STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

Index No. 006581/2022

CHRISTOPHER RYAN; DUSTIN CZARNY; CHARLES GARLAND; WILLIAM KINNE; MARY KUHN; LINDA ERVIN; PEGGY CHASE; HELEN HUDSON; MICHAEL GREENE; MARK F. MATT; MAX RUCKDESCHEL; MARCIA FERGUSON; and CHRISTOPHER J. SHEPHERD

Plaintiffs,

vs.

RYAN MCMAHON; COUNTY OF ONONDAGA; ONONDAGA COUNTY LEGISLATURE; and ONONDAGA COUNTY BOARD OF ELECTIONS,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION BY DEFENDANTS TO DISMISS THE COMPLAINT IN ITS ENTIRETY PURSUANT TO CPLR 3211 (a) (5), (a) (7) and (a) (10)

Dated: September 8, 2022

Respectfully submitted,

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PRELIMINARY STATEMENT

Plaintiffs have commenced what they have characterized as a declaratory judgment action, seeking to invalidate maps created pursuant to the authority of the Onondaga County Charter and the Onondaga County Administrative Code for the purpose of reapportioning the Onondaga County legislative districts following the most recent U.S. Census.

Both the procedural and substantive challenges raised by plaintiffs to the maps are without merit for a number of reasons. The procedural challenges raised by plaintiffs in their first cause of action are untimely. While plaintiffs have fashioned their action as one seeking a declaratory judgment, their first cause of action is essentially a challenge to the procedures by which a local law was enacted and, therefore, could have been brought as an Article 78 proceeding. Since it was brought outside the four-month statute of limitations for an Article 78 proceeding, plaintiff's first cause of action is time barred and must be dismissed. The first cause of action also fails to state a viable claim as to the first set of maps at issue, the maps created by the Legislative District Revision Commission ("LDRC"), which was vetoed by the Onondaga County Executive and then supplanted by a second set of maps created by an appointee of the County Executive (the "Adopted maps"). Any issue with respect to the LDRC maps was thereby rendered moot.

The substantive challenge to the maps must be dismissed because of plaintiffs' failure to join all 17 of the Onondaga County Legislators, all of whom are necessary parties. Plaintiffs have specifically challenged the changes to the districts encompassing the City of Syracuse and the Towns of Salina, Geddes and Manlius. However, a change to the boundaries of any of the 17 legislative districts will absolutely and necessarily change the other boundaries. Each of 17 legislative districts is bordered by multiple other districts, all of whom will potentially be

adversely affected by any change to their borders. The Legislators for those districts will also be adversely affected by any change in the district's boundaries. Hence, all 17 Legislators are indispensable and necessary parties to this action. Plaintiffs' failure to include them as parties mandates the dismissal of the Complaint.

Finally, plaintiffs' claim for attorneys' fees lacks merit as a matter of law.

STATEMENT OF FACTS

Onondaga County is authorized to redistrict pursuant to Section 207 of the Onondaga County Charter, Administrative Code Section 2.17 and Municipal Home Rule Law ("MHRL") Section 34(4), which was enacted in 2021. Because Onondaga County operates under a charter form of government and its reapportionment plans are adopted pursuant to its charter and not Municipal Home Rule Law § 10(1)(a)(13)(a), that section is not controlling. See *Mehiel v. Cty. Bd. of Legislators of Cty. of Westchester*, 175 A.D.2d 109 (2d Dep't 1991).

The LDRC was convened pursuant to the provisions of the Onondaga County Charter and the County Administrative Code. Those documents call for the LDRC to consider the one person – one vote concept of recent federal court decisions. In addition, they require the LDRC to consider the equal protection clauses of state and federal constitutions and the applicable redistricting rules and guidelines, and to preserve local government lines as practicable.

MHRL § 34(4) states that

> any plan of districting or redistricting adopted pursuant to a county charter or charter law relating to the division of any county, except a county wholly contained within a city, 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:

The factors to be considered, in descending order of priority, are:

1. Where a redistricting plan includes only single-member districts, the deviation from the mean in population is not to exceed 5%.
2. Districts may not be drawn with the intent or result of denying or abridging 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.
3. Districts shall consist of contiguous territory;
4. Districts shall be as compact in form as practicable; and
5. Districts shall not be drawn for the purpose of favoring incumbents or particular candidates or political parties, should maintain the cores of existing districts and pre-existing political subdivisions and, to the extent practicable, should not divide villages, cities or towns unless they have more than 405 of a full ration for each district to be divided; and
6. Districts shall be formed so as to promote the orderly and efficient administration of elections.

The LDRC was properly appointed in accordance with Section 207 of the County Charter, which directs the County Legislature "to evaluate the existing county legislative districts for equity and representation in relation to population within six months after the publication of the results of . . . any federal or special population census . . ." Section 207 provides that within three months after its appointment, the LDRC is to "make recommendations, if necessary, in the form of a proposed local law as to changes in the boundaries of county legislative districts."

Plaintiffs concede that the County Legislature adopted the LDRC maps as a local law and that a public hearing was then held in compliance with the County Charter. (Compl. ¶ 53). Subsequently, the County Executive issued a veto memo, finding that the LDRC maps needed to be corrected to conform to an interpretation regarding MHRL § 34's requirement that the difference in population between the most and least populous districts not exceed 5% of the mean population of all districts. A second set of maps was created, the Adopted maps.

The Legislature called for a second public hearing, which was held on December 21, 2021. After that hearing, the Legislature adopted a local law reapportioning the districts in accordance with the Adopted maps and the County Executive approved that law.

Eight months later, on August 18, 2022, plaintiffs brought this lawsuit, raising both procedural and substantive challenges not only to the Adopted maps but also to the LDRC maps that were supplanted by the Adopted maps. The first cause of action raised procedural challenges to the enactment of both sets maps. The second cause of action challenged both sets of maps on substantive grounds, contending that they failed to comply with the substantive standards of the MHRL and the New York State Constitution.

In their first cause of action, as to the LDRC maps, plaintiffs have charged that: (1) the County Charter did not permit the Legislature to vote on the changes to the Legislative District boundaries that were proposed by the LDRC but, rather, upon submission of the LDRC maps to the County Legislature, the Legislature was required to hold a public hearing and then enact the LDRC maps into law; and (2) the County Executive lacked authority under § 207 of the County Charter to veto the LDRC maps or to direct the preparation of new maps.

As to the Adopted maps, plaintiffs charge in their first cause of action that they were procedurally defective in that the appointment by the County Executive of an agent to draft a new maps, which were ultimately adopted by the Legislature and signed into law, violated §§ 10 (1)(ii)(a)(13)(a) and 34 of the MHRL and Article III, Section 4 of the New York State Constitution.

In their second cause of action, plaintiffs challenge both sets of maps on substantive grounds, contending that they failed to comply with the substantive standards of the MHRL and the State Constitution in that they: (1) failed to consider the maintenance of the cores of existing

districts, political subdivisions and communities of interest; (2) were not as compact in form as practicable; and (3) were 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 diminish their ability to elect representatives of their choice. Plaintiffs claim that, consequently, this court "must adopt new constitutional maps with the assistance of a special master", citing *Harkenrider v. Hochul*[1], No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022. For the reasons set forth below, it is respectfully submitted that the Complaint should be dismissed in its entirety.

POINT I

PLAINTIFFS' FIRST CAUSE OF ACTION MUST BE DISMISSED AS TIME BARRED PURSUANT TO CPLR 3211 (a) (5) AND AS FAILING TO STATE A CLAIM PURSUANT TO CPLR 3211 (a)(7)

In their first cause of action, while inartfully pled, plaintiffs assert that both the maps produced by the Legislative District Revision Commission ("LDRC") and the Adopted maps are procedurally defective in that they failed to comply with the Constitutional procedures for redistricting County District maps and also because the process by which they were enacted violated both the Onondaga County Charter and provisions of New York's Municipal Home

[1] Defendants submit that the Complaint is subject to dismissal for the reasons stated herein (statute of limitations, failure to state a claim as to the LDRC maps and failure to name necessary parties) without considering the merits of their substantive challenges. Notwithstanding, even if the Court were to consider those challenges, it should be noted that placing the issue in the hands of a special master would not be the proper remedy but, rather, returning the task to the Legislature. *Harkenrider* involved mapping for statewide elections and was conducted under the provisions of the State Constitution, not a county charter. With three judges dissenting, the Court of Appeals in *Harkenrider* ordered the assistance of a special master to develop redistricting maps only because it found that "[t]he procedural unconstitutionality of the congressional and senate maps is, at this juncture, incapable of a legislative cure" because the "deadline in the Constitution for the IRC to submit a second set of maps has long since passed". No such impediment exists here.

Rule Law ("MHRL"). In that cause of action, plaintiffs seek judgment declaring that both sets of maps were "created in violation of procedural requirements of the Constitution and MHRL." Compl. ¶ 130. It is respectfully submitted that this cause of action must be dismissed for two reasons: (1) it is time barred; and (2) as to the LDRC maps, it fails to state a claim.

A. The First Cause of Action is Time Barred

Plaintiffs' first cause of action is directed against both the LDRC maps and the Adopted maps. Their Complaint alleges that the last action taken by defendants with respect to the LDRC maps was on November 22, 2021, when they were vetoed by County Executive McMahon. Compl. ¶ 56. The Complaint alleges that the last action taken by defendants with respect to the Adopted maps was on December 29, 2021, when the County Executive signed the local law enacting them. Compl. ¶ 89. This lawsuit was commenced on August 18, 2022. Because it was commenced more than four months after each of the two final determinations plaintiffs seek to challenge, it is time barred under CPLR 217.

Plaintiffs framed their pleading as a declaratory judgment action. However, it should have been brought as an Article 78 proceeding, since it seeks to challenge the final determination of a municipal body. In classifying a cause of action for statute of limitations purposes, the controlling consideration is not the form in which the cause of action is stated, but its substance. *Dreamco Development Corporation v. Empire State Development Corporation*, 191 A.D.3d 1444, 142 N.Y.S.3d 688 (4th Dep't 2021). When a proceeding has been brought as a declaratory judgment action, for which there is no specific statute of limitations, it is necessary to examine the substance of the claim to identify the relationship out of which it arises and the relief that is sought in order to determine which statute of limitations is applicable. *Holihan v. Town of*

Orangetown, 152 A.D.3d 747 (2d Dep't 2017); see, also, *Foley v. Masiello*, 38 A.D.3d 1201 (4th Dep't 2007); *Town of Webster v. Village of Webster,* 280 A.D.2d 931 (4th Dep't 2001).

While the general rule is that an Article 78 proceeding is not available to challenge the validity of a legislative act, "when the challenge is directed not at the substance of the ordinance but at the procedures followed in its enactment, it is maintainable in an article 78 proceeding." *Vill. of Islandia v. Cty. of Suffolk*, 46 Misc. 3d 1223(A) (Sup. Ct. Suffolk Cty. 2015), aff'd, 162 A.D.3d 715 (2d Dep't 2018). Conversely, "a declaratory judgment action is not the proper vehicle to challenge an administrative procedure, where judicial review by way of article 78 proceeding is available." *Greystone Mgt. Corp. v. Conciliation & Appeals Bd. of City of N.Y.*, 62 N.Y.2d 763, 765 (1984).

The Fourth Department has held that "if the claim could have been made in a form other than an action for a declaratory judgment and the limitations period for an action in that form has already expired, the time for asserting the claim cannot be extended through the simple expedient of denominating the action one for declaratory relief" quoting *New York City Health & Hosps. Corp. v. McBarnette,* 84 N.Y.2d 194 at 201 (1994).

Here, it is clear from a reading of the first cause of action of the Complaint that plaintiffs are challenging the procedures pursuant to which the Adopted maps and their predecessor, the LDRC maps, were drawn. Specifically, plaintiffs have alleged that: (1) "neither the procedure nor the equitable product of that procedure, as envisioned in the famers (sic) of County of Onondaga Charter, was achieved by the LDRC" (Compl. ¶ 102); (2) the County Charter did not permit the Legislature to vote on the changes proposed by the LDRC in its maps (Compl. ¶ 105); (3) the County Charter did not authorize the County Executive to veto the proposed local law (Compl. ¶ 108); (4) the defendants adopted procedures that violated "an amendment to the

Municipal Home Rule Law that was then pending in the New York State Legislature and which would make illegal many of the inequitable provisions of the proposed LDRC maps" (Compl. ¶ 114); and (5) the procedures followed with respect to the Adopted maps violated MHRL §§ 10 (1)(ii)(a)(13)(a) and 34 (4) and New York State Constitution Article III, Section 4 (Compl. ¶ 121).

In examining these allegations of the Complaint in order to determine the appropriate statute of limitations for plaintiffs' declaratory judgment claim, it is clear that "the parties' dispute can be, or could have been, resolved through a form of action or proceeding for which a specific limitation period is statutorily provided." *Matter of Dandomar Co. v. Town of Pleasant Val. Town Bd.*, 86 A.D.3d 83, 90 (2d Dep't 2011); accord *Matter of Save the Pine Bush v. City of Albany*, 70 N.Y.2d 193 (1987). Such being the case, that is the statute of limitations that must be applied. *Id.* When a challenge is directed at procedures followed in the enactment of a law, it is maintainable in an article 78 proceeding. *Save the Pine Bush,* 70 N.Y.2d at 202.

Here, the first cause of action of the Complaint is clearly a challenge to the procedures pursuant to which the LRDC maps and the Adopted maps were prepared and handled by defendants. The relief plaintiffs seek may therefore be had in an article 78 proceeding and, therefore, the four-month statute of limitations applies. See *P & N Tiffany Props. v. Village of Tuckahoe*, 33 A.D.3d 61, 66 (2d Dep't 2006), appeal dismissed 8 N.Y.3d 943 (2007). This is so "even when conduct inconsistent with a statute or the state constitution is alleged." *Rural Community Coalition v. Village of Bloomingburg*, 118 A.D.3d 1092, 1096 (3d Dep't 2014); Vill. of Islandia v. Cty. of Suffolk, 46 Misc. 3d 1223(A) (N.Y. Sup. Ct. 2015), aff'd 162 A.D.3d 715 (2d Dep't 2018).

A plaintiff may not take advantage of a longer statute of limitations merely by characterizing the action as one seeking that relief unless the facts alleged in the complaint disclose that the action actually falls within the alleged category. *Alyssa Originals, Inc. v. Finkelstein*, 22 A.D.2d 701 (2d Dep't 1964), aff'd, 24 N.Y.2d 976 (1969). Where, as here, plaintiffs' first cause of action challenges the procedural aspects of the preparation of the LDRC maps and the Adopted maps, the appropriate vehicle to raise that challenge is an Article 78 proceeding, and the four-month statute of limitations applies. Since the latest determinations by defendants alleged in the Complaint occurred in November of 2021 (LDRC maps vetoed) and December of 2021 (Adopted maps enacted), the first cause of action of the lawsuit commenced on August 18, 2022 was time barred and must be dismissed. See *Riverview Development LLC v. City of Oswego*, 125 A.D.3d 1417 (4th Dep't 2015).

B. As to the LDRC maps, the first cause of action fails to state a claim

CPLR 3211 (a) governs motions to dismiss and provides, in subsection 7, that "[a] party may move for judgment dismissing one or more causes of action asserted against him on the ground that *** the pleading fails to state a cause of action[.]" In *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137 (2017), the Court of Appeals outlined the standard of review applicable to a motion to dismiss brought under CPLR 3211 (a)(7):

> On a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), [w]e accept the facts as alleged in the complaint as true, accord plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory. At the same time, however, allegations consisting of bare legal conclusions...are not entitled to any such consideration. Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, of if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery. 29 N.Y.3d at 141–142 (Emphasis added)

Godfrey v Spano, 13 N.Y.3d 358, 373 (2009) ("Although on a motion to dismiss plaintiffs' allegations are presumed to be true and accorded every favorable inference, conclusory allegations--claims consisting of bare legal conclusions with no factual specificity--are insufficient to survive a motion to dismiss.") (citation omitted). Further, "factual claims which are either inherently incredible or flatly contradicted by documentary evidence ... are not presumed to be true on a motion to dismiss for legal insufficiency.") *O'Donnell, Fox & Gartner, P.C. v. R–2000 Corp.*, 198 A.D.2d 154 (1st Dep't 1993) (citation omitted). Here, it is respectfully submitted that plaintiffs' first cause of action must be dismissed with respect to the LDRC maps because those maps were rendered a nullity by the veto of the County Executive so that any challenge to them has been rendered moot.

The situation presented here is similar to that in the case of *Peconic Baykeeper, Inc. v. Suffolk County*, 17 A.D.3d 371 (2d Dept. 2005). *Peconic* was a hybrid Article 78 proceeding/declaratory judgment action brought to review a resolution by which the county legislature approved an insect control plan. The proceeding/action was dismissed as academic when the time period covered by the plan ended and a different plan was implemented. In discussing the issue of mootness the court in Peconic held that the mootness doctrine "precludes the courts from resolving disputes which, due to the passage of time or a change in circumstances, would not affect any substantial rights of the parties and would not have an immediate consequence for them", quoting *Matter of Dreikausen v Zoning Bd of Appeals of City of Long Beach*, 98 N.Y.2d 165 (2002). Thus, held the court, an Article 78 action must be dismissed as moot if the issue raised has become moot because of a change in circumstances. 17 A.D.3d at 371. Section 210 of the Onondaga County Charter provides that if the County Executive vetoes a local law, the Legislature has 45 days to override it by a two-thirds vote of

the members. Since no override occurred here, the veto had the effect of nullifying the LDRC maps. Thus, plaintiffs' challenge to the LDRC maps is moot.

Hensley v. Williamsville Central School Dist., 206 A.D.3d 1655 (4th Dep't 2022). *Hensley* was a hybrid Article 78/declaratory judgment proceeding challenging a guidance issued during the Covid-19 pandemic by the State Department of Health and Department of Education regarding social distancing in schools. After a judgment was issued, the challenged guidance was withdrawn, and the statutory scheme permitting the Governor to issue the emergency guidelines on which the Departments of Health and Education relied in promulgating the guidance was replaced. Those changes in circumstances rendered the case moot. In this case, the maps that had been the product of the LDRC were vetoed by the County Executive and replaced by the Adopted maps. To the extent plaintiffs seek to challenge the LDRC maps, their challenge was rendered moot by the fact that those maps were supplanted by the Adopted maps.

Further, this case does not fall within the narrow exceptions to the doctrine of mootness. In this regard, exceptions to the doctrine of mootness will be made only when three common factors are all present: there must be a likelihood of repetition, either between the parties or among other members of the public; the matter must typically evade review; and there must be a showing of significant or important questions not previously passed on. *William J. Kline and Son, Inc. v. Fallows*, 1984, 124 Misc.2d 701 (Sup. Ct. Montgomery Cty. 1984); see, also, *Gonzalez v. Blum*, 1983, 96 A.D.2d 1091 (2d Dep't 1983); *Herald Co., Inc. v. Board of Parole of State of N.Y.*, (Sup. Ct. Onondaga Cty. 1985), aff'd as modified on other grounds 125 A.D.2d 985 (4th Dep't 1986), aff'd 125 A.D.2d 1015 (1986). None of those factors is present here.

POINT II

THE SECOND AND THIRD CAUSES OF ACTION MUST BE DISMISSED FOR FAILURE TO NAME ALL OF THE MEMBERS OF THE ONONDAGA COUNTY LEGISLATURE, WHO ARE NECESSARY PARTIES, PURSUANT TO CPLR 3211 (a)(10)

Six of the named plaintiffs are members of the defendant Onondaga County Legislature (Christopher Ryan, Charles Garland, William Kinne, Mary Kuhn, Linda Ervin and Peggy Chase). Compl. ¶¶ 5, 7-11). Onondaga County has 17 legislative districts.

In their Complaint, plaintiffs assert that the Adopted maps improperly divided districts located within the towns of Geddes, Salina and Manlius and the City of Syracuse. Compl. ¶ 139. In addition, plaintiffs allege that the Adopted maps "failed to maintain the cores of existing districts, of pre-existing political subdivisions in the Towns of Geddes, Salina and Manlius, as well as the Villages of Solvay, Liverpool, Mattydale, and Lyncourt." Compl. ¶ 145. Plaintiffs further allege that the mapss created by defendants "disregarded protection of a racial minority (African Americans) diminishing the voting power of that community within the County of Onondaga as the County Charter, State Home Rule Law, and State and Federal Constitutions require." Compl. ¶ 157.

There were 12 exhibits attached to plaintiffs' Complaint when it was filed. Exhibits 1 and 2 were the LDRC maps and the Adopted maps. As shown on those maps, the Town of Geddes is bordered in part by the Towns of Onondaga, Camillus and Clay. The Town of Salina is bordered in part by the Towns of Clay, Cicero and DeWitt. The Town of Manlius is bordered in part by the Towns of Cicero, DeWitt and Pompey. Yet, the Legislators representing the bordering districts of those Towns were not named as parties to this action. Further, it is respectfully submitted that any potential impact of the redrawing of district lines will most likely affect not

only bordering districts but, in fact, *all* of the districts within the County, like a row of falling dominos. Such being the case, the Legislators representing all 17 districts will be affected by any change and are therefore necessary parties to this action.

An action for a declaratory judgment is brought to forever settle the rights of all interested parties, and consequently all persons who may be affected thereby must be joined as parties. *Sisters of The Resurrection, New York, Inc. v. Country Horizons Inc.*, 257 A.D.2d 729 (3d Dep't 1999); *Anderson v. Town of Lewiston,* 244 A.D.2d 965 (4th Dep't 1997); *Hausman v. Royal Ins. Co.*, 153 A.D.2d 527 (1st Dep't 1989); *Dobler v. Kiley*, 151 A.D.2d 542 (2d Dep't 1989).

"A court may and ordinarily must refuse to render a declaratory judgment in the absence of necessary parties." *J–T Assocs. v. Hudson Riv.—Black Riv. Regulating Dist.,* 175 A.D.2d 438, 440 (3d Dep't 1991). *J-T Assocs.* was a hybrid declaratory judgment/Article 78 proceeding where petitioner sought a declaration that the respondent Regulating District did not have the authority to issue permits over its property. While 27 permits were issued, only one permit holder was named in the lawsuit. The lower court granted a motion by the Regulating District to dismiss for failure to name the remaining permit holders and the Third Department affirmed, holding "[i]f petitioner were to obtain the declaration that it seeks, the property rights of other property owners, many of whom are not parties here, could and would be adversely affected without affording them the opportunity to be heard on the issue." 175 A.D.2d at 440-441. Similarly, in *Matter of Overhill Bldg. Co. v Delany*, 28 N.Y.2d 449 (1971), the Court of Appeals held that individual village trustees were necessary parties to an action for judgment declaring unconstitutional a legislative act of the village. See also, *National Merritt, Inc. v Weist*, 50 A.D.2d 817 (2d Dep't 1975) aff'd 41 N.Y.2d 438 (1977) (holding that the constitutionality of a

legislative act may only be decided in a declaratory judgment action in which the village trustees are necessary parties).

Applying these cases to the situation presented here, any change to the boundaries of the districts raised by plaintiffs will necessarily impact the boundaries of all of the districts, adjacent and otherwise. The Legislators representing all 17 districts will be potentially impacted by any decision made in this case. They must therefore be given an opportunity to be heard, since they may be adversely affected by the outcome of this action. The remaining Legislators who have not been named by plaintiffs as parties to the action are necessary parties in whose absence this matter may not be allowed to proceed. The second and third causes of action should be dismissed for failure to name all of the Onondaga County Legislators as parties to this action, which seeks a judgment that could have the effect of adversely affecting their district and the rights of voters residing within each district.

POINT III

PLAINTIFFS' CLAIM TO RECOVER ATTORNEYS' FEES MUST BE DISMISSED

In the Wherefore clause of Plaintiffs' Complaint, they seek an award of attorneys' fees. It is respectfully submitted that plaintiffs are not entitled to recover attorneys' fees under any circumstances, as a result of which this claim must be dismissed.

The general rule in New York is that attorneys' fees and disbursements are incidents of litigation, and a prevailing litigant cannot collect attorneys' fees from its opponent except when an award is authorized by agreement between the parties or by statute or court rule. See *A.G. Ship Maint. Corp. v. Lezak*, 69 N.Y.2d 1, 5 (1986); *City of Buffalo v Clement Co.*, 28 N.Y.2d 241, 262-263 (1971); *Mighty Midgets v Centennial Ins. Co.*, 47 NY2d 12, 21-22 (1979). The rule

is based upon the high priority accorded free access to the courts and a desire to avoid placing barriers in the way of those desiring judicial redress of wrongs. *Id.*

Here, there is no agreement between the parties, no statute and no court rule that would authorize a grant of attorneys' fees even if plaintiffs were to prevail. Accordingly, their claim for attorneys' fees must be dismissed.

CONCLUSION

Plaintiffs' first cause of action, although pled as a declaratory judgment claim, is in essence an Article 78 claim, since it challenges the procedural aspects of the enactment of election district maps as violative of the Onondaga County Charter, sections of the MHRL and the New York constitution. As such, the first cause of action must be dismissed as time barred, pursuant to CPLR 3211 (a)(5) since it was not brought within four months of the final determination by defendants. In addition, the first cause of action, as it purports to challenge the LDRC maps, must be dismissed for failure to state a claim, pursuant to CPLR 3211 (a)(7). The second and third causes of action must be dismissed based on plaintiffs' failure to name all of the Onondaga County legislators, who are necessary parties, pursuant to CPLR 3211 (a)(10). Finally, plaintiffs' claim to recover attorneys' fees must be dismissed as a matter of law since, even if

plaintiffs were ultimately to prevail, they would not be entitled to recover attorneys' fees absent a statute or agreement between the parties.

Dated: September 8, 2022

Respectfully submitted,

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