

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

SERGIO SERRATTO, ANTHONY AGUIRRE, IDA  
MICHAEL, KATHLEEN SIGUENZA, SILVANA  
TAPIA

Plaintiffs,

- against -

TOWN OF MOUNT PLEASANT and TOWN  
BOARD OF THE TOWN OF MOUNT PLEASANT,

Defendants.

Index No.

Date Summons Filed:

Basis for venue is Plaintiffs'  
Residence, CPLR 503(a)

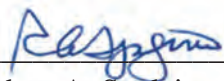
**SUMMONS**

To the above-named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on plaintiffs' attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: White Plains, New York  
January 9, 2024

ABRAMS FENSTERMAN, LLP  
*Attorneys for Plaintiffs*

  
Robert A. Spolzino, Esq.  
81 Main Street Suite 400  
White Plains, New York 10601  
(914)-607-7010

**Defendants' Address:**

Town of Mount Pleasant  
One Town Hall Plaza  
Valhalla, New York 10595  
(914) 742-2300

Town of Mount Pleasant Town Board  
One Town Hall Plaza  
Valhalla, New York 10595  
(914) 742-2300

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**VERIFIED COMPLAINT**

Plaintiffs Sergio Serratto, Anthony Aguirre, Ida Michael, Kathleen Siguenza, Silvana Tapia, by their attorneys, Abrams Fensterman, LLP, as and for their complaint against the defendants, allege as follows:

**NATURE OF THE ACTION**

1. This is an action to enforce the requirements of the John R. Lewis Voting Rights Act of New York (“NYVRA”) in the Town of Mount Pleasant, County of Westchester (the “Town”).

2. NYVRA was enacted by Chapter 226 of the Laws of 2022. It 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. The Town’s “at-large” voting system violates NYVRA because it has for many years systematically prevented members of the Town’s minority Hispanic community from electing any candidates of their choice to the Mount Pleasant Town Board, thus denying the members of that community their most basic rights. Lacking any representation on the Town Board, members of

the Town's Hispanic community have been demoted to second class citizens. Among other things, the Town Board has declared a state of emergency effectively preventing any Hispanic migrants from taking asylum in the Town.

4. Experts hired by the Town have found that the Town is violating the NYVRA by disenfranchising the Hispanic population. Despite this, the Town Board has done nothing to change the Town's electoral system.

5. NYVRA requires that the Town's at-large voting system be promptly changed to remedy the inequitable treatment of Mount Pleasant's minority Hispanic community and ensure that the members of that community are no longer denied the adequate electoral representation they are guaranteed by law.

#### **THE DEPRIVATION OF VOTING RIGHTS BY THE TOWN OF MOUNT PLEASANT**

6. The Town was established in 1788.

7. The Town is made up of the incorporated villages of Pleasantville and Sleepy Hollow, a portion of the incorporated Village of Briarcliff Manor and an unincorporated area which includes the hamlets of Hawthorne, Thornwood, Valhalla, and Pocantico Hills.

8. The Town is a political subdivision of the State of New York that has its principal office at One Town Hall Plaza, Valhalla, Westchester County, New York 10595.

9. The Town Board is the Town's legislative and policy-making authority.

10. The Town's population has risen dramatically in recent decades. Nearly 45,000 individuals now call Mount Pleasant home.

11. Much of that increase is attributable to a rapidly expanding Hispanic community which now comprises approximately 19 percent of the Town's population.

12. The presence of the Hispanic community is particularly notable in the Village of

Sleepy Hollow, located in the southwestern region of the Town. Sleepy Hollow's population is 47 percent Hispanic.

13. Despite the Town's significant Hispanic population, every person ever elected to the Mount Pleasant Town Board, which is the Town's governing body, has, to plaintiffs' knowledge, been white.

14. Voting in the Town is racially/ethnically polarized: Hispanic voters and Non-Hispanic white voters consistently support different candidates and the candidates supported by non-Hispanic white voters usually prevail in Town elections.

15. It is no coincidence that the Town Board is unanimously white. It is the result of the Town's at-large voting system, under which every member of the Town Board is elected by vote of the entire voting population of the Town, and the presence of racially polarized voting. Hispanic voters are politically cohesive and white voters are politically cohesive, but the two groups typically prefer different candidates. Because white voters make up a majority of the electorate, racially polarized voting within the Mount Pleasant's at-large system usually, almost invariably, denies the Town's Hispanic voters an opportunity to elect candidates of their choice to the Town Board.

16. "Slating" – the selection of candidates by party insiders – also contributes to the lack of electoral success by candidates preferred by Hispanic voters. Republican candidates for Town Board are selected by the Mount Pleasant Republican Committee. Its approval is a golden ticket onto the ballot and, in almost all cases, onto the Town Board. Favored candidates are well-known to members of the committee, who have invariably been white. Because of the Town's racial polarization, prospective Hispanic candidates are not able to develop the political connections that appear to be necessary to obtaining the nomination of the Republican party for

Town office.

17. There has not even been a candidate of color for the Town Board since 2003 because the at-large election system has created an environment in which the Hispanic community has lost hope that it will ever have a voice in Town government.

18. Hispanic candidates have had success on the village level, where the Town's overwhelming white majority is not an impediment. Rene Leon was elected to the Board of Trustees of the Village of Sleepy Hollow and Paul Alvarez was elected to the Board of Trustees of the Village of Pleasantville. Thus, when given a fair chance, Hispanic voters are more than capable of electing candidates of their choice.

19. Because there is no Hispanic representation on the Town Board, the Town routinely neglects the interests of the Hispanic community, whose pleas fall on deaf ears. For example, the current Town Board opposes affordable housing projects, which are overwhelmingly popular among Hispanics, but are disfavored by the white majority. The Town has also recently declared a state of emergency aimed at preventing asylum seekers from residing in the Town, even though the Hispanic community in Mount Pleasant would be opposed to doing so. And the Village of Sleepy Hollow almost lost \$10 million per year in property taxes from a development within the Village of Sleepy Hollow because of the Town of Mount Pleasant.

20. Plaintiffs are members of the Town's Hispanic community who seek by this action to remedy this situation in which they are unable to elect candidates of their choice and denied an equal opportunity to elect candidates of their choice compared to the white majority because voting in the Town is racially polarized, preventing Hispanic candidates from being elected to the Town Board.

21. At-large voting systems like the one utilized by the Town, are illegal in one of two

circumstances: either “voting patterns of members of the protected class within the political subdivision are racially polarized; or ... under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired.” N.Y. Elec. Law § 17-206(2)(b)(ii).

22. That is exactly the situation in the Town of Mount Pleasant.

23. There are several potential effective remedies for the dilution of Hispanic voting strength that results from the at-large system. The Town Board could draw single-member districts or institute a modified at-large system, such as proportional ranked-choice voting or cumulative voting, in combination with expanding or “unstaggering” the membership of the Town Board.

24. The Town Board has done nothing to effect any of these remedies.

#### **THE PLAINTIFFS**

25. Plaintiff Sergio Serratto is a Hispanic-American citizen and registered voter residing in the Town of Mount Pleasant, New York.

26. Plaintiff Anthony Aguirre is a Hispanic-American citizen and registered voter residing in the Town of Mount Pleasant, New York.

27. Plaintiff Ida Michael is a Hispanic-American citizen and registered voter residing in the Town of Mount Pleasant, New York.

28. Plaintiff Kathleen Siguenza is a Hispanic-American citizen and registered voter residing in the Town of Mount Pleasant, New York.

29. Plaintiff Silvana Tapia is a Hispanic-American citizen and registered voter residing in the Town of Mount Pleasant, New York.

#### **JURISDICTION AND VENUE**

30. The Court has jurisdiction over this matter by virtue of Election Law § 17-206(4).

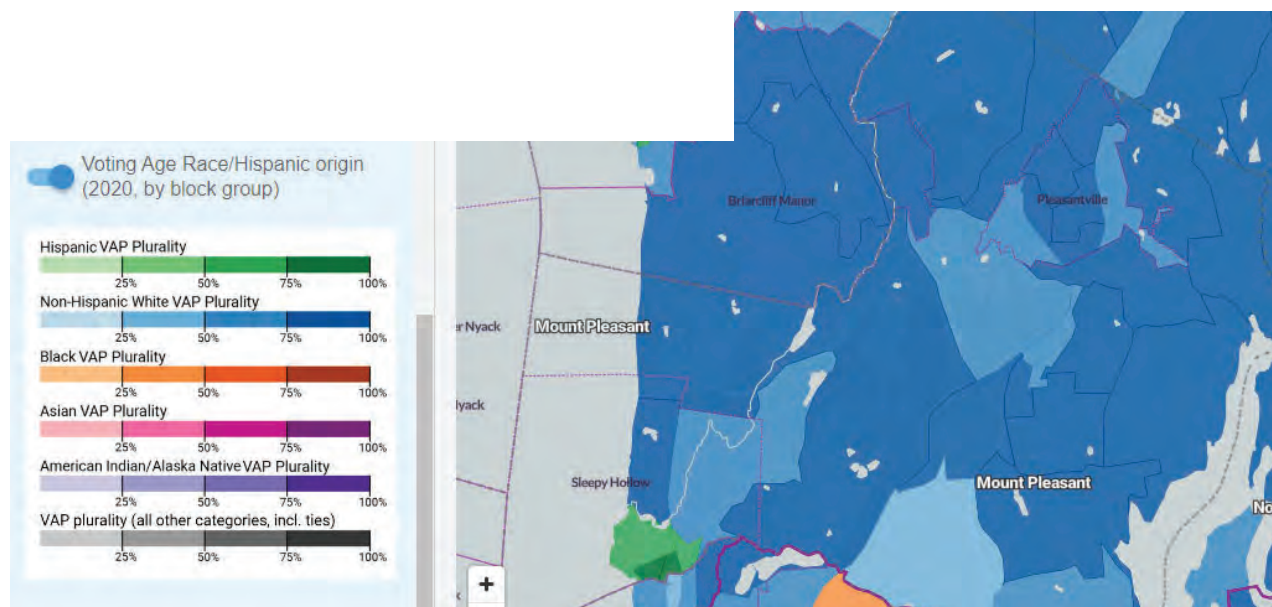
31. Venue is proper in Westchester County under Election Law § 17-206(4), CPLR 504, because the Town is situated in Westchester County, and CPLR 503(a), because the plaintiffs reside in Westchester County.

#### FACTS RELEVANT TO PLAINTIFFS' NYVRA CLAIM

32. According to the most recent census, the racial composition of the Town's population is approximately 69 percent white, 19 percent Hispanic, five percent black, and four percent Asian.

33. Much of the Hispanic population is concentrated in the Village of Sleepy Hollow, which is approximately 47 percent Hispanic.

34. The map below shows in green the area in which the Hispanic population is concentrated:



Source: <https://newyork.redistrictingandyou.org/>

35. The Town has “at-large” elections, which means that every registered voter residing within the Town is eligible to vote for each Town office in every Town election.

36. The Town Board comprises five individuals: the Town Supervisor and four members of the Town Board.

37. The Town Supervisor is the chief elected official of the Town and serves a two-year term. Carl Fulgenzi is the current Town Supervisor. Among other duties, the Town Supervisor sits as chairman of the Town Board.

38. The four Town Board members are elected to staggered, four-year terms. Thus, every two years, two seats on the Town Board are on the ballot. Danielle Zaino, Laurie Smalley, Tom Sialiano, and Mark Saracino are current members of the Town Board.

39. The current members of the Town Board, Carl Fulgenzi, Danielle Zaino, Laurie Smalley, Tom Sialiano, and Mark Saracino, are all white Republicans.

40. The plaintiffs are not aware of any person of color who has ever been elected to the Town Board.

**A. The John R. Lewis Voting Rights Act of New York.**

41. NYVRA unequivocally declares that it is the public policy of the State of New York to “[e]ncourage participation in the elective franchise by all eligible voters to the maximum extent” and “[e]nsure 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.” Election Law § 17-200.

42. To achieve that policy, the Legislature further provided that “all statutes, rules and regulations, and local laws or ordinances related to the elective franchise shall be construed liberally in favor of (a) protecting the right of voters to have their ballot cast and counted; (b) ensuring that eligible voters are not impaired in registering to vote, and (c) ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral



process in registering to vote and voting.” Election Law § 17-202.

43. Under the NYVRA, an “at-large” method of election refers to “a method of electing members to the governing body of a political subdivision: (a) in which all of the voters of the entire political subdivision elect each of the members to the governing body; (b) in which candidates are required to reside within given areas of the political subdivision and all of the voters of the entire political subdivision elect each of the members to the governing body; or (c) that combines at-large elections with district-based elections, unless the only member of the governing body of a political subdivision elected at-large holds exclusively executive responsibilities.” Election Law § 17-204(1).

44. A “political subdivision” is defined to include “a county, city, town, village, school district, or any other district organized pursuant to state or local law.” Election Law § 17-204(4).

45. The Town is a political subdivision under the NYVRA.

46. Because all voters in the Town elect the Town Supervisor and all four Town Board members, the Town utilizes an at-large method of election as defined in NYVRA.

47. The Town Board has the authority to change the Town’s at-large voting system but has thus far chosen not to do so.

48. Among other protections for voters, the NYVRA prohibits any political subdivision from using any 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.” Election Law § 17-206(2)(a).

49. The Town’s Hispanic residents are a “protected class” because they are “a class of eligible voters who are members of a race, color, or language-minority group.” Election Law § 17-204(5).

50. A political subdivision utilizing an at-large method of election violates the prohibition against vote dilution where “(A) voting patterns of members of the protected class within the political subdivision are racially polarized; or (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired.” Election Law § 17-206(2)(b)(i).

51. “Racially polarized voting” is defined as “voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate.” Election Law § 17-204(6).

52. Racially polarized voting “refers only to the existence of a correlation between the race of voters and the selection of certain candidates.” *Thornburg v. Gingles*, 478 U.S. 30, 74 (1986). “[E]vidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class is not required.” Election Law § 17-204(2)(c)(v).

**B. NYRVA’s notification requirement.**

53. Before commencing an action against a political subdivision under NYVRA, a prospective plaintiff must send a notification letter to the clerk of the political subdivision, asserting that the political subdivision may be in violation of NYVRA. Election Law § 17-206(7).

54. A prospective plaintiff cannot commence an action under NYVRA for at least 50 days after sending the notification letter. Election Law § 17-206(7)(a).

55. During that 50-day period, the governing body of the political subdivision may adopt a resolution affirming: “(i) the political subdivision’s intention to enact and implement a remedy for a potential violation of [the NYVRA]; (ii) specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy; and (iii) a schedule for enacting such a remedy.” Election Law § 17-206(7)(b).

56. If the political subdivision timely adopts a resolution in response to a notification letter, the political subdivision has another 90 days to enact and implement a remedy before the prospective plaintiff may commence an action under the NYVRA. *Id.*

**C. Plaintiffs' notification letter.**

57. On July 13, 2023, counsel for the plaintiffs sent a NYVRA notification letter by certified mail to Emily Costanza, Mount Pleasant Town Clerk, at the Town Clerk's Office located at One Town Hall Plaza in Valhalla, New York 10595. A true and correct copy of the notification letter as well as the return receipt is attached as Exhibit A.

58. Within 50 days, on August 25, 2023, the Town Board held a special meeting to address the notification letter. At that time, the Town Board adopted a resolution stating that it would "proactively review its current at-large system." A true and correct copy of the Town Board's August 25, 2023 resolution is attached as Exhibit B.

59. In that resolution, the Town Board approved the retention of Jeffrey M. Wice and Dr. Lisa Handley "to investigate the claim of the alleged voting rights act claims ... and assist the Town Supervisor and Town Attorney in investigating same and complying, to the extent the Town is not already complying with New York State law (NYVRA) and/or federal law." *See* Ex. B, Sec. 2.

60. The Town Board expressly stated that if, based on their expert reports and any other available information, "the Town concludes that there may be a violation of the NYVRA, the Town intends to enact and implement the appropriate remedy(ies)." *See* Ex. B. Sec. 3.

61. In accordance with Election Law § 17-206(6)(a), the Town Board further stated that it would hold two public hearings within 30 days of the Wice and Handley reports "to obtain input from the public regarding any proposed remedy(ies) believed to be necessary and appropriate by the Town including, without limitation, the composition of new election districts before drawing

any draft districting plan(s) or proposed boundaries of the districts.” *See* Ex. B. Sec. 4.

62. The NYVRA requires that, if a political subdivision chooses to prepare a districting or redistricting plan in response to an NYVRA notification letter, at least one draft plan must be published and at least two additional public hearings must be held over a period of no more than 45 days. *See* Election Law § 17-206(6)(b).

**D. The Wice and Handley reports and the Town’s public hearings concerning districting.**

63. Upon information and belief, the Town attorney received the Wice and Handley reports on or about November 9, 2023.

64. On or about the same day, November 9, 2023, the Town published notices stating that the Town Board would hold public hearings to consider procedures for remediating the Town’s violation of NYVRA on November 16, 2023 and November 20, 2023.

65. A true and correct copy of the report of Jeffrey M. Wice is attached as Exhibit C.

66. A true and correct copy of the report of Dr. Lisa Handley is attached as Exhibit D.

67. Dr. Handley used three different statistical methods to analyze voting patterns in the Town: (1) ecological regression (ER); (2) ecological inference as developed by Professor Gary King (EI 2x2); and (3) a more recently developed version of ecological inference (EI RxC). *See* Ex. D at pp. 6-7. These statistical methods are commonly accepted as establishing evidence of vote dilution.

68. Dr. Handley concluded on the basis of all three statistical methods that voting is racially polarized in the Town because “Hispanic voters and Non-Hispanic White voters consistently support different candidates and the candidates supported by the non-Hispanic White voters usually prevail in Mount Pleasant elections.” Ex. D at p. 1.

69. Dr. Handley found, within a 95 percent degree of statistical confidence, that voting

in all six Mount Pleasant elections that she analyzed was racially polarized. *See* Ex. D at p. 5.

70. Mr. Wice's report concludes, based on the statistical analysis conducted by Dr. Handley, that "voting is racially polarized" in Mount Pleasant. The report states that Dr. Handley's analysis of election contests "indicates that Non-Hispanic white voters and Hispanic voters prefer different candidates" and, in those races, the candidates supported by white voters "almost always win." The report further states that, even without considering other evidence, the pattern "is very likely to warrant remedial action." *See* Ex. C at p. 4.

71. Mr. Wice advised the Town to "develop, as may be necessary, a remedial plan for the Town Board to consider." Ex. C at p. 5.

72. The Wice and Handley reports are highly probative evidence of impermissible vote dilution. The Wice and Handley reports are based on elections conducted prior to both the filing of this action and the Town's receipt of the notification letter and they are based on statistical evidence with respect to elections for members of the Town Board (which is the governing body in the Town).

73. Despite the findings of the Town's own experts, the Town's white population appeared in force at the public hearings to oppose taking any remedial action. Certain commentators, apparently lacking training in law or any relevant expertise, offered their view that the plaintiffs' NYVRA case was frivolous and that the Town Board should fight those claims.

74. Those speaking in favor of establishing districts or taking other remedial action were often interrupted while at the podium by those in the audience. Those opposed to taking remedial action often made racially charged comments.

75. More than 90 days have elapsed since the Town Board's August 25, 2023 resolution.

76. The Town Board has taken no further action to date to enact or implement a remedy for its NYVRA violations.

#### **THE TOWN'S AT-LARGE ELECTION STRUCTURE VIOLATES NYVRA**

##### **A. The Town's voting patterns demonstrate racially polarized voting.**

77. The Town's at-large method of electing members of the Town Board violates NYVRA's prohibition against vote dilution because it causes candidates or electoral choices preferred by Hispanic voters to be usually defeated and "voting patterns of members of the protected class within the political subdivision are racially polarized." N.Y. Elec. Law § 17-206(2)(b)(ii).

78. The Town's own experts have determined that elections in the Town exhibit racially polarized voting and that the Town is in violation of the NYVRA.

79. Mr. Wice concluded that "voting is racially polarized" in Mount Pleasant.

80. Dr. Handley's analysis of recent, contested, elections for Town office "indicates that Non-Hispanic white voters and Hispanic voters prefer different candidates" and, in those races, "[t]he candidates preferred by Hispanic voters won only one of the six polarized contests," and that ultimately the candidates supported by white voters "almost always win." *See* Ex. C at p. 4.

81. Mr. Wice states that, even without considering other evidence of vote dilution, the pattern "is very likely to warrant remedial action." *Id.*

82. The determinations by the Town's own experts establish that there is racially polarized voting in the Town of Mount Pleasant, that the Town is violating NYVRA, and that remedial action is required.

##### **B. Under the totality of the circumstances, the Town violates the NYVRA.**

83. The Town violates NYVRA if "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of

elections is impaired.” Election Law § 17-206(2)(b)(i)(B).

84. The totality of the circumstances demonstrates the presence of vote dilution in the Town.

85. Election Law § 17-206(b)(3) sets forth a non-exhaustive list of factors to be considered in determining vote dilution claims but also states that “[n]othing in this subdivision shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that such a violation has occurred.” *Id.*, see also *Gingles*, 478 U.S. at 45 (“[T]here is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.”)

86. When evaluating whether the ability of a minority community to participate in the political process has been impaired, courts must look beyond discrimination within the political subdivision to consider history, socioeconomic factors, and discrimination not directly attributable to the political subdivision itself. See *Goosby v. Town Bd. of Town of Hempstead*, 180 F.3d 476, 488 (2d Cir. 1999) (considering effect of discriminatory voting laws enacted by Nassau County and New York State on Town elections); *Gomez v. City of Watsonville*, 863 F.2d 1407, 1418 (9th Cir. 1988) (“The district court apparently believed that it was required to consider only the existence and effects of discrimination committed by the *City of Watsonville itself*. That conclusion is incorrect”) (emphasis in original).

87. Considering the factors defined in NYVRA, Hispanic voters in the Town are not able to participate equally in the political process.

***a. The history of discrimination in the subdivision.***

88. There is a long history of discrimination against the Hispanic community in the Town.

89. Most recently, on May 26, 2023, the Town Supervisor declared a state of emergency over imagined fears that largely Hispanic migrants and asylum seekers from New York City would flood the Town. The declaration is littered with inflammatory language painting migrants – specifically those “from the Southern border” – in a negative light. The declaration states that the Town “has no ability to receive and sustain an influx of migrant persons and asylum seekers, whose presence will spike the number of people in need of government services, and stress other services that require the expenditure of local tax dollars.” It goes on to state that, if migrants are permitted to enter the Town, “there is no reason to believe that these migrant persons or asylum seekers will leave such jurisdictions after New York City ceases to pay for the housing and any services they are presently receiving from New York City, or that this will be the last time this kind of spike will occur.” A true and correct copy of the emergency declaration and corresponding Emergency Order No. 1 is attached as Exhibit E.

90. Although the state of emergency was set to last for only 30 days, it has been extended multiple times and, upon information and belief, remains in effect.

91. Using this “emergency” as an excuse, the Town has prohibited all persons, businesses, entities, or municipalities from “mak[ing] contracts with persons, businesses, or entities doing business within the Town to transport migrants or asylum seekers or locations in the Town, or to house persons at locations in the Town for any length of time without the express written permission of the Town Supervisor.” Ex. E, Emergency Order No. 1, Section 1(A).

92. In that same order, the Town Supervisor has prohibited any “hotel, motel, school, commercially zoned property, or owner of a multiple dwelling or any other building in the Town” from attempting to “provid[e] housing or accommodations for migrants or asylum seekers without a license granted by the Town.” Ex. E, Emergency Order No. 1, Section 1(B).



93. Violation of the order carries criminal penalties, including imprisonment. *See*, Executive Law § 24(5)

94. The order provides for strict liability, making an alleged offender's actual knowledge of a person's immigration status neither a necessary element nor a defense. Ex. E, Emergency Order No. 1, Section 1(C)(1); Executive Law § 24(5).

95. Because Town residents may be penalized for unknowingly transporting or harboring migrants, residents are discouraged from aiding anyone perceived to be a migrant or asylum seeker, whether or not they are.

96. The effect of the emergency order is to give the Town Supervisor the power to prohibit private individuals or entities from offering humanitarian aid to perceived migrants and asylum seekers and to penalize anyone who chooses to do so.

97. Even more recently, the Town Supervisor has issued a press release opposing the acceptance by the Cottage School, a facility for troubled youths operated by the Jewish Child Care Association ("JCCA"), of not more than 25 migrant children suffering from emotional and/or behavioral issues. Citing allegations that the facility was in violation of the building code, the Town Supervisor asserted that the Town "will take whatever legal action is necessary to see that the illegal work on the site is stopped."

98. The press release quotes the Town Supervisor as stating that he declared the state of emergency "after learning that migrant children and possibly families were headed to the Cottage School."

99. When the JCCA responded, the Town Supervisor issued another press release to address what he called "inaccurate comments made by JCCA," accusing the JCCA of making "misleading statements" such as JCCA's claim that it had the ability to accommodate migrant

children. The press release reiterates that the Town “will have no choice but to pursue legal options and actions.” See <https://www.mtpleasantny.com/CivicAlerts.aspx?AID=31>.

100. At the public hearings to consider a districting plan, certain residents in attendance could hardly contain their disdain for the Hispanic community.

101. For example, at the public hearing on November 16, 2023, while a former trustee from the Village of Sleepy Hollow was speaking in favor of a districting plan and stated that the rights of Hispanic voters as American citizens were being stripped from them, a member of the audience interrupted him to question whether the Hispanic residents are American citizens. Barret Seaman, *Mt. Pleasant Grapples With Sleepy Hollow Voting Rights Challenge*, The Hudson Independent (Nov. 19, 2023), <https://thehudsonindependent.com/mt-pleasant-grapples-with-sleepy-hollow-voting-rights-charge/>.

102. At the November 20, 2023 public hearing, Town Councilman Mark Saracino, who was elected on the Republican line in the 2023 Town Board election, publicly opposed creating a district system because he said of the Hispanic community: “You want a seat at the table that you’re not contributing to.” SPECIAL MEETING AND PUBLIC HEARING November 20, 2023, Town of Mount Pleasant Board Meetings, [wwtmp.com/past\\_meetings/tb11\\_20.html](http://wwtmp.com/past_meetings/tb11_20.html) at 22:00.

103. Town Councilman Saracino proceeded to say that if the residents of Sleepy Hollow wanted increased representation, the Village of Sleepy Hollow should leave the Town: “If you want to be a pioneer and you want to make a big difference, why have you not even considered that Sleepy Hollow should become the Town of Sleepy Hollow” and “why not look at that, and say I’m going to make real change, legacy change” instead of pursuing a lawsuit. *Id.* at 25:00-26:15. Town Councilman Saracino proceeded to say of his proposition that Sleepy Hollow leave Mount Pleasant that “they might crucify me for saying this . . . but that’s a thought to say maybe

we don't have to sue, don't have a to have a judge tell us where we should be or how we should vote." *Id.*

104. Town Councilman Saracino's statements are a stunning admission of the desire of at least one Town Board member to create a "whites-only" community and highlights the desperate need for Sleepy Hollow and the Hispanic population to have representation on the Town Board. The fact that a Town Councilman would call for Sleepy Hollow to leave the Town rather than give Sleepy Hollow the representation its residents deserve is evidence that the Town Board is completely dismissive of the needs of the Hispanic population.

***b. The extent to which members of the protected class have been elected to office in the political subdivision.***

105. No Hispanic person has ever been elected to Town office.

106. The absence of Hispanic candidates seeking election to Town office is further evidence of vote dilution. *See Westwego Citizens for Better Gov't v. City of Westwego*, 872 F.2d 1201, 1209 n.9 (5th Cir. 1989) ("While the district court seems to reject the argument that black candidates 'don't run because they can't win' as a basis for considering evidence drawn from nonaldermanic elections, it is precisely this concern that underpins the refusal of this court and of the Supreme Court to preclude vote dilution claims where few or no black candidates have sought offices in the challenged electoral system. To hold otherwise would allow voting rights cases to be defeated at the outset by the very barriers to political participation that Congress has sought to remove"). "The Court will begin its totality of the circumstances consideration with the two Senate factors identified by the Supreme Court as most important: (1) the "extent to which minority group members have been elected to public office in the jurisdiction" and (2) the "extent to which voting in the elections of the state or political subdivision is racially polarized." *Gingles*, 478 U.S. at 48 n. 15, 106 S.Ct. 2752 (citing Senate Report at 28–29, U.S.C.C.A.N.1982, p. 206). If those factors

are present, the other factors “are supportive of, but not essential to, a minority voter's claim.”

*United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 277 (D.S.C. 2003), *aff'd sub nom. United States v. Charleston Cnty., S.C.*, 365 F.3d 341 (4th Cir. 2004)

***c. The use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme.***

107. The at-large method of election utilized by the Town ensures that the votes of the Hispanic community are diluted by those of the white majority.

108. This system prevents members of the Hispanic community in areas where it is more heavily concentrated from pooling their voting power to elect a candidate.

109. Recent successes of candidates at the village level in those areas where the Hispanic community is more heavily concentrated demonstrates that it would be possible for Hispanic candidates to prevail if a districting system were implemented.

***d. Denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election.***

110. Republican and Democratic candidates for the Town Board are nominated by, respectively, the Mount Pleasant Republican Committee and the Mount Pleasant Democratic Committee.

111. Typically, the party approaches potential candidates for office or interested residents approach a member of a local party.

112. Both parties favor candidates who are already heavily involved with the Town or are already familiar with it. Carl Fulgenzi, the current Town Supervisor, is also a member of the Mount Pleasant Republican Committee. Mark Saracino, who recently won election to the Town Board, was active in the Town's Chamber of Commerce, in which Mr. Fulgenzi is also heavily involved.

113. Hispanic residents, many of whom are relative newcomers to the Town, do not have the institutional and political ties which many of the white residents enjoy.

114. Without those connections, potential Hispanic candidates for public office are not even considered by the local parties for nomination.

115. The sentiment that it is not possible for a Hispanic candidate even to be nominated for public office in the Town suppresses participation in government at the Town level, further decreasing the likelihood that Hispanic residents will be considered for nomination in the future.

*e. The extent to which members of the protected class contribute to political campaigns at lower rates.*

116. The substantial barriers already identified prevent Hispanic residents from fully participating in the Town's political process.

117. Upon information and belief, Hispanic residents contribute to Town political campaigns at lower rates than their White counterparts.

*f. The extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate.*

118. Upon information and belief, the Town's Hispanic population votes at a substantially lower rate than the white population.

*g. The extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection.*

119. Across a wide array of socioeconomic factors, the Town's Hispanic residents are worse-off than their white counterparts.

120. Hispanic residents are more likely to work in the service industry or in other blue-collar occupations than white residents of the Town.

121. The median income for white households is approximately \$70,000 higher than that of Hispanic households. *See* ACS Median Household Income in the Past 12 Months (in 2021

inflation-adjusted dollars), UNITED STATES CENSUS BUREAU (2021).

122. Hispanic residents of Mount Pleasant are more than twice as likely than white residents to be unemployed, to be below the poverty level, and to have been a recipient of food stamps in the past year. ACS Employment Status, UNITED STATES CENSUS BUREAU; ACS Poverty Status in the Past 12 Months, UNITED STATES CENSUS BUREAU; ACS Receipt of Food Stamps/SNAP in the Past 12 Months by Race of Household, UNITED STATES CENSUS BUREAU.

123. Hispanic residents lag behind their peers in key indicators of educational success, including lower graduation rates. *See* ACS Educational Attainment, UNITED STATES CENSUS BUREAU (2021).

124. There are noticeable disparities between the standardized test scores of Hispanic versus white students across all of Mount Pleasant's school districts

***h. The extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process.***

125. Hispanic residents are disadvantaged compared to white residents in areas affecting their ability to participate in the elective franchise.

126. Because of their disadvantaged economic status, Hispanic residents are often not able to take time off work to vote.

127. Information concerning political and other events in the Town is disseminated primarily through the Town's website, with which many Hispanic residents are unfamiliar.

128. Notices posted on the Town's website or sent via email are exclusively in English, and not in Spanish.

129. Upon information and belief, there are no Spanish speaking Town employees who work in Town Hall even though 19 percent of the Town's population is Hispanic.

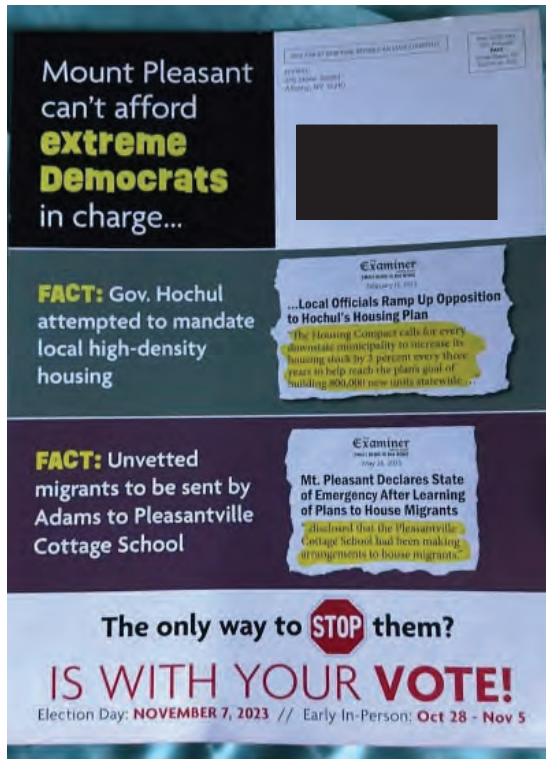
130. For all of these reasons, Hispanic voters, on average, are less informed concerning the issues at stake in Town elections and the candidates on the ballot than white voters.

*i. The use of overt or subtle racial appeals in political campaigns.*

131. In 2023, Republican candidates for Town office repeatedly invoked affordable housing and potential (likely Hispanic) migrants as a reason to vote against the Democratic ticket.

132. Affordable housing is highly important to and popular among Hispanic residents of the Town, many of whom have lower incomes and larger families than their white counterparts.

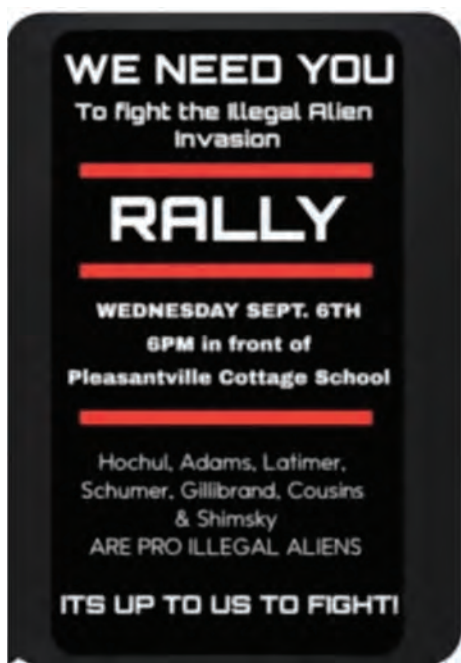
133. The mailer below from the Republican committee was sent to voters as part of the 2023 Town election calling on voters to oppose affordable housing and the influx of migrants in the Town.



134. Similarly, the Facebook post below shared by the Mount Pleasant Republican Committee states: “Did you know our opponents want migrant housing in town?”



135. Also on Facebook was a flyer for a rally opposing the arrival of asylum seekers in Mount Pleasant. Upon information and belief the Republican candidates did not disavow the rally:



136. In a Facebook post dated March 9, 2023, Supervisor Carl Fulgenzi is quoted as



characterizing an affordable housing plan championed by Governor Kathy Hochul as “a very real threat to the character and quality of life in municipalities.”

137. References to affordable housing and migrants are blatant and incendiary race-based appeals that voting for Democratic candidates would lead to an invasion of migrants and affordable housing that would change the “character” of the Town.

*j. A significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class.*

138. The Town Board has shown little regard for the particularized concerns of the Hispanic community.

139. The Town routinely ignores concerns raised by Hispanic residents that the Town does not employ enough Spanish-speaking employees.

140. Upon information and belief, the Town has no Spanish speaking staff working in Town Hall even though 19 percent of the Town’s population is Hispanic.

141. Sleepy Hollow’s lack of a voice on the Town Board has resulted in negative fiscal and policy ramifications for the Village. Former Sleepy Hollow Mayor Ken Wray recently discussed at one of the hearings hosted by the Town how “we have no representation on this board, there’s nobody from Sleepy Hollow on it. I’m not so much concerned what the Town can do for Sleepy Hollow but what the Town can do to Sleepy Hollow.” SPECIAL MEETING AND PUBLIC HEARING November 20, 2023, Town of Mount Pleasant Board Meetings, [wwtmp.com/past\\_meetings/tb11\\_20.html](http://wwtmp.com/past_meetings/tb11_20.html) at 12:34 to 12:47.

142. Mayor Wray discussed how the former General Motors property in Sleepy Hollow had been off the Sleepy Hollow tax rolls for 30 years and how Sleepy Hollow had recently sought to return the property back to the tax rolls (the property would have netted Sleepy Hollow \$10 million a year in tax revenue). According to Wray, the Town was planning to keep the property off

the tax rolls without informing Sleepy Hollow. Sleepy Hollow's Board of Trustees learned of the plan only by means of a public hearing notice. Wray stated: "If someone from Sleepy Hollow had been on this board, that never would have happened; something else would have been worked out because that person, Republican or Democrat, would have said 'Whoa, that's not good for my village.'" *Id.*

143. Similarly, the Town has allowed significant development along Pocantico Lake, potentially increasing flooding and pollution downstream into the Village of Sleepy Hollow as the Village was attempting to open up their portion of the lake for recreation.

144. At no point did the Town inform the Village of the development, nor did it attempt to determine the impact of the development on Sleepy Hollow's efforts.

145. The Town Board has also consistently opposed housing policies, particularly those that would incentivize affordable housing, which are popular in the Hispanic community.

146. The Village of Sleepy Hollow, where much of the Hispanic community within the Town is concentrated, repeatedly receives less funding than other areas of the Town.

***k. Whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy.***

147. NYVRA requires that any burden on the right to vote be "narrowly tailored" and supported by a "compelling policy justification that must be supported by substantial evidence." Election Law §17-202.

148. Upon information and belief, there is no compelling policy justification for maintaining the Town's current at-large method of election.

149. Instead, it appears that the Town Board and its supporters cling to the current system because it preserves their stranglehold over Town government.

150. The Town Board itself acknowledged that it would take remedial action if the Town's retained experts determined that the Town was not in compliance with the NYVRA or federal law. *See* Ex. B, Sec. 2. But even though those same experts advised the Town Board that the Town's at-large voting system is likely in violation of the NYVRA, that the Town Board should take remedial action and that refusing to take remedial action would likely force otherwise unnecessary litigation that could be financially damaging to the Town, *See* Exs. C & D, the Town Board has done nothing and offered no public explanation for its inaction.

151. Upon information and belief, the Town Board's failure to act is a direct result of the concerted effort by the Town's Republican Committee to encourage residents to appear at the public hearings and voice strong opposition to any action to remedy the Town's NYVRA violation.

### **C. Remedies.**

152. NYVRA requires that where the court finds that a political subdivision has engaged in vote dilution under the NYVRA, 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." Election Law § 17-206(5)(a).

153. Those remedies may include, but are not limited to: "(i) a district-based method of election; (ii) an alternative method of election . . . ." Election Law § 17-206(5)(a).

154. Here, a district-based method of election or alternative method of election would best serve to correct the ongoing vote dilution in the Town.

155. A single-member districting plan would curtail the ongoing disenfranchisement of Hispanic voters. It is possible to draw a map that adheres to traditional districting principles and includes a compact, single-member district that includes the entire Village of Sleepy Hollow. That district would provide the Town's Hispanic voters the opportunity to elect a candidate of their

choice or influence the outcome of elections.

156. Cumulative or ranked choice voting would also remedy the violation and allow the members of the Hispanic population to elect a candidate of their choice.

**D. The urgency of these proceedings and the need for expedited judicial review.**

157. NYVRA specifically provides for expedited judicial proceedings: “Because of the frequency of elections, the severe consequences and irreparable harm of holding elections under unlawful conditions, and the expenditure to defend potentially unlawful conditions that benefit incumbent officials, actions brought pursuant to this title shall be subject to expedited pretrial and trial proceedings and receive an automatic calendar preference.” Election Law § 17-216.

158. The plaintiffs’ claim of vote dilution, which is brought subject to Election Law § 17-206(2), is accordingly entitled to expedited pretrial and trial proceedings as well as an automatic calendar preference.

159. Without expedited review, the plaintiffs, together with all Hispanic voters in the Town, face the threat of irreparable harm.

160. The next scheduled election in the Town will take place in November 2025.

161. Under the existing system, the nomination process for candidates for Town office in November 2025 will begin in or around February 2025.

162. If the plaintiffs prevail in this action, the Court may order the Town to implement a districting plan.

163. Any districting plan would need to be implemented before the nomination process begins.

164. This action, including any appeals, must be decided with sufficient time to allow any court-ordered remedies to be implemented before February 2025.

165. If this action is not given expedited review, the 2025 election will continue to be tainted by the same NYVRA violations that are the subject of this action.

**AS AND FOR PLAINTIFFS' FIRST CAUSE OF ACTION**  
**Voter suppression in violation of Election Law § 17-206(1)**

166. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth here.

167. Election Law § 17-206(1)(a) prohibits laws, ordinances, standards, practices, procedures, regulations, or policies by any political subdivision that results in a denial or abridgement of the right of members of a protected class to vote.

168. Election Law § 17-206(1)(b) provides that a violation of Election Law § 17-206(1)(a) is established by evidence that, based on the totality of the circumstances, members of a protected class have less opportunity than the rest of the electorate to elect candidates of their choice or influence the outcome of elections.

169. The at-large voting system for members of the Town Board in the Town of Mount Pleasant is a law, ordinance, standard, practice, procedure, regulation, or policy within the meaning of Election Law § 17-206(1)(a).

170. Hispanic voters residing within the Town, including Plaintiffs, are members of a protected class within the meaning of Election Law § 17-206(1)(a).

171. The at-large voting system for members of the Town Board in the Town of Mount Pleasant abridges Plaintiffs' right to vote, within the meaning of Election Law § 17-206(1)(a), because, based on the totality of the circumstances, Plaintiffs have less opportunity than the rest of the electorate to elect candidates of their choice or influence the outcome of elections in the Town.

172. The at-large voting system for members of the Town Board in the Town of Mount

Pleasant violates NYVRA because it constitutes prohibited voter suppression within the meaning of Election Law § 17-206(1)(a).

173. Plaintiffs are entitled to the relief provided for in Election Law §§ 17-206(5) and 17-218 for the Town's violation of NYVRA.

**AS AND FOR PLAINTIFFS' SECOND CAUSE OF ACTION**

**Vote dilution in violation Election Law § 17-206(2) by reason of racially polarized voting**

174. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth here.

175. Election Law § 17-206(2)(a) prohibits every political subdivision from using any method of election that has 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.

176. Election Law § 17-206(2)(b)(i)(A) provides that a violation of Election Law § 17-206(2)(a) by a political subdivision which utilizes an at-large method of election is established by evidence demonstrating that "voting patterns of members of the protected class within the political subdivision are racially polarized."

177. The Town utilizes an at-large method of electing members of the Town Board.

178. Hispanic voters residing within the Town, including Plaintiffs, are members of a protected class within the meaning of Election Law § 17-206(2)(a).

179. The facts as set forth in this complaint, including the expert reports prepared on behalf of the Town by Dr. Handley and Mr. Wice, establish the existence of racially polarized voting in that Hispanic voters and Non-Hispanic white voters consistently support different candidates.

180. The facts as set forth in this complaint also establish that candidates or electoral choices preferred by members of the Hispanic community in the Town would usually be defeated

as a result of racially polarized voting in the Town.

181. Pursuant to Election Law § 17-206(2)(b)(i), the Town's at-large method of electing Town Board members, combined with the presence of racially polarized voting in the Town, establishes vote dilution that is prohibited by NYVRA.

182. Plaintiffs are entitled to the relief provided for in Election Law §§ 17-206(5) and 17-218 for the Town's violation of NYVRA.

**AS AND FOR PLAINTIFFS' THIRD CAUSE OF ACTION**  
**Vote dilution in violation of Election Law § 17-206(2)**  
**under the totality of the circumstances**

183. Plaintiffs repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth here.

184. Election Law § 17-206(2)(b)(i)(B) provides that a violation of Election Law § 17-206(2)(a) by a political subdivision which utilizes an at-large method of election is established by evidence that "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." Election Law § 17-206(2)(b)(i)(B).

185. The Town utilizes an at-large method of electing members of the Town Board.

186. The facts as set forth in this complaint establish that the Town's at-large system of election for members of the Town Board violates NYVRA because, under the totality of the circumstances, that system impairs the ability of Hispanic voters residing within the Town to elect candidates of their choice or influence the outcome of elections.

187. Plaintiffs are entitled to the relief provided for in Election Law §§ 17-206(5) and 17-218 for the Town's violation of NYVRA.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs respectfully request judgment:

(a) declaring that the use of an at-large system to elect members of the Mount Pleasant Town Board violates Election Law § 17-206;

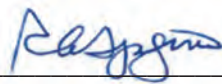
(b) ordering the implementation for the 2025 Town election of a new method of election for the Mount Pleasant Town Board as authorized by Election Law § 17-206(5)(a) that includes either a districting plan or an alternative method of election for the 2025 Town election that remedies the Town’s violation of NYVRA;

(c) awarding Plaintiffs’ the reasonable attorneys’ fees and litigation expenses incurred in asserting the claims in this complaint, including, but not limited to, expert witness fees and expenses pursuant to Election Law § 17-218;

(d) retaining jurisdiction to render any and all further orders that this Court may deem appropriate; and

(e) granting such other and further relief that the Court deems just and appropriate.

**ABRAMS FENSTERMAN, LLP**  
*Attorneys for Plaintiffs*

By:   
\_\_\_\_\_  
Robert A. Spolzino, Esq.  
Jeffrey A. Cohen, Esq.  
David T. Imamura, Esq.  
Steven Still, Esq.  
81 Main Street, Suite 400  
White Plains, NY 10601  
(914) 607-7010

Dated: White Plains, New York  
January 9, 2024

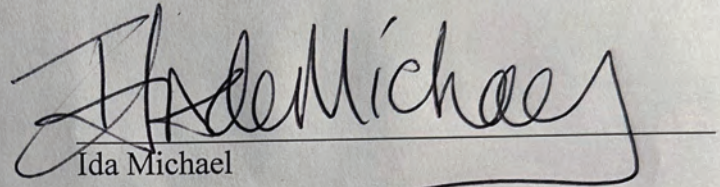


VERIFICATION

Ida Michael, affirms the following to be true, pursuant to CPLR 2106 and 3020:

I am one of the plaintiffs in this proceeding. I have read the foregoing complaint and know its contents, and same are true to the best of my knowledge, except those statements made upon information and belief, which statements I believe to be true.

I hereby affirm this 8<sup>th</sup> day of January, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing statement is true, and I understand that this document may be filed in an action or proceeding in a court of law.

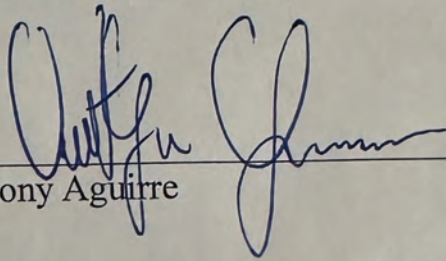
  
Ida Michael

**VERIFICATION**

Anthony Aguirre, affirms the following to be true, pursuant to CPLR 2106 and 3020:

I am one of the plaintiffs in this proceeding. I have read the foregoing complaint and know its contents, and same are true to the best of my knowledge, except those statements made upon information and belief, which statements I believe to be true.

I hereby affirm this 8 day of January, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing statement is true, and I understand that this document may be filed in an action or proceeding in a court of law.

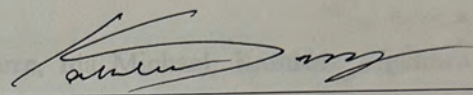
  
\_\_\_\_\_  
Anthony Aguirre

VERIFICATION

Siguenza  
Kathleen Siguenza, affirms the following to be true, pursuant to CPLR 2106 and 3020:

I am one of the plaintiffs in this proceeding. I have read the foregoing complaint and know its contents, and same are true to the best of my knowledge, except those statements made upon information and belief, which statements I believe to be true.

I hereby affirm this 8 day of January 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing statement is true, and I understand that this document may be filed in an action or proceeding in a court of law.

  
\_\_\_\_\_  
Kathleen Siguenza  
Siguenza

JUDICIAL TITLE  
Sign Here  
←

NATURE OF THE ACTION

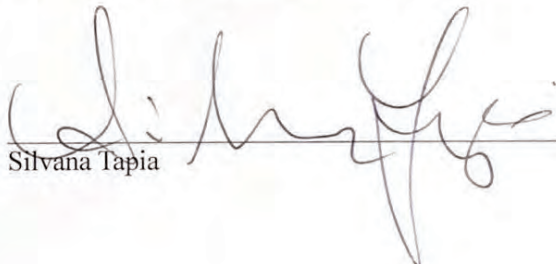
1. This is an action to enforce the requirements of the Wife & Linda Young Rights Act of New York ("NYVRA") in the Town of Mount Pleasant, County of Westchester (the "Town").
2. NYVRA was enacted by Chapter 225 of the Laws of 2022. It was enacted for the purpose of the State of New York to (i) encourage 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 states:
  1. The Town's "current" voting system violates NYVRA because it has for many years systematically prevented members of the Town's minority Hispanic community from exercising their right to vote.
  2. The Town Board, by denying the members of the Hispanic community the right to vote, is in violation of the Town Board, members of

**VERIFICATION**

Silvana Tapia, affirms the following to be true, pursuant to CPLR 2106 and 3020:

I am one of the plaintiffs in this proceeding. I have read the foregoing complaint and know its contents, and same are true to the best of my knowledge, except those statements made upon information and belief, which statements I believe to be true.

I hereby affirm this 8 day of January, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing statement is true, and I understand that this document may be filed in an action or proceeding in a court of law.

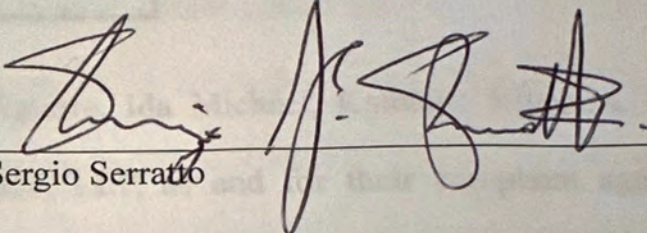
  
\_\_\_\_\_  
Silvana Tapia

VERIFICATION

Sergio Serratto, affirms the following to be true, pursuant to CPLR 2106 and 3020:

I am one of the plaintiffs in this proceeding. I have read the foregoing complaint and know its contents, and same are true to the best of my knowledge, except those statements made upon information and belief, which statements I believe to be true.

I hereby affirm this 08 day of JANUARY, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing statement is true, and I understand that this document may be filed in an action or proceeding in a court of law.

  
Sergio Serratto

