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January 16 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****LITIGATION****In First NYVRA Lawsuit, Hispanic Voters Challenge Town's At-Large Election System: *Sergio Serratto et al v. Town of Mount Pleasant et al***

On January 9, in Westchester County State Supreme Court, five members of the Town of Mount Pleasant's Hispanic community filed a lawsuit under the NYVRA. They seek to remedy the "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."

They assert that the Town's use of an at-large method of election, where all voters elect the Town Supervisor and all four Town Board members, violates the NYVRA's prohibition against vote dilution and voter suppression based on a totality of the circumstances analysis and by reason of racially polarized voting.

This legal action follows a process outlined in the NYVRA where prospective plaintiffs must first notify the town or other political subdivision of a potential NYVRA violation. According to the complaint, in accordance with the NYVRA's requirements, before commencing this action, the challengers sent a notification letter to the clerk of the Town, asserting that the Town may be in violation of the NYVRA. The Town then resolved to "proactively review its current at-large system" and hired experts Jeffrey M. Wice and Dr. Lisa Handley to investigate the claim and assist the Town in complying with the law. Wice and Handley reported findings of racially polarized voting, and the challengers contend that these findings are "highly probative evidence of impermissible vote dilution." The Town then held public hearings to consider procedures for remedying the violation. The complaint notes that at the hearings, many of the Town's white residents expressed their opposition to taking any remedial action, encouraged the Town to "fight the claims," and "often made racially charged comments." Because more than 90 days have elapsed since the Town passed its resolution, and no remedy has been enacted or implemented, the challengers assert they are now permitted to commence this action under the NYVRA.

The complaint alleges three causes of action in violation of the NYVRA: (1)

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voter suppression; (2) vote dilution by reason of racially polarized voting; and (3) vote dilution under the totality of the circumstances.

They maintain that the Town's at-large election system violates the NYVRA because for many years the system has "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." The complaint notes that the Town's population has risen drastically in recent decades, largely attributed to the rapidly expanding Hispanic community. The Hispanic community now constitutes about 19% of the Town's overall population, most notably in the Village of Sleepy Hollow with 47% Hispanic population.

Despite this, the complaint notes, every person ever elected to the Town Board has been white. The challengers contend that this reality is due to the Town's at-large election system combined with the Town's racial and ethnic polarization where Hispanic voters and white voters consistently support different candidates and those supported by white voters usually win because white voters make up a majority of the electorate. This system prevents Hispanic voters from having the opportunity to elect candidates of their choice. The challengers also note that there has not been a candidate of color for 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."

Moreover, the complaint emphasizes that because this community lacks representation on the Town Board, they have been "demoted to second class citizens." They point to several issues to demonstrate this point, including the Town Board frequently neglecting the community's interests, opposing affordable housing projects, and declaring a state of emergency to prevent Hispanic migrants from taking asylum in the Town.

The challengers contend that the NYVRA requires the Town's at-large election system be swiftly changed to remedy this unequal treatment of the Hispanic community in Mount Pleasant. They assert that there are several effective remedies, including drawing single-member districts or instituting a modified at-large system. They ask the court to declare that this use of an at-large system violates the NYVRA and to order the Town to implement a new method of election "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."

ELECTION LAW LEGISLATION

Doctor John L. Flatau Voting and Elections Database and

New York Census and Redistricting Institute**Academic Center of New York Act (S657A, Myrie)**

On January 8, The New York State Senate passed a bill intended to regulate public data maintained by county and city boards of elections and establish the New York voting and elections academic center to maintain a statewide database of voting and election data.

The bill's sponsor, Senator Zellnor Myrie (D-Kings) renamed the bill in memory of Dr. John L. Flateau, a veteran voting rights and redistricting expert. Dr. Flateau passed away on December 30th.

The New York Voting and Elections Database

The database would serve as a central repository of certain elections and voting data available to the public from an election authority in the state. The state board of elections (BOE) would be required to collect, host, and maintain these electronic records for at least 12 years.

After every election in the state, each election authority would be required to transmit to the state BOE copies of:

1. Election results at the election district level for every statewide election and every election in every political subdivision (city, town, etc.)
2. Voter registration lists
3. Voter history files
4. Maps or other documentation of the configuration of districts
5. Tabulations of the number of valid and invalid affidavit ballots, the reason for which the ballots were invalid, and the quantity and disposition of ballots subject to the cure procedure
6. Lists of election day poll sites and early voting sites and maps or other documentation of the configuration of districts
7. Adopted districting or redistricting plans
8. Any other publicly available data as requested by the state BOE

The bill would require the database to post the above records to its public facing website (except individual voter registration records which would only be made available to the public upon request free of charge).

The New York Voting and Elections Academic Center would be given full access to the database.

The New York Voting and Elections Academic Center

The act would also establish the New York Voting and Elections Academic Center jointly within the State University of New York (SUNY) and the City

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University of New York (CUNY) “to foster, pursue, and sponsor research on existing laws and best practices in voting and elections.”

The Center would be required to provide a center for research, and research methodologies for election and demographic data and would be empowered to:

1. Conduct classes
2. Organize interdisciplinary groups of scholars to research voting and elections in the state
3. Conduct seminars involving voting and elections
4. Assist in the dissemination of data from the database to the public
5. Publish such books and periodicals as it shall deem appropriate on voting and elections in the state
6. Provide nonpartisan technical assistance to political subdivisions, scholars, and the general public seeking to use the resources of the database

The Center would also be required to maintain the following electronic data and records and make them available to the public at no cost:

1. Estimates of the total population, voting age population, and citizen voting age population by race, color, and language-minority group, broken down to the election district level for every political subdivision in the state...
2. Estimates of voter turnout by race or Hispanic origin...
3. Estimates of citizens of voting age who speak a language other than English and are limited English proficient...
4. Any other estimates or analytical data that a director deems advisable.
5. Any other estimates requested by the state BOE or office of the attorney general.

The co-directors of the Center would also be required to publish a list of each board of elections or political subdivision that is required to provide language-related assistance in voting and elections along with which languages they must provide. The bill states that the attorney general would then adopt each such list and provide the information to each relevant board of elections or political subdivision.

Much of the redistricting related material has already been collected by New York Law School’s N.Y. Census & Redistricting Institute. The Institute hopes to collaborate with the new Center if the legislation is enacted into the law.

REDISTRICTING**Revised Broome County Legislative Map Approved**

New York Census and Redistricting Institute

Broome County Executive James Garnar approved county legislation that revised the county's 2021 county legislative map. The previous map had been invalidated by the state courts for violations of the state's new Municipal Home Rule Act provisions limiting town splits. The map was approved despite major public criticism of the map at a public hearing last week over the map's alleged partisan favoritism and lack of compact districts.