

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF STEUBEN

-----X

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  
VIOLANTE,

Index No. E2022-0116CV

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.

-----X

**PETITIONERS' SUPPLEMENTAL BRIEF ADDRESSING REMEDIES**

TROUTMAN PEPPER HAMILTON  
SANDERS LLP

Bennet J. Moskowitz, Reg. No. 4693842  
875 Third Avenue  
New York, New York 10022  
(212) 704-6000  
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No. 4642609  
227 W. Monroe St., Suite 3900  
Chicago, IL 60606  
(608) 999-1240  
misha.tseytlin@troutman.com

KEYSER MALONEY &  
WINNER LLP

George H. Winner, Jr., Reg. No. 1539238  
150 Lake Street  
Elmira, New York 14901  
(607) 734-0990  
gwinner@kmw-law.com

HOWARD HINMAN &  
KATTELL LLP

Richard C. Lewis  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, NY 13901  
(607) 231-6605  
rlewis@hbk.com

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT ..... 1

ARGUMENT ..... 2

I. Holding A Special Election For The U.S. House Of Representatives In 2023 Would Be Unconstitutional, And The Constitutionality Of Such A Special Election For The 2022 State Senate Is Uncertain ..... 2

II. This Court Can and Should Order Constitutional Congressional And State Senate Maps During The 2022 Election Cycle ..... 4

CONCLUSION..... 10

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Benninghoff v. 2021 Legislative Reapportionment Comm'n</i> , Nos. 4 WM 2022, 11 MM 2022, 14 MM 2022, 16 MM 2022, 17 MM 2022, 18 MM 2022, 7 WM 2022, 11 WM 2022, 12 WM 2022 (Pa. Mar. 16, 2022) .....	8
<i>Carter v. Chapman</i> , No. 7 MM 2022 (Pa. Feb. 23, 2022).....	8
<i>Carter v. Chapman</i> , No. 7 MM 2022 (Pa. Feb. 9, 2022).....	8
<i>Democratic Nat'l Comm. v. Wis. State Legislature</i> , 141 S. Ct. 28 (2020).....	10
<i>Foster v. Love</i> , 522 U.S. 67 (1997).....	2
<i>Fox v. Paterson</i> , 715 F. Supp. 2d 431 (W.D.N.Y. 2010).....	3
<i>Goldstein v. Rockefeller</i> , 257 N.Y.S.2d 994 (Sup. Ct. Monroe Cnty. 1965) .....	5
<i>Grove v. Emison</i> , 507 U.S. 25 (1993).....	9
<i>Harper v. Hall</i> , 865 S.E.2d 301 (N.C. 2021).....	8
<i>Holt v. 2011 Legislative Reapportionment Comm'n</i> , No. 7 MM 2012 (Pa. Feb. 3, 2012).....	9
<i>In re 2022 Legislative Districting of the State of Maryland</i> , No. COA-MISC-0025-2021 (Md. Mar. 15, 2022) .....	8
<i>In re N.Y. Juvenile Asylum</i> , 172 N.Y. 50 (1902).....	6
<i>In re: Petitions for Review Challenging the Final 2021 Legislative Reapportionment Plan</i> , Judicial Administration, Dkt. No. 569 (Pa. Feb. 23, 2022) .....	8
<i>Jackson v. Ogilvie</i> , 426 F.2d 1333 (7th Cir. 1970) .....	3
<i>Landes v. Town of N. Hempstead</i> , 20 N.Y.2d 417 (1967).....	5
<i>Legislative Research Comm'n v. Fischer</i> , No. 2012-SC-000091 (Ky. Apr. 26, 2012).....	9
<i>Merrill v. Milligan</i> , 142 S. Ct. 879 (2022).....	9, 10

*Purcell v. Gonzalez*,  
549 U.S. 1 (2006) (per curiam)..... 9

*Reiff v. N.Y.C. Conciliation & Appeals Bd.*,  
491 N.Y.S.2d 565 (Sup. Ct. N.Y. Cnty. 1985) ..... 4

*Republican Nat’l Comm. v. Democratic Nat’l Comm.*,  
140 S. Ct. 1205 (2020) (per curiam)..... 9

*Republican Party of Pa. v. Boockvar*,  
141 S. Ct. 1 (2020)..... 10

*U.S. Term Limits, Inc. v. Thornton*,  
514 U.S. 779 (1995)..... 1, 2, 3

*United States v. New York*,  
No. 1:10-cv-1214, 2012 WL 254263 (N.D.N.Y. Jan. 27, 2012) ..... 7

**Statutes And Rules**

2 U.S.C. § 7..... 2, 6

52 U.S.C. § 20302..... 6

N.Y. Election Law § 4-112 ..... 6

N.Y. Election Law § 4-114..... 6

N.Y. Election Law § 6-120..... 6

N.Y. Election Law § 6-134..... 6

N.Y. Election Law § 6-158..... 6

N.Y. Election Law § 8-100..... 6

N.Y. Election Law § 10-108..... 6

N.Y. Election Law § 11-204..... 6

**Constitutional Provisions**

U.S. Const. art. I, § 2..... 1, 2, 3

U.S. Const. art. I, § 5..... 3

N.Y. Const. art. III, § 2 ..... 3, 4

N.Y. Const. art. III, § 5 ..... 1, 2, 4, 5

**Other Authorities**

Fed. Voting Assistance Program, *Primary Elections By State and Territory* (2022)..... 8

*State Senate Districts Will Also Face Legal Challenge in New York*, Spectrum News 1 (Feb. 9, 2022) ..... 9

### PRELIMINARY STATEMENT

In their Amended Petition, Petitioners requested that this Court grant relief from the unconstitutional 2022 and 2012 Congressional and state Senate maps for the 2022 election cycle. NYSCEF No. 18 ¶¶ 245, 255, 263, 272–74, & pp.81–82. Their prayer for relief also included this Court moving any election-related deadlines and adopting constitutional congressional and state Senate maps *before* the 2022 General Election because that is the timing that the New York Constitution contemplates. N.Y. Const. art. III, § 5; *see* NYSCEF No. 18 ¶¶ 245, 255, 263, 272–74, & pp. 81–82. This Court preliminarily concluded that interim relief against election deadlines was unnecessary because, in part, of the possibility of holding special elections in 2023 under new, constitutional maps, NYSCEF No. 231 at 70:12–15. Petitioners on March 13, 2022, requested supplemental briefing on the following issues:

- (1) “Whether, assuming the Court finds the 2022 congressional and/or State Senate maps unconstitutional, the United States Constitution and New York Constitution would permit this Court to order special elections in 2023 under replacement, constitutional maps?” and
- (2) “whether, assuming the Court finds the 2022 congressional and/or State Senate maps unconstitutional, (a) this Court should use its constitutional authority to grant relief that would permit constitutional maps for the November 2022 elections and related primaries?; (b) assuming this Court imposes constitutional replacement maps for the November 2022 elections and related primaries, what are the election deadlines that this Court should order that would govern the 2022 elections, consistent with the time needed to create and adopt remedial maps, the practicalities of election administration, and the requirements of federal law?”

NYSCEF No. 199 at 2. This Court ordered supplemental briefing orally on Wednesday, March 16.

Petitioners now provide their answers to the questions that this Court ordered the parties to brief. *First*, the U.S. Constitution prohibits a special election in 2023 for Congressmembers who won congressional races in the 2022 General Election, *See* U.S. Const. art. I, § 2; *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 837–38 (1995), and this special-election issue is more complicated with regard to the state Senate. *Second*, this Court has ample time and authority to order new maps

for 2022, as the New York Constitution contemplates, N.Y. Const. art. III, § 5, including by postponing election-related deadlines to the extent necessary, in order to protect the rights of New York voters and safeguard the validity and integrity of elections held in the State. *Infra* Part II.

### ARGUMENT

#### **I. Holding A Special Election For The U.S. House Of Representatives In 2023 Would Be Unconstitutional, And The Constitutionality Of Such A Special Election For The 2022 State Senate Is Uncertain**

The U.S. Constitution does not permit courts to force Congressmembers who have won a November election to thereafter run in a special election to retain their seats for the constitutional 2-year term. Defining uniform election intervals and term lengths for the U.S. House of Representatives, Article I, Section II of the U.S. Constitution requires every State to hold its elections for the U.S. House of Representatives every two years, U.S. Const. art. I, § 2, cl. 1 (“The House of Representatives shall be composed of Members chosen every second Year by the People of the several States.”), which elections occur on “[t]he Tuesday next after the 1st Monday in November, *in every even numbered year*” by federal law, 2 U.S.C. § 7 (emphasis added). Interpreting this constitutional provision, the U.S. Supreme Court has noted that members of the House of Representatives must “be chosen *every second Year* by the People of the several States,” and that the Constitution does not “[a]llow[ ] individual States” to diverge from these requirements because doing so “would be inconsistent with the Framers’ vision of a uniform National Legislature representing the people of the United States.” *Thornton*, 514 U.S. at 783, 821 (emphasis added). Therefore, States must uniformly hold elections, which “refer[s] to the combined actions of voters and officials meant to make a final selection of an officeholder,” consistent with the schedule set by Congress. *Foster v. Love*, 522 U.S. 67, 71 (1997). The only exception of which Petitioners are aware arises in the case of a vacancy for specific reasons—such as death, congressional expulsion, or voluntary resignation by a Congressman. U.S. Const.

art. I, § 2, cl. 4 (“When vacancies happen in the Representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.”); *see also* U.S. Const. art. I, § 5, cl. 2; *Jackson v. Ogilvie*, 426 F.2d 1333, 1134, 1336 (7th Cir. 1970); *Fox v. Paterson*, 715 F. Supp. 2d 431, 432, 442 (W.D.N.Y. 2010).

Holding a special election for New York’s congressional seats in 2023, after a 2022 election under the prior, unconstitutional map, violates these principles. The Supreme Court has made clear that a state court cannot abridge the term of any duly elected Congressman, *Thornton*, 514 U.S. at 837–38—let alone all Congressmembers elected to office in a State’s general election. So, if this Court were to delay any remedy for the unconstitutional 2022 congressional map, thereby allowing congressional candidates to be elected under that map, the Court would be barred by the U.S. Constitution from remedying those constitutional errors for the entirety of the Congressmembers’ two-year terms of office. Given that there is no barrier to this Court remedying the unconstitutionality of this map for the 2022 election, *infra* Part II, permitting the unconstitutional congressional map to fester for that long is simply not the prudent course.

The limited constitutional exceptions for special elections plainly do not apply here. The U.S. Constitution permits special elections when a Congressman dies, retires, or is expelled during his term of office. U.S. Const. art. I, § 2, cl. 4. But there is no recall mechanism in the Constitution, and this Court is not empowered to hold special elections for congressional seats occupied by duly elected members. *See Thornton*, 514 U.S. at 837–38. Thus, this Court does not have the authority to essentially recall all 26 Congressmembers in 2023, by way of special elections.

Finally, while the New York Constitution suggests that duly elected state senators are similarly insulated from having to run in an out-of-time special election during their incumbency,

N.Y. Const. art. III, § 2, the 2014 amendments to the Constitution give this Court broad authority to remedy unconstitutional legislative maps, so it is probably true that this Court could order a special election for state Senate districts in 2023, N.Y. Const. art. III, § 5. Under Article III, Section 2 of the New York Constitution, any senator that has prevailed in an election is entitled to occupy that office for two years, absent any subsequent basis for removal or resignation. *See* N.Y. Const. art. III, § 2 (noting state Senate members “shall be chosen for two years.”). However, the later-enacted amendments to Article III banning partisan gerrymandering in redistricting give this Court broad authority and maximum flexibility to shape remedies and timing for relief on unconstitutional maps. N.Y. Const. art. III, § 5; *see Reiff v. N.Y.C. Conciliation & Appeals Bd.*, 491 N.Y.S.2d 565, 567 (Sup. Ct. N.Y. Cnty. 1985) (“[T]he more recent and more specific of the two [provisions] will control.”).<sup>1</sup> As such, the question of whether this Court *could* order a special election in 2023 under a new state Senate map remains open, although multiple considerations counsel against this choice of remedy. *See infra* Part II.

## **II. This Court Can and Should Order Constitutional Congressional And State Senate Maps During The 2022 Election Cycle**

This Court can and should exercise its constitutional authority to order constitutional congressional and state Senate maps for the November 2022 elections and related primaries.

*First*, the New York Constitution contemplates that if a challenger is successful, relief will apply to the first election cycle under the new map. The New York Constitution authorizes judicial review of the 2022 maps, mandating that if a court finds the maps “to violate the provisions of” Article III, Sections 4 and 5, it must “*invalid[ate]*” those maps “in whole or in part.” N.Y. Const. art. III, § 5 (emphasis added); *see Goldstein v. Rockefeller*, 257 N.Y.S.2d 994, 1004 (Sup. Ct.

---

<sup>1</sup> That authority would, of course, not extend to the congressional seats, because a state constitutional provision cannot trump the protections of the U.S. Constitution.



Monroe Cnty. 1965); *Landes v. Town of N. Hempstead*, 20 N.Y.2d 417, 421 (1967).<sup>2</sup> Further, Article III, Section 5 of the New York Constitution imposes upon the court a strict, 60-day deadline (ending April 4, 2022, in this case) to decide whether New York’s congressional and state Senate maps are unconstitutional—months before any election is set to take place—thereby envisioning immediate judicial consideration and subsequent effect of the Court’s ruling, should it “invalid[ate]” any maps. N.Y. Const. art. III, § 5. It would make very little sense for the Constitution to *mandate* such expedited proceedings if it did not envision that any remedy would take effect immediately before the impending election season, including in a case—such as this one—where the challengers filed their Petition on the very day that the Governor signed the maps.<sup>3</sup>

*Second*, this Court has ample authority to grant Petitioners’ requested remedy for 2022, including moving statutory election deadlines by postponing the primary election day set by state law. This authority derives from the New York Constitution, which authorizes this Court to review and “*invalid[ate]*” the 2022 maps “in whole or in part” upon finding the maps “to violate the provisions of” Article III, Sections 4 and 5. N.Y. Const. art. III, § 5 (emphasis added). Indeed, the Constitution explicitly envisions that the Court’s expedited consideration of a serious challenge to redistricting would not be frustrated by any ancillary concerns, including statutory deadlines, in order to consider the critical issues presented by such a challenge. *Id.*

Moreover, this Court plainly has authority to move statutorily imposed deadlines in service of resolving a *constitutional* violation. It is axiomatic that the constitutional provision in Article

---

<sup>2</sup> Since the 2022 maps are “invalid,” then that would leave the 2012 maps as the only maps, which maps are grossly malapportioned and thus unconstitutional. NYSCEF No. 18 ¶¶ 246–55.

<sup>3</sup> While Petitioners moved to amend the Petition several days later to add their challenges to the state Senate maps, *see* NYSCEF No. 18, this did not move the April 4 deadline for the Court to resolve this case.

III, Section 5, as most recently enacted by the 2014 amendments, trumps any statutorily imposed deadlines. *See, e.g., In re N.Y. Juvenile Asylum*, 172 N.Y. 50, 57 (1902). The statutory election deadlines are just that—governed by state statutes. *See, e.g.,* N.Y. Election Law §§ 6-134(4) (primary candidates obtaining signatures on designating petitions beginning on March 1, 2022), 6-158(1) (deadline to file designating petitions on April 7, 2022), 8-100(1)(a) (primary election on June 28, 2022). Thus, this Court has the authority and duty to enforce the New York Constitution and move the statutory election deadlines, as needed.

*Third*, there is ample time for this Court to grant the requested remedy for the 2022 election cycle, including moving the statutory primary date to August, if the Legislature does not itself take this action. This Court has suggested that drawing and putting in place remedial maps, as necessary, will likely take at least “a few weeks or even a couple of months.” NYSCEF No. 231 at 70:6–12. Assuming, *arguendo*, that this timeline is correct, that would still allow ample time to move the primary elections back from June 28, 2022, to August, and hold general elections on November 8, 2022, as prescribed by federal law, *see* 2 U.S.C. § 7, including accommodating the 45-day federal-law requirement under the Uniform and Overseas Citizens Absentee Voting Act, as amended by the Military and Overseas Voter Empowerment Act, 52 U.S.C. § 20302(a)(8)(A). Moving back the primary election to August would permit candidates ample time to obtain signatures on designating petitions, *see* N.Y. Election Law §§ 6-134(4), 6-158(1), and the Board of Elections a full week to authorize primary petitions, *see* N.Y. Election Law § 6-120(3), and sufficient time to certify the primary ballot, *see* N.Y. Election Law § 4-110, all while complying with the federal requirements noted above, 52 U.S.C. § 20302(a)(8)(A). And this extension of time for these primary deadlines would in no way implicate the general-election deadlines, which do not begin until September. N.Y. Election Law §§ 4-112, 4-114, 10-108, 11-204. Moreover, an

August primary would be consistent with the approach taken by fourteen other states that have scheduled primary elections in August 2022, *see* Fed. Voting Assistance Program, *Primary Elections By State and Territory* (2022).<sup>4</sup>

Notably, this adjustment of dates for state primary elections is not at all atypical for New York, given that it has held separate federal and state primaries regularly over the past several years. In fact, as a result of the MOVE Act, New York state was *required* to hold a separate primary election for federal offices from 2012 through 2018. *See United States v. New York*, No. 1:10-cv-1214, 2012 WL 254263, at \*3 (N.D.N.Y. Jan. 27, 2012). Consequently, in each of the election years 2012, 2014, 2016, and 2018, the federal primary election was held in June while the state and local primary elections were held in September. *See id.* Such a modification to primary deadlines would not even be an unfamiliar inconvenience and requires nothing more than what the Democratic Senate Leader Stewart-Cousins has already promised—“[the Legislature] can be nimble should [they] have to be”<sup>5</sup>—and the Legislature might well even extend the deadlines itself should the Court grant Petitioners the relief they seek against these maps.

*Fourth*, moving statutory election deadlines is consistent with the approach taken by state courts across the nation in just this election cycle during various redistricting challenges:

- In Maryland, the Court of Appeals very recently moved primary election deadlines from June 28, 2022, to July 19, 2022, in order to determine the constitutionality of a legislative redistricting plan that is subject to a partisan gerrymandering

---

<sup>4</sup> Available at: <https://www.fvap.gov/guide/appendix/state-elections>.

<sup>5</sup> *State Senate Districts Will Also Face Legal Challenge in New York*, Spectrum News 1 (Feb. 9, 2022), available at: <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/02/09/state-senate-districts-will-also-face-legal-challenge-in-new-york>.

challenge. See Order, *In re 2022 Legislative Districting of the State of Maryland*, No. COA-MISC-0025-2021 (Md. Mar. 15, 2022);<sup>6</sup>

- In Pennsylvania, courts temporarily suspended election calendar dates pending those courts' review challenges to reapportionment plans by Pennsylvania's Legislative Reapportionment Commission. See Order, *Benninghoff v. 2021 Legislative Reapportionment Comm'n*, Nos. 4 WM 2022, 11 MM 2022, 14 MM 2022, 16 MM 2022, 17 MM 2022, 18 MM 2022, 7 WM 2022, 11 WM 2022, 12 WM 2022 (Pa. Mar. 16, 2022)<sup>7</sup>; Order, *In re: Petitions for Review Challenging the Final 2021 Legislative Reapportionment Plan*, Judicial Administration, Dkt. No. 569 (Pa. Feb. 23, 2022)<sup>8</sup>; Order, *Carter v. Chapman*, No. 7 MM 2022 (Pa. Feb. 23, 2022)<sup>9</sup>; Order, *Carter v. Chapman*, No. 7 MM 2022 (Pa. Feb. 9, 2022)<sup>10</sup>;
- And in North Carolina, the State Supreme Court delayed primary elections for over two months to permit sufficient consideration of pending redistricting challenges. *Harper v. Hall*, 865 S.E.2d 301, 302 (N.C. 2021).

Moreover, as just a small sample of the 2012 redistricting cycle, state courts similarly moved election deadlines during their consideration of challenges to redistricting:

---

<sup>6</sup> Available at: <https://mdcourts.gov/sites/default/files/import/coappeals/highlightedcases/2022districting/20220315orderelectiondates.pdf>.

<sup>7</sup> Available at: <https://www.pacourts.us/assets/opinions/Supreme/out/18mm2022pco%20-%20105081192165697317.pdf#search=%222021%20Legislative%20Reapportionment%20Commission%22>.

<sup>8</sup> Available at: <https://www.pacourts.us/assets/opinions/Supreme/out/amended%20order%20entered%20-%20105056320163589068.pdf#search=%22Petitions%20for%20Review%20Challenging%20the%20Final%202021%20Legislative%20Reapportionment%20Plan%22>.

<sup>9</sup> Available at: [https://www.pacourts.us/assets/opinions/Supreme/out/7%20mm%202022%20-%20order%20adopting%202022%20congressional\\_plan.pdf#search=%22carter%20v.%20chapman%22](https://www.pacourts.us/assets/opinions/Supreme/out/7%20mm%202022%20-%20order%20adopting%202022%20congressional_plan.pdf#search=%22carter%20v.%20chapman%22).

<sup>10</sup> Available at: <https://www.pacourts.us/assets/opinions/Supreme/out/7mm2022pco%20-%202022-9-2022.pdf#search=%227%20mm%202022%22>.

- In Kentucky, a court enjoined various filing deadlines during its consideration of a challenge to the state’s post-2010 decennial census maps. *See Legislative Research Comm’n v. Fischer*, No. 2012-SC-000091 (Ky. Apr. 26, 2012)<sup>11</sup>;
- And in Pennsylvania, the Pennsylvania Supreme Court “adjust[ed] the primary election schedule” during the trial court’s hearing of “objections to nominating petitions” as part of consolidated challenges to the post-2010 decennial census redistricting. *Holt v. 2011 Legislative Reapportionment Comm’n*, No. 7 MM 2012 (Pa. Feb. 3, 2012), at 14 n.10.<sup>12</sup>

Finally, granting Petitioners’ requested relief would not run afoul of *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), or the U.S. Supreme Court’s recent actions in a Voting Rights Act case out of Alabama, *Merrill v. Milligan*, 142 S. Ct. 879 (2022). Under *Purcell*, it is permissible “for a State on its own to” modify “its election laws close to a State’s elections,” *Merrill*, 142 S. Ct. at 881 (Kavanaugh, J., concurring), which plainly includes state courts moving those deadlines, as in the examples noted immediately above. Only “lower federal courts” are prohibited from “alter[ing] . . . [State] election rules on the *eve* of an election,” in order to avoid voter confusion, *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam) (emphasis added). Any action by this Court to supervise and administer redistricting as a result of Petitioners’ challenge is “precisely the sort of state judicial supervision of redistricting [the U.S. Supreme Court] ha[s] encouraged.” *Grove v. Emison*, 507 U.S. 25, 34 (1993). This observation is supported by the U.S. Supreme Court’s recent and different treatment of appeals from state-court judgments versus federal-court judgments. *See, e.g., Republican Party of Pa. v. Boockvar*,

---

<sup>11</sup> Available at: <http://162.114.92.72/SC/2012-SC-000091-TG.PDF>.

<sup>12</sup> Available at: [https://www.pacourts.us/assets/opinions/Supreme/out/J-2-12\\_31-2012mo.pdf](https://www.pacourts.us/assets/opinions/Supreme/out/J-2-12_31-2012mo.pdf).

141 S. Ct. 1 (2020); *Democratic Nat’l Comm. v. Wis. State Legislature*, 141 S. Ct. 28 (2020). And given that Petitioners seek only to delay certain election deadlines with ample time for the State to advise voters while this Court considers the Petition, such changes do not “require complex or disruptive implementation,” so the State can “easily” make these changes “without undue collateral effects.” *Merrill*, 142 S. Ct. at 881 n.1 (Kavanaugh, J., concurring). Thus, nothing from *Merrill* precludes this Court from rescheduling election deadlines to afford complete relief on Petitioner’s claims, including the primary election deadline, until this Court renders its decision on April 4, 2022, and there is an opportunity to create and implement remedial maps, as necessary.

**CONCLUSION**

For the reasons set forth above, Petitioners respectfully request that this Court grant Petitioners’ Requested Timing And Scope Of Remedy.

Dated: New York, New York

March 18, 2022

TROUTMAN PEPPER HAMILTON  
SANDERS LLP

By: 

Bennet J. Moskowitz, Reg. No. 4693842  
875 Third Avenue  
New York, New York 10022  
(212) 704-6000  
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No. 4642609  
227 W. Monroe St.  
Suite 3900  
Chicago, IL 60606  
(608) 999-1240  
misha.tseytlin@troutman.com

Respectfully submitted,

KEYSER MALONEY &  
WINNER LLP

By: s/ George H. Winner, Jr.

George H. Winner, Jr., Reg. No. 1539238  
150 Lake Street  
Elmira, New York 14901  
(607) 734-0990  
gwinner@kmw-law.com

HOWARD HINMAN &  
KATTELL LLP

Richard C. Lewis  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, NY 13901  
(607) 231-6605  
rlewis@hbk.com

**CERTIFICATION**

I hereby certify that the foregoing memorandum of law complies with the bookmarking requirement and word count limitations set forth in Rule 202.8-b of the Uniform Rules of Supreme and County Courts. *See* 22 NYCRR § 202.8-b. This memorandum of law contains 3,010 words, excluding parts of the document exempted by Rule 202.8-b(b).

Dated: New York, New York  
March 18, 2022

TROUTMAN PEPPER HAMILTON  
SANDERS LLP

By: *Is Bennet J. Moskowitz*

Bennet J. Moskowitz, Reg. No. 4693842  
875 Third Avenue  
New York, New York 10022  
(212) 704-6000  
bennet.moskowitz@troutman.com