

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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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.

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

**INTRODUCTION**

Plaintiffs have filed a motion *in limine* seeking to prevent Defendants' political science expert, Dr. Brad Lockerbie, from providing any "expert legal opinion" in this case. Plaintiffs' motion *in limine* is deeply confused because Dr. Lockerbie has never attempted to offer an "expert legal opinion" in this case, and Plaintiffs have no reason to suspect Dr. Lockerbie will testify about such legal issues at trial. Rather, what Plaintiffs appear to object to is Dr. Lockerbie's observation that *Dr. Barreto* failed to explain whether he considered applicable legal requirements when drawing the districts he proposes—that is, whether Dr. Barreto's proposed maps show that a *legal* map could lead to more minority voters winning elections in the Town than under the current at-large system. But the *existence* of such legal requirements is within the knowledge and expertise of a political scientist, given that consideration of those requirements is a *necessary prerequisite for the drawing of election districts that can actually be lawfully implemented*. Defendants are happy to stipulate that Dr. Lockerbie will not offer any "expert legal opinion" at trial.

## BACKGROUND

On March 26, 2024, Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (collectively, “Plaintiffs”) filed this lawsuit, alleging that the Town of Newburgh’s (“Town”) at-large election method violates the New York Voting Rights Act’s prohibition against vote-dilution. NYSCEF No.1. Proving the existence of an alternative voting scheme that would give a town’s minority voters a greater chance to elect their preferred candidates is an essential element of any vote-dilution claim under the NYVRA, as all parties have agreed. NYSCEF No. 70 at 21; NYSCEF No.73 at 21.

The parties engaged in expedited discovery during the spring and summer of 2024. Consistent with the scheduling order in effect at that time, Plaintiffs served the expert report of Matt A. Barreto, PhD (among others) on June 28, 2024, and the Town served the rebuttal expert report of Brad Lockerbie, PhD shortly thereafter. Dr. Barreto’s June 28, 2024 report generally described four different election systems without providing any evidence or analysis of whether such systems would allow the Town’s minority electors to elect more candidates of their choice than under the Town’s current, at-large election system. For instance, while Dr. Barreto opined that “it is possible to implement a single-member district plan to allow Black and Latino voters to elect their candidates of choice,” NYSCEF No.68 at 16, he did not explain or analyze how those “single-member districts” could be drawn or configured, or how their use would in practice affect voting patterns in the Town. In response, Dr. Lockerbie’s initial report (dated July 9, 2024), endeavored to “determine whether minorities have a reasonable opportunity to elect candidates of their choice” in the Town. NYSCEF No.62 at 2. Analyzing exogenous election data, Dr. Lockerbie concluded that minorities did have the opportunity to elect candidates of their choice because minority-preferred candidates win 33% of the time in Town-wide elections, and win just under 50% of the time in even-numbered years. NYSCEF No.62 at 7.

On September 4, 2024—more than two months after the scheduling orders’ deadline for the exchange of expert reports—Plaintiffs produced an “addendum” to Dr. Barreto’s report (“Addendum Report”). NYSCEF No.92. The Addendum Report—plainly filed because Plaintiffs concluded that Dr. Barreto’s report did not attempt to carry their mandatory burden of showing that an alternative election system could lead to more minority-favored candidates winning elections for the Town Board of the Town of Newburgh—begins by explaining that the adoption of single-member districts is “one possible option to remedy the existing vote dilution faced by Black and Latino voters” in the Town. NYSCEF No.92 at 1. Then, the Addendum Report proposes four alternative single-member district maps that, in Dr. Barreto’s view, could be implemented to give the Town’s minority voters a greater chance to elect their preferred candidates than under the current at-large system. *See* NYSCEF No.92 at 3–6. Dr. Barreto’s conclusion is based on an analysis of certain precinct-by-precinct exogenous election results that purportedly allows him “to determine how only those [proposed] district voters would have voted” in certain Town-wide elections. NYSCEF No.92 at 2–6. Dr. Barreto does not explain how he determined the district boundaries he proposes, and cautions that those districts “are purely demonstrative to assess what is feasible.” NYSCEF No.92 at 1.

Defendants sought to exclude the Addendum Report as untimely and filed a motion *in limine* on the topic on October 16, 2024. NYSCEF No.112. This Court denied Defendants’ motion *in limine* on October 25, 2024, but adjourned the trial—scheduled to begin on October 31, 2024—to allow Plaintiffs the opportunity to submit their own expert report in rebuttal to the untimely Addendum Report and to depose Dr. Barreto concerning the Addendum Report.

Certain proceedings followed that appear to make the Addendum Report issue immaterial. On November 7, the Court granted Defendants’ motion for summary judgment concerning the

NYVRA's constitutional and terminated all proceedings in this case. NYSCEF No.147. Defendants thus ceased all efforts to respond to the Addendum Report, and focused on defending against Plaintiffs' appeal of this Court's summary judgment decision.

The Appellate Division, Second Department, reversed this Court's grant of summary judgment on January 30, 2025, *see* Notice of Entry, *Clarke v. Town of Newburgh*, A.D. No. 2024-11753 (2d Dep't Jan. 30, 2025) (NYSCEF No.36), and on February 10, 2025—less than two weeks later—Defendants requested from Plaintiffs the data that Dr. Barreto relied upon when drawing the proposed districts for the Addendum Report, and which data Dr. Lockerbie needed to conduct his analysis of Dr. Barreto's conclusions. Plaintiffs produced certain data on March 5, 2025, and substantially completed the data production on March 18, 2025. On April 17, 2025, the Court set trial for May 12–16, 2025, and on April 30, 2025, Defendants served Dr. Lockerbie's Expert Response Report. NYSCEF No.174 ("Ex.Resp.").

In the Expert Response Report, Dr. Lockerbie first opined that the Addendum Report fails to explain whether Dr. Barreto considered certain legal requirements when drawing his proposed maps—that is, whether Dr. Barreto was even *attempting* to draw legal maps that the Town could actually adopt in order to increase minority-favored candidates' electoral outcomes. Ex.Resp.1. For instance, Dr. Lockerbie notes that Dr. Barreto, among other failures, “does not describe the process by which he created his districting plans,” Ex.Resp.1, “nowhere considers whether his proposed districts are ‘drawn with’ impermissible intent,” Ex.Resp.2, “provides no analysis of compactness,” Ex.Resp.2, and “is silent as to whether the districts he proposes would ‘discourage competition,” Ex.Resp.3. Based on those failures, Dr. Lockerbie concludes that it is impossible to determine whether Dr. Barreto's “purely demonstrative” districts could actually be implemented,

such that they could be relevant to deciding whether there exists a lawful method of election that could increase minority-favored candidates' electoral outcomes in the Town. Ex.Resp.2.

Then, setting aside Dr. Barreto's failure to explain whether he considered certain legal requirements in his analysis, Dr. Lockerbie's Expert Response Report separately explains that the districts Dr. Barreto proposes would not meaningfully increase the ability of minorities in the Town to elect candidates of their choice. Ex.Resp.9-10. To reach that conclusion, Dr. Lockerbie explains that although "every single one of the exogenous elections that [Dr. Barreto] examines was competitive at the town level," using a 55% standard for competitiveness, those same races would be "much less competitive" in the district-based system he proposes. Ex.Resp.5. As Dr. Lockerbie found, minority-preferred candidates already have a 33% chance of winning Town-wide elections, and a 48% chance of winning in even-numbered years, meaning that "the current at-large system offers minority-preferred candidates a strong shot of winning every board seat in even numbered years." Ex.Resp.5. However, "Dr. Barreto's district system eliminates that possibility by entrenching support for minority-preferred candidates in certain districts and strongly favoring victory for non-minority preferred candidates in others." Ex.Resp.11. In other words, in Dr. Lockerbie's estimation, Dr. Barreto's proposed districts would make elections in the Town less competitive than under the at-large system, while not increasing minority voters' ability to elect candidates of their choice. Ex.Resp.11.

On May 5, 2025, Plaintiffs filed the instant motion *in limine* seeking to "preclude the opinions and/or testimony of" Dr. Brad Lockerbie "concerning 'legal requirements.'" NYSCEF No.173 ("Mot.") at 1-2. Plaintiffs do not object to any other portion of Dr. Lockerbie's Expert Response, including his analysis of the proposed districts and the impact of those districts on

minority voters' ability to elect candidates of their choice. Trial is scheduled to begin on May 12, 2024.

### ARGUMENT

A. "For purposes of admissibility, 'all that is required'" of an expert witness is that he or she "possess the requisite skill, training, education, knowledge and experience from which it can be assumed that the opinion rendered is reliable." *Lapidis v. Mills*, 305 A.D.2d 876, 877 (3d Dep't 2003) (citation omitted). And while "[e]xpert testimony as to a legal conclusion is impermissible," *Measom v. Greenwich & Perry St. Hous. Corp.*, 268 A.D.2d 156, 159 (1st Dep't 2000), an expert may testify about "legal requirements" without running afoul of this rule, *see Zohar v. 1014 Sixth Ave. Realty Corp.*, 24 A.D.3d 125, 126 (1st Dep't 2005). For instance, the First Department in *Zohar* "reject[ed] plaintiffs' argument that the trial court improperly permitted a defense witness to testify to a legal conclusion. . . . when it permitted the expert to testify that the Building Code *did not require the subject building to have sprinklers.*" *Id.* at 126 (emphasis added). In other words, the expert in *Zohar* was permitted to testify as to the requirements of the Building Code with respect to the subject property, but presumably would have been forbidden from testifying about whether the building was in compliance with that statute or offering an interpretation thereof. *Id.*

B. Plaintiffs object to Dr. Lockerbie offering "legal expert opinion" about the "legal requirements' and/or legal conclusions, and/or the interpretation of a statute" governing the proposed districts Dr. Barreto's Addendum Report posits the Town could adopt. Mot.8.

Plaintiffs' motion *in limine* fails as a threshold matter because at no point has Dr. Lockerbie ever attempted to offer any "legal expert opinion" in this case. Dr. Lockerbie's Expert Response does not opine as to whether Dr. Barreto's proposed districts actually comply with the law. *Contra*

*Measom*, 268 A.D.2d at 159. Rather, Dr. Lockerbie merely observes that redistricting efforts must comply with certain legal requirements, including those imposed by N.Y. Municipal Home Rule Law § 10, and notes that Dr. Barreto did not explain whether he considered those requirements when drawing the districts he proposes in the Addendum Report. *Cf. Zohar*, 24 A.D.3d at 126. Ensuring that proposed districting plans comply with all relevant legal requirements is, of course, a necessary component of analyzing whether any *lawful* district plan would increase minority voters' ability to elect their candidates of choice over the current at-large system.

Plaintiffs argue that Dr. Lockerbie's Expert Response should be excluded to the extent that it contains impermissible "legal expert opinion" that Defendants did not disclose pursuant to CPLR § 3101(d), which requires each party to identify expert witnesses and "disclose 'in reasonable detail the subject matter'" of the opinion and the expert's qualifications. Mot.6 (citing CPLR § 3101(d)(1)(i)). Defendants have offered Dr. Lockerbie as an expert in political science—not the law. And despite Plaintiffs' false characterization, Dr. Lockerbie does not purport to offer any "expert legal opinions" in this case, making his prior disclosure sufficient to satisfy CPLR § 3101(d)'s requirements here. Indeed, as noted above, Dr. Lockerbie's testimony falls squarely within the field of political science, as he simply notes that election maps must comport with certain legal requirements and observes that Dr. Barreto did not explain whether he considered those requirements when drawing his proposed maps. *See Zohar*, 24 A.D.3d at 126; *supra* pp.1, 4.

The cases upon which Plaintiffs rely for this argument are inapposite. For instance, in *Durant v. Shuren*, the court granted a new trial because the plaintiff "did not disclose the substance of their expert's *new theory of liability* until the eve of trial." 33 A.D.3d 843, 844 (2d Dep't 2006) (emphasis added). But Dr. Lockerbie's Expert Response does not contain any "new theory of

liability,” *id.*—rather, it rebuts Dr. Barreto’s expert opinion concerning an essential element of Plaintiffs’ vote dilution claim. And in Plaintiffs’ other cited cases, *Liang v. Yi Jing Tan*, 98 A.D.3d 653, 655 (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), courts excluded expert testimony that was disclosed in an untimely manner. But here, the Court *expressly provided* Defendants leave to address Dr. Barreto’s untimely addendum and Defendants complied with that directive in full by producing—over a week before trial—a supplemental report from a previously-identified expert addressing the conclusions contained in Dr. Barreto’s Addendum Report.

Plaintiffs contend the Expert Response Report is also impermissible because Dr. Lockerbie “is not qualified to offer legal opinion testimony,” Mot.6, and because it constitutes “expert opinion as to a legal conclusion” and involves the “interpretation of a statute.” Mot.7 (citations omitted). But again, Dr. Lockerbie does not purport to offer any “legal opinion testimony” or any “legal conclusions” in this case, *see supra* pp.6–7, so Plaintiffs’ fundamental mischaracterization of Dr. Lockerbie’s conclusions makes these arguments non-starters.

Finally, and in any event, Plaintiffs’ motion *in limine* only takes issues with Dr. Lockerbie’s conclusions about the “legal requirements” that apply to any lawful redistricting scheme. Plaintiffs *do not* seek to exclude any other opinions contained in the Expert Response Report, including Dr. Lockerbie’s review of exogenous election data, statistical analysis related thereto, and his ultimate conclusion that “a district system, at least the one presented by Dr. Barreto, means *less* competitive elections” in the Town. Ex.Resp.11. That conclusion is wholly independent from his observations about Dr. Barreto’s failure to explain his map-drawing methodology and the legal requirements governing that process. Therefore, while testimony about those legal requirements is clearly

permissible in this context, Dr. Lockerbie should be permitted to testify as to the effects of Dr. Barreto's proposed maps *even if* this Court grants Plaintiffs' motion *in limine* concerning Dr. Lockerbie's opinions about the "legal requirements" for redistricting.

### CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' motion *in limine*.

Dated: New York, New York  
May 7, 2025

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing Memorandum of Law complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum of Law uses Times New Roman 12-point typeface and contains 2,405 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.

/s/ Bennet J. Moskowitz