket No. 2025-00110
Appellate Division, Second Judicial Department Index Number 2024-11753

Court of Appeals
State of New York

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

Plaintiffs-Respondents,

(caption continued on next page)

BRIEF OF *AMICI CURIAE* THE NEW YORK CIVIL LIBERTIES UNION, THE AMERICAN CIVIL LIBRETIES UNION, THE AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, AND THE AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA IN SUPPORT OF PLAINTIFFS-RESPONDENTS

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Dated: August 25, 2025
New York, New York

-against-

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

Defendants-Appellants,

-and-

LETITIA JAMES, Attorney General of the State of New York,

Intervenor-Respondent.

DISCLOSURE STATEMENT PURSUANT TO RULE 500.1(f)

The American Civil Liberties Union hereby discloses that it is a non-profit 501(c)(4) organization with 54 affiliates throughout the 50 states, the District of Columbia, and Puerto Rico.

The New York Civil Liberties Union, the American Civil Liberties Union of Southern California, and the American Civil Liberties Union of Northern California hereby disclose that they are non-profit 501(c)(4) organizations and affiliates of the American Civil Liberties Union.

STATEMENT OF RELATED LITIGATION PURSUANT TO RULE 500.13(a)

Amici curiae state that they are not aware of any related litigation.

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PRELIMINARY STATEMENT

The New York Legislature recognized in enacting the NYVRA that "New York has an extensive history of discrimination against racial, ethnic, and language minority groups in voting" (Senate Introducer's Mem in Support, Bill Jacket, L 2022, ch 226 at 8–9). The effects of that history remain apparent today in places like the Town of Newburgh. There, Black and Latino residents make up 40 percent of the population, but because the Town Board is elected using an at-large system and voting is racially polarized, no Black or Latino candidate of choice has ever been elected to the Board. For these Newburgh residents and any other New Yorkers who can prove their political underrepresentation is the result of vote dilution, the NYVRA provides remedies.

Defendants contend the NYVRA's vote-dilution provisions set forth an unconstitutional racial classification. *Amici* make three points to explain why that is incorrect.

First, Defendants start from the premise that a state has little to no authority to supplement federal law to address the particular forms of discrimination that affect its voters. But in our system of federalism, each state is a laboratory of democracy with the sovereign authority to devise different approaches to protect the franchise. And the New York Constitution explicitly confers on this State the authority and obligation to protect New Yorkers' right to vote. The NYVRA was enacted pursuant

to that authority, tailored to the history and present reality of discrimination in New York, and designed to prevent New Yorkers' voting rights from being compromised by retrenchment in federal doctrine.

Second, the NYVRA operates like a host of other anti-discrimination laws that protect *all* racial groups from discrimination by providing a remedy for demonstrated race-based harms. These laws include the federal Voting Rights Act and many state voting rights acts that bear a close resemblance to the NYVRA. Far from deeming these laws unconstitutional racial classifications, courts have recognized that they appropriately consider race to identify and remedy racial discrimination. Thus, Defendants' attack on the NYVRA not only runs headlong into settled law, but also threatens federal and state governments' ability to tackle racial discrimination beyond the voting context.

Third, the NYVRA's provision authorizing coalition claims—which allows multiple protected groups to collectively seek redress for vote dilution that affects them collectively—is carefully crafted to avoid constitutional concerns. It requires plaintiffs to establish that the protected groups are politically cohesive and harmed by vote dilution in the same way—and to do so through rigorous evidence. Many other state voting rights acts similarly provide for coalition claims, and most federal courts have ruled that the federal Voting Rights Act allows such claims. No court has held that coalition claims are unconstitutional.

Accordingly, this Court should reject Defendants' arguments and affirm the Appellate Division's judgment.

ARGUMENT

I. IN ENACTING THE NYVRA, NEW YORK EXERCISED ITS AUTHORITY UNDER THE STATE CONSTITUTION AND FEDERALISM PRINCIPLES TO PROTECT NEW YORKERS' RIGHT TO VOTE.

Defendants' challenge to the NYVRA is premised on a series of misconceptions. Chief among them are claims that states have minimal authority "to use voting-rights laws to remedy societal discrimination" and that state efforts to stamp out vote dilution by supplementing federal protections are constitutionally suspect (*see* Defendants-Appellants' Br. at 43, 50–51). These claims are wrong. They ignore that states have their own authority, under their state constitutions and principles of federalism, to craft anti-discrimination laws responsive to the specific threats to democratic participation that arise in their states.

It is a bedrock tenet of "Our Federalism" that states may take different approaches to realizing democratic ideals (*see e.g. Younger v Harris*, 401 US 37, 44–45 [1971]). As Justice Brandeis observed, "[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country" (*New State Ice Co. v Liebmann*, 285 US 262, 311 [1932] [Brandeis, J., dissenting]). Within this system, deference to state lawmaking is not just a

fundamental or high-minded principle; it is also a practical necessity. Granting states latitude to legislate "allows local policies 'more sensitive to the diverse needs of a heterogeneous society,' permits 'innovation and experimentation,' enables greater citizen 'involvement in democratic processes,' and makes government 'more responsive by putting the States in competition for a mobile citizenry'" (*Arizona State Legislature v Arizona Indep. Redistricting Commn.*, 576 US 787, 817 [2015], quoting *Gregory v Ashcroft*, 501 US 452, 458 [1991]).

States play a particularly important role in protecting the right to vote—a right this Court has said is "of the most fundamental significance under our constitutional structure" (*Hoehmann v Town of Clarkstown*, 40 NY3d 1, 6 [2023], quoting *Matter of Walsh v Katz*, 17 NY3d 336, 343 [2011]; *see also Reynolds v Sims*, 377 US 533, 562 [1964] ["[T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights."]). And because the nature and persistence of voting discrimination may vary from state to state, each state may craft remedies responsive to its own conditions (*see Arizona State Legislature*, 576 US at 817). Federalism accommodates that diversity.

Exercising its authority to protect its voters, New York enacted the NYVRA in 2022. Like earlier state voting rights acts in California, Oregon, Washington, and Virginia, the NYVRA builds on the federal Voting Rights Act of 1965 ("VRA") to address contemporary barriers to equal political participation (*see* Cal Elec Code

§ 14025 *et seq.*; Or Rev Stat § 255.005 *et seq.*; Wash Rev Code § 29A.92.005 *et seq.*; Va Code Ann § 24.2-125 *et seq.*). The NYVRA has since become a national model, inspiring similar legislation in other states (*see e.g.* Conn Gen Stat § 9-368i *et seq.*; Minn Stat § 200.50 *et seq.*).

The New York Legislature derived its authority to enact the NYVRA from the New York Constitution, which expressly protects the right to vote. The opening sentence of the State's Bill of Rights declares that "[n]o member of this state shall be disfranchised" (NY Const art I, § 1). And Article II, Section 1 provides that "[e]very citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people," subject only to minimal residency and age requirements (NY Const art II, § 1; *see also Hopper v Britt*, 203 NY 144, 150 [1911] ["[A]ny system of election that unnecessarily prevents the elector from voting or from voting for the candidate of his choice violates the [New York] Constitution."]). These provisions reflect a constitutional commitment to ensuring equal access to the ballot—one is distinct from the protections of the U.S. Constitution.

The NYVRA's statement of legislative purpose explicitly invokes these constitutional commands, recognizing that New York's voting-rights protections "substantially exceed the protections for the right to vote provided by the constitution of the United States" (Election Law § 17-200). Taken together, New

York's constitutional text and longstanding judicial precedent impose a duty on the State to protect and expand access to the franchise.

Federal retrenchment heightens New York's duty to safeguard voting rights. Federalism allows states to fill gaps in federal law, and the NYVRA does exactly that. The Bill Jacket explains that as federal courts have read parts of the federal VRA more narrowly and the federal government enforces its provisions less and less, New York considers it "incumbent upon states to step up and step in, and this legislation ensures voting rights will be protected in New York" (Governor's Approval Mem, Bill Jacket, L 2022, ch 226, at 5).

For example, the NYVRA responded to the erosion of federal protections by establishing a state-level preclearance regime. In *Shelby County v Holder* (570 US 529 [2013]), the U.S. Supreme Court functionally invalidated the federal preclearance framework, eliminating advance review of voting changes in jurisdictions with documented histories of racial discrimination. To fill that void, the NYVRA created its own preclearance system (*see* Election Law § 17-210). Under this system, local jurisdictions are subject to preclearance by the New York Attorney General or designated courts in carefully circumscribed circumstances that are indicia of systemic racial discrimination. These indicia include a recent history of violating voting rights laws and specified data indicating a jurisdiction has significant disparities in arrest rates between a protected class and the rest of the

electorate (*see id.* § 17-210[3]). And preclearance can be denied only if there is a finding that the proposed change will "diminish the ability of protected class members to participate in the political process and to elect their preferred candidates to office" (*id.* § 17-210[4][e][i], [5][d]). These guardrails ensure that New York's preclearance framework is tailored to realities of discrimination in New York.

Additionally, the NYVRA confers an express private right of action, safeguarding voters' access to the courts to vindicate their rights. This is particularly important in light of concerning developments in federal law. In interpreting the text of the federal VRA, one federal Circuit has called into question whether private plaintiffs can even bring vote-dilution claims under that statute. In 2023, the U.S. Court of Appeals for the Eighth Circuit held that Section 2 of the VRA does not confer a private right of action, concluding that only the U.S. Attorney General may enforce Section 2 (*Arkansas State Conference NAACP v Arkansas Bd. of Apportionment*, 86 F4th 1204 [8th Cir 2023]). The Eighth Circuit's read of the statute is an outlier[1] (*see Singleton v Allen*, 740 F Supp 3d 1138, 1156 [ND Ala 2024] [citing *Arkansas State Conference NAACP* as the "only [] case" in which a circuit court has

[1] It is also a grievously incorrect interpretation contrary to the VRA's plain text and structure; its legislative history; decades-long congressional understanding; and the reasoning of every court to address the issue, including the U.S. Supreme Court (*see e.g. Morse v Republican Party of Virginia*, 517 US 186, 232 [1996 plurality] ["[T]he existence of the private right of action under Section 2 . . . has been clearly intended by Congress since 1965."]).

held that Section 2 did not create a private right of action]).[2] If embraced by other courts, however, this flawed interpretation could eliminate the primary mechanism by which private plaintiffs have historically brought vote-dilution claims in federal court. Against that backdrop, the NYVRA leaves no ambiguity, expressly allowing New Yorkers to vindicate their voting rights in state court, regardless of how federal doctrine develops.

In short, our system of federalism allows states to formulate state-specific safeguards for their citizens' voting rights and the New York Constitution commands that New York do so. Heeding that command, the Legislature enacted the NYVRA to ensure that all New Yorkers have full access to the franchise.

II. THE NYVRA IS SIMILAR TO MYRIAD OTHER VOTING RIGHTS AND ANTI-DISCRIMINATION LAWS THAT HAVE BEEN UPHELD AS CONSTITUTIONAL.

The NYVRA works like a litany of other federal and state anti-discrimination laws: it protects *all* racial groups from discrimination by providing a remedy for demonstrated race-based harms. As with "[e]very antidiscrimination statute aimed at racial discrimination, and every enforcement measure taken under such a statute,"

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[2] *See also Robinson v Ardoin*, 86 F4th 574, 588 [5th Cir 2023] ["We conclude that . . . there is a right for these [private] Plaintiffs to bring these [Section 2] claims."]; *Alabama State Conference of NAACP v Alabama*, 949 F3d 647, 652 [11th Cir 2020] ["The VRA . . . clearly expresses an intent to allow private parties to sue the States."], *vacated on other grounds*, 141 S Ct 2618 [2021]; *Mixon v Ohio*, 193 F3d 389, 406 [6th Cir 1999] ["An individual may bring a private cause of action under Section 2 of the Voting Rights Act . . . ."].

these law "reflect a concern with race" (*Hayden v County of Nassau*, 180 F3d 42, 49 [2d Cir 1999], quoting *Raso v Lago*, 135 F3d 11, 16 [1st Cir 1998]). "That does not make such enactments or actions unlawful or automatically 'suspect' under the Equal Protection Clause" (*id.*). Indeed, these laws—many of which have been on the books for decades—have comfortably passed constitutional scrutiny. Defendants' arguments that the NYVRA erects racial classifications subject to strict scrutiny are not only wrong as a matter of settled law, but, if accepted, would upend federal and state governments' ability to redress discrimination.

A. The NYVRA is similar to the federal Voting Rights Act and other state voting rights acts.

To begin, the NYVRA shares many core features with the federal VRA and numerous other state voting rights acts. Each secures equal voting opportunities for members of all racial groups and provides a cause of action to uphold those protections.

The VRA, for example, bars discrimination in voting "on account of race or color [or membership in a language-minority group]" (52 USC §§ 10301[a], 10303[f][2]). Its coverage includes white voters (*see e.g. Harding v County of Dallas*, 2018 WL 1157166, *10 [ND Tex Mar. 5, 2018, No. 3:15-CV-0131-D], *affd*, 948 F3d 302 [5th Cir 2020]). The U.S. Supreme Court recently reaffirmed in a Section 2 case that race consciousness—as opposed to race *predominance*—does not automatically trigger strict scrutiny in redistricting (*Allen v Milligan*, 599 US 1, 30 [2023]). As the

Court explained, "Section 2 itself 'demands consideration of race'" because, to prove vote dilution has occurred, plaintiffs must show there is a remedy that improves electoral success for their racial group (*id.* at 30, 33). Indeed, "[t]hat is the whole point of the enterprise" (*id.* at 33). The Court specifically rejected the contention that plaintiffs seeking to establish liability under Section 2 "must be entirely 'blind' to race" (*id.*).

Appellate courts have also uniformly upheld state voting rights acts against equal protection challenges just like the one Defendants advance here, recognizing that these laws are race-neutral and therefore do not trigger strict scrutiny. In particular, the NYVRA contains vote-dilution provisions nearly identical to those upheld under the California Voting Rights Act ("CVRA") and the Washington Voting Rights Act ("WVRA").

First, like the CVRA and WVRA, the NYVRA protects voters who are members of any "race, color, or language-minority group" (Election Law § 17-204[5]; *see* Cal Elec Code § 14026[d]; Wash Rev Code § 29A.92.010[6]).

Second, the NYVRA, CVRA, and WVRA all define liability for vote dilution similarly. The NYVRA establishes liability where an election system 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" (Election Law § 17-206[2][a]). The WVRA similarly finds a violation when "[m]embers of a

protected class or classes do not have an equal opportunity to elect candidates of their choice as a result of the dilution . . . of the rights of members of that protected class or classes" (Wash Rev Code § 29A.92.030[1][b]). The CVRA even more closely resembles the NYVRA: it finds a violation where an election system "impairs the ability of a protected class to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the [vote] dilution" (Cal Elec Code § 14027).

Third, as with the CVRA and WVRA, a successful NYVRA plaintiff must show that the challenged election system impairs the ability of a protected group to participate equally in the political process (*see* Election Law § 17-206[2][a]; Cal Elec Code § 14026[e]; Wash Rev Code § 29A.92.030[1]). In the case of the CVRA, this requires evidence of racially polarized voting and the existence of an alternative election method that would enhance the group's ability to elect its candidates of choice (*see Pico Neighborhood Assn. v City of Santa Monica*, 534 P3d 54, 64–65 [Cal 2023]). The NYVRA requires the same showing (*see* Election Law § 17-206[2][b]; Plaintiffs-Respondents' Br. at 43).

Finally, like the CVRA and WVRA, the NYVRA departs from the federal VRA by not requiring plaintiffs to satisfy the first "*Gingles* precondition" to establish a vote-dilution claim. Under federal law, plaintiffs must show that a minority group is sufficiently large and geographically compact to form a majority in a hypothetical

single-member district (*see Thornburg v Gingles*, 478 US 30, 50 [1986]). That requirement assumes the appropriate remedy for vote dilution is always the creation of single-member districts. But that assumption does not hold under many state voting rights acts, including the NYVRA, which expressly contemplate remedies beyond single-member districts. These remedies include ranked-choice voting, cumulative voting, and limited voting (*see e.g.* Election Law §§ 17-204[1], 17-206[2][b]). In jurisdictions that may adopt these alternative measures, it makes little sense to require plaintiffs to prove at the liability phase that they could constitute a majority in a hypothetical single-member district. Instead, the NYVRA allows consideration of numerosity and compactness as "a factor in determining an appropriate remedy" (*id.* § 17-206[2][c][viii]). By doing so, the NYVRA embraces a broader and more adaptable framework for addressing vote dilution in varied electoral contexts across the state.

Courts have recognized that states are well within their constitutional authority to supplement the protections provided by the federal VRA, including by recognizing different forms of discrimination and redressing them through a wider range of remedies. The California Court of Appeal rejected an equal protection challenge against the CVRA, holding that it "does not constitute the imposition of a burden or conferral of a benefit on the basis of a racial classification" (*Sanchez v City of Modesto*, 145 Cal App 4th 660, 681 [2006]; *see also Higginson v Becerra*,

786 Fed Appx 705, 707 [9th Cir. 2019] [holding with respect to the CVRA that "[s]trict scrutiny does not apply merely because redistricting is performed with consciousness of race"], quoting *Bush v Vera*, 517 US 952, 958 [1996 plurality]). That the CVRA was designed to "address perceived inadequacies in the VRA" and therefore had "notable differences" with the federal statute (*Pico Neighborhood Assn.*, 534 P3d at 62) did not render it unconstitutional.

Likewise, the Washington Supreme Court determined that the WVRA does not violate equal protection, notwithstanding "significant differences" between it and the federal VRA in "the range of available remedies and the elements required for a successful [vote-dilution] claim" (*Portugal v Franklin County*, 530 P3d 994, 1001 [Wash. 2023], *cert denied sub nom. Gimenez v Franklin County*, 144 S Ct 1343 [2024]). The court observed that the WVRA "protects *all* Washington voters from discrimination" and "does not compel local governments to do anything based on *race*" (*id.* at 999, 1010) (emphasis in original). "Instead, the WVRA may compel local governments to change their electoral systems to remedy proven *racial discrimination*" (*id.* at 1010).

The same is true of the NYVRA. It protects *all* New Yorkers from discrimination by requiring local governments to change their electoral systems to remedy proven racial vote dilution.

B. The NYVRA is like other federal and New York state anti-discrimination laws.

Beyond the voting context, too, many state and federal anti-discrimination statutes protect plaintiffs from discrimination once they have established a race-based harm. These protections also apply to every individual regardless of race. The New York Human Rights Law prohibits racial discrimination against "any individual" in a wide array of areas including employment, housing, the use of public accommodations, and education (Executive Law § 296). Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race and "[i]ts terms are not limited to discrimination against members of any particular race" (*McDonald v Santa Fe Trail Transp. Co.*, 427 US 273, 278–279 [1976]; *see also Ames v Ohio Dept. of Youth Services*, 145 S Ct 1540, 1546 [2025] [Title VII "establish[es] the same protections for every 'individual'—without regard to that individual's member in a minority or majority group."]), and the federal Fair Housing Act's plain text prohibits housing discrimination against "any person" (42 USC § 3604).

These statutes require plaintiffs to prove the existence of a race-based harm. For example, to prevail in an employment discrimination claim under the New York Human Rights Law, a "plaintiff must show that (1) she is a member of a protected class; (2) she was qualified to hold the position; (3) she was terminated from employment or suffered another adverse employment action; and (4) the discharge

or other adverse action occurred under circumstances giving rise to an inference of discrimination" (*Forrest v Jewish Guild for the Blind*, 3 NY3d 295, 305 [2004]). The same standard is applicable under Title VII (*id.* at n 3; *see e.g. McDonnell Douglas Corp v Green*, 411 US 792, 802 [1973]). And under the Fair Housing Act, a plaintiff must establish either that "animus against the protected group was a significant factor" in the challenged decision or that a defendant's "outwardly neutral practices" produced "a significantly adverse or disproportionate impact on persons of a particular type" (*Mhany Mgmt., Inc. v County of Nassau*, 819 F3d 581, 606, 617 [2d Cir 2016]).

As with the NYVRA, though these anti-discrimination statutes "reflect a concern with race, [they are not] unlawful or automatically 'suspect' under the Equal Protection Clause" (*Hayden*, 180 F3d at 49, quoting *Raso*, 135 F3d at 16). And while "government action taken out of hostility to a racial group can be condemned out of hand . . . [it cannot be said that these statutes are] hostile to whites"—not when they, like the NYVRA, seek to protect individuals of *all* racial groups against demonstrated race-based harms (*Raso*, 135 F3d at 16, quoting *Yick Wo v Hopkins*, 118 US 356, 373–374 [1886]).

* * *

All these anti-discrimination statutes belie Defendants' contention that the NYVRA sets forth impermissible racial classifications. Accordingly, should this

Court reach the question of the NYVRA's constitutionality (*see* Plaintiffs-Respondents' Brief at 32–35), it should uphold the statute.

III. THE NYVRA'S AUTHORIZATION OF COALITION CLAIMS IS RESPONSIVE TO NEW YORK'S HISTORY OF DISCRIMINATION AND RAISES NO CONSTITUTIONAL CONCERNS.

In exercising its power to craft laws that protect the right to vote, New York borrowed from and expanded upon the federal VRA to more effectively address discrimination in this State. One way the NYVRA has been tailored to address New York's particular history of discrimination is by expressly authorizing coalition claims: suits on behalf of multiple protected groups that are (i) politically cohesive and (ii) collectively experience racial vote dilution (Election Law § 17-206[8]). This feature of the NYVRA provides a viable and constitutional remedy for these communities and is consistent with other state voting rights acts.

The NYVRA ensures coalition claims will be available only when appropriate to remedy racial vote dilution that impacts multiple protected groups in the same way. "Members of different protected classes may file an action jointly" (Election Law § 17-206[8]) if they meet an exacting standard. First, plaintiffs must produce "evidence that more than one protected class of eligible voters are politically cohesive in the political subdivision" (*id.* § 17-206[2][c][iv]). That is, the groups in the proposed coalition must be cohesive in the electoral candidates they favor. Second, the plaintiffs must "demonstrate that the combined voting preferences of the

multiple protected classes are polarized against the rest of the electorate" (*id.* § 17-206[8]). And, of course, they must ultimately prove that their "ability . . . to elect candidates of their choice or influence the outcome of elections" is impaired "as a result of vote dilution" (*id.* § 17-206[2][a]). This standard for coalition claims is no different than that for any other vote-dilution claim under the NYVRA (*see* Election Law § 17-206[2][b]), and the constitutional analysis is likewise no different.[3]

Coalition claims are nothing new. New York is just one of the growing number of states to explicitly permit them. Like the NYVRA, the Connecticut Voting Rights Act provides that "[m]embers of two or more protected classes that are politically cohesive in a municipality may jointly file such an action in such court" (Conn Gen Stat Ann § 9-368j[d]). In such actions, courts must "determine whether voting by such combined protected class members is divergent from other electors" (*id*. § 9-368j[a][2][B][i][IV]). Similarly, the Illinois Voting Rights Act provides that redistricting plans may include "coalition districts" where "more than one group of racial minorities or language minorities may form a coalition to elect the candidate of the coalition's choice" (10 Ill Comp Stat 120/5-5 [a]–[b]). The Minnesota Voting

[3] The NYVRA specifies that, for all racial vote dilution claims, evidence shall be weighted such that "evidence concerning elections for members of the governing body of the political subdivision are more probative than evidence concerning other elections," and "statistical evidence is more probative than non-statistical evidence" (Election Law § 17-206[2][c][ii]–[iii]).

Rights Act allows coalition claims by defining a "protected class" as "a class of citizens who are members of a racial, color, or language minority group, or who are members of a federally recognized Indian Tribe, *including a class of two or more such groups*" (Minn Stat Ann § 200.52[7] [emphasis added]). And the WVRA's language permitting coalition claims closely resembles New York's: "A class of people protected by this section may include a coalition of members of different racial, color, or language minority groups," provided there is "demonstrated political cohesion among the protected classes" (Wash Rev Code Ann §§ 29A.92.030[8], 29A.92.110[3]). These are all permissible legislative choices to effectuate anti-discrimination protections enshrined in state law.

Defendants claim that plaintiffs asserting vote-dilution claims under the NYVRA either cannot or ought not be able to "aggregate minority groups together in a [] 'coalition' district" (Defendants-Appellants' Br. at 49). But their only support for that claim is a recent decision of the U.S. Court of Appeals for the Fifth Circuit that says nothing about the NYVRA—nor New York legislators' decision to expressly allow coalition claims (*see Petteway v Galveston County*, 111 F4th 596, 599 [5th Cir 2024] ["conclud[ing] that coalition claims do not comport with Section 2's statutory language"]). Rather, to reach its conclusion that the federal VRA does not sanction coalition claims, the Fifth Circuit relied wholly on its analysis of the VRA's text, which is not at issue here. The same is true of the only other federal

appellate decision to agree with *Petteway* (*see Nixon v Kent County*, 76 F3d 1381, 1387 [6th Cir 1996] ["A textual analysis of § 2 reveals no word or phrase which reasonably supports combining separately protected minorities."]).[4]

[4] In fact, when the Fifth Circuit overturned its precedent last year to reach the *Petteway* holding, dissenting judges noted that beyond the Sixth Circuit, "[*a*]*ll* other circuits that have considered the issue ruled that minority coalition suits may be used to satisfy § 2" (*Petteway*, 111 F4th at 623 [Douglas, J., dissenting]). The majority of federal courts have long granted relief for plaintiffs in VRA claims brought by a coalition of minority voters. This includes the U.S. Court of Appeals for the Second Circuit, which recognized that harmed and "diverse minority groups can be combined to meet VRA litigation requirements . . . provided they are shown to be politically cohesive" (*NAACP, Spring Val. Branch v E. Ramapo Cent. School Dist.*, 462 F Supp 3d 368, 379 [SDNY 2020], *affd sub nom. Clerveaux v E. Ramapo Cent. School Dist.*, 984 F3d 213 [2d Cir 2021]; *see also Bridgeport Coalition for Fair Representation v City of Bridgeport*, 26 F3d 271, 276 [2d Cir 1994] [quoting the District Court's observation that "[c]ombining minority groups to form [majority-minority] districts is a valid means of complying with § 2 if the combination is shown to be politically cohesive" and affirming that "there is more than sufficient evidence to support a conclusion that the Coalition satisfied its burden imposed by *Gingles*"], *vacated and remanded on other grounds*, 512 US 1283 [1994]; *Holloway v City of Virginia Beach*, 531 F Supp 3d 1015 [ED Va 2021] [holding "that racial coalitions, claiming voter dilution based on race, can bring a § 2 claim because it is consistent with the language and purpose of the VRA as well as Supreme Court precedent, namely *Gingles*."], *vacated as moot on other grounds and remanded*, 42 F4th 266 [4th Cir 2022]; *Badillo v City of Stockton*, 956 F2d 884, 886 [9th Cir 1992] [recognizing that multiple groups "together could form a majority in a single-member district" where the evidence shows they "would vote in a politically cohesive manner"]; *Concerned Citizens v Hardee County Bd. of Commissioners*, 906 F2d 524 [11th Cir 1990] ["Two minority groups . . . may be a single section 2 minority if they can establish that they behave in a politically cohesive manner."]; *Huot v City of Lowell*, 280 F Supp 3d 228, 236 [D Mass 2017] [holding that coalition claims must be cognizable under the federal VRA "in order properly to serve Section 2's legislative intent of curing past discrimination"]).

These decisions are inapposite to the interpretation of state voting rights acts like the NYVRA, which have different, state-specific text. Notably, the NYVRA, unlike the federal VRA, expressly authorizes coalitions claims (*see* Election Law § 17-206[8]). And when the Washington Supreme Court upheld the facial constitutionality of the WVRA, the court acknowledged that "in direct contrast to the [federal VRA], the WVRA explicitly allows for the creation of a crossover or 'coalition' district" (*Portugal*, 530 P3d at 1002). The court thus underscored that any statutory analysis of state voting rights acts must be different from analysis of the federal VRA. That the WVRA allows such districts rightfully did not change the Washington Supreme Court's constitutional analysis that the law advanced "the State's legitimate interest in protecting Washington voters from discrimination" (*id.* at 1011).

Nor does it alter the constitutional analysis that coalition claims allow for two or more racial groups, who make out the requisite factual showing, to jointly remedy the discrimination against them. Just like other anti-discrimination laws (*see supra* Section II), the NYVRA's allowance of coalition claims occurs only when the groups establish a race-based harm that impacts them all (*see* Election Law §§ 17-206[2][c][iv], 17-206[8]). This provision is therefore an appropriate intervention to remedy the actual history of discrimination observed in the State. As the NYVRA's Introducer Memorandum explains, "New York has an extensive history of

discrimination against racial, ethnic, and language minority groups in voting" (Senate Introducer's Mem in Support, Bill Jacket, L 2022, ch 226 at 8–9). That discrimination has been aimed at and affected multiple racial groups (*id.* [finding "[t]he result is a persistent gap between white and non-white New Yorkers in political participation and elected representation" and that registration and turnout rates for non-Hispanic white New Yorkers exceeded those of Asian, Black, and Hispanic New Yorkers]).

Coalition claims present an opportunity for members of different racial groups to collectively remedy voting discrimination that they collectively face. There is no basis for this Court to prevent the Legislature from exercising its discretionary power to enact such anti-discriminatory, democracy-enhancing measures.

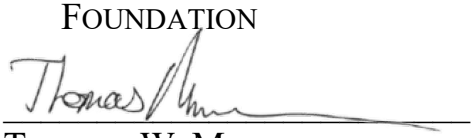
CONCLUSION

For these reasons, this Court should affirm the judgment of the Appellate Division.

Dated: August 25, 2025
New York, N.Y.

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION



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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 500.1 (j) and 500.13 (c) of the Rules of Practice of the Court of Appeals, I certify that the foregoing brief was prepared on a word processor, using 14-point Times New Roman proportionally spaced typeface. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the disclosure statement, table of contents, table of citations, certificate of compliance, and affidavit of service, is 5,162.

Dated: August 25, 2025
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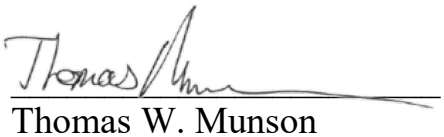

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