

NYSCEF DOC. NO. 175

Troutman Pepper Locke LLP
875 Third Avenue
New York, NY 10022

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troutman.com

Bennet J. Moskowitz
bennet.moskowitz@troutman.com

May 6, 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”).

Plaintiffs have noticed the deposition of Scott Manley for tomorrow, Wednesday, May 7, 2025, and the Court has indicated that it will be available to rule on any objections that arise. Based on questions Plaintiffs asked Mr. Manley at his prior deposition in this matter, Defendants anticipate Mr. Manley may need to invoke the legislative privilege tomorrow. Therefore, Defendants respectfully submit the enclosed bench memo addressing the legislative privilege and its application to the issues that may arise in these proceedings.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Bennet J. Moskowitz', written over a horizontal line.

Bennet J. Moskowitz

cc: All counsel of record via NYSCEF

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,

Index No.: EF002460-2024

v.

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

Defendants.

**DEFENDANTS' BENCH MEMO RE:
LEGISLATIVE PRIVILEGE**

Defendants Town of Newburgh and Town Board of The Town of Newburgh (together, "Defendants") respectfully submit this bench memo to address the scope of the legislative privilege, which Defendants have invoked during prior depositions and may be compelled to invoke during the upcoming deposition of Scott Manley and during trial to prohibit the divulgence of non-public information that bears on discussions among members of the legislature.

The New York Constitution's Speech and Debate Clause provides "at least as much protection as the immunity granted by the comparable provision of the Federal Constitution." *People v. Ohrenstein*, 77 N.Y.2d 38, 53 (1990). Specifically, the Clause entitles State legislators to absolute immunity from criminal prosecution or civil liability for damages arising from their legislative acts. *See Campaign for Fiscal Equity v. State*, 687 N.Y.S.2d 227, 231 (Sup. Ct. N.Y. Cnty. 1999), *aff'd*, 265 A.D.2d 277 (1st Dep't 1999).

A direct corollary to legislative immunity is legislative privilege, which “protects a state legislator from compelled testimony or production of evidence in connection with legitimate legislative acts.” *Coads, et al. v. Nassau County, et al.*, Index No. 611872/2023; *N.Y. Communities for Change, et al. v. County of Nassau, et al.*, Index No. 602316/2024, NYSCEF No.199 (June 7, 2024) (both cases collectively herein referred to as “*Nassau*”). Designed to “provide state legislators and other state officials acting within the legislative sphere with ‘breathing room’ to debate and decide on policy and mold it into legislation,” *Campaign for Fiscal Equity*, 687 N.Y.S.2d at 232., the Speech and Debate Clause creates a privilege that protects both utterances made “within the four walls” of the legislative chamber and any “committee hearings . . . even if held outside the Chambers.” *Oats v. Marino*, 106 A.D.2d 289, 290 (1st Dep’t 1984) (citations omitted). Consequently, the privilege even protects “communications [made] to assist executive branch officials in their performance of a legislative function.” *Id.* By doing so, the legislative privilege “protect[s] the integrity of legislative discussion.” *Bd. of Educ. of City of Buffalo v. Buffalo Council of Sup’rs and Administrators*, 52 A.D.2d 220, 230 (4th Dep’t 1976).

A legislative act is protected if it falls within the “sphere of legitimate legislative activity.” *Larabee v. Governor of State*, 65 A.D.3d 74, 89 (1st Dep’t 2009) (citation omitted), *aff’d as modified sub nom., Maron v. Silver*, 14 N.Y.3d 230 (2010). This includes acts that are “an integral part of the deliberative and communicative processes by which [legislators] participate in . . . proceedings with respect to the consideration and passage or rejection of proposed legislation,” including their underlying motivations. *Straniere v. Silver*, 218 A.D.2d 80, 83 (3d Dep’t 1996) (citation omitted); *see Maron*, 871 N.Y.S.2d at 418 (3d Dep’t 2008), *aff’d as modified*, 14 N.Y.3d 230 (2010).

The same legislative immunity and privilege applies to county legislatures under common law principles. In *Humane Society of New York v. City of New York*, the New York County Supreme Court applied a “similar common law legislative privilege” as the protection of the Speech or Debate Clause to a local executive branch board that was “engaged in legislative activities.” 729 N.Y.S.2d 360, 363–64 (Sup. Ct. N.Y. Cnty. 2001). The court noted that the common law privilege “functions as an evidentiary and testimonial privilege.” *Id.* at 363 (citations omitted). Similarly, in *Felder v. Foster*, 71 A.D.2d 71 (4th Dep’t 1979), the Fourth Department analyzed whether the Monroe County Legislature was immune from punitive damages with respect to a Section 1983 claim. *See id.* at 75. The court recognized an “absolute immunity for the county legislators” while “acting in their legislative capacities” and analogized to federal precedent recognizing that “immunity extends to regional legislators” with underpinnings in the Speech or Debate Clause, historical legislative immunity predating the constitution, and the fact that legislatures maintain internal procedures to punish members. *Id.* at 75–76.

Another New York Supreme Court Justice, The Hon. Paul I. Marx, recently applied the legislative privilege when quashing a subpoena directed at Nassau County Legislator Richard Nicoletto in a case involving Nassau County’s redistricting process. *Nassau*, NYSCEF No.199. In *Nassau*, defendants sought to quash the subpoena on the basis that the Subpoena, which sought testimony from Mr. Nicoletto “regarding knowledge and information learned and possessed by Mr. Nicoletto only through his official capacity as the Presiding Officer of the Legislature,” was protected by legislative privilege. *Nassau*, NYSCEF No.93.

Justice Marx agreed, explicitly holding that county legislators like Mr. Nicoletto “are entitled to the same degree of legislative privilege which is given to legislators at other levels of government” and quashing the subpoena on that basis. *Nassau*, NYSCEF No.199 at 20. In so

holding, Justice Marx found that the New York Court of Appeals “had addressed legislative immunity (as applied to State legislators), but has not addressed its corollary, legislative privilege.” *Id.* at 6. Recognizing this, Justice Marx traced the roots of legislative privilege to the common law and examined the evolution of legislative immunity and legislative privilege in the New York court system in a well-researched and remarkably thorough analysis. *Id.* at 6–18. As he concluded, “recent New York state court decisions which have applied legislative privilege have given it broad application to protect against production of documentary evidence and deposition testimony aimed at inquiry into acts which are within the sphere of legitimate activity.” *Id.* at 18. Thus, Justice Marx concluded it was appropriate to quash the subpoena directed at Mr. Nicollelo because that subpoena sought testimony concerning “internal deliberations and legislative information,” *id.* at 19, related to the “redistricting process, including drafting various maps proposed to the Legislature for consideration” because that redistricting process constituted “legislative activity,” *id.* at 19. Further, Justice Marx’s analysis emphasized that State legislators should be given the “same broad protection as members of Congress,” and that therefore “county legislators are entitled to the same degree of legislative privilege which is given to legislators at other levels of government.” *Id.* at 20–21.

Based on the foregoing, the legislative privilege applies to certain testimony Plaintiffs have sought, and will seek, in this case concerning the internal deliberations and decisions of local legislators, who are entitled to the same protections and immunities as State legislators. *See id.*

Dated: May 6, 2025

TROUTMAN PEPPER LOCKE LLP

/s/ Bennet J. Moskowitz

BENNET J. MOSKOWITZ

PARIS L. KENT

875 Third Avenue

New York, New York 10022

(212) 704-6000

MISHA TSEYTLIN

MOLLY S. DiRAGO (*pro hac vice*)

227 West Monroe Street

Suite 3900

Chicago, Illinois 60606

(608) 999-1240

ANAIS JACCARD

301 S. College St., 34th Floor

Charlotte, NC 28202

(704) 916-1506

*Attorneys for Defendants Town of Newburgh
and Town Board of the Town of Newburgh*