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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Earlier in this case, Defendants claimed that the NYVRA's vote dilution provisions were so ambiguous as to render the statute constitutionally indeterminate. They characterized the legislative text as "nonsensical and incoherent," "ambiguous," "unclear," "overrun with textual incoherence," "ha[ving] no real content," and "unworkable." *See* NYSCEF 118 at 11-12; NYSCEF 146 at 9; NYSCEF 157 at 7. Focusing in on the provisions defining racially polarized voting—the ones at issue here—they argued that the statutory definitions "provide[] courts with no guidance on [when] the legislature intended for 'racially polarized voting' to be found." NYSCEF 118 at 12. Defendants' arguments were, as this Court and the Appellate Division confirmed, hyperbolic: the NYVRA's prohibition on vote dilution is "not unconstitutionally vague." NYSCEF 183 at 4; *see also Clarke v Town of Newburgh*, 237 A.D.3d 14 (2d Dept 2025). But they contained a kernel of truth: as Plaintiffs have acknowledged, some of the NYVRA's provisions have ambiguity that requires judicial construction to harmonize the text, structure, and purpose of the statute. *See* NYSCEF 153 at 6-7.

Now, however, Defendants have changed their tune. The same text that Defendants claimed was so incoherent as to preclude courts from enforcing the NYVRA is actually "unambiguously clear." Def. Br. at 13. Applying it "could not be simpler." *Id.* The reason for Defendants' about-face is obvious. If the text of the provisions defining racially polarized voting is ambiguous, then this Court can and must utilize other interpretive tools to "discern and implement the will of the Legislature and attempt—by reasonable construction—to reconcile and give effect to all of the provisions of the subject legislation." *Carney v. Philippone*, 1 N.Y.3d 333, 339 (2004), *reargument denied* 2 N.Y.3d 794 (2004). Applying those interpretive tools yields a clear answer: the Legislature did not intend to radically depart from the standard for racially

polarized voting used in laws that the NYVRA "builds upon," NYSCEF 90 at 8-9 (NYVRA Bill Jacket), in a manner that would make vote dilution *more* difficult to prove under the more expansive NYVRA than under the federal VRA. So, rather than engage these sources of meaning, Defendants disavow their prior position in service to their newfound argument that, when giving meaning to the NYVRA's vote dilution provisions, "the interpretive exercise ends" with the text. Def. Br. at 14.

Defendants also contend that the question of what comparator to use when assessing racially polarized voting "has been extensively briefed to this Court through the parties' cross motions summary judgment." Def. Br. at 5. Not quite. Defendants' principal argument, which understandably commanded the most attention in both parties' summary judgment papers, was that the NYVRA's vote dilution provisions were unconstitutionally vague. *See, e.g.*, *id* at 8. By contrast, arguments about how to construe the phrase "rest of the electorate" in Election Law § 17-204(6) warranted just a few short paragraphs scattered across more than 100 pages of briefing. *See* NYSCEF 118 at 32; NYSCEF 146 at 18; NYSCEF 156 at 14; NYSCEF 157 at 18. Tellingly, analyses performed by Defendants' *own* experts—which Defendants used to make their affirmative summary judgment case—only compared Hispanic and *non-Hispanic white voters*, suggesting initial agreement that racially polarized voting should be assessed using the standard utilized in countless other vote dilution cases. *See* NYSCEF 65 (Handley Report); NYSCEF 71 (Lewis Report); NYSCEF 118 at 27, 28, 33 (citing both). Under these circumstances—where an important question of first impression initially received scant attention because other threshold questions took precedence, and where there is reason to believe the Court's answer to the question was in error—reargument is entirely appropriate.

Defendants' other arguments fare no better. They contend that the Appellate Division

decision in *Clarke* does not justify reargument or renewal because it was decided before this Court's Decision and Order on the parties' summary judgment motions, and because *Clarke* "does not address the statutory interpretation question Plaintiffs raise." Def. Br. at 11-12. Yet the *Clarke* decision came months *after* summary judgment briefing in this case had concluded. Moreover, while *Clarke* did not resolve the precise question at issue here, it did clarify that courts should look to the "very similar laws enacted in California and Washington" that the NYVRA is "modeled after" when interpreting the statute's vote dilution provisions. *Clarke*, 237 A.D.3d at 22. This clarification is especially important given that both the California and Washington VRAs use the exact same "rest of the electorate" language to define racially polarized voting, yet *neither* utilizes the novel test this Court adopted. NYSCEF 193 at 11-13.

Finally, if this Court applies the correct standard for demonstrating the existence of racially polarized voting, it should reconsider and grant Plaintiffs' Motion for Summary Judgment based on what this Court has already recognized as "strong statistical evidence demonstrating a divergence in the electoral choices of eligible Hispanic voters from non-Hispanic White voters." NYSCEF 183 at 9. Accordingly, this Court should grant Plaintiffs' motion for leave to reargue and/or renew pursuant to CPLR 2221.

ARGUMENT

I. This Court's prior interpretation of ambiguous language in Election Law § 17-204(6) is inconsistent with the Legislature's intent.

It is difficult to reconcile Defendants' present argument that "the statutory definition of 'racially polarized voting' is unambiguously clear," Def. Br. at 13, with their prior argument that "the statutory definitions [of racially polarized voting] add further mystery" to the task of interpreting the NYVRA. NYSCEF 118 at 12; *see also id.* at 11 (claiming that "[r]ead plainly,"

the NYVRA's definition of racially polarized voting "is nonsensical and incoherent"). Nevertheless, if Defendants are correct—if discerning the meaning of racially polarized voting as defined in Election Law § 17-204(6) based solely on dictionary definitions "could not be simpler," Def. Br. at 13—then the phrase "rest of the electorate" must surely have the same meaning when used in the California and Washington VRAs, the "very similar laws" that the NYVRA is "modeled after." *Clarke*, 237 A.D.3d at 22. After all, courts in both California and Washington, like courts in New York, "begin with the text as the first and best indicator of intent." *People v. Mentch*, 45 Cal.4th 274, 282 (Cal. 2008); *see also Antio, LLC v. Dep't of Revenue*, 3 Wash.3d 882, 889 (Wash. 2024). Yet neither the California nor the Washington VRAs—nor, for that matter, the federal VRA which, as this Court observed, is "'not significantly' different from the [NYVRA] in terms of the standard necessary to find a violation," NYSCEF 183 at 5 (quoting *Clarke*, 237 A.D.3d at 39)—require vote dilution plaintiffs to show they are polarized from non-protected class minority voters. *See* Pl. Br. at 11-13. Defendants do not dispute this. Instead, they offer various explanations for why the phrase "rest of the electorate" means one thing in the California and Washington VRAs and a completely different thing in the NYVRA. None are persuasive.

Defendants initially contend that Plaintiffs have "ignore[d] key differences between those statutes and the NYVRA." Def. Br. at 15. First and foremost, they claim that while "[t]he 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," *id.*, the NYVRA "requires only a 'divergence' in voting preferences between the protected class and the rest of the electorate," *id.* at 16. But this supposed difference is completely illusory. As the Appellate Division explained, vote dilution plaintiffs must "show that 'vote dilution' has occurred *and* that there is an alternative practice that would allow the minority group to 'have equitable

access to fully participate in the electoral process.'" *Clarke*, 237 A.D.3d at 39 (first quoting Election Law § 17–206(2)(a), then quoting Election Law § 17-206(5)(a) (emphasis added)).[1] This Court rightly acknowledged the same: the NYVRA "plainly requires plaintiffs demonstrate vote dilution and, to do so, plaintiffs must establish a reasonable alternative practice as a benchmark against which to measure the existing voting practice." NYSCEF 183 at 4 (internal citations omitted). Defendants are simply wrong to claim that the NYVRA "jettisoned" "the requirement to show impairment of a protected class's electoral opportunity." Def. Br. at 17. A mere "'divergence' in voting preferences" is *not* enough to demonstrate that an electoral system "*ha[s] the effect of impairing the ability of members of a protected class* to elect candidates of their choice or influence the outcome of elections." Election Law § 17-206(2)(a) (emphasis added). If Hispanic-preferred candidates regularly defeat white-preferred candidates in the Town of Mount Pleasant, then Plaintiffs *cannot* prove vote dilution under the NYVRA, no matter how polarized white and Hispanic voters may be.

Defendants emphasize the fact that the NYVRA implicitly adopts the second and third *Gingles* preconditions, whereas the California and Washington VRAs "expressly adopt[] … standards from the federal VRA." Def. Br. at 16. Yet Defendants do not and cannot dispute that the Legislature intended the NYVRA to "build[] upon the demonstrated track record of success [of state VRAs] in California and Washington, as well as the historic success of the federal voting rights act." NYSCEF 90 (NYVRA Bill Jacket) at 9. Given this clear statement of legislative intent, it is entirely appropriate—and, indeed, necessary—for this Court to look to decisions interpreting and applying similar language and concepts where they appear in those statutes. *See, e.g.*, *Cent.*

[1] As this quote makes clear, Defendants are wrong to suggest that *Clarke* "did not reach th[e] question" of whether evidence of divergent voting preferences alone is sufficient to prove vote dilution. Def. Br. at 16-17 n.4.

Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n, 108 A.D.2d 266, 271 (3d Dep't 1985) ("[T]he authoritative legislative history and judicial and administrative interpretation of a statute upon which New York legislation was modeled is highly persuasive").

Defendants next describe a hypothetical scenario where the behavior of non-protected class minority voters *is* relevant to the question of whether protected class voters are experiencing vote dilution, because the voting preferences of non-protected class minority voters can determine whether the candidates preferred by protected class voters defeat the candidates preferred by white voters. *See* Def. Br. at 18-19. This is a scenario Plaintiffs also described: "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 … 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.'" NYSCEF 193 at 14 n.3 (quoting *Gingles*, 478 U.S. at 51). Yet this scenario does not necessitate the standard this Court adopted. Because the NYVRA incorporates the second and third *Gingles* preconditions, the influence of non-protected class minority voters (Asian voters in Defendants' scenario) is accounted for in an analysis of the election results. If Asian voters are numerous enough and sufficiently cohesive with Hispanic voters to allow Hispanic-preferred candidates to routinely prevail, then Hispanic voters will *not* have a vote dilution claim. By contrast, if white-preferred candidates regularly defeat Hispanic-preferred candidates (and plaintiffs can satisfy all other requirements), then Hispanic voters *are* experiencing vote dilution, regardless of the exact percentage overlap between Hispanic and Asian voter preferences.

Defendants also point to various ways in which the NYVRA expands beyond its state and federal analogs. Def. Br. at 19. Some of these purported differences are, again, not actual

differences. Although the NYVRA is more explicit in listing remedies other than single-member districts, alternative remedies are also available under the California and Washington VRAs and the federal VRA. *See, e.g.*, Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 Emory L.J. 299, 314 (2023) (observing that "California's, New York's, Oregon's, and Washington's SVRAs suggest that a form of proportional representation is a proper remedy in certain cases"); *United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 447-48 (S.D.N.Y. 2010) (remedying federal vote dilution liability by imposing cumulative voting and de-staggering terms). Defendants do identify one actual difference between the NYVRA and the federal VRA—the NYVRA does not require plaintiffs who demonstrate vote dilution based on racially polarized voting to also prove impairment under the totality of the circumstances. They are simply wrong to claim that the California and Washington VRAs *require* vote dilution plaintiffs to prove totality of the circumstances in addition to racially polarized voting. These statutes both say that "[o]ther factors" pertaining to historical and ongoing discrimination are "probative, but *not* necessary" to "establish a violation." Cal. Election Code §14028(e) (emphasis added); Wash. Rev. Code §29A.92.030(7) (emphasis added). Regardless, they offer no explanation for *why* this minor difference between the NYVRA and federal VRA matters when defining racially polarized voting. To be sure, "[t]he Legislature's choice to depart from … standards and precedents" addressing the federal VRA "must be respected." Def. Br. at 16. But the converse is also true: the fact that the Legislature chose to use the *same language* as the California and Washington VRAs to define the *same concept* is compelling evidence that the Legislature intended to adopt the *same standard* for demonstrating the existence of racially polarized voting.

Finally, Defendants fault Plaintiffs for not "put[ting] forward actual evidence that it is impossible for them to show the voting behavior of other groups." Def. Br. at 19. Well, sure.

Plaintiffs have argued that the Court's new standard for racially polarized voting makes vote dilution cases harder to prove, not impossible. And it will. In Mount Pleasant, for example, the evidence indicates that white-preferred candidates regularly defeat Hispanic-preferred candidates in Town elections. If the small non-white, non-Hispanic population in Mount Pleasant votes cohesively with Hispanic voters, then the level of racial polarization that Plaintiffs can show will be lower under this Court's standard than under the traditional standard used under the California, Washington, and federal VRAs. Yet given the small size of Mount Pleasant's non-white, non-Hispanic population, and the voting patterns of white and Hispanic voters, the voting behavior of non-white, non-Hispanic voters has no bearing on Hispanic voters' opportunity to elect their candidates of choice. Plaintiffs will be penalized because they are proximate to other minority groups who may themselves be experiencing vote dilution. This will undermine the NYVRA's effectiveness in identifying and deterring vote dilution, contrary to the Legislature's clear intent.

At its core, Defendants argument is that this Court must adhere to a "wooden application of … literal language [that] would lead to an absurd conclusion." *Anderson v. Regan*, 53 N.Y.2d 356, 362 (1981). But "[t]he primary consideration of courts in interpreting a statute is to 'ascertain and give effect to the intention of the Legislature.'" *Riley v. County of Broome*, 95 N.Y.2d 455, 463 (2000) (quoting McKinney's Cons Laws of NY, Book 1, Statutes § 92(a)). Statutory text is always the starting point, but it is only "determinative" when the language is "unambiguous." *Id.* By contrast, where "several provisions of a statute are drafted in such a way that literal interpretation could result in a 'skewed and inartful interlock,' the court will … give the statute a sensible and practical over-all construction, which is consistent with and furthers its scheme and purpose and which harmonizes all its interlocking provisions." *Ryder v. City of New York*, 32 A.D.3d 836, 837 (2d Dep't 2006), *lv. denied* 8 N.Y.3d 896 (2007) (quoting *Long v. Adirondack*

Park Agency, 76 N.Y.2d 416, 421 (1990)) (some internal quotation marks omitted). Here, as Defendants have long maintained, the statutory definition of racially polarized voting in the NYVRA's vote dilution provisions is not obvious on the face of the statute. The Court's task, then, is to determine which proposed interpretation is more consistent with the Legislature's intent. Defendants have offered no plausible reason to believe that the Legislature intended to impose a novel requirement for proving racially polarized—one that is extraneous to the question of whether plaintiffs are experiencing vote dilution—when it borrowed language with a settled meaning from very similar statutes in other states.

II. Reargument is warranted under the circumstances of this case.

Defendants claim that Plaintiffs "seek to reargue an issue they have already extensively briefed." Def. Br. at 9.[2] As described above, Defendants are incorrect. The specific issue that is the subject of the instant motion was barely addressed by the parties in their summary judgment briefs. That is unsurprising: Defendants main argument then (that the NYVRA's vote dilution provisions are incoherent and meaningless) is inconsistent with their main argument now (that Election Law § 17-204(6) has an unambiguous and obvious meaning). The interpretation this Court adopted is also inconsistent with the concept of vote dilution, which is a "term of art with a settled meaning," as it has been applied in other contexts under laws that the NYVRA was modeled after. *Pico Neighborhood Ass'n v. City of Santa Monica*, 15 Cal.5th 292, 314 (Cal. 2023). The lack of fulsome briefing is likely the "reason" this Court "mistakenly arrived at its earlier decision" and justifies granting reargument. *Swenning v. Wankel*, 140 A.D.2d 428, 429 (2d. Dep't 1988).

[2] Although they overstate how thoroughly this issue was aired at the summary judgment stage, Defendants are correct to acknowledge that Plaintiffs are not "raising new questions … which were not previously advanced," making the issue of what standard applies when assessing racially polarized voting a proper subject for a motion under CPLR 2221. *People v. D'Alessandro*, 13 N.Y.3d 216, 219 (2009) (internal quotation marks omitted).

Defendants claim that it was always clear what standard they believed governed under Election Law § 17-204(6) is also inconsistent with the evidence they presented in support of their own summary judgment motion. Defendants now assert, implausibly, that they never "relied upon evidence that compared the political preferences of Hispanic and non-Hispanic white voters." Def. Br. at 20. But Defendants didn't just rely on such evidence: they were responsible for its creation. After receiving Plaintiffs' notice letter, Defendants hired two expert consultants, Dr. Lisa Handley and Jeffrey Wice, to investigate Plaintiffs' NYVRA claims "and assist the Town Supervisor and Town Attorney in investigating same and complying, to the extent the Town is not already complying, with [the NYVRA] and/or federal law." NYSCEF 59 at ¶ 109. To determine whether there was racially polarized voting in Mount Pleasant, Dr. Handley compared "Hispanic voters and Non-Hispanic [w]hite voters." NYSCEF 65 at 2. Similarly, the expert report by Defendants' expert, Dr. Jeffrey Lewis, exclusively assessed "the degree to which Hispanic and *Non-Hispanic white voters* support different candidates in elections." NYSCEF 71 at 7 (emphasis added). Defendants "relied upon" both the Handley and Lewis reports to make their affirmative case. *See* NYSCEF 118 at 27, 28, 33. The fact that they did not instruct their own experts to assess racially polarized voting in the manner they now contend the NYVRA demands is revealing and likely contributed to the lack of extensive briefing on this topic.

Finally, the Appellate Division's decision in *Clarke*, on its own, justifies granting reargument and/or renewal. As the briefs addressing the instant motion illustrate, one central question in the parties' dispute over the meaning of Election Law § 17-204(6) is how much weight this Court should give to decisions from courts in California and Washington that have interpreted and applied the exact same statutory language appearing in their states' VRAs. In *Clarke*, the Appellate Division supplied the answer: those decisions are highly persuasive. *Clarke* repeatedly

draws comparisons between the NYVRA and the California and Washington VRAs, and repeatedly cites to state court decisions interpreting the California and Washington VRAs when interpreting analogous provisions of the NYVRA. *See, e.g.*, *Clarke*, 237 A.D.3d at 25-26. This Court's Decision and Order does cite to *Clarke*, but it does not engage with decisions from California and Washington courts interpreting and applying the exact same language used in Election Law § 17-204(6). *Clarke* clarified that these decisions should have been considered and accorded significant persuasive weight. This is precisely the kind of "clarification of the decisional law" that is "sufficient" to support Plaintiffs' motion. *Dinallo v. DAL Elec.*, 60 A.D.3d 620, 621 (2d Dep't 2009).

III. Plaintiffs are entitled to summary judgment if this Court applies the correct standard for demonstrating the existence of racially polarized voting.

Finally, Plaintiffs maintain that, if this Court grants its motion and applies the correct standard for assessing racially polarized voting, Plaintiffs are entitled to summary judgment under Election Law § 17-206(2)(b)(i)(A) based on the strong evidence of racially polarized voting combined with the evidence that there are a number of alternative practices that would remedy the dilutive effects of the existing system. Regardless, even if this Court disagrees, granting Plaintiffs' motion would serve an important function by clarifying the standard Plaintiffs must meet at trial. From the standpoint of judicial efficiency, granting reargument to consider this issue on full briefing now, before the parties undergo the expense of trial, is far preferable than requiring the parties to argue under a standard that may well ultimately be reversed on appeal.

CONCLUSION

This Court did not have the benefit of full briefing on the specific issue underlying the instant motion. Now, with the benefit of further briefing on the question of vote dilution plaintiffs must show to demonstrate the existence of racially polarized voting under the NYVRA, this Court

should grant Plaintiffs' motion for leave to reargue and/or renew pursuant to CPLR 2221 and, applying the correct standard, grant Plaintiffs' summary judgment on their vote dilution claim.

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