

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
HAZEL COADS, STEPHANIE M. CHASE, MARVIN
AMAZAN, SUSAN E. COOLS, SUZANNE A. FREIER,
CARL R. GERRATO, ESTHER HERNANDEZ-KRAMER,
JOHN HEWLETT JARVIS, SANJEEV KUMAR JINDAL,
HERMIONE MIMI PIERRE JOHNSON, NEERAJ
KUMAR, KAREN M. MONTALBANO, EILEEN M.
NAPOLITANO, OLENA NICKS, DEBORAH M.
PASTERNAK, CARMEN J. PINEYRO, DANNY S. QIAO,
LAURIE SCOTT, RAJA KANWAR SINGH, AMIL
VIRANI, MARY G. VOLOSEVICH, and the NASSAU
DEMOCRATIC COUNTY COMMITTEE,

Index No. 611872/2023

Hon. Felice Muraca

(Mot. Seq. 003)

Plaintiffs,

-against-

NASSAU COUNTY, the NASSAU COUNTY
LEGISLATURE, the NASSAU COUNTY BOARD OF
ELECTIONS, JOSEPH J. KEARNY, in his official capacity
as a commissioner of the Nassau County Board of Elections,
and JAMES P. SCHEUERMAN, in his official capacity as a
commissioner of the Nassau County Board of Elections,

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS NASSAU COUNTY AND
THE NASSAU COUNTY LEGISLATURE’S MOTION TO DISMISS THE COMPLAINT**

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Defendants Nassau County and the Nassau County Legislature, 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 Hazel Coads, Stephanie M. Chase, Marvin Amazan, Susan E. Cools, Suzanne A. Freier, Carl R. Gerrato, Esther Hernandez-Kramer, John Hewlett Jarvis, Sanjeev Kuman Jindal, Hermione Mimi Pierre Johnson, Nerraj Kumar, Karen M. Montalbano, Eileen M. Napolitano, Olena Nicks, Deborah M. Pasternak, Carmen J. Pineyro, Danny S. Qiao, Laurie Scott, Raja Kanwar Singh, Amil Virani, Mary G. Volosevich, and the Nassau Democratic County Committee (collectively, “Plaintiffs”) on July 26, 2023. NYSCEF No.1 (attached as Exhibit 1 to Affirmation of Bennet Moskowitz (“Moskowitz Aff.”)).

PRELIMINARY STATEMENT

Following the release of the decennial census, the Nassau County Legislature (“Legislature”) adopted a new plan of redistricting that became legally effective on February 28, 2023. The Legislature adopted this plan after rejecting two maps submitted by partisan-aligned members of a redistricting commission, holding meetings among Legislators across the political spectrum, and listening to public input. While Legislators from both sides of the political aisle praised the map for incorporating multiple of their proposed changes, 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 of the Legislature: “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 174.¹ Had Plaintiffs brought

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. New York City. Transit.*

a lawsuit within that threatened timeframe or 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 timing in recent (and, indeed, far more complex) redistricting litigation in New York.

But despite assurances from both Plaintiffs' own counsel and certain Legislators that litigation was imminent, Plaintiffs waited almost *five months* to bring this lawsuit, asking for relief that would force the Legislature to engage in mid-decade redistricting in back-to-back election cycles. Plaintiffs' delay is inexplicable and their lawsuit, if successful, would severely prejudice Defendants and the public by forcing a disfavored mid-decade redistricting that would confuse voters and candidates, and require significant expenditures by the County to redistrict again and even potentially run a special election. Accordingly, this Court should dismiss the Complaint under the equitable doctrine of laches.

STATEMENT OF FACTS

A. The Nassau County Legislature Establishes A Temporary Districting Advisory Commission Process To Recommend A Redistricting Map

The Legislature is the legislative body of Nassau County's government, comprised of a single representative from each of the county's nineteen districts, tasked with the duty to draft and approve local laws, including as to redistricting. *See* Nassau Cnty. Charter, §§ 102–104, 112.²

Following the release of population statistics from the 2020 federal decennial census, the Legislature established the Temporary Districting Advisory Commission (“TDAC”) to assist the

Auth., 100 A.D.3d 700, 701 (2d Dep't 2012); *Hamilton v. Miller*, 23 N.Y.3d 592, 603 (2014); *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 Nassau County and the Legislature are still entitled to dismissal based upon laches for the reasons provided herein.

² Available at <https://www.nassaucountyny.gov/DocumentCenter/View/37579/Charter-1122?bidId=> (all websites last visited Aug. 29, 2023).

Legislature in redrawing the County's legislative districts. *Id.* § 113(1)(a). The TDAC must “recommend one or 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, including five members appointed by the Presiding Officer and five members appointed by the Minority Leader, *id.* § 113(1)(a), but it can only act “by not less than six affirmative votes of its members,” *id.* § 113(3). To aid in developing redistricting plans, the TDAC can conduct meetings and hold public hearings, and may hire experts, counsel, consultants, and staff. *Id.*

After the TDAC held public meetings throughout Nassau County, Nassau Cnty., *TDAC, Agenda Center*,³ 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 received significant criticism, 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. 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 ¶¶ 53–54. 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. Moskowitz Aff. Ex.1 ¶¶ 58–59. 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, who testified that the Presiding Officer’s map was unlawful. Moskowitz Aff. Ex.5 at 18–41, 161–93; Moskowitz Aff. Ex.1 ¶ 59.

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, but 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 to incorporate community-of-interest-based concerns that Legislators and members of the public testified to at the meeting. These 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 The Presiding Officer sent the Legislature the final version of this revised map for its consideration on February 21, 2023. *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, 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; Moskowitz Aff. Ex.1 ¶ 64.* 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.*

⁶ Available at <https://www.nassaucountyny.gov/5515/Adopted-Maps>

⁷ Available at <https://www.nassaucountyny.gov/5455/Redistricting>.

The Legislature “adopted [the] February 21 map as Local Law No. 1-2023” at the February 27 meeting without further amendment, Moskowitz Aff. Ex.1 ¶ 69, and “the redistricting map became law on February 28, 2023, with approval of the County Executive,” *id.* ¶ 70.

D. Plaintiffs File This Lawsuit Challenging The Enacted Map Nearly Five Months Later

Despite these threats of immediate litigation, the Legislature’s map went into effect unchallenged in February and governed the Legislature’s June 27, 2023, primary election. Since that time, the Nassau County Legislature’s adopted map has been used for a completed designating petition process, a primary election, and party-nominating processes, establishing candidates for the upcoming general election. *See* N.Y. State Bd. of Elections, *2023 Political Calendar*.⁸ Moreover, the general election is well in progress under the adopted map, and the completion of the general election ballot is due in only two weeks. *Id.*

It was not until July 26, 2023—nearly five months after the map’s enactment and a month after the primary election—that Plaintiffs, represented by the same attorney who “guarantee[d]” litigation on February 16, Moskowitz Aff. Ex.5 at 158, filed this lawsuit seeking a declaratory judgment that Nassau County’s 2023 redistricting map for the Legislature constitutes an impermissible partisan gerrymander under 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 ¶¶ 1–3, 75–81. Relying exclusively on the events that occurred in February and facts available at that time, Plaintiffs’ Complaint asks this Court to order the Legislature to adopt a new redistricting plan—or implement a court-ordered plan should the Legislature fail to agree on one—and then hold a special election under that new plan as soon as possible. *Id.* p.22.

⁸ Available at <https://www.elections.ny.gov/NYSBOE/law/2023PoliticalCalendar.pdf>.

The Complaint provides no factual allegations that occurred after the map became law on February 28, 2023. *Id.* ¶ 70.

STANDARD OF REVIEW

While allegations in a pleading are generally accepted as true in the context of a CPLR 3211 motion, 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. County 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, 593 (1980) (citing *Rovello v. Orofino Realty*, 40 N.Y.2d 633, 635 (1976)). It is proper for the court to 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 Plan. 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. Plaintiffs’ Complaint Is Barred By The Doctrine Of Laches

A. The doctrine of laches bars a claim 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.” 75 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 (N.Y. Sup. Ct. Bronx. Cnty. 1973), *aff’d as modified*, 41 A.D.2d 829

(1st Dep't 1973), *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,” *Env'tl 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.

New York courts have applied laches in the redistricting and election context, *see Badillo*, 343 N.Y.S.2d at 460 (redistricting); *MacDonald v. County of Monroe*, 191 N.Y.S.3d 578, 591–92 (N.Y. Sup. Ct. Monroe Cnty 2023) (redistricting); *Nichols v. Hochul*, 206 A.D.3d 463, 464 (1st Dep't 2022), *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 *MacGovern 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 County*, 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 County*, 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).

Applying laches in the redistricting context furthers 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 (N.Y. Sup. Ct. Queens Cnty. 2020). Waiting to bring a redistricting challenge until after a plan has governed elections 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. This is especially true where the delayed suit could potentially result in “back-to-back redistrictings.” *Sanders*, 245 F.3d at 1290. And this concern 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 hardship that borders on unfairness.” *Quinn*, 126 N.Y.S.3d at 641. In sum, delaying the filing of a redistricting challenge that could result in back-to-back redistrictings, thereby changing the maps for future elections, could “greatly prejudice 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 1004.

B. Here, dismissal on laches grounds is necessary because Plaintiffs’ near-five-month delay in filing this lawsuit was unreasonable and allowing Plaintiffs’ redistricting challenge to the map now would significantly prejudice Defendants and the public because, if Plaintiffs prevail, the

Legislature would have to conduct back-to-back redistrictings in two election cycles. *See Sanders*, 245 F.3d at 1290; *Daniel*, 909 F.2d at 1004.

1. The Legislature “adopted [the] map as Local Law No. 1-2023” at its February 27 meeting, *Moskowitz Aff. Ex.1* ¶ 69, and “the 2023 redistricting map became law on February 28, 2023, with approval of the County Executive,” *id.* ¶ 70. Plaintiffs’ challenge to that map became ripe immediately when the Executive signed it. *MacDonald*, 191 N.Y.S.3d at 592. Yet, Plaintiffs waited until July 26—*nearly five months later*—to file this lawsuit. Such a delay is unreasonable given the nature of Plaintiffs Complaint and triggers laches under circumstances here. *Id.*

Plaintiffs have provided no explanation for their near-five-month delay. Plaintiffs’ Complaint relies on no factual allegations that occurred after the map became law on February 28, 2023. *Moskowitz Aff. Ex.1* ¶ 70. Plaintiffs rely on population statistics from the 2010 and 2020 censuses, *id.* ¶ 44, demographics statistics from 2020, *id.* ¶¶ 36–37, County voter registration numbers from February 21, 2023, *id.* ¶¶ 38–39, County election results from 2017 to 2021, *id.* ¶ 39–40, and expert analysis of the map from Democratic Legislators’ expert, presented at the February 27, 2023 hearing, *id.* ¶¶ 64–65. That “none of the 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 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.

If Plaintiffs had 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, as threatened, *see supra* pp.6–7, there would have been

enough time for them to resolve this dispute before the 2023 election cycle. To take 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, which included building in 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 five months to file their complaint. *See Moskowitz Aff. Ex.1*. This was inexcusable and warrants application 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 1004.

2. Plaintiffs’ unexplained delay has created a situation where, if Plaintiff get the relief that they seek, that would force the County into back-to-back redistrictings in two straight election cycles, confusing voters, prejudicing candidates, and causing the County to needlessly incur great expenses. Plaintiffs’ delay has prejudiced the County in and public in at least three ways.

First, Plaintiffs’ request for mid-decade redistricting would “confuse voters,” *Sanders*, 245 F.3d at 1290, “by creating instability and dislocation in the electoral system,” *Daniel*, 909 F.2d at 104. Plaintiffs’ lawsuit requests a new redistricting after the initial elections under the Legislature’s new map, resulting in back-to-back redistrictings in two straight elections, including potentially a special election. *Moskowitz Aff. Ex.1* at p.22. There is no way to avoid the inevitable voter confusion and disenfranchisement that would result from such immediately adjacent

redistricting processes, implementing two different maps in the span of two election cycles (and, potentially, even adding an additional election cycle through Plaintiffs' requested special election). *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"). This harm would be exacerbated by the fact that Plaintiffs' challenge is to a local-election map. *See Chestnut*, 377 F. Supp. 3d at 1317.

Second, Plaintiffs' delay has harmed candidates, who have already expended money and effort seeking election under the current map, with the expectation that such map would remain in place for the decade. On this point, candidates have chosen to run for the Legislature under the districts that the plan established with the understanding 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). A primary election under the new map designating candidates for the general election has already occurred and 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*. 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, including potentially a special election, would cause the County to incur 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.”). And so this harm to the County’s economic interests alone is sufficient to bar Plaintiffs’ action on laches grounds. *Pataki*, 100 N.Y.2d at 817.

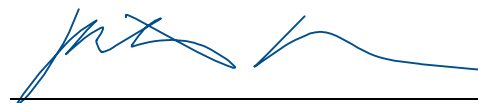
CONCLUSION & RELIEF REQUESTED

In sum, this Court should not entertain Plaintiffs’ extraordinary request for back-to-back redistrictings, with back-to-back elections on different maps. Plaintiffs’ unexplained neglect in bringing this time-sensitive challenge warrants dismissal under the equitable doctrine of laches.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum of Law in Support of Defendants Nassau County and the Nassau County Legislature'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 5,283 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

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