

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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

Plaintiffs,

- against -

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

Defendants.

Index No. EF002460/2024

**AFFIRMATION IN SUPPORT OF  
MOTION IN LIMINE TO  
PRECLUDE EXPERT  
TESTIMONY**

AMY B. MARION, an attorney admitted to practice law in the State of New York, affirms the following to be true under the penalty of perjury pursuant to CPLR § 2106:

1. I am a partner at the law firm of Abrams Fensterman, LLP, counsel for plaintiffs in the above-captioned action.
2. I respectfully submit this affirmation in support of Plaintiffs’ trial motion *in limine* to preclude opinions and testimony contained in defendants’ expert report.

**Preliminary Statement**

3. Plaintiffs commenced this action on March 26, 2024 alleging that defendants at-large system of election is in violation of the New York Voting Rights Act’s (“NYVRA’s”) prohibition against vote dilution by impairing the ability of Hispanic and Black voters to elect their candidates of choice or to influence the outcome of elections (a) as a result of racially polarized voting patterns in the Town, and (b) under the totality of the circumstances. See [NYSCEF Doc. No. 1](#).

4. This motion seeks an order in limine to preclude the opinions and/or testimony of defendants’ expert, Dr. Brad Lockerbie, concerning “legal requirements.”<sup>1</sup> See “Expert Response

<sup>1</sup> Plaintiffs contend that the following paragraphs of the Lockerbie April 30 Report include opinions concerning legal requirements: II. Comments ¶1-8, ¶10, ¶14-19; III. Conclusion ¶ 1.

Report of Brad Lockerbie, Ph.D,” dated April 30, 2025 (“Lockerbie April 30 Report”). Attached hereto as Exhibit 1 is the Lockerbie April 30 report.

5. The opinion and/or testimony as to “legal requirements” contained in the Lockerbie April 30 report is inadmissible because 1) plaintiffs were never given notice nor a report pursuant to CPLR 3101(d) of defendants’ intention to introduce legal expert opinion and testimony; 2) Dr. Lockerbie is not qualified to offer opinion testify as a legal expert; and 3) expert opinions as to legal conclusions are impermissible and the interpretation of a statute is purely a question of law.

6. Thus, an order precluding defendants’ from offering opinion testimony as to “legal requirements” is, respectfully, warranted.

#### **Facts and Procedural History Relevant to the Motion**

7. Plaintiffs provided an expert report of Matt A. Barreto, Ph,D dated June 28, 2024 in which Dr. Barreto concludes that strong evidence of racially polarized voting is present in the Town of Newburgh (“the Town” or “Newburgh”) whereby the minority group votes cohesively, and whites vote as a bloc to typically defeat the minority group’s candidate of choice. [NYSCEF Doc. No. 87](#) at ¶10.

8. Dr. Barreto’s June 28, 2024 report “noted that one possible option to remedy the existing vote dilution faced by Black and Latino voters in Newburgh was to convert from at-large to single-member districts.” *See* [NYSCEF Doc. No. 92](#).

9. Thereafter, Defendants provided an expert report of Brad Lockerbie, Ph,D dated July 9, 2024 in which Dr. Lockerbie concludes that in the Town of Newburgh “elections are competitive and minority preferred candidates often win” and “that minority favored candidates, while not winning a majority of the races, have won 33% of the time [and i]n even-numbered years, the win rate for minority favored candidates is even higher—just shy of 50%.” [NYSCEF Doc. No. 89](#) at

¶¶22-23. Dr. Lockerbie did not address Dr. Barreto’s assertion that single-member districts were a potential remedy to the vote dilution faced by Black and Latino voters. NYSCEF Doc. No. 90, at 132:19-22 (Q: “Q: Okay. And you are not offering an opinion on whether it’s possible to draw a single-member district for the Town of Newburgh -- a single-member district plan for the Town of Newburgh that allows minority voters to elect at least one candidate of choice; correct?; A: I was not asked to evaluate that.; Q Do you know --; A So I have no opinion.”)

10. Dr. Barreto prepared an addendum report (“the addendum report”) dated September 3, 2024, after “analyz[ing] different districting schemes.” [NYSCEF Doc. No. 92](#). The addendum report concludes “that a district-based scheme would be effective to remedy vote dilution and allow Black and Latino voters in Newburgh town to elect candidates of their choice in at least some districts.” *Id.*

11. Dr. Barreto’s addendum report states that the district schemes he analyzed “are purely demonstrative to assess what is feasible, they are not recommended or proposed maps. Rather, they answer the question of whether or not districts can function or perform to elect minority voter candidates of choice, and to that end, the answer is clearly yes.” *Id.*

12. After the addendum report was produced, defendants moved to preclude the addendum report and any testimony and/or opinion regarding the addendum report. [NYSCEF Doc. No. 112](#).

13. By decision and order dated October 25, 2024, this Court denied defendants’ motion in part, ordered that plaintiffs’ addendum report is allowed for trial, allowed defendants to supplement their expert’s report, and allowed defendants to depose Dr. Barreto as to his addendum report. [NYSCEF Doc. No. 141](#).

14. Pursuant to the the Court’s order, Dr. Barreto was further deposed on April 30, 2025, and thereafter defendants produced a report of Dr. Lockerbie dated April 30, 2025 (“the Lockerbie April 30 Report”). Exhibit 1.

15. The Lockerbie April 30 Report “question[s] . . . whether the plan created [by Dr. Barreto] is in accord with the law, including those required by NY Municipal Home Rule Law § 10, as well as by the Equal Protection Clauses of both the United States and New York Constitutions, U.S. Const. amend. XIV; N.Y. Const. art. 1, § 11, and Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.” *Id.* at §II, ¶1.

16. The Lockerbie April 30 Report opines, inter alia, that 1) the district schemes Dr. Barreto analyzed “did not consider the import of certain . . . legal requirements when drawing his proposed districts” (*id.* at §II, ¶8); 2) that “Dr. Barreto’s report does not shed any light on how minority-preferred candidates would perform in a district system drawn consistently with these legal requirements” (*id.* at §II, ¶1); and 3) that “[r]ather than address any of the legal requirements for a lawful district-based scheme, Dr. Barreto’s report at most shows that it is possible to create a district-based system” (*id.* at §II, ¶18).

17. The Lockerbie April 30 Report concludes that “Dr. Barreto’s report does not discuss or even reference the criteria that must govern any lawful redistricting process under New York law. See NY Muni. Home Rule L. § 10. Thus, Dr. Barreto’s report does not shed any light on how minority-preferred candidates would perform in a district system drawn consistently with these legal requirements.” *Id.* at §III, ¶1.

### Argument

18. The opinion and testimony in the Lockerbie April 30 Report as to “the legal requirements” is inadmissible for several reasons: 1) plaintiffs were never given notice nor a report

pursuant to CPLR 3101(d) of defendants' intention to introduce legal expert opinion and testimony; 2) Dr. Lockerbie is not qualified to offer opinion testify as a legal expert; and 3) expert opinions as to legal conclusions are impermissible and the interpretation of a statute is purely a question of law.

**I. No notice of legal opinion testimony provided**

19. Plaintiffs were never given notice nor a report pursuant to CPLR 3101(d) of defendants' intention to introduce legal expert opinion.

20. "Pursuant to CPLR 3101 (d) (1) (i), [parties are] required to disclose 'in reasonable detail the subject matter on which each expert is expected to testify, the substance of the facts and opinions on which each expert is expected to testify . . . and a summary of the grounds for each expert's opinion.'" *Dalrymple v. Koka*, 2 A.D.3d 769, 771 (2d Dep't 2003).

21. A "belated addition of a new and significantly different theory of recovery" provided days before a trial is to commence, "substantially prejudice[s]" the adverse party, when, as here, "the substance of the expert's testimony was not readily discernable from the numerous and extremely generalized allegations set forth in the bill of particulars or from the statements in the plaintiffs' original CPLR 3101 (d) response." *Durant v. Shuren*, 33 A.D.3d 843, 844, 827 N.Y.S.2d 65 (2d Dep't 2006), citing *Dalrymple v Koka*, 2 AD3d 769 (2d Dep't 2003); *see also Gregory v Mulligan*, 266 AD2d 344 (2d Dep't 1999).

22. Where timely disclosure of expert testimony is not made pursuant to CPLR 3101(d), a court is within its discretion to exclude such testimony from being offered at trial. *See Liang v. Yi Jing Tan*, 98 A.D.3d 653 (2d Dep't 2012); *Burnett v. Jeffers*, 90 A.D.3d 799, 800 (2d Dep't 2011); *Lucian v. Schwartz*, 55 A.D.3d 687, 688 (2d Dep't 2008); *Vigilant Ins. Co. v. Barnes*, 199 A.D.2d 257, 257–258, (2d Dep't 1993).

23. Dr. Lockerbie's initial disclosure does not disclose any opinion regarding "legal requirements" ([NYSCEF Doc. No. 89](#) at ¶¶22-23) and plaintiffs have not been afforded any opportunity to depose this witness as to this opinion. As Dr. Lockerbie confirmed at his deposition, taken on September 11, 2024, a full week after Dr. Barreto's addendum had been provided to Defendants, that he would not be offering any opinions beyond those expressed in his July 9, 2024 report. NYSCEF Doc. No. 90, at 132:19-22 (Q: "Is it fair to say you're not offering an opinion on anything that's not specifically included in your report;" A: "That is fair.").

24. Importantly, Dr. Barreto's addendum report does not open the door to the introduction of legal opinion testimony. Dr. Barreto's addendum report specifically emphasizes that the district schemes he analyzed "are purely demonstrative to assess what is feasible, they are not recommended or proposed maps. Rather, they answer the question of whether or not districts can function or perform to elect minority voter candidates of choice, and to that end, the answer is clearly yes." [NYSCEF Doc. No. 92](#).

25. To the extent that the attorneys seek to brief the Court about the application of the facts and political science opinions provided by Dr. Barreto and Dr. Lockerbie, then they are free to do so. The Court should not tolerate Defendants' attempt to disguise a legal argument as an opinion offered by a political scientist, presumably in the hope that it will hold some greater weight for the Court than an argument presented in briefing.

## **II. Dr. Lockerbie is not qualified to offer legal opinion testimony**

26. In addition to Dr. Lockerbie's initial disclosure not disclosing any opinion and/or testimony regarding "legal requirements," the report does not disclose any qualifications of this witness to offer such testimony. [NYSCEF Doc. No. 89](#) at ¶¶22-23.

27. Dr. Lockerbie has not received any formal legal training. Rather he has trained as a political scientist. NYSCEF 89 at 10. Dr. Lockerbie has offered no evidence that has gained legal expertise through experience, nor has he ever claimed to have legal expertise of any kind. NYSCEF 89 at 10-18.

28. In fact, Dr. Lockerbie's curriculum vitae evidences that he is not a legal expert nor does he have the expertise to offer opinion testimony as to the law. *See* NYSCEF Doc. No. 89 at 10-18 ("Lockerbie CV").

**III. Expert opinions as to legal conclusions are impermissible and the interpretation of a statute is purely a question of law**

29. "Expert opinion as to a legal conclusion is impermissible. Likewise, the interpretation of a statute is purely a question of law, and is the responsibility of the court, not the trier of facts." *Colon v. Rent-A-Ctr., Inc.*, 276 A.D.2d 58, 61–62 (1st Dep't 2000), citing *Measom v. Greenwich & Perry St. Hous. Corp.*, 268 A.D.2d 156, 159, 712 N.Y.S.2d 1 (1st Dep't 2000). This is "especially where legislative intent is called into question." *Id.*, citing *Matter of Newark Val. Cent. School Dist. v. Public Empl. Relations Bd.*, 83 N.Y.2d 315, 320 (1994); *see also Schulz v. Cuomo*, 133 A.D.3d 945, 948, (3d Dep't 2015) ("the subject affidavit does nothing more than offer bare legal conclusions regarding the propriety of defendants potentially serving as delegates at a future Constitutional Convention. Inasmuch as "[e]xpert opinion as to a legal conclusion is impermissible" (*Russo v. Feder, Kaszovitz, Isaacson, Weber, Skala & Bass*, 301 A.D.2d 63, 69, 750 N.Y.S.2d 277 [2002] [internal quotation marks and citation omitted]), Schulz's argument on this point must fail.").

30. Therefore, defendants' proffered opinion testimony offered in Lockerbie's April 30 report must be precluded on this ground as well.

31. WHEREFORE, for all the reasons set forth herein, plaintiffs are entitled to an order precluding Dr. Lockerbie from offering opinion testimony as to “legal requirements,” and/or legal conclusions, and/or the interpretation of a statute, which is purely a question of law.

I affirm this 5th day of May 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: Brooklyn, NY  
May 5, 2025

ABRAMS FENSTERMAN, LLP



By: \_\_\_\_\_

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