SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SERGIO SERRATTO, ANTHONY AGUIRRE, IDA MICHAEL, and KATHLEEN SIGUENZA,

Plaintiffs,

– against –

TOWN OF MOUNT PLEASANT and TOWN BOARD OF THE TOWN OF MOUNT PLEASANT,

Defendants.

Index No. 55442/2024

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR LEAVE TO REARGUE AND RENEW THEIR MOTION FOR SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

Plaintiffs Sergio Serratto, Anthony Aguirre, Ida Michael, and Kathleen Siguenza (collectively "Plaintiffs") respectfully submit this memorandum of law in support of their motion for an order pursuant to CPLR 2221 granting leave to reargue and/or renew this Court's decision and order dated April 11, 2025 and, upon reargument and/or renewal, granting Plaintiffs' motion for summary judgment declaring that the Town of Mount Pleasant's method of election for electing members to the Town Board of the Town of Mount Pleasant (the "Town Board") is unlawful and directing a remedy.

SUMMARY OF ARGUMENT

This motion presents a limited, but consequential, issue: Did the Court misapprehend the proper standard for demonstrating the existence of racially polarized voting under Election Law § 17-206(2)(b)(i)(A)? Respectfully, Plaintiffs submit that the Court did and that the application of the correct standard requires that their motion for summary judgment be granted. Alternatively, Plaintiffs submit that the recent decision of the Appellate Division, Second Department, in *Clarke v. Town of Newburgh*, 237 A.D.3d 14 (2d Dep't 2025), clarified the law in this regard sufficiently that leave to renew is appropriate and, upon renewal, summary judgment should be granted to Plaintiffs.

The existence of racially polarized voting is one of the two ways Plaintiffs can prove that the at-large election system used in the Town of Mount Pleasant (the "Town" or "Mount Pleasant") impermissibly dilutes the votes of Hispanic voters in violation of the New York Voting Rights Act ("NYVRA"). If racially polarized voting exists and the other statutory requirements for liability are met, the statute requires that the Town modify its electoral system.

The statute defines "racially polarized voting" as "voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the

candidates, or electoral choices of the rest of the electorate." Election Law § 17-204(b). In its summary judgment decision, the Court held that in order to demonstrate racially polarized voting Plaintiffs were required to demonstrate "a divergence in the electoral choices of eligible Hispanic voters" from the choices of "non-Hispanic voters of all races and ethnicities," NYSCEF DOC No. 183 ("Decision") at 9, rather than from the choices of the majority group. Plaintiffs submit that this construction of the definition of racially polarized voting differs from (i) the clear legislative intent as recently explicated in *Clarke v. Town of Newburgh*, 237 A.D.3d 14 (2d Dep't 2025); (ii) the construction of the identical language in the California and Washington state voting rights acts by the courts of those states; (iii) all federal precedent applying the Federal Voting Rights Act; and (iv) Defendants' experts' own understanding of the law. The correct interpretation, as admitted by Defendants' experts, and recognized by the California and Washington state courts, as well as all federal precedent, is that, under these circumstances, Plaintiffs must demonstrate a divergence between the choices of Hispanic voters and non-Hispanic White voters, not "non-Hispanic voters of all races and ethnicities."

For these reasons, Plaintiffs submit that leave to reargue or to renew should be granted and, upon such relief, Plaintiffs' motion for summary judgment should be granted.

ARGUMENT

"A motion for leave to reargue is addressed to the sound discretion of the motion court." *A.R. Conelly, Inc. v. New York City Charter High Sch. for Architecture, Eng'g & the Constr. Indus.*, 206 A.D.3d 787, 788 (2d Dep't 2022) (internal quotation marks omitted). Under CPLR 2221(d), a motion for leave to reargue should be granted if "the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision." *Schneider v. Solowey*, 141 A.D.2d 813 (2nd Dep't 1988).

Under CPLR 2221(e)(2), it is appropriate to renew a previously decided motion if "there

has been a change in the law that would change the prior determination" of that motion. "A motion for leave to renew is the appropriate vehicle for seeking relief from a prior order based on a change in the law." *Dinallo v. DAL Elec.*, 60 A.D.3d 620, 621 (2d Dep't 2009). "A clarification of the decisional law is a sufficient change in the law to support renewal." *Id.*; *see also Deutsche Bank Nat'l Tr. Co. v. Cincu*, 228 A.D.3d 825, 827 (2d Dep't 2024).

Here, leave to renew and leave to reargue are both appropriate. The Court misapprehended the legal standard for demonstrating racially polarized voting under § 17-206(2)(b)(i)(A) and the Appellate Division's decision in *Clarke v. Town of Newburgh* "clarifi[ed] the decisional law" with respect to establishing liability under the NYVRA.

I

Election Law § 17-206(2)(b)(i)(A) is properly construed to require that plaintiffs must show a divergence in political preferences between members of a protected class and members of the majority group in the jurisdiction

Construing the NYVRA in light of the legislative intent, there can be no doubt that racially polarized voting is established by comparing the political preferences of members of the protected class against the preferences of the majority group, not the preferences of everyone else in the electorate. Requiring a comparison with all other voters would provide less protection for minority voters than the federal voting rights act and the other state voting rights acts. That was clearly not the intent of the legislature. It would also be inconsistent with both the manner in which the federal and other state voting rights acts have been construed and with both parties' understanding of this case, based upon the evidence they presented in support of their respective summary judgment motions.

A. The Legislature intended that the New York Voting Rights Act be construed to expand voting rights relative to the federal Voting Rights Act.

The Court's primary role in construing the NYVRA is "to ascertain and give effect to the

intention of the Legislature." *Riley v. Cnty. of Broome*, 95 N.Y.2d 455, 463 (2000) (internal quotation marks omitted). "[L]egislative intent is the great and controlling principle." *New York Post Corp. v. Leibowitz*, 2 N.Y.2d 677, 685 (1957). "As the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself." *Majewski v. Broadalbin-Perth Cent. Sch. Dist*., 91 N.Y.2d 577, 583 (1998). At the same time, "[w]hen the statutory language at issue is but one component in a larger statutory scheme, it must be analyzed in context and in a manner that harmonizes the related provisions and renders them compatible." *Matter of Mestecky v. City of New York*, 30 N.Y.3d 239, 243 (2017) (internal quotation marks omitted), *denying reargument* 30 N.Y.3d 1098 (2018).

Plaintiffs and Defendants agree that the text of § 17-206(2)(b)(i)(A) (and the NYVRA as a whole) is ambiguous with respect to the precise standard for demonstrating racially polarized voting. NYSCEF 118 at 12. Where the text of a statutory provision is ambiguous, courts look to the structure of the statute as a whole and to legislative history to effectuate legislative intent. *See, e.g.*, *Matter of Shannon*, 25 N.Y.3d 345, 351 (2015). In addition, courts rely on the "fundamental rule of statutory interpretation that of two constructions which might be placed upon an ambiguous statute one which would cause objectionable consequences is to be avoided." *Eckel v. Hassan*, 61 A.D.2d 13, 18 (2d Dep't 1978) (quoting McKinney's Cons Laws of NY, Statutes § 141). Courts should "us[e] all available interpretive tools to ascertain the meaning of a statute." *Riley*, 95 N.Y.2d at 464. Here, these "interpretive tools" all indicate that this Court erred in requiring Plaintiffs to demonstrate a divergence in preferences between Hispanic voters and all non-Hispanic voters to prove the existence of racially polarized voting.

While the text of § 17-206(2)(b)(i)(A) (and the NYVRA as a whole) is ambiguous on this precise issue, the legislature's intent in enacting the NYVRA is clear: to protect voters of a

protected class from vote dilution by expanding upon the protections available under the federal Voting Rights Act ("federal VRA"). Consistent with that intent, the NYVRA must be construed to make it easier for protected class members to establish that their votes are being diluted under the NYVRA as compared to the federal VRA, not to make it harder to prove vote dilution under the NYVRA. The only way to effectuate that intent is to understand § 17-206(2)(b)(i)(A) to require that Plaintiffs show a divergence between the "electoral choices" of "eligible Hispanic voters" and voters of the majority group (in this case, non-Hispanic White voters), not between the electoral choices of "eligible Hispanic voters" from the choices of "non-Hispanic voters of all races and ethnicities."

The legislature's overarching purpose in enacting the NYVRA was to guarantee to all "eligible voters who are members of racial, color, and language-minority groups . . . an equal opportunity to participate in the [state's] political processes." Election Law §17-200(2). To achieve that purpose, the legislature identified multiple ways to establish that an electoral system or practice dilutes the voting power of members of a protected class, including § 17-206(2)(b)(i)(A). Proving racially polarized voting is one of those ways.

Indeed, in enacting the NYVRA, the legislature intended to "offer[] the most comprehensive state law protections for the right to vote in the United States." NYSCEF 90 at 9 (NYVRA Bill Jacket). The State Assembly Committee on Election Law described the goal of the NYVRA as "strengthen[ing] the scope of the federal Voting Rights Act . . . and codif[ying its] provisions into state law." New York State Assembly Committee on Election Law, *Annual Report* at 1 (2022).[1] Senate leaders explained that the NYVRA would "expand . . . voter protections" and enact "the strongest voter protection law . . . in the country." Press Release, *Senate Majority to*

[1] Available at https://assembly.state.ny.us/annualreports/?sec=story&story=106807.

Pass the John R. Lewis Voting Rights Act of New York (May 31, 2022).[2]

The Appellate Division, Second Department, recently confirmed that the legislature intended to provide the most expansive protections for voting rights in the country to "ensure[] that [New York] continues to move toward being a national leader in voting rights." *Clarke*, 237 A.D.3d at 22. Thus, to the extent the New York legislature intended for the NVYRA to diverge from Section 2 of the federal Voting Rights Act or from the state VRAs it is modeled after, the obvious goal was for the NYVRA to offer *more expansive protections* to New York voters, not to make vote dilution more difficult to prove.

B. No state or federal court has ever required vote dilution plaintiffs to show they are polarized from *every other* group of minority voters.

The NYVRA is relatively new, but its recognition of racially polarized voting as a predicate to vote dilution liability is not: racially polarized voting is also a predicate to vote dilution liability under Section 2 of the federal Voting Rights Act and under "very similar laws enacted in California and Washington" that the NYVRA is "modeled" after. *Clarke*, 237 A.D.3d at 22. The NYVRA is not identical to these other laws, but there can be no doubt that the legislature intended the NYVRA to "build[] upon the demonstrated track record of success in California and Washington, as well as the historic success of the federal voting rights act," NYSCEF 90 at 8-9 (NYVRA Bill Jacket).

Under the "very similar laws" that the vote dilution provisions of the NYVRA are "modeled" after and "build[] upon," racially polarized voting is assessed by comparing voting patterns of a protected class and the majority group. That is how federal courts have, for decades, resolved Section 2 vote dilution claims under the *Gingles* framework. *See Thornburg v. Gingles*, 478 U.S. 30, 51 (1986) (minority voter plaintiffs "must be able to demonstrate that the white

[2] Available at https://www.nysenate.gov/sites/default/files/press-release/attachment/senate_majority_to_pass_the_john_r._lewis_voting_rights_act_of_new_york.pdf.

majority votes sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate"). *See also Ga. State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1339 (11th Cir. 2015) (comparing only white and Black voters in conducting racially polarized voting analysis); *Teague v. Attala Cnty.,* 92 F.3d 283, 286-87 (5th Cir. 1996) (same), *cert. denied* 522 U.S. 807 (1997); *E. Jefferson Coal. for Leadership & Dev. v. Par. of Jefferson*, 691 F. Supp. 991, 1001 (E.D. La. 1988) (same); *LULAC v. Abbott*, 604 F. Supp. 3d 463, 505 (W.D. Tex. 2022) (comparing the Hispanic majority to the white minority).

It is also how California and Washington courts resolve vote dilution claims arising under the vote dilution provisions of their respective state Voting Rights Acts. *See Pico Neighborhood Ass'n v. City of Santa Monica*, 534 P.3d 54, 59 (Cal. 2023) (assessing racially polarized voting under California VRA by assessing whether "the protected class members vote as a politically cohesive unit, while the *majority* votes sufficiently as a bloc usually to defeat the protected class's preferred candidate") (cleaned up) (emphasis added); *Portugal v. Franklin Cnty.*, 530 P.3d 994, 1003 (Wash. 2023) (using same test to assess racially polarized voting under the Washington VRA), *cert. denied* 144 S. Ct. 1343 (2024). Both the Washington and California VRAs use the same "rest of the electorate" formulation as the NYVRA. *See* Cal. Elec. Code § 14026(e) ("'Racially polarized voting" means voting in which there is a difference . . . in the choice of candidates or other electoral choices that are preferred by voters in a protected class, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate."); Wash. Rev. Code § 29A.92.010(4) ("'Polarized voting' means voting in which there is a difference in the choice of candidates or other electoral choices that are preferred by voters in a protected class or a coalition of protected classes, and in the choice of candidates and electoral choices that are preferred by voters in the rest of the electorate."). Nonetheless, the California

Court of Appeals expressly rejected the argument that Cal. Elec. Code § 14026 "requir[es] a bivariate analysis comparing [the protected class's] voting preferences with those of *all* the other voters in the electorate." *Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385, 405 (Cal. App. 2020) (emphasis in original). The NYVRA's vote dilution provisions, which mirror those found in "very similar laws" that law is "modeled" after, should not be read to yield a different (and more burdensome) test for demonstrating racially polarized voting in New York.

The NYVRA, unlike the California Voting Rights Act, does not explicitly incorporate federal caselaw interpreting the federal Voting Rights Act. *See* Cal. Elec. Code § 14026(e). But the NYVRA's legislative history leaves no doubt that the legislature intended the NYVRA both to incorporate and *to expand upon* protections already afforded to New York voters under federal law. *Supra* at 5-6. Rather than expand upon federal law, however, this Court's interpretation of Election Law § 17-206(2)(b)(i)(A) would make vote dilution liability *harder* to establish under the NVYRA than under the federal Voting Rights Act (and California and Washington's laws). This interpretation foregoes "a sensible and practical over-all construction" of the NYVRA "which is consistent with and furthers its scheme and purpose" in favor of one that "would lead to an absurd result that would frustrate the statutory purpose." *Long v. Adirondack Park Agency*, 76 N.Y.2d 416, 420 (1990).

C. This Court's interpretation makes vote dilution more difficult to prove under the NYVRA than under the federal VRA or California and Washington VRAs.

Under the federal standard, members of a protected class can demonstrate legally significant racially polarized voting if they are "politically cohesive" and the "majority votes sufficiently as a bloc to usually defeat [the protected class's] preferred candidate." *Allen v. Milligan*, 599 U.S. 1, 22 (2023) (internal quotation marks omitted). The voting behavior of *other* minority voters is irrelevant: in answering the question of whether protected class voters are

experiencing vote dilution, what matters is whether protected class voters have "an *equal* opportunity to participate in the political process." *Id.* at 25 (emphasis added). If an "electoral structure operates in a manner that 'minimize[s] or cancel[s] out the[ir] voting strength'" as compared to members of the majority group, *id.* (quoting *Gingles*, 478 U.S. at 47) (alterations in original), then members of the protected class do not have an "*equal* opportunity to participate in the political process" in that jurisdiction, irrespective of how non-protected class minority voters behave. Put another way, if protected class voters lack an equal opportunity compared with majority voters to elect their candidates of choice, then Section 2 is violated whether non-protected class minority voters prefer the same (or different) candidates as protected class voters.[3]

Like Section 2 of the federal Voting Rights Act, the NYVRA protects every voter's right to an "equal opportunity to participate in the political process[]," Election Law § 17-200(2), and it prohibits electoral systems "having the effect of impairing the ability of members of a protected class to elect candidates of their choice." Election Law § 17-206(2)(a). Yet under this Court's definition of racially polarized voting, members of a protected class cannot prevail without demonstrating that their political preferences diverge from the preferences of non-protected class minority voters, even if the votes of the non-protected voters have *no* effect on the ability of protected class voters to elect their candidates of choice. Despite the legislature's clear intent to enact the most expansive protections for voting rights in the country, the standard the Court has adopted imposes on New York plaintiffs bringing claims under New York law a burden to prove vote dilution that goes beyond what is required in the federal context (or under any analogous state

[3] The one exception is a circumstance where there is a large enough population of non-protected class minority voters who are cohesive enough with protected class voters to allow the latter to elect their candidates of choice. But, where this dynamic is present, protected class voters will be unable to establish that they are experiencing vote dilution, because they cannot show that the candidates preferred by the majority group will "usually … defeat the [protected class's] preferred candidate." *Gingles*, 478 U.S. at 51.

law elsewhere).

For example, imagine there are two jurisdictions that use at-large elections to elect five-member governing bodies. In both jurisdictions, 60 percent of the population is non-Hispanic white, 30 percent is Hispanic, and 10 percent is Black; all non-Hispanic white voters prefer candidates from Party A, and all Hispanic voters prefer candidates from Party B. In the first jurisdiction, all Black voters prefer candidates from Party A; in the second jurisdiction, all Black voters prefer candidates from Party B. In both jurisdictions, Hispanic voters can *never* elect their candidates of choice under the existing at-large system. The fact that Black voters do not all support the same candidate (*i.e.*, the Black vote is not cohesive) is irrelevant to the Hispanic voters' inability to elect their candidate of choice. Yet, under this Court's test, Hispanic voters will have a harder time proving their case in the second jurisdiction than in the first, even though Hispanic voters in both jurisdictions—assuming they can meet the reasonable alternative election system requirement—are experiencing vote dilution. Hispanic voters' entitlement to relief will, potentially, turn on something entirely extraneous to the right the NYVRA seeks to protect. Instead, Hispanic voters in the second jurisdiction will be penalized simply due their proximity to other groups of minority voters (which may themselves be experiencing vote dilution).

If there is any remaining uncertainty about how to interpret § 17-206(2)(b)(i)(A), it should be resolved by looking to another provision of the NYVRA that offers express guidance for how to construe its protections: the law must be liberally construed "in favor of . . . ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process." Election Law §17-202. This Court's test for demonstrating racially polarized voting does the opposite and threatens to leave minority communities experiencing vote dilution without recourse under the NYVRA. Interpreting an ambiguous provision of the NYVRA to be more

restrictive than the federal Voting Rights Act, and imposing an additional and unnecessary burden on plaintiffs, is plainly inconsistent with legislative intent.[4]

D. The evidence submitted by both parties assumed that the proper comparison for the purposes of demonstrating racial vote dilution was between Hispanic and non-Hispanic white voters.

Although Defendants passingly referred to uncertainty about the legal standard for demonstrating racially polarized voting, their principal argument at summary judgment was that the NYVRA "does not establish a coherent or enforceable test" for proving vote dilution. NYSCEF 146 at 18. Indeed, the evidence they presented in support of their summary judgment motion—like the evidence Plaintiffs presented—exclusively addressed the divergence between the political preferences of Hispanic and non-Hispanic white voters. Dr. Lisa Handley, who Defendants initially retained to assess their potential liability under the NYVRA, "concluded that voting is racially/ethnically polarized" because "Hispanic voters and *[n]on-Hispanic White* voters consistently support different candidates and the candidates supported by *non-Hispanic White* voters usually prevail in Mount Pleasant elections." NYSCEF 65 at 1 (emphasis added). Similarly, the expert report by Dr. Jeffrey Lewis that Defendants relied on at summary judgment exclusively assesses "the degree to which Hispanic and *Non-Hispanic white voters* support different candidates in elections." NYSCEF 71 at 7 (emphasis added).[5]

To prevail on their own summary judgment motion, Defendants were required to

[4] Plaintiffs' argument that this Court's interpretation of the phrase "rest of the electorate" is inconsistent with the legislature's intent in enacting the NYVRA is not a "new argument[] not previously advanced," *Cruz v. Masada Auto Sales, Ltd.*, 41 A.D.3d 417, 418 (2d Dep't 2007), as Defendants acknowledged in their Reply in Support of their Motion for Summary Judgment, *see* NYSCEF 157 at 18 (noting Plaintiffs' argument that "[t]he legislature did not intend" to enact the test for racially polarized voting this Court ultimately adopted).

[5] Dr. Lewis's only reference to "non-Hispanic" voters—the kind of aggregate analysis this Court's standard would seemingly require—came in a longitudinal analysis of Democratic Party registration data in Mount Pleasant used to support an unrelated critique of the Plaintiffs' expert's methodology. NYSCEF 71 at 11.

"affirmatively demonstrat[e] as a matter of law" that Plaintiffs had failed to show the existence of racially polarized voting in Town elections. Decision at 7; *see also L & D Serv. Station, Inc. v. Utica First Ins. Co.*, 103 A.D.3d 782, 783 (2d Dep't 2013). Tellingly, the only evidence Defendants relied on to support their motion were analyses of the political preferences of Hispanic and non-Hispanic white voters. *See* NYSCEF 118 at 25-27 (citing Dr. Handley's report). It appears that Defendants, like Plaintiffs, assumed that the settled test for racially polarized voting used by every other state and federal court applying similar statutes would apply here. Given the overriding focus of Defendants' arguments on the NYVRA's facial constitutionality, and Defendants' presentation of evidence solely addressing Hispanic and non-Hispanic white voters, this Court never received full briefing on the question of what standard should apply when assessing racially polarized voting under Election Law § 17-206(2)(b)(i)(A). As illustrated above, the most plausible reading of this provision is the one that is consistent with the NYVRA's structure and purpose of providing expansive protection for New Yorkers' fundamental right to vote.

II

Upon reargument and renewal, Plaintiffs are entitled to summary judgment

If this Court were to grant leave to reargue and/or renew its order to correct its misapprehension of the standard for proving racially polarized voting, Plaintiffs would be entitled to summary judgment. As this Court previously noted, Plaintiffs have presented "strong statistical evidence demonstrating a divergence in the electoral choices of eligible Hispanic voters from non-Hispanic White voters." Decision at 9. Indeed, Defendants' own experts have confirmed that there is racially polarized voting between Hispanic and non-Hispanic White voters. *See* NYSCEF 65 (report of Dr. Lisa Handley). And, as the Appellate Division has confirmed, a plaintiff may prove vote dilution based on racially polarized voting without also demonstrating impairment of their voting power under the totality of the circumstances. *Clarke*, 237 A.D.3d at 23. This, combined

with Plaintiffs' evidence that there are a variety of alternatives to Mount Pleasant's current at-large system, is sufficient to establish liability. Regardless, even if Plaintiffs are not entitled to summary judgment, it is crucial that the parties have clarity regarding the proper standard for proving racially polarized voting before this case goes to trial.

CONCLUSION

Plaintiffs respectfully submit that the Court, in its April 11, 2015 decision and order denying summary judgment, misapprehended the proper legal standard for assessing racially polarized voting under Election Law § 17-206(2)(b)(i)(A), and respectfully request that the Court grant their motion for leave to reargue and/or renew pursuant to CPLR 2221 so that it can re-consider that critical issue with the benefit of meaningful briefing. Upon the granting of reargument, Plaintiffs request that this Court issue an order that does not impose upon Plaintiffs the burden, not articulated in the statute nor intended by the legislature, of demonstrating a divergence in the electoral choices of eligible Hispanic voters from the choices of non-Hispanic voters of all races and ethnicities in order to establish racially polarized voting. Applying the correct standards, the Court should grant Plaintiffs' summary judgment on their vote dilution claim.

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Dated: White Plains, New York
July 10, 2025

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