STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

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,

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.

Notice of Appeal

Index No.
E2022-0116CV

PLEASE TAKE NOTICE that Respondent Speaker of the Assembly Carl Heastie appeals to the Appellate Division, Fourth Department of the Supreme Court of the State of New York, from the Decision and Order of the Hon. Patrick F. McAllister, A.J.S.C. (the "Order," attached as **Exhibit A**), signed in this special proceeding on March 3, 2022, and filed with the Steuben County Clerk's Office on March 3, 2022, at NYSCEF Dkt. No. 126. This appeal is taken from each and every part of the Order, as well as from the whole thereof.

Dated: New York, New York
March 3, 2022

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Dated: Buffalo, New York
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STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

Index No. E2022-0116CV

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

Petitioners.

-against-

DECISION

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, abd THE NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT,

Respondents

PRESENT: Hon. Patrick F. McAllister
Acting Supreme Court Justice

In the Petitioner's third Order to Show Cause in this matter the Petitioners seek expedited discovery. The Respondents oppose this application on multiple grounds including the grounds of legislative privilege, that discovery is not provided for in these types of actions, that the proposed discovery was too broad, and because the discovery process would take too long and delay a timely resolution of this matter.

The Petitioners are seeking expedited discovery. To some extent the governmental defendants enjoy a level of immunity from even discovery. Based on the State and Federal Constitutions the courts have interpreted the Speech and Debate Clause of the constitutions as providing a level of protection for both Federal Congressional leaders as well as state elected representatives. The constitution provides both legislative immunity and legislative privilege. However, Court have found that state legislators do not have an absolute right to claim

legislative privilege. Gillock, 445 U.S. 360 (1980).

In 2003, in the case of Rodriguez v. Pataki, 280 F. Supp. 2d 89 (So. Dist. Of NY 2003) that court laid out a balancing test to determine what information should be disclosed and what needs to be protected because of the chilling effect it would have on the legislature if the information was disclosed. The Rodriguez court adopted the same five factors as was set forth in In re Franklin Nat'l Bank Secs. Litig., 478 F. Supp 583 (E. Dist. New York 1979). The factors to be considered are 1. the relevance of the evidence sought; 2. the availability of other evidence; 3 the seriousness of the issues; 4 the role of the government in the litigation; and 5 the possibility of future government employees being chilled by realizing potential disclosure of the information. Rodriguez v. Pataki, (supra.). In Favors v. Cuomo, 285 F.D.R. 187 (Eastern Dist. of NY 2012) the Petitioners sought the identity of the person(s) who drew the challenged map and that that person(s) be produced for deposition(s).

Even though an issue in this case is whether or not the Democrats purposely tailored a map to eliminate districts currently held by Republicans, the courts have been reluctant to require disclosure of statements made by a member of the decision-making body when there is no evidence that the body as a whole has adopted the same discriminatory intent. Comm. For a Fair & Balanced Map v. Ill. State Bd. of Elections, 2011 U.S. Dist. LEXIS 117656. "What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork." Hunter v. Underwood, 471 U.S. 222 at 229 (Sup Ct. 1985). On the other hand, when the requested information is seeking information about those who (including nonlegislators) were involved in the process and what documents were reviewed in coming up with the plan the courts have been more inclined to grant disclosure. Rodriguez v. Pataki, (supra.).

Often what is found to be discoverable are things where the court's find were not legislative in nature or where a privilege could be found to have been waived. Hence public remarks or statements, public testimony, inquires from and responses to the public or the media have all been found to be discoverable. See, Favors v. Cuomo, (supra.). On the other hand, documents related to floor speeches, floor debates, committee meetings, drafts and such have been prohibited from disclosure as being to likely to chill future debate and discussion if it was to be released as discoverable.

Members of the IRC and at least two members of LATFOR are not legislators. Therefore, discovery from these individuals is not prohibited under the Federal or State Constitution as these people do not enjoy legislative immunity or legislative privilege. See, Rodrigeuz. Further, this court adopts the ruling in Rodriguez that even these Respondents are not completely exempt from providing discovery. Further, the court adopts the five prong test of Rodriguez. Under the five prong test the court finds the requested discovery is relevant; that the relevant discovery is not otherwise available; that the issue of this case are very serious and that the governments role in this case is huge; further that limited discovery will not have the potential of chilling legitimate legislative actions in the future. Since this court only has until

potential of chilling legitimate legislative actions in the future. Since this court only has until April 4, 2022 to decide this matter the court will grant expedited discovery. All persons asked to provide discovery are to give this his/her highest priority and to set aside other matters.

The court will permit discovery of the Respondents as to whether or not the map-drawing process was directed and controlled by one political party or the legislative leaders of one political party. See, League of Women Voters of Ohio, 2022 WL 110261, Householder, 373 F. Supp 3d 1093-96; League of Women Voters of Pa, 178 AD3d 817. This would include whether the Respondents without Republican input directed and/or controlled the map-drawing process.

The court will also permit discovery of the Respondents as to any public remarks or statements made by them, any public testimony he/she gave about the redistricting process and/or maps, and any inquires from and any responses to the public or media about the redistricting process and/or maps. See, Favors v. Cuomo. This would include public comments made by the Respondents about the IRC and the IRC's action or lack of action. This would include any communication between the Respondents and third-parties about advancing a partisan agenda or any efforts to undermine the constitutional process of having the IRC produce a viable map and/or viable second map. This would also include all documents and communications concerning the work of the Commissioners of the Democratic Caucus of the IRC which documents and communications were received from third parties.

NOW, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberation, it is hereby decided that all discovery shall be completed by March 12, 2022.

Dated: March 3, 2022

Hon. Patrick F. McAllister
Acting Supreme Court Justice

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