

Troy political fallout has its day in nation's highest court

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Arguments in 2009 ballot fraud case go before U.S. Supreme Court Wednesday

Troy – What began as an absentee ballot fraud scheme to sway a 2009 minor party primary using voters from the city’s public housing and neighborhoods had spawned a civil rights lawsuit that is headed to the U.S. Supreme Court Wednesday.

A ruling in the case, which focuses on the timeliness of filing lawsuits, could also impact state and local governments.

The ballot fraud allegations broke when then-Republican operative Bob Mirch, a former Rensselaer County legislator and city public works commissioner, spent \$11,000 in his campaign funds to hire private investigators.

“I never thought it would go pass Rensselaer County Court. It surprises me it’s going to the Supreme Court,” said Mirch in by phone from Florida, where he moved after retiring.

The old refrain that in Rensselaer County “politics is a blood sport” is getting a look from the nation’s highest court in the case of “Edward G. McDonough, Petitioner v. Youel Smith, Individually and as Special District Attorney for the County of Rensselaer, New York, aka Trey Smith.”

Smith prosecuted McDonough, the Democratic county elections commissioner, in two county court trials.

McDonough's prosecution was part of a case that resulted in former Troy Councilman John Brown, former City Clerk William McInerney and Democratic operatives Anthony Renna and Anthony DeFiglio pleading guilty to charges.

McDonough's first trial ended in a hung jury in March 2012. McDonough was acquitted in Dec. 2012 at the second trial. From those trials came the lawsuit filed in U.S. District Court in Albany in Dec. 2015.

Former city councilman Michael LoPorto was tried along with McDonough when the case ended in mistrial; during the second trial, a jury also acquitted him. He also filed a civil rights lawsuit in U.S. District Court, but the case was ultimately dismissed last year.

McDonough's lawsuit alleges that Smith fabricated evidence and claims malicious prosecution for charging him with 74 felonies as part of a scheme in the 2009 Working Families Party primary election to forge more than 50 absentee ballots for Troy City Council Democratic

candidates. The suit also alleged that the other Democrats conspired to have McDonough take the fall and that Smith went along with it as part of a political vendetta he had against the elections commissioner.

At issue is not the substance of McDonough's original claims against the prosecutor, but whether McDonough was timely in filing his lawsuit.

McDonough filed the lawsuit in December 2015 under Section 1983 of a federal law which states that defendants can sue officials over civil rights violations. In these types of cases, there is no federal statute of limitations and state law applies, which in New York is three years.

The U.S. Second District Court of Appeals, however, ruled in August 2018 that McDonough filed his suit too late, deciding that he should have filed the suit after his first trial when he would have realized that false evidence was allegedly being used against him, according to a petition to the Supreme Court submitted by McDonough's attorney Neal Katyal.

In the petition, Katyal argues that the Second District's timeline for the application of the statute of limitation goes against rulings from five other federal courts of appeal.

“This has been a conflicted area for three decades. This case will hopefully resolve the issue,” said Brian Premo, the attorney who successfully defended McDonough in his criminal trial and filed the civil suit.

Attorney Thomas O'Connor of Albany will argue Smith's case before the Supreme Court, while McDonough's position will be argued by Katyal, a former acting U.S. solicitor general and attorney in Washington D.C, and Jeffrey B. Wall, principal deputy U.S. solicitor general.

The U.S. solicitor general was one of nine groups that filed amici curiae -- friends of the court - briefs supporting McDonough. The other briefs were filed by a range of liberal and conservative groups including the Cato Institute, the Cause of Action Institute, Constitutional Accountability Center, criminal law centers at New York University and Harvard University law schools, the American and New York Civil Liberty Unions and The Innocence Network.

Backing Smith are the states of Arkansas, Indiana, Louisiana, Nebraska, Ohio, South Carolina and Texas, plus the U.S. Conference of Mayors, National League of Cities and the International Municipal Lawyers Association.

The Supreme Court's ruling could either return McDonough's federal case to the lower courts for trial or end this — the last of the ballot-fraud related cases.

Arguments are likely to be contained to just one day, Wednesday, with a written decision coming in the next three to six months.