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October 28, 2025

Via Email/NYSCEF

Hon. Paul B. Wojtaszek
Erie County Supreme Court
25 Delaware Ave
Buffalo, New York 14202

Dear Justice Wojtaszek:

Re: Kenneth Young v. Town of Cheektowaga – Index No. 803989/2024

We represent Defendant the Town of Cheektowaga (the “Town”) in the above referenced matter and write concerning the parties’ pending cross-motions for summary judgment and the Court of Appeals’ recent decision upholding even-year elections. (Mot. Seq. 1, 3).

As the Court is aware, at the time the Court held oral argument on the pending summary judgment cross-motions, two pertinent Court of Appeals cases were pending. Both of these cases directly affect some of the issues to be decided by this Court. The first case, *Clarke v. Newburgh*, Index. No. 2025-647 (2025), involving an equal protection challenge to the New York Voting Rights Act (“NYVRA”), remains pending.¹ The second case, *Cnty. of Onondaga v. State*, --- N.E.3d ---, 2025 WL 2932957 (Oct. 16, 2025), involving the Even Year Election Law (“EYEL”) has been decided and the EYEL has been upheld. A copy of the *Onondaga* decision is attached as **Exhibit A**.

In opposition to Plaintiff’s Motion for Summary Judgment, the Town argued that Plaintiff’s NYVRA claim is not ripe because, under the NYVRA, even-year elections are a remedy for vote dilution that municipalities may implement in response to a NYVRA claim. As such, in implementing the EYEL, the State implemented a NYVRA remedy for certain local elections, including that for the Cheektowaga Town Board. Thus, the Town argued that Plaintiff’s challenge, could not be ripe until after the first biennial elections under the EYEL took place. Any additional remedy ordered by this Court would necessarily have to assume that, contrary to unanimous scholarship, biennial elections are ineffective in curing any racially polarized voting.

At the time the summary judgment cross-motions were briefed and argued, the Onondaga County State Supreme Court had invalidated the EYEL as void under Article IX of the New York State Constitution. *Cnty. of Onondaga v. State*, Index No. 003095/2024, Doc. No.

¹ When the Court of Appeals issues its decision in *Clarke*, the Town will promptly notify this Court.



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225, 24-25 (Oct. 8, 2024). On October 16, 2025, the Court of Appeals upheld the Fourth Department's reversal of the trial court's ruling and held that "the EYEL is a proper exercise of authority." *Onondaga*, 2025 WL 2932957, at *5. As a result of the Court's decision, elections for county and town offices, including positions on the Cheektowaga Town Board, will be held concurrently with national elections during every even-numbered year. In other words, a NYVRA remedy prescribed by the statute itself has already been implemented in the Town— even-year elections.

Accordingly, one of the Town's arguments in opposition to Plaintiff's Motion for Summary Judgment remains that the Plaintiff's NYVRA claim is not ripe until the first biennial elections for Cheektowaga Town Board are conducted.

Respectfully,

/s/ Cheyenne N. Freely

Cheyenne N. Freely

CNF/dcb

Encl.

cc: Daniel Spitzer, Esq.
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