APL-2025-00110

State of New York
Court of Appeals

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,

-and-

LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Intervenor-Respondent.

PROPOSED BRIEF OF *AMICI CURIAE* ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND AND LATINOJUSTICE PRLDEF

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INTEREST OF *AMICI CURIAE*

Amicus Asian American Legal Defense and Education Fund ("AALDEF"), founded in 1974, is a New York-based national organization that protects and promotes the civil rights of Asian Americans. Through litigation, advocacy, education, and organizing, AALDEF focuses on critical issues affecting Asian Americans, including the right of Asian American communities across the country to cast an effective ballot and receive fair representation. AALDEF has documented the continued need for protection of Asian voters under the federal Voting Rights Act ("VRA") and litigated cases around the country seeking to protect the voting rights of language minority, limited-English-proficient, and Asian American voters. AALDEF has also litigated cases under the John R. Lewis Voting Rights Act of New York ("NYVRA") to protect the ability of Asian American communities of interest to elect candidates of their choice, including in coalition with Black and Hispanic communities, notably in lawsuits involving constitutional and statutory challenges to redistricting plans. *See*, *e.g.*, *New York Cmtys. for Change v. Cnty. of Nassau*, No. 602316-2024 (Sup. Ct., Nassau Cnty., Feb. 7, 2024); *All. of South Asian Am. Labor v. Bd. of Elections in the City of New York*, No. 1:13-cv-03732 (E.D.N.Y. July 2, 2013); *Favors v. Cuomo*, 881 F. Supp.2d 356 (E.D.N.Y. 2012); *Chinatown Voter Educ. All. v. Ravitz*, No. 1:06-cv-0913 (S.D.N.Y. Feb. 6, 2006); *Diaz v. Silver*, 978 F. Supp 96 (E.D.N.Y. 1997).

Amicus LatinoJustice PRLDEF ("LatinoJustice") (formerly known as the Puerto Rican Legal Defense and Education Fund) was founded in New York City in 1972. For over 50 years, LatinoJustice has used and challenged laws to promote a more just and equitable society by transforming harmful systems, empowering our communities, and cultivating the next generation of Latino leaders in the fight for racial justice. LatinoJustice has a long and distinguished history championing unfettered access to the ballot for Puerto Rican, Latino, and other voters not fluent in English. LatinoJustice has challenged gerrymandering and unfair electoral district maps through five decennial redistricting cycles in New York, Illinois, Florida, New Jersey, Pennsylvania, Massachusetts, and Rhode Island. The organization has a long history of defending the right to multi-lingual ballots, interpreters, and other language access tools to facilitate voting, and recently fought for and won language access for Puerto Rican and other Spanish-speaking voters in Florida and Pennsylvania. LatinoJustice's work has expanded access to multi-lingual ballots and voting information and fought discriminatory voter purges and other barriers to voting. In coalition with other organizations, LatinoJustice also has served as a watchdog against attempts to dilute Latino, Black, and Asian American voting power, most recently helping (with AALDEF and others) to secure a historic settlement in *New York Communities for Change v. County of Nassau*, remediating the county's dilution of the collective voting power of Latino, Black, and Asian

community members. *See, e.g.*, *New York Cmtys. for Change*, *supra*; *see also Trump v. New York*, No. 20-366 (Nov. 16, 2020); *ACLU of Iowa v. Schultz*, No. 14-0585 (Iowa Sept. 15, 2014); *Favors v. Cuomo*, 881 F. Supp.2d 356 (E.D.N.Y. 2012).

Both *amici* are members of the Unity Map Coalition, which consists of LatinoJustice, AALDEF, and the Center for Law and Social Justice at Medgar Evers College. For several decades, the coalition has been at the forefront of nonpartisan redistricting to protect communities of color. During the redistricting cycle in 2010-11, the coalition successfully advocated for the adoption of its historic Unity Map for the 2010 Redistricting Congressional districts in NYC, the State Senate and Assembly, and the New York City Council. In the most recent cycle, the coalition repeated its successful advocacy, leading to maps that more equitably reflect the collective electoral strength of communities of color throughout the state and New York City. *See Harkenreider v. Hochul*, Index No. E2022-0116CV, NYSCEF Doc. No. 670 at 24, 27 (Sup. Ct. Steuben Cnty., May 21, 2022). The Coalition helped to shape redistricting history in New York and serves as a model of collective advocacy and power sharing by diverse racial and cultural communities united by the recognition that communities of color are best protected when they organize and advocate together.

INTRODUCTION

Although Black and Latino communities together comprise 40 percent of the Town of Newburgh's population, no non-white candidate has ever been elected to one of Newburgh's five at-large seats on the Town Board. A.283–284. ¶¶ 9–11. Voting patterns in Newburgh have historically been racially polarized, with Newburgh's majority white voters typically aligned against Black and Latino voters' candidates of choice. A.284 ¶ 12. Plaintiffs-Respondents ("Plaintiffs") in this case are Black and Latino registered voters residing in Newburgh who jointly brought this action as a "coalition claim" under the NYVRA against the Town and Town Board of Newburgh (together, the "Town"), challenging the dilution of their ability to elect candidates of their choice or influence the outcome of elections under the Town's at-large system. A.282–283 ¶¶ 1–4. The NYVRA was designed with the express purpose of addressing patterns of discrimination like those exhibited in Newburgh, and explicitly authorizes members of more than one statutory "protected class" under § 17-204 to assert "coalition claims" where "the combined voting preferences of multiple protected classes are polarized against the rest of the electorate." § 17-206(8).

At a time when federal jurisprudence has hobbled public enforcement of the VRA and increasingly narrowed the rights that disenfranchised voters can vindicate, the ability of multiple protected classes to bring "coalition claims" is a crucial

component of the NYVRA's central mandate to redress all forms of vote dilution and, in particular, to enable minority groups that jointly suffer discrimination to obtain meaningful relief. Black and Latino voters in Newburgh share the same barriers to representation in their local government, and as a result share many of the same deleterious social, economic, environmental impacts that stem from that lack of representation. A.295–299 ¶¶ 82–95. Many multiracial minority communities across the state who live and vote together have similar stories, and it is essential to the interests of justice that they be able to bring claims together, expressing a full picture of the oppression to be remedied.

The vote-dilution provisions of the NYVRA do not sanction or afford preferences in favor of any group, but rather *prohibit* discrimination on the basis of race, color, or membership in a language-minority group, *see* Election Law §§ 17-200, 204, 206. Nor does the NYVRA mandate any explicitly race- or other minority-conscious *remedy* for proven discrimination in violation of that prohibition, *see id.* §§ 17-206(5). Here, no specific remedy has yet been ordered for this Court to review. As Plaintiffs have demonstrated and the Appellate Division correctly concluded, there is simply no basis to apply strict scrutiny to the NYVRA's vote-dilution or other antidiscrimination provisions, nor is there any basis to conclude beyond a reasonable doubt that any of the NYVRA's provisions at issue or potentially implicated in this case are facially unconstitutional.

Although the Appellate Division here did not address – or need to address – the constitutional validity of coalition claims specifically, *Amici* respectfully submit this brief to highlight the significant backdrop of Plaintiffs' coalition claim under the NYVRA and the clear constitutional validity of such claims under both the U.S. and the New York Constitutions.

FACTUAL BACKGROUND

Notwithstanding its recent profile as a national leader in civil rights legislation and enforcement, New York State has a well-established and ongoing record of discrimination against racial, ethnic, and language minority groups, including in voting and elections. *See* Erika Wood, et al., *Jim Crow in New York*, Brennan Center for Justice (Feb. 10, 2010), https://www.brennancenter.org/our-work/research-reports/jim-crow-new-york; Juan Cartagena, *Voting Rights in New York City: 1982-2006*, 17 S. Cal. L. & Social Justice 501, 502 (2008); Jeffrey Toobin, *The Problem with Voting Rights in New York*, The New Yorker (Oct. 11, 2016), https://www.newyorker.com/news/daily-comment/the-problem-with-voting-rights-in-new-york. The scale and multiple levels of New York's election system – comprising over 3,400 electoral jurisdictions including 62 counties, 62 cities, 932 towns, and over 2,400 villages and special purpose districts – raise major challenges in enforcing antidiscrimination laws concerning voting. *See John R. Lewis Voting Rights Act of New York*, NYCLU, 2 (Feb. 24, 2022),

https://www.nyclu.org/resources/policy/legislations/john-r-lewis-voting-rights-act-new-york. The broad anti-dilution provisions of the NYVRA were specifically designed to meet these challenges.

A. The Broad Scope of Redressable Violations and Express Authorization of Coalition Claims Under the NYVRA

Congress passed the federal Voting Rights Act of 1965 ("FVRA") with the purpose of dealing with "voting discrimination, not step by step, but comprehensively and finally." S. Rep. No. 97-417 (1982). Over the last 60 years, the FVRA has been used effectively to remedy a broad range of discriminatory districting and other voting practices. However, the U.S. Supreme Court's 2013 decision striking down Section 5 of the FVRA, *see Shelby Cty. v. Holder*, 570 U.S. 529 (2013), and a recent sharp retrenchment in federal courts' interpretations of Section 2 of the FVRA*, see, e.g., Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647 (2021) (severely restricting availability of vote denial claims), have increased the already significant difficulty of obtaining relief under the FVRA. Moreover, the burdensome cost and complexity and protracted length of litigation under Section 2 raise often insuperable barriers to pursuing litigation or obtaining relief in a large number of potentially meritorious cases. *See John R. Lewis Voting Rights Act of New York*, NYCLU, 6–7 (Feb. 24, 2022),

https://www.nyclu.org/resources/policy/legislations/john-r-lewis-voting-rights-act-new-york.

Partly in response to this trend, New York in 2022 followed the example of other states such as California and Washington by enacting the NYVRA, with the stated purpose of providing members of all racial and language-minority groups "an equal opportunity to participate in the political processes of the state of New York." Election Law § 17-200. Though modeled on its federal counterpart, the NYVRA incorporates additional protections against discrimination that are not available under the FVRA. *See* Governor's Approval Mem., Bill Jacket, L 2022, Ch. 226 at 5. With respect to vote dilution, the NYVRA prohibits "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." Election Law § 17-206(2)(a). A "protected class" is "a class of individuals who are members of a race, color, or language-minority group, including individuals who are members of a minimum reporting category that has ever been officially recognized by the United States census bureau." *Id.* § 17-204(5).

The NYVRA simplifies vote dilution causes of action against local political subdivisions using "at-large" election methods. *See id.* § 17-204(1) (defining "at-large"). An "at-large" election method in a political subdivision results in vote dilution when "(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." *Id.* §17-206(2)(b)(i).[1] These provisions remove the Section 2 requirement under the so-called *Gingles* test that a plaintiff must prove that the minority group at issue is sufficiently large and compact to constitute a majority in a potential district. *See Thornburgh v. Gingles,* 478 U.S. 30, 50 (1986); *Allen v. Milligan*, 599 U.S. 1, 18 (2023). Such a requirement makes no sense in an "at-large" election challenge, for which the NYVRA allows discrete remedies other than creation of new single-member district(s). *See* Election Law § 17-206(4). However, the Appellate Division in this case construed proof of "vote dilution" to constitute a separate element of the cause of action under the NYVRA, requiring a plaintiff also to demonstrate, at a minimum, the availability of "a reasonable alternative voting practice to the existing at-large electoral system" under which the protected class would have greater ability to elect its preferred candidate or influence election outcomes. Appellate Division Op. at 12 (No. 2024-11753) (quoting *Pico Neighborhood Ass'n v. City of Santa Monica*, 15 Cal.5th 292, 315 (2023)).

[1] The NYVRA also provides that vote dilution is established if a political subdivision uses "a district-based or alternative method of election other than at-large or district-based," and the plaintiff proves both (1) either (A) or (B) under § 17-206(2)(b)(i), *and* (2) that "candidates or electoral choices preferred by members of the protected class would usually be defeated." *Id.* § 17-206(2)(b)(ii). This provision is not at issue here since the Town uses an at-large method for electing the Town Board.

The NYVRA also expressly permits "coalition claims" brought jointly by members of more than one minority group:

> **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.

Election Law § 17-206(8). Thus, the NYVRA allows the Black and Latino Plaintiffs here to plead a vote dilution claim by alleging jointly that their minority groups are politically cohesive and polarized against the rest of the electorate in the Town. In contrast, as the Appellate Division noted here, federal circuit courts are split as to whether coalition claims are authorized under Section 2 of the FVRA, as a matter of statutory interpretation. *Compare Concerned Citizens of Hardee Cnty. v. Hardy Cnty. Bd. of Commrs.*, 906 F.2d 524, 526 (11th Cir. 1990) (finding that "[t]wo minority groups . . . may be a single section 2 minority if they can establish that they behave in a politically cohesive manner"); *Bridgeport Coalition for Fair Representation v. City of Bridgeport*, 26 F.3d 271, 279 (2d Cir. 1994) (same), *vacated on other grounds by Johnson v. De Grandy*, 512 U.S. 997 (1994); *Badillo v. City of Stockton*, 956 F.2d 884, 886 (9th Cir. 1992) (concluding that vote dilution claim brought by Black and Latino voters failed because the minority voters were not politically cohesive, a finding that would be unnecessary if such claims were impermissible as a matter of law), *with Petteway v. Galveston Cnty.*, 111 F.4th 596,

599 (5th Cir. 2024) (holding that Section 2 does not permit coalition claims). The Appellate Division did not address coalition claims in holding that the Town lacked capacity to challenge the facial constitutionality of the NYVRA, nor does the Town directly contend here that the NYVRA's provision allowing coalition claims is unconstitutional or renders the statute as a whole unconstitutional.

B. The Key Importance of Coalition Claims in Vindicating the Right to Vote in New York

The NYVRA's express authorization of coalition claims is a key component of the NYVRA's overarching goal to ensure that all New Yorkers have an equal opportunity to participate in and influence the outcomes of elections at all levels of state government. More than half of all New York residents live in counties in which at least two racial or linguistic minority groups each account for over ten percent of the county's population. *See* New York Profiles, Cornell Program on Applied Demographics (last visited Aug. 21, 2025), https://pad.human.cornell.edu /profiles/index.cfm. Minority groups collectively make up at least 30 percent of residents in nine of New York's 62 counties (Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, and Westchester), comprising approximately 59 percent of the State's total population. *Id.* Throughout the state,

multiple minority groups often form discrete communities of interest with common voting patterns – and common experiences of discrimination.

On top of being politically cohesive, groups bringing coalition claims often live in the same geographic area within a particular political subdivision. *See e.g., New York Cmtys. for Change v. Cnty. of Nassau*, Index No. 602316-2024, NYSCEF Doc No. 323 ¶¶ 21–24 (Sup. Ct., Nassau Cnty., Feb. 7, 2024). Throughout New York, there are multiracial communities who shop at the same stores, see the same doctors, and go to the same schools. Citizen voters in such diverse communities may share a history of immigration and take the same public transit lines to work. In short, they make up the communities that traditional redistricting principles would keep together so that their shared interests can be represented. *See Miller v. Johnson*, 515 U.S. 900, 920 (1995) ("A State is free to recognize communities that have a particular racial makeup, provided its action is directed toward some common thread of relevant interests").

Although these communities exist and often vote in tandem, they still face efforts in the state to dilute their voting power along arbitrary lines. Indeed, since the NYVRA was enacted, coalitions of minority group voters have already compiled a significant track record of success on joint claims under § 17-206(8). For example, a coalition of Black, Asian, and Latino voters in Nassau County won a major settlement adding two majority-minority districts and one district remedying

previous dilution of Asian voter influence to the County's legislative map. *New York Cmtys. for Change v. Cnty. of Nassau*, Index No. 602316-2024, NYSCEF Doc. No. 370 (Sup. Ct., Nassau Cnty., Feb. 7, 2024); *Landmark Settlement Secures Fair Voting Maps in Nassau County*, ACLU (Jan. 23, 2025 16:50 ET) https://www.aclu.org/press-releases/landmark-settlement-secures-fair-voting-maps-in-nassau-county. Prior to the settlement, the County's legislative map included only four majority-minority districts, in violation of applicable laws prohibiting racial vote dilution and partisan gerrymandering. *New York Cmtys. for Change v. Cnty. of Nassau*, Index No. 602316-2024 NYSCEF Doc. No. 2, ¶ 1 (Sup. Ct., Nassau Cnty., Feb. 7, 2024). The pre-settlement map yielded a legislature that was 79 percent white in a county that was just 57 percent white, with zero Asian or Latino legislators even though the County was 13 percent Asian and 18 percent Latino. *Id.* at NYSCEF Doc. No. 323, ¶ 137. This settlement therefore signaled significant continued reduction in the incidence of unlawful discrimination in Nassau County, which prior to the 1990s had never elected a non-white board member to its county government. Sarah Lyall, *Nassau is Sued Over Rights of Minorities*, New York Times (Sept. 25, 1991).

ARGUMENT

I. The Appellate Division Correctly Held that the NYVRA Is Not Subject to Strict Scrutiny as a Matter of Law.

The Appellate Division correctly concluded that the Town lacks capacity to challenge the NYVRA facially at this stage, on the ground that the NYVRA is not subject to strict scrutiny and will not necessarily require the Town to violate the U.S. or the New York Constitutions. In the event that this Court chooses to address the facial constitutional validity of the NYVRA's vote dilution provisions, however, those provisions – including the authorization of coalition claims as defined under section 17-206(8) – are clearly constitutional on their face under the Equal Protection Clause because they are rationally related to New York's legitimate (indeed, compelling) interest in combatting racial discrimination in voting.

To the extent that the Appellate Division reached the issue of the NYVRA's facial validity, it correctly held that the statute should be subject to review under the more lenient rational basis standard – not strict scrutiny. Contrary to the Town's argument, the law is abundantly clear that a statutory reference to race is not, by itself, a racial classification requiring an application of strict scrutiny, especially when the statute itself seeks to *redress* the problem of racial discrimination. *See e.g.*, *U.S. v. Skrmetti*, 145 S. Ct. 1816, 1830 (2025) ("[T]he mere use of [suspect classification]-based language does not sweep a statute within the reach of heightened scrutiny."); *Texas Dept. of Hous. & Cmty. Affairs v. Inclusive Cmtys.*

Project, Inc., 576 U.S. 519, 545 (2015) ("[M]ere awareness of race in attempting to solve [race-related] problems . . . does not doom that endeavor."); *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 687 (2006) ("A legislature's intent to remedy a race-related harm" simply does not "constitute[] a racially discriminatory purpose."). And "in the context of districting, . . . there is a difference 'between being aware of racial considerations and being motivated by them.' The former is permissible; the latter is usually not." *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)).

Much like Section 2 of the FVRA, which the U.S. Supreme Court recently reaffirmed as constitutional and not subject to strict scrutiny, *Milligan*, 599 U.S. at 41, the NYVRA's anti-dilution framework seeks to redress racially discriminatory voting within the state by offering protections to "protected classes," declaring that "[n]o 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." Election Law § 17-206(1)(a). The term "protected class" is defined as "a class of individuals who are members of a race, color, or language-minority group" and therefore includes members of *any* racial group, including white voters (who may constitute a minority in some electoral subdivisions). Election Law § 17-204(5). In other words, the NYVRA, like the

FVRA, does not adopt a "racial classification" that protects some racial groups to the exclusion of others. Instead, it protects the individual right to vote against racial discrimination in elections for *all* New Yorkers, regardless of their race, color, or other status.

The mere fact that the NYVRA affords protections and contemplates remedies that go beyond the scope of the FVRA does not somehow trigger strict scrutiny. For example, the NYVRA, like its sister state-level VRA's in California and Washington, allows for non-district-based remedies, such as ranked-choice voting, cumulative voting, limited voting, and the elimination of staggered terms, that go beyond the remedies prescribed by the FVRA. Election Law § 17-206(5)(a); *see also Pico Neighbord Ass'n v. City of Santa Monica*, 15 Cal. 5th 292, 317 (2023) (CVRA remedies are not "limited to district elections" and include "cumulative voting, limited voting, and ranked choice voting"); *Portugal v. Franklin Cnty.*, 1 Wash. 3d 629, 640 (2023) ("potential remedies [under the Washington VRA] include, but are not necessarily limited to, limited voting . . . cumulative voting . . . and single transferable or ranked choice voting"). While such remedies go beyond those prescribed by federal law, that does not mean that they are constitutionally suspect, much less prohibited.

In fact, the opposite is true: states going beyond the floor of federal law[2] in regulating elections is constitutionally encouraged. Indeed, the U.S. Supreme Court has made clear that because "the framers . . . intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections," *Shelby Cnty. v. Holder*, 570 U.S. 529, 543 (2013) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461–62 (1991)), the States enjoy "broad powers to determine the conditions under which the right to suffrage may be exercised," *Carrington v. Rash*, 380 U.S. 89, 91 (1965) (quoting *Lassiter v. Northampton Cnty. Bd. of Elections*, 360 U.S. 45, 50 (1959)); s*ee also* U.S. Const. Art. I, § 4 (granting the States the constitutional power to prescribe "[t]he Times, Places and Manner of holding [federal] Elections"). This includes the authority to adopt policies "to eliminate racial disparities through race-neutral means," *Tex. Dep't of Hous. & Cmty. Affairs*, 576 U.S. at 545, including protections and remedies that go beyond those prescribed by the FVRA. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (plurality opinion).

The Town's argument for strict scrutiny is founded on a fundamental logical fallacy: prohibition of all discrimination against anyone on the basis of race simply does not itself entail a racial classification. For these reasons, as well as those

[2] Federal laws are the "floor below which [local] law cannot fall." *Loeffler v. Staten Island Univ. Hosp.*, 582 F.3d 268, 278 (2d Cir. 2009). They are not the ceiling. *See Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 667 (2006) ("There is no rule that a state legislature can never extend civil rights beyond what Congress has provided").

articulated by Plaintiffs-Respondents, the NYVRA is not subject to strict scrutiny. Accordingly, to the extent this Court rules on the statute's facial validity, it should find the NYVRA constitutional because it is rationally related to New York's interest in preventing racial discrimination in voting.

II. The NYVRA's Authorization of Coalition Claims Is Crucial to its Protection of Minority Groups' Voting Rights.

One way in which the NYVRA reinforces the protections of its federal counterpart is by explicitly empowering multiple protected classes to jointly bring coalition claims, providing that "[m]embers of different protected classes may file an action jointly" if "they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate." Election Law § 17-206(8). Allowing coalition claims is crucial to accomplishing the legislature's goal of redressing invidious discrimination against minorities – of any race, color, or language group – in voting.

In keeping with that legislative purpose, the NYVRA specifically allows coalition claimants like Plaintiffs-Respondents to obtain relief for the discrimination they face without being diverted into factual inquiries that are not essential to actually demonstrating that discrimination. Instead of forcing parties to spend time and energy to collect extensive data on parties' complex racial identities and answer the difficult question of who exactly belongs to different racial groups, the NYVRA streamlines this process by focusing on what is really at issue: the discrimination

faced by the coalition as a whole. Coalition claims also help to address issues that might arise from changing demographics and understandings of racial identity that continue to evolve.[3] The background facts traditionally required by the FVRA can be difficult to establish for various reasons, including the cost and complexity of data, the overall cost of litigation to plaintiffs, and evolving understandings of racial identity. Indeed, no protected class is going to be "monolithic" in terms of how they vote and how they self-identify. Practically speaking, the NYVRA's liability framework allows cohesive racial groups who live and vote together to protect their communities, regardless of the exact racial makeup of a given coalition.

A recent success of such coalitions demonstrates why coalition claims are such an important tool in protecting voting rights in New York. In Nassau County, a coalition of Black, Latino, and Asian voters challenged the County's legislative map that included only four majority-minority districts where applicable laws against racial vote dilution and partisan gerrymandering required six such districts. *New York Cmtys. for Change v. Cnty. of Nassau*, *supra,* 2024 NYSCEF Doc. No. 2, ¶ 1. That coalition successfully forced the legislature to remedy the map by adding two majority-minority districts and one district remedying previous dilution of Asian

[3] For example, the U.S. Census Bureau only started allowing individuals to select more than one race in the year 2000. *About the Topic of Race*, U.S. Census Bureau, (Dec. 20, 2024), https://www.census.gov/topics/population/race/about.html. In the 2020 Census, more than 1.7 million New Yorkers identified as belonging to two or more races, amounting to almost one in ten people in the state. *New York, Race and Ethnicity*, U.S. Census Bureau (last visited Aug. 22, 2025), https://data.census.gov/profile/New_York?g=040XX00US36#race-and-ethnicity.

voter influence, demonstrating remarkable progress for a county that had never elected a non-white representative to its local government body prior to the 1990s. *See Id.,* NYSCEF Doc. No. 370. The NYVRA's explicit authorization of coalition claims ensured that this progress was possible.

The case at hand provides another potent example. Newburgh's Latino community makes up 15 percent of its population. A.283 ¶ 9. That community might, on its own, have trouble proving that, given fairer election practices, it would be able to elect its preferred candidate to at least one of the Town Board's five seats. By jointly bringing a claim with Newburgh's Black community, with which the Latino community has common interests, the litigants represent 40 percent of the Town's electorate, who currently lack any significant voice on the Town Board. Coalition claims allow these groups to join in establishing, as a matter of fact, that they are cohesive in their voting patterns and suffer disenfranchisement collectively as a result of the *same* discrimination impacting both groups. Groups that combine to make a coalition claim are, individually, unquestionably protected classes, so there is no logical reason why combining them to bring a single claim should weaken the protections they are afforded under either the FVRA or NYVRA. These multi-racial groups are also often cohesive, as shown by the plaintiffs in *New York Communities for Change v. Nassau County.* The NYVRA does not encourage a political marriage of convenience, but rather permits more than one minority group

that are empirically joined by common voting preferences to bring claims jointly. If these groups were prevented from bringing claims jointly, their voices might be silenced despite the fact that they are suffering the exact consequences of vote dilution that voting rights laws have sought to prevent for decades.

To require these politically cohesive groups – made up of people who, despite being of different racial backgrounds may live in the same geographic area, shop at the same stores, see the same doctors, go to the same schools, and have a shared history as a community – to litigate as if they were wholly distinct and separate, not only makes no logical sense, but in fact could lead to the exact sort of race-predominant districting that does raise constitutional concerns. While drawing a district so that it contains multiple minority groups does not inherently create a constitutional issue, particularly when the minority groups live intermingled in the same area, specifically *dividing* an area into different districts simply because a unified district would contain multiple racial groups could be an unconstitutional racial gerrymander undermining traditional redistricting principles (such as compactness or the preservation of political subdivisions and communities of interest). *See Bush v. Vera*, 517 U.S. 952, 959 (1996) (strict scrutiny applies when "legitimate districting principles [are] 'subordinated' to race," meaning race is "the predominant factor motivating the legislature's redistricting decision." (cleaned up)). And while the NYVRA offers numerous remedies beyond redistricting, there

may be circumstances where, to avoid the ill effects of racially polarized voting, it is necessary to create districts including multiple minority racial groups (a "coalition district"). *See e.g., New York Cmtys. for Change v. Cnty. of Nassau*, Index No. 602316-2024, NYSCEF Doc. No. 323 ¶ 136 (Sup. Ct., Nassau Cnty., Nov. 12, 2024) (detailing Nassau County's creation of a coalition district comprised of Black and Latino voters). Preserving a multiracial community's ability to obtain representation for its shared interests in the face of racially polarized voting is a common-sense remedy to race-based voter suppression, not an act of racial classification or sorting.

III. The NYVRA's Authorization of Coalition Claims Is Valid Under Both Federal Law and the New York Constitution.

Although the Appellate Division here did not address – or need to address – the constitutional validity of coalition claims specifically, the Town attempts to cast doubt on such claims, suggesting that plaintiffs are prohibited from "aggregat[ing] minority groups together in a so-called 'coalition' district" for purposes of alleging vote dilution. App. Br. 49, 51. But there can be no question that NYVRA's statutory allowance of such claims is authorized under both federal law and the New York constitution.

A. Coalition Claims are Valid Under Federal Law.

The Town cites *Petteway v. Galveston Cnty.*, 111 F.4th 596, 599 (5th Cir. 2024) as support for their suggestion that coalition claims should be prohibited or are somehow unconstitutional. That reliance is misplaced, as *Petteway* did not

address the *constitutionality* of coalition claims.[4] The Fifth Circuit's *Petteway* decision was based purely on a textual analysis of FVRA Section 2, not the Equal Protection Clause, concluding that "[t]he text of Section 2 does not authorize coalition claims, either expressly or by implication." *Id.* at 604. In fact, the Fifth Circuit did not engage in any analysis or inquiry regarding the constitutionality of coalition claims. *Id.* at 599 (analyzing whether "Section 2 of the Voting Rights Act authorizes coalition[]" claims). Thus, the Fifth Circuit's decision in *Petteway* is not instructive to this Court and, in any event, has no bearing on the outcome of this case.. That alone should be enough for this Court to disregard any suggestion by the Town that coalition claims are constitutionally suspect.

Moreover, the Fifth Circuit's holding in *Petteway* is in conflict with the majority of circuits that have ruled on the issue. Three circuits have held that the FVRA permits coalition claims while only two circuits have held it does not. *Contrast Concerned Citizens of Hardee Cnty. v. Hardy Cnty. Bd. of Commrs.*, 906 F.2d 524, 526 (11th Cir. 1990) (finding that "[t]wo minority groups . . . may be a single section 2 minority if they can establish that they behave in a politically cohesive manner") and *Bridgeport Coalition for Fair Representation v. City of*

[4] Somewhat confusingly, the U.S. Department of Justice recently characterized some of Texas's congressional districts as "unconstitutional 'coalition districts,'" citing *Petteway. See* U.S. Department of Justice, *Letter re Unconstitutional Race-Based Congressional Districts*, July 7, 2025. The Department of Justice did not explain why they read *Petteway* to support the apparently arbitrary conclusion that coalition districts are "unconstitutional racial gerrymanders." *Id.*

Bridgeport, 26 F.3d 271, 279 (2d Cir. 1994) (same), *vacated on other grounds by Johnson v. De Grandy*, 512 U.S. 997 (1994) and *Badillo v. City of Stockton*, 956 F.2d 884, 886 (9th Cir. 1992) (concluding that vote dilution claim brought by Black and Latino voters failed because the minority voters were not politically cohesive, a finding that would be unnecessary if such claims were impermissible as a matter of law); *with Petteway*, 111 F.4th at 599 (finding that plaintiffs may not bring coalition claims under § 2 of the FVRA) and *Nixon v. Kent Cnty*., 76 F.3d 1381 (6th Cir. 1996) (same). Additionally, although the U.S. Supreme Court has never explicitly decided whether coalitions can bring claims under Section 2 of the FVRA, the Court has referenced such claims, *see*, *e.g.*, *Growe v. Emison*, 507 U.S. 25, 41 (1993), and *allowed* them when claimants have alleged vote dilution as a constitutional violation. *See, e.g.*, *White v. Regester*, 412 U.S. 755, 769–70 (1973) (election scheme diluted the votes of Black and Hispanic voters in violation of the Fourteenth Amendment).[5]

That *Petteway* is in the minority is not surprising – the FVRA's text and purpose make clear that coalition claims are permitted under the Act. To start, nothing in the text of Section 2 bars a class comprised of voters from different protected racial, ethnic, or language minority groups from seeking relief from policies or practices that operate to deprive them of the ability to elect their jointly-

[5] *See also* Kevin Sette, *Note: Are Two Minorities Equal to One?: Minority Coalition Groups and Section 2 of the Voting Rights Act*, 88 Fordham L. Rev. 2693, 2707 n. 127 (2020) (collecting cases).

preferred candidates. To the contrary, so long as the voting rights of the class members are "deni[ed] or abridge[d] . . . on account of race or color" or language minority status, their claims fall squarely within the scope of Section 2. 52 U.S.C. §10301(a). A class comprised of members of multiple racial or ethnic groups can, for example, suffer common injury on account of their race (because they are nonwhite), on account of their color (because they do not pass for white), or on account of their language status (because they speak a common language other than English). Congress did not prohibit only policies that abridge the rights of a "single racial group" or a "class of one race of voters," and it clearly knew how to use such limiting language, which appears in other sections of the FVRA. *See*, *e.g.*, 52 U.S.C. § 10303(f)(3) ("more than five per centum of the citizens of voting age residing in [a] State or political subdivision are members of a *single* language minority") (emphasis added). Absent such limiting language, the word "class" is most naturally understood to refer to plaintiffs who "possess the same interest and suffer the same injury" – specifically, a common discriminatory injury. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–49 (2011) (citation omitted).

Further, Congress has long understood that voting policies can discriminate against multiple minority groups and has long been aware of precedent allowing multiracial classes of voters to challenge such policies. Yet Congress has never amended the FVRA to foreclose those claims. For example, in 1975 Congress

understood that minorities of different racial groups often face the same discrimination in voting, causing common injury to their voting rights on account of race. Specifically, the Senate highlighted that Texas had "a substantial minority population, comprised primarily of Mexican Americans and Blacks[,]" and a "long history of discriminating against members of both minority groups." *See* S. Rep. No. 94-295, at 25 (1975). The Senate recognized that "[e]lection law changes which dilute *minority* political power" had "effectively den[ied] Mexican American and Black voters in Texas political access." *Id.* at 27–28 (emphasis added); H. Rep. No. 94–146, at 18–20 (1975) (same). It makes no sense that Congress would identify these issues as a basis for extending the FVRA if such discrimination were beyond the reach of the FVRA's protections.

Finally, as described above, the U.S. Constitution grants the states the power to regulate elections and to go beyond the protections of the FVRA to redress racial discrimination in voting. The NYVRA's authorization of coalition claims is a valid exercise of that power. Far from discriminating against any group on the basis of race, coalition claims help ensure no minority group, *regardless of their race*, faces discrimination in voting. This is exactly what is required by the Equal Protection Clause. Unsurprisingly, no court has held that coalition claims are unconstitutional, and the fact that the Second, Ninth, and Eleventh Circuits have permitted coalition

claims under Section 2 of the FVRA suggests that there is no constitutional barrier to those claims. The U.S. Supreme Court has not held or suggested otherwise.

B. Coalition Claims Are Valid Under the New York Constitution.

As for the New York Constitution, "[t]he question in determining the constitutionality of a legislative action is [] not whether the State Constitution permits the act, but whether it prohibits it." *Stefanik v. Hochul*, 43 N.Y.3d 49, 58 (2024). As the NYVRA recognizes, New York's Constitution "substantially exceed[s] the protections for the right to vote provided by the [U.S.] constitution" and provides "guarantees of equal protection." Election Law § 17-200. And unlike the federal constitution, New York's Constitution affirmatively protects the right to vote. *See* NY Const., art. I, §1; art. II, §1. There is therefore nothing in the New York Constitution, or inherent to its protection of coalition districts, that would make any aspect of the NYVRA unconstitutional.

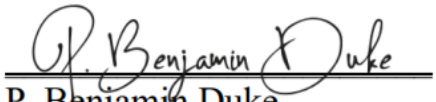
CONCLUSION

The NYVRA is constitutional, and its provision permitting coalition claims brought by more than one racial minority group is a crucial component that should be recognized as a legitimate and constitutional exercise of New York's authority to regulate elections. To the extent that this Court reaches the issue of facial validity, the constitutionality of the NYVRA's vote dilution provisions should be affirmed. At a minimum, this Court should affirm the Appellate Division's determination that

the NYVRA is not subject to strict scrutiny under the Equal Protection Clause and the Town has no capacity to raise its facial challenge to the NYVRA's constitutionality.

DATED: August 26, 2025

COVINGTON & BURLING LLP



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Respectfully submitted,

P. Benjamin Duke