

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Kenneth Young,

Plaintiff,

– vs –

TOWN OF CHEEKTOWAGA,

Defendant

PLAINTIFF'S
STATEMENT OF
MATERIAL FACTS
22 NYCRR 202.8-g

Index No: 803989/2024

Hon. Paul B. Wojtaszek,
J.S.C. Assigned Justice

Dated: May 20, 2024
Buffalo, NY

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-and-

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Attorneys for Plaintiff

Plaintiff submits the following statement of material facts for which Plaintiff contends there are no issues genuine issue to be tried.

1. Defendant is a town situated in Western New York bordering on the City of Buffalo with a population of approximately 89,000 residents. NYSCEF Doc No. 1, Verified Complaint ¶ 6.

2. Defendant is a “political subdivision” as defined by Election Law § 17-204(4). *Id.* ¶ 7.

3. Plaintiff is an adult citizen of New York State. *Id.*, ¶ 8.

4. Plaintiff is a registered voter in New York State and Erie County. *Id.*, ¶ 8

5. Plaintiff is an owner of residential property in the Town of Cheektowaga, located at 33 Victoria Blvd, Cheektowaga, NY 14225. *Id.*, ¶ 8

6. Plaintiff is a member of the minority Black race in the Town of Cheektowaga. *Id.*, ¶ 9.

7. Plaintiff is a resident of the northwest section of the Town of Cheektowaga. *Id.*, ¶ 10.

8. The majority of the town’s Black population lives in the northwest section of the town. *Id.*, ¶ 11.

9. The Black residents of the Town of Cheektowaga are a protected class under Article 17 of the Election Law. *Id.*, ¶ 12.

10. The town board members of Defendant Town of Cheektowaga are elected on the at-large basis. *Id.*, ¶ 44

11. In the November 2023 election for Cheektowaga Town Board members, Plaintiff received the fewest votes townwide despite being the candidate of choice of the

minority population in the Town of Cheektowaga. NYSCEF Doc No. 02, Exhibit 1 to the Verified Complaint, page 7 of 9.

12. Defendant's expert, Dr. Lisa Handley, concluded that:

a. In the November 2023 election for Cheektowaga Town Board members, Plaintiff was the candidate of choice of the Black voters in the Town of Cheektowaga. NYSCEF Doc No. 8, Exhibit 7 to the Verified Complaint, Handly Expert Report, page 4 of 19, footnote 9.

b. In the 2022 general election for Town of Cheektowaga Town Justice, voting was racially polarized. NYSCEF Doc No. 8, Exhibit 7 to the Verified Complaint, Handly Expert Report, page 4 of 19 to page 5 of 19.

c. In the 2022 general election for Town of Cheektowaga Town Justice, the candidate of choice of Black voters lost to the candidate of choice of white voters. Id.

d. In the 2019 general election for Town of Cheektowaga Town Justice, voting was racially polarized. NYSCEF Doc No. 8, Exhibit 7 to the Verified Complaint, Handly Expert Report, page 5 of 19.

e. In the 2019 general election for Town of Cheektowaga Town Justice, the candidate of choice of Black voters lost to the candidate of choice of white voters. Id.

f. In the 2015 Democratic Primary, Plaintiff was the clear first choice of Black voters but the last choice of White voters. NYSCEF Doc No. 8, Exhibit 7 to the Verified Complaint, Handly Expert Report, page 6 of 19.

g. Plaintiff did not win one of the three positions elected in the 2015 Democratic Primary. NYSCEF Doc No. 8, Exhibit 7 to the Verified Complaint, Handly Expert Report, page 6 of 19.

h. The 2021 Democratic Primary for Erie County Sheriff was racially polarized with regard to voters in the Town of Cheektowaga. NYSCEF Doc No. 8, Exhibit 7 to the Verified Complaint, Handly Expert Report, page 8 of 19.

i. In the 2021 Democratic Primary for Erie County Sheriff the candidate favored by White voters in the Town of Cheektowaga defeated the candidate favored by Black voters in the Town of Cheektowaga. *Id.*

j. The 2018 Democratic Primary for Attorney General was racially polarized with regard to voters in the Town of Cheektowaga. *Id.*

k. In the 2018 Democratic Primary for Attorney General the candidate favored by White voters in the Town of Cheektowaga defeated the candidate favored by Black voters in the Town of Cheektowaga. *Id.*

13. A legal consultant retained by Defendant concluded that: “The most recent elections (since 2021) have often been racially polarized. Although minority preferred candidates have prevailed in past years even when voting was polarized, there is an apparent trend against the election of minority preferred candidates beginning in 2022. This indicates a need for the Town to consider an alternative method of electing council members to avoid future liability.” NYSCEF Doc No. 9, Exhibit 8 to the Verified Complaint, Wice Expert Report, page 4 of 5.

14. Plaintiff mailed an NYVRA Notification Letter to Defendant on December 12, 2023. NYSCEF Doc No. 02, Exhibit 1 to the Verified Complaint.

15. Defendant's opportunity to enact a compliant NYVRA Resolution to take advantage of the Safe Harbor provisions of Election Law § 17-206(7) expired before February 1, 2024. Verified Complaint, ¶¶ 55 and 58.

16. On January 9, 2024, Defendant passed Resolution 2024-34 in response to Plaintiff's NYVRA Notification Letter of December 12, 2023. NYSCEF Doc No. 6, Exhibit 5 to the Verified Complaint.

17. Resolution 2024-34 did not contain an intention to enact and implement any specific remedy for a potential violation of Title 2, of Article 17 of the Election Law. *Id.* and NYSCEF Doc No. 10, Exhibit 9 to the Verified Complaint, page 1 of 5, Footnote 1.

18. Resolution 2024-34 did not contain the steps Defendant will undertake to facilitate approval and implementation of any specific remedy. NYSCEF Doc No. 6, Exhibit 5 to the Verified Complaint.

19. Resolution 2024-34 did not contain a schedule for enacting and implementing any specified remedy. NYSCEF Doc No. 6, Exhibit 5 to the Verified Complaint. *Id.*

20. On February 5, 2024, Defendant passed Resolution 2024-50. NYSCEF Doc No. 7, Exhibit 6 to the Verified Complaint.

21. Resolution 2024-50 did not contain an intention to enact and implement any specific remedy for a potential violation of Title 2, of Article 17 of the Election Law. *Id.*

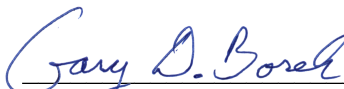
22. Resolution 2024-50 did not contain the steps Defendant will undertake to facilitate approval and implementation of any specific remedy. *Id.*

33. Resolution 2024-50 did not contain a schedule for enacting and implementing any specified remedy. *Id.*

23. On March 8, 2024, Defendant adopted Resolution 2024-138. NYSCEF Doc No. 22, Exhibit 21 to the Verified Complaint.

24. Under recent amendments to Town Law § 80, even-year elections for the Cheektowaga Town Board will not occur until November 2028 for three of the six council seats, and November 2030 for the remaining three seats. NYSCEF Doc No. 1, Verified Complaint, ¶ 81.

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WORD COUNT CERTIFICATION

I, Gary D. Borek, hereby certify that this Statement of Material Facts contains 1,069 words, excluding the caption, table of contents, table of authorities, and signature block, and complies with § 202.8-b(a) of Uniform Rules for New York State Trial Courts.

Pursuant to § 202.8-b(c) of Uniform Rules for New York State Trial Courts, I have relied on the word count of the word-processing system used to prepare this document.

Dated: May 20, 2024

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