

STATE OF NEW YORK SUPREME COURT
COUNTY OF MONROE

KENNETH MACDONALD,

Plaintiff,

—vs—

INDEX No.
E2023002165

AFFIRMATION

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

Defendants.

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

MATTHEW R LEMBKE, an attorney duly licensed to practice in the State of New York, hereby affirms, under penalty of perjury, as follows:

1. I represent the plaintiff, Kenneth MacDonald.
2. I make this affirmation in support of plaintiff's motion for a temporary restraining order and preliminary injunction.
3. As stated by the Court of Appeals, "the power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by [the United States Supreme] Court but appropriate action by the States in such cases has been specifically encouraged" (*Matter of Harkenrider v Hochul*, 38 NY3d 494, 521 [2022]) (citations omitted).

4. As the Court of Appeals has pointed out, if a legislative map is found to be unenforceable, it as if no map had been enacted. As a result, swift judicial action is necessary in order to protect voters' right to a free and fair election (*Id.*).

5. The Court of Appeals has also recognized the authority of New York State Supreme Court Justices to grant the injunctive relief—including rescheduling of primaries—in cases in which legislative maps are determined to be unenforceable (*Id.*).

6. The New York State Constitution requires expedited judicial review of redistricting challenges (NY Const, art III, § 5).

7. It also authorizes the judiciary to “order the adoption of, or changes to, a redistricting plan” in the absence of a constitutionally-viable legislative plan (NY Const, art III, § 4 [e]).

8. We are confident that, in consultation with the Board of Elections, this court can swiftly develop a schedule to retain a June primary election, that will allow sufficient time for the Monroe County, the Monroe County Legislature, and the Monroe County Board of Elections to:

A. The create and adopt of a new legislative district map that complies with the requirements of New York State law:

- B. Disseminate correct voting information to voters;
- C. The complete the designating petitioning process;
- D. Comply with federal voting laws, including the Uniformed and Overseas Citizens Absentee Voting Act (see 52 USC § 20302).

9. To that end, we propose the following schedule with regard to designating petitions for candidates for Monroe County Legislature:

- A. Changing the first day for signing designating petitions under Election Law § 6-134, Subd. 4 from February 28, 2023 to April 10, 2023.
- B. Changing the dates for filing designating petitions under Election Law § 6-158, Subd. 1 from April 3-6, 2023 to May 1-4, 2023.
- C. Changing the last day to authorize designations under Election Law § 6-120, Subd. 3 from April 10, 2023 to May 8, 2023.
- D. Changing the last day to accept or decline designations under Election Law § 6-158, Subd. 2 from April 10, 2023 to May 8, 2023.

E. Changing the last day to fill a vacancy after a declination under Election Law § 6-158, Subd. 3 from April 14, 2023 to May 12, 2023.

F. Changing the last day to file authorization of substitution after declination of a designation under Election Law § 6-120, Subd. 3 from April 18, 2023 to May 16, 2023.

10. With regard to Opportunity To Ballot (OTB) designating petitions we propose the following with regard to candidates for Monroe County Legislature:

A. Changing the first day for signing OTB petitions under EL § 6-164 from March 21, 2023 to April 24, 2023.

B. Changing the last day to file OTB petitions under Election Law § 6-158, Subd. 4 from April 13, 2023 to May 1, 2023.

C. Changing the last day to file OTB petitions if there has been a declination by a designated candidate under Election Law § 6-158, Subd. 4 from April 20, 2023 to May 8, 2023.

D. Changing the last day for member of committee to receive notices to file acceptance under Election Law § 6-166, Subd. 3 from April 24, 2023 to May 12, 2023.

11. We propose reducing the signature requirements for designating petitions for candidates for Monroe County Legislature under Election Law § 6-136 from 500 signatures to 150 signatures for 2023 (only).

12. We propose that the signature requirements for OTB designating petitions remain at 5% of the active enrolled voters of the political party in the political unit or 150, whichever is less.

13. We proposed that any valid signatures collected for Monroe County Legislature candidates under the current map and under the current election schedule (*i.e.* on or after February 28, 2023) be allowed to stand under the new schedule above, so long as voter who signed the petition resides within the boundaries of the new remedial district.

14. A temporary restraining order and preliminary injunction are necessary in the case because immediate and irreparable damage will result unless defendants are restrained before a hearing on the motion and enjoined pending final resolution of plaintiff's action from conduction elections and election activities for Monroe County Legislature under the current map (Monroe County Local Law No. 3 of 2023).

15. Specifically, if elections are permitted to proceed under the current unconstitutional and illegal map, voters in Monroe County will

be disenfranchised; and their rights to a free and fair election and their rights to have the opportunity to elect candidates of their choice will be violated.

16. And if this happens, these voters will have no remedy at law, and public confidence in election integrity will be forever undermined.

WHEREFORE, it is respectfully requested that the Court issue an order granting the following relief:

A. Under CPLR § 6301, restraining and enjoining defendants from conducting elections for Monroe County Legislature under the legislative district map enacted under Monroe County Local Law No. 3 of 2023 pending final judgment in this action; and

B. Suspending and enjoining the operation of any state or local laws that would undermine this Court's ability to provide effective and complete relief to plaintiff for the November 2023 elections for Monroe County Legislature, including primary elections preceding the November 2023 general elections for Monroe County Legislature, pending final judgment in this action.

C. Temporarily restraining and enjoining defendants from conducting elections and all activities related to these elections, including but not limited to accepting designating petitions, holding

primary elections, and any other such activities, under the legislative district map enacted under Monroe County Local Law No. 3 of 2023 pending the return date/hearing of this motion or upon further order of this Court.

D. And granting such other, further, and different relief as to the Court may seem just, proper, and equitable.

DATED: March 17, 2023

s/Matthew R. Lembke

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