At a Motion Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District Virtually at the Broome County Courthouse, Binghamton, New York, on the 29th day of September 2022.

PRESENT: HON. JOSEPH A. MCBRIDE
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : BROOME COUNTY

JAMES TOKOS, K. SHIRLEY COTHRAN, JUANITA HALE, ILDIKO MITCHELL, CLYDE TACKLEY and MATTHEW WHITE,

Plaintiffs,

-vs-

COUNTY OF BROOME, BROOME COUNTY LEGISLATURE, and BROOME COUNTY BOARD OF ELECTIONS,

Defendants.

DECISION AND ORDER

Index No. EFCA2022000981

APPEARANCES:

COUNSEL FOR PLAINTIFF:
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JOSEPH A. MCBRIDE, J.S.C.

The case before the Court follows an action seeking Declaratory Judgment pursuant CPLR §3001 filed by James Tokos, K. Shirley Cothran, Juanita Hale, Ildiko Mitchell, Clyde Tackley and Matthew White, (collectively "Plaintiffs") against Defendants, County of Broome, Broome County Legislature, and Broome County Board of Elections, (collectively "Defendants"). Plaintiffs filed the current motion for summary judgment pursuant CPLR §3212 seeking the Court to declare void the 2022 Broome County Law adopting a map establishing district lines for Broome County Legislature for failure to comply with the Municipal Home Rule Law, enjoining any elections from proceeding on the 2022 map, and asking the Court to either adopt its own map or to direct the Legislature to cure its infirmities. Defendants filed a response in opposition as well as a cross-motion for summary judgment pursuant CPLR §3212 seeking an order dismissing the complaint on the doctrine of laches, failure to name a necessary party, statute of limitation, and declaring the Local Law No. 1 of 2022 in compliance with Municipal Home Rule Law §34. Court received and reviewed said motions and decided; as discussed below.[1]

BACKGROUND FACTS

In October 2021, Governor Hochul signed an amendment to the Municipal Home Rule Law (MHRL) which requires all county governments to conform to uniform standards when enacting redistricting maps. The new MHRL §34 was signed on October 27, 2021. On November 17, 2021, Broome County's Ad Hoc redistricting committee held their first meeting to discuss the criteria for redistricting. Moreover, they set a due date for submissions for proposed maps as December 16, 2021. Defendants received five submissions and after a public hearing, Map 3 was recommended to be adopted. In January 2022, Broome County adopted Local Law No. 1 of 2022, which established a newly drawn district map for Broome County. The accepted Map 3 is alleged to be in violation of the Governor's amendment. Plaintiffs filed this current action for declaratory judgment and claimed the specific violations are as follows: 1) Forming

[1] All the papers filed in connection with this motion are included in the electronic file maintained by the County Clerk and have been considered by the Court.

legislative districts with differences in population exceeding the 5% outer limit imposed by MHRL §§ 10(1)(a)(12)(a)(i) and 34(4)(a); 2) Forming legislative districts that were not as nearly equal in population as practicable as required by the MHRL; and 3) Forming legislative districts that divided a town with a population less than 40% of the target total for individual districts in violation of MHRL. Plaintiffs alleged that the Amended Population data increased Broome County's population by 617 residents incarcerated outside the County and caused Map 3's maximum population imbalance to rise to 5.34% differential from the smallest to the largest district. Plaintiffs claimed that not only does this violate the newly imposed outer limit amendment (recently decreasing from 10% to 5%), the map is not "as nearly equal in population as is practicable" as put forth in the one-person-one-vote standard. Moreover, Plaintiffs alleged that Map 3 divided the Town of Maine, a municipality that is less than 40% of the full ratio of the total County population, into three separate districts, in violation of the MHRL. Noting, the Governor's amendment addresses this criterion for the first time.

On May 24, 2022, Plaintiffs filed a summons and complaint seeking a declaratory judgment that Broome County Local Law No. 1 of 2022 is invalid and enjoining Defendants of using the alleged illegal redistricting maps in any future elections. On July 6, 2022, Plaintiffs filed a motion for summary judgment seeking their declaration as a matter of law. On August 12, 2022, Defendants filed a cross-motion for summary judgment seeking to dismiss the complaint as a matter of law. As the parties consented to adjourn the motion return date, it should be noted that Plaintiffs consented and withdrew their demand to invalidate the new district map for the 2022 election cycle. The motions were heard for oral argument on Septmeber 29, 2022. Plaintiffs argued that the adopted Map 3, is in violation of the newly signed amendment and the evidence that there were other submitted maps that were within the statutory parameters is evidence that it could be done correctly and legally. Defendants argued that the adopted Map 3 is acceptable because the maps will never be "equal" and "practicable" does not mean "perfect." Defendants suggested that if you cannot get equal population, the Court is directed to make a determination that the districts are competitive, therefore creating a question of fact. The Court received further submissions on October 6, and October 7, 2022, respectively and makes a decision as described below.

LEGAL DISCUSSION AND ANALYSIS

Pursuant CPLR §3212(b), the motion for summary judgment shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of either party. When seeking summary judgment, the movant must make a *prima facie* showing of entitlement to judgment as a matter of law, by offering evidence which establishes there are no material issues of fact. Winegrad v. N.Y. Univ. Med. Ctr., 64 N.Y.2d 851, 853 (Ct. of App. 1985); Zuckerman v. New York, 49 N.Y.2d 557 (Ct of App. 1980). Once this burden is met, the burden shifts to the respondent to establish that a material issue of fact exists. Alvarez v. Prospect Hosp., 68 NY2d 320, 324 (Ct. of App. 1986); Winegrad, 64 N.Y.2d 851, 853. "When faced with a motion for summary judgment, a court's task is issue finding rather than issue determination (see, Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395, 404 [Ct. of App. 1957]) and it must view the evidence in the light most favorable to the party opposing the motion, giving that party the benefit of every reasonable inference and ascertaining whether there exists any triable issue of fact." Boston v. Dunham, *274* AD2d 708, 709 (3rd Dept. 2000); see, Boyce v. Vazquez, 249 AD2d 724, 726 (3rd Dept. 1998). The motion "should be denied if any significant doubt exists as to whether a material factual issue is present or even if it is arguable that such an issue exists." Haner v. DeVito, 152 AD2d 896, 896 (3rd Dept. 1989); Asabor v. Archdiocese of N.Y., 102 AD3d 524 (1st Dept. 2013). Mere conclusions and expressions of hope are insufficient to conquer a motion for summary judgement and the defendant must submit admissible evidence when stating their defense. See Zuckerman, 49 N.Y.2d 557. Finally, it "is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact." Vega v. Restani Constr. Corp., 18 NY3d 499, 505 (Ct. of App. 2012).

As it pertains to the case at hand, the United States Supreme Court has made clear that the "overriding objective of any legislative apportionment (or districting plan)…'must be substantial equality of population among various districts, so that that the vote of any citizen is approximately equal in weight to that of any other citizen'." See Seaman v. Fedourich, 16 NY2d 94, 102 (Ct. of App. 1965), citing Reynolds v. Sims, 377 US 533, 579 (1964). When redistricting, the latest official census is to be used in determining population. Seaman, 16 NY2d at 103. In Seaman, the Court of Appeals gave direction that the "proper judicial approach" in

evaluating the any particular district map is "to ascertain whether… there has been a faithful adherence to a plan of population-based representation." 16 NY2d at 102; citing Roman v. Sincock, 377 US 695, 710 (1964). The redistricting maps may be deemed void if "no possible legitimate purpose for the exercise of discretion to create district unequal in population was shown." Seaman, 16 NY2d at 103; citing Matter of Sherrill v. O'Brien, 188 NY 185, 210 (Ct. of App. 1907).

Plaintiffs as the moving party have the burden to show a *prima facie* case that the map is invalid as a matter of law. The Court finds that based on the statutory amendment signed by Governor Hochul in October 2021, and the long history of judicial interpretation of redistricting plans, Plaintiffs have made their *prima facie* showing of success as a matter of law. First, by mathematical calculations, the map as adopted by Defendants violates the 5% rule. When using the latest official census, the newly drawn districts have a greater than 5% disparity in population from their smallest and largest district. Plaintiffs submitted evidence that at least two other proposed maps allowed for the districts to be within 5%. Plaintiffs argued that the populations are not as equal as practicable and conflicts with the MHRL amendment. Further, the map violates the newly enacted statutory requirement that a municipality that has a population less than 40% of the ratio of the entire county shall not be divided. While the Court acknowledges that the Town of Maine has historically been divided, Governor Hochul, specifically wrote this new requirement into the amendment. As the maps were submitted after the amendment was signed, Map 3 as adopted is in violation of the plain language of the statute.

Next, the burden shifts to Defendants show a question of fact exists. Defendants failed to meet their burden as the record is devoid of any issues of material fact. While Defendants try to validate their reasoning for adopting the unauthorized map, the Court is directed to take population into consideration first, and foremost. See Roman, 377 US 695 at 710. The Court is not persuaded that a "competitive" district map overrides the statutory requirements. The Court finds that there has not been a faithful adherence to a plan of population-based representation. 16 NY2d at 102. As such, the Court finds that the newly adopted Map 3 is in violation of the statute. Moreover, since there was evidence that other possible maps would conform to the statute, there is no legitimate purpose to exercise discretion. Id at 103.

As deduced from the plain language of the statute, the clear meaning of the amendment is to stay within the spirit of the "one person, one vote" principal of equal representation. It is clear from pure mathematical calculations, that strict adherence to the 5% rule is not conformed with in Map 3. However, the Court cannot say that the .35 variance of the 5% rule is not substantial compliance with the statute that would safeguard the underlying principle of one person, one vote. That being said, the other provisions of the statute, particularly, that the subdivision of a municipality less than 40% ratio of the county population must not be divided is a clear violation that does render this map void. The argument that the Town of Maine has always been historically divided is of no consequence of the new statutory mandates. As such, hearing both sides and reviewing all the papers and arguments before it, the Court grants Plaintiffs' motion for summary judgment on redistricting and directs reconsider the districts in compliance with this decision. The Court notes that it reviewed all the arguments before it and if not specifically address herein were deemed meritless.

CONCLUSION

Based on all the factors and the foregoing discussion, looking at the facts in the light most favorable to the non-moving party and giving every reasonable inference, Plaintiffs' motion for summary judgment is GRANTED as a matter of law and the Defendants' Local Law No. 1 of 2022 is declared void. The Defendants are directed to amend the new district maps to conform with the law without delay. See Matter of Harkenrider v. Hochul, 2022 NY LEXIS 874 at 25.

This constitutes the **DECISION AND ORDER** of the Court. The transmittal of copies of this DECISION AND ORDER by the Court shall not constitute notice of entry (see CPLR 5513).

Dated: 12/6/22
Norwich, New York

HON. JOSEPH A. MCBRIDE
Supreme Court Justice