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Rochester, NY 14614

Rochester Police Locust Club, Inc.
Mazzeo, Michael
Sizer, Kevin

City of Rochester
Lovely A. Warren, as Mayor of the City of Rochester
Council of the City of Rochester
Monroe County Board of Elections

Total Fees Paid: \$0.00

Employee: JM

State of New York

MONROE COUNTY CLERK'S OFFICE
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ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
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ADAM J BELLO

MONROE COUNTY CLERK



STATE OF NEW YORK
SUPREME COURT

COUNTY OF MONROE

In the Matter of the Application of

ROCHESTER POLICE LOCUST CLUB, INC.,
MICHAEL MAZZEO, and KEVIN SIZER,

Petitioners,

DECISION, JUDGMENT
and ORDER

-vs-

Index No. E2019008543

CITY OF ROCHESTER, LOVELY A. WARREN,
as Mayor of the City of Rochester, COUNCIL OF
THE CITY OF ROCHESTER, and the MONROE
COUNTY BOARD OF ELECTIONS,

Respondents,

Appearances:

Trevett Cristo, P.C. (Daniel DeBolt, Esq.) for Petitioners;

Emery, Celli, Brinckerhoff, & Abady, LLP (Andrew Celli, Esq., Debra Greenberger, Esq., Scout Katovich, Esq.) for Respondent City Council;

Timothy R. Curtin, Esq. (Patrick Beath, Esq., of Counsel) for Respondents City of Rochester and Mayor Lovely A. Warren;

Monroe County Law Department (Matthew Brown, Esq., of counsel) for Respondent Monroe County Board of Elections.

DECISION, ORDER, AND JUDGMENT

Ark, J.

This Petition questions the enactment of Local Law No. 2, a statute which presents the Rochester City Council and Mayor (hereinafter referred to as “Respondents”)¹ with an opportunity to present to the voting City residents a unique, judicially-approved board to establish “a civilian-controlled process to fairly investigate and make determinations respecting

¹ The Respondent Board of Elections took no position in this pending matter.

complaints of misconduct involving sworn officers of the Rochester Police Department” (Local Law No. 2 § 18-1). The Petitioners’ legal challenges to Local Law No. 2 are multi-pronged and complex, as are the Respondents’ rebuttals. It would be a disservice to the community for the Court to render its legal judgment on such important legislation without a thorough analysis of the legality of the Statute. To date, the Court has only received and reviewed preliminary memoranda of law and heard brief oral argument, but fully anticipates more thorough litigation of the issues. However, of immediate concern is the placing of the referendum on the ballot for the upcoming November 5, 2019 election.

Although the Petitioners certainly delayed in commencing this proceeding, the Respondents are not entitled to dismissal on the basis of laches. “Dismissal based upon laches” requires, *inter alia*, “lack of knowledge or notice on the part of the offending party that the complainant would assert his or her claim for relief and . . . injury or prejudice to the offending party in the event that relief is accorded to the complainant” (*Sierra Club v. Vill. of Painted Post*, 134 A.D. 3d 1475 [4th Dept. 2015]; *see also Santillo v. Santillo*, 155 A.D. 3d 1688, 1689 [4th Dept. 2017]). Both elements bar the Respondents from dismissal. First, the Respondents had notice several months before the filing of this Petition that the Petitioners would assert these claims. Second, the Respondents articulated no prejudice in the Court granting preliminary injunctive relief. Although the Respondent Council argued that the Statute would “explode” if not included in a referendum on November 5, 2019, thus requiring the Council to re-draft and re-pass the Statute, Section 18-14 of Local Law No. 2 permits the Court to sever sections of the Statute as necessary. Thus, there is no prejudice to either the Mayor or City Council in delaying this referendum while the matter is thoroughly adjudicated.

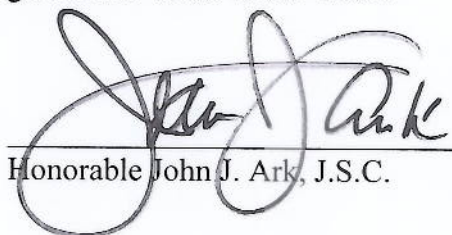
The opportunity which this case presents should not be squandered with only a cursory review of the Statute's legal implications. Certainly, the most lawful legislation will be accomplished through thorough judicial and, if necessary, appellate review.

The Statute may be legally permissible as written, but if judicial review requires changes to the Statute, those modifications will only be complicated if a legally defective version of the Statute has been approved in a hastily-passed referendum. Ultimately, any legislation submitted for a referendum on a matter of this importance should be a well-crafted, possibly judicially-honed law.

In light of the effect that the litigation may have upon the substance of Local Law No. 2, the Petitioners' request for preliminary injunctive relief barring Local Law No. 2 from being voted upon in the upcoming election on November 5, 2019 is granted. However, the Board of Elections shall authorize and distribute ballots containing the Local Law No. 2 referendum, but is stayed from authorizing the referendum to be voted upon until further order of this or an appellate court.

This Decision shall constitute the Judgment and Order of the Court.

Dated: September 25, 2019



Honorable John J. Ark, J.S.C.