

**IN THE SUPREME COURT OF NEW YORK  
COUNTY OF RICHMOND**

PHYLLIS COACHMAN, ANTHONY	)	
GILHUYS, KATHERINE JAMES, and	)	
DEROY MURDOCK,	)	
	)	COMPLAINT
Plaintiffs,	)	Index No. _____
v.	)	
	)	
THE NEW YORK CITY	)	
BOARD OF ELECTIONS,	)	
Defendant.	)	

The above-named Plaintiffs, Phyllis Coachman, Anthony Gilhuys, Katherine James, and DeroY Murdock, through their attorney, file this Complaint:

**Nature of the Case: Fifteenth Amendment Claim**

1. This lawsuit is a civil rights action pursuant to the Fifteenth Amendment, which prohibits Defendant from enforcing any election procedure that was enacted with an impermissible racial intent, or that denies or abridges a citizen’s right to vote on account race. This action alleges a violation of the Fifteenth Amendment to the United States Constitution by named Defendant against Black citizens of New York City.

**Parties**

2. The Defendant, New York City Board of Elections, is a public agency of the City of New York responsible for voter registration and election administration.

3. Plaintiff Phyllis Coachman is a registered voter in the City of New York. Ms. Coachman is Black.

4. Plaintiff Anthony Gilhuys is a registered voter in the City of New York. Mr. Gilhuys is Black.

5. Plaintiff Katherine James is a registered voter in the City of New York. Ms. James is Black.

6. Plaintiff Deroy Murdock is a registered voter in the City of New York. Mr. Murdock is Black.

### **Jurisdiction**

7. The Supreme Court of New York has jurisdiction over this claim. *See* N.Y. C.L.S. Jud. § 140-b.

### **Venue**

8. Venue is proper in this court in Richmond County due to C.P.L.R. § 504 because a plaintiff resides in Richmond County and her cause of action arose in Richmond County. In addition, the Board of Elections of the City of New York has offices in multiple counties, including Richmond County.

### **Facts**

9. On December 9, 2021, the New York City Council, the legislative body for the City of New York, passed a bill, referred to as Intro 1867-A (hereinafter “Foreign Citizen Voting Bill”) and entitled “A Local Law to amend the New York City charter, in relation to allowing lawful permanent residents and persons authorized to work in the United States in New York City to participate in municipal elections.” *See* Foreign Citizen Voting Bill, found online at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62>, attached here as Attachment #1. The law amends the New York city charter and allows lawful permanent residents and persons authorized to work in the United States to cast ballots in municipal elections. Foreign Citizen Voting Bill, § 1057-bb.

10. Under the law, “eligible municipal voters shall have the right to vote in municipal elections and shall be entitled to the same rights and privileges as U.S. citizen voters with regard to municipal elections.” *Id.*

11. Defendant New York City Board of Elections is or will be enforcing this law as part of its duties to administer the elections in New York City.

12. The Foreign Citizen Voting Bill violates the Fifteenth Amendment of the United States Constitution because it was adopted with an impermissible racial intent, as well as the explicit intent of its sponsors to increase voting strength of racial subgroups while simultaneously decreasing the voting strength of other racial subgroups. The Foreign Citizen Voting Bill was enacted with the impermissible racial purpose of intentionally abridging the voting strength of Black voters and other racial groups in New York City. Any election procedure enacted with any racial intent or purpose is unconstitutional under the Fifteenth Amendment of the United States Constitution.

13. The Fifteenth Amendment states: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” U.S. Const. amend. XV, § 1.

14. The “Fifteenth Amendment’s prohibition on race-based voting restrictions is both fundamental and absolute.” *Davis v. Guam*, 932 F.3d 822, 832 (9th Cir. 2019) (citing *Shaw v. Reno*, 509 U.S. 630, 639 (1993)). Because “[t]here is no room under the Amendment for the concept that the right to vote in a particular election can be allocated based on race,” the levels of scrutiny used to examine other constitutional restrictions are not relevant to election procedure enacted with a racial purpose. *Id.* (citing *Rice v. Cayetano*, 528 U.S. 495, 523 (2000)).

15. Election procedures that are facially neutral violate the Fifteenth Amendment if they are adopted with a racially discriminatory purpose. *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 481 (1997). “Racial discrimination need only be one purpose, and not even a primary purpose, of an official act” in order to violate the prohibitions on election procedures enacted with a racially discriminatory intent. *Velasquez v. City of Abilene*, 725 F.2d. 1017, 1022 (5th Cir. 1984) (citing *Arlington Heights v. Metropolitan Development Housing Corp.* 429 U.S. 252, 265 (1977)). The United States Supreme Court has held that “Discriminatory intent is simply not amenable to calibration. Either it is a factor that has influenced a legislative choice or it is not.” *Pers. Admin. of Mass. v. Feeney*, 442 U.S. 256, 277 (1979). Once a racial intent is demonstrated, it is no defense to claim the same law would have been enacted regardless of the racially discriminatory motive. *See Askew v. City of Rome*, 127 F.3d 1355, 1373 (11th Cir. 1997). If race played any role at all in the enactment of an election procedure, the procedure violates the Fifteenth Amendment and dooms the procedure.

16. Proof of racial animus or racial hatred is not necessary to prove an unconstitutional racial intent in enacting an election procedure. Actions taken with the intent of effectuating a disproportionately negative impact on a racial group are violative of the intent standard of the Fifteenth Amendment. *See e.g. Garza v. County of Los Angeles*, 918 F.2d 763, 778 (9th Cir. 1990) (Kozinski, J., concurring and dissenting in part).

17. Plaintiffs may prove a violation of the Fifteenth Amendment either through direct evidence or indirect circumstantial evidence of an impermissible racial intent. Both direct and indirect evidence of an impermissible racial intent infect the enactment of the Foreign Citizen Voting Bill, as discussed below.

18. Plaintiffs may prove a Fifteenth Amendment violation through indirect circumstantial evidence of (1) whether the official action bears more heavily on one race than another; (2) the historical background of the decision; (3) the sequence of events leading up to the decision; (4) procedural or substantive departures from normal decision making; (5) statements, including the legislative history reflecting on the purpose of the decision. 429 U.S. 252, 266-68. The list of *Arlington Heights* factors to prove racial intent through indirect circumstantial evidence is not exhaustive and a court can consider other relevant factors. *See Overton vs. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989).

19. Finally, the Fifteenth Amendment is self-executing and does not need any state or federal statutory basis to enforce it. *See Guinn v. United States*, 238 U.S. 347, 367-68 (1915).

**Direct Evidence of Impermissible Racial Intent:  
Statements by Council Members Explicitly Discuss Racial Intent**

20. Council Member Ydanis Rodriguez, a sponsor of the bill, proposed the bill with a consistent and explicit racial purpose. Throughout the September 20, 2021, New York City Council public hearing, Council Member Rodriguez spoke in favor of the bill explicitly in racial terms. *See* September 20, 2021, Transcript of the Minutes of the Committee on Governmental Operations of the New York City Council, found online at <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=&Search=>, attached here as Attachment #2 (hereinafter “September 20, 2021, Transcript”). Many of his statements referred to the race of the foreign citizens who would be granted municipal voting rights. In comparing them to those who had voting rights in the 1900s he stated: “[A]t a time where the city today look different than what it looked like in the 1900’s” and contrasted those circumstances with the racial composition of an electorate he preferred. In response to the Mayor’s Office not supporting the law he said “in the Bronx, in

Brooklyn, mainly effect people effect people of color in many of those communities. Some people, they don't have a voice to elect their Mayor. To elect the Public Advocate. To elect the Council Member. Yet because we as a city have decided that this city has changed the color of the skin of people coming to this city, then we change it who will be voting in this city." September 20, 2021, Transcript, p. 108.

21. Furthermore, in concluding his initial statement of support for this law, Council Member Rodriguez switched to Spanish and said the legislation was about increasing the power of Hispanics and Asians, as opposed to merely enhancing the voting power of foreign citizens. *See* the video of the hearing found online at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=890491&GUID=23147ADF-B417-43D2-B4E1-0F2BC2E98E5C&Search=>.

22. When advocating the bill, Council Member Rodriguez could have confined his advocacy to citizenship status. He did not. Instead, he crossed the bright line drawn by the Fifteenth Amendment and framed his support along racial lines.

23. In response to Council Member Vallone's vote to reconsider the bill before passage, in December 2021, Council Member Reynoso also crossed the bright line established by the Fifteenth Amendment and framed the debate about the bill along racial lines:

When white power or white men's power is being attacked, what they consider being attacked, they stand up and they fight. They fight to preserve their power and their influence.... have to stop and think about this sea of mostly white men that have stood up against this bill at this moment in an effort to preserve their power and influence, and that is exactly what will happen every time you challenge power. The faces always look the same, and it just never fails, and I was hoping that today we could have seen something different. This bill will pass today. It will. Maybe make another effort another time when you reassume power, I guess, to try to undo what I think is the principle foundation of democracy which is the right to vote, specifically if you're paying taxes.

See New York City Council, December 9, 2021, Transcript of the Minutes of the Stated Meeting, p. 70-71, attached as Attachment #3 (hereinafter “December 9, 2021, Transcript”).

**Indirect Evidence of Racial Intent: The Foreign Citizen Voting Bill Bears More Heavily  
On the Voting Power of Black Voters**

24. Approximately one million adult foreign citizens live in New York City. Estimates place the number of newly eligible foreign-citizen voters due to the Foreign Citizen Voting Bill at approximately 800,000.

25. The Foreign Citizen Voting Bill deliberately and expressly in the words of sponsors and supporters on the New York City Council is intended and designed to change the racial composition of the electorate in New York City.

26. According to the 2019 American Community Survey of the U.S. Census, there are 1,219,776 foreign nationals residing in Bronx, Kings, New York and Queens Counties. Of that total, 488,030 are Hispanic and 343,018 are Asian. The sponsors, aware of the racial composition of those who would obtain the power to vote in municipal elections, enacted legislation that was explicitly designed to alter the racial composition of the New York City electorate. Such an explicit racial purpose is prohibited by the Fifteenth Amendment. The Foreign Citizen Voting Bill accomplishes precisely what advocates intended: shifting the electoral power in New York City municipal elections along racial lines to Hispanic and Asian voters and reducing the power of other racial groups, including those of Plaintiffs.

27. New York City has approximately five million active registered voters. Foreign-citizen voters could potentially make up 15 percent or more of the electorate in future New York City elections. This is greater than the margin of victory in many municipal elections.

28. Though New York City has millions of registered voters, elections for local offices are decided by a limited few. Only 20 percent of eligible registrants turned out in the general

municipal election of 2021. The 2021 Democratic mayoral primary was decided by fewer than 10,000 votes. The newly enfranchised foreign-citizen voters have the potential to alter municipal elections.

**Indirect Evidence of Racial Intent: Historical Background of the Decision  
Includes Foreseeability of the Burden on a Racial Group**

29. At the City Council meeting on December 9, 2021, before a vote on the Foreign Citizen Voting Bill, concerns were raised explicitly by members of the City Council about the negative impact on Black citizen voters through the increase in Hispanic foreign-citizen voters.

30. Council President Lauri Cumbo expressed these concerns, stating:

*[T]his particular legislation is going to shift the power dynamics in New York City in a major way, and we do not have the numbers or the information to know how that is going to impact African-American communities who have been the most vulnerable in their existence in New York City.*

....

I've never heard in this one discussion about how is the African-American voter going to be impacted by this bill. This is going to be a great win for the ethnic groups that are going to be the highest number in the City of New York. And so, Ydanis, this is your legacy. This is yours, and this is going to be a huge win numerically for the Dominican Republic community, and I applaud you for that. We're all here to support our ethnic groups, and we're all here to make sure that we all win, but I need to know in supporting this, which I need more time, how are African-Americans going to be impacted, because that's the community I come from. *I'm clear how the Dominican Republic community will benefit, but not the African-American community, and it's only fair that I know that information.*

December 9, 2021, Transcript, p. 76-78 (emphasis added).

31. Council Member Cornegy also voiced concerns regarding the impact on Black voting rights, stating:

I appreciate and respect everyone's immigrant story. However, my ancestors did not come here as immigrants. We came here as slaves and fought vehemently to be able to be a part of the fabric of America and literally die for the right to vote, blood, sweat, and tears, and are still engaged and embroiled in eroding voter rights acts for communities of color across the country.

...



I would be remiss if I didn't remind people that there's one more perspective that we haven't talked about, and that is a different kind of immigrant experience and a different kind of voter rights that we still are suffering throughout the country. We all have applauded the work of voter rights advocates in the south, black women's vote, and all those kinds of things, and that's not being heard or represented sometimes, and *it's not being heard or represented in this bill*. It may very well pass, but like I said, I would be remiss if I didn't offer that perspective of representing a people whose vote has monumentally been taken for granted and now has eroded to the place where even the Voter Rights Act that were put in place to protect our vote and our voices are being eroded.

*Id.* at p. 72-73 (emphasis added).

32. Despite the foreseeability of this impact on the voting strength of Black voters, the City Council ignored pleas to delay passage and mitigate the racial impact on Black voters.

33. The City Council had a less discriminatory option available, as Council Member Cumbo, requested, to assess responsibly the obvious impact the bill would have on the Black community's voting strength.

34. Despite requests from its members, the City Council passed the law without any investigation whatsoever on the negative impact on Black voters in New York City.

**Indirect Evidence of Racial Intent: Significant Procedural Departure**

35. The passage of the Foreign Citizen Voting Bill was a deviation from normal procedures that are mandated by New York City statute and therefore is indirect evidence of racial intent under *Arlington Heights*. Section 23(2)(e) of the Municipal Home Rule Law of New York City requires a public referendum to pass any law that changes the method of nominating, electing, or removing an elective officer. The Foreign Citizen Voting Bill changes the method of electing city officials by changing who is eligible to vote in those elections. A referendum should have been held to grant such a right to vote to foreign citizens.

36. Council Member Borelli informed the Council that the Foreign Citizen Voting Bill was an improper deviation from procedures to accomplish the goal of giving voting rights to foreign citizens, stating:

Section 23 of the Municipal Home Rule Law states that a referendum is *required*, not optional, for any Local Law that changes the nominating, electing, or removing an elected officer, and that's what we're doing. So at the very least, my point is, if you want to do this, there's no problem with that as long as you do it the right way. This is not just an opinion of mine, Joe Borelli, the Minority Leader, the Republican leader. In 2013 an Administrative Attorney testified to this body that non-citizen voting is inconsistent with the State Constitution would require a citywide referendum. On 9/17 of this year Mayor de Blasio himself, a bonafide [sic] progressive known to you all, said, "Our Law Department is very clear. It's not legal for this to be decided at the city level. I really believe this has to be decided at the state level." ... Two weeks ago, on New York One, the same Democratic Mayor said the same thing. And finally on September 20th of this year, our Chief Democracy Officer, the person who we presume, his only job is to make sure every legal voter in this city has the opportunity to vote, said that the law could violate the State Constitution. So I urge you all to vote yes on this motion. Send this back to committee. Let's talk about these legal issues. If that happens to not by the case, then I urge you all to vote no on the bill.

December 9, 2021, Transcript, p. 56-57 (emphasis added).

37. Moreover, it seems the New York City Council received explicit legal advice from the New York City Law Department that the Foreign Citizen Voting Bill was contrary to the New York Constitution and home rule statutes. The receipt of this legal advice, and the stubborn refusal to follow the legal advice is also a deviation from procedures and thus relevant evidence under *Arlington Heights* that the Foreign Citizen Voting Bill violates the Fifteenth Amendment. The Council ignored the New York Constitution and home rule statutes and decided to expand the electorate to a large class of foreign-citizen voters without the authority to do so.

**Indirect Evidence: Historic Background of New York City's  
Long History of Voting Discrimination**

38. New York City has a history of racial discrimination in voting. Such history is relevant, circumstantial evidence of an impermissible racial intent under the Fifteenth Amendment.

39. In *United Parents Associations v. Board of Elections*, proof of racially discriminatory effects prevented the implementation of two successive legislative enactments regarding election procedures. *See* No. 89 Civ. 0612 (E.D.N.Y. May 6, 1993) (as cited in *Voting Rights in New York City: 1982-2006*, 17 S. CAL. REV. L. & SOCIAL JUSTICE 501, 527, n. 192.)

40. Furthermore, Bronx County, Kings County and New York County were covered by the Voting Rights Act Section 5 preclearance requirements due to historically low minority registration rates and the enforcement of a literacy test or device. *See Ravitch v. New York*, Case No. 90 Civ. 5752, 1992 U.S. Dist. LEXIS 11481, \*2 (S.D.N.Y. Aug. 3, 1992).

41. To obtain preclearance under Section 5, covered jurisdictions were required to demonstrate that voting changes “neither ha[d] the purpose nor w[ould] have the effect of denying or abridging the right to vote on account of race[,] color,” or “member[ship] [in] a language minority group.” 52 U.S.C. §§ 10304(a), 10303(f)(2). The Department of Justice has objected and denied preclearance to proposed election procedures by New York City *nine times*. *See Voting Determination Letters*, found online at <http://www.justice.gov/crt/voting-determination-letters-new-york> (last visited 02/02/2022).

42. The Attorney General of the United States has objected to New York City election procedures under Section 5 of the Voting Rights Act of 1965 on multiple occasions. *Id.* Among the procedures which failed to obtain preclearance under the Voting Rights Act were New York City Council’s redistricting plans (Submission No. V6107), and New York City’s replacement of an elected school board with appointed trustees (Submission 96-3759). *Id.*

43. Furthermore, there has been litigation under the National Voter Registration Act of 1993 (“NVRA”) against the State of New York for failure to establish agency-based voter registration in government agencies that serve low-income populations and by extension racial and language minorities in 1996 and 2004. As recently as 2017, the Department of Justice sued the State of New York for failing to provide voter registration opportunities at the Department of Motor Vehicles. *See United States and the State of New York*, Memorandum of Understanding (June 20, 2017), found online at <https://www.justice.gov/crt/case-document/memorandum-understanding> (last visited 02/02/2022). These cases were brought statewide for failure to provide registrations throughout the State of New York, including the agencies located in the City of New York.

44. Other courts have catalogued New York City’s longstanding failures to comply with the Voting Rights Act. *See, e.g., Ravitch v. City of New York*, No. 90 Civ. 5752, 1992 U.S. Dist. LEXIS 11481 (S.D.N.Y. Aug. 3, 1992).

**Indirect Evidence: Black Voters Bear the Burden:  
Voting in New York City Is Racially Polarized**

45. Elections in New York City are racially polarized. This polarization exacerbates the burden on Black voters with the enactment of the Foreign Citizen Voting Bill. With racially polarized voting, the addition of nearly a million foreign citizens will abridge the votes of Black voters to a significant degree.

46. The Department of Justice has justified, in part, a number of objections to preclearance under Section 5 in New York City on the basis of this racially polarized voting (“RPV”). In reviewing a Congressional redistricting plan in 1992, preclearance was denied due in part to racially polarized voting in upper Manhattan. In denying preclearance, the Department of Justice noted that City election voting exhibited clear patterns of racially polarized voting with

discriminatory effects on minority voting. See Letter (June 24, 1992), <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/30/NY-1070.pdf>

(last visited 02/02/2022).

47. Federal courts have found elections in New York City to be racially polarized. See *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997), *aff'd sub nom. Silver v. Diaz*, 522 U.S. 801 (1997).

48. The existence of racially polarized voting along with the impact of adding almost a million foreign-citizen voters will result in abridgement of Black voting strength in New York City.

49. With racially polarized voting, the addition of these voters, the majority of whom will be Hispanic and Chinese, Black voters will be significantly burdened in the ability to elect candidates of choice.

50. This lack of cohesion has been the subject of many discussions within the political sphere. In 2020 in New York City, for example, President Trump doubled his support in precincts where Dominican nationals account for a majority of the neighborhood and more than doubled his support in Hispanic-heavy precincts. See John Binder, *Analysis: Support for Trump's Working Class Agenda Surges Among Immigrants* (Dec. 28, 2020), Breitbart, available at <https://www.breitbart.com/politics/2020/12/28/analysis-support-for-trumps-working-class-agenda-surges-among-immigrants/> (last visited 02/02/2022).

51. New York City Hispanic voters supported Republican candidates in 2020, but the City's Black voters did not. These two groups do not support the same candidates. This lack of cohesion in voting caused Council Member Cumbo great concern. While speaking to her fellow Council Members she stated "As I read in Dem Conference about during the presidential election

how many of our Latino brothers and sisters voted Republican for President Trump. That concerns me of activating this particular bill because of that reason.” December 9, 2021, Transcript, p. 131.

**CAUSE OF ACTION**  
**Violation of the Fifteenth Amendment**

52. Plaintiffs re-allege and incorporate by reference the allegations set forth in all prior paragraphs of this Complaint.

53. The Fifteenth Amendment prohibits the enactment of election procedures with a racial intent, or the denial or abridgement of the right to vote of any citizen on the basis of race, color, or previous servitude.

54. Discriminatory intent may be established by proof that race was a motivating factor by proponents of the law. Overwhelming direct and circumstantial evidence exists that the Foreign Citizen Voting Bill was enacted with an impermissible racial intent. *See Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 256-66 (1977). Even when the challenged legislation appears neutral on its face, discriminatory intent may be inferred by analyzing the context and circumstances in which the law was enacted and reviewing the disproportionate racial impact of the law. All of the relevant indicia demonstrate that a racially discriminatory purpose was a motivating factor in the passage of the Foreign Citizen Voting Bill.

55. The New York City Council was aware of the discriminatory impact that the Foreign Citizen Voting Bill would have on the voting strength of Black voters. These concerns were raised by Council Members.

56. Despite this discriminatory impact and the knowledge that the New York City Council was without legal authority to grant foreign citizens the right to vote, the Council moved forward and passed the bill.

57. Defendant is required to implement the law despite the impact on Black voters.

58. Plaintiffs, as Black voters registered in the City of New York, are having their right to vote abridged on account of their race.

59. Plaintiffs suffer a constitutional injury due to the direct and proximate actions of Defendant's actions.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request:

1. A declaration that the Foreign Citizen Voting Bill was adopted with an impermissible racial intent or with the purpose of denying or abridging the right to vote on the basis of race, color or previous servitude in violation of the guarantee of the Fifteenth Amendment;

2. A declaratory judgment pursuant to N.Y. C.L.S. C.P.L.R. § 3001 declaring that the Foreign Citizen Voting Bill is void as violative of the Fifteenth Amendment;

3. A permanent injunction pursuant to Article 63 of the C.P.L.R. prohibiting Defendant from registering foreign citizens to vote and prohibiting Defendant from counting votes cast by foreign citizens;

4. A judgment awarding reasonable attorneys' fees and other relief pursuant to Article 86 of the C.P.L.R., and costs, disbursements, and other allowances of this proceeding, and;

5. A judgment awarding Plaintiffs any further relief that the Court deems just, proper, and equitable.

Dated: February 2, 2022

Respectfully submitted,

/s/ Maureen Riordan

Maureen Riordan (NY Bar No. 2058840)

\*Kaylan Phillips

Public Interest Legal Foundation, Inc.

32 E. Washington St., Ste. 1675

Indianapolis, IN 46204

Tel: (317) 203-5599

Fax: (888) 815-5641

[mrordan@publicinterestlegal.org](mailto:mrordan@publicinterestlegal.org)

[kphillips@publicinterestlegal.org](mailto:kphillips@publicinterestlegal.org)

\*Motion for admission *Pro Hac Vice* forthcoming