

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

-----X

HAZEL COADS, STEPHANIE M. CHASE, MARVIN
AMAZAN, et al.,

Plaintiffs,

-against-

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

Defendants.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X

NEW YORK COMMUNITIES FOR CHANGE, MARIA
JORDAN AWALOM, et al.,

Plaintiffs,

v.

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

Defendants.

-----X

Oral Argument Requested

Index No. 611872/2023

ACTION I

Oral Argument Requested

Index No. 602316/2024

ACTION II

**DEFENDANTS' STATEMENT OF MATERIAL FACTS
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

In support of their motion for summary judgment, and in accordance with Section 202.8-g of the Uniform Rules for the Supreme Court, Defendants Nassau County, the Nassau County Legislature, Bruce Blakeman, Michael C. Pulitzer, and Howard J. Kopel ("Defendants"), respectively submit this Statement of Material Facts:

I. The Parties

1. Defendant Nassau County (“County”) is a political subdivision of the State of New York. N.Y. Elec. L. § 17-204.

2. Defendant Nassau County Legislature (“Legislature”) is the legislative branch of Nassau County’s government. Nassau Cnty. Charter § 102.¹ Accordingly, the Legislature is vested with the authority to adopt local laws for the County, including laws related to redistricting. *See id.* §§ 102–03, 112. The Nassau County Legislature is comprised of 19 members, each representing one of the County’s 19 legislative districts. *Id.* § 104. The Legislature also selects a Presiding Officer from its own members to preside over legislative sessions and perform various official functions. *Id.* § 106.1.

3. Bruce Blakeman is the Nassau County Executive.

4. Michael C. Pulitzer is the Clerk of the Nassau County Legislature.

5. Howard J. Kopel is the Presiding Officer of the Nassau County Legislature.

II. The Nassau County Legislature Creates The Temporary Redistricting Advisory Commission To Propose A Redistricting Map, But The Commission Fails To Propose A Legally Compliant Map

6. Following the 2020 federal decennial census, the Legislature began the process of redistricting the County for the upcoming decade. *Id.* § 113(1)(a). Successfully completing that complicated process required the Legislature to adopt a redistricting map for the County that adhered to numerous federal and state-law requirements. For example, the County’s map must comply with the U.S. Constitution’s one person, one vote requirement, U.S. const. amend. XIV § 2; *accord* N.Y. Mun. Home R. L. § 10(1)(ii)(a)(13)(a)(i), and with Section 2 of the federal

¹ Available at <https://www.nassaucountyny.gov/DocumentCenter/View/37579/Charter-1124?bidId=> (all websites last visited Oct. 20, 2024).

Voting Rights Act’s (“VRA”) prohibition of vote dilution, 52 U.S.C. § 10301. Further, the County’s map must also comply with Section 34 of the New York State Municipal Home Rule Law and with the John R. Lewis Voting Rights Act of New York (“NYVRA”). As particularly relevant here, Section 34 includes a prohibition on partisan gerrymandering, N.Y. Mun. Home R. L. § 34(4), while the NYVRA includes a prohibition on what it terms “vote dilution,” N.Y. Elec. L. § 17-206(2)(a). Several of these legal requirements with which the Legislature must comply in enacting its redistricting plan necessitate conducting complicated social science analyses. *See, e.g., Harkenrider v. Hochul*, 38 N.Y.3d 494, 519 (2022).

7. The Legislature began the redistricting process by establishing the Temporary Districting Advisory Commission (“Commission”). Nassau Cnty. Charter § 113(1)(a). This Commission—composed of members appointed by the County Executive, the Presiding Officer, and the Minority Leader of the Legislature, *id.*—was tasked with “recommend[ing] one or more [redistricting] plans to the [C]ounty Legislature for dividing the [C]ounty into legislative districts for the election of county legislators,” *id.* § 113(2). Any recommended plan, however, required not less than six affirmative votes from the Commissioners. *Id.* § 113(3). Further, the Legislature retained the authority to “reject, adopt, revise or amend the redistricting plan recommended by the [Commission] or adopt any other redistricting plan, provided that any plan adopted by the County Legislature shall meet all constitutional and statutory requirements.” *Id.* § 114.

8. The Commission was unable to recommend a redistricting plan to the Legislature. *See* Ex.2 at 10–11 (“Feb. 16, 2023 Meeting Tr.”).² Rather, the Republican members of the Commission and the Democratic members of the Commission each developed and proposed

² All exhibits cited herein are attached to the contemporaneously filed Affirmation of Bennet J. Moskowitz.

separate maps for the Legislature's consideration. *See Nassau Cnty., TDAC Republican Commissioners Proposed Maps* (Nov. 21, 2022)³; *Nassau Cnty., TDAC Democrat Commissioners Proposed Maps* (Nov. 10, 2022).⁴

9. Each of these proposals suffered from legal defects and received significant criticism, with numerous allegations of partisan gerrymandering, minority-vote dilution, and neglect of traditional redistricting criteria. *See* Ex.21 at 22–23; Ex.22 at 2–4.; Ex.5 at 4 (“Troutman Feb. 16, 2023 Memo”). Further, neither of these proposals obtained the necessary six affirmative votes from members of the Commission. Nassau Cnty. Charter § 113(3). In light of these failings, the Presiding Officer at the time, Richard Nicoello, decided to develop and propose his own redistricting map for the Legislature's consideration, so as to faithfully satisfy the County's redistricting obligations.

III. The Presiding Officer Proposes A Legally Compliant Map That Resolves The Criticisms Of The Commission's Maps, After Meeting With Legislators Across The Political Spectrum

10. 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. Feb. 16, 2023 Meeting Tr.107–09. For example, in January 2023, the Presiding Officer sent a letter to Minority Leader Kevan Abrahams asking to meet with him, his staff, and “any Minority delegation member” in order “to discuss specific proposals that [the Minority] delegation may have with respect to the new district lines,” and promising to consider any “proposals offered by [the Minority Leader] on behalf of [his] delegation.” Ex.1 at 1. Indeed, the Presiding Officer “ma[d]e efforts as much as possible to incorporate what was said

³ Available at <https://www.nassaucountyny.gov/5457/RepubPropMaps>.

⁴ Available at <https://www.nassaucountyny.gov/5458/DemProposedMaps>.

during [the Legislature’s] Committee and during the TDAC process,” and Democratic members of the Legislature recognized the Presiding Officer’s willingness to listen to and address their constituents’ and their own concerns “very early on in the [map drawing] process.” Feb. 16, 2023 Meeting Tr.107–09. Notwithstanding these efforts, the Presiding Officer “still ha[d] to make sure that what [he] arrive[d] at at the end [wa]s something that’s going to survive a lawsuit.” *Id.* at 108.

11. The Presiding Officer took into consideration written and oral public comment, the Republican and Democratic TDAC members’ views, the opinions of the Legislature’s majority and minority party members, and advice from legal counsel and a redistricting expert. *See id.* at 107–08; *see generally* Troutman Feb. 16, 2023 Memo; Ex.6 (“Troutman Feb. 27, 2023 Memo”).

12. To ensure that his proposed map complied with all applicable legal requirements, the Presiding Officer retained the law firm Troutman Pepper Hamilton Sanders, LLP (“Troutman Pepper”), including partner Misha Tseytlin, to provide legal advice on his proposed map. *See* Feb. 16, 2023 Meeting Tr.17–19, 32–33, 46; Troutman Feb. 16, 2023 Memo at 1.

13. Mr. Tseytlin was the lead attorney for the prevailing petitioners in the landmark New York redistricting case of *Harkenrider v. Hochul*, 38 N.Y.3d 494 (2022), where the New York Court of Appeals held that the State’s congressional map violated the New York Constitution’s ban on partisan gerrymandering, Feb. 16, 2023 Meeting Tr.18; Troutman Feb. 16, 2023 Memo at 1, 9–10, which ban virtually mirrors Section 34’s partisan-gerrymandering prohibition, Troutman Feb.16, 2023 Memo at 9–10.

14. Troutman Pepper then retained Dr. Sean P. Trende, a leading redistricting expert and the lead expert for the petitioners in *Harkenrider*, 38 N.Y.3d at 506, to facilitate the firm’s provision of legal advice to the Presiding Officer, Feb. 16, 2023 Meeting Tr.19, given Dr. Trende’s expertise performing the complicated social-science analyses necessary to comply with the legal

requirements for redistricting, Troutman Feb. 16, 2023 Memo at 1, 5, 9–11; Feb. 16, 2023 Meeting Tr.28, 31, 34–35.

15. On February 9, 2023, the Presiding Officer publicly released his proposed redistricting map for the Legislature’s consideration. *See* Feb. 16, 2023 Meeting Tr.10–12, 274–75.

16. The Legislature then held a meeting on February 16, 2023, to review and discuss all proposed maps it had received, including the Presiding Officer’s proposal. *See id.* at 10–12.

17. At that meeting, the Presiding Officer presented a memorandum prepared by Troutman Pepper that explained how his proposed map complied with all applicable laws, including by citing relevant social-science analyses by Dr. Trende. *See id.* at 19–20; *see generally* Troutman Feb. 16, 2023 Memo. Specifically, the memorandum highlighted that the proposed map conformed with population equality standards, ensuring that the largest and smallest districts had a deviation well below the U.S. Supreme Court’s 10% threshold, Troutman Feb. 16, 2023 Memo at 1–3; complied with the federal Equal Protection Clause’s prohibition on racial gerrymandering, as traditional redistricting criteria were not subordinated to racial considerations, *id.* at 3–4; “contain[ed] 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 VRA,” *id.* at 4–5; and adhered to the various requirements of New York’s Municipal Home Rule law and the NYVRA, *id.* at 5–12.

18. Additionally, this memorandum also explained why the proposed maps from the Republican and Democratic members of the Commission failed to meet some of those same legal requirements, *see id.* at 4, and detailed all community-of-interest considerations that guided the creation of each district in the proposed map, *see id.* at A1–A4.

19. Mr. Tseytlin testified at this meeting at the Presiding Officer's direction, summarizing the conclusions reached in the memorandum. Feb. 16, 2023 Meeting Tr.18–41.

20. As the February 16, 2023 memorandum and Mr. Tseytlin's associated testimony explained, the Presiding Officer's proposed map complied with all applicable legal requirements, including the federal Equal Protection Clause, the VRA, Section 34's prohibition on partisan gerrymandering, and the NYVRA's prohibitions on what it calls "vote dilution." Feb. 16, 2023 Meeting Tr.18–25, 28–41; Troutman Feb. 16, 2023 Memo at 1–12 (explaining that the proposed map complied with all other legal requirements, including all redistricting standards under Section 10 of New York's Municipal Home Rule Law).

21. As to Section 34's prohibition on partisan gerrymandering, the memorandum explained Dr. Trende's "conclu[sion] that the proposed map very clearly satisfied" the "partisan fairness metrics at issue in [*Harkenrider*]," after Dr. Trende evaluated the proposed map "using the same approach that he used in *Harkenrider*." Troutman Feb. 16, 2023 Memo at 9. This analysis begins with the creation of an "ensemble" of thousands of potential maps "by computer simulation" that requires each map to conform with existing legal constraints, such that the ensemble illustrates the range of all possible maps that could have been adopted. *Harkenrider*, 38 N.Y.3d at 506. The difference between the average partisan lean of the districts in the ensemble and the particular partisan lean of the districts in a given map provides the "gerrymandering index" for that map. Ex.23 at 10–12 ("Trende Rep."). Finally, the average gerrymandering index for all ensemble maps is compared to the gerrymandering index of a proposed or enacted map to "reveal" the likelihood that the proposed or enacted map was developed under the same legal, nonpartisan requirements that constrained the computer simulation. *Harkenrider*, 38 N.Y.3d at 506. Dr. Trende concluded that the Presiding Officer's proposed map had "a gerrymandering index of just

below 0.08,” which is “well within the center of the range of computer simulated maps,” indicating that the Presiding Officer’s map was likely to have been drawn without extralegal partisan intent. Troutman Feb. 16, 2023 Memo at 9.

22. As to Section 2 of the federal Voting Rights Act and the NYVRA, as Mr. Tseytlin explained in his testimony, the U.S. Supreme Court “has only recognized one justification ever for drawing districts based on racial considerations” and that is “compliance with Section 2 of the Voting Rights Act.” Feb. 16, 2023 Meeting Tr.23. The Presiding Officer did not propose any race-based districts because Dr. Trende had “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 VRA.” Troutman Feb. 16, 2023 Memo at 5.

23. At this February 16, 2023 meeting, Legislators from both sides of the political aisle praised the Presiding Officer’s proposed map for incorporating many of their proposals. *See* Feb. 16, 2023 Meeting Tr.108–09. Legislator Siela A. Bynoe thanked the Presiding Officer for “hear[ing] the voices” of her constituents and restoring the Lakeview community as a whole when it had previously been “split into three different districts.” *Id.* Legislator Bynoe also “acknowledge[d] that [the Presiding Officer] heard testimony from even Legislator Mule regarding portions of her district”—namely, Freeport—and “acknowledge[d]” that “Westbury/Newcastle have been put together whole” in line with public comment. *Id.* at 109. Similarly, in response to both “public comment” and “concerns raised by Democratic . . . Commission[ers],” this proposal “combine[d] the interconnected communities of the Five Towns,” Troutman Feb. 16, 2023 Memo at A2, and “ke[pt] Uniondale whole, in a single district,” *id.* at A1, a decision lauded by several members of the public, *see* Feb. 16, 2023 Meeting Tr.286, 292.

24. During the February 16, 2023 meeting, Democratic legislators made five specific criticisms of the proposed map. First, Minority Leader Abrahams and Legislator Bynoe disapproved of the number of times the Village of Hempstead was split between districts. *Id.* at 13–14, 17, 51–54, 78, 96, 106–07. Second, Legislator Carrié Solages “implore[d] [her] colleagues to reconsider th[e] map to keep Elmont truly whole.” *Id.* at 112. Third, Legislator Solages further requested that Millbrook and Valley Stream be combined into the same district. *Id.* at 111. Fourth, Legislator Arnold W. Drucker objected to the splitting of Plainview and Old Bethpage into separate districts. *Id.* at 133–134. Fifth, Minority Leader Abrahams and Legislator Bynoe advocated for a change to the map to move Lakeview into a different district. *Id.* at 13, 17, 56–57, 105–06, 109.

25. Finally, during the February 16, 2023 meeting, the Democratic Minority Leader presented his own expert, Dr. Daniel Magleby, who testified that the Presiding Officer’s proposed map was too partisan. *See id.* at 160–93. As the Troutman Pepper memorandum explained, however, Dr. Magleby employed “an entirely different approach than that affirmed by the Court of Appeals in *Harkenrider*” and “[i]d] not use the gerrymandering-index analysis” that Dr. Trende utilized in that case. Troutman Feb. 27, 2023 Memo at 15. Instead, Dr. Magleby relied “upon a mean-median metric that no expert or court opined on in *Harkenrider*,” *id.*, without citing any legal authority to support this alternative approach. Dr. Magleby also based his findings on data from “countywide races” rather than “using the same statewide races that [Dr. Trende] used in *Harkenrider* to determine the partisanship baseline for his simulation analysis.” *Id.* at 18.

IV. The Presiding Officer Releases Revised Versions Of His Map In Response To Feedback From Legislators And The Public, And The Legislature Adopts The Final Iteration Of The Map As Local Law 1

26. The Presiding Officer then presented another supporting memorandum on February 27, 2023, which memorandum discussed the proposed revised map in detail and explained how it

complies with all applicable legal requirements, including, again by citing certain social-science analysis by Dr. Trende as relevant. *Id.* at 1.

27. As this second memorandum explained, the proposed revised map reflected “significant changes to accommodate requests from the public and Legislators” that were raised during the February 16, 2023 meeting as well as “additional revisions” that the Presiding Officer was required to make in order “to keep the map compliant with equal population requirements” after accommodating those requests. *Id.* at 3. The Presiding Officer also made changes to address various concerns raised “in the form of supplemental reports filed by Dr. Megan Gall”—the Democratic Commissioners’ expert—and Professor Daniel Magleby,” the Democratic Minority Leader’s expert. *Id.* at 1.

28. Specifically, the proposed revised map “incorporate[d]” four of the five “significant suggestions” Democratic members of the legislature “discussed at the [February 16, 2023] Legislature Meeting.” *Id.* at 2. First, the map “combin[ed] Plainview and Old Bethpage into a single district,” given the “compelling testimony” of Democratic “Legislator Arnold W. Drucker and members of the public.” *Id.* Second, the map “unifie[d] the vast majority of Elmont . . . in a single district,” because Democratic “Legislator Solages explained[] [that] the hamlet [] is a community of interest.” *Id.* Third, the map “restor[ed] a significant portion of Mill Brook” to the same district as Valley Stream, as Legislator Solages “testified that . . . these communities have significant connections.” *Id.* Fourth, “the number of times the Village of Hempstead [was] split between districts” was reduced in the revised proposed map to address “criticisms raised at the February 16, 2023, Full Legislature Meeting,” *id.*, particularly those of Minority Leader Abrahams, *see* Feb. 16, 2023 Meeting Tr.13–14, 17, 51–54, 78, 96, and Legislator Bynoe, *id.* at 106–07. However, the second memorandum explained that to “remain consistent with the legal

requirements for equal population” and to avoid “splitting multiple other communities of interest,” the proposed revised map was “unable to accommodate” requests to move Lakeview into a different district. Troutman Feb. 27, 2023 Memo at 2–3 n.3.

29. After making these changes, the Presiding Officer’s revised proposed map remained compliant with all applicable legal requirements, including Section 34’s partisan-gerrymandering prohibition and the NYVRA’s prohibition on racial gerrymandering, as the February 27, 2023 memorandum explained. *See id.* at 1, 4–20. As with the original proposed map, Dr. Trende analyzed the revised map using the same “partisan fairness metrics” and criteria approved in *Harkenrider* and concluded that the revised map still “very clearly” satisfied those metrics. *Id.* at 13. Indeed, the revised map’s partisan-gerrymandering-index score remained “well within the bell curve of the range of computer simulated maps” that do not account for partisanship, meaning that it too scored far better than the maps proposed by the Republican members and the Democratic members of the Commission. *Id.* at 13–14. The Presiding Officer’s revised map also continued to comply with the NYVRA and other state and federal-law requirements governing the consideration of race in redistricting because it “declin[ed] all requests to draw any districts to any racial targets, in order to remain in compliance with the Equal Protection Clause.” *Id.* at 10.

30. On February 27, 2023, the County Legislature held another full meeting to discuss the revised proposed map. *See Ex.3* at 9–13 (“Feb. 27, 2023 Afternoon Meeting Tr.”).

31. During this meeting, Democratic members of the Legislature and the public acknowledged that the Presiding Officer had addressed many of the concerns raised at the Legislature’s prior meeting with the revised proposed map. For example, Legislator Solages expressed his thanks for the map’s revisions to address concerns regarding unifying Elmont and Mill Brook in District 3. *Id.* at 147. Legislator Bynoe similarly remarked that she was “heartened”

by the changes made in response to public comments and recognized that the Presiding Officer had “done a lot” to address concerns raised by other Legislators during the previous meetings. *Id.* at 138.

32. Finally, at the February 27, 2023 meeting, the Legislature voted on and adopted the proposed revised map as Nassau County’s current redistricting map, denominating the map “Local Law 1.” *See* Local Law 1-2023.⁵ The Nassau County Executive signed Local Law 1 into law the following day, February 28, 2023. *Id.*

V. Plaintiffs File Two Separate Lawsuits Challenging Local Law 1, The Cases Proceed Through Fact And Expert Discovery, And The Cases Are Now Ripe For Summary Judgment

33. Two groups of Plaintiffs eventually filed two separate lawsuits challenging Local Law 1 on separate grounds.

34. Plaintiffs in Action I—*Coads v. Nassau County*, Index No.611872/2023—claim that Local Law 1 impermissibly favors the Republican Party and disfavors the Democratic Party, in violation of Section 34. Compl. at 2, 20–21, Index No.611872/2023, NYSCEF No.1 (July 26, 2023) (“Action I Complaint”); *see also id.* at 20–21 (also asserting claims that the County’s prior map is now malapportioned, and that an actual controversy exists between the parties). Action I Plaintiffs ask this Court to order the Legislature to either adopt a new redistricting plan or implement a court-ordered plan, and then hold a special election under the newly established map at the earliest feasible date. *See id.* at 21–22.

35. Plaintiffs in Action II—*New York Communities For Change v. County of Nassau*, Index No.602316/2024—claim that Local Law 1 dilutes the votes of racial minorities in the

⁵ Available at <https://www.nassaucountyny.gov/DocumentCenter/View/40335/Local-Law-1-2023>.

County, in violation of the NYVRA's vote-dilution provisions, which are "incorporated into Section 34," *see* Compl. at 1, ¶ 92, Index No.602316/2024, NYSCEF No.2 (Feb. 7, 2024) ("Action II Complaint"). Action II Plaintiffs allege that the "Legislature's decision to draw only four majority-minority districts" constitutes "racial vote dilution," because "Black, Latino, and Asian communities are politically cohesive and sufficiently numerous and compact to form a majority in six single-member districts." *Id.* ¶ 45. Like Plaintiffs in Action I, Plaintiffs in Action II request an injunction prohibiting the Legislature from using this redistricting map in future elections. *See id.* at 34. However, Action II Plaintiffs ask this Court to order the implementation of a remedial plan that is "recommend[ed] to the Court" by a "Special Master" who the Court appoints "to evaluate potential remedial plans . . . without deferring to remedies proposed by Defendants." *Id.*

36. The parties proceeded through expert discovery, during which each side presented multiple experts.

37. In addition to the details provided above, Dr. Magleby's analysis—which Plaintiffs advocate for, Action II Compl. ¶ 45—required each simulated map in his analysis to contain a minimum number of minority-majority districts, Ex.8 at 15–16 ("Trende Rebuttal"); *see also* Ex.10 at 121:24–122:7 ("Magleby Dep."). By programming the simulations in his analysis to create only maps that include a certain number of majority-minority districts, Trende Rebuttal at 15–16; *see also* Magleby Dep. at 121:24–122:7, Dr. Magleby based his analysis on a consideration that played no role in the Legislature's process of creating and adopting of Local Law 1, Troutman Feb. 16, 2023 Memo at 4; Troutman Feb. 27, 2023 Memo at 7.

38. Further, Dr. Magleby employed an alternative mean-median metric that "would have blessed" "the egregious pro-Democrat gerrymander that the Court of Appeals invalidated in *Harkenrider*." Troutman Feb. 27, 2023 Memo at 16.

39. Dr. Magleby also used different elections from those analyzed in *Harkenrider*, completely excluding even-year elections from his analysis in this case. *Trende Rebuttal* at 28.

40. Plaintiffs' primary expert on the "usually defeated" analysis is Dr. Oskooii, who concluded that "the County's White population votes sufficiently as a bloc for their preferred candidates to enable them to usually defeat the candidates preferred by Black, Latino, and Asian voters," Ex.19 at 27 ("Oskooii Rep."), relying on evidence that the minority favored candidates lost in "5 out of 8 [county-wide] contests." Ex.20 ¶ 41 ("Oskooii Rebuttal"). "This, of course, tells us they won in 3 of those elections," Ex.17 ¶ 41 ("Lockerbie Reply"), but Dr. Oskooii reached his conclusion by reading "usually" defeated to mean losing in only "50 percent" of elections, *see* Ex.12 at 128:5–11, 129:7–12 ("Oskooii Dep.>").

41. In any event, Dr. Oskooii only "examined the eight most recent, contested, county-wide, odd-year contests" and "contested odd-year elections held in years 2015 and 2013." Oskooii Rep. at 13; *see* Oskooii Dep. at 170:9–14. Defendants' experts noted that this decision ignores a swath of electoral results that "contradict[] [Dr. Oskooii's] thesis" by showing that "White voters do not usually vote as a bloc to defeat the minority candidates of choice here." *Trende Rebuttal* at 77–78. For example, "White voters didn't vote sufficiently as a bloc to defeat the minority candidate of choice" in 2016. *Id.* at 78. Indeed, Hillary "Clinton carried Nassau County by six points" in the presidential election, "while Schumer carried it comfortably" in the U.S. Senate race. *Id.* In 2018, meanwhile, "White voters backed the Republican candidate[s]" for Governor, Attorney General, and Senate, but "they did not vote sufficiently as a bloc to defeat the minority candidate of choice." *Id.* at 79. That year, Democratic gubernatorial candidate Andrew Cuomo won Nassau County "by just over 15 points," Democratic Attorney General Letitia James carried the county "by around 14 points," and Democrat U.S. Senator carried it "by 18 points." *Id.* And

again, in 2020, White voters backed the Republican presidential candidate, Donald Trump, but “President Biden, the minority candidate of choice, nevertheless carried the county by ten points.” *Id.* at 80. Though Dr. Oskooii admitted that an “analysis of state and federal elections may shed light on voter behavior in county elections,” Oskooii Rebuttal ¶ 7, Defendants’ experts criticized the analysis’s failure “to consider that white crossover voting is making minority favored candidates both competitive and successful,” Lockerbie Reply ¶ 46. Thus, even only examining Dr. Oskooii’s “sparse dataset,” Trende Rebuttal at 77, “his own data defeats [his] claim,” Ex.18 ¶ 10 (“Lockerbie Rebuttal”).

42. Plaintiffs’ expert witness Dr. Jonathan Cervas offers a district-based approach. *See generally* Ex.7 (“Cervas Rep.”). This approach requires a political subdivision to only examine hand-selected districts within the jurisdiction and then to redraw those districts so that candidates supported by citizens lumped together by race win more seats, while candidates supported by citizens lumped together by other races will win less. *See* Cervas Rep. at 49–50. Specifically, Dr. Cervas suggests that a political subdivision should only analyze districts “in which there are significant minority populations” and then pull minority voters “from surrounding districts, in order to increase the amount of minority voters in the district[s] you are analyzing” and ensure these minority voters-preferred candidates are not “usually defeated” in the analyzed districts. *See* Ex.9 at 271:13–272:18 (“Cervas Dep.”).

43. Ultimately, without first conducting a *Gingles* analysis for Nassau County, *see* Cervas Dep. at 145:4–146:17, Dr. Cervas proposed an alternative redistricting map to that enacted in Local Law 1, based on his analysis of “only [] seven” individual districts in the County where there was racially polarized voting, Trende Rebuttal at 83, 94; *see also* Lockerbie Rebuttal ¶ 46. Consequently, Defendants’ experts responded that Dr. Cervas failed to provide “an analysis of the

competitiveness of the minority favored candidates in the districts” county-wide, Lockerbie Rebuttal ¶ 47, and cannot demonstrate whether his map actually “give[s] minorities a reasonable opportunity to elect candidates for their choice in more districts” than under Local Law 1, Trende Rebuttal at 87. In fact, Dr. Trende found that Dr. Cervas’s map scores the same as Local Law 1 on the *Harkenrider* analysis in terms of partisan outcomes, *see* Trende Rebuttal at 87–92.

44. Moreover, at his deposition, Dr. Cervas explained that he developed his map to avoid splitting political subdivisions, but did not otherwise account for communities of interest. Cervas Dep. at 246:4–22.

45. Finally, Dr. Cervas relied exclusively on odd-year election data, *see id.* at 149:12–22, and Dr. Trende demonstrated that “the performance of Dr. Cervas’ map is dependent upon the races selected,” as “using the even-numbered year races, Dr. Cervas’ map actually decreases the number of races that the minority-preferred candidate won,” Trende Rebuttal at 94–96.

46. The undisputed record evidence is that minority-preferred candidates are *not* usually defeated in Nassau County. Rather, the unrebutted expert analyses Defendants have presented demonstrate that Nassau County is “a jurisdiction where the minority candidate of choice is obviously capable of winning, and does so regularly.” Trende Rebuttal at 82. That is because “[e]ven with racial polarization, there is enough crossover voting”—*i.e.* White residents voting for minority-preferred Democrat candidates—“to make the races competitive in Nassau County,” such that “minority favored candidates are not usually defeated when looking at all relevant elections,” “regardless of whether we are looking at even-year or odd-year races, midterm years, or presidential years, and county-wide or state-wide races.” Lockerbie Reply ¶¶ 56–57. This is evident from the chart below showing recent national, state-wide, and county-level election results in Nassau County:

Year	Office	Minority-Preferred Candidate Victorious?
2012	President	Yes
2012	US Senate	Yes
2014	Attorney General	Yes
2014	Governor	Yes
2016	President	Yes
2016	US Senate	Yes
2017	County Executive	No
2017	County Comptroller	Yes
2017	County Clerk	No
2018	Attorney General	Yes
2018	Governor	Yes
2018	US Senate	Yes
2019	County District Attorney	Yes
2020	President	Yes
2021	County Executive	No
2021	County Comptroller	No
2021	County Clerk	No

See Lockerbie Rebuttal at T.1, T.2.

47. As the above chart demonstrates, “the minority favored candidates were victorious in Nassau County in every election that follows: 2012 President, 2012 Senate, 2014 Attorney General, 2014 Governor, 2016 President, 2016 Senate, 2018 Attorney General, 2018 Governor, 2018 Senate, and 2020 President.” Lockerbie Rebuttal ¶ 21. Moreover, the minority favored

candidate often won these races by enormous margins of victory. *See* *Trende Rebuttal* at 78–82. For example, as recently as the last Presidential election, Joe Biden “carried the county by ten points.” *Id.* at 80. Minority favored candidates have been similarly successful in county-wide elections. *See* *Lockerbie Rebuttal* ¶¶ 10–11, 33, 48; *Lockerbie Reply* ¶¶ 41, 56–57. As Dr. Lockerbie concluded, minority favored candidates “win 3 and lose 4 of the county-wide elections examined in my report,” and even where Democratic candidates lose, election results “show that the elections are competitive across the board.” *Lockerbie Rebuttal* ¶¶ 10, 33.

48. As shown in the chart below, this conclusion is evident when viewing recent election results for each of the nineteen districts drawn in Nassau County’s current map, which results make clear that minority-preferred candidates would often be capable of winning a majority of those nineteen districts.

Year	Office	Districts Won By Minority-Preferred Candidate	Districts Lost But Competitive
2012	President	12	5
2012	US Senate	19	0
2014	Attorney General	9	4
2014	Governor	14	2
2016	President	10	5
2016	US Senate	19	0
2017	County Executive	9	5
2017	County Comptroller	10	4
2017	County Clerk	8	2
2018	Attorney General	15	1

2018	Governor	15	1
2018	US Senate	15	1
2019	County District Attorney	15	3
2020	President	14	0
2021	County Executive	8	6
2021	County Comptroller	6	1
2021	County Clerk	4	3

See Lockerbie Rebuttal at T.1, T.2.

49. At bottom, Black, Latino, and Asian voters’ preferred Democratic candidates in Nassau County simply do not lose elections “ordinarily” or “as a rule,” *Usually*, Oxford English Dictionary (2024),⁶ across Nassau County, such that it cannot be said that they will “usually be defeated” within the meaning of Section 17-206, *see* N.Y. Elec. L. § 17-206(2)(b)(ii).

50. Plaintiffs’ primary expert on the “usually be defeated” analysis is Dr. Oskooii, who concluded that “the County’s White population votes sufficiently as a bloc for their preferred candidates to enable them to usually defeat the candidates preferred by Black, Latino, and Asian voters.” Oskooii Rep. at 27. But the cherry-picked evidence that Dr. Oskooii relies upon for this conclusion is that the minority favored candidates “were defeated in 5 out of 8 [county-wide] contests” he examines. Oskooii Rebuttal ¶ 41. “This, of course, tells us that they won in 3 of these elections,” Lockerbie Reply ¶ 41, and this in no way shows that minority-preferred “candidates or electoral choices” are “usually [] defeated,” N.Y. Elec. L. § 17-206(2)(b)(ii), as that term must be interpreted. Dr. Oskooii only reaches a contrary conclusion based on his reading of “usually be

⁶ Available at <https://www.oed.com/search/dictionary/?scope=Entries&q=usually>.

defeated” to mean losing in only “50 percent” of elections, *see* Oskooii Dep. at 128:5–11, 129:7–12.

51. In any event, Dr. Oskooii only “examined the eight most recent, contested, county-wide, odd-year contests” and “contested odd-year elections held in years 2015 and 2013.” Oskooii Rep. ¶ 29; *see* Oskooii Dep. at 170:9–14.

52. Dr. Oskooii simply ignores a swath of electoral results that “contradict[] his thesis” by showing that “White voters do not usually vote as a bloc to defeat the minority candidates of choice here.” *Trende Rebuttal* at 77–78. For example, “White voters didn’t vote sufficiently as a bloc to defeat the minority candidate of choice” in 2016. *Id.* at 78. Indeed, Hillary “Clinton carried Nassau County by six points” in the presidential election, “while Schumer carried it comfortably” in the U.S. Senate race. *Id.* The same is true of 2018, where “White voters backed the Republican candidate[s]” for Governor, Attorney General, and Senate, but “they did not vote sufficiently as a bloc to defeat the minority candidate of choice.” *Id.* at 79. That year, Democratic gubernatorial candidate Andrew Cuomo won Nassau County “by just over 15 points,” Democratic Attorney General Letitia James carried the County “by around 14 points,” and Democratic U.S. Senator Kristen Gillibrand carried it “by 18 points.” *Id.* And again, in 2020, White voters backed the Republican presidential candidate, Donald Trump, but “President Biden, the minority candidate of choice, nevertheless carried the county by ten points.” *Id.* at 80. Despite admitting that an “analysis of state and federal elections may shed light on voter behavior in county elections,” Oskooii *Rebuttal* ¶ 7, Dr. Oskooii ignored this relevant election data, *see* *Lockerbie Reply* ¶ 9, and “fail[ed] to consider that white crossover voting is making minority favored candidates both competitive and successful,” *id.* ¶ 46.

53. But even only examining Dr. Oskooii's "sparse dataset," Trende Rebuttal at 77, "his own data defeats [his] claim," Lockerbie Rebuttal ¶ 10. As discussed and reflected in the charts above, minority-preferred candidates routinely win elections in Nassau County at the state-wide, national, and county-specific level and are at least competitive in elections where they are unsuccessful. *Supra* ¶¶ 46-48.

54. Dr. Cervas' analysis does not show that minority-favored candidates are usually defeated in Nassau County. First, Dr. Cervas examines a hand-picked set of "only [] seven districts" out of Nassau County's nineteen, Trende Rebuttal at 94; *see* Lockerbie Rebuttal ¶ 46, which is the legally wrong manner to conduct this analysis, *see supra* ¶ 43, and renders him unable to show that minority-preferred candidates will usually be defeated under the NYVRA. By ignoring the necessary impact that moving minority voters from around the County into these districts would have on minority-preferred candidates' ability to get elected in the County's twelve other districts that he did not individually analyze, Trende Rebuttal at 83, 94, Dr. Cervas failed to provide "an analysis of the competitiveness of the minority favored candidates in the districts" county-wide, Lockerbie Rebuttal ¶ 47, and cannot demonstrate whether his map actually "give[s] minorities a reasonable opportunity to elect candidates for their choice in more districts" than under Local Law 1, Trende Rebuttal at 87.

55. Second, like Dr. Oskooii, Dr. Cervas only relied on cherry-picked, odd-year election data, *see* Cervas Dep. at 149:12-22, which data fails to show whether minority-preferred candidates are usually defeated in Nassau County for the reasons discussed above, *supra* ¶ 41. Indeed, as Dr. Trende demonstrated, "the performance of Dr. Cervas' map is dependent upon the races selected," and "using the even-numbered year races, Dr. Cervas' map *actually decreases the*

number of races that the minority-preferred candidate won.” Trende Rebuttal at 94–96 (emphasis added).

56. Both Dr. Oskooii’s and Dr. Cervas’ analyses do not comply with the NYVRA, are overly narrow in scope, and fail to establish a “material issue[] of fact which require[s] a trial of th[is] action.” *Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986).

RETRIEVED FROM DEMOCRACYDOCKET.COM

Dated: New York, New York
October 21, 2024

**TROUTMAN PEPPER HAMILTON
SANDERS LLP**



Bennet J. Moskowitz
875 Third Avenue
New York, New York 10022
(212) 704-6000
bennet.moskowitz@troutman.com

Misha Tseytlin
Molly S. DiRago (admitted *pro hac vice*)
227 W. Monroe St.
Suite 3900
Chicago, IL 60606
(312) 759-1920
misha.tseytlin@troutman.com
molly.dirago@troutman.com

Mackenzie Willow-Johnson (admitted *pro hac vice*)
301 S. College St.
Charlotte, NC 28202
(704) 998-4050
mackenzie.jessup@troutman.com

*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 Statement of Material Facts complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Statement of Material Facts uses Times New Roman 12-point typeface and contains 5,883 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: /s/ Bennet J. Moskowitz
BENNET J. MOSKOWITZ

RETRIEVED FROM DEMOCRACYDOCKET.COM