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March 10, 2025

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

**Re: *Oral Clarke et al. v. Town of Newburgh et al.*, Docket No.2024-11753**

Dear Mr. Joseph:

Defendants-Respondents the Town of Newburgh and Town Board of the Town of Newburgh (collectively, the “Town”), respectfully submit this response letter to Plaintiffs-Appellants’ letter filed with the Court earlier today, NYSCEF No.41, which letter objects to the Town’s request that the Court accept for filing its already-submitted Reply Memorandum Of Law In Support Of Motion Of Defendants-Respondents For Leave To Appeal To The New York State Court Of Appeals And To Refrain From Issuing Remittitur (“Reply”), NYSCEF No.40. The Town makes three points in response to Plaintiffs’ letter.

*First*, Plaintiffs’ claim that the Court should not accept for filing the Town’s already-submitted Reply as untimely because doing so will delay this case makes no sense. NYSCEF No.41 at 1. As a threshold matter, as the Town explained in its cover letter requesting leave to file its already-submitted Reply, NYSCEF No.40 at 1, CPLR 5516’s requirement that the Town notice its Motion For Leave To Appeal for no more than 15 days did not permit the Town to file its Reply as of right under CPLR 2214(b), given that CPLR 2214(b) only permits replies where the motion is noticed for “at least sixteen days,” CPLR 2214(b). That is why the Town requested this Court’s permission to file its already-submitted Reply, consistent with ordinary practice. NYSCEF No.40 at 1. Further and more to the point, this Court accepting the Reply could not possibly delay this Court’s adjudication of the Town’s Motion, and Plaintiffs do not even attempt to explain their incoherent thesis as to how accepting an already-submitted reply brief could delay anything.

*Second*, Plaintiffs’ claim that the Town has “consistent[ly] attempt[ed] to delay the trial in this matter,” NYSCEF No.41 at 1, is an egregious effort to mislead the Court. As Plaintiffs know but failed to inform this Court, the Town agreed to expedited proceedings in the Supreme Court below, see *Clarke et al. v. Town of Newburgh et al.*, Index No.EF002460/2024, NYSCEF No.39, and the only source of delay in those proceedings was due to Plaintiffs’ inexplicable decision to file an extra expert report two months after the court-ordered deadline for the submission of expert reports, see Index No.EF002460/2024, NYSCEF Nos.29 at 4, 124 at 1, 126 at 3–5. That disregard by Plaintiffs for court-ordered deadlines led to the Supreme Court giving the Town the

right to file another expert report in response to Plaintiffs' untimely expert report, and then permitting the Town to re-depose Plaintiffs' expert on Plaintiffs' two-months-too-later report, Index No.EF002460/2024, NYSCEF No.141. Other than Plaintiffs' untimely expert report, the only reason that trial did not take place as originally scheduled last Fall was because the Supreme Court granted summary judgment in the Town's favor, which decision Plaintiffs appealed. See Index No.EF002460/2024, NYSCEF Nos.70, 147, 151. The Town complied fully with this Court's expedited appellate briefing schedule during that appeal, see NYSCEF No.4, and after this Court issued its ruling on that expedited appeal, the Town filed its Motion For Leave To Appeal this Court's Decision *13 days before its 30-day deadline, compare* NYSCEF No.37, *and* Index No.EF002460/2024, NYSCEF No.155, *with* CPLR 5513(b); N.Y. Gen. Constr. Law § 25-a.

*Finally*, this Court should reject out-of-hand Plaintiffs' bizarre position that they are still somehow seeking relief for the already ongoing 2025 election. NYSCEF No.41 at 2. While Plaintiffs initially sought relief for the 2025 election in their Complaint filed on March 26, 2024, they admitted that "any court-ordered remedies" would have needed "to be implemented *before February 2025*" for any such relief to take place, given that "the nomination process for candidates for Town office in November 2025 will begin in or around February 2025." See Index No.EF002460/2024, NYSCEF No.1 at 25–26 (emphasis added). The course of the proceedings described in the immediately preceding paragraph—including Plaintiffs' submission of a two-months-too-late additional expert report and the Supreme Court's entry of summary judgment and subsequent appeal—have made it impossible for Plaintiffs to obtain any court-ordered remedies "before February 2025." Thus, by Plaintiffs' own explicit and unambiguous concession, they cannot now obtain any relief here for the ongoing 2025 election.

Sincerely,



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