SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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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.

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Index No. 602316/2024

Hon. Paul I. Marx

Motion Seq. 3

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO CERTAIN DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

STEPTOE LLP
NEW YORK CIVIL LIBERTIES UNION FOUNDATION
LATINO JUSTICE PRLDEF
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LAW OFFICES OF FREDERICK K. BREWINGTON
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Plaintiffs respectfully submit this memorandum of law and the accompanying Affirmation of Michael G. Scavelli with exhibits in opposition to the Motion to Dismiss the Complaint filed by Defendants Nassau County, Nassau County Legislature, Bruce Blakeman, Michael C. Pulitzer, and Howard J. Kopel (collectively "Defendants").

PRELIMINARY STATEMENT

Plaintiffs filed this action on February 7, 2024, alleging that the redistricting plan for the Nassau County Legislature, Local Law 1-2023 (the "Map") impermissibly dilutes the voting strength of Nassau County's Black, Latino and Asian voters in violation of the John R. Lewis Voting Rights Act of New York ("NYVRA"), Election Law § 17-206[2], and Section 34 of the Municipal Home Rule Law. Plaintiffs seek, among other things, (1) 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 (2) an injunction prohibiting the Nassau County Legislature from using the Map in future elections. Defendants have moved to dismiss solely on the ground of laches.

The relief sought by Defendants is extraordinary and should be rejected by this Court. By its motion, which does not contest the legal sufficiency of the Plaintiffs' claims, Defendants ask the Court to permit the County to run elections for the next decade under an unlawful map just because Plaintiffs did not file their challenge to the Map immediately after enactment. The doctrine of laches is inapplicable here. And, as it did in the *Coads* action, this Court should decline to "disenfranchis[e] voters for the next eight to ten years on a map that might be improper" based on Defendants' faulty arguments.

Defendants' motion should be denied for two independent reasons. *First,* the unlawful Map represents a continuing harm to which laches does not apply. The harms caused to Nassau County's voters of color did not begin and end on the day the Map was enacted as Defendants' suggest.

Rather, the harm is continuing and it will continue in subsequent elections each time voters are required to cast their ballots for County Legislature under this illegal Map.

Second, Defendants have failed to meet their burden on any of the elements of laches. Defendants do not articlate concrete reasons why the delay was unreasonable or how prejudice could have flowed therefrom, as is required. Instead, Defendants offer conjecture backed by speculation that this Court has already—correctly—rejected in the *Coads* action. Defendants' motion also ignores the fact that any delays in filing this litigation were the direct result of Defendants' gamesmanship. Defendants denied the public access to information important to assessing the legality of the Map until *nine months* after the Map was enacted. And Defendants delayed enacting a final map until the day candidate petitioning for the 2023 election cycle began.

In essence, Defendants are seeking to leverage their own efforts to obstruct public accountability for an illegal Map to now claim that they are prejudiced by delays resulting from the public's difficulty in overcoming those obstructions. Giving any weight to the merits of Defendants' laches argument would reward political and legal gamesmanship and insulate unlawful election law conduct from proper judicial review. The Motion should be denied.

STATEMENT OF FACTS

Plaintiffs brought this action to challenge a redistricting plan passed by the Nassau County Legislature ("the Legislature") that impermissibly dilutes the voting strength of Black, Latino, and Asian voters in Nassau county. (NY St Cts Elec Filing [NYSCEF] Doc. No. 2). Defendants' entire strategy, from the time they introduced the Map, has been to delay and obscure information from the public and from Democratic legislators in an effort to conceal their unlawful activity.

In November 2022, Nassau County's Temporary Districting Advisory Commission presented two proposed redistricting maps to the Legislature. Both of these maps acknowledged the need for Nassau County to draw legislative districts that protected against racial vote dilution.

(NYSCEF Doc. No. 2 at ¶¶ 122–24). Both maps were advanced out of the Legislature's Rules Committee on January 17, 2023. However, Presiding Officer Richard Nicolello declined to bring these maps to the full Legislature for a vote. (*Id*. at ¶¶ 126–27).

Instead, on February 9, 2023, the Legislature proposed a new map, drawn by Troutman Pepper Hamilton Sanders LLP ("Troutman"). The Presiding Officer failed to provide the public with any explanation for the new map. (*Id*. at ¶¶ 127–30). On February 16, 2023, minutes before a hearing on the new redistricting map, legislators received a memorandum (the "February 16 Memo") claiming that previously considered maps were unlawful and the new map complied with all legal requirements. (*Id*. at ¶¶ 129–32). The February 16 Memo was made available only in hard copy and only to those who attended the Legislature's February 16 hearing in-person. (*Id*. at ¶ 100).

The February 16 Memo's stated basis for abruptly disposing of the previously-considered maps and drawing a new, "race-blind" map was captured in a single sentence. The Memo stated that "Sean Trende, a noted redistricting expert, conducted a *Gingles* precondition analysis of the County and the proposed map, and concluded 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]." (*Id*. at ¶ 130).[1] This conclusion was staggering. Only months earlier a consultant retained by Nassau County's Temporary Districting Advisory Commission concluded the exact opposite—*i.e.* that the *Gingles* preconditions were present and, thus, under the federal Voting Rights Act, the redistricting plan should include districts drawn to protect voters of color against racial vote dilution. (*Id*. at ¶¶ 134–

[1] As set forth in the Complaint at ¶ 131, "*Gingles* preconditions analysis" refers to statistical analysis of voting patterns to ascertain whether the three preconditions for requiring a jurisdiction to draw districts to protect against racial vote dilution: (1) the minority group must be sufficiently numerous and compact to constitute a majority in a single-member district; (2) the minority group must be politically cohesive such that they typically vote together for the same candidates; and (3) racial majority voters must vote cohesively in a way that usually defeats minority voters' candidate of choice. (NYSCEF Doc. No. 2 at ¶ 131; *see Thornburg v Gingles,* 478 US 30 [1986]).

37). This conclusion was also consistent with all three prior redistricting cycles for the Nassau County Legislature. Regardless of the political party in the majority, all prior redistricting plans for the Nassau County Legislature acknowledged the need for compliance with the federal Voting Rights Act and drew majority-minority districts to that effect.

At the February 16 hearing, legislators requested that Troutman and the Presiding Officer turn over Mr. Trende's analysis so it could be reviewed. But Troutman and the Presiding Officer refused. (*Id.* at ¶ 133). Instead, Troutman attorney Misha Tseytlin testified in defense of the Map. (*Id*. at ¶ 44). Mr. Tseytlin admitted that Mr. Trende found "racially polarized voting in some parts of Nassau," (*id*. at ¶¶ 134–137), but refused to provide any additional detail on Mr. Trende's methodologies or conclusions. As the Presiding Officer would confirm during Mr. Tseytlin's testimony, only Mr. Trende's "bottom line analysis"—*i.e.*, that the preconditions were not met—was going to be made available to the public. (*Id*. at ¶¶ 102–103).

The Legislature published subsequent revised versions of the map on February 17 and February 21.[2] It was not until February 27, on the very last day before the start of candidate petitioning for the 2023 election, that the February 21 map would be the final map. (NYSCEF Doc. No. 2 at ¶ 142). That day, the Legislature published—again, in hard copy only—a revised memorandum from Troutman (the "February 27 Memo") that provided no further information on Mr. Trende's *Gingles* precondition analysis. (NYSCEF Doc. No. 2 at ¶ 143). The Legislature passed the Map into law later that night, and the Map was signed by the County Executive the following day—while the candidate petitioning period was already underway. (*Id*. at ¶¶ 24, 105).

In March 2023, the League of Women Voters of Port Washington-Manhasset (the "League") submitted a FOIL request to the Legislature seeking documents relating to Mr. Trende's

[2] Nassau County, *Redistricting*, https://www.nassaucountyny.gov/5455/Redistricting [last visited March 7, 2024] (noting Proposed Redistricting maps filed on February 9, February 17, February 21, and the adopted map).

analysis. Except for copies of the February 16 and 27 Memos, the Legislature refused to disclose any records at all, asserting blanket FOIL exemptions. (*Id*. at ¶ 106). After exhausting its administrative remedies, the League brought an Article 78 proceeding against the Legislature in August 2023. (*Id*.). The Legislature settled the case by agreeing to produce the records of Mr. Trende's analyses, but it did not complete its production of documents until after the November 2023 general election. (*Id*.). The Legislature and the League stipulated to dismissal of the FOIL Article 78 on November 21, 2023 and the League of Women Voters made these materials public shortly thereafter. (NYSCEF Doc. No. 18 at ¶ 11).

Pursuant to the NYVRA's notice and safe-harbor requirement, Election Law § 17-206 [7], Plaintiffs promptly notified the County on December 14, 2023—a matter of weeks after the documents produced by the Legislature to the League of Women Voters were released—that the Map violated the NYVRA's prohibition on racial vote dilution. (Attached as Ex. B; *see also* NYSCEF Doc. No. 2 at ¶ 167). The Legislature responded by letter dated January 24, 2024 that it would not reconsider the Map. (Attached as Ex. C; *see also* NYSCEF Doc. No. 18 at ¶¶ 12–13). The letter reiterated that Mr. Trende's analysis confirmed the lawfulness of the Map. (Ex C). Plaintiffs filed this action two weeks later, on February 7, 2024.

PROCEDURAL HISTORY

On July 26, 2023, a group of Nassau County voters and a political organization filed an action challenging the Map as an illegal partisan gerrymander under Section 34 of the Municipal Home Rule Law. (*Coads et al. v. Nassau County, et al.*, No. 611872/2023 [Sup Ct, Nassau County]). On August 31, 2023, the Defendants filed a motion to dismiss the *Coads* action solely on the basis of laches. (*Coads* NYSCEF Doc No. 23). On February 28, 2024, the same Defendants filed a nearly identical motion to dismiss in this action. (NYSCEF Doc No. 28). On March 1, 2024, this Court denied the motion to dismiss in the *Coads* action. (Transcript of Mar. 1, 2024 Motion to

Dismiss Hearing at 36:12-38:19, *Coads et al. v. Nassau County, et al.*, No. 611872/2023 [Sup Ct, Nassau County] (attached as Exhibit A and hereinafter "Tr.").

LEGAL STANDARD

The equitable doctrine of laches bars recovery when a plaintiff's delay in bringing suit has prejudiced the defendant and has thereby made recovery unfair. (75A N.Y. Juris. 2d), Limitations and Laches § 350. To establish laches, a party must show: (1) conduct by an offending party giving rise to the situation complained of, (2) delay by the complainant in asserting his or her claim for relief despite the opportunity to do so, (3) lack of knowledge or notice on the part of the offending party that the complainant would assert his or her claim for relief, and (4) injury or prejudice to the offending party. *Kverel v Silverman,* 172 AD3d 1345, 1348 [2d Dept 2019]. Whether the doctrine applies depends on the facts of each case. Crucially, the party invoking laches bears the burden of establishing all four elements of the defense. *Meding v Receptopharm, Inc.,* 84 AD3d 896 [2d Dept 2011].

ARGUMENT

A. The Court's Order Denying Defendants' Motion to Dismiss in the *Coads* Action Applies with Equal Force Here.

This Court has already addressed and correctly rejected Defendants' laches defense in the related *Coads* litigation.[3] This Court rightly concluded that the alleged delay in the *Coads* action (five months) was not unreasonable, particularly given the grave consequence of "potentially disenfranchis[ing] voters in the County of Nassau." (Tr. at 36:19–23). Among other findings, this Court concluded that the five-month delay was not unreasonable as a matter of law, that the relief sought by the *Coads* plaintiffs was forward-looking and applicable only to future election cycles,

[3] Defendants filed a substantially similar motion to dismiss in *Coads* (NYCSEF Doc. No. 31). The reasoning set forth in the plaintiffs' opposition to that motion is sound and should be adopted by this Court. (*Id*. at NYSCEF Doc. No. 43). Plaintiffs incorporate by reference the legal arguments set forth therein to the extent they apply to Plaintiffs.

that the County was well aware and in no way surprised by the challenges to the Map, and that the asserted prejudice—*i.e*, costs to the County, potential voter confusion, harm to potential candidates—was minimal and could be mitigated given the fact that "any new map that might be generated would be adopted well before [the 2025 elections]." (Tr. at 36:12–38:19).

The same considerations apply with equal force here. Indeed, as defense counsel conceded at the March 1, 2024 hearing in the *Coads* action, the instant motion to dismiss is "very similar" to the one rejected in *Coads* and "rais[ed] the same issues" such that Mr. Tseytlin, defense counsel in both actions, "assume[d] that the Court will dispose of it in the same manner." (Tr. at 11:8–14;12:1–3).

B. Laches Is Inapplicable to Continuing Harms.

As an initial matter, laches is not applicable to the racial vote dilution and partisan gerrymandering claims at the heart of this case because voters suffer a new injury each time they are forced to cast a ballot in an election run under an illegal redistricting plan. The doctrine of laches "has no application when plaintiffs allege a continuing wrong." *Capruso v Vil. of Kings Point,* 23 NY3d 631, 642 [2014]; *accord Seaview at Amagansett, Ltd. v Trustees of Freeholders and Commonalty of Town of E. Hampton,* 142 AD3d 1066, 1068 [2d Dept 2016]. A law that creates an ongoing violation of constitutional or statutory rights does not become immunized from challenge forever by the mere passage of time. While laches can bar recovery for past violations, each recurring violation creates a new harm and thereby resets the clock. *See, e.g., Capruso,* 23 NY3d 631 at 642; *Seaview,* 142 AD3d at 1068; *see also, e.g., Transp. Workers Union of Am., Local 100, AFL-CIO v New York City Tr. Auth.,* 341 F Supp 2d 432, 453 [SDNY 2004], *appeal dismissed and remanded*, 505 F3d 226 [2d Cir 2007].

This principle is demonstrated in *Harvey v Metro. Life Ins. Co.*, 34 AD3d 364 [1st Dept 2006]. There, plaintiff purchased a term life insurance policy from defendant that included

coverage for his listed children up to the age of 25 and later alleged a deceptive practice for the manner in which the "Child Rider" was marketed in the policy because he believed coverage of his children could continue so long as he continued to pay premiums. Defendant contended that the lawsuit was untimely because plaintiff's youngest child had turned 25 four years prior to the commencement of the suit, but the First Department rejected the argument, holding that each premium payment plaintiff made in reliance on the deceptive insurance policy was a wrongful act for purposes of statute of limitation accrual. *Id*. at 1.

The facts of this case are analogous. The adoption of the Map was an initial wrongful act, and each election in which voters must cast ballots under that wrongful Map is another wrong for purposes of the statute of limitations. For this reason, courts recognize that vote dilution claims generally allege continuing violations. *See, e.g., Garza v County of Los Angeles,* 918 F2d 763, 772 [9th Cir. 1990] (rejecting laches defense in racial vote dilution case where multiple rounds of elections occurred under challenged map "[b]ecause of the ongoing nature of the violation"); *Luna v County of Kern*, 291 F Supp 3d 1088, 1143–44 [ED Cal 2018] (rejecting laches defense in racial vote dilution case brought in 2016 to map adopted in 2011 because redistricting plan constituted an "ongoing violation of [Section] 2 of the Voting Rights Act"); *Smith v Clinton*, 687 F Supp 1310, 1313 [ED Ark 1988] (rejecting laches defense to racial vote dilution claim because plaintiffs alleged continuing violation where injuries were "suffered anew each time a State Representative election is held" under the challenged plan).

The reasoning of these cases is sound. Contrary to Defendants' assertions, it is not only the passage of an unlawful redistricting map that causes harm; subsequent elections in which voters of color must cast ballots under a map that impermissibly dilutes their voting strength harms them anew each time. The same is true for the disfavored voters under an illegal partisan gerrymander. An illegal map debases voters again and again. (*Accord* Tr. at 38:6–13) ("[I]t occurs to the Court

that disenfranchising voters *for the next eight to ten years* on a map that might be improper certainly outweighs any other consideration here.") (emphasis added).

Defendants cite several inapposite cases to support the application of laches in a gerrymandering context. (*See* NYSCEF Doc. No. 29 at 15–16, citing *Badillo v Katz*, 343 NYS2d 451, 459–61 [Sup Ct, Bronx County 1973]; *MacDonald v County of Monroe*, 191 NYS 3d 578, 591–92 [Sup Ct, Monroe County 2023]; *In re Nichols v Hochul*, 170 NYS3d 70, 71 [1st Dept 2022]). *Badillo* did not apply laches at all. Rather, the court granted a declaratory judgment on the lawfulness of a redistricting plan but delayed injunctive relief until the next election cycle. Similarly, *MacDonald* and *Nichols* involved the denials of *motions for preliminary injunctions* geared toward stopping imminent elections. In *Nichols,* the First Department made plain that the relief applied only to the imminent election and that the unlawful map could and (would not) be used in the future. *Nichols,* 170 NYS3d at 71. And here, Plaintiffs seek only prospective injunctive relief as to future elections.

In short, none of these cases suggest that illegal redistricting is not a continuing harm, and none of these cases support the application of laches here. (*Cf.* Tr. at 37:11–20) (noting that the 2023 election has already passed and "any new map that might be generated would be adopted well before [the 2025 elections])."

C. Defendants Cannot Establish the Elements of Laches.

Even if the laches doctrine did apply to continuing violations that flow from a redistricting plan that dilutes minority voting strength, Defendants have not and cannot establish the elements of the defense.

1. Unreasonable Delay

First, Defendants fail to support their argument that Plaintiffs unreasonably delayed in bringing their claims. Defendants point only to the fact that "the Complaint provides no supporting

factual allegations that occurred after the map became law on February 28, 2023." (NYSCEF Doc. No. 29 at 13). Defendants cite no case law suggesting that this alone establishes an unreasonable delay. Instead, Defendants repeat that Plaintiffs "have provided no credible explanation" for the timing of their Complaint. (*Id*. at 17). This assertion impermissibly shifts the burden to Plaintiffs and also misstates the record.

There was no "unreasonable" delay here. (*Cf.* Tr. at 36:24–25) (five-month delay in *Coads* not unreasonable as a matter of law). Defendants assert that the lawsuit could have been filed as recently as the day the map was enacted—pointing to defense counsel's "rapidity in the *Harkenrider* case." (Tr. at 32:24–33:7). But this Court has already—correctly—declined to adopt such a "bright-line by which all other actions should be judged." (*Id.*).

It was prudent for Plaintiffs to properly investigate the potential flaws in the Map and test Defendants' basis for their assertions that the Map was lawful. Courts have long recognized that "[v]oting suits are unusually onerous to prepare." *South Carolina v Katzenbach*, 383 U.S. 301, 314 [1966]. Indeed, as one court addressing a racial vote dilution challenge to a redistricting plan recognized, this "sort of case takes an enormous amount of preparation, and it is to plaintiffs' credit that they took time to prepare it thoroughly before coming to court." *Jeffers v Clinton*, 730 F Supp 196, 202 [ED Ark 1989)], *affd*, 498 U.S. 1019 [1991].

The Complaint illustrates some of the infirmities that Plaintiffs were prudent to investigate before providing the Defendants with the statutorily required notice of their intent to file suit. For example, the February 16 and 27 Memos prepared by Troutman purported to provide reasons why certain communities were kept together under the Map. But, during the February 16 Hearing, Mr. Tseytlin refused to answer a number of fundamental questions about the choices to keep certain communities together and not others—leaving it to the public (and Plaintiffs) to investigate these choices for themselves. (NYSCEF Doc. No. 2 at ¶ 110). Moreover, as mentioned above, the

Legislature shielded from public disclosure Sean Trende's analysis, which the Legislature expressly and repeatedly asserted as its sole basis for throwing out earlier maps that purported to consider racial vote dilution and drawing a supposedly "race blind" map. (*See id*. ¶¶ 130–33, 143). Despite Defendants' conclusory assertions otherwise, obtaining the documents of Mr. Trende's analysis was important to Plaintiffs' investigation of their causes of action, including assessing whether Defendants' justification for enacting a "race-blind" Map was a pretext for discrimination. (NYSCEF Doc. No. 2 at ¶¶ 100–106; NYSCEF Doc. No. 18 at ¶¶ 10–11); *see* Election Law § 17-206 [k] (providing that "whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting" the challenged law is probative of racial vote dilution); Municipal Home Rule Law § 34[4][b] (prohibiting county legislative redistricting plans "drawn with the intent or result" of diluting minority strength)).

Indeed, Plaintiffs worked diligently upon receiving the Trende documents to bring this lawsuit as soon as possible. Less than four weeks after receiving the documents, Plaintiffs provided the County with notice that the Map violated the NYVRA. (Ex. B; *see also* NYSCEF 18 at ¶ 12). This notice triggered the NYVRA's 50-day safe harbor period for the Legislature to remedy the violation voluntarily, which it refused to do. (*See* Election Law § 17-206 [7] (providing "notice and safe-harbor" requirements for NYVRA actions; Ex. C; *see also* NYSCEF Doc. No. 18 at ¶ 13). Plaintiffs filed this action two weeks thereafter.

Moreover, to the extent there was any delay, responsibility for it rests squarely with the Defendants. Members of the public and Democratic legislators first began requesting Mr. Trende's full analysis during the February 16, 2023 hearing regarding the Map. (NYSCEF Doc. No. 2 at ¶¶ 100–106). Mr. Tseytlin refused to provide it, responding "I am providing his bottom-line conclusion. That is what I am providing." (*Id*. at ¶ 102). When Democratic legislator Carrié Solages asked Mr. Tseytlin to "please provide [Mr. Trende's] analysis," Presiding Officer Nicolello insisted

that Legislator Solages was "not entitled" to the full analysis. (*Id*. at ¶ 102). Nine months later—after a FOIL request and subsequently-filed litigation—the Legislature agreed, as part of settling an Article 78 proceeding, to turn over these documents. (*Id*. at ¶ 106). Thus, Defendants were responsible for any delay and cannot now use it as a defense. *See Simmons v Bell*, 220 AD3d 647, 649 [2d Dept 2023] (The equitable doctrine of laches is not available to a party with unclean hands).[4]

Finally, as Defendants acknowledge, what is "reasonable" depends on the facts and circumstances of this case. Unlike the plaintiffs in many of the cases on which Defendants rely, Plaintiffs here are not seeking relief related to a single, imminent election. Rather, as this Court recognized in denying the motion to dismiss in the *Coads* action, the relief sought by Plaintiff is forward-looking and seeks to replace an unlawful map that will otherwise be in place for the 2025 election and election cycles for the remainder of the decade. (Tr. at 37:4–38:13).

2. Knowledge of the Pending Claim

Defendants' brief concedes that they were aware of the complaints forming the basis for this lawsuit in February 2023. (NYSCEF Doc. No. 29 at 5–7, quoting legislators and experts who warned of legal action after the Map was introduced); *see also* (Tr. at 38:6–10) ("Of course, the County can't deny that it had knowledge of it. . . they can't claim any surprise or unnecessary delay."). This is dispositive. Defendants plainly cannot show a "lack of knowledge or notice . . . that the complainant would assert his or her claim for relief." *Kverel*, 172 AD3d at 1348. For this reason, the equitable doctrine of laches finds no application here. *See Marcus v Vil. Of*

[4] Defendants assert that Plaintiffs need not wait for the FOIL records because "Plaintiffs clearly had their own expert—Dr. Megan Gall, who did her own racial analysis under Plaintiffs' theory of the NYVRA []—upon whom they could rely to collect the requisite records and data" required to assert the claims in this suit. (NYSCEF 29 at 13–14). This is not true. Dr. Gall was retained by the Democratic commissioners of the Temporary Districting Advisory Commission, not by Plaintiffs in the instant matter.

Mamaroneck, 283 NY 325, 332 [1940] (laches will not bar a remedy without some showing of surprise or prejudice to the party seeking such estoppel).

3. Prejudice

Critically, Defendants have not and cannot establish any meaningful prejudice. Defendants do nothing more than assert—without evidence—that a redistricting remedy would cause "grave confusion" for voters who "now assume that" the 2023 districts are "their districts" and candidates who "made a decision to run" under the 2023 Map. (NYSCEF Doc. No. 29 at 7). Such unsupported speculation is insufficient to justify dismissal—especially at the motion to dismiss stage.

Of course, as this Court correctly observed: even if this speculation were true, any such prejudice would be mitigated because there is "ample time for voters and candidates to be instructed as to what their new district may be." (Tr. at 24:24–25:1; *see also* Tr. at 37:11–20). Further, candidates who sought election in 2023 are not harmed, because that election has concluded and Plaintiffs do not seek to upend its results. (Tr. at 25:6–10, "[Defendants] argue that [their] prejudice is that candidates have already expended money and effort seeking election under the current map. That argument is pretty much moot because that election has been completed, right?").[5]

Defendants further assert that they would be prejudiced by the cost of the redistricting process. This supposed "prejudice" is not the result of any delay on the part of Plaintiffs. If Plaintiffs had brought this suit the day after the Map was adopted, as Defendants insist, Defendants would still bear the cost of redistricting in the event that Plaintiffs prevailed. And regardless of the outcome or timing of this litigation, "the County would be put to the expense of running an election in 2025 nonetheless." (Tr. at 37:18–20).

[5] These assertions of prejudice must also be viewed in the context of the countervailing prejudice this unlawful map would have on minority voters who face the continued dilution of their votes.

In the end, counsel for Defendants admitted that waiting until after the 2023 elections to file suit was merely "suboptimal," because it would "be better for this all to have been settled in advance." (Tr. at 32:5–10). But "suboptimal" is not the standard for prejudice. As the Court concluded in *Coads*, Defendants have not established that "there has been any prejudice," much less such "significant prejudice such that would warrant the application of laches to bar the complaint." (Tr. at 37:1–3). It is certainly not justification for dismissal of this action and subjecting Nassau County voters to an illegal map for an entire decade.

CONCLUSION

For the foregoing reasons, the Court should deny Defendants' motion to dismiss.

Dated: March 8, 2024
New York, New York

Respectfully submitted,

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[*] Application for admission *pro hac vice* forthcoming.

[**] Application for admission *pro hac vice* filed but not yet granted.

[***] Not admitted in the District of Columbia; practice limited pursuant to D.C. App. R. 49(c)(3).