

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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

Plaintiffs,

- against -

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

Defendants.

Index No. EF002460-2024

Hon. Maria S. Vazquez-Doles

Mot. Seq. No. 3

**MEMORANDUM OF LAW IN SUPPORT OF MOTION, BY ORDER TO SHOW CAUSE,
OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK FOR LEAVE TO
PARTICIPATE AS *AMICUS CURIAE***

The New York State Attorney General submits this memorandum of law in support of her motion, by order to show cause, for leave to participate in this action as *amicus curiae* in opposition to the defendants’ motion to dismiss.

This case presents an important question of first impression concerning the proper interpretation of the safe harbor provisions of the John R. Lewis Voting Rights Act of New York (“NYVRA”): whether a political subdivision may receive the benefit of a 90-day shield from litigation pursuant to Election Law § 17-206(7)(b) when it does not meaningfully commit to enacting a specific remedy during the 90-day period, but instead indicates that it will further consider the issue? If that question is answered in the affirmative, as the defendants in this case urge, it would undermine the text and purposes of the NYVRA, enable delay of judicial remedies, and increase the risk of elections proceeding under unlawful conditions. The Attorney General, who is statutorily charged with administering and enforcing key provisions of the NYVRA,

respectfully requests leave to file her proposed *amicus* brief, appended as Exhibit A to the Affirmation of Derek Borchardt filed on this same date, which explains that the statute provides for a 90-day extension to an initial 50-day safe harbor only to those political subdivisions that, within the first 50 days, meaningfully affirm their intent to enact and implement specific remedies during the 90-day extension, and not to those political subdivisions, such as the defendants in this case, that effectively do no more than promise to consider the issue further.

The Attorney General should be permitted to participate as *amicus curiae* for several reasons. First, “[i]n cases involving questions of important public interest leave is generally granted to file a brief as *amicus curiae*.” *Kruger v. Bloomberg*, 1 Misc. 3d 192, 196 (Sup. Ct., N.Y. Cnty. 2003) (quoting *Colmes v. Fisher*, 151 Misc. 222, 223 (Sup. Ct., Erie Cnty. 1934)). The judicial construction of the NYVRA’s safe harbor provisions, an issue of first impression in the New York courts, is a question of important public interest with ramifications far beyond this individual case. Political subdivisions across the State will likely look to this Court’s resolution of this issue for guidance. As explained in the proposed *amicus* brief, if the Court adopts defendants’ position, it could lead to routine delays in voting rights litigation under the NYVRA, which undermines the ability to expeditiously address discriminatory conditions before elections. There is a significant public interest in avoiding this outcome. *Cf.* Election Law § 17-200(2) (“it is the public policy of the state of New York to . . . [e]nsure equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise”).

Second, as the Attorney General plays an important role in defending access to the franchise for New York voters,¹ the Attorney General’s interest in this issue is clear. *See Kruger*, 1

¹ *See, e.g., Nat’l Coal. on Black Civic Participation v. Wohl*, 661 F. Supp. 3d 78 (S.D.N.Y. 2023) (enforcement action by the Attorney General concerning robocall that attempted to threaten and deceive Black voters as to their voting rights); *People by James v. Schofield*, 199 A.D.3d 5 (3d

Misc. 3d at 198. Further, it is particularly appropriate to accept an *amicus* brief from the Attorney General in cases, such as this one, involving the interpretation of a statute the Office of the Attorney General is responsible for enforcing. *See Gen. Motors Corp. v. Warner*, 5 Misc. 3d 968 (Sup. Ct., Albany Cnty. 2004), *rev'd on other grounds sub nom. In re Gen. Motors Corp. (Warner)*, 24 A.D.3d 869 (3d Dep't 2005), *aff'd sub nom. DaimlerChrysler Corp. v. Spitzer*, 7 N.Y.3d 653 (2006) (accepting *amicus* brief from the Attorney General concerning interpretation of statute he enforced); *see also, e.g., McDonald v. N.Y.C. Campaign Fin. Bd.*, 40 Misc. 3d 826 (Sup. Ct., N.Y. Cnty. 2013), *aff'd as modified*, 117 A.D.3d 540 (1st Dep't 2014) (accepting *amicus* brief from the Attorney General concerning election law); *Stuyvesant Town-Peter Cooper Vill. Tenants' Ass'n v. BPP ST Owner LLC*, 184 N.Y.S.3d 538 (Sup. Ct., N.Y. Cnty. 2023) (accepting *amicus* brief from the Attorney General); *Nat'l Energy Marketers Ass'n v. N.Y. State Public Serv. Comm'n*, 60 N.Y.S.3d 760 (Sup. Ct., Albany Cnty. 2017), *aff'd*, 167 A.D.3d 88 (3d Dep't 2018) (same); *cf. Nelson v. N.Y. State Civil Service Comm'n*, 96 A.D.2d 132, 134 (3d Dep't 1983) (“[A]n opinion of the Attorney-General is usually accorded great deference . . .”).

Third, the Court's acceptance of the Attorney General's proposed *amicus* brief would not “substantially prejudice the rights of the parties.” *Kruger*, 1 Misc. 3d at 198. As the Attorney General filed this order to show cause prior to the May 2, 2024 return date of defendants' motion to dismiss, consideration of the Attorney General's *amicus* brief would not materially delay the Court's decision on the motion.

Dep't 2021) (enforcement action by the Attorney General concerning poll site locations in Rensselaer County); Compl. in Intervention, Dkt. 29, *Common Cause New York v. Bd. of Elec. in the City of New York*, No. 1:16-cv-06122 (E.D.N.Y. filed Jan. 30, 2017) (enforcement action by the Attorney General concerning voter roll purges by the New York City Board of Elections).

Fourth, while the parties are ably represented by counsel, the Court would benefit from the perspective of the Attorney General as to the public interest implications of this case, as the Attorney General is not a private party but an officer of the State. *Cf. Anschutz Expl. Corp. v. Town of Dryden*, 35 Misc. 3d 450, 454 (Sup. Ct., Tompkins Cnty. 2012), *aff'd sub nom. Norse Energy Corp. USA v. Town of Dryden*, 108 A.D.3d 25 (3d Dep't 2013), *aff'd sub nom. Wallach v. Town of Dryden*, 23 N.Y.3d 728 (2014) (“Although the parties have very capably advanced their respective positions, there is no prejudice to them in permitting the proposed amici to be heard on this case of first impression involving a matter of important public interest.”).

For the foregoing reasons, the Court should grant the Attorney General’s motion, by order to show cause, for leave to file a memorandum of law as *amicus curiae* in opposition to defendants’ motion to dismiss.

Dated: April 30, 2024
New York, New York

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CERTIFICATION

In accordance with Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court, I hereby certify that the Memorandum of Law in Support of Motion, by Order to Show Cause, of the Attorney General of the State of New York for Leave to Participate As *Amicus Curiae* contains 1,040 words, exclusive of caption, cover page, and signature block, as established using the word count function of Microsoft Word.

/s/ Derek Borchardt
Derek Borchardt
Assistant Attorney General