DECISION AND ORDER OF THE SUPREME COURT OF THE STATE OF NEW YORK (MARCH 10, 2023)

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF ROCKLAND

MICHAEL I. PARIETTI,

Petitioner,

v.

ROCKLAND COUNTY EXECUTIVE, ROCKLAND COUNTY LEGISLATURE, and ROCKLAND COUNTY BOARD OF ELECTIONS,

Respondents.

Index No. 35210/2022

Before: Hon. Sherri L. EISENPRESS, J.S.C.

Eisenpress, J.

This is a motion to dismiss a special proceeding commenced by Petitioner under CPLR Article 41 which seeks, *inter alia*, a declaration that the 2023 Rockland County legislative map adopted by the Rockland County Board of Legislators (the "Map") is unconstitutional and invalid for failure to comply with the requirements of Article III, § 4 of the New York State Constitution, Municipal Home Rule Law § 34(4), and the Federal Voting Rights Act.

Petitioner, Michael Parietti, seeks to bar Respondents from conducting the 2023 primary and general elections based on the current Map and to compel the Rockland County Legislature to adopt a new legislative map.

Respondents, the Rockland County Executive, the Rockland County Legislature, and the Rockland County Board of Elections (collectively, the "Respondents") move to dismiss the petition pursuant to CPLR 404(a) (objections in point of law); CPLR 3211(a)(1) (documentary evidence); and CPLR 3211(a)(7) (failure to state a cause of action).

PROCEDURAL POSTURE, HISTORY AND UNDISPUTED FACTS

After the 2020 census, State and County law required that Rockland County redraw its County Legislative district map to reflect changes to the County's population. In May 2022, the Rockland County Legislature's Special Committee on Redistricting (the "Committee") convened to begin to redraw the County's maps.

In June of 2022, the Committee held a series of community fora throughout the County—in Orangetown, Haverstraw, Stony Point, Clarkstown, and Ramapo—to obtain public input on how the County Legislative districts should be redrawn. To guide it through the redistricting process, the Rockland County Legislature retained two experts, Philip Chonigman and David Schaeffer, to assist in the redistricting process.

Philip Chonigman is the Co-Executive Director of the New York State Legislative Task Force on

Demographic Research and Reapportionment, which draws the Congressional, State Senate, and State Assembly lines for New York State. Chonigman is a geographic systems professional who works on and specializes in political geography. He has drawn district lines for almost 30 years and has conducted redistricting studies for New York State, Westchester County, Rockland County, Sullivan County, Albany County, the City of Yonkers, and many other municipalities.

David Schaefer is the Deputy Co-Executive Director of the New York State Independent Redistricting Commission and the former Co-Executive Director of the New York State Legislative Task Force on Demographic Research and Reapportionment. He has drawn district lines for more than 20 years, including the Congressional and State Legislature maps for New York State, Monroe County, Rockland County, Nassau County, Duchess County, and many other municipalities.

The Rockland County Legislature adopted the Map on November 2, 2022, by a vote of 13 to 1, with every Democrat and every Republican but one voting in the affirmative. The Map made several substantial changes to some of the previously drawn district lines.

On December 8, 2022, Parietti commenced this proceeding by way of order to show cause, challenging the Map. A motion to recuse this Court was made by Parietti and denied. Thereafter, the Court entertained oral arguments and written submissions as to the applicability of the 60-day timeframe set forth in Article III § 5 of the New York State Constitution. The Court determined, based on the plain language

of the provision at issue, its legislative history, and the decisional law on the topic, that the provision, by its terms, applies only to state assembly, senate and congressional districts, and not to county level redistricting, thus rendering the 60-day time frame for the disposition of such cases inapplicable here.[1]

Parietti has run for public office eight times (including three times for County Legislator). He has run as a Democrat, a Republican, and a candidate on the Preserve Ramapo Line and the Serve America Movement Line. All eight of his runs for office have been unsuccessful.

On or about January 26, 2023, the Respondents filed the instant Motion to Dismiss Parietti's Petition in its entirety. Parietti opposed the motion and Defendants filed a reply all of which, including the transcripts of the town fora, have been considered by the Court in rendering this Decision and Order.

Arguments of the Parties

In his Order to Show Cause and accompanying Verified Petition which commenced this action, Parietti asserts that the Map constitutes an unconstitutional and unlawful Map which was enacted without complying with the Federal Voting Rights Act, the New York State Constitution, Article III section 4, and the Section 34 subdivision 4 of the Municipal Home Rule Law.

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[1] Nevertheless, mindful of the schedule for the upcoming 2023 elections, the Court has expedited this matter and by this Decision and Order disposes of this case in 90 days.

In support of their motion to dismiss this action, Respondents advance several arguments. First, Respondents contend that Parietti lacks standing to assert that the Map disadvantages minorities. Next, Respondents argue that Parietti lacks standing to bring a federal Voting Rights Act claim. Respondents further contend that (i) Parietti lacks standing to assert a race dilution claim under Municipal Home Rule Law § 34; (ii) Article III § 4(c)(1) of the New York State Constitution does not give Parietti standing; (iii) even if Parietti had standing, he fails to plead facts which, if true, demonstrates a disenfranchisement of minority voters; (iv) the facts that Parietti alleges, even if true, do not establish that the Map was drawn for the purpose of advantaging incumbents and the documentary evidence establishes the contrary; (v) Parietti's remaining objections to the Map are unavailing; and (vi) the Petitioner fails to state a First Amendment claim.

In reply, Parietti contends that all of Defendants arguments are specious, that he has standing to assert each, and every claim asserted and further expounds on his arguments that the Map should be deemed invalid as improperly and unconstitutionally drawn. Among Parietti's specific contentions are:

(1) District 1 is not "as compact in form as is practicable" and that, in his view, Stony Point should be combined with Haverstraw;

(2) District 1 was drawn to protect legislative incumbent, Michael Grant, and to "crack" Western Ramapo in order to dilute its vote;

(3) District 1 should be comprised of Stony Point and all of Haverstraw, and Sloatsburg,

> Hillburn, Suffern and Montebello and a small part of Ramapo should be combined into a separate district, (although he concedes this combination would put the district "at the high end" of the 5% state mandated deviation and at a greater deviation than the 3% deviation that Rockland adopted).

Parietti argues further that District 4 was created to protect the incumbency of legislator Itimar Yager by combining New Hempstead and New Square as one district, arguing that instead New Hempstead should be combined with Wesley Hills.

Parietti also complains about District 6 which he claims was established to protect incumbent Alden Wolfe and his "power base."

Parietti also contends that District 7 is not in its most compact form and was drawn to discourage competition.

Moving on to Districts 8 and 13, which are substantially the same as the identically numbered pre-existing districts, Parietti argues that these districts should be changed despite the mandate that the "core of existing districts should be maintained," because these districts were gerrymandered during the last redistricting processes (in 2000 and 2010) and so should not be maintained in that gerrymandered configuration.[2]

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[2] Parietti raises an interesting point about the potential conflict between the requirement that during redistricting "the core of pre-existing districts be maintained" and the law, as it has evolved since the 2010 redistricting, regarding relevant factors to be considered during the redistricting process. It is possible that the districts drawn in 2000 and 2010 would not withstand

Parietti argues for the adoption of or at least a comparison to the map generated by "Dave's Redistricting Tool" and provides proposed maps (Ex. II) which he claims better meet the goals of MHL § 34(4) and all constitutional requirements.

It is on this record that the Court now rules:

GENERAL, RELEVANT LEGAL PRINCIPLES

A. Motions to Dismiss

CPLR § 404(a) provides for dismissal of a Petition on objections in point of law. An objection in point of law may be made on any basis provided for in CPLR 3211(a). *See* CPLR § 404(a), 3211(a); *See Bernstein Family Ltd. Partnership v. Sovereign Partners, L.P.*, 66 A.D.3d 1 (1st Dept. 2009); *See Hopwah v. Coughlin*, 118 A.D.2d 275 (3d Dept. 1986). The "objections" referred to in CPLR 404(a) and 7804(f) are not evidentiary but "threshold objections of the kind listed in CPLR 3211 (a), which are capable of disposing of the case without reaching the merits." *Id.* at 277.

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scrutiny under the law as it exists today. On the other hand, it is also possible that these districts would pass muster under an analysis conducted today. For better or worse, however, the constitutionality of districts drawn in 2000 or 2010 is not before the Court. And, the time has long passed to challenge districts created between 13 and 23 years ago. Moreover, there are no facts before this Court regarding the 2000 or 2010 county demographics, the process engaged in, the participation in the process in those years, other information the Court would require to undertake such an analysis. Nor is the legal question of retroactivity of the current redistricting laws as they have evolved, to the 2000 or 2010 redistricting processes addressed. For these reasons, *inter alia* the Court must begin with the presumption that the pre-existing districts were constitutional and proceed from there.

When considering a motion to dismiss, while the pleaded facts are generally taken to be true, "allegations consisting of bare legal conclusions as well as factual claims clearly contradicted by documentary evidence are not entitled to any such consideration," nor to that *arguendo* advantage. *Mass v. Cornell University*, 94 N.Y.2d 946 (1985).

In order to survive a motion to dismiss, a plaintiff must plead facts which, if proven, entitle the plaintiff to the relief sought. *See Jean v. Joseph*, 41 A.D.3d 657, 658 (2d Dept. 2007). "Conclusory allegations or bare legal assertions with no factual specificity are not sufficient and will not survive a motion to dismiss" *O'Neill v. Wilder*, 204 A.D.3d 823, 824 (2d Dept. 2022).

B. The Presumption of Constitutionality

It is well settled that acts of the legislature are entitled to a strong presumption of constitutionality. *Cohen v. Cuomo*, 19 N.Y.3d 196 (2012). Legislative enactments, including those implementing redistricting plans, are entitled to a "strong presumption of constitutionality" and redistricting legislation will be declared unconstitutional by the Courts, "only when it can be shown beyond a reasonable doubt that it conflicts" with the Constitution after "every reasonable mode of reconciliation has been found impossible." *Matter of Harkenrider v. Hochul*, 38 N.Y.3d 494, 509 (2022); *see Cohen v. Cuomo*, 19 N.Y.3d at 201-202.

As the Court noted in *Wolpoff v. Cuomo*, 80 N.Y.2d 70, 78 (1943):

> Balancing the myriad [redistricting requirements] is a function entrusted to the Legis-

> lature. It is not the role of this or any court to second guess the determination of the legislature, the elected representatives of the people, in this regard. We are hesitant to substitute our own determination for that of the Legislature even if we would have struck a slightly different balance on our own." *Id.* at 79.

Specifically, the New York State Municipal Home Rule Law (Article 4 § 34(4)) provides in relevant part:

> 4. Notwithstanding any local law to the contrary, any plan of districting or redistricting adopted pursuant to a county charter or charter law relating to the division of any county . . . , into districts for the purpose of the apportionment or reapportionment of members of its local legislative body shall be subject to federal and state constitutional requirements and shall comply with the following standards, which shall have priority in the order herein set forth, to the extent applicable:
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> a. If such plan of districting or redistricting includes only single-member districts, such districts shall be as nearly equal in population as is practicable; the difference in population between the most and least populous district shall not exceed five percent of the mean population of all districts. If such plan of districting or redistricting includes multi-member districts, the plan shall provide substantially equal weight for the population of that county in the allocation of representation

in the legislative body of that county; and

b. Districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process or to diminish their ability to elect representatives of their choice; and

c. Districts shall consist of contiguous territory; and

d. Districts shall be as compact in form as practicable; and

e. Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties. The maintenance of cores of existing districts, of pre-existing political subdivisions including cities, villages, and towns, and of communities of interest shall also be considered. To the extent practicable, no villages, cities or towns except those having more than forty percent of a full ratio for each district shall be divided; and

f. Districts shall be formed to promote the orderly and efficient administration of elections.

MHA § 34(4) lists these factors in the order of importance to be ascribed to each, with balancing of the population being the most important consideration.

This provision of the MHL explicitly borrows "federal constitutional requirements" and also specifically echoes the language of section 2 of the Voting Rights Act and requires Petitioner to plead and prove the *Gingles* factors, to wit, that the minority group in question is (1) "sufficiently large and geographically compact" to constitute a majority in a single member district"; (2) that the minority group is "politically cohesive", and (3) that the majority votes sufficiently as a bloc to enable it. . . . usually, to defeat the minority's preferred candidate." *Thornberg v. Gingles*, 478 U.S. 30, 50-51 (1986).

As to the first *Gingles* factor, Petitioner must plead the "possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority [population to elect candidates of its choice." *Johnson v. Degrandy*, 512 U.S. 997, 1008 (1994).

As to the additional *Gingles* factors, "in order to satisfy the political cohesiveness precondition, the Petitioner must show that a significant number of minority group members usually vote for the same candidate." "Political cohesiveness may be demonstrated by statistical evidence of racial bloc voting or testimony from persons familiar with the community in question." *Thonrberg*, 478 U.S. 30 at 56.

To plead and prove the third *Gingles* factor generally requires "statistical evidence" which is the primary means by which we can answer the question as to whether white bloc voting usually defeats minority voters candidates of choice.

The Voting Rights Act

The Voting Rights Act forbids district lines that result in "members [of a protected class] [having] less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. 5 U.S.C. § 10301(b).

DISCUSSION

With these general legal principles in mind, the Court must determine whether the Map enacted comports with statutory and constitutional provisions. To make that determination, the following questions must be answered:

First, does the Plaintiff have standing to bring the asserted claims?

Second, if Plaintiff has standing, taking as we must plaintiffs' factual assertions as true for purposes of this motion, would the facts alleged, if proven, prove beyond a reasonable doubt that the county legislative districts were drawn with a particular impermissible intent or motive *i.e.*, to discourage competition or to favor or disfavor incumbents, particular candidates or political parties? The Court notes that "[s]uch invidious intent could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results, *i.e.*, district lines that impactfully and unduly favor or disfavor a political party or reduce competition." *Harkenrider*, 38 N.Y.3d at 452.

A. Federal Standing

As noted above, before reaching the merits of the parties' contentions, the Court must first address the issue of legal standing and Respondents' assertions that the petition must be dismissed because Parietti has not been injured by the Map.

Standing is a fundamental jurisdictional predicate for asserting state and federal claims. Standing requires that the Petitioner be harmed personally by the challenged act. Here, Parietti claims that the Map unfairly disenfranchises minority groups in certain districts by diluting their votes and depriving them of the ability to elect candidates of their choice, thus violating Article III Section 4(b) of the New York State Constitution, the Federal Voting Rights Act and Municipal Home Rule Law ("MHRL") 34(4).

Petitioner bears the burden of pleading and proving his standing. *Society of Plastics Indus., Inc. v. County of Suffolk*, 77 N.Y.2d 761, 769 (1991). Subsumed in the standing requirements is Petitioner's obligation to prove "injury in fact." *Nurse Anesthetists v. Novella*, 2 N.Y.3d 207 (2004). The alleged injury must be personal, and distinguishable from harm caused to the general public. *Society of Plastics Indus, Inc.* at 761 (1991).

Thus, while the Court may be sympathetic to Parietti's philosophical standing argument—*e.g.*, that when any individual voter is harmed every voter is harmed—this generalized assertion of intangible public injury does not satisfy the "injury in fact" requirement *Id.* at 769. In order to prevail on the question of federal, legal standing Parietti must, at a minimum,

plead facts that, if true, would constitute a cognizable injury to himself, something he does not do.

Parietti's citation to Article III Section 5 of the New York State Constitution is equally unavailing since, as this Court has previously held, on its face, this provision is applicable to the apportionment of assemblypersons and the creation of assembly districts. A thorough review of this section and the attendant legislative history and decisional case law confirms that this provision applies only to the maps that are the responsibility of the State Legislature not to county legislative maps.

As a factual matter, Parietti neither lives in any of the districts which he claims have been discriminatorily drawn nor is he is a member of any minority group that is purportedly disadvantaged by the Map. Nowhere in his Petition does Parietti allege that he has been personally harmed by the Map, that is, in the manner contemplated by the relevant statutory and constitutional provisions. In asserting a claim of "vote dilution" plaintiff must plead facts that, if true, would show that he (1) is registered to vote and resides in the district where the discriminatory dilution occurred; and (2) is a member of the minority group whose voting strength was diluted." *Broword Citizens for Fair Districts v. Broward County.*, No. 12-60317-CIV, 2012 WL 1110053, at *3 (S.D. Fla. Apr. 3, 2012).

Parietti does not meet these requirements. He acknowledges in the petition that he resides at 6 Spook Rock Road in Suffern, New York, without identifying what district this is in under the Map. Therefore, he has not satisfied the requirement that he plead that he resides in a district where discriminatory dilution occurred. Despite this technical

pleading deficiency, a further analysis of the Map, conducted by the Court, shows that, as a factual matter, Parietti lives in District 7, which is not a district in which he even alleges racial dilution occurred. Nor does Parietti plead, as the law requires, that he is a member of the minority group whose voting strength was allegedly diluted.

B. State Standing

As noted above, Municipal Home Rule Law § 34 provides that county district lines "shall be subject to federal and state constitutional requirements" and "[d]istricts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process or do diminish their ability to elect representatives of their choice." This statute explicitly borrows "federal . . . constitutional requirements" and specifically echoes the language from Section 2 of the federal Voting Rights Act. Thus, the standing requirements of the federal Voting Rights Act clearly apply here.

Thus, looking past the federal standing requirements, Respondents further contend that Parietti also lacks standing under state law. Specifically, they argue that in New York, injury is essential to standing and that a "plaintiff must show 'injury in fact' meaning that the plaintiff will be actually harmed by the challenged action. The alleged injury must be more than mere conjecture. *New York State Ass'n of Nurse Anasthetists v. Novella*, 2 N.Y.3d 207, 211 (2004).

It is undisputed that Parietti is not a member of a "racial or language minority" group nor does he live

in one of the districts he alleges is affected by voter dilution and thus, could not have suffered injury in fact from the adoption of the Map and thus, lacks standing under state law to challenge it.

Thus, on the basis of standing alone, Parietti's race dilution claim must be dismissed.

Parietti attempts to overcome his lack of standing by alleging violation of the New York State Constitution Article III § 4(c)(1). However, the cited provision concerns only actions of the New York State Independent Redistricting Commission and has no bearing on county redistricting. The provision itself says that it applies only to the Independent Redistricting Commission: "[w]hen drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights."

C. Failure to State a Cause of Action

Even if the Court were to find that Parietti had standing to pursue these claims, based on the above principles, to state a cause of action a petitioner challenging a legislative redistricting cannot merely state that his plan meets the redistricting standards better. The petitioner must demonstrate by proof beyond a reasonable doubt, that the Map violates the law. "Plaintiff has submitted a . . . district plan which also appears to meet constitutional standards. However, a plan meeting constitutional standards submitted by the representative body of the county takes precedence over plaintiff's plan." *Slater v. Bd. of Supervisors of County of Cortland*, 69 Misc. 2d 842, 845 (Sup. Ct., Madison Cty. 1972) *aff'd*, 42 A.D.2d 795 (3d Dept. 1973); *Our City Action Buffalo, Inc. v.*

Common Council of City of Buffalo, 77 Misc.3d 1107, 180 N.Y.S.3d 871 (Sup Ct. Erie County 2022).

For the reasons set forth below, the Court finds that Parietti has not alleged the facts necessary to state a cause of action under this standard and, to the extent that he has, the documentary evidence refutes his claims. Nor does Parietti state a cause of action that the Respondents violated the First Amendment in adopting the Map.

Vote Dilution

To establish his vote dilution claim, Parietti must establish the *Gingles* factors: (1) that the minority group in question is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) that the minority group is "politically cohesive"; and (3) that the "majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). While Parietti summarily and conclusory repeats these requirements in his pleadings, he does not plead many actual facts to support them.

A review of Parietti's petition shows that in and amongst the 342 paragraphs that make up his petition, beginning in his preliminary statement, Parietti mixes actual facts with legal conclusions, speculation, rumor, hearsay and opinion.

For example, paragraphs 4 through 6 of Parietti's petition reads as follows:

> It appears that due to their rising political influence in Rockland County around the turn of the century, Hasidic leaders were

> able to gain control over the process of redistricting the Rockland County Legislature after the 2000 Census. The districts were gerrymandered to maximize the political representation and power of Hasidic leaders in the legislature at the expense of other groups.
>
> It appears, that the increased political power afforded to Hasidic leaders by the 2000 legislative map, in turn, allowed them to control the redistricting process that occurred after the 2010 Census, the legislative districts were altered just enough to further expand the political power of Hasidic leaders. *See* Exhibit A which is the map of the 2011 Legislative Districts.
>
> See this quote from Rockland County Times article Dated October 31 2022 and titled "Rockland Legislature Continues Redistricting Process"
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> "However, the population isn't the only factor in play – the racial and political background of residents must be taken into account to prevent the dilution of the voting power of "communities of interest." According to some political insiders, the county's last districting effort heavily favored large Hassidic communities in Districts 8 in Hill crest and 13 in Spring Valley, stifling the political voice away from the large minority communities that share those spaces."

Emphasis added.

Paragraphs 26 to 28, likewise conjoins statements of fact with statements of opinion, speculation, hearsay or conjecture, not backed up by any actual evidence, and apparently presumes that Parietti knows personally the needs of Western Ramapo—where he does not live—and the needs of the Hasidic community—of which he is not a part—and from his determination of each groups' needs he then reaches his conclusion, that these needs are diametrically opposed, which he states as fact:

> So why are Stony Point and Sloatsburg/ Hillburn, western Haverstraw joined within the same legislative district? First and foremost, it appears that sitting Legislator Michael Grant does not want to surrender any of his current District # 2, *See* Exhibit C and 1, in western Haverstraw to Stony Point for obvious reasons. Michael Grant's political power base is western Haverstraw. The more of Haverstraw that is moved into District # 1 the harder Michael Grant will have to work to get reelected. This is because when parts of Haverstraw are moved out of District # 2 and into District # 1, then geography from either northern Ramapo or Clarkstown must be added to District # 2 to reach the required population total. Michael Grant has never been elected in those areas and is not as well-known there and thus he would have to work harder to win reelection, which we can assume he does not want to do.
>
> Secondly, we believe it is part of a scheme to "crack" or split up the diverse suburban

> areas of western Ramapo so that they will not have a fair share of representation in the county legislature. The needs of western Ramapo are nearly diametrically opposite to the needs of the high-density Hasidic areas in eastern Ramapo and it appears that Hasidic leaders don't want to give a voice to those concerns in the legislature, so they use their influence over the redistricting process to propose a map in which western Ramapo is divided or "cracked" into three different legislative districts so its vote is diluted.

Paragraph 42 reads as follows:

> The boundaries of proposed District # 1 will also discourage competition because residents living in Sloatsburg or Hillburn in the Ramapo portion of the district will be discouraged from running for the county legislature because they will realize that in order to win they will need to receive a significant percentage of votes in the Town of Stony Point which is very unlikely to happen, particularly if they are running against an incumbent or candidate that resides in Stony Point, which will almost certainly be the case. This is a violation of Municipal Home Rule Law Section 34 Subdivision 4e which says the district boundaries should not be drawn to discourage competition.

Parietti may or may not be right about some or possibly even all of his assertions. However, this Court cannot accept as true, conclusory statements of

fact combined with conjecture and speculation made without any statistical or other evidentiary or expert support or scientific study.

In paragraphs 109 through 111 Parietti lays out his views—again wholly unsupported by anything other than Parietti's statements, speculation, hearsay, rumor and innuendo—on how the "Hasidic community" works:

> The social dynamics of the Hasidic Community and the communities of color in central Rockland are very different from each other and a discussion of these differences is important and necessary for this analysis.
>
> The Hasidic community is highly insular and places a high premium on near total obedience to their community leaders. The children attend private schools or yeshivas where it appears that loyalty to their community leaders and members is inculcated from an early age. This carries over to their voting patterns and level of involvement in politics in terms of running for office. It appears leaders decide which candidate the community will support and that information is then delivered to members of the community. Usually, shortly before elections a sample ballot is marked up to show community members who they should vote for at the polls and is distributed throughout the community and at polling places to voters as they arrive to vote. *See* Exhibit XXX. They will often use trucks driving through neighborhoods, with loudspeakers blaring voting instructions in Yiddish, to

remind community members to get out and vote directing them which candidates to voter for. A video clip of a sound truck can be seen at https://www.youtube.com/shorts/L1bLUFhUjN8

Adherence to the candidates chosen by the leadership is extremely high with vote percentages often running close to 100%. It is also believed by some that community leaders use the private school system to inform the community of the list of chosen candidates and drive voter turnout.

See New York Times Article In Hasidic Enclaves, Failing Private Schools, Flush With Public Money from 11 September 2022.

"Yeshivas play a central role in getting out the vote. Before elections, teachers often give students sample ballots with names of the grand rabbis' chosen candidates filled in, parents and former students said.

At some yeshivas, students who bring in their parents' "I Voted" stickers win rewards. The Central United Talmudical Academy recently took children with stickers on a trip to Coney Island, two parents said. The other children had to stay behind. Mr. Connolly, the lawyer for some Hasidic schools, disputed the parents' account!'

Furthermore, it appears that individuals within the Hasidic community will not run for political office without approval from their leadership. This is part of a strategy

> by Hasidic leaders to ensure that the community's vote is not split. This way the candidate chosen by Hasidic leaders to receive their Bloc vote is more likely to be victorious if the community's vote is united behind that one candidate. In addition, any members of the Hasidic community that might want to run without approval of the leaders, will likely be pressured not to run by other members of the community because of the belief that if they do run, the Hasidic vote might split and allow a candidate from outside the Hasidic community to win the election which might mean that the political interest of the community will not be given top priority. For that reason, there will also be peer pressure from rank-and-file members of the community for no other candidates to run.

Again, while certainly some of these assertions likely have some degree of factual accuracy—although Parietti provides no proof of them—the conclusion reached from those facts are Parietti's opinion, based on stereotypes, rumor, hearsay or innuendo, and assume that every Hasidic person and community acts in identical ways or that the Hasidic community never divides by community (*e.g.*, New Square, Kaser and Monsey each supporting different candidates).

In paragraphs 112-114, Parietti then goes on to expound on how communities of color work:

> To the contrary within communities of color there is a much different social and political dynamic. There is no centralized control or strong influence by any one community

leader over which candidates' community members will vote for collectively, or which candidate or how many candidates are allowed to run for any given office.

The majority of the children in the communities of color in central Rockland attend public schools where they are not taught to have a strong allegiance to the directives of community leaders when it comes to voting. Rather they are taught to think critically and analytically for themselves and to question authority rather than follow directives from leaders or authorities blindly. Thus, they tend to decide who they will vote for based on a whole host of different factors, and not at the direction of one leader or group of leaders. As a result, they are likely to split or spread their vote among two, or three, or even several candidates or color that are campaigning on the issues and political priorities of communities of color.

The public schools teach their students civics and about our democratic system of government and its electoral process. Students are also encouraged by their teachers and community leaders to participate in the political process by voting and running for office. As a result, numerous candidates from communities of color will often decide on their own volition to run for office without approval from community leaders. The public schools are never used to instruct or direct students as to which candidates their parents should vote for, even if certain candidates

> are running on platforms that are good for public schools. Any electioneering by public school teachers or administrators is strictly forbidden and enforced.

Like with the Petitioner's assertions regarding the Hasidic community, Parietti's assertions regarding communities of color assures that all communities of color act as a monolith; depend on evidentiarily unsupported factual statements interspersed with stereotypes, opinion, rumor, hearsay and innuendo, from which Parietti asks this Court to reach his desired conclusion. Notably, Parietti is neither a member of the Hasidic community or a community of color on whose behalf he purports to speak.

Parietti cites to no demographic, social science or other study or expert report, has no testimony by a demographer or a social behavioral scientist but instead, merely states what he claims to be a fact and then draws his own conclusion.

And, even if Parietti were a member of one of the groups he instructs about, the Court does not and cannot accept as fact, statements about the behavior of entire populations of people purported to act as a monolith without actual factual and statistical data supporting such contentions.

In contrast, the Defendants submit an affidavit from David Ely, the founder of Compass Demographics, a consulting and database management firm specializing in projects involving Census and Election Data. Ely has been qualified in numerous courts throughout the country as an expert for both Plaintiffs and Defendants in voting rights litigation challenging districts on gerrymandering—who uses actual data

in analyzing each of the categories using Census Blocks, statistics and actually identified the factual data behind each of the criteria.

Specifically, Ely used:

A. Census Redistricting data and New York adjusted population data to verify population totals for Legislative Districts;

B. Examined ethnic population distributions to verify compliance with VRA requirements;

C. Examined city splits in Adopted Legislative Districts and pre-existing Districts;

D. Examined Registered Voter distribution in Adopted Legislative Districts and pre-existing Districts by party; and

E. Compared Adopted Legislative Districts to pre-existing Districts for signs of partisan or ethnic gerrymandering

F. Examined Incumbent Legislators' residence distribution by District.

From the statistical analysis Ely conducted, he reached the following findings:

A. Population Equality: The districts meet the population requirements of state and federal law. The County adopted a narrower deviation goal (3% vs. 5%) than was legally required, which by definition limits the likelihood of a gerrymander.

B. Voting Rights Act: The Map shows no evidence of violation of the Voting Rights Act or dilution of minority votes.

C. Compactness: The districts were reasonably compact and showed no evidence of gerrymandering.

D. Splits of municipalities: The Map successfully reduced splits of small villages from 3 to 1.

E. Cores of existing districts: The Map successfully respected the cores of existing districts within the requirements of population equality and other criteria.

F. Partisan, Ethnic, or Incumbent Advantage Gerrymandering: The Map contains no evidence that it was gerrymandered to advantage any political party, ethnic group, or incumbent legislator. The Map in fact disadvantages certain incumbents by placing them in the same district or decreasing the partisan favorability of their districts.

Ely goes on to opine, on the basis of the documentary evidence and actual data.

1. The population totals for each of the legislative districts are within statutory limits.

2. No actual evidence of a violation of the Voting Rights Act. The actual data shows that there are significant concentrations of communities of color in legislative districts 2 and 3 and districts 8 and 13.

3. The Map reduces the number of small incorporated villages that were split from 3 to 1, thus satisfying the requirement to maintain small villages in a single district to the extent practicable given the other criteria.

4. The Map Does Not Advantage any incumbent or Party. Ely reaches this conclusion from a review of the partisan breakdown of the registered votes by district prior to the Map and pursuant to the new Map. While most districts have only minor differences, Districts 4, 9, 13 and 15 have significant differences which Ely argues is explained by the need to balance populations and consolidate communities that were divided in the earlier plan. Of these four districts, two districts became more Democratic and two more Republican. Two of these districts have one Democratic and one Republican incumbent.

Indeed, Ely shows the location of incumbents' residences relative to Pre-Existing Districts and the Map as adopted. None of the Incumbents appear to gain any benefit from the changes, but three of them may be negatively affected. The residences of Incumbents elected in Districts 9 and 15 are now located in Districts 10 and 9 respectively. This leaves District 15 with no resident Incumbent, while the Incumbents from Districts 9 (Christopher Carey, Republican) and 10 (Harriet Cornell, Democrat) are paired in District 10.

In contrast to these statistical, documented analysis and findings with respect to each of the applicable redistricting criteria, Parietti utilizes an internet program, "Dave's Redistricting," which allows the user to input information and create a report. *See* Parietti Memorandum in Opposition at paragraph 18. "Dave's Redistricting" is an online mapping tool. Parietti provides no significant details about this tool, no evidence to support its efficacy, no explanation as to how it works, no affirmation from anyone

involved in creating or administering this program, no documentation of the data input, but nevertheless avers that this hearsay report from "Dave's" makes the expert statistical analysis performed by Ely and the work of Chonigman and Schaffer, of no moment.

Over and over again, Parietti makes wholly unsupported assertions of opinion or speculation in his voluminous submission and asks the Court to accept it as fact. The Court will disregard all assertions by all parties titled as facts but which have no documented support and which are clearly speculative, based on rumor, innuendo and conjecture. In opposition to Respondents' motion to dismiss, Petitioner basically repeats in 90 paragraphs the assertions in the Petition and simply and repeatedly states that Respondents are wrong.[3]

Further, as to the first *Gingles* factor, Parietti must at least plead "the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *Johnson v. De Grandy*, 512 U.S. 997, 1008, 114 S.Ct. 2647, 2655, 129 L. Ed. 2d 775 (1994). Parietti opines about the Hasidic "Bloc vote," but Parietti does not point to any additional potential districts that can elect candidates of choice beyond those already established.

Moreover, Parietti fails to show any actual evidence that minority groups are "politically cohesive." In fact, Parietti himself points to multiple examples

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[3] Parietti also takes issue with Respondent's assertion that Petitioner is motivated by his unsuccessful candidacies and his desire to create a district for himself and decries it as a "false accusation." Parietti Opp. p.2, paragraph 2.

of several candidates competing against each other for a county legislative seat from within the minority community. *See e.g.* Petition ¶¶ 120-128.

Parietti does contend that the "majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate," and even if the Court accepts, for the purposes of this motion, the "Bloc vote" hypothesis and that the minority groups in the referenced districts are "politically cohesive," documentary evidence including the Map, demonstrate that the Map complies with the Voting Rights Act and that no new additional minority districts can be created, as explained in the uncontroverted affidavit of David Ely. Ex. at ¶¶ 19-22.

FAVORING OR DISFAVORING INCUMBENTS, CANDIDATES OR POLITICAL PARTIES

Parietti also alleges that the Map violates Municipal Home Rule Law § 34(4)(e), which requires that "[d]istricts shall not be drawn to discourage competition or for the purposes of favoring or disfavoring incumbents or other particular candidates or political parties." Respondents allege that Parietti is attempting to draw district lines to support his own potential candidacy. As stated above, Parietti has run eight times for political office, including three times for County Legislator, all unsuccessfully. Respondents argue that the law does not entitle Parietti to a county legislative seat that he can win. In fact, courts are so skeptical of unsuccessful candidates' challenges that the United States Court of Appeals for the Eighth Circuit "conclude[d] that an unsuccessful candidate attempting to challenge election results does not have standing under the Voting

Rights Act" and that "the purpose of the Voting Rights Act is to protect minority voters, not to give unsuccessful candidates for state or local office a federal forum in which to challenge elections." *Roberts v. Warmer*, 883 F.2d 617, 621 (8th Cir. 1989).

While this Court does not necessarily adopt Respondents' view of the motivation behind Parietti's attempts to overturn the Map, the fact remains that as an eight time unsuccessful candidate, the Court must look with great scrutiny at Parietti's claims and, having done so, this Court concludes that Parietti has not proved beyond a reasonable doubt that the Map was drawn for the purpose of favoring or disfavoring an incumbent or other candidates or political parties.

The Map itself is documentary evidence sufficient to dismiss the petition under CPLR 3211(a)(1). *See Webster v. State of New York*, 2003 WL 728780 (Court of Claims 2003). Despite Parietti's allegations, the documentary evidence–the Map–establishes that at least in certain instances—the new districts disadvantage, rather than advantage, incumbents. The Map places two incumbents, Christopher Carey (R-District 9) and Harriet Cornell (D-District 10), in the same district. Ely Aff. at ¶ 31. On its face, pairing incumbents hurts them rather than helps them since they would have to run against one another to hold their seats.[4]

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[4] Parietti argues that the pairing of incumbents in one district is a red-herring since it was well known, since before Plan B was approved that Chris Carey [was] not running for reelection." (Affidavit in Motion ¶ 33). This response is emblematic of a number of Parietti's factual assertions . . . statements made without any factual support and claimed as an established fact,

Furthermore, contrary to Parietti's assertions, the party enrollment data demonstrates that the districts were not redrawn to advantage incumbents or a particular political party. Indeed, the majority of districts remained relatively the same in terms of partisan composition, one district currently held by a Democrat became less Democratic, and one district currently held by Republicans became less Republican. As Mr. Ely's analysis demonstrates; there are only minor differences in partisanship for most districts. Districts 4, 9, 13, and 15 have more significant differences which are explained by changes needed to balance populations and consolidate communities that were divided in pre-existing plan. Of these four districts, two districts became more Democratic including one with Democratic incumbent and one with a Republican incumbent, and two became more Republican including one with Democratic incumbent and one with a Republican incumbent.

The Court of Appeals has held that invidious intent of advantaging incumbents or partisan gerrymandering "could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results (*i.e.*, lines that impactfully and unduly favor or disfavor a political party or reduce competition)." *Harkenrider*, 38 N.Y.3d at 519. Here, there is no such proof. The County Legislature adopted the Map on a bipartisan basis. There was no exclusion of the minority party and the lines do not unduly favor or disfavor a

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when instead it actually constitutes unsupported conjecture, speculation, gossip and hearsay. "Well known" is not a legal theory or proof of a fact that this Court can recognize.

political party. There is no evidence of the discriminatory results that demonstrate that the lines were drawn "for the purpose of favoring or disfavoring incumbents." Municipal Home Rule Law § 34 (emphasis added). There is simply no pattern in the Map that the Court can discern or that Parietti has proven beyond a reasonable doubt, that indicates an intent to help or hurt any incumbent or political party.

Compactness of Districts

Parietti also objects to the compactness of a number of districts and argues that under his proposed map districts would be more compact and communities of interest better represented. However, "[t]he issue is not whether the Map is the best possible map. Nor is the issue whether this Court likes Parietti's map better than the adopted map. Rather, it is whether the Map as adopted 'substantially complies' with legal requirements." *Our City Action Buffalo, Inc. v. Common Council of the City of Buffalo*, Index No. 812652/2022 (Sup. Ct. Erie County December 20, 2022). As detailed in the affidavit of Mr. Ely, and as this Court finds, the Map complies with the legal requirements. *See Municipal Home Rule Law § 34(4).*

It did not escape the Court's attention that, in terms of data used to support his claims, Parietti does append election results for various past county legislative races. However, Parietti then proceeds to draw conclusions from this data that is again conjecture and speculation—maybe true, maybe not—but nothing that Parietti or anyone else for that matter can prove or disprove.

For example, Parietti contends that District 8, which is substantially unchanged from the prior

map, is gerrymandered to protect the incumbency of Toney Earl Sr., an African-American incumbent legislator who receives the support of the Hasidic community. Mr. Earl, Parietti argues, lives in Hillcrest but gets his "power base" from the Hasidic community. Therefore, he concludes, if election district 36 and 64 were removed from District 8, Toney Earl would have to work harder and would have better and more well-funded opponents. (Petitions ¶ 122). He then goes on to opine that in 2011, Earl only won because two other candidates of color competed and split the minority vote, thus, allowing the Hasidic community vote to be the deciding factor.

Conversely, of course, this means (or possibly means) that if only one candidate from the minority community had run against Earl, despite support from the Hasidic community in ED's 36 and 64, Earl would have lost. Or he would have won, receiving the support from members of the minority community, that went to the second minority community candidate, thus not showing political cohesiveness at all. Either way, the facts actually upend Parietti's argument on this score. The point being, this is an example of a district election battle where anyone could have won and where political strategy and decisions as to which candidates to run, can have a great impact, and can unify voting, but it is not a set of facts, even if true, which would require a court to substitute its judgment for the legislature and step in to modify a Map adopted by a bipartisan legislative vote.

Parietti goes on to provide other examples of where the Hasidic supported candidate of color in districts 8 and 13 defeated another candidate of color. But in at least some of those races cited, there

were at least two other competing candidates who split the vote of the Haitian community, thus handing the victory to the third candidate.

In those races where there were only two candidates, by Parietti's admission, the non-Hasidic supported candidate (*See* ¶ 126), the challenger to Earl did not get enough support to have beaten Earl even if you removed the Hasidic vote altogether. (*See* Petition paragraph 122-28).

This kind of flawed analysis appears throughout Parietti's papers in support of his claims.

First Amendment

The third cause of action must be dismissed because it fails to state a claim, in both the legal and the commonsense use of that term. The purported third cause of action does not reference any recognized cause of action and does not actually seek any particular relief. By its subheading, the third cause of action lists First Amendment of the United States Constitution, MHRL Section 34, and "unconstitutional public hearing." But these subheadings do not describe any cognizable claim, and even a generous search of the balance of petition fails to locate anything that would even roughly approximate a First Amendment claim.

A claim alleging an abridgment of one's rights to freedom of speech under the First Amendment to the United States Constitution is typically and properly brought through the federal statutory vehicle offered by 42 U.S.C. § 1983 or by way of a declaratory judgment action to have a law declared unconstitutional. Here, despite its many conclusory refrains claiming

that Rockland County's Local Law 6 of 2022 ("Local Law 6") is unconstitutional, the Petition does neither (it is not a Section 1983 claim and it does not seek declaratory relief relative to the Local Law), nor does it advance any other form of claim rooted in the First Amendment. In fact, the Petition at paragraph 263 expressly clarifies that it is not asking the court to strike Local Law 6. This explicit concession made on the face of the pleading functionally ends the analysis, and the Court must dismiss the third cause of action.

Parietti erroneously conflates and confuses First Amendment rights with those that are sought to be protected by the Open Meetings Law. The First Amendment and the Open Meetings Law serve two distinctly different purposes. The First Amendment protects free speech. The Open Meetings Law on the other hand has as its purpose the collective interest of the public in open and transparent government operations and, to the extent that it is concerned with individual's rights, the individual's right of access, not speech. *Matter of Gordon v. Village of Monticello, Inc.*, 87 N.Y.2d 124, 127 (1995).

The principal directive the Open Meetings Law imposes on government is to "provide an opportunity for the public to attend, listen and observe meetings . . . " *See* Pub. Off. Law § 103 (emphasis added). These rights of access are passive ("attend, listen, and observe") and do not include a right to active participation. The absence of the latter is not, however, a limitation; it simply has nothing to do with advancing the Open Meetings Law's goal of transparency. In *Matter of Perez v. City University of New York*, 5 N.Y.3d 522 (2005), the Court of Appeals explained that in "enacting the Open Meetings Law, the Legislature

sought to ensure that public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy." *See id.*, 5 N.Y.3d at 528.

Neither the purpose of the Open Meetings Law nor its express provisions address requirements or restrictions on public comments at legislative meetings. *See Cipolla-Dennis v. County of Tompkins*, 2019 WL 2176669, at *8 (N.D.N.Y. May 20, 2019), *citing Gernatt Asphalt Prod., Inc. v. Town of Sardinia*, 87 N.Y.2d 668, 686 (1996) ("The purpose of the Open Meetings Law is to prevent municipal governments from debating and deciding in private what they are required to debate and decide in public."); *Jacobs v. New York City Landmarks Pres. Comm'n*, 59 Misc. 3d 1223(A), 93 N.Y.S.3d 626 (N.Y. Sup. Ct. 2017) (the Open Meetings Law merely "requires an opportunity for the public to participate only by observing and listening to the proceedings, not by speaking at the meeting as [Plaintiff] contend.")

The Open Meetings Law, from which Rockland's Local Law 6 is derived, is thus concerned with the ability of the public to observe and listen to public officials in the performance of their deliberations. The Open Meetings Law does not mandate that public bodies allow members of the attending public to speak, nor does it confer such an individual right. While the public body may elect to open the meeting for some form of active participation by the public, that is not because it is required to do so—and its primary obligation at that point is to ensure that the form of permitted participation is equal for those

engaging in such activity. Further, because the Open Meetings Law does not mandate public participation in the first place, it obviously does not specify any form that such participation, if allowed, must take. Thus, public bodies do not run afoul of any statutory or constitutional requirements in limiting or specifying the manner in which they permit comment or participation.

A 1993 Advisory Opinion from Robert J. Freeman, then Executive Director of the Committee on Open Government, instructively explained as follows:

> Within the language of the Open Meetings Law, there is nothing that pertains to the right of those in attendance to speak or otherwise participate. Certainly a member of the public may speak or express opinions about meetings or about the conduct of public business before or after meetings to other persons. However, since neither the Open Meetings Law nor any other provision of which 1 am aware provides the public with the right to speak during meetings, I do not believe that a public body is required to permit the public to do so during meetings. *See* OML-AO-2199, annexed as Exhibit D.

Parietti claims that persons attending a public meeting not only have the right to speak, but the "right to debate." That is not the law. In fact, it is patently absurd. And, for the reasons stated above, conclusory statements about the law, even if not erroneous (as they are here), are incapable of stating a cause of action.

Established First Amendment jurisprudence also fails to support Parietti's claim. As courts have repeatedly held, the "First Amendment does not include the absolute right to speak in person to officials. Where written communications are considered by government officials, denial of a hearing does not infringe upon the right to petition. The right to petition government does not create in the government a corresponding duty to act." *Piscottano v. Town of Somers*, 396 F.Supp.2d 187, 206 (D. Conn. 2005) (citing cases) (First Amendment rights not violated where written submission was permitted). "Unless otherwise required by law to accept testimony, public bodies conducting meetings via videoconference need only "provide an opportunity for the public to attend, listen and observe." *Komatsu v. City of New York*, 2021 WL 256956, at *4 (S.D.N.Y. Jan. 26, 2021), *reconsideration denied*, 2021 WL 670778 (S.D.N.Y. Feb. 2, 2021) quoting Pub. Off. Law § 103(c).

"The first issue to be addressed in any challenge to the constitutional validity of a rule under the First Amendment is whether a First Amendment right exists, for if it does not, we need go no further." *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1250-51 (3d Cir. 1992) (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 797 (1985)). Thus, "[i]n evaluating § 1983 claims for First Amendment violations, courts first inquire whether the activity in question is protected . . . under the First Amendment." *Hershey v. Goldstein*, 938 F. Supp. 2d 491, 505 (S.D.N.Y. 2013). Here, because the right to speak at a public meeting does not exist (i.e., it is not a protected right

under the constitution), there can be no First Amendment challenge.

Moreover, Local Law 6 does not implicate the First Amendment because, quite simply, it is not a restriction or restraint of speech. Indeed, the opposite is the case as it, including the particular subsection at issue, affirmatively creates an opportunity for speech where one does not otherwise exist under the law. As noted above, there is no constitutionally guaranteed right to speak or participate at a public hearing and the Open Meetings Law creates no such right either. Against this baseline of no affirmative right to participate, Local Law 6, under the circumstances described in the Petition, nevertheless allows written comments from the public to be submitted by email. This is a content-neutral policy and has the benefit of perfectly equal application amongst all who might wish to offer comments.

Nor does, Local Law 6 in any way impair an individual's broad exercise of free speech rights in an unlimited manner outside of the limited forum where the government conducts its business. Local Law 6 does not reach outside of its exceedingly narrow confines, and individuals quite obviously may express themselves in the public square, in the media, and through whatever channels they wish, including in such manner as may rail against the government precisely for its conduct during meetings (for which the law provides an ongoing right to access).

Local Law 6 was enacted in direct response to significant amendments made to New York's Open Meetings Law and in order to comply with that law. During the course of the Covid-19 pandemic, Rockland County, like every other municipality in the State of

New York, was forced to navigate continuously changing circumstances and guidance and adapt its governmental operations, inclusive of public meetings, accordingly. During this time, there was a proliferation of videoconferencing in all walks of life, government included. As New York State emerged from the height of the pandemic, and with videoconferencing having become a familiar tool, the New York State Legislature amended the Open Meetings Law (Public Officers Law § 100 *et seq*) to codify the procedures for utilizing videoconferencing in public meetings.

Notably among the amendments, § 103-a was added to the Public Officers Law, which expressly requires any municipality wishing to continue using videoconferencing to meet certain criteria, including specifically that it "adopt[ ] a local law . . . authorizing the use of videoconferencing" (§ 103-a(2)(a)), and "establish written procedures governing member and public attendance (§ 103-a(2)(b)). § 103-a(2)(c), requires that the local law and written procedures, required by the aforesaid subsections (a) and (b), address the contingency of a member of the body being unable to be physically present due to extraordinary circumstances. Local Law 6 does just that.

Thus, Local Law 6 was quite obviously not designed and created for the County's reapportionment meetings. Parietti, however, offers that he believes the law was a ploy solely to be used in redistricting meetings. Once again, however, the Court is construed to find that Parietti's subjective "beliefs," are not facts and thus are afforded no presumption of truth.

It is well established that the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that

may be desired. *See Heffron v. int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981). Here, Local Law 6 does not restrict Parietti's ability to communicate his views. It merely directs, under certain circumstances, and in contemplation of very recent remote video-conferencing practices, the medium by which the communication takes place.

The petition cites *Lerman v. Bd. Of Educ. Of the City of New York*, 232 F.3d 135 (2d Cir. 2000) for the proposition that "state election laws" subjecting speech to "severe restrictions," must be narrowly drawn to a compelling state interest. Petition at ¶ 232. Local Law 6, however, is not a "state election law;" it is a local law of general application enacted to comport with a newly amended state statute. However, the unfettered ability to express oneself in writing is not a severe restriction.

A public hearing which allows comment may be designated as a limited public forum for First Amendment purposes. In a limited public forum, a municipality may promulgate time, place, and manner regulations. *Johnson v. Perry*, 859 F.3d 156, 171 (2d Cir. 2017). Such regulations are permissible if they are content neutral and reasonable. *See M.B. ex rel. Martin v. Liverpool Cent. School Dist.*, 487 F. Supp 2d 117, 133 (N.D.N.Y. 2007) (District established a limited public forum for the distribution of written materials. Having done so, it may make reasonable, viewpoint neutral rules governing content and enforce reasonable time, place, and manner restrictions with respect to written materials.). Here again, Local Law 6 is entirely content and viewpoint neutral. Anyone making a written submission will have their com-

munication received. The transmission is completed without any possible reference to its contents.

Time restrictions on public comments at a hearing, limiting speakers to, for example, three minutes, are routinely upheld by the courts as a reasonable limitation. *See Davis v. Zoning Bd. Of Appeals of City of Buffalo*, 177 A.D.3d 1331, 1332 (4th Dept 2019}; *see also Cipolla-Dennis v. County of Tompkins*, 2019 WL 2176669, at *7 (N.D.N.Y. May 20, 2019) (time restrictions and other house rules are content-neutral regulations and apply to all speakers regardless of viewpoint}. To be sure, a time limitation of just a few minutes clearly restricts speech to the extent the speaker wishes to speak longer. This permissible limitation, though, is obviously more restrictive than one which simply designates the form of the speech. Whereas a speaker confined to three minutes clearly may not get to articulate all of his or his points in that timeframe, a written submission contains no such limitation.

CONCLUSION

For the reasons set forth above, the Respondents' motion to dismiss the Petition is granted in its entirety.

SO ORDERED:

/s/ Hon. Sherri L. Eisenpress, J.S.C.

Dated: New City, New York
March 10, 2023

Additional material from this filing is available in the Clerk's Office.