SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

SERGIO SERRATTO, ANTHONY AGUIRRE, IDA MICHAEL, and KATHLEEN SIGUENZA,

Plaintiffs,

-against-

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

Defendants.

Index No. 55442/2024

Hon. David F. Everett

Motion Seq. No. 8

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO STAY PROCEEDINGS

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I. INTRODUCTION

Plaintiffs in this action seek a ruling that the Town of Mount Pleasant's ("Town") at-large election system violates the John R. Lewis Voting Rights Act of New York, Elec. Law § 17-200 *et seq.* ("NYVRA"). Specifically, Plaintiffs allege that "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 [the] NYVRA" (Compl. ¶¶ 176, 181 [citing Elec. Law § 17-206[2][b][i]], attached as Exhibit A to the Affirmation of Ariana Dindiyal in Support of Defendants' Motion to Stay Proceedings). In addition, Plaintiffs claim that "the Town's at-large system of election for members of the Town Board violates [the] 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" (Compl. ¶¶ 184-186 [citing Elec. Law § 17-206[2][b][i][B]]). Defendants have asserted a number of defenses to these claims and moved for summary judgment on several grounds, including that the NYVRA is unconstitutional under both the United States and New York Constitutions.

In neighboring Orange County, the Town of Newburgh was sued by the same Plaintiffs' counsel in this case asserting that the Town of Newburgh's at-large method of election violated the same provisions of the NYVRA (*Clarke v Town of Newburgh*, Sup Ct, Orange County, Vazquez-Doles, J., Index No. EF002460-2024). Just as Plaintiffs here claim that Hispanic voters are unable to elect their preferred candidates to the Mount Pleasant Town Board, the plaintiffs in *Clarke* claimed that Hispanic and Black voters were unable to elect their preferred candidates to the Newburgh Town Board. The Town of Newburgh filed a motion for summary judgment in *Clarke* asserting many of the same defenses as the Town of Mount Pleasant asserts here, including that the NYVRA is unconstitutional.

On November 7, 2024, the Orange County Supreme Court issued an Order granting the Town of Newburgh's motion for summary judgment on the grounds that the NYVRA is unconstitutional on its face, ordering that the Complaint be dismissed, and ordering that "the NYVRA is hereby **STRICKEN** in its entirety from further enforcement and application to these Defendants and to any other political subdivision in the State of New York" (*Clarke v Town of Newburgh*, Sup Ct, Orange County, Nov. 7, 2024, Vazquez-Doles, J., Index No. EF002460-2024, Decision and Order at 25 ["Newburgh Order"], attached as Exhibit B to the Affirmation of Ariana Dindiyal in Support of Defendants' Motion to Stay Proceedings ["Ex. B"]). In the Newburgh Order, Judge Vazquez-Doles held that "the text of the NYVRA, on its face, classifies people according to their race, color and national origin," and "[f]or Plaintiffs to suggest that the NYVRA is not a race-based (or national origin-based) statute is simply to deny the obvious" (*id.* at 16). Judge Vazquez-Doles thus applied strict scrutiny to the NYVRA and held that the statute did not satisfy that standard because the State of New York lacked a compelling interest for such race based government action, and its prohibitions were not narrowly tailored (*id*. at 14-21). On November 11, 2024, the plaintiffs in the Newburgh case filed a Notice of Appeal to the Appellate Division of the Supreme Court of New York, Second Judicial Department (*Clarke v Town of Newburgh*, Sup Ct, Orange County, Nov. 11, 2024, Vazquez-Doles, J., Index No. EF002460-2024, Notice of Appeal ["Newburgh Appeal"], attached as Exhibit C to the Affirmation of Ariana Dindiyal in Support of Defendants' Motion to Stay Proceedings).

Defendants requested that Plaintiffs stipulate to a stay of this matter pending the outcome of the Newburgh Appeal, which will be binding on this Court, but Plaintiffs would not agree. For the reasons stated below, this Court should stay this matter pending the outcome of the Newburgh Appeal.

II. LAW AND ARGUMENT

A. The Standard for Granting a Stay of Proceedings.

Pursuant to CPLR 2201, "[e]xcept where otherwise prescribed by law, the court in which an action is pending may grant a stay of proceedings in a proper case, upon such terms as may be just." "A trial court has 'broad discretion with respect to stays as prescribed by CPLR 2201'" (*Matter of Rockman v Nassau County Sheriff's Dept.*, 224 AD3d 757, 758 [2d Dept 2024], quoting *Matter of Hersh*, 198 AD3d 773, 776 [2d Dept 2021]]). Courts exercise this discretion to "avoid the risk of inconsistent adjudications, application of proof and potential waste of judicial resources" (*Matter of Hersh*, 198 AD3d at 775 [citations omitted]). As discussed more fully below, a stay is warranted here because (1) the outcome of the Newburgh Appeal will be binding on this Court; and (2) the Court should avoid moving forward with an action that could result in enforcement of a statute that has been rendered void ab initio.

B. The Court Should Stay This Matter Because the Outcome of the Newburgh Appeal Will Bind This Court.

A trial court should stay an action pending an appellate determination in a different case that would have a "significant impact" in that action (*Assenzio v A.O. Smith Water Prods.*, 2015 NY Slip Op 31647[U], *5 [Sup Ct, NY County Aug. 28, 2015]; *Isaly v Garde*, 2022 NY Slip Op 34108[U], *10 [Sup Ct, NY County Dec. 6, 2022]; *Toorak Cap. Partners, LLC v XYZ 42 Van Buren LLC*, 2024 NY Slip Op 31647[U], *3 [Sup Ct, Kings County May 9, 2024]). This is particularly true when the forthcoming appellate decision will be binding on the action (*see Castillo v Saheet Constr. Corp.*, 2022 WL 6409689, *1 [Sup Ct, Queens County Aug. 31, 2022, No. 701809/2016] [staying action because Court of Appeals decision would bind parties in present litigation]; *Caputo v 6901 LLC,* 2023 NY Slip Op 33771[U], *4 [Sup Ct, Kings County Oct. 24, 2023] [staying action pending appeal in companion case because there was "no question" such

appeal "will have a significant impact upon this lawsuit," and the importance of the appellate decision is "readily apparent"]). That is exactly the case here.

There is no question that the Newburgh Appeal will have a significant impact on this lawsuit. A Second Department ruling on the constitutionality of the very same provisions of the NYVRA at issue in this case will bind this Court and direct the outcome (*see Maple Med., LLP v Scott*, 191 AD3d 81, 90 [2d Dept 2020] ["[T]he Supreme Court is bound to apply the law as promulgated by the Appellate Division in its own Department"]). And the grounds under which Judge Vazquez-Doles held that strict scrutiny applied and that the NYVRA failed to survive strict scrutiny are some of the very same grounds upon which Defendants seek to dismiss this case (*see* Defs' Mem of Law in Support of Mot for Summ J at 10-19 [NYSCEF Doc. No. 118]). In particular, Defendants here have likewise argued that the NYVRA is a race-based statute that is subject to strict scrutiny, that it serves no compelling interest because it provides no findings of a need to remedy past discrimination, and that it is not narrowly tailored in any sensible reading of it (*id.*). If the Second Department affirms the Newburgh Order, Plaintiffs' claims here must be dismissed. In addition, any ruling by the Court here will almost certainly be appealed to the Second Department, which will then apply its ruling in the Newburgh Appeal to this case. The significant impact the Second Department's ruling will have on this matter is clear.[1]

If the Court proceeds with this matter, including a potential trial, and if necessary, remedial proceedings, but the Second Department ultimately affirms the Newburgh Order, such proceedings will be for naught. The Court will have tried a case under (and possibly enforced) a statute that is unconstitutional and void, and the parties will have unnecessarily incurred significant additional

[1] The New York State Office of the Attorney General ("OAG") notified the Second Department on November 14, 2024, that it is intervening in the Newburgh Appeal. The OAG's intervention in the Newburgh Appeal underscores the importance of the issues in the Newburgh Appeal and the significant impact it will have on this case.

expenses and fees for no reason. In *Isaly*, for example, the New York County Supreme Court stayed an action when the determination of a pending appeal before the New York Court of Appeals would have a significant impact on the action (2022 NY Slip Op 34108[U], *10-11). In particular, the court recognized that although it was currently bound by precedent from the First Department, it believed that precedent to be an outlier, and therefore a stay was appropriate to await the Court of Appeals' decision (*id*. at *11-12). In doing so, the court stated it was "mindful both of the Court's need to expend scarce judicial resources efficiently and of the declared policy of the state to particularly adjudicate actions involving public petition and participation in a manner that minimizes costs in time and resources for litigants" (*id*. at *12).

While Plaintiffs here may argue that a stay is unwarranted because a decision in the Newburgh Appeal is not "imminent," that factor is "not dispositive where" the appeal "may have 'a significant impact'" on the stayed action (*Isaly*, 2022 NY Slip Op 34108[U], *10-11). Moreover, it is very likely that the Newburgh plaintiffs will seek expedited briefing and argument in the Newburgh Appeal. The Newburgh plaintiffs filed their notice of appeal just three calendar days (including an intervening weekend) after the Newburgh Order was issued and just two calendar days after it was entered by the Clerk, clearly indicating the accelerated process by which the appeal will proceed. Election appeals are often resolved promptly. The Newburgh plaintiffs' counsel—who are also Plaintiffs' counsel here—will surely proceed with the same urgency in prosecuting the Newburgh Appeal. And as the court in *Isaly* recognized, "[a]lthough some delay is unavoidable in any order staying proceedings, such delay can be minimized by granting the stayed proceeding calendar preference upon the conclusion of the stay" (*Isaly*, 2022 NY Slip Op 34108[U], *12).

For all these reasons, a stay in this case makes practical sense and is the interests of both judicial efficiency and the parties.

C. The NYVRA Has Been Stricken, Is Void Ab Initio, and Should Not Be Enforced Against the Town.

New York courts have consistently held that a statute struck down by a court as facially unconstitutional is void ab initio (*see, e.g.*, *People v Stuart*, 100 NY2d 412, 421 [2003] ["A successful facial challenge means that the law is 'invalid *in toto*—and therefore incapable of any valid application.'"]; *Atkins v Hertz Drivurself Stas.*, 261 NY 352, 356 [1933], *affd*, 291 US 641 [1934] ["If this provision of the Vehicle and Traffic Law were unconstitutional, it was void and of no effect, and the plaintiff could plead his facts as though it had no existence."]; *Town of Islip v Paliotti*, 196 AD2d 648, 649 [2d Dept 1993] ["The general rule is that a statute or part of a statute found to be unconstitutional is void ab initio."]; *Manoocherian v Lenox Hill Hosp.*, 229 AD2d 197, 205 [1st Dept 1997] ["The Court of Appeals declaration that Chapter 940 is unconstitutional effectively removed that provision from consideration, as if it had never been passed."]; *People ex rel. International Salt Co., Inc. v Graves*, 242 AD 124, 127 [3d Dept 1934] ["A segregation made in accordance with an unconstitutional statute is no segregation. It was void ab initio[.]"]).

"Even more fundamental, a voided law can have no lasting effect" (*Matter of Cobleskill Stone Prods., Inc. v Town of Schoharie*, 169 AD3d 1182, 1185 [3d Dept 2019]). "[A] void thing is no thing. It changes nothing and does nothing. It has no power to coerce or release. It has no effect whatever. In the eye of the law it is merely a blank, the same as if the types had not reached the paper" (*id.*, quoting *Standard Engraving Co., Inc. v Volz*, 200 AD 758, 765 [1st Dept 1922]). If other courts are permitted to continuing enforcing a voided statute, it continues to give that "illegally-enacted" statute "complete effect," when a different court has in fact voided it (*id.*).

Here, the Orange County Supreme Court struck the NYVRA as void in its entirety and ordered that it could not be enforced against any political subdivision in the State of New York (Ex. B at 25). The effect of that Newburgh Order is that the NYVRA is void ab initio. Common sense dictates that it should likewise not be enforced against the Town by this Court at this time, especially since the Second Department may affirm the Newburgh Order. Otherwise, the Court risks enforcing a statute that would then be unconstitutional under binding precedent.

In addition, "[t]he powers, duties, qualifications, number, mode of selection and removal, terms of office, compensation, hours of work, protection, welfare and safety of its officers and employees" are generally delegated in the first instance to the local government under the Municipal Home Rule (Mun. Home Rule Law § 10[1][a][1]). However, the NYVRA would require local governments, including the Town, to adopt a certain method for electing members to their Town Board in contravention of the Municipal Home Rule. That is permissible to the extent the NYVRA is a "general law" that sets forth state policy, and, as such, local laws cannot be inconsistent with such general laws (*Matter of Buenos Hill Inc. v Saratoga Springs Planning Bd.*, 206 NYS3d 902, 908 [Sup Ct, Saratoga County Mar. 4, 2024]). However, a "general law" is one that "in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages" (NY Const, art IX, § 3[d][1]). But if a general law is unconstitutional and stricken from application to certain counties, cities, towns, or villages, it makes little sense to continue to apply it to the remainder of the State's local governments. Such inconsistency would make for poor public policy: the NYVRA could require one Town to switch from an at-large election system to a district election system, but not a Town in the county next door. The Newburgh Order avoids this inconsistency by barring enforcement of the NYVRA to any political subdivision in New York.

For this reason, too, a stay is warranted so that the Court does not inconsistently enforce a statute against the Town that has been rendered void ab initio on its face for all political subdivisions in New York.

III. CONCLUSION

For all these reasons, the Court should stay this matter pending the appeal of the decision in *Clarke v Town of Newburgh*, Index No. EF002460-2024, Orange County Supreme Court, ordering that the NYVRA is unconstitutional on its face and that it is stricken in its entirety from further enforcement and application to any political subdivision in the State of New York.

Dated: November 15, 2024
New York, New York

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CERTIFICATION OF WORD COUNT

I certify that the word count of this memorandum of law complies with the word limits set forth in 2 NYCRR § 202.8-b. According to the word-processing system used to prepare this memorandum of law, the total word count for all printed text exclusive of the material omitted under 22 NYCRR § 202.8-b(b) is 2,488 words.

Dated: November 15, 2024
New York, New York

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