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MEMORANDUM

February 14. 2024

To: Hodgson Russ

From: Jeffrey M. Wice

Subject: Cheektowaga NYS Voting Rights Challenge

Overview:

The John R. Lewis New York State Voting Rights Act allows for a local government to be challenged over certain vote dilution allegations, including those enacted by the locality before the state law's effective date. The new state law expands the "causes of action" that can be brought beyond those covered by the federal Voting Rights Act.

The new law requires a challenging party to demonstrate one of the "causes of action" described in more detail below. In the current situation facing the Town of Cheektowaga (the "Town"), the challengers argue that Black voters are not able to elect their preferred candidates under the Town's at-large town board election system[1]. As Black and other minority residents now comprise approximately 19 percent of the Town's population, the newly enacted state law requires a remedy where it can be demonstrated that there is racially polarized voting or that minority voters can demonstrate other factors that dilute their voting power. The state law does not provide further definition.

As a point of background, in 1982, the U.S. Congress amended the federal Voting Rights Act of 1965 to require a challenger to demonstrate that the "effects" of an electoral law dilutes minority voting strength. The 1982 change no longer required that a challenger demonstrate "intentional discrimination" in its law. In essence, despite the fact that a local government may have established an at-large town board decades ago, quite possibly before the locality had many minority voters, the federal law now requires that the "effects" or "results test" requires the town to consider a new way of electing the town board.

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[1]   An at-large voting system permits voters to cast their ballots for all candidates in the jurisdiction. To address dilutive at-large electoral systems, single-member districts can be created that provide minority voters with an opportunity to elect their preferred candidate. These districts must also satisfy all other relevant federal and state laws.

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Even though the Town has never had any allegations of racial discrimination or vote dilution in the past related to its at-large voting system, the newly enacted state law permits an action against the Town due to the level of racially polarized, essentially a result of the decades old at-large voting system.

Dr. Lisa Handley has analyzed all recent contested town elections using long-accepted statistical methods approved by numerous federal and state courts over the several decades since the U.S. Supreme Court developed standards for federal law challenges. Dr. Handley's report is provided as an attachment to this memorandum. Her report explains her methodologies and conclusions.

In 2022, New York state developed and enacted the new state law to further expand federal protections at the state level to hold local governments more accountable for vote dilution situations (i.e., when an at-large system that has been in place impacts the voting preference of a minority group), even if the local government itself is not at fault for continuing to implement old laws that, over time, lead to vote dilution.

The following sections of the state election law in Title 2, Section 17-206 apply to electoral bodies:

Vote Dilution Rights of Action

A right of action against vote dilution is created by section 17-206(2) of the law. Vote dilution can result when voting practices, elected legislative bodies, or redistricting plans minimize or cancel out a minority group's voting strength. No board of elections or political subdivision shall use any method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice or to influence the outcome of elections, as a result of vote dilution.

Violations are established based on the specific voting system.

- 17-206: prohibits any voting law that results in a denial of the right to vote.

- 17-206(2)(b)(i): An at-large method means a method of electing members to the governing body where all of the voters of the entire political subdivision elect each of the members.

  - A violation is established if a political subdivision uses an at-large method of election and it is shown that 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 outcomes of elections is impaired.

According to 17-206(2)(c), to demonstrate that a violation has occurred, evidence shall be weighed and considered:

- Elections conducted prior to the filing of an action are more probative than elections conducted after the filing of the action;
- Evidence concerning elections for members of the governing body of the political subdivision are more probative than evidence concerning other elections;

- Statistical evidence is more probative than non-statistical evidence;
- 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;
- 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;
- Evidence that voting patterns and election outcomes could not be explained by factors other than racially polarized voting, including but not limited to partisanship, shall not be considered;
- Evidence concerning whether members of a protected class are geographically compact or concentrated shall not be considered, but may be a factor in determining the appropriate remedy; and
- Evidence concerning projected changes in population or demographics shall not be considered, but may be a factor in determining the appropriate remedy.

According to 17-206(3), under the totality of the circumstances, the following factors *may* be considered:

- (a) the history of discrimination in the political subdivision, geographic region, or the state;
- (b) the extent to which members of the protected class have been elected to office in the political subdivision;
- (c) the use of any voting law or procedure that may enhance the dilutive effects of the current elective scheme;
- (d) the denial of access of voters or candidates of the protected group to the ballot;
- (e) the extent to which members of the protected groups contribute to political campaigns at lower rates;
- (f) the extent to which members of the protected class vote at lower rates;
- (g) the extent to which members of the protective class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, and environmental protection;
- (h) the extent to which members of the protected class are disadvantaged in other areas which might hinder their ability to participate in the political process;
- (i) the use of overt or subtle racial appeals in political campaigns;
- (j) a significant lack of response by political officials to the needs of the protected class; and
- (k) whether the political subdivision has a compelling justification for the particular adoption.

No one factor is dispositive or necessary to establish a violation. Evidence of these factors concerning the state, private actors, or other political subdivisions may be considered but is less relevant than that concerning the subdivision itself.

According to 17-206(4), any person who was negatively impacted, any organization whose membership includes or is likely to include those negatively impacted, any organization whose mission would be frustrated by a violation of this law, any organization that would expend resources in order to fulfill its mission as a result of a violation of this law, or the attorney general may file an action described above.

Court Remedies for Vote Dilution Violations

According to 17-206(5), the court may institute a remedy upon a finding of a violation. Remedies for a violation may include but are not limited to a district-based method of election, an alternative method of election, **new or revised districting or redistricting plans**, elimination of staggered elections, increasing the size of the governing body, moving the dates of election to concurrent with the primary or general election dates for the state, county or, city office, transferring authority for conducting political subdivision's elections to the board of elections for the county in which the political subdivision is located, additional voting hours or days, additional polling locations, additional means of voting such as by mail, ordering of special elections, requiring expanded opportunities for voter registration, requiring additional voter education, modifying the election calendar, the restoration or addition of persons to registration lists, or 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 the law. The court can only adopt a remedy that will not diminish the ability of minority groups to participate in the election or elect their candidates of choice.

Procedural Guidelines for Future Redistricting Plans

17-206(6) outlines procedures for implementing new or revised districting or redistricting plans. Before drawing a draft plan, the political subdivision must hold at least two public hearings over a period of no more than 30 days. The political subdivision shall publish at least one draft plan. The political subdivision shall also hold at least two additional hearings over a period of no more than 45 days to allow the public to provide input regarding the content of the draft plan.

Cheektowaga Analysis

Based on the analysis conducted by Dr. Handley, recent voting patterns demonstrate racially polarized voting in the township, especially in 2021 and in the most recent elections. Before 2021, even when a contest was racially polarized, Black preferred candidates usually prevailed. Since 2021, voting in town elections (as well as county and statewide elections) has been racially polarized. and Black-preferred candidates do not always win. In 2023, the only Black candidate supported by Black voters was defeated in a contest demonstrating racially polarized voting.

These voting patterns make it difficult to make a hard and fast recommendation. There is no precedent to guide the Town. 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.

The federal Voting Rights Act holds local governments to a different standard. Under federal law, when jurisdictions are found to dilute minority voting strength according to federal tests, they are

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required to create an effective minority district with at least a 50% minority voting age population. The state law has no similar requirement and requires the creation of a minority-based district (or alternative system) after a violation has been established. Such a district can include one or more protected group of minority voters (if the groups vote cohesively, that is, for the same candidates).

The state law is new and there are only two other actions pending as a result of alleged state law vote dilution violations. Both are pending in state courts (in Westchester and Nassau counties).

The Town should proceed with public hearings to consider testimony from residents on this issue. In addition, the town may want to develop a remedial plan for the Town Board to consider in light of the findings of recent racial bloc voting. The challengers can bring a costly and time-consuming action in State Supreme Court unless a mutually agreed upon solution is reached.

Voting Patterns by Race in Recent Cheektowaga Elections
Dr. Lisa Handley

I.   Scope of Project

Because the voting patterns of minority and White voters are relevant to a claim of minority vote dilution under the NY John Lewis Voting Rights Act, I was retained to conduct an analysis of voting patterns by race in recent elections in the Town of Cheektowaga to determine if voting is racially polarized and if the candidates of choice of Black voters are usually defeated. The following describes the data and statistical techniques I used to conduct this analysis, reports the estimates of the percentage of Black and White voters who supported each of the candidates in the election contests I analyzed, and provides my conclusions regarding racial polarization in each of these election contests.

II.   Analyzing Voting Patterns by Race/Ethnicity

An analysis of voting patterns by race is needed to determine if voting is racially polarized. The results of the analysis indicate whether the minority group is politically cohesive in support of their preferred candidates and whether White voters are voting sufficiently as a bloc to usually defeat the candidates preferred by minority voters. The voting patterns of White and minority voters must be estimated using statistical techniques because direct information regarding the race of the voters is not, of course, available on the ballots cast.

Database To carry out an analysis of voting patterns by race, an aggregate level database must be constructed employing election precincts (referred to as election districts, or EDs, in New York) as the units of observation. Information relating to the demographic composition of these precincts and the election results in these precincts is collected, merged and statistically analyzed to determine if there is a relationship between the demographic composition and support for specific candidates across the precincts.

In New York – a state that does not collect voter registration or turnout by race – voting age population as supplied by the decennial census is used to denote the demographic composition of the precincts. I obtained the voting age population by race/ethnicity according to the 2020 census for the precincts in the Town of Cheektowaga from the New York State Legislative Task Force on

Demographic Research and Reapportionment (LATFOR) website.[1] The precinct level results for all of the election contests analyzed were downloaded from the Erie County Board of Elections website.[2]

Racial/Ethnic groups analyzed The racial/ethnic composition of the Town of Cheektowaga, according to the U.S. Census Bureau, is:

Racial/Ethnic Group	Percent of Total Population
Non-Hispanic White	77.0
Black (single race)	12.0
Hispanic	4.3
Asian (single race)	2.8

Because the Hispanic and Asian population is small, reliable estimates of voting patterns for these two protected groups could not be produced.[3] Estimates of the percentages of Black and non-Hispanic White voters supporting the candidates competing in recent Cheektowaga were derived and are listed in the summary tables found in Appendices B – E, attached to this report.

Standard Statistical Techniques Several statistical techniques have been developed over time to estimate the candidates supported by White voters and by the voters of various minority groups. For my analysis of voting patterns in Cheektowaga, I used the four standard, court-accepted statistical techniques to derive estimates of the percentage of Black and non-Hispanic White voters supporting each of the candidates: ecological inference rxc (column labeled "EI rxc" in the summary tables), King's EI (column labeled "EI 2x2" in the summary tables), ecological regression (column labeled "ER" in the summary tables), and homogeneous precinct

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[1] https://www.latfor.state.ny.us/.

[2] https://elections.erie.gov/.

[3] The U.S. Department of Justice and the courts have recognized four minority groups as protected under the Voting Rights Act: Black voters, Hispanic voters, Asian voters, and Native American and Alaska Native voters.

analysis (columned labeled "HP" in the summary tables).[4] These techniques are described in more detail the first appendix (Appendix A) to this report.

Elections examined   I analyzed all recent Cheektowaga general elections for township offices:[5] supervisor, councilmember, town clerk, and town justice. Because so few of these elections included Black candidates,[6] I also analyzed recent countywide and statewide general elections that included Black candidates. However, in the countywide and statewide elections, I examined the voting patterns of only those voters that resided in the Town of Cheektowaga.

In addition to these general election contests, I also analyzed all recent Cheektowaga Democratic primaries that included Black candidates. Republican primaries were not examined because the overwhelming majority of Black voters who participate in primaries cast their ballots in Democratic rather than Republican primaries. As a consequence, Democratic primaries are far more probative than Republican primaries in ascertaining the candidates preferred by Black voters.[7] Because there was only one recent Cheektowaga Democratic primary that included a Black candidate, I also examined the voting patterns of Cheektowaga voters in recent countywide and statewide Democratic primaries that included Black candidates.

III.   Voting Patterns in Recent Cheektowaga Town Elections

The summary tables found in Appendices B – E at the end of this report provide the estimates of the percentages of Black and White voters who voted for each of the candidates in the 15 township general elections (Appendix B) and the one Democratic primary (Appendix C) analyzed, as well as the eight countywide and statewide general elections (Appendix D) and

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[4] Homogeneous precinct (HP) estimates are only possible for White voters – there are no homogenous Black precincts, that is, precincts with Black voting age populations over 90%.

[5] I define "recent" as elections that have been conducted since 2015. The reason for going back in time only until 2015 is that the demographic data I have relates to the 2020 census. Elections earlier than 2015 would require 2010 census data for all of the precincts in the Town of Cheektowaga.

[6] The courts have indicated that elections that include minority candidates are more probative than contests in which all of the candidates are White in determining if voting is racially polarized and if the candidates of choice of Black voters are usually defeated. This is because it is not sufficient for minority voters to be able to elect their candidates of choice only if these candidates are White.

[7] In addition, producing reliable estimates for Black voters in Republican primaries would not have been statistically possible.

Democratic primaries (Appendix E) analyzed. This section provides a description of voting patterns in the town elections in the Town of Cheektowaga.

2023 General Election The 2023 race for *Councilmember* (in a "vote for three" election contest) included two Black candidates: Kenneth Young (Democrat) and Vernon Thompson (Republican, Conservative), as well as four White candidates: Gerald Kaminski and Linda Hammer (Democrats), and Eileen Ebner and Barbara Bakowski (Republicans, Conservatives). In this racially polarized contest,[8] Black voters supported the three Democrats competing, with Young the clear first choice among these voters.[9] White voters, on the other hand, supported the three Republicans running for the office, including Thompson. Two of the three candidates supported by White voters won a seat: Thompson and Bakowski. Only one of the candidates supported by Black voters won a seat – the White candidate that received more support from White voters than the other Democratic candidates, Kaminski. The candidate most strongly favored by Black voters, Young, did not win a seat.

Two candidates competed for S*upervisor* in this election: Brian Nowak (Democrat, Working Families) and Michael Jasinski (Republican, Conservative). Voting was racially polarized, with Black voters strongly supporting Nowak and a majority of White voters favoring Jasinski. The candidate of choice of Black voters, Nowak, won the contest by 53 votes. The same pattern is found in the race for *Superintendent of Highways*: Black voters strongly supported Richard Rusiniak (Democrat) and White voters cast a majority of their votes for Darryl Stachura (Republican, Conservative). Rusiniak won the seat with 51.6% of the vote. The offices of *Town Clerk* and *Town Justice* were uncontested in 2023.

2022 General Election The 2022 general election included a contest for the Cheektowaga *Town Justice*. Two candidates competed: Jennifer Runfola (Democrat, Working Families) and John Wanat (Republican, Conservative). Voting was racially polarized, with a strong majority of

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[8] A contest is racially polarized if Black and White voters support different candidates. More specifically, if Black voters considered alone would have elected a different candidate(s) than White voters considered alone, the election contest is polarized.

[9] According to all three of the estimates, the top choice of Black voters was clearly Kenneth Young, He garnered the following percentage of the total votes cast by Black voters: 35.8% according to the EI rxc estimate, 41.2% according to the ER estimate, and 44.0% according to the EI 2x2 estimate. While the estimates vary somewhat because they are derived using different statistical techniques, they all indicate that Young was the candidate most favored by Black voters. (The estimates produced via EI rxc are usually considered the most accurate by experts who conduct this type of statistical analysis regularly.)

Black voters supporting Runfola, and a majority of White voters supporting Wanat. Wanat won the seat with 50.9% of the vote.

2021 General Election Seats for three *Councilmembers* were contested in this general election. The three Democrats running were Stanley Kazowski, Brian Nowak, and Brian Pilarski.[10] The three Republicans (also endorsed by the Conservative Party) competing were Michael Jasinski, Vernon Thompson, and Eileen Ebner. White voters supported the three Republicans; Black voters supported the three Democrats, especially Nowak. Two Democrats, Nowak and Pilarski, and a Republican, Jasinski, won the three seats.

2019 General Election Four of the five contests for town office in the 2019 election were not racially polarized – Black and White voters supported the same candidate. This includes the contested *Councilmember* seat,[11] in which Black and White voters both strongly supported Richard Rusiniak, a Democrat, over the Green candidate running, Carol Przybylack. Black and White voters also supported Diane Benczkowski (Democrat, Working Families) over Scott Rybczynski (Republican) for *Supervisor*; Kimberly Burst (Democrat, Green) over Margaret Brezowski (Conservative) for *Town Clerk*; and Mark Wegner (Democrat, Conservative) over Dean Szymkowiak (Working Families) and Michael Anello (Green) for *Superintendent of Highways*. The only polarized contest was the race for *Town Justice*. Black voters strongly favored David Stevens (Democrat, Working Families, Green, Independent) while a majority of White voters supported Paul Piotrowski (Republican, Conservative). Stevens won with 51.3% of the vote.

2017 General Election Eight candidates competed for the three open seats in this *Councilmember* contest. Voting was not polarized: Black and White voters both supported the three Democrats running: Brian Nowak (Democrat, Working Families), James Rogowski (Democrat, Working Families, Conservative), and Timothy Meyers (Democrat, Conservative) and these three candidates easily won.

2016 General Election In this election, a single seat for *Councilmember* was contested because of a vacancy. This contest was racially polarized: Black voters strongly supported Alice Magierski (Democrat) while a majority or close to a majority of White voters supported one of her

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[10] Nowak and Pilarski were also endorsed by Working Families.

[11] There were two councilmanic general elections in 2019. The "vote for one" contest was analyzed because it was contested. The "vote for three" four- year seats election was uncontested – three Democratics ran for the three seats.

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opponents, Patrick Delaney (Republican, Conservative, Independent). The candidate preferred by Black voters, Magierski, won the seat with 50.3% of the vote.

2015 General Election None of the three contested contests for town office in the 2015 general election were racially polarized. In the race for *Councilmember*, Black and White voters supported the three Democrats who won: Linda Hammer (Democrat, Working Families, Women's Equity), Christine Adamczyk, and Gerald Kaminski. This contest included a Black candidate, Kenneth Young (endorsed by Working Families) who was the last choice of both Black and White voters in this nine candidate contest. However, Young received strong support from Black voters in the Democratic primary (see "2015 Democratic Primary" below). Black and White voters both supported the Democratic candidate in the other two contests: Vickie Dankowski (Democrat, Working Families) for *Town Clerk*, and Mark Wegner (Democrat, Conservative, Independent) for *Superintendent of Highways*.[12] The Democratic candidates won all of the contested seats.

2015 Democratic Primary There has only been one recent Democratic primary that included a Black candidate, the *Councilmember* primary in 2015. The results of my analysis of this election contest can be found in Appendix C. This seven candidate election included Black candidate Kenneth Young, who was the clear first choice of Black voters in this "vote for three" primary. The other two candidates supported by Black voters were Christine Adamczyk and Steven Speycel. The top three choices of White voters were Adamczyk, Gerald Kaminski, and Linda Hammer. Kenneth Young was the last choice of White voters. The three winners of the Democratic primary (and, ultimately, the general election) were Adamczyk, Kaminsky, and Hammer.

Summary of Recent Town Elections Table 1, below, summarizes the results of the recent townwide general elections analyzed. The results of the analysis has been organized beginning with 2015 and ending with the most recent election (2023) to illustrate the pattern found: White voters have increasingly begun to support Republican candidates while Black voters continue to strongly support Democratic candidates. This has led to an increasing number of racially polarized election contests. But until very recently, the candidates of choice of Black voters have been able to prevail even when the contests were racially polarized. This was not true, however, in the racially polarized 2022 election for town justice and the racially polarized 2023 town council race.

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[12] The offices of Supervisor and Town Justice were uncontested in the 2015 general election.

The most probative contests in a NYVRA claim are the elections for the office at issue[13] – in in this instance, is the councilmember race. The most recent council contest, in 2023, included a Black candidate, Kenneth Young, who was the clear first choice of Black voters. He was the last choice of White voters, however, in this six candidate race and did not win a seat on the town council. Young was also the only Black candidate to compete in a recent Democratic primary for town office – the race for the Democratic nomination in 2015. Despite strong support from Black voters, he was defeated in this primary.

Table 1: Summary of General Elections Results for Town Office in Cheektowaga

Election Year	Number of contested seats (total number of contests)	Number of seats in which Black and White voters support same candidate: no polarization	Number of seats in which Black and White voters support different candidates: racially polarized	Percent of contested seats for which voting was polarized	Number of seats the candidate supported by Black voters won (as a percentage of total seats)
2015	5 (3)	5	0	0%	5 (100.0%)
2016	1 (1)	0	1	100%	1 (100.0%)
2017	3 (1)	3	0	0%	3 (100%)
2019	5 (5)	4	1	20%	5 (100%)
2021	3 (1)	0	3	100%	2 (66.7%)
2022	1 (1)	0	1	100%	0 (0%)
2023	5 (3)	0	5	100%	3 (60.0%)
Total	*23 (15)*	*12 (52.2%)*	*11 (47.8%)*		*19 (82.6%)*

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[13] As stated in the New York Voting Right Act, Section 2 (c) "(ii) evidence concerning elections for members of the governing body of the political subdivision are more probative than evidence concerning other elections".

IV. Cheektowaga Voting Patterns in Recent Countywide and Statewide Elections

Because there were so few Cheektowaga town elections that included Black candidates, I also analyzed recent Erie County and New York State elections that included Black candidates and encompassed all of the Town of Cheektowaga. I examined only at the voting behavior of Cheektowaga voters in the analysis of these contests. There were three recent countywide general elections that included Black candidates – the 2017 and 2021 races for Erie County Sheriff, and the 2017 race for Erie County Comptroller. In addition, there were two New York statewide general elections that included Black candidates – the 2018 and 2022 races for Attorney General. The results of these countywide and statewide general elections can be found in Appendix D. In addition to these general election contests, I also analyzed three Democratic primaries that included Black candidates: the 2021 primary for Erie County Sheriff, and the 2018 primary contests for New York Lieutenant Governor and Attorney General.[14]

All five of the countywide and statewide general elections were racially polarized. Black voters supported the Black Democrat in each of these contests; White voters, however, supported the Republican candidates.[15] The Black candidate supported by Black voters did not carry the Town of Cheektowaga in the three odd-year county election contests (2017 and 2021) but did carry the Town of Cheektowaga in the two even-year statewide election contests (2018 and 2022).

Two of the three Democratic primaries were also racially polarized. In the 2021 primary for Erie County Sheriff, Black voters supported Kimberly Beaty, one of the two Black candidates running. White voters supported the White candidate, Brian Gould, who won the contest with 66.5% of the vote. In the 2018 race for the Democratic nomination for Attorney General, Black voters favored one of the two Black candidates running, Leecia Eve, and White voters supported Sean Patrick Malone. Malone carried the Town of Cheektowaga with 52.4% of the vote.

Voting was not polarized in the 2018 Democratic primary for New York Lieutenant Governor – Black and White voters both supported Kathy Hochul over Black candidate Jumaane Williams. Hochul carried the Town of Cheektowaga with 78.6% of the vote.

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[14] The 2022 Democratic primary for New York Governor also included a Black candidate, Jumaane Williams, but the election results for this contest were not posted on the Erie County Board of Elections website.

[15] Three of the Republican candidates in these general election contests were White, two were minorities: John Garcia in the 2021 Erie County race for Sheriff is Hispanic and Keith Wofford in the 2018 race for New York Attorney General is Black.

V.   Conclusion

Voting in the Town of Cheektowaga appears to be more racially polarized since 2021 than was the case as little as five years ago (2019). Moreover, prior to 2021, even when a contest was racially polarized, the candidates preferred by Black voters usually prevailed. Since 2021, however, all of the elections for town office (as well as all of the countywide and statewide elections analyzed) have been racially polarized. And not all of the candidates of choice of Black voters won these polarized contests. Perhaps most significantly, the only Black candidate supported by Black voters to run very recently (2023) for town council was defeated in a racially polarized election contest.

Appendix A:

Standard Statistical Techniques for Analyzing Voting Pattern by Race

The voting patterns of White and minority voters must be estimated using statistical techniques because direct information regarding the race of the voters is not, of course, available on the ballots cast. Using an aggregate level (election precinct level) database that merges demographic information with election results, a statistical analysis is conducted to determine if there is a relationship between the demographic composition of the precincts and support for specific candidates across the precincts.

Several standard statistical techniques have been developed over time to estimate vote choices by race: homogeneous precinct analysis, ecological regression, and two forms of ecological inference.[16] Two of these analytic procedures – homogeneous precinct analysis and ecological regression – were employed by the plaintiffs' expert in *Thornburg v. Gingles*,[17] have the benefit of the Supreme Court's approval in that case, and have been used in most subsequent voting rights cases. The third technique, ecological inference, was developed after *Gingles* was decided and was designed, in part, to address some of the disadvantages associated with ecological regression analysis. Ecological inference analysis has been introduced and accepted in numerous district court proceedings and is now generally accepted as the most accurate method for estimating voting patterns by race.

Homogeneous precinct (HP) analysis is the simplest technique. It involves comparing the percentage of votes received by each of the candidates in precincts that are racially homogeneous. The general practice is to label a precinct as homogeneous if at least 90 percent of the voters or the voting age population is composed of a single race. In fact, the homogeneous results reported are not estimates – they are the actual precinct results. However, because most voters do not reside in homogeneous precincts and the voters who do reside in homogeneous precincts may not be representative of voters who live in more racially diverse precincts, I refer

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[16] For a detailed explanation of homogeneous precinct analysis and ecological regression see Bernard Grofman, Lisa Handley and Richard Niemi, *Minority Representation and the Quest for Voting Equality* (Cambridge University Press, 1992). See Gary King, *A Solution to the Ecological Inference Problem* (Princeton University Press, 1997) for a more detailed explanation of ecological inference.

[17] 478 U.S. 30.

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to these percentages as estimates. Furthermore, there are no precincts with Black voting age populations of at least 90% in the Town of Cheektowaga and therefore it was not possible to produce HP estimates for this group of voters.

Ecological regression (ER) uses information from all of the precincts in the jurisdiction, not simply the homogeneous ones, to derive estimates of the voting behavior of minorities and Whites. If there is a strong linear relationship across precincts between the percentage of minorities (or Whites) and the percentage of votes cast for a given candidate, this relationship can be used to estimate the percentage of minority (or White) voters supporting the candidate.

Ecological inference (EI 2x2) was developed by Professor Gary King. This approach also uses information from all precincts but, unlike ecological regression, it does not rely on an assumption of linearity. Instead, it incorporates maximum likelihood statistics to produce estimates of voting patterns by race. In addition, it utilizes the method of bounds, which employs more of the available information from the precinct election returns than ecological regression.[18] Unlike ecological regression, which can produce percentage estimates of less than 0 or more than 100 percent, ecological inference was designed to produce only estimates that fall within the possible limits. However, EI does not guarantee that the estimates for all of the candidates add to 100 percent for each of the racial groups examined.

In conducting my analysis of voting patterns by race in recent elections in the Town of Cheektowaga, I also used a more recently developed version of ecological inference, which I have labeled "EI rxc" in the summary tables found in Appendices B – E at the end of this report. Unlike the other methods discussed, this approach permits the analysis of more than two groups simultaneously. In the summary tables I list estimates for the two groups of interest, Black and White voters, but all voters (as well as non-voters) are taken into account in the statistical analyses. More importantly, from the perspective of the data available to conduct the analysis in Cheektowaga, the analysis can be used to take into account the differences in the turnout rates of the age-eligible Black and White population. Another advantage of EI rxc is that it produces

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[18]The following is an example of how the method of bounds works: if a given precinct has 100 voters, of whom 75 are Black and 25 are White, and the Black candidate received 80 votes, then at least 55 of the Black voters voted for the Black candidate and at most all 75 did. (The method of bounds is less useful for calculating estimates for White voters, as anywhere between five of the White voters and all of the White voters could have voted for the Black candidate.)

generally accepted confidence intervals for each of the reported estimates.[19] I include the 95%

confidence intervals for each of the EI rxc estimates listed in the summary table.

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[19] The 95% confidence intervals reported in the summary table indicate that 95% of the simulated estimates produced via EI rxc fell within the range specified. The larger the confidence interval, the more uncertainty associated with the reported estimate. Factors that influence the size of the confidence interval include the number of precincts included in the analysis and the variation in the percentage of Black and White voters across the precincts in the area under investigation.

Estimates of Voting Patterns by Race in Recent Town Elections

APPENDIX B
Town of Cheektowaga: Townwide General Elections

	Party	Race	Votes	White Voters EI rxc	95% confidence interval	ER	EI 2x2	HP	Black Voters EI rxc	95% confidence interval	ER	EI 2x2
2023 General												
Supervisor												
Brian Nowak	D, WF	W	50.1	43.4	41.6, 45.7	39.9	41.9	44.0	87.8	78.4, 94.4	107.2	91.8
Michael Jasinski	R, C	W	49.9	56.6	54.3, 58.4	60.2	58.0	56.0	12.3	5.6, 21.6	-7.1	8.0
Councilmember (vote for 3)												
Gerald Kaminski	D	W	16.9	15.3	14.1, 16.5	14.2	14.7	15.5	25.1	17.0, 32.4	30.7	33.0
Linda Hammer	D	W	16.5	14.9	13.7, 16.1	13.8	14.1	15.1	25.8	18.0, 33.0	30.5	32.9
Kenneth Young	D	B	15.9	13.2	11.9, 14.4	11.4	12.0	13.8	35.8	28.0, 43.0	41.2	44.0
Vernon Thompson	R, C	B	17.0	18.9	17.9, 19.7	19.9	19.4	18.6	5.0	2.2, 8.8	0.6	2.0
Eileen Ebner	R, C	W	15.9	17.7	16.8, 18.5	19.0	18.4	17.5	4.3	1.7, 8.0	-0.6	1.4
Barbara Bakowski	R,C	W	17.8	20.1	19.1, 20.9	21.6	20.8	19.6	4.0	1.7, 7.3	-2.3	0.2
Town Clerk												
Kimberly Burst	D, C	W	uncont									
Town Justice												
David Stevens	D, R, C	W	uncont									
Superintendent of Highways												
Richard Rusiniak	D	W	51.6	45.8	43.7, 48.1	42.3	44.0	46.5	85.9	75.3, 93.5	99.6	92.0
Darryl Stachura	R, C	W	48.4	54.2	51.9, 56.3	57.6	56.1	53.5	14.1	6.5, 24.7	0.2	8.1
2022 General												
Town Justice												
Jennifer Runfola	D, WF	W	49.1	41.6	39.9, 43.8	37.5	40.0	42.5	89.9	80.8, 95.4	111.2	93.2
John Wanat	R, C	W	50.9	58.4	56.2, 60.1	62.5	60.0	57.5	10.1	4.6, 19.2	-11.2	6.9

Estimates of Voting Patterns by Race in Recent Town Elections

APPENDIX B
Town of Cheektowaga:
Townwide General Elections

	Party	Race	Votes	White Voters						Black Voters			
				El rxc	95% confidence interval	ER	EI 2x2	HP		El rxc	95% confidence interval	ER	EI 2x2
2021 General													
Councilmember (vote for 3)													
Stanley Kaznowski	D	W	15.6	13.1	11.7, 14.5	11.9	11.9	13.5		28.7	19.5, 36.6	35.5	38.5
Brian Nowak	D, WF	W	18.3	15.6	14.1, 17.0	14.0	14.3	15.7		35.6	27.3, 43.0	42.9	46.6
Brian Pilarski	D, WF	W	17.1	15.3	13.8, 16.6	14.3	14.6	15.2		25.8	17.7, 33.9	32.3	34.5
Michael Jasinski	R, C	W	18.0	20.6	19.7, 21.3	22.0	21.3	20.2		3.5	1.5, 6.5	-4.1	0.1
Vernon Thompson	R, C	B	16.4	18.7	17.8, 19.5	19.9	19.5	18.7		3.1	1.3, 6.0	-3.8	0.2
Eileen Ebner	R, C	W	14.7	16.7	15.8, 17.4	18.0	17.5	16.6		3.3	1.4, 6.3	-2.9	0.2
2019 General													
Supervisor													
Diane Benczkowski	D, WF	W	60.6	57.1	54.8, 59.7	53.6	54.2	58.0		85.7	74.2, 93.9	93.4	92.7
Scott Rybczynski	R	W	39.4	42.9	40.3, 45.2	46.4	45.7	42.0		14.3	6.1, 25.9	7.1	7.2
Councilmember (vote for 3)													
Christine Adamczyk	D	W	uncont										
Linda Hammer	D, WF	W											
Gerald Kaminski	D, C	W											
Councilmember (vote for 1)													
Richard Rusiniak	D	W	74.9	75.1	72.5, 77.7	71.3	72.3	74.1		85.5	73.9, 93.5	88.2	91.5
Carol Przybylack	Gr	W	25.1	25.0	22.3, 27.5	28.7	27.7	25.9		14.5	6.5, 26.1	12.2	8.8
Town Clerk													
Kimberly Burst	D, Gr	W	61.8	58.6	56.3, 61.3	55.4	56.5	58.5		86.5	76.5, 93.9	95.0	93.8
Margaret Brezowski	C	W	38.2	41.4	38.7, 43.7	44.6	43.5	41.5		13.5	6.2, 23.5	4.8	5.9
Town Justice													
David Stevens	D, WF, Gr, I	W	51.3	46.1	43.8, 48.9	43.8	43.6	47.7		82.9	71.4, 92.6	91.1	91.0
Paul Piotrowski	R, C	W	48.7	53.9	51.1, 56.2	56.2	56.5	52.3		17.1	7.4, 28.6	8.8	9.1

Estimates of Voting Patterns by Race in Recent Town Elections

APPENDIX B
Town of Cheektowaga: Townwide General Elections

Elections	Party	Race	Votes	White Voters					Black Voters			
				EI rxc	95% confidence interval	ER	EI 2x2	HP	EI rxc	95% confidence interval	ER	EI 2x2
Superintendent of Highways												
Mark Wegner	D, C	W	77.4	78.6	76.6, 80.6	74.5	74.3	76.7	87.8	80.1, 93.5	94.2	97.6
Dean Szymkowiak	WF	W	16.8	17.7	15.9, 19.2	18.8	20.0	18.1	5.7	2.4, 12.2	-0.1	0.1
Michael Anello	Gr	W	5.9	3.8	2.4, 5.1	5.6	4.8	5.2	6.4	2.8, 12.3	7.0	7.3
2017 General *Councilmember (vote for 3)*												
Brian Nowak	D, WF	W	18.7	16.9	15.8, 17.9	15.7	16.1	17.3	30.0	23.2, 37.7	34.0	36.7
James Rogowski	D, C, WF	W	22.2	21.6	20.5, 22.7	20.6	20.9	21.7	25.5	19.0, 31.4	28.8	30.8
Timothy Meyers	D, C	W	20.8	20.1	19.0, 21.2	18.8	19.3	19.9	27.8	19.9, 34.2	29.9	31.8
Roger Heymanowski	R, Ref	W	8.2	8.8	8.1, 9.4	9.6	9.0	9.0	3.3	1.5, 6.2	2.4	2.2
Doreen Fredrich	R, Ref	W	9.7	10.7	10.0, 11.4	11.6	11.1	10.3	3.4	1.4, 6.4	1.2	3.0
Patrick Delaney	R, Ref	W	10.3	11.3	10.6, 11.9	12.2	11.9	11.3	3.6	1.6, 6.8	1.6	0.1
Alice Magierski	C	W	8.9	9.6	8.9, 10.2	10.2	10.3	9.4	4.4	2.0, 7.7	1.3	1.6
Carol Przybylak	Gr	W	1.3	0.9	.5, 1.2	1.4	0.8	1.1	1.8	.8, 3.3	0.9	0.0
2016 General *Councilmember (vote for 1)*												
Alice Magierski	D	W	50.3	44.8	42.8, 47.0	41.1	40.8	44.5	87.2	80.2, 92.7	100.4	95.6
Patrick Delaney	R, C, Ind	W	42.3	49.3	47.3, 50.7	51.1	51.0	48.7	6.9	2.7, 12.9	-5.8	2.2
Dennis Smith	WF	W	7.4	6.0	4.6, 7.3	7.7	7.4	6.8	5.9	2.8, 10.8	5.5	5.3
2015 General *Supervisor*												
Diane Benczkowski	D, C, WF, Ir	W	uncont									

Estimates of Voting Patterns by Race in Recent Town Elections

APPENDIX B
Town of Cheektowaga: Townwide General Elections

	Party	Race	Votes	White Voters					Black Voters			
				El rxc	95% confidence interval	ER	El 2x2	HP	El rxc	95% confidence interval	ER	El 2x2
Councilmember (vote for 3)												
Linda Hammer	D, WF, W E	W	18.7	18.5	17.5, 19.3	17.8	17.9	18.1	22.3	15.6, 29.0	22.4	22.7
Christine Adamczyk	D	W	18.9	18.7	17.9, 19.7	17.8	18.1	18.2	23.8	16.7, 31.3	24.2	24.5
Gerald Kaminski	D	W	15.7	15.8	14.9, 16.7	15.2	15.3	14.9	18.4	13.3, 23.8	17.6	18.9
Jennifer Zalenski Blackhall	R, C, Ind, R	W	14.0	15.0	14.0, 15.8	15.2	15.3	15.3	8.5	4.3, 12.9	7.7	7.5
Chauncey Stewart	R, C, Ind, R	W	11.4	12.1	11.3, 12.8	12.7	12.2	12.3	5.5	2.2, 9.6	4.7	5.4
Patrick Delaney	R, Gr, Ind, F	W	11.4	11.9	11.0, 12.8	12.5	11.0	12.1	6.9	3.2, 11.2	8.4	10.8
Stanley Kaznowski	C	W	5.6	5.4	4.8, 6.0	5.7	5.8	5.7	5.2	2.2, 8.5	5.0	3.7
Steven Speycel	Gr, WF	W	2.7	1.9	1.4, 2.5	2.3	2.2	2.2	4.9	2.2, 8.0	4.9	7.5
Kenneth Young	WF	B	1.5	0.7	.4, 1.1	0.8	0.9	1.2	4.5	2.3, 6.9	5.0	4.2
Town Clerk												
Vickie Dankowski	D, WF	W	57.8	55.4	52.6, 58.3	53.4	51.5	55.1	78.8	65.0, 90.9	80.4	90.4
Brian Pilarski	R, C, Ind, R	W	42.2	44.6	41.7, 47.4	46.7	48.5	44.9	21.2	9.1, 35.0	19.7	9.9
Town Justice												
Paul Piotrowski	D, R, C, WF	W	uncont									
Superintendent of Highways												
Mark Wegner	D, C, Ind	W	83.3	86.0	83.5, 88.5	83.3	81.8	82.8	84.5	70.8, 94.6	84.7	87.6
Jersy Galaska	WF	W	16.7	14.0	11.5, 16.5	16.7	17.8	17.2	15.5	5.4, 29.2	15.7	10.2

APPENDIX C
Town of Cheektowaga:
Townwide Democratic
Primaries

Estimates of Voting Patterns by Race in Recent Town Elections

2015 Democratic Primary

Councilmember (vote for 3)

	Party	Race	Votes	White Voters								Black Voters				
				EI rxc	95% confidence interval	ER	EI 2x2	HP	EI rxc		95% confidence interval	ER	EI 2x2			
Linda Hammer	D	W	14.9	15.9	14.4, 17.2	17.3	16.6	17.6	10.1		4.2, 17.6	7.6	6.1			
Christine Adamczyk	D	W	20.1	20.7	19.0, 22.4	20.0	20.1	19.5	18.5		9.8, 27.8	20.6	20.3			
Gerald Kaminski	D	W	14.9	16.1	14.6, 17.5	16.3	17.2	14.8	7.1		2.3, 13.6	2.7	0.6			
Stanley Kaznowski	D	W	13.9	14.9	13.4, 16.2	15.7	15.5	15.1	7.8		2.8, 14.8	3.7	6.7			
Steven Speycel	D	W	13.1	12.3	10.7, 13.9	12.5	11.8	11.6	13.8		5.7, 22.4	15.3	20.6			
Kenneth Young	D	B	9.2	5.1	3.7, 6.4	2.3	3.7	6.8	35.6		26.5, 44.6	48.6	45.5			
Richard Zydel	D	W	13.9	15.0	13.5, 16.3	15.9	15.6	14.6	7.0		2.3, 13.4	1.5	3.1			

APPENDIX D
Town of Cheektowaga: Countywide and Statewide General Elections

Estimates of Voting Patterns by Race in Recent Town Elections

	Party	Race	Votes	White Voters					Black Voters			
				EI rxc	95% confidence interval	ER	EI 2x2	HP	EI rxc	95% confidence interval	ER	EI 2x2
Erie County												
2021 Sheriff												
Kimberly Beaty	D, J&P	B	39.7	31.2	29.6, 33.0	25.5	28.9	30.7	86.6	79.7, 91.9	120.6	90.5
John Garcia	R, BB	H	49.4	58.4	56.9, 59.6	61.0	59.7	57.6	5.3	2.0, 11.1	-20.9	0.7
Karen Healy-Case	C	W	3.7	3.2	2.1, 4.0	4.6	4.3	4.2	3.7	1.8, 6.4	-0.7	0.3
Theodore DiNoto	PS	W	7.2	7.3	6.2, 8.2	8.7	8.7	7.4	4.4	2.1, 7.8	1.2	2.0
2017 Sheriff												
Bernard Tolbert	D, WF, WEq	B	44.8	36.8	34.9, 39.0	33.9	35.3	39.0	87.5	78.3, 94.2	105.3	91.7
Timothy Howard	R, C, Ind, Ref	W	55.2	63.2	61.0, 65.1	66.1	64.7	61.0	12.5	5.8, 21.7	-5.0	8.3
2017 Comptroller												
Vanessa Glushefski	D, WF, WEq	B	41.0	33.6	31.5, 36.1	31.7	31.4	36.5	82.5	69.4, 92.5	94.4	91.6
Stefan Mychajliw Jr.	R, C, Ind, Ref	W	59.0	66.4	63.9, 68.5	68.3	68.6	63.5	17.5	7.5, 30.6	5.4	8.4
Statewide												
2022 Attorney General												
Letitia James	D, WF, Ind	B	51.5	44.3	42.7, 46.5	40.3	42.7	44.9	88.6	79.6, 94.7	113.4	93.2
Michael Henry	R, C	W	48.5	55.7	53.5, 57.3	59.7	57.3	55.1	11.4	5.3, 20.4	-13.4	6.8
2018 Attorney General												
Letitia James	D, WF, Ind	B	49.7	42.1	40.6, 44.4	37.5	39.1	42.0	91.7	84.4, 95.2	114.6	96.9
Keith Wofford	R, C	B	47.2	55.7	53.9, 57.0	58.8	57.0	54.8	5.5	2.5, 12.3	-14.6	3.1
Others			3.1	2.1	1.3, 3.1	3.7	3.9	3.2	2.8	1.3, 5.0	0.0	1.4

APPENDIX E
Town of Cheektowaga:
Countywide and Statewide
Democratic Primaries

Estimates of Voting Patterns by Race in Recent Town Elections

	Party	Race	Votes	White Voters					Black Voters			
				EI rxc	95% confidence interval	ER	EI 2x2	HP	EI rxc	95% confidence interval	ER	EI 2x2
Erie County												
2021 Erie County Sheriff												
Kimberly Beaty	D	B	29.7	18.7	15.6, 22.1	10.8	13.1	19.2	79.1	64.2, 90.2	124.9	98.5
Myles Carter	D	B	3.9	1.8	.9, 3.1	2.9	3.1	3.7	9.4	3.0, 17.8	10.1	2.6
Brian Gould	D	W	66.5	79.4	76.1, 82.4	86.1	83.0	77.1	11.5	3.5, 24.4	-35.2	0.0
Statewide												
2018 Lieutenant Governor												
Kathy Hochul	D	W	78.6	85.5	81.8, 88.6	82.4	82.8	82.3	63.6	44.8, 81.6	56.5	57.0
Jumaane Williams	D	B	21.4	14.5	11.4, 18.2	17.6	17.2	17.7	36.4	18.4, 55.2	43.3	43.0
2018 Attorney General												
Letitia James	D	B	12.8	8.1	5.6, 10.8	8.1	8.1	9.9	27.9	15.2, 41.6	37.7	37.4
Sean Patrick Maloney	D	W	52.4	60.4	57.4, 62.9	61.0	61.7	56.6	19.5	8.8, 32.9	10.9	11.7
Leecia Eve	D	B	13.0	7.4	5.2, 9.5	7.2	4.8	9.4	42.8	29.9, 55.7	50.6	51.9
Zephyr Teachout	D	W	21.8	24.1	21.7, 26.3	25.1	25.4	24.1	9.8	2.9, 19.2	0.8	3.1