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November 12, 2024

VIA NYSCEF

Hon. David F. Everett
Justice of the Supreme Court
Westchester County Courthouse
111 Dr. Martin Luther King Jr. Boulevard
White Plains, New York 10601

Re: *Sergio Serratto, et al. v. Town of Mount Pleasant, et al.*, Index No. 55442/2024

Dear Justice Everett:

We write in response to Defendants' letter dated November 8, 2024, regarding a recent decision issued by Justice Vazquez-Doles of the Orange County Supreme Court in *Oral Clarke v Town of Newburgh*, EF002460-2024. The *Clarke* decision – which held the New York Voting Rights Act ("NYVRA") unconstitutional under the Equal Protection Clause of the 14th Amendment to the United States Constitution – is plainly incorrect. Notably, the *Clarke* decision wrongly concludes, after only a cursory analysis, that the NYVRA is a racial classification. It also largely ignores the U.S. Supreme Court's recent decision affirming the constitutionality of race-conscious districting to remedy racial vote dilution, *Allen v. Milligan*, 599 U.S. 1 (2023). The Plaintiffs in *Clarke* (who are also represented by the undersigned counsel) have already filed a notice of appeal to the Appellate Division, Second Department. The *Clarke* decision may be the first word on the NYVRA's constitutionality, but it certainly will not be the last.

Regardless, for numerous reasons, the *Clarke* decision is not grounds for dismissing Plaintiffs' NYVRA claims in this case. Despite decretal language purporting to order the NYVRA "stricken in its entirety from further enforcement and application to these Defendants and to any other political subdivision in the State of New York," a single Supreme Court justice lacks the authority to either "strike[]" the NYVRA from state law or to bind non-parties. *See, e.g.*, *Torres v. City of New York*, 590 F. Supp. 3d 610, 624 (S.D.N.Y. 2022) (affirming "view that a decision in an individual case of the New York State Supreme Court, as New York's trial court, is not binding on future cases" because "[a] court only has the power to bind the parties properly before it"); *Green v. Santa Fe Indus., Inc.*, 70 N.Y.2d 244, 253 (1987) (explaining that "a judgment in a prior action is binding" on "parties to that action" and "those in privity with them"). Relevant here, the *Clarke* decision addresses a so-called "coalition" claim (i.e., one brought on behalf of both Black and Hispanic voters), in contrast to the claim at issue before this Court. Thus, as a decision of a coordinate jurisdiction, Justice Vazquez-Doles' interpretation of the NYVRA and the 14th Amendment "do[es] not bind this Court and need not be followed" – rather, this Court is "free to

reach a contrary result." *See JY Not So Common L.P. v. P & R Bronx, LLC*, 79 Misc. 3d 626, 641 (N.Y. Sup. Ct. 2023); *see also Matter of Hudson*, 2024 WL 4282674, at *6 (N.Y. Sup. Ct. Sept. 24, 2024) ("Courts of coordinate authority are not obligated to follow one another.").

Under settled principles of New York law, the *Clarke* decision simply has no bearing on Plaintiffs' NYVRA claims. If necessary, Plaintiffs are prepared to further address the *Clarke* decision at oral argument on the parties' cross motions for summary judgment, which is scheduled for November 21, 2024 at 11:00 am.

Respectfully yours,

Robert A. Spolzino, Esq.

cc: All counsel of record via NYSCEF