

# New York Supreme Court

## Appellate Division—Fourth Department

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,

**Docket No.:**  
**CAE 22-00506**

*Petitioners-Respondents,*

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

*Respondents-Appellants,*

and

NEW YORK STATE BOARD OF ELECTIONS,

*Respondent.*

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**JOINT RECORD ON APPEAL**  
**Volume 3 of 6 (Pages 1051 – 1488)**

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*(For Continuation of Appearances See Inside Cover)*

Steuben County Clerk's Index No. E2022-0116CV

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**AFFIDAVIT OF CLAUDE A. LAVIGNA IN SUPPORT OF EXPERT REPORTS,  
SWORN TO MARCH 1, 2022 [1051 - 1052]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

NYSCEF DOC. NO. 106

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF CLAUDE A.  
LAVIGNA IN SUPPORT OF  
EXPERT REPORTS**

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

CLAUDE A. LAVIGNA, being duly sworn, says under penalty of perjury as follows:

1. I have been retained by Troutman Pepper Hamilton Sanders LLP on behalf of their clients, Petitioners in the above-titled action, to evaluate the 2022 state Senate and Congressional maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, enacted by the New York State Legislature and signed by Governor Kathy Hochul.

2. I make this affidavit based on my personal knowledge, and if called upon to testify, I could and would testify to the following facts.

FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM

NYSCEF DOC. NO. 106

INDEX NO. E2022-0116CV

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3. I have rendered opinions relating to the 2022 state Senate and Congressional maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, enacted by the New York State Legislature and signed by Governor Kathy Hochul in the Expert Report of Claude A. LaVigna (“LaVigna Report”).

4. I have rendered opinions relating to Findings Sections C (Partisan Bias) and E (Communities of Interest) of the Expert Report of Stephen Ansolabehere in the Rebuttal Expert Report of Claude A. LaVigna (“LaVigna Rebuttal”).

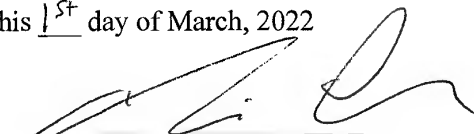
5. I have confirmed the conclusions in the LaVigna Report in the LaVigna Rebuttal.

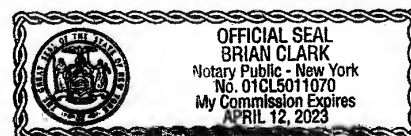
6. This affidavit serves to incorporate by reference the LaVigna Report and the LaVigna Rebuttal, both of which represent my true and accurate beliefs and conclusions on the matters contained therein.

7. If asked to testify on these matters, I could and would testify under oath to their contents, under penalty of perjury.

  
\_\_\_\_\_  
CLAUDE A. LAVIGNA

Sworn before me  
on this 1<sup>st</sup> day of March, 2022

  
\_\_\_\_\_  
NOTARY PUBLIC





**REBUTTAL EXPERT REPORT OF CLAUDE A. LAVIGNA,  
DATED MARCH 1, 2022 [1053 - 1066]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

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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  
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

**REBUTTAL EXPERT REPORT  
OF CLAUDE A. LAVIGNA  
MARCH 1, 2022**

**Rebuttal Expert Report of Claude A. LaVigna****I. Scope of Engagement**

I have been asked by counsel to review Findings Sections C (Partisan Bias) and E (Communities of Interest) of the Expert Report of Stephen Ansolabehere (“Ansolabehere Report”). I have been further asked to render such opinions relating to the 2022 state Senate and Congressional maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, enacted by the New York State Legislature and signed by Governor Kathy Hochul (respectively, “2022 Senate Map” and “2022 Congressional Map”) as needed to evaluate the Ansolabehere Report. I have also been asked to re-evaluate, if necessary, the conclusions found in the Expert Report of Claude A. LaVigna (“LaVigna Report”).

**II. Summary of Opinions**

Respondents’<sup>1</sup> expert, Dr. Stephen Ansolabehere, reaches conclusions about New York’s 2022 Congressional Map despite having no apparent knowledge of New York or New York’s political geography. Unsurprisingly, his analysis of New York’s political landscape ignores entirely the political realities of New York’s actual electorate. Dr. Ansolabehere also provides no analysis of the 2022 Senate Map.

I continue to find that the conclusions in the LaVigna Report are all correct and nothing in the Ansolabehere Report suggests otherwise.

**III. Sources**

- 1: Election Data from the New York Board of Elections
- 2: Public Comments Submitted to the Independent Redistricting Commission
- 3: 2012 Congressional Map – Attached as Exhibit 1 to the LaVigna Report
- 4: 2022 Congressional Map – Attached as Exhibit 3 to the LaVigna Report
- 5: Expert Report of Stephen Ansolabehere
- 6: Cook Partisan Voting Index

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<sup>1</sup> Respondents are 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 E. Heastie, the New York State Board of Elections, and the New York State Legislative Task Force on Demographic Research and Reapportionment (together, “Respondents”).

#### IV. Rebuttal of the Expert Report of Stephen Ansolabehere

##### *Qualification*

It appears that Dr. Ansolabehere has no qualifications to render an expert opinion on New York's political geography or communities of interest. Neither his background nor the curriculum vitae attached to his report provides any indication of him having any knowledge about New York's political geography or New York communities of interest.

##### *Methodology*

Dr. Ansolabehere attacks the methodology I use to analyze the 2022 Congressional Map in my first report, arguing that my claims of partisanship are unsubstantiated. Ansolabehere Report ¶¶ 39–40. But my conclusions as to the partisanship of each congressional district are based upon that district's political makeup. To confirm this, I have compared these conclusions with the treatment given by the Cook Political Report, which provides a nationally accepted metric for measuring partisan lean in congressional districts, in particular. The Cook Partisan Voting Index (CPVI) is widely considered by courts, nonpartisan organizations, and redistricting experts to be a reliable measure of partisan lean in districting. *See, e.g., Benisek v. Lamone*, 348 F. Supp. 3d 493, 507 (D. Md. 2018), *vac'd on other grounds by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019); *Ohio A. Philip Randolph Inst. v. Householder*, 367 F. Supp. 3d 697, 715–17 (S.D. Ohio 2019). Frequently used in partisan gerrymandering redistricting challenges, *see, e.g., Benisek*, 348 F. Supp. 3d at 507, CPVI is a particularly reliable measurement aid because it is universal for every district in the country. Accordingly, in this rebuttal report, I show that CPVI confirms all of the conclusions about the partisanship of the congressional districts in my first report.

Further, before concluding that the 2022 Congressional Map creates a partisan gerrymander with no coherent explanation except for seeking partisan and incumbent-protection advantage for the Democratic Party, I first examined whether the new district lines could be justified by valid considerations based on traditional redistricting principles, including compactness, contiguity, population shifts, and keeping counties, towns, and communities of interest together. In each district, I determined that the map drawers' choices could not reasonably be explained by reference to any consideration other than a desire to seek political advantage for Democrats. Based on my knowledge of New York's political geography and history, I concluded that numerous communities of interest were divided without valid justification—that is, divided in order to forward the political goal of favoring the Democratic Party. Many affected community

members described their historical ties and testified to their desire to be kept whole during the redistricting meetings over the last year, but the final lines do not reflect any consideration of the social landscape of the State. My knowledge of the State's unique political history and partisan trends enabled me to conclude that the 2022 Congressional Map cannot be justified by legitimate considerations, such as population shifts, keeping communities of interest whole, or the State's natural political landscape, and, thus, partisan bias is the only coherent explanation.

Instead of a standardized metric, Respondents' expert, Dr. Stephen Ansolabehere, used the data from certain statewide races in recent years and averaged these results out to produce skewed figures. Dr. Ansolabehere did not consider whether these races were representative of New York's actual turnout or candidate quality, including selecting races with strong incumbents and with under-funded challengers. This narrow approach excludes available and highly relevant data, particularly because the question at hand involves the degree of partisan bias in New York's congressional districts, as measured by the CPVI—or, indeed, as would be understood by anyone who has even a passing understanding of New York political geography.

Dr. Ansolabehere's report also reveals his utter ignorance of New York's social and political geography, as well as New York's communities of interest. Rather than analyze the many diverse and distinct communities of interest in the State, Dr. Ansolabehere divides the State into four regions and then looks at categories or "sorts of communities of interest" within each region. Ansolabehere Report ¶ 65. Unsurprisingly, this approach results in an utterly misleading and incorrect picture of New York's communities. Dr. Ansolabehere appears to lack any understanding of New York's unique political geography, and without this essential foundation, his report is not reliable.

#### *Congressional Districts 1–3*

In gerrymandering Congressional Districts 1–3, the Legislature split numerous towns, villages, and hamlets in historically connected conservative communities into multiple congressional districts with no coherent explanation except for seeking partisan and incumbent protection advantage, including by reducing competitiveness. LaVigna Report at 3–4. In particular, the Legislature placed strongly Republican areas from 2012 District 1 into the new Congressional District 2 while moving areas with high numbers of Democrats into the new District 1. *Id.* Further, the Legislature completely transformed Congressional District 3 with no coherent explanation except for Democratic partisan and incumbent-protection advantage. *Id.* at 4.

Refuting Dr. Ansolabehere's contrary view, the CPVI strongly supports these conclusions. Congressional District 1 was a strong Republican district (Republican+6) under the 2012 Congressional Map. The CPVI metric shows that the district is now Democratic-leaning (Democratic+2) as a result of Respondents' blatant gerrymandering under the 2022 Congressional Map. Further, District 2 also had a CPVI metric favoring Republicans under the 2012 map. By packing Republicans from District 1 into District 2, the Legislature turned District 2 from an already strong Republican district (Republican+5) into an overwhelmingly Republican stronghold (Republican+11). Finally, District 3 had a CPVI metric of Democratic+2 under the 2012 map, which reveals that the district was competitive despite Democrats ultimately winning elections. Due to the gerrymander, the Legislature transformed Congressional District 3 from a competitive district (Democratic+2) to a Democrat stronghold (Democratic+5).

	Congressional District 1	Congressional District 2	Congressional District 3
CPVI – 2012 Map	R+6	R+5	D+2
CPVI – 2022 Map	D+2	R+11	D+5
Representative	Lee Zeldin (R) (2015–present) Timothy H. Bishop (D) (2003–2015)	Andrew Garbarino (R) (2021–present) Peter T. King (R) (2013–2021)	Tom Suozzi (D) (2017–present) Steve Israel (D) (2013–2017)

Applying his flawed approach, Dr. Ansolabehere asserts that District 1 and District 2 were not Republican districts under the 2012 map but rather were Democratic-leaning. Ansolabehere Report ¶¶ 49–50. Dr. Ansolabehere also incorrectly states that the “2012 version of CD-3 was already a strong Democratic district; it was not a competitive seat.” Ansolabehere Report ¶ 52. These claims are directly contradicted by the vastly more reliable CPVI metric, as noted above. In addition, Dr. Ansolabehere's analysis of Long Island focuses solely on political affiliation as the only commonality that can create a community of interest. Ansolabehere Report ¶¶ 72–74. But while these now-divided communities of interest are politically aligned, as the CPVI indicates, they have much more in common than political affiliation. Not only does Dr. Ansolabehere's analysis ignore the reality that shared values and history, geography, and social and economic ties

contribute to a community of interest, he relies on incomplete political data to support his argument. He further supports his argument by describing the degree to which the Long Island districts changed from the 2012 Congressional Map, using percentages. Ansolabehere Report ¶ 72. This misleading and generalized approach entirely sidesteps any analyses of the distinct communities of interest on Long Island and ignores the important commonalities shared by neighboring towns and villages, resulting in a deeply flawed conclusion. And he apparently ignores that both Congressional District 1 and Congressional District 2 are presently represented by Republicans and have been for years.

In the 2012 Map, Brookhaven, East Islip, Manorville, South Manor, Upton, Lake Grove, Hauppauge, East Hauppauge, Southold, Shoreham, Riverhead, Smithtown, Head of the Harbor, and Nissequogue were united in District 1. These Republican-leaning communities share historical ties, industry and economic commonalities, and social values. After the Legislature's egregious gerrymander of Long Island, Brookhaven, East Islip, Manorville, South Manor, Lake Grove, East Hauppauge are broken off into District 2, shattering the shared bond of community, as well as weakening their voting power. Part of Smithtown and Nissequogue are now in District 3, splitting this once-united community of interest into three separate districts. To replace the towns and hamlets moved out of District 1, the Legislature broke up communities of interest in District 2. For example, Deer Park and Baywood were entirely shifted into District 1, while Babylon and Farmingdale were partially excised—breaking up these communities.

While some towns and hamlets with historical ties in 2012 District 3, like Dix Hills and parts of Smithtown were shifted to District 1 in the 2022 Map, the new District 3 adds back in communities in the Bronx and Westchester County that have nothing in common with the rest of District 3. In 2012 District 3, the areas of Queens joined with Nassau County had similar values and interests. Now, conservative blue-collar areas along the north shore of Long Island are connected with the affluent Democratic communities in Larchmont, Mamaroneck, Rye, New Rochelle, and part of Pelham.

#### *Congressional Districts 7–11*

In Brooklyn, the Legislature split up longstanding communities of interest in Congressional Districts 8, 9, 10, and 11 to create a partisan advantage for Democrats. The Legislature “cracked” established Orthodox Jewish and Russian communities with strong social and cultural ties, spreading these conservative Republican-leaning voters across multiple districts. The Legislature

also divided an established Asian community in District 10 by moving half of it to District 11. Previously a Republican-leaning district, the new District 11 combines Staten Island with unrelated and heavily liberal areas in Brooklyn, which fundamentally alters the political composition of this district. These redrawn Brooklyn districts have no coherent explanation except seeking partisan and incumbent-protection advantage, with bizarre boundaries that break up communities of interest and combine unrelated communities for no logical reason.

The CPVI strongly supports this characterization, illustrating how Republicans were spread across the districts in order to give Democrats a much better chance at winning District 11. The Democratic advantage in Districts 8, 9, 10 was maintained while Republicans were moved out of District 11. District 8 shifted from a Democratic+33 district to a Democratic+28 district, and District 9 shifted from a Democratic+32 district to a Democratic+28 district, while District 10 stayed a Democratic+27 district. The CPVI metric shows that District 11 shifted from a strong Republican district (Republican+7) to a Democratic district (Democratic+4).

	Congressional District 7	Congressional District 8	Congressional District 9	Congressional District 10	Congressional District 11
CPVI – 2012 Map	D+34	D+33	D+32	D+27	R+7
CPVI – 2022 Map	D+34	D+28	D+28	D+27	D+4
Representative	Nydia Velázquez (D) (2013–present)	Hakeem Jeffries (D) (2013–present)	Yvette D. Clarke (D) (2013–present)	Jerry Nadler (D) (2013–present)	Nicole Malliotakis (R) (2021–present) Max Rose (D) (2019–2021) Daniel M. Donovan (R) (2015–2019) Michael Grimm (R) (2013–2015)

In discussing Districts 7, 8, 9, 10, and 11, Dr. Ansolabehere fails to properly identify the communities of interest divided in the 2022 Map, nor does he discuss how the redrawn map broke up the Russian and Orthodox Jewish communities, Ansolabehere Report ¶¶ 75–77, despite a plethora of comments in the public hearing process that called for the unification of those

communities. *See, e.g.*, Public Comment of Nachman Mostofsky (July 28, 2021); Public Comment of Dr. Bernard Fryshman; Public Comment of Rabbi Avi Greenstein (July 29, 2021); Public Comment of David M. Pollock (July 30, 2021); Public Comment of Leon Goldenberg; Public Comment of Louis Jerome.<sup>2</sup> Dr. Ansolabehere attempts to justify this drastic partisan shift in District 11 by stating that Districts 7, 8, and 9 are majority-minority districts and “[t]heir configuration affects the configuration of [District] 10 and [District] 11.” Ansolabehere Report ¶ 54. Notably, he does not argue that the Voting Rights Act requires Districts 7, 8, and 9 to be majority-minority districts. In any event, keeping these districts as majority-minority districts does not require the Legislature to contort District 11 into its present configuration, which breaks up important communities of interest.

Dr. Ansolabehere’s description of Brooklyn belies his lack of knowledge of the history and social connections tying together communities of interest in the borough. He points to minority populations in Districts 7, 8, and 9, but fails to acknowledge the important Hispanic and Asian communities of interest in Districts 7, 10, and 11. Ansolabehere Report ¶ 76. Further, he discusses Brooklyn neighborhoods as discrete Jewish communities, failing to understand that the Jewish populations in Brooklyn share ties that stretch across connected neighborhoods. Ansolabehere Report ¶ 77. A close, New York-based examination of the 2022 Congressional Map’s effects on communities of interest in Brooklyn reveals a partisan and incumbent-protection gerrymander is the only available explanation for the new district lines. These districts illustrate why partisan data must be analyzed in the context of the local communities of interest and show how a surface analysis of past election results cannot provide a complete picture of the extent of partisan bias in redistricting maps. While District 11 is most obviously gerrymandered based on partisan data alone, the Legislature split numerous communities of interest with historical ties in Districts 8, 9, 10, and 11 in order to achieve the partisan result in District 11.

Brooklyn has one of the largest Orthodox Jewish populations in the world. Culturally, socially, spiritually, and politically, they form a community of interest. Instead of drawing district lines to reflect this, the Legislature spread this community into four separate districts, weakening their conservative votes. For example, Bensonhurst, which was previously united with Borough Park in District 10, is now split in two along 20th Avenue, dividing the community between

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<sup>2</sup> Available at [https://nyirc.gov/storage/archive/Kings\\_Richmond\\_Redacted.pdf](https://nyirc.gov/storage/archive/Kings_Richmond_Redacted.pdf).



Districts 9 and 10. In the 2012 Congressional Map, Jewish neighborhoods in Flatbush, Midwood, Park Slope, and Kensington were connected, wrapped around Prospect Park in District 9. Now, Park Slope is pulled into District 11, while Flatbush and Midwood are drawn in District 9. District 10 cuts through the center, taking Kensington and Prospect Park from the middle of this once-united community of interest.

The 2022 Congressional Map also severely divides historically united Hispanic and Asian populations in Brooklyn. Sunset Park, which has a well-established bond to Manhattan's Chinatown, was logically located in the same district in the 2012 Map—District 7. The 2022 Map cuts Sunset Park in two, placing half in District 10 and half in District 11. Further, instead of being united with Chinatown, a large portion of Sunset Park is instead linked to Staten Island—a community with which it has nothing in common.

Multiple community members expressed their desire to keep the Brooklyn's Jewish populations together, *see, e.g.*, Public Comment of Nachman Mostofsky (July 28, 2021); Public Comment of Dr. Bernard Fryshman; Public Comment of Rabbi Avi Greenstein (July 29, 2021); Public Comment of David M. Pollock (July 30, 2021); Public Comment of Leon Goldenberg; Public Comment of Louis Jerome, to keep Sunset Park whole to protect the Asian community of interest in Brooklyn, *see, e.g.*, Public Comment of Dr. Wah Lee (July 29, 2021), to keep Brooklyn's Hispanic populations together, Public Comment of Marco A. Carrión, and to keep Staten Island together with its community of interest in South Brooklyn, including the neighborhoods of Dyker Heights and Bay Ridge, *see, e.g.*, Public Comment of Brian Doherty Public; Public Comment of Barbara Slattery.<sup>3</sup>

#### *Congressional Districts 16–19*

Districts 16, 17, 18, and 19 in the 2022 Congressional Map have no coherent explanation except for seeking partisan and incumbent-protection advantage, including by reducing competitiveness. The new Congressional District 16 “cracks” Republican voters out of Congressional District 18, removing them from rural and suburban areas in northern Westchester County and Putnam County and combining them with highly urban Democratic strongholds in Mount Vernon, Yonkers, and the Bronx. The new District 16 can only be explained by seeking Democratic partisan and incumbent-protection advantage, as it connects the heavily Republican

<sup>3</sup> Available at [https://nyirc.gov/storage/archive/Kings\\_Richmond\\_Redacted.pdf](https://nyirc.gov/storage/archive/Kings_Richmond_Redacted.pdf).

towns of Putnam Valley, Carmel, Yorktown, and Somers to densely populated Democratic communities and neutralizes these Republican voters. As a result, the new District 18 is bizarrely shaped, but the Legislature achieves its partisan goal, keeping District 16 a safe Democratic district, while maneuvering District 18 from a Republican-leaning district to a Democratic district. The new Congressional District 17 is similarly contorted to combine strong Democratic areas with unrelated, rural Republican communities, neutralizing their votes. Despite extensive public testimony asking for the region's conservative Jewish populations—which have grown extensively and become more integrated over the last decade—to be placed together, *see, e.g.*, Public Comment of Israel Weinstock; Public Comment of Israel Hirsch, the new Map separates the Orthodox communities in Sullivan and Rockland counties from the Kiryas Joel Jewish community in Orange County. As a result, Congressional District 17 remains a reliable Democratic district. The new Congressional District 19 is drawn with each of its four corners reaching into the strongly Democratic areas, shifting the district from Republican to Democrat-leaning and adding a new county split.

The CPVI confirms this characterization of partisan bias. The CPVI metric shows that while District 16 has always been a Democratic stronghold (shifting from Democratic+25 to Democratic+18), District 17 was previously a safe Democratic district (Democratic+9) that is now slightly more competitive (Democratic+5). It is clear that by packing Republican voters into an already Democrat-controlled District 16, the Legislature has ensured that District 18 would shift from a Republican-leaning district (Republican+1) to a Democratic-leaning district (Democratic+1). Specifically, the CPVI metric shows that District 19 was a Republican+3 and is now a Democratic+1.

	Congressional District 16	Congressional District 17	Congressional District 18	Congressional District 19
CPVI – 2012 Map	D+25	D+9	R+1	R+3
CPVI – 2022 Map	D+18	D+5	D+1	D+1
Representative	Jamaal Bowman (D) (2021–present) Eliot Engel (D) (2013–2021)	Mondaire Jones (D) (2021–present) Nita Lowrey (D) (2013–2021)	Sean Patrick Maloney (D) (2013–present)	Antonio Delgado (D) (2019–present) John Faso (R) (2017–2019) Chris Gibson (R) (2013–2017)

Relying on his flawed approach, Dr. Ansolabehere argues that none of these districts leaned Republican in their 2012 configurations. Ansolabehere Report ¶¶ 56–59. While Dr. Ansolabehere states that the four towns in District 18, towns of Putnam Valley, Carmel, Yorktown, and Somers, “are not ‘Republican towns,’” Ansolabehere Report ¶ 58, he fails to recognize that in each of the four towns, there is no elected Democrat holding office on any of the town boards. Indeed, all four towns have a 5-0 makeup of Republican town boards. Further, Republican locally elected officials represent the vast majority of District 19’s counties, with the exception of Ulster. In addition to the CPVI metric, historical election data supports my conclusion that District 19 has not always been a Democratic district.

Dr. Ansolabehere’s report does not address how the 2020 Congressional Map shatters established communities of interest, which is not surprising given his utter lack of qualification to discuss New York’s communities of interest. He focuses on electoral data from Kiryas Joel and the other Jewish communities, arguing that these communities are not electorally aligned. Ansolabehere Report ¶¶ 79–81. He ignores the many other commonalities that create a community of interest and further ignores the other broken communities in the Hudson Valley districts. Specifically, the 2012 Congressional District 16 compactly connected related communities in Westchester County and the Bronx, joining Mount Vernon and Yonkers to Larchmont, Mamaroneck, Rye, New Rochelle, and Pelham—the liberal coast communities that are now connected to unrelated communities on Long Island in Congressional District 3. The new District excludes these coastal towns with historical ties to the Mount Version and Yonkers and snakes north in a narrow strip through Westchester into rural and suburban parts of Putnam County, grabbing Republican towns and villages. These areas, including the towns of Putnam, Carmel, Yorktown, and Somers, are “cracked” out of Congressional District 18 and separated from neighboring areas that share the same values, industries, history, and political interests. These conservative towns are split from the established community of interest in Putnam County—the neighboring areas of Rochester, Wawarsing, Peekskill, Cortlandt, North Salem, Lewisboro, Bedford, and Pound Ridge are separated into District 18.

While 2012 Congressional District 17 was compactly located in Rockland and Westchester counties, connecting New Yorkers with geographical, cultural, and social ties, the 2022 District 17 stretches across four counties. The rural and small-town Sullivan County and Orange County

are connected with river communities in Rockland County and Westchester County. New Yorkers in Jeffersonville, Liberty, Monticello, Chester, and Warwick have no connection with those in Greenburgh, Mount Pleasant, and Mount Kisco. In order to connect these unrelated communities, the 2022 Map divides communities of interest. The Kiryas Joel Jewish community in Orange County is cut off from the Orthodox communities in Sullivan and Rockland counties. Monroe is separated from the closely related town of Woodbury. The 2022 Map cracks these conservative communities into pieces and dilutes their voting power without any rational justification.

Multiple community members expressed the desire to place the three Jewish strongholds in the same district, *see, e.g.*, Public Comment of Israel Weinstock; Public Comment of Israel Hirsch, as well as the desire to keep rural communities together and separate from the heavily urban Democratic strongholds in Westchester County, *see, e.g.*, Public Comment of Clay Boone; Public Comment of Bill Peck; Public Comment of Cynthia Gottlieb (July 23, 2021).<sup>4</sup>

#### *Congressional Districts 21–24*

The 2022 Congressional Map breaks up rural, agrarian communities of interest in Upstate New York, dividing conservative populations in established communities into new districts with dissimilar and distant communities, with no coherent explanation except for seeking partisan and incumbent protection advantage, including by reducing competitiveness. The new Congressional District 21 “packs” Republican voters, adding Republican voters from large portions of Oneida County and Herkimer County, half of Montgomery County, and all of Schoharie County, increasing the concentration of Republican voters in the district and thus diminishing competitiveness in the surrounding districts. The Legislature “cracked” the new Congressional District 22 by removing Republican areas and adding Tompkins County, including the heavily Democratic city of Ithaca. As a result, the new District 22 shifts from a strong Republican district (Republican+9) in the 2012 court-drawn map to a safe Democratic district (Democratic+6) in the new map. The Legislature “packed” Republican voters into the new Congressional District 23, connecting the suburbs of Buffalo and other towns in southern Erie County to distant rural areas around Binghamton. As a result, Congressional District 23 is now much less competitive and has become an overwhelmingly Republican district. The Legislature similarly “packed” Republican voters into the new Congressional District 24, which stretches across four media markets,

<sup>4</sup> Available at [https://nyirc.gov/storage/archive/Mid-Hudson\\_Capital\\_Region\\_Redacted.pdf](https://nyirc.gov/storage/archive/Mid-Hudson_Capital_Region_Redacted.pdf);  
[https://nyirc.gov/storage/archive/West\\_FL\\_CNY\\_ST\\_Redacted.pdf](https://nyirc.gov/storage/archive/West_FL_CNY_ST_Redacted.pdf).

connecting numerous areas over more than 250 miles with little in common, extending all the way from Lewiston, in Niagara County eastward and northward into Jefferson County (all the way to the St. Lawrence County line), targeting Republican voters. As a result, Congressional District 24 is now overwhelmingly Republican.

Again, the CPVI metric supports the conclusion that partisan and incumbent protection are the only available justification for the new district lines. Congressional District 21 shifted from a Republican+8 district to a much less competitive Republican+12 district. The new District 22 has shifted from a strong Republican district (Republican+9) in the 2012 court-drawn map to a safe Democratic district (Democratic+6) in the new map. The new District 23 has shifted from a Republican+9 district to a Republican+14 district. Finally, the new District 24 transforms from a highly competitive Democratic+2 district into a Republican+14 district, designed to protect the neighboring districts from any serious Republican challenge.

	Congressional District 21	Congressional District 22	Congressional District 23	Congressional District 24
CPVI – 2012 Map	R+8	R+9	R+9	D+2
CPVI – 2022 Map	R+12	D+6	R+14	R+14
Representative	Elise Stefanik (R) (2015–present) Bill Owens (D) (2013–2015)	Claudia Tenney (R) (2021–present, 2017–2019) Anthony Brindisi (D) (2019–2021) Richard L. Hanna (R) (2013–2017)	Tom Reed (R) (2013–present)	John Katko (R) (2015–present) Dan Maffei (D) (2013–2015)

Again, Dr. Ansolabehere applies his flawed metric and focuses on percentages, stating that Districts 21, 22, 23, and 24 have changed very little. Ansolabehere Report ¶ 70. Again, this approach ignores the region’s political geography and the unique communities of interest that are shattered in the new Map. For example, while Dr. Ansolabehere claims that District 22 is a Democratic district when comparing it with the configuration of District 24 in 2012, Ansolabehere Report ¶¶ 60–61, he fails to consider that a Republican congresswoman was in office in this district for most of the past decade. Dr. Ansolabehere’s report fails to address Districts 21, 23, and 24 and ignores how the 2022 Congressional Map breaks up numerous communities of interest with

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historical and industrial ties in the Upstate region, despite voluminous public testimony arguing against this.

Multiple community members expressed their desire to keep rural areas in the region together in their historical communities, with many emphatic comments stressing that the Southern Tier should not be joined with Buffalo and Erie County. *See, e.g.*, Public Comment of Ben Schenk; Public Comment of Ben Troché (Aug. 13, 2021); Brent Ellis (Aug. 13, 2021); Brian Abram (Aug. 13, 2021); Dalton Anthony (Aug. 13, 2021).<sup>5</sup>

Dated: SUSSEX, New York  
March 1, 2022

  
\_\_\_\_\_  
CLAUDE A. LAVIGNA

<sup>5</sup> Available at [https://nyirc.gov/storage/archive/West\\_FL\\_CNY\\_ST\\_Redacted.pdf](https://nyirc.gov/storage/archive/West_FL_CNY_ST_Redacted.pdf).

**AFFIDAVIT OF ALAN NEPHEW, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 25, 2022 [1067 - 1068]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

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RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF ALAN  
NEPHEW IN SUPPORT OF  
PETITION**

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

ALAN NEPHEW, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 28 Aldrich Street, Gowanda, NY 14070, in Cattaraugus County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

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4. I regularly vote for Republican<sup>CONSERVATIVE</sup> candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.

5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.

6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.

  
ALAN NEPHEW

Sworn before me  
on this 25 day of February, 2022

  
NOTARY PUBLIC

**F** Jay William Frantz  
Notary Public, State of New York  
Qualified in Cattaraugus County  
My Commission Expires 08/04/2023



**AFFIDAVIT OF GEORGE DOOHER, JR., PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 25, 2022 [1069 - 1070]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

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RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF GEORGE  
DOOHER, JR. IN SUPPORT  
OF PETITION**

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

GEORGE DOOHER, JR., being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 209 Dixon Dr., Syracuse, New York 13219, in Onondaga County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

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4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.

5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.

6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.

  
GEORGE DOOHER, JR.

Sworn before me  
on this 15 day of February, 2022

  
NOTARY PUBLIC

JO ANNE M BROWN  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01BR4685508  
Qualified in Onondaga County  
My Commission Expires: 12/31/2022

**AFFIDAVIT OF GUY C. BROUGHT, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 28, 2022 [1071 - 1072]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

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RECEIVED NYSCEF: 03/03/2022

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

**AFFIDAVIT OF GUY C.  
BROUGHT IN SUPPORT OF  
PETITION**

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

GUY C. BROUGHT, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 170 Horton Lane, Apt. 462, Port Ewen, NY 12466, in Ulster County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM

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4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.

5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.

6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.

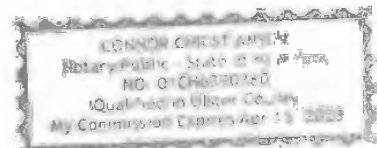


GUY Q. BROUGHT

Sworn before me  
on this 25 day of February, 2022



NOTARY PUBLIC



**AFFIDAVIT OF JAY FRANTZ, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 25, 2022 [1073 - 1074]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

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RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF JAY  
FRANTZ IN SUPPORT OF  
PETITION**

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

JAY FRANTZ, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 39 Orchard Place, Gowanda, NY 14070, in Cattaraugus County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

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*/Conservative JF*  
 4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans */Conservatives JF* running for Congress and state legislative office.

5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.

6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican */Conservative* candidates for state Senate and Congress in the State.

*J. W. Frantz*  
 JAY FRANTZ

Sworn before me  
 on this 24 day of February, 2022

*Victoria L. Hughes*  
 NOTARY PUBLIC

VICTORIA L. HUGHES  
 Notary Public State of New York  
 No. 6179932  
 Qualified in Cattaraugus County  
 Commission Expires January 7, 2024

**AFFIDAVIT OF JERRY FISHMAN, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 25, 2022 [1075 - 1076]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

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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

**AFFIDAVIT OF JERRY  
FISHMAN IN SUPPORT OF  
PETITION**

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

JERRY FISHMAN, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 8200 Narrows Avenue, Brooklyn, NY 11209, in Kings County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM

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RECEIVED NYSCEF: 03/01/2022

4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.

5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.

6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.

  
JERRY FISHMAN

Sworn before me  
on this 25 day of February, 2022

  
NOTARY PUBLIC

HARRY HELFENBAUM  
Commissioner of Deeds  
City of New York - No.5-883  
Certificate Filed in Richmond County  
Commission Expires June 30, 2023



**AFFIDAVIT OF LAWRENCE CANNING, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 26, 2022 [1077 - 1078]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

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INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF  
LAWRENCE CANNING IN  
SUPPORT OF PETITION**

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

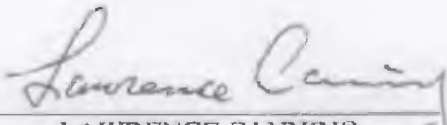
LAWRENCE CANNING, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 2843 Johnny Cake Hill Road, Hamilton, NY 13346, in Madison County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

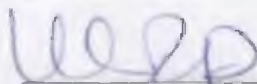
4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.

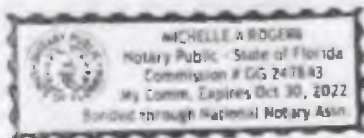
5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.

6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.

  
LAWRENCE CANNING

Sworn before me *By means of physical presence*  
on this 26 day of February, 2022

  
NOTARY PUBLIC



**AFFIDAVIT OF LINDA FANTON, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 25, 2022 [1079 - 1081]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

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RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF LINDA  
FANTON IN SUPPORT OF  
PETITION**

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

LINDA FANTON, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 2347 Fulmer Valley Road, Wellsville, NY 14895, in Allegany County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

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RECEIVED NYSCEF: 03/01/2022

4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.

5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.

6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.

Linda K. Fanton  
LINDA FANTON

Sworn before me  
on this 25 day of February, 2022

Schylar Shearouse  
NOTARY PUBLIC  
Schylar Shearouse



Schylar Shearouse  
Notary Public  
State of Florida  
Comm# HH082341  
Expires 1/19/2025

FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM

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RECEIVED NYSCEF: 03/01/2022

**CERTIFICATE OF CONFORMITY PURSUANT TO N.Y. CPLR § 2309(c)**

I, Noah J. DiPasquale, Esq., do hereby certify and attest that I am an attorney duly admitted to practice law in the State of Florida.

I make this certification for purposes of compliance with New York State Civil Practice Law & Rules Section 2309(c) with regard to the foregoing Affidavit of Linda Fanton, to be filed in the Supreme Court in Steuben County, State of New York.

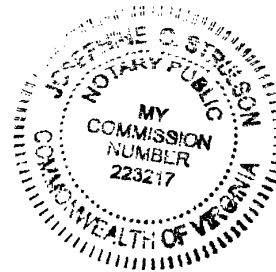
Said Affidavit, acknowledged and sworn by Ms. Fanton before a Notary Public in and for the State of Florida, is and appears to be, based upon my review of said document and notarization thereof, in conformity with the laws of the State of Florida for the making of an affidavit and the notarization thereof.



Noah J. DiPasquale (Florida Bar No. 1003238)

Sworn before me  
on this 28 day of February, 2022

*Josephine C. Strickson*  
NOTARY PUBLIC  
*My commission expires: 3/3/2024*



**AFFIDAVIT OF MARIANNE VOLANTE, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 26, 2022 [1082 - 1083]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

NYSCEF DOC. NO. 114

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/01/2022

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  
VOLANTE,

Index No. E2022-0116CV

**AFFIDAVIT OF MARIANNE  
VOLANTE IN SUPPORT  
OF PETITION**

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

MARIANNE VOLANTE, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 170 Loder Road, Yorktown Heights, NY 10598, in Westchester County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

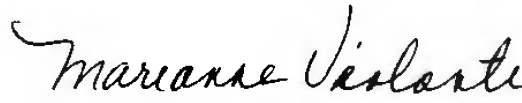
FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM

NYSCEF DOC. NO. 114

INDEX NO. E2022-0116CV


RECEIVED NYSCEF: 03/01/2022

4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.
5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.
6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.



MARIANNE VIOLANTE

Sworn before me  
on this 26 day of February, 2022



NOTARY PUBLIC  
JEANMARIE KLAUS  
Notary Public, State of New York  
No. 4672040  
Qualified in Westchester County  
Commission Expires 7/31/2023

**AFFIDAVIT OF STEPHEN EVANS, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 26, 2022 [1084 - 1085]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

NYSCEF DOC. NO. 115

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF PATRICIA  
CLARINO IN SUPPORT OF  
PETITION**

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

PATRICIA CLARINO, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 274 Garden Street, New Windsor, NY 12553, in Orange County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.



FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM

NYSCEF DOC. NO. 115

INDEX NO. E2022-0116CV

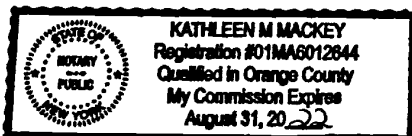
RECEIVED NYSCEF: 03/01/2022

4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.
5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.
6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.

Patricia Clarino  
PATRICIA CLARINO

Sworn before me  
on this 28 day of February, 2022

Kathleen M Mackey  
NOTARY PUBLIC



**AFFIDAVIT OF PATRICIA CLARINO, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 28, 2022 [1086 - 1087]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

NYSCEF DOC. NO. 116

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF STEPHEN  
EVANS IN SUPPORT OF  
PETITION**

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

STEPHEN EVANS, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 440 West 41st Street, Apt. 4G, New York, NY 10036, in New York County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

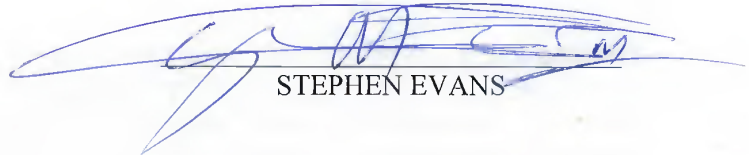
**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

NYSCEF DOC. NO. 116

INDEX NO. E2022-0116CV

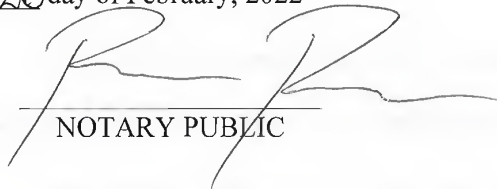
RECEIVED NYSCEF: 03/01/2022

4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.
5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.
6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.



STEPHEN EVANS

Sworn before me  
on this 26<sup>TH</sup> day of February, 2022



NOTARY PUBLIC

RHONDALISA ROBERTS  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RO6410737  
Qualified in New York County  
My Commission Expires 11-02-2024

**AFFIDAVIT OF SUSAN ROWLEY, PETITIONER, IN SUPPORT OF PETITION,  
SWORN TO FEBRUARY 28, 2022 [1088 - 1089]**

**FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM**

NYSCEF DOC. NO. 117

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/01/2022

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

**AFFIDAVIT OF SUSAN  
ROWLEY IN SUPPORT OF  
PETITION**

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

SUSAN ROWLEY, being duly sworn, says under penalty of perjury as follows:

1. I am a Petitioner in the above-titled action and a citizen of the State of New York,  
residing at 876 Ford Peterson Road, Frewsburg, NY 14738, in Chautauqua County.
2. I make this affidavit based on my personal knowledge, and if called upon to testify,  
I could and would testify to the following facts.
3. I am registered to vote in the State of New York.

FILED: STEUBEN COUNTY CLERK 03/01/2022 10:24 PM

NYSCEF DOC. NO. 117


INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/01/2022

4. I regularly vote for Republican candidates in local, state, and federal elections, and engage in campaign activity for Republicans running for Congress and state legislative office.

5. The Legislature's partisan and incumbent-favoring 2022 congressional and state Senate maps have harmed me, as explained below.

6. The Legislature's partisan and incumbent-favoring gerrymanders of the 2022 state Senate and congressional maps dilute the power of my vote based on my political beliefs and diminish the effect of my political action efforts. These new maps undermine efforts throughout New York to elect Republican candidates for state Senate and Congress in the State.

  
SUSAN ROWLEY

Sworn before me  
on this 28<sup>th</sup> day of February, 2022

  
NOTARY PUBLIC

KAREN L RUSSELL  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01RU6251218  
Qualified in Chautauque County  
My Commission Expires November 14, 2023

**ANSWER TO AMENDED PETITION BY RESPONDENTS GOVERNOR KATHY HOCHUL  
AND LIEUTENANT GOVERNOR AND PRESIDENT OF THE SENATE BRIAN A.  
BENJAMIN, DATED MARCH 10, 2022 [1090 - 1096]**

**FILED: STEUBEN COUNTY CLERK 03/10/2022 01:55 PM**

NYSCEF DOC. NO. 139

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022

**SUPREME COURT OF THE STATE OF NEW YORK  
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.*

**Governor Hochul's and  
Lt. Governor Benjamin's  
Answer to Amended Petition**

Index No. E2022-0116CV

McAllister, J.S.C.

The respondents, Governor of New York State Kathy Hochul and Lieutenant Governor and President of the Senate of New York State Brian A. Benjamin (the "Executive Respondents") answer the Amended Petition as follows:

1. Admit paragraphs 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 46, 48, 49, 50, 51, 52, 54, 55, 56, 58, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 85, 107, 153, 154, 169, 212, 253, and 254
2. Upon information and belief, admit paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 84, 88, 89, 92, 94, 95, 99, 102, 106, 110, 112, 116, 152, 157, 172, and 183.
3. Deny paragraphs 1, 2, 3, 8, 9, 10, 11, 40, 41, 44, 53, 59, 86, 113, 120, 121, 122, 124, 125, 128, 130, 132, 133, 134, 143, 144, 147, 148, 149, 150, 156, 158, 160, 163, 164, 168, 170, 175,

176, 179, 180, 181, 182, 184, 185, 186, 187, 188, 189, 190, 191, 193, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 232, 233, 237, 238, 240, 241, 243, 244, 245, 250, 251, 252, 255, 260, 261, 263, 267, 268, 269, 270, 271, 272, 273, and 274.

4. Deny knowledge or information sufficient to form a belief as to truth of the allegations contained in paragraphs 90, 91, 93, 96, 97, 98, 100, 103, 104, 105, 108, 109, 111, 115, 117, 123, 126, 129, 135, 136, 137, 138, 139, 140, 142, 151, 155, 166, 167, 171, 192, 213, 214, 215, 216, 231, and 242 and therefore deny the same.

5. State paragraphs 32, 33, 43, 235, 236, 247, 248, 249, 257, 258, and 259 contain legal conclusions to which no response is required, but to the extent a response is required deny the same.

6. Regarding paragraph 4, deny “exclusive” and the final sentence in said paragraph and admit the remaining allegations.

7. Regarding paragraph 5 deny the State “bragged about these” and admit the remaining allegations.

8. Regarding paragraph 6, admit there was a proposed Constitutional amendment and deny the remaining allegations.

9. Regarding paragraph 7, deny “exclusive” and admit the remaining allegations.

10. Regarding paragraph 39, deny LATFOR is a partisan body that produced partisan maps and admit the remaining allegations.

11. Regarding paragraph 42, deny “significant leeway to gerrymander for partisan and incumbent gain” and admit the remaining allegations.

12. Regarding paragraph 45, deny “exclusive” and admit the remaining allegations.

13. Regarding paragraph 47, deny “against the Legislature’s continued gerrymandering practices” and admit the remaining allegations.

14. Regarding paragraph 57, deny “would have gutted the 2014 constitutional reforms” and admit the remaining allegations.

15. Regarding paragraph 60, deny “attempts to avoid the Constitution’s limitations” and “notwithstanding the expressed desires of the People of this State” and admit the remaining allegations.

16. Regarding paragraph 82, deny “exclusive” and admit the remaining allegations.

17. Regarding paragraph 87, deny the first sentence and admit the remaining allegations.

18. Regarding paragraph 101, deny “partisan” and upon information and belief admit the remaining allegations.

19. Regarding paragraph 114, deny “turning a blind eye to the mandatory and exclusive constitutional process for redistricting established in Article III, Section 4” and admit the remaining allegations.

20. Regarding paragraph 118, admit the enacting legislation had a “notwithstanding clause” and deny the remaining allegations.

21. Regarding paragraph 119, admit the Legislature created and enacted state Senate district maps and deny the remaining allegations.

22. Regarding paragraph 127, deny “partisan” and the last sentence and admit the remaining allegations.

23. Regarding paragraph 131, deny “capturing overwhelmingly Democrat-voting towns along the shore” and admit the remaining allegations.



24. Regarding paragraph 141, deny “thereby drastically changing the political composition of this district, providing the Democrats a drastically increased change of flipping it” and admit the remaining allegations.

25. Regarding paragraph 145, deny “Democratic strongholds” and “in order to ‘crack’ them out of Congressional District 18” and admit the remaining allegations.

26. Regarding paragraph 146, deny “awkwardly connected” and “neutralizing these Republican votes” and admit the remaining allegations.

27. Regarding paragraph 159, deny “Republican communities” and “to add Democrat voters” and admit the remaining allegations.

28. Regarding paragraph 161, deny “to pick up additional Democratic voters there” and admit the remaining allegations.

29. Regarding paragraph 162, deny “to pick up the Democrat-voting city of Utica” and admit the remaining allegations.

30. Regarding paragraph 165, deny “thereby packing additional Republican voters” and “eliminating their ability to make surrounding districts more competitive for Democratic candidates” and admit the remaining allegations.

31. Regarding paragraph 173, deny “while notably avoiding certain portions of Monroe and Ontario counties” and admit the remaining allegations.

32. Regarding paragraph 174, deny “with little or nothing in common” and admit the remaining allegations.

33. Regarding paragraph 177, deny “egregious gerrymandering” and “with only slight modifications not related to their gerrymandering efforts” and admit the remaining allegations.

34. Regarding paragraph 178, deny “egregious gerrymandering” and admit the remaining allegations.

35. Regarding paragraph 194, deny “with which it shares a natural community of interest” and admit the remaining allegations.

36. Regarding paragraph 217, deny “thereby blessing her fellow Democrats’ blatant gerrymandering efforts” and admit the remaining allegations.

37. Regarding paragraph 239, deny “leaving the Legislature with no p=maps to act on within the scope of its limited constitutional role” and admit the remaining allegations.

38. Regarding paragraph 262, admit Governor Hochul signed the congressional map into law and respectfully refers the Court to the cited New York Times article for its content.

39. Regarding paragraph 265, admit that is what the Petitioner seeks but deny they are entitled to such relief.

40. Regarding paragraph 266, admit New York Courts must properly construe the New York Constitution and deny the remaining allegations.

41. State paragraphs 234, 246, 256, and 264 refer to other paragraphs in the Petition and answer said paragraphs as the referred to paragraphs were answered.

42. Deny every allegation not otherwise specifically addressed.

#### **1<sup>st</sup> Affirmative Defense**

41. The Court does not have personal jurisdiction over Governor Hochul or Lt. Governor Benjamin.

#### **2<sup>nd</sup> Affirmative Defense**

42. The 2022 enacted New York Congressional district maps and State Senate district

maps are proper.

**3<sup>rd</sup> Affirmative Defense**

43. The 2022 enacted New York Congressional district maps and State Senate district maps were properly enacted.

**4<sup>th</sup> Affirmative Defense**

44. The Governor and Lt. Governor are entitled to immunity under the NY Constitution's speech and debate clause and common law.

**5<sup>th</sup> Affirmative Defense**

45. This matter is nonjusticiable.

**6<sup>th</sup> Affirmative Defense**

46. The Petition fails to state a claim upon which relief can be granted.

**7<sup>th</sup> Affirmative Defense**

47. Petitioners lack standing to bring this action.

**8<sup>th</sup> Affirmative Defense**

48. Petitioners failed to serve or file the Amended Petition following the Court's decision granting their motion to amend.

**The Return**

49. The Executive Respondents incorporate by reference their Notice of Motion to Dismiss, dated February 24, 2022 (NYSCEF #75), Affirmation of Heather McKay, Esq., with exhibits, sworn to February 24, 2022, in opposition to the Petition and in support of the motion to dismiss (NYSCEF #76-81), the Executive Respondents' Memorandum of Law in opposition to the Petition and in Support of the motion to dismiss, dated February 24, 2022 (NYSCEF #82), and the

**FILED: STEUBEN COUNTY CLERK 03/10/2022 01:55 PM**

NYSCEF DOC. NO. 139

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022

Executive Respondents' Reply Memorandum, dated March 2, 2022 (NYSCEF #125), and state that motion to dismiss and those papers are to be construed as now applying to the Amended Petition, copies of which were filed with the New York State Courts Electronic Filing System, and said documents are incorporated by reference herein and made a part hereof. For the reasons stated in those motion papers, the Executive Respondents should be dismissed from this special proceeding.

50. The Executive Respondents further join in and adopt all arguments made by co-Respondents in this action.

**WHEREFORE**, the Executive Respondents pray that judgment be entered dismissing the Amended Petition in all respects and that the Executive Respondents be awarded reasonable costs and attorney fees and for such further relief as is proper and equitable.

March 10, 2022

LETITIA JAMES  
Attorney General for the State of New York  
*Attorney for Respondents Governor Kathy Hochul and Lieutenant Governor and President of the Senate Brian A. Benjamin*

s/ Matthew D. Brown  
Matthew D. Brown  
Assistant Attorney General  
NYS Office of the Attorney General  
144 Exchange Boulevard  
Suite 200  
Rochester, New York 14614  
(585) 327-3257  
matthew.brown@ag.ny.gov

LETTER FROM THE OFFICE OF THE ATTORNEY GENERAL TO HONORABLE  
PATRICK F. MCALLISTER, DATED MARCH 10, 2022



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF REGIONAL OFFICES  
ROCHESTER REGIONAL OFFICE

March 10, 2022

*via NYSCEF*

Hon. Patrick F. McAllister  
Steuben County Supreme & County Court  
3 East Pulteney Square  
Bath, New York 14810

Re: Tim Harkenrider, et al. v. Gov. Kathy Hochul, et al.  
Steuben County Index No. E2022-0116CV

Dear Judge McAllister:

As your Honor knows, this Office represents the Governor and Lieutenant Governor (collectively, "Executive Respondents") in the above-referenced special proceeding. I write to advise that the Executive Respondents respectfully renew and incorporate by reference their motion to dismiss (the "Motion") as against the Amended Petition. See NYSCEF 75-82, 125.

As noted in the Answer to Amended Petition filed simultaneously herewith, the arguments and defenses raised in the Motion are equally applicable to the Amended Petition, and form more than sufficient basis to dismiss Executive Respondents from this special proceeding. Although we are happy to respond to any further questions your Honor may have, we decline to request additional oral argument and instead rely upon prior arguments and submissions.

Very truly yours,

s/ Heather L. McKay

HEATHER L. MCKAY  
Assistant Attorney General  
Rochester Regional Office  
(585) 327-3207

cc (via NYSCEF): All parties of record

**ANSWER AND COUNTERSTATEMENT TO AMENDED PETITION BY  
RESPONDENTS SENATE MAJORITY LEADER AND PRESIDENT PRO TEMPORE  
OF THE SENATE ANDREA STEWART-COUSINS AND THE NEW YORK STATE  
SENATE MAJORITY'S APPOINTEES TO THE NEW YORK STATE LEGISLATIVE  
TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT,  
DATED MARCH 10, 2022 [1098 - 1149]**

**FILED: STEUBEN COUNTY CLERK 03/10/2022 10:50 PM**  
NYSCEF DOC. NO. 148

INDEX NO. E2022-0116CV  
RECEIVED NYSCEF: 03/10/2022

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  
VOLANTE,

Index No. E2022-0116CV

**ANSWER AND  
COUNTERSTATEMENT  
TO AMENDED PETITION**

Petitioners,

-against-

GOVERNOR KATHY HOCUL, 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

Respondents Senate Majority Leader and President *Pro Tempore* of the Senate Andrea  
Stewart-Cousins and the New York State Senate Majority's appointees to the New York State  
Legislative Task Force on Demographic Research and Reapportionment ("LATFOR"), by and  
through their attorneys, Cuti Hecker Wang LLP, as and for their Answer and Counterstatement  
to the Amended Petition, allege as follows:

1. Deny the allegations set forth in paragraph 1.
2. Deny the allegations set forth in paragraph 2.
3. Deny the allegations set forth in paragraph 3.

4. Deny the allegations set forth in paragraph 4, except admit that article III, sections 4 and 5 of the New York Constitution were amended to create the New York State Independent Redistricting Commission (the “Commission”) to participate in the redistricting process.

5. Deny the allegations set forth in paragraph 5. Any submissions made in prior lawsuits speak for themselves.

6. Deny the allegations set forth in paragraph 6.

7. Deny the allegations set forth in paragraph 7, except admit that a constitutional amendment related to the redistricting process was not approved by voters in the November 2021 election.

8. Deny the allegations set forth in paragraph 8.

9. Paragraph 9 calls for conclusions of law as to which no response is required.

10. Deny the allegations set forth in paragraph 10.

11. Deny the allegations set forth in paragraph 11.

12. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 12.

13. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 13.

14. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 14.

15. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 15.

16. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 16.

17. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 17.

18. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 18.

19. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 19.

20. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 20.

21. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 21.

22. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 22.

23. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 23.

24. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 24.

25. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 25.

26. Admit the allegations set forth in paragraph 26.

27. Admit the allegations set forth in paragraph 27.

28. Admit the allegations set forth in paragraph 28.

29. Admit the allegations set forth in paragraph 29.

30. Admit the allegations set forth in paragraph 30.



31. Admit the allegations set forth in paragraph 31 concerning LATFOR's principal place of business. Paragraph 31 otherwise calls for a conclusion of law as to which no response is required.

32. Paragraph 32 calls for conclusions of law as to which no response is required.

33. Paragraph 33 calls for conclusions of law as to which no response is required.

34. Admit the allegations set forth in paragraph 34.

35. Paragraph 35 calls for conclusions of law as to which no response is required.

36. Deny the allegations set forth in paragraph 36, except admit that the schedule and deadlines for elections in New York are governed by N.Y. Election Law, sections 6-100 *et seq.*, and respectfully refer to those statutes for their terms.

37. Deny the allegations set forth in paragraph 37 to the extent the allegations suggest that the Legislature is no longer primarily responsible for redistricting. Admit that the New York Legislature was, and remains, primarily responsible for enacting redistricting legislation.

38. Admit that LATFOR worked with the Legislature to prepare redistricting maps as alleged in paragraph 38.

39. Deny the allegations set forth in paragraph 39, except admit that LATFOR was established in 1978 and consists of six members, four of whom are legislators and two of whom are non-legislators, and that LATFOR's members are appointed as alleged.

40. Deny the allegations set forth in paragraph 40.

41. Deny the allegations set forth in paragraph 41.

42. Deny the allegations set forth in paragraph 42, except admit that the New York Constitution and federal law require consideration of multiple factors in the redistricting process.

43. Paragraph 43 calls for a conclusion of law as to which no response is required.

- 44. Deny the allegations set forth in paragraph 44.
- 45. Deny the allegations set forth in paragraph 45.
- 46. Admit the allegations set forth in paragraph 46.
- 47. Deny the allegations set forth in paragraph 47.
- 48. Deny the allegations set forth in paragraph 48, except admit that the commissioners of the Commission are appointed as set forth in this paragraph.
- 49. Paragraph 49 calls for conclusions of law as to which no response is required.
- 50. Deny that “[f]ive members of the IRC constitute a quorum.” Article II, section 5-b(f) of the New York Constitution provides that, after the final two commissioners have been appointed by the other Commission members, a minimum of seven commissioners is required to form a quorum. Paragraph 50 otherwise calls for conclusions of law as to which no response is required.
- 51. Paragraph 51 calls for conclusions of law as to which no response is required.
- 52. Paragraph 52 calls for conclusions of law as to which no response is required.
- 53. Deny the allegations set forth in paragraph 53.
- 54. Paragraph 54 calls for conclusions of law as to which no response is required.
- 55. Deny the allegations set forth in paragraph 55, except admit that article III of the New York Constitution requires that the Legislature consider certain factors in the redistricting process.
- 56. Deny the allegations set forth in paragraph 56 to the extent that facts are alleged therein. Paragraph 56 otherwise calls for conclusions of law as to which no response is required.
- 57. Deny the allegations set forth in paragraph 57.

58. Deny the allegations set forth in paragraph 58, except admit that a ballot proposal submitted to voters in November 2021 contained multiple provisions, including the provision set forth in paragraph 58.

59. Deny the allegations set forth in paragraph 59, except admit that the Legislature enacted and the Governor signed into law an amendment to chapter 17 of the laws of 2012 pertaining to the redistricting process, and respectfully refer to the legislation for its terms.

60. Deny the allegations set forth in paragraph 60.

61. Respondents respectfully refer to the article and judicial decision referenced in paragraph 61 for their contents.

62. Deny the allegations set forth in paragraph 62.

63. Admit that between 2010 and 2020 the population within New York's congressional districts changed. Paragraph 63 otherwise calls for conclusions of law as to which no response is required.

64. Admit the allegations set forth in paragraph 64.

65. Admit that the 2012 congressional map does not comply with the current population target for congressional districts. Paragraph 65 otherwise calls for a conclusion of law as to which no response is required.

66. Paragraph 66 calls for a conclusion of law as to which no response is required.

67. Admit the allegations set forth in paragraph 67.

68. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 68, except admit that the current population of Congressional District 23, as drawn following the 2010 decennial census, has 83,462 residents fewer than the population goal, which represents a -10.7% deviation.

69. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 69, except admit that the current population of Congressional District 22, as drawn following the 2010 decennial census, has 80,361 fewer residents than the population goal, which represents a -10.3% deviation.

70. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 70, except admit that the population of Congressional District 19, as drawn following the 2010 decennial census, has 78,298 fewer residents than the population goal, which represents a -10.1% deviation.

71. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 71, except admit that the population of Congressional District 24, as drawn following the 2010 decennial census, has 59,664 fewer residents than the population goal, which represents a -7.7% deviation.

72. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 72, except admit that the population of Congressional District 10, as drawn following the 2010 decennial census, has 26,832 more residents than the population goal, which represents a 3.5% deviation.

73. Admit that New York received 27 congressional seats after the 2010 census and 26 congressional seats after the 2020 census. Paragraph 73 otherwise calls for a conclusion of law as to which no response is required.

74. Deny the allegations set forth in paragraph 74.

75. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 75, except admit that the population of Senate District

27, as drawn following the 2010 decennial census, deviates from the target population (+12.2% deviation).

76. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 76, except admit that the population of Senate District 53 as drawn following the 2010 decennial census, deviates from the target population (-10.6% deviation).

77. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 77, except admit that the population of Senate District 57 as drawn following the 2010 decennial census, deviates from the target population (-13.3%).

78. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 78, except admit that the population of Senate District 58 as drawn following the 2010 decennial census, deviates from the target population (-10.1%).

79. Deny the allegations set forth in paragraph 79, except admit that other Senate districts, as drawn following the 2010 decennial census, deviate from the target population.

80. Admit the allegations set forth in paragraph 80.

81. Paragraph 81 calls for a conclusion of law as to which no response is required.

82. Deny the allegations set forth in paragraph 82.

83. Admit the allegations set forth in paragraph 83.

84. Deny the allegations set forth in paragraph 84, except admit that the listed individuals are commissioners of the Commission. Paragraph 84 otherwise calls for a conclusion of law as to which no response is required.

85. Deny the allegations set forth in paragraph 85, except admit that the listed individuals are commissioners of the Commission. Paragraph 85 otherwise calls for a conclusion of law as to which no response is required.

86. Deny the allegations set forth in paragraph 86.

87. Deny the allegations set forth in paragraph 87, except admit that the Legislature timely allocated \$1 million to the Commission in the 2020 budget and \$4 million to the Commission in the 2021 budget. Any delays in the Commission receiving these appropriated funds were not caused by the Legislature.

88. Deny the allegations set forth in paragraph 88. The Commission began a series of hearings to solicit public testimony about the redistricting process on July 20, 2021.

89. Admit the allegations set forth in paragraph 89.

90. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 90.

91. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 91, except admit that Commission Chair Imamura publicly stated that he did not see the Commission's decision to publish separate maps on September 15, 2021 as indicating an inability to reach agreement later.

92. Deny the allegations set forth in paragraph 92, except admit that the Commission held a total of 24 public hearings to solicit input regarding the redistricting process and also solicited written input from the public regarding the redistricting process.

93. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 93.

94. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 94.

95. Deny the allegations set forth in paragraph 95, except admit that following the public comment period, the Commission scheduled meetings to negotiate and finalize a single set of maps to submit to the Legislature.

96. Deny the allegations set forth in paragraph 96.

97. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 97.

98. Deny the allegations set forth in paragraph 98.

99. Admit the allegations set forth in paragraph 99.

100. Deny the allegations set forth in paragraph 100.

101. Deny the allegations set forth in paragraph 101, except admit that the Commission voted on two redistricting plans on January 3, 2022.

102. Admit the allegations set forth in paragraph 102.

103. Deny the allegations set forth in paragraph 103.

104. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 104.

105. Admit that Commission Plan A and Commission Plan B each received the number of votes set forth in paragraph 105. The statements of individual Senators during the legislative debate speak for themselves. Deny the truth of the statement allegedly made by Senator Andrew Lanza.

106. Deny the allegations set forth in paragraph 106, except admit that on January 10, 2022, the Legislature informed the Commission in writing that the Legislature had voted not to adopt either plan submitted by the Commission on January 3, 2022.

107. Paragraph 107 calls for a conclusion of law as to which no response is required.

108. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 108, except deny that Democratic members of the Commission refused to meet or discuss bipartisan maps.

109. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 109.

110. Admit the allegations set forth in paragraph 110.

111. Deny the allegations set forth in paragraph 111, except admit that Commissioner Martins issued a statement on January 24, 2021.

112. Deny the allegations set forth in paragraph 112, except admit that the Commission did not submit a second redistricting plan or plans to the Legislature for a vote as set forth in paragraph 112. Paragraph 112 otherwise calls for a conclusion of law as to which no response is required.

113. Deny the allegations set forth in paragraph 113. Contrary to Petitioners' unsubstantiated allegation, the Senate Democrats did not at any time discourage the Commission from submitting a final congressional or state legislative plan or plans to the Legislature by the deadline prescribed in the Constitution. Nor did the Democratic commissioners refuse to meet to vote on a final plan or plans to submit to the Legislature. To the contrary, when the deadline for submitting a final plan or plans to the Legislature was looming, the Democratic commissioners sought to convene a meeting of the full Commission to vote on a final plan or plans, but the



Republican commissioners refused to meet to vote on a final plan or plans. It was the Republican commissioners who prevented the Commission from submitting a final plan or plans to the Legislature, not the Democratic commissioners.

114. Deny the allegations set forth in paragraph 114.

115. Deny the allegations set forth in paragraph 115.

116. Deny the allegations set forth in paragraph 116, except admit that the Legislature released its congressional redistricting map on January 30, 2022, and that the Legislature voted on the map without conducting additional public hearings due to approaching election deadlines.

117. Deny the allegations set forth in paragraph 117.

118. Deny the allegations set forth in paragraph 118.

119. Deny the allegations set forth in paragraph 119.

120. Deny the allegations set forth in paragraph 120.

121. Deny the allegations set forth in paragraph 121.

122. Deny the allegations set forth in paragraph 122. The cited *New York Daily News* article speaks for itself with regard to any quotes contained therein.

123. Deny the allegations set forth in paragraph 123.

124. Deny the allegations set forth in paragraph 124.

125. Deny the allegations set forth in paragraph 125.

126. Deny the allegations set forth in paragraph 126.

127. Deny the allegations set forth in paragraph 127.

128. Deny the allegations set forth in paragraph 128.

129. Deny the allegations set forth in paragraph 129.

130. Deny the allegations set forth in paragraph 130.

131. Deny the allegations set forth in paragraph 131.

132. Deny the allegations set forth in paragraph 132.

133. Deny the allegations set forth in paragraph 133.

134. Deny the allegations set forth in paragraph 134.

135. Deny the allegations set forth in paragraph 135.

136. Deny the allegations set forth in paragraph 136.

137. Deny the allegations set forth in paragraph 137.

138. Deny the allegations set forth in paragraph 138.

139. Deny the allegations set forth in paragraph 139, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegation that Assemblymember Marcela Mitaynes made the quoted statement during legislative debate in the Assembly.

140. Deny the allegations set forth in paragraph 140.

141. Deny the allegations set forth in paragraph 141.

142. Deny the allegations set forth in paragraph 142.

143. Deny the allegations set forth in paragraph 143.

144. Deny the allegations set forth in paragraph 144.

145. Deny the allegations set forth in paragraph 145.

146. Deny the allegations set forth in paragraph 146.

147. Deny the allegations set forth in paragraph 147.

148. Deny the allegations set forth in paragraph 148.

149. Deny the allegations set forth in paragraph 149.

150. Deny the allegations set forth in paragraph 150.

151. Deny the allegations set forth in paragraph 151.
152. Deny the allegations set forth in paragraph 152, except admit that Congressional District 17 was previously located in Rockland and Westchester counties.
153. Deny the allegations set forth in paragraph 153, except admit that District 17 was adjusted to include parts of Sullivan, Orange, Rockland and Westchester counties.
154. Deny the allegations set forth in paragraph 154, except admit that District 17 includes part of White Plains.
155. Deny the allegations set forth in paragraph 155, except admit that District 17 unites communities of interest.
156. Deny the allegations set forth in paragraph 156.
157. Deny the allegations set forth in paragraph 157.
158. Deny the allegations set forth in paragraph 158.
159. Deny the allegations set forth in paragraph 159.
160. Deny the allegations set forth in paragraph 160.
161. Deny the allegations set forth in paragraph 161, except admit that Binghamton is located in Congressional District 19.
162. Deny the allegations set forth in paragraph 162, except admit that Utica is located in Congressional District 19.
163. Deny the allegations set forth in paragraph 163.
164. Deny the allegations set forth in paragraph 164.
165. Deny the allegations set forth in paragraph 165.
166. Deny the allegations set forth in paragraph 166.
167. Deny the allegations set forth in paragraph 167.

168. Deny the allegations set forth in paragraph 168.

169. Deny the allegations set forth in paragraph 169, except admit that Congressional District 23 includes suburbs of the City of Buffalo.

170. Deny the allegations set forth in paragraph 170.

171. Deny the allegations set forth in paragraph 171.

172. Deny the allegations set forth in paragraph 172, except admit that Congressional District 24 previously included Wayne, Cayuga, and Onondaga Counties, as well as part of Oswego County.

173. Deny the allegations set forth in paragraph 173, except admit that Congressional District 24 includes Lewiston, part of Erie County, and part of Jefferson County.

174. Deny the allegations set forth in paragraph 174.

175. Deny the allegations set forth in paragraph 175.

176. Deny the allegations set forth in paragraph 176.

177. Deny the allegations set forth in paragraph 177, except admit that the Legislature voted to approve the congressional map on February 2, 2022.

178. Deny the allegations set forth in paragraph 178, except admit that Republican legislators and Assemblymembers Simcha Eichenstein and Marcela Mitaynes voted against the congressional map.

179. Deny the allegations set forth in paragraph 179.

180. Deny the allegations set forth in paragraph 180.

181. Deny the allegations set forth in paragraph 181.

182. Deny the allegations set forth in paragraph 182.

183. Deny the allegations set forth in paragraph 183.

184. Deny the allegations set forth in paragraph 184.
185. Deny the allegations set forth in paragraph 185.
186. Deny the allegations set forth in paragraph 186.
187. Deny the allegations set forth in paragraph 187.
188. Deny the allegations set forth in paragraph 188.
189. Deny the allegations set forth in paragraph 189.
190. Deny the allegations set forth in paragraph 190.
191. Deny the allegations set forth in paragraph 191.
192. Deny the allegations set forth in paragraph 192.
193. Deny the allegations set forth in paragraph 193.
194. Deny the allegations set forth in paragraph 194, except admit that Putnam County is located in Senate Districts 41 and 42.
195. Deny the allegations set forth in paragraph 195, except admit that Philipstown, Beacon, and Fishkill are located in Senate District 41 and that the towns of Montgomery, Crawford, Chester, and Monroe are located in Senate District 44.
196. Deny the allegations set forth in paragraph 196, except admit that Ulster County is no longer in Senate District 44 and is wholly contained in Senate District 48.
197. Deny the allegations set forth in paragraph 197, except admit that Senate District 48 includes Ulster County and parts of Dutchess and Columbia counties.
198. Deny the allegations set forth in paragraph 198.
199. Deny the allegations set forth in paragraph 199.
200. Deny the allegations set forth in paragraph 200, except admit that Senate District 52 unites part of the City of Syracuse with its surrounding suburbs.

201. Deny the allegations set forth in paragraph 201.
202. Deny the allegations set forth in paragraph 202, except admit that all of Ontario and Genesee Counties and parts of Livingston and Cayuga Counties are located in Senate District 54.
203. Deny the allegations set forth in paragraph 203.
204. Deny the allegations set forth in paragraph 204, except admit that parts of the City of Rochester that were previously divided are united in Senate Districts 56 and 57.
205. Deny the allegations set forth in paragraph 205.
206. Deny the allegations set forth in paragraph 206, except admit that the City of Niagara Falls is located in Senate District 60 and the towns of Orchard Park, Evans, and Brant are not.
207. Deny the allegations set forth in paragraph 207, except admit that the City of Niagara Falls is not located in Senate District 62.
208. Deny the allegations set forth in paragraph 208, except admit that the Town of Amherst and the adjacent part of the City of Buffalo are united in Senate District 63.
209. Deny the allegations set forth in paragraph 209.
210. Deny the allegations set forth in paragraph 210.
211. Deny the allegations set forth in paragraph 211.
212. Deny the allegations set forth in paragraph 212, except admit that the Legislature voted to approve the Senate redistricting map as described.
213. Deny the allegations set forth in paragraph 213.

214. Deny the allegations set forth in paragraph 214. To the extent that paragraph 214 purports to quote from news articles or comments on the Commission's website, such articles or comments speak for themselves.

215. Deny the allegations set forth in paragraph 215. To the extent that paragraph 215 purports to quote from news articles, such articles speak for themselves.

216. Deny the allegations set forth in paragraph 216. To the extent that paragraph 216 purports to quote from news articles, such articles speak for themselves.

217. Deny the allegations set forth in paragraph 217, except admit that Governor Hochul signed the congressional redistricting plan into law on February 3, 2022.

218. Deny the allegations set forth in paragraph 218, except deny knowledge or information sufficient to form a belief as to what Petitioners want as set forth in paragraph 218.

219. Deny the allegations set forth in paragraph 219.

220. Deny the allegations set forth in paragraph 220.

221. Admit that voters should choose their elected representatives as set forth in paragraph 221.

222. Deny the allegations set forth in paragraph 222.

223. Deny the allegations set forth in paragraph 223.

224. Deny the allegations set forth in paragraph 224.

225. Deny the allegations set forth in paragraph 225, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where certain Petitioners reside.

226. Deny the allegations set forth in paragraph 226, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where certain Petitioners reside.

227. Deny the allegations set forth in paragraph 227, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where certain Petitioners reside.

228. Deny the allegations set forth in paragraph 228, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where certain Petitioners reside.

229. Deny the allegations set forth in paragraph 229, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where certain Petitioners reside.

230. Deny the allegations set forth in paragraph 230, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where certain Petitioners reside.

231. Deny the allegations set forth in paragraph 231, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where certain Petitioners reside.

232. Deny the allegations set forth in paragraph 232, except deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations regarding where certain Petitioners reside.

233. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph 233.



234. Respondents repeat and incorporate their responses to paragraphs 1-233.
235. Paragraph 235 calls for a conclusion of law as to which no response is required.
236. Paragraph 236 calls for a conclusion of law as to which no response is required.
237. Paragraph 237 calls for a conclusion of law as to which no response is required.
238. Deny the allegations set forth in paragraph 238.
239. Deny the allegations set forth in paragraph 239, except admit that the Commission did not send a second proposed plan or plans for a vote by the Legislature within fifteen days of the Legislature's rejection of the first proposed plans.
240. Deny the allegations set forth in paragraph 240.
241. Deny the allegations set forth in paragraph 241.
242. Deny the allegations set forth in paragraph 242.
243. Deny the allegations set forth in paragraph 243.
244. Deny the allegations set forth in paragraph 244, except to the extent that paragraph 196 calls for a conclusion of law as to which no response is required.
245. Deny the allegations set forth in paragraph 245, except to the extent that paragraph 197 calls for a conclusion of law as to which no response is required.
246. Respondents repeat and incorporate their responses to paragraphs 1-245.
247. Paragraph 247 calls for a conclusion of law as to which no response is required.
248. Paragraph 248 calls for a conclusion of law as to which no response is required.
249. Paragraph 249 calls for a conclusion of law as to which no response is required.
250. Deny the allegations set forth in paragraph 250, except to the extent that paragraph 202 calls for a conclusion of law as to which no response is required.

251. Deny the allegations set forth in paragraph 251, except to the extent that paragraph 203 calls for conclusions of law as to which no response is required.
252. Paragraph 252 calls for conclusions of law as to which no response is required.
253. Paragraph 253 calls for a conclusion of law as to which no response is required.
254. Paragraph 254 calls for a conclusion of law as to which no response is required.
255. Paragraph 255 calls for conclusions of law as to which no response is required.
256. Respondents repeat and incorporate their responses to paragraphs 1-255.
257. Paragraph 257 calls for a conclusion of law as to which no response is required.
258. Paragraph 258 calls for a conclusion of law as to which no response is required.
259. Paragraph 259 calls for a conclusion of law as to which no response is required.
260. Paragraph 260 calls for a conclusion of law as to which no response is required.
261. Deny the allegations set forth in paragraph 261.
262. Deny knowledge or information sufficient to form a belief about the truth or falsity of the allegations set forth in paragraph 262, and respectfully refer to the document referenced for its contents.
263. Deny the allegations set forth in paragraph 263, except to the extent that paragraph 263 calls for conclusions of law as to which no response is required.
264. Respondents repeat and incorporate their responses to paragraphs 1-263.
265. Paragraph 265 calls for a conclusion of law as to which no response is required.
266. Admit the allegations set forth in paragraph 266.
267. Paragraph 267 calls for conclusions of law as to which no response is required.
268. Deny the allegations set forth in paragraph 268.

269. Deny the allegations set forth in paragraph 269, except to the extent that paragraph 269 calls for conclusions of law as to which no response is required.

270. Deny the allegations set forth in paragraph 270.

271. Paragraph 271 calls for a conclusion of law as to which no response is required.

272. Deny the allegations set forth in paragraph 272.

273. Deny the allegations set forth in paragraph 273.

274. Paragraph 274 calls for conclusions of law as to which no response is required.

### **COUNTERSTATEMENT OF FACTS**

***Changes in the Population of New York State Since the 2010 Census, Which Varied Across Regions, Together with a Decrease in the Size of New York's Congressional Delegation, Necessitated Significant Changes to the Congressional Map***

275. Every ten years, New York must reapportion its congressional districts to account for population changes documented in the decennial census.

276. Federal law requires that there be zero population deviation across every congressional district. Accordingly, the population in each congressional district can vary by no more than one resident.

277. The 2010 decennial census reported that New York had 19,378,102 residents.

278. The 2020 decennial census reported that New York has 20,201,249 residents.

279. The 2022 reapportionment of congressional districts therefore required accommodating a statewide population increase of 823,147 people.

280. Based on the nationwide results of the 2020 decennial census, the New York congressional delegation was reduced from 27 districts to 26 districts.

281. Each of the 27 congressional districts in the 2012 congressional redistricting plan had to contain within one voter of 717,707 New York residents.

282. Each of the 26 congressional districts in the 2022 congressional redistricting plan must contain 776,971 residents, with a margin of one resident.

283. Because each existing congressional district had to gain, on average, tens of thousands of people, the congressional map had to change significantly within and between districts.

284. Moreover, the increase in population that New York experienced between 2010 and 2020 was not evenly distributed throughout New York State.

285. The downstate areas of New York – including New York City and Long Island – experienced significant population growth during the last decade.

286. The total population of the five counties within New York City increased by 629,057 people from 2010 to 2020, from 8,175,133 to 8,804,190. This represented a 7.7% increase in total population.

287. When New York City is combined with Nassau, Suffolk, and Westchester Counties – together, the eight southernmost counties in New York State – the total population of the downstate region increased by 773,213 from 2010 to 2020, from 11,957,128 to 12,730,341. This represented a 6.5% increase in the total population of the downstate region.

288. Because the target congressional district size for New York under the 2020 census is 776,971 people, the population growth that the downstate region experienced between 2010 and 2020 constituted nearly an entire additional congressional district.

289. New York's upstate region covers a significantly larger area geographically than downstate, but its population is highly dispersed.

290. All of New York's counties with fewer than 200,000 people are located in the Hudson Valley or upstate regions.

291. Of the 62 counties in New York, 44 counties have a population of less than 200,000 people.

292. These 44 counties presently contain a total population of 3,250,015. That reflects a population decrease of 83,403 people since the 2010 census.

293. Not counting Richmond County, which is part of New York City, eight counties in New York have a population of between 200,000 and 500,000 people.

294. Those eight counties increased in population by only 83,042 between 2010 and 2020.

295. Thus, among the 52 least populous counties in New York outside of New York City, there was almost no change in total population between 2010 and 2020.

296. The two counties in New York with a population between 500,000 and 1,000,000 – Erie County and Monroe County – gained a total of 50,295 people between 2010 and 2020.

297. Given these statistics, nearly all of New York's population gain during the last decade is attributable to a small percentage of its counties, and nearly all of the population gain is attributable to the eight counties comprising the downstate region.

298. New York's registered Democrats are concentrated most heavily in New York City and its suburbs and in other urban centers throughout the State. These are the areas that experienced the greatest population gains over the last ten years.

299. New York's registered Republicans are concentrated most heavily in the upstate region and in rural areas throughout the State that lost population over the last ten years.

300. These population shifts significantly constrain the range of choices available with respect to a new congressional plan.

301. These population shifts have partisan consequences that arise from the fact that Republican-dominated counties lost substantial population relative to Democrat-dominated counties.

302. The reapportionment process is also affected by New York's unique geography.

303. New York City and Long Island together comprise approximately 58% of the State's total population and have experienced most of the State's population growth since 2010.

304. The physical narrowing of the land where Bronx County connects to Westchester County creates a bottleneck through which districts must expand to the north to accommodate population growth in New York City and Long Island to account for population loss in the upstate region.

305. As discussed below, this physical bottleneck, the strict population equality requirement, and the requirement that minority voting strength not be diluted all significantly constrain the range of choices available with respect to a new congressional plan.

***Federal Law and the New York Constitution Require Numerous Disparate and Often Competing Factors to Be Balanced When Reapportioning Legislative Districts***

306. Because of the requirements expressly enumerated in the New York Constitution and the judicial precedents interpreting various federal and state constitutional and statutory requirements for redistricting, the task of reapportioning New York's congressional districts requires adhering to and balancing numerous often competing principles.

307. Federal law and the New York Constitution both require the protection of minority voting rights.

308. Section 2 of the Voting Rights Act prohibits voting practices or procedures that discriminate on the basis of race, color, or language minority. 52 U.S.C. § 10301.

309. Article III, section 4 of the Constitution provides that those drawing district lines “shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights.”

310. Article III, section 4 further provides that “[d]istricts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.”

311. Article III, section 4 of the New York Constitution also imposes additional requirements.

312. Article III, section 4(c)(3) requires that each district must “consist of contiguous territory.”

313. Article III, section 4(c)(4) requires that each district must “be as compact in form as practicable.”

314. Article III, section 4(c)(5) requires that “[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.”

315. Article III, section 4(c)(5) requires the consideration of “the maintenance of cores of existing districts.”

316. Article III, section 4(c)(5) requires the consideration of “pre-existing political subdivisions, including counties, cities, and towns.”

317. Article III, section 4(c)(5) further requires the consideration of “communities of interest.”

318. Any fair evaluation of a reapportionment plan must recognize the complexity of balancing these disparate constitutional and statutory factors and applying them to the realities of New York's population size, the distribution of its population, and its unique geography.

319. Petitioners present an array of criticisms of particular districts in the enacted congressional plan, but their criticisms disregard the interconnections between and among districts and regions that naturally constrain the range of available choices – including, for example, the basic fact that substantially increasing the population of one district, which the new census data requires for nearly all previously existing districts, necessarily affects the areas that are available to include in surrounding districts.

320. Petitioners' criticisms of particular districts in the enacted congressional plan are frequently internally inconsistent and/or inconsistent across districts.

321. Petitioners' claim that the enacted congressional reapportionment plan is unconstitutionally partisan is false.

322. As detailed below, many of Petitioners' factual allegations are simply false; others ignore how the reapportionment process works, the full range of factors the Legislature was required to consider, and the neutral principles that support the creation of each enacted district; and still others are premised upon self-serving and undefined metrics that inaccurately characterize the political effects of the enacted congressional plan.

323. A proper assessment of the enacted congressional plan confirms that it is not unlawful in whole or in part.

***Congressional Districts 1, 2, and 3 in Long Island, Queens, the Bronx, and Westchester Are Not Unlawful***

324. A fair assessment of the congressional districts in Long Island and Westchester requires that Districts 1, 2, and 3 be considered together.



325. The federal equal population rule required the population of former Congressional District 1 to be increased by 36,652 people.

326. The federal equal population rule required the population of former Congressional District 2 to be increased by 48,815 people.

327. The federal equal population rule required the population of former Congressional District 3 to be increased by 37,774 people.

328. Congressional District 1 in the enacted congressional plan preserves the core of the prior district. 56% of the old Congressional District 1 is in the new Congressional District 1.

329. Congressional District 2 unites communities of interest along the South Shore of Long Island that previously had been separated, including areas along the southern bays and barrier islands that experience similar environmental issues. The district unites significant parts of the Town of Islip and the Town of Babylon and unites those populations with similar South Shore communities in the Town of Brookhaven.

330. Congressional District 1 unites communities of interest along the North Shore of Long Island.

331. Congressional District 1 maintains a connection between communities of interest in Babylon and Islip, which had been united under the previous map.

332. Congressional District 1 continues to unite growing populations of Central American immigrants in Flanders, Riverside, and Riverhead with similar communities in Babylon and Islip. These communities share a common language and share common interests and needs.

333. Congressional District 1 reflects public testimony before the Commission that advocated for a congressional district that continues to unite Brookhaven National Laboratory with SUNY Stony Brook, two major research centers in Suffolk County of national significance.

334. Petitioners allege falsely that the reapportionment “effectively flipped” Congressional District 1 from a “strong Republican district” to “a lean Democratic district.”

335. Former Congressional District 1 was not a “strong Republican district.” It was and remains a highly competitive district.

336. During the first congressional election in Congressional District 1 after the 2012 redistricting, a Democrat was elected.

337. Petitioners also criticize the reapportionment of Congressional District 3, but in doing so, they ignore the redistricting requirements and principles that had to be applied and balanced in devising the congressional plan as a whole.

338. Congressional District 3 is now shaped differently than it was in 2012, but that change is consistent with the neutral application of a variety of competing redistricting principles.

339. More than 70% of the population of old Congressional District 3 remains in new District 3.

340. The requirement that substantial population be added to Congressional Districts 1 and 2 unavoidably required moving those districts westward toward New York City.

341. Congressional District 3 therefore necessarily had to shift to its west as well.

342. Congressional District 3 could not be shifted to its south without causing Congressional District 4 to shift to its west.

343. Shifting Congressional District 4 to its west would have required moving substantial minority population out of Congressional District 5 into Congressional District 4.

344. Removing substantial minority population from Congressional District 5 would have implicated concerns about diluting minority voting strength because Congressional District 5 was and remains a district in which minority voters have the opportunity to elect the candidate of their choice.

345. The incumbent Member of Congress representing Congressional District 5, Gregory Meeks, is African-American.

346. Removing substantial population out of Congressional District 5 also would have disturbed the core of that district.

347. Shifting Congressional District 3 to its west, and not to its south, avoided removing substantial minority population from Congressional District 5.

348. Because it was necessary to add 268,272 people to Congressional District 3 from outside of Nassau or Suffolk Counties, and because Congressional District 3, like all districts, must be contiguous, Congressional District 3 had to shift to the west into Queens.

349. The communities in Queens that are included in new Congressional District 3 are similar in character to the Nassau communities just across the Nassau-Queens border.

350. Because it was necessary to add 268,272 people to Congressional District 3, its westward expansion could not stop in eastern Queens.

351. Shifting Congressional District 3 into the heart of Queens would have required removing substantial Asian population from Congressional District 6.

352. Removing substantial minority population from Congressional District 6 would have implicated concerns about diluting minority voting strength because Congressional District

6 was and remains a district in which minority voters have the opportunity to elect the candidate of their choice.

353. The incumbent Member of Congress representing Congressional District 6, Grace Meng, is Asian-American.

354. Congressional District 6 is the only district in New York represented by an Asian-American.

355. Removing more population from Congressional District 6 than was necessary would have disturbed the core of that district.

356. The only way to add the additional population to Congressional District 3 that was required without removing substantial minority population from Congressional District 5 or Congressional District 6 and substantially disturbing the cores of those districts was to shift Congressional District 3 to its west through northern Queens and into the Bronx.

357. Shifting Congressional District 3 into the Bronx implicates concerns about diluting minority voting strength because each of the existing districts located wholly or partially in the Bronx, Congressional Districts 13, 14, 15, and 16, were and remain districts in which minority voters have the opportunity to elect the candidate of their choice.

358. The incumbent Member of Congress representing Congressional District 13, Adriano Espaillat, is Hispanic.

359. The incumbent Member of Congress representing Congressional District 14, Alexandria Ocasio-Cortez, is Hispanic.

360. The incumbent Member of Congress representing Congressional District 15, Ritchie Torres, is Hispanic.

361. The incumbent Member of Congress representing Congressional District 16, Jamaal Bowman, is African-American.

362. The Westchester communities that have been included in Congressional District 3 share significant interests with the Nassau and Suffolk communities that are in Congressional District 3. Among other common interests, all of these communities are located on or near the Long Island Sound and thus share common interests with respect to coastal management, interests that many believe are becoming more vital due to climate change and that are directly affected by the work of the Army Corps of Engineers and other federal resources and policies relating to environmental issues.

363. The Bronx population that has been included in Congressional District 3 enables Congressional District 3 to reach communities of interest in Westchester contiguously.

364. Given that removing substantial minority population from Congressional Districts 13, 14, 15, or 16 would have implicated concerns about diluting minority voting strength, and given that the suburban communities along the Long Island Sound in Nassau and Suffolk counties share vital interests with the suburban communities along the Long Island Sound in Westchester, filling Congressional District 3 with the additional population that was required by joining the Nassau shore suburbs with Westchester shore suburbs does not reflect any unlawful purpose.

365. The shape of new Congressional District 3 is similar to the shape of the district in a map created by the Unity Coalition, a consortium of organizations and advocates focused on issues concerning the preservation and protection of minority voting rights in New York City.

***Congressional Districts 8, 9, 10, and 11 in New York City Are Not Unlawful***

366. Petitioners' allegations regarding Congressional Districts 8, 9, 10, and 11 rest on false claims about these communities and ignore the complexities that redrawing these districts necessarily required.

367. The federal equal population rule required the population of former Congressional District 8 to be reduced by 27,429 people.

368. The federal equal population rule required the population of former Congressional District 9 to be increased by 21,129 people.

369. The federal equal population rule required the population of former Congressional District 10 to be reduced by 26,832 people.

370. The federal equal population rule required the population of former Congressional District 11 to be increased by 10,735 people.

371. Adding or removing the required population to or from any one of these neighboring districts necessarily affected the ability to adjust population in the others.

372. Because substantial population had to be adjusted in each of these districts, and because adjusting the population of each district affected the ability to adjust the population of the others, Congressional Districts 8, 9, 10, and 11 necessarily look different than they did under the prior plan.

373. The reapportionment of Congressional Districts 8, 9, 10, and 11 nevertheless preserved the cores of the prior districts and continued to unite nearly all of the communities of interest that were united under the prior plan, while also uniting communities of interest that had been separated under prior plans.

374. Petitioners' allegation that these districts cross "multiple bodies of water" ignores that the reapportionment of Congressional Districts 8, 9, 10, and 11 maintains the same number of water crossings that previously existed in this part of New York City.

375. Petitioners challenge what they describe as "vertical stripes" across southern Brooklyn, which they falsely suggest reflects changes that result from partisan intent.

376. In fact, the shapes of reapportioned Congressional Districts 8, 9, and 10 are substantially similar to the prior shapes of those districts. As explained below, the changes to Congressional District 11 reflect in part the changes to Congressional Districts 8, 9, and 10 that were necessitated by the need to adjust population in those districts and unite communities of interest.

377. Congressional District 8 is now more compact than its predecessor and is now located wholly within Brooklyn.

378. Moreover, Congressional District 8 experienced some of the most substantial gentrification within New York City over the past decade.

379. This gentrification implicates concerns about diluting minority voting strength because Congressional District 8 was and remains a district in which minority voters have the opportunity to elect the candidate of their choice.

380. The incumbent Member of Congress representing Congressional District 8, Hakeem Jeffries, is African-American.

381. Congressional District 9 also was and remains a district in which minority voters have the opportunity to elect the candidate of their choice.

382. The incumbent Member of Congress representing Congressional District 9, Yvette Clarke, is African-American.

383. Reconfiguring Congressional Districts 8 and 9 also had implications for nearby Congressional District 7, which was and remains a district in which minority voters have the opportunity to elect the candidate of their choice.

384. The incumbent Member of Congress representing Congressional District 7, Nydia Velazquez, is Hispanic.

385. Ignoring the substantial concern that Congressional Districts 8 and 9 had to be reconfigured in a manner that did not dilute minority voting strength, Petitioners complain that Congressional District 8 allegedly divides Orthodox Jewish and Russian-speaking people into different districts.

386. It is unclear whether Petitioners allege that Orthodox Jewish people should have been kept together with Russian-speaking people, or that Orthodox Jewish people should have been kept together with Orthodox Jewish people and that Russian-speaking people should have been kept together with Russian-speaking people.

387. Congressional District 8 united the majority of Russian-speaking people in South Brooklyn into one district, unlike the 2012 plan, which divided Russian-speaking people across three districts.

388. Petitioners' claim regarding the Orthodox Jewish community is similarly misplaced.

389. Brooklyn contains numerous different Orthodox Jewish communities. These communities share much in common, but they are also distinct in the languages they speak, the regions of the world from which they immigrated, the nature and degree of their religious observance, and in other ways.



390. The reapportionment of Congressional Districts 8 and 9 maintained the pre-existing split of the Orthodox Jewish communities of Borough Park and Midwood that was reflected in the 2012 plan.

391. The Orthodox Jewish community in Midwood remains united in Congressional District 9 with the Orthodox Jewish community in Crown Heights.

392. Congressional District 9 unites the Orthodox Jewish communities in Midwood and Crown Heights with the Orthodox Jewish community in Ocean Parkway South. These Orthodox Jewish communities have much in common with one another, and they now are more united than they were under the 2012 plan.

393. Congressional District 8 also now unites Sheepshead Bay, Brighton Beach, Gravesend, and Manhattan Beach, Russian-speaking communities of interest that had previously been divided.

394. The reapportionment of Congressional Districts 8 and 9 preserved the cores of those districts and avoided the dilution of minority voting strength in Congressional Districts 7, 8, and 9.

395. Petitioners allege that Congressional District 10 has an unusual shape, but Petitioners ignore that the shape of Congressional District 10 has been substantially the same for the last three redistricting cycles, dating back to 1992 when it was Congressional District 8.

396. A neutral special master retained by the United States District Court for the Eastern District of New York drew Congressional District 10 as a Manhattan-Brooklyn district in 2012, and the new version of Congressional District 10 maintains substantially the same shape as the prior court-drawn version.

397. Congressional District 10 maintains the core of the prior district.

398. Congressional District 10 continues to unite the Jewish communities on the Upper West Side of Manhattan with the Orthodox Jewish community in Borough Park, just as the 2012 court-drawn plan did and as public testimony before the Commission urged it to do.

399. Linking the Orthodox Jewish communities on the Upper West Side with the Orthodox Jewish community in Borough Park caused Congressional District 10 to look the way it did in 2012 and as it continues to look today.

400. New York City has the largest Jewish population of any city in the world, but Congressional District 10 is the only New York City district represented by a Jewish Member of Congress, Jerry Nadler.

401. Petitioners complain that the Orthodox Jewish communities in Borough Park and Midwood are not united in the new map, just as they were not united in the old map. But they ignore that because of the size of the Orthodox Jewish communities in New York City and their geographic distribution throughout Brooklyn and Manhattan, it would have been impossible to draw a district that unites all of the Orthodox Jewish communities in those boroughs without cracking other communities of interest and/or disregarding other neutral redistricting principles.

402. Petitioners also assert falsely that the enacted plan divides Asian-American communities of interest in Sunset Park between Congressional Districts 10 and 11. Petitioners appear to misunderstand the demographics of Sunset Park.

403. Sunset Park includes a substantial Chinese-speaking community.

404. Sunset Park also includes a substantial Hispanic community.

405. Congressional District 10 unites the Chinese-speaking community of Sunset Park with similar Chinese-speaking communities of interest in the Chinatown neighborhood of Manhattan.

406. For the first time, Congressional District 10 also unites substantial and growing Chinese-speaking communities of interest in Bensonhurst and Bath Beach with Chinese-speaking communities in Sunset Park and Chinatown. These communities of interest share a common language, transit routes, economic pursuits, and cultural and familial ties.

407. Congressional District 10 reflects public testimony before the Commission, including from the OCA-NY (formerly the Organization for Chinese-Americans), that urged both the unification of Chinese-speaking communities in Bensonhurst and Bath Beach, which had been divided previously, and the continued linking of the Chinese-speaking community of Sunset Park with the Chinese-speaking community in Chinatown.

408. Petitioners complain that the enacted plan did not keep the Hispanic community in Sunset Park united with other Hispanic communities in Brooklyn and the Lower East Side of Manhattan. Petitioners ignore that doing that, while complying with the equal population requirement, would have required splitting the Chinese-speaking communities that are now united in Congressional District 10 and also severing other communities of interest in surrounding districts.

409. Petitioners complain that Congressional District 11 allegedly does not protect its Republican incumbent, but that allegation, even if true, does not render Congressional District 11 unlawful.

410. Petitioners cite nothing wrong with this district or any violation of neutral redistricting criteria, other than alleged partisan intent, the inverse of their partisan dissatisfaction.

411. Congressional District 11 maintains the core of the prior district in Staten Island.

412. The population of Staten Island under the 2020 census is 495,747, which is approximately 64% of an equipopulous congressional district.

413. The federal equal population rule required the population of former Congressional District 11 to include an additional 281,224 residents from outside of Staten Island.

414. Staten Island historically has been combined with territory in Brooklyn, the borough with which it shares a vehicle bridge crossing, the Verrazano Narrows Bridge.

415. New Congressional District 11 continues this historical tradition.

416. New Congressional District 11 crosses only one body of water, thereby minimizing the number of water crossings.

417. The Brooklyn portion of Congressional District 11 is reasonably compact.

418. Congressional District 11 unites communities of interest in Staten Island and Bay Ridge, the community in Brooklyn with which Staten Island has historically enjoyed the closest affiliation. Bay Ridge is contained entirely within Congressional District 11.

419. Bay Ridge and Staten Island have each historically shared significant Italian-American and Irish-American populations.

420. Congressional District 11 avoids cracking Chinese-speaking communities of interest that are now united in Congressional District 10.

421. Congressional District 11 unites communities of interest that share a common transit line, the R line.

422. Petitioners allege that there is no common thread between the Brooklyn communities in Congressional District 11, but in fact, those communities were historically linked in a shared congressional district.

423. In 1972, Bay Ridge, Sunset Park, and Park Slope shared a congressional district located entirely within Brooklyn.

424. In 1982, Bay Ridge and Sunset Park were separated from Park Slope and combined with Staten Island, in a similar configuration to the lines in the current plan.

425. By reverting to its prior route through Brooklyn, Congressional District 11 accommodates the expansion of surrounding districts and communities of interest in those districts.

426. Petitioners ignore that the configuration of Congressional District 11 is constrained by the configurations of Congressional Districts 8, 9, and 10, that the configuration of Congressional Districts 8 and 9 implicates concerns relating to minority voting strength, and that Congressional District 10 was reconfigured to extend further south to unite Chinese-speaking communities of interest.

427. Congressional District 11 remains a highly competitive district.

***Congressional Districts 16, 17, 18, and 19 in the Hudson Valley Region Are Not Unlawful***

428. In the upstate region, the loss of population and elimination of a district required that districts be pushed significantly to the south and east into the Hudson Valley region.

429. At the same time, the population growth within Long Island and New York City required the downstate districts to push to the north.

430. These colliding demographic forces required significant reconfiguration of the Hudson Valley region districts.

431. The federal equal population rule required the population of former Congressional District 16 to be increased by 6,570 people.

432. The federal equal population rule required the population of former Congressional District 17 to be increased by 13,220 people.

433. The federal equal population rule required the population of former Congressional District 18 to be increased by 28,529 people.

434. The federal equal population rule required the population of former Congressional District 19 to be increased by 78,298 people.

435. Congressional District 16 was and remains a district in which minority voters have the opportunity to elect the candidate of their choice.

436. The incumbent Member of Congress representing Congressional District 16, Jamaal Bowman, is African-American.

437. To comply with the equal population rule, Congressional District 16 had to push further into Westchester County.

438. Petitioners observe that Congressional District 16 previously was shaped differently and located mostly in Westchester, but they ignore the demographic pressure imposed on this area by population growth in Long Island and New York City.

439. Congressional District 16 preserves the core of the prior district and unites communities of interest in the Bronx with similar communities with shared interests in Mount Vernon and Yonkers in Westchester County.

440. Congressional District 16 had to push further north than Mount Vernon and Yonkers, but moving District 16 to the northwest would have disturbed the core of existing Congressional District 17.

441. Moving Congressional District 16 further to the east in southern Westchester County would have disturbed Congressional District 3, which as set forth above enables that

district to comply with the equal population requirement without disturbing minority opportunity districts in Brooklyn, Queens, and the Bronx.

442. Moving Congressional District 16 to the east in northern Westchester County or Putnam County would have made it less compact because those areas are sparsely populated.

443. Congressional District 16 cuts a straight northern path through the towns of Yorktown and Somers. Together with Putnam Valley and Carmel to the north, this configuration created a relatively compact district.

444. Congressional District 16 unites communities of interest because the communities in District 16 on either side of the Westchester-Putnam border have more in common with one another than with the communities to their east.

445. Congressional District 16 reflects public testimony before the Commission, from a Republican elected official in Westchester, that encouraged the Commission to unite the communities of Yorktown and Somers with similar communities in Putnam County.

446. This Westchester-Putnam border region also shares the common recreational feature of Donald J. Trump State Park, which crosses the border between Westchester and Putnam Counties.

447. This distribution of population had the salutary effect of keeping communities in northeastern Westchester and southern Putnam together with similar communities on the other sides of the border in Congressional District 18.

448. The Commission's Plan A recommendation similarly included Putnam County in Congressional District 16.

449. It would not have been possible for Congressional District 17 to comply with the equal population rule if it remained confined to Westchester and Rockland Counties like it was in the 2012 plan given the expansion of other districts around it in the enacted plan.

450. Congressional District 17 preserves the core of the prior district and continues to unite Greenburgh with Mount Kisco.

451. Congressional District 17 continues to unite Hasidic Jewish communities of interest in the Town of Ramapo in Rockland County.

452. Congressional District 17 unites Orthodox Jewish communities in Sullivan County – which have grown substantially since the 2010 decennial census – with Orthodox Jewish communities in Rockland County.

453. Congressional District 17 includes a single Hudson River crossing, as it previously did.

454. That single Hudson River crossing unites communities of interest such as Nyack and Tarrytown.

455. Congressional District 17 keeps Sullivan County whole.

456. Congressional District 18 preserves the core of the prior district in Orange County, ceding some population to Congressional District 17 to enable Congressional District 17 to comply with the equal population requirement.

457. Petitioners assert that Congressional District 18 used to be a Republican-leaning district, but the prior version of Congressional District 18 elected a Democrat to Congress in every election since 2012, and new Congressional District 18 remains highly competitive.



458. Petitioners claim that Congressional District 18 was configured for partisan purposes, but that claim is undermined by their observation that Congressional District 18 includes the Republican-leaning community of Kiryas Joel.

459. Congressional District 19 maintains a similar shape to its predecessor.

460. Statewide population growth coupled with population decline to the north of Congressional District 19 required it to expand significantly. Heading into this redistricting cycle, District 19 was one of the three most under-populated districts in New York State.

461. Binghamton and Utica were previously united in Congressional District 22, which, as explained below, is the district that was eliminated because New York lost one Congressional district.

462. Congressional District 19 continues to unite Binghamton and Utica and unites them with Rensselaer and other cities that share common interests, such as Kingston, Hudson, and Oneonta.

463. Binghamton and Utica are cities with significant numbers of people that add needed population to the severely under-populated Congressional District 19.

464. Congressional District 19 also unites the southern suburbs of Albany, such as Bethlehem and East Greenbush.

465. Petitioners assert that Columbia and Greene Counties are “Republican communities,” but Columbia County voted for President Biden by a margin of 17 points in the 2020 election, and Greene County has become more Democratic.

466. Congressional District 19 keeps Columbia and Greene Counties intact, as they had been previously.

467. Petitioners claim that certain Republicans were intentionally pushed out of Congressional District 19, but Petitioners ignore that those same Republicans were placed in Congressional District 18, another district that Petitioners claim purposefully excluded Republicans.

***Congressional Districts 21, 22, 23, 24, and 25 in the Southern Tier and Upstate New York Are Not Unlawful***

468. New York's congressional delegation lost a district following the 2020 decennial census.

469. The elimination of a district required the previous congressional districts to be significantly reconfigured.

470. As explained above, the upstate region experienced the greatest population decreases during the last ten years.

471. The federal equal population rule required the population of former Congressional District 20 to be increased by 30,681 people.

472. The federal equal population rule required the population of former Congressional District 21 to be increased by 71,930 people.

473. Following the 2020 decennial census, Congressional Districts 22 and 23, as previously drawn, were the most underpopulated districts in the State.

474. The federal equal population rule required the population of former Congressional District 22 to be increased by 80,361 people.

475. The federal equal population rule required the population of former Congressional District 23 to be increased by 83,462 people.

476. The federal equal population rule required the population of former Congressional District 24 to be increased by 59,664 people.

477. The federal equal population rule required the population of former Congressional District 25 to be increased by 43,930 people.

478. The federal equal population rule required the population of former Congressional District 26 to be increased by 34,520 people.

479. Due to the population decline across upstate New York and the need to eliminate a district, it made the most sense to collapse either Congressional District 22 or Congressional District 23 into surrounding districts because those districts were the most under-populated.

480. Because much of prior Congressional District 23 bordered the State's southern border, and because prior Congressional District 22 was surrounded on nearly all sides by other districts, eliminating Congressional District 22 made it easier to disperse its population into other districts.

481. Many of Petitioners' allegations concerning the upstate districts are unintelligible because they compare districts in the prior plan to the districts with the same number in the enacted plan even though prior Congressional District 22 has been eliminated and other upstate districts have been renumbered.

482. Congressional District 20 unites communities of interest in the Albany suburbs, consistent with public testimony before the Commission that encouraged the continued unification of Troy, Albany, and Schenectady.

483. Congressional District 20 unites those areas with other communities of interest in Glens Falls and Queensbury, just as they were prior to the last redistricting cycle.

484. Congressional District 20 has become less reliably Democratic, not more so.

485. Congressional District 21 was significantly underpopulated following the 2020 census and needed to draw significant population from surrounding areas.

486. The areas closest to the core of Congressional District 21 are all rural and heavily Republican.

487. Because the areas closest to the core of Congressional District 21 are all sparsely populated, it was necessary to add several counties to Congressional District 21.

488. Congressional District 21 retains the core of the prior district and combines it with other similar communities of interest.

489. Because prior Congressional District 22 was eliminated, Petitioners' attempts to compare prior Congressional District 22 with the current Congressional District 22 are inapposite.

490. Petitioners claim that Congressional District 22 "flipped" from a competitive Republican district to a strong Democratic district, but prior Congressional District 22 no longer exists.

491. Current Congressional District 22 is most similar to prior Congressional District 24.

492. Current Congressional District 22 unites prominent centers of higher education, including Syracuse University, Cornell University, Ithaca College, SUNY Cortland, and other educational centers. These "college town" communities share similar characteristics.

493. Petitioners claim that Congressional District 22 unites Tompkins County with Onondaga County for unlawful purposes, but both plan recommendations submitted by the Commission united Tompkins County with Onondaga County.

494. Congressional District 22 reflects public testimony before the Commission that advocated for Tompkins County to be united with similar communities near Syracuse.

495. Congressional District 23 creates a unified Southern Tier district, a configuration that was supported by public testimony before the Commission.

496. Both of the plans submitted by the Commission proposed the creation of a Southern Tier district, though the Commission's proposed districts are less compact than the enacted Congressional District 23.

497. The equal population rule required substantial additional population to be added to the prior version of Congressional District 23.

498. Petitioners complain that Congressional District 23 pulls in parts of Erie County, including Buffalo suburbs.

499. In order to pull population from somewhere other than Erie County, it would have been necessary for Congressional District 23 to expand significantly to the north, such that Congressional District 23 would not have been a Southern Tier district.

500. Both of the plans submitted by the Commission drew population from Erie County to complete Congressional District 23.

501. The western portion of the upstate region includes two urban centers, Rochester and Buffalo.

502. Congressional Districts 25 and 26 preserve Rochester and Buffalo as the cores of those districts.

503. Congressional District 24 in the enacted plan did not replace prior Congressional District 24. Congressional District 24 has the most in common with prior Congressional District 27. Petitioners' comparisons of Congressional District 24 with prior Congressional District 24 therefore are inapposite.

504. Congressional District 24 keeps more than half of prior Congressional District 27 intact, thereby preserving the core of that district.

505. Congressional District 24 unites rural communities with communities of interest along Lake Ontario. Congressional District 24 spans a wide area because it is comprised of rural communities that are sparsely populated.

506. Petitioners assert that Congressional District 24 is excessively non-compact because of its length, but Congressional District 24 is approximately the same length as Congressional District 23, which is more compact than either version of the Southern Tier district proposed by the Commission.

507. Petitioners challenge the fact that part of Ontario County is in reapportioned Congressional District 25, instead of Congressional District 24. The portion of Ontario County in question contains Finger Lakes Community College. That institution and its surrounding community are now joined with other educational institutions, including the Rochester Institute of Technology, the University of Rochester, SUNY Brockport, and Monroe Community College, all of which share common interests.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

508. Petitioners never filed or served the Amended Petition.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

509. Petitioners lack standing to assert the claims set forth in the Amended Petition.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

510. The Court lacks subject matter jurisdiction over the claims set forth in the Amended Petition.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

511. The claims set forth in the Amended Petition are nonjusticiable.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

512. The Amended Petition fails to set forth plain and concise statements and fails to set forth single allegations in each separately numbered paragraph as required under CPLR 402 and Rule 3014.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

513. The Amended Petition fails to state a claim upon which relief can be granted.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

514. The Amended Petition is barred by the doctrine of estoppel.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

515. Petitioners waived any right to relief.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

516. The relief Petitioners seek would sow confusion among election officials, candidates, and voters, and would unduly interfere with orderly election processes.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

517. The Amended Petition seeks relief that is precluded by the New York State Constitution.

**WHEREFORE**, for all of the reasons set forth herein, in the papers previously filed by Respondents in opposition to the Petition and in the accompanying papers filed by Respondents including the Affidavit of Dr. Jonathan N. Katz, Ph.D., the Affidavit of Todd A. Breitbart, and the Second Affidavit of Dr. Kristopher R. Tapp, Ph.D., Respondents respectfully request that the Court dismiss the Amended Petition and otherwise deny the relief sought by Petitioners in the

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Amended Petition in its entirety, with costs, fees, and disbursements, together with such other  
and further relief as the Court deems just and proper.

Dated: New York, New York  
March 10, 2022

By: /s/ Alexander Goldenberg  
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**BACKGROUND AND QUALIFICATIONS**

3. I directed the staff work on redistricting for successive Minority (Democratic) Leaders of the New York State Senate as Senior Research Analyst from 1980 through my retirement at the end of 2005. I have extensive experience drafting redistricting proposals, and evaluating the proposals of others, according to the provisions of article III, section 4 of the New York State Constitution and supervening federal requirements, including Fourteenth Amendment population equality standards and the Voting Rights Act of 1965. In connection with my work, I marshalled the evidence for plaintiffs challenging the Senate districts enacted in 1992 (*Dixon v. Cuomo*, consolidated on appeal with *Wolpczf v. Cuomo*, 80 N.Y.2d 70 (1992)), and 2002 (*Rodriguez v. Pataki*, 308 F. Supp. 2d 346 (2004)). I submitted an affidavit as an expert witness for the Plaintiffs in *Rodriguez v. Pataki* (2004), and as such I was deposed by counsel for the Defendants.

4. In 2007, I was the principal consultant to the Committee on Election Law of the Bar Association of the City of New York in the development of the Association's report on reform of the New York State redistricting process, *A Proposed New York State Constitutional Amendment to Emancipate Redistricting from Partisan Gerrymanders: Partisanship Channeled for Fair Line-Drawing*, and I was the principal drafter of the text of the report. I am the co-author of the chapter on redistricting (Chap. 4) in P. Galie, C. Bopst, and G. Benjamin, eds., *New York's Broken Constitution* (State University of NY Press, 2016).

5. I was consulted by the Senate staff attorney who drafted Sec. 83-m, Par. 13 of the Legislative Law and the related provisions of the Correction Law and Municipal Home Rule Law, which provide for reallocating prison populations for state legislative redistricting. I consulted with the attorneys on the staff of the New York State Solicitor General who drafted

New York State's amicus brief in *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016), supporting the principle that legislative redistricting may be based on total population, not just citizen voting-age population. I provided the attorneys with an introductory briefing on redistricting procedures and the use of census geography and data in redistricting. I submitted an affidavit as a witness for New York State in *State of New York, et al., v. United States Department of Commerce*, 315 F. Supp. 3d 766 (S.D.N.Y. 2018), the lawsuit that prevented the addition of a citizenship question to the 2020 census.

6. Participating in the 2011-12 redistricting process, no longer as a legislative staff member, but independently as a concerned citizen, I testified four times before the New York State Legislative Task Force on Reapportionment (LATFOR) and submitted voluminous written testimony on several aspects of the process, including the determination of the number of Senate districts. I developed and submitted for LATFOR's consideration a comprehensive and extensively documented proposal for a 62-seat Senate. I was the principal witness for the plaintiffs challenging the Senate redistricting plan in subsequent litigation, *Cohen v. Cuomo*, 19 N.Y.3d 196 (2012), in which I was also a petitioner. I submitted extensive testimony regarding Senate redistricting in *Favors v. Cuomo*, 39 F. Supp. 3d 276 (2014), and crafted a redistricting plan for a 63-seat Senate in connection with that litigation.

#### **SCOPE OF ENGAGEMENT**

7. I have been retained by Cuti Hecker Wang LLP, counsel for Respondent Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins, and asked to opine on the redistricting plan for the New York State Senate and the conclusions drawn in the report submitted by Claude LaVigna.

8. My analysis of the enacted plan and the assertions in Mr. LaVigna's report is based on the relevant provisions of the New York State Constitution and a comparison of the enacted plan with the Senate districts enacted in 1992, 2002, and 2012, for which data is available on the LATFOR website. In connection with this report, I reviewed the chapter of which I was co-author in Peter J. Galie, et. al., eds., *New York's Broken Constitution* (SUNY Press, 2016) and written materials that I submitted to the Court in *Favors v. Cuomo*.

9. Attached as Exhibits A-C to this Affidavit are maps for districts referenced herein.

10. I am being compensated at a rate of \$300.00 per hour. My compensation does not depend in any way on the outcome of the case or on the opinions or testimony that I provide.

#### **SUMMARY OF EXPERT OPINIONS**

11. It is my opinion that the 2022 enacted Senate plan adheres to constitutional redistricting criteria. It appears, in particular, that the Legislature prioritized drawing districts with equal population, and achieved that goal by providing for a maximum total deviation of only 1.62%. The enacted plan ensures, to the extent practicable, equal population between districts and regions. The plan also features compact districts that unite communities of interest and, where practicable, respect the boundaries of political subdivisions.

12. Mr. LaVigna repeatedly states in his report that the Senate districts cannot be explained by anything other than partisan motive. These assertions often disregard entirely the objective characteristics of districts and their reflection of constitutional criteria. Mr. LaVigna also appears to start from the deeply problematic premise that any changes from the 2012 map that improve Democratic performance must be viewed as suspect and partisan-motivated. In fact, the 2012 plan was an extreme, pro-Republican partisan gerrymander. Districts that account

for population changes since 2010, adhere to constitutional requirements, and address the extreme regional malapportionment in the 2012 plan will inevitably be more favorable to Democrats because the 2012 map was so biased in favor of Republicans. That does not mean that adherence to constitutional principles can be dismissed as showing improper partisan intent.

### **Recent History of Senate Redistricting in New York State**

#### ***The Rules for Senate Redistricting Prior to 2014***

13. Prior to the 2014 constitutional amendments, legislative redistricting in New York was governed by rules contained in the New York State Constitution, the Voting Rights Act, and federal judicial decisions interpreting the Fourteenth Amendment to the federal Constitution.

14. A fundamental limitation on redistricting discretion is the equal population requirement. In *Reynolds v. Sims*, 377 U.S. 533 (1964), the United States Supreme Court held that “the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.” *Id.* at 577.

15. Although *Reynolds* initially observed that “it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters” and that “mathematical exactness or precision” therefore “is hardly a workable constitutional requirement,” *id.*, the Court subsequently articulated two different population equality rules for congressional apportionment plans versus state legislative apportionment plans. With respect to congressional reapportionment plans, strict population equality is required, but with respect to state legislative apportionment plans, the Supreme Court has held that “some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives such as “maintain[ing] the integrity of various political subdivisions” and “provid [ing] for

compact districts of contiguous territory.” *Brown v. Thomson*, 462 U.S. 835, 842 (1983) (quoting *Reynolds*, 377 U.S. at 577)). The Court held in *Brown* that “as a general matter,” a state legislative apportionment plan “with a maximum population deviation under 10% falls within this category of minor deviations,” and that a total population deviation of 10% or higher “creates a prima facie case of discrimination.” *Id.* at 842–43.

16. Beyond these federal constitutional requirements, since 1894 the New York State Constitution has contained additional equal population requirements for Senate redistricting.

17. First, the New York Constitution requires that Senate districts “shall contain as nearly as may be an equal number of inhabitants . . . as practicable.” Before *WMCA, Inc. v. Lomenzo*, 337 U.S. 633 (1964), applied *Reynolds* to the New York State Legislature, this population equality provision was effectively negated by other provisions of the New York Constitution. But the population equality rule remains in the New York Constitution after the 2014 amendment as Art. III, sec. 4(c)(2).

18. Second, the New York Constitution contains restrictions known as the “town-on-border” and “block-on-border” rules. These rules provide as follows:

No town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

19. In addition to population equality guidelines, the New York Constitution has required since 1894 that Senate districts “shall at all times consist of contiguous territory” and that “districts be in as compact form as practicable.”

20. The New York Constitution contains a specific formula for calculating the size of the Senate. The Senate started with 50 Senators in 1894, and has grown periodically since then pursuant to this formula. Although the formula is objective on its face, as explained below, it has been manipulated over time to help facilitate partisan gerrymanders.

21. Even before partisan gerrymandering was explicitly prohibited in the 2014 amendments, the rules in the Constitution were intended to constrain legislative discretion and produce fair maps. But that is not what happened over many decades.

***Senate Redistricting in 2002 and 2012***

22. In 2002, and again in 2012, the Senate Republicans achieved an extreme partisan gerrymander through at least three methods. First, the Senate Republicans manipulated the constitutional formula for determining the size of the Senate, determining first what total number of districts would best serve their partisan designs, then producing a constitutional interpretation that happened to require exactly that number of districts. Second, the Senate Republicans maximized the total population deviation between districts and also manipulated population deviations to achieve regional imbalances within their plans. Third, the Senate Republicans manipulated and contorted specific district lines to advance their partisan goals.

23. Extensive analysis and documentation of the Senate Republican's practice of manipulating the size of the Senate can be found in the documents I submitted to LATFOR during the 2012 redistricting process. These documents can be found here: <https://tinyurl.com/3z4evt4y>. The relevant materials are the 18th through the 48th pages of this PDF document. (Several documents are reproduced within this page range, each with their own internal pagination.)



24. In 2002, the Senate Majority increased the size of the Senate to 62 seats from 61. The question of what the size of the Senate should be turned on how the Senate Republicans could reduce the populations of the upstate districts (thereby increasing the voting power of upstate voters and diluting the votes of downstate voters) to the point where total deviations were optimized but did not exceed the 10% threshold established, as noted above, in *Brown v. Thomson*. The Senate Republicans concluded that 62 seats was the optimal size, and then publicly adopted a *post hoc* explanation, couched in legal terms, for the political decision that had already been made more than seven months earlier.

25. In 2012, in contrast to 2002, the Republican Senate Majority determined that by maximally underpopulating most of the upstate districts, it could now add a 63rd district in the upstate region, where the Republicans expected to win, without crossing the 10% total deviation threshold. The Senate Majority therefore could all but assure its continued control of that house of the Legislature.

26. A 62-district Senate would not have served the Senate Majority's partisan design in 2012. If a total of 28 districts were to be created in the region north of New York City as part of a 62-seat plan – as the Senate Majority required to assure itself of its continued control of that body under the voting patterns at the time – then the number of New York City districts would have to be reduced to 25, from the 26 in the 62-district plan. The 25 New York City districts would then have had an average deviation from the statewide mean of +6.00%, and the 28 districts to the north would have had an average deviation of -5.65%. Allowing for the inevitable creation of some upstate districts that deviate from the ideal population by more than the regional average, the total deviation of such a 62-district plan would have been more than 12%, and the plan would have presumptively run afoul of the equipopulousness requirements of the Fourteenth

Amendment. The *only* way to both create the additional upstate district and the total deviation below 10% was to increase the Senate to 63 districts, while maximally underpopulating most of the upstate districts.

27. Again in 2012, as in 2002, the Senate Republican’s attorney belatedly produced a memorandum purporting to explain the Senate Majority’s baldly political decision. This memorandum was the subject of much discussion in *Cohen v. Cuomo*, 19 N.Y.3d 196 (2012), litigation challenging the increase in the Senate size.

28. The Republican Senate Majority’s decision to increase the size of the Senate was directly connected to its manipulation of population deviations to advance a partisan agenda.

29. The 62-district 2002 Senate plan had a “total deviation” (the range between the most and least populous districts) equal to 9.78% of the mean district population, a number that barely avoided the presumptively-unconstitutional 10% threshold.

30. The “total deviation” in the 2012 Senate plan was 8.8%. Although this number was slightly lower than the total population deviation in 2002, the manipulation of district populations across regions was even more pronounced and discriminatory.

31. The chapter on redistricting that I co-authored in Peter J. Galie, *et al*, eds., *New York’s Broken Constitution* (SUNY Press, 2016), describes the regional malapportionment in the 2012 Senate redistricting plan. As stated in footnote 23 of the chapter:

The nine Long Island senate districts [in the enacted 2012 plan] ha[d] the aggregate population for 9.23 districts of the ideal population; the 26 districts wholly or partly within New York City – including two Bronx/Westchester districts that respectively ha[d] 94.4% and 80.5% of their populations within New York City – ha[d] the aggregate population for 26.93 districts of the ideal population; and the 28 districts to the north ha[d] the aggregate population for only 26.84 districts of the ideal population.

32. The practical effect of this regional malapportionment was that the geographic area north of New York City and Westchester had an entire Senate district more than its population should have allowed for (numerically, it had even more than an entire extra district). By contrast, New York City had nearly an entire Senate district less than it should have been allocated. This malapportionment could not be explained by anything other than partisan motive. To maintain a legislative majority in a state in which Democrats enjoyed a nearly two-to-one voter enrollment advantage statewide, the Republicans resorted to extreme measures.

33. As explained below in the context of specific districts, the Senate Republicans in 2012 also advanced their partisan agenda by drawing gerrymandered districts within each region. These tactics included dividing cities unnecessarily (including multiple cities in Westchester County, and Rochester, Schenectady, Troy, Saratoga Springs, and Auburn in upstate New York), dividing communities with significant minority populations, and manipulating district boundaries to achieve maximum partisan gain.

34. One area, in particular, that was subject to longstanding abuse by the Republican Senate Majority was splitting minority communities on Long Island to ensure that districts remained safely non-Hispanic white, thereby increasing Republican voting strength. In the 2012 plan, the two Long Island districts with the lowest non-Hispanic white percentage of the voting-age population (VAP) were Senate District 6 (62.54%) and Senate District 7 (64.31%). The district with the largest Hispanic VAP percentage was Senate District 3, in Suffolk County, with a VAP that was 23.91% Hispanic and 64.33% non-Hispanic white. These numbers reflect intentional efforts to dilute minority voting strength. The voting-age population (VAP) figures given here and below are for census figures adjusted in accordance with Legislative Law Sec. 83-m, Par. 13, which requires that, in the redistricting database, prisoners in state and federal

custody be subtracted from their place of incarceration and reallocated, insofar as possible, to their prior home addresses.

35. These partisan tactics worked for most of the decade after the 2010 Census, thanks in part to a group of Senators who were elected as Democrats but caucused with the Republicans. Things changed, however, in 2018, when the Democrats won a majority of seats and assumed leadership of the Senate. By 2020, Democrats achieved a super-majority in the Senate. Democrats currently hold 43 of the 63 seats in the Senate under the 2012 plan.

***Legal Reforms and Population Shifts Prior to the 2022 Redistricting***

36. The 2014 amendments to the New York Constitution preserved the existing redistricting criteria for the Senate, while also adding new requirements.

37. Article III, section 4 of the Constitution now prohibits district lines that “would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights.” The paragraph further provides that “[d]istricts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.”

38. Article III, section 4(c)(5) requires that “[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.”

39. Article III, section 4(c)(5) also requires that the Legislature consider “the maintenance of cores of existing districts”; “pre-existing political subdivisions, including counties, cities, and towns”; and “communities of interest.”

40. These new requirements explicitly prohibit political gerrymanders, and also outlaw some of the tools that the Senate Republicans previously used to seek partisan advantage, including diluting minority voting strength and gratuitously splitting cities and other political subdivisions.

41. A notable feature of the New York Constitution is that it identifies a number of redistricting criteria – racial and language minority fairness, population equality, compactness, avoiding county splits, uniting communities of interest – but does not rank or prioritize these criteria. Historically, the New York courts have afforded the Legislature broad discretion regarding how these criteria should be balanced.

42. With respect to the Senate, however, there are specific rules that are mandatory and must take precedence over others. These include requirements that districts be contiguous, that towns not be divided unless their populations are so large that they could not be kept whole in a single district (which is only true on Long Island), and that the populations of adjoining districts be fully equalized in compliance with the town-on-border and block-on-border rules. With respect to the latter rule, the block-on-border requirement often mandates that districts that share population within a city, or that have a city on their common border, have populations that are exactly (or nearly exactly) equal.

43. In the decade between the 2010 decennial Census and the 2020 decennial Census, New York experienced significant changes in population. Statewide, the population increased from 19,378,102 residents to 20,201,249 residents over the course of the decade.

44. The adjusted total State population for the 2022 Senate redistricting is 20,193,858. That is the total population reported in the Census, minus the number of prisoners who could not

be reallocated to a prior home address in New York State pursuant to to Legislative Law Sec. 83-m, Par. 13.

45. New York's population increase was not distributed evenly throughout the State. To the contrary, the combined population of New York City, Nassau County, Suffolk County, and Westchester County, as adjusted to reallocate prison populations, increased by 764,568 from 2010 to 2020, from 11,980,198 to 12,744,766. At the same time, the 44 counties in New York State with a population of less than 200,000, all of which are located upstate, lost of a total of 71,294 persons since the 2010 Census.

46. In 2012, the mean size of a Senate district, when adjusted to reflect changes required to account for prisoner population, was 307,356. In the enacted plan, the mean size of a Senate district, with the same adjustment, is 320,537.

47. As explained above, the 2012 Senate plan apportioned more than entire extra district to the upstate region, at the expense of New York City and its surrounding counties. In 2022, the Legislature not only faced the legacy of this severe and partisan malapportionment, but also a further shift of population away from upstate toward the downstate region. To achieve greater population equality and address the 2012 malapportionment, which had only gotten worse over the ensuing decade, the Legislature was required in this redistricting cycle to shift two entire districts from upstate to New York City.

48. It is impossible to evaluate the changes made to Senate districts in the enacted plan without considering this recent history of Senate redistricting, population shifts in New York State over the past decade, and the new constitutional requirements. Yet, that is what Mr. LaVigna does in his report, which helps to explain why his conclusions and observations are deeply flawed and misleading.

49. The 2012 Senate plan was an extreme pro-Republican partisan gerrymander. Despite that, Democrats have been able to elect a better-than-two-thirds majority of the 2012 districts. It was inevitable heading into this redistricting cycle that the Democrats would be in an even stronger partisan position if an enacted plan conformed to the requirements of the New York Constitution and federal law: minimal population deviation, fair regional apportionment, reducing division of counties and cities, refraining from manipulation of the Senate-size formula, drawing compact districts where possible, and providing fair representation of minority groups.

50. The LaVigna report attributes any improvement in likely Democratic performance in the enacted plan to partisan intent. But among other problems, his analysis rests on the flawed assumption that the extreme Republican gerrymander from 2012 is a lawful and objectively desirable baseline from which any deviation must be viewed as suspicious and politically motivated. In fact, the 2012 plan systematically violated multiple constitutional requirements at the time it was enacted. Those violations are even more pronounced today given population shifts and the amended New York Constitution.

***Overall Observations Regarding the 2022 Enacted Senate Plan***

51. There is no evidence that the Legislature engaged in any manipulation of the Senate-size formula during the 2022 redistricting. The proposed constitutional amendment that was placed on the ballot in 2021 would have fixed the number of Senate districts at the current 63. It is significant that the Democratic majority in the Legislature endorsed that proposal before the block-level counts from the 2020 Census became available. That means that the Legislature proposed to fix the number of districts at 63 before it had the data with which it could have determined whether that or some other number would best serve its redistricting designs. Although the proposed amendment was not approved, the size of the Senate has not been at issue

at any time during the 2022 redistricting process. This is a significant departure from what happened during previous redistricting rounds.

52. The total population deviation in the enacted 2022 Senate plan – 5,179 persons – is equal to 1.62% of the mean district population of 320,537.

53. The most populous district, Senate District 48, has a population of 324,786, 1.33% above the statewide mean, and the least populous district, Senate District 55, has a population of 319,607, 0.29% below the statewide mean. The most and least populous districts are now located upstate, where these small population deviations help to limit the division of counties. This is a notable departure from what was done in 2012. The 37 districts comprising Long Island, New York City, the City of Mount Vernon, and the Town of Pelham have an average population of 319,696, which is 841 persons, or 0.26%, below the statewide mean. This is very different than the 2012 plan, in which all of the New York City districts had populations 3.83% (Queens County) or 3.47% (the rest of New York City) above the mean.

54. The total population deviation in the enacted plan is significantly better than the total population deviation in either of the plans proposed by the Independent Redistricting Commission. Plan A, which was proposed by the Commission Democrats, has a total population deviation of 2.5%. Plan B, which was proposed by the Commission Republicans, has a total population deviation of 4.6%. This total deviation is nearly three times as large as that reflected in the enacted Senate plan.

55. The consequence of the low population deviations in the enacted plan is that the 2022 Senate plan apportions to every region of the State, however defined, a share of the Senate districts equal to its share of the total state population. New York City, including the two districts connecting the City of Mount Vernon and the Town of Pelham to the Bronx, is



apportioned two districts more than in the 2012 plan, and the upstate region two districts fewer. A shift of one district represents the correction of the malapportionment in the 2012 plan, and the shift of the second district results from the change in the distribution of the State's population between the censuses of 2010 and 2020.

56. If the Legislature, in designing the 2022 plan, had followed the partisan practice of the Senate Republican majority in 2012, enacting a regional malapportionment of approximately one whole district for partisan advantage, there would have been a reapportionment of three districts, not just two, from upstate to New York City.

57. As explained below, the enacted plan also avoids the intentional dilution of minority voting power and gratuitous splitting of communities of interest that were hallmarks of the 2012 plan.

### ***Long Island***

58. Mr. Lavigna states that, "The new Senate Districts on Long Island have no coherent explanation except for seeking partisan and incumbent-protection advantage." LaVigna Report at 7. This conclusory statement is plainly untrue upon examination of the Long Island districts.

59. Current Senate District 1 had a population of 341,101, based on the adjustment of the 2020 census, and had to lose 21,404 persons. Senate District 1 remains a compact district, encompassing the five undivided East End towns and a large part of Brookhaven, which because of its large population had to be split across more than one district. Brookhaven has an adjusted total population of 486,381. Senate District 1 preserves the core of the prior district while shedding excess population.

60. Senate District 2, as drawn in 2012, included two large pieces of the Town of Huntington, one in the northern part of the town and one in the southern part, bounded by extremely convoluted borders, as well as the Town of Smithtown and part of the Town of Brookhaven. Since the 2022 plan keeps Huntington intact within a single district, in accordance with sound constitutional principles as explained below, Senate District 2 was redrawn to retain the undivided Town of Smithtown and extend further into the Town of Brookhaven. This reconfiguration may frustrate the partisan purposes that were served in 2012 by dividing Huntington into three oddly shaped pieces in violation of the Constitution, but that does not mean that it can be explained only as a partisan design to “pack” Republican voters.

61. Mr. LaVigna similarly criticizes Senate Districts 3 and 4 as a purported effort to “pack” Republicans into Senate District 4 by removing certain populations from Senate District 3. *Id.* His criticism is likewise unsound when considered in the context of the 2012 plan’s Republican gerrymander.

62. In the 2012 plan, the Long Island district with the largest Hispanic VAP percentage was Senate District 3, with a VAP that was 23.91% Hispanic and 64.33% non-Hispanic white. Senate District 4, which contained the rest of the Town of Islip and part of the Town of Babylon had a VAP that was 16.74% Hispanic and 70.1% non-Hispanic white. As noted in my chapter in *New York’s Broken Constitution*, and demonstrated in detail in the testimony I submitted to LATFOR in 2012, this was part of a pattern of splitting the Long Island Hispanic and African-American communities in several consecutive decades of Senate redistrictings. My testimony can be found as “plan\_submission\_19” in the “Senate’s Department of Justice Submission” available on the LATFOR website at: <https://latfor.state.ny.us/justice2012/?sec=sendoj2012>.

63. The 2012 version of Senate District 3 cut into the Town of Islip from the Town of Brookhaven in three places: a large piece north of the convoluted eastward extension of Senate District 4, a small piece at the northeast corner of the Town of Islip, and a large piece south of the eastward extension of Senate District 4. These repeated cuts across a town line served no legitimate redistricting purpose, and were plainly imposed to advance Republican partisan interests. In the new configuration, Senate District 3 includes a single contiguous part of the Town of Islip, and Senate Districts 3 and 4 are both much more compact. Each of these changes comport with and can be explained by neutral constitutional redistricting criteria.

64. In the 2022 plan, Senate District 3, still wholly within Suffolk County, has a VAP that is 38.1% Hispanic, 10.5% non-Hispanic Black, and 45.0% non-Hispanic white. In the testimony I submitted to LATFOR in 2012, I observed that, “The line through Brentwood, splitting the Hispanic and black populations of the Town of Islip between SD’s 3 and 4, is precisely identical to the boundary that was drawn in 1982, 1992, and 2002. Apparently it has proven its effectiveness.” That division through Brentwood has been eliminated in the 2022 Senate plan, thereby uniting communities of interest in Brentwood that had been divided for decades for partisan reasons. Because Hispanic and Black voters tend to favor Democratic candidates, this change will further the interests of the Democratic Party, but Mr. Lavigna does not explain why the redrawing of Senate District 3 and adjoining districts should not be understood as a good faith attempt to comply with the new Article III, section 4(c)(1), given the elimination of a line that had been drawn in order to split minority communities across multiple districts for the purpose of intentionally diluting their voting strength.

65. Mr. Lavigna also asserts that, “Long Island’s new state Senate Districts 5 and 6 have no coherent explanation except for seeking partisan and incumbent-protection advantage,

including by reducing competitiveness. . . . In state Senate District 5, the Legislature removed the Town of Oyster Bay and added the Town of Babylon, picking up heavily Democratic communities to make the district more favorable to Democratic candidates.” LaVigna Report at 7.

66. A comparison of the 2012 and 2022 plans shows that in 2012 the Town of Huntington was split by two highly irregular boundaries within the town. Moreover, the 2012 plan created a pair of Nassau/Suffolk districts, with part of the divided Town of Huntington attached to the divided Nassau County Town of Oyster Bay. In contrast, the 2022 plan keeps the Town of Huntington intact within a compact district in Senate District 5. Combining the intact Town of Huntington with the northern part of the Town of Babylon, which adjoins Huntington to the south, keeps Senate District 5 wholly within Suffolk County. One result is that there is now only a single Nassau/Suffolk district, Senate District 4.

67. The constitutional requirement for Senate districts that towns not be divided if their populations are small enough to fit in one district is stated as a mandatory requirement. The fact that the 2012 plan violated this rule in Huntington by splitting the town into three parts across two districts, but the 2022 enacted plan follows the rule, is a coherent explanation for many of the changes in Senate District 5 and the surrounding Senate districts.

68. The 2022 reconfiguration of Senate District 5 thus serves several constitutional principles: avoiding the division of towns, limiting the division of counties, and compactness. The violation of these principles in 2012 may have served Republican partisan interests, and a reconfiguration that adheres to these principles may therefore benefit Democrats. But Mr. LaVigna does not show that the adherence to these principles in the 2022 plan does not represent

a good faith effort to abide by constitutional principles, or that abiding by those principles does not provide a coherent explanation for the reconfiguration of Senate District 5.

69. Mr. Lavigna objects to the addition of a large area from the northern part of the Town of Oyster Bay to Senate District 6 as a partisan Democratic design. But the attachment of that part of Oyster Bay to an area to the south was a necessary result of treating the Town of Huntington in accordance with sound constitutional principles, as described above, and of preserving the county line as the border of Senate District 6.

70. The enacted Senate District 6 has a VAP that is 52.1% non-Hispanic white, 10.1% non-Hispanic Black, 20.6% Hispanic, and 14.5% non-Hispanic Asian. In contrast, the Senate District 6 enacted in 2012 had a VAP that was 62.54% non-Hispanic white, 14.55% non-Hispanic Black, 16.52% Hispanic, and only 5.13% non-Hispanic Asian. There has clearly been a serious attempt to preserve the core of the existing Senate District 6 in a manner that preserves the ability of the multi-racial coalition that elected the first Indian-American (the first person of South Asian descent) to the New York State Senate to elect the candidate of its choice.

71. Mr. LaVigna states that, “The new state Senate Districts 7 and 9 have no coherent explanation except for seeking partisan and incumbent-protection advantage, including by reducing competitiveness.” But he provides no further explanation, description, or argument about Senate District 7. Senate District 7 is little changed. It remains a compact district. It still includes the whole Town of North Hempstead, and an area in the northwest corner of the Town of Hempstead. It includes a different, and somewhat larger part of the Town of Oyster Bay, but this again is an adjustment resulting from keeping intact the county boundary where it runs between the towns of Oyster Bay and Huntington.

72. Mr. Lavigna complains, “In the new Senate District 9, the Legislature removed the Five Towns, a conservative Orthodox Jewish community of interest, moving it to Senate District 10, a heavily Democratic district in Queens.” (The Five Towns are a compact group of villages, not all incorporated and not towns in the legal sense, in the southwest corner of the Town of Hempstead.) He ignores the fact that this joins the Five Towns to the immediately adjacent community of Far Rockaway. A web search on the phrase “Jewish community Far Rockaway Queens New York” will immediately produce a long list of Jewish congregations, communal organizations, and institutions in Far Rockaway, many of which straddle the county line, including the Far Rockaway - Lawrence Community Mikvah. A mikvah is a ritual bath, of great importance to Orthodox Jews especially. Lawrence is, of course, one of the Five Towns.

73. The 2012 plan divided Far Rockaway with a boundary that can best be described as squiggly, but the 2022 plan keeps Far Rockaway intact within a single district. Far Rockaway and the Five Towns share a common transit line on the Long Island Railroad, which stops in each of the Five Towns before completing its run in Far Rockaway.

74. An argument can be made for keeping the Queens/Nassau boundary intact, creating nine districts wholly within Long Island (*i.e.*, Nassau and Suffolk Counties together), with the trade-off of a somewhat larger total population deviation. But the New York State Constitution prescribes no hierarchy of redistricting criteria that can be used to determine when one rule should be subordinated to another if the two conflict. The 2022 Plan creates a Queens/Nassau district, and a total of 37 districts comprising Long Island, New York City, and the City of Mount Vernon and the Town of Pelham in Westchester County, all of which have equal total populations to within two persons. There is no basis to argue that, in giving priority to population equality and minimizing the population deviations among districts, the 2022 plan

violates the state constitutional rules, much less that it results from bad faith or improper purpose.

***Brooklyn***

75. Mr. Lavigna says that Senate District 22 “bizarrely extends” from Bay Ridge through Sunset Park into Carroll Gardens and Boerum Hill to the north. He ignores the history of Republican-designed Senate districts in this area. In the 1982 redistricting, Senate District 23 was drawn to further the re-election of a Republican State Senator. It was designed by Donald Zimmerman, who had been for several decades the leading Republican expert on New York State redistricting. The district included Bay Ridge, Dyker Heights, and part of Bensonhurst, and extended north through Sunset Park to Windsor Terrace and Park Slope – to the east of the newly enacted Senate District 22, and nearly as far north. The district enacted in 1982 did not work quite as intended. The Republican incumbent was narrowly defeated in 1982 (by a margin of 294 votes), but recaptured the seat in 1984. The Republicans tried several other configurations after that. The 2012 version of Senate District 22 extended from Bay Ridge through a winding course to Marine Park, picking up as many Republicans as possible along the way. The populations thus captured shared no commonalities other than partisan affiliation. This, too, worked for a while, until a Democrat defeated the Republican incumbent in 2018.

76. Mr. Lavigna does not explain why the highly irregular Senate District 22 enacted in 2012 should not be regarded as “bizarre.” A comparison of the Senate district maps from 2012 and 2022 shows that throughout Brooklyn and Queens a spectacular array of highly non-compact districts with intricately convoluted borders from 2012 have been replaced by districts that are admirably compact and keep together communities of interest.

77. In addition to 2012 Senate District 22, one should consider 2012 Senate Districts 11, 12, 14, 16, 17, 18, 19, and 20. A comparison between these 2012 districts and the districts that have now replaced them will show that the drafters of the 2022 Senate plan were quite serious about creating compact, coherent districts that keep communities intact, a remarkable departure from what was done in 2012.

78. Unlike the 2012 Senate Plan, for example, the 2022 Senate plan keeps the Jewish communities of Borough Park, Midwood, and Sheepshead Bay intact within Senate District 26.

79. There is an additional important reason for the new configuration of Senate District 22. The fair regional reapportionment of the 2022 Senate plan adds two districts to New York City. One of these is Senate District 27, which adjoins part of Senate District 22 to the east and unites the neighborhoods of Windsor Terrace, Kensington, Sunset Park, Dyker Heights, Bensonhurst, and Gravesend. It appears that this district was designed to keep together the Chinese-American community in Sunset Park and Bensonhurst that has grown substantially in recent years. Mr. Lavigna does not explain why the configuration of Senate District 27, with the complementary reconfiguration of Senate District 22, should not be regarded as a good faith effort to unite a growing community of interest and comply with Article III, section 4(c)(1).

***Upstate – Westchester County and the Hudson Valley***

80. Mr. LaVigna criticizes the new Senate District 42, in Westchester and Putnam Counties, as having a bizarre shape. It appears, rather, that the Westchester County districts were redrawn to correct the wildly non-compact forms of the 2012 Senate districts, and to eliminate the unnecessary splitting of cities.

81. 2012 Senate District 35 included much of the City of Yonkers and the whole Town of Greenburgh. It then divided the City of White Plains in half, turned south to divide the



City of New Rochelle with a convoluted boundary, and nearly touched the Long Island Sound. 2012 Senate District 37 was a highly non-compact district beginning in the northern part of Westchester County with the Town of Bedford, then extending south to take in the other half of the City of White Plains, taking in several parts of the City of New Rochelle where it shared the wildly convoluted boundary with old Senate District 35, and eventually including the other half of the City of Yonkers. A comparison with the 2022 plan is striking. The new Senate District 37 (which is most similar to old Senate District 35) is a compact district, mostly along the Hudson River, including most of the City of Yonkers, and extending north to include the whole towns of Greenburgh, Mount Pleasant, and New Castle. It includes only a few blocks from the City of White Plains, which had to be separated from the rest of the city to satisfy the mandatory block-on-border rule.

82. New Senate District 39 is a highly compact district. It includes the eastern part of the City of Yonkers, the undivided cities of New Rochelle and Rye, and the towns of Eastchester, Mamaroneck, Scarsdale, Harrison, and Rye. It borders on the City of White Plains, but does not cut into it at all. The new Senate District 42 keeps the City of White Plains intact, except where a few blocks on the western side of the city had to be included in Senate District 37 to satisfy the mandatory block-on-border rule. What Mr. Lavigna describes pejoratively as “a thin finger” in this district is the undivided Town of New Castle. The district connects the northern part of Westchester County with much of Putnam County, adjoining it to the north. Unlike 2012 Senate District 40, which also connected northern Westchester with an eastern part of Putnam County, Senate District 42 does not extend into Dutchess County.

83. The Constitution calls for compact districts, preservation of communities of interest, and maintaining political subdivisions. From the standpoint of compactness, the 2022

plan for Westchester is a vast improvement over the 2012 plan. And keeping small cities intact, which had not been done previously for partisan reasons intended to benefit Republicans, maintains those political subdivisions while preserving communities of interest. The new Senate plan for Westchester County reflects a good faith effort to comply with constitutional rules.

84. Mr. LaVigna faults various districts that connect communities that face each other on opposite sides of the Hudson River. But he does not fault Senate District 40, which unites much of Rockland County with the Town of Ossining, across the river in Westchester County. Senate District 40 is identical to the river-crossing Senate District 38 of the 2012 plan, drawn by the Republicans.

85. Communities that face each other across the Hudson River often have more in common with one another than with more distant areas of the same counties. For example, the cities of Newburgh and Beacon, physically joined and closely linked by the Newburgh-Beacon Bridge, are now joined in Senate District 41.

86. Ulster County is now kept whole within Senate District 48, which also includes the whole of Greene County, part of Albany County, and several towns and cities along the east bank of the Hudson River. In the 2012 Senate plan, Ulster County was divided among four districts: Senate Districts 39, 42, 46, and 51. Mr. LaVigna complains about the political consequences of “removing Democratic-voting parts of Ulster County” from District 44 and placing Democratic-leaning areas in Ulster in District 48. Ending the four-way split of Ulster County may indeed defeat the partisan purposes that were served by chopping up the county in 2012, but the 2022 Senate plan cannot be faulted for abiding by the constitutional rule of minimizing the division of counties. The resulting changes in surrounding districts are a

consequence of the fact that once Ulster County is kept whole, and population deviations are minimized in surrounding districts, the boundaries of districts must be adjusted.

87. Similarly, the new Senate District 44 reflects a good faith attempt to comply with the same constitutional requirement. In the 2012 plan, Delaware County had been split among three districts. Delaware County is wholly contained in 2022 Senate District 44.

88. Mr. Lavigna complains about Senate District 46 “disconnecting the City of Albany and the Albany County river cities across the Hudson River to protect Democratic candidates and reduce competitiveness.” LaVigna Report at 9. Senate District 46 is a compact district that unites the three principal capital region cities, other than the City of Albany: Schenectady, Troy, and Saratoga Springs. It does so without dividing any of those three cities, unlike the 2012 Senate plan, which divided all three. Keeping all three of those cities intact reflects a good faith effort to comply with Article III, section 4(c)(5). It is incorrect to assert, as Mr. LaVigna does, that Saratoga Springs “ha[s] nothing in common with the rest of the District.” LaVigna Report at 9.

89. Like the 2012 Senate District 44, new Senate District 45 unites the City of Albany with the City of Rensselaer across the river, clearly part of the same metropolitan area, but instead of taking in part of the City of Troy, Senate District 45 includes the Rensselaer County towns of North Greenbush, East Greenbush, and Shodack. All of those towns are riverside towns facing Albany County across the river. Senate Districts 45 and 46 both clearly abide by the constitutional rules calling for compact districts that preserve communities of interest and respect town boundaries.

90. Beyond his failure to acknowledge or address how each of these districts complies with neutral redistricting criteria, Mr. LaVigna infers a partisan intent to benefit Democrats

without accounting for the fact that the previous districts were drawn in 2012 for the indisputable purpose of maximizing the Republicans' partisan advantage. This, in particular, was the area of the state in which the Republican Senate Majority added a 63rd seat through manipulating both the Senate-size formula and population deviations across regions. Old Senate District 46 was the 63rd district that was added to the Senate in 2012 for the sole purpose of trying to create a new Republican district in a region that did not have the population to support one. Old Senate District 46 is currently severely underpopulated – its adjusted population is 295,281, more than 25,000 persons below the statewide mean for new districts. Any Senate redistricting plan that respects neutral redistricting criteria and adds the population to each Senate district required by statewide population growth – and the need to remedy systemic and egregious underpopulation of these districts – is bound to result in changes in political performance. The fact that certain changes benefitted Democrats more than Republicans is not surprising or evidence of partisan purpose. It would be surprising if a neutral plan that corrected an egregious partisan gerrymander intended to benefit one party *did not* have the effect of benefitting the other party.

***Upstate – North and West***

91. Before discussing Mr. LaVigna's comments about the rest of the Upstate area, we should note that the 2012 Senate plan split St. Lawrence County among three districts: Senate Districts 45, 47, and 48. The 2022 Senate plan keeps St. Lawrence County intact within the compact Senate District 50. This is another example of how the 2022 Senate plan adheres to constitutional principles that were ignored in 2012.

92. Mr. LaVigna states: "The new state Senate District 51 is a large, central New York district. This new district is drawn to lump together two Senators, Republican James Tedisco of the 2012 Senate District 49 and Republican Peter Oberacker of the 2012 Senate

District 51, into the same district. It appears highly likely that the Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican Senators.” LaVigna Report at 9.

93. In order to apportion the districts among regions of the State in proportion to each region’s share of the total State population, and complying with the State constitutional requirement to minimize population deviations, it was necessary to reduce the number of upstate districts by two. Mr. LaVigna does not attempt to explain how such a reapportionment could be achieved without pairing incumbents in two places upstate. The other pairing is of Sen. Timothy F. Kennedy, a Democrat residing in the City of Buffalo, and Sen. Edward A. Rath III, a Republican residing in the Town of Amherst, in the new Senate District 63, which is discussed further below. Senate District 51 is a compact rural district that keeps intact all of Schoharie, Chenango, Otsego, and Montgomery Counties, with adjoining parts of Herkimer, Fulton, and Schenectady Counties. Beyond the fact that this district is home to two incumbents in a region of the state where an incumbent pairing was inevitable, Mr. LaVigna does not identify any reason why this compact, rural district does not comply with constitutional requirements.

94. Mr. LaVigna misleadingly suggests that the decision to combine Senate District 49 with Senate District 51 was an arbitrary and partisan choice. But there was an obvious, neutral reason for the decision to select these districts: Senate District 51 is currently the most underpopulated of all 63 Senate Districts from 2012, with an adjusted population of 275,176, a deficit of 45,000 below the mean Senate district in the enacted plan. Senate District 49 is also significantly underpopulated, with an adjusted population of 298,927. Mr. LaVigna does not explain why the logical decision to select the most underpopulated district in the State as one to combine with another district necessarily evidences improper partisan purpose.

95. Mr. LaVigna complains that Senate District 52 “has no coherent explanation except for seeking partisan and incumbent protection advantage. The Legislature transformed the district from a consistently Republican district to a Democratic district by adding more of the City of Syracuse to completely unrelated suburbs in Onondaga County.” LaVigna Report at 9. Mr. LaVigna offers no explanation for the eyebrow-raising claim that the City of Syracuse should be regarded as “completely unrelated” to its own suburbs, including those directly adjoining the city. Far from “completely unrelated suburbs,” these connected communities form a compact area mostly within Onondaga County, except that the district extends as far as the City of Auburn in neighboring Cayuga County. In the 2012 plan, Senate District 50, which contained most of Onondaga County including several pieces of the City of Syracuse, also extended to the City of Auburn. But in the 2012 plan Auburn was divided between two districts. An analysis of the maps of the Onondaga County Senate districts enacted in 2012 and 2022 shows that the 2022 plan demonstrates respect for the constitutional principle of compactness, while the 2012 plan clearly does not. Rather than the new district reflecting an attempt to obtain partisan advantage, it was the 2012 plan that divided communities of interest to protect Republicans’ political interests.

96. Mr. LaVigna says, “The new state Senate District 53 has no coherent explanation except for seeking partisan and incumbent-protection advantage, including reducing competitiveness . . . disconnecting communities in Tompkins County from surrounding areas with which they have historical connections.” LaVigna Report at 10. Again, he ignores the clear effort to comply with constitutional redistricting principles. In the 2012 Senate plan Tompkins County was divided among three districts: Senate District 54, which extended north to Wayne and Monroe Counties; Senate District 58, which extended to include Steuben County; and Senate

District 51, which extended east to Schoharie and Ulster Counties. In Ulster County, Senate District 51 bordered on New Paltz. It appears to be Mr. LaVigna's view that the communities in Tompkins County have a close historical connection with towns in the Hudson Valley and on the shore of Lake Ontario, but not with the other towns in Tompkins County. In the new Senate District 53 Tompkins County is kept undivided, in a compact district that extends to the City of Binghamton and surrounding towns in Broome County. It unites two of the State's principal universities in one district. In creating Senate District 53 the Legislature abided by the constitutional rules to minimize the division of counties and create compact districts. The only non-compact feature of the district's configuration, the exclusion of the Town of Berkshire in Tioga County, can be explained by adherence to the town-on-border rule, which limits population deviations between adjoining districts.

97. Mr. LaVigna objects that Senate District 54 is packed with Republican voters. *See* LaVigna Report at 10. In fact, Senate District 54 unites rural areas in the northern part of western New York. It includes the whole of Genesee, Ontario, and Wayne Counties, and the northern parts of Livingston and Cayuga Counties. Unlike the Senate Districts 54, 55, 59, and 61 enacted in 2012, it does not cut into Monroe County, which had been divided across six districts in the 2012 plan. It is a coherent district uniting communities of interest.

98. In 2012, the City of Rochester was divided among three districts, one of which, Senate District 61, extended through Genesee and Erie Counties to the Buffalo city line. In the 2022 plan, Rochester is divided between two districts, Senate Districts 56 and 57, both of which are compact districts, entirely within Monroe County, uniting the city with nearby suburbs. Mr. LaVigna says this change cannot be explained except as a partisan gerrymander. *See* LaVigna Report at 10. He does not explain why it cannot be regarded as a good faith effort to apply the

constitutional principles of compactness, uniting communities of interest, and limiting the division of counties and cities. He makes no attempt to defend the wildly non-compact Senate District 61 of 2012. That the abandonment of that odd configuration may be helpful to Democrats is no reason why sound constitutional principles should not be followed.

99. Mr. LaVigna's critique of new Senate Districts 56 and 57, for adding back population in the City of Rochester that had been excluded for partisan reasons, also ignores that the population that had been excluded from those districts and cynically connected to Erie County featured a high percentage of Black voters. It appears that these voters were excluded from the districts of the city in which they lived as part of an extreme racial and political gerrymander. The fact that the Legislature corrected this problem in the 2022 enacted Senate Plan by adding population from the City of Rochester back into the City of Rochester is not a basis for inferring partisan intent to favor Democrats.

100. Where Mr. Lavigna appears to complain about the new Senate District 58, that is apparently a typo. *See* LaVigna Reply at 10. He seems to be discussing Senate District 59, which borders on Tompkins County. His complaint is that, unlike the 2012 Senate District 58, the new Senate District 59 is not part of a trio of districts splitting Tompkins County. New Senate District 59 is part of the scheme to unite in a single district all those communities within Tompkins County that in Mr. LaVigna's view have no historical connection to one another (but rather, according to Mr. LaVigna, have an historical connection to farflung regions of the State). The new Senate District 59 is actually a compact district uniting five whole counties (Chemung, Seneca, Schuyler, Steuben, and Yates) and parts of three adjoining counties (Cayuga, Livingston, and Tioga). The same may be said of the new Senate District 58, immediately to the west, a highly compact district uniting the whole of Chautauqua, Cattaraugus, Allegany, and Wyoming



Counties with a compact cluster of adjoining towns in the southernmost part of Erie County.

The treatment of the whole of the Southern Tier clearly represents a good faith effort to follow the constitutional principles of compactness, limiting the division of counties, and uniting communities of interest.

101. Mr. LaVigna argues that only a design to favor Democrats can explain the configuration of Senate District 60, uniting the City of Niagara Falls with the Town of Grand Island, the City and Town of Tonawanda, part of the City of Buffalo, part of the City of Lackawanna, and the Town of Hamburg. *See* LaVigna Report at 10. Mr. LaVigna does not explain why in 1992 the Republicans drew Senate District 57 so as to unite the City of Niagara Falls with the Town of Grand Island, part of the City of Tonawanda, and a large part of the City of Buffalo, or why in 2002 the Republicans drew Senate District 60 to unite the City of Niagara Falls with the Town of Grand Island, part of the City of Tonawanda, and a large part of the City of Buffalo. Assuming that the Republicans were not trying to defeat themselves in 1992 and 2002, the most plausible explanation is that the 1992, 2002, and 2022 plans were all designed to unite industrial areas with similar communities of interest in the Buffalo / Niagara Falls region. In other words, the joinder of Niagra Falls with Buffalo follows historical precedent, and reflects the shared characteristics between the industrial areas and cities in this region. It is not evidence of partisan intent.

102. Mr. LaVigna offers no coherent objection to uniting much of the City of Buffalo with most of the City of Lackawanna, adjoining Buffalo to the south, and the Town of Amherst, adjoining Buffalo to the northeast. Mr. LaVigna states that new Senate District 63 combines “several geographically distant and unrelated areas: the suburban swing Town of Amherst, the east side of Buffalo, and part of Lackawanna County [sic].” LaVigna Report at 11. He meant to

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NYSCEF DOC. NO. 149

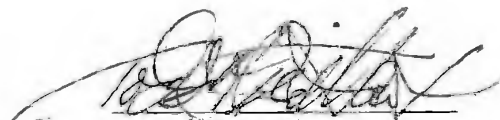
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refer to the City of Lackawanna, not county. Amherst adjoins Buffalo to the north and Lackawanna adjoins Buffalo to the south. Mr. LaVigna's critique ignores the fact that former Senate District 61, enacted in 2012, united the Town of Amherst with the City of Rochester.


103. Former Senate District 61 was among the most galling and egregious partisan gerrymanders in the 2012 Senate plan. It was necessary for the Legislature to significantly alter the boundaries of that patently unconstitutional district, which combined wholly unrelated communities for no legitimate reason. New Senate District 63 is a reasonable, good-faith effort to correct infirmities in the old plan. Contrary to Mr. LaVigna's claim, the boundaries of this district are not "geographically distant"; they certainly are not distant in comparison to former Senate District 61, or in comparison to other surrounding upstate districts in the 2012 plan and 2022 plan. Nor are the municipalities that are joined in new Senate District 63 "unrelated." The Town of Amherst is now joined with similar and adjoining parts of the City of Buffalo, including both campuses of the State University of New York at Buffalo, which had been divided into two districts in the 2012 plan, but are now contained within a single district.

Dated: March 10, 2022



Todd A. Breitbart

Sworn and Subscribed before me this 10th day of March, 2022



Alice G. Reiter  
Notary Public

**ALICE G. REITER**  
Notary Public, State of New York  
Registration #02RE6290446  
Qualified In New York County  
Commission Expires March 5, 2022

2026

**EXHIBIT A TO BREITBART AFFIDAVIT -  
MAP OF LONG ISLAND SENATE DISTRICTS [1183 - 1185]**

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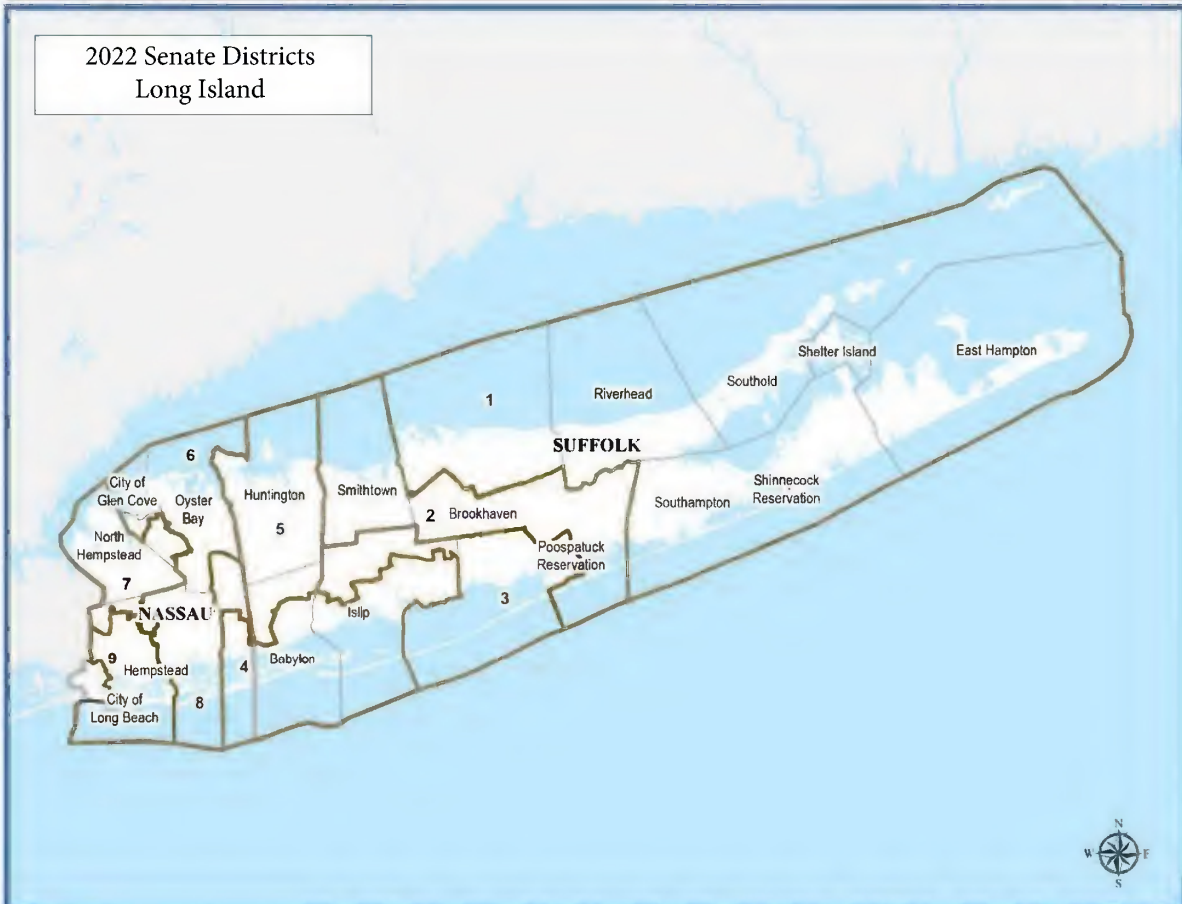
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NYSCEF DOC. 2012 Senate Districts  
Long Island

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2022 Senate Districts  
Long Island



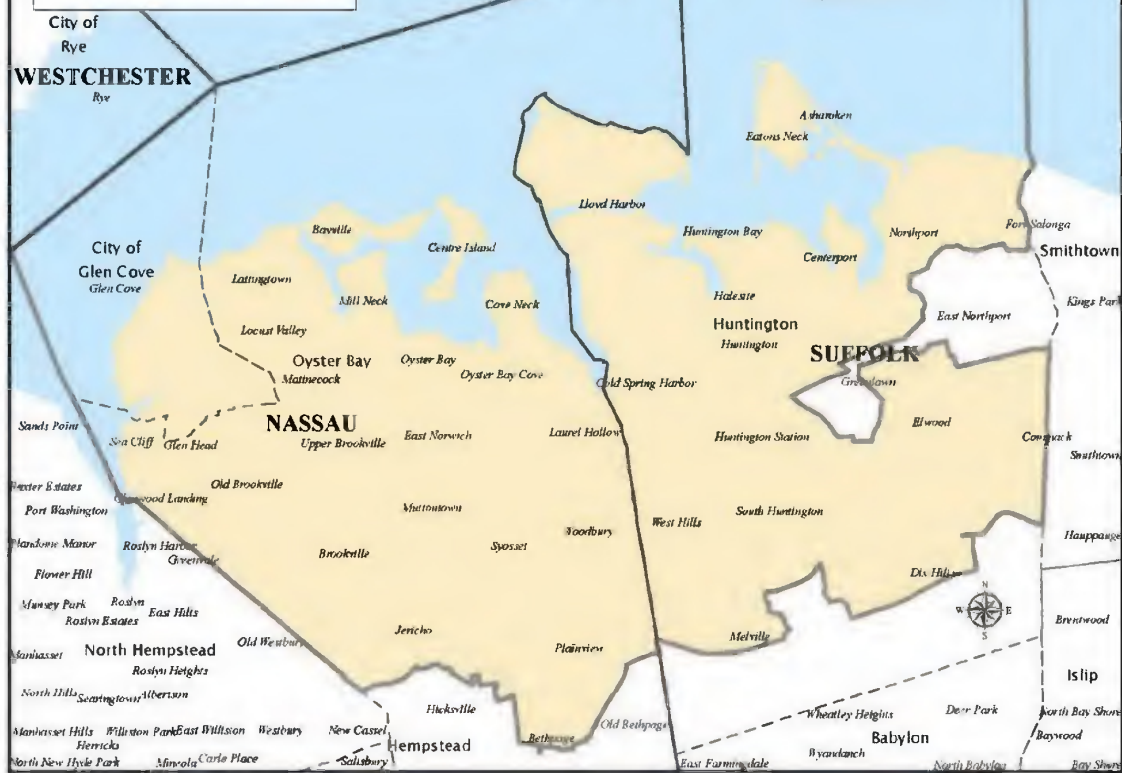
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NYSCEF DOC. NO. 150

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2012 Senate District 5



2022 Senate District 5





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NYSCEF DOC. NO. 150

2012 Senate District 9 REF: 03/10/2022

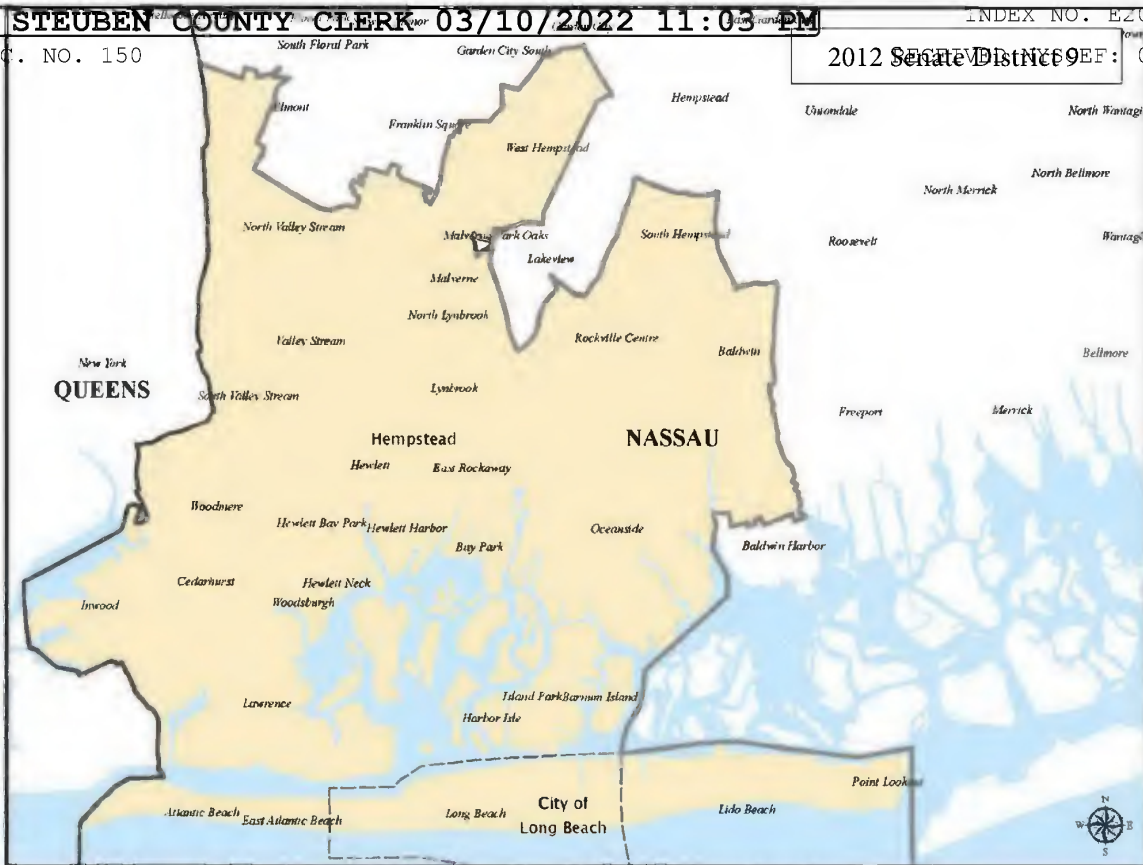


EXHIBIT B TO BREITBART AFFIDAVIT -  
MAP OF NEW YORK CITY SENATE DISTRICTS [1186 - 1187]

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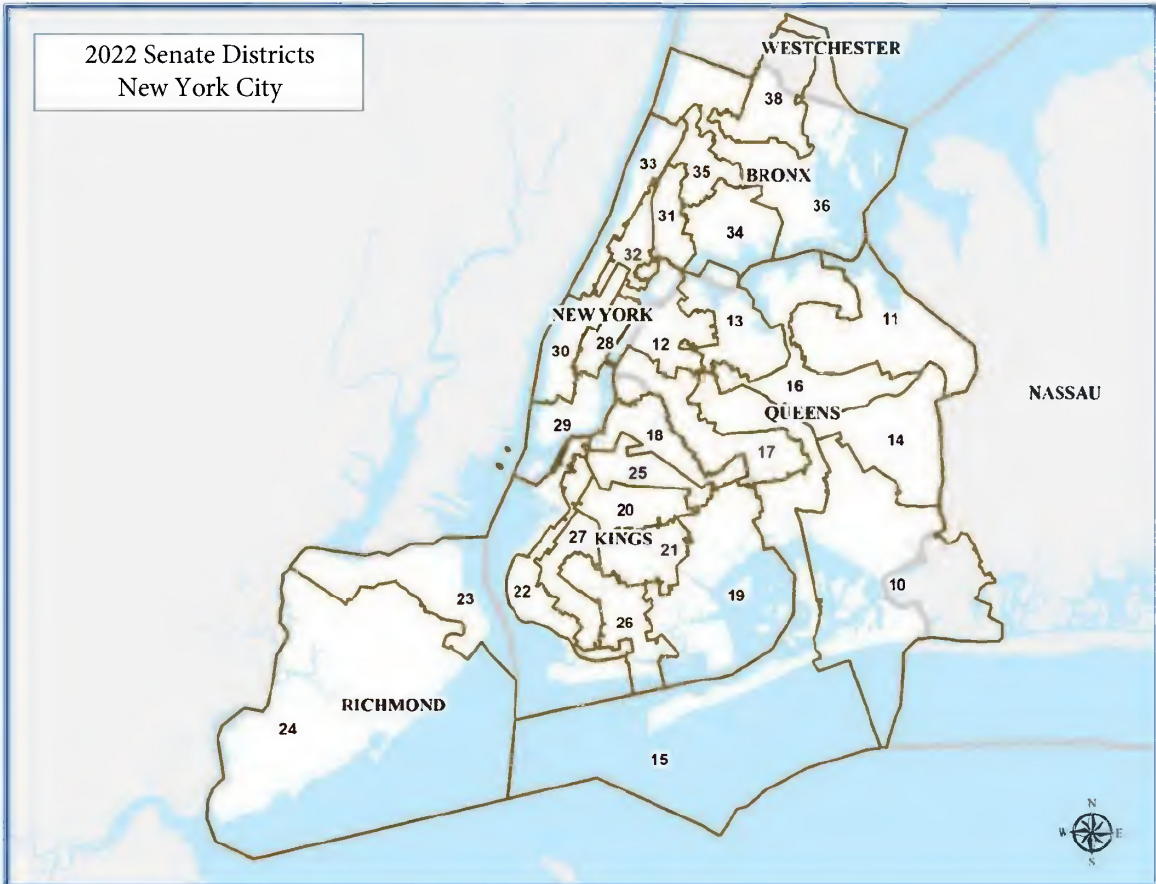
NYSCEF DOC. NO. 151

RECEIVED NYSCEF: 03/10/2022

2012 Senate Districts  
New York City



2022 Senate Districts  
New York City





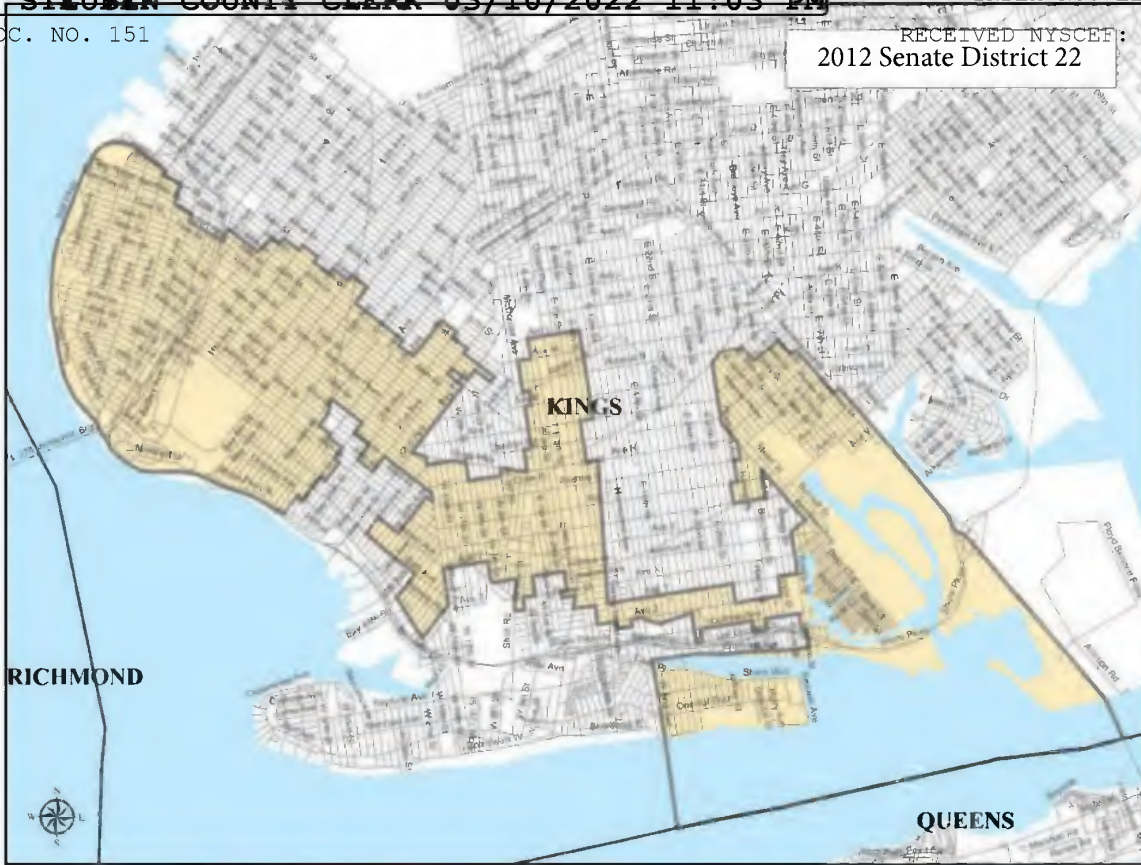
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NYSCEF DOC. NO. 151

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2012 Senate District 22



2022 Senate District 22



**EXHIBIT C TO BREITBART AFFIDAVIT -  
MAP OF UPSTATE NEW YORK SENATE DISTRICTS [1188 - 1193]**

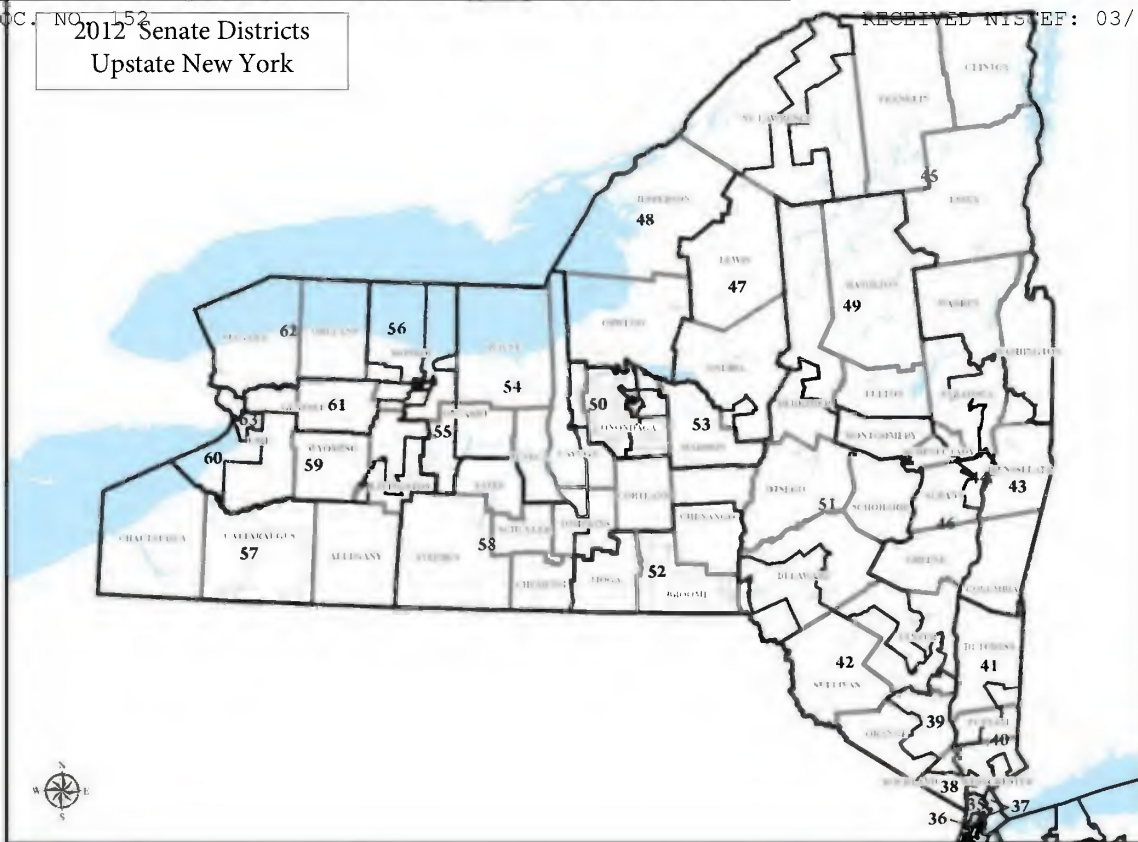
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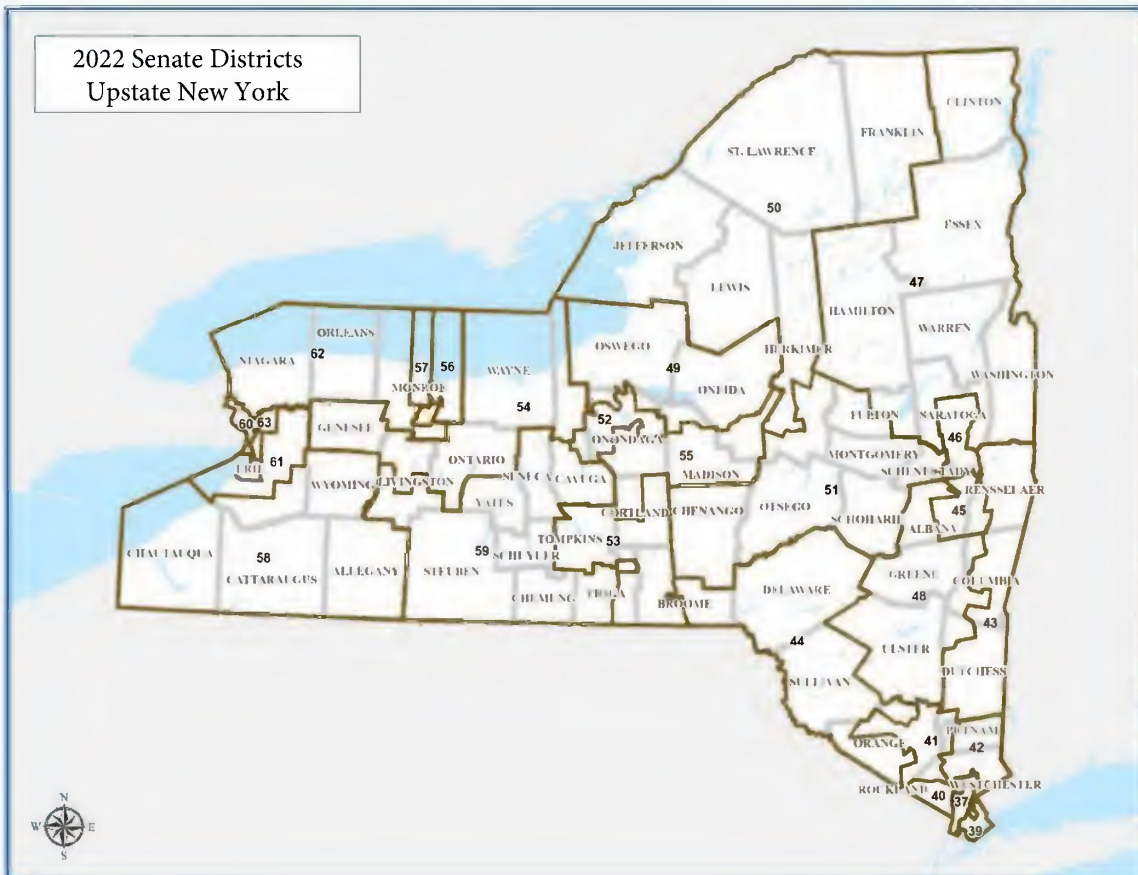
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**2012 Senate Districts  
Upstate New York**



**2022 Senate Districts  
Upstate New York**



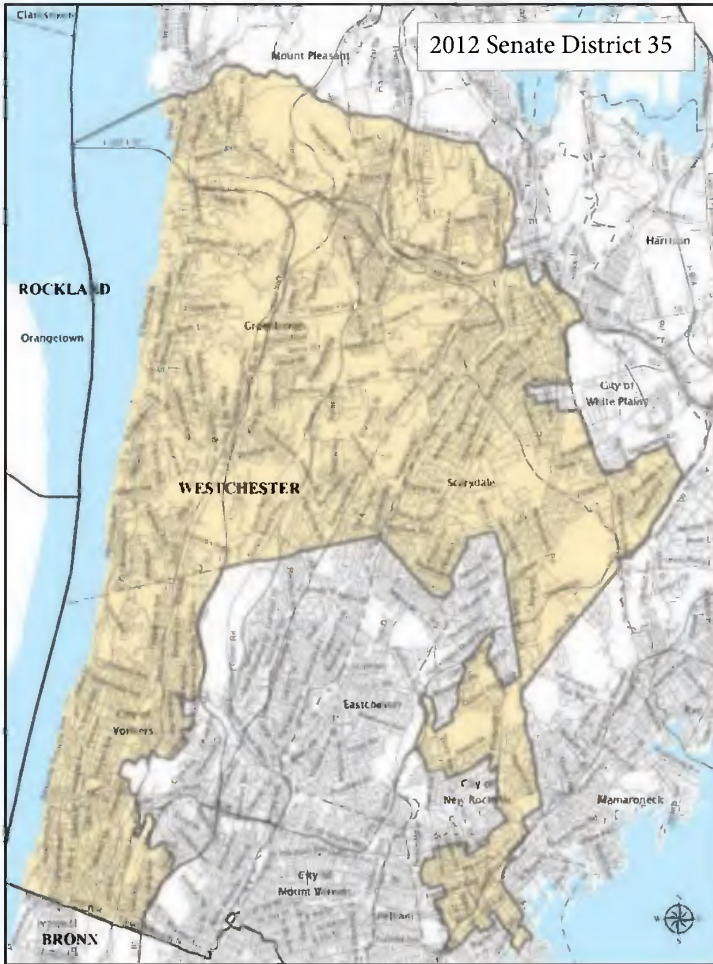


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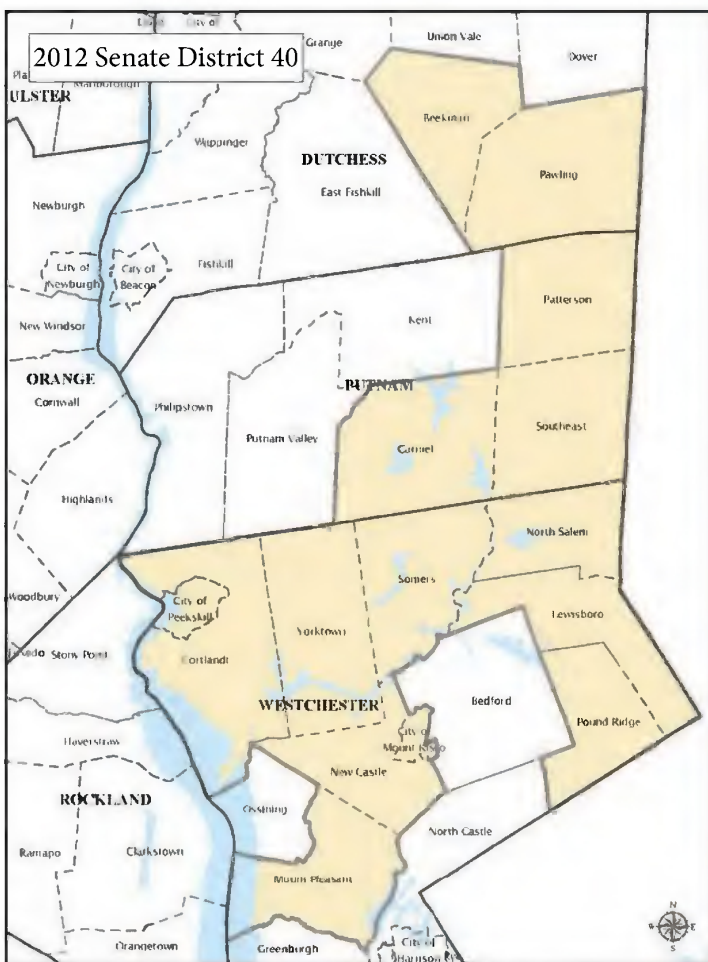
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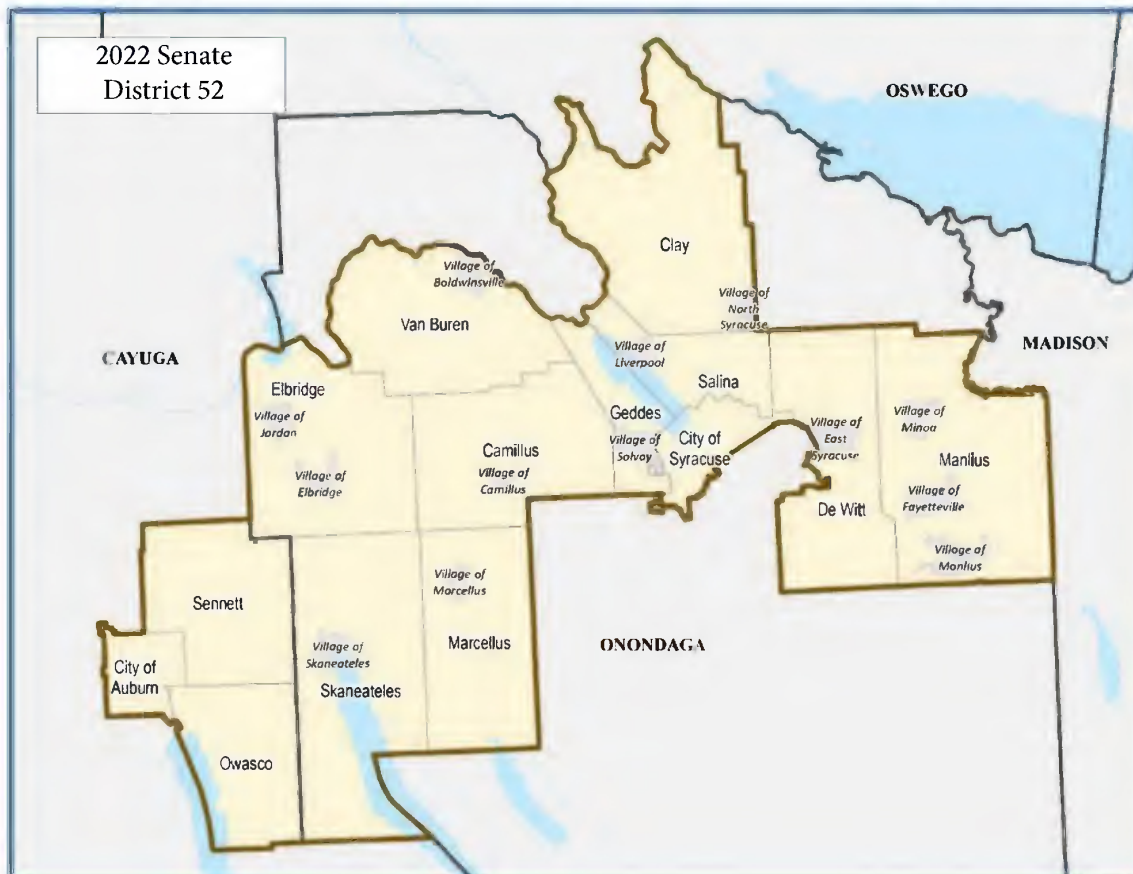


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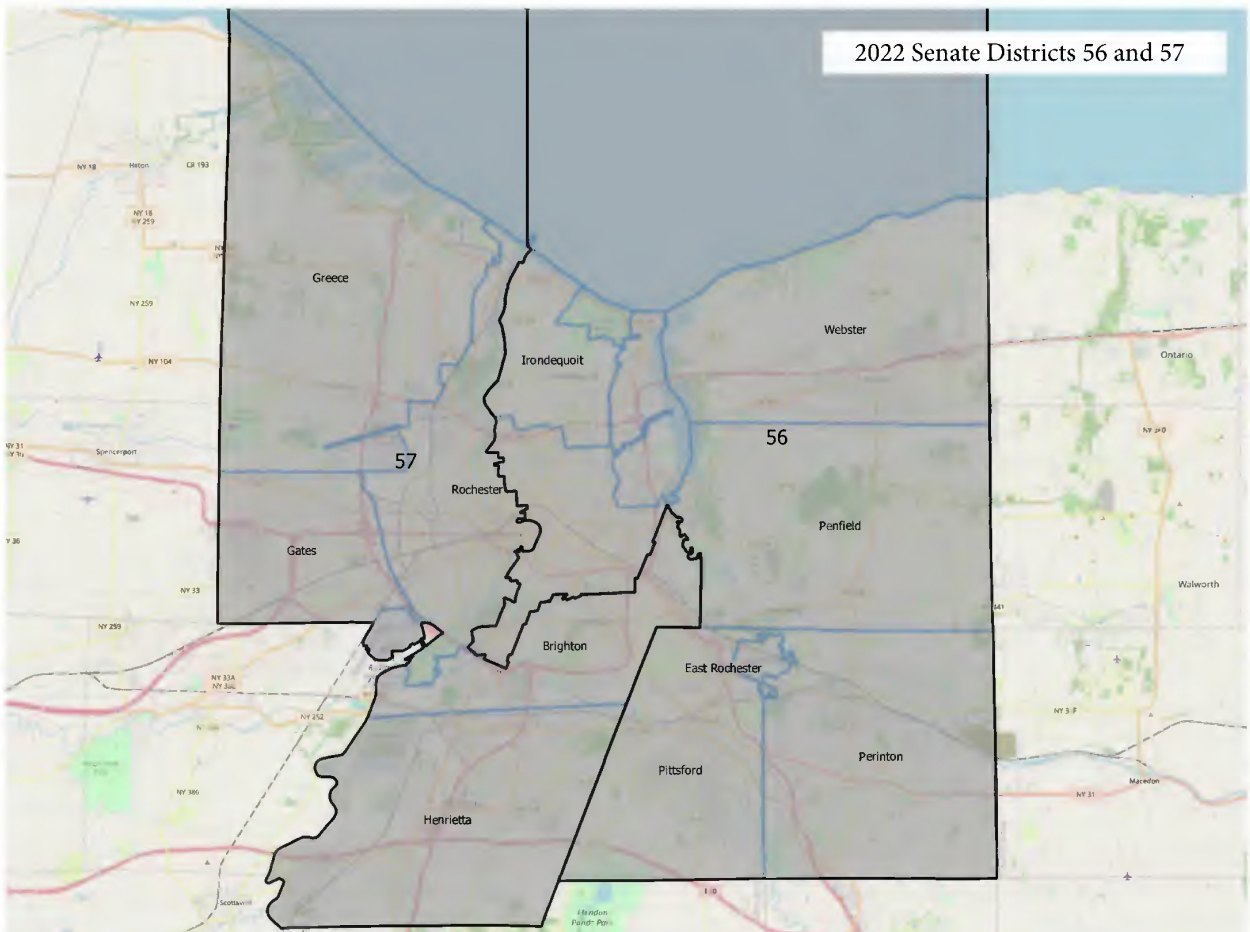
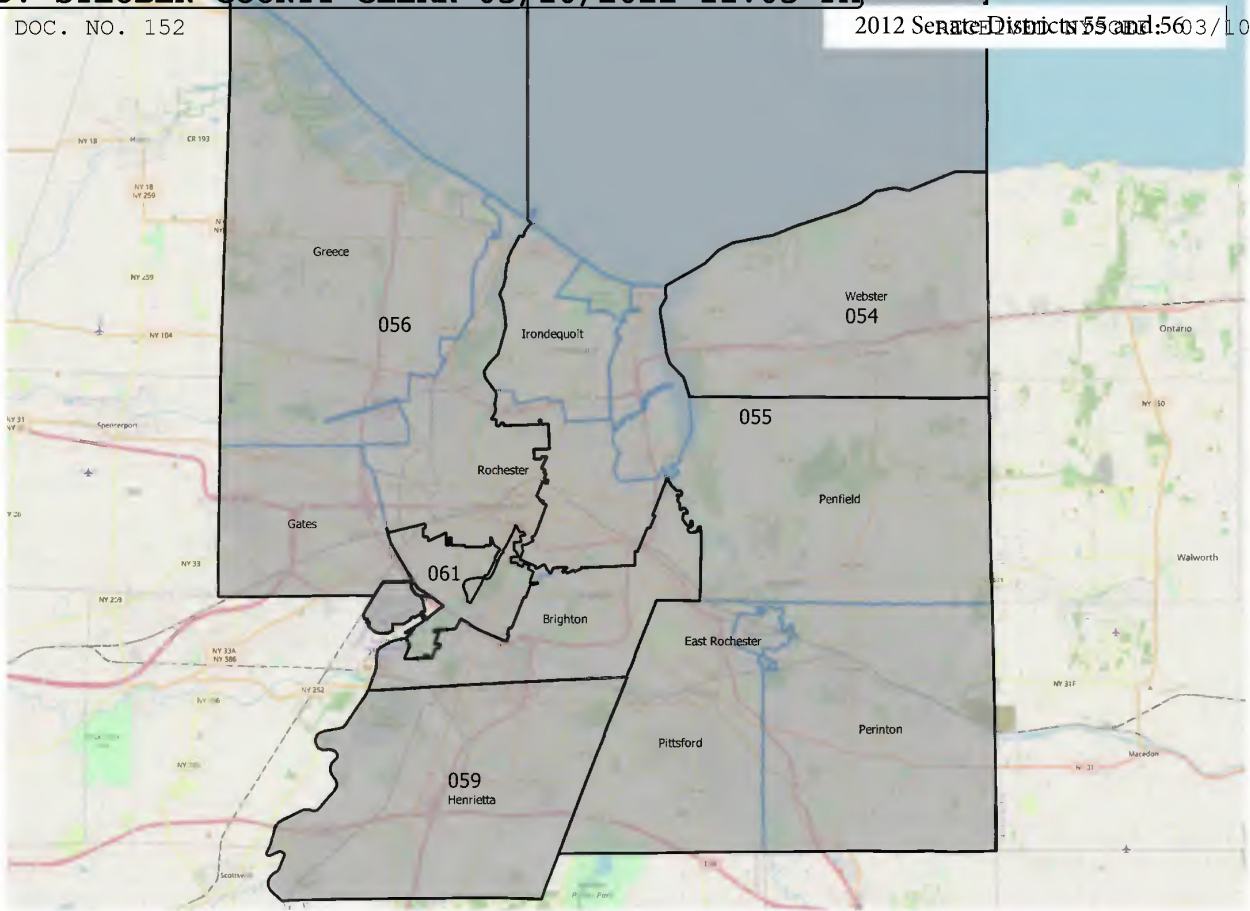


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NYSCEF DOC. NO. 152

2012 Senate Districts 55 and 56 03/10/2022

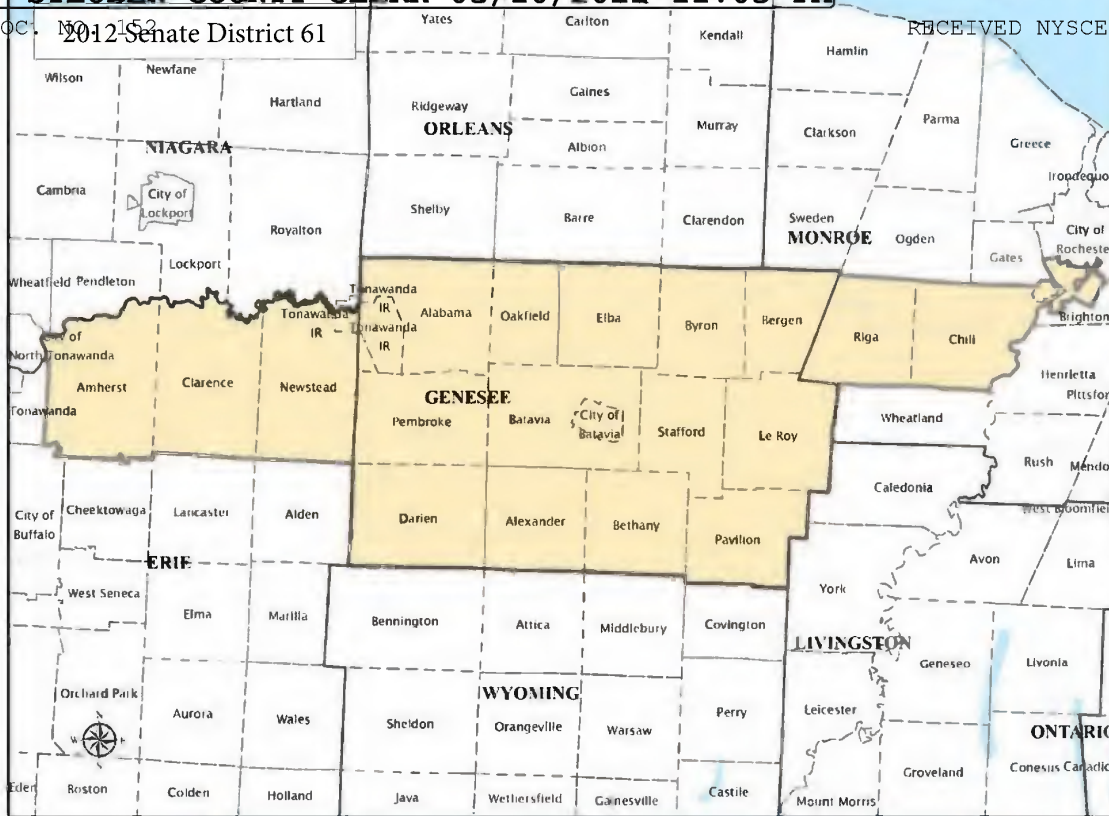


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NYSCEF DOC. NO. 152  
2012 Senate District 61

RECEIVED NYSCEF: 03/10/2022



**SECOND AFFIDAVIT OF DR. KRISTOPHER R. TAPP, PH.D,  
SWORN TO MARCH 10, 2022 [1194 - 1216]**

FILED: STEUBEN COUNTY CLERK 03/10/2022 11:11 PM

NYSCEF DOC. NO. 153

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RECEIVED NYSCEF: 03/10/2022

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

**SECOND AFFIDAVIT OF DR. KRISTOPHER R. TAPP, PH.D.**

COMMONWEALTH OF PENNSYLVANIA           )  
   ) ss:  
COUNTY OF MONTGOMERY                  )

Kristopher R. Tapp, Ph.D., being sworn, deposes and says that:

1. I am over 18 years of age and am not a party to this case.
2. I swear under penalty of perjury to the faithfulness of the opinions expressed in

this affidavit and the appendix, and, to the best of my knowledge, to the truth and accuracy of the factual statements made herein.

**BACKGROUND AND QUALIFICATIONS**

3. I refer to and incorporate by reference the relevant portions of my first Affidavit, which was filed on February 24, 2022. I attach as Exhibit A to this affidavit a copy of my curriculum vitae.

**SCOPE OF ENGAGEMENT AND COMPENSATION**

4. I have been retained by Cuti Hecker Wang LLP, counsel for Respondent Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins, and asked to opine on the validity of the analysis used and the conclusions drawn in the two reports submitted by Sean Trende.

5. I am being compensated at a rate of \$400.00 per hour. My compensation does not depend in any way on the outcome of the case or on the opinions or testimony that I provide.

**MATERIALS REVIEWED**

6. In connection with preparing this testimony and providing the opinions expressed herein, I have reviewed the following materials:

- Report of Sean Trende submitted on behalf of the Petitioners in this case;
- Reply of Sean Trende submitted on behalf of the Petitioners in this case;
- Relevant portions of Article III, Section 4(c) of the New York Constitution setting forth applicable redistricting criteria; and
- McCartan & Imai, *Sequential Monte Carlo for Sampling Balanced and Compact Redistricting Plans*.

**SUMMARY OF EXPERT OPINIONS**

7. Mr. Trende's stated opinion is that the enacted Congressional and Senate maps were drawn for the purpose of benefiting the Democratic Party. Based on my analysis of Mr.

Trende's report, his reply, and his methodology, I hold the following opinions to a high degree of professional certainty:

- a. As stated in my previous Affidavit, Mr. Trende's own results—based on his choice of electoral index and his sample of districting plans—clearly support the conclusion that the partisan electoral opportunity in the enacted Congressional map is more favorable to Republicans than the party-blind baseline represented by his ensemble. The same is true in the case of the Senate map, but with an even more significant Republican lean. For example, his data shows that the enacted Senate map is predicted to include 49 Democrat-leaning districts, whereas *every single one* of the 5,000 randomly generated maps in his ensemble is predicted to have at least 51 Democrat-leaning districts, and the majority have at least 53 Democrat-leaning districts. It is standard to interpret this data as an indication that the enacted Senate map is significantly *Republican*-favoring relative to maps drawn with the party-blind rules represented by his ensemble. All of this can be visualized in Figures 1 and 2 below.
- b. Although Mr. Trende freely chose in his first report to use a single electoral index created from averaging a set of elections, a large portion of his second report is devoted to critiquing the index that he selected. In an effort to run away from the conclusion that the index he chose to use in his first report compels—that the Congressional and Senate maps favor Republicans, not Democrats—his second report tries to move the goalposts by claiming that there supposedly is parity between the parties when the index he initially used shows that a district leans toward Democrats



by 53%-47%. His crude attempt to support this more convenient and self-serving hypothesis is fundamentally flawed and entirely unreliable.

- c. Mr. Trende claims that his ensemble of 5,000 Senate maps represent “what maps would tend to look like in New York if they were drawn without respect for politics.”

In my opinion, his ensemble of simulated maps can only be said to represent what maps would look like if they were drawn by his algorithm, using parameters that only he knows. I see no evidence that his ensemble of simulated maps are a representative sample according to any reasonable interpretation of the term “representative.”

Among other problems, there are very strong indications in Mr. Trende’s report that his ensemble of 5,000 simulated Senate maps consist entirely of small variations on just *two* maps. This alone is sufficient cause to dismiss his ensemble as too fundamentally broken to yield any statistically valid conclusions.

### **ANALYSIS OF MR. TRENDE’S RESULTS**

#### ***Analysis of Mr. Trende’s Senate Results***

8. As detailed in my first Affidavit and again below, Mr. Trende’s methodology has such substantial flaws as to render his model of little if any statistical value. Notwithstanding those methodological flaws, in this section I will take at face value Mr. Trende’s claim that his ensemble of 5,000 maps represents “what maps would tend to look like in New York if they were drawn without respect for politics.” In this section, I will critique only the conclusions he draws from his ensemble analysis based on this assumption. (To the extent certain statements in this Affidavit are repetitive of statements that I made in my prior Affidavit, that is because the points I made in my prior Affidavit about Mr. Trende’s analysis of the Congressional plan apply similarly to his analysis of the Senate plan.)

9. The chart on page 21 of Mr. Trende’s original report, titled, “Democratic Vote Share by Simulated Senate District,” indicates that the enacted Senate plan includes 49 Democrat-leaning districts, whereas *every single one* of the 5,000 maps from his ensemble includes at least 51 Democrat-leaning districts. Virtually all of the maps from his ensemble include at least 52 Democrat-leaning districts, and the majority include at least 53 Democrat-leaning districts (and many other maps include 54 or even 55 Democratic-leaning districts). Again, on average, the maps in his ensemble clearly contained more Democrat-leaning districts than does the enacted plan.

10. Mr. Trende’s data, using the index he chose to use in his original report, therefore clearly shows that the enacted Senate plan is a significantly Republican-favoring outlier relative to the maps in his ensemble.

11. Mr. Trende’s use of the “gerrymandering index” to conclude that the Senate plan is “obviously partisan gerrymandered” is simply wrong. As I explained in my prior Affidavit, the gerrymandering index does not provide any information about which party is favored by the enacted map relative to the ensemble, or even whether there is a favored party, nor does the gerrymandering index provide any information about whether the enacted map discourages competitive districts relative to the ensemble. As I explained in my prior Affidavit, partisan lean is only one of many factors that can make the gerrymandering index high, and to the extent that partisan lean contributed to the high gerrymandering index in Mr. Trende’s Senate analysis, it clearly was a Republican-favoring lean that made the gerrymandering index high.

*The Standard Interpretation of Trende's Own Results*

12. The histograms in Figures 1 and 2 below, made from Mr. Trende's own data,<sup>1</sup> speak for themselves. Mr. Trende has hidden the ball by declining to present this very clear and standard visualization of his own results. In each figure, the vertical line represents the number of districts in which Democrats are a majority in the enacted plans using the index Mr. Trende used in his original report. These histograms shows the number of districts in which Democrats are a majority in all of the maps in Mr. Trende's ensembles using the index used in Mr. Trende's original report. In the case of both the Congressional and Senate plans, the enacted plans have *fewer* districts in which Democrats are a majority than the average maps in Mr. Trende's ensembles. In the case of the Senate plan, the difference is particularly stark.

13. It is standard practice to produce histograms like this in any report relating to redistricting simulations, and the fact that Mr. Trende failed to produce these standard histograms in his original report could reflect his understanding that his data was not consistent with his stated conclusion.

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<sup>1</sup> I constructed these histograms from the information on pages 15 and 21 of Mr. Trende's original report by approximating the portion of the dots that are red and blue for each ordered district number. The potential error introduced by this approximation does not affect the key qualitative features of the resulting graphs.

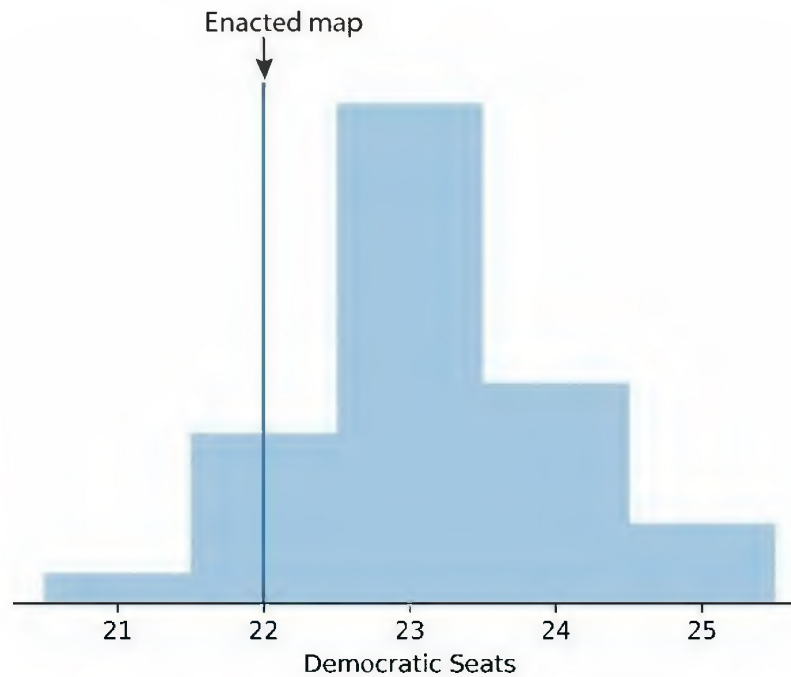


Figure 1: (CONGRESSIONAL) Majority-Democrat seats for the enacted plan and for Mr. Trende's ensemble maps

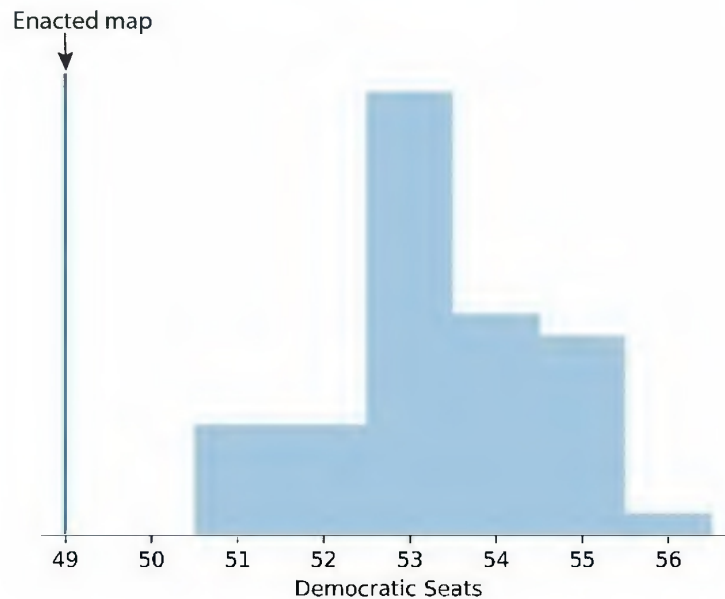


Figure 2: (SENATE) Majority-Democrat Seats for the enacted map and for Mr. Trende's ensemble maps

### ***Mr. Trende's Ad Hoc Partisan Analysis***

14. Mr. Trende freely chose to use a single electoral index created from averaging a set of state-wide elections. Mr. Trende justified this decision in his original report (footnote 2 on

page 12), by saying that “The simulation approach tends not to be as sensitive to the choice of elections as other metrics, unless political coalitions in a state vary radically from election-to-election. Regardless, to remove my discretion, I have simply used the calculation of partisanship contained in the dataset that I downloaded from the ALARM project . . . .” Yet now Mr. Trende is exercising arbitrary discretion in moving the goalposts by changing his choice of elections.

15. A large portion of Mr. Trende’s second report is devoted to critiquing the election index that he freely chose to use and justified using in his first report. To do this, he attempts to move the goalposts from the most obvious assumption—that 50% of the vote in recent prior elections corresponds to parity between the parties—to an entirely ad hoc and counter-intuitive assumption that there supposedly is parity between the parties when a district is 53% Democrat-leaning.

16. If Mr. Trende believes that the partisan data he selected for his model does not correctly predict Congressional/Senate elections, then he should have selected partisan data that does. Moreover, there is a good reason that his convoluted two-stage approach has never been done before: any statistical significance that can be attributed to a two-stage experiment is decreased significantly when the bar of the second stage is set only after seeing how the first stage turns out. That is like shooting an arrow and then drawing a target around the spot where it lands. It invites precisely the subjectivity and discretion that Trende purported to avoid by choosing a set of statewide elections in the first instance.

17. Even setting that issue aside, Mr. Trende’s method for determining that Republicans did better in recent Congressional elections than in statewide elections by about 3% of the vote share, and that it therefore supposedly makes sense to move the goalposts by 3% to compensate for this, is fundamentally flawed.

18. Mr. Trende first relies on the table on page 10 of his reply, which shows the results of Congressional elections in the old districts in New York from 2016, 2018, and 2020, to claim that “Republicans almost always win in districts up to roughly a 53% threshold in our [historical partisan voting] index, and are competitive/capable of winning in districts up to roughly a 55.5% threshold.” His point seems to be that if you look at the 53% partisan index level in his table, the cells above are mostly red, while the cells below are mostly blue. But the more precise observation is that all but six of the cells above the 53% index level are red, while all but three of the cells below that level are blue. If you instead look at the 52% index level, a closer balance is achieved: all but five of the cells above that level are red, while all but five of the cells below are blue. This undermines his claim that a 53%-47% Republican-leaning district is parity.

19. Indeed, if you ignore District 24 (in which John Katko, a popular Republican Congressman who consistently won a Democrat-leaning district, has now announced his retirement, which makes this district a poor predictor of future Congressional elections), then the level on Mr. Trende’s chart at which there are equal numbers of blue districts above and red districts below is approximately the 51.5% index. My point here is not that a bump of less than 3% would be more statistically justifiable than a 3% bump. It is simply that Mr. Trende’s reliance on the table on page 10 of his reply is not precise, reliable, or statistically valid.

20. Second, Mr. Trende states that he arrived at his proposed 3% bump by performing a simple linear regression comparing the statewide partisan voting history of each old Congressional district to the results in the Congressional elections. But this simple regression is likewise unreliable for several reasons.

21. Mr. Trende acknowledges in footnote 3 of his reply report that the partisan index he used in his original report “use[s] statewide races because it helps to control for things like candidate quality, fundraising, and incumbency in a uniform way across the State.” There is good reason that responsible practitioners rely on statewide rather than districted election data when using past results to forecast future results. The major reason that districted election results sometimes differ from statewide results is the presence of specific incumbents who are popular, controversial, etc. But changing district lines changes incumbent effects – after all, once you change the old district lines to form new districts, the effects of incumbency change by definition – which is why it is commonly understood by people who specialize in this area that one should not assume there will be no change in the incumbency advantage or disadvantage of present representatives when a totally new set of lines is enacted. Yet Mr. Trende’s regression does not control for incumbency in any way.

22. In addition, Mr. Trende’s simple linear regression is sensitive to data values that are too far away from 50% to matter. For example, in a district with a partisan index of 85%, it would make no difference to the election outcome whether the Democrat Congressional vote share is 75% or 95%, yet this difference would change his calculation.

23. It bears noting that Mr. Trende’s table 2 reports a p-value and a confidence interval, which shows that a 0% bump would lie with his reported 95%-confidence interval. In other words, Mr. Trende’s math shows that a 0% bump is reasonable. I tried other possible regression models, which similarly concluded that a 0% bump is reasonable.

24. In sum, Trende’s regression results are effectively nothing but a measurement of incumbency effects from the previous decade, which are irrelevant to analysis of a totally new set of lines for the new decade.

25. Finally, it is notable that Mr. Trende's statement that 55.6% is "the point at which Republicans have no chance at winning whatsoever" appears to be entirely based on the fact that in District 24, with an index of 55.66%, John Katko won all three of the elections in Mr. Trende's chart. In other words, he does not appear to have derived that number – which he asserts as the outer bound for a potentially competitive district – from his regression or from anything except for the past Congressional election results in one Democrat-leaning district on the old map in which the popular Republican incumbent has announced his retirement.

26. I especially do not see any justification for applying the 3% bump to Mr. Trende's analysis of Senate maps. His proposed 3% bump was derived purely from Congressional data, and Mr. Trende does not give any indication as to why he believes that data would be predictive of Senate elections, or why the Senate bump, if there should be one at all, should be exactly the same as the Congressional bump.

#### **ANALYSIS OF MR. TRENDE'S METHODOLOGY**

##### ***Mr. Trende's Senate Ensemble is Fatally Flawed***

27. In my prior Affidavit, I described numerous flaws in Mr. Trende's methodology with respect to his analysis of the Congressional plan, which demonstrated that his ensemble was not a representative sample of lawful maps that could be drawn without partisan considerations. Mr. Trende's analysis of the Senate plan was also deficient in all of those ways, including lack of reproducibility, failure to define the target distribution, and failure to consider constitutionally required redistricting criteria.

28. In addition, as described below, there are strong indications that there was a fatal redundancy in Mr. Trende's Senate ensemble – the 5,000 maps in the ensemble seem to in fact all be modest variations on just two maps.



29. As with his Congressional model, Mr. Trende provides almost no information about his methodology for his Senate simulations, which makes it impossible to precisely reproduce his results or definitively diagnose his errors. Relatedly, Mr. Trende does not define his *target distribution*, so it is impossible for me to diagnose how far he is from hitting his target of creating a representative sample.

30. As with his Congressional model, Mr. Trende's Senate model incorporates only a subset of the criteria that the New York Constitution states shall be used in redistricting. Among other factors, Mr. Trende's model does not take into account the following considerations:

- whether the districts would result in the denial or abridgement of racial or language minority voting rights
- whether the districts are drawn so that racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice
- maintenance of cores of existing districts
- maintenance of cities
- maintenance of towns
- maintenance of communities of interest

31. Because Mr. Trende's Senate model does not include those considerations, the model is incapable of creating a representative sample of legally compliant maps that would be drawn without partisan considerations.

32. An even more fatal problem is the evidence of massive redundancy in Mr. Trende's ensemble, especially in his Senate ensemble, which I believe arose because Mr. Trende

used an ensemble size that was too small.<sup>2</sup> There is no basis to believe that an ensemble of 5,000 or even 10,000 simulated maps was large enough to support reliable conclusions. The McCartan-Imai algorithm is very new, and not much is known yet about the ensemble size that is sufficient when using this algorithm, which depends on many factors. The empirical validation study in the McCartan-Imai paper at issue, which has not yet been peer reviewed, used an ensemble of 10,000 simulated maps to analyze a hypothetical jurisdiction with 50 precincts to be partitioned into 3 districts. Mr. Trende used an ensemble size of just 5,000 simulated maps for New York, which has over 15,000 precincts that must be partitioned into 63 Senate districts (or 26 Congressional districts). For this particular algorithm, there are technical reasons why a state with larger numbers of precincts should be expected to require a much larger ensemble. Mr. Trende's casual assumption that it was sufficient to use the same sample size that McCartan and Imai used to simulate a hypothetical jurisdiction that is far less complex than New York is baseless and reason enough to conclude that his simulations prove nothing, especially given that the McCartan-Imai algorithm is still in the peer review process and is known to require larger sample sizes for larger numbers of precincts.

33. I believe that the algorithm that Mr. Trende used behaved as if the Senate maps were constructed something like this: imagine that two people, Amy and Bob, each separately construct a partial Senate plan by drawing the first 50 of the 63 districts. Imagine that the algorithm used by Mr. Trende then were to randomly find 2,500 different ways to complete Amy's partial map and 2,500 different ways to complete Bob's partial map, and then produce the

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<sup>2</sup> The term "redundancy" applies when the maps that comprise an ensemble of 5,000 simulated maps are not actually 5,000 distinct simulated maps, but instead include a significant number of maps that are highly similar to each other. An ensemble with a high level of redundancy cannot be said to provide a representative sample of its target distribution.

resulting ensemble of 5,000 maps, effectively locking in only two versions of how the first 50 districts were drawn. There are under-the-hood reasons<sup>3</sup> to worry that the algorithm used by Mr. Trende might behave in this way when used in the manner that Mr. Trende seems to have used it.

34. As discussed further below, the reasons to be concerned about this significant issue are not just theoretical. There also are strong indications that the algorithm Mr. Trende used did in fact behave in this way, and that Mr. Trende's Senate ensemble is therefore fundamentally and fatally flawed.

35. One glaring indicator that Mr. Trende's Senate ensemble likely is actually infected with this fatal redundancy problem is the graph at the top of page 22 of Mr. Trende's original report. In the chart, the Polsby-Popper scores of the Senate maps are clustered in two distinct areas with virtually no results in between those two clusters. This shows that the ensemble of simulated Senate maps is fundamentally split into two clusters of maps, with each cluster having very similar properties to all of the maps within the cluster, but with the two clusters having strongly different properties to each other. There is nothing about New York's geography (or any state's geography) that could account for the bizarrely stark bimodal nature of this compactness histogram. By far the most plausible explanation for this stark compactness bimodality is that it indicates that the ensemble-generating algorithm did not work correctly because 5,000 simulated maps was an insufficiently small sample size for this particular

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<sup>3</sup> At each of the algorithm's 63 stages (one for each Senate district), it samples from a pool of only 5,000 partially-constructed weighted maps whose weights vary by multiplicative factors that could be orders of magnitude larger than 5,000 (depending on how the parameters are set). This could lead to extreme redundancy in the next-stage sample. In fact, it could lead to a situation where exactly two such partially-constructed maps (Amy's and Bob's in my illustration) are extremely upweighted relative to the other plans. In this case, there is a strong basis to be concerned that almost half of the next-stage maps might come from just two extremely upweighted partially constructed maps from the previous stage.

application and that the 5,000 maps in Mr. Trende's Senate ensemble are just modest variations of two maps (or because there was a different fatal flaw in Mr. Trende's model that cannot be identified from the limited information that he provides).

36. Mr. Trende's simulations clearly are deeply flawed and fail to produce a representative sample.

***Mr. Trende's Congressional Ensemble Still Is Not a Representative Sample***

37. In his second report, Mr. Trende supplemented the methodology for his initial Congressional ensemble with modifications that he says were intended to model additional constitutional requirements, and he says that he has now run 10,000 simulations instead of 5,000. Even with those modifications, there remain substantial methodological flaws that make clear that Mr. Trende's Congressional ensemble is not a representative sample of legally complaint maps that could be drawn without partisan considerations.

38. As is widely acknowledged, many kinds of algorithms can have hidden bias. Even a "random" and well-intentioned process may fail to draw a sample that is fairly distributed. A responsible modeler would confirm that maps are being drawn just in proportion to their properties, and can explain why certain kinds of maps occur more often than others. As a purely hypothetical example, imagine that the algorithm constructs maps that mostly keep eastern Long Island together, or that mostly split it horizontally, or that mostly split it vertically. In a well-designed model, this would be explained by explicit properties of the maps, such as their compactness. A responsible modeler would have been transparent from the start about the balance of maps that the algorithm will select, so its effect on Long Island could have been predicted in advance and can be subject to criticism or defense.

39. I can assert with confidence that Mr. Trende's ensembles are not representative samples of the legally valid maps under any reasonable interpretation of the term "representative." He is using an algorithm capable of sampling from a specified balance of maps, but he has not controlled the settings in a manner that can possibly achieve this. Mr. Trende claims that his ensemble of 5,000 maps (and now 10,000 maps) represent "what maps would tend to look like in New York if they were drawn without respect for politics." I see no reason to believe that Mr. Trende's Congressional ensemble is a representative sample of maps drawn without partisan considerations. Rather, his maps can only be said to represent what maps would look like if they were drawn by his algorithm, using parameters that only he knows.

40. One case in point is the balance of county-splits in his ensembles. The maps in his Congressional ensemble have only between 12 and 16 county-splits each, which indicates to me that his algorithm functioned more like a minimizer than a sampler, producing the kinds of maps that humans would draw if they tried their hardest for a very long time to split as few counties as possible, at the expense of all other considerations. This is one of many indications that Mr. Trende has not achieved the goal of drawing maps that accurately represent the universe of possibilities for good faith human line-drawers.

41. Mr. Trende's model still does not take into account the maintenance of communities of interest, which the New York Constitution requires to be considered in redistricting. I am sympathetic to his point that communities of interest are "a notoriously difficult concept to nail down" and are "difficult to encode." There is no easy or canonical way to program an algorithm to respect communities of interest in a state like New York where there is no agreed-upon specification of exactly which communities should be maintained.

42. It is nevertheless insufficient for Mr. Trende to effectively say, “I did my best.” Even if it’s true that there’s no obvious way he could have done better at incorporating communities of interest into his model, the conclusions that he can draw from its model are weakened by this missing constitutional requirement. Trende’s main punchline is that the enacted map is an outlier relative to the maps in his ensemble. But an outlier only shows that a map was likely drawn with some priorities that were not included in the model (like maintenance of communities of interest, among other possibilities). In ensemble analysis, when an enacted map is different from the random outputs, that only tells you that something else was in play, not that something impermissible was in play.

43. And, as discussed below, there is cause for concern that Mr. Trende’s Congressional ensemble might also be infected with the same potentially fatal redundancy as the Senate ensemble.

***Replicated Evidence of Fatal Redundancy in Mr. Trende’s Ensembles***

44. As discussed above, there are significant reasons to believe that Mr. Trende’s ensembles have massive redundancy in the maps that comprise them. Since I was not granted access to Mr. Trende’s outputs, I ran a replication study to determine how susceptible his method is to the problem of massive ensemble redundancy. I created a replication of Mr. Trende’s ensembles of 5,000 maps using the same McCartan-Imai algorithm that he used. Since Mr. Trende only reported a few of the parameters he used, I could not perfectly match all of his choices, but I re-ran the replication several times in order to try multiple possibilities for the compactness parameter, which is the one that most affects a sample’s redundancy.

Compactness<sup>4</sup> can be set to any number between 0 and 1. My experiments showed that ensembles created by replicating Trende’s method using *any* compactness setting can contain massive levels of redundancy that in some cases render the ensembles statistically useless.

45. I first tried compactness settings that were less than 1 (including 0, 0.25, 0.75), and these settings resulted in ensembles with such massive levels of redundancy that the algorithm’s own built-in validation system threw up warnings that the ensembles were broken and useless. The algorithm progresses through one stage for each district, so it takes 63 stages to create a Senate ensemble. Along the way, the algorithm can be asked to report the *effective sample size* of each stage. The *actual sample size* of each stage is 5,000 (the ensemble size), but because of imperfections inherent in this sampling method, the *effective sample size* will be less than 5,000. Numbers very close to 5,000 indicate that only a negligible amount of redundancy crept in during that stage. In my replication, the effective sample sizes at all stages were shockingly low; in fact, they were in the double and single digits. The values from the first 12 stages (with compactness=0.5) are reported in Table 1. The results were just as problematic with compactness set to 0 or 0.25 or 0.75.

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>
Senate ensemble	20	14	12	6	21	14	24	33	45	30	7	6
Congressional ensemble	7	3	7	6	1	2	5	3	3	2	2	6

Table 1: Effective samples sizes (rounded) for the first 12 stages in constructing the ensemble (compactness=.5)

<sup>4</sup> I find the name “compactness” here misleading, since it incorrectly suggests that higher values are always better. In fact, a compactness score of 0 is the only way to realize the *redist* algorithm’s often-mentioned promise of being able to sample from the uniform or any target distribution. Mathematically, the choice *compactness* = 0 corresponds to the uniform distribution. The choice *compactness* = 1 corresponds to the mathematically complicated “spanning tree distribution” when the county-preservation switch is turned off, and it corresponds to even more complicated “hierarchical spanning tree distribution” when this switch is turned on.

46. To illustrate the implication of the single-digit effective samples sizes reported in Table 1, note that the previously mentioned Amy-Bob scenario describes essentially what one would expect if the effective sample size were to equal 2 in stage 50. As another illustration, Table 1 reports an effective sample size of only 6 in the 12<sup>th</sup> stage of generating the Congressional ensemble. This means the algorithm acted roughly as if only six different people were asked to draw the first 12 districts, and all of the final maps were guaranteed to have their first 12 districts drawn in one of these six ways. Moreover, this redundancy is compounded in the other stages. The small effective sample sizes in the stages prior to the 12<sup>th</sup> means that it is as if these six people were severely constrained in how they could draw the first 11 of their 12 districts. The small effective sample sizes in all of the stages after the 12<sup>th</sup> means that the redundancy is further compounded as the remaining districts are constructed.

47. I next tried setting the compactness equal to 1. This setting avoided the algorithm's built-in warning lights, but I nevertheless found a massive amount of redundancy when I carefully studied the ensemble. More precisely, I measured the extent to which the 5,000 maps in this ensemble differed from each other. Imagine taking a pair of scissors to each of the 5,000 maps in this ensemble, cutting apart its 63 districts, and throwing all of the districts from all of the maps together into a pile. This pile would contain  $5000 \times 63 = 315,000$  districts. If the ensemble maps were all completely different from each other, then one would expect the 315,000 districts in this pile to mostly all be different from each other. Instead, the 315,000 districts in this pile ended up all being copies of just 12,319 distinct districts. Moreover, the repetition level was quite extreme. For example, there were 31 districts that each occurred exactly 3,219 times. In other words, *more than half of the maps had almost half of their districts exactly identical*. Furthermore, if you were to randomly grab one of the 315,000 districts from



this pile, you would expect there to be 1,360 copies of that district in the pile on average. This is a head-turning level of redundancy, even though the ensemble was built with the compactness=1, which is the setting that best avoids redundancy.

48. Even if Mr. Trende used the compactness setting of 1 (which is the setting that best avoids redundancy), his Senate ensemble would be expected to have about the same level of redundancy as my replication that used this same compactness setting, which is enough to render it statistically meaningless.<sup>5</sup> This would mean that, from his ensemble of 5,000 maps, it is possible to separate out a subcollection of 3,219 of them that all have in common how their first 31 districts were drawn. This locked-in decision about how the first 31 districts were drawn (in over half of the maps of his ensemble) might by pure chance be extremely Democrat-favoring or extremely Republican-favoring. It might by pure chance favor competitiveness or favor anticompetitiveness. These wildly variable chance effects in what should have been just a single version of how the first 31 districts are drawn would get amplified by the redundancy and would therefore have a greatly outsized effect on all of the partisan statistics he computed using the ensemble. In other words, if Mr. Trende's ensemble has anywhere near the redundancy that my replication has, then all of the partisan conclusions he drew could be caused by a single wildly variable chance effect. Again, as I describe above, there are clear indications in Mr. Trende's results, such as the bimodal nature of his Senate Polsby-Popper chart on page 22 of his first report, that strongly suggest this is the case.

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<sup>5</sup> Mr. Trende's Congressional ensemble may well have a similarly high level of redundancy even if it used a compactness setting of 1. I have not yet been able to conduct a replication of Mr. Trende's Congressional ensemble with a compactness setting of 1, or to examine the level of redundancy in the resulting districts, simply due to the litigation schedule not providing sufficient time to do so.

49. In conclusion, my replication experiment demonstrated that Mr. Trende's Senate ensemble is very likely to be infected with a level of redundancy that renders them statistically useless, and that his Congressional ensemble may well suffer from the same deficiency. To repeat, even with the compactness dialed to the setting that best avoids redundancy in my replication, more than half of the maps had almost half of their districts in common. No valid conclusions can be drawn from a broken ensemble. For a state as large as New York, using the settings that Mr. Trende seems to have used, I feel strongly that 5,000 or even 10,000 is not necessarily enough to yield an ensemble in which one can have any confidence, at least not without performing careful validations to make sure that there is enough diversity in the ensemble. Mr. Trende has not described performing any such validations for his ensembles, and I can state with certainty that they are not representative samples of maps that could be drawn without partisan considerations.

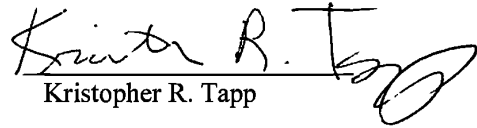
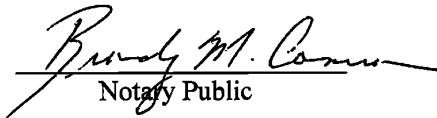
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Dated: March 10, 2022

  
Kristopher R. TappSworn and Subscribed before me this 10th  
day of March, 2022  
Notary PublicMy Commission Expires: *September 28, 2024*

Commonwealth of Pennsylvania - Notary Seal  
BRANDY M. CONNOR, Notary Public  
Philadelphia County  
My Commission Expires September 28, 2024  
Commission Number 1004805

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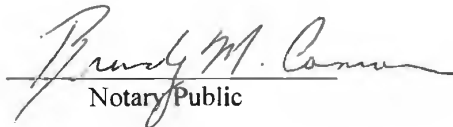
I, Randy C. Greene, do hereby certify and attest that I am an attorney duly admitted to practice law in the Commonwealth of Pennsylvania

I make this certification for the purposes of compliance with New York State Civil Practice Law & Rules Section 2309(c) with regard to the foregoing Affidavit of Kristopher R. Tapp, to be filed in Supreme Court in Steuben County, State of New York.

Said Affidavit, acknowledged and sworn by Mr. Tapp before a Notary Public in and for the Commonwealth of Pennsylvania, and said Affidavit being therein sworn in the Commonwealth of Pennsylvania, is and appears to be, based upon my review of said document and notarization thereof, in conformity with the laws of the Commonwealth of Pennsylvania for the making of an affidavit and the notarization thereof.



Sworn and Subscribed before me this 10th day of March, 2022

  
Notary Public

My Commission Expires: *September 28, 2024*

Commonwealth of Pennsylvania - Notary Seal  
BRANDY M. CONNOR, Notary Public  
Philadelphia County  
My Commission Expires September 28, 2024  
Commission Number 1004805

**EXHIBIT A TO TAPP SECOND AFFIDAVIT -  
CURRICULUM VITAE OF KRISTOPHER R. TAPP, PH.D. [1217 - 1221]**

**FILED: STEUBEN COUNTY CLERK 03/10/2022 11:11 PM**

NYSCEF DOC. NO. 154

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022

**Kristopher R. Tapp**

Department of Mathematics  
Saint Joseph's University, 5600 City Ave, Philadelphia, PA 19131  
Office: (610) 660-1509, Cell: (267) 912-5926  
ktapp@sju.edu

**Academic Employment**

Saint Joseph's University	8/08 - present
<i>Tenure granted 8/11, promoted to full professor 8/14.</i>	
Suffolk University	7/07 – 7/08
<i>Assistant Professor (tenure track)</i>	
University of Pennsylvania	8/06 – 7/07
<i>Visiting researcher during a sabbatical from Williams</i>	
Williams College	8/03 – 7/07
<i>Assistant Professor (tenure track)</i>	
Bryn Mawr College	8/02 – 7/03
<i>Keck Postdoctoral Fellow</i>	
SUNY at Stony Brook	8/00 – 8/02
<i>VIGRE Postdoctoral Fellow</i>	
Haverford College	6/99 – 6/00
<i>Visiting Assistant Professor</i>	

**Education**

Ph.D. University of Pennsylvania	conferred 5/99
<i>Thesis Advisor: Wolfgang Ziller</i>	
<i>Research Area: Differential Geometry</i>	
B.A. Grinnell College (with honors, Phi Beta Kappa)	conferred 5/93

**Grants**

- National Science Foundation Grant DMS-1720590, \$36,200 (co-PI), funded “Representations of Riemannian Geometry” conference at SJU in August 2017.
- National Science Foundation Grant DMS-0902942, \$79,000, awarded 7/09.
- National Science Foundation Grant DMS-0303326, \$75,000, awarded 5/03.
- Mathematics Association of America Grant for hosting undergrad research conference, \$5000, awarded 10/04.
- American Institute of Mathematics Grant to host “Nonnegative Curvature” conference in Palo Alto, 9/07, including full funding for all 30 participants.

### Expository Publications

- Symmetry: A Mathematical Exploration (271 page book), *Springer*,  
*First edition 2012, second edition 2021.*
- Differential Geometry of Curves and Surfaces (300+ page textbook), *Springer*,  
*2016.*
- Matrix Groups for Undergraduates (166 page book)  
*American Mathematics Society, Student Math Library Series, 2005*  
*Second edition including two new chapters, 2016.*
- The Mathematics of Measuring Self-Delusion, *Math Horizons*, April 2013
- Review of “Differential Geometry and its Applications” (3 page review)  
*American Mathematical Monthly*, Vol. 116, No. 4, April 2009, pp. 375-377.

### Research Publications and Preprints

- Spanning Tree Bounds for Grid Graphs  
*Under review by Journal of Graph Theory, 2021.*
- On Pull-backs of the Universal Connection  
*To appear in Canadian Mathematical Bulletin, 2022.*
- Clustering and Expected Seat-Share for District Maps  
*To appear in Communications in Statistics – Theory and Methods, 2022.*
- Measuring Political Gerrymandering  
*American Mathematical Monthly*, Vol. 126, No. 7 (2019) 593-609.
- Radially Symmetric Connections over Round Spheres  
*Proc. Amer. Math. Soc.*, Vol. 146, No. 8 (2018).
- On the Mathematics of the Free-Choice Paradigm  
*With Peter Selinger, arXiv:1808.06961, submitted 2018.*
- A Note on Quasi-Positive Curvature Conditions  
*With Megan Kerr, Differential Geometry and its Applications*, Vol. 34 (2014), 63-79.
- Rigidity for Odd-Dimensional Souls  
*Geometry and Topology*, Vol. 16, issue 2 (2012), 957-962.
- Metrics with Nonnegative Curvature on  $S^2 \times \mathbb{R}^4$ .  
*Annals of Global Analysis and Geometry*, Vol. 42, No. 1 (2012), 61-77.
- Totally Geodesic Foliations and Doubly Ruled Surfaces in a Compact Lie Group  
*With Marius Munteanu, Proc. Amer. Math. Soc.*, Vol. 139, No. 11 (2011), 4121-4135.

- Flats in Riemannian Submersions from Compact Lie Groups  
*Asian Journal of Mathematics, Vol. 13, No. 4 (2009), 459-464.*
- Homogeneous metrics with nonnegative curvature  
*With Lorenz Schwachhöfer, J. Geometric Analysis, Vol. 19, No. 4 (2009), 929-943.*
- Cohomogeneity one disk bundles with normal homogeneous collars  
*With Lorenz Schwachhöfer, Proceedings London Math Soc, Vol. 99, No. 3 (2009), 609-632.*
- Nonnegatively Curved Vector Bundles with Large Normal Holonomy Groups  
*Proc. Amer. Math. Soc., Vol. 136, No. 1 (2008), 295-300.*
- Invariant Metrics with Nonnegative Curvature on  $SO(4)$  and other Lie Groups  
*With Jack Huizenga, Michigan Math. Journal, Vol. 55, Issue 3 (2007), 609-630.*
- Invariant Metrics with Nonnegative Curvature on Compact Lie Groups  
*With Brown, Finck, Spencer, Wu., Canadian Math. Bulletin, Vol. 50, No. 1 (2007), 24-34.*
- Obstructions to Positive Curvature on Homogeneous Bundles  
*Geometriae Dedicata. 119, no. 1 (2006) 105-112.*
- Nonnegatively and Positively Curved Invariant Metrics on Circle Bundles  
*With Krishnan Shankar and Wilderich Tuschmann, Proc. Amer. Math. Soc. 133 (2005) 2449-2459.*
- Rigidity for Nonnegatively Curved Metrics on  $S^2 \times R^3$   
*Ann. Global Anal. Geom, Vol. 25 (2004), no. 1, pp. 43-58.*
- Quasi-positive Curvature on Homogeneous Bundles  
*Journal of Differential Geometry, Vol. 65 (2003), pp. 273-287.*
- Nonnegatively curved metrics on  $S^2 \times R^2$   
*With Detlef Gromoll, Geometriae Dedicata, Vol. 99 (2003), pp. 127-136.*
- Conditions for nonnegative curvature on vector bundles and sphere bundles  
*Duke Math Journal, Vol. 116 (2003), no. 1, pp. 77-101.*
- Finiteness theorems for submersions and souls  
*Proc. Amer. Math. Soc., Vol. 130 (2002), no. 6, pp. 1809-1817.*
- Bounded Riemannian submersions  
*Indiana Univ. Math. J., Vol. 49, no. 2 (Summer) 2000, pp. 637-654.*
- Volume growth and holonomy in nonnegative curvature  
*Proc. Amer. Math. Soc. 127 (1999), no. 10, pp. 3035-3041.*

All publications and preprints are available at:

<https://sites.google.com/sju.edu/ktapp>

**Presented Research Talks**

Connecticut College Math Colloquium (remote)	2/22
MGGG Trees working group (Tufts University, remote)	10/21
AMS Special Session on the Mathematics of Redistricting, Charlottesville	3/20
The University of Arizona Conference on Redistricting, Tucson	10/18
Geometry of Redistricting Workshop, San Francisco	2/18
Math Colloquium, Wesleyan University	10/17
Bi-College Mathematics Colloquium (Haverford+Bryn Mawr)	11/14
Undergraduate Math Colloquium, University of Pennsylvania	11/14
University Autónoma Madrid Geometry Seminar	7/13
Swarthmore College Mathematics Colloquium	9/12
Lehigh University Geometry and Topology Conference	6/12
Fairfield University Summer REU Colloquium	7/11
Geometry and Topology Seminar, University of Pennsylvania	2/09
Differential Geometry Workshop in Cuernavaca, Mexico	5/08
Lie Theory Conference in Cordoba, Argentina	11/07
AIM Positive Curvature Workshop in Palo Alto, CA	9/07
Math Colloquium, Bryn Mawr College	2/07
Homogeneous Space Conference, Tucson, AZ	3/07
Geometry Seminar, University of Pennsylvania	9/06
Undergraduate Colloquium, University of Pennsylvania	11/06
Curvature and Global Shape Conference, Muenster, Germany	7/05
Dartmouth College Geometry Seminar	5/05
Valley Geometry Seminar, University of Massachusetts	3/04
AMS Special session on Ricci Curvature, CUNY, NY	1/04
Curvature and Global Shape Conference, Muenster, Germany	7/03
Geometry Seminar, Muenster University, Germany	5/03
Geometry Reading Group, University of Pennsylvania	3/03
Geometry Seminar, Rutgers University	12/02
Geometry Reading Group, University of Pennsylvania	10/02
Math Colloquium, Bryn Mawr College	10/02
AMS Special Session on Curvature and Topology in Montreal (Speaker and co-organizer of conference)	5/02
Southeastern Geometry Festival, Athens, GA	3/02
Geometry Seminar, Princeton University	10/01
Geometry Seminar, CUNY Graduate Center	9/01
Differential Geometry Conference at Oberwolfach, Germany	6/01
Geometry Seminar, University of Augsburg, Germany	6/01



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AMS Special Session on Ricci Curvature in Hoboken, NJ	4/01
Geometry and Topology Seminar, SUNY Stony Brook	11/00
Math Colloquium, Haverford College	11/00
Nonnegative Curvature Seminar, University of Pennsylvania	11/99
Math Colloquium, Bryn Mawr College	10/99
Geometry Seminar, University of Bonn, Germany	6/99
Differential Geometry Conference at Oberwolfach, Germany	6/99
Joint Meetings in San Antonio: AMS session on Geometry	1/99
Geometry Seminar, Rutgers University	9/98
Lehigh University Geometry and Topology Conference	6/98

**AFFIDAVIT OF DR. JONATHAN N. KATZ, PH.D.,  
SWORN TO MARCH 9, 2022 [1222 - 1224]**

**FILED: STEUBEN COUNTY CLERK 03/10/2022 11:38 PM**

NYSCEF DOC. NO. 155

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022

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

**AFFIDAVIT OF DR. JONATHAN N. KATZ, PH.D**

STATE OF CALIFORNIA       )  
  ) ss:  
COUNTY OF LOS ANGELES   )

Jonathan N. Katz, Ph.D., being sworn, deposes and says that:

1. I am over 18 years of age and am not a party to this case.

2. I have been retained by Cuti Hecker Wang LLP, counsel for Respondent Senate

Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins, and asked to  
analyze relevant information and provide my expert analysis.

FILED: STEUBEN COUNTY CLERK 03/10/2022 11:38 PM

NYSCEF DOC. NO. 155

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022


3. The expert report that I have prepared in connection with this matter is attached as Exhibit A hereto and incorporated by reference into this affidavit. I swear to the faithfulness of the opinions expressed in, and, to the best of my knowledge, the accuracy of the factual statements made therein.

4. Attached as Exhibit B hereto is a true and correct copy of my curriculum vitae.

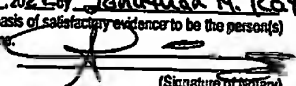
Dated: March 9, 2022

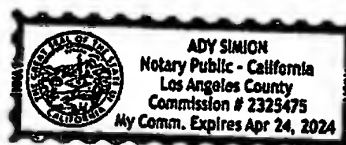
Jonathan N. Katz

Sworn to before me this 9  
day of March, 2022

  
Notary Public

"A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

STATE OF CALIFORNIA COUNTY OF Los Angeles  
Subscribed and sworn to (or affirmed) before me on this  
9 day of Mar, 2022 by Jonathan N. Katz  
proved to me on the basis of satisfactory evidence to be the person(s)  
who appeared before me.  
  
(Signature of Notary)



FILED: STEUBEN COUNTY CLERK 03/10/2022 11:38 PM

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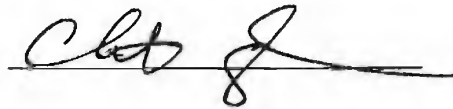
RECEIVED NYSCEF: 03/10/2022

CERTIFICATE OF CONFORMITY PURSUANT TO N.Y. C.P.L.R. § 2309(c)

I, Christina Chung, do hereby certify and attest that I am an attorney duly admitted to practice law in the State of California.

I make this certification for the purposes of compliance with New York State Civil Practice Law & Rules Section 2309(c) with regard to the foregoing Affidavit of Jonathan N. Katz, to be filed in Supreme Court in Steuben County, State of New York.

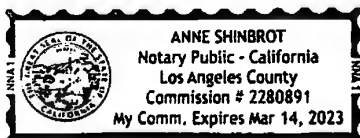
Said Affidavit, acknowledged and sworn by Dr. Katz before a Notary Public in and for the State of California, and said Affidavit being therein sworn in the State of California, is and appears to be, based upon my review of said document and notarization thereof, in conformity with the laws of the State of California for the making of an affidavit and the notarization thereof.



Sworn and Subscribed before me this 9<sup>th</sup>  
day of March, 2022

  
Notary Public

My Commission Expires: 3.14.23



1225

EXHIBIT A TO KATZ AFFIDAVIT -  
EXPERT REPORT OF JONATHAN N. KATZ,  
DATED MARCH 9, 2022 [1225 - 1253]

**FILED: STEUBEN COUNTY CLERK 03/10/2022 11:38 PM**

NYSCEF DOC. NO. 156

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022

Expert Report for *Harkenrider et al. v. Hochul*

Jonathan N. Katz

March 9, 2022

I was asked by legal counsel in this case to examine the 2022 New York Senate and Congressional district plans. In particular, I was asked to examine the potential politically partisan impact of the newly enacted plans. In making my findings, I have applied standard statistical methods, which I regularly employ in my research and which have been published in peer-reviewed journals, to historical election returns and demographic data in New York.

A summary of my report and basic findings is as follows:

- Using historical election data, I find that the enacted 2022 Senate plan shows no statistically significant partisan bias in favor of either party.
- Using historical election data, I find that the enacted 2022 Congressional plan shows no statistically significant partisan bias in favor of either party.

In the next section of the report I review my qualifications. In Section 2, I discuss how to quantify and statistically estimate the partisan impact of electoral maps. Section 3 discusses the statistical model used to estimate partisan fairness. Section 4 provides an analysis of partisan bias for the enacted 2022 Senate map. Section 5 provides an analysis of partisan bias for the enacted 2022 Congressional map.

## 1 Qualifications

I am currently the Kay Sugahara Professor of Social Sciences and Statistics at the California Institute of Technology (Caltech). I previously served for seven years as the Chair of the Division of the Humanities and Social Sciences at Caltech (which is akin to being a dean at other universities). Further, I was also formerly on the faculty at the University of Chicago and a visiting professor at the University of Konstanz (Germany). A complete copy of my curriculum vitae is in Attachment 1 to this report.

I received my Bachelor of Science degree from the Massachusetts Institute of Technology and my Masters of Arts and Doctor of Philosophy degrees, both in political science, from the University of California, San Diego. I did post-doctoral work at Harvard University and the Harvard-MIT Data Center. I am an elected fellow of both the American Academy of Arts and Sciences and an inaugural fellow of the Society for Political Methodology. I am a former fellow of the Center for Advanced Study in the Behavioral Sciences.

I have written numerous articles published in the leading journals as set forth in my curriculum vitae. I am currently a Deputy Editor for Social Sciences of *Science Advances*, the open access journal of the American Association for the Advancement of Science. I previously served as co-editor of *Political Analysis*, the journal of the Society for Political Methodology, and I was a co-founding editor of the Political Science network (a collection of on-line journals). I have also previously served on the editorial boards of *Electoral Studies*, *Political Research Quarterly* and the

*American Journal of Political Science*. I have frequently served as a referee of manuscripts for most of the major journals in my fields of research and the National Science Foundation.

I have done extensive research on American elections and on statistical methods for analyzing social science data. I am a member of the Caltech/MIT Voting Technology Project, serving as the co-director of the project from October 1, 2005 to September 30, 2010.

Over the past two decades, I have been involved in numerous elections cases for both Democratic and Republican clients involving the federal Voting Rights Act, partisan gerrymandering, the evaluation of voting systems, or the statistical evaluation of electoral data. I have testified or consulted in court cases in both state and Federal courts in the states of Arizona, California, Florida, Georgia, Indiana, Illinois, Maryland, Michigan, Missouri, New Hampshire, New Mexico, Nevada, North Carolina, Ohio, Oregon, Oklahoma, Texas, Virginia, and Washington. In particular, I was an expert for the plaintiffs in the Florida litigation regarding its 2012 Congressional map and for the defendants in the Oregon litigation regarding its 2021 Congressional map, both of which focused on questions of partisan fairness of enacted legislative maps. I used the same methods as in this case.

My rate for expert witness work in this case is \$600.00 per hour.

## 2 Measuring Partisan Impact of Redistricting Plans

A central concern about any redistricting plan is how it affects the translation of votes into seats. In particular, we would like to know whether a particular electoral map (or other feature of the electoral system) is politically fair. The concept of political fairness has been extensively studied in the political science literature. The most commonly accepted standard for fairness of voting in a legislature is statewide partisan symmetry (see Katz, King, and Rosenblatt 2020 and see Grofman and King 2007 for a historical review). The symmetry standard requires that parties with the same level of voter support be treated equally by the electoral system. In more concrete terms, the symmetry standard requires that each party should receive the same fraction of legislative seats for the same percentage of the vote.

This definition of political fairness can be straight-forwardly implemented and measured with electoral data using the idea of a seats-votes curve, which first appeared in the academic literature more than half of a century ago (see Kendall and Stuart 1950). A seats-votes curve is a simple mapping, stating for a given party's vote share what fraction of the seats they will receive.

Partisan symmetry requires that the seats-votes curves be the same for all political parties contesting an election. For example, if one party is able to translate 55% of the vote into 65% of the seats, then it would be symmetric (or fair) for the other party, if it were to receive 55% of the vote, to also receive 65% of the seats.

Political scientists define *partisan bias* as the deviation from partisan symmetry.<sup>1</sup> For example,

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<sup>1</sup>For early estimates of partisan bias in electoral systems see Tufte (1973) and Grofman (1983). For a review of

if the Republicans receive 5% more seats than is fair under a redistricting plan, than the plan has a bias of -5 percentage points. If the bias were reversed, so that the Democrats received 5% more seats than was fair, the partisan bias in the plan would be 5 percentage points.<sup>2</sup>

## 2.1 Distinguishing Symmetry (Partisan Fairness) from Proportionality

It is important to note that the concept of partisan symmetry as a definition of fairness does not appeal to any notion of proportionality. Proportional representation requires that a party's share of the seats should be roughly equal to their share of the vote in the election. Nor does partisan symmetry require that the two parties equally split the available number of seats. Because most electoral systems in the United States are single-member districts that are winner-take-all, in practice they normally give a "bonus" of varying sizes (above proportionality) in seats to the party that wins a majority of the votes across a state. In general, if a given party's average vote share is well above 50%, then it is likely that they will win well more than 50% of the seats. This is just a mechanical, or automatic, feature of single-member district electoral systems (see, for example, Powell and Vanberg 2000).

It is possible in a state where one party is getting well over half the votes, say 65% or 70%, that they win all the seats. This would happen, for example, if every district perfectly mirrored the partisan composition of the state. Because the partisan makeup of a state is rarely if ever evenly distributed, even a dominant political party typically is unlikely to sweep 100% of the seats. But it is a popular misconception that a party with 65% of the statewide vote is likely to win 65% of the seats. Because of the winner-take-all nature of the single member district system, a party with 65% of the statewide vote would be expected to win far more than 65% of the seats, though typically less than 100% of the seats.

On the other hand, a purely proportional system is one in which a one percent increase in the votes for a party leads to a one percent increase in seats for that party. In the United States, a one percent increase in votes for a party normally leads to a two to three percent increase in seats. Under the symmetry standard, there is nothing necessarily unfair about one party winning a greater proportion of seats than the other (see King and Browning 1987:1254–1259).

Partisan symmetry only requires that the electoral playing field be level for both parties. For example, it is not necessarily unfair for the Democrats to win 80% of the seats with 65% of the statewide vote, as long as the same opportunity is available to the Republicans. This notion of fairness is highly consistent with the American system of democratic representation.

A second criterion for evaluating a redistricting plan that comes from a seats-votes curve is *responsiveness*. Responsiveness measures how much an increase in a party's average district

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the literature, see King and Browning (1987) and Grofman and King (2007) and for an application using the concept in Congressional elections, see Cox and Katz (1999).

<sup>2</sup>The sign of partisan bias is only a convention. A plan becomes more fair as its bias gets closer to zero.



vote share increases its seat share.<sup>3</sup> For example, a responsiveness of say 2.6 means that a 1% increase in average vote share causes the party's expected seat share to rise by 2.6%. Unlike partisan symmetry, there is not an obviously "fair" or optimal amount of responsiveness for a redistricting plan. The larger the responsiveness of a given plan, the more sensitive the seat allocation is to changes in citizens' voting behavior. However, extreme amounts of responsiveness might be undesirable because it could lead to political instability, with very frequent changes in representatives for districts. It is the case, however, that smaller values of responsiveness typically correspond to redistricting plans designed to protect current incumbent legislators.<sup>4</sup>

## 2.2 Measuring Partisan Symmetry

Below I will discuss how to directly estimate partisan bias, responsiveness, as well as the entire seats-votes curve for a proposed redistricting map. It is somewhat involved and requires predicting counter-factual election results.

However, recently there have been several new measures of partisan symmetry proposed in the academic literature, such as the efficiency gap (Stephanopoulos and McGhee 2015), the mean-median test (Wang 2016), and declination (Warrington 2018). These newer measures are claimed to be simpler and more intuitive measures of partisan fairness. Unfortunately, while some of them measure some aspects of the seats-votes curve, Katz, King, and Rosenblatt (2020) show mathematically that none of them are accurate or complete measures of partisan symmetry. Therefore, they are not reliable measures of the partisan fairness of a proposed electoral map. Nonetheless, for the completeness of my analysis, in the sections below I calculate the efficiency gap for the enacted congressional and Senate maps.

## 2.3 Example of Redistricting Plans that Have Partisan Bias

In order to see how a redistricting plan can both produce partisan bias and affect responsiveness, consider a simple example of drawing a plan for a state with 1000 voters who need to be allocated to 10 equal size districts. A voter can be a supporter of either the Democratic or Republican Party — i.e., they are more likely to vote for a candidate of their preferred party. We will assume that the number of supporters statewide are equal at 500 for both parties. In order to make the drawing of different plans easy, we will assume that we can group the voters into districts according to their political preference. Table 1 gives four possible plans that have very different consequences for both partisan bias and responsiveness.

<sup>3</sup>A bit more formally it is the derivative of the seats-votes curve.

<sup>4</sup>This happens because the best way to protect current incumbents is to pack likely Democratic voters into districts held by Democratic incumbents and pack likely Republican voters into Republican held districts. This means it would take a very large swing in votes toward one of the parties in a future election to dramatically alter the seat distribution between the parties. See Cox and Katz (2002) for a complete argument.

Table 1: Example of Redistricting Impact on Partisan Bias and Responsiveness

Plan	Description	Partisan Bias	Responsiveness
1	10 Districts with 50 Democrats and 50 Republicans	None	Very High
2	5 Districts with 75 Democrats and 25 Republicans and 5 Districts with 25 Democrats and 75 Republicans	None	Low
3	8 Districts with 40 Democrats and 60 Republicans and 2 Districts with 90 Democrats and 10 Republicans	Large Republican	Moderate
4	8 Districts with 60 Democrats and 40 Republicans and 2 Districts with 10 Democrats and 90 Republicans	Large Democratic	Moderate

Plan 1 creates 10 identical districts with 50 Democrats and 50 Republicans each. That is, each of the districts is a microcosm of the political divisions within the state. In terms of partisan symmetry, clearly this plan is fair since neither party is advantaged by how the districts are drawn. If there were a swing toward the Democrats in an election held under this plan — perhaps because there was a popular Democratic presidential candidate also running on the ballot, causing some Republican voters to vote for Democratic House candidates — they would likely win every district. Similarly, if there were a swing toward the Republican Party, the Republicans would likely win all the seats. For this reason, this plan has maximal responsiveness. It is as close to a winner-take-all election as is possible for a district-based system. A very small change in average district votes would lead to large changes in seat allocation. In fact, this plan highlights the recipe to maximize responsiveness of a plan: make as many of the districts highly competitive with expected vote shares near 50% as possible.

Plan 2 consists of 5 districts with 75 Democrats and 25 Republicans and five districts that are the mirror image of the first set with 75 Republicans and 25 Democrats. Plan 2 looks a good deal different from Plan 1, but it is also fair to the two parties, producing zero partisan bias. Unless vote swings are very large in either direction, we would expect the Democrats to win the first five districts and the Republicans to win the second five. That is, for most average district votes, each party gets about five seats, so the plan is symmetric. However, it is this stability that causes the responsiveness of this plan to be very low. Large numbers of voters would have to vote differently in order to change the election outcomes in any of the districts. This plan can be thought of as a stylized incumbent protecting plan: the first set of districts is designed to make the Democrat incumbents in them likely to win re-election and the second set are the Republican counterparts.

Plan 3 and 4 are actually the same plan, but with the roles of the two parties reversed. They were constructed using the standard recipe to maximize partisan bias in favor of one of the parties: Party A packs as many of the other Party B's supporters in as few districts as possible (creating inefficiently safe districts), while Party A spreads its own supporters across as many districts as

possible (creating winnable but not inefficiently safe districts). Plan 3 is a Republican gerrymander whereas Plan 4 is a Democratic one.

Consider Plan 3 with 8 districts that have 60 Republicans and 40 Democrats each and the two remaining districts have 90 Democrats and only 10 Republicans each. Clearly, except under the most unusual of circumstances, the Democratic candidates would likely win the last two districts. However, unless there were very large vote swings towards them, it is unlikely the Democrats would win many of the other eight districts. This is not the case for the Republicans. While they will never win the last two highly Democratic districts, they are likely to always win a significant number of the other eight. Thus, the map treats the two parties differently and will therefore display partisan bias. Responsiveness for these plans, however, would likely fall somewhere between the high levels seen in Plan 1 and the low levels in Plan 2. The last two districts display very little responsiveness, but the other eight districts, while not as competitive as the Plan 1 districts, are more competitive than the ones in Plan 2.

In order to actually calculate numerical estimates of partisan bias and responsiveness, we would need more information than is provided in Table 1. We would need to know the expected vote share in each of the districts (which is clearly strongly correlated to the number of partisans in the districts in our example), as well as the amount of variability we would expect to see around this mean in a given election. Given these two quantities, we could calculate the probability that a party will win each seat and therefore the seats-votes curve.

### 3 Method for Estimating Partisan Bias and Responsiveness of Plans

The methodology I will use to estimate the partisan bias and responsiveness of the 2022 enacted New York Senate and Congressional plans was originally developed by Andrew Gelman and Gary King and published in a leading peer-reviewed scholarly journal (Gelman and King 1994).<sup>5</sup> The procedure is based on regression analysis — the most widely used statistical method in the social sciences. The details of the statistical procedure can be found in Gelman and King's original article. The procedure consists of two parts.

First, using historical elections results, we generate a statistical forecasting model from a regression of New York Senate or Congressional Democratic district vote share (the independent variable) on the following set of predictors: the average vote share that the Democrats received in statewide races in the district, an incumbency indicator<sup>6</sup>, and the fraction of the district that is Black, Asian, and Hispanic/Latino. That is, the forecasting model tells us our best estimate (or prediction) for the expected Democratic Senate or Congressional vote in a district with a given set

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<sup>5</sup>Their procedure has been actively studied and extended since its original publication. See, for example, Katz and King (1999) which extends the basic model to the case of more than two parties and Katz, King, and Rosenblatt (2020) that validates the use of "uniform partisan swing" that is used to estimate, for example, future election results.

<sup>6</sup>This allows the outcomes to vary if there is Democratic, Republican, or no incumbent running in the election in the district.

of the predictors — e.g., Average statewide vote of 58%, without an incumbent running, in a district that has no Blacks, Asians, or Hispanics. We also get an estimate of how variable elections are over time.<sup>7</sup>

The average vote share that the Democrats received in statewide races is used purely as a measure of the partisan composition of the district, thus when the election happened is not particularly important. The regression on the historical election will calibrate how this is translated into a forecast of votes in the New York Senate or Congressional elections. That is, we do not want to assume that a one point increase in this statewide average corresponds to exactly a one point increase in Congressional vote share. Also, this fails to account for the variability that occurs between elections that is also captured by the regression model. Similarly, an incumbency indicator is included because we know that incumbents tend to do better than non-incumbents. Therefore, we want to control for this in making our prediction. The demographics are used as predictors just to further aide in predicting Congressional district vote.

In order to make the statistical model more robust, we jointly estimate the New York Senate and Congressional elections, as well as those for the New York Assembly. This partial pooling allows us to improve the precision of our estimates and is a common technique in statistics.<sup>8</sup> It is also, for example, the strategy that the non-partisan PlanScore.org uses to analyze proposed redistricting plans.<sup>9</sup>

Now that we have the forecasting model, we can evaluate a particular redistricting map. A plan is just a set of hypothetical districts with new values of these observable predictors, much like the examples in Table 1. For each plan, we can calculate the expected vote shares and variability for the districts in the plan. We can, therefore, calculate the probability a seat would be won by the Democratic candidate or determine what would happen as the vote share for the Democratic candidate increased on average in every district. This allows us to trace out the seats-votes curve using the stochastic uniform swing assumption and hence estimate both partisan bias and responsiveness (see Gelman and King 1994).

Since our forecasting model is a statistical approximation, it has inherent uncertainty captured by associated standard errors — for example, the expected Democratic vote share in a particular district may be 45%, plus or minus 3%. This estimation uncertainty will filter through to our estimates of partisan bias and responsiveness. However, we will be able to use standard statistical procedures to test if estimates are different from some value after we control for this estimation uncertainty.

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<sup>7</sup>The full model also controls from systematic unobserved characteristics.

<sup>8</sup>For a text book treatment of partial pooling, also called hierarchical modeling, see Gelman and Hill (2007).

<sup>9</sup>See a discussion of their methodology at: <https://planscore.campaignlegal.org/models/data/2021B/>

#### 4 Partisan Impact of 2022 New York Senate map

Recall from Section 2 that a plan is fair if it treats the two parties symmetrically in terms of translating votes into seats. A plan is biased if it deviates from this partisan symmetry. If Democrats and Republicans (say in different election years) receive the same average vote share statewide, but the Republican win 5% more of the seats in their election, then the plan is biased towards the Republicans. For convenience in presenting results, I will use positive numbers for pro-Democratic biases and negative numbers for pro-Republican biases.

Table 2: Estimated District Results for enacted 2022 New York Senate Plan

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
1	49.8	8.4	49.2
2	44.0	8.7	24.0
3	56.4	8.7	76.8
4	42.0	8.6	17.4
5	54.1	8.7	68.2
6	55.8	8.8	74.6
7	57.2	8.8	79.4
8	54.1	8.7	68.8
9	54.4	8.4	70.1
10	72.0	8.7	99.4
11	67.5	8.9	97.0
12	73.1	8.9	99.6
13	79.0	8.7	100
14	79.9	8.8	100
15	61.9	8.5	92.2
16	65.3	8.8	96.0
17	71.8	8.6	99.5
18	78.4	8.8	100
19	74.8	8.9	99.8
20	77.5	8.7	99.9
21	77.9	8.9	99.9
22	66.4	8.7	97.4
23	65.9	8.6	96.7

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Table 2 – Continued from previous page

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
24	40.9	8.7	14.3
25	78.5	8.7	100
26	43.3	8.8	22.5
27	69.0	8.8	98.4
28	68.8	8.9	98.6
29	75.1	8.6	99.8
30	74.4	8.8	99.7
31	83.3	8.7	100
32	79.6	8.7	99.9
33	79.4	8.8	100
34	83.3	8.8	100
35	83.1	8.7	100
36	69.0	8.8	98.2
37	65.4	8.7	96.0
38	80.2	8.7	100
39	59.9	8.9	86.4
40	54.2	8.7	68.6
41	53.4	8.6	64.8
42	53.5	8.8	65.1
43	46.0	8.6	31.9
44	43.3	8.7	20.8
45	55.2	8.7	72.3
46	50.4	8.5	52.3
47	41.8	8.6	17.3
48	49.4	8.8	47.1
49	38.7	8.6	9.6
50	40.3	8.8	13.1
51	39.6	8.6	11.0
52	50.2	8.6	51.3
53	51.2	8.6	55.6
54	39.6	8.7	11.6
55	51.5	8.7	58.1

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Table 2 – Continued from previous page

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
56	54.6	8.5	70.5
57	55.3	8.6	73.1
58	36.3	8.7	5.4
59	37.8	8.6	7.7
60	52.8	8.7	62.2
61	43.0	8.6	20.8
62	39.2	8.7	11.0
63	60.7	8.7	88.6

Using the forecasting model described above, we can begin our analysis of the enacted 2022 New York Senate map. The first output of this analysis is predicted (or expected) Democratic vote share and the probability that a Democratic candidate wins each district. These can be seen in Table 2. As with all the subsequent analysis, I assume that no incumbents (of either party) contest a particular election. This is because in future elections held using the Senate map, we do not know which incumbents will run in each district. Further, the map partially determines which incumbents will run in future elections in each district.<sup>10</sup> For example, a newly drawn district that is highly favorable to the Republicans is likely to have Republican incumbents in future elections.

The first column of the table identifies the Senate district. The second column of the table tells us the expected vote share of the Democratic candidate in the district. The best way to think about this expected value is to consider observing many elections run with this map. If we averaged across all these hypothetical elections, say in district 3, then the average Democratic vote share would be 56.4% (or an average of 43.6% for the Republicans). Of course, there is wide variability in election outcomes from year to year, and the third column gives us a measure of this variability, the standard deviation of the expected vote. That is, in our large set of hypothetical elections, the result would vary from year to year, but about 95% of the time the Democratic vote share in district 3 should fall between 38.7% and 72.7%. This is because the 95% confidence interval for the expected vote is the estimate plus or minus twice its standard deviation. In this example, the upper bound is  $56.4 + 2 \times 8.7 = 73.8$  and the lower bound is  $56.4 - 2 \times 8.7 = 39.0$ . The fourth column summarizes the first two by giving us the probability that the Democrat wins the district. In district 3, we see that the Democrat should win the election with a probability around 77% (or the Republican wins with probability 23%). This means over our large set of hypothetical elections in

<sup>10</sup>Technically, incumbency is an endogenous consequence of the electoral map implemented.

district 3, the Democrats would win about 77% percent of the time. To be concrete, if we observed 100 elections in this map, we should expect to see the Democrats win about 77 times.

Given the district results presented in Table 2, we can vary the election results to trace out the seats-votes curve via uniform swing. Suppose, for example, the observed election saw the Democrats win on average 63% of the Senate vote, then we could add 1% to each district to see which seats the Democrats would win had they had an average vote share of 64%. Similarly, we could add 2% to see what would have happened if they had won 65% of the vote and so forth. Similarly, we can subtract from each district to see what happens at lower average vote shares.

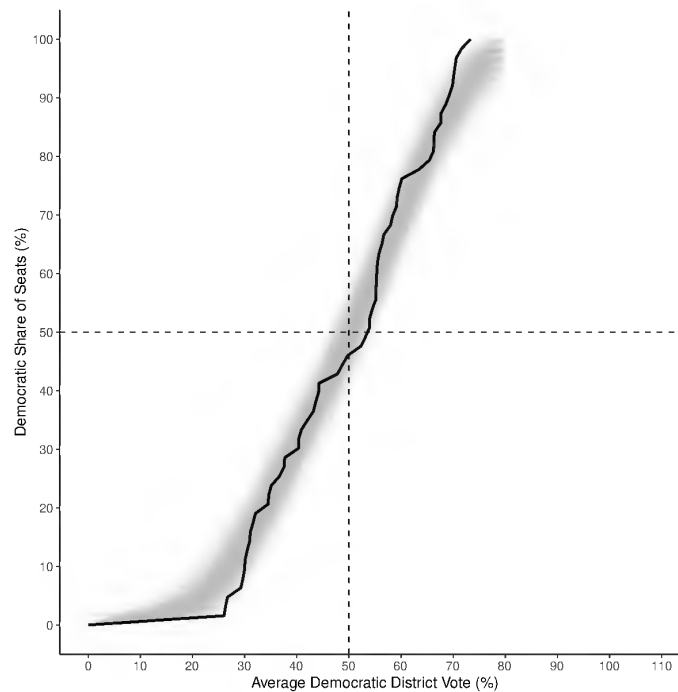


Figure 1: *Estimated Seats-Votes Curve for the 2022 Enacted New York Senate Map. The dark curve is based on the median district vote forecasts. The light gray curves are based on 500 draws of possible observed district vote shares from the model to represent statistical uncertainty.*

The full estimated seats-votes curve is presented in Figure 1. The dark line represents the curve estimated from the median estimated vote shares given in Table 2, column 2. This is our best estimate. The light gray lines are other draws that are consistent with the statistical forecasting model to give a sense of the variability in the estimated seats-votes curve. The curve looks relatively symmetric, including when we account for uncertainty.

Once we have traced out the seats-votes curve for the New York Senate map, we can directly calculate the partisan bias and responsiveness of the plan to statistically test for partisan fairness.



Figure 2 presents the estimates of the partisan bias of the enacted plan. Bias was estimated for five regions of vote shares: [49%, 51%], [51%, 55%], [55%, 60%], [61%, 65%], and [65%, 70%]. Recall that partisan bias compares the seat shares of the two parties for the same vote share. Thus, we need to specify the vote shares to estimate partisan bias at a given vote share on the seats-votes curve. To improve the statistical precision (i.e. make the confidence intervals smaller), we will average a range of possible vote shares. The regions were chosen to include plausible values for Democratic vote share that we may see in future elections. For example, in statewide elections over the last decade in New York, Democrats have averaged well over 60% of the vote.

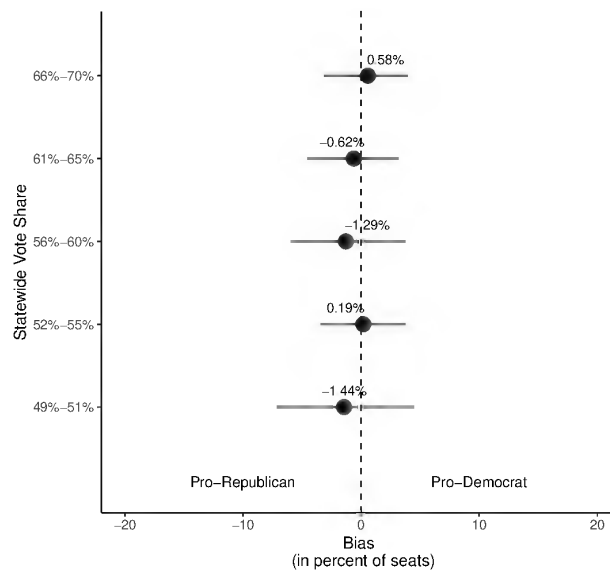


Figure 2: *Estimated Partisan Bias of the 2022 Enacted New York Senate Map. Positive values are pro-Democratic bias and negative values are pro-Republican bias.*

The center dot in the figure gives the point estimate of the partisan bias. The numerical estimate of the bias is denoted above the dot. As we can see for vote shares between 49% to 51%, as well as from 56% to 60%, and 61% to 65%, the point estimates of partisan bias are pro-Republican, but relatively small in magnitude. In the other ranges, the bias estimates are pro-Democratic, but also relatively small.

Given that these are statistical estimates, there is some inherent uncertainty in the estimates. This is captured in Figure 2 by the gray lines through each estimate. Technically, these lines constitute the “95% confidence interval” for the estimates. Given that these confidence intervals all cross the dotted line marking zero bias, we can say that the Senate plan shows no statistically

significant partisan bias in favor of either party.<sup>11</sup>

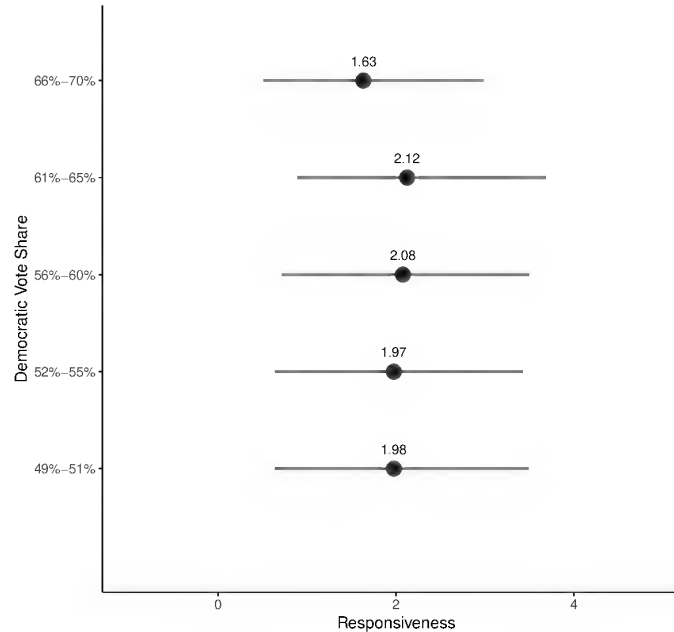


Figure 3: *Estimated Responsiveness of the 2022 Enacted Senate Map*

Figure 3 presents the estimates of the responsiveness of the 2022 enacted New York Senate map. As with the previous figure, the dots represent our best estimate of responsiveness and the gray lines give the “95% confidence interval.” The estimated responsiveness across all regions are similar at around 2. In other words, this means that if the average vote share to a party increased by 1 percentage point, then we would see their seat share increase by about 2 percentage points. These values are not out of the ordinary for district based electoral systems.<sup>12</sup>

Overall, the Democrats are expected to win 43.1 of the 63 seats, or about 69% of them, assuming there were no incumbents running, in the new map. Again since this is a statistical estimate the 95% confidence interval is from a low of 37 seats to a high of 49. This estimate, as discussed before, should be thought of as a long term average over many elections conducted with the map.

As mentioned above, Katz, King, and Rosenblatt (2020) show mathematically that partisan bias is the only complete and accurate measure of partisan fairness of an electoral map. However, there are two other commonly used measures of partisan fairness used in litigation, the mean-median test (Wang 2016) and the efficiency gap (Stephanopoulos and McGhee 2015). The mean-median test, as noted by Wang (2016), is not appropriate in a state like New York where a single party is

<sup>11</sup>Formally, we can not reject the null hypothesis that the bias is zero at conventional significance levels.

<sup>12</sup>See Kendall and Stuart (1950).

dominant and statewide vote shares are far from 50%.

For completeness of my analysis, I will calculate the efficiency gap, even though it is not a reliable measure of partisan fairness. We can plug in our point estimates of the forecasted district votes found in Table 2 as our estimate of how votes should be distributed in the new Senate map. This results in an efficiency gap of -0.5%.<sup>13</sup> Thus, we see that the efficiency gap is small in magnitude and shows that the Republicans are slightly more efficient at converting their votes into seats in the enacted New York Senate map.

#### 4.1 Partisan Symmetry Analysis under Alternative Assumption about Incumbents

Table 3: Estimated District Results for enacted 2022 New York Senate Plan with incumbents

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
1	46.5	8.5	33.9
2	40.9	8.6	14.6
3	56.4	8.6	77.3
4	42.2	8.6	18.2
5	57.3	8.6	80.3
6	58.8	8.7	84.6
7	60.5	8.5	89.6
8	57.0	8.7	78.9
9	54.3	8.6	68.8
10	75.2	8.8	99.8
11	70.5	9.1	98.8
12	76.3	8.6	99.8
13	82.2	8.8	100
14	82.9	8.9	100
15	64.8	8.8	95.4
16	68.6	8.7	98.5
17	71.6	8.8	99.4
18	81.3	8.6	100
19	77.8	8.9	99.9
20	80.4	8.9	100

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<sup>13</sup>Given that efficiency gap was not developed as part of a complete statistical model, there is no way to estimate its statistical uncertainty. This is yet another reason why it is not a reliable estimate of partisan fairness.

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District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
21	80.8	8.9	100
22	69.4	8.8	98.4
23	66.0	8.8	96.7
24	38.0	8.8	8.8
25	81.7	8.7	100
26	46.2	8.7	33.3
27	69.3	8.8	98.3
28	71.6	8.9	99.4
29	78.1	8.8	99.9
30	77.4	8.8	99.9
31	86.5	8.6	100
32	82.8	8.7	100
33	82.7	8.8	100
34	86.2	8.7	100
35	86.2	8.8	100
36	69.0	8.6	98.4
37	68.4	8.6	98.8
38	83.3	9.0	100
39	63.0	8.3	93.9
40	57.1	8.7	79.7
41	56.5	8.7	77.8
42	56.4	8.5	77.4
43	42.8	8.6	21
44	40.2	8.5	12.7
45	58.4	8.5	83.8
46	53.6	8.6	65.2
47	38.6	8.7	9.7
48	52.8	8.5	62.8
49	35.7	8.7	4.7
50	40.5	8.7	13.9
51	36.7	8.6	6.1
52	53.4	8.5	66.2

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Table 3 – Continued from previous page

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
53	51.2	8.7	56.1
54	36.3	8.6	5.9
55	54.7	8.6	70.5
56	57.1	8.7	79.6
57	58.1	8.6	83.2
58	33.2	8.7	2.5
59	34.8	8.7	4.4
60	56.2	8.5	76.5
61	40.0	8.8	13.4
62	36.2	8.6	5.3
63	60.5	8.7	88.9

As I previously noted, political scientists typically estimate the seats-votes curves of a redistricting plan assuming that no incumbents run. Of course, we know incumbents will likely run in future elections, it is just that these decisions to run or not by a particular incumbent are partially caused by the district map, and they will vary over time. However, as a robustness check, I re-ran the analysis assuming all incumbents are running in their successor districts except for those who have already announced, as of the date of this report, that they will not seek re-election.<sup>14</sup> This corresponds to Republican incumbents in districts 1, 2, 24, 43, 44, 46, 47, 49, 51, 54, 58, 59, 61, and 62; open seats in districts 3, 4, 9, 17, 23, 27, 36, 50, 53, and 63; and Democratic incumbents in all other districts.

<sup>14</sup>This scenario was provided to me by Counsel in this case.

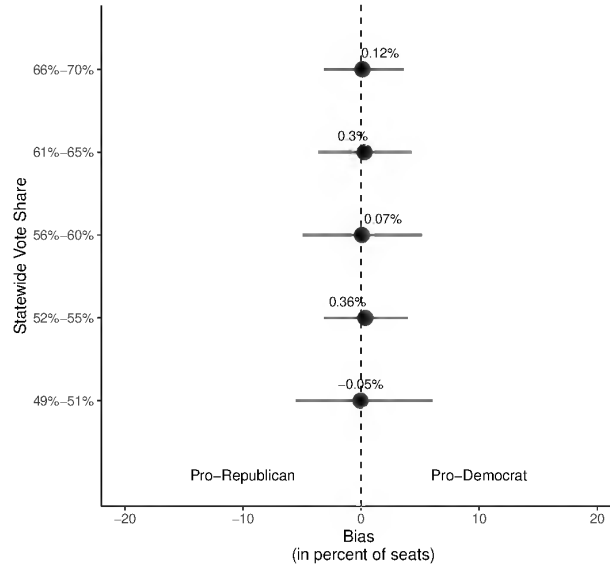


Figure 4: *Estimated Partisan Bias of the Enacted New York Senate Map with Incumbents. Positive values are pro-Democratic bias and negative values are pro-Republican bias.*

The analysis proceeds directly as above's analysis without incumbent. The district estimates are presented in Table 3. The results are qualitatively similar to the scenario without any incumbents running, because the estimated impact of an incumbent is about 3 percentage points (with a 95% confidence interval of 2.85 to 3.25). That is, a Democratic incumbent on the ballot increases the vote share by about 3 percentage points.

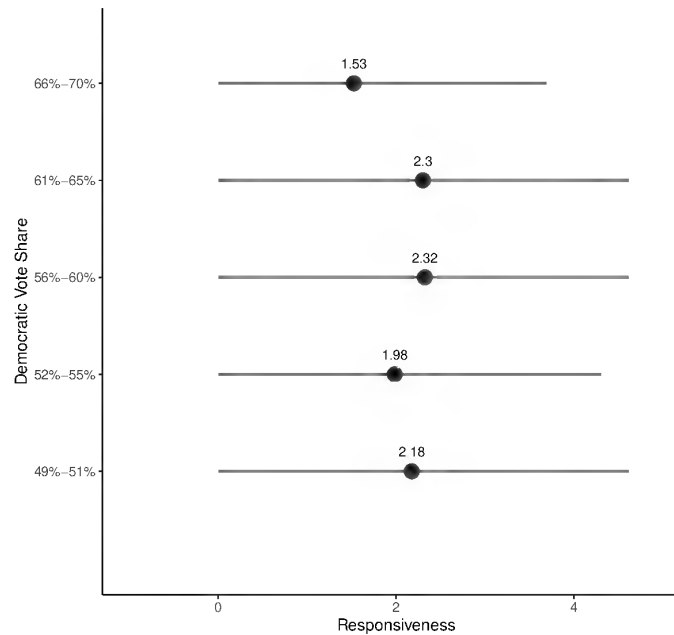


Figure 5: *Estimated Responsiveness of the Enacted New York Senate Map with Incumbents*

And once again we can calculate partisan bias for the map assuming this set of incumbents run. These results are presented in Figure 4. The results are qualitatively similar to the case without incumbents running. However, the point estimates do differ, but not in a statistically significant manner. We see again that in some regions there is a small bias in favor of Republicans and in others a small bias in favor of Democrats. More importantly, all the confidence intervals cross zero. Therefore, we can say that the Senate plan shows no statistically significant partisan bias in favor of either party with this given configuration of incumbents assumed to be running.<sup>15</sup>

The responsiveness estimates are presented in Figure 5. As with the bias estimates, the estimates do not qualitatively differ from the scenario without any incumbents running.

Again we can plug in the district vote estimates in the Senate map under this configuration of incumbents from Table 3 to calculate the efficiency gap. This results in an efficiency gap of -1.3%. This is a small, pro-Republican advantage in vote efficiency.

Overall, the Democrats are expected to win 44.3 of the 63 seats, or about 70% of them, assuming this particular configuration of incumbents running. Again since this is a statistical estimate the 95% confidence interval is from a low of 39 seats to a high of 49. This estimate, as discussed before, should be thought of as a long term average over many elections conducted with the map with this particular configuration of incumbents running.

<sup>15</sup>Formally, we can not reject the null hypothesis that the bias is zero at conventional significance levels.

## 5 Partisan Impact of 2022 Congressional map

The analysis of the partisan fairness of the 2022 enacted Congressional map proceeds in exactly the same manner as my analysis of the 2022 enacted Senate map presented above.

Table 4: Estimated District Results for enacted 2022 Congressional Plan

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
1	54.9	8.5	72.2
2	45.1	8.7	28.2
3	56.4	8.7	76.2
4	55.8	8.6	74.5
5	76.0	8.7	99.8
6	67.7	9.0	97.6
7	77.3	8.8	99.9
8	72.6	8.8	99.5
9	72.9	8.4	99.8
10	72.0	8.7	99.5
11	58.0	8.6	82.0
12	72.5	9.0	99.5
13	82.5	8.6	100
14	75.5	8.8	100
15	82.4	8.7	100
16	65.0	8.6	96.0
17	55.6	8.6	74.4
18	51.1	8.8	55.2
19	49.0	8.8	45.6
20	51.3	8.6	55.6
21	39.8	8.8	12.4
22	51.9	8.7	58.1
23	39.1	8.7	10.5
24	38.8	8.7	9.8
25	53.3	8.6	65.2
26	55.6	8.7	73.7

Using the same forecasting model described above, we can begin our analysis of the enacted



2022 New York Congressional map. The first output of this analysis is a summary of each district with its expected Democratic vote share, expected variability in the Democratic vote share over time, and the estimated probability that a Democratic candidate wins the district. These can be seen in Table 4. As with all the previous Senate analysis, I assume that no incumbents (of either party) contest a particular election.

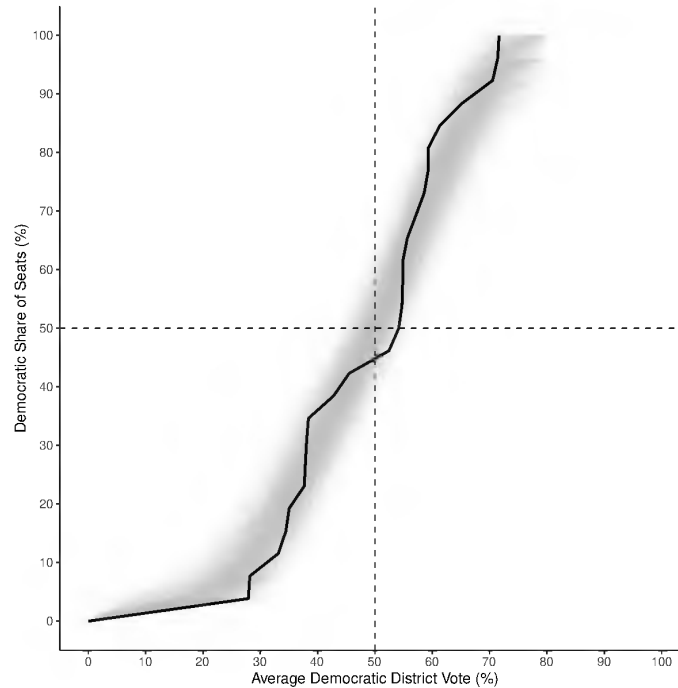


Figure 6: *Estimated Seats-Votes Curve for the Enacted Congressional Map. The dark curve is based on the median district vote forecasts. The light gray curves are based on 500 draws of possible observed district vote shares from the model to represent statistical uncertainty.*

Given the district results presented in Table 4, we can vary the election results to trace out the seats-votes curve via uniform swing to estimate the seats-votes curve. The full estimated seats-votes curve for the Congressional map is presented in Figure 6. The curve looks relatively symmetric, including when we account for uncertainty.

Once we have traced out the seats-votes curve for the Congressional map, we can directly calculate the partisan bias and responsiveness of the plan to statistically test for partisan fairness. Figure 7 presents the estimates of the partisan bias of the enacted Congressional plan over several regions of possible vote shares.

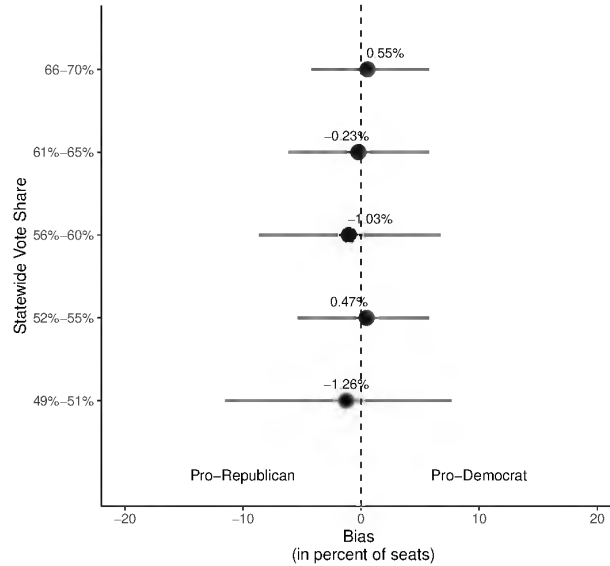


Figure 7: *Estimated Partisan Bias of the Enacted Congressional Map. Positive values are pro-Democratic bias and negative values are pro-Republican bias.*

As before, the center dot in the figure gives the point estimate of the partisan bias. The numerical estimate of the bias is denoted above the dot. As we can see for vote shares between 49% to 51%, as well as from 56% to 60%, and 61% to 65%, the point estimates of partisan bias are pro-Republican, but relatively small in magnitude. In the other ranges, the bias estimates are pro-Democratic, but also relatively small. Given that these confidence lines for all of these estimates all cross the dotted line marking zero bias, we can say that the Congressional plan shows no statistically significant partisan bias in favor of either party.<sup>16</sup>

<sup>16</sup>Formally, we can not reject the null hypothesis that the bias is zero at conventional significance levels.

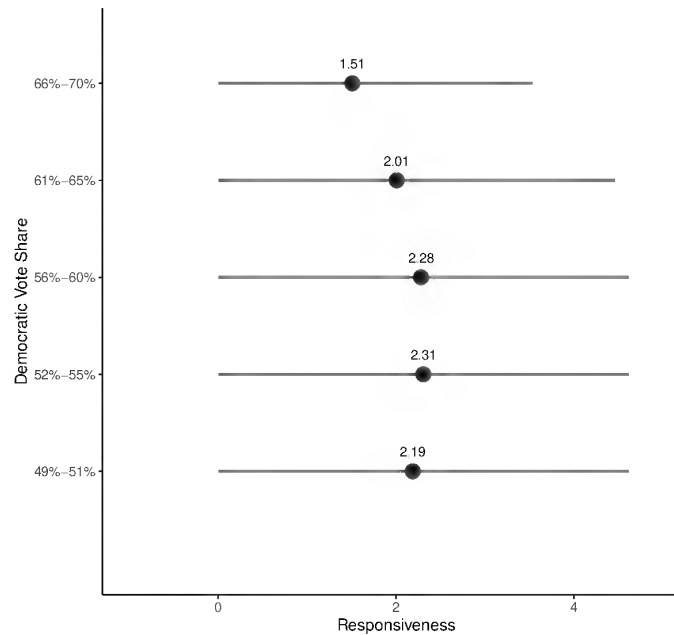


Figure 8: *Estimated Responsiveness of the Enacted Congressional Map*

Figure 8 presents the estimates of the responsiveness of the 2022 enacted Congressional map. As with the previous figure, the dots represent our best estimate of responsiveness and the gray lines give the “95% confidence interval.” The estimated responsiveness across all regions are similar at around 2.

Overall, the Democrats are expected to win 18.7 of the 26 Congressional seats, or about 72% of them, assuming there were no incumbents running. Again since this is a statistical estimate the 95% confidence interval is from a low of 15 seats to a high of 22. This estimate, as discussed before, should be thought of as a long term average over many elections conducted with the map.

As before we can plug in the district vote share estimates in Table 4 to calculate the efficiency gap of the Congressional map, even though this is not a reliable estimate of partisan fairness. This results in an efficiency gap of -1.3%. Thus, the Republicans’ distribution of votes is slightly more efficient than the Democrats’.

## 5.1 Partisan Symmetry Analysis under Alternative Assumption about Incumbents

Table 5: Estimated District Results for enacted 2022 Congressional Plan with incumbents

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
1	54.9	8.8	70.8
2	42.1	8.6	17.6
3	56.2	8.7	76.6
4	55.9	8.7	75.6
5	79.3	8.8	100
6	70.6	8.8	98.9
7	80.8	8.5	99.9
8	75.3	8.6	99.9
9	75.7	8.7	99.7
10	75.1	8.7	99.8
11	54.9	8.9	70.8
12	75.6	8.8	99.8
13	85.5	8.9	100
14	78.4	8.6	100
15	85.1	8.7	100
16	68.1	8.7	98.4
17	58.5	8.7	83.9
18	54.0	8.8	68
19	52.3	8.8	60.4
20	54.1	8.5	68.2
21	36.9	8.7	6.7
22	51.9	8.7	58.7
23	36.0	8.6	5.0
24	36.1	8.6	5.5
25	56.4	8.6	77.0
26	58.5	8.6	84.4

As I previously noted in the analysis of the Senate map, political scientists typically estimate the seats-votes curves of a redistricting plan assuming that no incumbents run. As a robustness check, I re-ran the analysis assuming all incumbents are running in their successor districts except

for those who have already announced, as of the date of this report, that they will not seek re-election.<sup>17</sup> This corresponds to Democratic incumbents in districts 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 25, and 26; Republican incumbents in districts 2, 11, 21, 23, and 24; and open seats in districts 1, 3, 4, and 22.

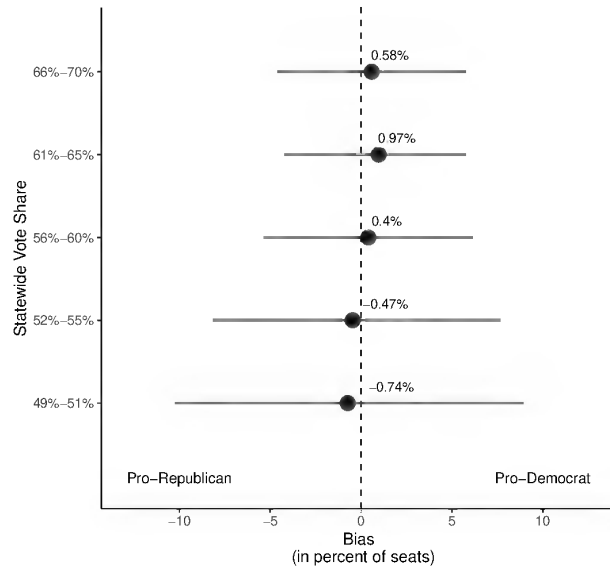


Figure 9: *Estimated Partisan Bias of the Enacted Congressional Map with Incumbents.* Positive values are pro-Democratic bias and negative values are pro-Republican bias.

The district estimates are presented in Table 5. The results are qualitatively similar to the scenario without any incumbents running, because the estimated impact of an incumbent is about 3 percentage points (with a 95% confidence interval of 2.85 to 3.25). That is, a Democratic incumbent on the ballot increases the vote share by about 3 percentage points.

<sup>17</sup>The source for these are: [https://ballotpedia.org/List\\_of\\_U.S.\\_Congress\\_incumbents\\_who\\_are\\_not\\_running\\_for\\_re-election\\_in\\_2022](https://ballotpedia.org/List_of_U.S._Congress_incumbents_who_are_not_running_for_re-election_in_2022)

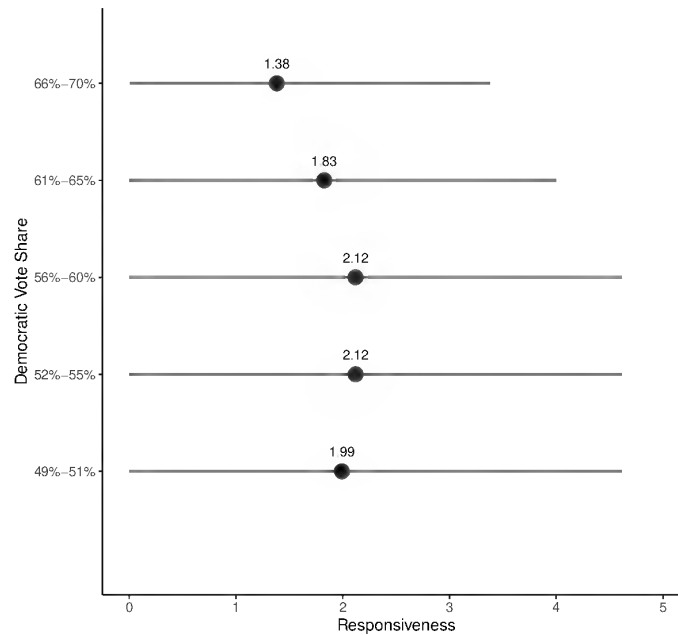


Figure 10: *Estimated Responsiveness of the Enacted Congressional Map with Incumbents*

And once again we can calculate partisan bias for the map assuming this set of incumbents run. These results are presented in Figure 9. The results are qualitatively similar to the case without incumbents running. However, the point estimates do differ, but not in a statistically significant manner. We see again that in some regions there is a small bias in favor of Republicans and in others a small bias in favor of Democrats. More importantly, all the confidence intervals cross zero. Therefore, we can say that the Congressional plan shows no statistically significant partisan bias in favor of either party with this given configuration of incumbents assumed to be running.<sup>18</sup>

The responsiveness estimates are presented in Figure 10. As with the bias estimates, the estimates do not qualitatively differ from the scenario without any incumbents running.

Overall, the Democrats are expected to win 19.3 of the 26 seats, or about 74% of them, assuming this particular configuration of incumbents running. Again since this is a statistical estimate the 95% confidence interval is from a low of 16 seats to a high of 22. This estimate, as discussed before, should be thought of as a long term average over many elections conducted with the map.

Again we can plug in the district vote estimates in the Congressional map under this configuration of incumbents from Table 5 to calculate the efficiency gap. This results in an efficiency gap of -0.5%. This is a very small, pro-Republican advantage in efficiency.

<sup>18</sup>Formally, we can not reject the null hypothesis that the bias is zero at conventional significance levels.

## 5.2 Expected Seat Share

As discussed above, the Democrats are expected to win 18.9 of the 26 seats, or about 72% of them, assuming all open seats with around 65% of the average statewide vote share. If incumbents run as in the scenario described in the previous subsection, they do slightly better, netting 74% of the seats. This is clearly not proportional since the Democrats are getting more seats than their statewide vote share. This is expected since single member district systems give a bonus to the majority party. However, as the analysis of the estimated seats-votes curve shows, if the Republicans were to win around 65% of the statewide vote share, they too would be expected to win around 19 Congressional seats.

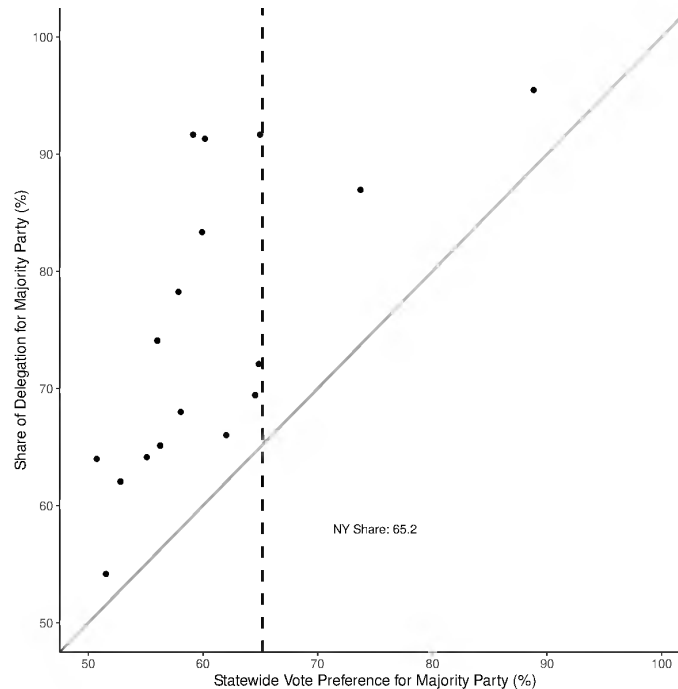


Figure 11: Scatter plot of Majority Party Congressional Seat Shares versus their Average Statewide Vote Share from states with at least 20 Congressional seats from 1972 to 2020. The horizontal dashed line corresponds to the average statewide vote share in New York in the last decade.

To give some historical context to an expected seat share for Democrats of 18.9 assuming no incumbents run, we can look at historical election results of larger states with 20 or more Congressional seats from 1972 to 2020 excluding New York.<sup>19</sup> The cutoff of 1972 was chosen because this

<sup>19</sup>The states in the analysis for at least part of the time period are California, Florida, Illinois, Ohio, Pennsylvania, Texas. States might be included or excluded after reapportionment caused by Census changes the size of their delegation.

was the first post-Census redistricting cycle that was subject to the U.S. Supreme Court's ruling *Reynolds v. Sims* (377 U.S. 533) that required equal sized districts for Congress.

This analysis is presented in Figure 11. This presents a scatter plot of the majority party's seat shares versus their average statewide district vote shares for the states with large Congressional delegations.

The non-proportionality of the single member district used to elect members of Congress is immediately apparent in this Figure. For every observation the majority party's seat share is above the diagonal line. This means that the majority party is receiving a larger seat share than their average statewide vote share.<sup>20</sup> Further, New York does not seem out of line with election results from other larger states. The average statewide vote share in New York is approximately 65.2% over the last decade, one of the highest of all state elections represented in the Figure, and they are expected to win about 72% or so of the seats. Some other state majority parties are winning this share of the seats with substantially smaller average statewide vote shares.

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<sup>20</sup> The same holds true if we use average Congressional district vote share.



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**EXHIBIT B TO KATZ AFFIDAVIT -  
CURRICULUM VITAE OF JONATHAN N. KATZ [1254 - 1258]**

**FILED: STEUBEN COUNTY CLERK 03/10/2022 11:38 PM**

NYSCEF DOC. NO. 157

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022

**Jonathan N. Katz**

D.H.S.S. (228-77)  
California Institute of Technology  
Pasadena, CA 91125  
(626)395-4191  
e-mail: jkatz@caltech.edu

**Education**

Ph.D. University of California, San Diego. Political Science, June 1995.  
M.A. University of California, San Diego. Political Science, June 1992.  
S.B. Massachusetts Institute of Technology. Applied Mathematics  
June 1990.

**Academic Appointments**

California Institute of Technology:

Kay Sugahara Professor of Social Sciences and Statistics, January 2012 – Present.  
Professor of Social Sciences and Statistics, June 2009 – December 2011.  
Professor of Political Science, November 2003 – May 2009.  
Associate Professor of Political Science, April 1998 – August 1998 and July 2000 –  
October 2003.  
Assistant Professor of Political Science, July 1995 – March 1998.

University of Chicago:

Assistant Professor of Political Science, September 1998 – June 2000.

Harvard University

Post-Doctoral Fellow in Positive Political Economy, July 1994 – June 1995.

**Other Employment**

Principal, Katz Statistical Consulting,  
January 2000 – Present.

Co-Founder and Chief Data Scientist, Adaptivo Inc,  
June 2017 – December 2018.

Scientific Advisor, Global Consequences Inc.,  
October 2014 – January 2016.

Statistical Advisor, Dispute Resolution Data, LLC.,  
August 2015 – September 2016.

Jonathan N. Katz

2

### Honors and Awards

Elected Fellow of the American Academy of Arts and Sciences, 2011.

Elected Inaugural Fellow of the Society for Political Methodology, 2008.

Center for the Advanced Study in the Behavioral Sciences Fellowship, 2005–2006.

John M. Olin Foundation Faculty Fellow, 1999–2000.

National Science Foundation Graduate Research Fellow, 1991–1994.

### Publications

#### *Books*

*Elbridge Gerry's Salamander: The Electoral Consequences of the Reapportionment Revolution.* (with G. Cox). New York: Cambridge University Press. 2002.

#### *Articles in Refereed Journals*

Government Partisanship, Labor Organization and Macroeconomic Performance: A Corrigendum (with N. Beck, R.M. Alvarez, G. Garrett, and P. Lange). *American Political Science Review*. 87(4):945–949. 1993.

What To Do (and Not To Do) with Times-Series–Cross-Section Data in Comparative Politics (with N. Beck). *American Political Science Review*. 89(3):634–647. 1995.

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Jonathan N. Katz

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- Modeling Dynamics in Time-Series-Cross-Section Political Economy Data (with N. Beck). *Annual Review of Political Science*. 14:331–352. 2011.

Jonathan N. Katz

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- Estimating Partisan Bias of the Electoral College Under Proposed Changes in Elector Apportionment (with A.C. Thomas, A. Gelman, and G. King). *Statistics, Politics and Policy*. 0:1–13. 2012.
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- Other Articles*
- Empirically Evaluating the Electoral College (with A. Gelman and G. King) in A. Crigler, et al (editors), *Rethinking the Vote: The Politics and Prospects of American Election Reform*. New York: Oxford University Press. 2004.
- Detecting Electoral Fraud: The Case of 2002 General Election in Georgia (with R.M. Alvarez) in R.M. Alvarez, T.E. Hall, and S.D. Hyde (editors), *Election Fraud: Detecting and Deterring Electoral Manipulation*. Washington, DC: Brookings. 2008.
- Fraud or Failure? What Incident Reports Reveal about Election Anomalies and Irregularities (with D.R. Kiewiet, T.E. Hall, R.M. Alvarez )in R.M. Alvarez, T.E. Hall, and S.D. Hyde (editors), *Election Fraud: Detecting and Deterring Electoral Manipulation*. Washington, DC: Brookings. 2008.
- Machines Versus Humans: The Counting and Recounting of Pre-scored Punchcard Ballots (with R.M. Alvarez, E.K. Hartman, and S. Hill) in R.M. Alvarez, L. Atkeson, and T.E. Hall (editors), *Confirming Elections: Creating Confidence and Integrity through Election Auditing*. Palgrave Macmillan. 2012.

**Jonathan N. Katz**

5

What's Age Got to Do with It? Supreme Court Appointees and the Long Run Location of the Supreme Court Median Justice (with M. Spitzer). *Arizona State Law Journal*. 46(1):41 – 88. 2014.

#### **Other Professional Activities**

Deputy Editor for Social Sciences, *Science Advances*  
March 2018 – Present.

Co-Editor, *Political Analysis*  
January 2010 – December 2017.

Member, Expert Panel on Measles Mortality Estimates, World Health Organization, 2004.

Member, Caltech/MIT Voting Technology Project,  
October 2003 – Present.

#### **Recent Expert Witness Cases**

*Rep. Antonio Maestas et al. v. Diana Duran* (2012, New Mexico State District Court)

*Rene Romo, et al. v. Ken Detzner, and Pam Bondi* (2013, Florida Circuit Court)

*Diego v. City of Whittier* (2014, Superior Court of the State of California, County of Los Angeles)

*Jim Soliz, et al. v. Santa Clarita Community College District* (2014, Superior Court of the State of California, County of Los Angeles)

*Bethune-Hill, et al. v. Virginia State Board of Elections, et al.* (2015 and 2017, U.S. District Court for Eastern District of Virginia)

*Luna, et al. v. County of Kern, et al.* (2017, U.S. District Court for Eastern District of California)

*Bruni v. Huges* (2020, U.S. District Court for the Southern District of Texas)

*Miller v. Huges* (2020, U.S. District Court for the Western District of Texas)

*Casey v. Garner* (2020, U.S. District Court for the District of New Hampshire)

*Clarno, et al. v. Fagan* (2021, Oregon Circuit Court, Marion County.)

March 9, 2022

ORDER TO SHOW CAUSE WHY PORTIONS OF THE EXPERT REPORTS OF PROF.  
JONATHAN N. KATZ AND DR. KRISTOPHER R. TAPP SHOULD NOT BE STRICKEN,  
DATED MARCH 14, 2022 [1259 - 1260]

FILED: STEUBEN COUNTY CLERK 03/14/2022 10:40 AM

NYSCEF DOC. NO. 201

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/14/2022

At IAS Part \_\_ of the Supreme Court of the State  
of New York, held in and for the County of  
Steuben, at the Courthouse located at 3 East  
Pulteney Square Bath, NY 14810, on the 14  
day of March, 2022.

PRESENT: \_\_\_\_\_

HON. PATRICK F. McALLISTER, J.S.C.

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  
VOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

**ORDER TO SHOW CAUSE**  
**WHY PORTIONS OF THE**  
**EXPERT REPORTS OF**  
**PROF. JONATHAN N. KATZ**  
**AND DR. KRISTOPHER R.**  
**TAPP SHOULD NOT BE**  
**STRICKEN**

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

FILED: STEUBEN COUNTY CLERK 03/14/2022 10:40 AM

NYSCEF DOC. NO. 201

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/14/2022

UPON reading of the Affirmation of Bennet J. Moskowitz dated March 11, 2022, and the exhibits annexed thereto, and Petitioners' Memorandum of Law in support of their Motion to Strike Portions of the Expert Reports of Professor Jonathan N. Katz and Dr. Kristopher R. Tapp; and all of the pleadings and proceedings heretofore had herein, it is hereby:

ORDERED that Respondents or their counsel appear and show cause before this Court, at IAS Part \_\_, Room \_\_\_\_, at the Courthouse located at 3 East Pulteney Square Bath, NY 14810, on the 16th day of March, 2022, at 9:30 a.m., or as soon thereafter as counsel can be heard, why an Order should not be issued granting Petitioners Motion to Strike Portions of the Expert Reports of Professor Jonathan N. Katz and Dr. Kristopher R. Tapp; and it is

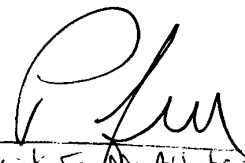
FURTHER ORDERED that Petitioners shall serve a copy of this Order and all papers in support thereof upon counsel for Respondents and counsel of record for the Attorney General by NYSCEF on or before the 14 day of March, 2022; and it is

FURTHER ORDERED that Respondents shall serve any papers in opposition to Petitioners' Motion to Strike Portions of the Expert Reports of Professor Jonathan N. Katz and Dr. Kristopher R. Tapp by NYSCEF no later than the 15 day of March, 2022; and it is

FURTHER ORDERED that Petitioners shall serve any reply papers in further support of their Motion to Strike Portions of the Expert Reports of Professor Jonathan N. Katz and Dr. Kristopher R. Tapp by NYSCEF no later than the \_\_\_\_ day of March, 2022.

signed March 14, 2022

Enter

  
Hon. Richard F. Whitaker  
Acting Supreme Court Justice



**AFFIRMATION OF BENNET J. MOSKOWITZ, ESQ., FOR PETITIONERS, IN SUPPORT  
OF ORDER TO SHOW CAUSE WHY PORTIONS OF THE EXPERT REPORTS OF PROF.  
JONATHAN N. KATZ AND DR. KRISTOPHER R. TAPP SHOULD NOT BE STRICKEN,  
DATED MARCH 13, 2022 [1261 - 1263]**

**FILED: STEUBEN COUNTY CLERK 03/13/2022 11:31 AM**

NYSCEF DOC. NO. 171

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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  
VOLANTE,

Index No. E2022-0116CV

**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.

-----X

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. 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.

3. Attached hereto as Exhibit A is a copy of the Affidavit (NYSCEF No.155) and Second Expert Report (NYSCEF No.156) submitted by Professor Jonathan N. Katz.

4. Attached hereto as Exhibit B is a copy of the Second Affidavit submitted by Dr. Kristopher R. Tapp (NYSCEF No.153).

5. Petitioners commenced this special proceeding: (1) challenging Respondents and the New York State Legislature's ("Legislature") failure to follow the exclusive process for redistricting embodied in Article III, Section 4 of the New York Constitution, (2) claiming that the only validly enacted map for Congress was the 2012 federal-court-adopted map that is now unconstitutionally malapportioned given subsequent population changes, and therefore invalid, (3) arguing that the Respondents' and the Legislature's 2022 congressional map is clearly gerrymandered to favor the Democratic Party and Democratic incumbents, contrary to Article III, Section 4 of the New York Constitution, and (4) seeking a declaratory judgment on all of those issues, all arising out of the 2022 redistricting process following the 2020 decennial census, as well as seeking other related relief, such as invalidating 2021 legislation, L.2021, c. 633, § 7150, as unconstitutional and suspending any other state laws necessary for the Court to provide effective and complete relief.

6. Petitioners request the court strike portions of the Expert Reports submitted by Professor Jonathan N. Katz and Dr. Kristopher R. Tapp.

**FILED: STEUBEN COUNTY CLERK 03/13/2022 11:31 AM**

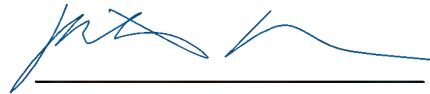
NYSCEF DOC. NO. 171

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

WHEREFORE, it is respectfully requested that the Court grant Petitioners' proposed Order to Show Cause, granting Petitioners Motion to Strike Portions of the Katz and Tapp Expert Reports.

Dated: New York, New York  
March 13, 2022



BENNET J. MOSKOWITZ

**EXHIBIT A TO MOSKOWITZ AFFIRMATION -  
AFFIDAVIT OF DR. JONATHAN N. KATZ, PH.D.,  
SWORN TO MARCH 9, 2022 [1264 - 1266]**

**FILED: STEUBEN COUNTY CLERK 03/10/2022 11:38 AM**

NYSCEF DOC. NO. 138

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022

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.

**AFFIDAVIT OF DR. JONATHAN N. KATZ, PH.D**

STATE OF CALIFORNIA       )  
  ) ss:  
COUNTY OF LOS ANGELES   )

Jonathan N. Katz, Ph.D., being sworn, deposes and says that:

1. I am over 18 years of age and am not a party to this case.
2. I have been retained by Cuti Hecker Wang LLP, counsel for Respondent Senate

Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins, and asked to  
analyze relevant information and provide my expert analysis.

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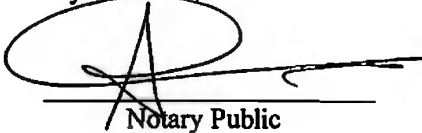
3. The expert report that I have prepared in connection with this matter is attached as Exhibit A hereto and incorporated by reference into this affidavit. I swear to the faithfulness of the opinions expressed in, and, to the best of my knowledge, the accuracy of the factual statements made therein.

4. Attached as Exhibit B hereto is a true and correct copy of my curriculum vitae.

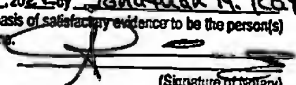
Dated: March 9, 2022

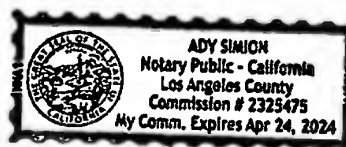
Jonathan N. Katz

Sworn to before me this 9  
day of March, 2022

  
Notary Public

"A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

STATE OF CALIFORNIA COUNTY OF Los Angeles  
Subscribed and sworn to (or affirmed) before me on this  
9 day of Mar, 2022 by Jonathan N. Katz  
proved to me on the basis of satisfactory evidence to be the person(s)  
who appeared before me.  
  
(Signature of Notary)



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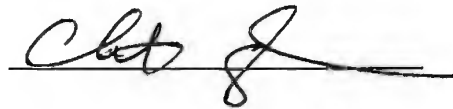
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CERTIFICATE OF CONFORMITY PURSUANT TO N.Y. C.P.L.R. § 2309(c)

I, Christina Cheung, do hereby certify and attest that I am an attorney duly admitted to practice law in the State of California.

I make this certification for the purposes of compliance with New York State Civil Practice Law & Rules Section 2309(c) with regard to the foregoing Affidavit of Jonathan N. Katz, to be filed in Supreme Court in Steuben County, State of New York.

Said Affidavit, acknowledged and sworn by Dr. Katz before a Notary Public in and for the State of California, and said Affidavit being therein sworn in the State of California, is and appears to be, based upon my review of said document and notarization thereof, in conformity with the laws of the State of California for the making of an affidavit and the notarization thereof.



Sworn and Subscribed before me this 9<sup>th</sup>  
day of March, 2022

  
Notary Public

My Commission Expires: 3.14.23

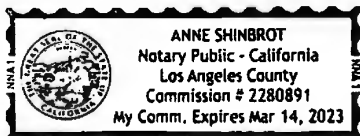


EXHIBIT A TO KATZ AFFIDAVIT -  
EXPERT REPORT OF DR. JOHNATHAN N. KATZ, PH.D.,  
DATED MARCH 9, 2020 [1267 - 1295]

**FILED: STEUBEN COUNTY CLERK 03/10/2022 11:38 AM**

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INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/10/2022

Expert Report for *Harkenrider et al. v. Hochul*

Jonathan N. Katz

March 9, 2022

I was asked by legal counsel in this case to examine the 2022 New York Senate and Congressional district plans. In particular, I was asked to examine the potential politically partisan impact of the newly enacted plans. In making my findings, I have applied standard statistical methods, which I regularly employ in my research and which have been published in peer-reviewed journals, to historical election returns and demographic data in New York.

A summary of my report and basic findings is as follows:

- Using historical election data, I find that the enacted 2022 Senate plan shows no statistically significant partisan bias in favor of either party.
- Using historical election data, I find that the enacted 2022 Congressional plan shows no statistically significant partisan bias in favor of either party.

In the next section of the report I review my qualifications. In Section 2, I discuss how to quantify and statistically estimate the partisan impact of electoral maps. Section 3 discusses the statistical model used to estimate partisan fairness. Section 4 provides an analysis of partisan bias for the enacted 2022 Senate map. Section 5 provides an analysis of partisan bias for the enacted 2022 Congressional map.

## 1 Qualifications

I am currently the Kay Sugahara Professor of Social Sciences and Statistics at the California Institute of Technology (Caltech). I previously served for seven years as the Chair of the Division of the Humanities and Social Sciences at Caltech (which is akin to being a dean at other universities). Further, I was also formerly on the faculty at the University of Chicago and a visiting professor at the University of Konstanz (Germany). A complete copy of my curriculum vitae is in Attachment 1 to this report.

I received my Bachelor of Science degree from the Massachusetts Institute of Technology and my Masters of Arts and Doctor of Philosophy degrees, both in political science, from the University of California, San Diego. I did post-doctoral work at Harvard University and the Harvard-MIT Data Center. I am an elected fellow of both the American Academy of Arts and Sciences and an inaugural fellow of the Society for Political Methodology. I am a former fellow of the Center for Advanced Study in the Behavioral Sciences.

I have written numerous articles published in the leading journals as set forth in my curriculum vitae. I am currently a Deputy Editor for Social Sciences of *Science Advances*, the open access journal of the American Association for the Advancement of Science. I previously served as co-editor of *Political Analysis*, the journal of the Society for Political Methodology, and I was a co-founding editor of the Political Science network (a collection of on-line journals). I have also previously served on the editorial boards of *Electoral Studies*, *Political Research Quarterly* and the



*American Journal of Political Science*. I have frequently served as a referee of manuscripts for most of the major journals in my fields of research and the National Science Foundation.

I have done extensive research on American elections and on statistical methods for analyzing social science data. I am a member of the Caltech/MIT Voting Technology Project, serving as the co-director of the project from October 1, 2005 to September 30, 2010.

Over the past two decades, I have been involved in numerous elections cases for both Democratic and Republican clients involving the federal Voting Rights Act, partisan gerrymandering, the evaluation of voting systems, or the statistical evaluation of electoral data. I have testified or consulted in court cases in both state and Federal courts in the states of Arizona, California, Florida, Georgia, Indiana, Illinois, Maryland, Michigan, Missouri, New Hampshire, New Mexico, Nevada, North Carolina, Ohio, Oregon, Oklahoma, Texas, Virginia, and Washington. In particular, I was an expert for the plaintiffs in the Florida litigation regarding its 2012 Congressional map and for the defendants in the Oregon litigation regarding its 2021 Congressional map, both of which focused on questions of partisan fairness of enacted legislative maps. I used the same methods as in this case.

My rate for expert witness work in this case is \$600.00 per hour.

## 2 Measuring Partisan Impact of Redistricting Plans

A central concern about any redistricting plan is how it affects the translation of votes into seats. In particular, we would like to know whether a particular electoral map (or other feature of the electoral system) is politically fair. The concept of political fairness has been extensively studied in the political science literature. The most commonly accepted standard for fairness of voting in a legislature is statewide partisan symmetry (see Katz, King, and Rosenblatt 2020 and see Grofman and King 2007 for a historical review). The symmetry standard requires that parties with the same level of voter support be treated equally by the electoral system. In more concrete terms, the symmetry standard requires that each party should receive the same fraction of legislative seats for the same percentage of the vote.

This definition of political fairness can be straight-forwardly implemented and measured with electoral data using the idea of a seats-votes curve, which first appeared in the academic literature more than half of a century ago (see Kendall and Stuart 1950). A seats-votes curve is a simple mapping, stating for a given party's vote share what fraction of the seats they will receive.

Partisan symmetry requires that the seats-votes curves be the same for all political parties contesting an election. For example, if one party is able to translate 55% of the vote into 65% of the seats, then it would be symmetric (or fair) for the other party, if it were to receive 55% of the vote, to also receive 65% of the seats.

Political scientists define *partisan bias* as the deviation from partisan symmetry.<sup>1</sup> For example,

<sup>1</sup>For early estimates of partisan bias in electoral systems see Tufte (1973) and Grofman (1983). For a review of

if the Republicans receive 5% more seats than is fair under a redistricting plan, than the plan has a bias of -5 percentage points. If the bias were reversed, so that the Democrats received 5% more seats than was fair, the partisan bias in the plan would be 5 percentage points.<sup>2</sup>

## 2.1 Distinguishing Symmetry (Partisan Fairness) from Proportionality

It is important to note that the concept of partisan symmetry as a definition of fairness does not appeal to any notion of proportionality. Proportional representation requires that a party's share of the seats should be roughly equal to their share of the vote in the election. Nor does partisan symmetry require that the two parties equally split the available number of seats. Because most electoral systems in the United States are single-member districts that are winner-take-all, in practice they normally give a "bonus" of varying sizes (above proportionality) in seats to the party that wins a majority of the votes across a state. In general, if a given party's average vote share is well above 50%, then it is likely that they will win well more than 50% of the seats. This is just a mechanical, or automatic, feature of single-member district electoral systems (see, for example, Powell and Vanberg 2000).

It is possible in a state where one party is getting well over half the votes, say 65% or 70%, that they win all the seats. This would happen, for example, if every district perfectly mirrored the partisan composition of the state. Because the partisan makeup of a state is rarely if ever evenly distributed, even a dominant political party typically is unlikely to sweep 100% of the seats. But it is a popular misconception that a party with 65% of the statewide vote is likely to win 65% of the seats. Because of the winner-take-all nature of the single member district system, a party with 65% of the statewide vote would be expected to win far more than 65% of the seats, though typically less than 100% of the seats.

On the other hand, a purely proportional system is one in which a one percent increase in the votes for a party leads to a one percent increase in seats for that party. In the United States, a one percent increase in votes for a party normally leads to a two to three percent increase in seats. Under the symmetry standard, there is nothing necessarily unfair about one party winning a greater proportion of seats than the other (see King and Browning 1987:1254–1259).

Partisan symmetry only requires that the electoral playing field be level for both parties. For example, it is not necessarily unfair for the Democrats to win 80% of the seats with 65% of the statewide vote, as long as the same opportunity is available to the Republicans. This notion of fairness is highly consistent with the American system of democratic representation.

A second criterion for evaluating a redistricting plan that comes from a seats-votes curve is *responsiveness*. Responsiveness measures how much an increase in a party's average district

the literature, see King and Browning (1987) and Grofman and King (2007) and for an application using the concept in Congressional elections, see Cox and Katz (1999).

<sup>2</sup>The sign of partisan bias is only a convention. A plan becomes more fair as its bias gets closer to zero.

vote share increases its seat share.<sup>3</sup> For example, a responsiveness of say 2.6 means that a 1% increase in average vote share causes the party's expected seat share to rise by 2.6%. Unlike partisan symmetry, there is not an obviously "fair" or optimal amount of responsiveness for a redistricting plan. The larger the responsiveness of a given plan, the more sensitive the seat allocation is to changes in citizens' voting behavior. However, extreme amounts of responsiveness might be undesirable because it could lead to political instability, with very frequent changes in representatives for districts. It is the case, however, that smaller values of responsiveness typically correspond to redistricting plans designed to protect current incumbent legislators.<sup>4</sup>

## 2.2 Measuring Partisan Symmetry

Below I will discuss how to directly estimate partisan bias, responsiveness, as well as the entire seats-votes curve for a proposed redistricting map. It is somewhat involved and requires predicting counter-factual election results.

However, recently there have been several new measures of partisan symmetry proposed in the academic literature, such as the efficiency gap (Stephanopoulos and McGhee 2015), the mean-median test (Wang 2016), and declination (Warrington 2018). These newer measures are claimed to be simpler and more intuitive measures of partisan fairness. Unfortunately, while some of them measure some aspects of the seats-votes curve, Katz, King, and Rosenblatt (2020) show mathematically that none of them are accurate or complete measures of partisan symmetry. Therefore, they are not reliable measures of the partisan fairness of a proposed electoral map. Nonetheless, for the completeness of my analysis, in the sections below I calculate the efficiency gap for the enacted congressional and Senate maps.

## 2.3 Example of Redistricting Plans that Have Partisan Bias

In order to see how a redistricting plan can both produce partisan bias and affect responsiveness, consider a simple example of drawing a plan for a state with 1000 voters who need to be allocated to 10 equal size districts. A voter can be a supporter of either the Democratic or Republican Party — i.e., they are more likely to vote for a candidate of their preferred party. We will assume that the number of supporters statewide are equal at 500 for both parties. In order to make the drawing of different plans easy, we will assume that we can group the voters into districts according to their political preference. Table 1 gives four possible plans that have very different consequences for both partisan bias and responsiveness.

<sup>3</sup>A bit more formally it is the derivative of the seats-votes curve.

<sup>4</sup>This happens because the best way to protect current incumbents is to pack likely Democratic voters into districts held by Democratic incumbents and pack likely Republican voters into Republican held districts. This means it would take a very large swing in votes toward one of the parties in a future election to dramatically alter the seat distribution between the parties. See Cox and Katz (2002) for a complete argument.

Table 1: Example of Redistricting Impact on Partisan Bias and Responsiveness

Plan	Description	Partisan Bias	Responsiveness
1	10 Districts with 50 Democrats and 50 Republicans	None	Very High
2	5 Districts with 75 Democrats and 25 Republicans and 5 Districts with 25 Democrats and 75 Republicans	None	Low
3	8 Districts with 40 Democrats and 60 Republicans and 2 Districts with 90 Democrats and 10 Republicans	Large Republican	Moderate
4	8 Districts with 60 Democrats and 40 Republicans and 2 Districts with 10 Democrats and 90 Republicans	Large Democratic	Moderate

Plan 1 creates 10 identical districts with 50 Democrats and 50 Republicans each. That is, each of the districts is a microcosm of the political divisions within the state. In terms of partisan symmetry, clearly this plan is fair since neither party is advantaged by how the districts are drawn. If there were a swing toward the Democrats in an election held under this plan — perhaps because there was a popular Democratic presidential candidate also running on the ballot, causing some Republican voters to vote for Democratic House candidates — they would likely win every district. Similarly, if there were a swing toward the Republican Party, the Republicans would likely win all the seats. For this reason, this plan has maximal responsiveness. It is as close to a winner-take-all election as is possible for a district-based system. A very small change in average district votes would lead to large changes in seat allocation. In fact, this plan highlights the recipe to maximize responsiveness of a plan: make as many of the districts highly competitive with expected vote shares near 50% as possible.

Plan 2 consists of 5 districts with 75 Democrats and 25 Republicans and five districts that are the mirror image of the first set with 75 Republicans and 25 Democrats. Plan 2 looks a good deal different from Plan 1, but it is also fair to the two parties, producing zero partisan bias. Unless vote swings are very large in either direction, we would expect the Democrats to win the first five districts and the Republicans to win the second five. That is, for most average district votes, each party gets about five seats, so the plan is symmetric. However, it is this stability that causes the responsiveness of this plan to be very low. Large numbers of voters would have to vote differently in order to change the election outcomes in any of the districts. This plan can be thought of as a stylized incumbent protecting plan: the first set of districts is designed to make the Democrat incumbents in them likely to win re-election and the second set are the Republican counterparts.

Plan 3 and 4 are actually the same plan, but with the roles of the two parties reversed. They were constructed using the standard recipe to maximize partisan bias in favor of one of the parties: Party A packs as many of the other Party B's supporters in as few districts as possible (creating inefficiently safe districts), while Party A spreads its own supporters across as many districts as

possible (creating winnable but not inefficiently safe districts). Plan 3 is a Republican gerrymander whereas Plan 4 is a Democratic one.

Consider Plan 3 with 8 districts that have 60 Republicans and 40 Democrats each and the two remaining districts have 90 Democrats and only 10 Republicans each. Clearly, except under the most unusual of circumstances, the Democratic candidates would likely win the last two districts. However, unless there were very large vote swings towards them, it is unlikely the Democrats would win many of the other eight districts. This is not the case for the Republicans. While they will never win the last two highly Democratic districts, they are likely to always win a significant number of the other eight. Thus, the map treats the two parties differently and will therefore display partisan bias. Responsiveness for these plans, however, would likely fall somewhere between the high levels seen in Plan 1 and the low levels in Plan 2. The last two districts display very little responsiveness, but the other eight districts, while not as competitive as the Plan 1 districts, are more competitive than the ones in Plan 2.

In order to actually calculate numerical estimates of partisan bias and responsiveness, we would need more information than is provided in Table 1. We would need to know the expected vote share in each of the districts (which is clearly strongly correlated to the number of partisans in the districts in our example), as well as the amount of variability we would expect to see around this mean in a given election. Given these two quantities, we could calculate the probability that a party will win each seat and therefore the seats-votes curve.

### 3 Method for Estimating Partisan Bias and Responsiveness of Plans

The methodology I will use to estimate the partisan bias and responsiveness of the 2022 enacted New York Senate and Congressional plans was originally developed by Andrew Gelman and Gary King and published in a leading peer-reviewed scholarly journal (Gelman and King 1994).<sup>5</sup> The procedure is based on regression analysis — the most widely used statistical method in the social sciences. The details of the statistical procedure can be found in Gelman and King's original article. The procedure consists of two parts.

First, using historical elections results, we generate a statistical forecasting model from a regression of New York Senate or Congressional Democratic district vote share (the independent variable) on the following set of predictors: the average vote share that the Democrats received in statewide races in the district, an incumbency indicator<sup>6</sup>, and the fraction of the district that is Black, Asian, and Hispanic/Latino. That is, the forecasting model tells us our best estimate (or prediction) for the expected Democratic Senate or Congressional vote in a district with a given set

<sup>5</sup>Their procedure has been actively studied and extended since its original publication. See, for example, Katz and King (1999) which extends the basic model to the case of more than two parties and Katz, King, and Rosenblatt (2020) that validates the use of "uniform partisan swing" that is used to estimate, for example, future election results.

<sup>6</sup>This allows the outcomes to vary if there is Democratic, Republican, or no incumbent running in the election in the district.

of the predictors — e.g., Average statewide vote of 58%, without an incumbent running, in a district that has no Blacks, Asians, or Hispanics. We also get an estimate of how variable elections are over time.<sup>7</sup>

The average vote share that the Democrats received in statewide races is used purely as a measure of the partisan composition of the district, thus when the election happened is not particularly important. The regression on the historical election will calibrate how this is translated into a forecast of votes in the New York Senate or Congressional elections. That is, we do not want to assume that a one point increase in this statewide average corresponds to exactly a one point increase in Congressional vote share. Also, this fails to account for the variability that occurs between elections that is also captured by the regression model. Similarly, an incumbency indicator is included because we know that incumbents tend to do better than non-incumbents. Therefore, we want to control for this in making our prediction. The demographics are used as predictors just to further aide in predicting Congressional district vote.

In order to make the statistical model more robust, we jointly estimate the New York Senate and Congressional elections, as well as those for the New York Assembly. This partial pooling allows us to improve the precision of our estimates and is a common technique in statistics.<sup>8</sup> It is also, for example, the strategy that the non-partisan PlanScore.org uses to analyze proposed redistricting plans.<sup>9</sup>

Now that we have the forecasting model, we can evaluate a particular redistricting map. A plan is just a set of hypothetical districts with new values of these observable predictors, much like the examples in Table 1. For each plan, we can calculate the expected vote shares and variability for the districts in the plan. We can, therefore, calculate the probability a seat would be won by the Democratic candidate or determine what would happen as the vote share for the Democratic candidate increased on average in every district. This allows us to trace out the seats-votes curve using the stochastic uniform swing assumption and hence estimate both partisan bias and responsiveness (see Gelman and King 1994).

Since our forecasting model is a statistical approximation, it has inherent uncertainty captured by associated standard errors — for example, the expected Democratic vote share in a particular district may be 45%, plus or minus 3%. This estimation uncertainty will filter through to our estimates of partisan bias and responsiveness. However, we will be able to use standard statistical procedures to test if estimates are different from some value after we control for this estimation uncertainty.

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<sup>7</sup>The full model also controls from systematic unobserved characteristics.

<sup>8</sup>For a text book treatment of partial pooling, also called hierarchical modeling, see Gelman and Hill (2007).

<sup>9</sup>See a discussion of their methodology at: <https://planscore.campaignlegal.org/models/data/2021B/>

#### 4 Partisan Impact of 2022 New York Senate map

Recall from Section 2 that a plan is fair if it treats the two parties symmetrically in terms of translating votes into seats. A plan is biased if it deviates from this partisan symmetry. If Democrats and Republicans (say in different election years) receive the same average vote share statewide, but the Republican win 5% more of the seats in their election, then the plan is biased towards the Republicans. For convenience in presenting results, I will use positive numbers for pro-Democratic biases and negative numbers for pro-Republican biases.

Table 2: Estimated District Results for enacted 2022 New York Senate Plan

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
1	49.8	8.4	49.2
2	44.0	8.7	24.0
3	56.4	8.7	76.8
4	42.0	8.6	17.4
5	54.1	8.7	68.2
6	55.8	8.8	74.6
7	57.2	8.8	79.4
8	54.1	8.7	68.8
9	54.4	8.4	70.1
10	72.0	8.7	99.4
11	67.5	8.9	97.0
12	73.1	8.9	99.6
13	79.0	8.7	100
14	79.9	8.8	100
15	61.9	8.5	92.2
16	65.3	8.8	96.0
17	71.8	8.6	99.5
18	78.4	8.8	100
19	74.8	8.9	99.8
20	77.5	8.7	99.9
21	77.9	8.9	99.9
22	66.4	8.7	97.4
23	65.9	8.6	96.7

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Table 2 – Continued from previous page

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
24	40.9	8.7	14.3
25	78.5	8.7	100
26	43.3	8.8	22.5
27	69.0	8.8	98.4
28	68.8	8.9	98.6
29	75.1	8.6	99.8
30	74.4	8.8	99.7
31	83.3	8.7	100
32	79.6	8.7	99.9
33	79.4	8.8	100
34	83.3	8.8	100
35	83.1	8.7	100
36	69.0	8.8	98.2
37	65.4	8.7	96.0
38	80.2	8.7	100
39	59.9	8.9	86.4
40	54.2	8.7	68.6
41	53.4	8.6	64.8
42	53.5	8.8	65.1
43	46.0	8.6	31.9
44	43.3	8.7	20.8
45	55.2	8.7	72.3
46	50.4	8.5	52.3
47	41.8	8.6	17.3
48	49.4	8.8	47.1
49	38.7	8.6	9.6
50	40.3	8.8	13.1
51	39.6	8.6	11.0
52	50.2	8.6	51.3
53	51.2	8.6	55.6
54	39.6	8.7	11.6
55	51.5	8.7	58.1

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Table 2 – Continued from previous page

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
56	54.6	8.5	70.5
57	55.3	8.6	73.1
58	36.3	8.7	5.4
59	37.8	8.6	7.7
60	52.8	8.7	62.2
61	43.0	8.6	20.8
62	39.2	8.7	11.0
63	60.7	8.7	88.6

Using the forecasting model described above, we can begin our analysis of the enacted 2022 New York Senate map. The first output of this analysis is predicted (or expected) Democratic vote share and the probability that a Democratic candidate wins each district. These can be seen in Table 2. As with all the subsequent analysis, I assume that no incumbents (of either party) contest a particular election. This is because in future elections held using the Senate map, we do not know which incumbents will run in each district. Further, the map partially determines which incumbents will run in future elections in each district.<sup>10</sup> For example, a newly drawn district that is highly favorable to the Republicans is likely to have Republican incumbents in future elections.

The first column of the table identifies the Senate district. The second column of the table tells us the expected vote share of the Democratic candidate in the district. The best way to think about this expected value is to consider observing many elections run with this map. If we averaged across all these hypothetical elections, say in district 3, then the average Democratic vote share would be 56.4% (or an average of 43.6% for the Republicans). Of course, there is wide variability in election outcomes from year to year, and the third column gives us a measure of this variability, the standard deviation of the expected vote. That is, in our large set of hypothetical elections, the result would vary from year to year, but about 95% of the time the Democratic vote share in district 3 should fall between 38.7% and 72.7%. This is because the 95% confidence interval for the expected vote is the estimate plus or minus twice its standard deviation. In this example, the upper bound is  $56.4 + 2 \times 8.7 = 73.8$  and the lower bound is  $56.4 - 2 \times 8.7 = 39.0$ . The fourth column summarizes the first two by giving us the probability that the Democrat wins the district. In district 3, we see that the Democrat should win the election with a probability around 77% (or the Republican wins with probability 23%). This means over our large set of hypothetical elections in

<sup>10</sup>Technically, incumbency is an endogenous consequence of the electoral map implemented.

district 3, the Democrats would win about 77% percent of the time. To be concrete, if we observed 100 elections in this map, we should expect to see the Democrats win about 77 times.

Given the district results presented in Table 2, we can vary the election results to trace out the seats-votes curve via uniform swing. Suppose, for example, the observed election saw the Democrats win on average 63% of the Senate vote, then we could add 1% to each district to see which seats the Democrats would win had they had an average vote share of 64%. Similarly, we could add 2% to see what would have happened if they had won 65% of the vote and so forth. Similarly, we can subtract from each district to see what happens at lower average vote shares.

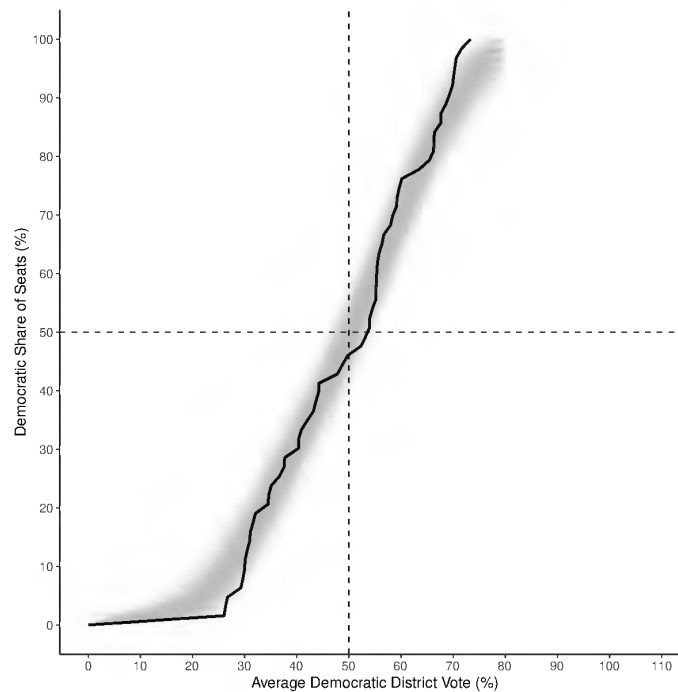


Figure 1: *Estimated Seats-Votes Curve for the 2022 Enacted New York Senate Map. The dark curve is based on the median district vote forecasts. The light gray curves are based on 500 draws of possible observed district vote shares from the model to represent statistical uncertainty.*

The full estimated seats-votes curve is presented in Figure 1. The dark line represents the curve estimated from the median estimated vote shares given in Table 2, column 2. This is our best estimate. The light gray lines are other draws that are consistent with the statistical forecasting model to give a sense of the variability in the estimated seats-votes curve. The curve looks relatively symmetric, including when we account for uncertainty.

Once we have traced out the seats-votes curve for the New York Senate map, we can directly calculate the partisan bias and responsiveness of the plan to statistically test for partisan fairness.

Figure 2 presents the estimates of the partisan bias of the enacted plan. Bias was estimated for five regions of vote shares: [49%, 51%], [51%, 55%], [55%, 60%], [61%, 65%], and [65%, 70%]. Recall that partisan bias compares the seat shares of the two parties for the same vote share. Thus, we need to specify the vote shares to estimate partisan bias at a given vote share on the seats-votes curve. To improve the statistical precision (i.e. make the confidence intervals smaller), we will average a range of possible vote shares. The regions were chosen to include plausible values for Democratic vote share that we may see in future elections. For example, in statewide elections over the last decade in New York, Democrats have averaged well over 60% of the vote.

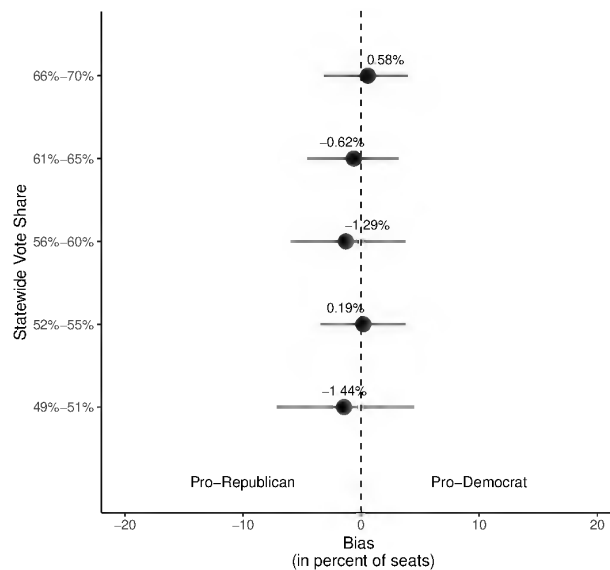


Figure 2: *Estimated Partisan Bias of the 2022 Enacted New York Senate Map. Positive values are pro-Democratic bias and negative values are pro-Republican bias.*

The center dot in the figure gives the point estimate of the partisan bias. The numerical estimate of the bias is denoted above the dot. As we can see for vote shares between 49% to 51%, as well as from 56% to 60%, and 61% to 65%, the point estimates of partisan bias are pro-Republican, but relatively small in magnitude. In the other ranges, the bias estimates are pro-Democratic, but also relatively small.

Given that these are statistical estimates, there is some inherent uncertainty in the estimates. This is captured in Figure 2 by the gray lines through each estimate. Technically, these lines constitute the “95% confidence interval” for the estimates. Given that these confidence intervals all cross the dotted line marking zero bias, we can say that the Senate plan shows no statistically

significant partisan bias in favor of either party.<sup>11</sup>

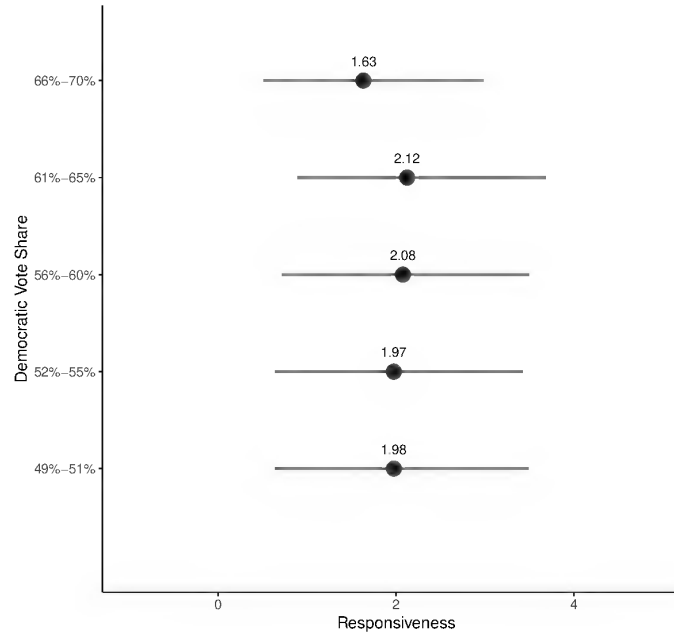


Figure 3: *Estimated Responsiveness of the 2022 Enacted Senate Map*

Figure 3 presents the estimates of the responsiveness of the 2022 enacted New York Senate map. As with the previous figure, the dots represent our best estimate of responsiveness and the gray lines give the “95% confidence interval.” The estimated responsiveness across all regions are similar at around 2. In other words, this means that if the average vote share to a party increased by 1 percentage point, then we would see their seat share increase by about 2 percentage points. These values are not out of the ordinary for district based electoral systems.<sup>12</sup>

Overall, the Democrats are expected to win 43.1 of the 63 seats, or about 69% of them, assuming there were no incumbents running, in the new map. Again since this is a statistical estimate the 95% confidence interval is from a low of 37 seats to a high of 49. This estimate, as discussed before, should be thought of as a long term average over many elections conducted with the map.

As mentioned above, Katz, King, and Rosenblatt (2020) show mathematically that partisan bias is the only complete and accurate measure of partisan fairness of an electoral map. However, there are two other commonly used measures of partisan fairness used in litigation, the mean-median test (Wang 2016) and the efficiency gap (Stephanopoulos and McGhee 2015). The mean-median test, as noted by Wang (2016), is not appropriate in a state like New York where a single party is

<sup>11</sup>Formally, we can not reject the null hypothesis that the bias is zero at conventional significance levels.

<sup>12</sup>See Kendall and Stuart (1950).

dominant and statewide vote shares are far from 50%.

For completeness of my analysis, I will calculate the efficiency gap, even though it is not a reliable measure of partisan fairness. We can plug in our point estimates of the forecasted district votes found in Table 2 as our estimate of how votes should be distributed in the new Senate map. This results in an efficiency gap of -0.5%.<sup>13</sup> Thus, we see that the efficiency gap is small in magnitude and shows that the Republicans are slightly more efficient at converting their votes into seats in the enacted New York Senate map.

#### 4.1 Partisan Symmetry Analysis under Alternative Assumption about Incumbents

Table 3: Estimated District Results for enacted 2022 New York Senate Plan with incumbents

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
1	46.5	8.5	33.9
2	40.9	8.6	14.6
3	56.4	8.6	77.3
4	42.2	8.6	18.2
5	57.3	8.6	80.3
6	58.8	8.7	84.6
7	60.5	8.5	89.6
8	57.0	8.7	78.9
9	54.3	8.6	68.8
10	75.2	8.8	99.8
11	70.5	9.1	98.8
12	76.3	8.6	99.8
13	82.2	8.8	100
14	82.9	8.9	100
15	64.8	8.8	95.4
16	68.6	8.7	98.5
17	71.6	8.8	99.4
18	81.3	8.6	100
19	77.8	8.9	99.9
20	80.4	8.9	100

*Continued on next page*

<sup>13</sup>Given that efficiency gap was not developed as part of a complete statistical model, there is no way to estimate its statistical uncertainty. This is yet another reason why it is not a reliable estimate of partisan fairness.

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Table 3 – Continued from previous page

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
21	80.8	8.9	100
22	69.4	8.8	98.4
23	66.0	8.8	96.7
24	38.0	8.8	8.8
25	81.7	8.7	100
26	46.2	8.7	33.3
27	69.3	8.8	98.3
28	71.6	8.9	99.4
29	78.1	8.8	99.9
30	77.4	8.8	99.9
31	86.5	8.6	100
32	82.8	8.7	100
33	82.7	8.8	100
34	86.2	8.7	100
35	86.2	8.8	100
36	69.0	8.6	98.4
37	68.4	8.6	98.8
38	83.3	9.0	100
39	63.0	8.3	93.9
40	57.1	8.7	79.7
41	56.5	8.7	77.8
42	56.4	8.5	77.4
43	42.8	8.6	21
44	40.2	8.5	12.7
45	58.4	8.5	83.8
46	53.6	8.6	65.2
47	38.6	8.7	9.7
48	52.8	8.5	62.8
49	35.7	8.7	4.7
50	40.5	8.7	13.9
51	36.7	8.6	6.1
52	53.4	8.5	66.2

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Table 3 – Continued from previous page

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
53	51.2	8.7	56.1
54	36.3	8.6	5.9
55	54.7	8.6	70.5
56	57.1	8.7	79.6
57	58.1	8.6	83.2
58	33.2	8.7	2.5
59	34.8	8.7	4.4
60	56.2	8.5	76.5
61	40.0	8.8	13.4
62	36.2	8.6	5.3
63	60.5	8.7	88.9

As I previously noted, political scientists typically estimate the seats-votes curves of a redistricting plan assuming that no incumbents run. Of course, we know incumbents will likely run in future elections, it is just that these decisions to run or not by a particular incumbent are partially caused by the district map, and they will vary over time. However, as a robustness check, I re-ran the analysis assuming all incumbents are running in their successor districts except for those who have already announced, as of the date of this report, that they will not seek re-election.<sup>14</sup> This corresponds to Republican incumbents in districts 1, 2, 24, 43, 44, 46, 47, 49, 51, 54, 58, 59, 61, and 62; open seats in districts 3, 4, 9, 17, 23, 27, 36, 50, 53, and 63; and Democratic incumbents in all other districts.

<sup>14</sup>This scenario was provided to me by Counsel in this case.

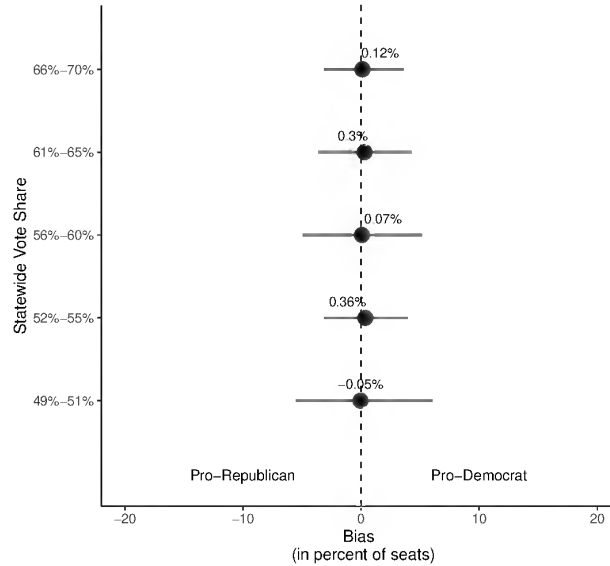


Figure 4: *Estimated Partisan Bias of the Enacted New York Senate Map with Incumbents. Positive values are pro-Democratic bias and negative values are pro-Republican bias.*

The analysis proceeds directly as above's analysis without incumbent. The district estimates are presented in Table 3. The results are qualitatively similar to the scenario without any incumbents running, because the estimated impact of an incumbent is about 3 percentage points (with a 95% confidence interval of 2.85 to 3.25). That is, a Democratic incumbent on the ballot increases the vote share by about 3 percentage points.



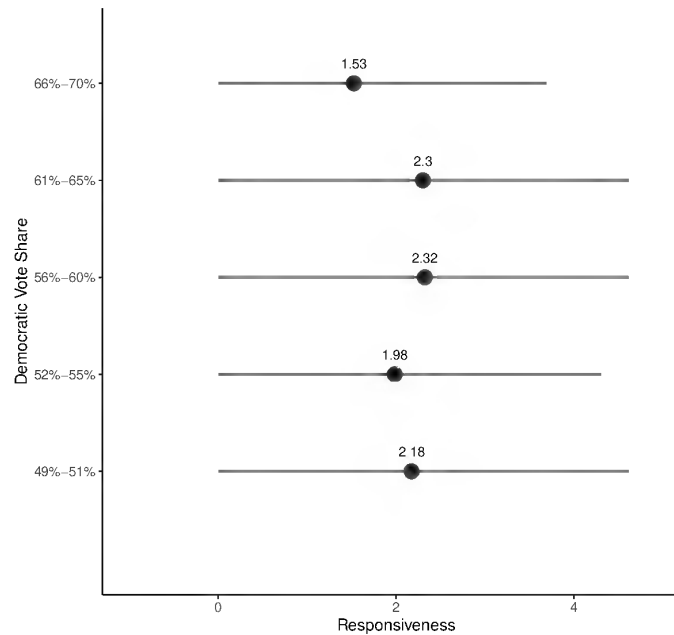


Figure 5: *Estimated Responsiveness of the Enacted New York Senate Map with Incumbents*

And once again we can calculate partisan bias for the map assuming this set of incumbents run. These results are presented in Figure 4. The results are qualitatively similar to the case without incumbents running. However, the point estimates do differ, but not in a statistically significant manner. We see again that in some regions there is a small bias in favor of Republicans and in others a small bias in favor of Democrats. More importantly, all the confidence intervals cross zero. Therefore, we can say that the Senate plan shows no statistically significant partisan bias in favor of either party with this given configuration of incumbents assumed to be running.<sup>15</sup>

The responsiveness estimates are presented in Figure 5. As with the bias estimates, the estimates do not qualitatively differ from the scenario without any incumbents running.

Again we can plug in the district vote estimates in the Senate map under this configuration of incumbents from Table 3 to calculate the efficiency gap. This results in an efficiency gap of -1.3%. This is a small, pro-Republican advantage in vote efficiency.

Overall, the Democrats are expected to win 44.3 of the 63 seats, or about 70% of them, assuming this particular configuration of incumbents running. Again since this is a statistical estimate the 95% confidence interval is from a low of 39 seats to a high of 49. This estimate, as discussed before, should be thought of as a long term average over many elections conducted with the map with this particular configuration of incumbents running.

<sup>15</sup>Formally, we can not reject the null hypothesis that the bias is zero at conventional significance levels.

## 5 Partisan Impact of 2022 Congressional map

The analysis of the partisan fairness of the 2022 enacted Congressional map proceeds in exactly the same manner as my analysis of the 2022 enacted Senate map presented above.

Table 4: Estimated District Results for enacted 2022 Congressional Plan

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
1	54.9	8.5	72.2
2	45.1	8.7	28.2
3	56.4	8.7	76.2
4	55.8	8.6	74.5
5	76.0	8.7	99.8
6	67.7	9.0	97.6
7	77.3	8.8	99.9
8	72.6	8.8	99.5
9	72.9	8.4	99.8
10	72.0	8.7	99.5
11	58.0	8.6	82.0
12	72.5	9.0	99.5
13	82.5	8.6	100
14	75.5	8.8	100
15	82.4	8.7	100
16	65.0	8.6	96.0
17	55.6	8.6	74.4
18	51.1	8.8	55.2
19	49.0	8.8	45.6
20	51.3	8.6	55.6
21	39.8	8.8	12.4
22	51.9	8.7	58.1
23	39.1	8.7	10.5
24	38.8	8.7	9.8
25	53.3	8.6	65.2
26	55.6	8.7	73.7

Using the same forecasting model described above, we can begin our analysis of the enacted

2022 New York Congressional map. The first output of this analysis is a summary of each district with its expected Democratic vote share, expected variability in the Democratic vote share over time, and the estimated probability that a Democratic candidate wins the district. These can be seen in Table 4. As with all the previous Senate analysis, I assume that no incumbents (of either party) contest a particular election.

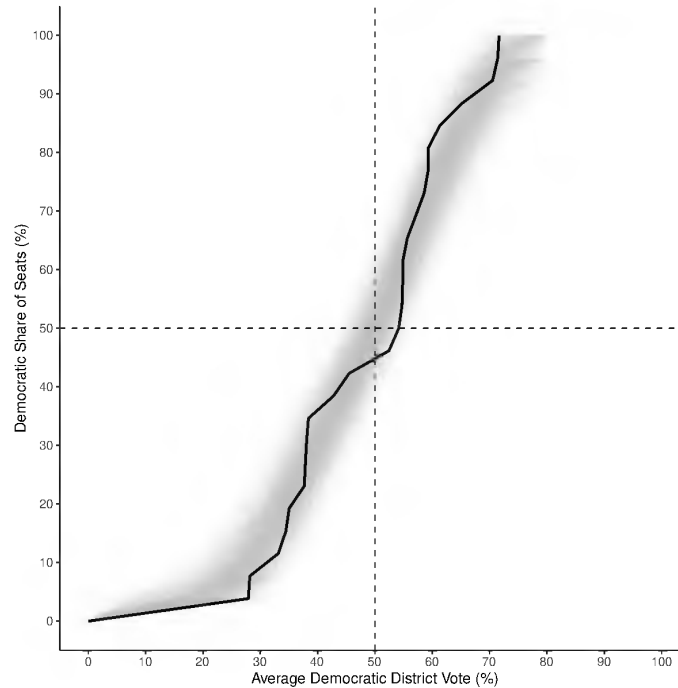


Figure 6: *Estimated Seats-Votes Curve for the Enacted Congressional Map. The dark curve is based on the median district vote forecasts. The light gray curves are based on 500 draws of possible observed district vote shares from the model to represent statistical uncertainty.*

Given the district results presented in Table 4, we can vary the election results to trace out the seats-votes curve via uniform swing to estimate the seats-votes curve. The full estimated seats-votes curve for the Congressional map is presented in Figure 6. The curve looks relatively symmetric, including when we account for uncertainty.

Once we have traced out the seats-votes curve for the Congressional map, we can directly calculate the partisan bias and responsiveness of the plan to statistically test for partisan fairness. Figure 7 presents the estimates of the partisan bias of the enacted Congressional plan over several regions of possible vote shares.

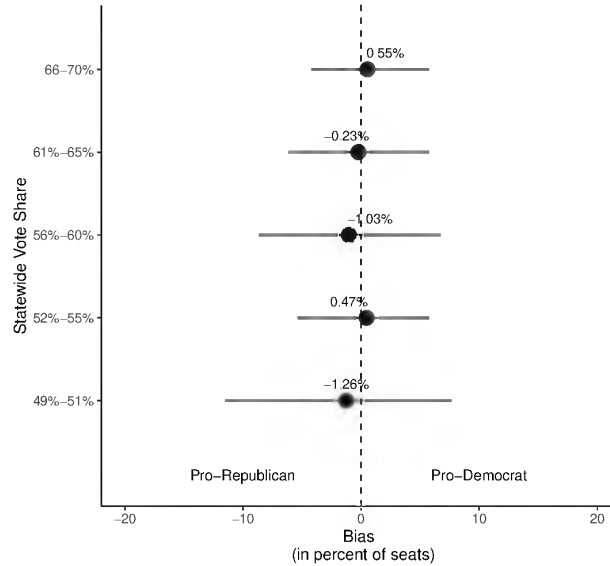


Figure 7: *Estimated Partisan Bias of the Enacted Congressional Map. Positive values are pro-Democratic bias and negative values are pro-Republican bias.*

As before, the center dot in the figure gives the point estimate of the partisan bias. The numerical estimate of the bias is denoted above the dot. As we can see for vote shares between 49% to 51%, as well as from 56% to 60%, and 61% to 65%, the point estimates of partisan bias are pro-Republican, but relatively small in magnitude. In the other ranges, the bias estimates are pro-Democratic, but also relatively small. Given that these confidence lines for all of these estimates all cross the dotted line marking zero bias, we can say that the Congressional plan shows no statistically significant partisan bias in favor of either party.<sup>16</sup>

<sup>16</sup>Formally, we can not reject the null hypothesis that the bias is zero at conventional significance levels.

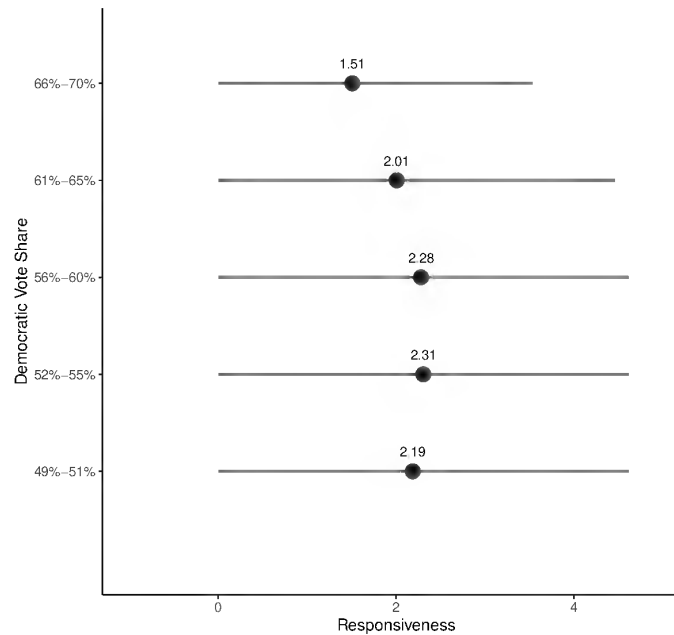


Figure 8: *Estimated Responsiveness of the Enacted Congressional Map*

Figure 8 presents the estimates of the responsiveness of the 2022 enacted Congressional map. As with the previous figure, the dots represent our best estimate of responsiveness and the gray lines give the “95% confidence interval.” The estimated responsiveness across all regions are similar at around 2.

Overall, the Democrats are expected to win 18.7 of the 26 Congressional seats, or about 72% of them, assuming there were no incumbents running. Again since this is a statistical estimate the 95% confidence interval is from a low of 15 seats to a high of 22. This estimate, as discussed before, should be thought of as a long term average over many elections conducted with the map.

As before we can plug in the district vote share estimates in Table 4 to calculate the efficiency gap of the Congressional map, even though this is not a reliable estimate of partisan fairness. This results in an efficiency gap of -1.3%. Thus, the Republicans’ distribution of votes is slightly more efficient than the Democrats’.

## 5.1 Partisan Symmetry Analysis under Alternative Assumption about Incumbents

Table 5: Estimated District Results for enacted 2022 Congressional Plan with incumbents

District	Predicted Democratic Vote (%)	Vote Standard Deviation	Prob. Democrat Wins (%)
1	54.9	8.8	70.8
2	42.1	8.6	17.6
3	56.2	8.7	76.6
4	55.9	8.7	75.6
5	79.3	8.8	100
6	70.6	8.8	98.9
7	80.8	8.5	99.9
8	75.3	8.6	99.9
9	75.7	8.7	99.7
10	75.1	8.7	99.8
11	54.9	8.9	70.8
12	75.6	8.8	99.8
13	85.5	8.9	100
14	78.4	8.6	100
15	85.1	8.7	100
16	68.1	8.7	98.4
17	58.5	8.7	83.9
18	54.0	8.8	68
19	52.3	8.8	60.4
20	54.1	8.5	68.2
21	36.9	8.7	6.7
22	51.9	8.7	58.7
23	36.0	8.6	5.0
24	36.1	8.6	5.5
25	56.4	8.6	77.0
26	58.5	8.6	84.4

As I previously noted in the analysis of the Senate map, political scientists typically estimate the seats-votes curves of a redistricting plan assuming that no incumbents run. As a robustness check, I re-ran the analysis assuming all incumbents are running in their successor districts except

for those who have already announced, as of the date of this report, that they will not seek re-election.<sup>17</sup> This corresponds to Democratic incumbents in districts 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 25, and 26; Republican incumbents in districts 2, 11, 21, 23, and 24; and open seats in districts 1, 3, 4, and 22.

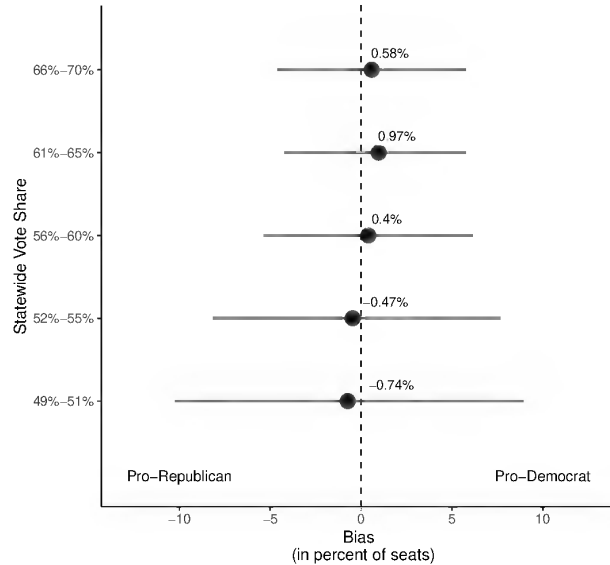


Figure 9: *Estimated Partisan Bias of the Enacted Congressional Map with Incumbents.* Positive values are pro-Democratic bias and negative values are pro-Republican bias.

The district estimates are presented in Table 5. The results are qualitatively similar to the scenario without any incumbents running, because the estimated impact of an incumbent is about 3 percentage points (with a 95% confidence interval of 2.85 to 3.25). That is, a Democratic incumbent on the ballot increases the vote share by about 3 percentage points.

<sup>17</sup>The source for these are: [https://ballotpedia.org/List\\_of\\_U.S.\\_Congress\\_incumbents\\_who\\_are\\_not\\_running\\_for\\_re-election\\_in\\_2022](https://ballotpedia.org/List_of_U.S._Congress_incumbents_who_are_not_running_for_re-election_in_2022)

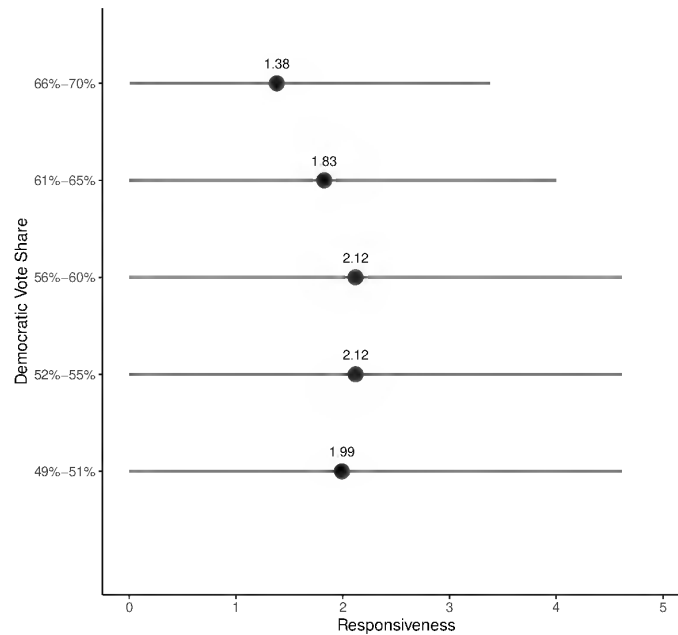


Figure 10: *Estimated Responsiveness of the Enacted Congressional Map with Incumbents*

And once again we can calculate partisan bias for the map assuming this set of incumbents run. These results are presented in Figure 9. The results are qualitatively similar to the case without incumbents running. However, the point estimates do differ, but not in a statistically significant manner. We see again that in some regions there is a small bias in favor of Republicans and in others a small bias in favor of Democrats. More importantly, all the confidence intervals cross zero. Therefore, we can say that the Congressional plan shows no statistically significant partisan bias in favor of either party with this given configuration of incumbents assumed to be running.<sup>18</sup>

The responsiveness estimates are presented in Figure 10. As with the bias estimates, the estimates do not qualitatively differ from the scenario without any incumbents running.

Overall, the Democrats are expected to win 19.3 of the 26 seats, or about 74% of them, assuming this particular configuration of incumbents running. Again since this is a statistical estimate the 95% confidence interval is from a low of 16 seats to a high of 22. This estimate, as discussed before, should be thought of as a long term average over many elections conducted with the map.

Again we can plug in the district vote estimates in the Congressional map under this configuration of incumbents from Table 5 to calculate the efficiency gap. This results in an efficiency gap of -0.5%. This is a very small, pro-Republican advantage in efficiency.

<sup>18</sup>Formally, we can not reject the null hypothesis that the bias is zero at conventional significance levels.



## 5.2 Expected Seat Share

As discussed above, the Democrats are expected to win 18.9 of the 26 seats, or about 72% of them, assuming all open seats with around 65% of the average statewide vote share. If incumbents run as in the scenario described in the previous subsection, they do slightly better, netting 74% of the seats. This is clearly not proportional since the Democrats are getting more seats than their statewide vote share. This is expected since single member district systems give a bonus to the majority party. However, as the analysis of the estimated seats-votes curve shows, if the Republicans were to win around 65% of the statewide vote share, they too would be expected to win around 19 Congressional seats.

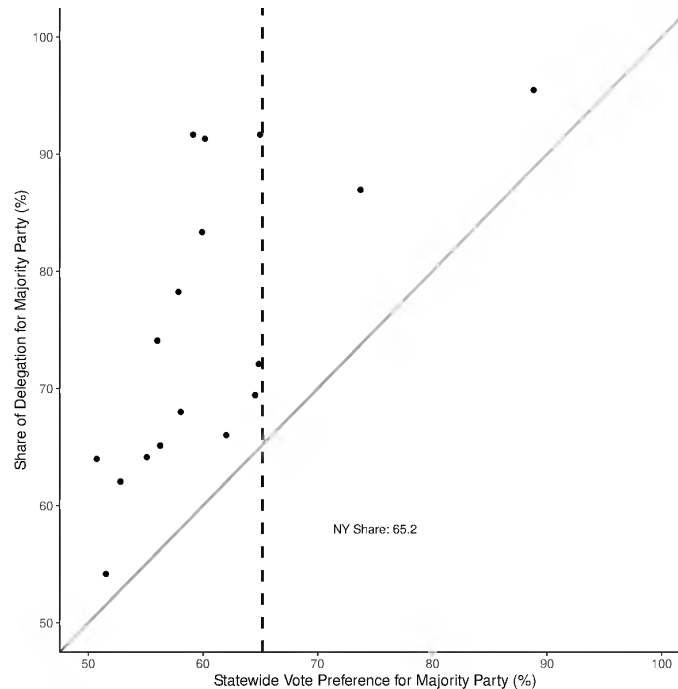


Figure 11: Scatter plot of Majority Party Congressional Seat Shares versus their Average Statewide Vote Share from states with at least 20 Congressional seats from 1972 to 2020. The horizontal dashed line corresponds to the average statewide vote share in New York in the last decade.

To give some historical context to an expected seat share for Democrats of 18.9 assuming no incumbents run, we can look at historical election results of larger states with 20 or more Congressional seats from 1972 to 2020 excluding New York.<sup>19</sup> The cutoff of 1972 was chosen because this

<sup>19</sup>The states in the analysis for at least part of the time period are California, Florida, Illinois, Ohio, Pennsylvania, Texas. States might be included or excluded after reapportionment caused by Census changes the size of their delegation.

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was the first post-Census redistricting cycle that was subject to the U.S. Supreme Court's ruling *Reynolds v. Sims* (377 U.S. 533) that required equal sized districts for Congress.

This analysis is presented in Figure 11. This presents a scatter plot of the majority party's seat shares versus their average statewide district vote shares for the states with large Congressional delegations.

The non-proportionality of the single member district used to elect members of Congress is immediately apparent in this Figure. For every observation the majority party's seat share is above the diagonal line. This means that the majority party is receiving a larger seat share than their average statewide vote share.<sup>20</sup> Further, New York does not seem out of line with election results from other larger states. The average statewide vote share in New York is approximately 65.2% over the last decade, one of the highest of all state elections represented in the Figure, and they are expected to win about 72% or so of the seats. Some other state majority parties are winning this share of the seats with substantially smaller average statewide vote shares.

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<sup>20</sup> The same holds true if we use average Congressional district vote share.

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**BACKGROUND AND QUALIFICATIONS**

3. I refer to and incorporate by reference the relevant portions of my first Affidavit, which was filed on February 24, 2022. I attach as Exhibit A to this affidavit a copy of my curriculum vitae.

**SCOPE OF ENGAGEMENT AND COMPENSATION**

4. I have been retained by Cuti Hecker Wang LLP, counsel for Respondent Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins, and asked to opine on the validity of the analysis used and the conclusions drawn in the two reports submitted by Sean Trende.

5. I am being compensated at a rate of \$400.00 per hour. My compensation does not depend in any way on the outcome of the case or on the opinions or testimony that I provide.

**MATERIALS REVIEWED**

6. In connection with preparing this testimony and providing the opinions expressed herein, I have reviewed the following materials:

- Report of Sean Trende submitted on behalf of the Petitioners in this case;
- Reply of Sean Trende submitted on behalf of the Petitioners in this case;
- Relevant portions of Article III, Section 4(c) of the New York Constitution setting forth applicable redistricting criteria; and
- McCartan & Imai, *Sequential Monte Carlo for Sampling Balanced and Compact Redistricting Plans*.

**SUMMARY OF EXPERT OPINIONS**

7. Mr. Trende's stated opinion is that the enacted Congressional and Senate maps were drawn for the purpose of benefiting the Democratic Party. Based on my analysis of Mr.

Trende's report, his reply, and his methodology, I hold the following opinions to a high degree of professional certainty:

- a. As stated in my previous Affidavit, Mr. Trende's own results—based on his choice of electoral index and his sample of districting plans—clearly support the conclusion that the partisan electoral opportunity in the enacted Congressional map is more favorable to Republicans than the party-blind baseline represented by his ensemble. The same is true in the case of the Senate map, but with an even more significant Republican lean. For example, his data shows that the enacted Senate map is predicted to include 49 Democrat-leaning districts, whereas *every single one* of the 5,000 randomly generated maps in his ensemble is predicted to have at least 51 Democrat-leaning districts, and the majority have at least 53 Democrat-leaning districts. It is standard to interpret this data as an indication that the enacted Senate map is significantly *Republican*-favoring relative to maps drawn with the party-blind rules represented by his ensemble. All of this can be visualized in Figures 1 and 2 below.
- b. Although Mr. Trende freely chose in his first report to use a single electoral index created from averaging a set of elections, a large portion of his second report is devoted to critiquing the index that he selected. In an effort to run away from the conclusion that the index he chose to use in his first report compels—that the Congressional and Senate maps favor Republicans, not Democrats—his second report tries to move the goalposts by claiming that there supposedly is parity between the parties when the index he initially used shows that a district leans toward Democrats

by 53%-47%. His crude attempt to support this more convenient and self-serving hypothesis is fundamentally flawed and entirely unreliable.

- c. Mr. Trende claims that his ensemble of 5,000 Senate maps represent “what maps would tend to look like in New York if they were drawn without respect for politics.”

In my opinion, his ensemble of simulated maps can only be said to represent what maps would look like if they were drawn by his algorithm, using parameters that only he knows. I see no evidence that his ensemble of simulated maps are a representative sample according to any reasonable interpretation of the term “representative.”

Among other problems, there are very strong indications in Mr. Trende’s report that his ensemble of 5,000 simulated Senate maps consist entirely of small variations on just *two* maps. This alone is sufficient cause to dismiss his ensemble as too fundamentally broken to yield any statistically valid conclusions.

### **ANALYSIS OF MR. TRENDE’S RESULTS**

#### ***Analysis of Mr. Trende’s Senate Results***

8. As detailed in my first Affidavit and again below, Mr. Trende’s methodology has such substantial flaws as to render his model of little if any statistical value. Notwithstanding those methodological flaws, in this section I will take at face value Mr. Trende’s claim that his ensemble of 5,000 maps represents “what maps would tend to look like in New York if they were drawn without respect for politics.” In this section, I will critique only the conclusions he draws from his ensemble analysis based on this assumption. (To the extent certain statements in this Affidavit are repetitive of statements that I made in my prior Affidavit, that is because the points I made in my prior Affidavit about Mr. Trende’s analysis of the Congressional plan apply similarly to his analysis of the Senate plan.)

9. The chart on page 21 of Mr. Trende’s original report, titled, “Democratic Vote Share by Simulated Senate District,” indicates that the enacted Senate plan includes 49 Democrat-leaning districts, whereas *every single one* of the 5,000 maps from his ensemble includes at least 51 Democrat-leaning districts. Virtually all of the maps from his ensemble include at least 52 Democrat-leaning districts, and the majority include at least 53 Democrat-leaning districts (and many other maps include 54 or even 55 Democratic-leaning districts). Again, on average, the maps in his ensemble clearly contained more Democrat-leaning districts than does the enacted plan.

10. Mr. Trende’s data, using the index he chose to use in his original report, therefore clearly shows that the enacted Senate plan is a significantly Republican-favoring outlier relative to the maps in his ensemble.

11. Mr. Trende’s use of the “gerrymandering index” to conclude that the Senate plan is “obviously partisan gerrymandered” is simply wrong. As I explained in my prior Affidavit, the gerrymandering index does not provide any information about which party is favored by the enacted map relative to the ensemble, or even whether there is a favored party, nor does the gerrymandering index provide any information about whether the enacted map discourages competitive districts relative to the ensemble. As I explained in my prior Affidavit, partisan lean is only one of many factors that can make the gerrymandering index high, and to the extent that partisan lean contributed to the high gerrymandering index in Mr. Trende’s Senate analysis, it clearly was a Republican-favoring lean that made the gerrymandering index high.



*The Standard Interpretation of Trende's Own Results*

12. The histograms in Figures 1 and 2 below, made from Mr. Trende's own data,<sup>1</sup> speak for themselves. Mr. Trende has hidden the ball by declining to present this very clear and standard visualization of his own results. In each figure, the vertical line represents the number of districts in which Democrats are a majority in the enacted plans using the index Mr. Trende used in his original report. These histograms shows the number of districts in which Democrats are a majority in all of the maps in Mr. Trende's ensembles using the index used in Mr. Trende's original report. In the case of both the Congressional and Senate plans, the enacted plans have *fewer* districts in which Democrats are a majority than the average maps in Mr. Trende's ensembles. In the case of the Senate plan, the difference is particularly stark.

13. It is standard practice to produce histograms like this in any report relating to redistricting simulations, and the fact that Mr. Trende failed to produce these standard histograms in his original report could reflect his understanding that his data was not consistent with his stated conclusion.

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<sup>1</sup> I constructed these histograms from the information on pages 15 and 21 of Mr. Trende's original report by approximating the portion of the dots that are red and blue for each ordered district number. The potential error introduced by this approximation does not affect the key qualitative features of the resulting graphs.

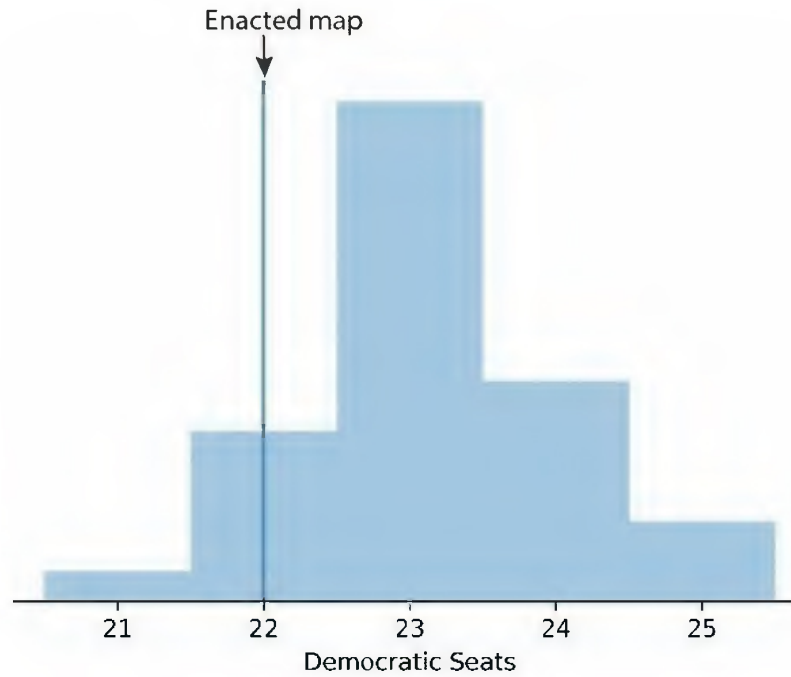


Figure 1: (CONGRESSIONAL) Majority-Democrat seats for the enacted plan and for Mr. Trende's ensemble maps

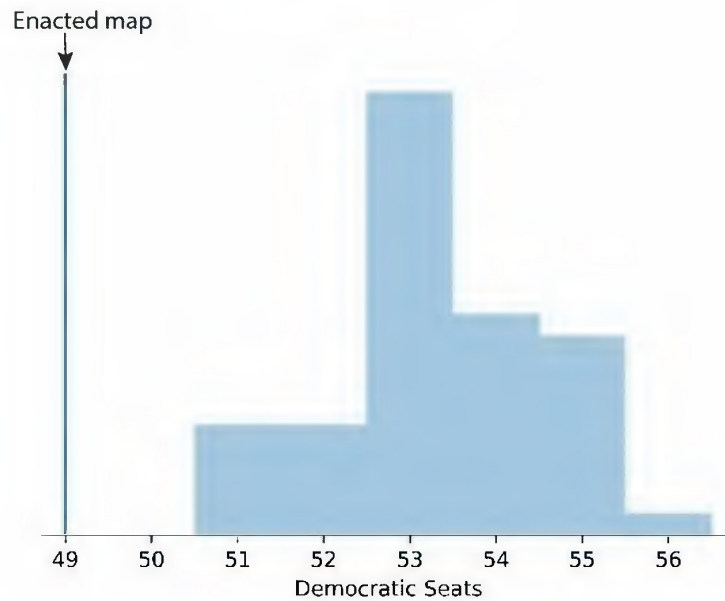


Figure 2: (SENATE) Majority-Democrat Seats for the enacted map and for Mr. Trende's ensemble maps

### ***Mr. Trende's Ad Hoc Partisan Analysis***

14. Mr. Trende freely chose to use a single electoral index created from averaging a set of state-wide elections. Mr. Trende justified this decision in his original report (footnote 2 on

page 12), by saying that “The simulation approach tends not to be as sensitive to the choice of elections as other metrics, unless political coalitions in a state vary radically from election-to-election. Regardless, to remove my discretion, I have simply used the calculation of partisanship contained in the dataset that I downloaded from the ALARM project . . . .” Yet now Mr. Trende is exercising arbitrary discretion in moving the goalposts by changing his choice of elections.

15. A large portion of Mr. Trende’s second report is devoted to critiquing the election index that he freely chose to use and justified using in his first report. To do this, he attempts to move the goalposts from the most obvious assumption—that 50% of the vote in recent prior elections corresponds to parity between the parties—to an entirely ad hoc and counter-intuitive assumption that there supposedly is parity between the parties when a district is 53% Democrat-leaning.

16. If Mr. Trende believes that the partisan data he selected for his model does not correctly predict Congressional/Senate elections, then he should have selected partisan data that does. Moreover, there is a good reason that his convoluted two-stage approach has never been done before: any statistical significance that can be attributed to a two-stage experiment is decreased significantly when the bar of the second stage is set only after seeing how the first stage turns out. That is like shooting an arrow and then drawing a target around the spot where it lands. It invites precisely the subjectivity and discretion that Trende purported to avoid by choosing a set of statewide elections in the first instance.

17. Even setting that issue aside, Mr. Trende’s method for determining that Republicans did better in recent Congressional elections than in statewide elections by about 3% of the vote share, and that it therefore supposedly makes sense to move the goalposts by 3% to compensate for this, is fundamentally flawed.

18. Mr. Trende first relies on the table on page 10 of his reply, which shows the results of Congressional elections in the old districts in New York from 2016, 2018, and 2020, to claim that “Republicans almost always win in districts up to roughly a 53% threshold in our [historical partisan voting] index, and are competitive/capable of winning in districts up to roughly a 55.5% threshold.” His point seems to be that if you look at the 53% partisan index level in his table, the cells above are mostly red, while the cells below are mostly blue. But the more precise observation is that all but six of the cells above the 53% index level are red, while all but three of the cells below that level are blue. If you instead look at the 52% index level, a closer balance is achieved: all but five of the cells above that level are red, while all but five of the cells below are blue. This undermines his claim that a 53%-47% Republican-leaning district is parity.

19. Indeed, if you ignore District 24 (in which John Katko, a popular Republican Congressman who consistently won a Democrat-leaning district, has now announced his retirement, which makes this district a poor predictor of future Congressional elections), then the level on Mr. Trende’s chart at which there are equal numbers of blue districts above and red districts below is approximately the 51.5% index. My point here is not that a bump of less than 3% would be more statistically justifiable than a 3% bump. It is simply that Mr. Trende’s reliance on the table on page 10 of his reply is not precise, reliable, or statistically valid.

20. Second, Mr. Trende states that he arrived at his proposed 3% bump by performing a simple linear regression comparing the statewide partisan voting history of each old Congressional district to the results in the Congressional elections. But this simple regression is likewise unreliable for several reasons.

21. Mr. Trende acknowledges in footnote 3 of his reply report that the partisan index he used in his original report “use[s] statewide races because it helps to control for things like candidate quality, fundraising, and incumbency in a uniform way across the State.” There is good reason that responsible practitioners rely on statewide rather than districted election data when using past results to forecast future results. The major reason that districted election results sometimes differ from statewide results is the presence of specific incumbents who are popular, controversial, etc. But changing district lines changes incumbent effects – after all, once you change the old district lines to form new districts, the effects of incumbency change by definition – which is why it is commonly understood by people who specialize in this area that one should not assume there will be no change in the incumbency advantage or disadvantage of present representatives when a totally new set of lines is enacted. Yet Mr. Trende’s regression does not control for incumbency in any way.

22. In addition, Mr. Trende’s simple linear regression is sensitive to data values that are too far away from 50% to matter. For example, in a district with a partisan index of 85%, it would make no difference to the election outcome whether the Democrat Congressional vote share is 75% or 95%, yet this difference would change his calculation.

23. It bears noting that Mr. Trende’s table 2 reports a p-value and a confidence interval, which shows that a 0% bump would lie with his reported 95%-confidence interval. In other words, Mr. Trende’s math shows that a 0% bump is reasonable. I tried other possible regression models, which similarly concluded that a 0% bump is reasonable.

24. In sum, Trende’s regression results are effectively nothing but a measurement of incumbency effects from the previous decade, which are irrelevant to analysis of a totally new set of lines for the new decade.

25. Finally, it is notable that Mr. Trende's statement that 55.6% is "the point at which Republicans have no chance at winning whatsoever" appears to be entirely based on the fact that in District 24, with an index of 55.66%, John Katko won all three of the elections in Mr. Trende's chart. In other words, he does not appear to have derived that number – which he asserts as the outer bound for a potentially competitive district – from his regression or from anything except for the past Congressional election results in one Democrat-leaning district on the old map in which the popular Republican incumbent has announced his retirement.

26. I especially do not see any justification for applying the 3% bump to Mr. Trende's analysis of Senate maps. His proposed 3% bump was derived purely from Congressional data, and Mr. Trende does not give any indication as to why he believes that data would be predictive of Senate elections, or why the Senate bump, if there should be one at all, should be exactly the same as the Congressional bump.

#### **ANALYSIS OF MR. TRENDE'S METHODOLOGY**

##### ***Mr. Trende's Senate Ensemble is Fatally Flawed***

27. In my prior Affidavit, I described numerous flaws in Mr. Trende's methodology with respect to his analysis of the Congressional plan, which demonstrated that his ensemble was not a representative sample of lawful maps that could be drawn without partisan considerations. Mr. Trende's analysis of the Senate plan was also deficient in all of those ways, including lack of reproducibility, failure to define the target distribution, and failure to consider constitutionally required redistricting criteria.

28. In addition, as described below, there are strong indications that there was a fatal redundancy in Mr. Trende's Senate ensemble – the 5,000 maps in the ensemble seem to in fact all be modest variations on just two maps.

29. As with his Congressional model, Mr. Trende provides almost no information about his methodology for his Senate simulations, which makes it impossible to precisely reproduce his results or definitively diagnose his errors. Relatedly, Mr. Trende does not define his *target distribution*, so it is impossible for me to diagnose how far he is from hitting his target of creating a representative sample.

30. As with his Congressional model, Mr. Trende's Senate model incorporates only a subset of the criteria that the New York Constitution states shall be used in redistricting. Among other factors, Mr. Trende's model does not take into account the following considerations:

- whether the districts would result in the denial or abridgement of racial or language minority voting rights
- whether the districts are drawn so that racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice
- maintenance of cores of existing districts
- maintenance of cities
- maintenance of towns
- maintenance of communities of interest

31. Because Mr. Trende's Senate model does not include those considerations, the model is incapable of creating a representative sample of legally compliant maps that would be drawn without partisan considerations.

32. An even more fatal problem is the evidence of massive redundancy in Mr. Trende's ensemble, especially in his Senate ensemble, which I believe arose because Mr. Trende

used an ensemble size that was too small.<sup>2</sup> There is no basis to believe that an ensemble of 5,000 or even 10,000 simulated maps was large enough to support reliable conclusions. The McCartan-Imai algorithm is very new, and not much is known yet about the ensemble size that is sufficient when using this algorithm, which depends on many factors. The empirical validation study in the McCartan-Imai paper at issue, which has not yet been peer reviewed, used an ensemble of 10,000 simulated maps to analyze a hypothetical jurisdiction with 50 precincts to be partitioned into 3 districts. Mr. Trende used an ensemble size of just 5,000 simulated maps for New York, which has over 15,000 precincts that must be partitioned into 63 Senate districts (or 26 Congressional districts). For this particular algorithm, there are technical reasons why a state with larger numbers of precincts should be expected to require a much larger ensemble. Mr. Trende's casual assumption that it was sufficient to use the same sample size that McCartan and Imai used to simulate a hypothetical jurisdiction that is far less complex than New York is baseless and reason enough to conclude that his simulations prove nothing, especially given that the McCartan-Imai algorithm is still in the peer review process and is known to require larger sample sizes for larger numbers of precincts.

33. I believe that the algorithm that Mr. Trende used behaved as if the Senate maps were constructed something like this: imagine that two people, Amy and Bob, each separately construct a partial Senate plan by drawing the first 50 of the 63 districts. Imagine that the algorithm used by Mr. Trende then were to randomly find 2,500 different ways to complete Amy's partial map and 2,500 different ways to complete Bob's partial map, and then produce the

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<sup>2</sup> The term "redundancy" applies when the maps that comprise an ensemble of 5,000 simulated maps are not actually 5,000 distinct simulated maps, but instead include a significant number of maps that are highly similar to each other. An ensemble with a high level of redundancy cannot be said to provide a representative sample of its target distribution.



resulting ensemble of 5,000 maps, effectively locking in only two versions of how the first 50 districts were drawn. There are under-the-hood reasons<sup>3</sup> to worry that the algorithm used by Mr. Trende might behave in this way when used in the manner that Mr. Trende seems to have used it.

34. As discussed further below, the reasons to be concerned about this significant issue are not just theoretical. There also are strong indications that the algorithm Mr. Trende used did in fact behave in this way, and that Mr. Trende's Senate ensemble is therefore fundamentally and fatally flawed.

35. One glaring indicator that Mr. Trende's Senate ensemble likely is actually infected with this fatal redundancy problem is the graph at the top of page 22 of Mr. Trende's original report. In the chart, the Polsby-Popper scores of the Senate maps are clustered in two distinct areas with virtually no results in between those two clusters. This shows that the ensemble of simulated Senate maps is fundamentally split into two clusters of maps, with each cluster having very similar properties to all of the maps within the cluster, but with the two clusters having strongly different properties to each other. There is nothing about New York's geography (or any state's geography) that could account for the bizarrely stark bimodal nature of this compactness histogram. By far the most plausible explanation for this stark compactness bimodality is that it indicates that the ensemble-generating algorithm did not work correctly because 5,000 simulated maps was an insufficiently small sample size for this particular

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<sup>3</sup> At each of the algorithm's 63 stages (one for each Senate district), it samples from a pool of only 5,000 partially-constructed weighted maps whose weights vary by multiplicative factors that could be orders of magnitude larger than 5,000 (depending on how the parameters are set). This could lead to extreme redundancy in the next-stage sample. In fact, it could lead to a situation where exactly two such partially-constructed maps (Amy's and Bob's in my illustration) are extremely upweighted relative to the other plans. In this case, there is a strong basis to be concerned that almost half of the next-stage maps might come from just two extremely upweighted partially constructed maps from the previous stage.

application and that the 5,000 maps in Mr. Trende's Senate ensemble are just modest variations of two maps (or because there was a different fatal flaw in Mr. Trende's model that cannot be identified from the limited information that he provides).

36. Mr. Trende's simulations clearly are deeply flawed and fail to produce a representative sample.

***Mr. Trende's Congressional Ensemble Still Is Not a Representative Sample***

37. In his second report, Mr. Trende supplemented the methodology for his initial Congressional ensemble with modifications that he says were intended to model additional constitutional requirements, and he says that he has now run 10,000 simulations instead of 5,000. Even with those modifications, there remain substantial methodological flaws that make clear that Mr. Trende's Congressional ensemble is not a representative sample of legally complaint maps that could be drawn without partisan considerations.

38. As is widely acknowledged, many kinds of algorithms can have hidden bias. Even a "random" and well-intentioned process may fail to draw a sample that is fairly distributed. A responsible modeler would confirm that maps are being drawn just in proportion to their properties, and can explain why certain kinds of maps occur more often than others. As a purely hypothetical example, imagine that the algorithm constructs maps that mostly keep eastern Long Island together, or that mostly split it horizontally, or that mostly split it vertically. In a well-designed model, this would be explained by explicit properties of the maps, such as their compactness. A responsible modeler would have been transparent from the start about the balance of maps that the algorithm will select, so its effect on Long Island could have been predicted in advance and can be subject to criticism or defense.

39. I can assert with confidence that Mr. Trende's ensembles are not representative samples of the legally valid maps under any reasonable interpretation of the term "representative." He is using an algorithm capable of sampling from a specified balance of maps, but he has not controlled the settings in a manner that can possibly achieve this. Mr. Trende claims that his ensemble of 5,000 maps (and now 10,000 maps) represent "what maps would tend to look like in New York if they were drawn without respect for politics." I see no reason to believe that Mr. Trende's Congressional ensemble is a representative sample of maps drawn without partisan considerations. Rather, his maps can only be said to represent what maps would look like if they were drawn by his algorithm, using parameters that only he knows.

40. One case in point is the balance of county-splits in his ensembles. The maps in his Congressional ensemble have only between 12 and 16 county-splits each, which indicates to me that his algorithm functioned more like a minimizer than a sampler, producing the kinds of maps that humans would draw if they tried their hardest for a very long time to split as few counties as possible, at the expense of all other considerations. This is one of many indications that Mr. Trende has not achieved the goal of drawing maps that accurately represent the universe of possibilities for good faith human line-drawers.

41. Mr. Trende's model still does not take into account the maintenance of communities of interest, which the New York Constitution requires to be considered in redistricting. I am sympathetic to his point that communities of interest are "a notoriously difficult concept to nail down" and are "difficult to encode." There is no easy or canonical way to program an algorithm to respect communities of interest in a state like New York where there is no agreed-upon specification of exactly which communities should be maintained.

42. It is nevertheless insufficient for Mr. Trende to effectively say, “I did my best.” Even if it’s true that there’s no obvious way he could have done better at incorporating communities of interest into his model, the conclusions that he can draw from its model are weakened by this missing constitutional requirement. Trende’s main punchline is that the enacted map is an outlier relative to the maps in his ensemble. But an outlier only shows that a map was likely drawn with some priorities that were not included in the model (like maintenance of communities of interest, among other possibilities). In ensemble analysis, when an enacted map is different from the random outputs, that only tells you that something else was in play, not that something impermissible was in play.

43. And, as discussed below, there is cause for concern that Mr. Trende’s Congressional ensemble might also be infected with the same potentially fatal redundancy as the Senate ensemble.

***Replicated Evidence of Fatal Redundancy in Mr. Trende’s Ensembles***

44. As discussed above, there are significant reasons to believe that Mr. Trende’s ensembles have massive redundancy in the maps that comprise them. Since I was not granted access to Mr. Trende’s outputs, I ran a replication study to determine how susceptible his method is to the problem of massive ensemble redundancy. I created a replication of Mr. Trende’s ensembles of 5,000 maps using the same McCartan-Imai algorithm that he used. Since Mr. Trende only reported a few of the parameters he used, I could not perfectly match all of his choices, but I re-ran the replication several times in order to try multiple possibilities for the compactness parameter, which is the one that most affects a sample’s redundancy.

Compactness<sup>4</sup> can be set to any number between 0 and 1. My experiments showed that ensembles created by replicating Trende's method using *any* compactness setting can contain massive levels of redundancy that in some cases render the ensembles statistically useless.

45. I first tried compactness settings that were less than 1 (including 0, 0.25, 0.75), and these settings resulted in ensembles with such massive levels of redundancy that the algorithm's own built-in validation system threw up warnings that the ensembles were broken and useless. The algorithm progresses through one stage for each district, so it takes 63 stages to create a Senate ensemble. Along the way, the algorithm can be asked to report the *effective sample size* of each stage. The *actual sample size* of each stage is 5,000 (the ensemble size), but because of imperfections inherent in this sampling method, the *effective sample size* will be less than 5,000. Numbers very close to 5,000 indicate that only a negligible amount of redundancy crept in during that stage. In my replication, the effective sample sizes at all stages were shockingly low; in fact, they were in the double and single digits. The values from the first 12 stages (with compactness=0.5) are reported in Table 1. The results were just as problematic with compactness set to 0 or 0.25 or 0.75.

	1 <sup>st</sup>	2 <sup>nd</sup>	3 <sup>rd</sup>	4 <sup>th</sup>	5 <sup>th</sup>	6 <sup>th</sup>	7 <sup>th</sup>	8 <sup>th</sup>	9 <sup>th</sup>	10 <sup>th</sup>	11 <sup>th</sup>	12 <sup>th</sup>
Senate ensemble	20	14	12	6	21	14	24	33	45	30	7	6
Congressional ensemble	7	3	7	6	1	2	5	3	3	2	2	6

Table 1: Effective samples sizes (rounded) for the first 12 stages in constructing the ensemble (compactness=.5)

<sup>4</sup> I find the name "compactness" here misleading, since it incorrectly suggests that higher values are always better. In fact, a compactness score of 0 is the only way to realize the *redist* algorithm's often-mentioned promise of being able to sample from the uniform or any target distribution. Mathematically, the choice *compactness* = 0 corresponds to the uniform distribution. The choice *compactness* = 1 corresponds to the mathematically complicated "spanning tree distribution" when the county-preservation switch is turned off, and it corresponds to even more complicated "hierarchical spanning tree distribution" when this switch is turned on.

46. To illustrate the implication of the single-digit effective samples sizes reported in Table 1, note that the previously mentioned Amy-Bob scenario describes essentially what one would expect if the effective sample size were to equal 2 in stage 50. As another illustration, Table 1 reports an effective sample size of only 6 in the 12<sup>th</sup> stage of generating the Congressional ensemble. This means the algorithm acted roughly as if only six different people were asked to draw the first 12 districts, and all of the final maps were guaranteed to have their first 12 districts drawn in one of these six ways. Moreover, this redundancy is compounded in the other stages. The small effective sample sizes in the stages prior to the 12<sup>th</sup> means that it is as if these six people were severely constrained in how they could draw the first 11 of their 12 districts. The small effective sample sizes in all of the stages after the 12<sup>th</sup> means that the redundancy is further compounded as the remaining districts are constructed.

47. I next tried setting the compactness equal to 1. This setting avoided the algorithm's built-in warning lights, but I nevertheless found a massive amount of redundancy when I carefully studied the ensemble. More precisely, I measured the extent to which the 5,000 maps in this ensemble differed from each other. Imagine taking a pair of scissors to each of the 5,000 maps in this ensemble, cutting apart its 63 districts, and throwing all of the districts from all of the maps together into a pile. This pile would contain  $5000 \times 63 = 315,000$  districts. If the ensemble maps were all completely different from each other, then one would expect the 315,000 districts in this pile to mostly all be different from each other. Instead, the 315,000 districts in this pile ended up all being copies of just 12,319 distinct districts. Moreover, the repetition level was quite extreme. For example, there were 31 districts that each occurred exactly 3,219 times. In other words, *more than half of the maps had almost half of their districts exactly identical*. Furthermore, if you were to randomly grab one of the 315,000 districts from

this pile, you would expect there to be 1,360 copies of that district in the pile on average. This is a head-turning level of redundancy, even though the ensemble was built with the compactness=1, which is the setting that best avoids redundancy.

48. Even if Mr. Trende used the compactness setting of 1 (which is the setting that best avoids redundancy), his Senate ensemble would be expected to have about the same level of redundancy as my replication that used this same compactness setting, which is enough to render it statistically meaningless.<sup>5</sup> This would mean that, from his ensemble of 5,000 maps, it is possible to separate out a subcollection of 3,219 of them that all have in common how their first 31 districts were drawn. This locked-in decision about how the first 31 districts were drawn (in over half of the maps of his ensemble) might by pure chance be extremely Democrat-favoring or extremely Republican-favoring. It might by pure chance favor competitiveness or favor anticompetitiveness. These wildly variable chance effects in what should have been just a single version of how the first 31 districts are drawn would get amplified by the redundancy and would therefore have a greatly outsized effect on all of the partisan statistics he computed using the ensemble. In other words, if Mr. Trende's ensemble has anywhere near the redundancy that my replication has, then all of the partisan conclusions he drew could be caused by a single wildly variable chance effect. Again, as I describe above, there are clear indications in Mr. Trende's results, such as the bimodal nature of his Senate Polsby-Popper chart on page 22 of his first report, that strongly suggest this is the case.

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<sup>5</sup> Mr. Trende's Congressional ensemble may well have a similarly high level of redundancy even if it used a compactness setting of 1. I have not yet been able to conduct a replication of Mr. Trende's Congressional ensemble with a compactness setting of 1, or to examine the level of redundancy in the resulting districts, simply due to the litigation schedule not providing sufficient time to do so.

49. In conclusion, my replication experiment demonstrated that Mr. Trende's Senate ensemble is very likely to be infected with a level of redundancy that renders them statistically useless, and that his Congressional ensemble may well suffer from the same deficiency. To repeat, even with the compactness dialed to the setting that best avoids redundancy in my replication, more than half of the maps had almost half of their districts in common. No valid conclusions can be drawn from a broken ensemble. For a state as large as New York, using the settings that Mr. Trende seems to have used, I feel strongly that 5,000 or even 10,000 is not necessarily enough to yield an ensemble in which one can have any confidence, at least not without performing careful validations to make sure that there is enough diversity in the ensemble. Mr. Trende has not described performing any such validations for his ensembles, and I can state with certainty that they are not representative samples of maps that could be drawn without partisan considerations.



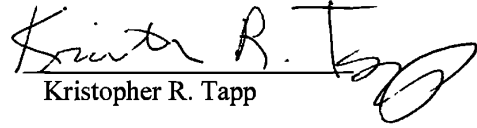
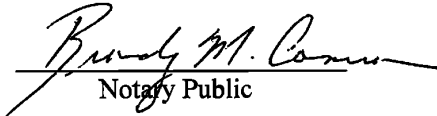
**FILED: STEUBEN COUNTY CLERK 03/18/2022 11:31 AM**

NYSCEF DOC. NO. 153

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/18/2022

Dated: March 10, 2022

  
Kristopher R. TappSworn and Subscribed before me this 10th  
day of March, 2022  
Notary PublicMy Commission Expires: *September 28, 2024*

Commonwealth of Pennsylvania - Notary Seal  
BRANDY M. CONNOR, Notary Public  
Philadelphia County  
My Commission Expires September 28, 2024  
Commission Number 1004805

**FILED: STEUBEN COUNTY CLERK 03/18/2022 11:31 AM**

NYSCEF DOC. NO. 153

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/18/2022

CERTIFICATE OF CONFORMITY PURSUANT TO N.Y. C.P.L.R. § 2309(c)

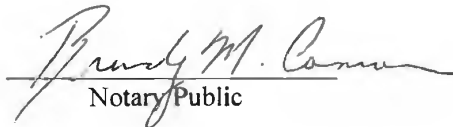
I, Randy C. Greene, do hereby certify and attest that I am an attorney duly admitted to practice law in the Commonwealth of Pennsylvania

I make this certification for the purposes of compliance with New York State Civil Practice Law & Rules Section 2309(c) with regard to the foregoing Affidavit of Kristopher R. Tapp, to be filed in Supreme Court in Steuben County, State of New York.

Said Affidavit, acknowledged and sworn by Mr. Tapp before a Notary Public in and for the Commonwealth of Pennsylvania, and said Affidavit being therein sworn in the Commonwealth of Pennsylvania, is and appears to be, based upon my review of said document and notarization thereof, in conformity with the laws of the Commonwealth of Pennsylvania for the making of an affidavit and the notarization thereof.



Sworn and Subscribed before me this 10th day of March, 2022

  
Notary Public

My Commission Expires: *September 28, 2024*

Commonwealth of Pennsylvania - Notary Seal  
BRANDY M. CONNOR, Notary Public  
Philadelphia County  
My Commission Expires September 28, 2024  
Commission Number 1004805

**ORDER TO SHOW CAUSE FOR ADVERSE INFERENCES FROM RESPONDENTS  
AND THEIR AGENTS' FAILURE TO APPEAL FOR NOTICED DEPOSITIONS,  
DATED MARCH 14, 2022 [1319 - 1320]**

**FILED: STEUBEN COUNTY CLERK 03/14/2022 10:41 AM**

NYSCEF DOC. NO. 202

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/14/2022

At IAS Part \_\_ of the Supreme Court of the State of New York, held in and for the County of Steuben, at the Courthouse located at 3 East Pulteney Square Bath, NY 14810, on the 14 day of March, 2022.

PRESENT: \_\_\_\_\_

HON. PATRICK F. McALLISTER, J.S.C.

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  
VOLANTE,

Index No. E2022-0116CV

Petitioners,

-against-

**ORDER TO SHOW CAUSE  
FOR ADVERSE  
INFERENCES FROM  
RESPONDENTS AND  
THEIR AGENTS' FAILURE  
TO APPEAR FOR NOTICED  
DEPOSITIONS**

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

**FILED: STEUBEN COUNTY CLERK 03/14/2022 10:41 AM**

NYSCEF DOC. NO. 202

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/14/2022

UPON reading of the Affirmation of Bennet J. Moskowitz dated March 11, 2022, and the exhibits annexed thereto, and Petitioners' Memorandum of Law in support of their Motion For The Court To Draw Adverse Inferences From Respondents' And Their Agents' Failure to Appear for Properly Noticed Depositions; and all of the pleadings and proceedings heretofore had herein, it is hereby:

**ORDERED** that Respondents or their counsel appear and show cause before this Court, at IAS Part \_\_, Room \_\_\_\_, at the Courthouse located at 3 East Pulteney Square Bath, NY 14810, on the 16th day of March, 2022, at 9:30 a.m., or as soon thereafter as counsel can be heard, why an Order should not be issued granting Petitioners' Motion for Adverse Inferences from Respondents and Third-Parties' Failure to Appear for Properly Noticed Depositions; and it is

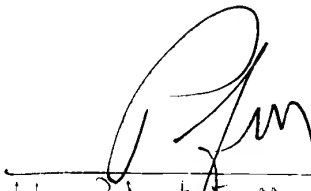
**FURTHER ORDERED** that Petitioners shall serve a copy of this Order and all papers in support thereof upon counsel for Respondents and counsel of record for the Attorney General by NYSCEF on or before the 14 day of March, 2022; and it is

**FURTHER ORDERED** that Respondents shall serve any papers in opposition to Petitioners' Motion for Adverse Inferences from Respondents and Third-Parties' Failure to Appear for Properly Noticed Depositions by NYSCEF no later than the 15 day of March, 2022; and it is

**FURTHER ORDERED** that Petitioners shall serve any reply papers in further support of their Motion for Adverse Inferences from Respondents and Third-Parties' Failure to Appear for Properly Noticed Depositions by NYSCEF no later than the \_\_\_\_ day of March, 2022.

Signed March 14, 2022

Enter

  
Hon. Patrick J. McAllister  
Acting Supreme Court Justice

**AFFIRMATION OF BENNET J. MOSKOWITZ, ESQ., FOR PETITIONERS, IN SUPPORT  
OF ORDER TO SHOW CAUSE FOR ADVERSE INFERENCES FROM RESPONDENTS  
AND THEIR AGENTS' FAILURE TO APPEAL FOR NOTICED DEPOSITIONS,  
DATED MARCH 13, 2022 [1321 - 1324]**

**FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM**

NYSCEF DOC. NO. 176

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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  
VOLANTE,

Index No. E2022-0116CV

**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.

-----X

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. 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.

3. Attached hereto as Exhibit A is a copy of the Subpoena Duces Tecum Ad Testificandum to Phillip Chonigman dated March 9, 2022.

4. Attached hereto as Exhibit B is a copy of the Notice to Take Deposition Upon Oral Examination to Phillip Chonigman dated March 10, 2022.

5. Attached hereto as Exhibit C is a copy of the Subpoena Duces Tecum Ad Testificandum to Michael Gianaris dated March 9, 2022.

6. Attached hereto as Exhibit D is a copy of the Notice to Take Deposition Upon Oral Examination to Michael Gianaris dated March 10, 2022.

7. Attached hereto as Exhibit E is a copy of the Subpoena Duces Tecum Ad Testificandum to David Imamura dated March 9, 2022.

8. Attached hereto as Exhibit F is a copy of the Subpoena Duces Tecum Ad Testificandum to Eric Katz dated March 9, 2022.

9. Attached hereto as Exhibit G is a copy of the Notice to Take Deposition Upon Oral Examination to Eric Katz dated March 10, 2022.

10. Attached hereto as Exhibit H is a copy of the Notice to Take Deposition Upon Oral Examination to the New York State Legislative Task Force on Demographic Research and Reapportionment ("LATFOR") dated March 9, 2022.

11. Attached hereto as Exhibit I is a copy of Petitioners' First Request for the Production of Documents to Respondents, dated March 9, 2022.

12. Attached hereto as Exhibit J is a copy of a letter dated March 10, 2022, from John R. Cuti, counsel for Respondents, to counsel for Petitioners.

13. Attached hereto as Exhibit K is a copy of a letter dated March 10, 2022, from counsel for Petitioners to John R. Cuti, counsel for Respondents.

14. Attached hereto as Exhibit L is a copy of a letter dated March 10, 2022, from John R. Cuti, counsel for Respondents, to counsel for Petitioners.

15. Attached hereto as Exhibit M is a copy of a letter dated March 10, 2022, from counsel for Petitioners to John R. Cuti, counsel for Respondents.

16. Attached hereto as Exhibit N is a copy of a letter dated March 10, 2022, from John R. Cuti, counsel for Respondents, to counsel for Petitioners.

17. Attached hereto as Exhibit O is a copy of a letter dated March 10, 2022, from counsel for Mr. Imamura to counsel for Petitioners.

18. Attached hereto as Exhibit P is a copy of a letter dated March 10, 2022, from Petitioners' counsel to Mr. Imamura's counsel.

19. Attached hereto as Exhibit Q is a copy of the rough transcript from the March 11, 2022 deposition of Phillip Chonigman and a rough draft of the rough transcript from the March 11, 2022 deposition of the representative for LATFOR.

20. Attached hereto as Exhibit R is a copy of the rough transcript from the March 11, 2022 deposition of Michael Gianaris.

21. Attached hereto as Exhibit S is a copy of the rough transcript from the March 11, 2022 deposition of Eric Katz.

22. Attached hereto as Exhibit T is a copy of Speaker Heastie's and the Assembly Majority's Objections and Responses to Petitioners' First Request for Production.

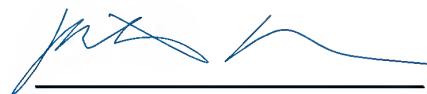
23. Attached hereto as Exhibit U is a copy of the Senate Majority Leader and the Senate Majority's Appointees to the New York State Legislative Task Force on Demographic Research and Reapportionment Objections and Responses to Petitioners' First Request for Production.

24. Petitioners commenced this special proceeding: (1) challenging Respondents and the New York State Legislature's ("Legislature") failure to follow the exclusive process for redistricting embodied in Article III, Section 4 of the New York Constitution, (2) claiming that the only validly enacted map for Congress was the 2012 federal-court-adopted map that is now unconstitutionally malapportioned given subsequent population changes, and therefore invalid, (3) arguing that the Respondents' and the Legislature's 2022 congressional map is clearly gerrymandered to favor the Democratic Party and Democratic incumbents, contrary to Article III, Section 4 of the New York Constitution, and (4) seeking a declaratory judgment on all of those issues, all arising out of the 2022 redistricting process following the 2020 decennial census, as well as seeking other related relief, such as invalidating 2021 legislation, L.2021, c. 633, § 7150, as unconstitutional and suspending any other state laws necessary for the Court to provide effective and complete relief.

25. Petitioners seek the drawing of adverse inferences against Respondents and Third Parties for their failure to appear for properly noticed depositions.

WHEREFORE, it is respectfully requested that the Court grant Petitioners' proposed Order to Show Cause, granting Petitioners' Request to Draw Adverse Inferences from Respondents' and Third Parties' Failure to Appear for Properly Noticed Depositions.

Dated: New York, New York  
March 13, 2022



BENNET J. MOSKOWITZ



**EXHIBIT A TO MOSKOWITZ AFFIRMATION -  
SUBPOENA DUCES TECUM AD TESTIFICANDUM TO PHILLIP CHONIGMAN,  
DATED MARCH 9, 2022 [1325 - 1486]**

**FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM**

NYSCEF DOC. NO. 177

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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  
VOLANTE,

Index No.: E2022-0116CV

**SUBPOENA DUCES  
TECUM AD  
TESTIFICANDUM**

*Petitioners,*

-against-

X

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.*

To: **Phillip Chonigman**  
**Senior Co-Executive Director and Democratic Head, New York State Legislative**  
**Task Force on Demographic Research and Reapportionment**  
**250 Broadway**  
**Suite 2100**  
**New York, NY 10007**

**YOU ARE COMMANDED** to appear for a deposition upon oral examination at the offices of Troutman Pepper Hamilton Sanders LLP, 875 Third Avenue, New York, New York 10022 on March 11, 2022, beginning at 9:00 a.m. EST, before a notary public who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein. The examination will continue from day to day until completed.

**NOTICE IS GIVEN** that, pursuant to section 202.15 of the Uniform Civil Rules for the Supreme Court and The County Court, the deposition will be videotaped by an employee of David Feldman Worldwide, A Veritext Company, which is located at 1250 Broadway, Suite 2400, New York, NY 10001.

**FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM**

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**YOU ARE FURTHER COMMANDED** to produce for use at the deposition examination the documents and things identified in **Exhibit A** attached hereto. Copies of the Petition and Amended Petition filed in this action on February 3, 2022, and February 8, 2022, respectively, are attached hereto as **Exhibits B** and **C**, respectively. If you prefer to produce the documents by e-mail, you can email them to Bennet.Moskowitz@troutman.com before your deposition date.

You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena.

Failure to comply with this subpoena is punishable as a contempt of court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed \$150 and for all damages sustained by reason of your failure to comply.

Dated: New York, New York  
March 9, 2022

Respectfully submitted,

TROUTMAN PEPPER HAMILTON  
SANDERS LLP  
875 Third Avenue  
New York, New York 10022

By: /s/ Bennet J. Moskowitz  
Bennet J. Moskowitz

Misha Tseytlin, Reg. No. 4642609  
227 W. Monroe St.  
Suite 3900  
Chicago, IL 60606

*Attorneys for Petitioners*

**EXHIBIT A****DEFINITIONS**

For purposes of these document requests, the following definitions apply to the following words and phrases, regardless of capitalization:

1. “Petition” means the Verified Petition dated February 3, 2022 filed in the above-captioned case.

2. “Amended Petition” means the Verified Amended Petition dated February 8, 2022 filed in the above-captioned case.

3. “Concerning,” and all tenses thereof, means referring to, relating to, constituting, describing or evidencing.

4. The term “document” means the originals, identical and non-identical copies (including all copies that are different in any way from the original, whether by interlineation, stamp, notation, indication of copy sent or received or otherwise), and drafts thereof, regardless of location, of any written, printed, photocopied, photographed, recorded, transcribed, punched, taped, emailed, filed, or graphic matter, and any other means of preserving thought or expression, of any nature or description. The term also includes all information stored in a computer system although not yet printed out, all information stored in computer hard drives, all information stored on diskettes of any kind, all information stored on computer tape backups, all information stored in e-mail, all forms of Electronic Data (as this term is defined below), and all information stored on Electronic Media (as this term is defined below).

5. The term “Electronic Data” as used herein means the original (or identical duplicate when the original is not available), and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or

highlighting of any kind) of writings of every kind and description whether inscribed by mechanical, facsimile, electronic, magnetic, digital, e-mail, or other means. Electronic Data includes, by way of example only, computer programs, programming notes or instructions, activity listings of electronic mail receipts and/or transmittals, output resulting from the use of any software program, including word processing documents, spreadsheets, database files, charts, graphs and outlines, electronic mail, operating systems, source code of all types, peripheral drivers, PIF files, batch files, ASCII files, and any and all miscellaneous files, regardless of the media on which they reside. Electronic Data includes any and all items stored on Electronic Media (as this term is defined below). The term Electronic Data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with each original and/or copy.

6. The term “Electronic Media” as used herein means any magnetic, optical or other storage media device used to record Electronic Data, either on a computer and/or data network. Electronic Media devices may include, but are not limited to, computer memories, hard disks, hard drives, optical disks, floppy disks, CD-ROM, removable media, thumb drives, magnetic tapes of all types, microfiche, microfilm, punched cards, punched tape, facsimile machine memories, voicemail and voicemail records, or any other vehicle for digital data storage and/or transmittal.

7. “Communication” means both documentary and non-documentary transmission of information or message, oral or written, regardless of: (a) the method of transmission; (b) the individual transmitting the Communication; or (c) whether the transmission was received. The term includes, but is not limited to, any form of expression, conversation, discussion, email, facsimile, letter, memorandum, meeting (however formal or informal), negotiation, notes, text

message, voicemail or the like, or any Document that abstracts, digests, transcribes, records, or reflects any of the foregoing.

8. The terms “you” or “your” means Phillip Chonigman and all other persons acting or purporting to act for or on his behalf, including, without limitation, representatives, agents, employees, attorneys, accountants and investigators.

9. The term “person” means any natural person or any legal entity, including, without limitation, any business, governmental entity, association, partnership, firm, limited liability company, or corporation.

10. “Commissioners of the Democratic Caucus of the IRC” means democratic members of the New York Independent Redistricting Commission, consisting of Democratic Commissioners David Imamura, Eugene Benger, John Flateau, and Elaine Frazier, along with non-party enrollee Ivelisse Cuevas-Molina.

11. The terms “all,” “any” and “each” shall each be construed as encompassing any and all.

12. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery requests all responses that might otherwise be construed to be outside of their scope.

13. The use of the singular form of any word includes the plural and vice versa.

14. Defined terms and phrases have the meanings ascribed to them above regardless of capitalization.

### **INSTRUCTIONS**

The following instructions apply to each individual request for documents contained herein:

1. You must produce all documents responsive to these requests which are in your actual or constructive possession, custody or control, including all documents within the actual or constructive possession, custody or control of all of your representatives, agents, employees, attorneys, accountants, investigators and all other persons acting for you or on your behalf.

2. All documents are to be produced as they are kept in the usual course of business, in the files in which such documents have been maintained, and in the order within each file in which such documents have been maintained. All documents are to be produced along with copies of folders in which they are kept.

3. If you know of the existence, past or present, of any document requested herein, but are unable to produce such document because it is not presently in your possession, custody or control, or in the possession, custody or control of your representatives, agents, employees, attorneys, accountants, investigators and all other persons acting for you or on your behalf, you shall so state in your response and shall identify (by title, if any, nature of document and subject matter) such document and shall identify (by name, address and telephone number) the person in whose possession, custody or control the document was last known to reside.

4. For purposes of interpreting or construing the following requests, the terms used are to be given their most expansive and inclusive interpretation, unless otherwise specifically limited in the document request itself.

5. You must respond fully to each document request. If you object to a document request, you must state with specificity all grounds for your objection. If an objection pertains only to a portion of a document request, or a word, phrase or clause contained therein, you must state your objection to that portion only and respond as completely as possible to the remainder of

the document request. No part of any document request may be left unanswered merely because an objection is interposed to another part of the request.

6. If your answer to any document request is qualified in any manner, you must set forth the reason for and details of such qualification.

7. In the event you claim that any information called for in any document request is immune from discovery on the grounds of attorney-client privilege, the work product doctrine, or any other privilege or immunity from disclosure, you must provide in writing the basis of such assertion.

8. A complete original or copy of each document or thing must be produced, even if only a portion of such document or thing is responsive to a document request. Documents should not be edited, cut, redacted (except where you assert a claim of attorney-client privilege, work product doctrine, or other privilege or immunity from disclosure with respect to a portion of a document), or expunged, and should include all attachments, appendices, tables and exhibits, in addition to all covering memoranda, letters, folders or documents.

9. If any documents within the scope of these Requests are within the possession, custody or control of Your employees, attorneys, representatives or any other person over whom you have control, or as to which you have a right of possession or production, then these Requests require the production of such documents.

10. Where a claim of privilege is asserted in objection to any Request or subpart thereof, and any information or any document, or any portion thereof, is not provided on the basis of such assertion, in asserting the privilege You shall provide the following information in a privilege log:

a. for documents: (i) the type of document; (ii) the general subject matter of the

document; (iii) the date of the document; and (iv) such other information as is sufficient to identify the document, including, without limitation, the author of the document, its date, the addressee of the document, and, where not apparent, the relationship of the author and addressee to each other;

- b. for oral communications: (i) the name of the person making the communication; (ii) the names of persons present while the communication was made or having other access to the contents of the communication; (iii) where not apparent, the relationship of the persons present to the person making the communication; (iv) the date and place of the communication; and (v) the general subject matter of the communication.

11. You shall preserve and maintain all documents in their native format throughout the course of this litigation and shall specifically preserve all metadata concerning all documents.

12. If any document or thing called for by these Requests has been lost or destroyed, You shall identify, with respect to each document: (i) its author(s) or writer(s); (ii) its addressor(s); (iii) its addressee(s); (iv) its creation date; (v) its subject matter; (vi) its length in pages; (vii) its attachments or appendices; (viii) all persons to whom it was distributed, shown or explained; (ix) the date of the destruction or loss; (x) the person(s) authorizing or directing the destruction; (xi) the person destroying the document or the person who last had custody of the document; (xii) the nature of the document (e.g. letter, memorandum, report, etc.); and, (xiii) the reason for the destruction or loss of the document.

13. If Your response to any particular Request is that no responsive information or documents exist, then You must: (1) state in writing that You conducted a good faith search for the requested information or documents; (2) describe the extent of the search; and (3) state that,



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based on such search, no such information or documents exist.

14. These requests are continuing in nature. You must produce all additional responsive information and documents by way of supplemental responses.

15. Unless otherwise indicated, the time frame applicable to these requests is August 1, 2021 through the present.

**DOCUMENT REQUESTS**

1. All Documents and Communications concerning whether or not the map-drawing process was directed and controlled by one political party or the legislative leaders of one political party, including whether You, without Republican input, directed and/or controlled the map-drawing process.

2. All Documents and Communications concerning any public remarks or statements made by You, any public testimony You gave about the redistricting process and/or maps, and any inquiries from and any responses to the public or media about the redistricting process and/or maps. This includes: (i) public comments You made about the IRC and the IRC's action or lack of action; (ii) any communication between You and third-parties about advancing a partisan agenda or any efforts to undermine the constitutional process of having the IRC provide a viable map and/or viable second map; and (iii) all Documents and Communications concerning the work of the Commissioners of the Democratic Caucus of the IRC, which Documents and Communications You received from third parties.

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## **EXHIBIT B**

**FILED: STEUBEN COUNTY CLERK 02/03/2022 02:02 PM**

NYSCEF DOC. NO. 177

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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  
VOLANTE,

Index No. \_\_\_\_\_

**PETITION**

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 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, by their counsel, Keyser Maloney & Winner LLP, and Troutman Pepper Hamilton Sanders LLP, for their Petition against Respondents 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 E. Heastie, the New York State Board of Elections, and the New York State Legislative Task Force on Demographic Research and Reapportionment, allege as follows:

**PRELIMINARY STATEMENT**

1. The People of New York in 2014 enshrined in the New York Constitution an exclusive process for enacting replacement congressional and state legislative districts, while also prohibiting partisan and incumbent-protection gerrymandering. Yet, in the very first redistricting cycle after these landmark constitutional amendments, the Democratic Party politicians who control the New York Legislature and Governor's office brazenly enacted a congressional map that is undeniably politically gerrymandered in their party's favor. As Dave Wasserman, a nonpartisan national elections expert correctly noted, these politicians' congressional map is "an effective gerrymander," designed so that Democrats will "gain three seats and eliminate four Republican seats," creating "probably the biggest shift in the country."<sup>1</sup> The non-partisan election analysis website FiveThirtyEight similarly explained that the map is so "skewed toward Democrats" and "egregious" as to "represent[ ] a failure for [New York's] new redistricting process."<sup>2</sup> And even a top attorney for the famously left-leaning Brennan Center for Justice opined that the congressional map "isn't good for democracy," because it is "a master class in gerrymandering, . . . tak[ing] out a number of Republican incumbents very strategically."<sup>3</sup> Indeed, the congressional map is so obviously biased that it favors Democratic partisan interests more than *any* of 5,000 computer-generated maps, drawn without partisan considerations.

---

<sup>1</sup> Grace Ashford & Nicholas Fandos, *N.Y. Democrats Could Gain 3 House Seats Under Proposed District Lines*, N.Y. Times (Jan. 30, 2022), available at <https://www.nytimes.com/2022/01/30/nyregion/new-york-redistricting-congressional-map.html> (all websites last visited on Feb. 2, 2022).

<sup>2</sup> Nathaniel Rakich, *New York's Proposed Congressional Map Is Heavily Biased Toward Democrats. Will It Pass?*, FiveThirtyEight (Jan. 31, 2022), available at <https://fivethirtyeight.com/features/new-yorks-proposed-congressional-map-is-heavily-biased-toward-democrats-will-it-pass/>.

<sup>3</sup> Nick Reisman, *How the Proposed Congressional Lines Could Alter New York's Politics*, Spectrum News 1 (Feb. 1 2022), available at <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/02/01/how-the-proposed-congressional-lines-could-alter-ny-s-politics>.

2. The People of New York in 2014 amended Sections 4 and 5 of Article III of the New York Constitution, establishing an *exclusive* process for redistricting that, both as a matter of procedure and substance, prohibits partisan and incumbent-protection gerrymandering. Through the creation of the New York Independent Redistricting Commission (“IRC” or “the Commission”), the requirements for multiple public hearings to receive public comment on proposed maps, and limiting the New York State Legislature’s (“Legislature”) authority to an up or down vote on IRC-proposed maps, these amendments designed a process to preclude gerrymandering. Indeed, these amendments explicitly prohibit drawing maps “for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5). These amendments thus bar the sorts of gamesmanship and self-interested gerrymandering that plagued the redistricting process in this State for years.

3. The State of New York even bragged about these reforms to its redistricting process before the U.S. Supreme Court, claiming that Article III, Section 4(c)(5) was powerful evidence that States could fight partisan gerrymandering by barring the drawing of district lines for the purpose of favoring or disfavoring a political party.<sup>4</sup>

4. The Democrat-controlled Legislature attempted, but failed, to gut these reforms in 2021 through a proposed constitutional amendment. That amendment would have allowed the Legislature to assume vast redistricting authority if the Commission failed to vote on redistricting plans for the Legislature’s consideration.

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<sup>4</sup> Amicus Br. for States of N.Y., et al. at 18, *Rucho v. Common Cause*, 558 U.S. \_\_\_\_ (2019) (No. 18-422).

5. But the People decisively voted this measure down in 2021, re-confirming the IRC's exclusive redistricting process under New York law.

6. Undeterred, the Democrats who control the Legislature and Governor Kathy Hochul have egregiously violated both the procedural and substantive protections in the New York Constitution to seek precisely the type of advantage for their party that the People outlawed in 2014 and reaffirmed in 2021. Governor Hochul thus lived up to her promise to "use [her] influence to help Democrats expand the House majority through the redistricting process," and help the Democratic Party "regain its position that it once had when [she] was growing up."<sup>5</sup>

7. This Court should invalidate the unconstitutional congressional map on two separate and independent bases.

8. First, the Legislature had no authority to enact the new map because the Legislature did not follow the *exclusive* process for enacting replacement maps that the People enshrined through the 2014 amendments, meaning that the congressional map is entirely void. Accordingly, the only validly enacted or adopted maps are those that the Legislature and courts adopted for New York after the 2010 decennial census. But the congressional map is now unconstitutionally malapportioned after the 2020 census and does not have the correct number of seats. This Court should expeditiously adopt a new map—prior to the impending deadlines for candidates to access the ballot—to cure the malapportionment now affecting the post-2010-census congressional map.

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<sup>5</sup> Katie Glueck & Luis Ferré-Sadurní, *Interview with Kathy Hochul: "I Feel a Heavy Weight of Responsibility"*, N.Y. Times (Aug. 25, 2021), available at <https://www.nytimes.com/2021/08/25/nyregion/kathy-hochul-interview.html>.

9. Second, if this Court holds that the Legislature somehow had the authority to adopt a replacement map notwithstanding these procedural failures, this Court should reject it as a matter of substance, as the map is an obviously unconstitutional partisan and incumbent-protection gerrymander. If this Court takes this approach, it should invalidate the map and then send it back to the Legislature to create a new congressional map, which complies with the law.

### THE PARTIES

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

11. Petitioner Guy C. Brought is an elector of the state of New York, residing at 170 Horton Lane, Apt. 462, Port Ewen, NY 12466, in Ulster County, within Congressional District 19.

12. Petitioner Lawrence Canning is an elector of the state of New York, residing at 2843 Johnny Cake Hill Road, Hamilton, NY 13346, in Madison County, within Congressional District 19.

13. Petitioner Patricia Clarino is an elector of the state of New York, residing at 274 Garden Street, New Windsor, NY 12553, in Orange County, within Congressional District 18.

14. Petitioner George Doohar, Jr. is an elector of the state of New York, residing at 209 Dixon Dr., Syracuse, New York 13219, in Onondaga County, within Congressional District 22.

15. Petitioner Stephen Evans is an elector of the state of New York, residing at 440 West 41st Street, Apt. 4G, New York, NY 10036, in New York County, within Congressional District 10.

16. Petitioner Linda Fanton is an elector of the state of New York, residing at 2347 Fulmer Valley Road, Wellsville, NY 14895, in Allegany County, within Congressional District 23.



17. Petitioner Jerry Fishman is an elector of the state of New York, residing at 8200 Narrows Avenue, Brooklyn, NY 11209, in Kings County, within Congressional District 11.

18. Petitioner Jay Frantz is an elector of the state of New York, residing at 39 Orchard Place, Gowanda, NY 14070, in Cattaraugus County, within Congressional District 23.

19. Petitioner Lawrence Garvey is an elector of the state of New York, residing at 2 Hillman Road, New City, NY 10956, in Rockland County, within Congressional District 17.

20. Petitioner Alan Nephew is an elector of the state of New York, residing at 28 Aldrich Street, Gowanda, NY 14070, in Cattaraugus County, within Congressional District 23.

21. Petitioner Susan Rowley is an elector of the state of New York, residing at 876 Ford Peterson Road, Frewsburg, NY 14738, in Chautauqua County, within Congressional District 23.

22. Petitioner Josephine Thomas is an elector of the state of New York, residing at 322 Wythrop Road, Syracuse, NY 13209, in Onondaga County, within Congressional District 22.

23. Petitioner Marianne Volante is an elector of the state of New York, residing at 170 Loder Road, Yorktown Heights, NY 10598, in Westchester County, within Congressional District 16.

24. Respondent Kathy Hochul is the Governor of the State of New York. She is being sued in her official capacity.

25. Respondent Brian A. Benjamin is the Lieutenant Governor of the State of New York and President of the New York State Senate. He is being sued in his official capacity.

26. Respondent Andrea Stewart-Cousins is the New York State Senate Majority Leader and President *Pro Tempore* of the New York State Senate, representing the 35th Senate District.

Majority Leader Stewart-Cousins has offices in Albany and at 28 Wells Avenue, Building #3, 5th Floor, Yonkers, NY 10701. She is being sued in her official capacity.

27. Respondent Carl E. Heastie is the Speaker of the New York State Assembly, representing the 83rd Assembly District. Speaker Heastie has offices in Albany and at 1446 East Gun Hill Road, Bronx, NY 10469. He is being sued in his official capacity.

28. Respondent New York State Board of Elections was established on June 1, 1974, as an Executive Department agency vested with the authority and responsibility for administration and enforcement of the laws relating to election in the State of New York. It has its principal place of business at 40 North Pearl Street, Suite 5, Albany, NY 12207.

29. Respondent New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”) was established by the Legislature in 1978 pursuant to New York Legislative Law § 83-m, with the principal responsibility—at least before the 2014 constitutional amendments to Article III, Section 4—of preparing and formulating reapportionment plans to the Legislature following each decennial census. LATFOR’s principal place of business is located at 250 Broadway, Suite 2100, New York, NY 10007.

### **JURISDICTION AND VENUE**

30. This Court has jurisdiction over this lawsuit pursuant to Article III, Section 5 of the New York Constitution, CPLR § 3001, and Unconsolidated Laws § 4221, the latter of which grants authority to the “supreme court” to “review” any “petition of any citizen” challenging “[a]n apportionment by the legislature.”

31. Venue is proper in this County under Article III, Section 5 of the New York Constitution, CPLR § 503(a), and Unconsolidated Laws § 4221, the latter of which authorizes the

filing of a petition challenging “[a]n apportionment by the legislature” in “the supreme court where any such petitioner resides.”

### **FACTUAL BACKGROUND**

#### **A. Redistricting in New York**

32. Following each federal decennial census, the New York Constitution requires the State of New York to redraw its congressional districts to adjust for population changes. The process of redrawing these district lines is known as redistricting.

33. New York congressional districts must be redrawn so that each district is contiguous; contains, to the extent possible, an equal number of inhabitants; and is in as compact a form as possible, as required by Article III, Section 4 of the New York State Constitution.

34. Redistricting is an extremely time-sensitive requirement, including because candidates must know what their districts are in advance of an election, in order to meet state-ballot-access requirements. Multiple petition and signature-related deadlines are looming for New York congressional candidates. *See generally* N.Y. Election Law § 6-100, *et seq.*

#### **i. The Redistricting Process Before 2014**

35. Before 2014, the Legislature maintained primary responsibility for redistricting.

36. To aid the Legislature in its task, LATFOR would prepare proposed redistricting maps for the Legislature’s vote.

37. Established in 1978, LATFOR is a partisan body that has consistently produced partisan maps. It consists of six members, including four legislators and two non-legislators. The Temporary President of the Senate appoints one legislator and one non-legislator. The Speaker of

the Assembly also appoints one legislator and one non-legislator. The Minority Leader of the Assembly appoints one legislator, and the Minority Leader of the Senate appoints one legislator.

38. Under the LATFOR system, “legislators w[ould never] give up their right to draw district lines.” David Freedlander, *Background: How Redistricting Will Reshape New York’s Battle Lines*, Observer (Dec. 27, 2010).<sup>6</sup> Indeed, legislators could effectively control redistricting under the LATFOR process in a partisan manner, by controlling “who winds up on [LATFOR]—those who make it are likely to be the favorites of [incumbent legislative leaders] and are likely to get exactly the districts that they want.” *Id.*

39. Over time, the Legislature manipulated its role in the redistricting process to protect existing incumbents. Under this pre-2014 system, elections were often predestined, with state legislative incumbents winning reelection more than 98% of the time, “usually overwhelmingly.” *Elections With No Meaning*, N.Y. Times (Feb. 21, 2004), at A14.<sup>7</sup> The “major reason” for this seemingly insurmountable incumbency advantage was gerrymandering, allowing the party in power to draw districts with “surgical precision” to “exclude the homes of rival candidates” and making favorable districts nearly “impregnable.” *Id.* With incumbents facing little chance of defeat under the then-existing process, elections became uncompetitive, and voters became increasingly disillusioned by the reality that they could not choose their representatives.

40. This system granted political parties significant leeway to gerrymander for partisan and incumbent gain. Only the requirement of “one person, one vote,” and requirements that

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<sup>6</sup>Available at <http://observer.com/2010/12/background-how-redistricting-will-reshape-new-yorks-battle-lines/>.

<sup>7</sup> Available at <https://www.nytimes.com/2004/02/21/opinion/elections-with-no-meaning.html>.

districts “shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade . . . , and shall at all times consist of contiguous territory,” N.Y. Const. art. III, § 4 (2014), constrained the party leaders responsible for drawing new maps. The New York Constitution required respect for county and city lines, noting that “no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county,” and “[n]o town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts,” as well as the “block on border” and “town on border” requirements. *Id.*; *see also* N.Y. Const. art. III, § 4(c)(6) (current version). But even these “requirements” were largely not meaningful constraints. *See Schneider v. Rockefeller*, 31 N.Y.2d 420, 426–27, 293 N.E.2d 67 (1972).

41. Additionally, prior to 2014, some New York Courts had interpreted the then-pertinent constitutional provisions as not providing for a claim of partisan gerrymandering. *Bay Ridge Cmty. Council, Inc. v. Carey*, 479 N.Y.S.2d 746, 749, 103 A.D.2d 280 (2d Dep’t 1984) (*per curiam*), *aff’d* 66 N.Y.2d 657, 486 N.E.2d 830 (1985) (order).

42. Therefore, the pre-2014 system for redistricting and reapportionment gave broad discretion to the politicians in power, and *required* only that all state legislative and congressional districts largely abided by the equal-population principle, creating unfair and undemocratic maps that ensconced powerful parties in the seat of government.

## **ii. The Redistricting Process After the 2014 Reforms**

43. In recent years, however, the People of this State explicitly outlawed partisan gerrymandering and constitutionalized an exclusive, nonpartisan procedure for redistricting.

44. In 2014, New Yorkers enacted a constitutional amendment, amending Article III, Sections 4 and 5 of the New York Constitution, and adding a new Section 5-b to the same Article, voting in favor of the following ballot measure:

The Proposed amendment to sections 4 and 5 and addition of new section 5-b to Article 3 of the State Constitution revises the redistricting procedure for state legislative and congressional districts. The proposed amendment establishes a redistricting commission every 10 years beginning in 2020, with two members appointed by each of the four legislative leaders and two members selected by the eight legislative appointees; prohibits legislators and other elected officials from serving as commissioners; establishes principles to be used in creating districts; requires the commission to hold public hearings on proposed redistricting plans; subjects the commission's redistricting plan to legislative enactment; provides that the legislature may only amend the redistricting plan according to the established principles if the commission's plan is rejected twice by the legislature; provides for expedited court review of a challenged redistricting plan; and provides for funding and bipartisan staff to work for the commission. Shall the proposed amendment be approved?

*2014 N.Y. State Prop. No. 1: An Amendment Revising State's Redistricting Procedure.*<sup>8</sup>

45. Proposition 1 amended the New York Constitution to vest primary redistricting responsibility in the newly created IRC, as well as establishing numerous procedural safeguards against the Legislature's continued gerrymandering practices.

46. One procedural safeguard is the IRC's 10-member composition. Two Commissioners are appointed by the New York State Senate Majority Leader and Temporary President, two are appointed by the New York State Senate Minority Leader, two are appointed by the Speaker of the New York State Assembly, and two are appointed by the New York State Assembly Minority Leader. The final two members are then selected by these eight appointees

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<sup>8</sup> Available at <https://www.elections.erie.gov/Files/Election%20Results/2014/11042014/2014-General.pdf>.

and cannot be enrolled as a Democrat or Republican in the past five years. All Commission members must be registered voters in New York.

47. Article III, Section 4 of the New York Constitution requires the IRC to hold public hearings in cities and counties around the State and release draft plans, data, and related information to facilitate public review of proposed district lines. Draft plans must be made available at least thirty days before the first public hearing and no later than September 15 of the year following the census.

48. Article III, Section 5-b(f) and (g) of the New York Constitution governs IRC voting and the procedure for approving and submitting redistricting maps to the Legislature. Five members of the IRC constitute a quorum. IRC approval of a plan requires seven votes, which must include a member appointed by each of the legislative leaders. In the event no plan gets seven votes, the IRC must submit the plan(s) with the highest vote to the Legislature.

49. Article III, Section 4 of the New York Constitution requires the IRC to submit an initial set of maps and the necessary implementing legislation to the Legislature no later than January 15 of the second year following the census. The Legislature then votes on the maps and implementing legislation without amendment. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

50. If the Legislature fails to adopt the first set of maps and implementing legislation, or the Governor vetoes adopted implementing legislation, the redistricting process reverts back to the IRC. The IRC must submit a second set of maps and implementing legislation to the Legislature, subject to the requirements outlined above, within 15 days of being notified of the first rejection and no later than February 28. The Legislature then votes on the second set of

proposed maps and implementing legislation without amendment. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

51. If (and only if) the Legislature fails to adopt the IRC's second set of maps and implementing legislation, or the Governor vetoes the second adopted implementing legislation, can the Legislature amend the IRC's proposed redistricting maps and enact its own replacement maps.

52. The 2014 amendments to Article III, Section 4 also changed and added to the *substantive* redistricting requirements. Now, the New York Constitution specifically provides that districts "shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c).

53. The Legislature must follow all of the substantive requirements for redistricting applicable to the IRC. That is, any maps and implementing legislation adopted by the Legislature cannot involve partisan gerrymandering or incumbent-favoring gerrymandering, must be compact and contiguous, and must have equal population between districts, in addition to the already-noted procedural requirement that all maps be enacted via a single mandatory process involving the IRC.

54. The Legislature also established an additional guardrail against partisan gerrymandering with Section 3 of the Redistricting Reform Act of 2012. 2012 N.Y. Sess. Laws 17, § 3. Applicable above and apart from New York Legislative Law §§ 93, 94, Section 3 of the Redistricting Reform Act of 2012 provides, in pertinent part, that "[a]ny amendments by the senate or assembly to a redistricting plan submitted by the independent redistricting commission, shall not affect more than two percent of the population of any district contained in such plan." 2012 N.Y. Sess. Laws 17, § 3.



**iii. The Legislative Democrats Fail To Derail These Reforms With A Proposed 2021 Constitutional Amendment**

55. In 2021, the Legislature referred a constitutional amendment to New York voters that would have gutted the 2014 constitutional reforms, in favor of the Legislature over the Commission, but the People decisively voted this measure down.

56. The ballot proposal would have amended the New York Constitution in a number of ways, including section 4(b) of Article III, to provide:

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, or the redistricting commission fails to vote on a redistricting plan and implementing legislation by the required deadline and makes a submission to the legislature pursuant to subdivision (g-1) of section five-b of this article, each house shall introduce such implementing legislation with any amendments each house of the legislature deems necessary.

*2021 Statewide Ballot Proposals, New York State Board of Elections* (amendment underlined).<sup>9</sup>

57. The IRC's exclusive redistricting process, enshrined in Article III, Section 4 of the New York Constitution, can only be altered by a constitutional amendment. Yet, within days of the People voting down the 2021 constitutional amendment, the Legislature referred a bill that purports to achieve largely the same result as the failed amendment would have to the Governor for her signature. The Governor signed this unconstitutional bill on November 24, 2021.

58. This law attempts to avoid the Constitution's limitations by purporting to amend only section 4(c) of the Redistricting Reform Act of 2012, notwithstanding the expressed desires of the People of this State:

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature

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<sup>9</sup> Available at <https://www.elections.ny.gov/2021BallotProposals.html>.

shall fail to override such veto within ten days of such veto, or if the commission does not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan and the commission submitted to the legislature pursuant to subdivision (a) of this section all plans in its possession, both completed and in draft form, and the data upon which such plans are based, each house shall introduce such implementing legislation with any amendments each house deems necessary. If approved by both houses, such legislation shall be presented to the governor for action within three days.

L.2021, c. 633, § 1 (amendment underlined).

**B. The Post-2010 Census Map For Congress Is Unconstitutional Under The New York Constitution**

59. Following the 2010 Census, the Legislature in 2012 reapportioned New York's state legislative districts, but it could not agree on new congressional districts. As a result, a panel of three federal judges appointed a federal magistrate judge, Roanne Mann, to propose a new congressional map for New York. On March 19, 2012, the judicial panel imposed its congressional map, which was largely the same as the map issued by Judge Mann. *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012); *see also* Thomas Kaplan, *New Congressional Lines Imposed by Federal Court*, N.Y. Times (Mar. 19, 2012).<sup>10</sup>

60. After the 2010 census, New York had a population goal of 719,298 residents for each of its 27 congressional districts.

61. In the interim, various population shifts caused congressional districts to become unconstitutionally malapportioned.

62. New York's 26 congressional districts have a population goal of 776,971 residents.

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<sup>10</sup> Available at <https://www.nytimes.com/2012/03/20/nyregion/judges-impose-new-congressional-map-for-new-york.html>.

63. The prior congressional map does not comply with this new population target or the constitutional requirements for population equality.

64. In other words, none of the districts complies with the “strict standard of population equality applicable to congressional apportionment,” which require “maximum population equality.” *Schneider v. Rockefeller*, 31 N.Y.2d 420, 427–28, 293 N.E.2d 67 (1972).

65. None of the prior districts matches exactly (or even within 1,000 residents) the population goal of 776,971 residents.

66. For example, in prior Congressional District 23, where Petitioners Tim Harkenrider, Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside, the current population is 83,462 residents below the population goal (a -10.7% deviation).

67. In prior Congressional District 22, where Petitioner Lawrence Canning resides, the current population is 80,361 residents below the population goal (a -10.3% deviation).

68. In prior Congressional District 19, where Petitioner Guy C. Brought resides, the current population is 78,298 residents below the population goal (a -10.1% deviation).

69. In prior Congressional District 24, where Petitioners George Dooher, Jr. and Josephine Thomas reside, the current population is 59,664 residents below the population goal (a -7.7% deviation).

70. Moreover, the prior congressional map includes 27 congressional districts, and New York only receives 26 congressional seats after the most recent census, so that map is plainly

invalid. U.S. Census Bureau, 2020 Census: Apportionment of the U.S. House of Representatives (April 26, 2021).<sup>11</sup>

**C. The IRC And Legislature Failed To Follow The Constitutional Process For Redistricting To Cure This Malapportionment**

**i. The Commission's Initial Efforts To Develop Redistricting Maps**

71. On April 26, 2021, the U.S. Census Bureau released the population counts from the 2020 Census, showing that New York's resident population increased by more than 4 percent, or 823,147 residents, from 19,378,102 a decade ago, to 20,201,249 in 2020. Because of national population shifts, however, New York lost one of its congressional seats in the United States House of Representatives, leaving the State with a total of 26 such districts.

72. The 2020 Census data further showed, as previously mentioned, that New York's congressional districts are now unconstitutionally malapportioned.

73. Pursuant to the 2014 constitutional amendments, the New York Constitution established an exclusive process for adopting any replacement redistricting maps, granting the IRC and Legislature specifically defined roles.

74. The IRC's current members are David Imamura, serving as Chair, Jack M. Martins, serving as Vice Chair, Eugene Bengier, Ross Brady, John Conway III, Dr. Ivelisse Cuevas-Molina, Dr. John Flateau, Elaine Frazier, Charles H. Nesbitt, and Willis H. Stephens, Jr.

75. Consistent with the procedures established by the 2014 amendments, Democratic leaders in the Legislature appointed the "Democratic Caucus" of the Commission, made up of:

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<sup>11</sup> Available at <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

David Imamura, Eugene Bengier, John Flateau, and Elaine Frazier, along with non-party enrollee Ivelisse Cuevas-Molina.

76. Similarly, Republican leaders in the Legislature selected the “Republican Caucus” of the Commission, made up of: Jack Martins, John Conway, Charles Nesbitt, and Willis Stephens, joined by Conservative Party member Ross Brady.

77. From the outset, Democratic legislative leaders attempted to hamstring the new Commission with multiple challenges and delays.

78. The Democrats attempted to impede the Commission by delaying its receipt of state funding from the Legislature. Despite a \$1 million allocation in the 2020 state budget, the funding never materialized, forcing Commission staff to work on a voluntary basis for months. After more than a year, the Legislature finally allocated \$4 million to the Commission’s redistricting efforts in April 2021. Ethan Geringer-Sameth, *New York Redistricting Commission Kicks C of State’s New Map-Drawing Process*, Gotham Gazette (July 20, 2021);<sup>12</sup> Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).<sup>13</sup>

79. Finally, beginning on June 20, 2021, the IRC held a series of nine public meetings across the State to hear public testimony about the new maps and the redistricting process, as required by the New York Constitution. N.Y. Const. art. III, § 4(c).

80. On September 15, 2021, members of the IRC released initial map drafts, consistent with constitutional requirements. N.Y. Const. art. III, § 4(c).

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<sup>12</sup> Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

<sup>13</sup> Available at <https://www.news10.com/news/redistricting-commission/>.

81. Republican members had hoped to submit a single bipartisan set of draft maps. Speaking to reporters about the two draft plans, Commissioner Martins said the IRC “should end up with the maps being negotiated and presented jointly,” but the Democratic commissioners had not agreed to meet over the weekend before the Commission released the draft maps. *See* Rebecca C. Lewis & Zach Williams, *Takeaways From New York’s (Competing!) Redistricting Draft Maps*, City & State N.Y. (Sept. 15, 2021).<sup>14</sup>

82. The Democratic members viewed the competing draft maps differently, with Commissioner Imamura stating that “the fact that we put out two plans does not indicate that the commission will be unable to come to a bipartisan agreement.” *Id.*

83. The IRC held an additional fourteen public hearings across the State, during which residents voiced concerns, desires, and suggestions regarding the draft maps and the redistricting process. The IRC also solicited written comments and draft maps from the public.

84. Democratic members revised their respective maps between the end of November and when the full Commission met to deliberate in December. Testimony of Eugene Banger at 23:44–24:10, Virtual Public Meeting of the NYIRC, Jan. 3, 2022 (“1/3/22 IRC Meeting”).<sup>15</sup>

85. The IRC held its last public hearing on December 5, 2021, and the final deadline for public comments and draft maps was December 6, 2021.

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<sup>14</sup> Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

<sup>15</sup> Available at <https://totalwebcasting.com/view/?func=VOFF&id=nysirc&date=2022-01-03&seq=1>.

86. Following the public comment period, the IRC scheduled meetings to negotiate and finalize a single set of maps to submit to the Legislature. The IRC agreed on a procedure for putting together this set of consensus maps:

- a. First, two third-party redistricting organizations, Redistricting Partners and Redistricting Insight, would prepare a set of maps without IRC input, using the draft maps released by the IRC in September, as well as the public testimony and written comments.
- b. The Commission would then hold a series of meetings, breaking into subgroups, to review the organizations' preliminary maps.
- c. Based on these discussions, the IRC would make changes to the preliminary maps and work to arrive at a single map.

87. All of the members of the Commission initially followed their agreed-upon plan and worked together on a set of consensus maps for over two weeks, moving toward a bipartisan consensus.

88. On December 22, 2021, the full Commission met to discuss the bipartisan maps. By this point, only a small number of issues remained open, and the Commission was close to reaching a consensus. After discussing the open issues for two hours, the Commission broke at 1:00 p.m., agreeing to reconvene at 4:00 p.m. to reach an agreement on the remaining issues. Testimony of Jack Martins at 8:44–9:14, 1/3/22 IRC Meeting, *supra*.

89. When the IRC reconvened at 4:00 p.m. on December 22, Commissioner Imamura read a statement announcing that the Democratic Caucus would no longer negotiate the bipartisan maps, as all members previously agreed to do. Instead, the Democratic Caucus was only willing

to negotiate on the latest iteration of the maps it had released unexpectedly, and without explanation, the day prior. Testimony of Jack Martins at 9:16–9:49, 1/3/22 IRC Meeting, *supra*.

**ii. The IRC Submits Two Sets Of Maps To The Legislature**

90. On January 3, 2022, the IRC met to vote on maps to send to the Legislature.

91. The Democratic Caucus again refused to negotiate with the full Commission, discuss the bipartisan maps, or make any concessions. Commissioner Martins expressed his disappointment with the impasse, noting that the Republican members had reached an agreement with Democrats on 90 percent of the new district lines before talks broke down.

92. The Commission then voted on two redistricting plans—the Democratic members’ partisan maps presented on December 21 (“Plan A”) and the consensus maps, which were based on the preliminary maps drawn by independent organizations and negotiated by the full Commission throughout December 2021 (“Plan B”).

93. Both plans received five votes each, resulting in both being delivered to the Legislature on January 3.

94. The Legislature rejected both plans out-of-hand, without consideration of the public’s input, the Commission’s negotiations and reflections on the public’s testimony, bipartisan priorities, and the other considerations New Yorkers enshrined in the Constitution.

95. The Assembly set the plans for a party vote, rejecting them all. Before the final vote, Assemblyman Colin Schmitt asked Assemblyman Kenneth Zebrowski, a Democrat representing the 96th District who sponsored Plan A, whether the Assembly would “follow[ ] all of the currently prescribed State Law and State constitutional process for redistricting” if the Legislature failed to approve any of the IRC’s plans—including taking public input before enacting



new maps. Assemblyman Zebrowski did not give a concrete answer, saying “I don’t—I don’t think that’s germane to—to this debate right now.” Transcript at 12–14, Session, New York State Assembly (Jan. 10, 2022) (Questioning of Assemblyman Zebrowski by Assemblyman Colin Schmitt).<sup>16</sup>

96. In the Senate, Plan A’s maps received no votes in favor of enactment. Seventeen senators voted in favor of Plan B’s Senate and Assembly districts, with forty-six voting no, while nineteen senators voted to enact Plan B’s congressional map, with forty-four voting against. Before voting in favor of Plan B, Senator Andrew Lanza commented on the Commission’s lack of real autonomy, saying, “I think it’s been the worst-kept secret in Albany, if not the entire country, that this Independent Redistricting Commission was never going to be allowed to remain independent.” Transcript at 73:14–17, Regular Session, New York State Senate (Jan. 10, 2022) (Testimony of Senator Andrew Lanza).<sup>17</sup>

97. On January 10, the Legislature advised the Commission that it had rejected the submitted plans.

98. Following this rejection, the IRC had until January 25 to submit a revised plan under the 2014 amendments to the Constitution.

99. The full Commission met to discuss a single plan for the final submission to the Legislature, as required by Article III, Section 4(b) of the New York Constitution. The Republican members attempted to restart negotiations on the previously negotiated bipartisan maps. Chairman

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<sup>16</sup> Available at <https://www.nyassembly.gov/av/session/>.

<sup>17</sup> Available at <https://legislation.nysenate.gov/pdf/transcripts/2022-01-10T15:51/>.

Imamura stated that the Democratic members wanted to re-submit virtually the same plan that the legislature had rejected. Despite multiple entreaties from the Republican members, the Democratic members refused to meet to discuss bipartisan maps.

100. On January 18, before the IRC's constitutional window for revision expired, Speaker Carl Heastie announced he had appointed Assembly Democrat Kenneth Zebrowski to be the temporary co-chair of LATFOR. Speaker Heastie stated that "the results of reapportionment will determine the path our state and our nation take for the coming decade," and "Assemblymember Zebrowski is the right person for the job." Assembly Speaker Carl E. Heastie, News Release, *Speaker Heastie Announces Assemblymember Zebrowski Appointed Temporary Co-Chair of LATFOR* (Jan. 18, 2022).<sup>18</sup>

101. On January 24, 2021, Commissioner Imamura announced that the IRC was at an impasse and would not be submitting a second set of redistricting maps to the Legislature at all.

102. On the same day, Commissioner Martins made a statement on behalf on the Republican members on the Commission, outlining the Democratic members' refusal to engage with anything other than their partisan maps and expressing his disappointment that the Commission failed its constitutional mandate.

103. On January 25, 2022, the 15-day window for the IRC to submit revised maps to the Legislature closed without the IRC submitting new maps, as required by the Constitution.

104. Upon information and belief, the Democratic Caucus of the IRC decided not to submit a compromise congressional map within the constitutional timeframes after receiving

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<sup>18</sup> Available at <https://www.nyasembly.gov/Press/?sec=story&story=100542>.

encouragement to undermine the constitutional process from Democratic Party politicians and officials.

**iii. Notwithstanding The Failure Of The Constitutional Process, The Legislature Nevertheless Attempted To Enact A Replacement Congressional Map, And The Map It Enacted Is An Unconstitutional Partisan And Incumbent-Protection Gerrymander**

105. Despite the failure of the IRC to vote on and present a second set of maps, the Legislature proceeded to craft its own congressional map, turning a blind eye to the mandatory and exclusive constitutional process for redistricting established in Article III, Section 4.

106. In doing so, the Legislature ignored calls from all across the aisle to engage with the public and be more transparent about the choices it was making in drawing district lines. Clifford Michel & Farah Javed, *Albany Democrats Seize Control of Redistricting, With Unclear Role for Public*, The City (Jan. 27, 2022).<sup>19</sup>

107. Instead, Democratic leaders crafted and pushed through legislation to enact its own new congressional map over the course of only a few days, releasing the Legislature's proposed map on Sunday evening, January 30, without a single public hearing. Ashford & Fandos, *supra*.

108. This map bears no resemblance to the two maps proposed by the IRC.

109. To underscore how different the Legislature's map is, and to make adoption of this unrecognizable congressional map possible, the Legislature added a "notwithstanding clause" to the enacting legislation, exempting the map from any laws to the contrary, including the 2% rule embodied in 2012 New York Session Laws 17, § 3.

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<sup>19</sup> Available at <https://www.thecity.nyc/2022/1/26/22903787/albany-democrats-seize-control-of-redistricting-with-unclear-role-for-public>.

110. The result is an unmistakably gerrymandered map for Congress.

111. The Legislature created a congressional map that, without a doubt, creates “an effective [Democratic] gerrymander, resulting in the Democrats “gain[ing] three seats and eliminat[ing] four Republican seats,” and creating the biggest shift in the country” with “the stroke of a pen.” Ashford & Fandos, *supra*.

112. As noted by Laura Ladd Bierman, the executive director of the League of Women Voters of New York, “New Yorkers deserve a transparent and fair redistricting process, and it is shameful that the Legislature has denied them this.” *NYC Would Get More Seats in State Senate Under Proposed Maps*, N.Y. Daily News Feb. 1, 2022).<sup>20</sup> So, even though the New York Constitution prohibits partisan gerrymandering, she noted that the congressional map “reflect[s] a Legislature that appears to care more about favoring partisan interests than it does for fair maps.” *Id.*

113. In fact, the Legislature’s congressional gerrymander was so successful, so biased in favor of Democrats, that the enacted congressional map is more favorable to Democrats than *any* of the 5,000 computer simulated maps, designed specifically to follow New York’s redistricting requirements without focusing on any goal of increasing partisan advantage.

114. The Legislature concocted numerous individual congressional districts with boundaries with no honest explanation except for impermissible partisan and incumbent-favoring gerrymandering. The following examples are illustrative.

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<sup>20</sup> Available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-state-senate-nyc-seats-legislative-redistricting-20220202-2xoyaqnvlfdliax5tosbnuage-story.html>.

115. In Long Island, the Legislature completely changed Congressional Districts 1 and 2, swapping Republican voters for Democratic voters in an egregious gerrymander.

116. In particular, the Legislature placed areas with high concentrations of Republican voters into new Congressional District 2 while moving solidly Democrat communities into Congressional District 1—all of the Republican communities in Brookhaven on the south shore are now in District 2, whereas the heavily Democrat areas in the center of Long Island are now channeled into District 1.

117. This partisan reconfiguration creates several new town splits, and an additional county split, where Congressional District 1 now reaches into Nassau County between Oyster Bay and Huntington. By packing Republicans into Congressional District 2, the Legislature effectively flipped Congressional District 1.

118. The result of this blatant gerrymandering has turned Congressional District 1 from a strong Republican district, solely in Suffolk County, into a lean Democratic district, unnecessarily sprawling across two counties.

119. Similarly, the redrawing shifted District 2 from a safe Republican district into an outright uncompetitive Republican stronghold.

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**Map of Prior Congressional Districts 1 & 2<sup>21</sup>****Map of New Congressional Districts 1 & 2**

<sup>21</sup> All maps, unless otherwise specified, come from the LATFOR government website, available at <https://www.latfor.state.ny.us/maps/>.

120. The new Congressional District 3 is dramatically different from the old map in order to accomplish the Legislature's partisan goals.

121. The old District 3 bridged Suffolk and Nassau counties, with a slight reach into Queens County. The new map reaches from Suffolk County, through Nassau and Queens counties, and then skips through Bronx County all the way up into Westchester County across the Long Island Sound in a thin strip up to the town of Rye, capturing overwhelmingly Democrat-voting towns along the shore.

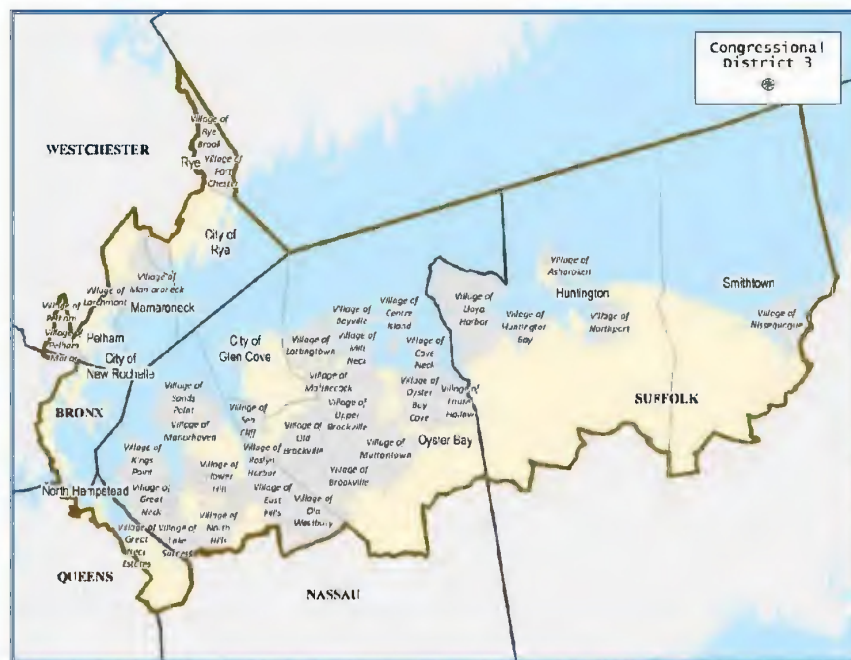
122. This combination of Westchester, with a district largely populated on Suffolk and Nassau counties, makes no sense. These communities have no nexus and share no communities of interest.

123. With these stark and otherwise unexplainable changes, the Legislature has decreased competitiveness, shifting Congressional District 3 from a competitive Democratic-leaning district to a strong Democrat district.

## Map of Old Congressional District 3



## Map of New Congressional District 3





124. The new Congressional Districts 8, 9, 10, and 11 radically break up established communities of interest in Brooklyn to create a partisan advantage for Democrats.

125. The new map divides closely knit, concentrated Orthodox Jewish and Russian communities with strong social and cultural ties, resulting in conservative Republican-leaning voters spread or “cracked” across multiple districts.

126. These new districts are drawn as vertical stripes across the southern two-thirds of Brooklyn, moving large numbers from the Russian Jewish communities in Brooklyn into Congressional District 8 and dividing the Orthodox Jewish communities between Congressional District 9 and Congressional District 10.

127. This partisan gerrymander also split other communities of interest—in Congressional District 10, the Legislature cut across an established Asian community, moving half of it into Congressional District 11.

128. In particular, it cuts Sunset Park off from northern Brooklyn and the Lower East Side of Manhattan, separating the Asian American, Pacific Islander, and Latino communities—which have formed the “backbone” of the district for nearly 30 years, since the 1992 reapportionment process—from its related communities of interest in northern Brooklyn and Manhattan’s Lower East side. Kristyn Brendlen, *Brooklyn Electeds, Community leaders Ask State Gov Cjfficials to Reconsider Redistricting Maps*, Brooklyn Paper (Feb. 1, 2022).<sup>22</sup> This new split breaks up these linked communities from the North Brooklyn area, which is especially important given the recent “rise in anti-Asian hate.” *Id.*

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<sup>22</sup> Available at <https://www.brooklynpaper.com/brooklyn-electeds-community-redistricting/>.

129. Democratic Assemblymember Marcela Mitaynes also decried this inexplicable particular line-drawing, noting that the Legislature had “separate[d]” these “culturally and historically connected” communities for nothing more than “political expediency to ensure a[n] electoral advantage in the near term,” and “fail[ed] to meet the necessary level of transparency, accountability, and public participation that our constituents rightfully deserve from our democratically elected leaders,” before concluding that she would “not dismantle the political voice of [her] constituents by voting to approve the proposed Congressional Districts.” Assemblymember Marcela Mitaynes’ Statement on New York State’s Proposed 2022 Congressional Maps (Feb. 2, 2022).<sup>23</sup>

130. The Legislature designed this particular shift with the intent of unseating incumbent Republican Congresswoman Nicole Malliotakis from Congressional District 11. Carl Campanile, *Dems Plan to Topple GOP Rep. Malliotakis in Redistricting Plan*, N.Y. Post (Jan. 27 2022);<sup>24</sup> Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).<sup>25</sup>

131. Congressional District 11 shifted from the previous map where it covered Staten Island and adjacent southern portions of Brooklyn, to now covering Staten Island and winding northwestward into the heavily liberal areas of Brooklyn—Sunset Park, Red Hook, Gowanus, Windsor Terrace, and Park Slope, thereby drastically changing the political composition of this district, providing the Democrats a drastically increased chance of flipping the seat.

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<sup>23</sup> Available at [https://docs.google.com/document/d/16jJFKDH-\\_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing](https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing).

<sup>24</sup> Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

<sup>25</sup> Available at <https://www.cityandstateny.com/politics/2022/01/rep-nicole-malliotakis-probably-screwed/361412/>.

132. As the Asian American Legal Defense Fund noted on Twitter, “[t]he legislature’s map does not keep our [Asian American] communities together”<sup>26</sup>:



133. These redrawn Brooklyn districts are blatant gerrymanders, with bizarre, roving boundaries crossing multiple bodies of water and snaking between each other for no discernible reason besides partisan advantage.

134. These shifts allowed the Legislature to place additional, safe Democratic voters into District 11, changing that district from a strong Republican district to a Democratic district.

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<sup>26</sup> Available at <https://twitter.com/aaldef/status/1488223479371599876>.

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**Map of Old Congressional Districts 8, 9, 10, & 11****Map of New Congressional Districts 8, 9, 10, & 11**

Map of Old Congressional District 8



Map of New Congressional District 8



Map of Old Congressional District 9



Map of New Congressional District 9





**Map of Old Congressional District 10****Map of New Congressional District 10**

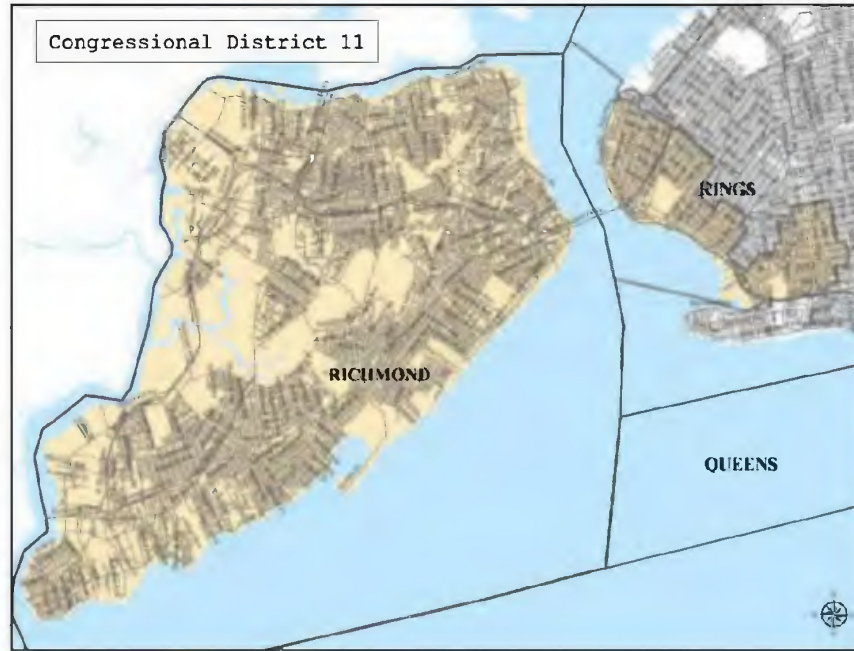
**Overlay of Old Congressional District 10 and New Congressional District 10<sup>27</sup>**

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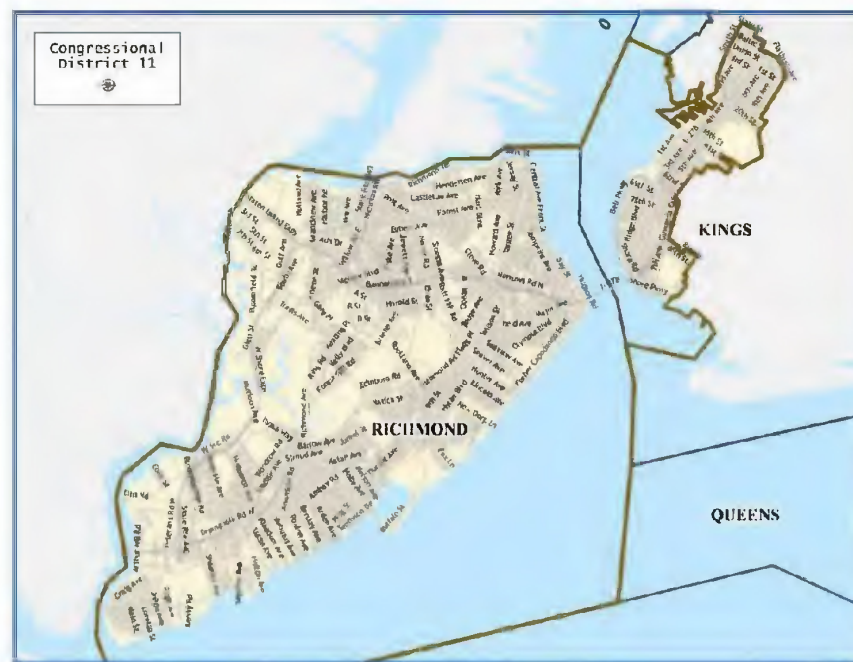
<sup>27</sup> Nicholas Fandos, *How N.Y. Democrats Came Up With Their Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022), available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.



Map of Old Congressional District 11



Map of New Congressional District 11



135. The old Congressional District 16 was almost entirely contained in Westchester County, with only a small section of the Bronx for population purposes, while the new District connects a section of the Bronx to Mount Vernon and Yonkers—Democratic strongholds—then winds in a narrow segment up through Westchester County into Putnam County, grabbing rural and suburban Republican communities, in order to “crack” them out of Congressional District 18.

136. The towns of Putnam Valley, Carmel, Yorktown, and Somers—strongly Republican areas—are awkwardly connected to highly populated Democratic communities, neutralizing these Republican votes. The bisection of Westchester County and added county split into Putnam County creates a district with geographically distanced communities.

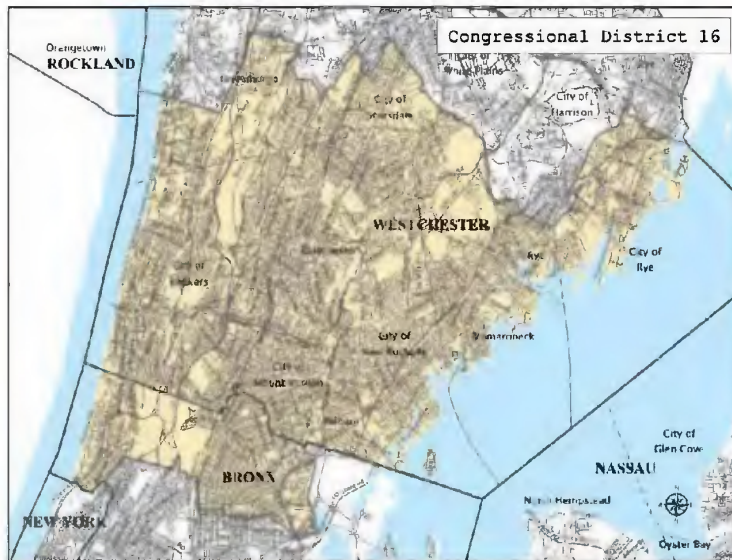
137. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 into a strong Democratic district, making Congressional District 18 a safer Democratic district, without jeopardizing the Democratic Party’s interests in Congressional District 16.

138. Congressional District 18 is now oddly shaped, like a sitting dog, with a tail that extends into the Ulster County towns of Rochester and Wawarsing, with legs made of Peekskill, Cortlandt, North Salem, Lewisboro, Bedford, and Pound Ridge, and a noticeable space between those legs where the central portions of Putnam and Westchester counties were scooped out for Congressional District 16.

139. The legislative Democrats made these shifts not only to shore up their party’s chances in Congressional District 18, but also to protect incumbent Democratic Congressman Sean Maloney, the newly elected chair of the Democratic Congressional Campaign Committee.

140. As a result of this gamesmanship, Congressional District 16 moves only somewhat from a very strong Democratic district to a still-strong Democratic one, whereas District 18 shifts from a lean Republican district to a lean Democratic district.

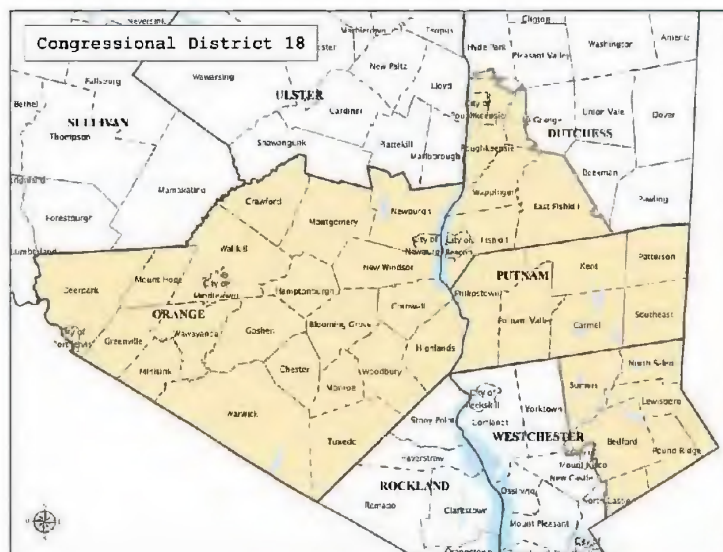
### Map of Old Congressional District 16



## Map of New Congressional District 16



## Map of Old Congressional District 18



### Map of New Congressional District 18



141. The new Congressional District 17 is similarly stretched to include strong Democrat-voting communities with rural Republican areas, while splitting the conservative Jewish communities to neutralize their Republican votes.

142. The old Congressional District 17 was compactly located in Rockland and Westchester counties.

143. Now, the District reaches from Sullivan County through Orange County into Rockland County, finally crossing the river to connect with Democrat strongholds in Westchester County, including Greenburgh and Mount Kisco.

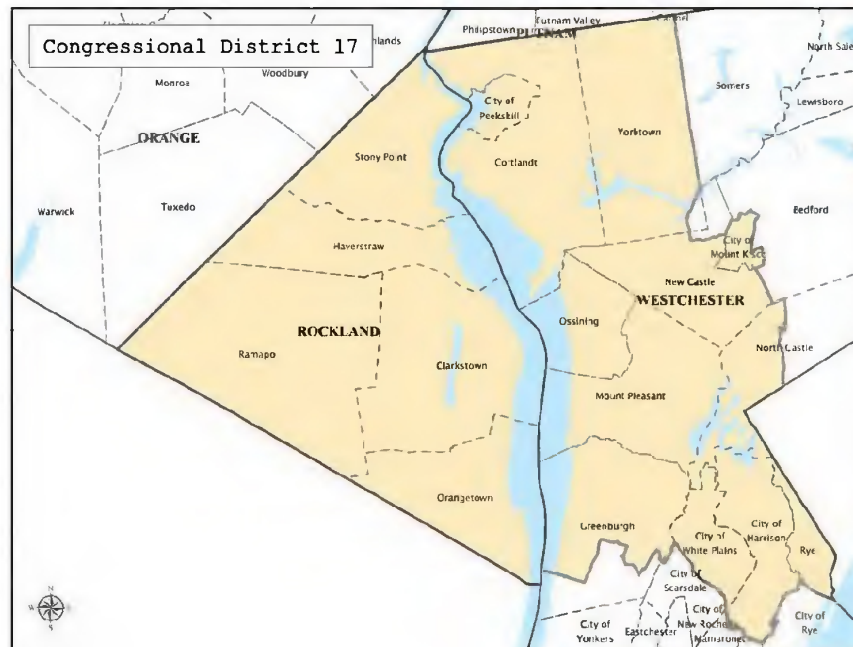
144. The District also includes part of the strongly Democrat city of White Plains.

145. The district combines the Orthodox communities in Sullivan and Rockland counties but excludes the Kiryas Joel Jewish community in Orange County, despite the extensive public testimony and overwhelming evidence in support of keeping these communities together.

146. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power, without jeopardizing any Democratic districts.

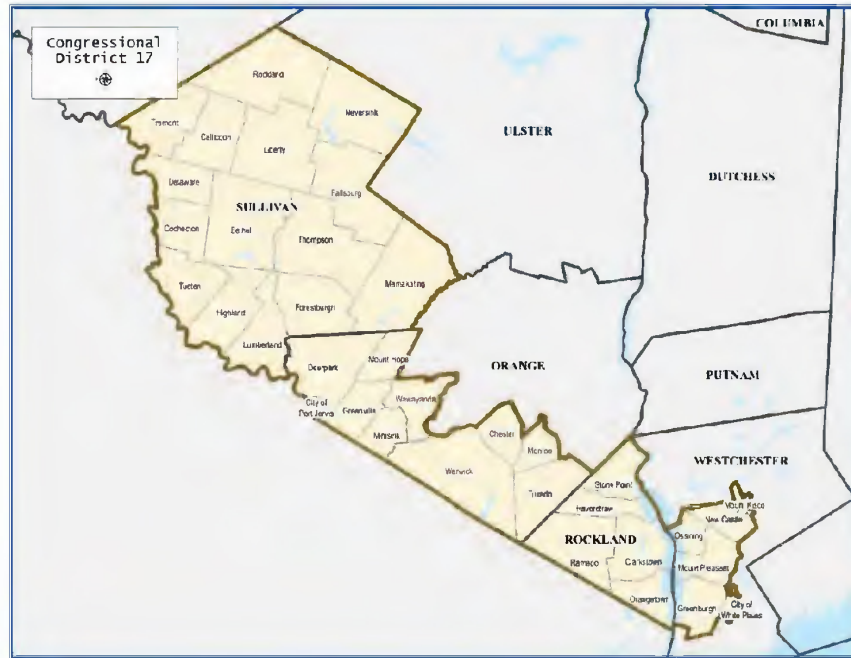
147. Thus, Congressional District 17 shifted only slightly from a Democratic stronghold to a still-reliable but less Democratic district.

**Map of Old Congressional District 17**





### Map of New Congressional District 17



148. Congressional District 19 is similarly drawn for the impermissible purpose of strengthening the Democratic Party's political interests, with the four reaching corners of Congressional District 19 showing how the Legislature shopped for Democratic voters in order to turn the district from Republican-leaning to a Democratic-advantage district.

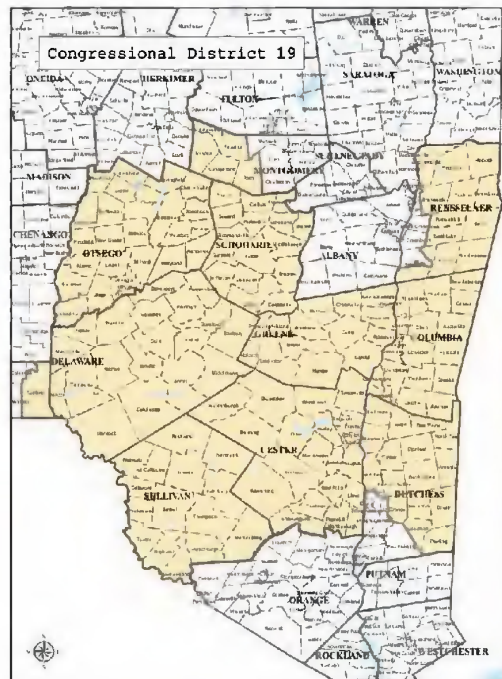
149. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

150. In Ulster County, the District picks up Democrats while specifically avoiding communities with large numbers of Republican voters.

151. The new Congressional District 19 then stretches far west to encompass the mostly Democratic city of Binghamton, to pick up additional Democratic voters there.

152. Finally, the District extends northward to pick up the Democrat-voting city of Utica.
153. All of these particular partisan choices flipped this District into a Democratic advantage.

**Map of Old Congressional District 19**





## Map of New Congressional District 19

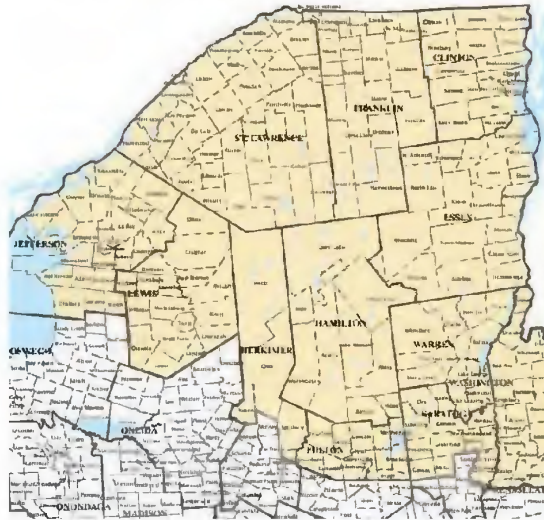


154. The Legislature also gerrymandered Congressional District 21 to pack it with additional Republican voters.

155. The new Congressional District 21 now extracts Saratoga and Schenectady counties, in addition to splitting off a portion of Warren County, from the surrounding areas, replacing those regions with much of Oneida County and Herkimer County, half of Montgomery County, and all of Schoharie County, thereby packing additional Republican voters into this single district and eliminating their ability to make surrounding districts more competitive for Democratic candidates.

## Map of Old Congressional District 21

Congressional District 21



## Map of New Congressional District 21

Congressional District 21



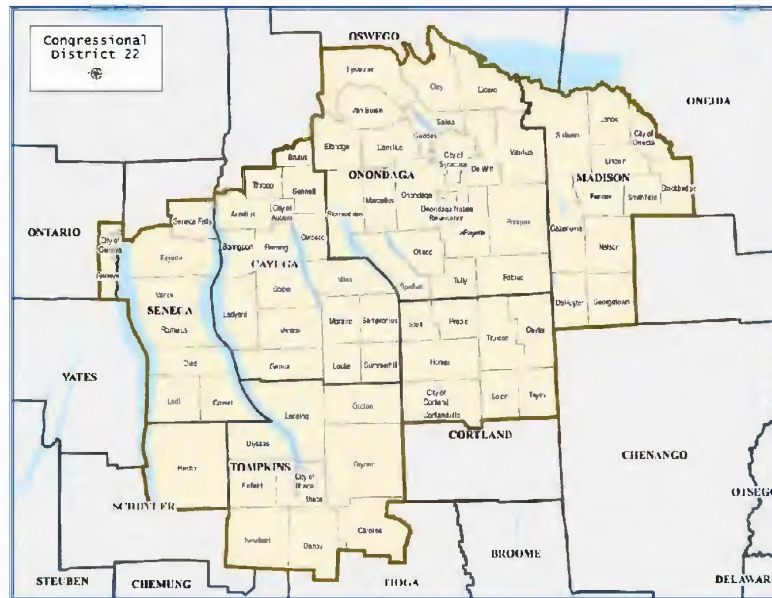
156. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

157. As a result, Congressional District 22 underwent a massive political swing, changing from a very competitive Republican district to a strong Democratic district.

**Map of Old Congressional District 22**



## Map of New Congressional District 22



158. The Legislature gerrymandered Congressional District 23 by “packing” as many Republican votes into this district as it could, for partisan gain.

159. The new District now includes southern Erie County towns—first-ring suburbs to the city of Buffalo—connecting them with far away and rural areas around Binghamton.

160. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22, in order to flip that district.

161. As a result, Congressional District 23 became less competitive and shifted from a very strong Republican district to an uncontested Republican district.



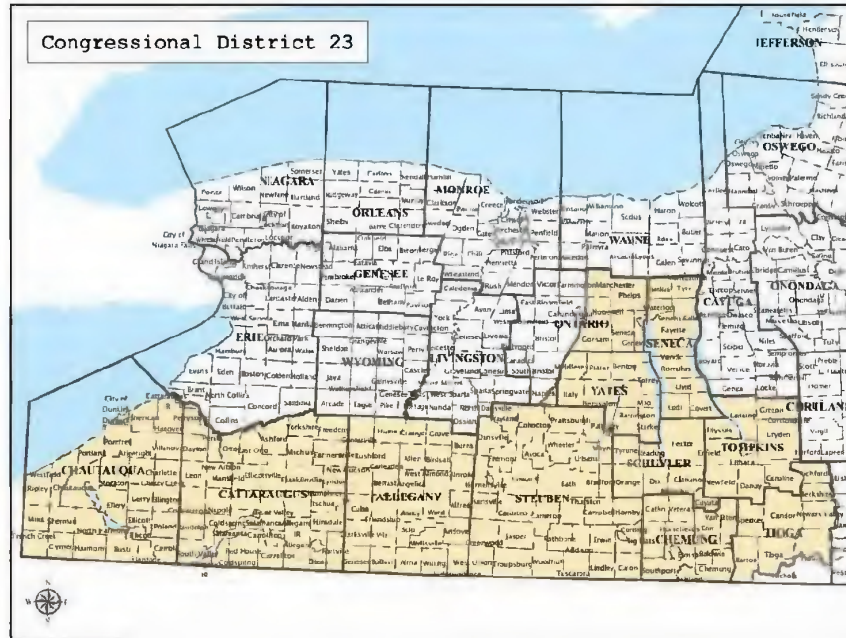
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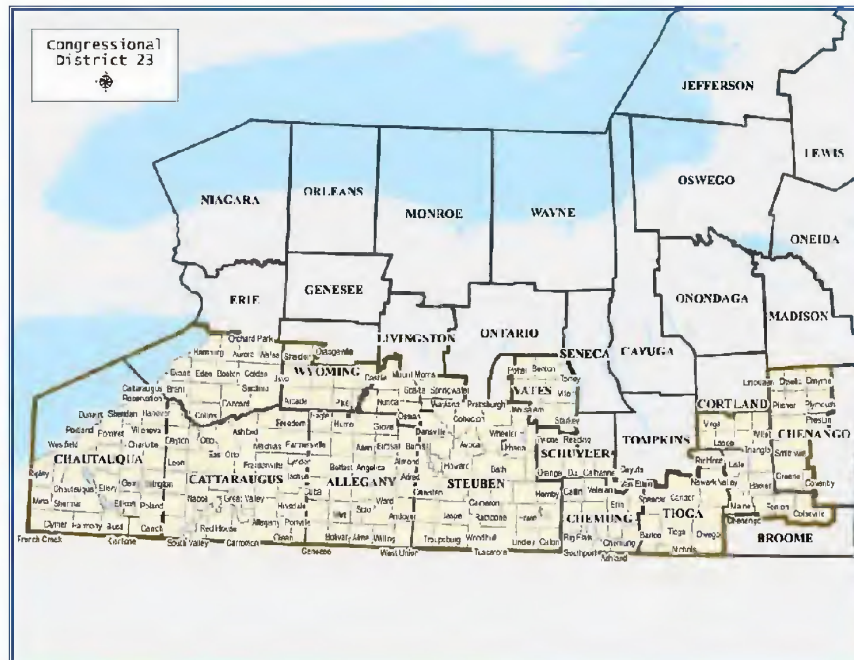
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## Map of Old Congressional District 23



## Map of New Congressional District 23



162. Previously, District 24 compactly encompassed the bordering counties of Wayne, Cayuga, and Onondaga, as well as part of Oswego County.

163. Now, this District extends from Lewiston, in Niagara County, and various similarly Republican areas in northeast Erie County, traveling all the way eastward and northward to Jefferson County (all the way to the St. Lawrence County line), while notably avoiding certain portions of Monroe and Ontario counties.

164. Indeed, this District now stretches across four media markets, connecting numerous areas, over more than 250 miles, with little or nothing in common.

165. As a result, the Legislature shifted Congressional District 24 from a highly competitive Democratic district into a very strong Republican district, designed to protect numerous surrounding districts from any serious Republican challenge.

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## Map of Old Congressional District 24



## Map of New Congressional District 24



166. Each of these blatantly gerrymandered districts, both individually and together, have no reasonable explanation except for the Legislative Democrats' specific goal of increasing their political power. These examples are only illustrative of the map's partisan design as a whole.

167. On February 2, 2022, notwithstanding the egregious gerrymander within the Legislature's map, the Democrats in the Assembly and State Senate adopted the congressional map (with only slight modifications not related to their gerrymandering efforts), despite every Republican in the Assembly and State Senate voting against the map. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196 and A.9039 (as technically amended by A.9167).



168. In addition to the Republican legislators, all of whom voted against this egregious gerrymander, Democratic Assemblymembers Simcha Eichenstein and Marcela Mitaynes voted against the congressional maps as well.

**iv. The Governor Signs The Legislature’s Unfair Congressional Map Into Law Despite Widespread Objection From New Yorkers**

169. After the Legislature released its proposed congressional map, there was extensive public outcry over both the process and substance.

170. Members of the public took to the IRC’s public comment page to decry the Legislature’s opaque approach to redrawing the maps. Submissions, New York Independent Redistricting Committee (“IRC Public Submissions”).<sup>28</sup> As one comment said, “[t]his is clearly gerrymandering at its worst.” IRC Public Submissions, *supra* (submitted by Anthony on Jan. 31, 2022). Betsy Gotbaum, the executive director of good-government group Citizens Union, described the Legislature’s lack of process succinctly: “There was no public input.” Jacob Kaye, *State Legislature Shares Version of Congressional Redistricting Map*, Queens Daily Eagle (Feb. 1, 2022).<sup>29</sup> She also noted that the Legislature’s actions completely deprived the process of an accurate understanding of the public’s desires in a new map: “We don’t really know what groups of people really wanted once the commission couldn’t come to any kind of a conclusion and then the legislators took it over. We don’t know.” *Id.*

171. New Yorkers across the state quickly flagged the new map as a highly partisan gerrymander. “If it looks like gerrymandering and sounds like gerrymandering—it’s most likely

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<sup>28</sup> Available at <https://nyirc.gov/submissions>.

<sup>29</sup> Available at <https://queenseagle.com/all/state-legislature-shares-version-of-congressional-redistricting-map>.

gerrymandering,” said Brian Browne, a political science professor at St. John’s University in New York City. Kaye, *supra*. “This is why people don’t trust politicians,” observed Pat Kiernan, a local morning news anchor on NY1, “[a]nd the Democrats have given up any high ground they had over Republicans on gerrymandering.” Nicholas Fandos, *How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022).<sup>30</sup>

172. Even Democratic politicians condemned the map. Cynthia Appleton, the Democratic chair for Wyoming County, described the congressional map as “an absolute travesty.” Jerry Zremski, *New Congressional Map Sparks Gerrymandering Outcry*, Buffalo News (Jan. 31, 2022).<sup>31</sup> Nate McMurray, a former Democratic congressional candidate, offered a similar view on the new map, calling it “nuts.” *Id.* Melanie D’Arrigo, a Democratic candidate running in Congressional District 3, harshly criticized the new map as well: “We cannot stay silent as we watch the state legislature publish a map that extreme gerrymanders our district.” Kaye, *supra*. Describing the redrawn District 3, which now spans five counties, D’Arrigo despaired, “How is this fair to the people who live in any of these counties?” *Id.* She further noted that “[c]onstituent services will be more difficult, more expensive and less efficient: the needs of someone living on the border of Connecticut being wildly different from someone in Huntington,” and “[a]ll of the voters at stake deserve real representation, not to be used as political pawns.” *Id.*

173. On February 3, 2022, Governor Hochul signed the Legislature’s congressional map into law, thereby blessing her fellow Democrats’ blatant gerrymandering efforts.

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<sup>30</sup> Available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

<sup>31</sup> Available at [https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article\\_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html](https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html).

**D. The Map's Impact On Petitioners**

174. The Legislature's blatant gerrymandering has caused grave harm to Petitioners, all of whom want a fair, representative government at both the state and national level, unhindered by partisan interests and egregious gerrymandering.

175. Broadly, this kind of partisan gerrymandering is profoundly undemocratic and cuts deeply into the public's confidence in their representative government. The Legislature's egregious attempt to entrench the majority party's incumbents and political power harms the franchise of all New York voters, Petitioners included.

176. For example, the proposed map treats Petitioners unequally and dilutes their voting power based on their political beliefs. Through this map, Democrats have essentially guaranteed that they will win more congressional districts—and thus more power—than is warranted by the party's popular support. As a result, representatives will subject Petitioners to laws and policies that do not fairly reflect the public will.

177. Moreover, when incumbents choose their voters—rather than voters electing their chosen representatives—the public's faith in the franchise is diminished.

178. Participation in the democratic process will decrease, as voting holds little appeal to those in gerrymandered districts because their votes cannot change the preordained outcomes of elections. New Yorkers made their will clear when they voted to ban partisan gerrymandering.

179. Allowing this map to be enacted deals a crushing blow to the State's representative democracy and the faith of the People in those governing them.

180. More specifically, each of Petitioners suffers directly from this map, including because they lose the opportunity to vote for their preferred congressional candidate, rather than one selected for them by the Legislature's cynical line-drawing.

181. For example, the new Congressional District 16, a strong Democratic district where Petitioner Marianne Volante lives, moved Republican voters from Congressional District 18, where Petitioner Patricia Clarino lives, decreasing competition and turning District 18 into a safe Democratic district, without jeopardizing the Democratic Party's interests in District 16. As a result, Petitioner Clarino's vote is diluted, while Petitioner Volante and other District 16 Republicans' votes will never outweigh the Democratic vote that has been gerrymandered around them.

182. In the new Congressional District 23, where Petitioners Tim Harkenrider, Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside, the Legislature "packed" as many Republican votes into the district as it could. As a result, the Republican votes of Petitioners and similar voters in the District are far in excess of what their candidates need to win in elections. Rather than fairly spreading Republicans through logically constructed districts, the Legislature has ensured that many of their votes are wasted in District 23.

183. Conversely, in the new Congressional District 10, where Petitioner Stephen Evans resides, and Congressional District 11, where Petitioner Jerry Fishman resides, the Legislature broke up conservative communities of interest, "cracking" and effectively neutralizing Republican voters in these districts. As a result, these Petitioners' votes are diluted, and they are subjected to political policies that do not align with their own views or the will of their communities.

184. Similarly, new Congressional District 17, where Petitioner Lawrence Garvey resides, new Congressional District 19, where Petitioners Guy C. Brought and Lawrence Canning reside, and new Congressional District 22, where Petitioners George Dooher, Jr. and Josephine Thomas reside, each “crack” and neutralize Republican votes by breaking up communities of interest and unnaturally reaching across the state to add Democratic voters to each of these districts. These Petitioners will be forced to endure representatives who do not reflect the communities they represent, enforcing their unwelcome policies.

185. Petitioners regularly vote for Republicans running for Congress and engage in campaign activity for Republicans running for Congress, so the gerrymandering of the congressional map dilutes the power of their votes and political action efforts.

### **FIRST CAUSE OF ACTION**

#### **(N.Y. Const. art. III, § 4(b); N.Y. Legis. Law § 93(1) – Failure To Follow Constitutional And Statutory Procedures For Redistricting)**

186. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

187. Article III, Section 4(e) of the New York Constitution provides that “[t]he process for redistricting congressional . . . districts established by this section and sections five and five-b of this article *shall govern* redistricting in this state,” with limited exceptions not relevant here. N.Y. Const. art. III, § 4(e) (emphases added); *see* N.Y. Legis. Law § 93(3) (same).

188. Section 4(b) of Article III requires that, should the Legislature “fail to approve the legislation implementing the first redistricting plan” prepared by the IRC, the IRC then “*shall* prepare and submit to the legislature a second redistricting plan and the necessary implementing

legislation for such plan,” and that “[s]uch legislation *shall* be voted upon, without amendment.”

N.Y. Const. art. III, § 4(b) (emphases added); *see also* N.Y. Legis. Law § 93(1).

189. Only then, after having considered and rejected such a *second* redistricting plan, or, after the Governor vetoes any such second plan after the Legislature approved it, may the Legislature “introduce” its own “implementing legislation” along with “any amendments” that comply with Article III, Section 4. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

190. Because the Legislature never received, let alone considered and acted upon, a second redistricting plan from the Commission, it never obtained redistricting authority under the *exclusive* process established by the New York Constitution for introducing redistricting maps.

191. After the Legislature rejected both of the first-round maps introduced by the IRC out of hand, the Commission did not adopt and introduce second-round maps to the Legislature within 15 days, leaving the Legislature with no maps to act on within the scope of its limited constitutional role.

192. As a result, the Legislature did not consider a second map or maps from the IRC, which mandatory consideration was required before the Legislature was constitutionally permitted to adopt its own congressional map. N.Y. Const. art. III, § 4(b).

193. The 2021 legislation enacted by the Legislature and Governor purporting to give the Legislature authority to circumvent the Constitution, to adopt its own maps if the Commission failed to vote on second-round maps, L.2021, c. 633, § 1, is unconstitutional. There is no provision of law that allows the Legislature to sidestep the Constitution’s exclusive process for redistricting in New York via legislative enactment.

194. The Legislature enacted L.2021, c. 633, § 7150 in an effort to avoid the effect of the People voting down a constitutional amendment to provide for what L.2021, c. 633, § 7150(1) purports to do. But, of course, a constitutional amendment is necessary to make the changes to New York's exclusive, constitutionally enshrined redistricting process

195. The Legislature cannot act contrary to the Constitution's restrictions on the respective duties and responsibilities allocated to it and other entities responsible for redistricting. Because the Legislature acted contrary to the Constitution when it enacted L.2021, c. 633, § 7150, the 2022 congressional map is invalid.

196. Since the Legislature had and has no constitutional authority to draw congressional districts given the IRC's failure to follow the exclusive, constitutionally mandated procedures, this Court cannot give the Legislature another opportunity to draw curative districts.

197. Thus, this Court should draw its own map for Congress prior to the upcoming deadlines for candidates to gain access to the ballot, just as happened after the 2010 census.

### **SECOND CAUSE OF ACTION**

#### **(N.Y. Const. art. III, § 4(c)(2); N.Y. Legis. Law § 93(2)(b) – Unconstitutional Malapportionment)**

198. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

199. Article III, Section 4(c)(2) provides that “[t]o the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants,” and that “[f]or each district that deviates from this requirement,” the entity responsible for drawing the map “shall provide a specific public explanation as to why such deviation exists.” N.Y. Const. art. III, § 4(c)(2).

200. This constitutional requirement establishes a population-equality standard for congressional districts, absent a “specific” and “public” explanation from the mapdrawer as to why any deviation is necessary. N.Y. Const. art. III, § 4(c)(2).

201. Therefore, following any decennial census, all congressional districts must abide by this equal-population requirement.

202. As explained above, the congressional map enacted by the Legislature following the 2020 decennial census is *ultra vires* because the Legislature ignored entirely the mandatory, *exclusive* process established by the 2014 constitutional amendments for enacting any such redistricting, as well as applicable substantive requirements for any Legislature-created map. *See supra* First Cause Of Action.

203. That is, the Legislature enacted its congressional map without abiding by the constitutional and statutory requirement that the IRC present a second round of maps following the Legislature’s decision not to approve the first round of maps. N.Y. Const. art. III, § 4(b). Indeed, the Constitution *requires* that the Legislature “vote[ ] upon” the “second redistricting plan and the necessary implementing legislation” before it may introduce its own plan, and yet the Legislature never complied with these rules. *Id.*; *see also supra* First Cause Of Action.

204. These violations render the 2022 congressional map invalid, leaving only the vestigial map that the court adopted after the 2010 decennial census in place.

205. But the map that the federal court adopted in the wake of the 2010 census is plainly unconstitutional *today*, following the 2020 census, given New York’s inarguable population shifts, because it does not meet the equal-population requirement of the New York Constitution.



206. That is, following the 2022 Census, none of those congressional districts “[t]o the extent practicable” “contain as nearly as may be an equal number of inhabitants.” N.Y. Const. art. III, § 4(c)(2); N.Y. Legis. Law § 93(2)(b).

207. Thus, this Court must now also declare that the court-adopted congressional map—the only validly-adopted map in existence, *supra* First Cause Of Action—is invalid, and adopt a replacement, constitutional congressional map.

### **THIRD CAUSE OF ACTION**

#### **(N.Y. Const. art. III, § 4(c)(5); N.Y. Legis. Law § 93(2)(e) – Unlawful/Unconstitutional Partisan And Incumbent-Protection Gerrymandering)**

208. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

209. Article III, Section 4(c)(5) of the New York Constitution provides that “in the creation of . . . congressional districts . . . [d]istricts shall not be to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5).

210. New York Legislative Law § 93(2)(e) provides that, “in the creation of . . . congressional districts . . . [d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Legis. Law § 93(2)(e).

211. New York Legislative Law § 93(4) also provides that “any law establishing congressional . . . districts found to violate the provisions of this article shall be invalid in whole or in part.” N.Y. Legis. Law § 93(4).

212. The 2022 congressional map violates the clear prohibitions against partisan and incumbent-favoring/disfavoring gerrymandering found in Article II, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e).

213. The Legislature drew the 2022 congressional map “to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties,” N.Y. Const. art. III, § 4(c)(5), as discussed in detail above, *supra* ¶¶ 102–68.

214. Governor Hochul, who signed the congressional map into law, previously acknowledged that it was her intention “to use [her] influence to help Democrats” by way of “the redistricting process,” and claimed that she fully “embrace[d] that” role as Governor. Glueck & Ferré-Sadurní, *supra*.

215. For that reason, the enacted congressional map violates both the New York Constitution and New York Legislative Law § 93, requiring this Court to strike it as “invalid.” N.Y. Legis. Law § 93(4).

#### **FOURTH CAUSE OF ACTION**

##### **(CPLR § 3001 – Declaratory Judgment)**

216. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

217. Petitioners seek a declaratory judgment from the Court “as to the rights and other legal relations of the parties,” CPLR § 3001, regarding the substantive and procedural requirements for redistricting in this State.

218. It is imperative that the New York Courts properly construe the recent amendments to Article 3, Section 4 of the New York Constitution and New York Legislative Laws § 93.

219. The 2014 amendments to the New York Constitution prohibit the Legislature and Governor from reapportioning seats for Congress in a manner that

- a. disregards the exclusive procedures for redistricting, including the requirement that the IRC submit two rounds of maps for the Legislature's consideration before the Legislature may undertake the redistricting function itself;
- b. creates districts that fail to contain as nearly as possible an equal number of inhabitants, requiring, as practicable, no deviation from perfect population equality;
- c. creates a partisan gerrymander with the intent to favor of any political party; and
- d. creates an incumbent-protection or incumbent-disfavoring gerrymander with the intent of aiding or hurting any incumbent.

Each of these violations, alone and in tandem, requires the Court to invalidate the congressional map.

220. Respondents' actions in violating each of these constitutional requirements come from a determined effort to advance the interests of the Democratic Party by entrenching incumbent Democrats and targeting incumbent Republicans, in direct contravention of the will of the citizens of the State of New York, who voted in favor of ridding such partisan interests from the redistricting process.

221. Further, the 2021 legislation, L.2021, c. 633, § 7150, enacted by the Legislature and Governor in an attempt to give the Legislature authority to circumvent the Constitution and

adopt this unlawful map, is unconstitutional. The Legislature cannot contravene the Constitution's exclusive process for redistricting in New York through legislative enactment.

222. Each of these constitutional violations has harmed Petitioners, who are now subject to a gerrymandered and highly partisan map for their representatives in Congress.

223. This issue is ripe for judicial review.

224. Absent resolution of these constitutional questions, neither Respondents nor the citizens of New York will have adequate guidance regarding the propriety of the enacted map and the prior court-drawn map, in preparation for impending elections.

225. If each of these fundamental issues regarding the redistricting processes in New York is not resolved in short order, it will be too late to do so without threatening the integrity of upcoming elections.

226. Therefore, this Court should enter judgment declaring that the 2022 enacted congressional map violates the New York Constitution, declare that the 2012 congressional map now violates the New York Constitution in light of the population shifts identified in the 2020 Census, strike down the 2021 legislation, L.2021, c. 633, § 7150, as unconstitutional, and itself draw a new congressional map cured of all legal infirmities.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully demand that this Court review the constitutionality of the congressional apportionment and enter judgment and order against Respondents as follows:

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;

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F. Suspending or enjoin 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

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# **EXHIBIT C**

**FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM**

NYSCEF DOC. NO. 187

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RECEIVED NYSCEF: 03/08/2022

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. E2022-0116CV

**AMENDED PETITION**

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 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, by their counsel, Keyser Maloney & Winner LLP, and Troutman Pepper Hamilton Sanders LLP, for their Petition against Respondents 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 E. Heastie, the New York State Board of Elections, and the New York State Legislative Task Force on Demographic Research and Reapportionment, allege as follows:



**PRELIMINARY STATEMENT**

1. The People of New York in 2014 enshrined in the New York Constitution an exclusive process for enacting replacement congressional and state legislative districts, while also prohibiting partisan and incumbent-protection gerrymandering. Yet, in the very first redistricting cycle after these landmark constitutional amendments, the Democratic Party politicians who control the New York Legislature and Governor's office violated these constitutional provisions.

2. These politicians brazenly enacted a congressional map ("2022 congressional map") that is undeniably politically gerrymandered in their party's favor. Dave Wasserman, a nonpartisan national elections expert, correctly noted that these politicians' congressional map is "an effective gerrymander," designed so that Democrats will "gain three seats and eliminate four Republican seats," creating "probably the biggest shift in the country."<sup>1</sup> The non-partisan election analysis website FiveThirtyEight similarly explained that the map is so "skewed toward Democrats" and "egregious" as to "represent[ ] a failure for [New York's] new redistricting process."<sup>2</sup> And even a top attorney for the famously left-leaning Brennan Center for Justice opined that the congressional map "isn't good for democracy," because it is "a master class in gerrymandering, . . . tak[ing] out a number of Republican incumbents very strategically."<sup>3</sup> Indeed,

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<sup>1</sup> Grace Ashford & Nicholas Fandos, *N.Y. Democrats Could Gain 3 House Seats Under Proposed District Lines*, N.Y. Times (Jan. 30, 2022), available at <https://www.nytimes.com/2022/01/30/nyregion/new-york-redistricting-congressional-map.html> (all websites last visited on Feb. 8, 2022).

<sup>2</sup> Nathaniel Rakich, *New York's Proposed Congressional Map Is Heavily Biased Toward Democrats. Will It Pass?*, FiveThirtyEight (Jan. 31, 2022), available at <https://fivethirtyeight.com/features/new-yorks-proposed-congressional-map-is-heavily-biased-toward-democrats-will-it-pass/>.

<sup>3</sup> Nick Reisman, *How the Proposed Congressional Lines Could Alter New York's Politics*, Spectrum News 1 (Feb. 1 2022), available at <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2022/02/01/how-the-proposed-congressional-lines-could-alter-ny-s-politics>.

the congressional map is so obviously biased that it favors Democratic partisan interests more than *any* of 5,000 computer-generated maps drawn without partisan considerations.

3. While the 2022 congressional map received the great bulk of media attention, the Legislature's new state Senate map ("2022 state Senate map") is likewise politically gerrymandered to favor the Democratic Party and Democratic Party incumbent politicians. Yet again, when the Legislature's state Senate map was compared to any of 5,000 computer-generated maps designed to create state Senate districts consistent with New York law but without partisan considerations, it is the most favorable to the Democratic Party.

4. In 2014, the People of New York amended Sections 4 and 5 of Article III of the New York Constitution, establishing an *exclusive* process for redistricting that, both as a matter of procedure and substance, prohibits partisan and incumbent-protection gerrymandering. Through the creation of the New York Independent Redistricting Commission ("IRC" or "the Commission"), the requirements for multiple public hearings to receive public comment on proposed maps, and limiting the New York State Legislature's ("Legislature") authority to an up-or-down vote on IRC-proposed maps, these amendments designed a process to preclude gerrymandering. Indeed, these amendments explicitly prohibit drawing maps "for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c)(5). Thus, the amendments bar the sorts of gamesmanship and self-interested gerrymandering that have plagued the redistricting process in this State for years.

5. The State of New York even bragged about these reforms to its redistricting process before the U.S. Supreme Court, claiming that Article III, Section 4(c)(5) was powerful evidence

that States could fight partisan gerrymandering by barring the drawing of district lines for the purpose of favoring or disfavoring a political party.<sup>4</sup>

6. The Democrat-controlled Legislature attempted, but failed, to gut these reforms in 2021 through a proposed constitutional amendment. That amendment would have allowed the Legislature to assume vast redistricting authority if the Commission failed to vote on redistricting plans for the Legislature's consideration.

7. But the People decisively voted this measure down in 2021, reconfirming the IRC's exclusive redistricting process under New York law.

8. Undeterred, the Democrats who control the Legislature and Governor Kathy Hochul have egregiously violated both the procedural and substantive protections in the New York Constitution to seek precisely the type of advantage for their party that the People outlawed in 2014 and reaffirmed in 2021. Governor Hochul thus lived up to her promise to "use [her] influence to help Democrats expand the House majority through the redistricting process," and help the Democratic Party "regain its position that it once had when [she] was growing up."<sup>5</sup>

9. This Court should invalidate both the unconstitutional 2022 congressional map and unconstitutional 2022 state Senate map on two separate and independent bases.

10. First, the Legislature had no authority to enact the new maps because the Legislature did not follow the *exclusive* process for enacting replacement maps that the People enshrined through the 2014 amendments, meaning that the Senate map and congressional map are

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<sup>4</sup> Amicus Br. for States of N.Y., et al. at 18, *Rucho v. Common Cause*, 558 U.S. \_\_\_\_ (2019) (No. 18-422).

<sup>5</sup> Katie Glueck & Luis Ferré-Sadurní, *Interview with Kathy Hochul: "I Feel a Heavy Weight of Responsibility"*, N.Y. Times (Aug. 25, 2021), available at <https://www.nytimes.com/2021/08/25/nyregion/kathy-hochul-interview.html>.

entirely void.<sup>6</sup> Accordingly, the only validly enacted or adopted maps are those that the Legislature and courts adopted for New York after the 2010 decennial census. But the prior congressional map (“2012 congressional map”) is now unconstitutionally malapportioned after the 2020 census and does not have the correct number of seats. And the prior state Senate map (“2012 state Senate map”) is similarly malapportioned, given changes in New York’s population. This Court should expeditiously adopt new maps—prior to the impending deadlines for candidates to access the ballot—to cure the malapportionment now affecting the 2012 congressional and state Senate maps.<sup>7</sup>

11. Second, if this Court holds that the Legislature somehow had the authority to adopt replacement maps notwithstanding these procedural failures, this Court should reject the new 2022 congressional map and 2022 state Senate map as a matter of substance, as those maps are obviously unconstitutional partisan and incumbent-protection gerrymanders. If this Court takes this approach, it should invalidate the 2022 congressional map and 2022 state Senate map and then send them back to the Legislature to create new maps that comply with the law.

### **THE PARTIES**

12. Petitioner Tim Harkenrider is an elector of the state of New York, residing at 22 Spruce Street, Canisteo, NY 14823, in Steuben County, within Congressional District 23 and state Senate District 59.

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<sup>6</sup> To be sure, this same procedural basis for invalidation applies equally to the state Assembly map. However, the Petitioners do not challenge that map in this lawsuit. Of course, any other elector, N.Y. Const. art. III, § 5; Unconsolidated Laws § 4221, can challenge the Assembly map if that elector chooses.

<sup>7</sup> Although this failure applies equally to the state Assembly map enacted by the Legislature, Petitioners do not challenge that map or ask for its invalidation. Therefore, the Court need not consider any procedural failures related to enactment of the 2022 state Assembly map.

13. Petitioner Guy C. Brought is an elector of the state of New York, residing at 170 Horton Lane, Apt. 462, Port Ewen, NY 12466, in Ulster County, within Congressional District 19 and state Senate District 48.

14. Petitioner Lawrence Canning is an elector of the state of New York, residing at 2843 Johnny Cake Hill Road, Hamilton, NY 13346, in Madison County, within Congressional District 19 and state Senate District 55.

15. Petitioner Patricia Clarino is an elector of the state of New York, residing at 274 Garden Street, New Windsor, NY 12553, in Orange County, within Congressional District 18 and state Senate District 41.

16. Petitioner George Dooher, Jr. is an elector of the state of New York, residing at 209 Dixon Dr., Syracuse, New York 13219, in Onondaga County, within Congressional District 22 and state Senate District 52.

17. Petitioner Stephen Evans is an elector of the state of New York, residing at 440 West 41st Street, Apt. 4G, New York, NY 10036, in New York County, within Congressional District 10 and state Senate District 30.

18. Petitioner Linda Fanton is an elector of the state of New York, residing at 2347 Fulmer Valley Road, Wellsville, NY 14895, in Allegany County, within Congressional District 23 and state Senate District 58.

19. Petitioner Jerry Fishman is an elector of the state of New York, residing at 8200 Narrows Avenue, Brooklyn, NY 11209, in Kings County, within Congressional District 11 and state Senate District 22.

20. Petitioner Jay Frantz is an elector of the state of New York, residing at 39 Orchard Place, Gowanda, NY 14070, in Cattaraugus County, within Congressional District 23 and state Senate District 58.

21. Petitioner Lawrence Garvey is an elector of the state of New York, residing at 2 Hillman Road, New City, NY 10956, in Rockland County, within Congressional District 17 and state Senate District 40.

22. Petitioner Alan Nephew is an elector of the state of New York, residing at 28 Aldrich Street, Gowanda, NY 14070, in Cattaraugus County, within Congressional District 23 and state Senate District 58.

23. Petitioner Susan Rowley is an elector of the state of New York, residing at 876 Ford Peterson Road, Frewsburg, NY 14738, in Chautauqua County, within Congressional District 23 and state Senate District 58.

24. Petitioner Josephine Thomas is an elector of the state of New York, residing at 322 Wyntthrop Road, Syracuse, NY 13209, in Onondaga County, within Congressional District 22 and state Senate District 52.

25. Petitioner Marianne Volante is an elector of the state of New York, residing at 170 Loder Road, Yorktown Heights, NY 10598, in Westchester County, within Congressional District 16 and state Senate District 42.

26. Respondent Kathy Hochul is the Governor of the State of New York. She is being sued in her official capacity.

27. Respondent Brian A. Benjamin is the Lieutenant Governor of the State of New York and President of the New York State Senate. He is being sued in his official capacity.

28. Respondent Andrea Stewart-Cousins is the New York State Senate Majority Leader and President *Pro Tempore* of the New York State Senate, representing the 35th Senate District. Majority Leader Stewart-Cousins has offices in Albany and at 28 Wells Avenue, Building #3, 5th Floor, Yonkers, NY 10701. She is being sued in her official capacity.

29. Respondent Carl E. Heastie is the Speaker of the New York State Assembly, representing the 83rd Assembly District. Speaker Heastie has offices in Albany and at 1446 East Gun Hill Road, Bronx, NY 10469. He is being sued in his official capacity.

30. Respondent New York State Board of Elections was established on June 1, 1974, as an Executive Department agency vested with the authority and responsibility for administration and enforcement of the laws relating to election in the State of New York. It has its principal place of business at 40 North Pearl Street, Suite 5, Albany, NY 12207.

31. Respondent New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”) was established by the Legislature in 1978 pursuant to New York Legislative Law § 83-m, with the principal responsibility—at least before the 2014 constitutional amendments to Article III, Section 4—of preparing and formulating reapportionment plans to the Legislature following each decennial census. LATFOR’s principal place of business is located at 250 Broadway, Suite 2100, New York, NY 10007.

### **JURISDICTION AND VENUE**

32. This Court has jurisdiction over this lawsuit pursuant to Article III, Section 5 of the New York Constitution, CPLR § 3001, and Unconsolidated Laws § 4221, the latter of which grants authority to the “supreme court” to “review” any “petition of any citizen” challenging “[a]n apportionment by the legislature.”

33. Venue is proper in this County under Article III, Section 5 of the New York Constitution, CPLR § 503(a), and Unconsolidated Laws § 4221, the latter of which authorizes the filing of a petition challenging “[a]n apportionment by the legislature” in “the supreme court where any such petitioner resides.”

### **FACTUAL BACKGROUND**

#### **A. Redistricting in New York**

34. Following each federal decennial census, the New York Constitution requires the State of New York to redraw its state Senate, state Assembly, and congressional districts to adjust for population changes. The process of redrawing these district lines is known as redistricting.

35. New York congressional and state Senate districts must be redrawn so that each district is contiguous; contains, to the extent possible, an equal number of inhabitants; and is in as compact a form as possible, as required by Article III, Sections 4 and 5 of the New York State Constitution.

36. Redistricting is an extremely time-sensitive requirement, including because candidates must know what their districts are in advance of an election, in order to meet state-ballot-access requirements. Multiple petition and signature-related deadlines are looming for New York congressional candidates. *See generally* N.Y. Election Law § 6-100, *et seq.*

#### **i. The Redistricting Process Before 2014**

37. Before 2014, the Legislature maintained primary responsibility for redistricting.

38. To aid the Legislature in its task, LATFOR would prepare proposed redistricting maps for the Legislature’s vote.



39. Established in 1978, LATFOR is a partisan body that has consistently produced partisan maps. It consists of six members, including four legislators and two non-legislators. The Temporary President of the Senate appoints one legislator and one non-legislator. The Speaker of the Assembly also appoints one legislator and one non-legislator. The Minority Leader of the Assembly appoints one legislator, and the Minority Leader of the Senate appoints one legislator.

40. Under the LATFOR system, “legislators w[ould never] give up their right to draw district lines.” David Freedlander, *Background: How Redistricting Will Reshape New York’s Battle Lines*, Observer (Dec. 27, 2010).<sup>8</sup> Indeed, legislators could effectively control redistricting under the LATFOR process in a partisan manner, by controlling “who winds up on [LATFOR]—those who make it are likely to be the favorites of [incumbent legislative leaders] and are likely to get exactly the districts that they want.” *Id.*

41. Over time, the Legislature manipulated its role in the redistricting process to protect existing incumbents. Under this pre-2014 system, elections were often predestined, with state legislative incumbents winning reelection more than 98% of the time, “usually overwhelmingly.” *Elections With No Meaning*, N.Y. Times (Feb. 21, 2004), at A14.<sup>9</sup> The “major reason” for this seemingly insurmountable incumbency advantage was gerrymandering, allowing the party in power to draw districts with “surgical precision” to “exclude the homes of rival candidates” and making favorable districts nearly “impregnable.” *Id.* With incumbents facing little chance of

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<sup>8</sup>Available at <http://observer.com/2010/12/background-how-redistricting-will-reshape-new-yorks-battle-lines/>.

<sup>9</sup> Available at <https://www.nytimes.com/2004/02/21/opinion/elections-with-no-meaning.html>.

defeat under the then-existing process, elections became uncompetitive, and voters became increasingly disillusioned by the reality that they could not choose their representatives.

42. This system granted political parties significant leeway to gerrymander for partisan and incumbent gain. Only the requirement of “one person, one vote,” and requirements that districts “shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the first year of the next decade . . . , and shall at all times consist of contiguous territory,” N.Y. Const. art. III, § 4 (2014), constrained the party leaders responsible for drawing new maps. The New York Constitution required respect for county and city lines, noting that “no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county,” and “[n]o town, except a town having more than a full ratio of apportionment, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts,” as well as the “block on border” and “town on border” requirements. *Id.*; *see also* N.Y. Const. art. III, § 4(c)(6) (current version). But even these “requirements” were largely meaningless constraints. *See Schneider v. Rockefeller*, 31 N.Y.2d 420, 426–27, 293 N.E.2d 67 (1972).

43. Additionally, prior to 2014, some New York Courts interpreted the then-pertinent constitutional provisions as not providing for a claim of partisan gerrymandering. *Bay Ridge Cmty. Council, Inc. v. Carey*, 479 N.Y.S.2d 746, 749, 103 A.D.2d 280 (2d Dep’t 1984) (per curiam), *aff’d* 66 N.Y.2d 657, 486 N.E.2d 830 (1985) (order).

44. Therefore, the pre-2014 system for redistricting and reapportionment gave broad discretion to the politicians in power and *required* only that all state legislative and congressional districts largely abide by the equal-population principle, creating unfair and undemocratic maps that ensconced powerful parties in the seat of government.

## ii. The Redistricting Process After the 2014 Reforms

45. In recent years, however, the People of this State explicitly outlawed partisan gerrymandering and constitutionalized an exclusive, nonpartisan redistricting procedure.

46. In 2014, New Yorkers amended Article III, Sections 4 and 5 of the New York Constitution, and added a new Section 5-b to the same Article, enacting the following ballot measure:

The Proposed amendment to sections 4 and 5 and addition of new section 5-b to Article 3 of the State Constitution revises the redistricting procedure for state legislative and congressional districts. The proposed amendment establishes a redistricting commission every 10 years beginning in 2020, with two members appointed by each of the four legislative leaders and two members selected by the eight legislative appointees; prohibits legislators and other elected officials from serving as commissioners; establishes principles to be used in creating districts; requires the commission to hold public hearings on proposed redistricting plans; subjects the commission's redistricting plan to legislative enactment; provides that the legislature may only amend the redistricting plan according to the established principles if the commission's plan is rejected twice by the legislature; provides for expedited court review of a challenged redistricting plan; and provides for funding and bipartisan staff to work for the commission. Shall the proposed amendment be approved?

*2014 N.Y. State Prop. No. 1: An Amendment Revising State's Redistricting Procedure.*<sup>10</sup>

47. Proposition 1 amended the New York Constitution to vest primary redistricting responsibility in the newly created IRC and established numerous procedural safeguards against the Legislature's continued gerrymandering practices.

48. One such procedural safeguard is the IRC's 10-member composition. Two Commissioners are appointed by the New York State Senate Majority Leader and Temporary President, two are appointed by the New York State Senate Minority Leader, two are appointed

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<sup>10</sup> Available at <https://www.elections.erie.gov/Files/Election%20Results/2014/11042014/2014-General.pdf>.

by the Speaker of the New York State Assembly, and two are appointed by the New York State Assembly Minority Leader. The final two members are then selected by these eight appointees and cannot have enrolled as a Democrat or Republican in the past five years. All Commission members must be registered voters in New York.

49. Article III, Section 4 of the New York Constitution requires the IRC to hold public hearings in cities and counties around the State and release draft plans, data, and related information to facilitate public review of proposed district lines. Draft plans must be made available at least thirty days before the first public hearing and no later than September 15 of the year following the census.

50. Article III, Section 5-b(f) and (g) of the New York Constitution governs IRC voting and the procedure for approving and submitting redistricting maps to the Legislature. Five members of the IRC constitute a quorum. IRC approval of a plan requires seven votes, which must include a member appointed by each of the legislative leaders. If no plan gets seven votes, the IRC must submit the plan(s) with the highest vote to the Legislature.

51. Article III, Section 4 of the New York Constitution requires the IRC to submit an initial set of maps and the necessary implementing legislation to the Legislature no later than January 15 of the second year following the census. The Legislature then votes on the maps and implementing legislation without amendment. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

52. If the Legislature fails to adopt the first set of maps and implementing legislation or if the Governor vetoes adopted implementing legislation, then the redistricting process reverts back to the IRC. The IRC must submit a second set of maps and implementing legislation to the

Legislature, subject to the requirements outlined above, within 15 days of notification of the first rejection and no later than February 28. The Legislature then votes on the second set of proposed maps and implementing legislation without amendment. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

53. If (and only if) the Legislature fails to adopt the IRC's second set of maps and implementing legislation, or if the Governor vetoes the second adopted implementing legislation, can the Legislature amend the IRC's proposed redistricting maps and enact its own replacement maps.

54. The 2014 amendments to Article III, Section 4 also changed and added to the *substantive* redistricting requirements. Now, the New York Constitution specifically provides that districts "shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c).

55. The Legislature must follow all of the substantive requirements for redistricting applicable to the IRC. That is, any maps and implementing legislation adopted by the Legislature cannot involve partisan gerrymandering or incumbent-favoring gerrymandering, must be compact and contiguous, and must have equal population between districts, in addition to the already-noted procedural requirement that all maps be enacted via a single mandatory process involving the IRC.

56. The Legislature also established an additional guardrail against partisan gerrymandering with Section 3 of the Redistricting Reform Act of 2012. 2012 N.Y. Sess. Laws 17, § 3. Applicable above and apart from New York Legislative Law §§ 93, 94, Section 3 of the Redistricting Reform Act of 2012 provides that "[a]ny amendments by the senate or assembly to a redistricting plan submitted by the independent redistricting commission, shall not affect more

than two percent of the population of any district contained in such plan.” 2012 N.Y. Sess. Laws 17, § 3.

**iii. The Legislative Democrats Fail To Derail These Reforms With A Proposed 2021 Constitutional Amendment**

57. In 2021, the Legislature referred a constitutional amendment to New York voters that would have gutted the 2014 constitutional reforms in favor of the Legislature over the Commission, but the People decisively voted this measure down.

58. The ballot proposal would have amended the New York Constitution in a number of ways, including section 4(b) of Article III, to provide:

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto, or the redistricting commission fails to vote on a redistricting plan and implementing legislation by the required deadline and makes a submission to the legislature pursuant to subdivision (g-1) of section five-b of this article, each house shall introduce such implementing legislation with any amendments each house of the legislature deems necessary.

*2021 Statewide Ballot Proposals, New York State Board of Elections* (amendment underlined).<sup>11</sup>

59. The IRC’s exclusive redistricting process, enshrined in Article III, Section 4 of the New York Constitution, can only be altered by a constitutional amendment. Yet, within days of the People’s rejection of the 2021 constitutional amendment, the Legislature referred a bill that purports to achieve largely the same result as the failed amendment to the Governor for her signature. The Governor signed this unconstitutional bill on November 24, 2021.

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<sup>11</sup> Available at <https://www.elections.ny.gov/2021BallotProposals.html>.

60. This law attempts to avoid the Constitution's limitations by purporting to amend only section 4(c) of the Redistricting Reform Act of 2012, notwithstanding the expressed desires of the People of this State:

If either house shall fail to approve the legislation implementing the second redistricting plan, or the governor shall veto such legislation and the legislature shall fail to override such veto within ten days of such veto, or if the commission does not vote on any redistricting plan or plans, for any reason, by the date required for submission of such plan and the commission submitted to the legislature pursuant to subdivision (a) of this section all plans in its possession, both completed and in draft form, and the data upon which such plans are based, each house shall introduce such implementing legislation with any amendments each house deems necessary. If approved by both houses, such legislation shall be presented to the governor for action within three days.

L.2021, c. 633, § 1 (amendment underlined).

**B. The 2012 Congressional Map and 2012 State Senate Map Are Unconstitutional Under The New York Constitution**

61. Following the 2010 Census, the Legislature in 2012 reapportioned New York's state legislative districts, 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584), but could not agree on new congressional districts. As a result, a panel of three federal judges appointed a federal magistrate judge, Roanne Mann, to propose a new congressional map for New York. On March 19, 2012, the judicial panel imposed its congressional map, which was largely the same as the map issued by Judge Mann. *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012); *see also* Thomas Kaplan, *New Congressional Lines Imposed by Federal Court*, N.Y. Times (Mar. 19, 2012).<sup>12</sup>

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<sup>12</sup> Available at <https://www.nytimes.com/2012/03/20/nyregion/judges-impose-new-congressional-map-for-new-york.html>.

62. After the 2010 census, New York had a population goal of 719,298 residents for each of its 27 congressional districts, and 313,242 residents for each of its state Senate districts.

63. In the interim, various population shifts caused state Senate and congressional districts to become unconstitutionally malapportioned.

64. New York's 26 congressional districts now have a population goal of 776,971 residents, whereas the state Senate districts have a population goal of 320,537.

65. The 2012 congressional map does not comply with this new population target or the constitutional requirements for population equality.

66. In other words, none of the districts complies with the "strict standard of population equality applicable to congressional apportionment," which requires "maximum population equality." *Schneider v. Rockefeller*, 31 N.Y.2d 420, 427–28, 293 N.E.2d 67 (1972).

67. None of the prior districts matches exactly (or even within 1,000 residents) the population goal of 776,971 residents.

68. For example, in 2012 Congressional District 23, where Petitioners Tim Harkenrider, Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside, the current population is 83,462 residents below the population goal (a -10.7% deviation).

69. In 2012 Congressional District 22, where Petitioner Lawrence Canning resides, the current population is 80,361 residents below the population goal (a -10.3% deviation).

70. In 2012 Congressional District 19, where Petitioner Guy C. Brought resides, the current population is 78,298 residents below the population goal (a -10.1% deviation).



71. In 2012 Congressional District 24, where Petitioners George Dooher, Jr. and Josephine Thomas reside, the current population is 59,664 residents below the population goal (a -7.7% deviation).

72. In 2012 Congressional District 10, where Petitioner Stephen Evans resides, the current population is 26,832 residents above the population goal (a 3.5% deviation).

73. Moreover, the 2012 congressional map includes 27 congressional districts, and New York only receives 26 congressional seats after the most recent census, so that map is plainly invalid. U.S. Census Bureau, 2020 Census: Apportionment of the U.S. House of Representatives (April 26, 2021).<sup>13</sup>

74. The 2012 state Senate map is no better. Even allowing for some deviation between state Senate districts as presumptively valid, *Schneider*, 31 N.Y.2d at 428–29, many of the 2012 state Senate districts vary wildly in population without any valid explanation for their continued use.

75. 2012 state Senate District 27—where Petitioner Stephen Evans resides—now has a population 12.2% above the goal.

76. 2012 state Senate District 53—where Petitioner Lawrence Canning resides—now has a population 10.6% below the goal.

77. 2012 state Senate District 57—where Petitioners Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside—now has a population 13.3% below the goal.

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<sup>13</sup> Available at <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html>.

78. 2012 state Senate District 58—where Petitioner Tim Harkenrider resides—now has a population 10.1% below the goal.

79. Many more 2012 state Senate districts have similarly large population deviations.

**C. The IRC And Legislature Failed To Follow The Constitutional Process For Redistricting To Cure This Malapportionment**

**i. The Commission's Initial Efforts To Develop Redistricting Maps**

80. On April 26, 2021, the U.S. Census Bureau released the population counts from the 2020 Census, showing that New York's resident population increased by more than 4 percent, or 823,147 residents, from 19,378,102 a decade ago to 20,201,249 in 2020. Because of national population shifts, however, New York lost one of its congressional seats in the United States House of Representatives, leaving the State with 26 congressional districts.

81. The 2020 Census data further showed, as previously mentioned, that New York's congressional and state Senate districts are now unconstitutionally malapportioned.

82. Pursuant to the 2014 constitutional amendments, the New York Constitution established an exclusive process for adopting any replacement redistricting maps, granting the IRC and Legislature specifically defined roles.

83. The IRC's current members are David Imamura, serving as Chair, Jack M. Martins, serving as Vice Chair, Eugene Bengert, Ross Brady, John Conway III, Dr. Ivelisse Cuevas-Molina, Dr. John Flateau, Elaine Frazier, Charles H. Nesbitt, and Willis H. Stephens, Jr.

84. Consistent with the procedures established by the 2014 amendments, Democratic leaders in the Legislature appointed the "Democratic Caucus" of the Commission, made up of: David Imamura, Eugene Bengert, John Flateau, and Elaine Frazier, along with non-party enrollee Ivelisse Cuevas-Molina.

85. Similarly, Republican leaders in the Legislature selected the “Republican Caucus” of the Commission, made up of: Jack Martins, John Conway, Charles Nesbitt, and Willis Stephens, joined by Conservative Party member Ross Brady.

86. From the outset, Democratic legislative leaders attempted to hamstring the new Commission with multiple challenges and delays.

87. The Democrats attempted to impede the Commission by delaying its receipt of state funding from the Legislature. Despite a \$1 million allocation in the 2020 state budget, the funding never materialized, forcing Commission staff to work on a voluntary basis for months. After more than a year, the Legislature finally allocated \$4 million to the Commission’s redistricting efforts in April 2021. Ethan Geringer-Sameth, *New York Redistricting Commission Kicks C of State’s New Map-Drawing Process*, Gotham Gazette (July 20, 2021);<sup>14</sup> Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).<sup>15</sup>

88. Finally, beginning on June 20, 2021, the IRC held a series of nine public meetings across the State to hear public testimony about the new maps and the redistricting process, as required by the New York Constitution. N.Y. Const. art. III, § 4(c).

89. On September 15, 2021, members of the IRC released initial map drafts, consistent with constitutional requirements. N.Y. Const. art. III, § 4(c).

90. Republican members had hoped to submit a single bipartisan set of draft maps. Speaking to reporters about the two draft plans, Commissioner Martins said the IRC “should end

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<sup>14</sup> Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

<sup>15</sup> Available at <https://www.news10.com/news/redistricting-commission/>.

up with the maps being negotiated and presented jointly,” but the Democratic commissioners had not agreed to meet over the weekend before the Commission released the draft maps. *See* Rebecca C. Lewis & Zach Williams, *Takeaways From New York’s (Competing!) Redistricting Draft Maps*, City & State N.Y. (Sept. 15, 2021).<sup>16</sup>

91. The Democratic members viewed the competing draft maps differently, with Commissioner Imamura stating that “the fact that we put out two plans does not indicate that the commission will be unable to come to a bipartisan agreement.” *Id.*

92. The IRC held an additional fourteen public hearings across the State, during which residents voiced concerns, desires, and suggestions regarding the draft maps and the redistricting process. The IRC also solicited written comments and draft maps from the public.

93. Democratic members revised their respective maps between the end of November and when the full Commission met to deliberate in December. Testimony of Eugene Banger at 23:44–24:10, Virtual Public Meeting of the NYIRC, Jan. 3, 2022 (“1/3/22 IRC Meeting”).<sup>17</sup>

94. The IRC held its last public hearing on December 5, 2021, and the final deadline for public comments and draft maps was December 6, 2021.

95. Following the public comment period, the IRC scheduled meetings to negotiate and finalize a single set of maps to submit to the Legislature. The IRC agreed on a procedure for putting together this set of consensus maps:

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<sup>16</sup> Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

<sup>17</sup> Available at <https://totalwebcasting.com/view/?func=VOFF&id=nysirc&date=2022-01-03&seq=1>.

- a. First, two third-party redistricting organizations, Redistricting Partners and Redistricting Insight, would prepare a set of maps without IRC input, using the draft maps released by the IRC in September, as well as the public testimony and written comments.
- b. The Commission would then hold a series of meetings, breaking into subgroups, to review the organizations' preliminary maps.
- c. Based on these discussions, the IRC would make changes to the preliminary maps and work to arrive at a single map.

96. All Commission members initially followed their agreed-upon plan and worked together on a set of consensus maps for over two weeks, moving toward a bipartisan consensus.

97. On December 22, 2021, the full Commission met to discuss the bipartisan maps. By this point, only a small number of issues remained open, and the Commission was close to reaching a consensus. After discussing the open issues for two hours, the Commission broke at 1:00 p.m., agreeing to reconvene at 4:00 p.m. to reach an agreement on the remaining issues. Testimony of Jack Martins at 8:44–9:14, 1/3/22 IRC Meeting, *supra*.

98. When the IRC reconvened at 4:00 p.m. on December 22, Commissioner Imamura read a statement announcing that the Democratic Caucus would no longer negotiate the bipartisan maps, as all members previously agreed to do. Instead, the Democratic Caucus was only willing to negotiate on the latest iteration of the maps it had released unexpectedly, and without explanation, the day prior. Testimony of Jack Martins at 9:16–9:49, 1/3/22 IRC Meeting, *supra*.

## **ii. The IRC Submits Two Sets Of Maps To The Legislature**

99. On January 3, 2022, the IRC met to vote on maps to send to the Legislature.

100. The Democratic Caucus again refused to negotiate with the full Commission, discuss the bipartisan maps, or make any concessions. Commissioner Martins expressed his disappointment with the impasse, noting that the Republican members had reached an agreement with Democrats on 90 percent of the new district lines before talks broke down.

101. The Commission then voted on two redistricting plans—the Democratic members’ partisan maps presented on December 21 (“Plan A”) and the consensus maps, which were based on the preliminary maps drawn by independent organizations and negotiated by the full Commission throughout December 2021 (“Plan B”).

102. Both plans received five votes each, resulting in both being delivered to the Legislature on January 3.

103. The Legislature rejected both plans out-of-hand, without consideration of the public’s input, the Commission’s negotiations and reflections on the public’s testimony, bipartisan priorities, and the other considerations New Yorkers enshrined in the Constitution.

104. The Assembly set the plans for a party vote, rejecting them all. Before the final vote, Assemblyman Colin Schmitt asked Assemblyman Kenneth Zebrowski, a Democrat representing the 96th District who sponsored Plan A, whether the Assembly would “follow[ ] all of the currently prescribed State Law and State constitutional process for redistricting” if the Legislature failed to approve any of the IRC’s plans—including taking public input before enacting new maps. Assemblyman Zebrowski did not give a concrete answer, saying “I don’t—I don’t think that’s germane to—to this debate right now.” Transcript at 12–14, Session, New York State

Assembly (Jan. 10, 2022) (Questioning of Assemblyman Zebrowski by Assemblyman Colin Schmitt).<sup>18</sup>

105. In the Senate, Plan A's maps received no votes in favor of enactment. Seventeen senators voted in favor of Plan B's Senate and Assembly districts, with forty-six voting no, while nineteen senators voted to enact Plan B's congressional map, with forty-four voting against. Before voting in favor of Plan B, Senator Andrew Lanza commented on the Commission's lack of real autonomy, saying, "I think it's been the worst-kept secret in Albany, if not the entire country, that this Independent Redistricting Commission was never going to be allowed to remain independent." Transcript at 73:14–17, Regular Session, New York State Senate (Jan. 10, 2022) (Testimony of Senator Andrew Lanza).<sup>19</sup>

106. On January 10, the Legislature advised the Commission that it had rejected the submitted plans.

107. Following this rejection, the IRC had until January 25 to submit a revised plan under the 2014 amendments to the Constitution.

108. The full Commission met to discuss a single plan for the final submission to the Legislature, as required by Article III, Section 4(b) of the New York Constitution. The Republican members attempted to restart negotiations on the previously negotiated bipartisan maps. Chairman Imamura stated that the Democratic members wanted to re-submit virtually the same plan that the

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<sup>18</sup> Available at <https://www.nyassembly.gov/av/session/>.

<sup>19</sup> Available at <https://legislation.nysenate.gov/pdf/transcripts/2022-01-10T15:51/>.

legislature had rejected. Despite multiple entreaties from the Republican members, the Democratic members refused to meet to discuss bipartisan maps.

109. On January 18, before the IRC's constitutional window for revision expired, Speaker Carl Heastie announced he had appointed Assembly Democrat Kenneth Zebrowski to be the temporary co-chair of LATFOR. Speaker Heastie stated that "the results of reapportionment will determine the path our state and our nation take for the coming decade," and "Assemblymember Zebrowski is the right person for the job." Assembly Speaker Carl E. Heastie, News Release, *Speaker Heastie Announces Assemblymember Zebrowski Appointed Temporary Co-Chair of LATFOR* (Jan. 18, 2022).<sup>20</sup>

110. On January 24, 2021, Commissioner Imamura announced that the IRC was at an impasse and would not be submitting a second set of redistricting maps to the Legislature at all.

111. On the same day, Commissioner Martins made a statement on behalf on the Republican members on the Commission, outlining the Democratic members' refusal to engage with anything other than their partisan maps and expressing his disappointment that the Commission failed its constitutional mandate.

112. On January 25, 2022, the 15-day window for the IRC to submit revised maps to the Legislature closed without the IRC submitting new maps, as required by the Constitution.

113. Upon information and belief, the Democratic Caucus of the IRC decided not to submit a compromise congressional map within the constitutional timeframes after receiving

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<sup>20</sup> Available at <https://www.nyasembly.gov/Press/?sec=story&story=100542>.



encouragement to undermine the constitutional process from Democratic Party politicians and officials.

**iii. Notwithstanding The Failure Of The Constitutional Process, The Legislature Nevertheless Attempted To Enact Replacement Congressional And State Senate Maps, And The Maps It Enacted Are An Unconstitutional Partisan And Incumbent-Protection Gerrymanders**

114. Despite the failure of the IRC to vote on and present a second set of maps, the Legislature proceeded to craft its own congressional map, turning a blind eye to the mandatory and exclusive constitutional process for redistricting established in Article III, Section 4.

115. In doing so, the Legislature ignored calls from all across the aisle to engage with the public and be more transparent about the choices it was making in drawing district lines. Clifford Michel & Farah Javed, *Albany Democrats Seize Control of Redistricting, With Unclear Role for Public*, The City (Jan. 27, 2022).<sup>21</sup>

116. Instead, Democratic leaders crafted and pushed through legislation to enact their own new congressional map over the course of only a few days, releasing the Legislature's proposed map on Sunday evening, January 30, without a single public hearing. Ashford & Fandos, *supra*.

117. This map bears no resemblance to the two maps proposed by the IRC.

118. To underscore how different the Legislature's map is, and to make adoption of this unrecognizable congressional map possible, the Legislature added a "notwithstanding clause" to

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<sup>21</sup> Available at <https://www.thecity.nyc/2022/1/26/22903787/albany-democrats-seize-control-of-redistricting-with-unclear-role-for-public>.

the enacting legislation, exempting the map from any laws to the contrary, including the 2% rule embodied in 2012 New York Session Laws 17, § 3.

119. The Democratic leaders also crafted and hurriedly pushed through legislation to enact their own state Senate districts, releasing this map two days later, on February 1, 2022. Bill Mahoney, *New State Senate Maps Shift Two Seats from Upstate to NYC. Here's Where.*, Politico.com (Feb. 1, 2022).<sup>22</sup>

120. The result is unmistakably gerrymandered maps for Congress and state Senate.<sup>23</sup>

*a. Gerrymandered Congressional Districts*

121. The Legislature created a congressional map that, without a doubt, creates “an effective [Democratic] gerrymander, resulting in the Democrats “gain[ing] three seats and eliminat[ing] four Republican seats,” and creating the biggest shift in the country” with “the stroke of a pen.” Ashford & Fandos, *supra*.

122. As noted by Laura Ladd Bierman, the executive director of the League of Women Voters of New York, “New Yorkers deserve a transparent and fair redistricting process, and it is shameful that the Legislature has denied them this.” *NYC Would Get More Seats in State Senate Under Proposed Maps*, N.Y. Daily News Feb. 1, 2022).<sup>24</sup> So, even though the New York Constitution prohibits partisan gerrymandering, she noted that the congressional map “reflect[s] a

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<sup>22</sup> Available at <https://www.politico.com/news/2022/02/01/new-state-senate-maps-shift-two-seats-from-upstate-to-nyc-heres-where-pro-00004173>.

<sup>23</sup> This failure applies equally to the Legislature’s enactment of the state Assembly map. But, again, Petitioners do not challenge that map, and so the Court need not consider it.

<sup>24</sup> Available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-state-senate-nyc-seats-legislative-redistricting-20220202-2xoyaqnvlfdliax5tosbnuage-story.html>.

Legislature that appears to care more about favoring partisan interests than it does for fair maps.”

*Id.*

123. In fact, the Legislature’s congressional gerrymander was so successful and so biased in favor of Democrats, that the enacted congressional map is more favorable to Democrats than *any* of the 5,000 computer simulated maps designed specifically to follow New York’s redistricting requirements without aiming to increase partisan advantage.

124. The Legislature concocted numerous individual congressional districts with boundaries with no honest explanation except for impermissible partisan and incumbent-favoring gerrymandering. The following examples are illustrative.

125. In Long Island, the Legislature completely changed Congressional Districts 1 and 2, swapping Republican voters for Democratic voters in an egregious gerrymander.

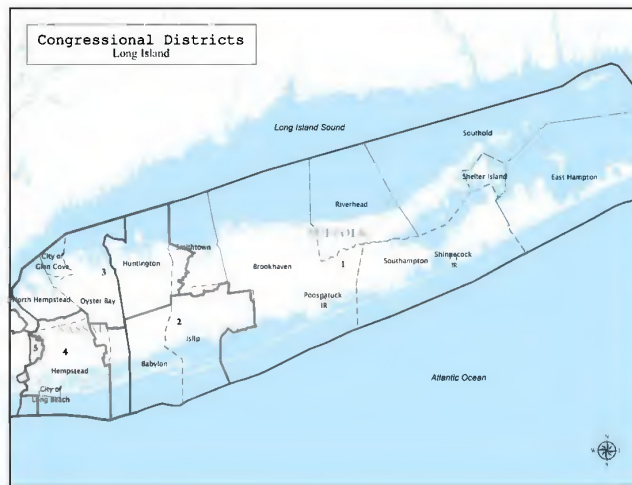
126. In particular, the Legislature placed areas with high concentrations of Republican voters into new Congressional District 2 while moving solidly Democrat communities into Congressional District 1—all the Republican communities in Brookhaven on the south shore are now in District 2, whereas the heavily Democrat areas in the center of Long Island are now channeled into District 1.

127. This partisan reconfiguration creates several new town splits and an additional county split where Congressional District 1 now reaches into Nassau County between Oyster Bay and Huntington. By packing Republicans into Congressional District 2, the Legislature effectively flipped Congressional District 1.

128. The result of this blatant gerrymandering has turned Congressional District 1 from a strong Republican district, solely in Suffolk County, into a lean Democratic district, unnecessarily sprawling across two counties.

129. Similarly, the redrawing shifted District 2 from a safe Republican district into an outright uncompetitive Republican stronghold.

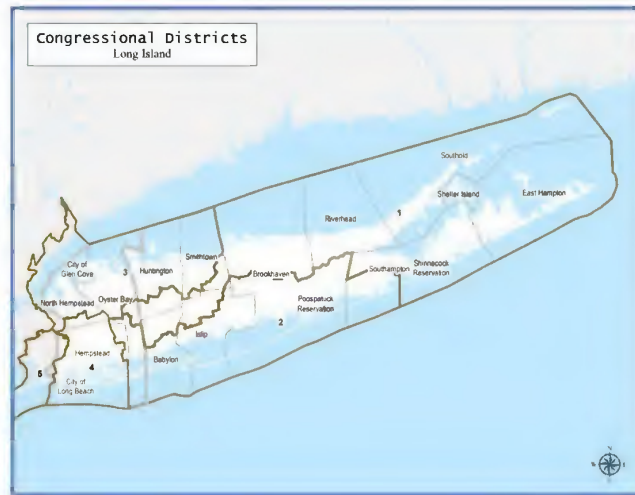
### Map of Prior Congressional Districts 1 & 2<sup>25</sup>



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<sup>25</sup> All maps, unless otherwise specified, come from the LATFOR government website, available at <https://www.latfor.state.ny.us/maps/>.

### Map of New Congressional Districts 1 & 2



130. The new Congressional District 3 is dramatically different from the old map in order to accomplish the Legislature's partisan goals.

131. The old District 3 bridged Suffolk and Nassau counties, with a slight reach into Queens County. The new map reaches from Suffolk County, through Nassau and Queens counties, and then skips through Bronx County all the way up into Westchester County across the Long Island Sound in a thin strip up to the Town of Rye, capturing overwhelmingly Democrat-voting towns along the shore.

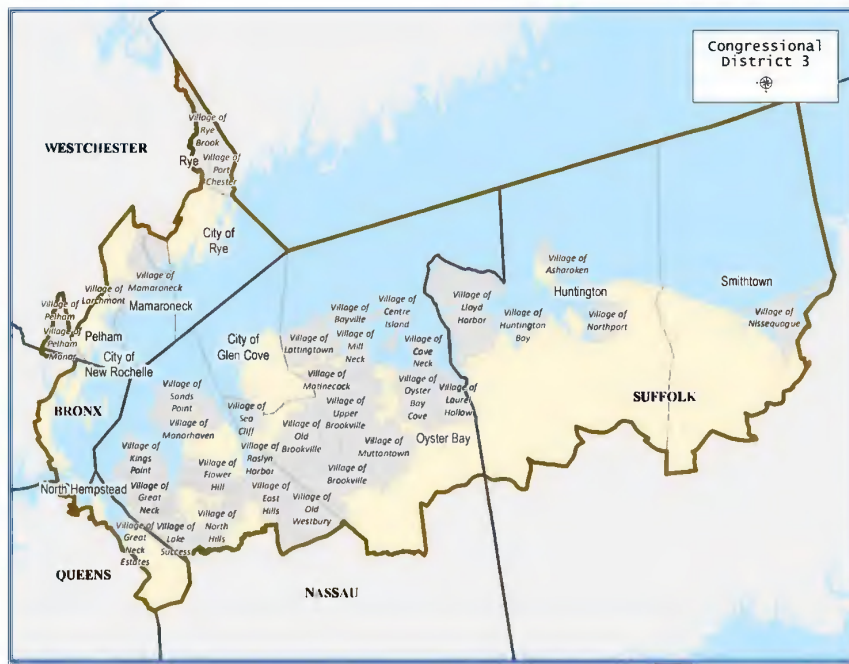
132. This combination of Westchester, with a district largely populated on Suffolk and Nassau counties, makes no sense. These communities have no nexus and share no communities of interest.

133. With these stark and otherwise unexplainable changes, the Legislature has decreased competitiveness, shifting Congressional District 3 from a competitive Democratic-leaning district to a strong Democrat district.

## Map of Old Congressional District 3



## Map of New Congressional District 3



134. The new Congressional Districts 8, 9, 10, and 11 radically break up established communities of interest in Brooklyn to create a partisan advantage for Democrats.

135. The new map divides closely knit, concentrated Orthodox Jewish and Russian communities with strong social and cultural ties, resulting in conservative Republican-leaning voters spread or “cracked” across multiple districts.

136. These new districts are drawn as vertical stripes across the southern two-thirds of Brooklyn, moving large numbers from the Russian Jewish communities in Brooklyn into Congressional District 8 and dividing the Orthodox Jewish communities between Congressional District 9 and Congressional District 10.

137. This partisan gerrymander also split other communities of interest—in Congressional District 10, the Legislature cut across an established Asian community, moving half of it into Congressional District 11.

138. In particular, it cuts Sunset Park off from northern Brooklyn and the Lower East Side of Manhattan, separating the Asian American, Pacific Islander, and Latino communities—which have formed the “backbone” of the district for nearly 30 years, since the 1992 reapportionment process—from its related communities of interest in northern Brooklyn and Manhattan’s Lower East side. Kristyn Brendlen, *Brooklyn Electeds, Community leaders Ask State Gov Cjfficials to Reconsider Redistricting Maps*, Brooklyn Paper (Feb. 1, 2022).<sup>26</sup> This new split breaks up these linked communities from the North Brooklyn area, which is especially important given the recent “rise in anti-Asian hate.” *Id.*

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<sup>26</sup> Available at <https://www.brooklynpaper.com/brooklyn-electeds-community-redistricting/>.

139. Democratic Assemblymember Marcela Mitaynes also decried this inexplicable particular line-drawing, noting that the Legislature had “separate[d]” these “culturally and historically connected” communities for nothing more than “political expediency to ensure a[n] electoral advantage in the near term,” and “fail[ed] to meet the necessary level of transparency, accountability, and public participation that our constituents rightfully deserve from our democratically elected leaders,” before concluding that she would “not dismantle the political voice of [her] constituents by voting to approve the proposed Congressional Districts.” Assemblymember Marcela Mitaynes’ Statement on New York State’s Proposed 2022 Congressional Maps (Feb. 2, 2022).<sup>27</sup>

140. The Legislature designed this particular shift to unseat incumbent Republican Congresswoman Nicole Malliotakis from Congressional District 11. Carl Campanile, *Dems Plan to Topple GOP Rep. Malliotakis in Redistricting Plan*, N.Y.Post (Jan. 27 2022);<sup>28</sup> Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).<sup>29</sup>

141. Congressional District 11 shifted from the previous map, where it covered Staten Island and adjacent southern portions of Brooklyn, to now covering Staten Island and winding northwestward into the heavily liberal areas of Brooklyn—Sunset Park, Red Hook, Gowanus, Windsor Terrace, and Park Slope, thereby drastically changing the political composition of this district and providing the Democrats a drastically increased chance of flipping the seat.

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<sup>27</sup> Available at [https://docs.google.com/document/d/16jJFKDH-\\_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing](https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing).

<sup>28</sup> Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

<sup>29</sup> Available at <https://www.cityandstateny.com/politics/2022/01/rep-nicole-malliotakis-probably-screwed/361412/>.



142. As the Asian American Legal Defense Fund noted on Twitter, “[t]he legislature’s map does not keep our [Asian American] communities together”<sup>30</sup>.



143. These redrawn Brooklyn districts are blatant gerrymanders, with bizarre, roving boundaries crossing multiple bodies of water and snaking between each other for no discernible reason besides partisan advantage.

144. These shifts allowed the Legislature to place additional, safe Democratic voters into District 11, changing that district from a strong Republican district to a Democratic district.

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<sup>30</sup> Available at <https://twitter.com/aaldef/status/1488223479371599876>.

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**Map of Old Congressional Districts 8, 9, 10, & 11****Map of New Congressional Districts 8, 9, 10, & 11**

Map of Old Congressional District 8



Map of New Congressional District 8



**Map of Old Congressional District 9**



**Map of New Congressional District 9**





### Map of Old Congressional District 10



### Map of New Congressional District 10

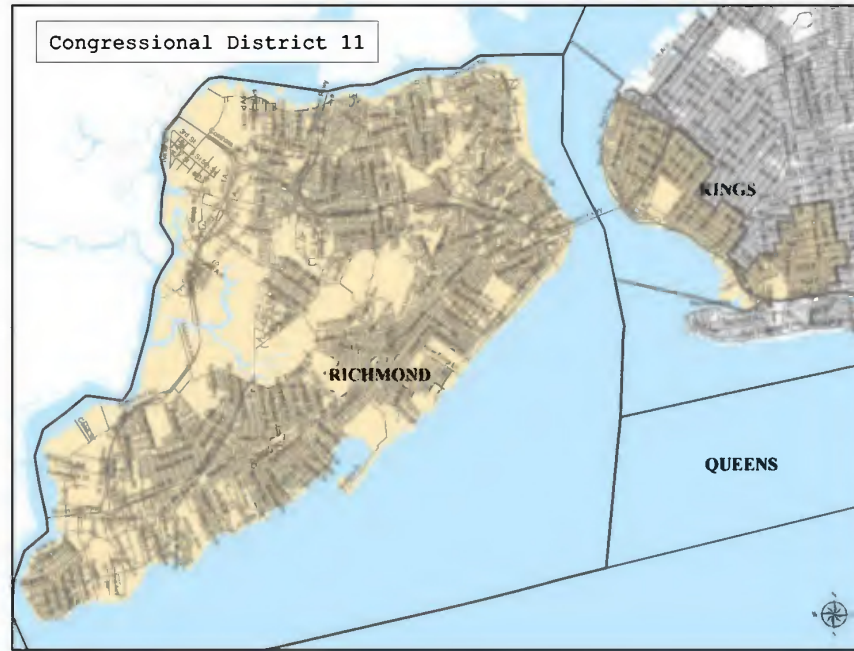


**Overlay of Old Congressional District 10 and New Congressional District 10<sup>31</sup>**

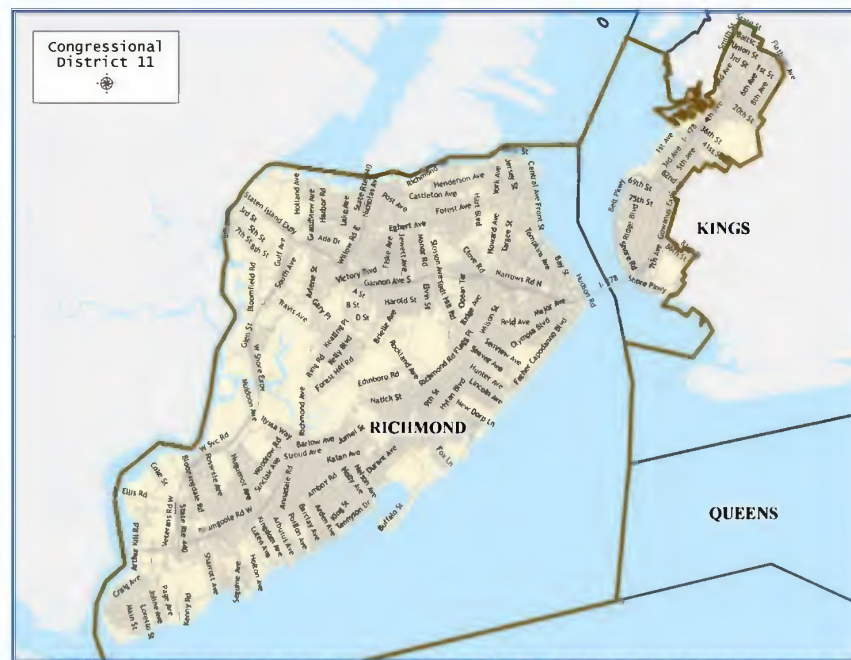
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<sup>31</sup> Nicholas Fandos, *How N.Y. Democrats Came Up With Their Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022), available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

## Map of Old Congressional District 11



## Map of New Congressional District 11



145. The old Congressional District 16 was almost entirely contained in Westchester County, with only a small section of the Bronx for population purposes, while the new District connects a section of the Bronx to Mount Vernon and Yonkers—Democratic strongholds—then winds in a narrow segment up through Westchester County into Putnam County, grabbing rural and suburban Republican communities to “crack” them out of Congressional District 18.

146. The towns of Putnam Valley, Carmel, Yorktown, and Somers—strongly Republican areas—are awkwardly connected to highly populated Democratic communities, neutralizing these Republican votes. The bisection of Westchester County and added county split into Putnam County creates a district with geographically distanced communities.

147. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 and places them into a strong Democratic district, making Congressional District 18 a safer Democratic district without jeopardizing the Democratic Party’s interests in Congressional District 16.

148. Congressional District 18 is now oddly shaped, like a sitting dog, with a tail that extends into the Ulster County towns of Rochester and Wawarsing, with legs made of Peekskill, Cortlandt, North Salem, Lewisboro, Bedford, and Pound Ridge, and a noticeable space between those legs where the central portions of Putnam and Westchester counties were scooped out for Congressional District 16.

149. The legislative Democrats made these shifts not only to shore up their party’s chances in Congressional District 18, but also to protect incumbent Democratic Congressman Sean Maloney, the newly elected chair of the Democratic Congressional Campaign Committee.

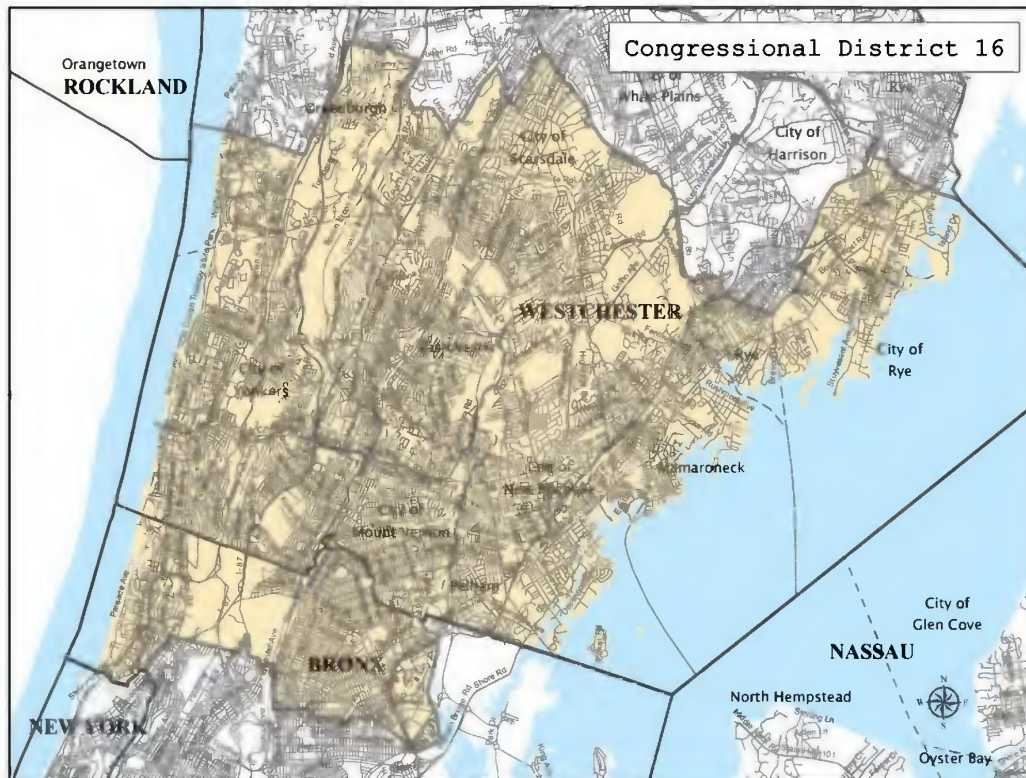


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150. As a result of this gamesmanship, Congressional District 16 moves only somewhat from a very strong Democratic district to a still-strong Democratic one, whereas District 18 shifts from a lean Republican district to a lean Democratic district.

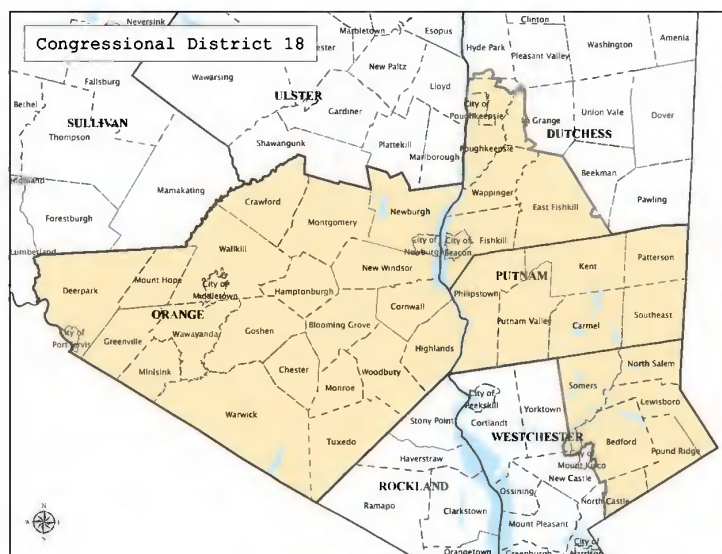
## Map of Old Congressional District 16



### Map of New Congressional District 16



### Map of Old Congressional District 18



### Map of New Congressional District 18



151. The new Congressional District 17 is similarly stretched to include strong Democrat-voting communities with rural Republican areas, while splitting the conservative Jewish communities to neutralize their Republican votes.

152. The old Congressional District 17 was compactly located in Rockland and Westchester counties.

153. Now, the District reaches from Sullivan County through Orange County into Rockland County, finally crossing the river to connect with Democrat strongholds in Westchester County, including Greenburgh and Mount Kisco.

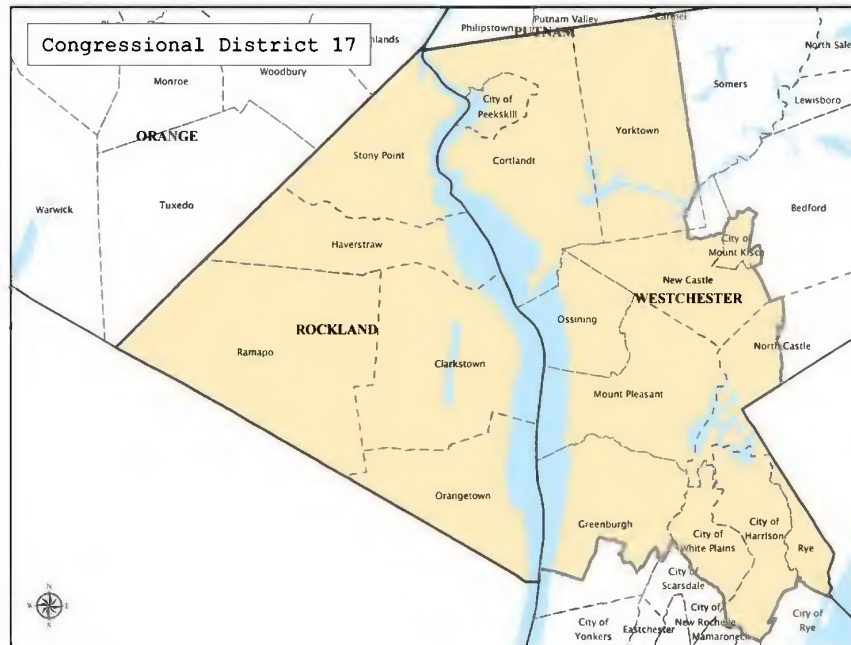
154. The District also includes part of the strongly Democrat city of White Plains.

155. The district combines the Orthodox communities in Sullivan and Rockland counties but excludes the Kiryas Joel Jewish community in Orange County, despite the extensive public testimony and overwhelming evidence in support of keeping these communities together.

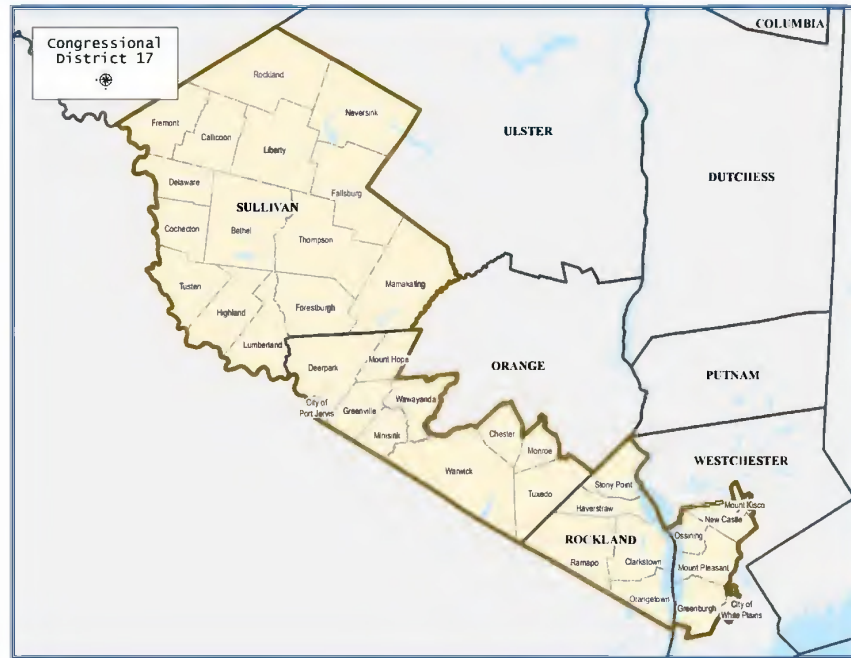
156. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power without jeopardizing any Democratic districts.

157. Thus, Congressional District 17 shifted only slightly from a Democratic stronghold to a still-reliable but less Democratic district.

**Map of Old Congressional District 17**



### Map of New Congressional District 17



158. Congressional District 19 is similarly drawn for the impermissible purpose of strengthening the Democratic Party's political interests, with the four reaching corners of Congressional District 19 showing how the Legislature shopped for Democratic voters to turn the district from Republican-leaning to a Democratic-advantage district.

159. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

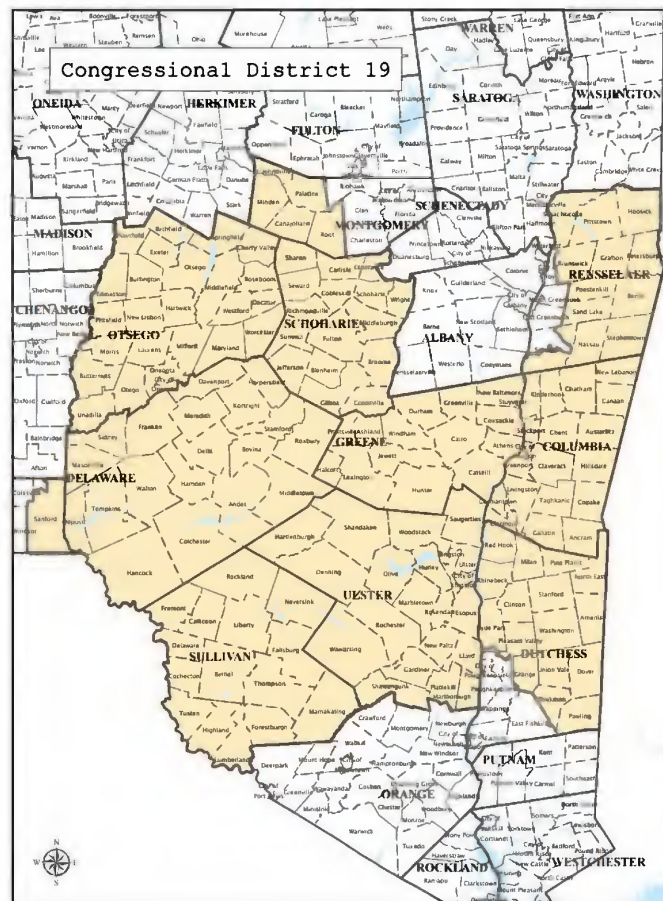
160. In Ulster County, the District picks up Democrats while specifically avoiding communities with large numbers of Republican voters.

161. The new Congressional District 19 then stretches far west to encompass the mostly Democratic city of Binghamton, to pick up additional Democratic voters there.



162. Finally, the District extends northward to pick up the Democrat-voting city of Utica.
163. All these particular partisan choices flipped this District into a Democratic-advantage district.

**Map of Old Congressional District 19**



## Map of New Congressional District 19

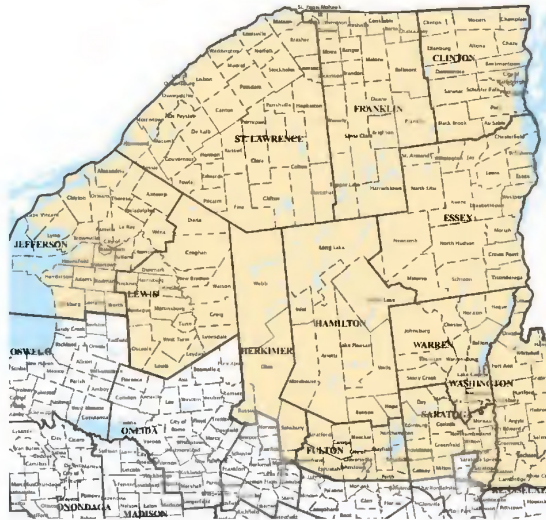


164. The Legislature also gerrymandered Congressional District 21 by packing it with additional Republican voters.

165. The new Congressional District 21 now extracts Saratoga and Schenectady counties, in addition to splitting off a portion of Warren County, from the surrounding areas, replacing those regions with much of Oneida County and Herkimer County, half of Montgomery County, and all of Schoharie County, thereby packing additional Republican voters into this single district and eliminating their ability to make surrounding districts more competitive for Democratic candidates.

### Map of Old Congressional District 21

Congressional District 21



### Map of New Congressional District 21

Congressional District 21

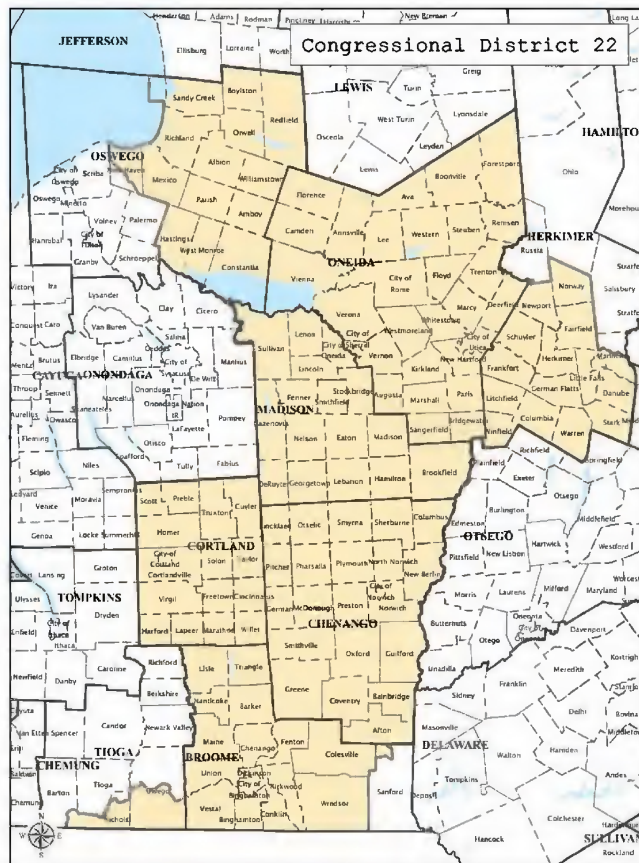




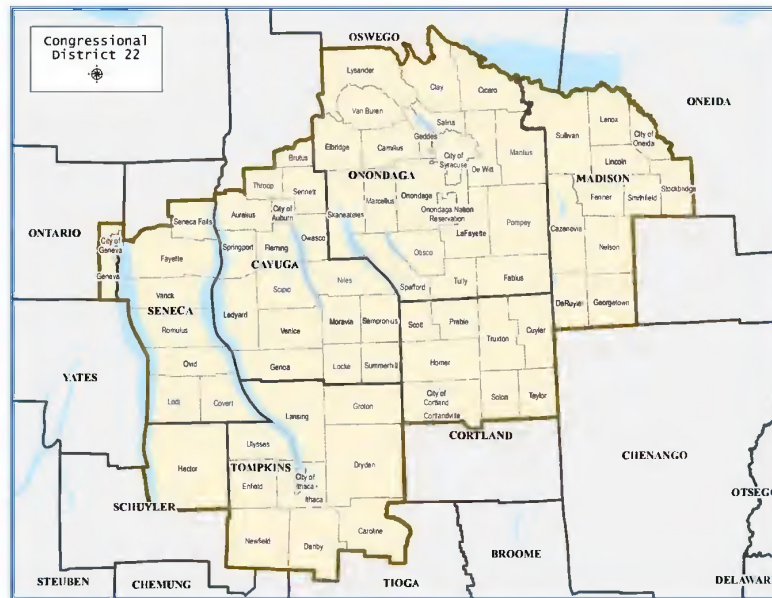
166. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

167. As a result, Congressional District 22 underwent a massive political swing, changing from a very competitive Republican district to a strong Democratic district.

### Map of Old Congressional District 22



## Map of New Congressional District 22



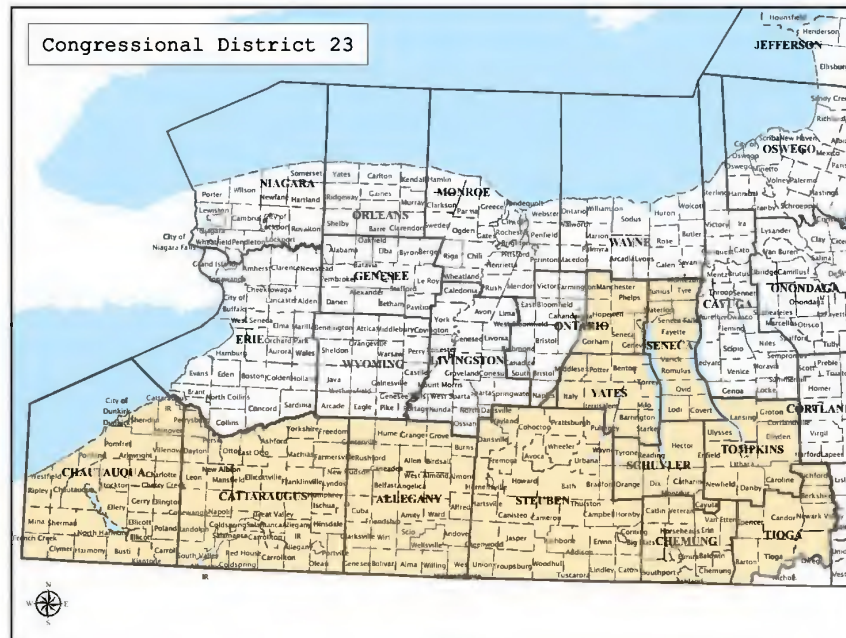
168. The Legislature gerrymandered Congressional District 23 by “packing” as many Republican votes into this district as it could, again for partisan gain.

169. The new district now includes southern Erie County towns—first-ring suburbs to the city of Buffalo—connecting them with far away and rural areas around Binghamton.

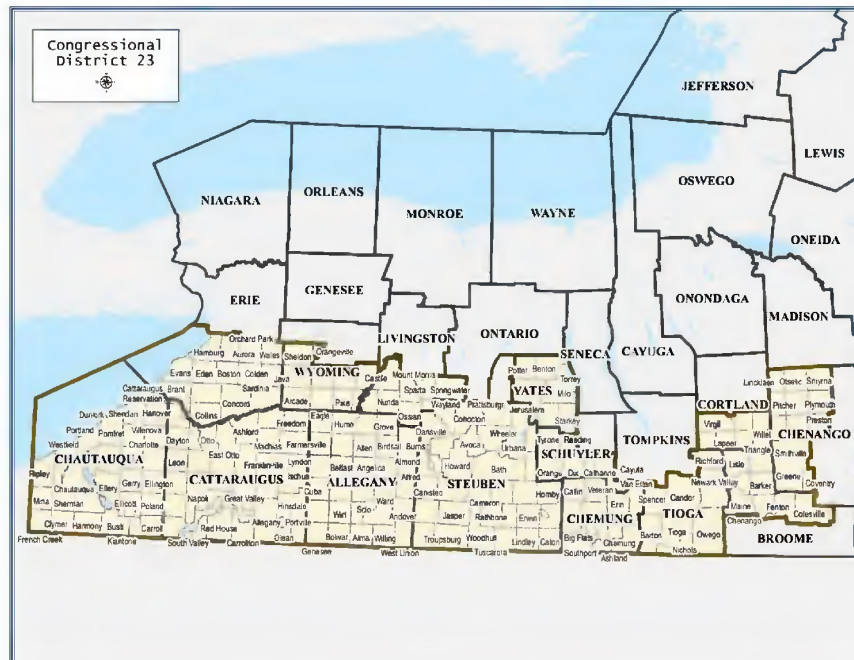
170. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22 to flip that district.

171. As a result, Congressional District 23 became less competitive and shifted from a very strong Republican district to an uncontested Republican district.

## Map of Old Congressional District 23



## Map of New Congressional District 23



172. Previously, District 24 compactly encompassed the bordering counties of Wayne, Cayuga, and Onondaga, as well as part of Oswego County.

173. Now, this District extends from Lewiston, in Niagara County, and various similarly Republican areas in northeast Erie County, all the way eastward and northward to Jefferson County (all the way to the St. Lawrence County line), while notably avoiding certain portions of Monroe and Ontario counties.

174. Indeed, this District now stretches across four media markets, connecting numerous areas over more than 250 miles with little or nothing in common.

175. As a result, the Legislature shifted Congressional District 24 from a highly competitive Democratic district into a very strong Republican district, designed to protect numerous surrounding districts from any serious Republican challenge.

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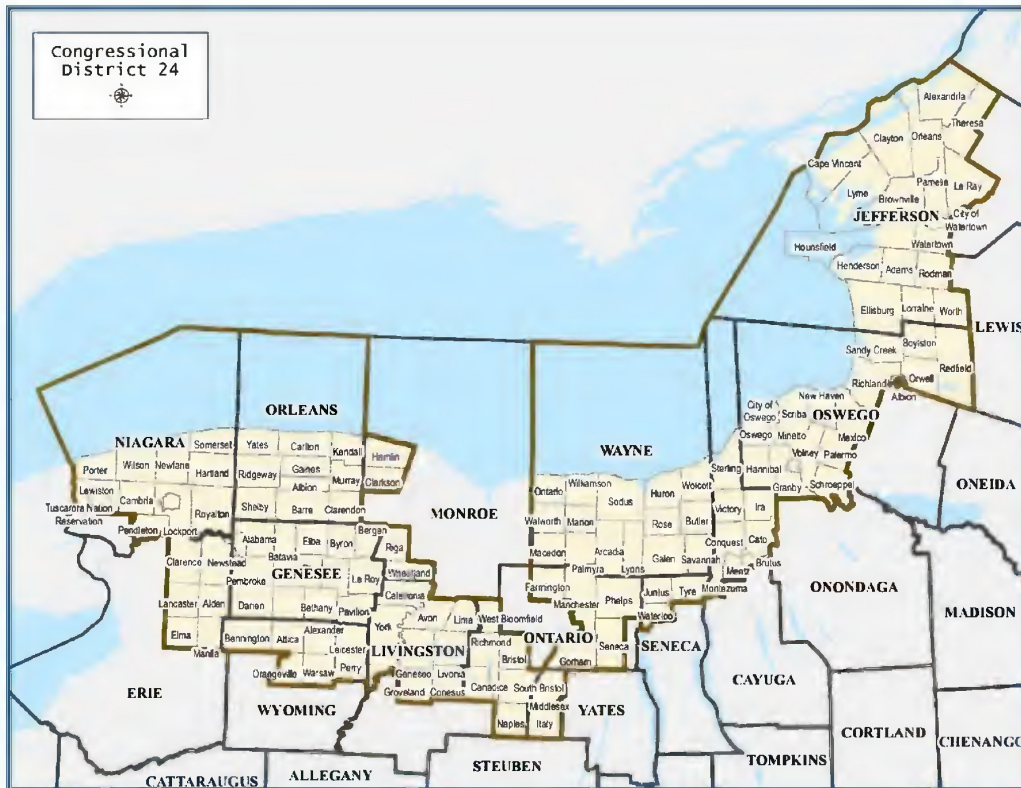
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### Map of Old Congressional District 24





## Map of New Congressional District 24



176. Each of these blatantly gerrymandered districts, both individually and collectively, has no reasonable explanation except the Legislative Democrats' specific goal of increasing their political power. These examples are only illustrative of the map's partisan design as a whole.

177. On February 2, 2022, notwithstanding the egregious gerrymander within the Legislature’s map, the Democrats in the Assembly and State Senate adopted the congressional map (with only slight modifications unrelated to their gerrymandering efforts), despite every Republican in the Assembly and State Senate voting against the map. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196 and A.9039 (as technically amended by A.9167).

178. In addition to the Republican legislators, all of whom voted against this egregious gerrymander, Democratic Assemblymembers Simcha Eichenstein and Marcela Mitaynes voted against the congressional maps.

*b. Gerrymandered State Senate Districts*

179. The 2022 state Senate map is no better. Just as the Legislature gerrymandered the congressional districts, it concocted numerous state Senate districts with no viable explanation but impermissible partisan and incumbent-favoring plotting. *See Mahoney, supra.*

180. On Long Island, the Legislature sought to pack Republican voters into two strongly Republican districts and make each of the other seven districts more favorable for Democratic candidates.

181. For example, in state Senate District 2, the new map packs Republican voters who had been in Senate District 1 in the 2012 state Senate map, thereby making new Senate District 1 more favorable for a Democratic candidate.

182. The Legislature similarly packed Long Island's state Senate District 4 with Republican voters. The already somewhat-reliable Republican Senate District 4 now encompasses Bayport, Oakdale, and east Islip, areas that previously made state Senate District 3 competitive.

183. And the Legislature combined the Republican incumbents who currently represent state Senate Districts 3 and 4 into new Senate District 4, while creating an open seat in new Senate District 3.

184. In short, the Legislature connected and consolidated some of the most Republican areas of Suffolk and Nassau counties in state Senate District 4, ensuring that Republican voters

who previously resided in multiple districts that had been represented by Republican state Senators for the majority of the last decade would now be represented by only one Republican state Senator.

185. In new state Senate Districts 5 and 6, the Legislature combined areas that had been in different state Senate districts for decades, and which are not communities of interest, to turn previously swing districts into strongly Democrat-favoring districts.

186. In state Senate District 5, the Legislature removed the half of the district that had been in the Town of Oyster Bay and ran the district southward into the Town of Babylon, picking up very Democratic regions to make the district more favorable for Democratic candidates.

187. The Legislature then took Oyster Bay from old Senate District 5 and placed it in new Senate District 6, running that district southward to add strong Democrat areas from Uniondale and the Village of Hempstead to make that district much more favorable for Democratic candidates.

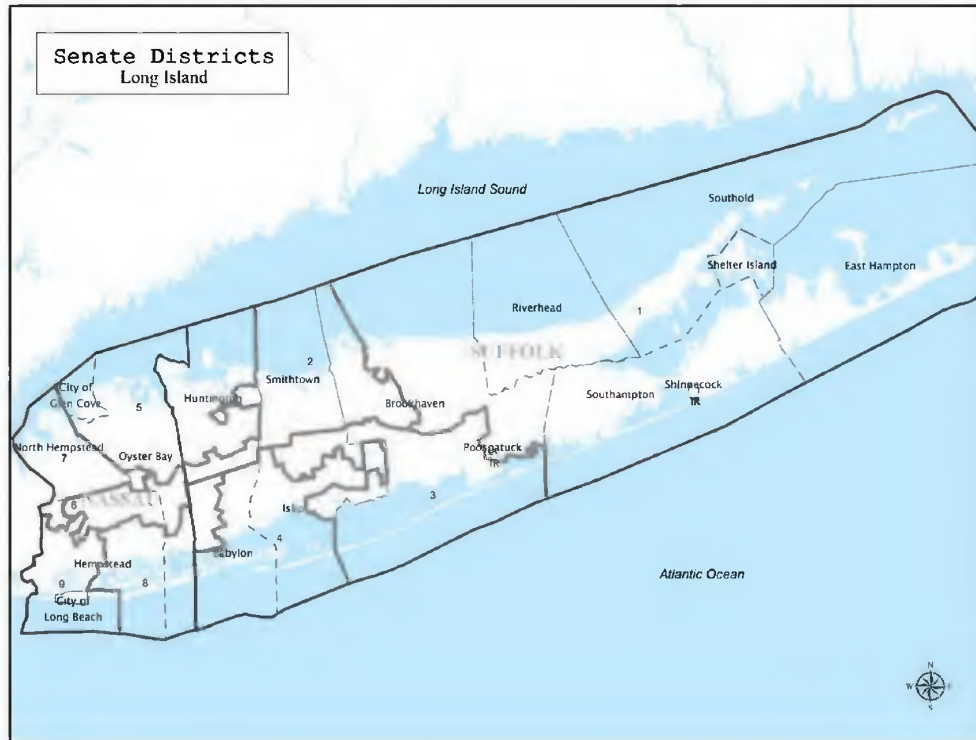
188. The Legislature also increased the Democratic Party's advantage in state Senate District 7, and in state Senate District 9, the Legislature removed the heavily Orthodox Jewish communities known as the Five Towns, which have a history of voting strongly Republican, from the district and then moved them to a heavily Democratic district in Queens, thus making Senate District 9 more favorable for a Democratic candidate. Unlike the 2012 state Senate map, the 2022 state Senate map now breaks the Nassau-Queens border.



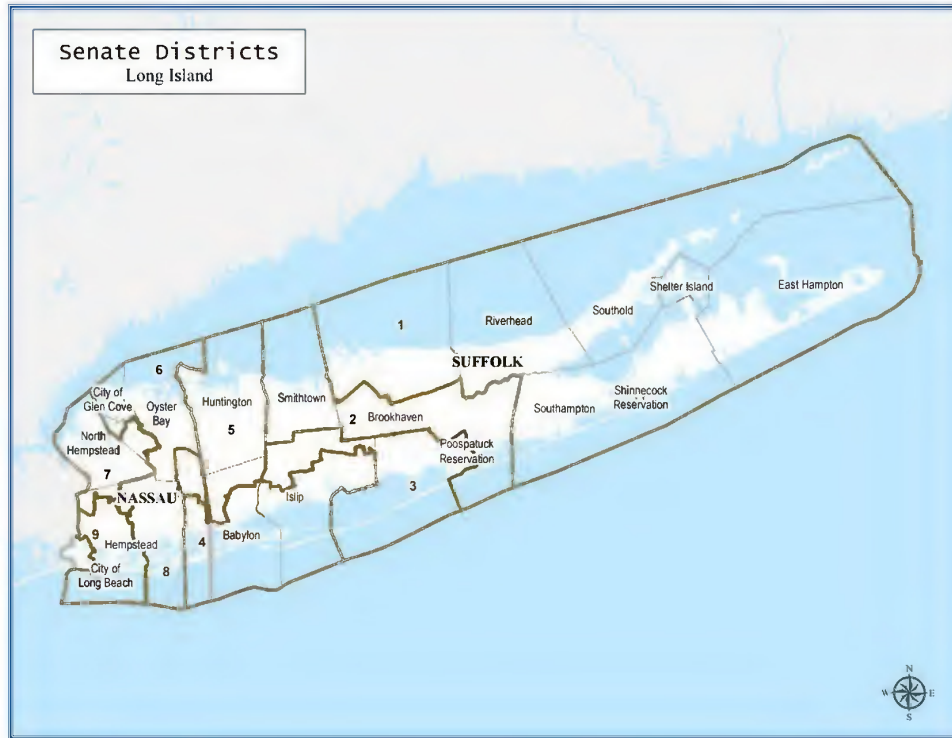
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### Map of Old State Senate Districts on Long Island



### Map of New State Senate Districts on Long Island



189. The Legislature's partisan gerrymander of Senate District 9 also impacts Senate District 10. The Legislature removed heavily Orthodox Jewish and Republican leaning areas known as the Five Towns from state Senate District 9 in Nassau County and placed them into Senate District 10, an already heavily Democratic district in Queens, combining two unrelated communities, and thereby diluting the voting power of Republicans in the new district without at all risking that seat for Democrats.

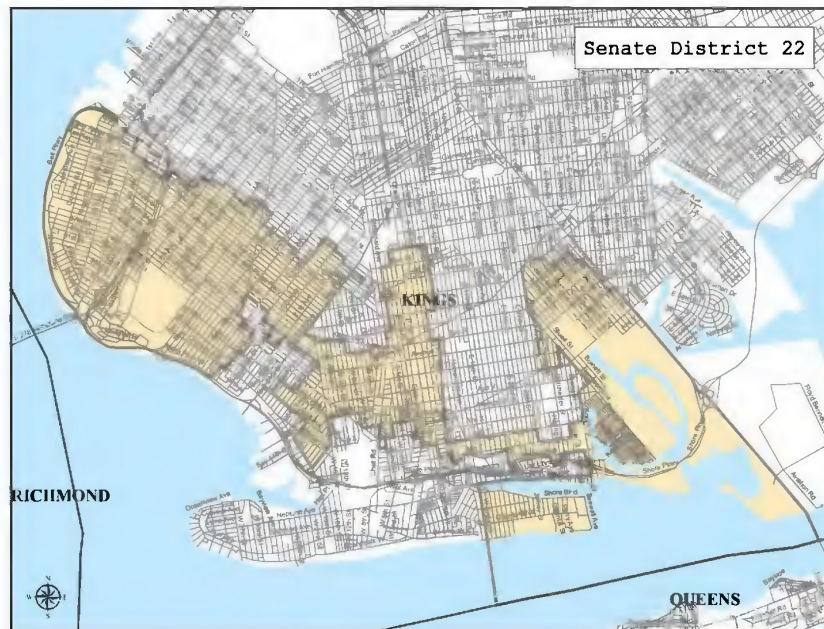
190. Moreover, the Legislature failed to respect the longstanding division of Nassau County from New York City by breaking the Nassau County-Queens County border, where there had been no prior cross-border state Senate districts breaching that line. By moving the Five Towns to a Queens-based Senate district, the Legislature targets a religious community of interest

and separates it from other suburban areas with similar government, school district, and community institutions to join it with New York City.

191. In state Senate District 22, the Legislature specifically drew the boundaries to remove Republican votes in southern Brooklyn by awkwardly extending a long arm northeastward into communities in northern Brooklyn that share little in common, using those heavily Democratic voting areas to negate the Republicans at the southwestern ends of the District.

192. By doing so, the Legislature divided Brooklyn's Russian and Orthodox Jewish community of interest between multiple state Senate districts.

#### Map of Old State Senate District 22



### Map of New State Senate District 22



193. North of New York City, the Legislature continued its gerrymander. Republican leaning towns in Dutchess County and swing northern Westchester towns were removed from what had been Senate District 40, and in the new Senate District 42, a thin finger stretches southward to include the city of White Plains—which has nothing in common with the more rural/suburban towns in Putnam and norther Westchester counties. This converted a swing district that had been represented by Republicans for most of the last decade into a strong Democratic district.

### Map of New State Senate District 42



194. Putnam County is now split between state Senate District 42 and state Senate District 41 and is now connected with Orange County, instead of Dutchess County, with which it shares a natural community of interest.

195. The Legislature moved the Putnam County Town of Philipstown and the Dutchess County communities of Beacon and Fishkill from what had been Senate District 41 (Dutchess and Putnam counties) to the new, Orange County-based Senate District 41. The Legislature did so because these three communities are Democrat-leaning and, by moving them to the new state

Senate District 41, they shifted the district from Republican to Democratic, making it a safe seat for the Democratic incumbent. The Legislature accomplished this shift by removing the Republican-performing Orange County towns of Montgomery, Crawford, Chester, and Monroe from the previous Senate District 39 in its new incarnation as Senate District 41, and placed them in new Senate District 44.

196. The Legislature likewise gerrymandered state Senate District 44, by packing it with Republican voters, removing parts of Ulster County that generally vote Democrat from the district, and adding parts of Orange County that generally vote Republican, as well as similar areas in Delaware and Broome counties.

197. New state Senate District 48 (which most closely approximates state Senate District 46 in the 2012 state Senate map), is now a somewhat strong Democratic district, flipping from a lean Republican district. The Legislature accomplished this gerrymandered flip by lopping off Republican-performing areas in the northern reaches of the previous district—Montgomery County and portions of Schenectady County—and replacing them with more Democratic areas in Ulster, Dutchess, and Columbia counties.

198. In state Senate District 46, the Legislature disconnected the City of Albany and the Albany County river cities that face it across the Hudson River and combined it with Republican areas in Saratoga County with which it has little in common, to create a safe Democratic district.

199. The Legislature's drawing of new state Senate District 51 lumps both Republican Senator James Tedisco and Republican Senator Peter Oberacker into the same district. The Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican Senators.

200. The Legislature flipped new state Senate District 52 (which somewhat approximates state Senate District 50 in the 2012 state Senate map) from a district that had elected a Republican for the majority of the last decade into a district favoring Democratic candidates by adding a larger portion of the City of Syracuse into a district based in Onondaga County suburbs.

**Map of Old State Senate District 50**





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## Map of New State Senate District 52



201. In new state Senate District 53, the Legislature cynically disconnected Tompkins County, a portion of Cortland County, and portions of Tioga and Broome counties from surrounding areas with which they had been historically connected to create a new district that strongly favors a Democrat candidate.

202. In new state Senate District 54, the Legislature packed Republicans by adding Wayne County to other strongly Republican-performing areas in Genesee, Livingston, Ontario, and Cayuga counties.



203. The Legislature's specific choices here made this district noticeably less competitive, creating a very strong Republican district, and also extracted these strong Republican areas from their previous districts, which also included swing areas, thereby decreasing protection in neighboring districts.

204. In new state Senate District 56 (which most closely resembles District 55 in the 2012 state Senate map), the Legislature added a large portion of the City of Rochester, and its heavily Democratic voting citizens to flip this district from one that had been represented by a Republican state senator until his recent retirement into a strong Democratic district. The situation is virtually identical in new state Senate District 57.

205. In new state Senate District 58, the Legislature packed a large number of Republicans to remove them from surrounding districts and decrease competitiveness, enabling the Legislature to create the new Democratic district in Tompkins and Broome counties.

206. In creating new state Senate District 60, the Legislature broke the Erie-Niagara County border and added the City of Niagara Falls to what had been state Senate District 60 under the 2012 state Senate map and removed the towns of Orchard Park, Evans, and Brant. Previously, State Senate District 60 had been a competitive swing district represented by both Republicans and Democrats over the last decade. By adding the heavily Democratic City of Niagara Falls, which is in a different county than the rest of the district, the district changed from one that leaned Democratic to one that is now solidly Democratic, reducing realistic competition there.

207. Relatedly, the Legislature gerrymandered new state Senate District 62 by packing it with Republicans. The Legislature removed from this district the City of Niagara Falls, while

adding the reliably Republican towns to the east, to make this a heavily Republican district with little to no competitiveness.

208. The Legislature also gerrymandered state Senate District 63 by cobbling together from several disparate areas: the suburban swing Town of Amherst, the east side of Buffalo, and part of Lackawanna County. The Town of Amherst is much more closely aligned with the other suburban towns to the north of the City of Buffalo and these three areas are not communities of interest by any reasonable metric and lack commonalities with one another.

209. As a result, new state Senate District 63 is overwhelmingly Democratic, with no real risk of the Democrats losing that Senate seat.

210. All in all, the 2022 state Senate map largely guarantees the Democratic Party in New York an outsized number of state Senate seats compared to their political support in this State.

211. In fact, the Legislature's state Senate gerrymander was so successful and so biased in favor of Democrats, that the enacted state Senate map is more favorable to Democrats than *any* of the 5,000 computer simulated maps designed specifically to follow New York's redistricting requirements without partisan considerations.

212. Despite these and other gerrymandered districts within the new 2022 state Senate map, the Legislature enacted that map on a vote of 118–29 in the Assembly and 43–20 (a straight party line) in the Senate on February 3, 2022. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168.

**iv. The Governor Signs The Legislature's Unfair Congressional And State Senate Maps Into Law Despite Widespread Objection From New Yorkers**

213. After the Legislature released its proposed maps, there was extensive public outcry over both the process and substance.

214. Members of the public took to the IRC's public comment page to decry the Legislature's opaque approach to redrawing the maps. Submissions, New York Independent Redistricting Committee ("IRC Public Submissions").<sup>32</sup> As one comment said, "[t]his is clearly gerrymandering at its worst." IRC Public Submissions, *supra* (submitted by Anthony on Jan. 31, 2022). Betsy Gotbaum, the executive director of good-government group Citizens Union, described the Legislature's lack of process succinctly: "There was no public input." Jacob Kaye, *State Legislature Shares Version of Congressional Redistricting Map*, Queens Daily Eagle (Feb. 1, 2022).<sup>33</sup> She also noted that the Legislature's actions completely deprived the process of an accurate understanding of the public's desires in new maps: "We don't really know what groups of people really wanted once the commission couldn't come to any kind of a conclusion and then the legislators took it over. We don't know." *Id.*

215. New Yorkers across the state quickly flagged the new maps as highly partisan gerrymanders. "If it looks like gerrymandering and sounds like gerrymandering—it's most likely gerrymandering," said Brian Browne, a political science professor at St. John's University in New York City. Kaye, *supra*. "This is why people don't trust politicians," observed Pat Kiernan, a local morning news anchor on NY1, "[a]nd the Democrats have given up any high ground they had over Republicans on gerrymandering." Nicholas Fandos, *How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022).<sup>34</sup>

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<sup>32</sup> Available at <https://nyirc.gov/submissions>.

<sup>33</sup> Available at <https://queenseagle.com/all/state-legislature-shares-version-of-congressional-redistricting-map>.

<sup>34</sup> Available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

216. Even Democratic politicians condemned the maps. Cynthia Appleton, the Democratic chair for Wyoming County, described the congressional map as “an absolute travesty.” Jerry Zremski, *New Congressional Map Sparks Gerrymandering Outcry*, Buffalo News (Jan. 31, 2022).<sup>35</sup> Nate McMurray, a former Democratic congressional candidate, offered a similar view on the new map, calling it “nuts.” *Id.* Melanie D’Arrigo, a Democratic candidate running in Congressional District 3, harshly criticized the new map as well: “We cannot stay silent as we watch the state legislature publish a map that extreme gerrymanders our district.” Kaye, *supra*. Describing the redrawn Congressional District 3, which now spans five counties, D’Arrigo despaired, “How is this fair to the people who live in any of these counties?” *Id.* She further noted that “[c]onstituent services will be more difficult, more expensive and less efficient: the needs of someone living on the border of Connecticut being wildly different from someone in Huntington,” and “[a]ll of the voters at stake deserve real representation, not to be used as political pawns.” *Id.*

217. On February 3, 2022, Governor Hochul signed the Legislature’s congressional and state Senate maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, into law, thereby blessing her fellow Democrats’ blatant gerrymandering efforts. Patrick Ryan, *Gov. Hochul Signs New State and Congressional Redistricting Maps into Law* WIVB.com (Feb. 3, 2022) (providing signed bills).<sup>36</sup>

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<sup>35</sup> Available at [https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article\\_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html](https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html).

<sup>36</sup> Available at <https://www.wivb.com/news/new-york/gov-hochul-signs-new-state-and-congressional-redistricting-maps-into-law/>.

**D. The 2022 Maps' Impact On Petitioners**

218. The Legislature's blatant gerrymandering has caused grave harm to Petitioners, all of whom want a fair, representative government at both the state and national level, unhindered by partisan interests and egregious gerrymandering.

219. Broadly, this kind of partisan gerrymandering is profoundly undemocratic and cuts deeply into the public's confidence in their representative government. The Legislature's egregious attempt to entrench the majority party's incumbents and political power harms the franchise of all New York voters, Petitioners included.

220. For example, the adopted 2022 congressional and state Senate maps treat Petitioners unequally and dilutes their voting power based on their political beliefs. Through this map, Democrats have essentially guaranteed that they will win more congressional and state Senate districts—and thus more power—than is warranted by the party's popular support. As a result, political representatives will subject Petitioners to laws and policies that do not fairly reflect the public will.

221. Moreover, when incumbents choose their voters—rather than voters electing their chosen representatives—the public's faith in the franchise is diminished.

222. Participation in the democratic process will decrease, as voting holds little appeal to those in gerrymandered districts because their votes cannot change the preordained outcomes of elections. New Yorkers made their will clear when they voted to ban partisan gerrymandering.

223. Enacting these maps deals a crushing blow to the State's representative democracy and the faith of the People in those governing them.

224. More specifically, each of Petitioners suffers directly from these maps, including because they lose the opportunity to vote for their preferred congressional and state Senate candidates, rather than ones selected for them by the Legislature's cynical line-drawing.

225. For example, the new Congressional District 16, a strong Democratic district where Petitioner Marianne Volante lives, moved Republican voters from Congressional District 18, where Petitioner Patricia Clarino lives, decreasing competition and turning District 18 into a safe Democratic district, without jeopardizing the Democratic Party's interests in District 16. As a result, Petitioner Clarino's vote is diluted, while Petitioner Volante and other Congressional District 16 Republicans' votes will never outweigh the Democratic vote that has been gerrymandered around them.

226. In the new Congressional District 23, where Petitioners Tim Harkenrider, Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley reside, the Legislature "packed" as many Republican votes into the district as it could. As a result, the Republican votes of Petitioners and similar voters in the District far exceed the amount their candidates need to win in elections. Rather than fairly spreading Republicans through logically constructed districts, the Legislature has ensured that many of their votes are wasted in Congressional District 23.

227. Conversely, in the new Congressional District 10, where Petitioner Stephen Evans resides, and Congressional District 11, where Petitioner Jerry Fishman resides, the Legislature broke up conservative communities of interest, "cracking" and effectively neutralizing Republican voters in these districts. As a result, these Petitioners' votes are diluted, and they are subjected to political policies that do not align with their own views or the will of their communities.

228. Similarly, new Congressional District 17, where Petitioner Lawrence Garvey resides, new Congressional District 19, where Petitioners Guy C. Brought and Lawrence Canning reside, and new Congressional District 22, where Petitioners George Dooher, Jr. and Josephine Thomas reside, each “crack” and neutralize Republican votes by breaking up communities of interest and unnaturally reaching across the state to add Democratic voters to each of these districts. These Petitioners will be forced to endure representatives who do not reflect the communities they represent, enforcing their unwelcome policies.

229. Petitioners face similar harms from the gerrymandered 2022 state Senate map. In state Senate District 41—where Petitioner Patricia Clarino resides—the Legislature gerrymandered the district to lean Democratic, depriving Petitioner Clarino of the representation of her choice.

230. Similarly, in state Senate District 42—where Petitioner Marianne Volante resides—the Legislature drew the boundaries to stretch down into White Plains and create a safely Democratic district, depriving Petitioner Volante of the representation of her choice.

231. In state Senate District 48—where Petitioner Guy C. Brought resides—the Legislature removed more-conservative-voting areas in Montgomery County and Schenectady County, replacing them with more liberal areas in Dutchess and Columbia counties, thereby flipping this district into a somewhat strong Democratic district, thereby forcing upon Petitioner Brought a likely Democratic state Senator whose political policies will not align with his own.

232. In state Senate District 58—where Petitioners Linda Fanton, Jay Frantz, Alan Nephew, and Susan Rowley all reside—and state Senate District 59—where Petitioner Tim Harkenrider resides—the Legislature “packed” Republican voters into these districts, so the

Republican votes of Petitioners and similar voters in the District far exceed the amount their candidates need to win in elections. By doing so, the Legislature has ensured that Petitioners' votes will be wasted in these state Senate Districts.

233. Petitioners regularly vote for Republicans running for Congress and state legislative office and engage in campaign activity for Republicans running for Congress and state legislative office. Thus, the gerrymandering of the 2022 state Senate and congressional maps dilutes the power of their votes and political action efforts.

#### **FIRST CAUSE OF ACTION**

##### **(N.Y. Const. art. III, § 4(b); N.Y. Legis. Law § 93(1) – Failure To Follow Constitutional And Statutory Procedures For Redistricting)**

234. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

235. Article III, Section 4(e) of the New York Constitution provides that “[t]he process for redistricting congressional and state legislative districts established by this section and sections five and five-b of this article *shall govern* redistricting in this state,” with limited exceptions not relevant here. N.Y. Const. art. III, § 4(e) (emphases added); *see* N.Y. Legis. Law § 93(3) (same).

236. Section 4(b) of Article III requires that, should the Legislature “fail to approve the legislation implementing the first redistricting plan” prepared by the IRC, the IRC then “*shall* prepare and submit to the legislature a second redistricting plan and the necessary implementing legislation for such plan,” and that “[s]uch legislation *shall* be voted upon, without amendment.” N.Y. Const. art. III, § 4(b) (emphases added); *see also* N.Y. Legis. Law § 93(1).



237. Only then, after having considered and rejected such a *second* redistricting plan, or, after the Governor vetoes any such second plan after the Legislature approved it, may the Legislature “introduce” its own “implementing legislation” along with “any amendments” that comply with Article III, Section 4. N.Y. Const. art. III, § 4(b); *see also* N.Y. Legis. Law § 93(1).

238. Because the Legislature never received, let alone considered and acted upon, a second redistricting plan from the Commission, it never obtained redistricting authority under the *exclusive* process established by the New York Constitution for introducing and adopting its own redistricting maps. *See* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168.

239. After the Legislature rejected the first-round maps introduced by the IRC out of hand, the Commission did not adopt and introduce second-round maps to the Legislature within 15 days, leaving the Legislature with no maps to act on within the scope of its limited constitutional role.

240. As a result, the Legislature did not consider a second map or maps from the IRC, which mandatory consideration was required before the Legislature was constitutionally permitted to adopt its own congressional map. N.Y. Const. art. III, § 4(b).

241. The 2021 legislation enacted by the Legislature and Governor purporting to give the Legislature authority to circumvent the Constitution, to adopt its own maps if the Commission failed to vote on second-round maps, L.2021, c. 633, § 1, is unconstitutional. There is no provision of law that allows the Legislature to sidestep the Constitution’s exclusive process for redistricting in New York via legislative enactment.

242. The Legislature enacted L.2021, c. 633, § 7150 in an effort to avoid the effect of the People voting down a constitutional amendment to provide for what L.2021, c. 633, § 7150(1) purports to do. But, of course, a constitutional amendment is necessary to make the changes to New York's exclusive, constitutionally enshrined redistricting process

243. The Legislature cannot act contrary to the Constitution's restrictions on the respective duties and responsibilities allocated to it and other entities responsible for redistricting. Because the Legislature acted contrary to the Constitution when it enacted L.2021, c. 633, § 7150, the 2022 congressional and state Senate maps are invalid.

244. Since the Legislature had and has no constitutional authority to draw congressional or state Senate districts given the IRC's failure to follow the exclusive, constitutionally mandated procedures, this Court cannot give the Legislature another opportunity to draw curative districts.

245. Thus, this Court should draw its own maps for Congress and state Senate prior to the upcoming deadlines for candidates to gain access to the ballot, just as happened regarding the 2012 congressional map.

### **SECOND CAUSE OF ACTION**

#### **(N.Y. Const. art. III, § 4(c)(2); N.Y. Legis. Law § 93(2)(b) – Unconstitutional Malapportionment)**

246. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

247. Article III, Section 4(c)(2) provides that “[t]o the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants,” and that “[f]or each district that

deviates from this requirement,” the entity responsible for drawing the map “shall provide a specific public explanation as to why such deviation exists.” N.Y. Const. art. III, § 4(c)(2).

248. This constitutional requirement establishes a population-equality standard for congressional and state Senate districts, absent a “specific” and “public” explanation from the mapdrawer as to why any deviation is necessary. N.Y. Const. art. III, § 4(c)(2).

249. Therefore, following any decennial census, all congressional and state Senate districts must abide by this equal-population requirement.

250. As explained above, the 2022 congressional and state Senate maps are ultra vires because the Legislature ignored entirely the mandatory, *exclusive* process established by the 2014 constitutional amendments for enacting any such redistricting, as well as applicable substantive requirements for any Legislature-created map. *See supra* First Cause Of Action.

251. That is, the Legislature enacted its congressional and state Senate maps without abiding by the constitutional and statutory requirement that the IRC present a second round of maps following the Legislature’s decision not to approve the first round of maps. N.Y. Const. art. III, § 4(b). Indeed, the Constitution *requires* that the Legislature “vote[ ] upon” the “second redistricting plan and the necessary implementing legislation” before it may introduce its own plan, and yet the Legislature never complied with these rules. *Id.*; *see also supra* First Cause Of Action.

252. These violations render the 2022 congressional and state Senate maps invalid, leaving only the vestigial maps that the Legislature enacted or the court adopted after the 2010 decennial census. *See* 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584); *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012).

253. But the 2012 congressional map and 2012 state Senate map, *see id.*, are plainly unconstitutional *today*, following the 2020 census, given New York’s inarguable population shifts, because they do not meet the New York Constitution’s equal-population requirement.

254. That is, following the 2022 Census, none of the previous congressional and state Senate districts “[t]o the extent practicable” “contain as nearly as may be an equal number of inhabitants.” N.Y. Const. art. III, § 4(c)(2); N.Y. Legis. Law § 93(2)(b); *see supra* ¶¶ 61–79.

255. Thus, this Court must now also declare that the Legislature-enacted 2012 state Senate map, and court-adopted 2012 congressional map—the only validly-adopted map in existence, *supra* First Cause Of Action—are invalid, and adopt replacement, constitutional congressional and state Senate maps.

### **THIRD CAUSE OF ACTION**

#### **(N.Y. Const. art. III, § 4(c)(5); N.Y. Legis. Law § 93(2)(e) – Unlawful/Unconstitutional Partisan And Incumbent-Protection Gerrymandering)**

256. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

257. Article III, Section 4(c)(5) of the New York Constitution provides that “in the creation of state senate and . . . congressional districts . . . [d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Const. art. III, § 4(c)(5).

258. New York Legislative Law § 93(2)(e) provides that, “in the creation of state senate and . . . congressional districts . . . [d]istricts shall not be drawn to discourage competition or for

the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” N.Y. Legis. Law § 93(2)(e).

259. New York Legislative Law § 93(4) also provides that “any law establishing congressional or state legislative districts found to violate the provisions of this article shall be invalid in whole or in part.” N.Y. Legis. Law § 93(4).

260. The 2022 congressional and state Senate maps, 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, violate the clear prohibitions against partisan and incumbent-favoring/disfavoring gerrymandering found in Article II, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e).

261. The Legislature drew the 2022 congressional and state Senate maps “to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties,” N.Y. Const. art. III, § 4(c)(5), as discussed in detail above, *supra* ¶¶ 114–212.

262. Governor Hochul, who signed the maps into law, previously acknowledged that it was her intention “to use [her] influence to help Democrats” by way of “the redistricting process,” and claimed that she fully “embrace[d] that” role as Governor. Glueck & Ferré-Sadurní, *supra*.

263. For that reason, the enacted congressional and state Senate maps violate both the New York Constitution and New York Legislative Law § 93, requiring this Court to strike them as “invalid.” N.Y. Legis. Law § 93(4).

#### **FOURTH CAUSE OF ACTION**

##### **(CPLR § 3001 – Declaratory Judgment)**

264. Petitioners hereby incorporate each of the foregoing paragraphs as if fully set forth herein.

265. Petitioners seek a declaratory judgment from the Court “as to the rights and other legal relations of the parties,” CPLR § 3001, regarding the substantive and procedural requirements for redistricting in this State.

266. It is imperative that the New York Courts properly construe the recent amendments to Article 3, Section 4 of the New York Constitution and New York Legislative Laws § 93.

267. The 2014 amendments to the New York Constitution prohibit the Legislature and Governor from reapportioning seats for Congress and state Senate in a manner that

- a. disregards the exclusive procedures for redistricting, including the requirement that the IRC submit two rounds of maps for the Legislature’s consideration before the Legislature may undertake the redistricting function itself;
- b. creates districts that fail to contain as nearly as possible an equal number of inhabitants, requiring, as practicable, no deviation from perfect population equality;
- c. creates a partisan gerrymander with the intent to favor of any political party; and
- d. creates an incumbent-protection or incumbent-disfavoring gerrymander with the intent of aiding or hurting any incumbent or candidate.

Each of these violations, alone and in tandem, requires the Court to invalidate the congressional and state Senate maps.

268. Respondents’ actions in violating each of these constitutional requirements come from a determined effort to advance the interests of the Democratic Party by entrenching incumbent Democrats and targeting incumbent Republicans, in direct contravention of the will of

the citizens of the State of New York, who voted in favor of ridding such partisan interests from the redistricting process.

269. Further, the 2021 legislation, L.2021, c. 633, § 7150, enacted by the Legislature and Governor in an attempt to give the Legislature authority to circumvent the Constitution and adopt these unlawful maps, is unconstitutional. The Legislature cannot contravene the Constitution's exclusive process for redistricting in New York through legislative enactment.

270. Each of these constitutional violations has harmed Petitioners, who are now subject to gerrymandered and highly partisan maps for their representatives in Congress and state Senate.

271. This issue is ripe for judicial review.

272. Absent resolution of these constitutional questions, neither Respondents nor the citizens of New York will have adequate guidance regarding the propriety of the enacted maps and the prior legislature-enacted and court-drawn maps, in preparation for impending elections.

273. If each of these fundamental issues regarding the redistricting processes in New York is not resolved in short order, it will be too late to do so without threatening the integrity of upcoming elections.

274. Therefore, this Court should enter judgment declaring that the 2022 congressional and state Senate maps, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, violate the New York Constitution, declare that the 2012 congressional and state Senate maps, *see* 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584); *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012), now violate the New York Constitution in light of the population shifts

identified in the 2020 Census, strike down the 2021 legislation, L.2021, c. 633, § 7150, as unconstitutional, and itself draw a new congressional map cured of all legal infirmities.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully demand that this Court review the constitutionality of the congressional apportionment and enter judgment and order against Respondents as follows:

A. Declaring pursuant to CPLR § 3001 that:

i) the 2022 congressional map and 2022 state Senate map, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills S.8196, A.9039-A, A.9040-A, and A.9168, both constitute unconstitutional maps enacted without complying with the mandatory constitutional procedures for redistricting in Article III, Section 4(b) of the New York Constitution;

ii) the 2012 congressional map, court-adopted after the 2010 decennial census, *Favors v. Cuomo*, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012), and the 2012 state Senate map, legislatively enacted after the 2010 decennial census, 2011–2012 N.Y. Reg. Sess. Leg. Bills S.6696 and A.9525 (as technically amended by S.6755 and A.9584), are the only validly enacted maps currently in existence, but are 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 and 2022 state Senate map, apart and aside from procedural deficiencies, constitute unconstitutional partisan and incumbency-favoring/disfavoring gerrymanders, in violation of Article III, Section 4(c)(5) of the New York Constitution and New York Legislative Law § 93(2)(e);



iv) the 2012 congressional map and 2012 state Senate map are unconstitutional in light of the population shifts identified in the 2020 census; and

v) the 2021 legislation, L.2021, c. 633, § 7150, enacted by the Legislature and Governor in an attempt to give the Legislature authority to circumvent the Constitution and adopt these unlawful maps, is unconstitutional.

B. Enjoining Respondents from conducting any elections under the 2012 congressional map and 2012 state Senate map;

C. Enjoining Respondents from conducting any elections under the 2022 congressional map and 2022 state Senate map;

D. Adopting new, legally compliant congressional and state Senate maps;

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 the 2022 congressional map and 2022 state Senate map and adopt lawful maps for each;

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, including, if this Court deems necessary, § 3(i) of 2021–2022 S.8172-A and A.9039-A, and § 2 of 2021–2022 S.8185-A and A.9040-A;

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.

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INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/08/2022

Dated: New York, New York

February 8, 2022

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**EXHIBIT B TO MOSKOWITZ AFFIRMATION -  
NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION TO  
PHILLIP CHONIGMAN DATED MARCH 10, 2022 [1487 - 1488]**

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INDEX NO. E2022-0116CV

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SUPREME COURT FOR THE STATE OF NEW YORK  
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.

Index No.: E2022-0116CV

**NOTICE TO TAKE  
DEPOSITION UPON ORAL  
EXAMINATION**

**PLEASE TAKE NOTICE** that pursuant to Article 31 of the Civil Practice Law and Rules, as well as the March 9, 2022 Order and March 3, 2022 Decision of the Court, the deposition upon oral examination of Phillip Chonigman, Senate Co-Executive Director and Democratic head of Respondent the New York State Legislative Task Force on Demographic Research and Reapportionment, will be taken before an officer authorized by the laws of the State of New York to administer oaths, who is not an attorney, or employee of an attorney, for any party or prospective party herein and is not a person who would be disqualified to act as a juror because of interest or because of consanguinity or affinity to any party herein, at the **offices of Troutman Pepper Hamilton Sanders LLP, 875 Third Avenue, New York, New York 10022**, on the **11th day of March, 2022**, at **9:00AM ET**, with respect to evidence material and necessary in the prosecution of this action. The examination will continue from day to day until complete.

**FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM**

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RECEIVED NYSCEF: 03/13/2022

**PLEASE TAKE FURTHER NOTICE** that, pursuant to section 202.15 of the Uniform Civil Rules For The Supreme Court And The County Court, the deposition will be videotaped by an employee of David Feldman Worldwide, A Veritext Company, which is located at 1250 Broadway, Suite 2400, New York, NY 10001.

Dated: New York, New York  
March 10, 2022

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