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MATTHEW ROBERT LEMBKE

MacDonald, Kenneth

County of Monroe  
Monroe County Legislature  
Monroe County Board of Elections

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MONROE COUNTY CLERK



STATE OF NEW YORK SUPREME COURT  
COUNTY OF MONROE

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KENNETH MACDONALD,

*Plaintiff,*

—vs—

INDEX NO.  
E2023002165

AFFIDAVIT

COUNTY OF MONROE, MONROE COUNTY  
LEGISLATURE, AND MONROE COUNTY BOARD  
OF ELECTIONS,

*Defendants.*

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STATE OF NEW YORK )  
COUNTY OF MONROE ) SS.:

RACHEL BARNHART, being duly sworn, deposes and says, that:

1. I am a resident of the City of Rochester, County of Monroe, and State of New York.

2. I am a Democratic Monroe County Legislator representing the 21st Legislative District, first elected in 2019. I was a broadcast journalist for eighteen years and now work for a national nonprofit in public relations. I obtained an undergraduate degree from Cornell University in communication and an Executive Master Degree in Public Administration from the Maxwell School of Citizenship and Public Affairs at Syracuse University.

3. My duties as a Monroe County Legislator included being involved in discussions, negotiations, and review of proposed new legislative redistricting maps submitted to the Monroe County Legislature (“Legislature”) by the Legislative District Revision Commission (“Commission”) in connection with a new Monroe County Legislative District map signed into law by the County Executive on January 5, 2023 under Monroe County Local Law No. 3 of 2023 (“current map”).<sup>1</sup>

4. As a result of my position in the Legislature, I am fully familiar with federal, New York State, and Monroe County laws relating to legislative districts—including New York State Municipal Home Rule Law § 34, Subd. 4, the Monroe County Charter and Administrative Code (“County Charter”), and the federal Voting Rights Act.

5. I am familiar with events that took place in connection with the current map.

6. I am familiar with the allegations contained in the complaint in this case (NYSCEF Doc. No. 2) and I incorporate the allegations of the complaint, together with the attached exhibits and

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<sup>1</sup><https://www.monroecounty.gov/files/legis/Referrals%2C%20Resolutions%20%26%20Local%20Laws/Local%20Laws/2023-03.pdf>

and internet links to which it refers, as if fully set forth in this affidavit.

7. I make this affidavit in support of plaintiff's motion for a temporary restraining order and preliminary injunction.

#### INTRODUCTION

8. According to the County Charter, the defendant, County Legislature is required to consider the results of the federal decennial census ("census") and, if necessary, redraw County legislative district boundaries to incorporate the results of the census, including changes and shifts in population.

9. Effective October 27, 2021, the New York State Legislature amended the Municipal Home Rule Law § 34, Subd. 4 to impose new New York State statutory requirements for county legislative districts.

10. Specifically, Municipal Home Rule Law § 34, Subd. 4 provides six requirements for county legislative districts:

- a. Districts shall be of equal population.
- b. Districts shall not be drawn to deny the voting rights of any minority group.
- c. Districts shall be made of contiguous territory.
- d. Districts shall be as compact in form as practicable.

e. Districts shall not be drawn to favor or disfavor particular political parties, candidates, or incumbents; and

f. Districts shall promote orderly and efficient elections.

11. On January 5, 2023, Monroe County enacted a new legislative district map (“current map”).<sup>2</sup>

12. The current map violates at least three of the six requirements of Municipal Home Rule Law § 34, Subd. 4—namely:

- It contains districts drawn to favor incumbents, candidates, and political parties in violation of Municipal Home Rule Law § 34, Subd. 4 (e).

- It denies voting rights of black voters in violation of Municipal Home Rule Law § 34, Subd. 4 (b).

- It contains districts that are not as compact as practicable in violation of Municipal Home Rule Law § 34, Subd. 4 (d).

#### BACKGROUND

13. Before I begin to address the circumstances that led to the creation and implementation of the current map, it is important for the Court to know that—during the approximately fifteen month period I

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<sup>2</sup> The current map is a public record and is published by Monroe County at <https://www.monroecounty.gov/elections#maps>

will be discussing below—*not once* did any person associated with the legislature, the County Executive’s office, or any other part of Monroe County government discuss complying with the provisions of New York State Municipal Home Rule Law § 34, Subd. 4 that prohibit racial gerrymandering, partisan gerrymandering, or incumbent protection.

14. No one associated with the Legislature or the County Executive’s office engaged legal counsel to advise us about whether we were complying with the law prohibiting gerrymandering and incumbent protection

15. Starting in or around the Fall 2021, the Legislature began the process of revising its legislative district map to account for population changes and shifts identified in the 2020 census.

16. The County Charter provides a method for revising the map after a census.

17. It states that, not more than six months after publication of census results, the Legislature must appoint a Legislative District Revision Commission (“Commission”) to evaluate existing legislative districts.

18. Among other requirements, the Commission must examine legislative districts to ensure equity and representation in relation to population and to ensure that composition of legislative districts

complies with the equal protection clauses of United States and New York State constitutions.

19. The Commission must also ensure that legislative districts are as compact and contiguous as possible.

20. Within three months of appointment—if the Commission concludes that revisions to existing legislative districts are required—the Commission must submit these recommendations to the Legislature in the form of a proposed local law (which is, essentially, a proposed revised map).

21. Not more than three months after the Commission submits its proposed revised map, the Legislature must conduct at least one public hearing on the proposed revised map, after which it must agree on a new map for submission to the County Executive for approval.

22. In about December 2021 and September 2022, the Commission submitted two different proposed revised maps to the Legislature.

23. The Legislature adopted both of these maps—but the Monroe County Executive vetoed them.

24. On December 23, 2022, the Commission submitted its third proposed revised map, which the Legislature adopted on December 29, 2022.

25. The County Executive signed this map (“current map”) into law on January 5, 2023, as a Monroe County Local Law.<sup>3</sup>

MUNICIPAL HOME RULE LAW § 34, SUBD. 4 (E)

26. Municipal Home Rule Law § 34, Subd. 4 was passed to: prohibit county governments from manipulating redistricting for political advantage; promote fair and non-partisan configuration of legislative districts; and guarantee fairness and equity in furtherance of the principal of ‘one person one vote.’<sup>4</sup>

27. The current map violates Municipal Home Rule Law § 34, Subd. 4 (e) because it was configured to favor incumbents, candidates, and political parties.

28. Jeanne Clelland, Ph.D—a leading national expert in redistricting map analysis—has conducted a statistical/mathematical analysis of Monroe County’s current map.<sup>5</sup>

29. Dr. Clelland concluded that there is a 99.87% probability that the current map was deliberately designed to favor incumbents.<sup>6</sup>

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<sup>3</sup> To date, the Local Law has not been given a number available to the public

<sup>4</sup> <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-ensuring-county-redistricting-done-fairly-and-non-partisan>

<sup>5</sup> NYSCEF Doc. No. 3

<sup>6</sup> NYSCEF Doc. No. 3, pp. 5-6



30. I have first-hand knowledge of conduct by Monroe County Legislators and Monroe County government officials during negotiations—including various “unofficial” proposed maps, and public and private statements—that corroborates Dr. Clelland’s objective statistical conclusions.

31. During the course of negotiations, current legislators requested concessions or modifications to their districts that would help them get re-elected.

32. I became actively involved in negotiations and discussion about a new map in the summer of 2022, after months of negotiations had resulted in an impasse.

33. On June 30, 2022, the Republican caucus proposed a redistricting map through the Legislative District Revision Commission.

34. Members of the Democratic caucus objected to the configuration of historically Black districts.

35. This map was configured to remove the Rochester neighborhood/area known as the “East End” from Legislative District (“LD”) 22—which is a majority Black district represented by Legislator Mercedes Vazquez Simmons.

36. During a Democratic caucus meeting, Legislator Vazquez Simmons said that did not want more Black and brown people in her district.

37. During this caucus meeting, Democratic Legislators voiced concerns about primary opponents being drawn into their districts as a result of changes to the map.

38. During this meeting, then-Monroe County Democratic Committee Chairman Zach King said that the map was bad for Democratic incumbent legislators.

49. King recommended that Democrats stop negotiating with Republicans about the map, so that the Legislature would be sued, resulting in the court appointing a special master to draw the map.

40. I expressed my opinion that this tactic would be more detrimental to Democratic legislators who were worried about reelection because a special master would not care about incumbents.

41. King said that, because of its enrollment advantage, the Democratic Party would do better in court than it would negotiating a map with Republicans—even if it meant sacrificing some incumbents.

42. My position was that we had a responsibility by law to pass a new map—which necessarily involved negotiating with

Republicans—and we could not abdicate our responsibilities, irrespective of how it may impact our own political interests.

43. In August 2022, the Democratic caucus agreed to continue negotiating with the Republican caucus about the map rather than force litigation.

44. The parties agreed with Legislature President Sabrina Lamar to include five Black voting districts, which we agreed would be districts with at least 50% black voting age population.

45. The parties also agreed that any legislators who requested it would have their own “single member district.” Stated another way, the map would not be reconfigured so that two incumbent legislators ended up in the same district (known in the political vernacular as “double-bunking”)—unless everyone agreed otherwise.

46. During the course of negotiations, I made contemporaneous written notes of requests made by legislators concerning the map.

47. Here are some requests related specifically to incumbency protection:

- Henrietta based-Democratic Legislator Michael Yudelson (LD 13) essentially opened a negotiation meeting with Republicans and Democrats in August 2022 by requesting that he keep a portion of

Pittsford in his district because these Pittsford voters had won him the election in 2021. Republicans agreed.

- Democratic Legislator Carolyn Hoffman, a white legislator representing an historically Black district (LD 25), repeatedly requested that she be able to keep white areas in Rochester’s South Wedge neighborhood and/or downtown. It was virtually impossible to accommodate Hoffman’s requests and still create five Black voting districts.

- Republicans requested changes to LD 11 and LD 18 that “double-bunked” the incumbents from those two districts (this is described in more detail below and in the complaint [NYSCEF Doc. No. 2, ¶¶ 30-32]). Democrats agreed to this request.

- Legislature President Sabrina Lamar (LD 27)—a black legislator representing a majority Black district—demanded that her district be changed as little as possible in order to keep the percentage of Black voters high—near 60%— in order to guarantee her re-election. Democrats said yes to this request.

48. In late August, the parties drafted a proposed map with five Black voting districts.

49. The Democratic caucus immediately rejected the map primarily because it did not like the configuration of the five Black voting districts.

50. Their intentions are proven by reviewing that map that members of the Democratic caucus circulated to other Democrats in response.<sup>7</sup>

51. This map did not have five Black majority districts, and it protected all incumbent legislators by accommodating their requests (for example, Vazquez Simmons's request to keep white voters in the East End, Hoffman's request to keep white areas of her district).

52. Members wanted to present the Democratic-preferred map to Republicans as a "take it or leave it."

53. I objected to this map because it violated our commitment and obligation to create a map with at least five Black majority voting districts.

54. In response to my objections, members of the caucus, said that they had spoken to a lawyer who told them we had no legal obligation to create five majority Black majority districts because these districts already had a history of electing Black representatives.

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<sup>7</sup> <https://davesredistricting.org/join/c5e005bd-fd5b-44a5-b908-6228f6dbf6c3>

55. Having been informed of this dispute, County Executive Adam Bello called me.

56. In our ensuing conversation, Bello accused me of trying to hurt Vazquez Simmons and Hoffman.

57. Bello told me that he did not “trust” any map the caucus negotiated with Republicans.

58. He told me that he objected to the horse-trading of election districts (as he phrased it, “trading EDs”) necessary in negotiating a map.

59. He told me that the only map he would sign was a map created on April 29, 2022, by ARCBridge Consulting & Training, Inc., which is a firm out of Virginia that had been hired by the Commission in early 2022.<sup>8</sup>

60. Bello told me he would rather go to court than sign any map other than the ARCBridge map.

61. After we hung up, I sent Bello and Deputy County Executive Jeffrey McCann a lengthy text message in which I explained my prediction that if we (Democrats) did not continue to negotiate a

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<sup>8</sup> <https://monroecountyredistricting.com/redistricting-plans/> (The ARCBridge map did not have five Black majority districts, and merely adjusted lines based on population changes and did not account for all requirements included in Municipal Home Rule Law § 34, Subd. 4.)

suitable map, then the five Black voting district map would likely be introduced and it would lead to a contentious public fight over Black voting rights.

62. I implored them to reconsider. Neither Bello or McCann ever responded.

63. Later that day, McCann sent a group text message to the Democratic caucus, which includes an admission that—as of late August 2022—the County Executive had yet to do an analysis of what the Voting Rights Act requires for a map.

64. Perhaps more troubling is McCann’s statement to Democrats that they not be “bullied or pressured” into supporting a map out of fear that the Black President of the Legislature and her assistant Vince Felder “will call us racist[]” (Exhibit A).

65. As I predicted, in September, Legislature President Lamar and the Commission introduced the five-Black district map that was jointly drawn among Democrats and Republicans, but that Democrats had already rejected.

66. This began a weeks-long public battle over the map, which became known as the “Crescent Map.”

67. The Crescent Map was supported by significant numbers of citizens who signed petitions and spoke to the Legislature, by our local

NAACP chapter, Faith Community Alliance, Baber A.M.E. Church, and the Urban League of Rochester, among others.

68. Despite this outpouring of support, Democratic caucus members not only opposed the map, but made public statements opposing the very concept of Black voting districts.

69. Democratic caucus members questioned whether the map actually included five Black voting districts because it included “mixed-race” voters.

70. This was shocking to me because it is the same argument made by the State of Louisiana in defending its racist map—that mixed-race Black people should be excluded when creating voting districts.

71. Bello publicly opposed the Crescent Map, stated that Monroe County should have *six* voting districts that were “effectively” Black majority districts, and decided to abandon the ARCBridge map and propose a new alternative map.<sup>9</sup>

72. This new proposed map did not have six Black majority districts—in fact, it didn’t even have five Black majority districts.

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<sup>9</sup> <https://www.monroecounty.gov/news-2022-10-21-districts>



73. It did, however, favor incumbents by creating only single-member districts for incumbents known to be running for reelection.

74. Bello then took aim at me publicly and—by so doing—created additional evidence supporting the conclusion that he was not concerned with complying with the spirit of the law as it pertains to Black voters.

75. Bello accused me of self-interest in wanting get rid of black voters from my white plurality district.<sup>10</sup>

76. I won my district with 65% of the vote in the last primary—it was in my interest to keep things exactly the same.

77. Bello implied that, since I wanted to create Black districts, I should agree to a Black district that included my residence.

78. I advocated for Black portions of my district to be in a Black majority district so Black voters could elect the candidate of their choice.

79. Bello's suggestion that the map be drawn deliberately and unnecessarily to include a white incumbent with resources (me) into a

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<sup>10</sup> My district (LD 21) has voting age population that is about 44% white, 35% black, and 16% Hispanic; it has had similar boundaries for thirty years; and it has never elected a person of color.

Black district could hurt Black voters' opportunity to elect a Black candidate.

80. At the same time Bello proposed a map with six "effective" Black districts, he refused negotiate with Republicans for a better map.

81. Before the October 21, 2022 vote on the Crescent Map, I told Republican caucus leaders about my concern that Bello would veto the map; I also said that that we can and should create six—not five—Black *majority* districts to comply with the law.

82. Republican leaders and President Lamar insisted we move forward with the vote.

83. The Legislature voted to approve the Crescent Map.

84. Almost immediately after this vote—and anticipating the County Executive's veto—Republicans began working on a map with six Black majority districts.

85. Republicans (led by a Black Democratic President who caucused with Republicans) intended to propose their six Black district map as a grand compromise, since Bello wanted six "effective" Black districts and the Black community wanted "majority" Black districts.

86. I learned in discussions with Republican Majority Leader Steve Brew that their priority in creating six Black districts was to do so without compromising any Republican legislative seats.

87. At this point, Brew and Bello were given a map that suggested a way to incorporate six majority Black districts into the County legislative map.<sup>11</sup>

88. Brew told me that Republicans would not agree to this map because they claimed it took away one of their districts in Greece.

89. In late November, Republicans created and published their six Black district map, which took the Charlotte neighborhood of the city east (into Irondequoit).<sup>12</sup>

90. By drawing Charlotte to the east, thousands of Democratic votes cannot be used efficiently because Irondequoit is already heavily Democratic.

91. Stated another way, these Democratic voters in Charlotte should have been used in a district to the west – in Greece – to potentially elect an additional Democratic representative—instead, these votes are essentially “wasted” (this is known as “packing”

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<sup>11</sup> <https://davesredistricting.org/maps#viewmap::96ab32f6-05f8-45da-a4d5-9aca89239c83>

<sup>12</sup> <https://davesredistricting.org/maps#viewmap::63aa0a7c-a9b3-4291-bd9b-d1bf8fbe09bf>

Democratic voters to diminish their voting power—also known as partisan gerrymandering).

92. The Republican proposal unnecessarily gave President Lamar’s district the highest percentage of Black voters among the six Black districts, because she wanted as many Black voters as possible in her new district to help her ensure reelection.

93. Lamar’s demand made it nearly impossible to draw the remaining five Black districts in the least obtrusive manner (which resulted in goofy-looking districts like LD 28) .

94. The Republican proposal put my residence into a city-Irondequoit district. I gave feedback that if the district would be split city-suburbs, I wanted the city to make up at least half the district, so as to not disenfranchise city residents.

95. Somehow Deputy County Executive McCann got the Republican map before it had been made public and responded with a map of his own, which was circulated privately (“Bello-McCann map”).<sup>13</sup>

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<sup>13</sup> <https://davesredistricting.org/maps#viewmap::a859ff21-bcf2-49c2-b225-7b20222d5899>

96. The Bello-McCann map attempted to configure three Black majority districts in a non-compact fashion so that each had about 30% Hispanic population.

97. This was illegal because you cannot draw voting maps based on race unless the minority group has protection under the Voting Rights Act (and only Black voters meet the requirements for protection in Monroe County).

98. The Bello-McCann map also drew my house out of the city-Irondequoit district into a Black majority district.

99. The Bello-McCann map's version of the city-Irondequoit district made it more Irondequoit-based, which broke up North Winton Village (in the city) and disenfranchised city voters.

100. And as a result, this district extended from the Browncroft neighborhood all the way to West Irondequoit.

101. At the time, I thought this proposed district was drawn to pick up the residence of the LD 17 incumbent.

102. The Bello-McCann map did not include known potential primary opponents to the incumbent of LD 29.

103. The Bello-McCann proposal broke up Black election districts in the Maplewood area, placing a significant number of Black voters in an adjacent district – LD 26.

104. Using Black voters in a white adjacent district – LD 26 – made it difficult to draw the remaining five Black districts in the least obtrusive manner, and disenfranchised these Black voters.

105. The Bello-McCann map used these Black voters in LD 26 to protect that incumbent because Black voters are reliably Democratic.

106. These Black voters also helped LD 26 maintain the requisite population in that district. Republicans did not want that district to go too far west (into Greece). Democrats did not want the district to go too far east (into Irondequoit) to protect the LD 17.

107. The Bello-McCann map largely accepted Republican proposals for most suburban districts.

108. The Bello-McCann map placed all incumbents known to be running again in single-member districts.

109. At this point, it was early December.

110. Bello was now willing to negotiate with Republicans—after months of refusing to do so.

111. I told Brew that—for multiple reasons—I was concerned about the Bello-McCann map.

112. I asked Brew what was his strategy for negotiating the Greece-city-Irondequoit corridor, because Bello obviously prioritized protecting his favored incumbents and trying to hurt me politically over creating sound districts.

113. I asked Brew if I could be part of negotiations with Bello.

114. Brew said no, presumably because Bello refused to negotiate a map with me present and the Republicans desperately wanted to negotiate a map to avoid litigation.

115. In mid-December, I heard that Democrat Allan Richards was intending to run for County Legislator in LD 17, which was the city-Irondequoit based district on various proposed maps.

116. Then I discovered that Richards lives in the same part of LD 17 as the LD 17 incumbent who had decided not to seek re-election.

117. It became obvious that the Bello-McCann map was purposely configured to include Richards' residence.

118. Richards could not have known that there would be an open seat in the district that did not yet exist (and which included his residence), unless he was told that a district was being created for him.

119. The final map was announced on December 22, to be introduced by the legislature the next day. I saw it for the first time when it was released publicly.

120. The final map included most of the requests made via the Bello-McCann proposal.<sup>14</sup>

#### REPUBLICAN ONE-TO-ONE DISTRICTS

121. Based upon my education and experience, participation in discussions about the map, and historical knowledge of Monroe County elections, I believe that Republicans attempt to configure the voting districts to create as many districts as possible in which the ratio of Democratic voter enrollment and Republican/Conservative voter enrollment is between .85 and 1.2.

122. I refer to districts with Democratic and Republican/Conservative voter enrollment in this range as “one-to-one” districts.

123. Historical analysis of the past three legislative elections shows that Republicans have overwhelmingly won in districts in which

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<sup>14</sup> Vince Felder, assistant to President Sabrina Lamar, told me LD 29 was deliberately configured to include the address of Candice Lucas (who lives on the block described in PP 66-69 in Document 2.) But Felder said he asked for her residence to be drawn into the district because she leads the LD 29 committee, not because he had knowledge she would run for the seat.



the ratio of Democratic voters to Republican/Conservative voters is between .85 and 1.2.

124. Stated another way, Democratic candidates do not start winning legislative seats regularly unless the district has a Democratic voter enrollment ratio advantage over 1.2 (*i.e.*, at least 120 Democratic voters for every 100 Republican/Conservative voters in the district).

125. In 2015, of the twenty-nine LDs in Monroe County, there were eleven districts in which Democrats had an enrollment advantage greater than 1.2.

126. There were thirteen districts in which Republican/Conservatives had in an enrollment advantage greater than 1.2.

127. And there were five district in which the Democratic and Republican/Conservative voter enrollment ratio was between .85 and 1.2 (“one-to-one” districts).

128. Republicans won all five “one-to-one” districts (shaded in red in the table below).

	Total	DEM	REP	CON	GRN	WKF	IND	WEP	REF	BK	Ratio D: R+C
	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	
Legislative District 01	18,983	4,383	6,605	472	36	60	888	0	0	4,519	0.62
Legislative District 02	11,981	2,955	4,929	330	28	45	698	1	0	2,972	0.56
Legislative District 03	15,832	4,910	6,688	419	35	40	737	0	0	4,003	0.80
Legislative District 04	16,524	5,610	6,449	428	35	71	824	1	0	4,108	0.95
Legislative District 05	15,419	4,628	5,733	259	53	28	787	1	0	3,932	0.77
Legislative District 06	15,183	5,119	4,824	382	31	65	795	1	0	3,958	0.98
Legislative District 07	16,853	5,005	6,186	450	24	54	798	0	0	4,338	0.75
Legislative District 08	16,826	5,020	5,845	379	23	42	888	1	0	4,630	0.81
Legislative District 09	18,713	5,558	6,714	326	38	27	1,028	0	0	5,022	0.79
Legislative District 10	15,581	5,137	5,557	300	36	21	730	1	0	3,899	0.89
Legislative District 11	16,917	5,123	6,226	265	51	26	824	0	0	4,402	0.79
Legislative District 12	11,941	3,602	4,442	301	24	38	611	1	0	2,921	0.76
Legislative District 13	16,333	5,521	5,620	341	27	34	755	1	0	4,034	0.93
Legislative District 14	14,205	6,325	3,480	173	58	34	641	0	0	3,494	1.73
Legislative District 15	17,500	5,321	6,133	374	38	34	959	1	0	4,640	0.82
Legislative District 16	17,141	5,984	5,161	389	74	38	904	1	0	4,600	1.08
Legislative District 17	15,558	6,762	3,880	286	47	44	759	0	0	3,780	1.62
Legislative District 18	17,082	5,197	6,217	266	46	27	904	0	0	4,405	0.89
Legislative District 19	18,380	5,204	5,809	430	28	64	772	0	0	4,063	0.83
Legislative District 20	15,133	4,335	5,631	437	33	58	810	1	0	3,828	0.71
Legislative District 21	11,449	7,230	1,297	84	58	74	422	0	0	2,284	5.24
Legislative District 22	10,039	7,503	532	49	13	80	205	1	0	1,658	12.91
Legislative District 23	13,457	6,659	2,546	143	118	43	685	2	0	3,261	2.48
Legislative District 24	13,206	6,932	2,272	102	101	35	578	2	0	3,184	2.92
Legislative District 25	10,330	7,572	724	46	46	60	282	1	0	1,699	9.83
Legislative District 26	13,664	6,177	3,199	316	28	77	622	0	0	3,245	1.76
Legislative District 27	13,445	9,987	970	81	34	68	383	0	0	1,932	9.39
Legislative District 28	9,272	6,047	980	87	24	78	284	1	0	1,771	5.67
Legislative District 29	10,992	7,409	1,106	120	21	78	305	1	0	1,952	6.04
Grand Total	423,859	167,193	123,745	7,945	1,208	1,447	19,876	19	0	102,426	

129. In 2019, there were only four districts in which Republican/Conservatives had in an enrollment advantage greater than 1.2.<sup>15</sup>

130. There were twelve districts in which Democrats had an enrollment advantage greater than 1.2.

131. And there were thirteen “one-to-one” districts.

<sup>15</sup> After Donald Trump won the 2016 Presidential election, Democratic enrollment grew significantly in Monroe County

132. Republicans won in eleven of these thirteen “one-to-one” districts (shaded in red in the chart below).

	Total	DEM	REP	CON	WOR	GRE	LBT	IND	SAM	WEP	REF	BLK	Ratio D:R+C
	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	
Legislative District 01	17,893	4,655	7,031	470	66	34	29	895	0	9	1	4,703	0.62
Legislative District 02	13,533	3,481	5,414	350	55	27	43	759	0	6	2	3,396	0.60
Legislative District 03	16,713	5,515	5,731	416	49	33	37	757	0	5	3	4,165	0.90
Legislative District 04	17,951	6,302	5,722	420	83	37	43	880	1	12	1	4,450	1.03
Legislative District 05	16,850	5,739	5,728	266	35	41	50	812	1	1	2	4,175	0.96
Legislative District 06	16,144	5,687	4,914	372	91	39	28	820	0	11	5	4,177	1.03
Legislative District 07	18,214	5,551	6,561	471	69	37	33	880	0	3	1	4,618	0.79
Legislative District 08	18,861	5,882	6,385	300	48	26	42	980	1	8	1	5,028	0.89
Legislative District 09	20,168	6,608	6,708	314	49	40	45	1,081	1	3	2	5,317	0.94
Legislative District 10	16,376	6,125	5,186	196	14	37	27	715	0	3	5	4,068	1.14
Legislative District 11	18,318	6,180	6,231	279	20	34	35	857	0	4	1	4,677	0.95
Legislative District 12	13,363	4,316	4,707	307	45	31	34	668	0	3	3	3,249	0.86
Legislative District 13	17,882	6,595	5,543	327	31	40	47	826	0	6	1	4,466	1.12
Legislative District 14	15,698	7,668	3,370	174	34	52	45	636	0	7	1	3,711	2.16
Legislative District 15	19,198	6,157	6,537	385	49	43	41	847	1	5	0	5,033	0.89
Legislative District 16	18,104	7,039	5,035	384	45	61	34	938	0	4	1	4,562	1.30
Legislative District 17	16,729	7,774	3,727	279	81	48	35	796	0	10	1	3,988	1.94
Legislative District 18	17,997	6,154	6,047	251	29	40	40	899	0	4	0	4,533	0.98
Legislative District 19	17,305	5,817	5,839	409	66	38	34	837	0	7	0	4,256	0.93
Legislative District 20	16,374	4,839	5,893	431	46	31	42	808	0	10	0	4,174	0.78
Legislative District 21	12,575	8,290	1,210	88	61	60	14	404	0	15	2	2,431	6.39
Legislative District 22	10,621	7,684	541	39	75	18	2	208	0	15	1	2,058	13.21
Legislative District 23	15,276	8,471	2,485	131	38	65	48	673	1	10	1	3,353	3.24
Legislative District 24	14,595	8,625	2,038	109	38	82	38	501	1	8	0	3,155	4.02
Legislative District 25	11,873	8,621	747	54	59	46	13	307	0	16	1	2,009	10.76
Legislative District 26	14,896	7,067	3,208	293	81	42	28	627	0	9	0	3,541	2.01
Legislative District 27	14,216	10,511	890	94	89	30	17	379	0	13	1	2,222	10.68
Legislative District 28	10,168	6,484	953	84	94	22	9	279	0	24	0	2,219	6.25
Legislative District 29	11,778	7,908	1,004	95	80	26	7	282	0	19	2	2,355	7.20
Grand Total:	459,669	191,925	125,385	7,850	1,564	1,160	940	20,450	7	250	39	110,099	

133. In 2021, there were still four districts in which Republican/Conservatives had in an enrollment advantage greater than 1.2.

134. There were fourteen districts in which Democrats had an enrollment advantage greater than 1.2.

135. And there were eleven “one-to-one” districts.

136. Republicans won in ten of these eleven districts.

	Total	DEM	REP	CON	WOR	LBT	GRE	IND	SAM	WEP	REF	BLK	Ratio D/R
	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	
Legislative District 01	18,739	4,900	7,208	508	65	50	34	825	3	6	0	5,140	0.64
Legislative District 02	14,311	3,612	5,694	377	61	63	27	687	0	4	0	3,786	0.59
Legislative District 03	17,627	5,948	5,791	428	53	57	31	667	0	5	1	4,628	0.96
Legislative District 04	19,191	6,711	5,990	454	81	59	32	779	1	8	0	5,078	1.04
Legislative District 05	18,100	6,382	5,686	263	46	84	33	748	1	1	1	4,855	1.07
Legislative District 06	16,845	6,125	4,829	362	83	44	41	698	0	7	5	4,651	1.18
Legislative District 07	19,049	5,910	6,624	470	60	63	38	835	0	2	1	5,046	0.83
Legislative District 08	20,298	6,665	6,510	410	50	68	24	890	1	7	1	5,672	0.96
Legislative District 09	21,147	7,266	6,751	336	45	61	42	961	3	3	3	5,676	1.03
Legislative District 10	17,002	6,719	4,951	207	32	40	26	832	3	1	6	4,385	1.30
Legislative District 11	19,198	6,786	6,071	290	36	55	34	796	0	4	1	5,125	1.07
Legislative District 12	14,324	4,633	4,849	317	49	57	30	644	0	2	2	3,741	0.90
Legislative District 13	18,735	7,154	5,402	303	40	55	38	726	1	7	1	5,010	1.25
Legislative District 14	16,398	8,275	3,198	160	44	52	44	589	1	5	3	4,027	2.46
Legislative District 15	20,288	6,680	6,574	404	58	65	35	866	1	6	0	5,579	0.96
Legislative District 16	18,724	7,409	4,973	387	56	52	53	832	1	5	1	4,955	1.38
Legislative District 17	17,525	8,381	3,634	279	63	59	45	716	2	8	1	4,337	2.14
Legislative District 18	18,657	6,714	5,802	264	28	73	41	797	1	2	0	4,935	1.11
Legislative District 19	18,109	6,152	5,930	421	64	56	35	745	1	4	0	4,701	0.97
Legislative District 20	17,387	5,236	6,119	450	52	77	35	737	0	7	0	4,674	0.80
Legislative District 21	13,291	8,608	1,224	89	74	22	52	372	2	14	3	2,831	6.56
Legislative District 22	11,411	7,980	605	47	80	10	22	203	1	13	1	2,449	12.24
Legislative District 23	16,015	9,106	2,401	149	53	55	61	559	1	9	0	3,621	3.57
Legislative District 24	15,385	9,316	1,913	111	52	52	66	434	2	3	0	3,436	4.60
Legislative District 25	12,395	8,840	777	46	67	40	48	280	0	16	0	2,281	10.74
Legislative District 26	16,052	7,650	3,338	297	105	56	44	596	0	8	0	3,958	2.10
Legislative District 27	14,763	10,780	911	52	63	22	28	343	0	11	1	2,524	10.86
Legislative District 28	11,136	6,957	998	88	110	14	25	277	0	10	0	2,659	6.42
Legislative District 29	12,511	8,158	1,059	99	84	11	20	291	0	13	1	2,777	7.04
Grand Total:	484,613	205,051	125,810	8,098	1,754	1,472	1,080	18,565	26	191	33	122,533	

137. As shown in the table below (compiled from Monroe County Board of Elections published turnout reports<sup>16</sup>), it appears that the primary reason Republicans perform well in these “one-to-one” districts is that in odd-year elections (in which there are only local races), Republican/Conservative voter turnout is significantly higher than Democratic voter turnout.

	<b>2015</b>	<b>2019</b>	<b>2021</b>
<b>Democrat % Turnout</b>	29.80%	41%	29.10%
<b>Republican + Conservative % Turnout</b>	39.20%	47.60%	40.20%
	<b>2015</b>	<b>2019</b>	<b>2021</b>
<b>Democrat # of Voters who Turned Out</b>	49,907	78,756	59,744
<b>Republican + Conservative # Voters who Turned Out</b>	51,669	63,471	53,945

<sup>16</sup> <https://www.monroecounty.gov/elections-results>

138. It is difficult to overstate the extent to which Republicans count on low Democratic turnout to win county legislative seats.

139. Republicans won a majority of County Legislative seats in 2015 and 2019, and fourteen of twenty-nine seats in 2021 even though Republican voter enrollment percentage had declined from 31% in 2011 to 26% in 2021.

140. We expect defendants to argue that Republicans are not responsible for Democratic apathy in elections.

141. Perhaps this is true—but it does not mitigate the fact that Republicans draw maps based on these conditions and expected results.<sup>17</sup>

142. Republicans faced a challenge negotiating the current map because of their declining enrollment, which is now 26% compared to 42% for Democrats.

143. Despite these substantial enrollment deficits, Republican were somehow able to negotiate the current map to include ten “one-to-one” districts (in yellow in the table below).

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<sup>17</sup> The 2011 map, which was the starting point for negotiations in 2022, was tainted because of partisan gerrymandering that took place when the 2011 map was configured.

Summary by County Legislative District - Official Winter 2023

Ratio D:R/C

	DEM	REP	CON	WOR	LBT	GRE	IND	SAM	WEP	REF	BLK	
	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	Voters	
Total	18,847	4,639	7,418	532	64	50	32	798	1	4	0	5.311
Legislative District 01	15,700	4,049	6,087	417	56	66	33	685	0	1	0	4.286
Legislative District 02	18,740	6,396	5,375	450	69	58	30	672	0	3	2	5.055
Legislative District 03	18,050	6,814	5,397	392	73	53	31	665	1	6	0	4.848
Legislative District 04	19,046	6,790	6,439	323	51	79	31	756	2	6	1	5.488
Legislative District 05	18,109	6,898	4,457	328	97	42	35	634	0	9	2	4.607
Legislative District 06	19,046	6,941	6,065	454	58	59	30	695	2	3	3	5.242
Legislative District 07	19,757	6,322	6,389	374	43	50	25	769	1	7	1	5.777
Legislative District 08	19,628	6,739	6,166	348	41	50	34	847	3	3	2	5.394
Legislative District 09	18,084	7,378	5,040	189	38	35	32	582	3	2	4	4.781
Legislative District 10	18,489	6,854	6,232	327	52	72	42	735	1	4	3	5.167
Legislative District 11	12,787	4,229	4,242	279	31	44	23	502	0	2	4	3.431
Legislative District 12	17,513	7,054	4,528	277	51	59	35	628	0	4	1	4.876
Legislative District 13	18,849	9,649	3,745	187	61	55	48	619	5	1	0	4.479
Legislative District 14	18,577	6,083	6,109	399	54	58	29	729	0	4	0	5.142
Legislative District 15	20,128	8,079	5,172	498	69	71	53	859	1	6	1	5.409
Legislative District 16	17,482	9,032	3,105	228	71	64	51	699	2	10	1	4.339
Legislative District 17	20,483	7,214	6,553	277	28	57	33	779	1	0	0	5.640
Legislative District 18	18,554	6,449	5,760	430	77	62	30	698	1	6	0	5.041
Legislative District 19	19,155	5,175	7,342	520	56	76	24	740	0	7	0	5.215
Legislative District 20	12,923	8,420	1,039	92	98	18	26	282	0	14	3	2.930
Legislative District 21	11,336	7,606	677	52	92	11	22	204	0	12	1	2.659
Legislative District 22	14,606	8,891	1,638	113	65	57	73	429	1	7	0	3.234
Legislative District 23	13,211	7,769	1,555	100	69	43	58	338	1	2	0	3.195
Legislative District 24	10,617	7,627	614	46	67	13	20	216	0	12	0	2.003
Legislative District 25	15,520	7,642	2,932	273	81	50	48	546	1	5	0	3.942
Legislative District 26	15,578	9,915	1,813	146	77	25	30	375	0	6	0	3.191
Legislative District 27	10,661	6,638	893	75	111	15	20	261	0	9	1	2.635
Legislative District 28	12,114	7,836	972	95	94	11	24	247	0	10	1	2.821
Legislative District 29												
Grand Total:	482,417	202,866	123,935	8,128	1,897	1,393	1,004	14,881	27	165	31	128,056

144. Republicans accomplished this by conceding that not only could Democrats could keep districts they currently held, but could configure the map to make these districts more Democratic and, therefore, more favorable for Democratic candidates (in particular, incumbents).

145. For example, in LD 10 the Democratic voter enrollment ratio advantage increased from 1.3 to 1.4.

146. LD 13 went from 1.25 to 1.47 in favor of Democrats.

The Perinton Conspiracy

147. There are two legislative districts in Perinton—LD 11 and LD 18.

148. Republican Sean Delehanty represents LD 11. Democrat John Baynes represents LD 18.

Delehanty—LD 11

149. In 2019, there were 6,510 Republican/Conservative enrolled voters 6,180 Democratic voters enrolled in LD 11 (330 voter advantage for Republicans/Conservatives). Delehanty won the 2019 election by 237 votes in an election in which there were 8,287 votes cast (4,262 to 4,025).

150. In 2021, there were 6,786 Democratic enrolled voters and 6,361 Republican/Conservative enrolled voters in LD 11 (425 voter advantage for Democrats). Somewhat amazingly, in 2021, Delehanty won again by 237 votes in an election in which there were 6,895 votes cast (3,566 to 3,329). The explanation for this is that a lower number of Democrats turned out in 2021 relative to Republican/Conservatives.

151. As of October 2022, there were 6,857 Democratic enrolled voters and 6,250 Republican/Conservative enrolled voters in LD 11.

152. This is bad news for Delehanty's re-election prospects—especially considering that Bello is running for re-election in 2023, which will drive up Democratic voter turn out.

153. If the map in Perinton stayed the same in 2023 as it was in 2021, Democrats were probably going to “flip” LD 11.

Baynes—LD 18

154. In 2021, there were 6,714 Democratic enrolled voters and 6,066 Republican/Conservative enrolled voters in LD 18 (684 voter advantage for Democrats). Baynes won by 533 votes in an election in which there were 6,987 votes cast.

155. As of October 2022, there were 6,782 Democratic enrolled voters and 5,986 Republican/Conservative enrolled voters in LD 18 (796 voter advantage for Democrats).

156. If the map in Perinton stayed the same in 2023 as it was in 2021, Baynes was going to win again.

157. Stated another way, Democrats were going to win both seats in Perinton and, as a result, pick up a seat in the Monroe County Legislature.

158. So, here's what happened.

159. During the negotiations of the current map, Republican proposed that the map be reconfigured so that Delehanty and Baynes were both in LD 11 ("double-bunking").<sup>18</sup>

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<sup>18</sup> Delehanty and Baynes live in close proximity to each other in Perinton.



160. To make it more palatable for Democrats, Republicans proposed to make LD 11 more Democratic.<sup>19</sup>

161. Drawing Baynes and Delehanty together into LD 11 created an open seat in LD 18 (because Baynes is now in LD 11).

162. In the current map, LD 18 (the open seat) is more favorable for Republicans/Conservatives than it was in 2021 because it reduced the Republican/Conservative enrollment deficit from 796 voters to only 384 voters.

163. This is obviously less than the 425 enrollment deficit Delehanty overcame when he won in LD 11 in 2021.

164. Baynes is running for LD 11 this year.

165. And wouldn't you know it, Delehanty is petitioning to become the Republican and Conservative party nominee for County Legislature in LD 18.<sup>20</sup>

166. This is a perfect example of how the current map was manipulated for political party advantage—in the case of LD 11 and

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<sup>19</sup> LD 11 increased from 1.07 (in 2021) to 1.23 (currently) in favor of Democrats

<sup>20</sup> The County Charter permits any resident to run for County Legislator in any district in a “re-districting year” regardless of residence. But if the candidate who wins the election does not live in the district, he or she must move into the district before taking office.

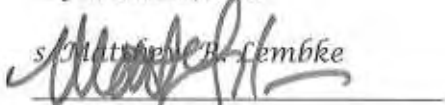
LD 18, to give Republicans a better chance of holding one of the two Perinton seats.

167. This is partisan gerrymandering and incumbency protection.

168. And it is illegal under New York law.

*s/Rachel Barnhart*  
  
Rachel Barnhart

Sworn to before me this 17th day of March, 2023

*s/Matthew R. Lembke*  
  
Matthew R. Lembke  
Notary Public, State of New York  
No.: 02LE5025964  
Qualified in Monroe County  
My Commission Expires May 10, 2026