

SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY

ORAL CLARKE, ROMANCE REED, GRACE
PEREZ, PETER RAMON, ERNEST TIRADO, and
DOROTHY FLOURNOY

Plaintiffs,

– against –

TOWN OF NEWBURGH and TOWN BOARD OF
THE TOWN OF NEWBURGH,

Defendants.

Index No. 50325/2025

CONSENT JUDGMENT

CONSENT JUDGMENT AND DECREE

The parties to this action are Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (collectively, “Plaintiffs”); and Defendants Town of Newburgh (“the Town”) and Town Board of the Town of Newburgh (“the Town Board”) (collectively, “Defendants”).

1. Plaintiffs in this action sued Defendants under Section 17-206 of the John R. Lewis Voting Rights Act of New York (the “NYVRA”). Plaintiffs allege that the Town of Newburgh’s current at-large system for electing Board members dilutes the voting power of Black and Hispanic residents in violation of Section 17-206(2)(b)(i).
2. Without conceding a violation of the NYVRA and while denying all of Plaintiffs’ allegations, Defendants agree to adopt a ranked choice voting electoral system (the “Rank Choice Voting Electoral System”) to resolve this litigation.
3. The Parties, through counsel, have conferred extensively and agree that it is in the best interest of all Parties that these actions be resolved without the expense of further litigation.
4. Accordingly, the Parties agree to entry of this Consent Judgment and Decree. The Decree sets forth the Rank Choice Voting Electoral System for the Town of Newburgh that complies with the NYVRA and all other applicable legal requirements. The details of the

Rank Choice Voting Electoral System are set out in **Exhibit A – Memorandum of Understanding**, creating a proportional ranked choice voting system for the Town Board beginning in 2027.

STIPULATIONS

The Parties acknowledge and agree that the foregoing stipulations are true and correct and form the basis for this Agreement. The Parties stipulate and agree as follows:

1. Defendant Town of Newburgh is a political subdivision of the State of New York and has its principal office at 1496 Route 300, Newburgh, Orange County, New York 12550.
2. Defendant Town Board of the Town of Newburgh is the Town's legislative and policy-making authority.
3. The Town currently uses an at-large method of electing members to the Town Board.
4. The Town Board is comprised of five individuals: The Town Supervisor and four members of the Town Board.
5. The Town Supervisor is the chief elected official of the Town and serves a two-year term.
6. The four Town Board members are elected to staggered, four-year terms.
7. Defendants do not concede liability or admit any wrongdoing whatsoever.
8. New York law does not mandate the current at-large method to elect the Town Board.
9. The Court has authority, pursuant to the NYVRA, to require the Town of Newburgh to implement the Rank Choice Voting Electoral System, as a remedy.
10. The Rank Choice Voting Electoral System complies with the NYVRA and all other applicable federal, state, and local legal requirements.
11. Accordingly, to avoid unnecessary, costly, and divisive litigation, and without admitting any wrongdoing and expressly denying the same, Defendants voluntarily enter into this Decree and agree to adopt and implement the Rank Choice Voting Electoral System.

12. Plaintiffs and Defendants have the authority to enter this Decree.
13. Plaintiffs and Defendants agree that this settlement is in the best interests of all Parties and the residents of the Town. They thus agree not to use the existence or terms of this Consent Judgment And Decree as grounds to allege or imply that either Plaintiffs or Defendants engaged in, or conceded engaging in, any wrongdoing whatsoever.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

14. This Court has jurisdiction of this action pursuant to Election law § 17-206(4).
15. This Court has authority to order the adoption of a new electoral system for the Town of Newburgh to ensure compliance with the NYRA and all other applicable legal requirements.
16. Having reviewed the Parties' stipulations, the record before the Court in this action, and the details of the Rank Choice Voting Electoral System, the Court is satisfied that the stipulations above reflect those records in these actions.
17. Effective starting with the 2027 Town election, Defendants, their officers, agents, employees, successors and all other persons acting in concert with any of them shall cease conducting elections for the Town Board of the Town of Newburgh using the current at-large method.
18. The Parties agree that resolution of this action shall be achieved through the adoption of the Rank Choice Voting Electoral System described in the attachment hereto as Exhibit A on March 9.
19. Defendants, the Town and the Town Board, shall implement the Rank Choice Voting Electoral System for use in the 2027 Town election.
20. As soon as practicable, Defendants shall codify the Rank Choice Voting Electoral System, effective starting with the 2027 Town Election.

21. Defendants shall take any and all necessary and timely steps to publicize to Town residents the adoption of the Rank Choice Voting Electoral System and the election schedule in both English and Spanish. The Town Board shall seek to provide every registered voter in the Town notice of the adoption of the Rank Choice Voting Electoral System including information and education on the new method, in both English and Spanish.
22. To the extent that implementation of this Decree conflicts with any other provision(s) of state or local law governing the conduct of elections for the Town Board of the Town of Newburgh, this Decree shall supersede such provision(s).
23. Except as incompatible with or specifically altered by the terms of this Decree, all state and local laws shall continue to govern elections for the Town Board of the Town of Newburgh.
24. Pursuant to, and in full satisfaction of, Defendants' obligation under Election Law § 17-218, the Town of Newburgh will pay Plaintiffs' attorney fees and cost totaling \$1.6 million, by check, which will be sent to Abrams Fensterman LLP, c/o Ernesto Gallone and Amy Marion, 3 Dakota Drive, Suite 300, Lake Success, New York 11042, on March 10, 2026 via Federal Express for delivery on March 11, 2026. If the Town of Newburgh fails to pay this amount when required, the entity to which payment is due may enter a monetary judgment against the Town of Newburgh in said amount.
25. The Court retains jurisdiction in these actions to enforce the provisions of this Decree and to order such further relief as may be appropriate in connection with this Decree. The Parties retain the ability and right to seek relief from this Court to ensure compliance with this Decree. For good cause shown, any party may move to extend or to reopen this action.
26. All litigation activities relating to this lawsuit other than those necessary to effectuate the provisions of this Decree shall be suspended pursuant to the Parties' compliance with the terms of this Decree. This Decree, if adhered to, shall completely and finally resolve all claims in and relating to this action.
27. Upon the Town Board's adoption of the Rank Choice Voting Electoral System, and implementation of educational activities to promote the new system in both English and

Spanish, and satisfaction of the terms of the separate agreement referenced in paragraph 24, this action shall be marked as disposed, with each party to bear his, her or its own costs except as otherwise expressly agreed by the Parties.

28. Upon the Town Board's adoption of the Rank Choice Voting Electoral System, Plaintiffs finally and forever settle and release and covenant not to sue or otherwise challenge in any court of law or other body any current or former Town Board Member or Defendants and their respective officers, agents, attorneys, employees, successors, divisions, departments, subsidiaries, affiliates, representatives, and insurers to the fullest extent available under applicable law for or based on any claims, counterclaims, actions, defenses, affirmative defenses, suits, rights, causes of action, lawsuits, set-offs, costs, losses, controversies, agreements, promises, and demands or liabilities, whatever kind or character, direct or indirect, whether known or unknown or capable of being known, whether present or future, arising at law or in equity, by right of action or otherwise including but not limited to suits, debts, accounts, bills, damages, losses, judgments, executions, warranties, attorney's fees, costs of litigation, expenses, claims and demands for upon or by reason of any matter cause or thing whatsoever in law or equity relating to or based in part or in whole upon the claims asserted in this action, except for Plaintiffs' rights to enforce this Decree.

29. Either the Town of Newburgh or the Orange County Board of Elections shall be responsible for administration of elections under the Rank Choice Voting Electoral System.

30. The number of Town Board seats and the dates of elections for Town Board shall remain unaffected by this Decree.

SO ORDERED THIS DATE

Exhibit A

Memorandum of Understanding

This Memorandum of Understanding (“MOU”) is entered into between Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (collectively “Plaintiffs”) and Town of Newburgh and Town Board of the Town of Newburgh (collectively “Defendants”).

Plaintiffs and Defendants share the goal of ensuring that all Town of Newburgh voters have an opportunity to participate in local elections and to elect representatives of their choice. Through a proposed consent decree, the Town of Newburgh has agreed to adopt ranked choice voting as the new method of election for the Town Board of the Town of Newburgh. The parties agree that ranked choice voting under the consent decree shall proceed in accordance with the procedures set out below, to the extent technically feasible using voting equipment and other resources available. The parties acknowledge impediments may arise that prevent Town of Newburgh from following these exact procedures and will work together to ensure successful implementation beginning in February 2026. The November 2027 Town Board Election and all Town Board Elections afterwards shall be subject to this system.

Section 1: RANKED CHOICE VOTING DEFINED

“Ranked choice voting” means the method of casting and tabulating votes in which voters rank candidates in order of choice and tabulation proceeds in rounds as described in Section 4 for the election of a single office or Section 5 for the election of multiple offices.

Section 2: ADDITIONAL DEFINITIONS

For the purposes of this ordinance, the following terms have the following meanings:

- (a) “Continuing candidate” means any candidate that has not been defeated or elected.
- (b) “Election threshold” means the number of votes sufficient for a candidate to be elected in a multi-winner contest. The election threshold is calculated by dividing the total number of votes cast in the contest by the sum of one plus the number of offices to be filled in the contest and then adding one vote, with any fractions disregarded. *I.e.*,

$$\frac{\textit{Total Votes}}{1 + \textit{Total Seats}} + 1$$

- (c) “Exhausted ballot” means a ballot that is not counted for any continuing candidate for one or more of the following reasons:
1. It does not rank any continuing candidates;
 2. Its highest continuing ranking contains an overvote; or
 3. It includes two or more consecutive skipped rankings prior to its highest continuing ranking.
- (d) “Highest continuing ranking” means the highest ranking for any continuing candidate.
- (e) “Overvote” means a voter has ranked more than one candidate at the same ranking.
- (f) “Ranking” means the number assigned by a voter to a candidate to express the voter’s choice for that candidate. A ranking of “1” is the highest ranking followed by “2” and then “3” and so on.
- (g) “Round” means an instance of the sequence of voting tabulation beginning with Section 4(a) for single winner contests or Section 5(a) for multi winner contests.
- (h) “Skipped ranking” means a voter has left a ranking blank and ranks a candidate at a subsequent ranking.
- (i) “Surplus” means a positive difference between a candidate’s vote total and the election threshold.
- (j) “Surplus fraction” means the number equal to a candidate’s surplus divided by that candidate’s vote total, rounding to four decimal places.
- (k) “Transfer value” means the proportion of a vote that a ballot will contribute to its highest continuing ranking. Each ballot begins with a transfer value of 1. If a ballot transfers from an elected candidate with a surplus, it receives a new transfer value. The new transfer value of such a ballot is calculated by multiplying the surplus fraction of the elected candidate by the ballot’s current transfer value, rounding down to four decimal places.

Section 3: FORM OF BALLOT

In any contest conducted by ranked choice voting, the ballot shall allow voters to rank candidates in order of choice. Additionally, it shall meet the following specifications:

- (a) The ballot shall be simple and easy to understand.

- (b) If feasible, the ballot shall allow voters to rank every listed candidate in a contest. If it is not feasible to allow voters to rank that number of candidates, the number of allowable rankings may be limited to no fewer than 3.
- (c) Instructions on the ballot or the ballot secrecy sleeve shall conform substantially to the following specifications, subject to usability testing and modification based on ballot design:
 - i. TO VOTE: completely darken the oval to the right of the candidate of your choice.
 - ii. Rank candidates in order of preference.
 - iii. Fill in the oval marked “1” next to your first choice. Fill in the oval marked “2” next to your second choice. Fill in the oval marked “3” next to your third choice. And so on.
 - iv. Do not fill in more than one oval per candidate. Do not fill in more than one oval per column.
 - v. Ranking additional candidates will not hurt your first choice candidate.

Section 4: RANKED CHOICE VOTING—SINGLE WINNER TABULATION

In any contest for exactly one office conducted by ranked choice voting, each validly cast ballot shall be initially counted as one vote for the candidate at its highest continuing ranking or as an exhausted ballot. If a candidate has more than half of the total votes counting for candidates, that candidate is elected and the tabulation is complete. Otherwise, tabulation proceeds in rounds. Each round shall proceed sequentially as follows:

- (a) If two or fewer continuing candidates remain, the candidate with the greatest number of votes is elected and the tabulation is complete. Otherwise, the tabulation continues to subsection (b).
- (b) If three or more continuing candidates remain:
 - 1. The candidate with the fewest votes is defeated.
 - 2. Votes for the defeated candidate shall cease counting for the defeated candidate and shall be added to the totals of each ballot’s next-ranked continuing candidate or counted as exhausted ballots, and
 - 3. A new round begins with subsection (a).

Section 5: RANKED CHOICE VOTING—MULTI WINNER TABULATION

In any contest for more than one office conducted by ranked choice voting, each validly cast ballot shall be initially counted as one vote for its highest-ranked continuing candidate or as an exhausted ballot. First, the election threshold shall be calculated. Tabulation shall then proceed sequentially as follows:

- (a) If the number of continuing candidates whose vote totals exceed the election threshold is equal to the number of seats remaining to be filled, those candidates are elected and the tabulation is complete. Otherwise, the tabulation continues to subsection (b).
- (b) If the number of continuing candidates is equal to or less than the number of seats remaining to be filled, then all continuing candidates are elected and the tabulation is complete. Otherwise, the tabulation continues to subsection (c).
- (c) If at least one continuing candidate has a vote total that equals or exceeds the election threshold, then the continuing candidate with the highest vote total is elected. Otherwise, the tabulation continues to subsection (d).
 1. If a candidate is thus elected, the number of surplus votes and the surplus fraction for the elected candidate shall then be calculated.
 2. Next, the new transfer value of each vote cast for the elected candidate shall be calculated.
 3. Votes for the elected candidate shall be added, at their new transfer values, to the totals of each ballot's highest-ranked continuing candidate or counted as exhausted ballots.
 4. A new round begins with subsection (a).
- (d) The candidate with the fewest votes is defeated.
 1. If the number of continuing candidates is now equal to the number of seats remaining to be filled, all continuing candidates are elected, and the tabulation is complete.
 2. Otherwise, votes for the defeated candidate shall cease counting for the defeated candidate.

- A. Votes cast for the defeated candidate shall be added, at their current transfer values, to the totals of each ballot's next-ranked continuing candidate or counted as exhausted ballots
- B. A new round begins with subsection (a).

SECTION 6: RANKED CHOICE VOTING—TIES

If a tie to determine which candidate has the greatest number of votes or the fewest votes occurs at any point in the tabulation procedure described in Sections 4 or 5, and tabulation cannot proceed until the tie is resolved, the board of canvassers shall determine the candidate who is considered to have the greater number of votes by lot.



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- A. Votes cast for the defeated candidate shall be added, at their current transfer values, to the totals of each ballot's next-ranked continuing candidate or counted as exhausted ballots
- B. A new round begins with subsection (a).

SECTION 6: RANKED CHOICE VOTING—TIES

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SO ORDERED:

Hon. Nancy Quinn Koba, J.S.C.

Date: