STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

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,

v. **Index No.: 006581/2022**

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

Defendants.

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION OF DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

This Memorandum of Law is submitted in support of Plaintiffs 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") opposition to Defendants' motion to dismiss the complaint. The following is a discussion demonstrating that Plaintiffs have properly commenced this action in the form of a declaratory judgment action against the Defendants and have "standings to seek declaratory relief as a qualified voter in the County" *Wright v. County of Cattaraugus*, 41 A.D.3d 1303, 1304 (4th Dept. 2007) (citing *Phelan v. City of Buffalo*, 54 A.D.2d 262, 265).

FACTUAL BACKGROUND

On or about October 1, 2021, the Republican Chair of the Onondaga County Legislature informed the Democratic Caucus of that body that the legislature would be voting pursuant to the Charter of the County of Onondaga, Section 207, to appoint a commission to evaluate and change the boundaries of the existing legislative districts in light of the results of the 2020 federal census. Once the census data is published, the Onondaga County Charter Section 207 specifically provides that the Legislature had "six months after the publication of the results of any federal or special population census" within which to activate the LDRC. Onondaga County Charter § 207.

Thereafter, on October 5, 2021, a vote was taken at the regular meeting of the Legislature in which, by a party line vote (11-6), the Legislature formed and activated the LDRC, pursuant to the County Charter § 207.

On October 13, 2021, at the first meeting of the LDRC, Republican members of the commission presented the Democratic members of the LDRC with a schedule that included 4 meetings and 4 public hearings as well as plan for the adoption of maps and the analyzing census data.

On October 15, 2021, the members of the LDRC received the first official publication of the census data from the Onondaga County Planning Agency. Thereafter, the LDRC Maps were submitted to the legislature to be enacted. (Hereinafter "LDRC Map")

The following day, on November 4, 2021, at the regularly scheduled Onondaga County Legislature, the Republican Chair of the County Legislature called for a special session of the Legislature to take place on November 12, 2021, to consider the proposal of the LDRC. In accordance with the County Charter, the Legislature conducted "a public hearing on the proposed changes" to the borders of the County Legislative Districts.

Thereafter, on November 19, 2021, the County Executive Ryan McMahon held a hearing on the redistricting process where all the members of the public who spoke opposed the maps.

On November 22, 2021, the County Executive Ryan McMahon issued a veto memo for the GOP maps passed on November 21, 2021, citing they were in violation of the Municipal Home Rule Law Section 34 because the law required that in the drawing of district boundaries, the final map "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."

In this case, the map was drawn by the LDRC, and accepted by the Onondaga County Legislature in the form of a local law, and was enacted as a local law.

The LDRC map adopted as a local law was defective in that the least populous district was **District 12**, with a population 26,734 which was a Republican District; and the most populous district was **District 15**, with a population of 29,137, which was a Democratic District. In the LDRC map, the mean population of all districts in the County of Onondaga was 28,030. Five percent of the mean of all districts is approximately 1,402. However, in the LDRC map, the difference between the most and least populous districts was 2,403. Therefore, in the LDRC map,

the difference between the most and least populous districts was 8.57%, which was in violation of the Municipal Home Rule Law and this subject to legal challenge.

The County Charter granted no authority to the County Legislature nor the County Executive to act in relation to the map drawn by the LDRC other than to hold a public meeting and then enact the local law. It is alleged that the County Legislature violated the clear language of the County Charter by having conducted a vote on the proposed law submitted by the LDRC.

Additionally, the maps submitted by the LDRC suffered from the fact that of the legislative districts, seventeen in all, six of the seven most populous districts were represented by Democratic Legislators, whereas of the remaining ten districts, which were the least populous districts, all ten of them were represented by Republicans.

The Legislature's act of submitting the proposed law to the County Executive was not authorized by the County Charter Section 207 which by its very terms required that following the conducting of a public meeting regarding the Change in Districts prepared by the LDRC, the Legislature is required to "enact" the local law and was granted no power to refer the matter to the County Executive.

The County Executive assumed the power to veto the Change-in-District, which had been enacted pursuant to the County Charter, when the Charter did not grant the Executive the power to act in relation to that proposed local law.

Neither County Legislature nor the County Executive had the power to act in relation to the LDRC's Change In Districts other than to hold a public hearing on the proposed changes. The County Charter is explicit in stating that following the hearing the Legislature "shall the enact a local law setting forth revised district boundaries…" The Legislature had the duty to "enact" the changes pursuant to the charter and then submit the new boundaries to the public in a "permissive referendum" at the next general election.

As such, it is alleged that the County Charter did not grant the Executive or his agents to perform the task granted exclusively to the LDRC to effect a Change-in-District which was defined in Section 207 of the Charter.

Upon information and belief, a county employee, Travis Glazier, thereafter prepared a new map of Legislative District boundary lines to address the violation of the Home Rule Law. Mr. Glazier performed this task even though he was not a member of the LDRC and that the LDRC had completed its work when it submitted its Change-In-Districts to the Legislature. Upon information and belief, Mr. Glazier completed the task of preparing his map on or about December 10, 2021, and thereafter, provided a Map to the County Legislature. (Hereinafter, referred to as the "Glazier Map")

The Glazier map contained multiple defects. Chief among those defects is that fact that of the (17) seventeen legislative districts depicted on the Glazier map, five of the six most populous districts were represented by Democratic Legislators, whereas only one of the six was represented by Republicans. In the Glazier map, of those most populous districts is the 16th District, which was also the district with more black citizens than any other district.

This defect is in direct conflict with the Onondaga County Charter which requires the change in district boundaries apply the "one-person, one vote" concept and is made even more egregious in that of all the citizens of the County of Onondaga, it is the African American community that has suffered in the Glazier map with the largest decrease in the weight of their votes.

On December 21, 2021, a hearing was held. Immediately after the hearing, on the same day, the Glazier map passed into law on a vote of 9-8 with all 6 Democrats and 2 GOP voting against the maps.

On or about December 29, 2021, the County Executive signed the local law enacting the Glazier Maps as new district boundaries. Both the LDRC and Glazier maps were placed into the form of a local law and were enacted into law by the Onondaga County Legislature.

Both local laws violated unconstitutionally impacted the voting rights of African American citizens of the County of Onondaga, and failed to comply with New York states Home Rule Law by drawing district boundaries that disproportionately diminishing the voting power of democratic party voters, dividing communities of interest, unnecessarily dividing citizens who had shared political interests and in violating the principle of one person one vote.

As a result, the Plaintiffs' complaint alleging the above defects was filed as a declaratory judgment action challenging unconstitutional legislative acts of the Onondaga County Legislature in having enacted these local laws.

ARGUMENT

I. Plaintiffs' First Cause of Action Is Properly Commenced As a Declaratory Judgment Action, And Is Not Appropriate Under Article 78 Proceeding

A. Plaintiffs' First Cause of Action Challenges a Legislative Act

It is well settled that "the proper procedural vehicle for challenging a legislative act is a declaratory judgment action." *Wright v. County of Cattaraugus,* 41 A.D. 3d at 1304 (citing *New York City Health & Hosps. Corp. v. McBarnette,* 84 N.Y.2d 194, 201; *Matter of Save the Pine Bush v. Albany*, 70 N.Y.2d 194, 202; *American Ind. Paper Mills Supply Co., Inc. v. County of Westchester,* 16 A.D.3d 443, 44; *Matter of Swanick v. Erie County Legislature*, 103 A.D.2d 1036, 1037) Black's Law Dictionary defines "legislative" as "making or giving laws; pertaining to the function of law-making or to the process of enactment of laws", and as such, a legislative act pertains to the enactment of laws. *Black's Law Dictionary* 810 (5th Ed.)

In this instant matter, the County of Onondaga passed a law adopting legislative district maps. At its core, the plaintiffs' action is challenging the validity of that law on two grounds. First,

the law as expressed in the adopted maps violates provisions the New York's Home Rule Law which preempts the local law. Secondly, the law was adopted a manner that was outside of the authority granted to the legislature in the county charter and is thus *ultra vires* and void.

The plaintiff challenges the law's validity in a declaratory judgement proceeding because a challenge to a legislative act must be maintained in an action for declaratory judgement. It is beyond dispute that the enactment of that enacted law qualifies as a "legislative act", and therefore can only be challenged by way of a declaratory judgement action. In the case of *Sheehan v. City of Syracuse*, 137 Misc.2d 438 (Sup. Ct. Onondaga Cnty., 1987), Justice Murphy held that laws are synonymous with statutes and that "a statute is defined as a 'legislative act' being the result of the combined action of both the Legislature and the Governor on a bill." In *Sheehan*, Justice Murphy ruled in a declaratory judgement action that local legislation had been pre-empted by the state legislature and therefore the local law failed. *Id*. Justice Murphy recognized that the passage of a law is by definition a 'legislative act' and that it is properly challenged in a declaratory judgement action.

In an analogous case, *Wright v. County of Cattaraugus*, 41 A.D.3d 1303 (4th Dept. 2007), Plaintiff commenced an action seeking a declaration that the adoption of local law by defendant county legislature is invalid as the local law reapportioned defendant county and reduced the size of the legislature in violation of Municipal Home Rule Law. The court found that Plaintiff properly commenced the declaratory judgment action to challenge a legislative act, ruling that the proper procedural vehicle for challenging a legislative act is a declaratory judgment action. *Wright v. County of Cattaraugus*, 41 A.D.3d 1303, 1304 (4th Dept. 2007) (citing *New York City Health & Hosps. Corp. v. McBarnette,* 84 N.Y.2d 194, 200-201; *Press v. County of Monroe*, 50 N.Y.2d 695, 701-704; *Solnick v. Whalen,* 49 N.Y.2d 224, 229-232) The *Wright* case is directly on point in that addresses itself squarely to the statute of limitations question raised by the defendant in this case.

In *Wright*, defendants argued that the plaintiff's challenge of the county's redistricting plan should have been brought as an article 78 proceeding subject to the four-month statute of limitations found in CPLR 217. In response, plaintiff argued the proper vehicle for raising a complaint that the county legislature's adoption of a redistricting plan without authority was properly challenged be means of a declaratory judgement action, and is thus timely. The *Wright* court concluded "plaintiff has standing to seek declaratory relief, 'as a qualified voter in the county'. *Id*.

The *Wright* case has been cited as authority for the proposition that a 'declaratory judgement action [is]…the proper vehicle to challenge a legislative act." *Yatauro v. Mangano,* 32 Misc.3d 838, 845 (Nassau Cnty., 2011) (citing *Wright v. County of Cattaraugus*, 41 A.D.3d 1303 (4th Dept. 2007)). In *Yatauro,* Justice Jaeger, ruled in an action challenging the authority of the county legislature to enact a redistricting plan inconsistent with the county charter. To the extent that the legislature had acted inconsistent with the county charter, its enacted local law was 'null and void.' The decision of Justice Jaeger in *Yatauro* was challenged and made its way to the Court of Appeals. The Court of Appeals affirmed the decision of Justice Jaeger finding that he had " properly declared that Local Law No. 3–2011 [was] in accord with Nassau County Charter § 112, **but that its implementation is null and void** in connection with the November 8, 2011 general election for lack of compliance with Nassau County Charter §§ 113 and 114." *Yatauro v. Mangano*, 17 N.Y.3d 420, 425 (2011)(emphasis added).

In *Yatauro* the Court of Appeal described the plaintiff's action "seeking a declaration that the implementation of Local Law No. 3–2011 in relation to the November 8, 2011 general election [was] null and void for lack of compliance with the Nassau County Charter' as follows:

> Supreme Court concluded that petitioners were entitled to partial relief because there was "no basis in the Nassau County Charter itself, the legislative intent, the legislative history, or the established past practice of the Legislature" for adjusting the district lines prior to the 2011 general election (32 Misc.3d 838, 852, 927

> N.Y.S.2d 868 [2011]). The court determined that sections 112 through 114 of the Nassau County Charter required that a three-step redistricting process be implemented before new lines are adopted for the 2013 general election. The court declared that adoption of Local Law No. 3–2011 was in accord with Nassau County Charter § 112, but that its implementation for use in the 2011 general election was ineffective for lack of compliance with Nassau County Charter §§ 113 and 114. The court further declared that new district lines based on the 2010 census data would not go into effect until the 2013 general election and therefore the 2011 general election would be held based on the district lines designated in Local Law No. 2–2003 of the County of Nassau.

Yatauro v. Mangano, 17 N.Y.3d at 425. The language in *Yatauro* describing the plaintiff's declaratory judgement action is directly comparable to the challenge of the plaintiffs in this case. The plaintiffs in this case also seek an order declaring the enactment of a local law regarding redistricting by the county legislature to be a nullity because of its non-compliance with the county charter.

In this pending motion, Defendants argue that the Plaintiffs' first causes of action focuses on procedural defects of a manner in which the County legislature enacted its local law describing the boundaries of new legislative district. Defendants further claim, because such defect is procedural in nature, the challenge must be brought pursuant to Article 78 with a short statute of limitation. This argument is an error. Both the Fourth department and Court of Appeals, in *Yatauro* have announced an attempt by the county legislature to enact a local redistricting law in violation of county charter is a legislative act properly challenged in the declaratory action.

In determining what is and what is not a legislative act of a county legislature, it is important to determine what the legislature was attempting to accomplish. When a legislature is enacting a law, it is engaged in legislative act. As discussed more fully below, if a legislature attempts to enact a law in a manner inconsistent with the authorities vested to the legislature as prescribed in the County Charter is an *ultra vires* act.

B. Any *ultra vires* enactment of any local law is a legislative act

It is submitted that the county charter defines the 'metes and bounds' by which the county legislature can act in relation to a redistricting plan. The authority of the legislature is defined by the plain language of the County Charter. Any legislative act (such as the enactment of a local law) that is made outside of the prescribed authority of the legislature and is an *ultra vires* act. An *ultra vires* act is aptly described as being 'full of sound and fury, signifying nothing.'

It is beyond cavil that where a citizen challenges the adoption of a local law redefining legislative districts, the proper vehicle for that challenge is a declaratory judgement action. In an analogous case, plaintiffs challenged the declaration of redistricting plan enacted by the Niagara County Legislature in violation of the Municipal Home Rule law. In that case, the Court wrote "at the outset, we note that this action, framed as a request for CPLR article 78 relief, should be converted to a demand for declaratory judgment." *Tylec v. Niagara County Legislature,* 175 A.D.2d 676, 676 (4th Dept. 1991) (citing CPLR 103(c); *Kamhi v. Town of Yorktown,* 141 A.D.2d 607, 609 (2nd Dept. 1988)

Furthermore, in *Goldestein v. Rockefeller*, citizens and voters of the Town of Irondequoit challenged that the apportionment of members of the Monroe county Board of Supervisors failed to comply with the so-called 'one person, one vote' principle. In *Goldstein*, the Court found that "an Article 78 proceeding is not maintainable against a legislative body to test the validity of its legislative acts. Clearly, such a proceeding does not lie to review action which is legislative in nature or to compel a legislative body to enact particular legislation." *Goldestein v. Rockefeller*, 45 Misc. 2d 778, 780 (Sup. Ct. Monroe Cnty, 1965).

In this instant action, Plaintiffs' first cause of action clearly challenges the legislative act of enacting redistricting maps by means of a local law. ("Unconsolidated Laws § 4221 likewise authorizes "any citizen" of the state to **seek judicial review of a legislative act** establishing

electoral districts." *Harkenrider v. Hochul*, No. 60, 2022 WL 1236822, at *4 (N.Y. Apr. 27, 2022)) (emphasis added).

More specifically, here, the county charter mandated that any change in the districts be done in strict accordance with Section 207 of the charter and that such changes be memorialized "in the form of a proposed local law" that the county legislature upon receipt of the proposed law "shall then a local law setting forth the revised district boundaries…" As elaborated in the complaint, the enactment of the local law was defective in this case because the legislature acted beyond its authority in accepting revised district boundaries that had been drafted by an agent of the county executive rather than by a commission appointed by pursuant to the county charter section 207. Therefore, the district boundaries currently enacted, were enacted outside the authority granted to the legislature in the county charter and are thus *ultra vires* and void.

In *Kamhi v. Town of Yorktown,* 74 N.Y.2d 423 (1989), the Court of Appeals noted that when a law-making body acts without a grant of authority to create a law the "attempt to exercise such authority is *ultra vires* and void." In *Kamhi,* the town argued as the defendants in this case have, that the plaintiffs' action should have been brought by means of an article "78 proceeding, which was time-barred." That argument was accepted by the trial court in *Kamhi* but later reversed by the Appellate Division and converted to a declaratory judgement action. The decision of the Appellate Division was thereafter affirmed by the Court of Appeals.

The second point of attack on the redistricting boundaries enacted by the county legislature was that the boundaries enacted were both unconstitutional and in violation of the most recent amendments to the Municipal Home Rule Law. The challenge of the local law as violative of state law and the constitution can only be accomplished in a declaratory judgement action.

In short, an *ultra vires* act is a procedural defect of legislative dimensions.

C. Plaintiffs' First Cause of Action Challenges a Constitutionality of Legislative Enactments

"Municipal home rule in this State has been a matter of constitutional principle for nearly a century. Article IX of the State Constitution declares that effective local self-government and intergovernmental cooperation are purposes of the people of this State, and it directs the Legislature to provide for the creation and organization of local governments so as to secure the rights, powers, privileges and immunities granted by the Constitution." *Kamhi v. Town of Yorktown*, 74 N.Y.2d 423, 428 (1989) (Citing N.Y. Const., art. IX, §1). More specifically, Municipal Home Rule Law § 10(1)(ii)(a)(13) was enacted as part of a legislative scheme designed to provide equality in voting and to ensure effective local redistricting. *Id.* (Citing memorandum and supplemental memorandum, 1969 N.Y.Legis.Ann., 242-246)

Here, the Constitutional voting rights of each Plaintiffs have deprived and adversely affected as a result of Defendants' promulgation of new legislation in which the boundaries of the proposed districts.

The enacted local law illegally created district boundaries in which the seventeen (17) legislative districts depicted on the map defining the district boundaries were drawn in such a way that, five of the six most populous districts were represented by Democratic Legislators, whereas only one of the six was represented by Republicans. That disproportionate distribution wrongfully dilutes the votes of those living in Democratic districts and inflates the power of votes in Republican Districts.

Additionally, most populous districts in the county is the 16th District, which was also the district with more black citizens than any other district thus diluting the power of the votes of black citizens as compared to white citizens. This defect is in direct conflict with the Onondaga County Charter, the Home Rule Law, and the Constitution, which requires the change in district boundaries

apply the 'one person, one vote' concept and is made even more egregious in that of all the citizens of the County of Onondaga, it is the African American community that has suffered in the enacted map with the largest decrease in the weight of their votes.

Additionally, effective October 27, 2021, the New York State Legislature amended MHR Law Sections 10(1)(ii)(a)(13)(a) and 34(4) requiring a plan of redistricting comply with the five (5) substantive standards outlined in the law. Here the enacted law and maps, failed to comply with three (3) substantive standards: 1) "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…" MHRL §§ 10(1)(ii)(a)(13)(a)(v); 34(4)(e) (Emphasis added); 2) "Districts shall be as compact in form as practicable" MHRL §§ 10(1)(ii)(a)(13)(a)(iv); 34(4)(d); and 3) "District 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" MHRL §§ 10(1)(ii)(a)(13)(a)(ii); 34(4)(b). It is submitted that the enacted local law in question violated all of those provisions.

Additionally, the New York Constitution Article III, Section 4 gives this Court a full discretion to intervene following a violation of the law, and pursuant to the analysis and adoption of Article III, Section 4 of the New York Constitution by the Court in *Harkenrider*, this Court must declare the Maps created and signed into law by the Defendants County Legislatures were created in violation of substantive requirements of the Constitution and MHRL, and with its delegated authority by the Constitution, this Court must adopt new constitutional maps with the assistance of a special master. *Harkenrider v. Hochul*, No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022) Here, the defendants created a local law that entirely neglects considering keeping communities of

interest together as the Constitution requires and divided towns for the purpose of favoring the candidates of the Republican party as is set forth in the supporting affidavits of residents of the towns of Geddes, Salina, and Manlius. The affidavits attached to the complaint included witnesses who establish that the proposed districts are non-compact pairing unrelated communities to each other, thus, diminishing the political and voting power of democratic voters who reside in those proposed districts. The enacted law also creates districts that are irregularly shaped, includes numerous unnecessary political subdivisions splits, breaks up geographically compact communities of interests, and failed to create an appropriately redistricted legislative map.

The racial impact of the enacted law as it relates to the City of Syracuse were drawn with the intent of "abridging the equal opportunity of racial (African American)…minority groups to participate in the political process or diminish their ability to elect representatives of their Choice…" in that the Syracuse community located in the city's south side was divided and paired with unrelated communities so as to diminish the ability of the African American minority to elect representatives from the same community of interest to the Onondaga County Legislature.

The enacted law needlessly divides neighborhoods and communities of interest in the University area of Syracuse into three differing Legislative districts the citizens of that area living in close proximity to each other find their single community of interest to so divided as to discourage the "orderly and efficient administration of elections" as mandated by the Home Rule Law, such that citizens of that area would be hampered in understanding which of the three County Legislative Districts in which the reside thus hampering their ability to fully participate in elections of their representatives to the Onondaga County Legislature

Most importantly, Plaintiffs' expert political scientist opined that the study and measurement of proposed Maps reveal that the plans adopted by the Onondaga County Legislature

do not meet the criteria laid out in the subdivision 4 of section 34 of the Municipal Home Rule Law of New York, because they are less compact in form than is practicable.

D. The Doctrine of Mootness Does Not Nullify Plaintiffs' First Cause of Action

The defendant argues that "plaintiff's 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 a challenge to them has been rendered moot." (See Defendants' Memorandum of Law page 10) This argument is not strictly a legal argument, rather it a logical conclusion of the defendants' counsel. To the extent the defense has argued law and cited cases regarding mootness we accept the law cited as an accurate statement of the law but argue those legal principles have been misapplied to the facts of this case.

The conclusion claiming that the Plaintiffs' first cause of action is moot seems, on its face, to be the irresistible result of logic. However, the defendants' conclusion suffers from one inescapable flaw. The LDRC map was enacted as a local law by the County Legislature pursuant to Section 207 of the County Charter. Up to that point, the enactment procedure followed by County Legislature was entirely consistent with section 207 of the County Charter. It was veto exercised by the County Executive that was inconsistent with the County Charter, and thus the veto was an *ultra vires* act. The County Executive then assigned his agent Glazer to draft a new map which was presented to the County Legislature for enactment as a local law. The legislative action of the County Legislature enacting the Glazer map as a local law was also an *ultra vires* act.

In contrast to the veto of the LDRC map and adoption of the Glazer map, the enactment of the local law incorporating the LDRC map by the County Legislature was completely consistent with the enactment provisions of the County Charter. Should this court recognize the Executive's veto of the LDRC map was an *ultra vires* act, his veto will be rendered a nullity, the local law incorporating the LDRC map will be resurrected like Lazarus. Likewise, should this Court

recognize the enactment of the Glazer map as was also an *ultra vires* act, it too will be rendered a nullity leaving only the enacted LDRC map to be considered on its merits.

The Glazer map, which was enacted as a local law, is also a nullity by reason that its creation was not in accord with section 207 of the County Charter. The enactment of a local law incorporating the Glazer map is therefore an *ultra vires* act of the County Legislature because the proposed local law was not created in a manner that consistent with section 207 of the County Charter. Therefore, the Glazer map as incorporated into a local law was also a nullity.

To be clear, Section 207 of the County Charter mandated that when the LDRC submitted its maps in the form of a proposed local law, the Legislature was to hold a public hearing and then "enact a local law setting forth revised district boundaries." The only provision to challenge a local redistricting law is by a "permissive referendum." There is no provision in section 207 of the County Charter that permits the County Executive to exercise a veto of a local redistricting law because the legislature vested the power to reject a proposed local law respecting redistricting to the voters of the county.

Therefore, the Plaintiffs' first cause of action not rendered moot as claimed by the defense.

II. Plaintiffs' Second Cause of Action Includes All Necessary Parties

A. 17 Legislators Are Not Necessary Parties

Defendants argues that the Legislators who are currently representing all 17 Onondaga County districts that exist with the boundaries as defined following the last census are necessary parties to this pending action. Necessary parties are defined in CPLR § 1001 as, "[p]ersons who ought to be parties if complete relief is to be accorded between the parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants." The defendants do not claim the first clause of that definition applies in this case, rather the defense argues that the unnamed Onondaga County Legislators "might be inequitably

affected by a judgement" in the event that this court either accepts or invalidates the recently enacted Legislative District boundaries. However, there has yet to be an election in any of the newly created legislative districts.

To understand when it is necessary to name an additional party, the case of *Hudson River Sloop, Inc. v. Town of Coeymans,* 144 A.D.3d 1274 (3d Dept. 2016), is instructive. In *Hudson River* there was a change in the zoning of a neighborhood from residential use to industrial use. The party opposing that change argued for joinder of every property owner whose property interests may be affected by the ordinance. The *Hudson River* court rejected that demand and reasoned that a property owner in the affected area is a necessary party, only when the owner had already obtained an approval under the challenged ordinance. In contrast, no person currently sits as county legislator for any of the newly created districts.

In *Hudson River,* it was only those who had a presently existing development approval who could potentially suffer *actual prejudice* by annulment of the ordinance. The *Hudson River* court recognized the need to limit the parties to those who might suffer actual injury, and who are presently in possession of an interest which might be affected. Here, there is no pending election to the redefined Legislative Districts. There are no current candidates for those offices. No person who might in the future run in those yet unoccupied seats can be identified with any certainty, and it is therefore, speculative in the extreme to suggest that all of the currently serving county legislators will be running in future elections for the newly created legislative district offices.

In this instant motion, Defendants argue that the Seventeen (17) individual members of the Onondaga county legislature should have been named in the complaint in their individual capacity because they and each of them have an interest in competing in future elections in the proposed districts. The argument that these individuals are necessary parties suffers from a fundamental flaw and misunderstanding of the word 'necessary'. To say that someone is a necessary party is to say

that they have a present tangible interest the outcome of this lawsuit that requires their participation. However, in this case, the individual members of the Onondaga county legislature are in fact only theoretically interested in the newly drawn districts. All of the individual members of the legislature are already elected to fill their posts in the currently existing districts as created following the last census. The newly created districts are not identical to the previously created districts and there is no way to determine who might be candidates for the newly created districts. Although it is certainly possible that one or more of the currently serving county legislators might choose to run in the next election, there is no present evidence that any of them will run to set your office.

B. Failure to Join Necessary Party Does Not Warrant Dismissal

Although Defendants seek to dismiss the complaint for failure to name all of the Onondaga County Legislatures as parties to this action, failure to join necessary party does not warrant dismissal, but a proper remedy is joinder of necessary parties. See, *Red Hook/Gowanus Cahmber of Com. V. New York City Bd. Of Standards & Appeals,* 5 N.Y.3d 452 (2005); *Farrell v. City of Kingston*, 156 A.D.3d 1269 (3rd Dept. 2017).

In this instant matter, the statute of limitation for the filing of a declaratory judgement action is years from expiring and more importantly there is no election for the newly defined districts until the 2023.

Here, no facts have been plead by the Defendants or otherwise appear in this record which would establish that prejudice or unnecessary delay would result in the prosecution of this lawsuit by the joining of the 17 Legislators as party Defendants in the case. As such, in the event this Court finds that the Legislators representing all 17 districts are, in fact, necessary parties, Plaintiffs respectfully requests for a leave to join the necessary party.

III. Plaintiffs Are Entitled to Recover Attorneys' Fees Under 42 U.S.C. § 1988

As a general rule of thumb, Plaintiffs agree that attorneys' fees are not recoverable absent a contractual or statutory liability, e.g. (1) when the litigation creates a benefit to others; and (2) when the opposing party's malicious act cause a person to incur legal fees. *Harradine v. Bd. of Sup'rs of Orleans Cnty.,* 73 A.D.2d 118, 122 (4th Dept. 1980) However, when the private citizen take action as "private attorney general", and the fact of such action is premised upon a constitutional claim, New York State courts have found that attorneys' fees may be recovered. *Id.* at 126.

According to the Fourth Department, New York State courts recognized the applicability of section 1988 in actions brought to enforce section 1988. *Harradine v. Bd. of Sup'rs of Orleans Cnty.,* 73 A.D.2d 118, 126 (4th Dept. 1980) The *Harradine* Court further noted that "the policy behind section 1988 which is to encourage the private citizen to take action as a "private attorney general", and the fact this action is premised upon a constitutional claim, we conclude that attorney's fees may be recovered in this context pursuant to section 1988 in a state court. Plaintiff's cause of action is embraced within the spirit of section 1983…" *Id.* Furthermore, Section 1988 extends to cases alleging statutory violation under section 1983 as well as constitutional violation. *Id.* 127 (citing *Hutto v. Finney*, 98 S. Ct. 2565)

In this pending matter, as pointed out in the argument 1(C) above, Plaintiffs' Complaint strongly makes out an argument for the violation of Constitutional protection of the voting rights of citizens to have a 'one person, one vote' regardless of race or party affiliation. Accordingly, individual Plaintiffs commenced this present action under individual capacity as a citizen of the County of Onondaga, is acting as "private attorney general" to protect the Constitutional voting rights of citizens of the County of Onondaga. As a result, in the event Plaintiffs prevail on the issue of Constitutional deprivation of voting rights, attorneys' fees are recoverable in this action.

CONCLUSION

Based on the foregoing, it is respectfully requested that this Court issue an order denying the Defendants motion in its entirety, and granting such further and different relief this court deems just and proper.

Dated: October 31, 2022

/s/ Joseph Cote

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CERTIFICATION PUSUANT TO RULE 202.8-b

Pursuant to Uniform Rules for the New York State Trial Courts Rule 202.8-b, Joseph S. Cote, III, Esq. makes the following statement:

According to Microsoft Word's word-count function, this document contains 6,201 words excluding the parts of the documents exempted by 202.8-b(b).