SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
HON. PAUL I. MARX, J.S.C.

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HAZEL COADS, STEPHANIE M. CHASE, MARVIN AMAZAN, et al., Index No. 611872/2023

Plaintiffs, **ACTION I**

-against-

NASSAU COUNTY, the NASSAU COUNTY LEGISLATURE, et al.,

Defendants.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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NEW YORK COMMUNITIES FOR CHANGE, MARIA JORDAN AWALOM, et al., Index No. 602316/2024

Plaintiffs, **ACTION II**

v. (Mot. Seq. 003)

COUNTY OF NASSAU, THE NASSAU COUNTY LEGISLATURE, et al.,

Defendants.

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REPLY MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS NASSAU COUNTY, THE NASSAU COUNTY LEGISLATURE, BRUCE BLAKEMAN, MICHAEL C. PULITZER, AND HOWARD J. KOPEL'S MOTION TO DISMISS THE COMPLAINT IN *NEW YORK COMMUNITIES FOR CHANGE* (ACTION II)

Defendants Nassau County, the Nassau County Legislature, Bruce Blakeman, Michael C. Pulitzer, and Howard J. Kopel (collectively "Defendants"), by and through their undersigned counsel, respectfully submit this reply memorandum of law in support of their motion, pursuant to CPLR 3211(a)(1) and 3211(a)(7), to dismiss the Complaint filed by Plaintiffs New York Communities for Change, Maria Jordan Awalom, Monica Diaz, Lisa Ortiz, and Guillermo Vanetten (collectively, "Plaintiffs") on February 7, 2024, NYSCEF No.2 (attached as Exhibit 1 to the Affirmation of Bennet J. Moskowitz, NYSCEF No.30 ("Moskowitz Aff.")).

As Defendants explained, *see* NYSCEF No.29 ("Mot."), laches bars this lawsuit given Plaintiffs' near-one-year delay in filing this case. Allowing this action to proceed would prejudice both the public and Defendants by potentially forcing the County to conduct a mid-decade redistricting in back-to-back election cycles and causing significant confusion to voters, candidates, and election officials alike. Mot.12. Plaintiffs' challenge to the Legislature's map became ripe when the County Executive signed the Legislature's plan into law on February 28, 2023, and yet Plaintiffs offer no valid basis for delaying until almost an entire year later to file this lawsuit. Mot.12–14. Moreover, Plaintiffs' excessive delay means that if this lawsuit were to succeed, the County would be forced to undergo back-to-back redistrictings in consecutive election cycles, causing confusion to voters, prejudicing candidates, and causing needless expenditures for the County. Mot.15–17.

Defendants acknowledge that this Court denied Nassau County's and the Nassau County Legislature's Motion to Dismiss in the now-consolidated *Coads* case, *see* Order at 3, *Coads, et al. v. Nassau County, et al.*, Index No.611872/2023 (Nassau Cnty. Sup. Ct. Mar. 12, 2024), NYSCEF No.91; *see also* Transcript at 36–38, *id.* (Mar. 1, 2024), NYSCEF No.90 ("*Coads* Tr."), finding that laches did not bar the complaint because there was neither unreasonable delay nor significant

prejudice based on this delay. While Defendants do not dispute that a significant portion of this Court's reasoning in denying the motion to dismiss applies to this Motion as well, one difference is that Plaintiffs brought their suit almost a year after the map was signed—more than double the delay in *Coads*. *Id*. Having said that, Defendants again acknowledge the similarity of the issues before this Court here and the motion that this Court denied in *Coads*, and respond briefly to Plaintiffs' various arguments to preserve all rights, including potentially for appeal.

Plaintiffs erroneously contend that their Complaint alleges a "continuing wrong" to which laches does not apply. *See* NYSCEF No.64 ("Opp.") at 7–9. Laches in New York applies to *all* "declaratory judgment actions where the defendant shows prejudicial delay." 75A N.Y. Jur. 2d Limitations and Laches § 353; *see Saratoga Cnty. Chamber of Com., Inc. v. Pataki,* 100 N.Y.2d 801, 816 (2003). Plaintiffs here failed to allege a "continuing wrong," and, instead, raised only allegedly continual harms from a single claimed wrong. Although Plaintiffs contend that "each election in which voters must cast ballots under th[e] wrongful Map is another wrong for purposes of the statute of limitations," Opp.8, at most they have alleged (incorrectly) that Defendants took a single unlawful act in enacting the challenged map, and that single act will cause them to suffer harm throughout the remainder of the period the challenged map remains in effect, until the next redistricting process. This is insufficient to evade the reach of laches under New York law, *see Salomon v. Town of Wallkill*, 174 A.D.3d 720, 721 (2d Dep't 2019); *Selkirk v. State*, 249 A.D.2d 818, 819 (3d Dep't 1998) (citation omitted), and Plaintiffs' inapposite, out-of-jurisdiction cases, Opp.8, do not support a contrary conclusion. Defendants Nassau County and the Nassau County Legislature previously explained in briefing on their Motion To Dismiss in *Coads* why each of the out-of-jurisdiction decisions Plaintiffs cite here offer no basis to avoid laches under New York law. *See* Reply Memorandum Of Law In Support Of Defendants Nassau County And The Nassau

County Legislature's Motion To Dismiss The Complaint at 5–6, *Coads*, Index No.611872/2023 (Oct. 3, 2023), NYSCEF No.47.

Moving to the elements Defendants' laches argument, Defendants have properly established all elements of laches, and Plaintiffs' contrary contentions are wrong. *See* Opp.9–14.

As to the unreasonable delay element, Plaintiffs' assertion that they waited almost a year to file this lawsuit because they want to be more "thorough[ ]" is without adequate support. Opp.10. Despite Plaintiffs' claim that lawsuits like this one take a long time to "investigate" and develop, Opp.10, they fail to point to anything in their Complaint that they developed after the map was enacted—no new experts retained, new expert analysis created, or the like—beyond that already provided during the legislative process by the Democratic members of the Legislature, *see* Opp.10–11; *see generally* Moskowitz Aff. Ex.1. While Plaintiffs claim that they needed to obtain the documents pertaining to Mr. Trende's analysis because such documents were "important to Plaintiffs' investigation of their causes of action," Opp.11, they nowhere explain how that could be true (or to which claims/theories that analysis could be relevant in their Complaint) given that Mr. Trende's analysis of racial considerations in redistricting was limited to Section 2 of the federal Voting Rights Act, *see* Moskowitz Aff. Ex.7 at 5; *id.*, Ex.8 at 9. Plaintiffs' legal theories in this case are based on the NYVRA, which Plaintiffs contend imposes different legal requirements. Moskowitz Aff. Ex.1 ¶¶ 32, 34, 45, 46, 87, 92, 111, 119, 140, 141.

Plaintiffs are wrong on the law and the facts in claiming that awareness of broad-based "complaints" by persons not involved in this lawsuit scuttles Defendants' laches defense for lack of surprise. Opp.12–13. Notice or lack thereof, while possibly relevant in some laches cases, is not an element of a laches defense. Laches is "an equitable bar, based on a lengthy neglect or omission to assert a right and the resulting prejudice to an adverse party," *MacDonald v. Cnty. of*

Monroe, 191 N.Y.S.3d 578, 591 (N.Y. Sup. Ct. Monroe Cnty. 2023) (quoting *Pataki*, 100 N.Y.2d at 816), meaning the only elements of the defense are (1) unexplained delay by the plaintiff and (2) resulting prejudice to the defendant, *see Capruso v. Vill. of Kings Point,* 23 N.Y.3d 631, 641 (2014); *Mundel v. Harris,* 199 A.D.3d 814, 815 (2d Dep't 2021); *see also* 89 N.Y. Jur. 2d Real Property—Possessory Actions § 110 ("the two essential elements of laches are unexplained delay and prejudice"). Even if prior notice or knowledge of the potential filing of a lawsuit were relevant, Plaintiffs' arguments fail under their own test. As Plaintiffs admit, the relevant notice test—if it were applicable—is whether a defendant has a "lack of knowledge or notice . . . that *the complainant* would assert his or her claim for relief." *Kverel v. Silverman*, 172 A.D.3d 1345, 1348 (2d Dep't 2019). Plaintiffs claim only that Defendants knew of various "legislators and experts who warned of legal action after the Map was introduced," Opp.12, but they nowhere explain why Defendants should have known that Plaintiffs—i.e., "*the complainant[s]*," *Kveral*, 172 A.D.3d at 1348—would bring this lawsuit almost a year later.

Nor have Plaintiffs negated Defendants' showing of prejudice from Plaintiffs' inexcusable delay. *Contra* Opp.13–14. Plaintiffs point to the fact that the 2023 election cycle has already finished, Opp.13–14, but Plaintiffs' request for mid-decade redistricting would, if successful, likely "confuse voters," *Sanders v. Dooly Cnty.*, 245 F.3d 1289, 1290-91 (11th Cir. 2001), who would have to deal with back-to-back redistrictings in as many election cycles (indeed, in three consecutive elections), which necessarily "creat[es] instability and dislocation in the electoral system," *White v. Daniel*, 909 F.2d 99, 104 (4th Cir. 1990). Furthermore, Plaintiffs delay will cause harm to candidates who have "adjusted their campaigns in reliance" on the new map, because altering it after Plaintiffs' unreasonable delay would destroy all of their efforts in conforming their campaigning and voter outreach on the new map, thereby "likely result[ing] in a hardship that

borders on unfairness." *See Quinn v. Cuomo*, 126 N.Y.S.3d 636, 641 (Sup. Ct. Queens Cnty. 2020). Finally, Plaintiffs' delay risks significant expenses for the County, given that a successful suit would require additional, "back-to-back redistricting[ ]," that would "be unnecessarily costly to the County." *Sanders*, 245 F.3d at 1290–91; *see Daniel*, 909 F.2d at 104. Had Plaintiffs timely brought their suit, this Court could have resolved the claims and prevented this risk without any such confusion and attendant costs to Defendants. *See* Mot.15–17.

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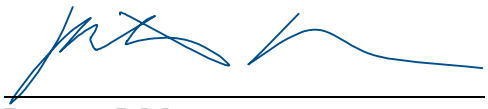
This Court should grant Defendants' Motion To Dismiss under laches.

Respectfully submitted,

Dated: New York, New York
March 14, 2024

TROUTMAN PEPPER HAMILTON SANDERS LLP



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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply Memorandum of Law in Support of Defendants Nassau County, the Nassau County Legislature, Bruce Blakeman, Michael C. Pulitzer, and Howard J. Kopel's Motion to Dismiss the Complaint complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum uses Times New Roman 12-point typeface and contains 1,422 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.

By: _____
BENNET J. MOSKOWITZ