

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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New York City Council Member Adrienne E. Adams;
American Brotherhood For The Russian Disabled, Inc.;
American Chinese Empowerment Association Inc.; New
York City Council Member Alicka Ampry-Samuel;
Brooklyn Emerge, Inc.; Chinese Action Network Inc.;
New York City Council Member Robert E. Cornegy, Jr.;
New York City Council Member Laurie A. Cumbo;
Khyber Society of America Inc.; Jason Loughran; New
York City Council Member Farah N. Louis; New York
City Council Member I. Daneek Miller; Pakistani
American Youth Society, Inc.; Russian American Voters
Educational League, Inc.; UA3 Inc.; United Clergy
Coalition by Bishop Gerard Seabrooks; Sustainable
United Neighborhoods Inc.; Your Network Caring
Community Advocate (YNCAA), Inc.;

Index No.

COMPLAINT

Plaintiffs,

City of New York, New York City Board of Elections,
and New York City Campaign Finance Board,

Defendants.
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Plaintiffs, by their attorneys, Abrams, Fensterman, Fensterman, Eisman, Formato, Ferrara,
Wolf, & Carone, LLP, allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action for declaratory and injunctive relief to prohibit the use of Rank Choice Voting for the February 2, 2021 New York City Special Election because (a) the Defendant City Board of Elections (the “City Board”) has failed to comply with the implementation requirements mandated by the New York City Charter (“City Charter” or “Charter”) §1057-g; and (b) Defendants’ stated plan to use RCV in violation of the City Charter’s requirements, if allowed to proceed, will deprive New York City’s limited-English proficient

(“LEP”) population of the right to vote for and elect candidates of their choice in violation of the Voting Rights Act (52 U.S.C. § 10101 et seq.) (“VRA”) and New York State Election Law § 3-412 which requires that voters “with limited or no proficiency in the English language” receive assistance at the polls.

2. Ranked Choice Voting (“RCV”) also known as instant runoff or alternative vote was first developed in the 1870’s by a professor at Massachusetts Institute of Technology. *See Dudum v. Arntz*, 640 F.3d 1098 (9th Cir. 2011). RCV is an election voting system that allows for voters to vote for multiple candidates and allows voters to list their multiple-choice selection in terms of preference, i.e., 1st choice, 2nd choice, 3rd choice, etc. As of 2004, there are only 27 cities within the United States which use and/or which plan to use RCV in upcoming elections.¹ The state of Maine has used RCV in a statewide election. The voting age population of the other jurisdictions that use RCV do not come anywhere close to the 5.4 million voting age residents of New York City.² The closest is the state of Maine with 1 million potential voters, the next largest population is the state of Alaska³ with 500,000 potential voters. The populations of the remaining cities that are using or plan to use RCV range from 297,000 to 3,000.⁴

3. RCV emanated in the United States as a potential way to cure the problems that exist with election tabulation. Proponents of RCV argue that it increases both voter participation and voter engagement in municipal elections.⁵ However, “[d]espite the claims of RCV advocates, the research on how RCV impacts voter turnout in local elections is limited, and the findings are somewhat mixed.”⁶

¹ [Data on Ranked Choice Voting - FairVote](#)

² *Id.*

³ The data does not indicate if Alaska is using RCV in a state-wide election as indicated for the state of Maine.

⁴ *Id.*

⁵ <https://cpb-us-w2.wpmucdn.com/web.sas.upenn.edu/dist/7/538/files/2019/07/McDaniel-RCV-Voter-Turnout-Revised-ESRA-2019.pdf>

⁶ *Id.*

4. A 2019 study found that voters in RCV cities are more likely to report that understanding voting instructions was “very or somewhat difficult” compared to voters in plurality voting systems and suggest that more attention should be paid to improving voter education in RCV cities.⁷ Studies also suggest that RCV “requires significantly more cognitive effort than making one candidate preference” and that “the increased cognitive effort required to rank multiple candidates causes some voters to choose not to do so, either through indifference, lack of appropriate information to guide preference formation, or as a way to minimize cognitive effort.”⁸

5. Pursuant to New York City Charter Section §1057-g, RCV is to be used with respect to “certain primary elections and elections for which nominations were made by independent nominating petitions” in the City of New York on and after January 1, 2021. *See* City Charter §1057-g (h),(i).

6. The City Charter requires Defendant City Board to “take all necessary steps to ensure timely implementation of ranked choice voting” and requires the City’s Campaign Finance Board (“CFB”) to “conduct a voter education campaign to familiarize voters with ranked choice voting.” *Id.*

7. As will be set forth in detail below, the City Board has not taken the necessary steps to ensure timely implementation of ranked choice voting pursuant to §1057-g of the City Charter and the CFB has not conducted a voter education campaign that has familiarized New York City’s (“the City’s” or “NYC’s”) LEP voters with ranked choice voting.

8. Allowing RCV to be used in the upcoming election will violate the City Charter and the Voting Rights Act, 52 U.S.C. § 10503 and New York State Election Law § 3-412.

9. Plaintiffs therefore request a declaration that allowing RCV to be used for the

⁷ <https://onlinelibrary.wiley.com/doi/full/10.1111/ssqu.12651>

⁸ *Id.*

February 2, 2021 Special Election will violate the City Charter, the Voting Rights Act, 52 U.S.C. § 10503, and New York State Election Law § 3-412 and injunctive relief prohibiting Defendants from implementing RCV for the February 2, 2021 Special Election.

PARTIES

10. Plaintiff New York City Council Member Adrienne E. Adams is an individual residing in the State of New York.

11. Plaintiff American Brotherhood For The Russian Disabled, Inc. is an organization registered under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. American Brotherhood For The Russian Disabled's mission is to assist the Russian disabled in the United States of America. American Brotherhood For The Russian Disabled represents approximately 30,000 members and the primary language of its membership is Russian.

12. Plaintiff American Chinese Empowerment Association Inc. is a not-for-profit organization incorporated under the laws of the State of New York. American Chinese Empowerment Association's mission is to foster outreach for Chinese-American neighborhoods. American Chinese Empowerment Association represents approximately 30-50 members whose primary language consists of English and Chinese.

13. Plaintiff New York City Council Member Alicka Ampry-Samuel is an individual residing in the State of New York.

14. Plaintiff Brooklyn Emerge Inc. is an organization registered under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. Brooklyn Emerge's mission is to create a platform for the positive souls of Brooklyn, where unity and harmony are nurtured to work together for an ideal society.

15. Plaintiff Chinese Action Network Inc. is an organization registered under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. Chinese Action Network's mission is to promote and

advocate for issues concerning the Chinese community. Chinese Action Network has 10 active members and serves approximately 6000 individuals whose primary language is Chinese.

16. Plaintiff New York City Council Member Robert E. Cornegy Jr. is an individual residing in the State of New York.

17. Plaintiff New York City Council Member Laurie A. Cumbo is an individual residing in the State of New York.

18. Plaintiff Khyber Society of America Inc. is an organization registered under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. Khyber Society of America's mission is dedicated to assisting and educating the Pashtun Dispora while preserving and evolving the culture and 6000-year-old creed of Pashtunwali and to provide an institutional role model for the community at large.

19. Plaintiff Jason Loughran is an individual residing in the State of New York, County of Kings.

20. Plaintiff New York City Council Member Farah N. Louis is an individual residing in the State of New York.

21. Plaintiff New York City Council Member I. Daneek Miller is an individual residing in the State of New York.

22. Plaintiff Pakistani American Youth Society, Inc. is an organization registered under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. Pakistani American Youth Society's mission is to unite the community for young Pakistani Americans by providing a central communal space for meetings and activities, to encourage engagement by organizing town hall events, workshops, and open discussions with community leaders, members and local merchants, and to provide a safe space for building professional networks, offering opportunities for leadership and development

and promoting access to professional and social opportunities.

23. Plaintiff Russian American Voters Educational League, Inc. is an organization registered under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. Russian American Voters Education League's mission is to provide objective information and education to Russian-Americans to encourage their civic participation and responsibility and to make them an indispensable part of the American electoral process. Russian American Voters Education League represents approximately 22,000 people and the primary language of its community is Russian.

24. Plaintiff UA3 Inc. is an organization registered under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. UA3's mission is to support New York City disadvantaged students, adults, and nonprofits through digital technology, mental health advocacy services and to provide funding to community organizations. Recently, UA3 has joined the COVID-19 fight with its elected officials and community partners. Currently, UA3 has 30 active members and serves approximately 5000 individuals across New York City who speak a variety of languages, including English, Spanish, Chinese, and Bangladesh.

25. Plaintiff United Clergy Coalition by Bishop Gerald Seabrooks is an organization comprised of 50 members in Brooklyn, New York. United Clergy Coalition is a retinue of ecclesiastical leaders, called and elected by God to respond to the clarion call of issues that impact the people of the communities we represent. As an essential and unified force, the United Clergy Coalition is dedicated to bringing about togetherness, tranquility, and transformation to the City of New York and its neighboring counties. Currently, the United Clergy Coalition has 50 members that represent approximately 10,000 parishioners and community residents who primarily speak English and Spanish.

26. Plaintiff Sustainable United Neighborhoods Inc. is an organization registered under 26 U.S.C. § 501(c)(3) of the Internal Revenue Code. Sustainable United Neighborhoods' mission is to advance the green economy through public awareness, education, implementation, and workforce development, particularly in LMI & Environmental Justice communities. Sustainable United Neighborhoods has provided pandemic relief to and speaks for sustainable communities for over 250,000 residents throughout Brooklyn and Queens. It represents and advocates on behalf of a diverse population and provides significant support and advocacy to North Brooklyn neighborhoods, with sixty-six percent of this population being of Hispanic or Latino descent. In addition to English as the organization's primary language spoken, its client work is often performed in both Spanish and Cantonese.

27. Plaintiff Your Network Caring Community Advocate (YNCCA), Inc. is a not-for-profit organization incorporated under the laws of the State of New York. YNCCA's mission is to guide and stabilize those displaced by natural disasters, especially Hurricane Maria, through a "Housing First" approach that leads to the rebuilding of lives. YNCCA serves hundreds of people who speak numerous languages, including English, Spanish, Polish, Chinese, Cantonese, and Bangladeshi.

28. Defendant City of New York ("NYC" or "the City") is a municipal corporation in the State of New York, organized and operating under the laws of the State of New York, the New York City Charter and the rules and regulations of the City of New York. New York City oversees, maintains, supports, manages, supervises, and controls numerous departments, agencies, bodies, and employees including, but not limited to, the New York City Board of Elections and the New York City Campaign Finance Board. The City has its offices at City Hall, New York, New York 10007.

29. Defendant New York City Board of Elections (“City Board”) is the City agency charged with implementation of elections and creation of new or altered processes, including Rank Choice Voting, by which elections are to be conducted within the City of New York.

30. Defendant New York City Campaign Finance Board (“CFB”) is a City agency that studies voting in New York City and makes policy and legislative recommendations to improve access to voting for New York City residents, to improve election administration, including early voting, additional language interpreter support provided by the new Civic Engagement Commission, and implementation of ranked choice voting for municipal elections in 2021.

THE CITY BOARD HAS FAILED TO COMPLY WITH THE CITY CHARTER REQUIREMENTS FOR IMPLEMENTATION OF RANKED CHOICE VOTING

The Actual Plan Required by Charter §1057-g has never been Provided

31. City Charter §1057-g(i) requires the City Board to “take all necessary steps to ensure timely implementation” of RCV. Among the steps the City Board is required to take is to provide the Mayor and Speaker of the City Council with a report containing a plan for achieving timely implementation of ranked choice voting for applicable elections held on or after January 1, 2021. *See* City Charter §1057-g(i).

32. In June of 2019, the City Board sent the Mayor and the Speaker a report which contained a purported “Plan for Achieving Timely Implementation of Ranked Choice Voting (RCV) as required by the Charter of the City of New York § 1057-g” (the “Plan”).⁹

33. The State Board has confirmed that the City Board’s Plan and recommendation concerning the software necessary for RCV did not even “speak to . . . the Charter language . . .

⁹ *See* Exhibit 1, Plan for Achieving Timely Implementation of Ranked Choice Voting (RCV) Pursuant to The Charter of the City of New York § 1057-g, NYC Board of Elections (June 30, 2019) (herein “the Plan”) at 1.

[in terms of] how the results should be tabulated.”¹⁰

34. As reported by the State, the Plan did not contain a “clear-cut list” of the requirements and expected calculations that the tabulation software is to perform.¹¹

35. The City Board represented in its June 2019 Plan that it had engaged its voting machine vendor (ES&S) to address concerns regarding potential RCV implementation and that the voting machine presently in use by the City and certified by the State Board, has “the ability to layout a ballot that will accommodate RCV.”¹²

36. However, fifteen months later the State Board reported that, like the City Board’s failures, its voting machine vendor also failed to address the Charter language in its software recommendation for result tabulation and failed to list the requirements and expected calculations that the tabulation software is to perform.¹³

37. In fact, according to the State Board, this vendor, who advised the City Board, submitted an implementation plan using “a version of the system that has not yet been certified” and, it did not indicate how it would make “changes to the existing certified software” as it should have.¹⁴

38. The vendor did not provide anything helpful in terms of “additional messaging to voters” needed for implementation of RCV. Thus, the State Board concluded that the additional messaging required for RCV cannot be accomplished by February 2021.¹⁵

39. Its evaluation, as reported on September 8, 2020, demonstrates that the City Board’s Plan does not comply with the Charter requirements for “timely implementation” of RCV.

¹⁰ See New York State Board of Elections, *New York State Board of Elections September 8, 2020 Meeting*, YouTube (Sept. 9, 2020), <https://www.youtube.com/watch?v=f-3Fr-opFs8&feature=youtu.be> at 52:25.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 20:39.

¹⁵ *Id.* at 53:53.

40. Indeed, as recently as December 3, 2020, the State Board reported that “[b]ack in October” it met with the City Board and “provided them with a draft of what a possible testing plan could look like” but as of December 3, 2020, the State reported that it was still waiting for “formal feedback” from the City Board.¹⁶

41. The City Board has failed to comply with the Charter’s requirement of submitting a report with an actual plan within 30 days of June 1, 2020. Having failed to submit a plan within this time frame, pursuant to Charter § 1057-g(i), there is a rebuttable presumption that the City Board is declining to implement RCV. *See* City Charter § 1057-g(i).

Education Required by Charter § 1057-g Never Provided

42. In its June 2019 Plan, the City Board indicated that it would “actively engage community-based organizations, good government groups and other relevant stakeholders to ensure a vibrant and effective public education campaign.”¹⁷

43. The CFB reports in its April 2020 Voter Analysis Report that although the Board provides translation and interpreter services in Bengalis, Chinese, Korean, and Spanish as required by the Voting Rights Act, there are still 16.7 percent, approximately 300,000 of the 1.8 million LEP residents, that do not have access to translation and interpreter services.¹⁸

44. As a result of this, in November of 2018 New York City voters approved a ballot initiative to create the Civic Engagement Commission (“CEC”) to develop a plan to consider the language access needs of limited-English proficiency New Yorkers and to provide language interpreters at poll sites by the 2020 general election.¹⁹ According to this April 2020 Voter

¹⁶ New York State Board of Elections, *December 3, 2020 New York State Board of Elections – Board Meeting*, YouTube (Dec. 3, 2020), <https://www.youtube.com/watch?v=rK99dEQiAZE> at 38:30.

¹⁷ *Id.*

¹⁸ [Voter Analysis Report: 2019 - 2020 | New York City Campaign Finance Board \(nyccfb.info\)](https://www.nycctfb.info) at 59.

¹⁹ *Id.*

Analysis Report, poll site interpreters to reflect the location of limited-English proficiency communities has still not been accomplished.²⁰

45. The April 2020 Report indicates that pursuant to the 2018 ballot initiative, CEC has only developed an initial methodology to determine which languages are eligible for services and the poll sites where such services would be needed.²¹

46. The Report also indicates that although it is possible to aggregate the data for the LEP voting age population from census tract data, this has not been done yet.²²

47. Thus, as of April 2020, the CEC had not yet determined the threshold for providing interpreters at poll sites in NYC.”²³ Nevertheless, the obvious need is recognized and is being studied.

48. This, coupled with the instructions required for the RCV ballot pursuant to the City Charter (as set forth below), and the State Board’s statement that the additional messaging required for RCV cannot be accomplished by February 2021,²⁴ indicates that if the City pushes forward with the RCV rollout for February 2021 as it indicates it will do, there is an imminent likelihood that the voting rights of the LEP communities will be abridged.

49. Prior to the planned implementation of RCV, the City Board and the City were aware of the need for interpreters at poll sites throughout the City. In 2019, the City Board sued the City’s Commissioner of Immigrant Affairs to bar mayoral offices’ language interpreters from being stationed within 100 feet of poll sites. *See Bd. of Elections v. Mostofi*, 65 Misc. 3d 876, 108

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *See* New York State Board of Elections, *New York State Board of Elections September 8, 2020 Meeting*, YouTube (Sept. 9, 2020), <https://www.youtube.com/watch?v=f-3Fr-opFs8&feature=youtu.be>

See New York State Board of Elections, *New York State Board of Elections September 8, 2020 Meeting*, YouTube (Sept. 9, 2020), <https://www.youtube.com/watch?v=f-3Fr-opFs8&feature=youtu.be>

N.Y.S.3d 819 (N.Y. Sup. Ct. 2019).

50. As the City Defendants stated in that lawsuit, its Poll Site Project would offer interpretation services to LEP voters in New York City by providing “interpretation services in Russian at 40 poll sites (reaching 46,670 LEP eligible voters), Haitian Creole at 5 poll sites (reaching 5,538 LEP eligible voters), Yiddish at 2 poll sites (reaching 3,752 LEP eligible voters), and Polish at 1 poll site (reaching 887 LEP eligible voters). For the first time, the Project’s interpreters will be stationed within poll site buildings to better serve LEP voters.”²⁵

[T]he Project promotes the City’s “compelling interest” in securing the voting rights of its citizens. *Burson v. Freeman*, 504 U.S. 191, 199 (1992). Certainly, it is undisputed that the “right to vote freely for the candidate of one’s choice is of the essence of a democratic society,” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964), and that there is no right more important. *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“[N]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.”) . . . There is no rational basis to enjoin the City from providing this service that both advances vital government interests and benefits voters in exercising their most cherished democratic rights.²⁶

51. CFB, who was tasked with “conduct[ing] a voter education campaign to familiarize voters with ranked choice voting”,²⁷ indicates that the approach being taken for implementation of RCV will involve “[c]onducting a survey of community needs which will inform the topics of an education series.”²⁸ The Plaintiffs, and the communities they represent, have not been surveyed and no educational series has been provided for them.

52. RCV requires voters to be informed and to be informed on a larger and much more in-depth scale. RCV will require voters to make multiple choices instead of one choice. Voters

²⁵ [legal-brief-02-25-2019.pdf \(nyc.gov\)](#)

²⁶ *Id.*

²⁷ See attached CFB’s PowerPoint.

²⁸ *Id.*

will be expected to make multiple informed choices and, they will be required to make those choices in order of preference, ranking those preferences, which presumes a more in-depth level of knowledge about the candidates and those choices. This is the very reason for the City Charter's requirements for the implementation of RCV. Requirements with which Defendant City Board has failed to comply.

Ballot Design, Content and Instructions Required by Charter §1057-g Not Implemented

53. The City Charter's ballot design, content, and instruction requirements cannot be implemented by the February 2021 election nor can the needed education occur in such a short amount of time.

54. The design requirements for the ballot are set forth in §1057-g(d) of the Charter. The Charter states that the ballot content and instructions for RCV shall be designed in accordance with the requirements of that section of the Charter and in accordance with any New York State Election Law requirements not superseded under §1057-g.

The Subdivision (d) Requirements of Charter §1057-g

55. Subdivision (d)(1) of §1057-g provides that:

- all candidates in a ranked choice election shall be listed on the ballot;
- the ballot shall permit a voter to rank five candidates, inclusive of any write-in candidate permitted by law;
- in order of preference for a ranked choice office;

However, if there are less than five candidates on the ballot for such office,

- the ballot shall permit a voter to rank the total number of such candidates for such office inclusive of any write-in candidate permitted by law.

56. Subdivision (d)(2) of §1057-g provides that:

- the sections of the ballot containing ranked choice elections shall be organized in the form of a grid,

- with dimensions and spacing sufficient to facilitate a ranked choice election as follows:
 - the title of the office shall be arranged horizontally in a row at the top of such grid;
 - with columns underneath;
 - the leftmost column shall contain the names of the candidates for such office and the slot or device for write-in candidates, arranged vertically;
 - for any election for a ranked choice office in which all candidates are nominated by independent nominating petition, the names selected for the independent bodies making the nomination of the candidates shall be included on the ballot in accordance with the election law;
 - the subsequent columns shall contain ovals or squares, with one oval or square per each column and row;
 - each column containing ovals or squares shall be labeled consecutively with the rankings, starting from “1st choice” and going up to a maximum of “5th choice.”

57. Subdivision (d)(3) of §1057-g indicates that the ballot shall set forth:

- in plain language,
- instructions that indicate how to mark a ballot,
- such instructions must be done so as to be read by the voting equipment used to tabulate results;
- instructions how to rank candidates in order of voter’s preference; and,
- any other information deemed necessary by [the City Board].

58. Subdivision (d)(3) of §1057-g also provides the *minimum* amount of text required for ballot instructions and provides that the text “shall be substantially as follows” so that it accurately reflects the ballot layout:

- rank candidates in the order of your choice;
- mark the (insert oval or square) in the 1st choice column for you first-choice candidate;
- mark the (insert oval or square) in the 2nd choice column for you second-choice candidate, and so on;
- provide illustration of correctly marked voting positions;
- to rank a candidate who name is not printed on the ballot, mark (insert oval or square) next to the box labeled “write-in” and print the name clearly, staying within the box;
- you may mark as many or as few candidates as the numbered columns allow, but do not mark more than one (insert oval or square) per candidate;
- ranking a second-choice candidate, third-choice candidate, and so on will not hurt your first-choice candidate;
- do not mark more than one (insert oval or square) in any column;
- if you do, you vote may not count;
- any mark or writing outside the spaces provided for voting may void the entire ballot;
- you have a right to a replacement ballot;
- if you make a mistake, or want to change your vote, ask a poll worker for a new ballot;

59. Subdivision (d)(3) of §1057-g further indicates that the City Board shall also:

- provide line drawing illustrations to supplement these instructions;
- at a minimum, an illustration of the correct way to mark the ballot shall be provided.

60. Subdivision (d)(4) of §1057-g states that “[t]o the greatest extent practicable, the ballot design shall allow for electronic tabulation of all rankings and electronic detection of ballot marking in order to allow a voter to correct a ballot that assigns equal rank to two or more

candidates.”

61. Subdivision (d)(5) of §1057-g provides for the situation where a RCV election is on the ballot with one or more elections using other methods of voting, indicating that “to the extent practicable, the ranked choice elections shall be grouped together and presented either on a separate ballot page from the non-ranked choice elections, or on one side of a combined ranked choice and non-ranked choice ballot page.”

62. Finally, Subdivision (d)(6) of §1057-g concludes that the “final ballot design shall be based on the space and design limitations of the ballot design software, while following the best practices for ballot design to the greatest extent possible.”

63. Education regarding the above ballot design, content, and instructions has not been conducted nor can it be adequately conducted by February of 2021.

THE CITY HAS FAILED TO OBTAIN REAPPROVAL OF ITS VOTING SYSTEM AS REQUIRED BY NEW YORK STATE ELECTION LAW SECTION 7-201

64. Pursuant New York State Election Law §7-201(2), when any change is made “in the operation or material of any feature or component of any machine or system which has been approved . . . [by the State], such machine or system must be submitted for such re-examination and reapproval pursuant to the provisions of [§7-201(1)] as the state board of elections deems necessary.” *See* New York State Election Law §7-201(2).

65. As set forth above, the City submitted its request for re-examination to the State and failed to receive reapproval.

66. According to the State Board, “there is no way for the current ES&S system used by New York City to do th[e] additional calculations [needed for RCV] as [the machines are

currently] certified.”²⁹

67. Failing to receive reapproval from the State for its current vendor, the City Board put out a request for proposal on November 16, 2020, seeking “a vendor who can supply a rank choice voting system thiat (sic) is compatible with the Board’s current voting tabulators ES&S D200 scanners and implement the system.”³⁰

68. However, the City’s request for proposals states “that if required by the State board the vendor would have to submit any of their software to [the State] for either authorization certification or approval if merited.”³¹

69. According to the State, this is necessary because, “without a very clear-cut list of items [from the City] that the system should be held against, . . . there should be at least some sort of review by the [State] board as to this software system and . . . this kind of independent software that’s being used to calculate and figure out who the winner of a contest is.”³²

CITY BOARD DIRECTOR FAILS TO DISCLOSE GIFTS FROM AND RELATIONSHIP WITH CITY’S VOTING MACHINE VENDOR

70. Compounding the harm, at the time the City Board provided the Mayor with its Plan, the City Board’s Director was acting under a conflict of interest with this vendor.

71. Since 2009, the City has paid the vendor (ES&S) \$43 million for ballot scanners and other services supplied by ES&S.³³ Since 2014, ES&S has paid for Ryan to go to at least nine so-called conferences all across the country, apparently as part of Ryan’s role as a member of a

²⁹ See New York State Board of Elections, *New York State Board of Elections September 8, 2020 Meeting*, YouTube (Sept. 9, 2020), <https://www.youtube.com/watch?v=f-3Fr-opFs8&feature=youtu.be> at 49:06.

³⁰ See Exhibit 2, RFP.

³¹ New York State Board of Elections, *December 3, 2020 New York State Board of Elections – Board Meeting*, YouTube (Dec. 3, 2020), <https://www.youtube.com/watch?v=rK99dEQiAZE>, at 38:30.

³² See New York State Board of Elections, *New York State Board of Elections September 8, 2020 Meeting*, YouTube (Sept. 9, 2020), <https://www.youtube.com/watch?v=f-3Fr-opFs8&feature=youtu.be> at 52:25.

³³ <https://www.ny1.com/nyc/all-boroughs/politics/2018/12/03/mike-ryan-nyc-board-of-election-boss-is-on-the-board-for-election-systems-and-software>

secretive advisory board for ES&S, which it calls the “National Customer Advisory Board.” Ryan was invited to join that board in 2013.³⁴ The City Board claims that it approved Ryan sitting on the board in 2014, but the City’s Conflict of Interest Board never received a request for the a waiver required by the City Charter for Ryan to sit on the board.³⁵

72. In January 2020, Common Cause New York filed a letter of complaint with the Conflicts of Interest Board and requested that an investigation be opened because of the City Board’s Executive Director’s undisclosed participation on the advisory board of this voting machine vendor.³⁶ Ryan had been filing inaccurate annual disclosure forms with the Conflicts of Interest Board for years in violation of the applicable law.³⁷ The Board said the mistakes on Ryan’s disclosures, such as not disclosing trips to Arizona, Florida, or South Carolina, were clerical errors.

73. Ryan denied any conflicts of interest but has since stepped down from the advisory board. The City permitted him to simply pay a \$2,500 fine this past June “for accepting a prohibited gift” from ES&S.³⁸

FIRST CAUSE OF ACTION

Declaratory Judgment and Injunctive Relief

74. Plaintiff repeats, reiterates and realleges each and every allegation contained in the prior paragraphs with the same force and effect as if more fully and at length set forth herein.

³⁴ *Id.*

³⁵ *Id.*; see New York City Charter § 2604(e).

³⁶ See Common Cause New York’s letter dated Jan. 28, 2020 at <https://www.commoncause.org/new-york/resource/the-nyc-conflicts-of-interest-board-must-open-an-investigation-into-nyc-board-of-elections-executive-director-michael-ryans-relationship-with-ess/>.

³⁷ *Id.*

³⁸ <https://www.ny1.com/nyc/all-boroughs/news/2020/06/25/conflicts-of-interest-board-fines-boe-head-after-ny1-report>; see also *United States v. Silver*, No. 15-CR-93 (VEC), 2018 WL 4440496, at *3 (S.D.N.Y. Sept. 17, 2018)(jury charged on honest services fraud, knowingly and intentionally sought or received property, at least in part, because of Mr. Silver’s official position); see also *USA v. Edward Mangano, et al.*, 16-CR-540 (E.D.N.Y. 2017) (Indictment alleging, inter alia, that former County Executive used his official position to advise and pressure County official to award contracts to co-conspirator and that “through certain business entities, [co-conspirator] was awarded lucrative contracts by Nassau County”).

75. The City's Charter requires that before Rank Choice Voting can be implemented in the City, Defendant City Board must provide a report with a plan of the necessary steps to ensure timely implementation of ranked choice voting by June 1, 2020 and must take all necessary steps to ensure timely implementation of ranked choice.

76. The City Board has failed to provide such a plan and has failed to take all necessary steps to ensure timely implementation of ranked choice as required by City Charter §1057-g (i).

77. The City's CFB has not conducted a voter education campaign that has familiarized voters with RCV as required by City Charter §1057-g (i).

78. The right to vote "encompasses the right to an effective vote." *Puerto Rican Org. for Political Action v. Kusper*, 490 F.2d 575, 580 (7th Cir. 1973). A person who cannot read English is entitled to oral assistance in the language she or he can read or understand. *Id.*; *see also United States v. Louisiana*, 265 F. Supp. 703 (E.D.La.1966), *aff'd* without opinion, 386 U.S. 270, 87 S. Ct. 1023, 18 L.Ed.2d 39 (1967).

79. The Voting Rights Act forbids voting discrimination on the basis of race, color or membership in a language minority group. *See* 52 U.S.C.A. § 10301.

80. The minority population of NYC voters as represented by the Plaintiffs herein who are persons of color and members of language minority groups and are entitled to the protections afforded by the Voting Rights Act as codified in 52 U.S.C.A. § 10301.

81. Pursuant to New York State Election Law § 3-412, the State Board of Elections must establish a mandatory core curriculum for poll worker training which ensures protection of voters' rights at the polls that includes assistance to voters "with limited or no proficiency in the English language." *Id.*, § 3-412(1-a).

82. The City's CFB has not conducted a voter education campaign that has familiarized

voters with RCV.

83. A voter's ability to understand the ballot is fundamental to the ability to cast his or her vote.

84. New York State Election Law Election Law § 7-201 requires that any voting machine or system not approved by the State Board "cannot be used at any election."

85. No voting system has been approved by the State Board and therefore there is no voting system that can lawfully be used at the February 21, 2020 Special Election.

86. The City Board's planned roll out of RCV, without having taken all the necessary steps to ensure proper implementation and compliance with the City Charter, will result in a violation of the Voting Rights Act and presents proof of the imminent likelihood of impairment of voters' ability to cast their vote and elect representatives of their choice.

87. Unless enjoined by order of this Court, Defendants will continue to act in violation of the Voting Rights Act by administering, implementing, and conducting future elections with RCV using the current unlawful scheme for the roll out.

88. Plaintiffs' claims constitute a justiciable controversy.

89. Plaintiffs' claims as fully set forth in all previously alleged paragraphs, warrant a judicial determination thereof.

90. Plaintiffs are entitled to a declaratory judgment otherwise declaring and adjudicating the rights and relations of the parties.

91. By reason of the foregoing, Plaintiffs will suffer injury for which it has no other adequate remedy at law.

92. Upon such declaratory relief, a permanent injunction enjoining and restraining Defendants from using RCV until such time as the City Board complies with the City Charter and take all necessary steps required for proper implementation of RCV is necessary and appropriate.

NO PRIOR APPLICATION

93. No prior application for this or any similar relief has been made in any court.


PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request judgment from the Court:

- a. Declaring that the Defendants' present plan to use RCV in NYC for a February 2021 election violates the City Charter;
- b. Declaring that the Defendants' present plan to use RCV in NYC for a February 2021 election violates the Voting Rights Act;
- c. Enjoining and restraining Defendants, their agents and successors in office, and all persons acting in concert with, or as an agent of, any Defendant in this action, from administering, implementing, or conducting any future elections in NYC under the Board's 2019 RCV rollout plan;
- d. Ordering that the Defendants implement a new RCV rollout plan that provides for messaging and education that will ensure all voters, including limited-English proficiency groups, the ability to understand the ballot, cast their vote, and elect representatives of their choice;
- e. Awarding Plaintiffs their reasonable attorneys' fees, pursuant to 52 U.S.C. § 10301(e), and the costs and disbursements of maintaining this action, such as expert fees;
- f. Retaining jurisdiction to render any and all further orders that this Court may deem appropriate; and

g. Ordering such other relief that this Court may deem just and reasonable.

Dated: December 8, 2020



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