

# Exhibit 1

**From:** [Tseytlin, Misha](#)  
**To:** [Eric Hecker](#); [Moskowitz, Bennet J.](#); [Dutton, Sean T.H.](#); [George H. Winner Jr.](#)  
**Cc:** [John Cuti](#); [Alex Goldenberg](#); [Alice Reiter](#); [Chill, C. Daniel](#); [Reich, Elaine](#); [O'Brien, Ted](#); [McKay, Heather](#); [Halliyadde, Muditha](#)  
**Subject:** RE: Tim Harkenrider, et al. v. Governor Kathy Hochul, et al., E2022-0116CV (Steuben Cnty.)  
**Date:** Friday, February 11, 2022 12:30:15 PM

[EXTERNAL]

Hello Eric,

In the spirit of compromise, and without agreeing with any of your statements below, we accept your proposal that Petitioners serve their principal brief and expert reports by Monday, in which case Respondents will not move to strike the brief or reports. We also accept your proposal that the parties each stipulate to a 10,000 word limit for their respective principal briefs, and Petitioners get 5,000 words for our reply. And we are glad to be in agreement on e-mail service.

We are carefully considering the other matters discussed in your email below.

Best,

**Misha Tseytlin**

Partner

**troutman pepper**

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**Sent:** Friday, February 11, 2022 10:42 AM  
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**Subject:** Re: Tim Harkenrider, et al. v. Governor Kathy Hochul, et al., E2022-0116CV (Steuben Cnty.)

**EXTERNAL SENDER**

Misha, I am following up on our one-on-one telephone conversation earlier. When you called me directly, I took your call, and I told you that I had no issue speaking with you informally on a one-on-one basis, but that other than providing you with off-the-cuff reactions to the issues you raised, I could not agree to anything before you first put your suggestions in writing for consideration by counsel for all Respondents. You indicated that you would do that, and we look forward to hearing

from you in writing at your earliest convenience.

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Pronouns: he/him/his

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**From:** Eric Hecker <[hecker@chwillp.com](mailto:hecker@chwillp.com)>

**Date:** Friday, February 11, 2022 at 10:26 AM

**To:** "Tseytlin, Misha" <[Misha.Tseytlin@troutman.com](mailto:Misha.Tseytlin@troutman.com)>, "Moskowitz, Bennet J." <[Bennet.Moskowitz@troutman.com](mailto:Bennet.Moskowitz@troutman.com)>, "Dutton, Sean T.H." <[Sean.Dutton@troutman.com](mailto:Sean.Dutton@troutman.com)>, "George H. Winner Jr." <[gwinner@kmw-law.com](mailto:gwinner@kmw-law.com)>

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**Subject:** Re: Tim Harkenrider, et al. v. Governor Kathy Hochul, et al., E2022-0116CV (Steuben Cnty.)

Misha,

We have carefully reviewed your email with our clients and with counsel for the Assembly and the Attorney General, and we submit this joint response.

We begin by reiterating that we will continue to reach compromises wherever feasible. However, we were surprised by the positions you have taken, many of which we believe are untenable.

Regarding the petition signature deadline, having now consulted with our clients, we have concluded that our clients do not have the authority to stipulate to what would amount to an amendment of duly enacted statutes, so we do not believe that we can push the deadlines back by stipulation.

Regarding the case schedule, all parties agreed during the meet and confer teleconference that Respondents' papers in opposition to the two pending orders to show cause are due on February 24. We hope to be able to meet that deadline, but our ability to do that will hinge on when you serve your expert reports and brief. For the record, our position is that it was improper for you to commence this special proceeding without filing and serving any expert reports or a brief with your petition, and that by failing to do so, you have waived your right to do so. Indeed, we do not read either of the orders to show cause to permit you to serve additional papers in support of either the Petition or your pending motion. With that said, if you will serve your expert reports by Monday,

February 14, we will not move to strike them. Especially given the highly complex nature of the statistical issues we are assuming you will attempt to raise, it would be impractical for us to be able to submit rebuttal expert reports by February 24 without having at least ten days to review and respond to your expert reports. We see no reason why you should need any additional time, much less time past Monday, to serve your brief (which you did not file with your petition as is customary, or seek leave to file or even mention in either of your proposed orders to show cause). So long as you serve your expert reports and brief no later than Monday, February 14, we see no reason to adjourn the current March 3 return date for the Petition and the pending motion.

Regarding discovery, we are surprised by the breadth and depth of the discovery you are seeking in this special proceeding, in which discovery is disfavored and available only by leave of the Court. With respect to your question about where and how the documents you are seeking are maintained, you purportedly are seeking every single document that was relevant to or considered by anyone in connection with the redistricting process, so the answer is that those documents are maintained in the electronic and/or paper files of every person who was involved in the redistricting process in any way. If you would like to provide us with proposed demands, we will review them and continue this discussion in good faith, but our position is that you currently do not have leave to obtain discovery and that the Court should not grant you such leave. Our reasons for that position – including, without limitation, the overbreadth of what you are seeking, and the impossibility of gathering and reviewing documents, creating a privilege log, briefing the weighty legislative and attorney-client privilege issues that would be raised, submitting documents that are claimed to be privileged for an in camera review, and exhausting any appeals that may be necessary in the next two weeks – are beyond the scope of this response, and we reserve all of our rights with respect to opposing any discovery you may seek leave to conduct. But again, we of course will continue our discussions with you to see if any common ground can be identified.

Regarding your motion to amend, we do not consent to the filing of your amended petition. Our position is, among other things, that allowing you to greatly expand the scope of this proceeding, with no realistic hope of obtaining a final judgment and completing any appeals that may be necessary anytime soon, would be unduly prejudicial to the election process, and also that it would be unduly prejudicial for Respondents to have to address expert reports regarding two reapportionment plans on such a compressed schedule.

Regarding email service, we consent.

Regarding brief length, as set forth above, our position is that you have waived your right to submit an opening brief. If you serve your brief by Monday February 14, we will not move to strike it, and we would consent to 10,000 words, provided that you likewise consent to the same for Respondents. We believe that the 4,200 words provided for in Rule 202.8-b is sufficient for your reply brief, but we would consent to 5,000 words as a courtesy.

If you prefer to respond to the above by email, of course feel free to do so. If you would prefer to resume our discussions by telephone, we will make ourselves available at the soonest time that is convenient for all counsel. We look forward to continuing to work with you constructively to narrow any areas of disagreement to the greatest extent possible.

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**From:** "Tseytlin, Misha" <[Misha.Tseytlin@troutman.com](mailto:Misha.Tseytlin@troutman.com)>

**Date:** Thursday, February 10, 2022 at 4:58 PM

**To:** Eric Hecker <[hecker@chwillp.com](mailto:hecker@chwillp.com)>, John Cuti <[jcuti@chwillp.com](mailto:jcuti@chwillp.com)>, Alex Goldenberg <[agoldenberg@chwillp.com](mailto:agoldenberg@chwillp.com)>, Alice Reiter <[areiter@chwillp.com](mailto:areiter@chwillp.com)>, "Chill, C. Daniel" <[DChill@graubard.com](mailto:DChill@graubard.com)>, "Reich, Elaine" <[EReich@graubard.com](mailto:EReich@graubard.com)>, "O'Brien, Ted" <[Ted.O'Brien@ag.ny.gov](mailto:Ted.O'Brien@ag.ny.gov)>, "McKay, Heather" <[Heather.McKay@ag.ny.gov](mailto:Heather.McKay@ag.ny.gov)>, "Halliyadde, Muditha" <[Muditha.Halliyadde@ag.ny.gov](mailto:Muditha.Halliyadde@ag.ny.gov)>

**Cc:** "Moskowitz, Bennet J." <[Bennet.Moskowitz@troutman.com](mailto:Bennet.Moskowitz@troutman.com)>, "George H. Winner Jr." <[gwinner@kmw-law.com](mailto:gwinner@kmw-law.com)>, "Dutton, Sean T.H." <[Sean.Dutton@troutman.com](mailto:Sean.Dutton@troutman.com)>

**Subject:** RE: Tim Harkenrider, et al. v. Governor Kathy Hochul, et al., E2022-0116CV (Steuben Cnty.)

Counsel,

Thank you for taking the time to speak with us earlier today. Given the forthcoming March 1, 2022 deadline for candidates to start collecting signatures for petitions, we greatly appreciate that you all made time to speak about these important issues. We reiterate that we appreciate your professionalism and desire – which we share – to reach compromises wherever feasible.

Per your request, we are providing the following draft proposal to facilitate the parties' ongoing discussions regarding the case schedule and related matters. As discussed, we understand no party is committing to a particular path unless and until an agreement is formalized (i.e., the list below is for discussion only).

Eric: You had mentioned some concerns you had about potential undue burdens related to discovery requests. We have no desire to unduly burden anyone. To enable us to address your concerns, we ask that you please share with us where and how the documents referenced below are maintained, so we can consider ways to reduce any potential burdens.

#### **Moving March 1 Petition Signature Deadline**

- Parties agree to the Court entering an order pushing back the period for candidates to collect signatures for petitions, N.Y. Election Law § 6-134(4); N.Y. Election Law § 6-158(1), by one week, so that this period now would start on March 8, and end on April 11–14.

**Proposed Case Schedule (Working Backwards And Assuming Petition Signature Date Moved to March 8)**

- Parties agree that scheduling applies to all issues in the Amended Petition (i.e., both Senate and congressional districts), so as to avoid separate or serial briefing.
- Petitioners' Expert Reports: February 15, 2022.
- Petitioners' Opening Brief: February 17, 2022.
- Respondents' Response And Expert Reports: February 24, 2022 (if return date remains March 3) or February 28, 2022 (if Court moves return date to March 7, 2022).
- Petitioners' Reply with any Reply Expert Reports due: March 2, 2022 (if return date remains March 3) or March 6, 2022 (if Court moves return date to March 7, 2022).
- Return date: March 3, 2022 or March 7, 2022, based upon what the Court decides.

**Discovery (Without prejudice to any Party's right to seek leave to serve additional discovery requests as appropriate)**

- Petitioners' Discovery Requests
  - Depositions
    - IRC (Subpoena)
      - Elaine Frazier
      - John Flateau
      - Ivelisse Cuevas-Molina
      - David Imamura
      - Eugene Bengier
    - Respondents
      - Governor Hochul
      - Senate Majority Leader Andrea Stewart-Cousins
      - Speaker Carl Heastie
      - LATFOR
        - Eric Katz (Counsel to NY Senate Office of Majority Counsel)
        - Phil Chonigman (Co-Executive Director)
        - Assemblymember Kenneth Zebrowski
        - Senator Mike Gianaris
  - Request for documents to Respondents seeking:
    - Documents concerning Respondents' contacts with IRC Commissioners Frazier, Flateau, Cuevas-Molinas, Imamura, and Bengier.
    - Communications concerning the IRC's work, which Respondents received from third parties.
    - Any other documents and communications relevant to and considered by Respondents in the process of New York's redistricting of Congressional and state Senate districts in the current decennial.
- Petitioners would serve their discovery requests tomorrow, February 11.
- Parties to stipulate to expedited response deadlines for stipulated discovery requests, with the goal of having discovery completed by February 24. This is without prejudice to any party raising any objections it may have with any discovery request.

**Stipulate to amended petition.**

- Respondents to stipulate to Petitioners' leave to file the Amended Petition, thereby relieving all parties of having to devote further resources to Petitioners' pending Motion for Leave to Amend.

**Email Service**

All parties agree to accept email service of all documents not filed through NYSCEF, including the two Orders to Show Cause already entered and supporting papers.

**Word Limits on Briefs**

- All parties agree to double the word limits from those found in Rule 202.8-b of the Uniform Civil Rules for the Supreme Court and the County Court.
  - Memoranda of Law in Chief: 14,000 words
  - Reply Memoranda: 8,400 words.

Best,

**Misha Tseytlin****Partner****troutman pepper**

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**From:** Eric Hecker <[hecker@chwillp.com](mailto:hecker@chwillp.com)>**Sent:** Wednesday, February 9, 2022 5:13 PM**To:** Moskowitz, Bennet J. <[Bennet.Moskowitz@troutman.com](mailto:Bennet.Moskowitz@troutman.com)>; George H. Winner Jr. <[gwinner@kmw-law.com](mailto:gwinner@kmw-law.com)>; Tseytlin, Misha <[Misha.Tseytlin@troutman.com](mailto:Misha.Tseytlin@troutman.com)>**Cc:** John Cuti <[jcuti@chwillp.com](mailto:jcuti@chwillp.com)>; Alex Goldenberg <[agoldenberg@chwillp.com](mailto:agoldenberg@chwillp.com)>; Alice Reiter <[areiter@chwillp.com](mailto:areiter@chwillp.com)>; Chill, C. Daniel <[DChill@graubard.com](mailto:DChill@graubard.com)>; Reich, Elaine <[EReich@graubard.com](mailto:EReich@graubard.com)>; O'Brien, Ted <[Ted.O'Brien@ag.ny.gov](mailto:Ted.O'Brien@ag.ny.gov)>; McKay, Heather <[Heather.McKay@ag.ny.gov](mailto:Heather.McKay@ag.ny.gov)>; Halliyadde, Muditha <[Muditha.Halliyadde@ag.ny.gov](mailto:Muditha.Halliyadde@ag.ny.gov)>**Subject:** Re: Tim Harkenrider, et al. v. Governor Kathy Hochul, et al., E2022-0116CV (Steuben Cnty.)**EXTERNAL SENDER**

Thank you for reaching out. I am copying my colleagues, counsel for the Assembly, and attorneys with the Attorney General's office, which may or may not represent certain Respondents. We have conferred about our respective schedules and are available at noon tomorrow if that works for you.

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**Subject:** Tim Harkenrider, et al. v. Governor Kathy Hochul, et al., E2022-0116CV (Steuben Cnty.)

Mr. Hecker,

We represent Petitioners in the referenced matter. We would like to meet and confer with you about the case schedule at your earliest convenience. What is your availability tomorrow?

Sincerely,  
Bennet

**Bennet J. Moskowitz\***

Partner

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