

NYSCEF DOC. NO. 165

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RECEIVED NYSCEF: 04/14/2025



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April 14, 2025

VIA NYSCEF

Hon. Anne E. Minihan
District Administrative Judge
Ninth Judicial District
Richard J. Daronco Westchester County Courthouse
111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601

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

Dear Justice Minihan,

We represent Defendants Town of Newburgh and Town Board of the Town of Newburgh (collectively, “Defendants” or “Town”) in the above-referenced action (the “Action”). We write in opposition to Plaintiffs’ disrespectful, meritless request that this case be removed from Justice Vazquez-Doles’ docket and transferred to another Justice. *See* NYSCEF No. 164. Plaintiffs requested this relief from Justice Vazquez-Doles herself on April 7, 2025, to which Defendants filed a letter in opposition the same day. *See* NYSCEF Nos. 162, 163. Plaintiffs have now filed the same request with Your Honor, without offering any justification for attempting to deprive Justice Vazquez-Doles of the opportunity to rule on their request in the first instance. No urgency justifies Plaintiffs’ disrespectful approach toward Justice Vazquez-Doles for several reasons, and this Court should thus summarily deny that request.

As a threshold matter, this case is not before the Supreme Court at this time, and there is no assurance that the case will ever return to the Supreme Court’s jurisdiction, let alone in the timeframe about which Plaintiffs now express concern. Defendants’ motion for leave to appeal the Second Department’s decision reversing Justice Vazquez-Doles’ grant of summary judgment to the Court of Appeals remains pending before the Second Department. *See Oral Clarke, et al. v. Town of Newburgh, et al.*, Index No. 2024-11753, NYSCEF No. 37. While the Second Department reversed Justice Vazquez-Doles’ decision invalidating the New York Voting Right Act’s (NYVRA) vote dilution provisions, it has not acted on Defendants’ motion for leave to appeal to the Court of Appeals and has not issued a remittitur. *See Clarke et al. v. Town of Newburgh et al.*, Index No. EF002460/2024 (Sup. Ct. Orange Cnty.). Given that the Second Department has not issued remittitur, the Supreme Court currently lacks jurisdiction to hold the trial that Plaintiffs want. 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); *In re Grecco v. Cimino*, No. 09-45759, 2013 WL 5574538, at *4 (Sup. Ct. N.Y. Cnty. Sep. 27, 2013).

Plaintiffs assert that the Appellate Division order remitting the matter for trial has been entered in the office of the Clerk of the Appellate Division and on the docket in this Court. Not so. While there is a notice of entry from Plaintiffs and a copy of the Appellate Division's Decision on the docket, *see Oral Clarke et al. v. Town of Newburgh et al.*, Index No. EF002460/2024 (Sup. Ct. Orange Cnty.), NYSCEF Nos. 155, 160, neither of those documents are denominated as a remittitur or contain any order remitting the case to the Supreme Court for further proceedings. This is in contrast to other cases, including in the Second Department. *See, e.g.*, Conditional Remittitur, *Haggerty v. Imperial Towers Condo.*, Index No. 151708/2020, NYSCEF Mot. No. 3 (Sup. Ct. Richmond Cnty. May 15, 2024); Order Directing Remittitur, *Blasch v. Edwards*, Index No. 52196/2017, NYSCEF Mot. No.1 (Sup. Ct. Westchester Cnty. May 7, 2020); Remittitur, *Trump Vill. Sec. 3 Inc. v. City of N.Y.*, Index No. 0026572/2010 (Sup. Ct. Kings Cnty. Jan. 22, 2015); Remittitur, *Modafferi v. N.Y.C. Transit*, Index No.0024060/2010 (Sup. Ct. Kings Cnty. Mar. 12, 2012); *see also* Notice of Entry of Ct. of Appeals Op. and Remittitur, *Harkenrider v. Hochul*, Index No. E2022-0116CV, NYSCEF No. 288 (Sup. Ct. Steuben Cnty. Apr. 27, 2022). Issuance of the remittitur is crucial to the proper administration of justice. *See, e.g.*, Fry, 671 N.Y.S.2d at 634; *Malnati v. Metro. Life Ins. Co.*, 300 N.Y.S. 1313, 1317 (Sup. Ct. Queens Cnty. 1937), *aff'd*, 254 A.D. 681 (2d Dep't 1938). No such remittitur has been issued in this case, and therefore the Supreme Court has no "authority for any further proceedings." *Fry*, 671 N.Y.S.2d at 634.

That the Second Department has not issued remittitur while it considers Defendants' motion for leave to appeal makes sense. As Defendants explained in their motion, their "Motion presents significant issues of statewide importance that merit review by the Court of Appeals"; in particular, whether the NYVRA's vote-dilution provisions are constitutional and, if those provisions are constitutional, what the elements of those provisions are that a plaintiff must prove to prevail at trial. *See Oral Clarke, et al. v. Town of Newburgh, et al.*, Index No. 2024-11753, NYSCEF No. 37. Accordingly, the Court of Appeals' review "would either dispose of this case, should the Court of Appeals reverse [the Appellate Division, Second Department] and affirm the" Supreme Court's holding that the NYVRA's vote dilution provisions are unconstitutional, "or provide much needed clarity on the essential elements of Plaintiffs' NYVRA claim. Such guidance is crucial" prior to any trial in this Action. *Id.*

The need for clarity from the Court of Appeals is also why other NYVRA vote dilution cases are awaiting the resolution of the appeal in this case. Trial has not been set in *Sergio Serratto, et al. v. Town of Mount Pleasant, et al.*, Westchester County Index No. 55442/2024 or *Young v. Town of Cheektowaga*, Erie County Index No. 803989/2024—two other NYVRA lawsuits filed in 2024. In fact, counsel for Plaintiffs here also represent the plaintiffs in the Westchester County Action, which was filed over two months before this Action. Additionally, in *Young*, Intervenor-Office of the Attorney General of the State of New York has requested that the court "stay proceedings in [the] action, and adjourn the oral arguments on the [parties'] pending cross-motions

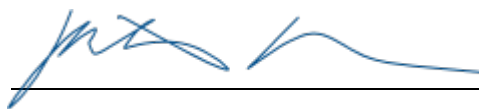
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for summary judgment” until the issues raised in Defendants’ currently-pending appeal of Justice Vazquez-Doles’ November 7, 2024 summary judgment decision here have been resolved. *Young v. Town of Cheektowaga*, Erie County Index No. 803989/2024, NYSCEF No. 154.

Even if the Second Department were to deny Defendants’ motion for leave to appeal and/or issue remittitur, there would be no reason to transfer the case away from Justice Vazquez-Doles. Justice Vazquez-Doles is deeply familiar with this case, including the issues and facts involved, as well as the conduct of the parties in these proceedings to date. For example, while Plaintiffs now assert that this case can be resolved in time to impact the November 2025 Town Council election, that is contrary to multiple representations that they have made to Justice Vazquez-Doles. *See* NYSCEF Nos. 162, 164. Plaintiffs’ Complaint alleges 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 reaffirmed this position on multiple occasions to Justice Vazquez-Doles, including by stating in a letter dated November 1, 2024 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). These concessions mean that even in the unlikely event that the Second Department were to deny Defendants’ motion and/or issue remittitur, *and* Plaintiffs were to prevail at trial, any relief would not apply until 2027. And given that previously conceded timeline, Plaintiffs’ request can only be seen as a blatant attempt at judge-shopping, hoping to take a case away from a Justice who ruled against Plaintiffs at the summary judgment stage.

Respectfully submitted,



Bennet J. Moskowitz

cc: All counsel of record via NYSCEF