

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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

Index No. EF002460-2024

Plaintiffs,

-against-

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

Defendants.

**PLAINTIFFS’ MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS’ MOTION IN LIMINE**

Plaintiffs respectfully submit this memorandum of law in opposition to Defendants’ motion in limine (Motion Sequence # 7 [[NYSCEF Doc. No. 112](#)]) for an order excluding the Addendum of Dr. Matt A. Barreto (Affirmation of Bennet J. Moskowitz (“Moskowitz Aff.”) at Ex. J. [[NYSCEF Doc. No. 123](#)]) and precluding any testimony and/or opinions regarding the same at trial.

I. Argument.

Plaintiffs complied with CPLR 3101(d) by timely disclosing the identity of their expert witness – Dr. Matt Barreto – his qualifications, and the “subject matter . . . [and] substance of the facts and opinions on which [he] is expected to testify.” CPLR 3101(d); *see* NYSCEF 121 (Barreto Initial Report) at 1-2. Dr. Barreto’s initial report included his opinion that, based on his expertise and his review of voting patterns in the Town of Newburgh, “it is possible to implement” multiple reasonable alternative electoral systems, including “a single-member district plan” that would “allow Black and Latino voters to elect their candidates of choice,” as opposed to the existing at-large system. *Id.* at 16-18 (section titled “**Different Electoral Systems as a Means to Elect**

Minority Preferred Candidates”). Later – after the expert disclosure deadline, but more than a week before Dr. Barreto was deposed, before this Court entered an order fixing summary judgment briefing deadlines, and almost two months before trial – Plaintiffs disclosed an addendum providing additional context on a topic Dr. Barreto had previously addressed: “the question of whether or not districts can function or perform to elect minority voter candidates of choice.” NYSCEF 123 (Barreto Addendum) at 1.

Plaintiffs’ disclosure of the Barreto Addendum, while untimely, in no way undermined Defendants ability to conduct “adequate and thorough trial preparation.” *Silverberg v. Cmty. Gen. Hosp. of Sullivan Cnty.*, 290 A.D.2d 788, 788 (3d Dep’t 2002). Plaintiffs initially disclosed a report containing Dr. Barreto’s opinion that multiple alternative electoral systems could remedy the dilution of Plaintiffs’ votes; as litigation commenced, Plaintiffs disclosed an addendum providing further details regarding Dr. Barreto’s opinion with respect to one of those systems. Defendants do not explain how receiving *more* and *more specific* information about a topic addressed in Dr. Barreto’s initial report, well in advance of trial, undermines their capacity to mount an “adequate and thorough” defense. Defendants’ entire argument is based on speculation about what difficulties they *might* have faced had they attempted to rebut the addendum. *See* NYSCEF 126, ¶ 25. But the mere possibility that it *might* have been difficult for Defendants to respond to the Barreto Addendum if they had tried does not justify “the drastic remedy of preclusion.” *Silverberg*, 290 A.D.2d at 789. Defendants are not entitled to manufacture prejudice by sitting on their hands.

While Plaintiffs agree that this Court has the authority to preclude the Barreto Addendum from being introduced at trial, doing so is not warranted under these circumstances. Indeed, Defendants cannot point to a single case in which a court precluded expert testimony under remotely similar circumstances. Rather, the cases Defendants rely upon universally involve

circumstances where the prejudice to the non-disclosing party was obvious because a litigant either did not timely disclose the *identity* of their expert, *see, e.g., Vigilant Ins. Co. v. Barnes*, 199 A.D.2d 257 (2d Dep’t 1993), or used a late disclosure to introduce a *new* theory that was inconsistent with their expert’s prior disclosures, *see e.g., LaFurge v. Cohen*, 61 A.D.3d 426 (2009), *lv. denied* 13 N.Y.3d 701 (2009). Here, by contrast, Plaintiffs disclosed an addendum prepared by an expert whose identity had been timely disclosed, covering a topic the expert had previously addressed, months before trial. Defendants’ fallback argument – that they are not required to prove prejudice – is simply wrong. *See, e.g., Browne v. Smith*, 65 A.D.3d 996, 997 (2d Dep’t 2009)

Regardless, even if this Court concludes that the Barreto Addendum should be excluded, Defendants wildly overreach in seeking to preclude Dr. Barreto from offering any “testimony and/or opinions regarding” the *subject* of the addendum: the likelihood that a single-member district plan would provide Black and Latino voters in the Town of Newburgh with an opportunity to elect candidates of their choice. Given that Dr. Barreto’s initial report offered an opinion on this *exact* topic based on his expertise and analysis, he is plainly entitled to offer testimony on this matter at trial. Whether or not this Court deems the Barreto Addendum admissible, Defendants’ demand that they be allowed to shut their eyes and ignore evidence they do not like – evidence undoubtedly relevant to the proper disposition of this case – should be denied.

A. Defendants’ must show prejudice to justify the “drastic remedy” of preclusion.

“Trial courts possess broad discretion in their supervision of expert disclosure under CPLR 3101(d)(1),” *Rivera v. Montefiore Med. Ctr.*, 28 N.Y.3d 999, 1002 (2016), including the discretion to impose the sanction of preclusion for a party’s failure to comply with court-ordered discovery deadlines, *see, e.g., Theroux v. Resnicow*, 148 N.Y.S.3d 885, 889 (Sup. Ct., N.Y. Cty. 2021). But preclusion is a “drastic remedy.” *Seale v. Seale*, 149 A.D.3d 1164, 1167 (3d Dep’t 2017). It is a

“stern sanction[.]” that, typically, is only appropriate after “repeated discovery disagreements between the parties leading to judicial intervention(s).” *Theroux*, 148 N.Y.S.3d at 890; *see also Gushlaw v. Roll*, 290 A.D.2d 667, 669 (3d Dep’t 2002) (describing preclusion as a “draconian” sanction). Preclusion is also in tension with the basic purpose of New York’s expert discovery rules, which is to ensure that parties can rely on expert testimony at all stages of litigation. *See Theroux*, 148 N.Y.S.3d at 888 (summarizing Report of the Advisory Committee on Civil Practice to the Chief Administrative Judge of the Courts of the State of New York (January 2015)).

“CPLR 3101(d)(1) does not . . . mandate that a party be precluded from proffering expert testimony merely because of noncompliance with the statute, unless there is evidence of intentional or willful failure to disclose *and* a showing of prejudice by the opposing party.” *Browne*, 65 A.D.3d at 997 (internal quotation marks omitted) (emphasis added). Indeed, courts have consistently held that preclusion is *only* warranted where there is prejudice: absent prejudice, a court abuses its discretion in precluding expert testimony *even if* there is evidence of willful noncompliance with discovery deadlines. *See, e.g., Gayz v. Kirby*, 41 A.D.3d 782, 782-83 (2d Dep’t 2007) (holding that Supreme Court abused its discretion in granting motion to preclude because “any potential prejudice to the defendants was ameliorated” by subsequent court orders, notwithstanding “evidence . . . that the plaintiff’s belated disclosure of her expert information . . . was intentional”); *Castellani v. Bagdasarian*, 286 A.D.2d 870, 871 (4th Dep’t 2001) (reversing order precluding expert testimony because “there was no ‘demonstrable prejudice or surprise’ to defendant” (quoting *Rook v. 60 Key Ctr.*, 239 A.D.2d 926, 927 (4th Dep’t 1997))); *Silverberg*, 290 A.D.2d at 789 (affirming order denying preclusion where “defendants failed to assert prejudice in their motion papers, nor did they assert that there was insufficient time to prepare for trial”).

Defendants are simply wrong in claiming otherwise. *See* NYSCEF 126 ¶ 25 (citing *Colucci*

v. Stuyvesant Plaza, Inc., 157 A.D.3d 1095, 1099 (3d Dep’t 2018), *lv. denied* 31 N.Y.3d 906 (2018)); *see also id.* ¶ 14 (citing *LaFurge v. Cohen*, 61 A.D.3d 426 (1st Dep’t 2009), *lv. denied* 13 N.Y.3d 701 (2009)). Neither *Colucci* nor *LaFurge* – nor any case cited by Defendants – states that a showing of prejudice is *not* required to warrant preclusion. Many cases say the exact opposite. *See, e.g., Browne*, 65 A.D.3d at 997; *Mazzurco v. Gordon*, 173 A.D.3d 1001, 1002 (2d Dep’t 2019) (“Generally, preclusion is unwarranted without evidence of intentional or willful failure to disclose *and* a showing of prejudice by the party seeking preclusion.” (emphasis added)); *Tate-Mitros v. MTA N.Y.C. Transit*, 144 A.D.3d 454, 456–57 (1st Dep’t 2016) (“[A] party should not be precluded from presenting expert testimony merely because of noncompliance with CPLR 3101(d)(1)(i), unless there is evidence of a willful failure to disclose *and* a showing of prejudice by the opposing party.” (emphasis added)).¹

Moreover, in both *Colucci* and *LaFurge* – and, as detailed below, in every single case Defendants rely upon – the party seeking preclusion was obviously prejudiced. In *Colucci*, the disclosing party failed to timely disclose the *identities* of their experts. 157 A.D.3d at 1098-99. In *LaFurge*, the disclosing party attempted to introduce expert testimony “regarding a *new theory* of liability . . . which was not apparent from her prior expert disclosures.” 61 A.D.3d at 426 (emphasis added). Under these circumstances, it is self-evident that the parties opposing disclosure could not prepare an “adequate and thorough” rebuttal – they did not know who or what they were rebutting until the eve of trial. By contrast, Defendants had (and still have) ample opportunity to prepare to respond to the Barreto Addendum at trial. And, with or without the addendum, they cannot credibly claim to be surprised by any testimony Dr. Barreto will offer at trial regarding the likely effects of

¹ *See also Hernandez-Vega v. Zwanger-Pesiri Radiology Grp.*, 39 A.D.3d 710, 711 (2d Dep’t 2007) (party seeking preclusion must show willfulness and prejudice); *Shopsin v. Siben & Siben*, 289 A.D.2d 220, 221 (2d Dep’t 2001) (same); *Cutsogeorge v. Hertz Corp.*, 264 A.D.2d 752, 753-54 (2d Dep’t 1999) (same); *Aversa v. Taubes*, 194 A.D.2d 580, 582 (2d Dep’t 1993) (same).

implementing single-member districts in the Town of Newburgh, given the opinion he offered on this very topic in his initial report. *See* NYSCEF 121 at 16-18.

B. Defendants have not and cannot show prejudice.

Claims “which rest[] on conclusory, speculative and unsubstantiated assertions” are insufficient to demonstrate prejudice. *Cruickshank v. Dukes*, 188 Misc. 2d 514, 516 (App. Term 2d Dep’t 2001). Here, Defendants’ prejudice claim is, admittedly and entirely, “conclusory, speculative, and unsubstantiated.” Defendants argue that if the Town were required to respond to the Barreto addendum, “it *would have* needed to first evaluate whether one of its current experts had the time to prepare a new report to rebut Dr. Barreto’s belated claims or whether it needed to retain an additional expert.” NYSCEF 126 ¶ 25 (emphasis added). By necessary implication, the Town is acknowledging it intentionally did nothing to assess what would have been required to respond to the Barreto Addendum.

Defendants did not show the Barreto Addendum to their rebuttal expert, Professor Lockerbie, NYSCEF 90 (Lockerbie Deposition) at 127:19-128:25, despite retaining Professor Lockerbie to rebut Dr. Barreto’s initial report, NYSCEF 89 (Lockerbie Report) at 1, which included the opinion that “it is possible to implement a single-member district plan to allow Black and Latino voters to elect their candidates of choice” in the Town of Newburgh, NYSCEF 121 (Barreto Initial Report) at 16. Notably, Professor Lockerbie offered no opinion and reached no conclusion rebutting this opinion. *See* NYSCEF 90 (Lockerbie Deposition) at 127:19-131:15. And Defendants have absolutely no idea whether other experts were available “at the start of the academic year” *because they did not even ask*. NYSCEF 126 ¶ 25. Evidence showing that the Town attempted to rebut the Barreto Addendum but was unable to due to circumstances outside of its control would potentially support the requisite showing of prejudice; “pure speculation”

about what *might* have occurred had they done something to respond cannot. *Khan v. Galvin*, 206 A.D.2d 776, 778 (3d Dep’t 1994).

Further, if Defendants could not respond to the Barreto Addendum because their attorneys “were handling multiple other matters with court deadlines that they could not move,” NYSCEF 126 ¶ 25, there was an available remedy: Defendants could have asked this Court to move deadlines in *this* case. Courts have consistently held that preclusion is inappropriate if “any potential prejudice to the plaintiffs could . . . be[] eliminated by an adjournment,” even where a party discloses an expert’s identity and testimony for the first time at trial. *Rowan v. Cross Cnty. Ski & Skate, Inc.*, 42 A.D.3d 563, 564 (2d Dep’t 2007) (affirming denial of preclusion despite untimely disclosure); *see also Elgart v. Berezovsky*, 123 A.D.3d 970, 972 (3d Dep’t 2014) (“[B]ecause an adjournment of the trial ameliorated any prejudice . . . the court providently exercised its discretion in declining to preclude the expert witness from testifying at trial.”). By the same logic, if Defendants were truly unable to address the Barreto Addendum before the summary judgment deadline or before trial, they should have sought extensions instead of waiting until the last moment to seek preclusion.²

Indeed, Defendants had multiple opportunities to seek additional time to respond to the Barreto Addendum. Plaintiffs disclosed the addendum on September 4, 2024. NYSCEF 124 at 1. Plaintiffs’ counsel offered Defendants the opportunity to have Professor Lockerbie update his report to respond to the addendum, but Defendants declined and instead declared the addendum “null and void.” *Id.* On September 13, Plaintiffs submitted a letter to this Court requesting a delay of the previously scheduled trial date. *See* NYSCEF 51. Before submitting the letter, Plaintiffs asked Defendants whether they wished to jointly request the delay, but Defendants declined.

² Notably, at the time the Barreto Addendum was disclosed, this Court had not yet entered an order setting a deadline for the parties to submit summary judgment briefs. *See* NYSCEF 57.

See Exhibit A (Email from David Imamura (Sep. 11, 2024)). On September 19, Plaintiffs submitted a letter on behalf of both parties to “request adjusting our proposed briefing schedule to accommodate several depositions that needed to be rescheduled.”³ NYSCEF 56. On any of these occasions – or at any point prior to filing the instant motion – Defendants could have raised the addendum as grounds for seeking an enlargement of time. Of course, that would also have required Defendants to explain what steps they believed they needed to take to respond to the addendum – and to explain why they chose not to provide the addendum, which addressed a topic covered in Dr. Barreto’s initial report, to the expert they had retained to rebut Dr. Barreto’s initial report.

The cases Defendants rely on in support of their motion uniformly demonstrate why Defendants’ half-hearted prejudice argument necessarily fails. In the vast majority of these cases, the question was whether a court acted within its discretion to preclude litigants from relying on testimony from experts *whose identities and topics of expected testimony* had never been disclosed or were disclosed on the eve of trial. *See Vigilant*, 199 A.D.2d at 257 (“In the instant case, the plaintiff failed . . . to disclose the names of three expert witnesses until the eve of trial.”); *Bauernfeind v. Albany Med. Ctr. Hosp.*, 195 A.D.2d 819, 819 (3d Dep’t 1993) (“Defendants served a demand for experts’ names pursuant to CPLR 3101(d) upon plaintiff on December 19, 1985. Plaintiff replied on June 10, 1992, seven years after demand was made and four days before trial.”), *lv. denied* 82 N.Y.2d 885 (1993); *Colucci*, 157 A.D.3d at 1096, 1101 (describing “plaintiffs’ complete lack of expert disclosure and failure to submit any expert proof” and affirming preclusion based on their “failure to provide any expert disclosure for over one year” after deadline);

³ The main reason for this request was Defendants’ failure to make a representative for the Town available for a 22 NYCRR 202.20-d deposition until September 22, *see* Exhibit B (Town Deposition Email Thread No. 1); Exhibit C (Town Deposition Email Thread No. 2), despite the deadline set forth in the pretrial scheduling order, *see* NYSCEF 29 at 3. Rather than seek to preclude the Town from offering testimony at trial, Plaintiffs instead sought a modest extension to accommodate Defendants and allow the parties time to complete depositions in advance of summary judgment and trial.

Schwartzberg v. Kingsbridge Heights Care Ctr., Inc., 28 A.D.3d 463, 464 (2d Dep’t 2006) (“In the present case, the defendants did not offer any explanation for their inordinate delay in disclosing the identity of their expert witness, his credentials, and the specific subject matter of his expected testimony.”); *Meyer v. Zeichner*, 263 A.D.2d 597, 599 (3d Dep’t 1999) (affirming preclusion where counsel for plaintiff in medical malpractice action averred that “a physician was consulted” as a potential expert but failed to provide physician’s identity). In these cases, the prejudice was obvious: a party cannot prepare to rebut an expert witness if they do not know who the expert is or what they will testify about. Here, by contrast, Plaintiffs timely disclosed Dr. Barreto’s identity and the subject of his expected testimony, which included the topic covered in his timely disclosed addendum.

In other cases invoked by Defendants, a party’s untimely disclosure introduced a novel theory which was either irreconcilable with or not apparent from a prior expert disclosure.⁴ See *LaFurge*, 61 A.D.3d at 426 (“The trial court providently exercised its discretion in precluding testimony from plaintiff’s expert oncologist regarding a new theory of liability that plaintiff failed to timely disclose and which was not apparent from her prior expert disclosures.”). In *Krimkevitch v. Imperiale*, for example, the plaintiff disclosed an additional expert report “immediately before trial” that contained “a new theory not previously disclosed,” a theory that “contradicted [the expert’s] earlier reports.” 104 A.D.3d 649, 650 (2d Dep’t 2013) (quoting *Caccioppoli v. City of New York*, 50 A.D.3d 1079, 1080 (2d Dep’t 2008)). These cases are also not like this case: here,

⁴ Other cases Defendants cite are simply irrelevant. The question of what a litigant must show to justify filing a late summary judgment motion under CPLR 3212(a), which expressly provides that “such motion[s] shall be made no later than one hundred twenty days after the filing of the note of issue, *except with leave of court on good cause shown*,” has no bearing on the question presently before this Court. *Brill v. City of New York*, 2 N.Y.3d 648, 651 (2004) (emphasis added) (quoting CPLR 3212(a)). And the court in *Atkinson v. Golub Corp. Co.* said nothing about the circumstances surrounding the expert disclosure in its one sentence affirmance of the Supreme Court’s decision to grant preclusion. 278 A.D.2d 905, 906 (4th Dep’t 2000).

the Barreto Addendum addressed a topic (the possibility of implementing a reasonable alternative electoral system) and theory (that a single-member district system would provide Black and Hispanic voters with an opportunity to elect their candidate of choice) explicitly addressed in Plaintiffs' initial, timely disclosed report. *See* NYSCEF 121 (Barreto Initial Report) at 16-18 (section titled “**Different Electoral Systems as a Means to Elect Minority Preferred Candidates**”). If anything, Plaintiffs' disclosure of the Barreto Addendum *helped* Defendants prepare for trial by providing additional details regarding his analysis of one of the numerous electoral systems he opined on in his initial report.

Finally, Defendants rely on *Theroux v. Resnicow*, 148 N.Y.S.3d 885 (Sup. Ct. N.Y. Cnty. 2021), for the proposition that preclusion is warranted because “plaintiff[s] failed to serve [their] expert disclosure in accordance with the court’s scheduling order.” NYSCEF 126 ¶ 25. *Theroux*, like most of the cases Defendants cite, is inapposite for the basic reason that it involved a party’s failure to provide the *identity* of their expert. 148 N.Y.S.3d at 886, 890 (noting that the plaintiff had merely “represented he will be relying on an expert’s opinion”). But *Theroux* is also unhelpful to Defendants for an additional reason: the court in *Theroux* made clear that an order granting preclusion at the summary judgment stage “would *not* extend . . . to use of expert evidence at a trial of this action,” because at trial “[t]he issue of admissibility of expert testimony . . . would instead be considered anew . . . under CPLR 3101(d)(1).” *Id.* at 890. Notwithstanding this express caution, Defendants cite *Theroux* in their leap from an argument about summary judgment to an argument about trial, conflating two analytically distinct questions. NYSCEF 126 ¶¶ 25-26. *Theroux*, like every case Defendants rely on, simply does not support the argument Defendants seek to advance.

C. Even if this Court excludes the Barreto Addendum, there is no justification for precluding Dr. Barreto from testifying about reasonable alternative electoral systems at trial.

Defendants cannot credibly argue that they lacked adequate time to prepare to address the Barreto Addendum at trial, which was nearly two months away at the time the addendum was disclosed. *See, e.g., Rowan*, 42 A.D.3d at 564 (finding no prejudice from untimely disclosure and noting that “disclosure of the expert information was not made on the eve of trial since the plaintiff had two weeks within which to review the material prior to the date when the trial was scheduled to begin”); *Saldivar v. I.J. White Corp.*, 46 A.D.3d 660, 661 (2d Dep’t 2007) (“[T]he defendant was not prejudiced by the plaintiffs’ delay given that the plaintiffs had apprised the defendant of the subject matter and substance of the testimony of their expert several months before the trial.”). Thus, Defendants are not entitled to exclude the addendum at trial.⁵ However, even if this Court disagrees, there is still no justification for granting Defendants’ request to preclude “any testimony and/or opinions regarding” the addendum at trial. NYSCEF 126 ¶ 28.

To reiterate, the Barreto Addendum provided additional context regarding a subject Dr. Barreto assessed and offered his opinion on in his initial report: the likelihood that Black and Latino voters in the Town of Newburgh could elect candidates of their choice if the Town adopted a single-member district system. In his initial report, Dr. Barreto “review[ed] four different systems as compared to at-large elections” and, after “carefully consider[ing] the racial and ethnic demographics of Newburgh,” the scholarly literature, and his analysis of the voting patterns of different racial groups in the Town, opined that “it is possible to implement a single-member

⁵ Plaintiffs are entitled to rely on the Barreto Addendum in opposing Defendants’ summary judgment motion for the reasons described previously. *See* NYSCEF 73 at 28-29. Further, Dr. Barreto’s initial report was itself sufficient to raise a triable issue of fact on the reasonable alternative election system issue. *Id.*

district plan to allow Black and Latino voters to elect their candidates of choice.” NYSCEF 87 at 16.⁶ Dr. Barreto offered the exact same opinion in his addendum. Defendants cannot claim to be prejudiced or surprised if he offers testimony to that effect at trial.

Under CPLR 3101(d)(1)(i), “[t]here is no requirement that an expert set forth the specific facts and opinions that will be encompassed in his or her anticipated testimony.” *Velez v. Roy*, 191 A.D.3d 571, 571 (1st Dep’t 2021). Rather, Plaintiffs were required to “disclose *in reasonable detail* [their] expert’s qualifications, the facts and opinions on which the expert is expected to testify at trial and the grounds therefor.” *Chapman v. State*, 189 A.D.2d 1075, 1075 (3d Dep’t 1993) (emphasis added). With respect to the topic of implementing a single-member district system, Dr. Barreto’s initial report does exactly that. Defendants cannot show that the initial report is “so inadequate or inconsistent with” testimony that Dr. Barreto is likely to offer on the subject of the addendum as to “be[] misleading, or [likely to] result[] in prejudice or surprise.” *Gagliardotto v. Huntington Hosp.*, 25 A.D.3d 758, 758-59 (2d Dep’t 2006), *lv. denied* 7 N.Y.3d 710 (2006). They cannot show that the initial report was “deficient” for lack of “a theory or basis for [Dr. Barreto’s] opinion” on the likely effect of single member districts on Black and Latino voters in the Town of Newburgh. *Rivera*, 28 N.Y.3d at 1002. Accordingly, whether or not the addendum is excluded, Dr. Barreto is entitled to testify about the likely consequences of implementing single-member districts in the Town of Newburgh at trial.

II. Conclusion

Plaintiffs first disclosed Dr. Barreto’s opinion that alternative electoral systems, including a single-member district system, would enable Black and Latino voters in the Town of Newburgh the opportunity to elect candidates of their choice on June 28, 2024. *See* NYSCEF 87. In the

⁶ Moreover, in his initial report Dr. Barreto expressly “reserve[d] the right to update [his] report and opinions.” NYSCEF 87 at 18.

ensuing months, Defendants have had every opportunity to introduce evidence rebutting that opinion. They have introduced no such evidence. Indeed, their rebuttal expert testified that he had “no opinion” as to the potential consequences of implementing single-member districts or any of the alternative electoral systems addressed in Dr. Barreto’s initial report. *See* NYSCEF 90 (Lockerbie Deposition) at 127:19-131:15. Having failed to rebut Dr. Barreto’s opinion regarding alternative electoral systems, Defendants now seek to preclude any further testimony on the topic, on the specious grounds that Plaintiffs disclosure of an addendum providing additional information regarding Dr. Barreto’s analysis was somehow prejudicial. Defendants’ motion should be denied.

ELECTION LAW CLINIC AT HARVARD LAW SCHOOL

By:  _____

Ruth Greenwood

Daniel Hessel

Samuel Davis (*pro hac vice*)

6 Everett Street, Suite 4105

Cambridge, MA 02138

Telephone: 617-998-1010

ABRAMS FENSTERMAN, LLP

By:  _____

Robert A. Spolzino

Jeffrey A. Cohen

David T. Imamura

Steven Still

81 Main Street, Suite 400

White Plains, NY 10601

(914) 607-7010

Attorneys for Plaintiffs

Dated: White Plains, New York
October 24, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum uses Times New Roman 12-point typeface and contains 4,090 words, excluding parts of the document exempted by Rule 202.8-b. As permitted, the undersigned has relied on the word count feature of this word processing program.

By: /s/ Steven Still
Steven Still