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May 16, 2025

VIA EMAIL

Darrell M. Joseph
Clerk of Court
Supreme Court of the State of New York
Appellate Division, Second Department
45 Monroe Place
Brooklyn, NY 11201

Re: *Oral Clarke, et al. v. Town of Newburgh, et al.* (Index No. 50325/2025; Westchester Cnty.)*

Dear Mr. Joseph,

We represent Defendants-Appellants Town of Newburgh and Town Board of the Town of Newburgh (collectively, “Defendants” or “Town”) in the above-referenced action. Defendants write to request respectfully that this Court expedite consideration of the two appeals Defendants recently filed in this Court. First, Defendants have appealed Justice Vazquez-Doles’ decision that the Supreme Court has jurisdiction over the case notwithstanding Defendants’ view that this Court has not issued remittitur after it reversed the Supreme Court’s grant of summary judgment to Defendants on January 30, 2025. Second, Defendants appeal the decision of Justice Scattaretico-Naber—to which this case was assigned following Justice Vazquez-Doles’ recusal due to Plaintiffs’ position and actions on May 12, 2025, and certain other Justices’ subsequent recusal—to transfer this case to the Westchester County Supreme Court. While the first appeal raises novel, difficult questions; the second appeal should—with all respect—be easy to dispose of by reversing a transfer decision that is clearly at odds with this Court’s binding caselaw.

As Defendants will explain in their appellate papers, Plaintiffs’ motion to transfer this case to the Westchester County Supreme Court was egregiously untimely and inappropriate. ***Under Plaintiffs’ theory of Election Law § 16-101, their right to seek transfer to Westchester County arose on May 28, 2024***, when Defendants filed their Answer alleging that the New York Voting Rights Act’s (“NYVRA”) vote dilution provisions, NY Elec. L. § 17-206, are unconstitutional. *Clarke v. Town of Newburgh* (Index No. EF002460-2024; Orange Cnty.) (NYSCEF Nos. 34, 35).[†]

* As noted below, Defendants have filed two notices of appeal in this case—the first on May 14, 2025, NYSCEF No.191, and the second on May 16, 2025, NYSCEF No.198. At the time of writing, no Index Number has been assigned to these appeals by the Appellate Division, Second Department.

[†] This case was originally assigned Index Number EF002460-2024 when it was filed in Orange County. Upon transfer to Westchester County on May 16, 2025, it was reassigned as Index Number 50325/2025.

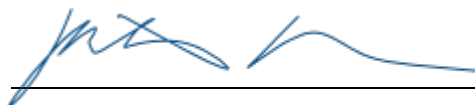
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But Plaintiffs did not seek to transfer for a full year, after trial had already begun on May 12, 2025 (and only after *Plaintiffs* were unwilling to continue the trial after Justice Vazquez-Doles' disclosure of a decades-old connection between herself and one of the named plaintiffs in this suit, despite Plaintiffs presumably knowing of such potential conflict at the time Justice Vazquez-Doles was first assigned to this case over a year ago). At no time until trial did Plaintiffs even *suggest* that venue would lie in Westchester County, despite the parties briefing the NYVRA's constitutionality at the summary judgment stage, the Supreme Court ruling in Defendants' favor on that issue, and this Court subsequently reversing that decision. Remarkably, the Supreme Court granted Plaintiffs' motion to transfer notwithstanding clear legal precedent that venue is waived by failing to raise it timely, *see Balbuenas v. New York City Health & Hosps. Corp.*, 209 A.D.3d 642, 643–44 (2d Dep't 2022), and Plaintiffs failure to identify any contrary legal authority rebutting that straight-forward principle or otherwise demonstrate that they had not waived the venue issue by filing in Orange County and litigating there until the continuance of trial afforded Plaintiffs the opportunity to seek a more favorable forum for their claims. Additionally, while this jurisdictional issue is admittedly more open to reasonable debate, the transfer decision was issued (and trial began) without jurisdiction because—in Defendants' respectful view—remittitur from the decision reversing summary judgment on the aforementioned constitutional questions had not been issued and Defendants' motion for leave to appeal that decision to the Court of Appeals remains pending. *Clarke v. Town of Newburgh* (Index No. 2024-11753, 2d Dep't) (NYSCEF No. 37).

Defendants respectfully request that this Court expedite consideration of both the Transfer Appeal and the Remittitur Appeal, given that both issues relate to *whether* and *where* this case will proceed before the Supreme Court. Indeed, resolving whether Plaintiffs have waived their right to seek to transfer this case to Westchester County by their year-long, egregious delay will be dispositive as to whether trial takes place in Orange County (where Plaintiffs initially filed, where the parties litigated for over a year, and where trial began) or in Westchester County (a forum with no connection to the parties). And an expedited ruling on Defendants' pending remittitur motion could have even more significant practical consequences, given that a ruling in Defendants' favor could halt all trial court proceedings until a decision is made on Defendants' pending motion for leave to appeal this Court's underlying order reversing the Supreme Court's grant of summary judgment to the Court of Appeals. For these reasons, expeditiously resolving these issues would be in the best interest of the parties and judicial economy.

Respectfully submitted,



Bennet J. Moskowitz

cc: All counsel of record via EMAIL