

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF STEUBEN

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TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEPHEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEPHEW, SUSAN
ROWLEY, JOSEPHINE THOMAS, and MARIANNE
VOLANTE,

Index No. _____

**AFFIRMATION IN
SUPPORT OF
PETITIONERS' ORDER TO
SHOW CAUSE**

Petitioners,

-against-

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

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BENNET J. MOSKOWITZ, an attorney duly admitted to practice before the Courts of the
State of New York, hereby affirms the following under penalty of perjury:

1. I am a Partner at Troutman Pepper Hamilton Sanders LLP, counsel for Petitioners
in this CPLR Art. 4 special proceeding.

2. Petitioner Tim Harkenrider, an elector of the state of New York, residing at 22
Spruce Street, Canisteo, NY 14823, in Steuben County, within Congressional District 23, and the

other Petitioners, all of whom are New York residents, by their counsel, pursuant to Article III, section 5 of the New York Constitution, Unconsolidated Laws § 4221 (L 1911, ch. 773, § 1), and CPLR § 3001, commenced this CPLR Art. 4 special proceeding by filing a Petition to challenge an apportionment and a proposed Order to Show Cause.*

3. I submit this Affirmation solely to present to the Court information and materials supporting Petitioners' proposed Order to Show Cause submitted herewith, which materials are attached hereto as described below.

4. Attached hereto as Exhibit A is a copy of Article III, section 5 of the New York Constitution, which provides: "An apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; *and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings*, and if said court be not in session it shall convene promptly for the disposition of the same. *The court shall render its decision within sixty days after a petition is filed.* In any judicial proceeding relating to redistricting of congressional or state legislative districts, any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part. In the event that a court finds such a violation, the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." (emphases added)

5. Attached hereto as Exhibit B is a copy of Unconsolidated Laws § 4221 (L.1911, ch. 773, § 1), which provides: "An apportionment by the legislature shall be subject to review by the supreme court at the suit of any citizen, upon the petition of any citizen to the supreme court where any such petitioner resides and upon such service thereof upon the attorney-general, the

* CPLR § 403(d) provides that "[t]he court may grant an order to show cause to be served, in lieu of a notice of petition at a time and in a manner specified therein."

president of the senate, the speaker of the assembly and the governor, as a justice of the supreme court may direct.”

6. Attached hereto as Exhibit C is a copy of the 2022 Political Calendar downloaded from <https://www.elections.ny.gov/NYSBOE/law/2022PoliticalCalendar.pdf> on the date hereof.

7. Attached hereto as Exhibit D is a copy of New York Assembly Bill A.09039 downloaded from <https://nyassembly.gov/> on the date hereof.

8. Attached hereto as Exhibit E is a copy of New York Assembly Bill A.09167 downloaded from <https://nyassembly.gov/> on the date hereof.

9. Attached hereto as Exhibit F is a copy of New York Senate Bill S.8196 downloaded from <https://www.nysenate.gov/legislation/bills/2021/s8196> on the date hereof.

WHEREFORE, it is respectfully requested that the Court grant Petitioners’ proposed Order to Show Cause, including by directing Respondents or their counsel show cause before this Court on the date set forth therein why Judgment should not be made and entered pursuant to CPLR § 411 and CPLR § 3001:

A. Declaring pursuant to CPLR § 3001 that:

i) the 2022 congressional map constitutes an unconstitutional map enacted without complying with the mandatory constitutional procedures for redistricting in Article III, Section 4(b) of the New York Constitution;

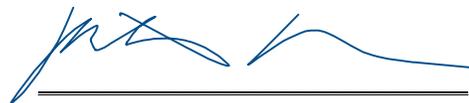
ii) the prior congressional map, court-adopted after the 2010 decennial census, is the only validly enacted map currently in existence, but is now unconstitutionally malapportioned, failing to comply with the mandatory constitutional requirements that each district contain an equal number of inhabitants, found in Article III, Section 4(c)(2) of the New York Constitution;

iii) the 2022 congressional map, apart and aside from procedural deficiencies, constitutes an unconstitutional partisan and incumbency-favoring/disfavoring gerrymander, in violation of Article III, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e); and

iv) the 2012 congressional districts are unconstitutional in light of the population shifts identified in the 2020 census.

- B. Enjoining Respondents from conducting any elections under the post-2010 congressional map;
- C. Enjoining Respondents from conducting any elections under the 2022 congressional map;
- D. Adopting a new, legally compliant congressional map;
- E. Alternatively, and only if the Court does not agree with Petitioners' procedural claim, ordering the Legislature to attempt to cure the legal and constitutional infirmities in 2022 congressional map and adopt a lawful congressional map;
- F. Suspending or enjoining the operation of any other state laws that would undermine this Court's ability to offer effective and complete relief to Petitioners for the November 2022 elections and related primaries;
- G. Awarding Petitioners all of their reasonable attorneys' fees and costs; and
- H. Awarding such other and further relief as this Court may deem just and proper.

Dated: New York, New York
February 3, 2022



BENNET J. MOSKOWITZ