

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NEW YORK REPUBLICAN STATE COMMITTEE, NEW YORK
STATE ASSOCIATION OF TOWN SUPERINTENDENTS OF
HIGHWAYS, INC.,

Nassau County Plaintiffs

NASSAU COUNTY REPUBLICAN COMMITTEE, COUNTY OF
NASSAU, TOWN OF HEMPSTEAD, TOWN OF OYSTER BAY,
TOWN OF NORTH HEMPSTEAD, JENNIFER DESENA, JOHN
FERRETTI, MAZI M. PILIP, LAURA A. RYDER, ELAINE
PHILLIPS,

Suffolk County Plaintiffs

SUFFOLK COUNTY REPUBLICAN COMMITTEE, COUNTY OF
SUFFOLK, TOWN OF BROOKHAVEN, TOWN OF ISLIP, TOWN
OF RIVERHEAD, TOWN OF HUNTINGTON, RAHEEM SOTO,
JAROD MORRIS, LAURA ENDRES,

Orange County Plaintiffs

ORANGE COUNTY, STEVEN M. NEUHAUS, LEIGH J. BENTON,
BARRY CHENEY, THOMAS J. FAGGIONE, PAUL
RUSZKIEWICZ, KATHY STEGENGA, JANET SUTHERLAND, and
PETER V. TUOHY,

Plaintiffs,

v.

NEW YORK STATE BOARD OF ELECTIONS, STATE OF NEW
YORK, and KATHY HOCHUL, in her official capacity as Governor of
the State of New York,

Defendants.

2:25-cv-06083
(GRB-AYS)

**MEMORANDUM OF LAW IN SUPPORT OF STATE OF NEW YORK AND
GOVERNOR KATHLEEN HOCHUL'S MOTION TO DISMISS**

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Defendants State of New York and Governor Kathleen Hochul respectfully submit this memorandum of law in support of their motion, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss all claims and requests for relief asserted in the First Amended Complaint based on *res judicata*, the Eleventh Amendment to the United States Constitution, lack of capacity to sue, lack of standing, and failure to state a claim.

PRELIMINARY STATEMENT

In this action for declaratory and injunctive relief, Plaintiffs seek to relitigate the very issues decided by the New York Court of Appeals just seven months ago. However, despite Plaintiffs' blatant attempt to have a second bite at the apple, their case continues to suffer from a litany of procedural, jurisdictional, and substantive deficiencies that compel its dismissal.

In their Amended Complaint, Plaintiffs—comprised of three New York State- and County-level Republican committees, the New York State Association of Town Superintendents of Highways, three counties and eight towns in New York State, sixteen candidates for local office, thirteen of whom are incumbents, and one candidate Plaintiff also identified as a voter—challenge the Even Year Election Law (EYEL), enacted in December 2023, which changes the timing of certain local elections held throughout New York State. The EYEL, which shifts many local elections to even-numbered years, was enacted for the express purpose of increasing voter turnout and decreasing voter confusion. After the EYEL was challenged in eight consolidated state court actions commenced in 2024, the New York Court of Appeals ruled that the “EYEL is a neutral law which changes the timing of elections in a manner common to all voters, and imposes no form of restriction, burden, or limitation on voting.” *Cnty. of Onondaga v. State*, 44 N.Y.3d 639, 656 (2025), *cert. denied sub nom. Rockland Cnty. v. New York*, No. 25-836, 2026 WL 795059 (U.S. Mar. 23, 2026). The Court of Appeals affirmed in all respects a decision by the Appellate Division,

Fourth Department, which held that the EYEL “does not violate the New York Constitution or the United States Constitution.” *Cnty. of Onondaga v. State*, 238 A.D.3d 1535, 1536 (4th Dep’t 2025), *aff’d*, 44 N.Y.3d 639 (2025), *cert. denied sub nom. Rockland Cnty. v. New York*, No. 25-836, 2026 WL 795059 (U.S. Mar. 23, 2026).

Plaintiffs purport to assert claims under the First Amendment to the U.S. Constitution and the Voting Rights Act (VRA), however their claims fail in all respects. The Amended Complaint suffers from several threshold defects. *First*, the claims of more than half of the Plaintiffs, those who appeared as plaintiffs in the New York state court actions, are barred by *res judicata*. These Plaintiffs are the Counties of Nassau, Suffolk, and Orange; the Towns of Hempstead, North Hempstead, Brookhaven, Islip, and Huntington; and Steven M. Neuhaus, Barry J. Cheney, Thomas J. Faggione, Paul Ruskiewicz, Kathy Stegenga, Janet Sutherland, Peter V. Tuohy, and Leigh J. Benton. The New York Court of Appeals rejected all of the plaintiffs’ challenges to the EYEL. *Cnty. of Onondaga v. State*, 44 N.Y.3d at 650. Because these Plaintiffs could have asserted their claims in the state court actions, their claims are barred by *res judicata*.

Second, Plaintiffs’ First Amendment claims are barred by the Eleventh Amendment, which bars suits against state officials in their official capacities. The *Ex Parte Young* exception does not apply here to Governor Hochul because there is no allegation, nor could there be, that Governor Hochul has any particular duty to enforce the EYEL. Governor Hochul’s general duty to enforce the law is insufficient for the *Ex Parte Young* exception to apply.

Third, all of the County Plaintiffs, Town Plaintiffs, and the Plaintiffs identified as local officials lack capacity to assert their First Amendment claims.¹ It is settled law that municipalities and their officials lack capacity to assert constitutional claims against their state creators.

¹ Plaintiffs define Municipal Plaintiffs as including only the Counties and Towns, *see* Am.

Fourth, Plaintiffs lack standing to assert their claims. The Party Plaintiffs, as well as the New York State Association of Town Superintendents of Highways, Inc. (the “Association”), purport to sue on their own behalf and on behalf of their members. Am. Compl. ¶¶ 9, 10, 11, 21, ECF No. 18. However, they fail to identify any injury to themselves, and they cannot establish associational standing on behalf of their members because no such standing exists for claims brought under 42 U.S.C. § 1983. The Counties and the Towns do not allege any injury whatsoever. And the Candidate Plaintiffs (which comprise all of the individual Plaintiffs) do not identify any injury that is legally cognizable, and not remote and speculative.

Finally, Plaintiffs’ claims also fail on the merits. Plaintiffs fail to state a plausible First Amendment claim. As the New York Court of Appeals held, the EYEL is a neutral law that merely changes the timing of elections and imposes no restriction or burden on voting. *Cnty. of Onondaga v. State*, 44 N.Y.3d at 656. Even if the Court were to apply the balancing test known as the *Anderson-Burdick* framework, it would find, just as the New York Court of Appeals did, that any injury alleged by Plaintiffs is “minor as compared to the State’s legitimate and substantial interest in increasing voter turnout and reducing confusion.” *Id.*

Plaintiff Jarod Morris, the only Plaintiff identified as a voter, also fails to state a claim under the VRA. Plaintiff Morris fails to state a vote-denial claim because he fails to plausibly allege that the EYEL will have a disparate impact on minority voters, and the informational burdens allegedly caused by the EYEL are not cognizable. Plaintiff Morris also fails to state a vote-dilution claim because he fails to allege any of the necessary *Gingles* preconditions.

Compl. ¶ 30, but for purposes of the capacity rule, the Plaintiffs identified as local officials are also Municipal Plaintiffs.

FACTUAL ALLEGATIONS

New York State has long held many local elections in odd-numbered years. Am. Compl. ¶¶ 48-52. In December 2023, New York enacted the EYEL, Ch. 741, L. 2023. Am. Compl. ¶ 57. The November 2025 election cycle was the first election impacted by the change: winning candidates for offices affected by the EYEL will serve shortened terms and elections for those offices will again take place in November 2026. *Id.* ¶¶ 57, 59.

Plaintiffs allege that the EYEL is politically motivated in that it was intended to inhibit the ability of the Republican party to prevail in local elections. Am. Compl. ¶¶ 65-66.² Plaintiffs also allege that the EYEL will make it more difficult for citizens to engage directly with local issues and for local candidates to gain visibility and reach their constituents. *Id.* ¶¶ 68-70. Plaintiffs contend that the EYEL will lead to longer ballots, causing State and national elections to “eclipse local priorities,” and leading voters to rely on “heuristics, including partisan, racial, and gender stereotypes” when casting their vote for local candidates. *Id.* ¶¶ 72-78. Plaintiffs further allege that the EYEL will lead to down-ballot drop off. *Id.* ¶ 79.

Plaintiffs contend that holding local elections together with State and national elections burdens political speech in violation of the First Amendment by “drowning [local] elections in the flood of national statewide contests.” Am. Compl. ¶¶ 81-86.³ According to Plaintiffs, the EYEL “suppresses the effectiveness” of Candidate Plaintiffs’ political speech “by diminishing visibility,

² To the extent Plaintiffs allege that the EYEL was enacted for partisan reasons, such a claim is a nonjusticiable political question. *See Rucho v. Common Cause*, 588 U.S. 684, 718 (2019).

³ As discussed below, *see infra*, Point III, Plaintiffs’ reliance on *Kim v. Hanlon*, 99 F.4th 150 (3d Cir. 2024) (*see* Am. Comp. ¶¶ 83-85), is misplaced because that case involved candidates’ ballot placement relative to their competitors, which is not at issue here.

inflating communication costs, and distorting the informational environment in which voters evaluate local candidates.” *Id.* ¶¶ 87-90.

Plaintiffs also allege, without support, that the EYEL will disproportionately burden minority voters and increase racially polarized voting in violation of the VRA. Am. Compl. ¶¶ 96, 100-103; 111-114. Plaintiffs allege that ballot drop off caused by longer ballots will disproportionately affect minority candidates. *Id.* ¶¶ 104-110. Plaintiffs further allege that this exacerbation of racially polarized voting will harm minority candidates, *id.* ¶¶ 113-114, and that the current racial diversity in local governing bodies will be lost. *Id.* ¶¶ 116-126.

All Plaintiffs appear to assert First Amendment claims. Only Plaintiff Jarod Morris asserts a claim under the VRA. *Id.* ¶¶ 28, 116.

STANDARDS ON MOTION TO DISMISS UNDER RULES 12(b)(1) and 12(b)(6)

To survive a motion to dismiss under Rule 12(b)(6), a plaintiff must plead facts sufficient “to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). The court is not “bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555). And, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.

A case should be dismissed pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction “when the district court lacks the statutory or constitutional power to adjudicate it.” *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). “A plaintiff asserting subject matter jurisdiction has the burden of proving by a preponderance of the evidence that it exists.” *Id.*

ARGUMENT

POINT I: THE CLAIMS OF MORE THAN HALF OF THE PLAINTIFFS ARE BARRED BY *RES JUDICATA*

This matter is not the first challenge to the EYEL. In 2024, eight separate actions challenging the EYEL were filed in New York state courts, and these actions were consolidated. *See County of Onondaga, et al. v. State of New York, et al.*, Index No. 003095/2024 (Onondaga Cnty.), NYSCEF Doc. No. 117 (Order consolidating eight cases).

After the Onondaga Supreme Court ruled that the EYEL violated the home rule provisions of the New York Constitution, the Appellate Division, Fourth Department, reversed, stating unequivocally, “[i]t is adjudged and declared that chapter 741 of the Laws of 2023 [the EYEL] does not violate the New York Constitution or the United States Constitution.” *Cnty. of Onondaga*, 238 A.D.3d at 1536. With respect to constitutional claims asserted by some plaintiffs,⁴ the court explained that “Plaintiffs’ other constitutional challenges arising under the Federal and State Constitutions—asserting that the EYEL violates the rights of free speech and association, the right to equal protection of the laws, the right to substantive due process, and the right to vote—must be judged based on the extent to which [the EYEL] directly infringes upon First and Fourteenth Amendment rights and the associated rights under the New York Constitution.” *Cnty. of Onondaga*, 238 A.D. 3d at 1452 (internal quotation marks omitted) (citing *Burdick v. Takushi*, 504 US 428, 433-34 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)). The Fourth Department ultimately concluded that “the EYEL, which changes only the timing of certain local

⁴ The Plaintiffs in the action filed in Jefferson County asserted a claim under Article I, § 8 of the New York Constitution, which guarantees freedom of speech and assembly. *See County of Onondaga*, Index No. 003095/2024, NYSCEF Doc. No. 44. The Court need not determine whether such claims are coextensive with the First Amendment because Plaintiffs who appeared in the state actions could have brought a First Amendment claim in state court.

elections and applies equally to all participants in the political process, affects these rights only in an incidental and remote way.” *Id.* (internal quotation marks omitted). The court further held that the “EYEL’s ‘reasonable, nondiscriminatory restrictions’ are justified by the State’s ‘important regulatory interests.’” *Id.* (quoting *Burdick*, 504 U.S. at 434).

In October 2025, the New York Court of Appeals affirmed the Fourth Department’s ruling. The Court of Appeals held that any constitutional injury alleged by the plaintiffs was “minor as compared to the State’s legitimate and substantial interest in increasing voter turnout and reducing confusion.” *Cnty. of Onondaga*, 44 N.Y.3d at 656. The Court of Appeals also held that the “EYEL is a neutral law which changes the timing of elections in a manner common to all voters, and imposes no form of restriction, burden, or limitation on voting.” *Id.* Some of the plaintiffs petitioned the U.S. Supreme Court for writ of certiorari, which was denied. *Rockland Cnty. v. New York*, No. 25-836, 2026 WL 795059, at *1 (U.S. Mar. 23, 2026).

The following sixteen Plaintiffs appeared as plaintiffs in the state court actions: County of Nassau; Town of Hempstead; Town of North Hempstead; County of Suffolk; Town of Brookhaven; Town of Islip; Town of Huntington; County of Orange; Steven M. Neuhaus; Barry J. Cheney; Thomas J. Faggione; Paul Ruszkiewicz; Kathy Stegenga; Janet Sutherland; Peter V. Tuohy; and Leigh J. Benton. *See Cnty. of Onondaga v. State*, 86 Misc. 3d 214, 216 (N.Y. Sup. Ct. 2024), *appeal transferred*, 43 N.Y.3d 935 (2025), *and rev’d and vacated*, 238 A.D.3d 1535 (2025), *aff’d*, 44 N.Y.3d 639 (2025), *cert. denied sub nom. Rockland Cnty. v. New York*, 224 L. Ed. 2d 274 (Mar. 23, 2026).

The claims of all of these Plaintiffs are barred by *res judicata* or claim preclusion. “Federal courts are required ‘to give preclusive effect to state-court judgments whenever the courts of the [s]tate from which the judgments emerged would do so.’” *VDARE Found., Inc. v. James*, 162 F.4th

77, 83 (2d Cir. 2025) (quoting *Allen v. McCurry*, 449 U.S. 90, 96 (1980)). Because the New York Court of Appeals issued the relevant prior judgment, New York law regarding claim preclusion applies. *Id.* Under New York law, “a prior court decision has claim-preclusive effect when there is: (1) ‘a judgment on the merits . . . from a prior action’; (2) ‘between the same parties’; and (3) ‘involving the same subject matter.’” *Id.* (quoting *In re Hunter*, 4 N.Y.3d 260, 269 (2005)).

Critically, “[c]laim preclusion ‘prevents parties from raising issues that could have been raised and decided in a prior action—even if they were not actually litigated.’” *Thermal Surgical, LLC v. Brown*, 150 F.4th 115, 121 (2d Cir. 2025) (quoting *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 590 U.S. 405, 412 (2020)); *see also* *VDARE*, 162 F.4th at 83 (the claim preclusion rule includes “claims that could have been raised in the prior litigation” (internal quotation marks omitted)); *Corbett v. City of New York*, 816 F. App’x 551, 554 (2d Cir. 2020) (“*Res judicata* bars all claims that *could have been raised*, not just those actually raised.” (emphasis in original)); *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 95 (2d Cir. 2005) (“[T]he voters’ constitutional claims will be barred by claim preclusion if they could have been raised in state court and they arise from the same transaction or series of transactions as the state-court claims.” (internal quotation marks omitted)).

All of the requirements for claim preclusion are satisfied for all sixteen of the above-mentioned Plaintiffs, who could have asserted First Amendment claims in the state court action. First, the decision by the New York Court of Appeals, New York’s highest court, is a final judgment on the merits by a court of competent jurisdiction. New York’s state courts have jurisdiction to hear First Amendment and other constitutional claims brought under 42 U.S.C. § 1983. *See Haywood v. Drown*, 556 U.S. 729, 739-41 (2009) (explaining that New York has created state courts of general jurisdiction with authority to hear suits for damages under 42 U.S.C.

§ 1983); *Corbett*, 816 F. App'x at 554 (finding proposed § 1983 claim barred by *res judicata* where claim could have been raised in plaintiff's prior state court proceeding); *Jones v. HSBC Bank USA Nat'l Ass'n*, No. 23-cv-7773, 2024 WL 2766515, at *8 (E.D.N.Y. May 30, 2024) (state supreme court "is a court of general jurisdiction and is fully competent to adjudicate federal constitutional and statutory claims").⁵

Identity of parties and identity of subject matter are also established. With respect to the aforementioned Plaintiffs, the state court actions involved the identical parties. And the subject matter—the EYEL and its validity—is identical. Accordingly, the claims of all Plaintiffs who were also plaintiffs in the state court actions are precluded.

POINT II: THE ELEVENTH AMENDMENT BARS ALL PLAINTIFFS' FIRST AMENDMENT CLAIMS

Plaintiffs' First Amendment claims are barred by the Eleventh Amendment, which prohibits suits "in which the State or one of its agencies or departments is named as the defendant." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). This immunity extends to state officials, such as Governor Hochul, sued in their official capacities. *See Li v. Lorenzo*, 712 F. App'x 21, 22 (2d Cir. 2017) (citing *Davis v. New York*, 316 F.3d 93, 101-02 (2d Cir. 2002)); *Burnette v. Carothers*, 192 F.3d 52, 57 (2d Cir. 1999).

Plaintiffs seek to invoke the exception to Eleventh Amendment immunity set forth in *Ex Parte Young*, 209 U.S. 123 (1908), against Governor Hochul, but that exception does not apply. The *Ex Parte Young* exception allows claims for prospective injunctive relief asserted against a

⁵ The aforementioned Plaintiffs do not assert VRA claims, but to the extent they were to do so, those claims would be equally barred for the same reasons because state courts also have jurisdiction to hear VRA claims. *See Denis v. New York City Bd. of Elections*, No. 94-cv-7077, 1994 WL 613330, at *4 n.5 (S.D.N.Y. Nov. 7, 1994) (state courts "do have the power and the duty to decide claims brought under § 2" of the VRA (emphasis in original)).

state official sued in her official capacity for the purpose of ending “a continuing violation of federal law.” *Kelly v. New York Civ. Serv. Com’n*, 632 F. App’x 17, 18 (2d Cir. 2016) (citing *Ex Parte Young*, 209 U.S. at 154). However, for that exception to apply, “the state officer against whom a suit is brought ‘must have some connection with the enforcement of the act’ that is in continued violation of federal law.” *In re Dairy Mart Convenience Stores, Inc.*, 411 F.3d 367, 372-73 (2d Cir. 2005) (quoting *Ex parte Young*, 209 U.S. at 154). As *Ex Parte Young* explained:

In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state, and thereby attempting to make the state a party.

Ex Parte Young, 209 U.S. at 154. *Ex Parte Young* further explained:

A general duty to enforce state law or to supervise other officials responsible for enforcing the challenged provision is insufficient; otherwise, “the constitutionality of every act passed by the legislature could be tested by a suit against the governor . . . based upon the theory that [he], as the executive of the State was, in a general sense, charged with the execution of all its laws”

Id. at 157.

Plaintiffs allege only that “the EYEL was introduced by those aligned with Governor Hochul” and that she “signed the bill into law.” *See* Am. Compl. ¶¶ 54, 57. However, the “well-settled doctrine of absolute legislative immunity . . . bars actions against legislators or governors . . . on the basis of their roles in enacting or signing legislation.” *Warden v. Pataki*, 35 F.Supp.2d 354, 358 (S.D.N.Y.1999), *aff’d sub nom. Chan v. Pataki*, 201 F.3d 430 (2d Cir. 1999). And it is established law that the Governor’s general duty to execute the laws does not satisfy the *Ex Parte Young* exception. *See, e.g., Jeannot v. New York State*, 762 F. Supp. 3d 217, 233-34 (E.D.N.Y. 2025), *appeal withdrawn sub nom. Jeannot v. McDonald*, No. 25-314, 2025 WL 2320485 (2d Cir. July 14, 2025) (finding allegations that governor “spearheaded” amendments to a Medicaid statute, was “leading their implementation,” and made public statements reflecting her “intimate

involvement in the implementation” of the law insufficient to show governor had a particular duty to enforce the law (internal quotation marks omitted)); *Goldstein v. Hochul*, 680 F. Supp. 3d 370, 384 (S.D.N.Y. 2023) (“The Governor’s general duty to execute the laws is not sufficient to make her a proper party in a suit challenging a state statute.”); *Nassau & Suffolk Cnty. Taxi Owners Ass’n, Inc. v. State*, 336 F. Supp. 3d 50, 68-69 (E.D.N.Y. 2018) (*Ex Parte Young* exception does not apply where “it does not appear that” the governor’s office “has any particular enforcement authority over” the statute in question); *Emory v. New York*, No. 11-cv-1774, 2013 WL 1881009, at *1 (E.D.N.Y. May 6, 2013) (same).

Seneca Nation v. Hochul, 58 F.4th 664 (2d Cir. 2023), cited by Plaintiffs (*see* Pls.’ letter dated Feb. 9, 2026, ECF No. 30), does not hold otherwise. Plaintiffs ignore that the *Seneca Nation* plaintiffs attempted to allege that the named State officials had a particular duty associated with the easements at issue. *See Seneca Nation v. Cuomo*, 484 F. Supp. 3d 65, 70 (W.D.N.Y. 2020). Here, Plaintiffs make no allegation that Governor Hochul has any duty to enforce the EYEL.

Accordingly, Plaintiffs’ First Amendment claims should be dismissed pursuant to the Eleventh Amendment.

POINT III: THE MUNICIPAL PLAINTIFFS, INCLUDING OFFICEHOLDER PLAINTIFFS, LACK CAPACITY TO ASSERT THEIR CLAIMS

Under clear and controlling New York State law, the Municipal Plaintiffs—the Counties of Nassau, Suffolk, and Orange, the Towns of Hempstead, Oyster Bay, North Hempstead, Brookhaven, Islip, Riverhead, and Huntington, and individual Plaintiffs DeSena, Ferretti, Pilip, Ryder, Phillips, Neuhaus, Benton, Cheney, Faggione, Rusziewicz, Stegenga, Sutherland, and

Tuohy⁶—lack capacity to assert constitutional claims, including claims for alleged First Amendment violations, against the State of New York.

“[T]he capacity of a governmental entity to sue or be sued is a question of state law.” *Town of Babylon, N.Y. v. James*, No. 22-cv-1681, 2023 WL 8734201, at *3 (E.D.N.Y. Dec. 19, 2023) (citing Fed. R. Civ. P. 17(b)) (internal quotation marks omitted). New York law makes clear that the Municipal Plaintiffs lack capacity to assert their constitutional claims. The New York Court of Appeals has established that “municipalities and other local governmental corporate entities and their officers lack capacity to mount constitutional challenges to acts of the State and State legislation.” *City of New York v. State*, 86 N.Y.2d 286, 289 (1995). As the Court of Appeals explained, “[c]onstitutionally as well as a matter of historical fact, municipal corporate bodies—counties, towns and school districts—are merely subdivisions of the State, created by the State for the convenient carrying out of the State’s governmental powers and responsibilities as its agents.” *Id.* at 289-90; *see also Town of Black Brook v. State*, 41 N.Y.2d 486, 488 (1977) (impairment of a local government’s powers “raises no constitutional issue”).

This capacity rule reflects “the manifest improbability that the legislature would breathe constitutional rights into a public entity and then equip it with authority to police state legislation on the basis of those rights.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 N.Y.3d 377, 385 (2017) (internal citations and quotation marks omitted). Municipal officials “suffer the same lack of capacity to sue the State.” *City of New York*, 86 N.Y.2d at 291.

Four exceptions are recognized to this general capacity rule, none of which applies here: (1) statutory authority to sue; (2) a proprietary interest exists in a specific fund of moneys; (3)

⁶ As stated above, *see supra*, n. 1, Plaintiffs define Municipal Plaintiffs as including only the Counties and Towns, *see Am. Compl.* ¶ 30, but for purposes of the capacity rule, the Plaintiffs identified as local officials are also Municipal Plaintiffs.

interference with the municipality's home rule powers; and (4) where the State action would oblige the municipality to violate a constitutional proscription. *In re World Trade Ctr.*, 30 N.Y.3d at 386.

Plaintiffs seek to invoke the fourth exception, the constitutional proscription exception, but that exception is exceedingly narrow in scope. *See Clarke v. Town of Newburgh*, No. 84, 2025 WL 3235042, at *3 (N.Y. Nov. 20, 2025) (noting the court had not found a single case in which a court had applied it). This exception does not apply because the Municipal Plaintiffs cannot show how complying with the EYEL would force them to violate any constitutional proscription. Merely asserting that a statute itself violates a constitutional proscription is insufficient to satisfy the constitutional proscription exception. *See City of New York*, 86 N.Y.2d at 295 (“[I]t cannot be persuasively argued that the [Municipal Plaintiffs] should be held accountable [under the First Amendment] . . . by reason of the alleged [First Amendment violation] over which they have absolutely no control.”). The Municipal Plaintiffs merely allege that they will be “compelled to plan, administer, and conduct elections pursuant to an unlawful regime.” Am. Compl. ¶ 150. This is merely an allegation, at most, that the EYEL directly burdens free speech rights (itself a meritless allegation), not that the administration of even-year elections will infringe on free speech rights. *See Massapequa Union Free Sch. Dist. v. New York State Bd. of Regents*, 809 F. Supp. 3d 33, 65 (E.D.N.Y. 2025), *motion for relief from judgment denied*, No. 23-cv-7052, 2026 WL 961337 (E.D.N.Y. Feb. 23, 2026) (finding school district and school board failed to satisfy the constitutional proscription exception because, rather than alleging their own involvement in violating their employees' political speech rights, plaintiffs alleged that the state statute infringed their employees' rights directly).

Moreover, given that Plaintiffs assert a facial challenge to the EYEL, the recent Court of Appeals decision in *Newburgh* dispenses with any argument that the constitutional proscription

exception applies. In the context of a municipality’s facial challenge to a state statute, *Newburgh* emphasized the importance of principles of judicial restraint, which “counsel strongly against permitting subordinate units of state government from using the judiciary to second-guess the wisdom of enacted legislation.” See *Clarke v. Town of Newburgh*, 2025 WL 3235042, at *3. The Court of Appeals explained: “A municipality’s authority to raise a challenge to a State law is at its lowest ebb when that challenge is a facial constitutional challenge, seeking to invalidate a statute in all possible applications, not merely because it allegedly placed the particular municipality in an allegedly untenable position.” *Id.*

Because the Municipal Plaintiffs seek to invalidate the EYEL in all of its applications, not only as applied to them, and because they fail to explain how they would be forced to violate any constitutional proscription, they lack capacity to assert their First Amendment claims.

POINT IV: PLAINTIFFS’ CLAIMS SHOULD BE DISMISSED FOR LACK OF STANDING

A. Plaintiffs lack standing to assert their First Amendment claims.

The U.S. Supreme Court has “established that the ‘irreducible constitutional minimum’ of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), *as revised* (May 24, 2016) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). At the pleading stage, “the plaintiff must clearly allege facts demonstrating each element.” *Id.* (internal quotation marks and ellipsis omitted). “To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Id.* at 339 (internal quotation marks omitted).

1. The Party Plaintiffs and the Association

The Party Plaintiffs and the Association seek to assert First Amendment claims on behalf of themselves and their members. *See* Am. Compl. ¶¶ 9, 10, 11, 21. However, these Plaintiffs lack standing to assert such claims on their own behalf or on the behalf of their members.

An organization may bring a suit under 42 U.S.C. § 1983 on its own behalf, but it still must satisfy the requirements for Article III standing. To satisfy the injury element, an organization must show that it faces “an imminent injury in fact to itself as an organization (rather than to its members) that is distinct and palpable.” *Citizens United to Protect Our Neighborhoods v. Vill. of Chestnut Ridge, New York*, 98 F.4th 386, 395 (2d Cir. 2024) (internal quotation marks omitted). The organization must also show that “the challenged action ‘perceptibly impaired’ the organization’s activities, as opposed to merely harming its ‘abstract social interests.’” *Id.* at 396 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

However, “when an organization is not directly regulated by a challenged law or regulation, it cannot establish perceptible impairment absent an involuntary material burden on the established core activities by which its organizational mission has historically been carried out.” *Id.* (internal quotation marks omitted). Because the Party Plaintiffs are not directly regulated by the EYEL, they must show “an involuntary material burden on [their] established core activities, that impeded their ability to carry out [their] responsibilities or forced them to divert money from [their] other current activities to advance [their] established organizational interests.” *See Fam. Equal. v. Becerra*, No. 22-cv-1174, 2024 WL 618760, at *1 (2d Cir. Feb. 14, 2024) (internal quotation marks and citation omitted).

The State Committee alleges it is “responsible for recruiting, nominating, endorsing, and supporting Republican candidates for town and county office and for communicating the Party’s

platform to voters throughout New York.” Am. Compl. ¶ 9. The Nassau and Suffolk Committees claim the identical responsibilities for their respective counties. *See id.* ¶¶ 11, 21. None of these Plaintiffs makes a single allegation that the EYEL will restrict their ability to perform these core activities. The Party Plaintiffs make a conclusory assertion that the EYEL will force them to divert resources “to remedy changes in the voting systems for local elections.” *See* ECF No. 30 at 2. This argument, however, appears nowhere in the Amended Complaint and fails to show how the EYEL will restrict the Party Plaintiffs’ ability to perform their core functions. The Party Plaintiffs do not allege that they have any responsibility for the administration of elections, so any efforts they undertake to “remedy changes in the voting systems” would be entirely voluntary. “[A]n organization’s decision to embark on categorically new activities in response to action by a putative defendant will not ordinarily suffice to show an injury for standing purposes[.]” *Connecticut Parents Union v. Russell-Tucker*, 8 F.4th 167, 174 (2d Cir. 2021).

The Association makes no allegation of any injury to itself to establish standing. Plaintiffs describe the Association’s basic activities, and nothing more. *See* Am. Compl. ¶ 10.

Nor can the Party Plaintiffs or the Association demonstrate associational standing on behalf of their members. “[I]t is the law of [the Second] Circuit that an organization does not have standing to assert the rights of its members in a case brought under 42 U.S.C. § 1983.” *A.H. by E.H. v. New York State Dep’t of Health*, 147 F.4th 270, 278 n.2 (2d Cir. 2025), *cert. denied sub nom. Disability Rts. NY v. NY State Dep’t of Health*, No. 25-843, 2026 WL 642799 (U.S. Mar. 9, 2026) (internal quotation marks omitted). This is because the Second Circuit has “interpreted the rights § 1983 secures to be personal to those purportedly injured.” *Nnebe v. Daus*, 644 F.3d 147, 156 (2d Cir. 2011) (internal quotation marks omitted). Accordingly, this principle applies regardless of the remedy being sought.

Plaintiffs attempt to distinguish *National Rifle Association of America v. Hochul*, No. 20-cv-3187, 2021 WL 5313713, at *2 (2d Cir. Nov. 16, 2021) (*see* Pls.’ letter dated Feb. 9, 2026, ECF No. 30), but their attempt fails. That case involved § 1983 claims for injunctive and declaratory relief as well as damages. *Id.* at *1. The Second Circuit found that the requests for injunctive and declaratory relief were moot, *id.*, so there was no need to examine standing for those requests. The damages claims, however, were not moot, so the court then turned to the question of standing and ruled that the NRA did not have standing on behalf of its members for claims under § 1983. *Id.* at *1-2. The court did not, as Plaintiffs appear to suggest, rule that organizations have standing to assert § 1983 claims for injunctive and declaratory relief on behalf of their members.

Plaintiffs’ reliance on *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333 (1977) (*see* Pls.’ letter dated Feb. 9, 2026, ECF No. 30), is misplaced. In cases involving § 1983 claims the Second Circuit does not apply *Hunt*, which did not involve § 1983 claims. *See A.H. by E.H.*, 147 F.4th at 278 nn.1-2 (discussing *Hunt* test and clarifying that in the Second Circuit organizations lack standing for § 1983 claims on behalf of their members); *New York State Citizens’ Coal. for Child. v. Velez*, 629 F. App’x 92, 93 (2d Cir. 2015) (declining to apply *Hunt* where organization sought to sue under § 1983 on behalf of its members); *Hunter v. Cortland Hous. Auth.*, No. 5:23-cv-1540, 2024 WL 2078590, at *5 (N.D.N.Y. May 9, 2024) (noting that *Hunt* did not address § 1983 claims).

Even if *Hunt* did apply, Plaintiffs do not satisfy its test for representational standing. Under *Hunt*, the organizational plaintiff must show, *inter alia*, that “its members would otherwise have standing to sue in their own right.” *See Hunt*, 432 U.S. at 343. The Party Plaintiffs and the Association do not so much as identify a single member, much less show how any member would have standing.

2. *The Counties and Towns*

The Counties of Nassau, Suffolk, and Orange, and the Towns of Hempstead, Oyster Bay, North Hempstead, Riverhead, Islip, Riverhead, and Huntington also fail to assert any First Amendment injury caused by EYEL. The Counties and Towns allege nothing more than that their elections will be affected by the EYEL. *See* Am. Compl. ¶¶ 12-15, 22-26, 30, 62-64, 88-90. This is insufficient to show the type of concrete, particularized injury necessary to establish standing.

3. *The Candidate Plaintiffs*

Nor can the Candidate Plaintiffs show standing to assert a First Amendment claim. The EYEL, which merely changes the schedule for certain local elections, is a type of election law that does not implicate the First Amendment or any other constitutional right. *See, e.g., Jackson v. Tarrant Cnty., Texas*, 158 F.4th 571, 591 (5th Cir. 2025) (“[T]here is no constitutional right to vote ‘on a particular schedule.’” (quoting *Republican Party of Oregon v. Keisling*, 959 F.2d 144, 145 (9th Cir. 1992))); *Keisling*, 959 F.2d at 145 (“declin[ing] invitation to find” a “first amendment right to vote for state representatives on a particular schedule”).

The Candidate Plaintiffs’ alleged injuries—which are merely conjectural and reflect their core complaint that the EYEL will cause too many elections to occur at the same time—do not bear a “close relationship to a harm traditionally recognized as providing a basis for a lawsuit in English or American courts.” *See Spokeo, Inc.*, 578 U.S. at 341. Accordingly, the injuries the Candidate Plaintiffs claim—more competition for visibility and longer ballots—are not cognizable injuries under any legal theory and cannot confer standing. *See Raines v. Byrd*, 521 U.S. 811, 819 (1997) (“[T]he alleged injury must be legally and judicially cognizable.”); *see also Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 198 (2008) (“usual burdens of voting” are not cognizable injuries).

The injuries alleged by the Candidate Plaintiffs are also too remote and speculative to confer standing. Plaintiffs speculate that civic engagement for local elections will decline in even-numbered years, and Candidate Plaintiffs' voices will be submerged under national politics. *See* Am. Compl. ¶¶ 67-69. However, such injuries are completely speculative and rely on "numerous suppositions that must occur before [the Candidate Plaintiffs] might suffer any harm." *See Bruni v. Hughes*, 468 F. Supp. 3d 817, 824 (S.D. Tex. 2020) (finding plaintiffs' alleged injuries, which included longer lines, ballot roll off, and voter confusion due to state law eliminating straight ticket voting, failed to satisfy the imminence requirement for standing). Like the alleged injuries in *Bruni*, the Candidate Plaintiffs' alleged injuries are wholly contingent on the actions of third parties that may or may not occur. *Id.* at 824, 827. Indeed, it is equally plausible that local civic engagement and candidate visibility will increase with greater awareness of an election season, and that more votes will be cast in local races overall due to higher voter turnout.

The Candidate Plaintiffs' reliance on *Bost v. Illinois State Board of Elections*, 607 U.S. 71 (2026) (*see* Pls.' letter dated Feb. 9, 2025), is misplaced. *Bost* held that candidates have standing to challenge rules regarding processes for counting ballots. *Id.* at 82. The claimed injury in *Bost* was rooted in concerns for a fair process and election integrity. *Id.* at 77, 82. Ballot counting and election integrity are not implicated by the EYEL, which merely changes the timing for certain local elections.⁷

In sum, in addition to being not legally cognizable, the injuries alleged by Candidate Plaintiffs are far too remote and speculative to confer standing to assert First Amendment claims.

⁷ Nor does *Gallagher v. New York State Board of Elections*, 477 F. Supp. 3d 19 (S.D.N.Y.) support Candidate Plaintiffs' standing. *Gallagher* also involved ballot counting and the application of a regulation that could have been outcome determinative. *Id.* at 35-36.

4. *The Voter Plaintiff (Jarod Morris)*

The sole voter Plaintiff, Jarod Morris, also fails to show standing to assert his VRA claim. Plaintiff Morris alleges the EYEL will cause “lengthy even-year ballots and heighten information-access concerns for voters[.]” Am. Compl. ¶ 108. However, the burden of completing a longer ballot or learning of additional races is “not a cognizable injury because it merely involves the ‘usual burdens of voting.’” See *La Union Del Pueblo Entero v. Abbott*, 151 F.4th 273, 287 (5th Cir. 2025) (quoting *Crawford*, 553 U.S. at 181) (finding “vague” allegations of longer voting lines “falls far short of establishing a cognizable Article III injury”); see also *McCorkle v. Raffensperger*, No. 1:24-cv-03137, 2025 WL 238014, at *4 (N.D. Ga. Jan. 13, 2025) (finding plaintiff lacked standing to raise a vote-denial claim where her “alleged injury concern[ed] not the ability to vote but rather the precise timing of the election.” (internal quotation marks omitted) (emphasis in original)).

POINT V: PLAINTIFFS’ FIRST AMENDMENT CLAIMS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

Plaintiffs fail to state a viable First Amendment claim under any of their theories.

States are granted “broad power to prescribe the Times, Places and Manner” for holding national and state-level elections. *SAM Party of New York v. Kosinski*, 987 F.3d 267, 274 (2d Cir. 2021) (citing U.S. Const. Art. I, § 4, cl. 1) (internal quotation marks omitted). The Supreme Court has recognized that “as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983).

Taking these principles into account, the Supreme Court has set forth a framework, commonly referred to as the *Anderson-Burdick* framework, for evaluating challenges to election laws that may implicate constitutional rights. “A court considering a challenge to a state election

law must weigh ‘the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate’ against ‘the precise interests put forward by the State as justifications for the burden imposed by its rule,’ taking into consideration ‘the extent to which those interests make it necessary to burden the plaintiff’s rights.’” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson*, 460 U.S. at 789).

However, where an election law, such as the EYEL, does not involve any direct restrictions on speech or access to the ballot, the *Anderson-Burdick* framework need not be invoked. In *Molinari v. Bloomberg*, 564 F.3d 587 (2d Cir. 2009), the Second Circuit held that a New York City law that amended a referendum on term limits did not require application of the *Anderson-Burdick* framework because it did not restrict speech in any way. *Id.* at 604-05. The plaintiffs alleged that the city’s referendum amendment would make voters less likely to engage in speech, that their speech will potentially become less effective, and plaintiffs will have more difficulty organizing referenda in the future. *Id.* at 605. The court held that “‘the difficulty of the process alone is insufficient to implicate the First Amendment.’” *Id.* at 602 (quoting *Dobrovolny v. Moore*, 126 F.3d 1111, 1113 (8th Cir. 1997), *cert. denied*, 523 U.S. 1005 (1998)).

Like the referendum amendment in *Molinari*, the EYEL imposes no restrictions on speech or access to the ballot. Because the EYEL merely shifts most local elections from odd-numbered years to even-numbered years, the *Anderson-Burdick* framework need not be invoked. *See Molinari*, 564 F.3d at 604-05; *Jackson*, 158 F.4th at 593 (5th Cir. 2025) (declining to apply *Anderson-Burdick* because it “applies to laws that ‘burden a relevant constitutional right,’ [and,] [a]s we have explained, there is no constitutional right to vote ‘on a particular schedule’” (quoting *Keisling*, 959 F.2d at 145)); *New York State Bd. of Elections v. Lopez Torres*, 552 U.S. 196, 208 (2008) (upholding New York’s statutory scheme for political parties’ nominating of candidates for

Supreme Court judges; rejecting argument that entrenched “one-party rule” in New York’s judicial districts justified applying First Amendment for purpose of increasing election competitiveness).

However, even if the Court were to undertake an *Anderson-Burdick* analysis, it should find that any First Amendment injury alleged by Plaintiffs is outweighed by the legitimate state interest in increasing voter turnout and decreasing voter confusion. The EYEL merely shifts most local elections to even-numbered years. The EYEL affects all local candidates and voters, across party lines and otherwise, equally. At bottom, Plaintiffs’ alleged burden is that the EYEL will cause too many races to be held at the same time. However, the number of races held in a given election is a valid policy choice that a state may make. *See Michigan State A. Philip Randolph Inst. v. Johnson*, 749 F. App’x 342, 345-46 (6th Cir. 2018) (“[A]llowing and requiring choices on a large number of other ballot items . . . is not an arbitrary [choice], nor is it a ‘tenuous’ interest.”).

Further, Plaintiffs’ allegations that local candidates will be burdened by competition from federal and statewide races implicate concerns that are unprotected by the First Amendment, which protects robust speech in the marketplace of ideas that is political elections. The First Amendment “creates an open marketplace where ideas, most especially political ideas, may compete without government interference.” *Lopez Torres*, 552 U.S. at 208. And the First Amendment does not guarantee a level playing field in the marketplace of ideas. *See, e.g., Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 350 (2010) (noting that the “First Amendment’s protections do not depend on the speaker’s financial ability to engage in public discussion”) (internal quotation marks omitted).

Consistent with these fundamental principles, the New York Court of Appeals held that any injury alleged by the plaintiffs was “minor as compared to the State’s legitimate and substantial interest in increasing voter turnout and reducing confusion,” and that the “EYEL is a neutral law

which changes the timing of elections in a manner common to all voters, and imposes no form of restriction, burden, or limitation on voting.” *Cnty. of Onondaga*, 44 N.Y.3d at 656. The Court should agree with the reasoned conclusion of the New York Court of Appeals and find that Plaintiffs fail to state a plausible First Amendment claim.

Kim v. Hanson, 99 F.4th 140 (3d Cir. 2024), cited by Plaintiffs (*see* Am. Compl. ¶¶ 83-85), does not hold otherwise. *Kim* involved a ballot design that placed certain candidates in a less favorable position on the ballot *relative to their competitors* based on their “associational choices and policy positions.” *Id.* at 155-56. Here, the Candidate Plaintiffs’ place on the ballot will be exactly the same relative to their competitors in elections held in even-numbered years.

POINT VI: PLAINTIFF MORRIS FAILS TO STATE A PLAUSIBLE VOTING RIGHTS ACT CLAIM.

A. Plaintiffs’ allegations and Section 2 of the VRA.

Plaintiffs also fail to state a claim under Section 2 of the VRA. The gravamen of Plaintiffs’ VRA claim is that the EYEL increases informational burdens for minority voters to learn about local races. *See* Am. Compl. ¶¶ 110, 117. Specifically, Plaintiffs allege that “[t]he EYEL’s shift to even-year ballots will exacerbate roll-off and lower engagement as informational burdens rise in the minority communities that already face higher costs of participation.” *Id.* ¶ 110. Plaintiffs’ allegations, however, fail to state a claim under any recognized theory of VRA liability.

Section 2(a) of the VRA prohibits any voting practice or procedure that “results in a denial or abridgement of the right . . . to vote on account of race or color[.]” 52 U.S.C. § 10301(a). To state a claim under the VRA, a plaintiff must show “that the political processes leading to nomination or election . . . are not equally open to [minorities] in that [minorities] have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 667 (2021);

52 U.S.C. § 10301(b). In evaluating a claim under Section 2, courts must examine the totality of circumstances related to the alleged harm at issue. *See Brnovich*, 594 U.S. at 668.

In applying Section 2, the Supreme Court has recognized two theories under which a plaintiff may challenge a voting standard, practice, or procedure: (1) vote-dilution claims, and (2) vote-denial claims. *See Brnovich*, 594 U.S. at 660; *Ohio Democratic Party v. Husted*, 834 F.3d 620, 636 (6th Cir. 2016) (“Section 2(b) encompasses two types of claims: a ‘vote-dilution’ claim . . . and a ‘vote-denial’ claim[.]”). Plaintiffs’ allegations fail to plausibly state a claim under either theory of VRA liability.

B. Plaintiffs fail to state a vote-denial claim.

Given that the EYEL is a state law governing the timing of casting ballots in local New York elections, *Brnovich* provides the proper framework for analyzing Plaintiffs’ VRA claim.⁸

In *Brnovich*, the Supreme Court emphasized that the “key requirement” for a vote-denial claim is that the “political processes leading to nomination and election . . . must be ‘equally open’ to minority and non-minority groups alike.” 594 U.S. at 667-68 (“[T]he core of § 2(b) is the requirement that voting be ‘equally open.’”). To determine whether a voting rule violates the VRA’s “equal openness” requirement, the *Brnovich* court identified five “Guideposts” that courts should consider: (1) the size of the burden imposed by the voting rule; (2) the degree to which the voting rule departs from standard voting practice across the United States; (3) the size of any disparities in the rule’s impact on members of different racial groups; (4) the opportunities provided by a State’s entire voting system; and (5) the strength of the state interests served by the

⁸ *Brnovich* provided the first opportunity for the Supreme Court to develop a framework for analyzing vote-denial claims in the context of generally applicable voting rules regulating the time, place, and manner for casting ballots. *See Brnovich*, 594 U.S. at 660.

voting rule.⁹ *Id.* at 669-72. Plaintiffs fail to plausibly allege any of these factors weigh in their favor.

1. The size of the burden.

The first *Brnovich* Guidepost is the “size of the burden imposed by the challenged voting rule.” *Id.* at 669. As the *Brnovich* court recognized, while “every voting rule imposes a burden of some sort,” the VRA is concerned with “burdens that block or seriously hinder voting.” *Id.* at 669 (“[B]ecause voting necessarily requires some effort and compliance with some rules. . . [voters] must tolerate the ‘usual burdens of voting.’” (citing *Crawford*, 553 U.S. at 198)). The *Brnovich* court further emphasized that “[m]ere inconvenience cannot be enough to demonstrate a violation of § 2.” *Id.* (noting that “[t]here is a difference between openness and opportunity, on the one hand, and the absence of inconvenience, on the other”).

Plaintiffs do not come close to alleging the type of significant burdens that block or seriously hinder voting that *Brnovich* requires. The informational burdens on minorities allegedly caused by “lengthy even-year ballots” are more akin to “mere inconveniences” than burdens that seriously hinder voting. Indeed, the obligation to expend some effort to learn what races are on a given ballot “falls squarely in the heartland of the usual burdens of voting.” *See Brnovich*, 594 U.S. at 683 (internal quotation marks omitted); *Anderson*, 460 U.S. at 797 (“Our cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues.”); *Tangipa v. Newsom*, 816 F. Supp. 3d 1081, 1101 (C.D. Cal. 2026) (recognizing the “litany of case law treating voters as discerning, which is a core precept of our electoral system”).

⁹ While the *Brnovich* court did not attempt to compile an exhaustive list of factors to be considered in analyzing the “totality of the circumstances,” the court cautioned that only circumstances that have a “logical bearing on whether voting is ‘equally open’ and affords equal ‘opportunity’ may be considered.” *See Brnovich*, 594 U.S. at 668-69.

Similarly, to the extent Plaintiffs allege that the EYEL requires voters to spend additional time to complete longer even-year ballots, such burdens also fall within the heartland of the usual burdens of voting. *See Brnovich*, 594 U.S. at 669 (noting that voting takes time); *La Union Del Pueblo Entero*, 151 F.4th at 287 (finding increased voting time was not a cognizable VRA injury).

The only other burden identified by Plaintiffs is that “the EYEL will amplify existing patterns of racially polarized voting.” *See* Am. Compl. ¶ 111. However, the racially polarized voting factor is specifically designed for use in redistricting and vote-dilution cases. *See Brnovich*, 594 U.S. at 672-73 (noting that racially polarized voting “ha[s] a bearing on whether a **districting plan** affects the opportunity of minority voters to elect their candidates of choice”) (emphasis added)). As the *Brnovich* Court explained, “[i]n cases involving neutral time, place, or manner rules, the only relevance of [racially polarized voting] is to show that minority group members suffered discrimination in the past . . . and that effects of that discrimination persist[.]” *Id.* Thus, the *Brnovich* court cautioned that while the existence of racially polarized voting should not be disregarded, “[its] relevance is much less direct.” *Id.* Here, Plaintiffs’ unsupported allegations fail to show how the existence of racially polarized voting is at all relevant to the court’s analysis.

2. History of even-year elections in the United States.

The second *Brnovich* Guidepost concerns the “degree to which a voting rule departs from what was standard practice when § 2 was amended in 1982.” *Brnovich*, 594 U.S. at 669-70. Plaintiffs allege that the EYEL is “precisely the kind of departure from standard practice that *Brnovich* flags for review.” *See* Am. Compl. ¶ 101; Pls.’ letter dated Feb. 9, 2026, ECF No. 30 at 4 n.5 (alleging that the EYEL departs from standard practice in New York). Plaintiffs, however, miss the mark because the relevant question is not whether the voting rule has a long pedigree in the relevant state or jurisdiction. Rather the question is “the degree to which a challenged rule has

a long pedigree or is in widespread use **in the United States**[.]” *Brnovich*, 594 U.S. at 670-71 (emphasis added) (“We doubt that Congress intended to uproot facially neutral time, pace, and manner regulations that have a long pedigree or are in widespread use in the United States.”).

Indeed, *Brnovich* itself proves this point. In finding that Arizona’s out-of-precinct voting ban did not violate the VRA, the court noted that such policies were widespread throughout the United States and cited state laws across the country prohibiting the counting of such votes. *Id.* at 681-82. Thus, because it is undeniable that even-year elections “have a long pedigree [and] are in widespread use in the United States,” Guidepost 2 favors upholding the EYEL. *Id.* at 670-71.

3. *Disparate impact.*

The third *Brnovich* Guidepost is the “size of any disparities in a rule’s impact on members of different racial or ethnic groups.” *Id.* at 671. Plaintiffs rely on wholly conclusory allegations that the EYEL has a disparate impact on minority voters. According to Plaintiffs, “the EYEL dramatically alters the electoral landscape in a manner that disproportionately burdens minority voters.” *See* Am. Compl. ¶ 96. However, such threadbare allegations are entitled to no deference. *See Hayden v. Paterson*, 594 F.3d 150, 162 (2d Cir. 2010) (finding allegation that New York Constitution “restricted the suffrage of minorities” was conclusory because it constituted “the very assertion that plaintiffs must prove”). Further, such allegations are belied by the indisputable fact that the EYEL “applies equally to all participants in the political process.” *Cnty. of Onondaga*, 238 A.D.3d at 1542. Plaintiffs fail to identify any factual basis to support the assertion that the EYEL will cause disparities in voting rates between minorities and non-minorities. Because a showing of disparate impact is fundamental to a vote-denial claim, such failure is fatal to Plaintiffs’ claim. *See Ohio Democratic Party*, 834 F.3d at 639-40 (finding facially neutral statute reducing early voting from 35 to 29 days did not have a disparate impact on minority voters); *Maldonado v. Pataki*, No.

05-cv-5158, 2005 WL 3454714, at *4 (E.D.N.Y. Dec. 16, 2005) (finding plaintiffs failed to allege disparate treatment based on allegations that plaintiffs were deprived of the opportunity to vote in a primary where “plaintiffs were not treated differently than other individual voters”).

4. *New York’s voting system as a whole.*

The fourth *Brnovich* Guidepost concerns the “opportunities provided by a State’s entire system of voting.” *See Brnovich*, 594 U.S. at 671 (“[W]here a State provides multiple ways to vote, any burden imposed on voters who choose one of the available options cannot be evaluated without also taking into account the other available means.”). While Plaintiffs make no allegations regarding the opportunities provided by New York’s voting system as a whole, New York offers numerous options for voters to receive and cast their ballots, including absentee and early voting. The New York State Board of Elections also makes information regarding upcoming elections and races available to all voters. *See* <https://elections.ny.gov/ways-vote>. Thus, New York makes extensive efforts to minimize any informational burdens faced by New York voters.

5. *State interest.*

The final *Brnovich* Guidepost considers the strength of the state interest served by the challenged voting rule. *See Brnovich*, 594 U.S. at 671. Here, the EYEL reflects New York’s compelling interest in increasing voter turnout and reducing voter confusion. *See Van Allen v. Cuomo*, 621 F.3d 244, 248-49 (2d Cir. 2010); *see also Tedards v. Ducey*, 398 F. Supp. 3d 529, 539-40 (D. Ariz. 2019), *aff’d*, 951 F.3d 1041 (9th Cir. 2020); *Valenti v. Rockefeller*, 292 F. Supp. 851, 859 (W.D.N.Y. 1968), *aff’d*, 393 U.S. 405 (1969), and *aff’d sub nom. Phillips v. Rockefeller*, 393 U.S. 406 (1969), and *aff’d sub nom. Backer v. Rockefeller*, 393 U.S. 404 (1969); *Cnty. of Onondaga*, 44 N.Y.3d at 656 (recognizing that the EYEL furthers “the State’s legitimate and substantial interest in increasing voter turnout and reducing confusion”). While Plaintiffs allege

that New York could achieve these goals through other means, *see* Am. Compl. ¶ 125, “Section 2 does not require a State to show that its chosen policy is absolutely necessary or that a less restrictive means would not adequately serve the State’s objectives.” *See Brnovich*, 594 U.S. at 682.

Because each of the *Brnovich* Guideposts weigh in Defendants’ favor, Plaintiffs’ VRA claim must fail.

C. Plaintiffs fail to state a vote-dilution claim.

To the extent the Plaintiffs attempt to allege a vote-dilution claim, they fail to do so because the EYEL is not a redistricting law or regulation, and the Amended Complaint fails to allege any of the preconditions identified in *Thornburg v. Gingles*, 478 U.S. 30 (1986).¹⁰ Under *Gingles*, three preconditions must be met to state a vote-dilution claim: (1) the minority group must demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group must show that it is politically cohesive; and (3) the minority must demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate. *Id.* at 50-51. After a plaintiff has satisfied these preconditions, the plaintiff must further demonstrate that, under the “totality of the circumstances,” the electoral device at issue results in unequal access to the electoral process. *Id.* at 44-46.

Here, Plaintiffs have not attempted to allege any of the required *Gingles* preconditions for stating a vote-dilution claim. Plaintiffs make no allegation that minorities in New York are sufficiently large or geographically compact to constitute a majority in a single-member district,

¹⁰ Plaintiffs appear to concede that they are not asserting a vote-dilution claim, and, thus, need not satisfy the *Gingles* preconditions. *See* Pls.’ letter dated Dec. 15, 2025, ECF No. 16 at 3 (“Section 2 imposes no requirement that a claim satisfy the preconditions established in *Gingles* . . . when, as here, the challenged practice is a structural election-law change[.]”).

that minorities are politically cohesive, or that the white majority engages in bloc voting. Thus, to the extent Plaintiffs rely on a vote-dilution theory, their VRA claim must fail. *See Rose v. Secretary, State of Georgia*, 87 F.4th 469, 479-86 (11th Cir. 2023) (rejecting “novel” vote-dilution challenge to statewide at-large elections where plaintiffs failed to satisfy the first *Gingles* precondition and noting that “plaintiffs’ request strains both federalism and Section 2 to the breaking point”).

The Supreme Court’s recent decision in *Louisiana v. Callais*, which “updated” the traditional *Gingles* framework by imposing stricter pleading requirements for vote-dilution claims, makes Plaintiffs’ failure to state a vote-dilution claim even clearer. In *Callais*, the Supreme Court “update[d] the *Gingles* framework [to] realign it with the text of § 2 and constitutional principles.” *Louisiana v. Callais*, 146 S. Ct. 1131, 1159 (2026). In updating the *Gingles* framework, the *Callais* court essentially *heightened* the burden on Plaintiffs to satisfy the three *Gingles* preconditions to stating a vote-dilution claim. *Id.* (holding, *inter alia*, that plaintiffs must “disentangle race and politics” to demonstrate a violation). Here, given that Plaintiffs fail to allege any of the traditional or updated *Gingles* preconditions, any vote-dilution claim asserted by Plaintiffs must fail.

CONCLUSION

Defendants respectfully request that the Court grant Defendants’ motion, in its entirety, and grant such other and further relief that the Court deems just and equitable.

Dated: Mineola, New York
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