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April 7, 2025

**VIA NYSCEF**

Hon. Maria S. Vazquez-Doles  
New York Supreme Court, Orange County  
285 Main Street  
Goshen, New York 10924

**Re: *Oral Clarke, et al. v. Town of Newburgh, et al.* (Index No. EF002460-2024; Orange Cnty.)**

Dear Justice Vazquez-Doles,

We represent Defendants Town of Newburgh and Town Board of the Town of Newburgh (collectively, “Defendants”) in the above-referenced action (the “Action”). We write in opposition to Plaintiffs’ unsupported, untimely request that this Court ask the District Administrative Judge to transfer this case to another Justice. *See* NYSCEF No. 162. The Court should reject Plaintiffs’ request for several reasons.

First, Plaintiffs cite no legal authority demonstrating that such a transfer at this stage of these proceedings is even permissible.

Second, in any event, transfer at this time would be counterproductive and inappropriate given Your Honor’s familiarity with the unique issues in this Action brought pursuant to the relatively new New York Voting Rights Act (the “NYVRA”). Indeed, it appears Plaintiffs’ request is nothing more than a cynical attempt to transfer this action away from Your Honor, who has previously sided with Defendants regarding the constitutionality of the NYVRA’s vote dilution provisions. *See* this Court’s Decision and Order dated November 7, 2024. NYSCEF No. 147.

Third, Plaintiffs’ request is premature. Defendants have moved the Second Department for permission to appeal to the Court of Appeals, to vindicate this Court’s aforementioned Decision and Order. *See Oral Clarke, et al. v. Town of Newburgh, et al.*, Index No. 2024-11753, NYSCEF No. 37. That motion remains pending before the Second Department. In the interests of judicial economy and to prevent potentially unnecessary fees and expenses, there is no compelling reason

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to proceed to trial – before any justice – while the Appellate Division considers whether to authorize Defendants’ appeal to the Court of Appeals on dispositive matters.<sup>1</sup>

Fourth, the procedural postures of, and positions taken by parties in, other pending NYVRA cases commenced in 2024 – including one pending in Westchester County in which the plaintiffs are represented by the same counsel as Plaintiffs in this Action and which was filed over two months before this Action – support Defendants’ position in this letter. Trial has not been set in any of those actions. See e.g. *Sergio Serratto, et al. v. Town of Mount Pleasant, et al.*, Westchester County Index No. 55442/2024; *Young v. Town of Cheektowaga*, Erie County Index No. 803989/2024 (NYVRA lawsuit). Moreover, in *Young*, the Office of the Attorney General of the State of New York, which is an intervenor therein just as it is an intervenor herein, specifically requested that the court “stay proceedings in [the] action, and adjourn the oral arguments on the [parties’] pending cross-motions for summary judgment” pending the adjudication of the issues raised in our clients’ appeal of Your Honor’s November 7, 2024 decision in this Action. *Young v. Town of Cheektowaga*, Erie County Index No. 803989/2024, NYSCEF No. 154.

Fifth, Plaintiffs’ reasoning for their request – that they seek relief for the November 2025 Town Council elections – is belied by their prior, long-held position in this lawsuit. NYSCEF No. 162. In their Complaint, Plaintiffs alleged that “the nomination process for candidates for Town office in November 2025 will begin in or around February 2025,” such that “any court-ordered remedies” issued in this lawsuit would have “to be implemented before February 2025” for any such relief to be effective. See NYSCEF No. 1 ¶¶ 140, 143.

Plaintiffs have reiterated this position, including on November 1, 2024, when they represented in a letter to Your Honor that “it is critical that this matter be decided in time for the 2025 election cycle, which will begin in February. **If the trial is delayed until January**, it will be extraordinarily difficult to achieve that. In those circumstances, **even if the Court decides that the plaintiffs are entitled to relief, they will not see it until 2027.**” NYSCEF No. 144 (emphasis added). It is now April—so for Plaintiffs to now maintain that they still need a trial as soon as possible does not square with their prior position that not having a trial by January would likely doom their ability to get meaningful relief for the 2025 election.

Respectfully submitted,

Bennet J. Moskowitz

<sup>1</sup> Additionally, and as Defendants have previously explained, the Second Department has yet to issue remittitur. Therefore, the Supreme Court currently lacks jurisdiction. C.P.L.R. 5524(b); *Fry v. Vill. of Tarrytown*, 176 Misc. 2d 275, 276, 671 N.Y.S.2d 633, 634 (Sup. Ct. Westchester Cnty. 1998).



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cc: All counsel of record via NYSCEF