

STATE OF NEW YORK
SUPREME COURT : ERIE COUNTY

KENNETH YOUNG,

Plaintiff,

Index No.: 803989/2024

v.

TOWN OF CHEEKTOWAGA,

Defendant.

VERIFIED ANSWER

Defendant the Town of Cheektowaga (“Defendant” or the “Town”), by and through its attorneys, Hodgson Russ LLP, for its answer to Plaintiff Kenneth Young’s Verified Complaint, states as follows:

INTRODUCTION

1. Admits that the allegations in paragraph 1 purport to describe Plaintiff’s action but denies the remaining allegations in paragraph 1 of the Verified Complaint.
2. As to the allegations in paragraph 2, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 2 of the Verified Complaint.
3. As to the allegations in paragraph 3, states that Election Law § 17-210(5)(f) speaks for itself and denies the remaining allegations in paragraph 3 of the Verified Complaint.
4. Admits that the allegations in paragraph 4 purport to describe Plaintiff’s action but denies the remaining allegations in paragraph 4 of the Verified Complaint.

5. States that Election Law § 17-206(1)(a) speaks for itself and further states that paragraphs 5, 5.1, 5.2, and 5.3 call for legal conclusions to which no response is required. To the extent responses are required, denies the allegations in paragraphs 5, 5.1, 5.2, and 5.3 of the Verified Complaint.

PARTIES

6. As to the allegations in paragraph 6 of the Verified Complaint, admits Defendant is a town in Western New York bordering the City of Buffalo and that, as of the 2020 Census, the Town's population was reported to be 89,877. Defendant denies the remaining allegations in paragraph 6 of the Verified Complaint.

7. As to the allegations in paragraph 7, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 7 of the Verified Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Verified Complaint.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Verified Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 of the Verified Complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11 of the Verified Complaint.

12. As to the allegations in paragraph 12, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph of the Verified Complaint.

13. Denies the allegations in paragraph 13 of the Verified Complaint.

14. Admits that Plaintiff lost the election but denies the remaining allegations in paragraph 14 of the Verified Complaint.

15. Admits that Plaintiff references reports prepared by Dr. Lisa Handley and Jeffrey Wice and that those reports speak for themselves. Defendant denies the remaining allegations in paragraph 15 of the Verified Complaint.

16. Admits the allegations in paragraph 16 of the Verified Complaint.

17. Admits the allegations in paragraph 17 of the Verified Complaint.

18. As to the allegations in paragraph 18, states that the law speaks for itself. To the extent a response is required, denies the allegations in paragraph 18 of the Verified Complaint.

19. As to the allegations in paragraph 19, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 19 of the Verified Complaint.

JURISDICTION AND VENUE

20. As to the allegations in paragraph 20, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 20 of the Verified Complaint.

21. Admits that Defendant is in Erie County but denies knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Verified Complaint regarding Plaintiff's residence. As for the remainder of allegations in paragraph 21, states that they call for a legal conclusion to which no response is required. To the

extent a response is required, denies the remaining allegations in paragraph 21 of the Verified Complaint.

EXHIBITS ASSOCIATED WITH THIS VERIFIED COMPLAINT

22. As to the allegations in paragraph 22 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 22 of the Verified Complaint.

23. As to the allegations in paragraph 23 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 23 of the Verified Complaint.

24. As to the allegations in paragraph 24 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 24 of the Verified Complaint.

25. As to the allegations in paragraph 25 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 25 of the Verified Complaint.

26. As to the allegations in paragraph 26 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 26 of the Verified Complaint.

27. As to the allegations in paragraph 27 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 27 of the Verified Complaint.

28. As to the allegations in paragraph 28 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 28 of the Verified Complaint.

29. As to the allegations in paragraph 29 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 29 of the Verified Complaint.

30. As to the allegations in paragraph 30 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 30 of the Verified Complaint.

31. As to the allegations in paragraph 31 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 31 of the Verified Complaint.

32. As to the allegations in paragraph 32 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 32 of the Verified Complaint.

33. As to the allegations in paragraph 33 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 33 of the Verified Complaint.

34. As to the allegations in paragraph 34 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 34 of the Verified Complaint.

35. As to the allegations in paragraph 35 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 35 of the Verified Complaint.

36. As to the allegations in paragraph 36 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 36 of the Verified Complaint.

37. As to the allegations in paragraph 37 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 37 of the Verified Complaint.

38. As to the allegations in paragraph 38 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 38 of the Verified Complaint.

39. As to the allegations in paragraph 39 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 39 of the Verified Complaint.

40. As to the allegations in paragraph 40 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 40 of the Verified Complaint.

41. As to the allegations in paragraph 41 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 41 of the Verified Complaint.

42. As to the allegations in paragraph 42 of the Verified Complaint, states that the document speaks for itself. To the extent a response is required, denies the allegations in paragraph 42 of the Verified Complaint.

FIRST CAUSE OF ACTION

43. With regard to paragraph 43, reiterates its prior responses to paragraphs 1 through 42 of the Verified Complaint with the same force and effect as if herein set forth in full.

44. Admits the allegations in paragraph 44 of the Verified Complaint.

45. Admits the allegations in paragraph 45 of the Verified Complaint.

46. As to the allegations in paragraph 46, states that the Plaintiff's New York Voting Rights Act ("NYVRA") Notification Letter, purportedly attached to Plaintiff's Verified Complaint as Exhibit 1, speaks for itself. To the extent a response is required, denies the allegations in paragraph 46 of the Verified Complaint.

47. As to the allegations in paragraph 47, states that the expert reports speak for themselves. To the extent a response is required, denies the allegations in paragraph 47 of the Verified Complaint.

48. As to the allegations in paragraph 48, states that they speak for themselves. To the extent a response is required, denies the allegations in paragraph 48 of the Verified Complaint.

49. As to the allegations in paragraph 49, states that the expert reports speak for themselves. To the extent a response is required, denies the allegations in paragraph 49 of the Verified Complaint.

50. As to the allegations in paragraph 50, states that the expert reports speak for themselves. To the extent a response is required, denies the allegations in paragraph 50 of the Verified Complaint.

51. As to the allegations in paragraph 51, states that the expert reports speak for themselves. To the extent a response is required, denies the allegations in paragraph 51 of the Verified Complaint.

52. As to the allegations in paragraph 52, states that the expert reports speak for themselves. To the extent a response is required, denies the allegations in paragraph 52 of the Verified Complaint.

53. As to the allegations in paragraph 53, states that Election Law § 17-206(a) speaks for itself. To the extent a response is required, denies the allegations in paragraph 53 of the Verified Complaint.

54. States that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 54 of the Verified Complaint.

55. As to the allegations in paragraph 55, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 55 of the Verified Complaint.

56. States that Election Law § 17-206(7)(b) speaks for itself and further states that paragraphs 56, 56.1, 56.2, and 56.3 call for legal conclusions to which no response is required. To the extent a response is required, denies the allegations in paragraph 56, 56.1, 56.2, and 56.3 of the Verified Complaint.

57. Admits the allegations in paragraph 57 of the Verified Complaint.

58. Denies the allegation in paragraph 58 of the Verified Complaint.

59. As to the allegations in paragraph 59, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 59 of the Verified Complaint.

60. As to the allegations in paragraph 60, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 60 of the Verified Complaint.

61. Denies the allegations in paragraph 61 of the Verified Complaint, and further states that it speaks for itself.

62. Denies the allegations in paragraph 62 of the Verified Complaint, and further states that it speaks for itself.

63. Denies the allegations in paragraph 63 of the Verified Complaint, and further states that it speaks for itself.

64. Denies the allegations in paragraph 64 of the Verified Complaint, and further states that it speaks for itself.

65. As to the allegations in paragraph 65, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 65 of the Verified Complaint.

66. As to the allegations in paragraph 66, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 66 of the Verified Complaint.

67. As to the allegations in paragraph 67 of the Verified Complaint, states that they call for a legal conclusion to which no response is required, and further states that the

February 5, 2024 resolution speaks for itself. To the extent a response is required, denies these allegations.

68. As to the allegations in paragraph 68 of the Verified Complaint, states that they call for a legal conclusion to which no response is required, and further states that the February 5, 2024 resolution speaks for itself. To the extent a response is required, denies these allegations.

69. As to the allegations in paragraph 69, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 69 of the Verified Complaint.

70. As to the allegations in paragraph 70, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 70 of the Verified Complaint.

71. As to the allegations in paragraph 71 of the Verified Complaint, states that they call for a legal conclusion to which no response is required, and further states that the March 12, 2024 resolution speaks for itself. To the extent a response is required, denies these allegations.

72. As to the allegations in paragraph 72 of the Verified Complaint, states that they call for a legal conclusion to which no response is required, and further states that the March 12, 2024 resolution speaks for itself. To the extent a response is required, denies these allegations.

73. As to the allegations in paragraph 73 of the Verified Complaint, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 73 of the Verified Complaint.

74. As to the allegations in paragraph 74, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 74 of the Verified Complaint.

75. Denies the allegations in paragraph 75 of the Verified Complaint.

76. As to the allegations in paragraph 76, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 76 of the Verified Complaint.

77. As to the allegations in paragraph 77, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 77 of the Verified Complaint.

78. States that Title 2 of Article 17 of the Election Law speaks for itself and further states that paragraphs 78, 78.1, 78.2 and 78.3 are legal conclusions to which no response is required. To the extent a response is required, denies the allegations in paragraph 78, 78.1, 78.2, and 78.3 of the Verified Complaint.

79. As to the allegations in paragraph 79, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 79 of the Verified Complaint.

80. States that Election Law § 17-206(5)(a) speaks for itself. To the extent a response is required, denies these allegations.

81. As to the allegations in paragraph 81, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 81 of the Verified Complaint.

82. As to the allegations in paragraph 82, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 82 of the Verified Complaint.

83. As to the allegations in paragraph 83, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 83 of the Verified Complaint.

84. As to the allegations in paragraph 84, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 84 of the Verified Complaint.

85. Admits the allegations in paragraph 85 of the Verified Complaint.

86. Admits the allegations in paragraph 86 of the Verified Complaint.

87. Denies the allegations in paragraph 87 of the Verified Complaint.

SECOND CAUSE OF ACTION

88. As to the allegations in paragraph 88, states that they call for a legal conclusion to which no response is required. To the extent a response is required, denies the allegations in paragraph 88 of the Verified Complaint.

DENIALS

89. Denies all allegations in the wherefore clause.

90. Denies each and every other allegation not otherwise expressly addressed in this answer.

DEFENSES

By asserting a defense, the Town is not assuming any evidentiary burden of proof than it otherwise would have. The Town reserves the right to assert further defenses as additional facts become known to it through the course of litigation.

FIRST AFFIRMATIVE DEFENSE

The Verified Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Voting in Town elections is equally open to participation by members of a class of eligible voters protected by Election Law § 17-204(5) (the “protected classes”).

THIRD AFFIRMATIVE DEFENSE

Members of protected classes have the same opportunity as other members of the electorate to participate in Town elections.

FOURTH AFFIRMATIVE DEFENSE

All voters, including members of protected classes, are able to elect their preferred representatives.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred because NY Election Law § 17-206 compels race-based state action not authorized or supported by an act of Congress enforcing the Fourteenth or Fifteenth Amendments, in violation of the Equal Protection Clause of Article I, Section 11 of the New York Constitution, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because the NYVRA violates the Equal Protection Clause of Article I, Section 11 of the New York State Constitution.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because the NYVRA violates the Due Process Clause of the 14th Amendment of the United States Constitution and Article I, Section 6 of the New York State Constitution by stripping all legal defenses to racial polarization, depriving Defendants of substantive due process.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because the NYVRA violates the First Amendment of the United States Constitution and Article I, Section 8 of the New York State Constitution by stripping all legal defenses to racial polarization, depriving Defendants of freedom of speech.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because there is no legally significant racially polarized voting in the Town of Cheektowaga.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Plaintiff's requested remedy, in the form of Plaintiff's proposed ward boundaries, violate the 14th Amendment of the United States Constitution by the impermissible use of race.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because Plaintiff's requested remedy, in the form of Plaintiff's proposed ward boundaries, violate the 15th Amendment of the United States Constitution by the impermissible use of race.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred because the action is not ripe for adjudication.

WHEREFORE, Defendant Town of Cheektowaga demands judgment dismissing the Verified Complaint together with the costs and disbursements of this action, and such further relief as the Court deems proper.

Dated: April 10, 2024

HODGSON RUSS LLP

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