SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SERGIO SERRATTO, ANTHONY AGUIRRE, IDA MICHAEL, and KATHLEEN SIGUENZA,	:	INDEX NO.: 55442/2024
Plaintiffs,	:	**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO REARGUE AND RENEW THEIR MOTION FOR SUMMARY JUDGMENT**
-against-	:	
TOWN OF MOUNT PLEASANT and TOWN BOARD OF THE TOWN OF MOUNT PLEASANT,	:	
Defendants.	:	Motion Sequence No. 9

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I. INTRODUCTION

Plaintiffs seek leave to reargue and/or renew their motion for summary judgment on the standard for demonstrating racially polarized voting under the New York Voting Rights Act ("NYVRA"). The Court should reject their request.

First, Plaintiffs cannot meet the standard for reargument or renewal. The issue Plaintiffs raise has been extensively briefed to this Court through the parties' cross motions for summary judgment. There is nothing new, and nothing this court misapprehended or overlooked. Nor has there been any change in the law. To the contrary, this Court was well aware of the Second Department's decision in *Clarke v. Newburgh*, 237 A.D.3d 14 [2d Dept 2025], at the time it issued its decision, where it cited *Clarke* numerous times. Thus, *Clarke* is not grounds for reargument or renewal. Plaintiffs simply seek a third bite at the apple, but that request should be soundly rejected.

Second, for the same reasons it was previously rejected, Plaintiffs' argument fails on the merits. Plaintiffs would have this Court re-write the language of an unambiguous statue to conform it to their liking. But it is not the role of this Court to re-write the text of a statute for Plaintiffs, or to infer what the Legislature meant to say, as opposed to what it did say. The Legislature could have adopted language akin to other state Voting Rights Acts ("VRAs") incorporating provisions from federal law, but expressly did not. This Court recognized that racially polarized voting as defined by the NYVRA's text requires a divergence between Hispanic voters "'from the rest of the electorate' as required by the statute, meaning non-Hispanic voters of all races and ethnicities" (Apr. 11, 2025 Decision & Order, NYSCEF DOC No. 183 at 9). That interpretation was correct in April and is still correct today.

Third, even assuming the Court were to adopt Plaintiffs' standard—which it should not—there are still numerous issues of fact requiring denial of summary judgment, including whether racially polarized voting has been demonstrated even under Plaintiffs' standard, and whether

Plaintiffs have proven an alternative election system that will more likely elect a Hispanic preferred candidate when compared to the current at-large system. Plaintiffs' suggestion that this Court can simply reverse its prior holding and grant them summary judgment is incorrect.

For all these reasons, this Court should deny Plaintiffs' request for leave for reargument or renewal.

II. BACKGROUND

Plaintiffs argue that the definition of "racially polarized voting" in the NYVRA requires them only to show a divergence in the voting preferences of Hispanic voters (i.e., the protected class at issue) and non-Hispanic White voters (who Plaintiffs contend are the "majority group") (Pls' Mtn for Reargument 1-2). But this question is one the Court previously considered—at length—and rejected.

On August 13, 2024, the parties each filed motions for summary judgment, which were followed by memoranda in opposition and replies. In the course of that briefing, the parties argued and debated this question extensively. The Court's April 11, 2025 Decision and Order was entered after consideration of that briefing.

In their summary judgment motion, Defendants cited to the plain text of the definition of racially-polarized voting requiring a "divergence in the candidate, political preferences, or electoral choice of members in a protected class from the … choice of *the rest of the electorate*." (Defs' MSJ, NYSCEF DOC No. 118 at 25, *quoting* N.Y. Elec. Law. § 17-204[6] [emphasis added]). Defendants argued that, as the alleged protected class consists of Hispanic voters, the "rest of the electorate" consists of all "non-Hispanic voters," not just *White* voters (*Id.*). Defendants expanded on this position in opposition to Plaintiffs' summary judgment motion, arguing that Plaintiffs' polarized-voting evidence was premised on the "wrong standard" because that evidence—coming from Drs. Velez and Handley—examined only "voting patterns among

Hispanic and non-Hispanic *whites*," (Defs' Opp. to Pls' MSJ, NYSCEF DOC No. 146 at 13 [citation omitted]), not whether the voting preferences of Hispanic voters "diverge[]" from those of "the rest of the electorate," a comparison group Defendants argued was *not limited to just White voters* (*Id., quoting* N.Y. Elec. Law § 17-204[6]).

In their briefing, Plaintiffs raised some of the very same arguments they renew in the present motion. In opposing Defendants' motion for summary judgment, Plaintiffs appeared to accept that "racially polarized voting 'cannot be [present] where large numbers of non-Hispanic residents vote for candidates chosen by … a large number of Hispanic residents'" (Pls' Opp. to Defs' MSJ, NYSCEF DOC No.153 at 26). But they argued that the standard for racially polarized voting under the NYVRA is based on the second and third *Gingles* preconditions governing vote-dilution under the federal VRA, which evaluate if the minority group is cohesive and there exists a "bloc voting majority" that is "usually … able to defeat candidates" supported by the minority (*Id.*, *quoting Thornburg v. Gingles*, 478 U.S. 30, 49 [1986]). In other words, Plaintiffs proposed a standard akin to that adopted under federal law in *Gingles* interpreting the federal VRA to require a divergence between the minority group and only white voters.

Plaintiffs likewise argued that Defendants' interpretation of the dilution standard would make NYVRA claims too difficult to prove, (Pls' Opp. to Defs' MSJ, NYSCEF DOC No. 153 at 26-27), an argument they also renew in the present motion (at 5-6, 8-9). Plaintiffs elaborated on their position in their reply in support of their summary judgment motion. There, Plaintiffs argued the proper comparison to establish racially-polarized voting under the NYVRA is Hispanic versus White voters, in part because they argued Hispanic and White voters made up 90% of the electorate in the Town and to require estimation of the entire electorate would be so difficult that to require it would "gut § 17-206(2)(b)(i)(A)" (Pls' RIS MSJ, NYSCEF DOC No.156 at 10).

In its Decision and Order, this Court resolved this dispute by agreeing with Defendants' position. Citing the statutory text, the Court found that while Plaintiffs submitted evidence "demonstrating a divergence in the electoral choices of eligible Hispanic voters from non-Hispanic White voters, plaintiffs do not demonstrate such divergence from the 'rest of the electorate' as required by the statute, meaning non-Hispanic voters of all races and ethnicities" (Apr. 11, 2025 Decision and Order, NYSCEF DOC No. 183 at 8-9).

Now, in their instant motion for leave to reargue or renew their motion for summary judgment, Plaintiffs advance four arguments in support of their position that N.Y. Elec. Law § 17-204[6] only requires Plaintiffs to show a divergence in voting preferences between members of a protected class (Hispanic voters) and the "majority group" (Non-Hispanic White voters): (1) legislative intent; (2) decisions from other courts applying the federal VRA and/or state VRAs from California and Washington; (3) a policy argument that the Court's interpretation of §17-204(6) makes it harder to prove vote-dilution, and (4) a claim that all parties' evidence presupposed Plaintiffs' interpretation was correct (*See generally* Pls' Mtn for Reargument at 3–12). These are all arguments that either were considered and rejected already, or could have been raised before and were not.

In the end, Plaintiffs, had—and took—two opportunities to brief this issue, and did not prevail. By filing the instant motion, Plaintiffs seek a mulligan. They are not entitled to do so procedurally, and their argument is no better on their third attempt.

III. LAW AND ARGUMENT

A. Plaintiffs' Motion Does Not Present A Basis For Reargument Or Renewal Of Plaintiffs' Motion For Summary Judgment.

Plaintiffs bring a motion for leave to both reargue and renew their motion for summary judgment under CPLR § 2221. The Court should summarily deny leave because Plaintiffs have failed to satisfy the applicable legal standard under either branch of their motion.

1. Plaintiffs are not entitled to successive opportunities to reargue issues the Court already considered after extensive briefing.

A "motion for leave to reargue 'is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented'" (*Anthony J. Carter, DDS, P.C. v. Carter*, 81 A.D.3d 819, 820 [2d Dept 2011], *quoting McGill v. Goldman*, 261 A.D.2d 593, 594 [2d Dept 1999]; *see also William P. Pahl Equipment Corp. v. Kassis,* 182 A.D.2d 22, 27-28 [1st Dept 1992]). Plaintiffs' motion runs afoul of both these principles.

Here, Plaintiffs seek to reargue an issue they have already extensively briefed—specifically, their contention that racially polarized voting under the NYVRA is evaluated by showing a divergence between the voting preferences of Hispanic with non-Hispanic White voters, rather than with the "rest of the electorate," as the NYVRA provides (*See, e.g.,* Pls' MSJ, NYSCEF DOC No. 60 at 10, 15-16; Pls' RIS MSJ, NYSCEF DOC No. 156 at 10). Plaintiffs acknowledge as much in their motion (at 11, n. 4).

Indeed, most of the arguments Plaintiffs advance in their motion to support reargument are akin to what Plaintiffs already argued in connection with the cross-motions for summary judgment. Plaintiffs already argued in their summary judgment briefing that the Legislature intended for the NYVRA to apply expansively, (Pls' MSJ, NYSCEF DOC No. 60 at 12), that Defendants' interpretation of § 17-204[6] would make the NYVRA more difficult to satisfy than the federal

VRA or California's VRA, (Pls' MIO to Defs' MSJ, NYSCEF DOC No. 153 at 27; Pls' RIS MSJ, NYSCEF DOC No. 156 at 10), and that Dr. Lisa Handley's expert report measured polarization by comparing Hispanic to White voters, (*see* Pls' RIS MSJ, NYSCEF DOC No. 156 at 10). Their present motion repackages these arguments, but in the end does little more than offer a "successive" presentation of arguments they had ample opportunity to brief at the summary judgment stage. That is not enough to warrant reargument and, in essence, a third bite at the apple.

While Plaintiffs *arguably* offer some additional reasons they claim support their interpretation of the racially polarized voting standard under the NYVRA based upon how other courts have analyzed polarized voting standards under federal and other state VRAs (at 6-8), that merely expands on their policy argument that this Court's application of the plain text of the NYVRA would make vote-dilution *more* difficult to prove than under those other statutes (at 8-10). But even if these arguments are new, they were all positions available to Plaintiffs during summary judgment briefing that Plaintiffs could have, and should have, presented earlier. It is not appropriate for a party to raise an argument "for the first time in connection with [a] motion for reargument" (*Woody's Lumber Co. v. Jayram Realty Corp.*, 30 A.D.3d 590, 592-93 [2d Dept 2006] [finding "no need for the Supreme Court to address" an unclean-hands argument because it was raised for the first time on reargument]; *see also, e.g., V. Veeraswamy Realty v. Yenom Corp.*, 71 A.D.3d 874, 874 [2d Dept 2010] [reargument not appropriate where "the plaintiff merely advanced arguments that had not been presented in its previous motion, and made no effort to demonstrate to the court in what manner it had misapprehended the relevant facts or law."]). Plaintiffs already had a full and fair opportunity to present any and all reasons in support of their statutory interpretation of the definition of racially polarized voting during the extensive briefing on the cross-motions for summary judgment. It is prejudicial to expect Defendants and this Court to spend

time covering the same ground every time Plaintiffs think up a new argument, or simply want to be re-heard, in support of their position. There was nothing this Court overlooked or misapprehended as Plaintiffs suggest. Plaintiffs simply disagree with this Court's decision.

2. *Clarke* is not a basis for reargument or renewal of Plaintiffs' motion for summary judgment.

Plaintiffs alternatively bring a motion to renew under CPLR § 2221(e)(2), which permits renewal of a motion if "there has been a change in the law that would change the prior determination" of the motion. Plaintiffs contend this can be satisfied by a "clarification in the decisional law," citing *Dinallo v. DAL Elec.*, 60 A.D.3d 620, 621 [2d Dept 2009] (Pls' Mtn for Reargument at 3). Plaintiffs point to the Second Department's decision in *Clarke v. Town of Newburgh*, 237 A.D.3d 14 [2d Dept 2025], as providing the "change" or "clarification" of the law sufficient to support reargument and/or renewal of their motion for summary judgment. But *Clarke* does not support Plaintiffs' request to renew or reargue the summary judgment motions for two reasons.

First, this Court already considered and relied upon the *Clarke* decision in its comprehensive summary judgment opinion, so it is not "new" authority. *Clarke*, currently on appeal to the Court of Appeals,[1] was decided on January 30, 2025. The parties notified the Court of the Second Department's decision in *Clarke* as part of letters filed on January 30 and 31, 2025 (NYSCEF DOC Nos. 179, 180, and 181). On April 11, 2025, over two months later, this Court entered its summary judgment Decision and Order denying the parties' cross-motions for summary judgment (NYSCEF DOC No. 183). That Decision and Order cited *Clarke* repeatedly—*e.g.*, at

[1] The Second Department granted the *Clarke* Defendants-Appellants leave to appeal to the Court of Appeals pursuant to CPLR § 5713 on May 23, 2025. On July 7, 2025, those Defendants-Appellants filed their Brief in the Court of Appeals in the appeal captioned *Clarke v. Town of Newburgh*, Docket No. APL-2025-00110, and remains pending.

pgs. 4, 5, 7, 8—for numerous propositions of law, demonstrating that the Court was aware of and considered *Clarke* in its Decision and Order.

Second, *Clarke* does not address the statutory interpretation question Plaintiffs raise, and that decision does not compel the Court to interpret "rest of the electorate" in N.Y. Elec. Law §§ 17-204[6] and 17-206[2][b][i][A] to mean, in this case, only "White voters." Rather, Plaintiffs only cite *Clarke* for the anodyne position that the Legislature intended the NYVRA to expand upon the protections of the federal VRA and that the NYVRA was modeled after VRAs in California and Washington (Pls' Mtn for Reargument at 6, *citing Clarke*, 237 A.D.3d at 22).

As such, *Clarke* is *not* a "change in the law" or a "clarification of the decisional law" sufficient to support renewal of Plaintiffs' motion for summary judgment.

B. Plaintiffs' Arguments Fail On The Merits.

Plaintiffs demand that the Court rewrite the definition of "racially polarized voting" in the NYVRA based on legislative intent and policy arguments. But neither is persuasive, and it is not the role of the Court to re-write the statute to Plaintiffs' liking.

1. Plaintiffs summarily declare the definition of racially polarized voting under the NYVRA ambiguous, without any meaningful engagement with its text, in order to ask the Court to "interpret" the statute inconsistent with its text to (in Plaintiffs' opinion) better fulfill the Legislature's intent. Doing so is improper.

The Court of Appeals has "long held that the statutory text is the clearest indicator of legislative intent, and that a court should construe unambiguous language to give effect to its plain meaning" (*Matter of Walsh v. New York State Comptroller*, 34 N.Y.3d 520, 524 [2019] [internal quotation and citation omitted]). As such, "[w]here the statutory language is unambiguous, a court need not resort to legislative history" to interpret it (*Id.; see also Freedom Found. v. Jefferson*

Cnty., 229 A.D.3d 1203, 1205 [4th Dept 2024] [same]). Plaintiffs admit this point (*See* Pls' Mtn for Reargument at 4).

Here, the statutory definition of "racially polarized voting" is unambiguously clear, as Defendants argued in their summary judgment motion (Defs MSJ, NYSCEF DOC No. 118 at 25).[2] The NYVRA provides in pertinent part that a violation of the vote-dilution prohibition "shall be established upon a showing that a political subdivision: (i) used an at-large method of election and … (A) voting patterns of members of the protected class within the political subdivision are racially polarized" (N.Y. Elec. Law § 17-206[2][b][i][A]). The term "racially polarized voting" is then defined as "voting in which there is a divergence in the candidate, political references, or electoral choices of members in a protected class from the candidates, or electoral choice of the rest of the electorate" (*Id.* § 17-204[6]). That definition of "racially polarized voting" must be interpreted in the usual manner, where the Court should "construe [its] words of ordinary import with their usual and commonly understood meaning," and can "regard[] dictionary definitions as useful guideposts in determining the meaning of a word or phrase" (*Nadkos, Inc. v. Preferred Contrs. Ins. Co. Risk Retention Group, LLC*, 34 N.Y.3d 1, 7 [2019] [citations omitted]; *see also Walsh*, 34 N.Y.3d at 524 [same]).

This could not be simpler. Racially polarized voting requires a "divergence" in the choices of "members in a protected class" from "the rest of the electorate" (N.Y. Elec. Law § 17-204[6]). The term "divergence" means "moving off in different directions" (IV Oxford English Dictionary 885 [2d ed 1989]). The relevant "divergence" here is between the choices of two groups: those "members in a protected class" against those of "the rest of the electorate." In that context, the common and ordinary meaning of "rest" of the electorate is the "remainder or residue" of it (XIII

[2] Plaintiffs are therefore incorrect in arguing that Plaintiffs and Defendants agree that the text of § 17-206[2][b][i][A] is ambiguous (Pls' Mtn for Reargument at 4).

Oxford English Dictionary 746 [2d ed 1989]; *see also* Webster's New World College Dictionary 1222 [4th ed 2007] [defining "rest" as "what is left after part is taken away; remainder"]). The definition therefore calls for a comparison between the choices of those in the protected class and those not in the protected class (i.e., the rest of the electorate). Here, the alleged protected class consists of Hispanic voters. As this Court found, therefore, the "'rest of the electorate' as required by the statute [means] non-Hispanic voters of all races and ethnicities" (Apr. 11, 2025 Decision and Order, NYSCEF DOC No. 183 at 9).

Since the statute is unambiguous, the interpretive exercise ends there. Otherwise, it "would require [the court] to assume the drafters meant something other than what they wrote" and to violate the "established canon of construction that '[courts] are not at liberty to second-guess the legislature's determination, or to disregard—or rewrite—its statutory text'" (*Xiang Fu He v. Troon Mgmt., Inc.*, 34 N.Y.3d 167, 172 [2019], *quoting Matter of New York Civ. Liberties Union v. New York City Police Dept.*, 32 N.Y.3d 556, 567 [2018]). This Court should again reject Plaintiffs' request to have this Court rewrite the definition of "rest of the electorate" in § 17-204[6] to mean only "the majority group" (here, non-Hispanic White voters).

2. Instead of following its unambiguous, plain language, Plaintiffs ask the Court to interpret the NYVRA's definition of racially polarized voting consistent with the standards under the federal, California, and other state VRAs. In support of this position, Plaintiffs point to similar "rest of the electorate" language that appears in the California and Washington statutes (*See, e.g.,* Cal. Elec. Code § 14026[e] [defining "racially polarized voting" as "voting in which there is a difference … in the … electoral choices that are preferred by voters in a protected class, and in the … electoral choices that are preferred by voters in the rest of the electorate"]; RCW § 29A.92.010[4] [defining "polarized voting" as "voting in which there is a difference in the …

electoral choices that are preferred by voters in a protected class or a coalition of protected classes, and in the … electoral choices that are preferred by voters in the rest of the electorate"]).

But Plaintiffs ignore key differences between those statutes and the NYVRA. The California and Washington VRAs evaluate racially polarized voting using the second and third preconditions laid out in *Thornburg v. Gingles*, 478 U.S. 30 [1986] for the federal VRA, including the third precondition that asks if "whites [i.e., the majority group] vote sufficiently as a bloc usually to defeat the minority's preferred candidates (*Id.* at 56; *see e.g., Yumori-Kaku v. City of Santa Clara*, 59 Cal. App. 5th 385, 411-412 [Cal.App.6th Dist. 2020][3] ["[S]ection 14026 defines racially polarized voting by reference to federal case law" and "the second and third *Gingles* factors—showing the minority group is politically cohesive *and* that majority bloc voting enables it usually to defeat the minority's preferred candidate…are required to prove a violation" under the California VRA]; *Pico Neighborhood Ass'n v. City of Santa Monica,* 534 P.3d 54, 63 [Cal. 2023] [confirming *Gingles* governs the California VRA's racially polarized test]; *Portugal v. Franklin Cnty.*, 530 P.3d 994, 1003 [Wash. 2023] [the Washington VRA's definition of "polarized voting" "corresponds to the second and third *Gingles* factors"]).

Thus, as Defendants previously pointed out (Defs' RIS MSJ, NYSCEF DOC No. 157 at 13), the California VRA explicitly adopted the second and third *Gingles* preconditions into its test for racially polarized voting (*Pico Neighborhood*, 534 P.3d at 63 [acknowledging that under Cal. Elec. Code § 14026[e], racially polarized voting "may be established by '[t]he methodologies for estimating group voting behavior as approved in applicable federal cases to enforce the [VRA]'"]).

[3] Plaintiffs erroneously claim in their motion (at 8) that in *Yomori-Kaku*, a vote-dilution case brought on behalf of Asian voters, the "Court of Appeals expressly rejected" the interpretation Defendants submit here for the NYVRA. The cited page, 59 Cal.App.5th at 405, only restates the *trial court's* opinion, not its own. Moreover, the opinion also reports that the expert in that case estimated *three* categories of voters: "non-Hispanic Whites and Blacks, Latinos, and Asian Americans." *Id.* at 400. Plaintiffs here did not estimate any race(s) beyond Hispanic and White.

And the Washington VRA provides that "'courts may rely on relevant federal case law guidance' in interpreting the WVRA" (*Portugal*, 530 P.3d at 1000 [quoting RCW § 29A.92.010]). The NYVRA did not, as Plaintiffs concede (Pls' Mtn for Reargument at 8).

Unlike California and Washington, the Legislature did *not* explicitly adopt the second and third *Gingles* preconditions as the test for racially polarized voting or empower New York courts to rely on federal case law to guide their interpretation of the NYVRA. Indeed, as Plaintiffs argue (at 4-5), the Legislature chose to "expand[] upon the protections available under the federal [VRA]." In so doing, it adopted a definition for racially polarized voting not found in the federal VRA—one that requires only a "divergence" in voting preferences between the protected class and the rest of the electorate, not the more demanding showing required under *Gingles*' third precondition that the "white majority votes sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate" (*Gingles*, 478 U.S. at 51). The Legislature was certainly aware of the language of these other state VRAs expressly adopting the standards from the federal VRA. The Legislature's choice to depart from federal standards and precedents must be respected, and the Court therefore should not accept Plaintiffs' invitation to engraft a federal racially polarized voting definition onto the NYVRA that the Legislature itself chose not to adopt.

Furthermore, unlike in California and Washington, the NYVRA's vote-dilution framework is disjunctive, allowing vote-dilution claims against at-large systems where there is *either* a showing of "racially polarized" voting patterns *or* a showing that "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" (N.Y. Elec. Law § 17-206[2][b][i][A]-[B]). The California[4] and Washington VRA require *both* a showing that there is "racially polarized voting"

[4] *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 26 (2d Dept 2025), observed that N.Y. Elec. Law § 17-206[2][b][i] "suggests that a vote dilution claim shall be established simply upon a showing that a political subdivision used an at-

and that the protected class has experienced a dilution of voting strength (i.e., "that the protected class thereby has less ability to elect its preferred candidate") (*See* Ruth Greenwood & Nicholas Stephanopoulos, *Voting Rights Federalism*, 73 Emory. L.J. 299, 312-13 [2023]).

That distinction matters because the third *Gingles* precondition's racial bloc voting standard—which Plaintiffs ask the Court to import into the NYVRA—is tied to the requirement to show impairment of a protected class's electoral opportunity that the NYVRA jettisoned (*See Gingles*, 478 U.S. at 55 [recognizing that "bloc voting is a key element of a vote dilution claim" and "the extent of bloc voting necessary to demonstrate that a minority's ability to elect its preferred representatives is impaired" is an element thereof]). *Gingles* found the preconditions were necessary to show impairment of a protected class's ability to elect candidates of their choice under the "totality of the circumstances" inquiry under Section 2 of the federal VRA (*See id.* at 48-50; 52 U.S.C. § 10301[b]). Because the New York Legislature did not require plaintiffs to show impairment under the totality of circumstances to prove a claim of vote dilution, there is no basis to import *Gingles'* third precondition and its majority-bloc voting requirement to supplant § 17-204[6]'s plain text.

3. Plaintiffs urge the Court to adopt their atextual interpretation of the definition of racially polarized voting in § 17-204[6] by claiming that the Court's interpretation, which adheres to the text, would make it *harder* to prevail under the NYVRA than under the federal VRA or California's VRA—what they call an "absurd result that would frustrate the statutory purpose" (Pls' Mtn for Reargument at 8-11, *quoting Long v. Adirondack Park Agency,* 76 N.Y.2d 416, 420 [1990]). This argument lacks credibility and was already rejected.

large method of election and the voting patterns are racially polarized," but noted that the California Supreme Court had concluded otherwise under CVRA. *Clarke* did not reach this question, however.

First, Plaintiffs are wrong to claim (at 8) that under the federal VRA, "the voting behavior of *other* minority voters [beyond the protected class that is suing] is irrelevant." Under the *Gingles* framework, to show the existence of legally significant racially polarized voting, a plaintiff must show the minority group is "politically cohesive" and that the "white majority votes sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate" (*Gingles*, 478 U.S. at 51). "[I]n general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting" (*Id.* at 56). At a minimum, under this framework, the voting preferences of other minority groups directly impact the effect of "white bloc voting" on the minority group's ability to elect a candidate of choice. Consider a hypothetical electorate of 100 voters that is 50% White, 30% Hispanic, and 20% Asian, in an election featuring two candidates – A and B. Suppose 90% of Hispanic voters (27) support Candidate A, and 80% of White voters (40) support Candidate B, as shown in this chart:

GROUP	VOTES FOR: CANDIDATE A	CANDIDATE B
White (50 voters)	10	40
Hispanic (30 voters)	27	3
Subtotal:	37	43
Asian (20 voters)	?	?

In this example, the level of White crossover voting for the Hispanic-preferred candidate is 20%. As a result, White voters alone cannot provide the 51 votes necessary for Candidate B to defeat the Hispanic-preferred Candidate A, and the voting preferences of "other minority voters" will decide this hypothetical election. If Asian voters support the Hispanic-preferred Candidate A (with at least 14 of their 20 votes), then Candidate A will win and it cannot be said that a "white bloc voting" defeated the Hispanic-preferred candidate in this election for purposes of the third *Gingles* precondition. So, the voting behavior of other minority groups can be highly relevant.

Second, as *Clarke* found, the NYVRA is more expansive than the federal VRA both with respect to liability and remedy (*Clarke*, 237 A.D.3d at 25-26). Specifically, *Clarke* found that unlike the federal VRA, the NYVRA and California and Washington VRAs "permit[] 'influence' claims, and do[] not require the first *Gingles* precondition, i.e., that the minority group must be sufficiently large and geographically compact to constitute a majority in a reasonably configured district" to be satisfied (*Id.*). As for remedy, *Clarke* found the NYVRA permits "non-district based remedies, such as ranked-choice voting, cumulative voting, limited voting, and the elimination of staggered terms" (*Id.* at 26). The disjunctive nature of liability under the NYVRA—where a plaintiff can prevail on a showing of "racially polarized voting" without a showing of impairment under the totality-of-circumstances—is also an expansion from the federal VRA, as Plaintiffs argued to this Court (Pls' MSJ, NYSCEF DOC No. 60 at 14). And, as discussed *supra,* § 17-204[6]'s "divergence"-based definition of racially polarized voting *is* more expansive than the federal *Gingles* test. These provisions mark a significant expansion beyond the federal VRA, and the modest requirement that Plaintiffs prove a divergence between the voting preferences of the protected class they claim to represent from that of the rest of the electorate, rather than just non-Hispanic White voters, does not render the statute unworkable. To this point, it is significant that Plaintiffs do not put forward any actual evidence that it is impossible for them to show the voting behavior of other groups.

In particular, the hypothetical example Plaintiffs provided in their motion—one where 100% of White voters preferred a different candidate than 100% of Hispanic voters—does not reflect voting in the Town. As Defendants have argued elsewhere (e.g., Defs' RIS MSJ, NYSCEF DOC No. 157 at 13), depending on the election, between 20 and 40% of White voters in the Town support Hispanic-preferred candidates, plus an unknown quantum of the voters of other racial or

ethnic groups. It cannot be said on the facts of this case that the "rest" of the Town's electorate oppose Hispanic-preferred candidates as N.Y. Elec. Law § 17-204[6] requires to find a divergence from the preferences of Hispanic voters.

4. Finally, Plaintiffs argue that Defendants likewise relied upon evidence that compared the political preferences of Hispanic and non-Hispanic White voters, somehow implying that Defendants have conceded theirs is the appropriate standard (Pls' Mtn for Reargument at 11-12). Not so. Throughout the summary judgment briefing, Defendants maintained that the appropriate standard under the plain terms of the NYVRA was to compare the political preferences of the Hispanic community to the "rest of the electorate," and that Plaintiffs failed to meet that standard where between 20-40% of white voters and an unknown number of members of other racial groups have the same political preferences as the Hispanic community in the Town of Mount Pleasant (Defs' MSJ, NYSCEF DOC No. 118 at 25; Defs' Opp. to Pls' MSJ, NYSCEF DOC No. 146 at 13; Defs' RIS MSJ, NYSCEF DOC No. 157 at 12-13). That Defendants may have cited to their expert analysis of Hispanic voting preferences compared to only White voters to demonstrate an issue of fact in *opposition* to Plaintiffs' motion for summary judgment advocating for such a standard (Defs' Opp. to Pls' MSJ, NYSCEF DOC No. 146 at 14-15) does not eradicate Defendants' primary argument that Plaintiffs applied the wrong standard in the first instance. Plaintiffs' suggestion otherwise misunderstands Defendants' position.

C. Even If the Court Adopts Plaintiffs' Position, They Are Still Not Entitled to Summary Judgment.

Plaintiffs argue that if the Court were to correct its prior misapprehension and inappropriately re-write an unambiguous statute to adopt their preferred white bloc voting standard, they would be entitled to summary judgment (Pls' Mtn for Reargument at 12-13). Not so. Even under Plaintiffs' desired standard, whether voting in the Town is racially polarized and

whether Plaintiffs are entitled to relief under the NYVRA present issues of fact that preclude summary judgment in their favor.

As previously argued by Defendants, even adopting Plaintiffs' standard, there are still disputed issues necessitating a trial (Defs' Opp. to Pls' MSJ, NYSCEF DOC No. 146 at 14-15). For example, whether there is sufficient white crossover voting that might permit Hispanic preferred candidates to win in future elections is a disputed issue of fact—especially if Town elections move to even years. Indeed, a Hispanic preferred candidate recently won election to the Town Board in 2018 (*Id.* at 16) (citing 2018 Town Board election where Democrat Francesca Hagadus-McHale defeated the White Republican candidate Anthony Amiano).

In addition, as Plaintiffs suggest, they must still prove an alternative election system that would more likely elect Hispanic preferred candidates when compared to the at-large system. As previously argued by Defendants, and the Cout found, this is at least an issue of fact further necessitating a trial (Defs' Opp. to Pls' MSJ, NYSCEF DOC No. 146 at 16-21). Plaintiffs do not even address this point in their Motion, but, rather, summarily suggest that if this Court simply corrects its interpretation of the definition of racially polarized voting, they win. They do not. For this reason, too, there is no reason to grant Plaintiffs request for leave to reargue or renew their motion for summary judgment.

IV. CONCLUSION

For all the foregoing reasons, Defendants respectfully request that this Court deny Plaintiffs' Motion for Leave to Reargue and Renew Their Motion for Summary Judgment.

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Respectfully submitted,

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I certify that the word count of this memorandum of law complies with the word limits set forth in 22 NYCRR § 202.8-b. According to Microsoft Word 365, the word-processing system used to prepare this memorandum of law, the total word count for all printed text exclusive of the material omitted under 22 NYCRR § 202.8-b(b) is 5,506 words.

Dated: New York, New York
August 11, 2025

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