

Matter of Mills v Zellner

2024 NY Slip Op 31729(U)

May 6, 2024

Supreme Court, Erie County

Docket Number: Index No. 811419/2023

Judge: Amy C. Martoche

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SUPREME COURT OF THE STATE OF NEW YORK
ERIE COUNTY

In the Matter of John J. Mills, Scott A.
Marciszewski and Joette A. Tronolone,

Petitioners/Plaintiffs,

DECISION

v

Index No. 811419/2023

Jeremy J. Zellner and Ralph M. Mohr,
Commissioners Constituting the Erie County
Board of Elections, and Erie County Legislature,

Respondents/Defendants.

Randall C. Siford, Stanley Sliwa, William F.
Schmind, Jr., Michelle J. Shoeneman, Elizabeth A.
Brinkworth, and Thomas W. Pemberton,

Intervenors/Respondents.

HON. AMY C. MARTOCHE, J.S.C.:

Petitioners-plaintiffs (petitioners) commenced this hybrid CPLR article 78 proceeding and declaratory judgment action seeking, among other things, judgment declaring that the Erie County Board of Elections (Board) deviated from Local Law 2 of 2022 by implementing legislative district lines as depicted in one countywide and eleven legislative district maps submitted for the consideration of the Erie County Legislature prior to the passage of that law. Petitioners also seek a judgment directing

the Board to adopt and publish legislative maps in accordance with and as described in Local Law 2 of 2022.

By contrast, intervenors cross-petition for an order and judgment, in relevant part, declaring that the Board's efforts to implement boundaries consistent with Local Law 2 of 2022 and the subject maps were proper and faithful to the lines established in those instruments. Now, intervenors, together with respondents Erie County Legislature (Legislature) and Jeremy J. Zellner, who is one of two commissioners of the Board, apply for relief distilling to summary judgment declaring that the district lines implemented by the Board¹ were "proper" and constitute the correct boundaries of those districts.

For the reasons that follow, the Court, among other things, grants the parts of those motions² seeking an order awarding summary judgment determining that Local Law No. 2 is to be construed in accordance with the aforementioned maps. That award, in somewhat simple terms, produces a result in which the Court concludes that the boundaries for the Legislature's various districts are those articulated in the maps at

¹ The Court characterizes the lines as "implemented by the Board" here, and in the next paragraph, for the sake of simplicity. The Court acknowledges that petitioners contend, among other things, that the district lines were altered without "bipartisan collaboration" and therefore do not constitute an action of the Board.

² This decision does not consider the pending motion of the Minority Caucus of the Erie County Legislature for an order permitting the Minority Caucus to intervene in this matter. That application was made approximately one day before the instant motions were to be argued; therefore, it will be determined separately.

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issue in this case, and that further proceedings are required to determine whether the district lines implemented by the Board in advance of the 2023 election cycle are consistent with those established in the maps.

Facts

Section 210 of the Erie County Charter provides that every ten years, following the federal census, “an advisory committee shall be created to make recommendations to the County Legislature on whether and how the County Legislature should be reapportioned consistent with federal and state law.” Consistent with additional directives established in that part of the charter, that advisory committee (hereafter, Committee) was created and, by all accounts, later approved and submitted one countywide and eleven legislative district maps for the consideration of the Legislature on October 29, 2021 (*see* Erie County Legislature, Advisory Committee on Reapportionment Maps, <https://www4.erie.gov/legislature/advisory-committee-reapportionment-maps> [accessed May 1, 2024]). Those maps (hereafter, Desk Maps), according to sworn statements of the Clerk and a staff member of the Legislature, were “deposited on the desks of each” member of the Legislature in conjunction with a textual description of what, following consideration of the Legislature and a public hearing, became Local Law 2 of 2022 (Local Law) on January 11, 2022.³

³ The Desk Maps and the text of what became the Local Law were “deposited on the desks of each of the Legislators of the County of Erie” on November 16, 2021. Those materials, to the Court’s understanding, were subsequently introduced to the

The Local Law, it should be noted, contains approximately 4,500 words articulating the metes and bounds of each of the subject legislative districts. “Metes and bounds,” of course, refer to “[t]he territorial limits of each of [those districts] as measured by distances and angles from designated landmarks” (Black’s Law Dictionary 1012 [8th ed 2004]). The articulation of those districts is a sophisticated, artful process that is bereft of beauty and based upon the turgid expression of hundreds of details with respect to the path of each of the district lines.⁴

Legislature on November 18, 2021 and subject to comment at a public hearing held on December 2, 2021.

On December 16, 2021, the Legislature adopted the Local Law, and it became effective after it was approved by the Erie County Executive on January 11, 2022 (*see* Erie County Legislature, Local Laws, <https://www4.erie.gov/legislature/local-laws> [accessed May 1, 2024]). The Court notes that the subject law is embodied only in text filed in accordance with Municipal Home Rule Law § 27 (1).

⁴ The articulation of the boundaries of Legislative District 1 illustrates that point. That district is described in the Local Law as follows:

“District 1

“All of that portion of Erie County bounded and described as follows: Beginning at the point of intersection of the shoreline at Black Rock Canal and Amvets Dr, and proceeding northerly along the shoreline at Black Rock Canal to Peace Bridge Plz, and proceeding easterly along Peace Bridge Plz to Sheridan Ter, and proceeding northerly along Sheridan Ter to Busti Ave, and proceeding easterly along Busti Ave to Rhode Island St, and proceeding easterly along Rhode Island St to Bremen St, and proceeding southerly along Bremen St to Vermont St, and proceeding easterly along Vermont St to 17th St, and proceeding southerly along 17th St to Connecticut St, and proceeding easterly along Connecticut St to Richmond Ave, and proceeding southerly along Richmond Ave to Summer St, and proceeding easterly along Summer St to Elmwood Ave, and proceeding southerly along Elmwood Ave to North St, and proceeding easterly along North St to Delaware Ave, and proceeding northerly along Delaware Ave to Summer St, and proceeding easterly along Summer St to Main St, and proceeding

northerly along Main St to Woodlawn Ave, and proceeding easterly along Woodlawn Ave to Chester St, and proceeding southerly along Chester St to Glenwood Ave, and proceeding easterly along Glenwood Ave to Jefferson Ave, and proceeding northerly along Jefferson Ave to Northland Ave, and proceeding easterly along Northland Ave to N Fillmore Ave, and proceeding northerly along N Fillmore Ave to Penn Central RR, and proceeding easterly along Penn Central RR to Northland Ave, and proceeding easterly along Northland Ave to Cornwall Ave, and proceeding southerly along Cornwall Ave to Scajaquada St, and proceeding easterly along Scajaquada St to Colorado Ave, and proceeding southerly along Colorado Ave to Scajaquada St, and proceeding easterly along Scajaquada St, and proceeding northerly to Northland Ave, and proceeding easterly along Northland Ave to Bailey Ave, and proceeding southerly along Bailey Ave to Lang Ave, and proceeding easterly along Lang Ave to Newburgh Ave, and proceeding northerly along Newburgh Ave to Lang Ave, and proceeding easterly along Lang Ave to East End Ave, and proceeding southerly along East End Ave to the Cheektowaga/Buffalo line, and proceeding southerly along the Cheektowaga/Buffalo line to Reiman St, and proceeding westerly along Reiman St to N Ogden St, and proceeding southerly along N Ogden St to Reiman St, and proceeding westerly along Reiman St to Davey St, and proceeding southerly along Davey St to Vanderbilt St, and proceeding westerly along Vanderbilt St to Ideal St, and proceeding southerly along Ideal St to William St, and proceeding westerly along William St to Bailey Ave, and proceeding southerly along Bailey Ave to the Buffalo River shoreline, and proceeding westerly along the Buffalo River shoreline to the point just south of Babcock St, and proceeding northerly along Babcock St to Seneca St, and proceeding westerly along Seneca St to Wasson St, and proceeding northerly along Wasson St to Penn Central RR, and proceeding westerly along Penn Central RR to Erie-Lackawanna RR, and proceeding westerly along Erie-Lackawanna RR to Norfolk and Western Rlwy, and proceeding southerly along Norfolk and Western Rlwy to Seneca St, and proceeding westerly along Seneca St to Smith St, and proceeding southerly along Smith St to Fulton St, and proceeding westerly along Fulton St for .48 miles, and proceeding southerly at a 126 degree angle to Elk St, and proceeding westerly along Elk St to S Park Ave, and proceeding westerly along South Park Ave to point (-78.854869, 42.870054), and proceeding southerly to the Buffalo River Shoreline, and proceeding westerly along the Buffalo River Shoreline to the Buffalo Skyway, and proceeding northerly along the Buffalo Skyway to Marine Dr, and proceeding westerly along Marine Dr to Erie St, and proceeding northerly to Wilkeson Way, and proceeding westerly along Wilkeson Way to La Riviere Dr, and proceeding westerly on La Riviere Dr to the Buffalo Harbor shoreline, and proceeding northerly along the Buffalo Harbor shoreline to the point of beginning.”

The difficult task of transcribing those metes and bounds was imperfect and saw what may be characterized as “several inadvertent errors” (*Mohr v Erie County Legislature*, No. 23-CV-39-LJV, 2023 WL 3075956, at *1 [WD NY 2023] [internal quotation marks omitted])⁵ that largely escaped detection (*see id.*). For example, according to respondent Ralph M. Mohr, the districts drawn in what became the Local Law “extend[ed] to points outside [] Erie County”—including in “Antarctica [and] across the Canadian border”—and “purported to contain points of intersection along lines which did not [meet], [to] include[] voters of the county in multiple districts[,] and [to] exclude[] other voters in the county [altogether]” (*id.* at *2 [internal quotation marks omitted]; *see id.* at *3).

On January 17, 2023, respondent Mohr, who is one of two commissioners of the Board, commenced an action in the United States District Court for the Western District of New York alleging that the legislative redistricting accomplished through the Local Law “violate[d] his rights under the United States Constitution’s Equal Protection and Due Process Clauses” (*id.* at *1). Respondent Mohr also moved for a preliminary injunction and asked the District “Court to order that the 2023 election cycle proceed under the legislative map used in prior legislative cycles,” rather than pursuant to the

⁵ Those errors, the Court notes, may flow from the means by which the metes and bounds are reduced to writing. To the Court’s understanding, the Legislature’s process of reviewing and implementing the legislative district lines recommended by the Committee involved Board staff and legal counsel devising and reading aloud metes and bounds descriptions of the proposed district lines that were then transcribed and incorporated into what at that point was the draft of the Local Law for the Legislature’s consideration (*see Mohr*, No. 23-CV-39-LJV, 2023 WL 3075956, at *1).

boundaries transcribed in the Local Law (*id.*).⁶ The request for a preliminary injunction was denied, and the complaint in that action was dismissed on April 24, 2023 on the ground that respondent Mohr “lacked standing to bring his claims” (*id.*).

Meanwhile, candidates for seats in the Legislature were designated through a petitioning process that was conducted pursuant to district lines different from those under which the 2021 election was held and generally consonant with the metes and bounds established in the Local Law. Various primary elections with respect to those seats were held on June 27, 2023 (*see* New York State Board of Elections, Calendars, <https://elections.ny.gov/system/files/documents/2023/07/2023politicalcalendar.pdf> [accessed May 1, 2024]; *see also* Election Law § 8-100 [1] [a]).

Consonance with the metes and bounds of the Local Law was achieved through a February 2023 process in which various employees of the Board implemented lines depicted in the Desk Maps—the Desk Maps do not contain the imperfections in the Local Law that inadvertently articulated some overlapping district boundaries and that extended other district boundaries into Canada and Antarctica. On September 8, 2023,

⁶ That election cycle commenced on February 28, 2023 through the circulating of designating petitions (*see* New York State Board of Elections, Calendars, <https://elections.ny.gov/system/files/documents/2023/07/2023politicalcalendar.pdf> [accessed May 1, 2024]; *see also* Election Law § 6-134 [1]). Primary elections with respect to those legislative positions were held on June 27, 2023, and the general election relative to those seats was conducted on November 7, 2023 (*see* New York State Board of Elections, Calendars, <https://elections.ny.gov/system/files/documents/2023/07/2023politicalcalendar.pdf> [accessed May 1, 2024]; *see also* Election Law § 8-100 [1] [a], [c]).

however, petitioners commenced this proceeding, generally alleging that the act of rectifying the errors in the written metes and bounds and in attempting to align those boundaries with the Desk Maps constituted an ultra vires reapportionment inasmuch as it was done without the approval of respondent Mohr, who, as noted, is one of two commissioners of the Board. To that end, petitioners seek, among other things, judgment declaring that the Board deviated from the Local Law and therefore engaged in an impermissible legislative redistricting process (*see* Municipal Home Rule Law § 10 [1] [ii] [a] [13] [f]).⁷ Petitioners also seek judgment directing the Board “to adopt and publish legislative district maps for each of the county’s eleven legislative districts . . . in accordance with and as described in [the Local Law].”

Intervenors, in turn, cross-petitioned for an order and judgment, as relevant here, declaring that the Board’s February 2023 efforts to implement boundaries consistent with the Local Law were “proper” and that those metes and bounds “constitute the proper boundaries of the . . . Legislature’s eleven legislative districts.” The intervenors also seek an order and judgment directing the Board “to conduct elections in accordance therewith for the next decade.”

⁷ Put another way, Municipal Home Rule Law § 10 (1) (ii) (a) (13) (f) permits only one restructuring by a local government of its legislative body per decade. Petitioners posit that the Local Law was the first and only such permissible restructuring, and that the setting of district lines under which the 2023 legislative elections were conducted departed from the boundaries established in that statute and therefore constituted a second restructuring of the Legislature within a ten-year period and in violation of the Municipal Home Rule Law.

The requests for relief contained in the cross petition catalyzed this motion practice. The Legislature now moves, in relevant part, for an order granting summary judgment dismissing the petition and declaring that the Board's "assignment of voters to legislative districts was consistent with the intent of [the] Local Law." Intervenors, in turn, move for summary judgment declaring, among other things, that the Board's efforts to implement the Local Law were "proper" and consistent with that statute, and that both the Desk Maps and the district lines implemented by the Board "constitute the proper boundaries of the . . . Legislature's eleven legislative districts."

For his part, respondent Zellner cross-moves for an order, in relevant part, awarding summary judgment granting the cross petition in its entirety, declaring that the Board's February 2023 efforts to implement the subject legislative district lines were "proper," and declaring that those lines constitute the proper boundaries of those districts. For the reasons that follow, the parts of the motions seeking an order granting summary judgment to the extent of determining that the Local Law is to be construed in accordance with the Desk Maps are granted.

Analysis

The Court's review of the merits begins with an articulation of the processes by which the meaning the Local Law is to be determined. The initial task, statutory "interpretation[,] is most akin to the application of the plain language of the statute or code in question" (*Matter of Waite v Town of Champion*, 31 NY3d 586, 599 n 3 [2018])

[Fahey, J., dissenting] [internal quotation marks omitted]). “By contrast,” the successive task of statutory construction is

“ ‘a process for determining the meaning of statutes [by] drawing . . . conclusions with respect to subjects which lie beyond the direct expression of the text’ (McKinney’s Cons Laws of NY, Book 1, Statutes § 71). ‘The process of construction necessarily presupposes doubt, obscurity, or ambiguity, and consequently, where a statute is framed in language so plain as to make an explanation superfluous, one will not be attempted’ (McKinney’s Cons Laws of NY, Book 1, Statutes § 71, Comment at 138–139)” (*Waite*, 31 NY3d at 599 n 3 [Fahey, J., dissenting]).⁸

The starting point in any instance in which the meaning of a statute must be determined is the text of that law itself (*see American Tr. Ins. Co. v Sartor*, 3 NY3d 71, 76 [2004]). “When presented with an issue of statutory *interpretation*, the court’s primary consideration ‘is to ascertain and give effect to the intention of the [l]egislature’ ” (*Long v State of New York*, 7 NY3d 269, 273 [2006] [emphasis added], quoting *Riley v County of Broome*, 95 NY2d 455, 463 [2000] [internal quotation marks and citation omitted]). Where, however, “ ‘a literal construction would lead to absurd or unreasonable consequences that are contrary to the purpose of the [statute’s] enactment,’ courts may ‘[r]esort to legislative history’ (*Matter of Auerbach v Board of Educ. of City School Dist. of City of N.Y.*, 86 NY2d 198, 204 [1995])” (*Matter of Anonymous v Molik*, 32 NY3d 30, 37 [2018];

⁸ To be clear, “[s]tatutory interpretation and statutory construction are different exercises. Indeed, the difference in name of the respective exercises of ‘interpretation’ and ‘construction’ reflects a difference in the mechanics and execution of those inquiries” (*Waite*, 31 NY3d at 599 n 3 [Fahey, J., dissenting]).

see *Matter of Albany Law Sch. v New York State Off. of Mental Retardation & Dev. Disabilities*, 19 NY3d 106, 120 [2012]). That is, where literal interpretation of a statute would produce a nonsensical result, a reviewing court must resort to statutory *construction* to determine the meaning of that law.

Applying those principles here, the Court concludes that the Local Law should not be applied literally, and that the text of that statute alone does not establish the Legislature's district lines for this redistricting cycle. The plain language of that statute describes legislative districts—for the *Erie County* Legislature—that would include *international* and *intercontinental territory*. To apply those district lines, the Court concludes, would be to produce a patently absurd and unreasonable result (*Molik*, 32 NY3d at 37).

Consequently, the Court's inquiry proceeds to the task of statutory construction. That review must be informed by the Desk Maps. Those maps were generated by the Committee and, to the Court's understanding, are consistent with the parts of the metes and bounds established in the text of the Local Law considering territory within Erie County. The record also reflects that those maps were "deposited on the desks of each" member of the Legislature in conjunction with a textual description of what became, following public hearing and approval, the Local Law.

The Court acknowledges that the Legislature easily could have appended those Desk Maps to the Local Law (*cf. generally* Municipal Home Rule Law § 27 [1]). Still, the point remains that, consistent with the interests of practicality, common sense, and the governing principles of law, the Local Law is properly construed and informed by the

Desk Maps. Against that backdrop, the Court concludes that the lines for the legislative districts of the Legislature for this redistricting cycle are those denominated in the Desk Maps. To that end, the Court grants the parts of the motions seeking an order determining that the Local Law is to be construed in accordance with the Desk Maps.

That determination is not the end either of this matter or of this motion practice. At this juncture, the Court makes what it sees as ancillary and related awards dismissing the third request for relief in the amended petition.⁹ The Court further grants the part of the fifth request for relief in the cross petition seeking an order directing the Board “to publish statutorily required information on the [Board’s] website regarding Erie County Legislative maps and campaign finance contribution limits for all public offices within its jurisdiction.” Finally, the Court notes that the parties shall appear as scheduled on May 20, 21, 23 and May 24 for a hearing on the issue whether the legislative district lines under which the 2023 election cycle was conducted are consistent with those articulated in the Desk Maps. To the extent necessary, the hearing may also consider the issue whether respondent Mohr, in his capacity as a Commissioner of the Board, acquiesced to the implementation of those lines.

⁹ Through that request for relief petitioners seek judgment directing the Board “to re-canvass and correct the canvas of returns of the various primary elections held for the public offices of Erie County Legislator at the June 27, 2023 primary election, and to certify the results of said primary elections in conformity with the votes cast within the legislative boundaries set forth by [the Local Law].”

Conclusion

Accordingly, for all of the foregoing reasons, the Court grants the parts of the motions seeking an order granting summary judgment (1) determining that the Local Law is to be construed in accordance with the Desk Maps; (2) dismissing the third request for relief in the amended petition; and (3) granting the part of the fifth request for relief in the cross petition seeking an order directing the Board “to publish statutorily required information on the [Board’s] website regarding Erie County Legislative maps and campaign finance contribution limits for all public offices within its jurisdiction.” The Legislature shall submit a proposed order consistent with this decision within seven days.

Dated: May 6, 2024



Hon. Amy C. Martoche, J.S.C.