

## NVRA RESOLUTION

A special meeting of the Town Board of the Town of Mount Pleasant was convened on August 25, 2023.

The following resolution was duly offered and seconded, to wit:

**WHEREAS**, on July 19, 2023, the Town Clerk of the Town of Mount Pleasant received a letter dated July 13, 2023 from the law firm Abrams Fensterman LLP alleging a violation of the John R. Lewis Voting Rights Act of New York (NYVRA), Chapter 226 of the Laws of 2022 of the State of New York (hereinafter referred to the "NYVRA Notification Letter") (Exhibit A);

**WHEREAS**, the Town Board of the Town of Mount Pleasant is comprised of four members, elected at-large, to serve a four-year term, as well as a duly elected Supervisor;

**WHEREAS**, the NYVRA Notification Letter broadly alleges that the voting patterns of members of a protected class within the Town are racially polarized or that under the totality of the circumstances, the ability of members of a protected class to elect candidates of their choice or influence the outcome of Town elections is impaired;

**WHEREAS**, Abrams Fensterman LLP has failed and refused to provide the Town with any data or information tending to support the broad allegations made in the NYVRA Notification Letter and has acknowledged, by letter dated August 18, 2023, that their preliminary analysis is incomplete (Exhibit B);

**WHEREAS**, notwithstanding the foregoing, the Town of Mount Pleasant recognizes that it is the public policy of the State of New York and the Town of Mount Pleasant to encourage participation in the elective franchise by all eligible voters to the maximum extent; and to ensure that eligible voters who are members of racial, color, and language-minority groups have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise; and

**WHEREAS**, the Town intends to proactively review its current at-large election system in order to ensure that the aforementioned public policy is achieved and to enact and implement remedies for any potential violation of the NYVRA that may exist.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN BOARD OF THE TOWN OF MOUNT PLEASANT AS FOLLOWS:**

Section 1. The Town Supervisor and Town Attorney are hereby directed to review and investigate the current at-large election system employed by the Town to determine whether any potential violation of the NYVRA may exist and is authorized and empowered to engage any expert consultant(s) the Town deems necessary and appropriate to aid in such analysis, except that any contract(s) for expert consulting services shall be subject to review and approval of the Town Board.

Section 2. The Town Board hereby approves Jeffrey M. Wice as an expert consultant, as per his proposal dated August 21, 2023 (attached hereto as Exhibit C) and Dr. Lisa Handley (Exhibit D), to investigate the claim of the alleged voting rights act claims (NYVRA) 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. The Town is availing itself of the “Safe Harbor Provision” under the NYVRA. *See* NYS Election Law § 17-206(7).

Section 3. It is hereby directed that the Town Supervisor and Town Attorney will report their findings and the result of Mr. Wice’s and Dr. Handley’s analyses to the Town Board within thirty (30) days of the date of this Resolution (the “Wice Report”). If, after considering the Wice Report and any other information that may become available to the Town – including, without limitation, any report(s) that Abrams Fensterman indicated its expert consultant is preparing, the Town concludes that there may be a violation of the NYVRA, the Town intends to enact and implement the appropriate remedy(ies). *See* NYS Election Law § 17-206(7)(b)(i).

Section 4. The Town Board shall hold two (2) hearings within thirty (30) days of the Wice Report and Handley analysis 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* NYS Election Law §§ 17-206(7)(b)(ii)(iii); 17-206(6). The Town Board’s schedule for enacting and implementing the proposed remedy(ies) shall comply with NYS Election Law § 17-206.

Section 5. This resolution shall take effect immediately.

The question of the adoption of the foregoing NVRA Resolution was duly put to a vote on roll call, which resulted as follows:

Vote:

Supervisor Carl Fulgenzi	Y	N	A	Absent
Councilwoman Laurie Smalley	Y	N	A	Absent
Councilman Thomas Sialiano	Y	N	A	Absent
Councilman Jerome Schulman	Y	N	A	Absent
Councilwoman Danielle Zaino	Y	N	A	Absent

I hereby attest that the above Resolution was approved by the Town Board of the Town of Mount Pleasant at its August \_\_\_, 2023 Special Meeting and that I have been authorized to sign this Resolution by decision of the Town Board.

\_\_\_\_\_  
Emily Costanza, Town Clerk



# Exhibit A

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ABRAMS

FENSTERMAN, LLP

ATTORNEYS AT LAW

Long Island · Brooklyn · White Plains · Rochester · Albany · Manhattan

White Plains  
81 Main Street, Suite 400  
White Plains, NY 10601  
914.607.7010 | P

July 13, 2023

RECEIVED  
TOWN CLERK

VIA CERTIFIED MAIL

JUL 18 2023

Emily Costanza, Mount Pleasant Town Clerk  
Town Clerk's Office  
One Town Hall Plaza  
Valhalla, NY 10595

TOWN OF MT. PLEASANT  
TOWN CLERKS OFFICE  
TIME

**Re: Violation of the New York State Voting Rights Act**

Dear Town Clerk Costanza:

We are writing on behalf of our clients Kathleen Siguenza, Silvana Tapia, Sergio Fernando Serratto, Anthony Aguirre, and Ida Michael, who are Hispanic voters in the Town of Mount Pleasant, to advise you that the Town's current method of electing Town Council Members, by at-large elections, violates the New York State Voting Rights Act of 2022 ("NYVRA"). If the Town does not cure that violation, we intend to commence an action under NYVRA to compel the Town to elect Council Members by district or other alternative voting systems.

**The New York State Voting Rights Act**

NYVRA specifically forbids the use of at-large methods of election where the voting patterns of members of a protected class within the political subdivision are racially polarized or where, 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)(i).

The Town of Mount Pleasant's at-large voting system satisfies those standards and thus clearly violates NYVRA. An analysis of election data and demographic patterns within Mount Pleasant reveals significant and persistent patterns of racially polarized voting with regards to Hispanic voters and demonstrates that the voting preferences and choices of Hispanic voters differ markedly from those of white voters within the jurisdiction. These disparities have persisted across multiple elections and are not attributable to chance or isolated incidents.

In addition, under the totality of the circumstances, the Hispanic community is less able to elect candidates of their choice and their ability to influence the outcome of elections is impaired. Among other things, not once has Mount Pleasant ever elected a Hispanic candidate to Town office, despite the fact that Hispanic voters constitute 19 percent of the Town's voters. The absence of Hispanic candidates for Town office is further evidence of vote dilution.

**The Town of Mount Pleasant May Cure Its Violation**

NYVRA provides a safe harbor against judicial action if the Town takes certain actions to remedy its violation. Specifically, if, within 50 days of the mailing of this letter, the Town passes a

resolution affirming: (i) its intention to enact and implement a remedy for its NYVRA violation; (ii) the specific steps it will undertake to facilitate the approval and implementation of such a remedy; and (iii) a schedule for enacting and implementing such a remedy. N.Y. Elec. Law § 17-206(7). If Mount Pleasant passes such a resolution, it will have 90 days after such passage to enact and implement such a remedy. If the Town of Mount Pleasant finds that it does not have authority to enact this remedy, it may submit the proposed remedy to the New York Attorney General's office for approval.

### Consequences of Failure to Cure

If the Town does not voluntarily cure its violation of the NYVRA, our clients are prepared to commence litigation against the Town in which the Town will be responsible for both our clients' legal fees as well as its own. N.Y. Election Law § 17-218. The Town will significantly limit the legal fees it will be responsible to pay to the plaintiffs' attorneys fees if it acts promptly to cure the NYVRA violation. N.Y. Elec. Law. § 17-206(7)(e).

Redistricting litigation can be extremely expensive. In *NAACP v. East Ramapo Central School District*, No. 2017-CV-8943 (S.D.N.Y.), the NAACP sued the East Ramapo Central School District under the federal equivalent of NYVRA and forced the School District to draw individual districts for school board elections. East Ramapo ultimately paid at least \$7.2 million in its own fees<sup>1</sup> and \$5.4 million to the plaintiffs for their legal fees.<sup>2</sup>

The City of Santa Clara, California, paid over \$5.8 million to its own attorneys and to plaintiffs' counsel in a California Voting Rights Act ("CVRA") case.<sup>3</sup> Similarly, the City of Palmdale paid out \$4.6 million in attorneys' fees.<sup>4</sup> In the 20 years the CVRA has been in effect, no California municipality has ever successfully defended itself against a CVRA claim.

### Conclusion

Given the historical lack of Hispanic representation on the Mount Pleasant Town Council, the presence of racially polarized voting, and other indicia of the disenfranchisement of the Hispanic community, we urge the Town to change its at-large system voluntarily. Our goal is to bring about the fair electoral process in the Town of Mount Pleasant that the NYVRA act requires. To that end, we will be happy to work with the Town to bring it into compliance. If the Town does not take voluntary steps to achieve compliance, however, we will have no choice but to seek judicial relief. Please advise us no later than August 18, 2023, as to the Town's decision.

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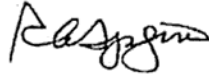
<sup>1</sup> Thomas C. Zambito, JOURNAL NEWS, *East Ramapo wants to cut NAACP legal fees to \$1, if not teachers could be fired* (Jan. 13, 2021), <https://www.lohud.com/story/news/local/rockland/2021/01/13/east-ramapo-wants-trim-naacp-legal-fees-warns-firings/4148743001/>.

<sup>2</sup> Nancy Cutler, JOURNAL NEWS, *Voting rights lawyers blast how East Ramapo wants to pay court-demanded \$5.4M payment* (July 8, 2021), <https://www.lohud.com/story/news/local/rockland/2021/07/08/naacp-school-board-diversity-lawsuit/7887398002/>.

<sup>3</sup> Carolyn Schuk, THE SILICON VALLEY VOICE, *Final Verdict: Twice-Lost Voting Rights Lawsuit Cost City Nearly \$5.8 Million* (Apr. 21, 2021), <https://www.svvoice.com/final-verdict-twice-lost-voting-rights-lawsuit-cost-city-nearly-5-8-million/>.

<sup>4</sup> Perry Smith, SCV NEWS, *Palmdale Out \$4.6 Mil. To Settle Voting Rights Lawsuit* (May 7, 2015), <https://scvnews.com/palmdale-out-4-6-mil-to-settle-voting-rights-lawsuit/>.

**ABRAMS FENSTERMAN, LLP**



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

# Exhibit B



**HARRIS BEACH** PLC  
ATTORNEYS AT LAW445 HAMILTON AVENUE, SUITE 1206  
WHITE PLAINS, NEW YORK 10601  
914.683.1200DARIUS P. CHAFIZADEH  
MEMBER  
MOBILE: 914.393.6802  
FAX: 914.683.1210  
DCHAFIZADEH@HARRISBEACH.COM

July 26, 2023

**VIA EMAIL (rspolzino@abramslaw.com)  
AND FIRST-CLASS MAIL**Robert A. Spolzino, Esq.  
Abrams Fensterman, LLP  
81 Main Street, Suite 400  
White Plains, NY 10601**Re: Town of Mount Pleasant  
Alleged Violations of The New York Voting Rights Act**

Dear Mr. Spolzino:

We are counsel to the Town of Mount Pleasant ("Town") and write in reply to your letter of July 13, 2023, alleging that the Town is in violation of the John R. Lewis Voting Rights Act of New York ("NYVRA").

Please be advised that the Town is investigating your allegations and, if warranted, intends to avail itself of the safe harbor provision set forth in § 17-206[7] of the Election Law.

As we discussed in our telephone conference last week, we appreciate your offer to "work with the Town" on this issue and your explanation as to how these kinds of matters can be costly to the Town and its taxpayers. To that end, the Town requests that you identify and provide us with the "analysis of election data and demographic patterns" that are referenced in your letter. During our telephone conversation, you also mentioned that you had completed only a "preliminary analysis" of the data relevant to the Town. The Town would like to use that preliminary information as a starting point for the Town's more in-depth investigation. Please be advised, if you fail to adhere to your offer of cooperation and refuse to identify and provide your preliminary analysis to the Town, the Town may request that the Court offset from any fee application you may seek under § 17-206[7][e] the cost to the Town of compiling that information itself.

We look forward to receiving your preliminary analysis as soon as possible.

Sincerely,



Darius P. Chafizadeh

cc: Carl Fulgenzi (Supervisor)  
Members of the Town Board



**White Plains**  
81 Main Street, Suite 400  
White Plains, NY 10601  
914.607.7010 | P

Long Island • Brooklyn • White Plains • Rochester • Albany

**VIA EMAIL (DChafizadeh@HarrisBeach.com) & Regular Mail**

August 18, 2023

Darius P. Chafizadeh  
Harris Beach PLLC  
445 Hamilton Avenue, Suite 1206  
White Plains, NY 10601

ROBERT A. SPOLZINO  
Executive Partner  
rspolzino@abramslaw.com  
Direct: 914-607-7102

**Re: Town of Mount Pleasant Voting Rights Litigation**

Dear Mr. Chafizadeh:

As you will recall, this firm represents Kathleen Siguenza, Silvana Tapia, Sergio Fernando Serratto, Anthony Aguirre, and Ida Michael, Hispanic voters in the Town of Mount Pleasant (the "Town"). We write in response to your letter of July 26, 2023, on behalf of the Town where you state that the Town is considering utilizing the safe harbor provision of Election Law § 17-206(7). To assist in the Town's deliberations, you requested that we provide the preliminary information we identified which served as the basis for our initial letter.

As of the last census, the Town's racial composition is approximately 69% white, 19% Hispanic or Latino, 5% black, and 4% Asian. Much of the Hispanic population is concentrated in Sleepy Hollow, where 47% of the total population is Hispanic. Due to the Town's at-large voting system, however, not a single minority candidate has ever been elected to the Town Board.

We have retained Associate Professor Daniel B. Magleby of Binghamton University, as our expert to conduct an analysis of voting patterns in the Town. Professor Magleby is a national expert on legislative districting and political geography. Professor Magleby has found clear evidence of racially polarized voting which has impaired the ability of Hispanic voters to elect candidates of their choice.

Professor Magleby is preparing a report which is being finalized and is not ready for publication. What we can do at this point, however, to assist in the Town's deliberations is to identify the software he used in his analysis and the publicly-available data he examined.

Professor Magleby utilized Ecological Inference Software to estimate the rates of racially polarized voting. It can be found here: <https://cran.r-project.org/web/packages/eiPack/index.html>.

The public data he utilized includes:

- Mount Pleasant Election Results (<https://citizenparticipation.westchestergov.com/election-dates-and-calendars/enrollment-figures-and-election-results>);

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- Demography (<https://data.census.gov/table?q=United+States>)
- Electoral District Boundaries (<https://redistrictingdatahub.org/state/new-york/>)

Any analysis of this data demonstrates the presence of racially polarized voting that prevents Hispanic residents from electing candidates of their choice

Separately, you state that you will request that the Court offset the cost of an analysis from any fee application under § 17-206(7)(e) of the Election Law. We note that the statute provides no basis for such an offset.

ABRAMS FENSTERMAN, LLP



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

# Exhibit C

**JEFFREY M. WICE  
461 EAST OLIVE STREET  
LONG BEACH, NY 11561**

[JMWice@gmail.com](mailto:JMWice@gmail.com)

(202)494-7991

Member, District of Columbia Bar

August 21, 2023

To: Jared Kasschau, Harris Beach  
From: Jeffrey M. Wice  
Subject: Redistricting Assistance Proposal

### **Introduction and Background**

This proposal outlines redistricting services I can provide to Harris Beach for the Mount Pleasant Town districting process, including information on my background.

The goal of this proposal is to assist your firm in the development of a town board plan that fully complies with federal and state law, including the newly enacted requirements of the New York State John R. Lewis Voting Rights Act. This work would include helping to prepare a response to the notification received by the town, the process, and the final map.

I have assisted and guided state and local governments with information, briefings, plan management, and legal guidance on the redistricting process, with an emphasis on the legislative process, developing public engagement strategies, and helping enact redistricting plans that would withstand any legal challenges. I also assist with educational outreach to public institutions, nonprofit organizations, and the public about redistricting law and process.

I am an Adjunct Professor and Senior Fellow at New York Law School where I direct the N.Y. Census & Redistricting Institute, a nonpartisan resource and information center on all aspects of redistricting. My past work has been done at the federal, state, and local government levels. The law school Institute publishes a weekly update on all state and local redistricting activity. For more information on the Institute, see <https://www.nyls.edu/academics/specialty-areas/centers-and-institutes/new-york-census-and-redistricting-institute/>

In January 2022, the New York publication "City & State" recognized me as one of New York's "Top 50 Over 50" for my contribution and leadership in the state. The Washington, D.C. based ROLL CALL has included me in its list of the top 50 Washington policy insiders and in 2020 I was recognized by the National Conference of State Legislatures (NCSL) with the Legislative Staff Achievement Award for my work co-editing and co-authoring NCSL's redistricting handbook for legislators and staff. I am also quoted frequently on redistricting

and has appeared in many programs on the redistricting process in New York and across the nation.

I have assisted many legislative leaders, Members of Congress, county, and local government officials on redistricting and voting rights matters across the nation. During the 1990s, I served as a counsel to the President's appointees to the 2000 federal Census Monitoring Board.

As a long-time counsel to the New York State Legislature, I have served in several National Conference of State Legislatures (NCSL) leadership positions, including service on the national Executive Committee and as staff chair of the Elections and Redistricting Committee and Vice Chair of Standing Committees. I served as redistricting counsel to five New York Assembly Speakers and four State Senate leaders.

In 2003, I assisted the Town of North Hempstead, NY in its successful effort to switch from an at-large board to single member districts. In 2013, I assisted the Town Of Brookhaven in its implementation of a first-time redistricting commission. This experience should lend itself well to creating a new map in Mount Pleasant.

In 2003, 2013 and 2022, I assisted the New York City Districting Commission and helped successfully guide the New York City Council redistricting plans to completion without any successful challenges filed against them. I also helped obtain quick approval from the U.S. Department of Justice under Section 5 of the federal Voting Rights Act in 2003 and 2013.

Through New York Law School, I have also been involved in recent redistricting efforts in the cities of Syracuse, Albany, and Kingston; Suffolk, Monroe, Ulster, Chemung, Dutchess, Nassau, Albany, and Orange counties. Last year, I also assisted the Town of North Hempstead enact a new redistricting plan.

In 2020, I was a regular participant in many New York county-level Census Complete Count Committees (including Westchester County's committee). I am a member of the Election Law Committee of the New York City Bar Association and chairs its Redistricting Subcommittee.

Outside New York, I have assisted numerous state and local governments on redistricting including Boston, MA, Clark County, NV, Baltimore, MD, and state legislatures in Massachusetts, Connecticut, Maine, Virginia, Colorado, Kansas, Tennessee, Vermont, New Hampshire, Maryland, South Carolina, Pennsylvania, Ohio, Michigan,

In 2017, I co-authored a chapter on redistricting in "New York's Broken Constitution" (SUNY Press). I am also a Fellow at SUNY Buffalo Law School and have also taught redistricting and election law classes at Hofstra Law School and at the Touro Law Center.

I worked with counsel across the nation on redistricting litigation and has been involved with several redistricting cases in New York State, including the major cases *Favors v. Cuomo* (state redistricting), *Cecere v. Nassau County*, *Jackson v. Nassau County Board of*

*Supervisors, Puerto Rican Legal Defense Fund v. Gant (state redistricting), and Goosby v. Town of Hempstead.*

### **Plan Development and Implementation**

Redistricting Development, Legal, & Process

- Provide overall guidance and direction to redistricting process
- Develop strategic plan (inception to plan enactment)
- Create public outreach and education efforts for the town redistricting process
- Work with officials to schedule and implement pre-plan public hearing and input process
- Assist in conducting draft plan public hearings
- Guide town officials through legal process before mapping
- Determine if specialized racial voting analysis is warranted and work with a political science specialist
- Assist town in development and enactment of final plan and prepare plan for town board enactment

### **Personnel**

Jeffrey M. Wice- hourly rate \$260.00 (negotiable if there is a cap on the Town's legal fees)

Mapping- approximately \$150-250.00 hourly rate

Mapping assistance will be provided by Redistricting Partners, a national mapping firm that has worked for the New York State Independent Redistricting Commission and for the New York City Districting Commission. Dr. Jonathan Cervas will also be available. Dr. Cervas is a post-doctoral fellow at Carnegie Mellon University who has served as a redistricting Special Master for the New York State Supreme Court.

# Exhibit D



## CONDUCTING A RACIAL BLOC VOTING ANALYSIS

Dr. Lisa Handley

The Voting Rights Act prohibits any voting practice or procedure that results in the denial or dilution of minority voting strength. In the context of redistricting, Section 2 of the VRA prohibits any plan that fragments or unnecessarily packs a geographically concentrated, politically cohesive minority community, at least not if white voters consistently vote against minority-preferred candidates and these candidates usually lose. Given that we have a secret ballot, determining if minority voters are politically cohesive and whites are bloc voting against the candidates preferred by minority voters requires statistical estimation procedures.

**Database requirements** To conduct a racial bloc voting analysis, a database that includes both demographic information and election results must be constructed. This is usually an election precinct level database in which census population data from the PL94-171 census file (demographic data) has been matched with election precinct returns (election results).

*Election returns:* Elections for the office at issue are the most relevant elections to analyze. But if there are not a sufficient number of these elections, countywide, statewide and federal primary and general elections, especially those statewide and federal contests that include minority candidates, can be analyzed.

*Census data:* The 2020 PL94-171 census data is used to provide demographic information for the election precincts included in the analysis. However, this data is only really useful in conjunction with elections conducted from 2015 through 2020. The 2010 PL94-171 census data matched with election geography captured for the 2010 census is a much better choice for analyzing election contests held prior to 2015.

**Analysis of voting patterns** An analysis of voting patterns by race/ethnicity is necessary to determine whether voting is polarized by race/ethnicity. The standard analytic procedures used for estimating the percentage of minorities and whites voting for given candidates are ecological regression and ecological inference, with homogeneous precinct analysis serving as a useful check on the estimates derived using these two statistical approaches.<sup>1</sup> Using a statistical package referred to as "r" and the merged database described above, I use homogenous precinct analysis, ecological regression and ecological inference to produce estimates of participation rates and voting patterns by race for recent local, countywide, statewide and federal primary and general election contests. The results are detailed in tables that report the estimated percentages of minority and white voters that support each of the candidates in the elections examined.

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<sup>1</sup> Homogeneous precinct analysis and bivariate ecological regression analysis have the benefit of the U.S. Supreme Court's stamp of approval in *Thornburg v. Gingles*. The more recently developed third technique, ecological inference, is widely regarded as an improvement over traditional bivariate ecological regression analysis and has been introduced in court in scores of voting rights cases.