

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
ORAL CLARKE, ROMANCE REED, GRACE PEREZ,
PETER RAMON, ERNEST TIRADO, and DOROTHY
FLOURNOY

Index No. EF002460-2024

Plaintiffs,

(Mot. Seq. 001)

-against-

TOWN OF NEWBURGH and TOWN BOARD OF THE
TOWN OF NEWBURGH,

Defendants.

-----X

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS
TOWN OF NEWBURGH AND TOWN BOARD OF THE TOWN OF NEWBURGH'S
MOTION TO DISMISS THE COMPLAINT**

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Defendants Town of Newburgh (the “Town”) and Town Board of the Town of Newburgh (the “Town Board”), by and through their undersigned counsel, pursuant to CPLR 3211 (a)(1) and 3211(a)(7), respectfully submit this Memorandum of Law in support of their Motion to Dismiss the Complaint filed by Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (collectively, “Plaintiffs”). NYSCEF No.1 (attached as Exhibit 1 to Affirmation of Bennet Moskowitz (“Moskowitz Aff.”)).

PRELIMINARY STATEMENT

The John R. Lewis Voting Rights Act of New York (“NYVRA”) gives voters powerful tools to challenge certain voting practices and procedures, but only after voters first give the localities notice of the alleged violation and an opportunity to examine and, if needed, modify the challenged provisions. When a political subdivision receives a NYVRA notice, it has the right to take certain steps to avoid a NYVRA lawsuit. A political subdivision may pass a resolution affirming its intent to remedy any potential NYVRA violation; identifying specific steps that it will undertake to do so; and set forth a schedule for implementing and enacting any potential remedy. If the political subdivision passes such a resolution within 50 days of receiving notice of the potential NYVRA violation, it is entitled to an additional 90 days in which to implement any remedy, during which time a prospective plaintiff may not sue.

Plaintiffs here upended this scheme by filing a premature lawsuit in violation of the NYVRA’s mandatory 90-day safe harbor. On January 26, 2024, Plaintiffs sent the Town of Newburgh a letter alleging that the Town’s at-large method of electing Town Board members violates the NYVRA. In light of Plaintiffs’ allegations and pursuant to the NYVRA’s terms, the Town Board passed a resolution on March 15, 2024, which explicitly affirmed the Town Board’s intent to remedy any potential NYVRA violation; identified the specific steps that the Town Board

would take to investigate Plaintiffs' allegations and implement a remedy for any potential violation; and set forth a specific schedule for implementing and enacting any such remedy. Pursuant to the NYVRA, the Town Board's passage of this resolution entitled it to 90 days to implement a remedy for any potential NYVRA violation without having to defend against a lawsuit. Plaintiffs filed a lawsuit prematurely anyway, undermining the NYVRA's carefully crafted regime.

This Court should thus dismiss this premature lawsuit. Given Plaintiffs' violation of the NYVRA's safe harbor, if they still want to bring their lawsuit, they must wait until 90 days after dismissal of this lawsuit to have any lawful ability to sue.

STATEMENT OF FACTS

A. Legal Background

The NYVRA prohibits the enactment or use of voting practices and procedures that “result[] in a denial or abridgement of the right of members of a protected class to vote,” N.Y. Elec. Law § 17-206(1), and the use of “any method of election” that “impair[s] the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections,” *id.* § 17-206(2). The NYVRA provides specific instructions about the evidentiary standard required, as well as the “factors that may be considered,” *id.* § 17-206(3), to establish a violation, *id.* § 17-206(1)(b), (2)(c), (3). The law also enumerates a list of “appropriate remedies” that a court may implement “to ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process,” *id.* § 17-206(5), and specifies the “[p]rocedures” a political subdivision must take to “implement[] new or revised districting or redistricting plans” if a NYVRA violation exists, *id.* § 17-206(6). A plaintiff who prevails in

NYVRA litigation against a political subdivision may recover reasonable attorneys' fees and litigation expenses. *Id.* § 17-218.

The NYVRA imposes a mandatory notification requirement on plaintiffs who intend to file a lawsuit under the statute, so that the political subdivision can avoid a potentially costly NYVRA lawsuit. *Id.* § 17-206(7). “Before commencing a judicial action against a political subdivision . . . , a prospective plaintiff shall send” a “NYVRA notification letter” to “the governing body of the political subdivision . . . asserting that the political subdivision may be in violation of” the NYVRA. *Id.* A plaintiff may not commence a lawsuit premised on a potential NYVRA violation “within fifty days of sending” the NYVRA notification letter. *Id.* § 17-206(7)(a). A political subdivision that receives a NYVRA notification letter may, “within fifty days of [the] mailing of a NYVRA notification letter,” pass a “NYVRA resolution” affirming: (1) “the political subdivision’s intention to enact and implement a remedy for a potential violation of this title”; (2) “specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy”; and (3) “a schedule for enacting and implementing such a remedy.” *Id.* § 17-206(7)(b).

When a “political subdivision passes a NYVRA resolution,” it is entitled to a 90-day “safe harbor” from any judicial action premised on the potential NYVRA violation. *Id.* Specifically, the political subdivision has “ninety days” after passing a resolution “to enact and implement such remedy, during which a prospective plaintiff shall not commence an action.” *Id.* During that 90-day period, the political subdivision may “enact and implement” a remedy to cure the alleged violation. *Id.* If the subdivision “lacks the authority” to “enact and implement” a remedy, *id.* § 17-206(7)(c), it may “approve a proposed remedy that complies with” the NYVRA—that is, a “NYVRA proposal,” *id.* § 17-206(7)(c)(i)—after holding “at least one public hearing, at which the

public shall be invited to provide input regarding the” proposed remedy, *id.* § 17-206(7)(c)(ii), “and submit such proposed remedy to the” Civil Rights Bureau of the Office of the Attorney General, for the Bureau’s ultimate approval, *id.* § 17-206(7)(c)(i). A prospective plaintiff may not bring suit to assert potential NYVRA violations until this 90-day safe-harbor period is over. *See id.* § 17-206(7)(b). The political subdivision and prospective plaintiff may agree to extend this 90-day safe harbor for an additional 90 days, so long as the political subdivision agrees to “enact and implement a remedy” or “pass a NYVRA proposal and submit it to the civil rights bureau” within this extended time period. *Id.* § 17-206(7)(d).¹

B. Litigation Background

1. Plaintiffs Send The Town A Letter Alleging Violations Of The NYVRA And The Town Board Adopts A Resolution Under The NYVRA

The Town of Newburgh is a political subdivision of the State of New York. Verified Complaint² (“Compl.”) ¶¶ 5–6. The Town Board is the Town’s legislative and policy-making authority. *See* N.Y. Town Law § 60; Div. of Loc. Gov’t Servs., N.Y. Dep’t of State, *Local Government Handbook* 72–73 (7th ed. 2018) (“*Loc. Gov’t Handbook*”).³ Like “almost all towns” in the State of New York, N.Y. Dep’t of State, *Loc. Gov’t Handbook* 74–75, the Town uses an at-large voting system to elect the Town Board’s four members and its Supervisor, pursuant to which

¹ The statute provides just one exception to the 90-day safe harbor, inapplicable to this case. If either (i) “the first day for designating petitions for a political subdivision’s next regular election to select members of its governing board has begun or is scheduled to begin within thirty days,” or (ii) “a political subdivision is scheduled to conduct any election within” 120 days, a plaintiff may bring suit without waiting for the 90-day safe harbor to expire, “provided that the relief sought by such a plaintiff includes preliminary relief for that election.” *Id.* § 17-206(7)(f).

² A copy of Plaintiff’s Verified Complaint, including Exhibits A and B thereto, is attached as Exhibit 1 to the Affirmation of Bennet J. Moskowitz, dated April 16, 2024, submitted herewith.

³ Available at https://dos.ny.gov/system/files/documents/2023/06/localgovernmenthandbook_2023.pdf (all websites last visited Apr. 15, 2024).

“all of the voters of the entire political subdivision elect each of the members to the governing body,” who each represent the subdivision “at-large,” rather than a limited geographic area therein. N.Y. Elec. Law § 17-204.

On January 30, 2024, Plaintiffs here sent a letter to the Town dated and postmarked January 26, 2024 (the “Notification Letter”). *See* Compl., Ex. A. The Notification Letter alleged that the Town Board’s at-large method of election violates the NYVRA because certain “statistical methods” “reveal[] . . . patterns of racially polarized voting with respect to African American and Hispanic voters and demonstrates that the voting preferences . . . of African American and Hispanic voters differ markedly from those of white voters within the jurisdiction,” and because “the African American and Hispanic communities are less able to elect candidates of their choice.” Compl., Ex. A, at 1. The Notification Letter also alerted the Town of Plaintiffs’ intent to commence a legal action if the Town did not cure the alleged violations. *See generally* Compl., Ex. A.

On March 15, 2024—49 days after Plaintiffs mailed their letter—the Town Board adopted the Resolution of the Town Board of the Town of Newburgh Pertaining to New York State Election Law 17-206 (the “Resolution”). The Town Board adopted the Resolution in response to the Notification Letter at a “special meeting of the Town Board,” and after the Resolution was “duly put to a vote on roll call.” *See* Compl. Ex. B at 1, 3. With two Town Board Councilmen and the Town Supervisor voting in favor, “[t]he resolution was thereupon declared duly adopted.” *Id.* at 3. As the Resolution explains, “it is the public policy” of both the State of New York and the Town “to encourage participation in the elective franchise by all eligible voters to the maximum extent.” *Id.* at 2. That “public policy” includes “ensur[ing] that eligible voters who are members of racial 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.” *Id.* To achieve this public policy, the Resolution provides that the Town Board will “proactively review the Town’s current at-large election system for members of the Town Board,” and will “implement remedies for any potential violation of the NYVRA that may exist.” *Id.*

The Resolution calls for the Town Board to, within 90 days, take a series of specific, detailed steps to investigate and remedy the potential NYVRA violation alleged in Plaintiffs’ Notification Letter: First, the Town Board must work with a law firm and experts to (i) investigate the at-large voting system, (ii) “determine whether any potential violation of the NYVRA may exist,” and (iii) “evaluate potential alternatives to bring the election system into compliance with the NYVRA” if a “potential violation [is] determined to exist.” *Id.* § 1. Second, the investigative findings and evaluation must be reported to the Town Board within 30 days of the date of the Resolution, at which time the Town Board must consider this information—as well as any information provided by Plaintiffs’ legal counsel—and determine whether “there may be a violation of the NYVRA.” *Id.* § 2. Third, if the Town Board finds “that there may be” a NYVRA violation, it must “cause a written proposal of the selected remedy(ies) that comply with the NYVRA to be prepared and presented to the Town Board” within the next 10 days. *Id.* § 3. Fourth, within the next 30 days, the Town Board must (i) conduct at least two public hearings on the proposed remedies, providing the public an opportunity “to provide input” on the NYVRA Proposal as well as “the proposed remedy(ies) set forth therein,” and (ii) amend those proposed remedies “based upon the public input received” during the public hearings. *Id.* § 4. Finally, within 90 days of the date of the Resolution, the Town Board must “approve the completed NYVRA Proposal” and submit it to the Civil Rights Bureau of the State Attorney General’s office for final approval. *Id.* § 5.

C. Plaintiffs File This Lawsuit Challenging The Town’s At-Large Method Of Election And Alleging That The Town Board’s Resolution Is Insufficient, Without Honoring The 90 Day Safe Harbor

On March 26, 2024—just 11 days after the Town Board adopted its Resolution—Plaintiffs filed their Complaint, alleging that the Town’s at-large method of voting violates the NYVRA. *See* Compl., ¶¶ 145–160. Plaintiffs are six Town residents, *id.* ¶¶ 24–29, and are the same individuals named as clients in the Notification Letter from law firm Abrams Fensterman, LLP, *compare id., with id.*, Ex. A, at 1. Plaintiffs allege two causes of action. First, they assert that the Town Board’s at-large method of election violates Section 17-206(2)’s prohibition against vote dilution because “Black and Hispanic voters consistently support certain candidates different from the candidates supported by non-Hispanic white voters,” such that “Black and Hispanic voting preferences are polarized against the rest of the electorate.” Compl., ¶ 151; *see also id.* ¶¶ 66–76. Second, Plaintiffs present an alternative argument as to why the Town Board’s at-large method of election violates Section 17-206(2)—namely, that “under the totality of the circumstances, [the at-large] system impairs the ability of Black and Hispanic voters residing within the Town to elect candidates of their choice or influence the outcome of elections.” Compl., ¶ 159; *see also id.* ¶¶ 77–135. Plaintiffs ask this Court to “declar[e] that the use of an at-large system to elect members of the Newburgh Town Board violates” Section 17-206, and “order[] the implementation . . . of a new method of election for the . . . Town Board.” *Id.* at 29 (Prayer for Relief). Plaintiffs also seek to recover attorneys’ fees and litigation expenses under Section 17-218. *Id.* (Prayer for Relief).

With respect to the timing of their lawsuit, Plaintiffs allege that the Resolution was not a “NYVRA resolution” under Section 17-206(7)—and therefore did not trigger Section 17-206(7)’s 90-day safe harbor period—for three reasons: (1) it did not “commit[] the Town Board to any action other than to consider [the] findings” concerning a potential violation, *id.* ¶ 60; (2) although it requires the “evaluation of the at-large system” to be submitted to the Board “within 30 days”

of the Resolution’s passage, the Resolution “contains no ‘schedule’ by which the Town Board must act on” that evaluation and “instead giv[es] the Town Board an indefinite deliberation period,” *id.* ¶ 61; and (3) the Resolution was “not duly adopted at a duly called meeting of the Town Board,” *id.* ¶ 63. Plaintiffs thus allege that the Town “took no other action purporting to respond to the NYVRA notification letter within the 50-day period.” *Id.* ¶ 62. Therefore, Plaintiffs contend they were entitled to sue the Town on March 18, 2024—the first Monday following 50 days after sending the Notification Letter on January 26, 2024. *Id.* ¶¶ 62, 64, 65.

On April 8, 2024, the Town Board adopted a new resolution in response to this lawsuit. *See Resolution Of The Town Board Of The Town Of Newburgh Pertaining To New York State Election Law 17-206 And Commencement Of Litigation* (Apr. 8, 2024) (the “April 8 Resolution”);⁴ *Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 20 (2d Dep’t 2009) (“[M]aterial derived from official government Web sites may be the subject of judicial notice.”). The April 8 Resolution reiterates the Town’s “intention to enact and implement a remedy or remedies for a potential violation of the NYVRA.” *Id.* However, Plaintiffs’ allegation in this lawsuit that the March 15 Resolution was invalid, the April 8 Resolution suspends the Town Board’s schedule for implementing any remedy pending a determination from this Court as to whether the March 15 Resolution complies with the NYVRA. *Id.*

STANDARD OF REVIEW

While allegations in a pleading are generally accepted as true in the context of a motion to dismiss, “bare legal conclusions,” or factual claims that contradict documentary evidence, receive no such deference. *22-50 Jackson Ave. Assocs., L.P. v. County of Suffolk*, 216 A.D.3d 943, 945 (2d

⁴ Available at <https://townofnewburgh.org/uppages/Resolution%20Pertaining%20to%20NYew%20York%20State%20Election%20Law%2017-206%20and%20Commencement%20of%20Litigation.pdf>

Dep't 2023) (citation omitted). Under CPRL 3211(a)(7), the court may dismiss a claim if the plaintiff fails to allege a legally cognizable cause of action. *Monroe v. Monroe*, 50 N.Y.2d 481, 484 (1980) (citing *Rovello v. Orofino Realty*, 40 N.Y.2d 633, 635 (1976)).

ARGUMENT

A. The goal of statutory interpretation “is to ascertain the legislative intent and construe the pertinent statute[] to effectuate that intent.” *In re M.B.*, 6 N.Y.3d 437, 447 (2006). Because “the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself.” *People v. Golo*, 26 N.Y.3d 358, 361 (2015). To that end, courts “construe words of ordinary import with their usual and commonly understood meaning,” *Walsh v. New York State Comptroller*, 34 N.Y.3d 520, 524, 122 N.Y.S.3d 209, 144 N.E.3d 953 (2019) (citation omitted), “unless the Legislature by definition or from the rest of the context of the statute provides a special meaning,” *Lohan v. Take-Two Interactive Software, Inc.*, 31 N.Y.3d 111, 121 (2018). Statutes must be construed “so as to give meaning to each word,” *Skanska USA Bldg. Inc. v. Atl. Yards B2 Owner, LLC*, 146 A.D.3d 1, 9 (1st Dep't 2016), *aff'd*, 31 N.Y.3d 1002 (2018), and to “avoid an unreasonable or absurd application of the law,” *Bank of Am., N.A. v. Kessler*, 39 N.Y.3d 317, 324 (2023) (citation omitted).

B. Here, the Town Board passed a NYVRA resolution that fully complied with Section 17-206(7)'s safe-harbor provision, and Plaintiffs were therefore statutorily prohibited from filing this lawsuit until 90 days after the Town Board passed its Resolution on March 15, 2024. Plaintiffs' lawsuit is thus premature under the NYVRA and must be dismissed and can only be re-filed 90 days after such dismissal.

As relevant here, Section 17-206(7)(a) prohibits a plaintiff from filing suit “within fifty days of sending” a potential defendant a NYVRA notification letter. N.Y. Elec. Law § 17-206(7)(a). Section 17-206(7)(b), in turn, provides that, if the defendant “pass[es] a resolution

affirming: (i) the political subdivision’s intention to enact and implement a remedy for a potential violation of this title; (ii) specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy; and (iii) a schedule for enacting and implementing such a remedy,” the defendant “shall have ninety days after such passage to enact and implement such remedy.” *Id.* § 17-206(7)(b). During these 90 days, a “prospective plaintiff shall not commence an action to enforce this section against the political subdivision.” *Id.*

Here, the Town Board availed itself of this 90-day safe harbor period by timely passing a NYVRA resolution that fully complied with Section 17-206(7).

Initially, the Town Board timely passed the Resolution within 50 days of receiving Plaintiffs’ Notification Letter, thereby triggering the NYVRA’s 90-day safe-harbor period. *See* N.Y. Elec. Law § 17-206(7)(a). Plaintiffs sent the Notification Letter to the Newburgh Town Clerk on January 26, 2024, *see* Compl. ¶ 59 & Ex. A, at which point Plaintiffs were subject to an automatic 50-day waiting period before they could file suit. *See* N.Y. Elec. Law § 17-206(7)(a). On March 15, 2024, before that 50-day period expired and in direct response to the Notification Letter, the Town Board held a special meeting and adopted the Resolution. *See* Compl. ¶ 60 & Ex. B; N.Y. Town Law § 63 (requiring resolutions to be adopted by “the affirmative vote of a majority of all members of the town board”).

The Resolution contained everything required to trigger Section 17-206(7)(b)’s 90-day safe harbor period. *See* N.Y. Elec. Law § 17-206(7)(b).

The Resolution “affirm[s]” the Town Board’s “intention to enact and implement a remedy for a potential violation of” the NYVRA. *Id.* § 17-206(7)(b)(i). The Resolution states that the Town Board “intends to proactively review the Town’s current at-large election system for members of the Town Board in order to . . . enact or apply for approval, as the case may be, and

implement remedies for any potential violation of the NYVRA that may exist.” Compl. Ex. B at 2. Per Section 17-206(7)(b), the Resolution confirms that, should a violation be deemed to exist, the Town Board “intends to enact and implement the appropriate remedy(ies).” Compl. Ex. B § 2.

The Resolution then sets forth several “specific steps” the Town Board “will undertake to facilitate approval and implementation of such a remedy.” N.Y. Elec. Law §17-206(7)(b)(ii). Specifically, the Resolution requires the Town’s counsel and experts to investigate the at-large election system for Town Board members “to determine whether any potential violation of the NYVRA may exist,” and “to evaluate potential” remedies “should a potential violation be determined to exist.” Compl. Ex. B § 1. The investigative findings and evaluation must then be presented to the Town Board. *Id.* § 2. If the Town Board concludes, based on those findings, that the current voting system is unlawful, it “shall” cause a NYVRA Proposal to be prepared and presented to the Board. *Id.* § 3. The Town Board must then hold at least two public hearings concerning the NYVRA Proposal, during which hearings the public “shall be invited to provide input regarding” the proposal and, specifically “the composition of proposed new election districts.” *Id.* § 4. Following these hearings, the Town Board must amend the NYVRA Proposal as appropriate to account for public input. *Id.* If the Town Board finds that the at-large voting system violates the NYVRA, the Resolution commits the Town Board to “approv[ing] the completed NYVRA Proposal” and submitting it to the Civil Rights Bureau of the Office of the New York State Attorney General for final approval. *Id.* § 5.

Finally, the Resolution provides a “schedule for enacting and implementing . . . a remedy” for any NYVRA violation. N.Y. Elec. Law §17-206(7)(b)(iii). A “schedule” is a “time-table,” including “a programme or plan of events, operations, etc.” *Schedule*, Oxford English Dictionary

Online (Dec. 2022).⁵ In context, then, Section 17-206(7)(b)(iii)'s requirement that NYVRA resolutions contain "a schedule for enacting and implementing" a proposed remedy, N.Y. Elec. Law § 17-206(7)(b)(iii), calls for the "program[]" of "operations," *Schedule*, Oxford English Dictionary Online, necessary "for enacting and implementing" a remedial measure, N.Y. Elec. Law § 17-206(7)(b)(iii). The Resolution here contains such a schedule: if the Town Board makes a "finding that there may be a violation of the NYVRA," a NYVRA Proposal must be presented to the Town Board within 10 days of that finding. Compl. Ex. B § 3. The Town Board then has 30 days to conduct public hearings and amend the NYVRA Proposal based upon public input. *Id.* § 4. Following the public hearings and any amendments, the Town Board must "approve the completed" NYVRA Proposal if it finds any legal violation and submit it to the Civil Rights Bureau for final approval within 90 days of the date on which the Resolution is issued. *Id.* § 5.

Because the Resolution contains everything required to trigger Section 17-206(b)'s 90-day safe harbor period, Plaintiffs could not file this lawsuit for 90 days after the passage of the Resolution on March 15, 2024. *See* N.Y. Elec. Law § 17-206(7)(b). Plaintiffs did not wait for this 90-day statutory safe-harbor period to expire and instead filed their Complaint on March 26, 2024, in violation of the NYVRA. *See id.* Accordingly, Plaintiffs lawsuit should be dismissed. And given Plaintiffs' violation of the NYVRA's safe harbor, if they still want to bring their lawsuit, they must wait until 90 days after dismissal of this lawsuit and can only bring suit if the Town does not remedy any claimed violation before the 90-day safe-harbor period ends. Requiring Plaintiffs to re-commence the NYVRA process in this manner is necessary to respect the Town's right to the statutory safe harbor period and prevent plaintiffs from gutting that provision by filing premature

⁵ Available at https://www.oed.com/dictionary/schedule_n?tab=meaning_and_use#24189809.

lawsuits that interrupt and distract from diligent efforts to investigate the allegations raised in NYVRA notification letters. *See Bank of Am.*, 39 N.Y.3d at 324; Compl. Ex. B.

C. The Complaint suggests three reasons why Plaintiffs believe the Resolution was insufficient to trigger the NYVRA's 90-day safe-harbor period, *see* Compl. ¶¶ 60–63, but each is belied by the law and the Resolution's plain text, *see In re M.B.*, 6 N.Y.3d at 447; *Golo*, 26 N.Y.3d at 361; *Walsh*, 34 N.Y.3d at 524.

According to Plaintiffs, the Resolution does not “commit[] the Town Board to any action other than to consider” the Town Supervisor and Town counsel’s findings concerning whether the at-large voting system violates the NYVRA. Compl. ¶ 60. Plaintiffs are wrong as to the Resolution’s plain terms, but even if they were correct, this point would be legally irrelevant. The Resolution’s text both states the Town Board’s intent to remedy a “potential [NYVRA] violation” and commits the Town Board to initiating multiple “specific steps” to remedy such potential violation. Those “specific steps” involve more than just “consider[ing]” the investigative findings. *Contra* Compl. ¶ 60. The Town Board must make an express “finding” as to whether “there may be a violation of the NYVRA.” Compl., Ex. B § 3. If the Board finds a violation of law, it must undertake to prepare an NYVRA Proposal, hold public hearings, amend the proposal if appropriate, approve the completed proposal, and submit it to the Civil Rights Bureau for approval. *Id.* §§ 4–5. And, in any event, while Section 17-206 requires a NYVRA Resolution to explain the “specific steps” a defendant “will undertake” to remedy a potential NYVRA violation, N.Y. Elec. Law §17-206(7)(b), it does not dictate what those “specific steps” must entail. Thus, even if the Resolution did not “commit[]” the Town Board to do anything beyond “consider[ing]” the findings concerning a potential NYVRA allegation, as Plaintiffs assert contrary to the Resolution’s plain text, Compl. ¶ 60, that would not render the Resolution legally deficient.

Plaintiffs next assert that the Resolution is insufficient because it “contains no ‘schedule’ by which the Town Board must act on” the “evaluation of the at-large system,” Compl. ¶ 61, but as with Plaintiffs’ first argument, this assertion is both wrong as to the Resolution’s text and legally irrelevant. The Resolution *does* contain a schedule, mandating that the Town Board consider a NYVRA Proposal within 10 days of finding a potential NYVRA violation, Compl., Ex. B § 3, and hold at least two public hearings within 30 days to solicit public input on the NYVRA Proposal, *id.* § 4. The Town Board must submit the completed NYVRA Proposal to the Civil Rights Bureau by 90 days after the date of the Resolution. *Id.* § 5. The Resolution thus provides a “schedule” for “enacting and implementing” a remedy for any potential NYVRA violation. N.Y. Elec. Law § 17-206(b)(iii). In any event, the NYVRA does not require political subdivisions to impose a schedule governing their deliberations on whether a proposed NYVRA violation exists to be entitled to the safe harbor. *See id.* § 17-206(7)(b). The statute only requires that a NYVRA resolution contain a “schedule for *enacting and implementing*” a “*remedy*” for the proposed violation, *id.* (emphases added), which the Resolution plainly does. Notably, in the Resolution here, the Town Board’s “finding that there may be a violation of the NYVRA” triggers the remedial “enact[ment] and implement[ation]” schedule in the Resolution, in full compliance with the NYVRA. *See id.* § 17-206(7)(b)(iii).

Finally, Plaintiffs allege that the Resolution “is void and of no effect because, upon information and belief, it was not duly adopted at a duly called meeting of the Town Board,” but they offer no facts to support this conclusory allegation, and, in any event, the Resolution *was* properly “adopted” by the Town Board. *See* Compl. ¶ 63. In fact, the Resolution states that it was “duly put to a vote on roll call,” and that it was thereafter “declared duly adopted” during “a special meeting of the Town Board” held on “the 15th day of March, 2024 at 12:00 o’clock p.m.,” with

the three out of five members of the Town Board present at the meeting voting in the Resolution's favor. Ex. B. Thus, in "pass[ing]" the Resolution via the affirmative vote of three out of five members of the Town Board, the Town Board fully complied with N.Y. Town Law § 63, which provides that a resolution's adoption "shall require . . . the affirmative vote of a majority of all the members of the town board." N.Y. Town Law § 63.


CONCLUSION & RELIEF REQUESTED

This Court should grant Defendants' Motion To Dismiss The Complaint.

Dated: New York, New York
April 16, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum of Law in Support of Defendants Town of Newburgh and Town Board of the Town of Newburgh's Motion to Dismiss the Complaint complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum uses Times New Roman 12-point typeface and contains 4,730 words, excluding parts of the document exempted by Rule 202.8-b. As permitted, the undersigned has relied on the word count feature of this word-processing program.

By: 

BENNET J. MOSKOWITZ