U.S. Supreme Court to hear appeal in Troy ballot-fraud lawsuit

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The U.S. Supreme Court has the opportunity to resolve an issue regarding a question of timeliness when it hears the appeal of a federal civil rights lawsuit that grew out of the prosecution of the decade-old Troy ballot fraud criminal case, the attorney representing the ballot fraud case's special prosecutor said Thursday.

At issue is when the clock starts running to file a lawsuit that results from a fabrication of evidence allegation, said Thomas J. O'Connor, who represents Trey Smith, the special district attorney in the election fraud case.

O'Connor is arguing that the U.S. Second District Court of Appeals was correct in its decision that Rensselaer County Democratic Elections Commissioner Edward G. McDonough missed the deadline for filing his $8 million lawsuit against Smith.

"There's been so much different analysis of this across the circuits. It's time this issue be adjudicated and reviewed by the U.S. Supreme Court," said O'Connor, with the Albany firm Napierski, VanDenburgh, Napierski and O'Connor.

McDonough sued Smith within the three-year period under Section 1983 of federal law after his Dec. 21, 2012 acquittal in the ballot-fraud case. The U.S. Second District Court of Appeals ruled in August 2018 that McDonough should have filed the lawsuit within three years of discovering the alleged evidence fabrication, or sometime within the first quarter of 2012.

O'Connor wrote in his legal brief filed Wednesday with the U.S. Supreme Court that because "a 'fabrication of evidence' claim does not require favorable termination of the proceedings," McDonough shouldn't have waited.

The U.S. Supreme Court will hear the case April 17.

Brian Premo, the attorney who successfully defended McDonough in his criminal trial and filed the civil suit, said five other federal judicial districts agree with the timeline that was followed in filing McDonough's lawsuit.

"In my opinion, it doesn't address the issues head on," Premo said about the new filing in the case.

"The U.S. government is on our side of this issue," said Premo. He added that the U.S. solicitor general is expected to ask for time to argue in support of McDonough's position before the U.S. Supreme Court.

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.

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.

O'Connor will argue the case for Smith, while Neal Katyal, a former acting U.S. solicitor general and partner at Hogan Lovells in Washington D.C., will argue the case for McDonough.