COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

----------X

NEW YORK COMMUNITIES FOR CHANGE, MARIA JORDAN AWALOM, MONICA DIAZ, LISA ORTIZ, AND GUILLERMO VANETTEN,

Plaintiffs,

v.

COUNTY OF NASSAU, THE NASSAU COUNTY LEGISLATURE, THE NASSAU COUNTY BOARD OF ELECTIONS, BRUCE BLAKEMAN, in his official capacity as Nassau County Executive, MICHAEL C. PULITZER, in his official capacity as Clerk of the Nassau County Legislature, HOWARD J. KOPEL, in his capacity as Presiding Officer of the Nassau County Legislature, and JOSEPH J. KEARNY and JAMES P. SCHEUERMAN, in their official capacity as commissioners of the Nassau County Board of Elections,

Defendants.

----------X

Index No. 602316/2024

Hon. Paul I. Marx

(Mot. Seq. 003)

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes And Rules

County Charter

Other Authorities

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 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 ("Moskowitz Aff.")).

PRELIMINARY STATEMENT

After the release of the 2020 decennial census, the Nassau County Legislature ("Legislature") adopted a new redistricting plan that became legally effective on February 28, 2023, when the County Executive signed it into law. The Legislature adopted this plan after considering and rejecting two maps proposed by partisan-aligned members of an independent redistricting commission, holding multiple meetings with various Legislators across the political spectrum, and incorporating public input on pertinent communities of interest. Legislators from across the political aisle commended the redistricting plan for accommodating many of their proposed revisions, but nevertheless some Legislators and lawyers promised an immediate lawsuit because they believed that the Legislature had not accommodated their concerns sufficiently, with one Legislator remarking at a public hearing that "[t]omorrow morning, students in Nassau County are going to wake up to a snow day. This Body is going to wake up to a lawsuit." Moskowitz Aff. Ex.2 at 174.[1] Had Plaintiffs instead brought a lawsuit significantly earlier, within that threatened

[1] The Court may take judicial notice of such publicly available and publicly issued Nassau County government documents without converting this Motion into one for summary judgment. *See Headley v. N.Y.C. Transit Auth.*, 100 A.D.3d 700, 701 (2d Dep't 2012); *J & JT Holding Corp. v. Deutsche Bank Nat'l Tr. Co.*, 173 A.D.3d 704, 706 (2d Dep't 2019). And even if this Court chooses to ignore these documents at this stage of this case, Defendants are still entitled to dismissal based upon laches for the reasons provided herein.

timeframe or even anywhere close to it, the legality of the map could have been litigated promptly, with a final decision in time for the 2023 elections, consistent with the expediency of recent (and significantly more complex) redistricting litigation in this State.

Despite disregarding these threats of immediate litigation by various attorneys and certain Legislators that litigation was imminent, Plaintiffs waited almost ***a whole year*** to bring this lawsuit—significantly longer than even the delay by the plaintiffs in *Coads, et al. v. Nassau County, et al.*, Index No. 611872/2023 (Sup. Ct. Nassau Cnty.), currently pending before this Court—asking for relief that would mandate mid-decade redistricting in back-to-back election cycles. Plaintiffs' delay is inexcusable and this lawsuit, if successful, would deeply prejudice Defendants and the public by forcing a disfavored mid-decade redistricting, causing grave confusion for voters and candidates, and requiring the County to make significant expenditures to redistrict again. Accordingly, this Court should dismiss Plaintiffs' Complaint under the equitable doctrine of laches.

STATEMENT OF FACTS

A. The Nassau County Legislature Forms A Temporary Districting Advisory Commission To Propose A Redistricting Map

The Legislature is the legislative body of Nassau County's government, comprising a single representative from each of the county's nineteen districts, and tasked with drafting and approving local laws, including as to redistricting. *See* Nassau Cnty. Charter, §§ 102–104, 112.[2]

After the 2020 federal decennial census released population statistics, the Legislature created the Temporary Districting Advisory Commission ("TDAC") to assist the Legislature in redrawing the County's legislative districts. *Id.* § 113(1)(a). The TDAC must "recommend one or

[2] Available at https://www.nassaucountyny.gov/DocumentCenter/View/37579/Charter-1122?bidId= (all websites lasted visited Feb. 27, 2024).

more plans to the [C]ounty Legislature for dividing the county into legislative districts for the election of county legislators," *id.* § 113(2), while the Legislature maintains the authority to "reject, adopt, revise or amend the redistricting plan recommended by the [TDAC] or adopt any other redistricting plan, provided that any plan adopted by the County Legislature shall meet all constitutional and statutory requirements," *id.* § 114. The TDAC consists of ten voting members, five members appointed by the Presiding Officer and five members appointed by the Minority Leader, *id*. § 113(1)(a); however, the TDAC can only act "by not less than six affirmative votes of its members," *id.* § 113(3). In the process of developing redistricting plans, the TDAC can conduct meetings and hold public hearings, and may hire experts, counsel, consultants, and staff. *Id.* § 113(2).

The TDAC held public meetings throughout Nassau County. Nassau Cnty., *TDAC Agenda Center*.[3] Thereafter, the TDAC Republican Commissioners and Democratic Commissioners each submitted their own proposed maps to the Legislature, *see* Nassau Cnty., *TDAC Republican Commissioners Proposed Maps*[4]; Nassau Cnty., *TDAC Democrat Commissioners Proposed Maps*.[5] The Commissioners' two proposed plans were heavily criticized, with various allegations of partisan gerrymandering, minority vote dilution, and failure to consider important traditional redistricting criteria. *See* Moskowitz Aff. Ex.3 at 22; Moskowitz Aff. Ex.4 at 2–4.

[3] Available at https://www.nassaucountyny.gov/AgendaCenter/Search/?term=&CIDs=21,&startDate=&endDate=&dateRange=&dateSelector=.

[4] Available at https://www.nassaucountyny.gov/5457/RepubPropMaps.

[5] Available at https://www.nassaucountyny.gov/5458/DemProposedMaps.

B. The Presiding Officer Meets With Legislators From Across The Political Spectrum And Then Proposes A Different Map That Attempts To Address Criticism Offered By Both Sides Of The TDAC And The Public

After receiving the two TDAC proposed maps, the Presiding Officer—charged with "presid[ing] at all meetings of the County Legislature, be[ing] chairman of the Rules Committee, prepar[ing] that portion of the proposed county budget relating to the County Legislature, and perform[ing] such other functions as are assigned to" him, Nassau Cnty. Charter, § 106(1)—proposed his own map. *See* Moskowitz Aff. Ex.1 ¶ 99. The Presiding Officer first met with Legislators from across the political spectrum to hear about their concerns, including as to the two proposed maps from both the Democratic and Republican members of the TDAC. Moskowitz Aff. Ex.5 at 107–09. Then, he presented both of the TDAC maps to the Rules Committee of the Legislature for consideration. Moskowitz Aff. Ex.5 at 10–11; Moskowitz Aff. Ex.1 ¶ 99. The Presiding Officer also consulted with the lead counsel and a redistricting expert who prevailed in *Harkenrider v. Hochul*, 38 N.Y.3d 494 (2022), to ensure that his proposed map complied with all legal requirements. *See* Moskowitz Aff. Ex.1 ¶¶ 43, 101. After engaging in this consultation, the Presiding Officer proposed a map for the Legislature's consideration. Moskowitz Aff. Ex.5 at 10–11.

At the February 16, 2023, Full Legislature Meeting, the Presiding Officer presented testimony from the *Harkenrider* counsel, as well as a memorandum prepared by counsel, explaining why the map complied with the law (unlike the two TDAC proposals), while the Democratic Minority Leader presented his own expert, Professor Daniel B. Magleby, who testified that the Presiding Officer's map was unlawful. Moskowitz Aff. Ex.5 at 18–41, 161–93; *see* Moskowitz Aff. Ex.1 ¶ 96. This memorandum prepared by counsel for the Presiding Officer discussed the social science conclusions of noted redistricting expert Sean Trende, who previously served as the expert in the *Harkenrider* case. Mr. Trende's analyses concentrated primarily on

political/partisanship considerations, *see* Moskowitz Aff. Ex.7 at 9–11, and the memorandum included only one sentence discussing Mr. Trende's analysis of racial considerations, which sentence noted that "Nassau County contains no districts meeting the *Gingles* preconditions that would require or permit the creation of any race-focused districts, for purposes of compliance with Section 2 of the [federal Voting Rights Act ("VRA")]," *id.* at 5.

At this same hearing, various Legislators and members of the public expressed concern with certain aspects of the Presiding Officer's proposed map, while at the same time lauding him for rejecting the proposed maps from both the Democratic and Republican members of the TDAC. *See generally* Moskowitz Aff. Ex.5. For example, Legislator Siela A. Bynoe praised the Presiding Officer for "hear[ing] the voices" of her constituents and restoring Lakeview as a whole. Moskowitz Aff. Ex.5 at 108–09. On the other hand, Legislator Arnold W. Drucker and various members of the public provided testimony that Plainview and Old Bethpage form a single, strong community of interest that need to be in the same district, and objecting to the fact that the proposed map separated the two. Moskowitz Aff. Ex.5 at 133–34. Legislator Carrié Solages criticized the Presiding Officer's proposed map for splitting Elmont into more than one district, thereby splitting this strong community of interest, Moskowitz Aff. Ex.5 at 111–12, 131, and for splitting Mill Brook and Valley Stream, when instead he wanted them both in District 3, to unite these significantly connected communities, Moskowitz Aff. Ex.5 at 110–11, 131. And both Legislators and members of the public criticized the Presiding Officer's proposed map for splitting of the Village of Hempstead into three districts. *See, e.g.*, Moskowitz Aff. Ex.5 at 13. Counsel for Plaintiffs in this case also testified at this hearing against the proposed map, threatening that "we are going to be in litigation and you're guaranteeing that . . . and you will be paying millions of

dollars to somebody, because this map, the map that you presented, is completely illegal." Moskowitz Aff. Ex.5 at 158.

Following the February 16, 2023, Full Legislature Meeting, the Presiding Officer made changes to his proposed map, incorporating community-of-interest-based concerns that Legislators and members of the public testified to at the meeting. The notable changes included: combining Plainview and Old Bethpage into a single district, unifying the majority of Elmont and restoring portions of Mill Brook to the same district, and reducing the number of times the Village of Hempstead was split between districts. *See* Nassau Cnty., *Adopted Maps*.[6] On February 21, 2023, the Presiding Officer sent the Legislature the final version of this revised map for its consideration. Nassau Cnty., *Redistricting*.[7]

C. The Legislature Enacts Its Final Map, With Certain Legislators Threatening An Immediate Lawsuit

At an additional Nassau County Full Legislature Meeting on February 27, 2023, Legislators recognized the Presiding Officer's efforts to address their concerns and public testimony when revising his proposed map, and the Presiding Officer presented a new memorandum in support of the revised map. *See* Moskowitz Aff. Ex.6 at 137–38, 147. Again, this memorandum discussed Mr. Trende's analyses of the revised map, which focused primarily on political considerations, Moskowitz Aff. Ex.8 at 13–18, and included only one short section outlining his analysis on relevant racial considerations, concluding that "Nassau County contains no districts meeting the *Gingles* preconditions that would require or permit the creation of any race-focused districts, for purposes of compliance with § 2 of the VRA. That is why, consistent with the discussion of the Equal Protection Clause immediately above, the Proposed Revised Map

[6] Available at https://www.nassaucountyny.gov/5515/Adopted-Maps.

[7] Available at https://www.nassaucountyny.gov/5455/Redistricting.

continues to decline to draw any districts to any racial targets," *id.* at 9. The Democratic Majority Leader offered the written analyses of Dr. Megan Gall, who claimed that the map violated the NYVRA by failing to draw a sufficient number of districts intentionally designed as majority-minority districts. *See* Moskowitz Aff. Ex.8 at 7–8. And at this hearing, Legislator Bynoe remarked that she was "heartened" by the changes made in response to community comments and recognized that the Presiding Officer had "done a lot" to address the concerns raised by certain Legislators. *See* Moskowitz Aff. Ex.6 at 138. Legislator Solages expressed his thanks for the changes the Presiding Officer had made, noting revisions made to address concerns regarding unifying Elmont and Mill Brook in District 3. *See* Moskowitz Aff. Ex.6 at 147.

Not everyone was entirely happy, however, given that no redistricting map is perfect, as the Presiding Officer explained. Moskowitz Aff. Ex.5 at 11–12; Moskowitz Aff. Ex.2 at 179. At the February 27 meeting, the Minority Leader called the map "an illegal document" that would end up in court if not changed and "forewarned" the Legislature that the "County will be sued." Moskowitz Aff. Ex.6 at 14, 20–21. Legislator Joshua A. Lafazan promised that such a lawsuit would occur immediately: "Tomorrow morning, students in Nassau County are going to wake up to a snow day. This Body is going to wake up to a lawsuit." Moskowitz Aff. Ex.2 at 174.

The Legislature "passed Local Law 1" at its February 27 meeting without further amendment, and the map became law when "County Executive Bruce Blakeman signed [it] into law" on February 28, 2023. Moskowitz Aff. Ex.1 ¶ 24. The Legislature also maintained a public website with all of the underlying data and redistricting files, including demographic data, redistricting block assignment files, shape files, and images of the entire map and each individual district for every one of its proposed maps, including the map ultimately adopted by the County

on February 28, 2023, providing all interested persons with all necessary data and information to judge the proposed and adopted maps on their merits. *See* Nassau Cnty., *Redistricting*, *supra*.

D. Plaintiffs File This Lawsuit Challenging The Enacted Map Nearly One Whole Year Later

While the Legislature received threats of immediate litigation, its map went into effect unchallenged in February and governed the Legislature's June 27, 2023, primary election, and subsequent general election. Since that time, the Nassau County Legislature's adopted map was used for a completed designating petition process, a primary election, party-nominating processes, and a general election. *See* N.Y. State Bd. of Elections, *2023 Political Calendar*.[8]

It was not until almost a year later, on February 7, 2024, that Plaintiffs filed this lawsuit seeking a declaratory judgment that Nassau County's 2023 redistricting map for the Legislature violates the NYVRA and Section 34 of the N.Y. Municipal Home Rule Law and requesting an injunction prohibiting the Legislature from using that map in future elections. Moskowitz Aff. Ex.1 at p.34. Plaintiffs' Complaint asks this Court to appoint a "Special Master to evaluate potential remedial plans and recommend to the Court a remedial plan for implementation without deferring to remedies proposed by Defendants." *Id.* Plaintiffs also ask the Court to implement a court-ordered plan that complies with all applicable laws and to award reasonable attorneys' fees and litigation costs to Plaintiffs. *Id.* Other than one offhand reference to a March 27, 2023, records request for production of records on how the map was drawn, and another noting that the County held elections for the Legislature under the new map, the Complaint provides no supporting factual allegations that occurred after the map became law on February 28, 2023. *See* Moskowitz Aff. Ex.1 ¶¶ 106, 154. The reference to the records request and subsequent Freedom of Information

[8] Available at https://elections.ny.gov/system/files/documents/2023/07/2023politicalcalendar.pdf.

Law ("FOIL") lawsuit relates to the since settled lawsuit in *League of Women Voters of Port Washington-Manhasset v. Nassau County Legislature*, Index No. 613287/2023 (Sup. Ct. Nassau Cnty., *filed* Aug. 17, 2023). That case ultimately settled on November 21, 2023, *see* Stipulation Of Discontinuation With Prejudice, NYSCEF No.30, *id.* (Sup. Ct. Nassau Cnty. Nov. 21, 2023), with the Legislature providing the League of Women Voters of Port Washington-Manhasset (the "League") all relevant records from Mr. Trende's analysis of the proposed and adopted maps' compliance with Section 2 of the federal VRA, *see* NYSCEF Doc. No.19 ("Grossman Aff.") ¶ 11; *see also* Moskowitz Aff. Exs.7, 8.

On February 23, 2024, Plaintiffs' counsel submitted an affirmation in support of Plaintiffs' Motion for an Expedited Case Schedule. *See* Grossman Aff. In that affirmation, Plaintiffs' counsel claims that resolution of the League's FOIL lawsuit was a necessary prerequisite to its filing of this lawsuit, Grossman Aff. ¶ 11.

STANDARD OF REVIEW

In the context of a CPLR 3211 motion, while allegations in a pleading are generally accepted as true, allegations amounting to "bare legal conclusions," or factual claims contradicted by documentary evidence, receive no such deference. *22-50 Jackson Ave. Assocs., L.P. v. Cnty. of Suffolk*, 216 A.D.3d 943, 945 (2d Dep't 2023) (citation omitted). Pursuant to CPLR 3211(a)(7), the court may dismiss a cause of action if the plaintiff fails to allege a legally cognizable cause of action. *See Morone v. Morone*, 50 N.Y.2d 481, 484 (1980) (citing *Rovello v. Orofino Realty*, 40 N.Y.2d 633, 635 (1976)). A court may properly dismiss a complaint under the doctrine of laches pursuant to a CPLR 3211 motion. *See Diecidue v. Russo*, 142 A.D.3d 686, 687–88 (2d Dep't 2016); *Miner v. Town of Duanesburg Planning Bd.*, 98 A.D.3d 812, 813–14 (3d Dep't 2012); *Speis v. Penfield Cent. Schs.*, 114 A.D.3d 1181, 1183 (4th Dep't 2014).

ARGUMENT

I. The Doctrine Of Laches Bars Plaintiffs' Complaint

A. Under the doctrine of laches, a claim is barred where the plaintiff has "neglect[ed] to assert promptly a claim for relief" and that neglect has "cause[d] prejudice to the adverse party." *Dwyer v. Mazzola*, 171 A.D.2d 726, 727 (2d Dep't 1991) (emphasis omitted) (citing 75A N.Y. Jur. 2d Limitations and Laches § 330). The doctrine applies to any "equitable actions and declaratory judgment actions where the defendant shows prejudicial delay." 75A N.Y. Jur. 2d Limitations and Laches § 353. Delay is measured by an objective standard, with the relevant time period beginning when the plaintiff "knew or should have known" of the facts giving rise to its claim, *Badillo v. Katz*, 343 N.Y.S.2d 451, 460 (Sup. Ct. Bronx Cnty.), *aff'd as modified*, 41 A.D.2d 829 (1st Dep't), *aff'd*, 32 N.Y.2d 825 (1973), and "does not depend on subjective awareness of the legal basis on which a claim can be made," *Envt'l Def. Fund, Inc. v. Alexander*, 614 F.2d 474, 479 (5th Cir. 1980); *see Fouts v. Harris*, 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999), *aff'd sub nom. Chandler v. Harris*, 529 U.S. 1084 (2000). Laches may be applied "regardless of whether the statutory limitations period has expired." *White v. Priester*, 78 A.D.3d 1169, 1171 (2d Dep't 2010) (quoting *Saratoga Cnty. Chamber of Com. v. Pataki*, 100 N.Y.2d 801, 816 (2003)). The party invoking laches may prove prejudice "'by a showing of injury, change of position, loss of evidence, or some other disadvantage resulting from the delay.'" *Id.* (quoting *Skrodelis v. Norbergs*, 272 A.D.2d 316, 317 (2d Dep't 2000)). But "the defendant 'is aided by the inference of prejudice warranted by the plaintiff's delay,'" *White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990) (quoting *Giddens v. Isbrandtsen Co.*, 355 F.2d 125, 128 (4th Cir. 1966)), and harm to economic interests can be sufficient to bar an action on laches grounds, *Pataki*, 100 N.Y.2d at 817.

In the redistricting and election context, New York courts have consistently applied laches, *see Badillo*, 343 N.Y.S.2d at 460 (redistricting); *MacDonald v. Cnty. of Monroe*, 191 N.Y.S.3d 578,

591–92 (Sup. Ct. Monroe Cnty. 2023) (redistricting); *Nichols v. Hochul*, 206 A.D.3d 463, 464 (1st Dep't), *appeal dismissed*, 38 N.Y.3d 1053 (2022) (redistricting); *League of Women Voters of N.Y. State v. N.Y. State Bd. of Elections*, 206 A.D.3d 1227, 1229–30 (3d Dep't 2022) (certification of ballots); *Amedure v. State*, 210 A.D.3d 1134, 1136–40 (3d Dep't 2022) (canvassing of absentee ballots), just like other courts throughout the country, *see, e.g.*, *Fouts*, 88 F. Supp. 2d at 1353 (citing *Mac Govern v. Connolly*, 637 F. Supp. 111 (D. Mass. 1986), and *Daniel*, 909 F.2d at 99); *Dobson v. Mayor & City Council of Baltimore City*, 330 F. Supp. 1290, 1301 (D. Md. 1971); *Chestnut v. Merrill*, 377 F. Supp. 3d 1308, 1314 (N.D. Ala. 2019); *Sanders v. Dooly Cnty.*, 245 F.3d 1289, 1290–91 (11th Cir. 2001); *Ole, Ole, Inc. v. Kozubowski*, 543 N.E.2d 178, 183–84 (Ill. App. Ct. 1989); *Lopez v. Hale Cnty.*, 797 F. Supp. 547, 550 (N.D. Tex. 1992), *aff'd*, 506 U.S. 1042 (1993) (per curiam); *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 366 F. Supp. 2d 887, 908–09 (D. Ariz. 2005).

Courts apply laches in the redistricting context to advance important public-policy considerations because "those who claim a right against a governmental body should press their claims with diligence," *Ole, Ole, Inc.*, 543 N.E.2d at 184 (citation omitted), and voters, candidates, and election officials alike rely on the stability of redistricting plans, *see Quinn v. Cuomo*, 126 N.Y.S.3d 636, 641 (Sup. Ct. Queens Cnty. 2020). If a plaintiff waits to bring a redistricting challenge until after a plan has governed elections, that delay can cause "voter confusion," *id.*, because "voters have come to know their districts and candidates, and will be confused by change," *Fouts*, 88 F. Supp. 2d at 1354. That is especially true where the delayed suit could potentially result in "back-to-back redistrictings." *Sanders*, 245 F.3d at 1290. And this concern of voter confusion is even more pronounced in the context of "localized county redistricting," which is not as well "funded and highly publicized" as congressional races, where "voters would be more aware

of which district they belong." *Chestnut*, 377 F. Supp. 3d at 1317. Candidates too "certainly adjust[ ] their campaigns in reliance" on current maps, such that delayed redistricting challenges can "result in a hardship that borders on unfairness." *Quinn*, 126 N.Y.S.3d at 641. In sum, a delay in filing a redistricting challenge could result in back-to-back redistrictings, thereby changing the maps for future elections and "greatly prejudic[ing] the County and its citizens by creating instability and dislocation in the electoral system and by imposing great financial and logistical burdens." *Daniel*, 909 F.2d at 104.

B. Here, dismissal based on laches is necessary because Plaintiffs have provided no credible explanation for their near-one-year delay in filing this lawsuit and allowing their redistricting challenge to the map now would significantly prejudice Defendants and the public since, if Plaintiffs prevail, the Legislature will have to conduct back-to-back redistrictings in two election cycles. *See Sanders*, 245 F.3d at 1290; *Daniel*, 909 F.2d at 104.

1. The Legislature "passed Local Law 1" at its February 27 meeting, and the map became law when "County Executive Bruce Blakeman signed [it] into law" the following day on February 28, 2023. Moskowitz Aff. Ex.1 ¶ 24. Once the County Executive signed the map into law, Plaintiffs' challenge to such map became ripe. *MacDonald*, 191 N.Y.S.3d at 592. Nevertheless, Plaintiffs waited until February 7, 2024—***nearly a full year later***—to file this lawsuit. Plaintiffs' delay is unreasonable, particularly given the nature of their Complaint, and such delay triggers the doctrine of laches. *Id.*

Plaintiffs have provided no credible explanation for their near-one-year delay. Plaintiffs' Complaint provides no factual allegations that occurred after the map became law on February 28, 2023, that could possibly justify such delay. Plaintiffs rely on population statistics from the 1990, 2010, and 2020 censuses, *see* Moskowitz Aff. Ex.1 ¶¶ 25–26, 60–61, demographics statistics from

2020, *id.* ¶¶ 25–27, 60–61, discussions of historical discrimination in Nassau County dating back to the 1920s, *id.* ¶¶ 48–54, a 2000 consent decree relating to a discriminatory tax assessment system, *id.* ¶¶ 56–57, the history of minority candidates elected to the Legislature and other countywide offices in the past, *id.* ¶¶ 59–63, discussions of historical discrimination in Nassau County jurisdictions from 1992 through the 2005, *id.* ¶¶ 64–68, election tactics from county races between 2017 and 2023, *id.* ¶¶ 75–81, past redistrictings where the County created coalition minority districts, *id.* ¶ 87, expert analysis of the map from Democratic Legislators' experts, presented at the February 27, 2023, hearing, *id.* ¶¶ 96, 123, 143, and extended discussions among Legislators at the February 2023 Legislature hearings, *id.* ¶¶ 102–03. That none of Plaintiffs' relevant "facts alleged in the Complaint occurred after" the map was adopted shows that "nothing prevented the plaintiff[s] from filing this action" when the map was signed into law on February 28, 2023. *MacDonald,* 191 N.Y.S.3d at 593. After all, "[t]he filing of the [complaint] did not change the manner in which the redistricting had been accomplished" such that even if the map did violate New York law—which it does not—it would have violated that law in the same way "when it was completed." *Ole, Ole, Inc.*, 543 N.E.2d at 184.

Plaintiffs' attempt to rely upon the League's March 2023 FOIL request for records relating to the 2023 redistricting to justify their delay fails. In their latest submission on February 23, 2024 (further showcasing their unreasonable delay in this case), Plaintiffs allege that the Legislature "refused to disclose virtually any of the requested records," which records relate to what the Legislature relied upon in adopted the map at issue. Grossman Aff. ¶ 10. According to Plaintiffs, they had to wait until they received such records before they could file this lawsuit. That is nonsensical. As acknowledged in their Complaint, *see* Moskowitz Aff. Ex.1 ¶ 123, Plaintiffs clearly had their own expert—Dr. Megan Gall, who did her own racial analysis under Plaintiffs'

theory of the NYVRA, Moskowitz Aff. Ex.1 at 7–8—upon whom they could rely to collect the requisite records and data and assert the claims they belatedly raise here. And, again, the Legislature has provided to the public all data necessary to assess the adopted map for all relevant legal criteria, since even before the Legislature adopted that map. *Supra* pp.7–8. It is telling that Plaintiffs do not claim, nor can they, that they did not have any necessary data, such as race and demographics, that was not already available to the public to determine the legality of the map at issue.

Plaintiffs' articulation of their claims undercuts any need they might have had for Mr. Trende's analyses before filing this lawsuit. Mr. Trende's analysis of racial considerations relevant to redistricting discussed only the requirements of the Section 2 of the VRA and the U.S. Supreme Court's interpretation of the VRA's requirements and "vote dilution" in *Thornburg v. Gingles*, 478 U.S. 30 (1986). *See* Moskowitz Aff. Ex.7 at 5; Moskowitz Aff. Ex.8 at 9. As explained in the February 16 Memorandum by Troutman Pepper, the NYVRA's requirement that no districts be drawn with the intent to deny or abridge the equal opportunity of racial or language minority groups to participate in the political process or otherwise impair minorities' ability to elect candidates of their choice, *see, e.g.*, Election Law § 17-206(3), any such requirements under the NYVRA "must be understood in light of the U.S. Supreme Court's Equal Protection Clause caselaw prohibiting racial gerrymandering . . . , the principle of constitutional avoidance, and the U.S. Constitution's Supremacy Clause. Moskowitz Aff. Ex.7 at 6; *see also id.* Ex.8 at 10. But Plaintiffs' *legal* theory here is that the NYVRA imposes different and additional requirements from the VRA on redistricting efforts in New York, and Plaintiffs have alleged only claims arising under the NYVRA, not the VRA, rendering any purported need for Mr. Trende's analyses entirely suspect. *See, e.g.*, Moskowitz Aff. Ex.1 ¶¶ 32, 34, 45, 46, 87, 92, 111, 119, 140, 141. Thus,

Plaintiffs had no need for additional information relating to Mr. Trende's federal VRA analysis under their theory of the NYVRA. Indeed, Plaintiffs nowhere explain what Mr. Trende's *Gingles*-focused analysis under the VRA, which is what they now claim they wanted, would tell them relevant to their NYVRA claims under their NYVRA theory, a serious deficiency this Court should require them to fix to justify their nearly year-long delay in filing.

Had Plaintiffs acted in accordance with the "exceedingly time sensitive," *MacDonald*, 191 N.Y.S.3d at 593, nature of redistricting challenges and filed immediately after Defendants adopted the map on February 28, 2023, they would have had enough time to resolve this dispute before the 2023 election cycle. As just one example, the petitioners in *Harkenrider*—the landmark redistricting case in New York—filed a comprehensive challenge to New York's entire congressional map the same day the Governor signed it into law, and then filed an amended petition shortly thereafter adding a challenge to the entire state Senate map as well. 38 N.Y.3d at 505–06. Those petitioners obtained a remedial map for the 2022 elections and even had enough time for appeals challenging the determination that the Legislature's maps were unconstitutional through the Court of Appeals, *id.* at 506–08, and a complete remedial process drawing constitutional maps after the appeals completed, *Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 192 N.Y.S.3d 763, 765–66 (3d Dep't 2023). Here, by contrast, Plaintiffs waited nearly a year to file their complaint. This delay is inexcusable and warrants dismissal under the doctrine of laches. *See MacDonald*, 191 N.Y.S.3d at 592; *Badillo*, 343 N.Y.S.2d at 460; *Dobson*, 330 F. Supp. at 1301; *Ole, Ole, Inc.*, 543 N.E.2d at 183–84; *Sanders*, 245 F.3d at 1290; *Daniel*, 909 F.2d at 104.

2. Plaintiffs' inexcusable delay has created a situation where, if Plaintiffs get the relief that they seek, including their requested expedited schedule, that would result in the County having back-to-back redistrictings in two straight election cycles, confusing voters, prejudicing

candidates, and causing the County to needlessly incur great expenses. The County and the public have been prejudiced by Plaintiffs' delay in at least three ways.

First, Plaintiffs' request for mid-decade redistricting by ordering the implementation of a remedial plan would "confuse voters," *Sanders*, 245 F.3d at 1290, since it would "create[e] instability and dislocation in the electoral system," *Daniel*, 909 F.2d at 104. Plaintiffs' lawsuit requests a new redistricting and prevents any other elections under the Legislature's new map, resulting in back-to-back redistrictings in two straight elections. Moskowitz Aff. Ex.1 at p.34. Such request would inevitably lead to voter confusion and disenfranchisement due to the immediately adjacent redistricting processes, implementing two different maps in the span of two election cycles. *See Fouts*, 88 F. Supp. 2d at 1354 (noting that "voters have come to know their districts and candidates, and will be confused by change"). Given that Plaintiffs' challenge is to a local-election map, the harm to the County and public would be exacerbated. *See Chestnut*, 377 F. Supp. 3d at 1317.

Second, Plaintiffs' delay has harmed candidates, who, with the expectation that such map would remain in place for the decade, have already expended money and effort seeking election under the current map. Indeed, candidates have decided to run for the Legislature under the districts that the plan established believing that, pursuant to the County Charter, the Legislature had "adopt[ed] . . . a *final* plan for the redistricting of the County Legislature," Nassau Cnty. Charter § 114 (emphasis added), that would be in place until the TDAC was reconstituted "*ten years thereafter*," *id.* § 113(1)(a) (emphasis added). Not only has a primary election under the new map designating candidates for the general election already occurred, but the general election is well under way, with all petitions and nominating papers already filed, all working toward certification of the general election ballot in only a couple of weeks. *See* N.Y. State Bd. of

Elections, *2023 Political Calendar*, *supra*. Candidates have certainly "adjusted their campaigns in reliance" on the new map and altering it after Plaintiffs' unreasonable delay "would likely result in a hardship that borders on unfairness." *See Quinn*, 126 N.Y.S.3d at 641.

Third, Plaintiffs' request for back-to-back redistrictings and elections would result in the County incurring significant expenses. Redistricting would "certainly be costly" and requiring the County to "redistrict twice in two years" would impose these extensive costs in a short time period. *Chestnut*, 377 F. Supp. 3d at 1316–17. This "back-to-back redistricting[ ]," would "be unnecessarily costly to the County." *Sanders*, 245 F.3d at 1290–91; *see Daniel*, 909 F.2d at 104 ("We believe that two reapportionments within a short period of two years would greatly prejudice the County . . . by imposing great financial and logistical burdens."). Therefore, the significant harm to the County's economic interests alone is sufficient to dismiss Plaintiffs' action under the doctrine of laches. *Pataki*, 100 N.Y.2d at 817.

CONCLUSION & RELIEF REQUESTED

This Court should deny Plaintiffs' extraordinary request for back-to-back redistrictings, with back-to-back elections on different maps. Plaintiffs have inexcusably failed to bring this time-sensitive challenge in a reasonable, timely manner, warranting dismissal under the equitable doctrine of laches.

Respectfully submitted,

Dated: New York, New York
February 28, 2024

TROUTMAN PEPPER HAMILTON SANDERS LLP

BENNET J. MOSKOWITZ
875 Third Avenue
New York, New York 10022
(212) 704-6000

MISHA TSEYTLIN
227 W. Monroe St.
Suite 3900
Chicago, IL 60606
(608) 999-1240

Attorneys for Defendants Nassau County, the Nassau County Legislature, Bruce Blakeman, Michael C. Pulitzer, and Howard J. Kopel

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum of Law in Support of Defendants Nassau County, the Nassau County Legislature, Bruce Blakeman, Michael C. Pulitzer, and Howard J. Kopel's'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 6,258 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