

SUPREME COURT
STATE OF NEW YORK
COUNTY OF ERIE

KENNETH YOUNG,
Plaintiff

– vs –

TOWN OF CHEEKTOWAGA,
Defendant

VERIFIED COMPLAINT

Index No:

Hon.

Plaintiff KENNETH YOUNG, (“Plaintiff”), by his attorney, Gary D. Borek, as and for his Verified Complaint against the Town of Cheektowaga, based on personal information, public records, media reports, attorney investigation, information, and belief, alleges as follows:

INTRODUCTION

1. This is an action against Defendant Town of Cheektowaga to enforce the requirements of the John R. Lewis Voting Rights Act of New York (“NYVRA”) which was enacted by Chapter 226 of the Laws of 2022 as Title 2 of Article 17, §§ 17-200 et. seq. of the Election Law.

2. The NYVRA establishes the policy of the State of New York to (i) encourage participation in the elective franchise by all eligible voters to the maximum extent; and (ii) ensure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise. The NYVRA specifically allows lawsuits challenging municipal at-large elections.

3. Election Law § 17-210(5)(f) states that “Due to the frequency and urgency of elections, actions brought pursuant to this section shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference on appeal.”

4. This action is brought under Election Law § 17-206(4).
5. This action seeks to enforce the prohibitions in Election Law §§ 17-206(1)(a) and 17-206(2)(a) by way of:
 - 5.1. A judgment adopting a district voting system (a/k/a the “ward” system) for all future elections of Town Board members (other than Town Supervisor);
 - 5.2. A recovery of attorney fees and costs associated with the action; and
 - 5.3. Such other and further relief as necessary to effectuate the provisions of the NYVRA.

PARTIES

6. Defendant is a town situated in Western New York bordering on the City of Buffalo with a population of approximately 89,000 residents.
7. Defendant is a “political subdivision” as defined by Election Law § 17-204(4).
8. Plaintiff is an adult citizen of New York State, a registered voter in New York State and Erie County, and an owner of residential property in the Town of Cheektowaga, located at 33 Victoria Blvd, Cheektowaga, NY 14225.
9. Plaintiff is a member of the minority Black race in the Town of Cheektowaga.
10. Plaintiff is a resident of the northwest section of the Town of Cheektowaga.
11. The majority of the town’s Black population lives in the northwest section of the town.
12. The Black residents of the Town of Cheektowaga are a protected class under Article 17 of the Election Law.

13. In the November 2023 election for Cheektowaga Town Board members, Plaintiff was the candidate of choice of the minority population living in the northwest portion of the Town of Cheektowaga.

14. Plaintiff did not win a seat on the Town Board in that election because of majority white bloc voting in the areas of the town outside of the northwest section of the town.

15. The determinations by the Defendant's experts establish that there is racially polarized voting in the Town of Cheektowaga, that the Town is violating the NYVRA, and that remedial action is required.

16. The New York Attorney General has preliminarily determined that the Town of Cheektowaga will be a "covered entity" as defined by Election Law § 17-210 when the pre-clearance provisions go into effect on September 22, 2024.

17. As a covered entity, the town of Cheektowaga will need pre-clearance authorization from the NYS Attorney General's office before the town can adopt a "covered policy" after September 22, 2024.

18. The method of election is defined as a "covered policy" under Election Law § 17-210(2)(a).

19. Plaintiff is an aggrieved person and has standing under Election Law § 17-206(4).

JURISDICTION AND VENUE

20. This Court has jurisdiction over this matter under its general jurisdiction under Election Law § 17-206(4) and CPLR § 301 et seq.

21. Venue is proper in this County under CPLR § 503 and Election Law § 17-206(4) because Plaintiff resides in Erie County and Defendant Town is in Erie County.

EXHIBITS ASSOCIATED WITH THIS COMPLAINT

22. **Exhibit 1** hereto is a true and accurate copy of the NYVRA Notification Letter mailed by Plaintiff to the clerk of Defendant on December 12, 2023.

23. **Exhibit 2** hereto is a true and accurate copy of the USPS-certified mail tracking printout for the Young Notification Letter.

24. **Exhibit 3** hereto is a true and accurate copy of Plaintiff's expert consultant's report regarding racially polarized voting in the November 2023 election for members of the town board (the "Collingwood Report").

25. **Exhibit 4** hereto is a true and accurate copy of the Dr. Handley and Jeffery Wice, Esq. proposal to Defendant with regard to the NYVRA matter.

26. **Exhibit 5** hereto is a true and accurate copy of the January 9, 2024 resolution of the Town of Cheektowaga (Resolution 2024-34).

27. **Exhibit 6** hereto is a true and accurate copy of the February 5, 2024 resolution of the Town of Cheektowaga (Resolution 2024-50).

28. **Exhibit 7** hereto is a true and accurate copy of Defendant's expert consultant's report regarding racially polarized voting (the "Handley Report").

29. **Exhibit 8** hereto is a true and accurate copy of Defendant's expert consultant's memorandum regarding the NYVRA process and requirements (the "Wice Memorandum").

30. **Exhibit 9** hereto is a true and accurate copy of a letter sent to Defendant by attorney, Michael Pernick, of the Legal Defense Fund.

31. **Exhibit 10** hereto is a true and accurate copy of the Public Hearing resolution and notice for February 21, 2024.

32. **Exhibit 11** hereto is a true and accurate copy of the Public Hearing resolution and notice for February 24, 2024.

33. **Exhibit 12** hereto is a map depicting Plaintiff's suggestion for a six-district system for electing town board members to replace the current at-large system.

34. **Exhibit 13** hereto is a set of closeup maps of the six proposed districts.

35. **Exhibit 14** hereto is a list of the U.S. Census Blocks contained in each suggested district with population figures from the 2020 Census.

36. **Exhibit 15** hereto is a true and accurate copy of an article in the Buffalo News dated February 25, 2024.

37. **Exhibit 16** hereto is a true and accurate copy of the February 13, 2024 Resolution 2024-73 to appoint a council member but failed to pass.

38. **Exhibit 17** hereto is a true and correct copy of the NY Attorney General's December 19, 2024 NYVRA preliminary identification of covered entities and covered policies subject to preclearance.

39. **Exhibit 18** hereto is a true and correct copy of the introductory portions of the Governor's Approval Bill Jacket for the John R. Lewis Voting Rights Act.

40. **Exhibit 19** hereto is a true and correct copy of an article from the Buffalo Courier Express dated November 14, 1953, about the adoption of a ward system of voting by the town of Cheektowaga.

41. **Exhibit 20** hereto is a true and correct copy of an article in the Buffalo Evening News dated March 30, 1955, about the revocation of the ward system of voting for the town of Cheektowaga.

42. **Exhibit 21** hereto is a true and accurate copy of a resolution adopted by Defendant on March 12, 2024.

FIRST CAUSE OF ACTION

43. Plaintiff repeats and realleges all the foregoing allegations as if fully stated herein.

44. Defendant currently uses an at-large system of election for electing members of the Town Board.

45. On December 12, 2023, Plaintiff mailed an NYVRA Notification Letter to Defendant's Town Clerk.

46. Said NYVRA Notification Letter included empirical evidence of the existence of racially polarized voting in the 2023 general election for the Town Board for the Town of Cheektowaga.

47. Both Defendant's expert consultants and Plaintiff's expert consultant determined that racially polarized voting existed in the Town of Cheektowaga, as set forth in Exhibits 3, 7, and 8 hereto.

48. Defendant's expert determined that there was racially polarized voting in "the 2021 primary for Erie County Sheriff, Black voters supported Kimberly Beaty, one of the two Black candidates running. White voters supported the White candidate, Brian Gould, who won the contest with 66.5% of the vote." See Exhibit 7 hereto, page 8.

49. Defendant's expert determined that there was racially polarized voting in "the 2018 race for the Democratic nomination for Attorney General, Black voters favored one of the two Black candidates running, Leecia Eve, and White voters supported Sean Patrick Malone. Malone carried the Town of Cheektowaga with 52.4% of the vote." See Exhibit 7 hereto, page 8.

50. Defendant's expert concluded that there was racially polarized voting in the 2022 election for town justice "with a strong majority of Black voters supporting Runfola, and a majority of White voters supporting Wanat. Wanat won the seat with 50.9% of the vote." See Exhibit 7 hereto, pages 4 and 5.

51. Defendant's expert determined that "Since 2021, however, all of the elections for town office (as well as all of the countywide and statewide elections analyzed) have been racially polarized." See Exhibit 7 hereto, page 9.

52. Jeffery Wice, one of Defendant's consultants, concluded that "This indicates a need for the Town to consider an alternative method of electing council members to avoid future liability" as set forth in Exhibit 8 hereto.

53. Election Law § 17-206(a) provides that a political subdivision shall not use a ' method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution.'

54. Election Law § 17-206(2)(b)(i) makes clear that the combination of an at-large system of election and a finding of racially polarized voting violates Election Law § 17-206(2)(a).

55. Election Law § 17-206(7)(b) allows a political subdivision to invoke a 90-day safe-harbor period if it passes a "NYVRA resolution" within 50 days of receiving the NYVRA notification letter.

56. Under Election Law § 17-206(7)(b), to be a compliant "NYVRA resolution" the resolution must affirm:

56.1. (i) the political subdivision's intention to enact and implement a remedy for a potential violation of this title;

56.2. (ii) specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy; and

56.3. (iii) a schedule for enacting and implementing such a remedy."

57. Plaintiff's NYVRA Notification Letter was mailed to the town clerk of the town of Cheektowaga on December 12, 2023.

58. February 1, 2024, was fifty days after December 12, 2023.

59. Defendant did not pass a resolution compliant with Election Law § 17-206(7)(b) within the fifty-day limitation period specified in Election Law § 17-206(7)(b).

60. Defendant's January 9, 2024 resolution (Exhibit 5 hereto) does not qualify as a compliant safe harbor resolution under Election Law § 17-206(7)(b). See, e.g., footnote 1 to the letter from Michael Pernick (Exhibit 9 hereto).

61. More specifically, Defendant's January 9, 2024 resolution does not specify an intention to enact and implement a remedy for a potential violation of Title 2 of Article 17 of the Election Law Article.

62. Defendant's January 9, 2024 resolution does not specify the steps Defendant will undertake to facilitate approval and implementation of a remedy.

63. Defendant's January 9, 2024 resolution also fails to specify a schedule for enacting and implementing a remedy.

64. Defendant's January 9, 2024 resolution merely states that Defendant is going to investigate the matter.

65. Election Law § 17-206(7)(b) requires more specificity as to a remedy, requires more specificity of the steps to be taken, and requires more specificity of a schedule for implementation than is contained in the January 9, 2024 resolution.

66. Defendant's February 5, 2024 resolution (Exhibit 6 hereto) does not qualify as a valid safe harbor resolution under Election Law § 17-206(7)(b) because it was adopted after the fifty-day period specified in Election Law § 17-206(7)(b) had expired.

67. Defendant's February 5, 2024 resolution is not a safe harbor resolution because it does not specify the steps Defendant will undertake to facilitate approval and implementation of the identified remedies.

68. Defendant's February 5, 2024 resolution is not a safe harbor resolution because it fails to specify a schedule for enacting and implementing the identified remedies.

69. Defendant's March 12, 2024 resolution is not a valid safe harbor resolution under Election Law § 17-206(7)(b) because it was not enacted within fifty days after the mailing of the NYVRA Notification Letter.

70. Title 2 of Article 17 of the Election Law does not contain a provision for the enactment of a safe harbor resolution after the expiration of the fifty-day period specified in § 17-206(7)(b).

71. Defendant's March 12, 2024 resolution is not a compliant NYVRA resolution under Election Law § 17-206(7)(b) because it does not contain a remedy that would resolve the violation of the Election Law § 17-206(2)(a) that arises from the existence of racially polarized voting and the at-large election system.

72. Defendant's March 12, 2024 resolution is not a compliant NYVRA resolution under Election Law § 17-206(7)(b) because it does not contain a schedule for enacting and implementing a remedy that would resolve the violation of the Election Law § 17-206(2)(a) that arises from the existence of racially polarized voting and the at-large election system.

73. Subjecting the question of adopting district voting to the very at-large system that was found to be infected with racially polarized voting is not a rational means of resolving racially polarized in an at-large election system.

74. Subjecting the question of adopting district voting to the very at-large system that was found to be infected with racially polarized voting is an illusory remedy because a failure of the voters to adopt a district method of election would result in no remedy of the violation of Election Law § 17-206(2)(a).

75. Even if the voters approved a district system of voting, implementation of a district system by way of a referendum would take a minimum of two years to implement, thereby continuing the imposition of racially polarized voting in an at-large election system for a minimum of two, and possibly three, more election cycles.

76. Even if the voters did approve a district system of voting the voters could by way of referendum revoke the district system of voting just as they did in 1955 after the 1953 approval of district voting. See Exhibits 19 and 20 hereto.

77. Title 2 of Article 17 of the Election Law does not contain a provision that would allow a political subdivision to submit a remedy to the electorate for approval.

78. Title 2 of Article 17 of the Election Law provides only three paths to the adoption of a compliant remedy:

78.1. Adoption directly by the political subdivision if authorized to do so by state law;

78.2. Approval by the NYS Attorney General's office of a proposal for a compliant remedy that the political subdivision lacks authority to unilaterally adopt; or

78.3. Approval or imposition by the court.

79. Title 2 of Article 17 of the Election Law does not contain a provision for the enactment of a safe harbor resolution after the expiration of the fifty-day period specified in § 17-206(7)(b).

80. Election Law § 17-206(5)(a) states that, “upon a finding of a violation of any provision of this section, the court shall implement appropriate remedies to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process.”

81. Reliance on the eventual move to even-year elections under the yet-to-take-effect changes to Town Law § 80 is not a remedy because the even-year election of town board candidates will not occur until November 2028 for three members, and November 2030 for the remaining three members.

82. A district system of voting is the most appropriate remedy for Defendant’s violation of Election Law § 17-206(2)(a) that arises from the existence of racially polarized voting and the at-large election system.

83. A district system of voting can be implemented well in advance of the November 2025 election for town board and would apply to all town board elections thereafter.

84. As shown by the empirical evidence submitted with Plaintiff’s NYVRA Notification Letter (Exhibit 1 hereto, at pages 7 and 8), the 2021 preferred candidate of black voters in the northwest section of town would have been elected to the town board if that election had been held under a district system

85. Plaintiff has previously provided Defendant with Plaintiff’s proposed districts in the form of Exhibits 12, 13, and 14 attached hereto.

86. Plaintiff has previously provided Defendant with the associated mapping shape files associated with Exhibits 12 and 13.

87. Plaintiff is entitled to a judgment implementing a district-based method of election for all future elections of the Town Board in the Town of Cheektowaga.

SECOND CAUSE OF ACTION

88. Plaintiff reserves the right to amend this complaint in accordance with applicable law to seek an injunction pursuant to Election Law § 17-206(7)(f) with respect to the November 5, 2024 election for a town council member when said rights accrues on July 8, 2024.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

A. Issue a judgment adopting a district system of voting for all future elections of the Town of Cheektowaga Town Board;

B. Issue a judgment adopting a six-district system of voting based on the maps created by Plaintiff for all future elections of the Town of Cheektowaga Town Board;

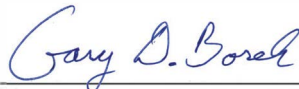
C. Retain jurisdiction over the matter until such time as the six-district system is in place and the first election thereunder is held;

D. Awarding Plaintiff's attorney fees and costs of this action; and

E. Grant such other and further relief as this Court deems just and equitable.

Dated: March 18, 2024
Cheektowaga, NY

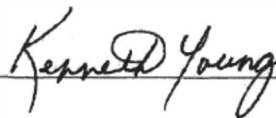
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I affirm this 18th day of March, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true except as to matters stated to be upon information and belief, and as to such matters I believe them to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: March 18, 2024



Kenneth Young, Plaintiff