

BY CERTIFIED MAIL NO: 7020 0090 0001 8532 9190

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Town Clerk  
Town of Cheektowaga  
3301 Broadway  
1st Floor Room 101  
Cheektowaga, New York 14227

Dear Town Clerk, Council Members, and Supervisor:

I, Ken Young, am hereby submitting this letter as a “NYVRA notification letter” in accordance with NY Election Law § 17-206(7) demanding that the town board:

1. Approve a ward system of voting and a 2-term limit law for town board members; and
2. Submit the town board approved ward system and 2-term limit law to the NYS Attorney General’s civil rights bureau for approval and enactment (because the town board is without authority to enact the ward system and 2-term limit on its own, but the civil rights bureau has the legal authority to do so pursuant to NY election Law 17-206(7)(c)(5)).

You can contact either me or my attorney, Gary D. Borek, to respond to this request.

**Factual Basis:**

In November of 2023 Ken Young, a black resident of the town of Cheektowaga, was one of six candidates for three seats on the town board. Mr. Young came in last in the total at large voting. The attached Exhibit 1 shows that:

1. Mr. Young was the top vote getter in the election districts located in the area of the town in which most Black residents reside, whether the sample area is restricted to the election districts north of Broadway and west of Harlem Rd or is expanded to include the election districts north of Broadway and west of Union Road.
2. Mr. Young received the least votes in the non-Black neighborhoods in the town.
3. The reduction of votes in non-Black neighborhoods was so great that Mr, Young went from being the top vote-getter in Black neighborhoods to being the lowest vote-getter overall.

If the town of Cheektowaga had used a ward system of voting instead of an at large method of election, then Mr. Young would have been elected to the town board as a representative of the North-West section of the town (whether that section was just west of Harlem road or was expanded to include the are west of Union Road

**Substantive Law:**

On July 1, 2023 the New York State John R. Lewis Voting Rights Act became effective. *See* Laws 2022, ch 226, §§ 1 and 5. Section 17-200 of the NYS Election Law states that the purpose of the voting rights act is to:

1. Encourage participation in the elective franchise by all eligible voters to the maximum extent; and
2. Ensure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York, and especially to exercise the elective franchise.

The act applies to all political subdivisions in New York State. *See* NY Elec §17-204(4).

Section 17-206(2)(a) of the Election Law prohibits the use of “any method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution.”

Section 17-206(2)(b)(i) provides that a violation of the act shall be established by a showing that a political subdivision used an at large method of election and either:

- (A) voting patterns of members of the protected class within the political subdivision are racially polarized; or
- (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired;

“Protected class” means a class of eligible voters who are members of a race, color, or language-minority group. *See* NY Elec §17-204(5). “Racially polarized voting” means voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate. *See* NY Elec §17-204(5).

The statistics depicted on Exhibits 1 and 2 leave no doubt that the “voting patterns of members of the protected class within the political subdivision are racially polarized” and that the ability of black residents are unable to elect candidates of their choice under the existing at-large system.

It is not necessary to show discriminatory intent: “evidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class is not required” *See* NY Election Law § 17-206(2)(c)(v).

Subsection (c) of NY Election Law § 17-206(2) contains a non-exclusive list of evidentiary rules for degerming if a violation of Section 17-206(2) has occurred: “For the purposes of demonstrating that a violation of paragraph (a) of this subdivision has occurred, evidence shall be weighed and considered as follows:

- (i) elections conducted prior to the filing of an action pursuant to this subdivision are more probative than elections conducted after the filing of the action;
- (ii) evidence concerning elections for members of the governing body of the political subdivision are more probative than evidence concerning other elections;
- (iii) statistical evidence is more probative than non-statistical evidence;
- (iv) where there is evidence that more than one protected class of eligible voters are politically cohesive in the political subdivision, members of each of those protected classes may be combined;
- (v) evidence concerning the intent on the part of the voters, elected officials, or the political subdivision to discriminate against a protected class is not required;
- (vi) evidence that voting patterns and election outcomes could be explained by factors other than racially polarized voting, including but not limited to partisanship, shall not be considered;
- (vii) evidence that sub-groups within a protected class have different voting patterns shall not be considered;
- (viii) evidence concerning whether members of a protected class are geographically compact or concentrated shall not be considered, but may be a factor in determining an appropriate remedy; and
- (ix) evidence concerning projected changes in population or demographics shall not be considered, but may be a factor, in determining an appropriate remedy.

The statistics presented in attached Exhibit 1 and Exhibit 2 leave no doubt that voting patterns of black residents of the town are racially polarized. Thus, there is an incontrovertible violation of 17-206(2)(b)(i) that can only be remedied by changing from the at-large system to a ward system of voting, and to expand the opportunity for minority candidates by adopting term limits.

### **Procedural Aspects:**

Any “aggrieved persons or members of a protected class”, organizations whose missions are to protect voting rights, or the NYS Attorney General can commence a lawsuit to enforce the provisions of the John R. Lewis Voting Rights Act. See NY Election Law § 17-206(4).

However, before an individual or organization can commence a lawsuit, they have to follow the steps outlined in section 17-206(7) as follows:

1. A prospective plaintiff shall send by certified mail a written notice to the clerk of the political subdivision, ... asserting that the political subdivision may be in violation of this title. This written notice shall be referred to as a “NYVRA notification letter” in this title.
2. A prospective plaintiff shall not commence a judicial action against a political subdivision under this section within fifty days of sending to the political subdivision a NYVRA notification letter.
3. Within fifty days of mailing of a NYVRA notification letter, the governing body of a political subdivision may pass a resolution affirming:
  - i. the political subdivision’s intention to enact and implement a remedy for a potential violation of this title;
  - ii. specific steps the political subdivision will undertake to facilitate approval and implementation of such a remedy; and
  - iii. a schedule for enacting and implementing such a remedy. Such a resolution shall be referred to as a “NYVRA resolution” in this title.
4. The political subdivision shall have ninety days after such passage to enact and implement such remedy, during which a prospective plaintiff shall not commence an action to enforce this section against the political subdivision.
5. However, if the governing body of a political subdivision lacks the authority under this title or applicable state law or local laws to enact or implement a remedy identified in a NYVRA resolution, then the governing body of the political subdivision shall undertake the steps enumerated in the following provisions:
  - i. The governing body of the political subdivision may approve a proposed remedy that complies with this title and submit such a proposed remedy to the civil rights bureau. Such a submission shall be referred to as a “NYVRA proposal” in this title.

- ii. Prior to passing a NYVRA proposal, the political subdivision shall hold at least one public hearing, at which the public shall be invited to provide input regarding the NYVRA proposal.
  - iii. Within forty-five days of receipt of a NYVRA proposal, the civil rights bureau shall grant or deny approval of the NYVRA proposal.
- 6. If the civil rights bureau grants approval, the NYVRA proposal shall be enacted and implemented immediately, **notwithstanding any other provision of law, including any other state or local law.**
- 7. A political subdivision that has passed a NYVRA resolution may enter into an agreement with the prospective plaintiff providing that such prospective plaintiff shall not commence an action pursuant to this section against the political subdivision for an additional ninety days.
  - i. Such agreement shall include a requirement that either the political subdivision shall enact and implement a remedy that complies with this title or the political subdivision shall pass a NYVRA proposal and submit it to the civil rights bureau.
- 8. If the political subdivision does not pass an affirming resolution, then the prospective plaintiff may commence an action against the political subdivision. The court can impose a remedy, including, but not limited to, the following:
  - i. a district-based method of election;
  - ii. an alternative method of election;
  - iii. new or revised districting or redistricting plans;
  - iv. elimination of staggered elections so that all members of the governing body are elected on the same date;
  - v. reasonably increasing the size of the governing body;
  - vi. moving the dates of regular elections to be concurrent with the primary or general election dates for state, county, or city office as established in section eight of article three or section eight of article thirteen of the constitution, unless the budget in such political subdivision is subject to direct voter approval pursuant to part two of article five or article forty-one of the education law;
  - vii. transferring authority for conducting the political subdivision's elections to the board of elections for the county in which the political subdivision is located;
  - viii. additional voting hours or days;
  - ix. additional polling locations;

- x. additional means of voting such as voting by mail;
  - xi. ordering of special elections;
  - xii. requiring expanded opportunities for voter registration;
  - xiii. requiring additional voter education;
  - xiv. modifying the election calendar;
  - xv. the restoration or addition of persons to registration lists; or
  - xvi. retaining jurisdiction for such period of time on a given matter as the court may deem appropriate, during which no redistricting plan shall be enforced unless and until the court finds that such plan does not have the purpose of diluting the right to vote on the basis of protected class membership, or in contravention of the voting guarantees set forth in this title, except that the court's finding shall not bar a subsequent action to enjoin enforcement of such redistricting plan.
9. The court shall consider proposed remedies by any parties and interested non-parties, but shall not provide deference or priority to a proposed remedy offered by the political subdivision.
10. The court ***shall have the power*** to require a political subdivision to implement remedies that are inconsistent with any other provision of law where such inconsistent provision of law would preclude the court from ordering an otherwise appropriate remedy in such matter.
11. In any action to enforce any provision of this title, the court shall allow the prevailing plaintiff party, other than the state or political subdivision thereof, a reasonable attorneys' fee, litigation expenses including, but not limited to, expert witness fees and expenses as part of the costs.
12. A plaintiff will be deemed to have prevailed when, as a result of litigation, the defendant party yields much or all of the relief sought in the suit.
13. Prevailing defendant parties shall not recover any costs, unless the court finds the action to be frivolous, unreasonable, or without foundation.

Dated: 12-12-2023

/s/ Ken Young  
Ken Young  
33 Victoria Blvd  
Cheektowaga, NY 14225

| VOTES FOR DISTRICTS WEST OF HARLEM AND NORTH OF BROADWAY (Code "NWHarlem") |          |          |        |       |          |       |          |          |
|--|----------|----------|--------|-------|----------|-------|----------|----------|
| District   | CODE     | Kaminski | Hammer | Young | Thompson | Ebner | Bakowski | WRITE-IN |
| 15   | NWHarlem | 230      | 244    | 271   | 73       | 64    | 68       | 2        |
| 16   | NWHarlem | 163      | 161    | 177   | 57       | 51    | 55       | 1        |
| 31   | NWHarlem | 91       | 93     | 107   | 36       | 31    | 30       | 0        |
| 33   | NWHarlem | 123      | 116    | 178   | 58       | 56    | 55       | 0        |
| 34   | NWHarlem | 88       | 85     | 102   | 57       | 47    | 55       | 0        |
| 42   | NWHarlem | 75       | 75     | 78    | 21       | 14    | 24       | 3        |
| 44   | NWHarlem | 74       | 76     | 79    | 77       | 69    | 80       | 2        |
| 45   | NWHarlem | 82       | 74     | 93    | 37       | 39    | 43       | 0        |
| 71   | NWHarlem | 100      | 108    | 108   | 68       | 57    | 56       | 0        |
|  |          |          |        |       |          |       |          |          |
|  |          | Kaminski | Hammer | Young | Thompson | Ebner | Bakowski | WRITE-IN |
| W of Harlem, N of Broadway   |          | 1026     | 1032   | 1193  | 484      | 428   | 466      | 8        |
| Totals for Remainder   |          | 7325     | 7118   | 6630  | 7874     | 7402  | 8318     | 66       |
| Overall Totals   |          | 8351     | 8150   | 7823  | 8358     | 7830  | 8784     | 74       |
|  |          |          |        |       |          |       |          |          |
|  |          |          |        |       |          |       |          |          |
| VOTES FOR DISTRICTS WEST OF UNION AND NORTH OF BROADWAY (Code "NWUnion")   |          |          |        |       |          |       |          |          |
| District   | CODE     | Kaminski | Hammer | Young | Thompson | Ebner | Bakowski | WRITE-IN |
| 12   | NWUnion  | 185      | 186    | 186   | 138      | 120   | 132      | 0        |
| 13   | NWUnion  | 162      | 163    | 159   | 119      | 115   | 127      | 0        |
| 14   | NWUnion  | 103      | 101    | 102   | 101      | 94    | 100      | 0        |
| 15   | NWUnion  | 230      | 244    | 271   | 73       | 64    | 68       | 2        |
| 16   | NWUnion  | 163      | 161    | 177   | 57       | 51    | 55       | 1        |
| 20   | NWUnion  | 97       | 98     | 100   | 78       | 73    | 76       | 0        |
| 21   | NWUnion  | 124      | 122    | 110   | 92       | 88    | 98       | 0        |
| 27   | NWUnion  | 30       | 27     | 31    | 25       | 24    | 26       | 0        |
| 29   | NWUnion  | 56       | 58     | 54    | 42       | 35    | 37       | 0        |
| 30   | NWUnion  | 32       | 29     | 34    | 35       | 33    | 35       | 1        |
| 31   | NWUnion  | 91       | 93     | 107   | 36       | 31    | 30       | 0        |
| 33   | NWUnion  | 123      | 116    | 178   | 58       | 56    | 55       | 0        |
| 34   | NWUnion  | 88       | 85     | 102   | 57       | 47    | 55       | 0        |
| 36   | NWUnion  | 58       | 52     | 53    | 49       | 48    | 54       | 0        |
| 37   | NWUnion  | 64       | 62     | 61    | 78       | 72    | 79       | 0        |
| 40   | NWUnion  | 122      | 121    | 114   | 100      | 100   | 114      | 1        |
| 42   | NWUnion  | 75       | 75     | 78    | 21       | 14    | 24       | 3        |
| 44   | NWUnion  | 74       | 76     | 79    | 77       | 69    | 80       | 2        |
| 45   | NWUnion  | 82       | 74     | 93    | 37       | 39    | 43       | 0        |
| 60   | NWUnion  | 52       | 52     | 48    | 63       | 60    | 67       | 1        |
| 69   | NWUnion  | 64       | 63     | 64    | 38       | 43    | 43       | 0        |
| 71   | NWUnion  | 100      | 108    | 108   | 68       | 57    | 56       | 0        |
|  |          |          |        |       |          |       |          |          |
|  |          | Kaminski | Hammer | Young | Thompson | Ebner | Bakowski | WRITE-IN |
| W of Union, N of Broadway  |          | 2175     | 2166   | 2309  | 1442     | 1333  | 1454     | 11       |
| Totals for Remainder   |          | 6176     | 5984   | 5514  | 6916     | 6497  | 7330     | 63       |
| Overall Totals   |          | 8351     | 8150   | 7823  | 8358     | 7830  | 8784     | 74       |

VOTES FOR DISTRICTS WEST OF HARLEM AND NORTH OF BROADWAY (Code "NWHarlem")

| District                   | CODE     | Kaminski | Hammer | Young | Thompson | Ebner | Bakowski | WRITE-IN |
|----------------------------|----------|----------|--------|-------|----------|-------|----------|----------|
| 15                         | NWHarlem | 230      | 244    | 271   | 73       | 64    | 68       | 2        |
| 16                         | NWHarlem | 163      | 161    | 177   | 57       | 51    | 55       | 1        |
| 31                         | NWHarlem | 91       | 93     | 107   | 36       | 31    | 30       | 0        |
| 33                         | NWHarlem | 123      | 116    | 178   | 58       | 56    | 55       | 0        |
| 34                         | NWHarlem | 88       | 85     | 102   | 57       | 47    | 55       | 0        |
| 42                         | NWHarlem | 75       | 75     | 78    | 21       | 14    | 24       | 3        |
| 44                         | NWHarlem | 74       | 76     | 79    | 77       | 69    | 80       | 2        |
| 45                         | NWHarlem | 82       | 74     | 93    | 37       | 39    | 43       | 0        |
| 71                         | NWHarlem | 100      | 108    | 108   | 68       | 57    | 56       | 0        |
|                            |          | Kaminski | Hammer | Young | Thompson | Ebner | Bakowski | WRITE-IN |
| W of Harlem, N of Broadway |          | 1026     | 1032   | 1193  | 484      | 428   | 466      | 8        |
| Totals for Remainder       |          | 7325     | 7118   | 6630  | 7874     | 7402  | 8318     | 66       |
| Overall Totals             |          | 8351     | 8150   | 7823  | 8358     | 7830  | 8784     | 74       |





