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March 10, 2025

Hon. Darrell M. Joseph
Clerk of the Court
Appellate Division, Second Department
45 Monroe Place
Brooklyn, NY 11201

Re: *Oral Clarke, et al. v. Town of Newburgh, et al.*
Appellate Division Docket No. 2024-11753
Orange County Index No. EF002460-2024

Dear Mr. Joseph:

This firm represents the plaintiffs-appellants Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (the “appellants”) in this matter. The appellants object to the untimely reply submission by the defendants-respondents the Town of Newburgh and the Town Board of the Town of Newburgh (collectively, “the Town”), which was filed on March 7, 2025 in an attempt to further support their motion for leave to appeal this Court’s order dated January 30, 2025 to the Court of Appeals and for this Court to “withhold” remittitur to the Supreme Court pending a determination of that branch of their application seeking leave to appeal and any subsequent review of this appeal by the Court of Appeals.

The Town’s notice of motion specifically set the return date for their motion as March 3, 2025 at 10:00 a.m. They acknowledge that their motion was not filed more than sixteen days prior to the return date, which would have enabled them to file reply papers. There is no reason for this Court to entertain papers submitted after the motion has been fully submitted simply because the Town failed to submit their papers on time.

This is simply the latest example of the Town’s consistent attempts to delay the trial in this matter. Although this Court denied summary judgment on January 30, 2025, the Supreme Court has yet to schedule a trial in this matter based, initially, on the Town’s expressed intention on February 4, 2025 to move in this Court for leave to appeal. The Town then waited until February 18 to make its motion. The Supreme Court declined again on March 3, 2025 to schedule the trial because this motion had not yet been decided. For the Court’s reference, a copy of the transcript from that recent conference is attached. Now the Town seeks to delay that decision further by submitting an untimely reply.

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As the Court is aware, this matter is subject to expedited pretrial and trial proceedings pursuant to Election Law § 17-216. To reiterate, and contrary to what the Town claims in its reply papers, the appellants certainly *are* seeking relief for the 2025 elections. In fact, the appellants repeatedly referenced the 2025 elections in their complaint filed with the Supreme Court as a reason that these proceedings need to be expedited. *See* Orange County Index Number EF002460-2024, Doc. No. 1 at ¶¶ 136-144.

Accordingly, the appellants respectfully request that this Court deny the Town's request to submit a reply, expedite its decision on the pending motion to the extent possible, and, upon denying the motion, direct the Supreme Court to schedule a trial.

We thank you for your consideration in this matter.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Jeffrey A. Cohen", with a long horizontal flourish extending to the right.

Jeffrey A. Cohen

To: All parties of record via NYSCEF

SUPREME COURT
COUNTY OF ORANGE : STATE OF NEW YORK

-----X

ORAL CLARKE, ET AL,
Plaintiff,

-against- Index No. EF002460-2024

TOWN OF NEWBURGH, ET AL,
Defendant.

-----X

STATUS CONFERENCE 03/03/2025

285 Main Street
Orange County Courthouse
Goshen, New York 10924

B E F O R E:

HON. MARIA VAZQUEZ DOLES,
SUPREME COURT JUSTICE

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TANIA MILZA,
SENIOR COURT REPORTER

1 COURT CLERK: No. 8, Clarke versus
2 Town of Newburgh, EF002460-2024.

3 THE COURT: Appearances, please?

4 MR IMAMURA: Good morning, Your Honor.
5 David Imamura, Abrams Fensterman for the plaintiffs.

6 MR. DAVIS: Samuel Davis, The Elections Law
7 Clinic at Harvard Law School for the plaintiffs.

8 MR. MOSKOWITZ: Good morning,
9 Bennet Moskowitz, Troutman, Pepper, Locke for the
10 defendants.

11 THE COURT: Okay, the day we last left off
12 you were going to file a motion with the Appellate
13 Division, regarding possible appeals, the Court of
14 Appeals, and have you done so?

15 MR. MOSKOWITZ: We did. We did it within the
16 time that we discussed with Your Honor, and then last
17 Friday, I think both my friends here today, filed
18 their opposition briefs. My understanding is, any
19 Reply would have to be filed this week, and upon that,
20 the issue of the appeal, and/or the stay of these
21 proceedings will be teed up for the Court.

22 THE COURT: In other words, you don't have
23 an order from the Court staying this action, as of
24 yet?

25 MR. MOSKOWITZ: We don't. And my colleagues

1 will pull my ears off if I don't put on the record,
2 again, our position, which we recognize the Court has
3 a different view, that unless and until that formal
4 document that says, remitter on issues, this Court
5 here doesn't have jurisdiction to hear the proceeding.
6 Notwithstanding that, we have conferred with opposing
7 counsel about trial dates.

8 THE COURT: I just needed to know, if we
9 don't have the stay from the Appellate Court, that --
10 that's why I called you guys in, is to be able to get
11 the status, so that that way, it doesn't linger, no
12 matter what, it's one in which I have to follow-up.
13 And so with that said, I'm going to put it off thirty
14 days. That's the longest I can give --

15 MR. MOSKOWITZ: Fine with us, Your Honor.

16 MR. IMAMURA: Your Honor, as the Court is
17 aware, under the Election Law statutes this proceeding
18 is entitled to expedited proceedings.

19 THE COURT: And that's what I'm doing it. I'm
20 expediting it. And that's why we're coming back in
21 thirty days.

22 MR. IMAMURA: Yes, Your Honor.

23 THE COURT: Okay, we're not going to come
24 back tomorrow, or have a week. And on top of it, I
25 need to make sure that the Court of Appeals has a

1 chance to review and comes back with something or
2 nothing. And that's why it's thirty days, and that's
3 as expedited as I can come.

4 MR. IMAMURA: Yes, Your Honor.

5 THE COURT: Okay.

6 COURT CLERK: We're going to have this case
7 back in thirty days, April 3rd at 10AM.

8 MR. MOSKOWITZ: Thank you.

9 THE COURT: 10AM.

10 MR. MOSKOWITZ: 10AM.

11 THE COURT: Thank you. Any further
12 questions, or --

13 MR. DAVIS: No, Your Honor.

14 THE COURT: Okay.

15 MR. MOSKOWITZ: No, Your Honor. Thank you.

16 THE COURT: Take care.

17 (Whereupon the proceedings were adjourned.)

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19 Certified to be a true and accurate transcript.

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TANIA MILZA
SENIOR COURT REPORTER