State of New York
Court of Appeals

ORAL CLARKE, *et al*.,
Plaintiff-Respondents,

v.

TOWN OF NEWBURGH, *et al*.,
Defendants-Appellants.

BRIEF OF THE STATES OF CALIFORNIA, COLORADO, CONNECTICUT, MINNESOTA, OREGON, AND WASHINGTON AS *AMICI CURIAE*

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

FEDERAL STATUTES

STATE STATUTES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

OTHER AUTHORITIES

INTRODUCTION AND INTEREST OF AMICI CURIAE

The States of California, Colorado, Connecticut, Minnesota, Oregon, and Washington, as *amici curiae*, file this brief in support of Plaintiffs-Respondents and Intervenor-Respondent. Under the Constitution, "States retain the power to regulate their own elections." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992). As part of the exercise of this authority, *Amici* States have enacted laws that seek to ensure that their elections are "fair and honest and [in] some sort of order." *Storer v. Brown*, 415 U.S. 724, 729 (1974). This includes laws that seek to ensure equal access to the ballot and to prevent discrimination in administering elections.

Amici States California, Colorado, Connecticut, Minnesota, Oregon, and Washington have each enacted their own state voting rights act similar to the New York law at issue in this case. Each of these laws is unique and responsive to the specific needs of the enacting State. At the same time, these laws share common features with each other and with New York's law. Each law provides protections from discriminatory vote dilution that track but extend beyond those afforded by the federal Voting Rights Act. Each law authorizes multiple possible remedies for proven vote dilution, allowing a locality to select a remedy that is tailored to its unique circumstances. And each law evenhandedly protects members of *every* racial group within the State.

In *Amici*'s experience, these laws have proven an important—and constitutional—tool for addressing discriminatory vote dilution. The Appellate Division correctly recognized that such race-neutral protections against discrimination do not violate the Equal Protection Clause of the U.S. Constitution. Accordingly, *Amici* States urge this Court to affirm the decision below and hold that New York's Voting Rights Act is constitutional.[1]

ARGUMENT

The Supreme Court has long recognized that the right to vote "can be affected by a *dilution* of voting power as well as by an absolute prohibition on casting a ballot." *Shaw v. Reno*, 509 U.S. 630, 640 (1993) (quoting *Allen v. State Bd. of Elections*, 393 U.S. 544, 569 (1969)). The federal Voting Rights Act of 1965 thus prohibits discriminatory vote dilution. So, too, do state laws. Like New York, *Amici* States have enacted their own state voting rights acts that prohibit discriminatory vote dilution. The first such law to pass was California's Voting Rights Act, enacted in 2002. Since then, seven other states, including New York, have passed state

[1] No counsel for any party authored this brief in part or in whole and no entity or person, other than *amici* and their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

voting rights acts that specifically address discriminatory vote dilution: Colorado, Connecticut, Minnesota, Oregon, Virginia, and Washington.[2]

While *Amici* States' laws are not identical, they contain many similarities. Like New York's law, all of these laws provide protections against discriminatory vote dilution that draw from and build upon the federal Voting Rights Act. Like New York's law, these laws evenhandedly protect citizens of *all* races, without singling out individuals of a particular race for differential treatment or special benefits. And like New York's law, these laws provide for constitutional remedies, whether in the form of drawing new districts or implementing other non-districting remedies, to resolve proven violations. In the experience of *Amici* States California, Colorado, Connecticut, Minnesota, Oregon, and Washington, these laws are important and constitutional tools for eliminating discriminatory vote dilution and ensuring equal access to voting.

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[2] In addition, Illinois has enacted a law that requires "crossover districts," "influence districts," and "coalition districts," to be drawn when conducting redistricting. *See* 10 Ill. Comp. Stat. § 120/5-5. Several states have also introduced, but not enacted, voting rights acts similar to New York's and *Amici*'s in recent years. *See* Nat'l Conf. of State Legislatures, *State Voting Rights Acts*, https://www.ncsl.org/elections-and-campaigns/state-voting-rights-acts (last updated June 4, 2025) (last visited Aug. 25, 2025).

I. STATE VOTING RIGHTS ACTS BUILD UPON THE PROTECTIONS OF FEDERAL LAW

Amici States' voting rights acts build upon federal law's protections against discriminatory vote dilution. Section 2 of the federal Voting Rights Act provides that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). A violation of this prohibition "is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" because members of a protected class "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b).

The Supreme Court has recognized that discriminatory vote dilution violates the protections of the federal Voting Rights Act. Such vote dilution occurs when "a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality" in a protected class's ability "to elect their preferred representatives." *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986). In particular, "multimember districts and at-large voting schemes may 'operate to minimize or cancel out the voting strength" of the protected class. *Id.* (citation

omitted). Federal courts apply a three-part test, known as the *Gingles* factors, to determine when discriminatory vote dilution that violates the federal Voting Rights Act has occurred. First, the protected class "must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district." *Id.* at 50. Second, the protected class "must be able to show that it is politically cohesive." *Id.* at 51. Third, the protected class "must be able to demonstrate that the . . . majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.*

Amici States have also each enacted their own state voting rights act that, like the federal Voting Rights Act, prohibit discriminatory race dilution. These laws are by no means identical. For instance, some (but not all) prohibit vote dilution that impairs a protected class's ability to influence the outcome of an election as well as to elect candidates of the class's choice. *Compare, e.g.*, Cal. Elec. Code § 14027 *and* Conn. Gen. Stat. § 9-368j(b)(1), *with* Minn. Stat. § 200.54, subd. (2)(a) *and* Wash. Rev. Code § 29A.92.020. The former provide broader protection against discriminatory vote dilution because "a protected class's ability to influence the outcome of an election could include, for example, 'forming a coalition with another group to elect a candidate acceptable to each' or 'blocking an unacceptable candidate.'" *Pico Neighborhood Ass'n v. City of Santa Monica*, 15 Cal. 5th 292, 324 (2023). Some (but not all) permit two or more protected classes to aggregate

their claims together in a single action to remedy discriminatory vote dilution. *See* Minn. Stat. §§ 200.52, subd. (7), 200.54, subd. (2)(e); Conn. Gen. Stat. § 9-368j(d). Some apply only to educational board elections, while others apply broadly to all municipal board elections. *Compare* Or. Rev. Stat. §§ 255.400(1), 255.405(1), *with, e.g.*, Conn. Gen. Stat. §§ 9-368i(a)(7), 9-368j(a). Some apply only to at-large methods of election that result in discriminatory vote dilution, while others apply to any method of election that causes such vote dilution. *Compare* Cal. Elec. Code § 14027, *with, e.g.*, Minn Stat. § 200.54, subd. (2)(a).

Despite their variance, each of these laws draws from and builds upon the protections accorded by the federal Voting Rights Act in several key ways. First, like New York's law at issue here, every act applies to protect members of *all* races evenly. All of the laws prohibit practices with a discriminatory impact on a "protected class" and define a "protected class" as a class of voters who are members of a race, color, or language minority group, tracking (or even expressly incorporating) the definition of "protected class" in the federal Voting Rights Act.[3]

Second, like New York's law, each of *Amici* States' laws do not require that a plaintiff demonstrate the first *Gingles* factor is met in order to establish

[3] *See* Cal. Elec. Code § 14026(d)(7); Colo. Rev. Stat. § 1-47-103(23); Conn. Gen. Stat. § 9-368i(a)(9); Minn. Stat. § 200.52, subd. (7); Or. Rev. Stat. § 255.400(3); Wash Rev. Code § 29A.92.010(6); *see also* Va. Code § 24.2-125.

discriminatory vote dilution that violates the State's law. The laws enacted in California, Colorado, Minnesota, Oregon, and Washington all specifically provide that the fact that members of a protected class are not geographically compact or concentrated cannot preclude a finding of a violation—an express decision not to adopt the first *Gingles* factor as a prerequisite for establishing a violation of state law. *See* Cal. Elec. Code § 14028(c); Colo. Rev. Stat. § 1-47-205(4); Minn. Stat. § 200.54, subd. (2)(d); Or. Rev. Stat. § 255.411(4); Wash. Rev. Code § 29A.92.030(5); *see also* Va. Code § 24.2-130(B). The law in Connecticut does so indirectly by spelling out the precise requirements to demonstrate impermissible vote dilution—requirements that do not include a showing of geographical compactness or concentration. *See* Conn. Stat. § 9-368j(b)(2).

Third, like New York's law, each act allows for the implementation of an appropriate remedy to address a proven instance of discriminatory vote dilution and does not limit courts solely to drawing districts as a remedy. For instance, Connecticut's law specifies that appropriate remedies include changing to a district-based method of election, eliminating staggered elections, increasing the size of the legislative body, adding additional voting days or hours, adding additional polling places, or adding additional methods for returning ballots. Conn. Gen. Stat. § 9-368j(e)(1). The laws in California, Oregon, and Washington state that a court may impose an appropriate remedy that will cure the violation, including but not limited

to imposing a new or revised district-based system of election. *See* Cal. Elec. Code § 14029; Or. Rev. Stat. § 255.411(8)(a); Wash. Rev. Code § 29A.92.110(1). Both the California Supreme Court and the Washington Supreme Court have interpreted this language in their State's laws to allow for the implementation of lawful, appropriate non-districting remedies. *Pico Neighborhood Ass'n*, 15 Cal. 5th at 317; *Portugal v. Franklin County*, 1 Wash. 3d 629, 640 (2023). Finally, the laws of Minnesota and Colorado direct a court to "order remedies that are tailored to best mitigate the violation," and nowhere specify that the remedy must be drawing districts. Minn. Stat. § 200.58; *see also* Colo. Rev. Stat. § 1-47-206(2)(a) ("court shall order appropriate remedies that are tailored to address the violation"); Va. Code § 24.2-130(D) ("court shall implement appropriate remedies that are tailored to remedy the violation").

That *Amici* States' laws are not limited to districting remedies makes complete sense. Depending on the specific circumstances of the locality and election system at issue, redistricting may *not* be a proper remedy for any discriminatory vote dilution. For instance, consider a locality with a protected class that constitutes 30% of the population. If the protected class is evenly dispersed geographically throughout the locality, it may not be possible to draw districts that will ensure the protected class has an equal opportunity to elect a candidate of their choice or to influence electoral outcomes. Under this particular hypothetical, drawing districts

would not be a remedy that would be tailored to address any existing discriminatory vote dilution. *See Pico Neighborhood Association*, 15 Cal. 5th at 322 ("To replace at-large with district elections under a dilution theory, a successful plaintiff must show . . . that the incremental gain in the class's ability to elect its candidate of choice in such districts would not be offset by a loss of the class's potential to elect its candidates of choice elsewhere in the locality."). In contrast, if the locality instead conducts an election for four or more at-large members at once, the protected class will likely be able to elect one of the four members——indicating that alternative, non-districting remedies are instead appropriate to remedy any violation of law in this hypothetical scenario.

Thus, *Amici* States' laws allow for the flexibility needed to address discriminatory vote dilution in the vast range of situations where it arises. Indeed, in analyzing whether such vote dilution exists, many of these laws require or permit courts to take account of a wide range of factors related to the relevant locality and its circumstances. *E.g.*, Minn. Stat. § 200.55, subd. (1) (probative factors include locality's history of past discrimination, whether members of the protected class have previously been elected to office, and the extent that protected class members face hostility or barriers while campaigning due to their membership in a protected class); Or. Rev. Stat. § 255.411(7) (probative factors include the locality's history of discrimination, denial of access to the processes that determine which candidates

receive funding, and the use of racial appeals in campaigns). Given the wide range of demographics within and between *Amici* States, it is necessary that States have the flexibility to adopt laws that respond to and account for the unique circumstances that they face. In enacting their respective laws, *Amici* States have sought to expand protection against discriminatory vote dilution in a way that allows for such flexibility.

Amici States' experience in implementing their laws has shown they are useful tools for addressing discriminatory vote dilution. The experience in California since the passage of the California Voting Rights Act is illustrative. In the more than 20 years since its passage, the Act has had a profound impact on elections throughout the state. One paper from 2018 found that approximately 195 local governmental boards changed their electoral system following the Act's passage.[4] These changes have yielded tangible results: multiple scholarly analyses have found that the diversity of representation in governing boards has increased following these

[4] David C. Powell, *The California Voting Rights Act and Local Governments*, 10 Cal. J. Politics & Policy, no. 2, 2018, at 4, *available at* https://escholarship.org/content/qt031405xr/qt031405xr.pdf (last accessed Aug. 25, 2025); *see also* Justin Levitt et al., Rose Institute of State and Local Government, *Quiet Revolution in Local Government Gains Momentum* (Nov. 3, 2016), at 1, *available at* https://s10294.pcdn.co/wp-content/uploads/2016/11/CVRA-White-Paper-2.pdf (last accessed Aug. 25 2025).

changes to electoral systems, particularly for Latinos.[5] One paper found that this result was more pronounced in localities with a high Latino population, suggesting the changes in electoral system have indeed remediated practices with a discriminatory impact on the voting power of a protected class.[6] In addition, research also indicates that the turnout gap between White voters and Latino and Asian voters has decreased in localities that adopted changes.[7] Overall, the California experience highlights the utility of state voting rights acts in remediating discriminatory vote dilution and ensuring equality of access to elections.

II. STATE VOTING RIGHTS ACTS EXPANDING PROTECTIONS AGAINST DISCRIMINATORY VOTE DILUTION ARE CONSTITUTIONAL

As courts have uniformly recognized, state voting rights acts with the features common to New York's law and those of *Amici* States do not violate equal protection. *See Higginson v. Becerra*, 786 F. App'x 705, 707 (9th Cir. 2019) (rejecting facial

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[5] Levitt et al., *supra* n.4, at 2-5; Olivier Richomme, *'Fair' Minority Representation and the California Voting Rights Act*, 20 Nat'l Political Sci. Rev. 55, 62-64 (2020), *available at* https://hal.science/hal-03878337v1/document (last accessed Aug. 25, 2025); Loren Collingwood & Sean Long, *Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act*, 57 Urban Affairs Rev. 731, 734, 757 (2019).

[6] Collingwood & Long, *supra* n.5, at 734, 757.

[7] Zachary L. Hertz, *Does a Switch to By-District Elections Reduce Racial Turnout Disparities in Local Elections? The Impact of the California Voting Rights Act*, 22 Election L.J.: Rules, Politics & Policy 213, 224-225 (2023), *available at* https://www.liebertpub.com/doi/full/10.1089/elj.2022.0023 (last accessed Aug. 25, 2025).

equal protection challenge to California Voting Rights Act); *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 680 (2006) (same); *Portugal*, 1 Wash. 3d at 661 (rejecting facial equal protection challenge to Washington Voting Rights Act). Such statutes do not distribute benefits or burdens on the basis of race—instead, they evenhandedly protect members of *all* races and equally protect *all* citizens regardless of their race or ethnicity. As discussed above, New York's law and *Amici* States' laws adopt a definition of "protected class" that does not distinguish between different racial or ethnic groups, impose differential treatment on individuals of different races, or grant special benefits or burdens solely to specific races. *See supra* at 6. Rather, all citizens within *Amici* States are equally protected against discriminatory vote dilution and can seek to remediate such dilution when it exists. That is precisely the sort of race-neutral anti-discrimination protection that accords with, not violates, Equal Protection.

Unsurprisingly, courts have thus uniformly rejected challenges to state voting rights acts on this basis. The Washington Supreme Court has held that Washington's voting rights act does not facially violate Equal Protection. *Portugal*, 1 Wash. 3d at 661. It explained that the statute "does not classify voters on the basis of race, nor does it deprive anyone of the fundamental right to vote." *Id.* at 658. On the contrary, the law "mandates *equal* voting opportunities for members of every race, color, and language minority group." *Id.* So, too, have the California Court of Appeal and the

Ninth Circuit rejected challenges to California's voting rights act, for similar reasons. The California Court of Appeal explained that California's Voting Rights Act "confers on members of any racial group a cause of action to seek redress for a race-based harm, vote dilution," which "does not constitute the imposition of a burden or conferral of a benefit on the basis of a racial classification." *Sanchez*, 145 Cal. App. at 681; *see also Higginson*, 786 F. App'x at 706-707. Thus, the Court of Appeal distinguished the California law from the policies challenged in cases such as *Johnson v. California*, 543 U.S. 499 (2005), which "classif[ied] individuals by race and then impos[ed] some kind of burden or benefit on the basis of the classification," even though "persons of all races b[ore] the burden or receive[d] the benefit equally." *Sanchez*, 145 Cal. App. 4th at 680. Were it otherwise, the Court of Appeal observed, "every law . . . that creates liability for race-based harm" would also be a race-based law subject to strict scrutiny, including the federal Voting Rights Act and federal Civil Rights Act. *Id.* at 681. As these courts have recognized, race-neutral laws such as *Amici* States' do not trigger strict scrutiny and clearly survive rational basis review. *See Portugal*, 1 Wash. 3d at 658; *Sanchez*, 145 Cal. App. 4th at 680; *Higginson*, 768 F. App'x at 707.

To the extent that these laws do not adopt or incorporate the first *Gingles* factor as a requirement to establish a violation, *see supra* at 6-7, that does not render them unconstitutional. The U.S. Supreme Court has never suggested that the three

Gingles factors are constitutionally imposed. Rather, its case law grounds the factors in an interpretation of the text of the federal Voting Rights Act. As the Court has explained, "[e]ach *Gingles* precondition serves a different purpose" connected to the text of the federal Voting Right Act. *Allen v. Milligan*, 599 U.S. 1, 18 (2023). The first *Gingles* factor "is 'needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district.'" *Id.* (citation omitted). After all, the text of the federal Voting Rights Act prohibits vote dilution that impairs a protected class's ability to elect members of its own choice, thereby grounding the *Gingles* factors in that Act's text, not any constitutional provisions. Supreme Court precedent has never suggested that the *Gingles* factors are constitutionally mandated, rather than arising from the Court's statutory interpretation of the Voting Rights Act's text.

Nor is it the case that a locality implementing a remedy for a violation of a state law—including a districting remedy—must necessarily violate Equal Protection. For one, as discussed above, *Amici* States' laws do not limit the remedies a court may implement solely to drawing districts. *See supra* at 7-8. Rather, courts are authorized to implement a remedy that is appropriate for the particular locality at issue—which, under the particular circumstances a court confronts, may or may not be drawing districts. *See supra* at 8-9. Alternative remedies may include staggering (or un-staggering) at-large elections or expanding the size of a board. *See*

Conn. Gen. Stat. § 9-368j(e)(1). Other options include implementing alternative election systems such as ranked choice voting, limited voting, or cumulative voting when such systems are permitted under state law. *See Portugal*, 1 Wash. 3d at 629; *Pico Neighborhood Ass'n*, 15 Cal. 5th at 317.[8] Such race-neutral remedies do not raise Equal Protection concerns. *See Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 545 (2015) (government should strive to "eliminate racial disparities through race-neutral means").

And even if a court were to direct a locality to draw districts as a remedy, *Amici* States' laws do not permit the court or locality to draw districts in a manner that offends equal protection. On the contrary, if a locality does draw districts to comply with a court-imposed remedy, it must draw them in a manner that accords with the Constitution—otherwise the remedy would hardly be an "appropriate" one. *See Pico Neighborhood Ass'n*, 15 Cal. 5th at 322-323. To the extent a case arises where districts are believed to have been drawn in violation of Equal Protection, affected voters can of course challenge the allegedly unconstitutional districts. But a *remedy* is distinct from a *violation*, and an unconstitutional remedy does not

[8] Under ranked choice voting, a voter ranks candidates in order of preference and their vote is transferred to a lower-ranked candidate who was not elected on first-placed votes if open seats remain after considering first-placed votes. *See Portugal*, 1 Wash. 3d at 640. Under cumulative voting, a voter may cast multiple votes for a single candidate. *Id.* Under limited voting, a voter receives fewer votes than there are open positions to elect. *Id.*

ordinarily undermine a separate finding that a violation has occurred. *See, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 579 (2005) (holding sentence of death for minor criminal defendant unconstitutional but not disturbing conviction); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 412 (2003) (holding punitive damages award unconstitutional but not disturbing finding of liability). Thus the fact that a scenario *could* occur where a locality draws districts in violation of equal protection to remedy discriminatory vote dilution—though petitioner does not identify a single case where such a scenario *has* occurred—does not render state voting rights acts unconstitutional. Instead, as courts addressing such challenges have uniformly recognized, such laws are constitutional race-neutral methods for addressing discriminatory election practices. *See supra* at 11-13.

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CONCLUSION

State voting rights acts such as *Amici* States' and New York's are important tools to address discriminatory vote dilution that impairs the ability of a protected class to elect candidates of its choice or influence electoral outcomes. Such race-neutral protections, like the plethora of other laws that evenhandedly prohibit discrimination or seek to remedy discrimination through race-neutral means, do not offend Equal Protection. This Court should affirm the decision below and uphold the validity of the law challenged here.

Dated: August 26, 2025

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CERTIFICATE OF COMPLIANCE

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Court: State of New York, Court of Appeals
Case Name: ORAL CLARKE, et al. v. TOWN OF NEWBURGH, et al.
Case No.: APL-2025-00110

I, Vanessa Jordan, declare:

1. I am over the age of 18 years, and I am not a party to this matter.
2. I am employed by the Office of the Attorney General of the State of California. My business address is: 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004.
3. On September 17, 2025, I served two (2) copies of the following document:

"BRIEF OF THE STATES OF CALIFORNIA, COLORADO, CONNECTICUT, MINNESOTA, OREGON, AND WASHINGTON AS *AMICI CURIAE*"

to the parties via overnight delivery, by placing true copies thereof enclosed in sealed envelopes with the FedEx Overnight Courier Service, addressed to the attorneys listed on the attached "Service List."

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. This declaration was executed on September 17, 2025, at San Francisco, California.

Vanessa Jordan	Vanessa Jordan
Declarant	Signature

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