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Court of Appeals

State of New York

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.

BRIEF OF AMICUS CURIAE NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. IN SUPPORT OF PLAINTIFFS-RESPONDENTS

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STATEMENTS

Pursuant to 22 NYCCR §§ 500.1(f) and 500.13(a), movant NAACP Legal Defense & Educational Fund, Inc., is a 501(c)(3) nonprofit organization and has no parent corporations or other publicly traded or held corporations that own 10% or more of its stock.

Pursuant to 22 § 500.23(a)(4)(iii), no party's counsel contributed content to the brief or participated in the preparation of the brief in any other manner. Movant also certificates that no party, party's counsel, or person or entity other than Movant or Movant's counsel contributed money that was intended to fund preparation or submission of the brief.

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QUESTION PRESENTED

1. Whether the opinion and order of the Second Judicial Department dated January 30, 2025, reversing, on the law, the grant of summary judgment to Defendant Town of Newburgh and holding the John R. Lewis Voting Rights Act of New York constitutional in its entirety was properly made?

ARGUMENT

The John R. Lewis Voting Rights Act of New York, also referred to as the New York Voting Rights Act ("NYVRA"), is a comprehensive statute designed to safeguard the right to vote and ensure that all voters have an equal and fair opportunity to participate in the democratic process. To safeguard this critical legislation for the people of New York, this Court should affirm the decision of the Appellate Division, Second Department, and hold that the NYVRA is constitutional and does not run afoul of the Equal Protection Clause of the Fourteenth Amendment. Any decision to the contrary would misinterpret U.S. constitutional and statutory law and precedent. This *amicus* brief addresses three key reasons this Court should affirm the Second Department's decision.

First, the NYVRA does not require racial classifications—nor is the NYVRA itself a racial classification—and is therefore not subject to strict scrutiny. The NYVRA does not subject individuals to differential treatment based on their race, which is the touchstone of any racial classification. On the contrary, like the Equal Protection Clause itself, the NYVRA *prohibits* discrimination on the basis of race. And, like other civil rights laws, the NYVRA authorizes remedies that take account of race only to the extent necessary to address race-based harms. The need to consider race in crafting a remedy for racial discrimination or racial vote dilution does not mean a law prohibiting such discrimination is itself a racial classification

subject to strict scrutiny. On its face, the NYVRA is race-neutral, and strict scrutiny therefore does not apply.

Second, state legislatures seeking to enshrine state-level protections against racial vote dilution are not limited to the legal framework that federal courts apply to claims under Section 2 of the federal Voting Rights Act ("Section 2"). Section 2, as construed by the Supreme Court in *Thornburg v Gingles*, does not define the only constitutionally permissible approach to identifying and addressing racial vote dilution. Instead, the *Gingles* framework is primarily a judicially crafted interpretation of a federal statute, not a constitutional mandate. Indeed, the U.S. Supreme Court has consistently treated the *Gingles* framework as one constitutional method of addressing vote dilution, not as the exclusive or constitutionally required approach. By insisting that the NYVRA mirror the *Gingles* framework, the trial court improperly elevated federal statutory standards to the level of constitutional doctrine.

Third, a decision by this Court undermining the legitimacy of the NYVRA would have resounding implications across the country. To date, every constitutional challenge to a state VRA has failed, but a contrary ruling by this Court could set a dangerous precedent with national implications. States have frequently taken up the mantle of protecting individual rights and the constitutional guarantees of equal protection when and where the Supreme Court has declined to do so. And, in the

wake of numerous federal court decisions that weaken or limit protections for the right to vote, state legislatures' enactments of state VRAs are a critical stopgap for individual rights, representing a trend that is emblematic of and critical to our system of federalism.

For these reasons, and those described below, this Court should confirm the constitutionality of the NYVRA and preserve fair access to the democratic process in New York. An affirmance in this case would support the authority of state legislatures across the country, including the New York State Legislature, to adopt measures to protect the fundamental right to vote and other individual rights.

I. THE NYVRA IS NOT ITSELF A "RACIAL CLASSIFICATION" AND IS NOT SUBJECT TO STRICT SCRUTINY.

A law or policy is a racial classification and per se triggers strict scrutiny when it expressly classifies individuals based on their race and uses that classification to "distribute[] burdens or benefits." (*Parents Involved in Community Schs. v Seattle Sch. Dist. No. 1*, 551 US 701, 720 [2007]). A "racial classification" requires "unequal treatment" based on a race (*Adarand Constructors, Inc. v Pena*, 515 US 200, 224 [1995]). Illustrating this principle, strict scrutiny applies to school district policies that assigned students to different schools based on their race (*Parents Involved,* 551 US at 709-710, 720), to laws that required government contractors to hire minority-owned businesses or give financial bonuses for doing so (*City of Richmond v J.A. Croson Co.*, 488 US 469, 493 [1989 plurality]; *Adarand*, 515 US

at 204, 224), and to university policies where some "admission decisions . . . turn[ed] on an applicant's race" (*Students for Fair Admissions, Inc. v Presidents & Fellows of Harvard Coll.*, 600 US 181, 208 [2023]). The common concern animating each of these cases is that, in each, a policy classified individuals by race and then provided benefits or burdens to individuals based on that racial classification. Further, none of these cases involve the consideration of whether the use of race was necessary to remedy a judicial finding of racial discrimination.

As the Second Department noted below, the NYVRA's reference to race, color, and language-minority status is not a racial classification (*Clarke v Town of Newburgh*, 237 AD3d 14, 16 [2d Dept 2025]). Nor does the mere use of the term "race" transform the law into a racial classification. The law references race, color, and language-minority status because of the harms the NYVRA targets—race-based discrimination, regardless of which racial group it affects. As with all antidiscrimination laws, it would be impossible for the NYVRA to prohibit or remedy such race-based harms without using the term "race" in the text of the statute (*see e.g.* US Const, 15th Amend, § 1; Fair Housing Act, 42 USC § 3604; Title VII, 42 USC § 2000 [e] [2]). The NYVRA references race not to require race-based classifications, but to prohibit race-based discrimination.

Far from requiring political subdivisions to treat individuals differently based on their race, color, or language-minority status, the NYVRA imposes liability on

political subdivisions that dilute the voting power of members of any "protected class." (*See* Election Law § 17-206 [2] [a].) The term "protected class" includes members of any racial group, defined as "a class of individuals who are members of a race, color, or language minority group" (*see* § 17-204 [5]). For example, a white voter subject to vote dilution could bring a claim just as easily as a Black voter. The NYVRA is race-neutral—it does not protect some racial groups to the exclusion of others.

By the same token, the NYVRA creates a cause of action for race-based voter suppression and racial vote dilution that is available to members of *any* race, color, or language-minority group. (*See* § 17-206 [4].) The creation of a general cause of action for vote dilution does not confer any benefits or impose any burdens based on a racial classification. (*See Sanchez v City of Modesto* (2006) 145 Cal.App.4th 660, 681 [51 Cal.Rptr.3d 821] [addressing a similar challenge to California's VRA]; *Portugal v Franklin County*, 1 Wash 3d 629, 647 [2023], *cert denied*, 144 S Ct 1343 [2024] [same for Washington's VRA].) Because the law does not distribute benefits or burdens to individuals based on their race, it does not create a racial classification.

The NYVRA prohibits election methods that differentially affect individuals on account of their race, color, or language-minority status. For individuals to prove that they have been harmed by an election method and seek relief under the NYVRA, they must identify their racial identity, but this is true with any antidiscrimination

claim. (*See Allen v Milligan*, 599 US 1, 16 [2023] [describing the federal Voting Rights Act claim of Black voters]; *Buck v Davis*, 580 US 100, 104 [2017] [describing the discrimination that a Black person experienced based on his race]; *Fisher v Univ. of Texas at Austin*, 570 US 297, 301 [2013] [noting that a "Caucasian" plaintiff brought suit to challenge an affirmative program]; *Ricci v DeStefano*, 557 US 557, 574 [2009] [describing the discrimination claims of white plaintiffs]; *McDonnell Douglas Corp. v Green*, 411 US 792, 802 [1973] [holding that to establish a *prima facie* case of employment discrimination, plaintiff must establish that she is a member of a protected class].)

Of course, upon a finding that a political subdivision violated the law by engaging in racial discrimination, the NYVRA authorizes remedies that may involve consideration of race, such as the drawing of single-member districts or revised redistricting plans in a manner designed to remedy racial vote dilution. (*See* § 17-206 [5] [a].) But the contention that the NYVRA's remedies will necessarily be created based on racial classifications is baseless. A race-neutral law that protects all voters from vote dilution on account of race does not constitute a racial classification simply because the remedy for racial vote dilution requires awareness of race.

Indeed, the U.S. Supreme Court has long recognized that race-neutral antidiscrimination laws may involve the consideration of race in providing remedies for racial discrimination, but it has never suggested that civil right laws should per

se be subject to strict scrutiny. (*See e.g. Milligan*, 599 US at 30 [holding that Section 2 is constitutional because, while it may "demand[] consideration of race," it does not require "impermissible race discrimination" [internal quotation marks omitted]]; *Texas Dept of Hous. & Community Affairs v Inclusive Communities Project, Inc.*, 576 US 519, 545 [2015] [explaining that the fact that the Fair Housing Act requires the "mere awareness of race" in devising remedies to "combat racial isolation . . . does not doom that [remedial] endeavor at the outset"]).

To be sure, the U.S. Supreme Court has also recognized that constitutional questions may arise when race predominates in the districting process (for example, through the creation of a majority-minority district that was not compact and disregarded traditional redistricting principles). (*See Shaw v Reno*, 509 US 630, 647 [1993].) But even in that context, the Supreme Court recognizes that "compelling interests" permit "resort to race-based government action" when "remediating specific, identified instances of past discrimination that violated the Constitution or a statute" (*Students for Fair Admissions*, 600 US at 207 [citing *Shaw v Hunt*, 517 US 899, 909-910 [1996]]). Indeed, "under certain circumstances," the Court itself has "authorized race-based redistricting as a remedy for state districting maps that violate [Section] 2" (*Milligan*, 599 US at 41).

Regardless, Plaintiffs' proposed remedies do not implicate this principle. They seek either a single-member districting plan, with compact districts that adhere

to traditional redistricting principles, or cumulative or ranked-choice voting. (*See* complaint ¶¶ 134-135, *Clarke v Town of Newburgh*, index No. EF002460-2024 [Sup Ct, Orange County 2024]). The Supreme Court has long recognized that a remedial redistricting plan is constitutional so long as the new districts were not predominately drawn along racial lines or depart from traditional redistricting principles based on race. (*See Milligan,* 599 US at 30-32 [2023 plurality].) And cumulative or ranked-choice voting systems do not involve race-based redistricting or any redistricting at all. (*See United States v Vil. of Port Chester*, 704 F Supp 2d 411, 453 [SD NY 2010] [explaining that a cumulative voting plan does not "involve any consideration of race since every voter is treated exactly the same"].) "In fact, cumulative voting and other alternative voting schemes have received focus precisely because they avoid the *Shaw* problem that plagued drawing single-member districts" (*id*. [citation omitted]). This Court therefore would have no basis to conclude that even the specific remedies sought in this case would trigger strict scrutiny, much less that the entire statute constitutes a racial classification and should be invalidated.

Affirming the Second Department's decision merely upholds the Equal Protection Clause's aim to stymie race-based discrimination. Far from creating a racial classification, the NYVRA operates to identify and remedy race-based voter

suppression and vote dilution. For these reasons, this Court should decline to hold otherwise.

II. THE LEGAL TEST UNDER SECTION 2 OF THE FEDERAL VRA DOES NOT REPRESENT THE ONLY CONSTITUTIONALLY PERMISSIBLE WAY TO ADDRESS RACIAL VOTE DILUTION.

The legal test for racial vote dilution under Section 2 comes from the text of Section 2 itself and the Senate Report that accompanied the 1982 amendments to Section 2 (the "1982 Senate Report").[1] As the Second Department noted, that test does not represent the only constitutionally permissible way to address racial vote dilution. (*Town of Newburgh*, 237 AD3d at 19-20.)

The U.S. Supreme Court in *Thornburg v Gingles* (478 US 30 [1986]) explained that, to succeed on a Section 2 challenge to an at-large election scheme, plaintiffs must first satisfy three preconditions,[2] and then must show, under the totality of circumstances, that the challenged act or practice results in unequal access to the political process for minority voters. (*See generally id*.) Subsequent cases have applied the standard in challenges to redistricting plans composed of single-member

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1 S Rep 97-417, 97th Cong, 2d Sess at 111, reprinted in 1982 US Code Cong & Admin News at 177, 282 (hereinafter "1982 Senate Report"). The 1982 Senate Report "elaborates on the nature of § 2 violations and on the proof required to establish these violations." *Thornburg v Gingles*, 478 US 30, 43 (1986).

2 *See e.g. Allen v Milligan*, 599 US 1 (2023) ("First, the minority group must be sufficiently large and geographically compact to constitute a majority in a reasonably configured district. Second, the minority group must be able to show that it is politically cohesive. And third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidate") (citations and quotations removed).

districts. (*E.g. Milligan*, 599 US 1.) Although this framework has been widely applied in federal courts, it does not represent the only constitutionally permissible approach; indeed, for over two decades, numerous state legislatures have successfully applied constitutional alternatives to the *Gingles* framework to address and remedy racial vote dilution.[3]

The *Gingles* test was not derived from the U.S. Constitution. Rather, the three preconditions were crafted by the U.S. Supreme Court in *Gingles* to effectuate Section 2's *statutory* mandate that violations must be predicated upon a showing that protected class members "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." (*See* 52 USC § 10301 [b]; *Gingles*, 478 US at 49-51.) Likewise, the totality of circumstances standard derives from the text of Section 2 (*see* § 10301 [b]) and the factors courts consider in applying that standard are drawn verbatim from the 1982 Senate Report. (*See Gingles*, 478 US at 36; *see also Milligan*, 599 US at 18 ["[A] plaintiff who demonstrates the three preconditions must also show, under the 'totality of circumstances,' that the political process is not 'equally open' to minority voters"] [citing to *Gingles* listing the factors enumerated in the 1982 Senate Report].)

[3] *See e.g. Higginson v Becerra*, 786 Fed Appx 705, 706 (9 Cir 2019) (affirming the constitutionality of the California Voting Rights Act, adopted in 2002).

In the decades since *Gingles* was decided, the U.S. Supreme Court has consistently characterized the *Gingles* framework as an application of Section 2 rather than a constitutional mandate. (*See e.g. Wisconsin Legislature v Wisconsin Elections Commn.*, 595 US 398, 402 [2022] ["We have construed § 2 to prohibit the distribution of minority voters into districts in a way that dilutes their voting power"]; *Bartlett v Strickland*, 556 US 1, 6 [2009] ["This case requires us to interpret § 2 of the Voting Rights Act of 1965"].) Indeed, because the Section 2 framework is not constitutionally compelled, the Court has specifically recognized that Congress has the authority to change it. (*See Milligan*, 599 US at 17 [declining to revisit *Gingles* because "[Congress] can change [Section 2] if it likes. But until and unless it does, statutory *stare decisis* counsels our staying the course"]; *id.* at 42 ["Unlike with constitutional precedents, Congress and the President may enact new legislation to alter statutory precedents such as *Gingles*"].)

Moreover, New York is one of eight states to codify legal tests for racial vote dilution that differ from the *Gingles* framework,[4] and every constitutional challenge to those tests has been rejected. (*See Higginson v Becerra*, 786 Fed Appx 705, 706 [9 Cir 2019], *cert denied*, 140 S Ct 2807 [2020] [rejecting a constitutional challenge

[4] Election Law §§ 17-200-17-218; Cal Elec Code §§ 14025-14032; Wash Rev Code § 29A.92.050; Or Rev Stat §§ 255.400-255.424; Va Code Ann § 24.2-125; Conn Gen Stat Ann §§ 9-368i-9-368q; Minn Stat §§ 200.50-200.59; Colo Rev Stat §§ 1-47-101-1-47-302.

to vote dilution protections adopted under a state voting rights act]; *Sanchez*, 145 Cal.App.4th 660 [same]; *Portugal*, 1 Wash 3d 629 [same].)

There are constitutionally permissible standards for addressing racial vote dilution other than what is outlined in *Gingles* and its progeny. That several provisions in the NYVRA differ from those in Section 2 does not somehow render the NYVRA unconstitutional. First, nothing in the Equal Protection Clause suggests that states must rely on an illustrative single-member district plan to identify racial vote dilution.[5] Rather, the first *Gingles* precondition's requirement that plaintiffs must introduce an illustrative single-member district plan is driven by the fact that the typical remedy ordered by courts in Section 2 cases are non-dilutive single-member districts. (*See e.g. Growe v Ellison*, 507 US 25, 40 [1993] [the purpose of the first *Gingles* precondition is to confirm "that the minority has the potential to elect a representative of its own choice in some ***single-member district***"] [emphasis added]; *Citizens for Good Govt. v City of Quitman*, 148 F3d 472, 476 [5 Cir 1998] [there is a "longstanding general rule that single-member districts are to be used in judicially crafted redistricting plans"].)

[5] *Compare Milligan*, 599 US at 18-19 (explaining the Section 2 vote dilution inquiry without reference to the Equal Protection Clause) *with id.* at 27 (describing the constitutional limits on redistricting derived from the Equal Protection Clause) *and Shaw*, 509 US at 647-649 (similar).

In contrast, the NYVRA offers remedies other than single-member districts,[6] and it therefore makes no sense to require plaintiffs to introduce an illustrative single-member district plan when that remedy is not being sought. This flexibility allows affected voters to obtain relief where their population is geographically dispersed but nevertheless has distinctive voting preferences that are rarely or never transformed into representation. Indeed, one important reason every state voting rights act omits or replaces the first *Gingles* precondition is to enable remedies besides single-member districts. States, including New York, have made a policy choice to break from the preference under federal law for single-member district remedies to vote dilution. Under the Constitution, states maintain broad authority to decide the form and methods of election permissible in their local governments. (*See Bartlett*, 556 US at 23 [explaining that "in the exercise of lawful discretion States could draw crossover districts as they deemed appropriate"].) That New York has chosen its preference for race-neutral remedies like cumulative voting is a mark in favor of the NYVRA's constitutionality. (*Cf. Port Chester*, 704 F Supp 2d at 449.) A decision inconsistent with this principle would upend New York's discretion and

[6] *See* Election Law § 17-206 [5] [a] [ii].

the laws in eight states that have existed for up to twenty years and have never been held constitutionally void.[7]

Second, the Second Department is correct that the NYVRA may provide an optional pathway for plaintiffs to prove liability based solely on the totality of circumstances without proof of racially polarized voting (*Town of Newburgh*, 237 AD3d at 19-20). The Equal Protection Clause does not demand any specific analyses to identify racial vote dilution (*see* n 5, *supra*).

The flexibility under the NYVRA to allow claims to proceed based on the totality of circumstances factors serves an important purpose, because racially polarized voting analyses are often associated with rigorous and costly expert reports that may not be necessary in all cases, especially where dilution is obvious based on the totality of circumstances inquiry. But Plaintiffs must still demonstrate that an aggrieved group actually has candidates of choice and that those candidates are not being elected under the challenged method of election to satisfy the NYVRA's requirement that the challenged method of election has "the effect of impairing the ability of members of a protected class to elect candidates of their choice" (*see* § 17-206 [2] [a]).

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[7] *See* n 4, *supra*; *see also Higginson*, 786 Fed Appx at 706 (rejecting a constitutional challenge to vote dilution protections adopted under a state voting rights act); *Sanchez*, 145 Cal.App.4th 660 (same); *Portugal*, 1 Wash 3d 269 (same).

Finally, the NYVRA validly grants courts the flexibility to consider factors outside of the traditional factors outlined in *Gingles* and its progeny, like "the history of discrimination in or affecting the political subdivision." The Equal Protection Clause does not mandate consideration of specific factors (*see* n 5, *supra*), and the flexible analysis demanded by the NYVRA is consistent with the framework for analyzing the "totality of circumstances" factors under Section 2. Under *Gingles*, "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other" (478 US at 45 [citation omitted]). "No one of the factors is dispositive; the plaintiffs need not prove a majority of them; other factors may be relevant" (*Westwego Citizens for Better Govt. v City of Westwego*, 946 F2d 1109, 1120 [5 Cir 1991]). Allowing one factor or a particular factual circumstance to be dispositive or using a similar "inflexible rule would run counter to the textual command of § 2, that the presence or absence of a violation be assessed 'based on the totality of circumstances'" (*Johnson v De Grandy*, 512 US 997, 1018 [1994]).

In sum, it is plainly incorrect that any state statute that fails to align precisely with the *Gingles* framework is unconstitutional. *Gingles* does not define the only constitutionally permissible test for vote dilution, nor does it set a ceiling on what policies state legislatures can adopt to combat racial vote dilution. By contrary logic, all state voting rights acts in the nation would be facially invalid merely because they

provide alternatives to the *Gingles* framework. Yet every other court that has faced this question directly has decided exactly the opposite[8] (*see* n 7, *supra*).

III. THIS COURT'S DECISION REGARDING THE CONSTITUTIONALITY OF THE NEW YORK VOTING RIGHTS ACT HAS SIGNIFICANT NATIONAL IMPLICATIONS.

The Voting Rights Act was the product of unwavering sacrifice, organizing, and advocacy to secure and indelibly safeguard the political equality of racial and ethnic minorities, particularly of Black people, terrorized by the era of Jim Crow, who had otherwise been denied the guarantees of the Fourteenth and Fifteenth Amendments by certain states and political subdivisions (*South Carolina v Katzenbach*, 383 US 301, 309-311 [1966]). Today, in the wake of numerous federal court decisions that weaken or roll back protections for the right to vote, states have stepped up to fill

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[8] Implicit in Supreme Court reasoning is also the recognition that the creation of influence districts to comply with federal civil rights laws is consistent with constitutional principles. Indeed, the Supreme Court has expressly recognized the broad discretion of states to draw "influence" or "crossover" districts. (*Cf. Bartlett*, 556 US at 23; *see also Cooper v Harris*, 581 US 285, 305 [2017] [explaining that a state engaged in unconstitutional racial gerrymandering where it unnecessarily converted a former crossover district into a majority-minority district].) While the trial court in this case believed that "[a]ttempts to extend the [federal] VRA to the degree that Plaintiffs assert here have been soundly rejected," citing to the U.S. Supreme Court in *League of United Latin American Citizens v Perry* (548 US 399 [2006]), this construction was based on the text of the statute, not on federal constitutional law. There is no basis in *LULAC*—or any other U.S. Supreme Court opinion—to support the trial court's contention that the U.S. Constitution prohibits states from proscribing voting rules or devices that limit a minority group's ability to influence election outcomes, or that the Equal Protection Clause demands that a minority group show that it is able to dictate election outcomes before it is entitled to be free from discrimination.

the void by enacting their own State Voting Rights Acts, a trend that is emblematic of and critical to our system of federalism.[9]

Although state VRAs vary greatly in true democratic fashion, they all fight racial discrimination in voting, all uniformly contain provisions prohibiting racial vote dilution, and, where violations exist, permit both race-conscious and race-neutral remedies to achieve this end. A ruling undermining the NYVRA would undercut states' democratic progress across the country by encouraging attacks on existing state VRAs.

State legislative efforts to protect the franchise gained momentum and became critical to the protection of the right to vote as federal courts began to chip away at the federal VRA. The trend began in earnest following the Supreme Court's decision in *Shelby County v Holder*, which struck down the preclearance coverage formula in § 4 of the Act as unconstitutional.[10] Likewise, the Supreme Court's decision in *Brnovich v Democratic National Committee* erected five new and unnecessary barriers to succeeding on a Section 2 challenge to rules that specify the time, place, or manner for casting ballots beyond what the Court set out in *Gingles.* (594 US 647, 660 [2021].) The decision has almost entirely stymied Plaintiffs' success in

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[9] *See* n 4, *supra*.

[10] Even as the Court maintained its "decision in no way affect[ed] the permanent, nationwide ban on racial discrimination in voting found in § 2," included "no holding on § 5 itself, only on the coverage formula," and encouraged Congress to draft another formula based on current conditions for preclearance. (570 US 529, 557 [2013].)

challenging time, place, and manner restrictions under Section 2. (*But see Braxton v Town of Newbern*, 2024 WL 3519193, *3 [SD Ala July 23, 2024, No. 23-cv-127 (KD)] [settlement reached by LDF when Town stipulated to a Section 2 violation].) The Fifth and Sixth Circuits have similarly limited the ability of coalitions of racial and language minority voters to demonstrate vote dilution in legislative redistricting under Section 2. (*Petteway v Galveston County, Texas*, 111 F4th 596, 604 [5 Cir 2024] [holding that the "text of Section 2 does not authorize coalition claims, either expressly or by implication"]; *Nixon v Kenty County*, 76 F3d 1381, 1393 [6 Cir 1996] [holding that minority coalition claims were not "part of Congress' remedial purpose" in enacting the Voting Rights Act].) And the Eighth Circuit recently determined that Section 2 is not privately enforceable, either under the Act or through Section 1983, in a stark break from the history of near unanimous private enforcement, congressional intent, and Supreme Court precedent. (*Compare Turtle Mountain Band of Chippewa Indians v Howe*, 137 F4th 710 [8 Cir 2025], *staying mandate* — S Ct —, 2025 WL 2078664 (Mem), *with Morse v Republican Party of Virginia*, 517 US 186 [1996]; *Allen v State Board of Elections*, 393 US 544 [1969].)

As a result, multiple states have risen to the occasion by enacting voting rights acts that provide even greater protection than the federal Voting Rights Act. Legislatures in eight states—California, Washington, Oregon, Virginia, Connecticut, New York, Minnesota, and Colorado—have successfully passed voting

rights acts with protections against racial vote dilution.[11] In fact, a state voting rights act has been passed in every year since 2018, except for 2020, when the nation was grappling with a global pandemic. (*See* NAACP Legal Defense & Educational Fund, Inc., *State Voting Rights Acts*, available at https://www.naacpldf.org/state-voting-rights-protect-democracy/ [last updated June 2025].)

State VRAs are getting stronger each year with additional protections against voting schemes that tend to dilute the votes of historically disadvantaged groups. California led the charge in 2001 when it enacted a voting rights act that dispensed with *Gingles'* requirement (like the NYVRA) that members of a protected class must constitute a majority in a compact district to bring vote dilution claims (*see Sanchez*, 145 Cal.App.4th at 680). This opened the door for more people experiencing discrimination to vindicate their rights to be free from voting discrimination or dilution. The enactment of the NYVRA in 2022 was also transformative, as it was the most comprehensive state VRA at the time it was enacted, and was the first to include a preclearance system (Election Law § 17-210 *et seq*). Then, in 2023, Connecticut enacted a voting rights act strikingly similar to the NYVRA and adopted a preclearance system for entities that violated provisions of the VRA (Conn Gen Stat Ann § 9-368m [2023]). Moreover, every state that has passed a voting rights act

[11] *Supra* note 4.

has included provisions protecting members of protected classes against vote dilution.[12]

Protections against racial vote dilution form the common core of all sixteen states that have introduced voting rights act legislation, and they all contain similar provisions to the NYVRA.[13] Each of these statutes or proposed bills are race-neutral, antidiscrimination laws that authorize race-conscious remedies that have survived legal challenges in various states. In two states—Michigan and Maryland—state VRAs have already passed one chamber of their state legislature[14], and across the country, VRAs are making their way through the state legislative process. Furthermore, polls show that voters nationwide overwhelmingly support their state legislators prioritizing passing a state VRA in their state (NAACP Legal Defense Fund, *State VRA Key Findings Memo*, available at https://www.naacpldf.org/wp-content/uploads/2025-01-16-Key-Findings-Memo4.pdf [last updated Jan. 30, 2025]). An adverse decision from this court would thwart the progress that states and their voters have achieved in making the political processes open and equal to all.

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12 *See* n 4, *supra*.

13 *Id.*; 2025 Ala Senate Bill 7; 2025 Fla Senate Bill 1582; 2025 Md Senate Bill 342; 2023 Mich Senate Bill 401; 2024 NJ Assembly Bill 4083; 2025 Ariz Senate Bill 1193; 2025 Texas House Bill 2082; 2025 Ill House Bill 3047.

14 2025 Md Senate Bill 342; 2024 Mich Senate Bill 401.

State VRAs are a popular and powerful strategy to protect voters from race-based discrimination, which is especially critical in a post-*Shelby* world. A ruling against the NYVRA by this Court would both be incorrect and undercut a key strategy for protecting voting rights in the states. Moreover, such a decision would likely have broader implications by spurring similar challenges to VRAs in other states. But right now, state legislators can move forward with this strategy, confident that every time the constitutionality of a state VRA has been challenged, courts have rejected it. This court should maintain this precedent.

CONCLUSION

For the foregoing reasons, this Court should reverse the lower court's decision in its entirety and hold that the New York Voting Rights Act is constitutional.

Dated: August 26, 2025

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CERTIFICATE OF SERVICE

Pursuant to 22 NYCCR § 500.1(e), proposed *amicus curiae* provides this proof of service to accompany their *amicus* brief in the above-captioned case. The following parties were served via overnight delivery:

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September 11, 2025

Rachael M. MacVean
Clerk's Office
State of New York
Court of Appeals
20 Eagle Street
Albany, New York 11207-1095

Re: Clarke v Town of Newburgh
Mo. No. 2025-648 (Pin No. 84621)

To the Chief Motion Clerk:

Per your communications dated August 28, 2025, please find attached an amended disclosure statement to accompany the amicus motion in the above title.

Respectfully,

Kathryn Sadasivan
Victor Olofin
NAACP Legal Defense & Educational Fund, Inc.
40 Rector Street, 5th Floor
New York, NY 10006-1738

AMENDED DISCLOSURE STATEMENT

Pursuant to 22 NYCCR §§ 500.1(f) and 500.13(a), movant NAACP Legal Defense & Educational Fund, Inc., is a 501(c)(3) nonprofit organization and has no parents, subsidiaries, or affiliate entities.

CERTIFICATE OF SERVICE

Pursuant to 22 NYCCR § 500.1(e), proposed amicus curiae provides this proof of service to accompany the amended disclosure statement for their amicus motion, No. 2025-648. The following parties were served via overnight delivery:

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Dated: September 11, 2025

New York, NY

Respectfully submitted,

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