ORIGINAL

NO. 23-______

In the Supreme Court of the United States

MICHAEL PARIETTI,

Petitioner pro se,

v.

ROCKLAND COUNTY EXECUTIVE ED DAY, ET AL.,

Respondents

Application for a Stay

MICHAEL PARIETTI

PETITIONER PRO SE

6 SPOOK ROCK ROAD

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SEPTEMBER 7, 2023

Table of Contents

Jurisdiction page 1

Constitutional Provisions page 1

Application for a Stay on the 2023 Rockland County Legislative Elections page 2

Conclusion page 12

Appendix Table of Contents page 13

Jurisdiction

Jurisdiction is invoked under 28 U.S.C Section 2101 (f)

Constitutional Provisions

New York State Constitution Article III Section 5

"An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same. The court shall render its decision within sixty days after a petition is filed."

New York Municipal Home Rule Law Section 34 subdivision 4

"4. any plan of ....redistricting adopted pursuant to a county charter .... shall be subject to federal and state constitutional requirements"

Application to Supreme Court Justice Sonia Sotomayer for a Stay.

Petitioner applies for a stay on the 2023 Rockland County Legislative Elections.

Petitioner seeks to review the 8 June 2023 Order of the New York Court of Appeals, (A-1), the 25 Apr 2023 Decision and Order of the Appellate Division 2nd Department, (A-2), the 29 Mar 2023 Decision and Order of the New York Appellate Division 2nd Department, (A-5), the 10 Mar 2023 Decision and Order of Rockland County Supreme Court, (A-7), the So Ordered Transcript of the 13 Jan 2023 virtual court appearance,(A-30), in Rockland County Supreme Court, each of which denied Petitioners request to give the instant case precedence in the courts, and or denied his request for a stay on the 2023 Rockland County Legislative elections.

The U.S. Supreme Court is the only remaining court that Petitioner can appeal to for a stay in this matter because he has asked for his case to be given precedence over other cases, and have a stay imposed on the 2023 Rockland County Legislative Elections at every level of the Courts in New York State, however his requests were denied by each. This includes Rockland County Supreme Court, the Appellate Division 2nd Department, and the New York Court of Appeals.

Petitioner asks for a Stay because this case involves the decennial or ten-year redistricting/reapportionment of the Rockland County Legislature. There are numerous, serious violations of law integral to the final map and the redistricting process. In his Verified Petition of 8 December 2023, Index # 035210-2022, Petitioner alleged violations of his First Amendment right to speak at a public

hearing and the use of the incorrect legal standard by Court for judicial disqualification. However, Petitioner also alleged in his original Verified Petition Index # 035210-2022 that the legislative districts in the new reapportionment were deliberately drawn to discourage competition, advantage incumbents, deny racial groups the opportunity to participate equally in the electoral process, failed to consider the needs of communities of interests, and were not in as compact a form as possible precisely because of the aforementioned defects.

Furthermore, the term of office for the Rockland County Legislature is four years. If the 2023 Rockland County Legislative elections are allowed to go forward the manifold injustices of the current reapportionment plan would likely remain in place for another four years even if Petitioner ultimately prevails at the U.S. Supreme Court.

Furthermore, any hardship resulting from a stay would be self-created by the Rockland County Legislature themselves, due to the schedule and process they employed for their own redistricting effort.

Data from the 2020 Census was made available to municipalities for redistricting purposes by the U.S. Census Bureau in September 2021. However, the Redistricting Committee for the Rockland County Legislature did not begin their redistricting process until June of 2022 during which month they held five public forums to solicit input from the public before any draft maps were available to the public. Furthermore, the Committee did not publish any draft maps for public review for a full three months, until finally, on 6 October 2022 and 19 October 2022,

when they unveiled the Plan A and Plan B maps respectively. Public hearings on those two maps were scheduled for 19 Oct and 1 Nov 2022 respectively, with less than the 30 days' notice required by the State Constitution.

Furthermore just prior to the commencement of the redistricting process the Legislature enacted Local Law 6-2022, which extended Covid era measures allowing legislators to attend public meetings remotely via videoconferencing while restricting public input to written and email comments only, if any legislator notified the Clerk of the Legislator that they intended to attend remotely, whether or not they actually did.

At the 19 Oct public hearing Petitioner and other members of the public who attended in person, were prohibited from giving spoken verbal comments, and public input was restricted to email only, despite the fact that no legislators were attending remotely.

At the legislature meeting of the same date, and just prior to the public hearing on the Plan A map began, a new Plan B map was unveiled and the paid consultant for the Redistricting Committee was allowed to give an in person spoken presentation that cast the map in a favorable light. However, as the public hearing was conducted under the auspices of Local Law 6 -2022, Petitioner and others who attended in person were unable to rebut the consultant's depiction of the new map or give any verbal testimony about any aspect of the redistricting plan or process.

As the 1 November 2022 public hearing for the Plan B map was also held under the auspices and restrictions on speech of Local Law 6 – 2022, the same situation prevailed. Despite the fact that no legislators were attending remotely, Petitioner and others who attended in person were prohibited from giving in person spoken comments or testimony about the reapportionment plan or process during the public hearing designated specifically for that purpose.

The so-called public hearings consisted of a twenty-minute window, during which the public was permitted only to send in email comments. Mere minutes after that window closed at the 1 November public hearing, a vote was called on the Plan B map and it was quickly approved.

It should be noted that the Counsel to the Legislature, who likely drafted Local Law 6 – 2022, also served as the Counsel to the Redistricting Committee, and is married to a sitting legislator, who was also a member of the Redistricting Committee, and who is now running unopposed for reelection in a legislative district that Petitioner alleged was drawn to discourage competition and advantage the incumbent.

The Plan B reapportionment plan was sent to Rockland County Executive Ed Day, who waited the full 21 days allowed by statute, before signing it into law on 22 November 2022 just prior to Thanksgiving and the December holiday season. It was apparent to Petitioner that the legislature and county executive deliberately delayed publication and approval of the redistricting plan to hinder any legal challenge that might ensue.

Undeterred, Petitioner worked nonstop through the Thanksgiving Holiday and beyond to file a challenge to the reapportionment plan and the process on 8 December 2022. Index # 035210-2022. He hurried to file as early as possible to ensure that the court system and the Legislature would have ample time to adjudicate his challenge and remediate the map if required, before the political calendar commenced.

The first two judges assigned to the case recused themselves, and Justice Sherri Eisenpress was assigned the case on 19 December 2022, but did not schedule a court appearance until after the holiday recess on 5 January 2022.

On 4 Jan 2023, Petitioner filed a motion for the Judge to recuse herself stating she was likely biased. During the 5 January court appearance Petitioner repeatedly requested the opportunity to explain his arguments for recusal orally in court so that they would be on the record. However, the judge refused, because she said he had to wait until Respondents had the opportunity to respond in writing. None the less, the judge denied the Motion for Recusal from the bench at the 5 January court appearance.

Petitioner also explained to the Judge that the challenge should be given precedence as per Article III Section 5, of the NY State Constitution. The Judge was unmoved but did provide that if Petitioner sent her the statute, she would consider it. The judge also mentioned the possibility of a stay on the election depending on the submissions by the parties. The entire discussion can be found at (A-34) which is the So ordered transcript of the 5 January court appearance.

On the afternoon of 5 Jan 2023, Petitioner sent a letter to the Court (A-51) and cited Article III Section 5 of the New York State Constitution as justification for giving the case precedence over other cases. On 6 Jan 2023, Respondents answered with a letter to the Court of their own (A-52), and Petitioner responded with a second letter on 9 Jan 2023(A-54). Respondents then replied again with a second letter on 12 Jan 2023.(A-58)

This correspondence prompted the Court to schedule a virtual court conference on 12 Jan 2023, during which the Judge stated that there was no justification for giving the case precedence. The So Ordered transcript of this virtual court conference can be found at (A-30).

Despite the fact that both parties filed a full set of papers on the recusal question, Justice Eisenpress issued a formal written decision on the subject or revisited her denial of the motion from the bench, at the 5 Jan 2023 court appearance. On 7 Mar 2023, the judge finally signed and so ordered the transcript of the 5 Jan 2023 court appearance. Petitioner appealed the recusal decision following day on 8 Mar 2023.

Respondents had filed a Motion to Dismiss, which the Court granted in its entirety on 10 Mar 2023, (A-7) ruling that Petitioner did not have standing to challenge the whole apportionment, or districts he did not live in, or districts in which racial groups were being denied the opportunity to participate equally in the electoral process. The Court also dismissed Petitioners claims regarding the legislative district he resides in ruling that he had no standing to do so. The Court also dismissed Petitioners claims in regard to the First Amendment. Petitioner also

appealed the Courts decision to dismiss, and refusal to give the case precedence. Docket nos. 2023-02574, 02576, 02578.

Shortly after Petitioner filed his Notice of Appeal, he also filed an Order to Show Cause with the Appellate Division Second Department seeking a stay on the 2023 Rockland County Legislative Elections until the appeals were heard, however that request was denied. (A-5)

Oral arguments on the appeals were held on 24 Apr 2023 and the Appellate Court ruled the following day. In its Decision and Order of 25 Apr 2023, (A-2) the Court upheld the lower court decision in its entirety. The Appellate Court held that Article III Section 5 of the NYS Constitution, did not apply to county level redistricting, thus implying indirectly that the courts were not required to give precedence to legal proceedings involving county level reapportionment plans. In regard to judicial disqualification/recusal the Court stated that Petitioner had failed to "show proof of bias", and also stated that "The petitioner's contention regarding the First Amendment to the United States Constitution is without merit."

Petitioner filed a Motion Seeking Leave to Appeal with Statement in Support with the New York State Court of Appeals on 15 May 2023, Motion no. 2023-381, and again requested a stay on the county legislative elections. However, permission to appeal was denied and the court dismissed the motion for a stay as well.(A-1)

Petitioner filed his Writ of Certiorari to the New York Court of Appeals with the United States Supreme Court on 5 Sep 2023 and now files this request for a stay on the 2023 county legislative elections.

Petitioner has exhausted every remedy for a stay in the New York State Court system. He now turns to the U.S. Supreme Court.

Although it is inherently problematic to allow elected officials preside over the reapportionment process of their own legislative boundaries, there is usually no other option, and so it must be tolerated as a first resort. However, once a particular legislative body has clearly demonstrated its inability or unwillingness to abide by the statutes governing the reapportionment process and fails to create an equitable map that serves the public interest rather than their own personal ambition, the courts have a duty to intervene. Such is the case with the 2023 reapportionment of the Rockland County Legislature.

We know that justice delayed is justice denied. The configuration of the Rockland County Legislative boundaries have been unlawfully gerrymandered for more than twenty years. The recently approved reapportionment seeks to extend and perhaps perpetuate the injustices of that gerrymander. If the county legislative elections are allowed to proceed, Petitioner and the people of Rockland County will be left to wait at least four years if not another ten or more for a fair share of representation.

The negative impact or harm to the public and candidates caused by a stay on the county legislative elections would be minimal. In all of the 17 county legislative

districts there was only one primary contest in 2023. See attached candidate list for the 27 June primary election from the Rockland County Board of Elections website. (A-60). Furthermore in 7 of the 17 county legislative districts, incumbents are running unopposed in the November general election. In addition, to Petitioners knowledge, all three 2023 county wide elections for District Attorney, Sheriff and Family Court Judge are uncontested. Four of the five towns within the county, have uncontested elections for Supervisor with the incumbent running unopposed for reelection in each.

As a result, voter turnout in the 2023 election cycle will likely be very low. The public would be better served if the county legislative elections were postponed until next year anyway, when presidential, congressional and state legislative offices will also be on the ballot, driving higher voter engagement and turnout.

Furthermore, the fall election season has not yet begun in earnest. A stay imposed at this juncture will spare candidates the effort and expense of campaigning in a legislative district that may ultimately cease to exist by next year. Better that they harbor their resources for a 2024 legislative election in a new lawful reapportionment that ensures all communities of interest have an equitable share of representation.

Furthermore, legislation is currently pending that will permanently alter the schedule for local elections throughout New York State. NYS Assembly Bill no.

A4282, or NYS Senate Bill no. S3505B (A-61)has been passed by both houses of the New York State Legislature and is awaiting Governor Kathy Hochul's signature. If signed into law as expected, the bill will move most elections for local government, including those for county legislature, to even number years so that they will be held concurrently with state legislative and federal elections. Postponing this year's legislative elections until next year would be in accordance with the spirit and intent of the pending legislation.

To mitigate the harm caused to candidates who circulated petitions for the county legislative elections this year, an accommodation can made for them similar to the one afforded to congressional candidates in 2022, when New Yorks congressional reapportionment was invalidated by the courts. In 2022 any congressional candidate who filed a valid designating or nominating petition during the original petitioning period, was automatically granted ballot access under the final map. That same privilege could be made available to county legislative candidates who filed a valid designating or nominating petition for this year's election, in county legislative elections postponed to next year.

Conclusion

For all the reasons mentioned above and in the interest of fair elections, equality in voting rights, and the efficient administration of government, we respectfully request that the U.S. Supreme Court grant a stay on the 2023 Rockland County Legislative elections until Petitioners Writ of Certiorari is heard by the U.S. Supreme Court.

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845 504 7715
spookrock@gmail.com
7 Sep 2023

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Order of the Court of Appeals of the State of New York (June 8, 2023) A-1

Decision and Order of the New York Supreme Court Appellate Division, Second Judicial Department (April 25, 2023) A-2

Decision and Order on Motion, Supreme Court of the State of New York, Appellate Division (March 29, 2023) A-5

Decision and Order of the Supreme Court of the State of New York (March 10, 2023) A-7

OTHER DOCUMENTS

So Ordered Transcript, Supreme Court of New York, County of Rockland (January 13, 2023) A-30

So Ordered Transcript, Supreme Court of New York, County of Rockland (January 5, 2023) A-34

5 Jan 2023 Letter to the Court from Petitioner...A-51

6 Jan 2023 Letter to the Court from Respondents..A-52

9 Jan 2023 Letter to the Court from Petitioner...A-54

12 Jan 2023 Letter to the Court from Respondents A-58

Candidate List for 2023 Rockland County Primary Elections...................................A-60

New York State Senate Bill No. S 3505-B/ Assembly Bill No. A 4282-B......................A-61

A-1

State of New York
Court of Appeals

Decided and Entered on the eighth day of June, 2023

Present, Hon. Rowan D. Wilson, *Chief Judge*, ***presiding.***

Mo. No. 2023-381
In the Matter of Michael I. Parietti,
Appellant,
v.
Ed Day, &c., et al.,
Respondents.

Appellant having moved for leave to appeal to the Court of Appeals and for a stay in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion for leave to appeal is denied; and it is further

ORDERED, that the motion for stay is dismissed as academic.

Lisa LeCours
Clerk of the Court

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D72266
T/htr

_____AD3d_____ Argued - April 24, 2023

VALERIE BRATHWAITE NELSON, J.P.
JOSEPH A. ZAYAS
WILLIAM G. FORD
HELEN VOUTSINAS, JJ.

2023-02574 DECISION & ORDER
2023-02576
2023-02578

In the Matter of Michael I. Parietti, appellant,
v Ed Day, etc., et al., respondents.

(Index No. 35210/22)

Michael I. Parietti, Suffern, NY, appellant pro se.

Abrams Fensterman, LLP, White Plains, NY (Robert A. Spolzino and David Imamura of counsel), for respondents.

In a purported proceeding, inter alia, pursuant to NY Const, article III, § 5, and Municipal Home Rule Law § 34(4), the petitioner appeals from (1) an order of the Supreme Court, Rockland County (Sherri L. Eisenpress, J.), dated January 31, 2023, (2) an order of the same court dated March 7, 2023, and (3) an order and judgment (one paper) of the same court dated March 10, 2023. The order dated January 31, 2023, denied the petitioner's application pursuant to NY Const, article III, § 5, to give precedence to this proceeding and for the petition to be decided within 60 days of the commencement of the proceeding. The order dated March 7, 2023, insofar as appealed from, denied that branch of the petitioner's motion which was for recusal. The order and judgment granted the respondents' motion pursuant to CPLR 404(a) and 3211(a) to dismiss the petition and, in effect, dismissed the proceeding.

ORDERED that the appeals from the orders are dismissed, without costs or disbursements; and it is further,

ORDERED that the order and judgment is affirmed, without costs or disbursements.

The appeal from the order dated January 31, 2023, must be dismissed because no appeal lies as of right from an order that does not decide a motion made on notice, and leave to

A-3

appeal has not been granted (*see* CPLR 5701[a][2]). The appeal from the order dated March 7, 2023, must be dismissed because the right of direct appeal therefrom terminated with the entry of the order and judgment (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeals from the orders are brought up for review and have been considered on the appeal from the order and judgment (*see* CPLR 5501[a][1]).

Following the 2020 decennial federal census (U.S. Dept. of Commerce, Census Bureau, Decennial Census of Population and Housing, 2020), the respondent Rockland County Legislature (hereinafter the County Legislature) began the redistricting process for its 17 county legislative districts to account for population changes that occurred between 2010 and 2020. On November 2, 2022, the County Legislature voted overwhelmingly in favor of adopting a new district map, with 13 votes in favor and only 1 in opposition. On November 22, 2022, the respondent Ed Day, the Rockland County Executive, signed the legislation into law.

On December 8, 2022, the petitioner commenced this proceeding against Day, the County Legislature, and the respondent Rockland County Board of Elections to challenge the new district map. The petitioner thereafter made an application pursuant to NY Const, article III, § 5, to give precedence to this proceeding and for the petition to be decided within 60 days of the commencement of the proceeding. By order dated January 31, 2023, the Supreme Court determined that NY Const, article III, § 5, was inapplicable to this proceeding and denied the application. The petitioner also moved, among other things, for recusal. By order dated March 7, 2023, the court, inter alia, denied that branch of the motion which was for recusal. The respondents moved pursuant to CPLR 404(a) and 3211(a) to dismiss the petition, asserting, among other things, that the petitioner lacked standing to pursue his claims and, in any event, that he had failed to state a cause of action. By order and judgment dated March 10, 2023, the court granted the respondents' motion and, in effect, dismissed the proceeding. The petitioner appeals.

"Judiciary Law § 14 prohibits a trial judge from presiding over any claim if he or she is related by consanguinity or affinity to any party to the controversy within the sixth degree. Similarly, Code of Judicial Conduct Canon 3(E)(1)(d)(i) calls upon a judge to disqualify himself or herself in a proceeding in which a person known by the judge to be within the sixth degree of relationship to the judge is a party to the proceeding" (*Matter of City of Yonkers v Yonkers Fire Fighters, Local 628, Intl. Assn. of Firefighters, AFL-CIO*, 175 AD3d 676, 677 [alterations and internal quotation marks omitted]; *see* 22 NYCRR 100.3[E][1][d][i]). "Absent a legal disqualification under Judiciary Law § 14, the determination of a motion for recusal of the Justice presiding based on alleged impropriety, bias, or prejudice is within the discretion and the personal conscience of the court" (*Matter of Lew v Sobel*, 192 AD3d 799, 800-801 [internal quotation marks omitted]; *see Matter of Walsh v Abramowitz*, 78 AD3d 852, 853). "A court's decision in this respect may not be overturned unless it was an improvident exercise of discretion" (*D'Andraia v Pesce*, 103 AD3d 770, 771).

Here, the petitioner failed to establish a basis for mandatory disqualification pursuant to Judiciary Law § 14. The petitioner did not demonstrate, or even allege, that the Supreme Court had any familial relationship to any party to this proceeding. Moreover, he failed to set forth "any proof of bias or prejudice on the part of the [court] which would have warranted recusal" (*Matter of Lew v Sobel*, 192 AD3d at 801; *see Matter of Shisgal v Abels*, 179 AD3d 1070, 1070). Accordingly, the court providently exercised its discretion in denying that branch of the petitioner's

motion which was for recusal.

Pursuant to the New York State Constitution, "[a]n apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe" (NY Const, art III, § 5). Contrary to the petitioner's contention, this provision is inapplicable to this matter because it only applies to an apportionment by the State Legislature or a body acting on its behalf or in relation to state legislative or congressional districts, such as the New York State Independent Redistricting Commission. Moreover, Municipal Home Rule Law § 34(4), which subjects redistricting plans adopted by charter counties "to federal and state constitutional requirements," does not render the judicial review provision of NY Const, article III, § 5, applicable to such redistricting plans. The terms of the statute relate to the redistricting process itself, a conclusion supported by the legislative history (*see* Bill Jacket, L 2021, ch 516).

Since the constitutional standing provision of NY Const, article III, § 5, is inapplicable here (*cf. Matter of Harkenrider v Hochul*, 38 NY3d 494, 508), traditional standing principles apply to the petitioner's claims. Contrary to the petitioner's contentions, the Supreme Court properly concluded that he lacked standing to pursue any claims pursuant to the Voting Rights Act, Municipal Home Rule Law § 34(4), or other authority relating to county legislative districts that he did not reside in, or any claims concerning alleged vote dilution impacting any minority groups of which he was not a member (*see Gill v Whitford*, _____ US _____, _____, 138 S Ct 1916, 1930; *Matter of Festa v Town of Oyster Bay*, 210 AD3d 678, 679; *Suffolk County Democratic Comm. v Gaffney*, 196 AD2d 799, 800).

In addition, the petitioner failed to demonstrate his standing to pursue his claims to the extent they relate to the district in which he resides, including his assertion that the new district map improperly advantaged the incumbent in the petitioner's district and that the district was insufficiently compact, since he did not allege sufficient facts in the petition establishing the requisite personal harm (*see Matter of Festa v Town of Oyster Bay*, 210 AD3d at 679; *Matter of Montano v County Legislature of County of Suffolk*, 70 AD3d 203, 216).

The petitioner's contention regarding the First Amendment to the United States Constitution is without merit.

Accordingly, the Supreme Court properly granted the respondents' motion to dismiss the petition and, in effect, dismissed the proceeding.

In light of our determination, the petitioner's remaining contentions have been rendered academic.

BRATHWAITE NELSON, J.P., ZAYAS, FORD and VOUTSINAS, JJ., concur.

ENTER: Maria T. Fasulo

Maria T. Fasulo
Clerk of the Court

A - 5

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M288196
AFA/

CHERYL E. CHAMBERS, J.P.
ROBERT J. MILLER
PAUL WOOTEN
LILLIAN WAN, JJ.

2023-02574, 2023-02576

DECISION & ORDER ON MOTION

In the Matter of Michael I. Parietti, appellant, v Rockland County Executive, etc., et al., respondents.

(Index No. 35210/2022)

2023-02578

In the Matter of Michael I. Parietti, appellant, v Rockland County Executive, et al., respondents.

(Index No. 35210/2022)

Appeals from two orders of the Supreme Court, Rockland County, dated March 7, 2023, and January 31, 2023, and an order and judgment (one paper) of the same court dated March 10, 2023, respectively. Motion by the appellant to stay the petitioning period for Rockland County legislative elections and to enjoin the respondents from conducting legislative elections, pending hearing and determination of the appeals, and to consolidate the appeals.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the branches of the motion which are to stay the petitioning period for Rockland County legislative elections and to enjoin the respondents from conducting legislative elections, pending hearing and determination of the appeals, are denied; and it is further,

ORDERED that the branch of the motion which is to consolidate the appeals is denied as unnecessary as the appeals may be consolidated as of right (*see* 22 NYCRR 1250.9[f][3]); and it is further,

ORDERED that on or before April 5, 2023, the appellant shall serve and file the record or appendix and the appellant's brief via NYSCEF, if applicable, or, if NYSCEF is not mandated, serve the record or appendix and the appellant's brief and upload digital copies of the record or appendix and the appellant's brief, with proof of service thereof, through the digital portal on this Court's website; and it is further,

ORDERED that on or before April 12, 2023, the respondents shall serve and file the respondents' brief via NYSCEF, if applicable, or, if NYSCEF is not mandated, serve the brief and upload a digital copy of the brief, with proof of service thereof, through the digital portal on this Court's website; and it is further,

ORDERED that on or before April 14, 2023, the appellant shall serve and file the reply brief via NYSCEF, if applicable, or if NYSCEF is not mandated, serve the reply brief and upload a digital copy of the reply brief, with proof of service thereof, through the digital portal on this Court's website.

CHAMBERS, J.P., MILLER, WOOTEN and WAN, JJ., concur.

ENTER:

Maria T. Fasulo
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

---x

Michael I. Parietti

Petitioner,

- against –

Rockland County Executive, Rockland County Legislature, and Rockland County Board of Elections,

Respondents.

---x

DECISION AND ORDER

Index No. 035210/2022

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.

[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.

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.

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]

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. JJ) 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. 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).

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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 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.

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 NY3d 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 NY3d 494, 509 (2022); see *Cohen v. Cuomo,* 19 NY3d at 201-202.

As the Court noted in *Wolpoff v. Cuomo,* 80 NY2d 70, 78 (1943):

> Balancing the myriad [redistricting requirements] is a function entrusted to the Legislature. 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:
>
> 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 NY3d 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 NY2d 761, 769 (1991). Subsumed in the standing requirements is Petitioner's obligation to prove "injury in fact." *Nurse Anesthetists v. Novello,* 2 NY 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." *Broward 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. Novello*, 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"
>
> "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 J, 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 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

[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.

voters, not to give unsuccessful candidates for state or local office a federal forum in which to challenge elections." *Roberts v. Wamser*, 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]

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 NY3d 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 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

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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, 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.

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 <u>one</u> 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 122-128).

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 I 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 videoconferencing 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.

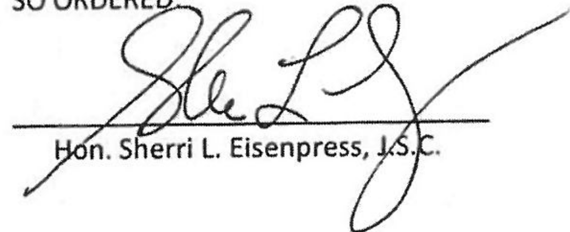
A public hearing which allows comment may be designated as a limited public forum for First Amendment purposes. In a limited public forum, a municipality may promulgate time, place, and manner regulations. *Johnson v. Perry*, 859 F.3d 156, 171 (2d Cir. 2017). Such regulations are permissible if they 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 communication 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:



Dated: New City, New York
March 10, 2023

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

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RECEIVED NYSCEF: 01/22/2023

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND: CIVIL TERM

- X

MICHAEL PARIETTI, Pro se,

Petitioner,

-against-

Index No. 035210/2022

ROCKLAND COUNTY EXECUTIVE ED DAY,
THE ROCKLAND COUNTY LEGISLATURE, and
THE ROCKLAND COUNTY BOARD OF ELECTIONS,

Respondents.

- X

Rockland County Courthouse
One South Main Street
New City, New York
January 13, 2023
(Proceedings held virtually)

BEFORE: HONORABLE SHERRI L. EISENPRESS
Justice of the Supreme Court

APPEARANCES:

Plaintiff Pro Se:

MICHAEL PARIETTI
6 Spook Rock Road
Suffern, New York 10901

For the Defendants:

ABRAMS FENSTERMAN, LLP
81 Main Street, Suite 400
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JEFFREY COHEN, ESQ.
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Sayville, New York 11782
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Michele Mastropolo, RPR
Senior Court Reporter

1 of 4

FILED: ROCKLAND COUNTY CLERK 01/22/2023 06:22 PM INDEX NO. 035210/2022
NYSCEF DOC. NO. 106 RECEIVED NYSCEF: 01/22/2023

1 THE CLERK: This is Michael Parietti versus
2 Rockland County Executive. This is index number 035210 of
3 2022. Can I have appearances please starting with
4 plaintiff?
5 MR. PARIETTI: Michael Parietti, 6 Spook Rock Road,
6 Suffern, New York, petitioner pro se.
7 MR. SPOLZINO: For the defendants, co-counsel for
8 the defendants, Abrams Fensterman, LLP, 81 Main Street,
9 White Plains, Robert Spolzino, Jeffrey Cohen and David
10 Imamura, co-counsel for defendants.
11 MR. HILL: Timothy Hill, Perillo Hill, 285 West
12 Main Street, Sayville, New York, 11782.
13 THE CLERK: Mr. Parietti, can you please raise your
14 right hand.
15 Do you swear or affirm that the testimony you are
16 about to give is the truth, the whole truth and nothing but
17 the truth?
18 MR. PARIETTI: I do.
19 THE CLERK: Can you please state your name and
20 address for the record.
21 MR. PARIETTI: Michael Parietti, 6 Spook Rock Road,
22 Suffern, New York, 10091.
23 THE CLERK: Thank you, sir. Judge, the case has
24 been called, and everybody has been sworn in.
25 THE COURT: Good morning, folks. I just wanted to

2 of 4

1 do this briefly because I got a series of letters first from
2 Mr. Parietti and then from Mr. Spolzino and then again I
3 think from Mr. Parietti regarding the applicability of this
4 article of the Constitution to county elections, and I have
5 reviewed the Constitution and the cases thereunder and the
6 case cited by Mr. Parietti which is the most -- as you know
7 -- is the most recent determination by the Court of Appeals,
8 and I find that that section does not apply to this
9 proceeding. So with that, the timeframes also do not apply.
10 Having said that, I'm not looking to drag this out
11 particularly. So I think our dates still have us coming
12 back prior to the petitioning date, and hopefully we'll get
13 enough clarity on the issues at that time to be able to make
14 a determination. So that's it.
15 If anyone wants to say anything, that's fine.
16 Otherwise, that's the reason I called this.
17 MR. PARIETTI: Your Honor, will you entertain
18 argument to the contrary at this point?
19 THE COURT: No. I have reviewed the Constitutional
20 provision, and I have reviewed the case law, and I'm very
21 comfortable that this does not apply to this proceeding.
22 So we'll proceed accordingly and I will see you all
23 -- I think our date is the 16th or something like that.
24 MR. SPOLZINO: That is correct.
25 THE CLERK: The date is the 16th.

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NYSCEF DOC. NO. 106 RECEIVED NYSCEF: 01/22/2023

1 THE COURT: See you all then.

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3 **

4 C E R T I F I C A T I O N

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6 The foregoing is hereby certified to be a true and

7 accurate transcript of the proceedings as transcribed from

8 the stenographic notes to the best of my ability.

9 *Michele Mastropolo*
Michele Mastropolo, RPR
Senior Court Reporter

10 Dated: January 31, 2023

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So ordered

14 Honorable Sherri L. Eisenpress, J.S.C.

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4 of 4

FILED: ROCKLAND COUNTY CLERK 01/02/2023 02:55 PM
INDEX NO. 035210/2022
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND: CIVIL TERM

- X

MICHAEL PARIETTI, Pro se,

Petitioner,

-against-

Index No.
035210/2022

ROCKLAND COUNTY EXECUTIVE ED DAY,
THE ROCKLAND COUNTY LEGISLATURE, and
THE ROCKLAND COUNTY BOARD OF ELECTIONS,

Respondents.

- X

Rockland County Courthouse
One South Main Street
New City, New York
January 5, 2023

BEFORE: HONORABLE SHERRI L. EISENPRESS
Justice of the Supreme Court

APPEARANCES:

Plaintiff Pro Se:

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DAVID IMAMURA, ESQ.

PERILLO HILL, LLP
285 West Main Street, Suite 203
Sayville, New York 11782
BY: TIMOTHY HILL, ESQ.

Michele Mastropolo, RPR
Senior Court Reporter

1 THE CLERK: Good morning, everybody. This is
2 number 8 on today's calendar, Michael Parietti versus Ed
3 Day, index number 035210 of 2022 for an order to show cause
4 and conference.
5 Can I have appearances please starting with
6 plaintiff?
7 MR. PARIETTI: Michael Parietti, 6 Spook Rock Road,
8 Suffern, New York.
9 MR. SPOLZINO: Good morning, Your Honor, co-counsel
10 for the defendants, Robert Spolzino, Abrams Fensterman, 81
11 Main Street, White Plains, New York, 10601, and with me from
12 our firm are Jeffrey Cohen and David Imamura.
13 MR. HILL: Good morning, Your Honor, Timothy Hill
14 Perillo Hill, LLP, 285 West Main Street, Sayville, New York
15 also co-counsel for the defendants.
16 THE COURT: You could pull your chairs up to the
17 table if you want.
18 Okay, so I guess the first order of business is I
19 received -- I guess it was handed to me yesterday -- a
20 motion for me to recuse myself. I don't know if it was
21 served on you folks or not.
22 MR. SPOLZINO: The proposed order to show cause was
23 served --
24 THE COURT: Was served --
25 MR. SPOLZINO: -- NYSEF.

1 THE COURT: Obviously, I could give you time to
2 respond if you would like, or if you're prepared to argue it
3 today, I'm prepared to hear it.
4 MR. SPOLZINO: We would like time to respond, Your
5 Honor.
6 THE COURT: Sure. How long do you need?
7 MR. SPOLZINO: Three weeks.
8 THE COURT: Today is the 5th. January 26. Would
9 you like an opportunity to reply?
10 MR. PARIETTI: Well, yes, Your Honor. First of
11 all, I would like to make my arguments on the record. Can I
12 do that here?
13 THE COURT: Well, not if they haven't had an
14 opportunity to respond yet.
15 MR. PARIETTI: Three weeks seems quite a long time,
16 Your Honor, in spite of the -- this is a case that's
17 supposed to be expedited and above all of other cases stated
18 in the law, and the other thing is that we have these
19 petitioning periods coming up in the beginning of either
20 late February or the beginning of March where this all
21 has --
22 THE COURT: Petitions start then?
23 MR. PARIETTI: Yup.
24 THE COURT: Okay. Look, I have read the papers
25 that you submitted. I have also read the petition. I have

1 no basis on which to recuse myself. That's my view.

2 If you guys want to submit it and argue, you can.

3 If you're in agreement, you can tell me that, too.

4 MR. SPOLZINO: Well, Judge, we were in agreement

5 you should not recuse yourself, that there's no basis for

6 doing so, but I do think we need to make a record because

7 I'm not sure Mr. Parietti will stop here with your decision,

8 so we need that opportunity, Your Honor.

9 MR. PARIETTI: Well, can I state -- why don't I

10 make the record full because there's a couple things I

11 didn't mention and that way they will have my full argument

12 to respond to.

13 THE COURT: That's really not the way this works.

14 The way this works is you make your submission. They

15 respond. You get an opportunity to reply if you would like

16 to, and then I will make my decision.

17 MR. PARIETTI: So I can't make an oral motion here

18 and state my arguments in Court on the record? It has to be

19 just on paper?

20 THE COURT: For now. They haven't responded. So

21 I'm not going to put them in a position of having you argue

22 and have them not be in a position to be able to respond.

23 MR. PARIETTI: Yes, Your Honor. I'm pro se, so I

24 don't know exact procedure.

25 THE COURT: Are you an attorney?

1 MR. PARIETTI: No, I'm not, Your Honor.
2 MR. SPOLZINO: Judge, Mr. Parietti made his
3 application, submitted his affidavit. He's made his record.
4 He doesn't get to supplement that today.
5 THE COURT: I agree. That's what I just said.
6 So in any case, I have the petition. What's the
7 statutory timeframe? Is there a shortened timeframe for
8 these cases? I thought only election law cases --
9 MR. SPOLZINO: This is not an election law case.
10 MR. PARIETTI: Your Honor, can I respond to that?
11 THE COURT: Sure.
12 MR. PARIETTI: In the State Constitution it clearly
13 states that -- it says that an apportionment by the state
14 legislature or other body may be challenged by the suit of
15 any citizen. And then it says -- right after that it says,
16 paraphrasing, these cases will be expedited over all other
17 cases, and if the Court is not in session, the Court will
18 convene and take up the case immediately.
19 I mean how are we going to -- provided we were
20 successful in our case, we would have to redraw the
21 boundaries. That could mean involved process and going to
22 public hearings --
23 THE COURT: Look, Mr. Parietti, you filed this
24 action on December 8. You then made a motion for me to
25 recuse myself just the other day. So it's your motion

1 that's delaying this. It's not them.
2 So they need time to respond. The law requires
3 that, so I'm going to give them time to respond.
4 MR. PARIETTI: I would just say we filed this
5 December 8. It was originally taken by Judge Marx who then
6 abruptly recused on December 15. It then went to Judge
7 Thorsen who recused on December 19.
8 Then you took the case. I think you indicated you
9 would take the case I think it was December 21. The Courts
10 close as far as I know --
11 THE COURT: I didn't get this case until after the
12 new year. I don't know what you're talking about.
13 MR. PARIETTI: Well, it said that you had said we
14 got a notice on the -- I believe it December 21 that there
15 was a conference scheduled for January 5 at 2 p.m.
16 I'm just saying that there is -- these cases do
17 need to be expedited. I just think three weeks to respond
18 to a motion for recusal I think is too long. I just think
19 how are we going to get the map redone?
20 MR. SPOLZINO: Judge, I don't think we are going to
21 get the map redone. First of all, I don't think there's a
22 basis for getting the map redone.
23 THE COURT: Well, that's a substantive argument.
24 MR. SPOLZINO: That's correct, but there is a whole
25 process that has to occur. We anticipate moving to dismiss

1 this complaint. I don't know if you have read the
2 complaint. It's a 343 --
3 THE COURT: I read a good part of the complaint.
4 MR. SPOLZINO: -- 343 paragraph complaint which is
5 going to take substantial time to respond to. We didn't
6 choose to make it a 343 page complaint. Mr. Parietti did.
7 We expect, based on our initial analysis, that we
8 are going to move to dismiss this complaint, because even if
9 you assume everything that's true -- I'm not saying this for
10 Mr. Parietti's benefit -- even if you assume everything in
11 the complaint is true, it doesn't state a claim under the
12 applicable law. That's going to take time to brief, take
13 time to decide. None of this is going to happen by February
14 28. The pattern here, the example --
15 THE COURT: When do petitions start?
16 MR. SPOLZINO: February 25, 28, something like
17 that.
18 THE COURT: Okay. I mean there's no way -- even
19 everyone if you were to prevail -- today is January 5 --
20 there would be no way to have an independent person
21 appointed -- which is what you're seeking -- to draw new
22 maps. That's what your ultimate relief requested is, right?
23 MR. PARIETTI: Yes. The Congressional maps were
24 thrown out. They were challenged by February 3. They
25 finalized the map I think January 30. They were challenged

1 on February 3, and they were successful because the case was
2 expedited, as it's supposed to be, and the map was redrawn
3 by the petitioner -- but the petition was postponed.
4 THE COURT: Well, then I'll tell you what I'm going
5 to do. I'm going to deny your motion to recuse. I'm going
6 to allow you to submit papers, and you could submit a reply,
7 and I will give it another look, and I will consider whether
8 there's any basis for me to reconsider that decision. How
9 is that? And we could move forward. Motion denied. Okay.
10 MR. SPOLZINO: So when then would we submit our
11 papers?
12 THE COURT: You could submit your papers in three
13 weeks, but we'll proceed with the case.
14 MR. SPOLZINO: Thank you. And we need time to
15 respond to make our motion to dismiss. We need at least
16 four weeks to make our motion to dismiss.
17 MR. PARIETTI: Your Honor, could I just say he said
18 it was my choice to submit 300 pages. It's not my choice.
19 This choice was made by the Rockland County Legislature when
20 they enacted a blatantly unlawful map which is transparently
21 obvious by looking at the map. No one challenged them. So
22 they just did whatever they wanted to do.
23 These are very complex situations. There's 17
24 districts that are all interrelated and they broke the law
25 -- almost every tenet of the law from federal, state and

1 local.

2 So to respond to that, it's going to be a very

3 complex case. It's not my choice. I had no choice.

4 And I hustled and got it in December 8, so it's not

5 me delaying the case.

6 THE COURT: When were the maps finalized?

7 MR. PARIETTI: Well, they were -- the county

8 legislator held a public hearing on the map on November 1

9 without any public -- no one was allowed to speak in public

10 to oppose it, some contrived law they had, and then they

11 immediately voted a few minutes later to approve it, 13 to

12 1, and they then took a full 21 days -- I think he had 21

13 days to sign it. He went the full 21 days and signed it on

14 November 22.

15 It took a tremendous amount of hustle and work and

16 effort to get this very complicated case in by December 8.

17 MR. SPOLZINO: I'm not disagreeing with Mr.

18 Parietti when it he says it's a complicated case.

19 THE COURT: What do you say? I don't have the

20 Constitution provision in front of me. Is there a provision

21 that requires these cases to be expedited?

22 MR. SPOLZINO: My understanding is that it applies

23 only to state --

24 THE COURT: Do you have a copy of the section --

25 MR. PARIETTI: It says an apportionment by the

1 state legislature or other body can be challenged by the
2 suit of any citizen. To paraphrase, these cases will be
3 expedited above all other cases. If the Court is not in
4 session, it will convene immediately and take up the case.
5 MR. SPOLZINO: Judge, I don't have that provision
6 memorized, but I know that Mr. Imamura, who is with me,
7 formerly chaired the Independent State Redistricting
8 Commission, and Mr. Hill was its republican counsel. They
9 understand better than anybody what those provisions are,
10 and they're telling me it does not include any requirement
11 that a local districting for the judicial consideration of a
12 local redistricting be expedited.
13 The example is what's happening with the assembly.
14 The assembly was not redistricted for this year because
15 there wasn't time. That case is still going to be
16 litigated. That's what's going to have to happen here.
17 I wasn't able to get out everything I wanted to say
18 which is that even if you deny our motion to dismiss -- I
19 know that you won't but even if you did, there's going to be
20 discovery, and there's going to be a trial, so this isn't
21 happening in six weeks.
22 THE COURT: Yeah, I don't see how that's
23 conceivable.
24 MR. PARIETTI: Well, I know they did it for the
25 Congressional and the State Senate. The Assembly they

1 postponed a year but they did -- they postponed the primary.
2 If you look at what the county legislature did,
3 they're the real culprits here. I guess they assumed no one
4 could challenge them, and they would get away with this, but
5 it is blatantly illegal. I could go through it.
6 THE COURT: I read your petition. I understand
7 there's many arguments in there, and I can't say that I'm so
8 familiar that I know what the provisions hold, but I will be
9 looking at it, but I can't make them make a motion to
10 dismiss a 340 page complaint in a week.
11 MR. PARIETTI: It's been up since December 8. You
12 signed on the case before the holidays. They've got two law
13 firms, lots of people, the whole county --
14 THE COURT: I will give you three weeks to make
15 your motion to dismiss.
16 MR. SPOLZINO: January 26?
17 THE COURT: Yes. Is that three weeks?
18 MR. SPOLZINO: Yes.
19 THE COURT: Make your motion to dismiss by then,
20 and as fast as you get your response in, we could have a
21 hearing.
22 MR. SPOLZINO: We would like the opportunity to
23 reply, Judge.
24 THE COURT: How long do you need?
25 MR. PARIETTI: A week.

1 THE COURT: Are you sure?
2 MR. PARIETTI: Well, I mean I think the case needs
3 to be expedited. If you're telling me it's not going to be
4 expedited --
5 THE COURT: Today is January 5 or 6. What day is
6 it?
7 MR. SPOLZINO: 5th.
8 THE COURT: January 5, and the petitions start in
9 six weeks. You have a 340 page complaint. You have a
10 motion to recuse that they're entitled to a response to.
11 They're entitled to make a motion to dismiss.
12 I will give you a discovery schedule. You could
13 get started on discovery in the interim, but they're
14 entitled to some discovery. You're entitled to some
15 discovery.
16 MR. PARIETTI: Yes, Your Honor. You know how
17 election law works. It's like very very quick.
18 THE COURT: But this isn't an election law case.
19 MR. PARIETTI: It almost has the same exact
20 language as the election law.
21 THE COURT: I'll tell you what. You show me that
22 the provision that requires me to expedite this beyond the
23 traditional case that's in front of me -- show me where it
24 requires it to be treated like an election law case.
25 MR. PARIETTI: All right, Your Honor, and why is it

FILED: ROCKLAND COUNTY CLERK 01/02/2023 02:55 PM INDEX NO. 035210/2022
NYSCEF DOC. NO. 102 RECEIVED NYSCEF: 01/02/2023

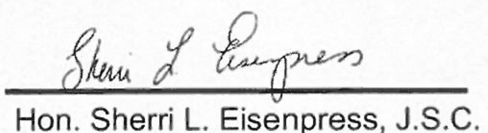
1 that this case wouldn't be a case where we would postpone
2 the primary? Why would we elect people like they did for
3 the State Senate and the Congress, like they did. They
4 postponed the primary so they could get the map redrawn.
5 Why would this be any different? I don't see how it would
6 be.
7 Why would we elect people into districts that
8 they're not going to be represented if this case is
9 successful?
10 MR. SPOLZINO: There's no basis for postponing
11 elections, Judge. Elections need to go forward.
12 THE COURT: I didn't say I was postponing them.
13 Submit your papers by January 26, and you get yours in by
14 February 3. I will have you in the following week.
15 MR. SPOLZINO: Give us a week to reply, Judge.
16 THE COURT: Sure, February 10, and I will have you
17 in, and if the papers suggest that there should be some kind
18 of stay of the election, we'll deal with it. I honestly
19 don't know.
20 MR. PARIETTI: Well, Your Honor, if there's not
21 going to be a stay, then I would ask for these ten days to
22 respond if we are not going to expedite it.
23 THE COURT: You could do that, but again, we are
24 pushing it closer and closer.
25 MR. PARIETTI: Of course.

1 THE COURT: So January 26, February 3, February 10
2 -- February 7 and then February 13, February 14?
3 MR. SPOLZINO: 14th is fine.
4 THE COURT: February 14, and let's have them back
5 on February --
6 THE CLERK: 16.
7 THE COURT: -- 16.
8 THE CLERK: So we'll back in here February 16 at 10
9 a.m.
10 THE COURT: I will keep the same schedule for the
11 recusal motion.
12 MR. PARIETTI: I do have a couple other things.
13 THE COURT: Give me a second.
14 MR. PARIETTI: Okay.
15 THE COURT: What else?
16 MR. PARIETTI: I did have some corrections in brief
17 that I noticed after I called Judge Marx and Judge Thorsen.
18 They told me to write the corrections and then -- when I
19 serve them. So I did write a cover page with the
20 corrections. Do I need to read them into the record or do
21 anything further?
22 THE COURT: No, that's okay. The cover letter
23 covers it.
24 MR. SPOLZINO: Did you serve those? I don't think
25 we have those.

1 MR. PARIETTI: Yeah, I'm pretty sure -- if you look
2 at this section of the brief.
3 MR. SPOLZINO: You served them with the complaint?
4 MR. PARIETTI: Yes.
5 MR. SPOLZINO: I think we do have that. I thought
6 it was something subsequent to that.
7 THE COURT: Just submit it to chambers.
8 MR. PARIETTI: Okay. The other issue I have I
9 filed this in my own name pro se because it's the suit of
10 any citizen in a very complicated case.
11 However, I have been approached by a number of
12 people that would like to join the case including the NAACP
13 is reviewing the case potentially possibly joining, but I
14 think I need your permission to grant that.
15 Is that something that's possible?
16 THE COURT: If someone is making a motion to
17 intervene, sure. Make that application.
18 MR. PARIETTI: Thank you, Your Honor.
19 THE COURT: Anything else?
20 MR. SPOLZINO: We'll be happy to respond. It may
21 delay our ability to make our motion to dismiss.
22 THE COURT: Okay. Anything else, folks? Thanks.
23 I will see you on the 16th.
24
25

So Ordered:

Dated: March 7, 2023



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

FILED: ROCKLAND COUNTY CLERK 03/02/2023 02:55 PM INDEX NO. 035210/2022
NYSCEF DOC. NO. 104 RECEIVED NYSCEF: 03/02/2023

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3 **

4 CERTIFICATION

5

6 The foregoing is hereby certified to be a true and

7 accurate transcript of the proceedings as transcribed from

8 the stenographic notes to the best of my ability.

9 Michele Mastropolo
Michele Mastropolo, RPR
10 Senior Court Reporter

11

12

13

So ordered ______________________________
14
Honorable Sherri L. Eisenpress
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5 January, 2023

From: Michael Parietti, Petitioner Pro se for Index Number 035210/2022
To: The Honorable Justice Sherri Eisenpress

Ref: New York State Constitution Article III Section 5

Dear Justice Eisenpress,

The section of law regarding expediting the challenge of an apportionment, can be found in Article III of the New York State Constitution Section 5. It is at the beginning of the fifth paragraph of Section 5. The relevant part of which reads as follows:

"An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same. ***The court shall render its decision within sixty days after a petition is filed.***"

It appears that the law compels the court to dispose of this case and render a decision by February 7th at the latest, which I believe is entirely possible. I also believe that if the court finds the Plan B map to be unlawful, it will provide plenty of time for appointing an independent master to redraw the map in time for the board of elections to conduct elections according to the regular political calendar beginning with the petitioning period in late February.

The main reason we worked so hard to file the case as soon as possible, was specifically because we wanted to give the courts, the independent master, and the board of elections the time they needed to ensure that the county legislative elections could be conducted according the current political calendar.

I believe a briefing schedule wherein the Respondents are given two weeks to respond to our petition, and I am given one week to reply, will then give the court enough time to render a decision prior to 7 February 2023.

Sincerely,

Michael Parietti
Petitioner, Pro Se.

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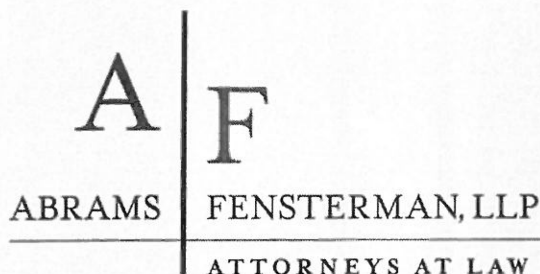

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January 6, 2023

VIA ECF

Hon. Sherri Eisenpress
Supreme Court of the State of New York
Rockland County Courthouse
One South Main Street
New City, NY 10956

Re: *Michael I. Parietti v. Rockland County Executive et al.*, Index No. 035210/2022

Dear Justice Eisenpress:

We, together with the Perillo Hill firm, represent defendants Rockland County Executive, Rockland County Legislature, and Rockland County Board of Elections (collectively, the "defendants") in this matter. The next appearance date for this matter is February 16, 2023. We write in response to the petitioner's January 5, 2023 letter (NYSCEF No. 98) asserting that Article III, Section 5 of the New York State Constitution requires that this Court expedite proceedings in this matter. The petitioner is incorrect. The constitutional language cited by the petitioner applies only to proceedings challenging redistricting conducted by the State Legislature. It does not apply to redistricting conducted by Rockland County.

The petitioner's argument is based upon the language in Article III, Section 5 of the New York State Constitution requiring that "[a]n apportionment by the legislature, or other body, shall be subject to review by the supreme court" and "[t]he court shall render its decision within sixty days after a petition is filed." Article III, however, concerns the State Legislature and section 5 is entitled "Apportionment of assemblymen; creation of assembly districts." The provision clearly refers, therefore, solely to redistricting by the State Legislature.

To the extent that section 5 refers to an "other body," the only thing it can be referring to is a body such as the New York State Independent Redistricting Commission that acts in lieu of the State Legislature. For example, section 5 discusses "enactment of a law making an apportionment of members of assembly" and "such apportionment and districts shall remain unaltered until after the next reapportionment of members of assembly, except that the board of supervisors of any county a town having more than a ratio of apportionment and one-half over may alter the assembly districts in a senate district . . . ." Apportionment in this context, and the subsequent requirement for expediting judicial proceedings, applies only to district maps that are the responsibility of the State Legislature.

The legislative history clearly supports that this language applies only to redistricting by the State Legislature. The amendment which adopted section five was approved by the State

Legislature in two consecutive legislative sessions and, ultimately, by New York State voters. The legislative summary of the bills amending the Constitution (S.6698/A.9526 (2011-2012) and S.2107/A.2086 (2013-2014)) is: "Creates the independent redistricting commission to establish senate, assembly, and congressional districts." The purpose of the amendment, as thus identified by the State Legislature, was to "amend the constitution to reform comprehensively the process and substantive criteria used to establish new state legislative and congressional district lines every ten years." The State Legislative summary of the provision at issue states:

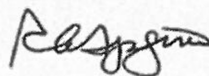
> Section 1 would require the [New York State Independent Redistricting Commission] to hold extensive public hearings across the state in specified cities and counties, and to make its drafts and relevant data widely available via the best available technology. Section I would amend the judicial review provision of this article to establish a 60-day deadline for decisions in this area, to establish that a court may find a district plan invalid in whole or in part if it has been drawn in violation of this article, and to provide that the court shall provide the legislature an opportunity to address such legal infirmity in the first instance.

Id.

The legislative summary thus establishes that the amendment and, consequently, the accelerated judicial review provision on which the petitioner relies, applies only to "decisions in this area," meaning state redistricting decisions, as indicated not only by the article in which the provision is located but also by the summary stating that "the court shall provide the legislature an opportunity to address such legal infirmity in the first instance." Recognizing this, there is no reasonable argument that the State Legislature and the voters intended to impose the judicial review provision beyond the state redistricting decisions to which it clearly applies, especially where the State Legislature created an entire separate legal regime for County redistricting. *See* Municipal Home Rule Law § 34.

For all of these reasons, the petitioner is incorrect in his assertion that the New York State Constitution requires expedited review of this action.

Sincerely yours,



Robert A. Spolzino

CC: (by ECF and E-mail)
Michael Parietti (mikeparietti@gmail.com)
John Ciampoli, Esq. (ciampolilaw@yahoo.com)
Timothy Hill, Esq. (thill@mphlawgroup.com)

9 January, 2023

From: Michael Parietti, Petitioner Pro se for Index Number 035210/2022
To: The Honorable Justice Sherri Eisenpress

Ref: Response to Letter of Robert Spolzino of 6 December 2023.

Dear Justice Eisenpress,

This letter is in regards to Index # 035210/2022 for which the next appearance date is scheduled for 16 February 2023. It is in response to the letter sent to the court by Robert Spolzino on 6 January 2023.

In his letter, Mr. Spolzino states that the text in New York State Constitution Article III Section 5 that addresses challenges to apportionments does not apply to county legislatures. That is incorrect. The text in question reads:

"An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same. The court shall render its decision within sixty days after a petition is filed."

Mr. Spolzino states that the text shown above, concerning challenges to apportionments and setting a 60 deadline for judicial decisions, does not apply to county legislatures because Section 5, is entitled "Apportionment of assemblymen; creation of assembly districts."

However, it is undeniable that the 60-day deadline was adhered to in the 2022 legal challenge to the congressional districts and the state senate districts, both of which are clearly not assembly districts. See:

Harkenrider v. Hochul **76 Mis171(2022) 173 N.Y.S.3d 1092022 NY Slip Op 22176**

Harkenrider filed on 3 February 2022 and the case was decided in less than 60 days on 31 March 2022. The entire text shown above from Article III Section 5 was cited in Harkenrider's Order to Show Cause as justification for filing the lawsuit. This shows that despite the title of Section 5, the included language regarding challenges to apportionments is written broadly so it can be applied to apportionments of all kinds at every level of government in New York State.

Look also at the sentence immediately following the text regarding the 60-day deadline for judicial decisions, which reads

"In any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part."

That sentence is very deliberate and specific in stating that it only applies to "any judicial proceedings relating to .... Congressional or state legislative districts" If lawmakers had intended the sentences immediately preceding that sentence to also only apply to congressional and state legislative districts they would have included that same language in those preceding sentences as well, but they did not. This was no accident.

Mr. Spolzino states the use of the words "other body" can only refer to such entities as the Independent Redistricting Committee and other arms of the State Legislature. However, this is incorrect which can be understood by examining the wording of the sentence in question, which reads:

"An apportionment by the legislature, or other body"

An apportionment is something that can only be made or done by a governmental body vested with the power to enact it. The IRC or a subcommittee can propose or recommend a redistricting plan but it cannot enact an apportionment. The apportionment itself occurs only after a plan recommended by the IRC is approved by a vote of the State Legislature. Thus the "other body" referred to in the paragraph can only mean governmental bodies vested with the power to enact an apportionment, such as county legislatures, city councils, town or village boards.

Mr. Spolzino also states that Article III Section 5 can not possibly apply to county legislature apportionments because the legislature created a separate section in New York Municipal Home Rule Law to deal with local apportionments, which is Section 34. However, Section 34 appears to be silent on the issue of challenges to apportionments and deadlines for decisions in those challenges. This is a strong indication that the framers of Section 34 intended for the broadly worded challenge and enforcement provisions of Article III Section 5 to apply to local apportionments as well.

In addition, Section 11 of the Bill of Rights of the New York State Constitution says the following:

[Equal protection of laws; discrimination in civil rights prohibited] §11. No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; amended by vote of the people November 6, 2001.)

The above makes it clear that civil rights violations, like the ones in the Plan B map, are subject to the Equal Protection of the laws, of this state or any subdivision thereof. The idea that the very same civil rights violation, perpetrated upon the very same people, of the very same municipality might be subject to starkly different enforcement measures, simply because in one case the boundary in question is for a state body and the other is county political subdivision is absurd. All civil rights violations should be treated equally under the law, and that clearly extends to those found in redistricting plans, whether they be at the state or local level.

All of this aside there is certainly nothing in Article III Section 5 stating that the 60-day decision deadline does not apply to apportionments at the county level, nor is there anything in New York Municipal Home Rule law that prevents the court from expediting the case and adhering to that deadline. Nor is there any legal or common-sense argument for not rendering a decision in 60 days in the instant case, and justice cries out for it. This is particularly true when you consider the very lopsided competing interests at stake, as well as the potential for irreparable harm if a decision is delayed.

Competing Interests

On one side we have multiple communities of interest and the people of Rockland who have been deprived of a fair share of representation in the county legislature for over 20 years, and will likely continue to have their civil rights violated for another full four years if this case is not adjudicated in the 60-day window spelled out explicitly in the NYS Constitution.

On the other side we have Respondents Rockland County Executive Ed Day and the Rockland County Legislature who enacted a blatantly unlawful and discriminatory redistricting plan and engaged in a protracted campaign of deliberate delay throughout the redistricting process, in an obvious attempt to run out the clock on this case and the voters of Rockland County. It now appears that Respondents intend to use the courts and the judicial process to extend and continue these delays beyond the petitioning period for the upcoming county legislative elections. Their attempt to implement this strategy was on full display at the 5 January 2023 court conference.

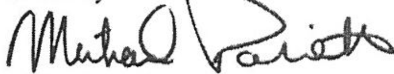
Irreparable Harm

If this lawsuit is not decided prior to the upcoming petitioning period irreparable harm could be caused to numerous candidates and citizens who may expend significant expense and effort collecting signatures for political subdivisions which may then be dissolved if this case is successful. Such a debacle played out this past year following Harkenrider's successful challenge as the decision came down towards the end the petitioning period. When the new boundaries were finally established weeks later, numerous candidates who had circulated and filed petitions for the original districts found themselves in new districts with different constituencies in which they were no longer viable candidates. The instant case was filed early enough that it could be decided within the 60-day window and well before the petitioning period begins on 28 February 2023.

If this lawsuit is decided after the primaries, or the general election, the civil rights of the people of Rockland will continue to be violated for another 4 years until the 2027 elections.

For all the reasons cited above we urge the court to revise the briefing schedule to ensure a decision can be reached by the 7 February 2023 deadline.

Sincerely



Michael Parietti
Petitioner Pro se

A-57

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A -58

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January 12, 2023

VIA ECF

Hon. Sherri Eisenpress
Supreme Court of the State of New York
Rockland County Courthouse
One South Main Street
New City, NY 10956

Re: *Michael I. Parietti v. Rockland County Executive et al.*, Index No. 035210/2022

Dear Justice Eisenpress:

We, together with the Perillo Hill firm, represent defendants Rockland County Executive, Rockland County Legislature, and Rockland County Board of Elections (collectively, the "defendants") in this matter. The next appearance date for this matter is January 13, 2023. We write in response to the petitioner's January 10, 2023 letter (NYSCEF No. 100) arguing that Article III, Section 5 of the New York State Constitution requires that this Court expedite proceedings in this matter, specifically petitioner's newly asserted argument that the trial court's resolution of the state legislature and congressional redistricting case in *Harkenrider v. Hochul*, 173 N.Y.S.3d 109 (2022) within 60 days requires that this court do the same.

Petitioner fundamentally misinterprets defendants' argument. In defendants' January 6, 2022 letter (NYSCEF No. 99), we noted that Article III, Section 5 of the New York State Constitution is entitled "Apportionment of assemblymen; creation of assembly districts." We then pointed to the language of Article III, Section 5, which discusses redistricting *by* the state legislature, not exclusively new districts for the state senate and state assembly. We mention the titles of Article III ("Legislature") and Section 5 ("Apportionment of assemblymen; creation of assembly districts"), to show that the focus of these sections are actions by the state legislature, which solely includes congressional and state legislative redistricting. As discussed in our January 6, 2022 letter, the legislature's stated purpose of the amendment was to "amend the constitution to reform comprehensively the process and substantive criteria used to establish new state legislative and congressional district lines every ten years."[1] Respondents agree that the trial court in *Harkenrider v. Hochul* was required to render a decision within sixty days because the petition there challenged "new state legislative and congressional district lines." The present district lines at issue are not "new state legislative and congressional district lines" and thus are not subject to expedited review.

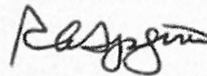
[1] S.6698/A.9526 (2011-2012) and S.2107/A.2086 (2013-2014).

Petitioner also asks, in "an apportionment by the legislature or other body shall be subject to review" that must be resolved within 60 days, what other body could be subject to litigation that would require expedited review. The answer lies in *Harkenrider* itself—there the trial court gave a special master the ability to draw the lines. The court and the special master's decision, acting as "other bodies," were themselves subject to challenge that must be resolved within 60 days. Similarly, the New York State Independent Redistricting Commission could have been empowered by a court to draw district lines independent of state legislative review. If this were the case, the New York State Independent Redistricting Commission's proposal would be subject to judicial review.

Petitioner is making the specious argument that an amendment to the New York State Constitution, creating an independent commission designed to draw state legislative and congressional districts, also in one isolated sentence created an entirely new review process for all county redistricting when the amendment makes no other changes to county redistricting. In our January 6, 2022 letter we quote at length legislative history that supports the text of the amendment being limited only to state legislative and congressional redistricting. Petitioner points to no such legislative history in support of his argument.

For all of these reasons, the petitioner is incorrect in his assertion that the New York State Constitution requires expedited review of this action. His other arguments regarding equal protection of law, competing interests, and irreparable harm, cite no legal basis and are without merit.

Sincerely yours,



Robert A. Spolzino

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A-60

ROCKLAND COUNTY CANDIDATE LIST
PRIMARY ELECTION -TUESDAY, JUNE 27, 2023

FAMILY COURT JUDGE	**(VOTE FOR 1) 10 YEAR TERM**
DEMOCRATIC	PATRICIA BRIMAIS TENEMILLE
DEMOCRATIC	CHRISTOPHER EXIAS
WORKING FAMILIES	CHRISTOPHER EXIAS
WORKING FAMILIES	PATRICIA BRIMAIS TENEMILLE

COUNTY LEGISLATOR DISTRICT 10	**(VOTE FOR 1) 4 YEAR TERM**
REPUBLICAN	MATTHEW BRENNAN
REPUBLICAN	RAY FRANCIS

CLARKSTOWN SUPERVISOR	**(VOTE FOR 1) 2 YEAR TERM**
REPUBLICAN	GEORGE HOEHMANN
REPUBLICAN	LAWRENCE GARVEY

CLARKSTOWN TOWN COUNCIL WARD 2	**(VOTE FOR 1) 2 YEAR TERM**
DEMOCRATIC	BRIAN SHANAHAN
DEMOCRATIC	ELAINE PHILHOWER

CLARKSTOWN TOWN JUSTICE	**(VOTE FOR 2) 4 YEAR TERM**
REPUBLICAN	DAVID ASCHER
REPUBLICAN	PAUL CHIARAMONTE
REPUBLICAN	KEVIN F. HOBBS
CONSERVATIVE	HOWARD GERBER
CONSERVATIVE	KEVIN F. HOBBS
CONSERVATIVE	DAVID ASCHER

STONY POINT SUPERINTENDENT OF HIGHWAYS	**(VOTE FOR 1) 4 YEAR TERM**
REPUBLICAN	CHICKY BRUNTFIELD
REPUBLICAN	KARL JAVENES

VILLAGE OF NYACK TRUSTEE	**(VOTE FOR 2) 2 YEAR TERM**
DEMOCRATIC	ROGER COHEN
DEMOCRATIC	JOE CARLIN
DEMOCRATIC	TAYLOR SCOTT MANDELBAUM
DEMOCRATIC	NATHALIE RIOBE-TAYLOR
DEMOCRATIC	MARIE LORENZINI

VILLAGE OF SPRING VALLEY TRUSTEE	**(VOTE FOR 2) 4 YEAR TERM**
DEMOCRATIC	SHERRY MCGILL
DEMOCRATIC	JACQUES CHARLOT
DEMOCRATIC	YISROEL EISENBACH
DEMOCRATIC	SHMUEL SMITH

VILLAGE OF SPRING VALLEY JUSTICE	**(VOTE FOR 1) 4 YEAR TERM**
CONSERVATIVE	SCOTT GOLDMAN
CONSERVATIVE	VINCENT ALTIERI

A-61

S03505 Text:

STATE OF NEW YORK

3505--B

2023-2024 Regular Sessions

IN SENATE

January 31, 2023

Introduced by Sens. SKOUFIS, SALAZAR -- read twice and ordered printed,
and when printed to be committed to the Committee on Elections --
committee discharged, bill amended, ordered reprinted as amended and
recommitted to said committee -- committee discharged, bill amended,
ordered reprinted as amended and recommitted to said committee

AN ACT to amend the town law, the village law, the county law, and the
municipal home rule law, in relation to moving certain elections to
even-numbered years

**The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:**

1 Section 1. Section 80 of the town law is amended to read as follows:

2 § 80. Biennial town elections. [~~Except as otherwise provided in this~~

3 ~~chapter, a~~] **Notwithstanding any provision of any general, special or**

4 **local law, charter, code, ordinance, resolution, rule or regulation to**

5 **the contrary, a** biennial town election for the election of town

6 officers**, other than town justices or any town office with a three-year**

7 **term prior to January first, two thousand twenty-five,** and for the

8 consideration of such questions as may be proposed by the town board or

9 the duly qualified electors, pursuant to the provisions of this chapter,

10 shall be held on the Tuesday next succeeding the first Monday in Novem-

11 ber of every [~~odd-numbered~~] **even-numbered** year. All other town elections

12 are special elections. A town election or special town election held

13 pursuant to this chapter, shall be construed as a substitute, for a town

14 meeting or a special town meeting heretofore provided to be held by law,

15 and a reference in any law to a town meeting or special town meeting

16 shall be construed as referring to a town election or special town

17 election. **Any town completely coterminous with a village shall continue**

18 **to elect its officers, including town justices, in odd-numbered years if**

19 **both such village and town last held such elections in an odd-numbered**

20 **year prior to January first, two thousand twenty-five.**

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD06852-13-3

1 § 2. Subdivision 4 of section 17-1703-a of the village law, as amended
2 by chapter 513 of the laws of 2022, is amended to read as follows:
3 4. In any case in which the proposition provided for in subdivision
4 one of this section shall have resulted in favor of the local government
5 operating principally as a town, then, at the regular village election
6 next ensuing, all offices to be filled thereat shall be filled for terms
7 to end at the conclusion of the then current calendar year. The term of
8 office of each other elected village office shall also end at the
9 conclusion of said then current calendar year, notwithstanding that any
10 such term of office originally extended beyond such date. The offices of
11 supervisor, four town council members and two town justices shall be
12 filled by election as hereinafter provided at the November general
13 election next following the effective date of the creation of such town
14 or annexation of such territory; all other town offices shall be appoin-
15 tive. The election of the supervisor, council members and justices shall
16 be for terms of office as follows:
17 (a) If such election is held in an [~~odd-numbered~~] **even-numbered** year,

18 then the term of office for supervisor shall be the term regularly
19 provided by law; the terms of office for two council members shall be
20 the terms regularly provided by law and the terms for the other two
21 council members shall be two years each; the term for each justice shall
22 be the term regularly provided by law. Upon the expiration of the two
23 year term for council members as above provided, the terms for such
24 offices shall be as regularly provided by law.
25 (b) If such election is held in an [~~even-numbered~~] **odd-numbered** year,
26 then the term of office for supervisor shall be one year; the terms of
27 office for council members shall be one year for two council members and
28 three years for the other two council members and the terms of office
29 for each justice shall be for the remainder of the then unexpired terms.
30 Thereafter, each office shall be filled for the term regularly provided
31 by law.
32 § 3. Section 400 of the county law is amended by adding a new subdivi-
33 sion 8 to read as follows:
34 **8. Notwithstanding any provision of any general, special or local**
35 **law, charter, code, ordinance, resolution, rule or regulation to the**
36 **contrary, all elections for any position of a county elected official**
37 **shall occur on the Tuesday next succeeding the first Monday in November**
38 **and shall occur in an even-numbered year; provided however, this subdi-**
39 **vision shall not apply to an election for the office of sheriff, county**

40 **clerk, district attorney, family court judge, county court judge, surro-**
41 **gate court judge, or any offices with a three-year term prior to January**
42 **first, two thousand twenty-five.**
43 § 4. Paragraph g of subdivision 3 of section 34 of the municipal home
44 rule law, as amended by chapter 24 of the laws of 1988, is amended and a
45 new paragraph h is added to read as follows:
46 g. In this chapter or in the civil service law, eminent domain proce-
47 dure law, environmental conservation law, election law, executive law,
48 judiciary law, labor law, local finance law, multiple dwelling law,
49 multiple residence law, public authorities law, public housing law,
50 public service law, railroad law, retirement and social security law,
51 state finance law, volunteer firefighters' benefit law, volunteer ambu-
52 lance workers' benefit law, or workers' compensation law[.]**; and**
53 **h. Insofar as it relates to requirements for counties, other than**
54 **counties in the city of New York, to hold elections in even-numbered**
55 **years for any position of a county elected official, other than the**
56 **office of sheriff, county clerk, district attorney, family court judge,**

1 **county court judge, surrogate court judge, or any county offices with a**
2 **three-year term prior to January first, two thousand twenty-five.**
3 § 5. Notwithstanding any provision of any general, special or local
4 law, charter, code, ordinance, resolution, rule or regulation to the

5 contrary, a county elected official, or town elected official, subject
6 to the requirements of sections one, two, three, or four of this act,
7 elected and serving their term as of January 1, 2025 shall complete
8 their full term as established by law. Provided, however, that if the
9 completion of such full term results in the need for an election in an
10 odd-numbered year after January 1, 2025, the county or town official
11 elected at such election shall have their term expire as if such offi-
12 cial were elected at the previous general election held in an even-num-
13 bered year. Provided, further, that such term shall not be applicable to
14 any general, special, or local law pertaining to term limits. Nothing in
15 this act shall prohibit a county, town, or any village subject to arti-
16 cle seventeen of the village law, from enacting a local law to alter or
17 permit alteration of an official's term limit.
18 § 6. Severability. If any provision of this act is held invalid or
19 ineffective in whole or in part or inapplicable to any person or situ-
20 ation, such invalidity or holding shall not affect, impair or invalidate
21 other provisions or applications of this act that can be given effect
22 without the invalid provision or application, and all other provisions
23 thereof shall nevertheless be separately and fully effective, and to
24 this end the provisions of this act are declared to be severable.
25 § 7. This act shall take effect immediately; provided however that

26 sections one, two, three and four of this act shall take effect January
27 1, 2025.