

STATE OF NEW YORK  
SUPREME COURT ONONDAGA COUNTY

**DECISION AND ORDER**

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

Index No: 006581/2022

Plaintiffs,

v.

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

Defendants.

BEFORE: HON. JOSEPH E. LAMENDOLA, JSC

Plaintiffs commenced this action against Defendants asserting that 1) the procedures followed in the creation of certain redistricting maps violated Municipal Home Rule Law ("MHRL"), the Onondaga County Charter, and Article III of the New York State Constitution; 2) the redistricting maps were substantively unconstitutional, failing to comply with the standards required by the MHRL and New York State Constitution; and 3) seeking declaratory judgment that the redistricting maps are invalid and to adopt new maps with the assistance of a special master.

In October of 2021, pursuant to Onondaga County Charter, a six-member Legislative District Revision Commission ("LDRC") was formed by the Onondaga County Legislature for the purpose of reviewing the 2020 census data and the preparation of redistricting maps necessary to achieve equitable representation in light of population changes. Plaintiffs allege that the LDRC was hastily formed, meetings

were held in a manner that excluded members of the minority party, and the redistricting maps prepared by the LDRC were done so without the input of the minority party commission members. After the Legislature passed the LDRC redistricting maps the County Executive vetoed the maps citing violation of MHRL's requirement that "the difference in population between the most and least populous district shall not exceed five percent of the mean population of all districts." Plaintiffs allege that although the County Executive recognized the substantive violation of MHRL of the LDRC maps, he had no authority to veto the proposed law. Thereafter, an employee of the County, Travis Glazier, prepared a new redistricting map which was enacted by the Legislature immediately following public hearing by a vote of 9-8. Plaintiffs allege that the Glazier map is both constitutionally flawed, violating the one-person, one-vote concept, and was created without authority. More specifically, the County Charter dictates that only the LDRC, composed of six members of the Onondaga County Legislature, may propose redistricting maps/legislation. There exists no authority by which a non-LDRC member would be permitted to propose a redistricting map, especially a member of the Executive branch.

Presently pending before the Court is Defendants' pre-answer motion to dismiss pursuant to CPLR 3211. In their motion, Defendants seek: 1) dismissal of Plaintiffs' first cause of action as time barred pursuant to CPLR 3211 (a)(5); (2) dismissal of the second and third causes of action for failure to name necessary parties pursuant to CPLR 3211 (a)(10); and (3) dismissal of the Plaintiffs' claim for attorneys' fees. Plaintiffs oppose the motion.

Defendants argue that the first cause of action must be dismissed as untimely as, although framed as a declaratory judgment action, it sounds in the nature of an Article 78 special proceeding which requires commencement within four-months of the final municipal determination. It is uncontroverted that the last action taken by the Defendants with respect to the redistricting maps occurred on December 29, 2021, when the County Executive signed the local law enacting the Glazier redistricting map. The present action was commenced on August 18, 2022, more than eight months later. Defendants assert that the first cause of action seeks to challenge the procedures by which both redistricting maps were created and is therefore subject to the same statute of limitations as would be applicable to an action brought pursuant to CPLR 7803, regardless of whether Plaintiffs present the claim as one seeking declaratory judgment. CPLR 7803(3) provides for actions brought to determine “whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion...”

“In order to determine the Statute of Limitations applicable to a particular declaratory judgment action, the court must ‘examine the substance of that action to identify the relationship out of which the claim arises and the relief sought.’ If the court determines that the underlying dispute can be or could have been resolved through a form of action or proceeding for which a specific limitation period is statutorily provided, that limitation period governs the declaratory judgment action.” *Save the Pine Bush, Inc. v. Albany*, 70 NY2d 193, 202 [1987] (*internal citations omitted*)

Since a claim seeking declaratory judgment is not subject to a particular statute of limitations, we need examine the nature of the allegations to determine the proper time frame, i.e. if “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.” *Mtr. of Dandomar Co. v. Town of Pleasant Val.*

*Town Bd.*, 86 AD3d 83, 90 (2<sup>nd</sup> Dept., 2011). Where, as in the present action, a claim seeks to challenge the procedure or manner by which legislation is prepared, an Article 78 proceeding may be maintained and its four-month statute of limitations would apply. In essence, a party may not extend the applicable statute of limitations merely by so framing the relief requested as to avail itself of a longer statute of limitations. As a result, the allegations with respect to the LDRC maps and subsequent Glazier maps must be evaluated separately, as set forth below.

Plaintiffs argue, correctly, that the proper procedural vehicle for challenging a legislative act is by way of declaratory judgment. The question before the Court is then, whether the allegations set forth in the first cause of action are legislative or procedural in nature. The distinction hinges on whether the procedure in enacting legislation is being challenged, or the validity of the local law itself. *Wright v. County of Cattaraugus*, 41 AD3d 1303 [4<sup>th</sup> Dept., 2007]

With respect to the LDRC maps, it is clear from the allegations set forth in the first cause of action, that the Plaintiffs are objecting to the procedures or methodology by which the maps and corresponding legislation were enacted. There is no legislative act identified with respect to the first maps. The Onondaga County Legislature was charged with the responsibility of enacting the Local Law containing the redistricting maps. They were therefore authorized to pass the LDRC maps. "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." *Mtr. of Save the Pine Bush*, 70 NY2d 193 [1987] Plaintiffs

are inexplicably arguing that the Legislature was not authorized to “vote” but required to enact the LDRC maps as local law. The only alleged unauthorized act set forth by Plaintiffs with respect to these first maps was the County Executive’s veto. However, Plaintiffs fail to address §210 of the Onondaga County Charter which provides that within 10 days following the passage, the “County Executive *shall* have power to veto *any* local law” passed by the legislature. Plaintiffs point to no provision within either §210 or §207 of the County Charter, or elsewhere, that would impinge upon the County Executive’s authority to veto the LDRC local law legislation.

As a result, Defendants are entitled to dismissal of the first cause of action as it applies to the LDRC maps/legislation, as such procedural claim is untimely.

Turning to the Glazier redistricting maps, the analysis is quite different. Plaintiffs’ argument in the first cause of action with respect to these second maps challenge the validity of the maps/legislation itself. The Plaintiffs have set forth a cognizable legal action alleging that the Defendants impermissibly delegated the creation of the redistricting maps/legislation to the Executive branch, in violation of statutory and constitutional mandates. More simply put, neither the County Executive nor his agent were authorized to create, prepare, and/or submit proposed redistricting maps to the Legislature. Nor was Legislature authorized to delegate that duty to the Executive branch or enact those unauthorized redistricting maps/legislation. As such, Plaintiffs’ allegations contained within the first cause of action are properly pled as a declaratory judgment action. Further, such a challenge to legislative acts is not the proper subject for an Article 78 proceeding, and therefore not subject to the four-month statute of

limitations applicable thereto. The Court finds those allegations to be timely commenced, and Defendants' motion to dismiss the first cause of action with respect to the Glazier maps must be denied.

Defendants next argue that the second and third causes of action must be dismissed pursuant to CPLR §3211(a)(10) as Plaintiffs have failed to join the Legislators of all 17 of the Districts in Onondaga County, who are alleged to be necessary parties. Defendants argue that as declaratory judgment is brought to "forever settle" rights, all parties who might be affected must be joined as parties. In support, Defendants cite *Mtr of Overhill Bldg. Co. v. Delany*, 28NY2d 449 [1971] wherein the Court of Appeals held that in a declaratory judgment action alleging an unconstitutional legislative act, all individual village trustees were necessary parties. (see also, *Nat'l. Merritt, Inc. v. Weist*, 50 AD2d 817 [2<sup>nd</sup> Dept., 1975] *aff'd* 41 NY2d 439 [1977])

Plaintiffs argue that for a party to be considered a necessary party in a redistricting action, they must have a present tangible interest in the action. They argue that as no elections are currently pending, and there has yet to be an election in any of the newly created legislative districts, there is no tangible interest to protect. The individual legislators are in fact only theoretically interested in the newly drawn districts, and as there is no way to determine who the candidates might be in the newly created districts it is difficult to assess what present tangible interest is at stake. The Court agrees and sees no purpose to be achieved in joining all 17 legislators other than creating unnecessary delay. There are no "forever" rights at issue, as redistricting is a recurring byproduct of the ever changing Census data. The newly formed districts do

not have representatives to be joined as parties who might arguably suffer some harm by being excluded from the present controversy.

Defendants finally argue that Plaintiffs' claim submitted in the ad damnum clause seeking recovery of attorneys' fees must be dismissed as such fees are available only if authorized by statute, court rule, or contract, none of which, Defendants argue, are present in the matter at bar. In the Court's view, the issue of attorneys' fees raised in this pre-answer motion would be best suited to be resolved in the context and through the lens of a summary judgment motion.

Accordingly, it is

**ORDERED**, that Defendants' motion to dismiss the first cause of action as time barred pursuant to CPLR 3211(a)(5) is **GRANTED IN PART** as it relates to the LDRC maps/legislation; and it is further


**ORDERED**, that Defendants' motion to dismiss the first cause of action is **DENIED IN PART** as it relates to the Glazier maps/legislation; and it is further

**ORDERED**, that Defendants' motion to dismiss the second and third causes of action for failure to name necessary parties pursuant to CPLR 3211(a)(10) is **DENIED**; and it is further

**ORDERED**, that Defendants' motion to dismiss the Complaint for failure to state a claim as to the LDRC maps pursuant to CPLR 3211(a)(7) is **DENIED**, and it is further

**ORDERED**, that Defendants' motion to dismiss Plaintiffs' claim for attorneys' fees is **DENIED**.

Dated: January <sup>11<sup>th</sup></sup>, 2023



HON. JOSEPH E. LAMENDOLA, JSC



**PAPERS CONSIDERED:**

1. Notice of Motion, filed on September 8, 2022 (NYSCEF # 15).
2. Attorney affirmation in support (Carni), filed September 8, 2022 (NYSCEF # 16).
3. Attorney affirmation in support (Durr), filed September 8, 2022 (NYSCEF # 17).
4. Memorandum of Law, filed on September 8, 2022 (NYSCEF # 18).
5. Attorney affirmation in opposition, filed on October 31, 2022 (NYSCEF # 24).
6. Memorandum of Law, filed on October 31, 2022 (NYSCEF # 25).
7. Reply Affirmation, filed November 15, 2022 (NYSCEF # 26).
8. Memorandum of Law in Reply, filed November 15, 2022 (NYSCEF # 27).