

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

Plaintiffs,

v.

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

Defendants.

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Oral Argument Requested

Index No.: 50325/2025

**DEFENDANTS’ MEMORANDUM  
OF LAW IN SUPPORT OF  
ORDER TO SHOW CAUSE FOR  
STAY OF PROCEEDINGS**

Defendants the Town of Newburgh and Town Board of The Town of Newburgh (together, “Defendants”) respectfully submit this memorandum of law in support of their motion, pursuant to CPLR § 2201, to stay these proceedings pending the resolution of Defendants’ two appeals and Defendants’ motion for leave to appeal to the Court of Appeals in a third appeal.

**INTRODUCTION**

There are several reasons why it makes no sense to proceed to trial at this time. As a threshold matter, whether a trial happens now or in a few months, it will not affect the 2025 election in the Town of Newburgh. As Plaintiffs Oral Clarke, Romance Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy (collectively, “Plaintiffs”) admitted many times during the course of this case, any relief offered by any Supreme Court in the coming months will have no effect on the upcoming November 2025 general election—and it is presumably for that precise reason that Plaintiffs previously suggested they were amenable to proceeding with a trial in July 2025. *See e.g.* Transcript of April 14, 2025 Hearing before Justice Vazquez-Doles at 18:16-23; 27:22-28:7 (attached to Affirmation of Bennet Moskowitz (“Moskowitz Aff.”) as Exhibit B). Because any relief issued now will have no bearing on the upcoming election, and because

proceeding to trial during the pendency of appeal will only waste the parties' and judicial resources, a stay of these proceedings is proper and justified.

Separately, a stay is needed because there are multiple reasons that a trial may never be needed in this action. As a matter of brief context, Plaintiffs filed and litigated this case in Orange County for over a year before the Hon. Maria S. Vazquez-Doles. This makes sense; the result of this lawsuit may result in a complete transformation of the way the Town of Newburgh has historically conducted elections for members of the Town Board. At the eleventh hour—indeed, *after trial began*—Plaintiffs succeeded in having Justice Vazquez-Doles recuse and, further, having a different Orange County Supreme Court justice (who presided over the case for a matter of days) transfer these proceedings to Westchester County. Defendants have appealed the transfer decision, which provides no meaningful response to binding Second Department precedent holding that statutory venue provisions can indeed be waived (the “Transfer Appeal”), as well as a separate, recent decision from the Orange County Supreme Court declaring that it retained jurisdiction over this case despite the Second Department’s failure to issue remittitur when it reversed the Supreme Court’s prior grant of summary judgment to Defendants (the “Remittitur Appeal”).

This Court should enter Defendants’ Order to Show Cause and stay these proceedings pending the outcome of Defendants’ multiple appeals. Without a stay, all parties and the Court will devote significant resources to trying this case, only to potentially have the Second Department transfer this case back to the Orange County Supreme Court (in the case of the Transfer Appeal), or eliminate the need for trial all together (if the Second Department grants either the Remittitur Appeal and/or the Defendants’ pending motion for leave to appeal the summary judgment decision to the Court of Appeals). And even in the unlikely event that the Second

Department rejects all three of Defendants' motion/appeals, a stay is still warranted because in short order Defendants will in this Court renew their summary judgment motion on the basis of new evidence demonstrating that Plaintiffs cannot sustain their burden under the NYVRA, such that no trial is needed even if the NYVRA is upheld and Defendants' Transfer Appeal and Remittitur Appeal are unsuccessful.

### BACKGROUND

This case arises out of the New York Voting Rights Act ("NYVRA"), which prohibits, among other things, the use of election systems that result in "vote dilution." The NYVRA defines illegal vote dilution as the use of "an at-large method of election" where either (a) racially polarized voting patterns exist within the political subdivision, or (b) "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." N.Y. Election L. § 17-206(b). As the Second Department has made clear, a vote dilution claim also includes certain implicit element(s), including proof that "an alternative practice that would allow the minority group to have equitable access to fully participate in the electoral process." *See Clarke v. Town of Newburgh*, 226 N.Y.S. 3d 310, 330 (2d Dep't 2025).

Plaintiffs filed this lawsuit on March 26, 2024 in the Orange County Supreme Court, alleging that the Town's at-large system of elections for members of the Town Board violates the NYVRA's vote-dilution prohibition. NYSCEF No. 1 (Index No. EF002460-2024; Orange Cnty.). Defendants filed a verified Answer on May 28, 2024, asserting that the NYVRA's vote dilution provisions violate the New York and United States Constitution's Equal Protection clauses, NYSCEF No. 34 at 25 (Index No. EF002460-2024; Orange Cnty.), and filed a Notice of

Constitutional Question on May 29, 2024, NYSCEF No. 35 (Index No. EF002460-2024; Orange Cnty.).

Litigation ensued in the Orange County Supreme Court for over a year. Pursuant to the Orange County Supreme Court's expedited briefing schedule, the parties exchanged expert reports in June and July 2024. Neither of Plaintiffs' reports purported to establish that there exists a reasonable alternative system that would give minority-preferred candidates a greater chance at being elected than under the current, at-large system. *See Clarke*, 226 N.Y.S. 3d at 330. Presumably to attempt to remedy that critical evidentiary failure, Plaintiffs disclosed an "Addendum Report" authored by Dr. Matt A. Barreto on September 4, 2024 ("Barreto Addendum")—more than two months after the Scheduling Order's deadline for the exchange of initial expert reports and almost one month after the close of discovery—without leave of court. NYSCEF No. 92 (Index No. EF002460-2024; Orange Cnty.). The Barreto Addendum purported to propose four alternative district-based plans the Town could, in Dr. Barreto's view, adopt to increase the chances of minority-preferred candidates being elected to Town office. Notably, the Barreto Addendum was Plaintiffs' *only attempt* to satisfy their burden of proving the "reasonable-alternative benchmark" element of their claim. *See Clarke*, 226 N.Y.S. 3d at 330.

Defendants filed a motion *in limine* to preclude consideration of the untimely Barreto Addendum on October 16, 2024. NYSCEF No. 126 (Index No. EF002460-2024; Orange Cnty.). Although the Court denied that motion, it indefinitely adjourned the upcoming trial to afford Defendants the opportunity to investigate the basis for Dr. Barreto's conclusions, respond to those conclusions in a supplemental expert report, and depose Dr. Barreto concerning those conclusions. NYSCEF No. 141 (Index No. EF002460-2024; Orange Cnty.).

On November 7, 2025—before Defendants had the chance to investigate the Barreto Addendum—the Court granted Defendants’ previously-filed motion for summary judgment, which argued that the NYVRA’s vote dilution provisions violated the New York and United States Constitution’s Equal Protection Clauses. NYSCEF No. 147 (Index No. EF002460-2024; Orange Cnty.) (Moskowitz Aff., Exhibit F). As the Orange County Supreme Court held, the NYVRA “on its face, classifies people according to their race, color and national origin,” making these classifications “the *sine qua non* for relief” under the statute, so strict scrutiny governs its provisions’ constitutionality. *Id.* at 16. The Orange County Supreme Court concluded that the statute did not satisfy strict scrutiny’s “exacting standard,” *id.* at 1, because “no compelling interest of the State in this instance justifies the use of an extremely broad race and national-origin based legislation, which opens the door to an overhaul of the electoral system [in the Town],” and because the “process for reaching a determination of voter dilution,” which “can rest on the slightest impairments in Plaintiffs’ ability to influence an election,” and may be “based on any criteria that the court itself creates, or no criteria at all,” “cannot be described as ‘narrow’ in any sense of the word.” *Id.* at 2, 20. Finding that the NYVRA’s vote dilution provisions therefore violate the New York and United States’ constitutions’ equal protection clauses, the Orange County Supreme Court invalidated the statute and, consequently, terminated all pending trial court proceedings and deadlines. *Id.* at 25.

Plaintiffs appealed, and on January 30, 2025, the Second Department reversed the Orange County Supreme Court’s order. NYSCEF No. 160 (Index No. EF002460-2024; Orange Cnty.) (Moskowitz Aff., Exhibit E). However, in doing so, the Second Department did not precisely define the elements that are required to prevail on a vote dilution claim. For instance, while the Second Department held that an NYVRA vote dilution claim implicitly requires a showing that

“vote dilution has occurred” and “that there is an alternative practice that would allow the minority group to have equitable access to fully participate in the electoral process,” *id.* at 20, that is not precisely the same element as the parties agreed Plaintiffs had the burden of proving in this case—namely, that there exists an alternative system that would *increase* minority preferred candidates’ chances of winning compared to the current system. NYSCEF No. 70 at 21-24 (Moskowitz Aff., Exhibit C). Therefore, the Second Department’s decision invites clarification as to what “equitable access to fully participate in the electoral process,” and “vote dilution” mean, and how those elements are proven.

Further, when the Second Department issued its order, that Order was never denominated a “remittitur,” nor did the decision contain and decretal language remitting the case to the Supreme Court for further proceedings. Moskowitz Aff., Exhibit E. Defendants moved the Second Department for leave to appeal that decision to the Court of Appeals, NYSCEF No. 37 (Index No. 2024-11753, 2d Dep’t) (Moskowitz Aff., Exhibit G), and urged the Second Department to refrain from issuing remittitur while that motion was pending, which it remains to this day, *id.* at 37–39.

The Second Department’s reversal of the Orange County Supreme Court’s summary judgment decision re-instigated trial proceedings, notwithstanding Defendants’ continued objections to the Orange County Supreme Court’s exercise of jurisdiction in the absence of remittitur from the Second Department. The parties discussed trial dates with the Court on multiple occasions in the winter and spring of 2025, and all parties agreed they were amendable to a trial in July 2025. Moskowitz Aff., Ex. B at 18:16-23; 27:22-28:7 (“if you could make the July date firm, we would be great with that.”). However, at Plaintiffs’ further insistence, the Court ultimately scheduled trial for May 12–16, 2025. These trial dates were selected despite Plaintiffs’ concession that any relief offered as a result thereof will not be implemented in time to affect the November

2025 general election. NYSCEF No. 144 (emphasis added) (Moskowitz Aff., Exhibit A) (noting, in November 2024, that “[i]f the trial is delayed until January [2025], 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.”).

While those scheduling conversations were ongoing, Defendants requested from Plaintiffs the data underlying the conclusions contained in the Barreto Addendum. After receiving some, but not all of that data, Defendants exercised their court-ordered right to produce a supplemental expert report—titled the Expert Response Report of Dr. Brad Lockerbie—and deposed Dr. Barreto about his conclusions on April 30, 2025. Dr. Lockerbie’s Expert Response Report demonstrates that the districts proposed in the Barreto Addendum do not satisfy Plaintiffs’ burden to demonstrate that a reasonable alternative system would increase the likelihood of minority-preferred candidate’s being elected to Town office, as compared to the current at large system. For instance, Dr. Lockerbie’s Expert Response Report begins by noting that Dr. Barreto did not explain the process he used to draw the proposed districts and that it was unclear how, or even whether, Dr. Barreto took certain legal requirements for redistricting, including those required by NY Municipal Home Rule Law § 10, into account during that process. NYSCEF No. 174 at 1–3 (Index No. EF002460-2024) (Moskowitz Aff., Exhibit H). Even more importantly, the Expert Response Report also analyzed the same endogenous and exogenous races as Dr. Barreto and concluded that the implementation of those districts would not increase minority-preferred candidates’ chances of electoral success in the Town and would, in fact, decrease the competitiveness of elections in the Town. *Id.* at 3–10. However, because trial was scheduled to begin less than two weeks later, Defendants did not have the opportunity to renew their motion for summary judgment on these grounds before trial commenced.

Trial began, as scheduled on May 12, 2025. Shortly before Court convened that day, the Orange County Supreme Court issued an order rejecting Defendants' argument that the Supreme Court lacked jurisdiction due to the Second Department's failure to issue remittitur when it reversed the Orange County Supreme Court's summary judgment decision. NYSCEF No. 179 (Index No. EF002460-2024; Orange Cnty.), (Moskowitz Aff., Exhibit I). Then, trial came to an abrupt halt shortly after Plaintiffs' opening statement, after Justice Vazquez-Doles disclosed a decades-old connection with Plaintiff Ernest Tirado, and Plaintiffs' counsel provided supplemental information about that connection. Defendants confirmed that they did not see any basis for recusal and represented that they were prepared to proceed with trial. However, Plaintiffs did not feel similarly and refused to proceed unless Defendants agreed to forever waive certain rights related to the disclosure. Justice Vazquez-Doles thereafter recused herself from this case. NYSCEF No. 181 (Index No. EF002460-2024; Orange Cnty.)

During a post-recusal discussion with the Court, Plaintiffs raised the possibility of transferring this case to the Westchester County Supreme Court pursuant to either Election Law § 16-101, or CPLR § 510.<sup>1</sup> Plaintiffs sent a letter request to the Hon. Anne E. Minihan the following day requesting a transfer on these same grounds. NYSCEF No. 183 (Index No. EF002460-2024; Orange Cnty.). In the following two days, Justices Sherri L. Eisenpress, Kyle C. McGovern, Brett Broge, Craig Stephen Brown and E. Loren Williams also recused themselves from this case, citing scheduling concerns and/or a desire to avoid the appearance of impropriety. NYSCEF Nos. 182, 185, 186, 188, 192 (Index No. EF002460-2024; Orange Cnty.).

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<sup>1</sup> Plaintiffs had previously requested transfer to "a Justice within the Ninth Judicial District who can try it on dates to which counsel have already agreed," and suggested that this case "is properly venued in Westchester County," on April 11, 2025. NYSCEF No. 164 (Index No. EF002460-2024; Orange Cnty.). However, Plaintiffs obviously abandoned that request—made over a year after filing this lawsuit—when Justice Vazquez-Doles agreed to scheduled trial on Plaintiffs' requested dates in May 2025.

On May 15, 2025, Justice Mary Anne Scattaretico-Naber—to whom the case had been assigned following the aforementioned recusals and who notably did not recuse—held a conference with the parties and transferred the case to the Westchester County Supreme Court over Defendants’ objections, pursuant to Election Law § 16-101(1)(b), which provides that venue is proper in Westchester County in cases arising in the Second Judicial Department that challenge the constitutionality of New York’s election laws. The case was administratively transferred to Westchester County on May 16, 2025, and reassigned as Index No. 50325/2025.

While those administrative matters were underway, Defendants filed a notice of appeal challenging the Orange County Supreme Court’s decision concerning the exercise of jurisdiction despite the Second Department’s lack of remittitur (“Remittitur Appeal”). NYSCEF No. 191 (Index No. EF002460-2024; Orange Cnty.). Defendants also filed a notice of appeal challenging Justice Scattaretico-Naber’s transfer of this case to Westchester County (“Transfer Appeal”).

### ARGUMENT

A. This Court has the “inherent power” to stay proceedings in the Supreme Court while an appeal is pending. *Schwartz v. New York City Hous. Auth.*, 219 A.D.2d 47, 48 (2d Dep’t 1996), *Tax Equity Now NY LLC v. City of New York*, 173 A.D.3d 464, 465 (1st Dep’t 2019) (granting discretionary stay pending appeal of denial of motion to dismiss even where, as here, a stay of enforcement under CPLR § 5519 was unavailable). This power derives from the courts’ “responsibility, so essential to the proper administration of justice, to control their calendars and to supervise the course of litigation before them.” *Kobrick v. New York State Div. of Hous. & Cmty. Renewal*, 2012 N.Y. Slip Op. 52150(U), at \*2 (Sup. Ct. N.Y. Cnty. 2012) (quoting *Grisi v. Shainswit*, 119 A.D.2d 418, 421 (1st Dep’t 1986)); see *Trump v. Trump*, 2024 N.Y. Slip Op. 50023(U), at \*1 (Sup. Ct. N.Y. Cnty. 2024) (“[T]he power to stay proceedings is incidental to the

power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” (citation omitted)); *215 W. 84th St Owner LLC v. Ozsu*, 209 A.D.3d 401, 401 (1st Dep’t 2022) (“[A] court has broad discretion to grant a stay in order to avoid the risk of inconsistent adjudications, duplication of proof and potential waste of judicial resources.” (citation omitted)). Exercise of this “broad source of [inherent] authority,” *Schwartz*, 219 A.D.2d at 48; *Pokoik v. Dep’t of Health Servs. of Cnty. of Suffolk*, 220 A.D.2d 13, 16 (2d Dept. 1996), is appropriate where a party shows that “prejudice or irreparable damage will result from the denial of a stay,” *Kobrick*, 2012 N.Y. Slip Op. 52150(U), at \*2.

B. This Court should exercise its “broad” inherent powers, *Schwartz*, 219 A.D.2d at 48, and stay trial proceedings pending the resolution of the Remittitur Appeal and the Transfer Appeal, because doing so will economize both the parties’ and the Court’s resources, *Schwartz*, 219 A.D.2d at 48, without prejudicing Plaintiffs in any way. Without a stay of proceedings, the parties will be forced to prepare for trial, leading to potentially wasted proceedings by the parties and this Court. The Transfer Appeal will determine whether this case proceeds to trial in Westchester County or Orange County, so a decision from the Second Department on the Transfer Appeal may obviate the need for further proceedings in this forum. And the Remittitur Appeal poses even more potentially significant consequences, given that a decision in Defendants’ favor from the Second Department on that issue would make clear that the Supreme Court has no jurisdiction over this matter entirely and eliminate the need for trial all together at this stage.

Plaintiffs would not be prejudiced by a stay. Plaintiffs have repeatedly represented in this case 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 [2025]**, 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.**” Moskowitz Aff., Exhibit A. That is obviously true, given that the election is already underway, with designation petitions having been due in February 2025, and a primary scheduled for June 24, 2025. *See* Upcoming Elections, NY State Bd. of Elections.<sup>2</sup> Further, Plaintiffs *had* the opportunity to complete this trial as they requested last week, but chose to derail that trial. It is now mid-May, so by Plaintiffs’ own estimation, no relief from the Supreme Court will affect elections taking place in 2025—regardless of whether trial is held immediately or after resolution of the pending appeals.

Moreover, Defendants are likely to succeed on both the Transfer Appeal and the Remittitur Appeal—making it likely that trial will not proceed in Westchester County, if at all. While the merits of Defendants’ Remittitur Appeal are subject to reasonable appellate debate, the Transfer Appeal presents a straightforward and easily resolvable question about whether Plaintiffs waived their right to invoke a non-jurisdictional venue provision by filing this lawsuit in the Orange County Supreme Court and continuing to litigate there for over a year, including through the beginning of trial, before seeking transfer of this case. Thus, Defendants are particularly likely to succeed on the Transfer Appeal, and an order in Defendants favor on that issue would absolve the need for the Westchester County Supreme Court to preside over this case.

Plaintiffs’ request to transfer this case from Orange County to Westchester County was inappropriate and untimely. Even 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 NYVRA’s vote dilution provisions, N.Y. Elec. L. § 17-206, are unconstitutional. NYSCEF Nos. 34, 35 (Index No. EF002460-2024; Orange Cnty.). But Plaintiffs waited for almost

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<sup>2</sup> Available at <https://elections.ny.gov/> (all websites last visited May 20, 2025).

a year—until trial had already begun on May 12, 2025— to raise the possibility of transfer, and did so only after Plaintiffs refused to proceed with the case following Justice Vazquez-Doles’ disclosure of a minor, decades-old connection to one of the named Plaintiffs. Indeed, Plaintiffs had never raised the possibility of transfer before, despite receiving Defendants’ Answer and Notice of Constitutional Question on May 28, 2024 and May 29, 2024, respectively, NYSCEF Nos. 34, 35 (Index No. EF002460-2024; Orange Cnty.), and briefing the Court about the NYVRA’s constitutionality during summary judgment proceedings, NYSCEF Nos. 70 (Moskowitz Aff., Exhibit C), 73 (Moskowitz Aff., Exhibit D), 129 (Index No. EF002460-2024; Orange Cnty.), and on appeal, NYSCEF Nos. 13, 24, 34 (Index No. 2024-11753; 2d Dep’t). Thus, Plaintiffs very obviously waived their right to seek transfer pursuant to N.Y. Election Law § 16-101—which, while phrased as a mandatory venue provision, is non-jurisdictional and therefore waivable. *Balbuenas*, 209 A.D.3d at 643–44. The Orange County Supreme Court, with all respect, provided no analysis of Plaintiffs’ obvious waiver of N.Y. Election Law § 16-101 when it transferred this case to Westchester County, and its decision was additionally flawed because, in Defendants’ view and as Defendants will explain in the Remittitur Appeal, it was issued without jurisdiction, given that the Second Department did not issue remittitur from its decision reversing summary judgment on the aforementioned constitutional questions.<sup>3</sup>

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<sup>3</sup> Plaintiffs further suggested in a letter to the Court dated May 13, 2025, that “CPLR § 510 also requires such transfer because there is a reason to believe an impartial trial cannot be had in Orange County.” NYSCEF No. 187 (Index No. EF002460-2024, Orange Cnty.). That is clearly incorrect: one Justice recused not for any actual or apparent conflict, but because her schedule did not allow for expedited proceedings that Plaintiffs, by their own account, do not need in this case. NYSCEF No. 182 (Index No. EF002460-2024). And Justice Scattaretico-Nabers did not recuse, but rather made a substantive (albeit, in Defendants’ estimation, erroneous) transfer decision. Further, Justice Vazquez-Doles presided over this case for over a year before recusing, and that recusal was based only on Plaintiffs’ unwillingness to move forward with the trial based on that information unless Defendants agreed to waive certain appellate rights, despite Defendants’ stated belief that the disclosure did not compromise Justice Vazquez-Doles’ impartiality.

As for the Remittitur Appeal, the Orange County Supreme Court should have stayed all trial court proceedings—including holding the trial, recusing, and subsequently transferring this case to Westchester County—because the Second Department’s failure to issue remittitur with respect to its order reversing the Orange County Supreme Court’s grant of summary judgment deprived the Supreme Court of jurisdiction over this case. Indeed, despite Plaintiffs’ and the Orange County Supreme Court’s belief, remittitur was never issued with respect to that decision, given that neither the Notice of Entry filed by Plaintiffs on January 30, 2025, NYSCEF No. 155, nor the Certified Copy of the decision, filed by the Court on February 4, 2025, Moskowitz Aff., Exhibit E, are denominated a remittitur or contain any instruction remitting this case to the Supreme Court for further proceedings—as is the practice in other cases in the Second Department. Compare 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 5, 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). Because remittitur did not issue here, the Supreme Court has no “authority for any further proceedings” under CPLR § 5524(b), which provides that “entry of a copy of the remittitur ‘shall be authority for any further proceedings.’” *Fry v. Vil. Of Tarrytown*, 671 N.Y.S.3d 633, 634 (Sup. Ct. Westchester Cnty. 1998) (citing CPLR § 5524(b)).

Finally, and in any event, if this Court does retain jurisdiction over this case, Defendants intend to move for renewed summary judgment on the basis of information recently submitted

during the court-ordered discovery related to the untimely Barreto Addendum. Given that disposition of that motion may well preclude the need for any trial in this matter, this further supports issuance of a stay.

### CONCLUSION

For the foregoing reasons, the Court should grant Defendants' motion for a stay of proceedings pending resolution of the pending appeals and appellate motions.

Dated: New York, New York  
May 20, 2025

TROUTMAN PEPPER LOCKE LLP

/s/ Bennet J. Moskowitz

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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 4,179 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*\_\_\_\_\_