

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.

JOINT RECORD ON APPEAL
Volume 4 of 6 (Pages 1489 – 2068)

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(For Continuation of Appearances See Inside Cover)

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TABLE OF CONTENTS

| | Page |
|---|-------------|
| Statement Pursuant to CPLR § 5531 | i |
| Notice of Appeal by Respondents Governor Kathy Hochul and Lieutenant Governor and President of the Senate Brian A. Benjamin, dated April 1, 2022 with Affidavit of Service..... | 1 |
| Exhibit A to Notice of Appeal - Decision and Order of the Honorable Patrick F. McAllister, dated March 31, 2022 | 7 |
| Notice of Appeal 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 31, 2022, with Affidavit of Service..... | 25 |
| Exhibit A to Notice of Appeal - Decision and Order of the Honorable Patrick F. McAllister, dated March 31, 2022 (Reproduced herein at pp. 7-24) | 31 |
| Notice of Appeal by Respondent Speaker of the Assembly Carl Heastie, dated March 31, 2022 with Affidavit of Service..... | 32 |
| Exhibit A to Notice of Appeal - Decision and Order of the Honorable Patrick F. McAllister, dated March 31, 2022 (Reproduced herein at pp. 7-24) | 37 |

| | Page |
|---|-------------|
| Decision and Order of the Honorable Patrick F. McAllister, dated March 31, 2022, Appealed From (Reproduced herein at pp. 7-24) | 37 |
| Decision and Order of the Honorable Patrick F. McAllister, dated March 3, 2022 | 38 |
| Proposed Order to Show Cause | 41 |
| Order to Show Cause, dated February 7, 2022 | 46 |
| Petition, dated February 3, 2022 | 51 |
| Affirmation of Bennet J. Moskowitz, Esq., for Petitioners, in Support of Order to Show Cause for Leave to Conduct Expedited Discovery, dated February 3, 2022 | 118 |
| Exhibit A to Moskowitz Affirmation - Article III, Section 5 of the New York Constitution..... | 122 |
| Exhibit B to Moskowitz Affirmation - Unconsolidated Laws §4221..... | 125 |
| Exhibit C to Moskowitz Affirmation - 2022 Political Calendar..... | 126 |
| Exhibit D to Moskowitz Affirmation - New York Assembly Bill A.09039..... | 128 |
| Exhibit E to Moskowitz Affirmation - New York Assembly Bill A.09167..... | 207 |
| Exhibit F to Moskowitz Affirmation - New York Senate Bill S.8196 | 219 |
| Expert Report of Sean P. Trende, dated February 14, 2021 | 231 |

| | Page |
|--|-------------|
| Expert Report of Claude A. Lavigna, dated February 14, 2021 | 265 |
| Affidavit of Senator Robert G. Ort, in Support of Petition, sworn to February 14, 2022..... | 287 |
| Affidavit of Lawrence Garvey, Petitioner, in Support of Petitioner, sworn to February 14, 2022 | 290 |
| Order to Show Cause for Leave to File Amended Petition, dated February 9, 2022 | 292 |
| Affirmation of Bennet J. Moskowitz, Esq., for Petitioners, in Support of Order to Show Cause for Leave to Conduct Expedited Discovery, dated February 8, 2022 | 295 |
| Exhibit A to Moskowitz Affirmation - Petition, dated February 3, 2022 (Reproduced herein at pp. 51-117) | 298 |
| Exhibit B to Moskowitz Affirmation - Affirmation of Bennet J. Moskowitz, dated February 3, 2022 (Reproduced herein at pp. 118-121) | 298 |
| Exhibit A to Moskowitz February 3, 2022 Affirmation - Article III, Section 5 of the New York Constitution (Reproduced herein at pp. 122-124) | 298 |
| Exhibit B to Moskowitz February 3, 2022 Affirmation - Unconsolidated Laws 4221 (Reproduced herein at p. 125)..... | 298 |

| | Page |
|--|-------------|
| Exhibit C to Moskowitz February 3, 2022 Affirmation - 2022 Political Calendar (Reproduced herein at pp. 126-127) | 298 |
| Exhibit D to Moskowitz February 3, 2022 Affirmation - New York Assembly Bill A.09039 (Reproduced herein at pp. 128-206) | 298 |
| Exhibit E to Moskowitz February 3, 2022 Affirmation - New York Assembly Bill A.09167 (Reproduced herein at pp. 207-218) | 298 |
| Exhibit F to Moskowitz February 3, 2022 Affirmation - New York Senate Bill S.8196 (Reproduced herein at pp. 219-230) | 298 |
| Exhibit C to Moskowitz Affirmation - Order to Show Cause, dated February 7, 2022 (Reproduced herein at pp. 46-50) | 298 |
| Exhibit D to Moskowitz Affirmation - Amended Petition, dated February 8, 2022 | 299 |
| Exhibit E to Moskowitz Affirmation - Comparison of Petitioners' Proposed Amended Petition to their Original Petition..... | 382 |
| Exhibit F to Moskowitz Affirmation - 2021-2022 N.Y. Reg. Sess. Leg. Bills S.8185-A and A.9040-A..... | 461 |
| Exhibit G to Moskowitz Affirmation - 2021-2022 N.Y. Reg. Sess. Leg. Bills S.8197 and A.9168 | 654 |

| | Page |
|--|-------------|
| Letter from Eric Hecker, Esq. to Honorable Patrick F. McAllister, dated February 9, 2022 | 668 |
| Order to Show Cause Why Petitioners Should Not Be Granted Leave to Conduct Expedited Discovery, dated February 15, 2022 | 670 |
| Affirmation of Bennet J. Moskowitz, Esq., for Petitioners, in Support of Order to Show Cause Why Petitioners Should Not Be Granted Leave to Conduct Expedited Discovery, dated February 14, 2022 | 673 |
| Exhibit A to Moskowitz Affirmation - Petition, dated February 3, 2022 (Reproduced herein at pp. 51-1117) | 677 |
| Exhibit B to to Moskowitz Affirmation - Amended Petition, dated February 8, 2022 (Reproduced herein at pp. 299-381) | 677 |
| Exhibit 1 to Moskowitz Affirmation - Petitioners' First Request for the Production of Documents to Respondents, dated February 14, 2022 | 678 |
| Exhibit 2 to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination of Respondent Governor Kathy Hochul, dated February 14, 2022 | 687 |
| Exhibit 3 to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination of Respondent Brian A. Benjamin, Lieutenant Governor and President of the Senate, dated February 14, 2022 | 689 |

| | Page |
|--|-------------|
| Exhibit 4 to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination of Respondent Andrea Stewart- Cousins, Senate Majority Leader and President Pro Tempore of the Senate, dated February 14, 2022 | 691 |
| Exhibit 5 to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination of Respondent Carl E. Heastie, Speaker of the Assembly, dated February 14, 2022 | 693 |
| Exhibit 6 to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination of Assemblymember Kenneth Zebrowski, Democratic head of Respondent the New York State Legislative Task Force on Demographic Research and Reapportionment, dated February 14, 2022 | 695 |
| Exhibit 7 to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination of Senator Michael Gianaris, Democratic head of Respondent the New York State Legislative Task Force on Demographic Research and Reapportionment, dated February 14, 2022 | 697 |
| Exhibit 8 to Moskowitz Affirmation - Notice of Deposition of Eric Katz, Democratic head of Respondent the New York State Legislative Task Force on Demographic Research and Reapportionment, dated February 14, 2022.... | 699 |

| | Page |
|--|-------------|
| Exhibit 9 to Moskowitz Affirmation - Notice of Deposition of Phillip Chonigman, Senate Co-Executive Director and Democratic head of Respondent the New York State Legislative Task Force on Demographic Research and Reapportionment, dated February 14, 2022.... | 701 |
| Exhibit 10 to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to David Imamura, Commissioner, New York State Independent Redistricting Commission, dated February 14, 2022 | 703 |
| Exhibit 11 to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to Eugene Bengert, Commissioner, New York State Independent Redistricting Commission, dated February 14, 2022 | 714 |
| Exhibit 12 to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to Ivelisse Cuevas-Molina, Commissioner, New York State Independent Redistricting Commission, dated February 14, 2022 | 725 |
| Exhibit 13 to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to John Flateau, Commissioner, New York State Independent Redistricting Commission, dated February 14, 2022 | 736 |
| Exhibit 14 to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to Elaine Frazier, Commissioner, New York State Independent Redistricting Commission, dated February 14, 2022 | 747 |

| | Page |
|--|-------------|
| Letter from Counsel for Petitioners to Honorable Patrick F. McAllister, dated February 14, 2022 | 758 |
| Letter from Eric Hecker, Esq. to Honorable Patrick F. McAllister, dated February 15, 2022 | 761 |
| Letter from Counsel for Petitioners to Honorable Patrick F. McAllister, dated February 15, 2022 | 766 |
| Affirmation of Good Faith by Bennet J. Moskowitz, Esq., for Petitioners, dated February 15, 2022 | 770 |
| Letter from Brian L. Quail to Honorable Patrick F. McAllister, dated February 16, 2022 | 774 |
| Affidavits of Service of the Petition, Order to Show Cause, and Affirmation in Support, sworn to February 9, 2022 and February 11, 2022 | 775 |
| Court Notice, dated February 18, 2022 | 798 |
| Letter from Bennet J. Moskowitz, Esq. and Misha Tseytlin to Honorable Patrick F. McAllister, dated February 24, 2022 | 799 |
| Answer and Counterstatement of 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 February 24, 2022 | 800 |
| Affidavit of Dr. Kristopher R. Tapp, Ph.D., sworn to February 24, 2022 | 845 |
| Expert Report of Stephen Ansolabehere, dated February 24, 2022 | 865 |

| | Page |
|--|-------------|
| Notice of Motion by Respondents, Governor Kathy Hochul and Lieutenant Governor and President of the Senate Brian A. Benjamin, for an Order to Dismiss, dated February 24, 2022 | 898 |
| Affirmation of Heather McKay, for Respondents, Governor Kathy Hochul and Lieutenant Governor and President of the Senate Brian A. Benjamin, in Opposition to the Petition and in Support of Motion to Dismiss, dated February 24, 2022 | 900 |
| Exhibit 1 to McKay Affirmation - Emails, dated February 11, 2022 | 905 |
| Exhibit 2 to McKay Affirmation - Legislation | 912 |
| Exhibit 3 to McKay Affirmation - 2021 Statewide Ballot Proposals | 914 |
| Exhibit 4 to McKay Affirmation - New York Times Article, Interview with Kathy Hochul: ‘I Feel a Heavy Weight of Responsibility’ | 925 |
| Exhibit 5 to McKay Affirmation - Governor’s Approval Memoranda, dated February 3, 2022 | 929 |
| Declaration Opposing Motion to Amend the Petition of Matthew D. Brown, Esq., for Respondents Governor Hochul and Lt. Governor Benjamin, dated February 23, 2022 | 933 |
| Exhibit A to Declaration - Emails | 939 |

| | Page |
|---|-------------|
| Exhibit B to Declaration - Memorandum-Decision and Order, in United States of America v. State of New York, dated January 27, 2012 | 945 |
| Answer to Petition of Respondents Governor Kathy Hochul and Lieutenant Governor and President of the Senate Brian A. Benjamin, dated February 24, 2022 | 962 |
| Answer of Respondents Speaker of the Assembly Carl Heastie and the Assembly Majority, dated February 24, 2022 | 969 |
| Affidavit of Dr. Michael Barber, Ph.D., sworn to February 24, 2022 | 991 |
| Exhibit A to Barber Affidavit - Curriculum Vitae of Michael Barber, Ph.D. | 1010 |
| Letter from Craig R. Bucki, Esq. to Honorable Patrick F. McAllister, dated February 25, 2022 | 1016 |
| Letter from Bennet J. Moskowitz, Esq. and Misha Tseytlin to Honorable Patrick F. McAllister, dated February 25, 2022 | 1018 |
| Affidavits of Service of the Petition, Order to Show Cause, and Supporting Documents, sworn to March 1, 2022 | 1020 |
| Affidavit of Sean P. Trende in Support of Expert Reports, sworn to March 1, 2022..... | 1022 |
| Reply of Sean P. Trende, dated March 1, 2022..... | 1025 |
| Affidavit of Claude A. Lavigna in Support of Expert Reports, sworn to March 1, 2022..... | 1051 |

| | Page |
|---|-------------|
| Rebuttal Expert Report of Claude A. Lavigna, dated March 1, 2022 | 1053 |
| Affidavit of Alan Nephew, Petitioner, in Support of Petition, sworn to February 25, 2022..... | 1067 |
| Affidavit of George Dooher, Jr., Petitioner, in Support of Petition, sworn to February 25, 2022... | 1069 |
| Affidavit of Guy C. Brought, Petitioner, in Support of Petition, sworn to February 28, 2022 | 1071 |
| Affidavit of Jay Frantz, Petitioner, in Support of Petition, sworn to February 25, 2022..... | 1073 |
| Affidavit of Jerry Fishman, Petitioner, in Support of Petition, sworn to February 25, 2022..... | 1075 |
| Affidavit of Lawrence Canning, Petitioner, in Support of Petition, sworn to February 26, 2022... | 1077 |
| Affidavit of Linda Fanton, Petitioner, in Support of Petition, sworn to February 25, 2022..... | 1079 |
| Affidavit of Marianne Volante, Petitioner, in Support of Petition, sworn to February 26, 2022... | 1082 |
| Affidavit of Stephen Evans, Petitioner, in Support of Petition, sworn to February 26, 2022 | 1084 |
| Affidavit of Patricia Clarino, Petitioner, in Support of Petition, sworn to February 28, 2022 | 1086 |
| Affidavit of Susan Rowley, Petitioner, in Support of Petition, sworn to February 28, 2022..... | 1088 |
| 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 |

| | Page |
|--|-------------|
| Letter from the Office of the Attorney General to Honorable Patrick F. McAllister, dated March 10, 2022 | 1097 |
| 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 |
| Affidavit of Todd A. Breitbart, sworn to March 10, 2022 | 1150 |
| Exhibit A to Breitbart Affidavit - Map of Long Island Senate Districts | 1183 |
| Exhibit B to Breitbart Affidavit - Map of New York City Senate Districts | 1186 |
| Exhibit C to Breitbart Affidavit - Map of Upstate New York Senate Districts | 1188 |
| Second Affidavit of Dr. Kristopher R. Tapp, Ph.D, sworn to March 10, 2022 | 1194 |
| Exhibit A to Tapp Second Affidavit - Curriculum Vitae of Kristopher R. Tapp, Ph.D. | 1217 |
| Affidavit of Dr. Jonathan N. Katz, Ph.D., sworn to March 9, 2022 | 1222 |
| Exhibit A to Katz Affidavit - Expert Report of Jonathan N. Katz, dated March 9, 2022 | 1225 |
| Exhibit B to Katz Affidavit - Curriculum Vitae of Jonathan N. Katz..... | 1254 |

| | Page |
|---|-------------|
| 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 |
| 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 |
| Exhibit A to Moskowitz Affirmation - Affidavit of Dr. Jonathan N. Katz, Ph.D., sworn to March 9, 2022 | 1264 |
| Exhibit A to Katz Affidavit - Expert Report of Dr. Johnathan N. Katz, Ph.D., dated March 9, 2020 | 1267 |
| Exhibit B to Moskowitz Affirmation - Second Affidavit of Dr. Kristopher R. Tapp, Ph.D., sworn to March 10, 2022 | 1296 |
| Order to Show Cause for Adverse Inferences from Respondents and Their Agents' Failure to Appeal for Noticed Depositions, dated March 14, 2022 | 1319 |
| 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 |
| Exhibit A to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to Phillip Chonigman, dated March 9, 2022 | 1325 |

| | Page |
|--|-------------|
| Exhibit B to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination to Phillip Chonigman dated March 10, 2022 | 1487 |
| Exhibit C to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to Michael Gianaris dated March 9, 2022..... | 1489 |
| Exhibit D to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination to Michael Gianaris dated March 10, 2022 | 1651 |
| Exhibit E to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to David Imamura dated March 9, 2022 | 1653 |
| Exhibit F to Moskowitz Affirmation - Subpoena Duces Tecum Ad Testificandum to Eric Katz dated March 9, 2022..... | 1814 |
| Exhibit G to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination to Eric Katz dated March 10, 2022 .. | 1976 |
| Exhibit H to Moskowitz Affirmation - Notice to Take Deposition Upon Oral Examination to the New York State Legislative Task Force on Demographic Research and Reapportionment, dated March 9, 2022 | 1978 |
| Exhibit I to Moskowitz Affirmation - Petitioners' First Request for the Production of Documents to Respondents, dated March 9, 2022 | 1980 |

| | Page |
|---|-------------|
| Exhibit J to Moskowitz Affirmation - Letter dated March 10, 2022, from John R. Cuti, Counsel for Respondents, to Counsel for Petitioners | 1989 |
| Exhibit K to Moskowitz Affirmation - Letter dated March 10, 2022, from Counsel for Petitioners to John R. Cuti, Counsel for Respondents | 1990 |
| Exhibit L to Moskowitz Affirmation - Letter dated March 10, 2022, from John R. Cuti, Counsel for Respondents, to Counsel for Petitioners | 1992 |
| Exhibit M to Moskowitz Affirmation - Letter dated March 10, 2022, from Counsel for Petitioners to John R. Cuti, Counsel for Respondents | 1994 |
| Exhibit N to Moskowitz Affirmation - Letter dated March 10, 2022, from John R. Cuti, Counsel for Respondents, to Counsel for Petitioners | 1995 |
| Exhibit O to Moskowitz Affirmation - Letter dated March 10, 2022, from Counsel for Mr. Imamura to Counsel for Petitioners | 1996 |
| Exhibit P to Moskowitz Affirmation - Letter dated March 10, 2022, from Petitioners' Counsel to Mr. Imamura's Counsel..... | 1998 |

| | Page |
|--|-------------|
| Exhibit Q to Moskowitz Affirmation - 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 | 2000 |
| Exhibit R to Moskowitz Affirmation - Rough Transcript from the March 11, 2022 Deposition of Michael Gianaris..... | 2049 |
| Exhibit S to Moskowitz Affirmation - Rough Transcript from the March 11, 2022 Deposition of Eric Katz | 2069 |
| Exhibit T to Moskowitz Affirmation - Speaker Heastie's and the Assembly Majority's Objections and Responses to Petitioners' First Request for Production | 2108 |
| Exhibit U to Moskowitz Affirmation - 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 | 2117 |
| Order to Show Cause Why Petitioners Should be Granted Leave to Submit Supplemental Briefing on the Timing of Remedy, dated March 14, 2022 . | 2123 |
| Letter from Steven B. Salcedo to Honorable Patrick F. McAllister, dated March 15, 2022 | 2125 |

| | Page |
|--|-------------|
| Affirmation of Eric Hecker, Esq., for 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, in Opposition to Petitioners' 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 15, 2022 | 2126 |
| Letter from Steven B. Salcedo, Esq. to Honorable Patrick F. McAllister, dated March 15, 2022 | 2132 |
| Affirmation of John R. Cuti, Esq., for 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, in Opposition to Order to Show Cause for Adverse Inferences from Respondents and Their Agents' Failure to Appeal for Noticed Depositions, dated March 15, 2022 | 2134 |
| Exhibit A to Cuti Affirmation - Proposed Order to Show Cause with Interim Relief..... | 2154 |
| Exhibit B to Cuti Affirmation - Decision of the Honorable Stephen K. Lindley, dated March 9, 2022 | 2156 |

| | Page |
|---|-------------|
| Exhibit C to Cuti Affirmation - Subpoena Duces Tecum Ad Testificandum to Michael Gianaris dated March 9, 2022 (Reproduced herein at pp. 1489-1650) | 2161 |
| Exhibit D to Cuti Affirmation - Subpoena Duces Tecum Ad Testificandum to Phillip Chonigman, dated March 9, 2022 (Reproduced herein at pp. 1325-1486) | 2161 |
| Exhibit E to Cuti Affirmation - Subpoena Duces Tecum Ad Testificandum to Eric Katz dated March 9, 2022 (Reproduced herein at pp. 1814-1975) | 2161 |
| Exhibit F to Cuti Affirmation - Letter dated March 10, 2022, from John R. Cuti, Counsel for Respondents, to Counsel for Petitioners (Reproduced herein at pp. 1989) | 2161 |
| Exhibit G to Cuti Affirmation - Letter dated March 10, 2022, from Counsel for Petitioners to John R. Cuti, Counsel for Respondents (Reproduced herein at pp. 1990-1991) | 2161 |
| Exhibit H to Cuti Affirmation - Notice to Take Deposition Upon Oral Examination to Michael Gianaris dated March 10, 2022 (Reproduced herein at pp. 1651-1652) | 2161 |
| Exhibit I to Cuti Affirmation - Notice to Take Deposition Upon Oral Examination to Phillip Chonigman dated March 10, 2022 (Reproduced herein at pp. 1487-1488) | 2162 |

| | Page |
|--|-------------|
| Exhibit J to Cuti Affirmation - Notice to Take Deposition Upon Oral Examination to Eric Katz dated March 10, 2022 (Reproduced herein at pp. 1976-1977) | 2162 |
| Exhibit K to Cuti Affirmation - Letter dated March 10, 2022, from John R. Cuti, Counsel for Respondents, to Counsel for Petitioners (Reproduced herein at pp. 1992-1993) | 2162 |
| Exhibit L to Cuti Affirmation - Letter dated March 10, 2022, from Counsel for Petitioners to John R. Cuti, Counsel for Respondents (Reproduced herein at pp. 1994) | 2162 |
| Exhibit M to Cuti Affirmation - Letter dated March 10, 2022, from John R. Cuti, Counsel for Respondents, to Counsel for Petitioners (Reproduced herein at pp. 1995) | 2162 |
| Exhibit N to Cuti Affirmation - Letter dated March 9, 2022, from Misha Tseytlin to Honorable Patrick F. McAllister | 2163 |
| Exhibit O to Cuti Affirmation - Affirmation of John R. Cuti, Esq. in Opposition to the Motion by Order to Show Cause to Vacate the Automatic Stay, dated March 8, 2022 | 2171 |
| Exhibit P to Cuti Affirmation - Sur-Reply Affirmation of John R. Cuti, Esq. in Further Opposition to the Motion by Order to Show Cause to Vacate the Automatic Stay, dated March 8, 2022 | 2205 |

| | Page |
|---|-------------|
| Exhibit Q to Cuti Affirmation - Emails, dated March 9, 2022 through March 12, 2022 and Objections and Responses, dated March 12, 2022 | 2216 |
| Affirmation of Eric Hecker, Esq., for 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, in Opposition to Petitioners' Order to Show Cause Why Petitioners Should be Granted Leave to Submit Supplemental Briefing on the Timing of Remedy, dated March 15, 2022 . | 2224 |
| Affirmation of Steven B. Salcedo, Esq., for Respondent Carl Heastie, Speaker of the New York State Assembly, in Opposition to Petitioners' Order to Show Cause Why Petitioners Should be Granted Leave to Submit Supplemental Briefing on the Timing of Remedy, dated March 15, 2022 | 2227 |
| Exhibit A to Salcedo Affirmation - Transcript of Special Proceedings, dated March 3, 2022 | 2230 |

| | Page |
|---|-------------|
| Affirmation of Eric Hecker, Esq., for 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, in Opposition to Petitioners' Supplemental Brief Addressing Remedies in Opposition to Petitioners' Order to Show Cause Why Petitioners Should be Granted Leave to Submit Supplemental Briefing on the Timing of Remedy, dated March 21, 2022 | 2302 |
| Affirmation of Heather L. McKay, for Respondents Governor Kathy Hochul and Lieutenant Governor and President of the Senate Brian A. Benjamin, in Opposition to Order to Show Cause Why Petitioners Should be Granted Leave to Submit Supplemental Briefing on the Timing of Remedy, dated March 21, 2022 | 2312 |
| Exhibit A to McKay Affirmation - Affidavit of Thomas Connolly, sworn to March 21, 2022 | 2315 |
| Affidavit of Todd D. Valentine, Co-Executive Director of the New York State Board of Elections, sworn to March 22, 2022 | 2326 |
| Letter from Bennet J. Moskowitz, Esq. and Misha Tseytlin, Esq. to Honorable Patrick F. McAllister, dated March 28, 2022 | 2330 |
| Exhibit A to Letter - Memorandum Opinion and Order, in Szeliga, et al. v. Lamone, et al., dated March 25, 2022..... | 2332 |

| | Page |
|---|------------------|
| Exhibit B to Letter - Declaratory Judgment, Permanent Injunction, and Order of Remand, in Szeliga, et al. v. Lamone, et al., dated March 25, 2022 | 2426 |
| Letter from Bennet J. Moskowitz, Esq. and Misha Tseytlin, Esq. to Honorable Patrick F. McAllister, dated March 30, 2022 | 2429 |
| Exhibit A to Letter - Defendants’ Response to Declaratory Judgment, Permanent Injunction and Order of Remand, in in Szeliga, et al. v. Lamone, et al., dated March 30, 2022 | 2430 |
| Civil Hearing Minutes | 2436 |
| Transcript of Special Proceedings, dated March 3, 2022 | 2441 |
| Transcript of Bench Trial, dated March 14, 2022 | 2513 |
| Petitioner’s Witnesses: | |
| Sean P. Trende | Direct..... 2523 |
| | Cross..... 2564 |
| Claude A. Lavigna | Direct..... 2673 |
| | Cross..... 2687 |
| Transcript of Bench Trial, dated March 15, 2022 | 2734 |
| Petitioner’s Witness: | |
| Claude A. Lavigna | Cross..... 2740 |

| | | Page |
|---|---|------------------------|
| Assembly Majority's Witness: | | |
| Michael Barber | Direct..... | 2796 |
| | Cross..... | 2841 |
| | Re-Direct..... | 2864 |
| | Re-Cross..... | 2871 |
| Senate Majority's Witnesses: | | |
| Stephen D. Ansolabehere | Direct..... | 2874 |
| | Cross..... | 2922 |
| Kristopher R. Tapp | Direct..... | 2937 |
| Transcript of Bench Trial, dated March 16, 2022 | | 2945 |
| Senate Majority Witnesses: | | |
| Kristopher R. Tapp | Direct..... | 3015 |
| | Cross..... | 3066 |
| | Re-Direct..... | 3084 |
| Jonathan N. Katz | Direct..... | 3087 |
| | Cross..... | 3133 |
| | Re-Direct..... | 3141 |
| Todd A. Breitbart | Direct..... | 3144 |
| | Cross..... | 3171 |
| Senate Exhibits: | | |
| S1 | Sequential Monte Carlo Paper | In Evidence 2569 |
| | | Reproduced 3181 |
| S2 | Memo to VA Supreme Court co-written by Trende | In Evidence 2598 |
| | | Reproduced 3208 |

| | | | Page |
|-----|--|---------------------------------------|--------------|
| S3 | Comparison of 2022 Enacted Congressional Upstate vs. Plan A + B Upstate Maps | In Evidence Reproduced | 2609 3263 |
| S4 | ALARM Project Upstate Maps | In Evidence Reproduced | 2617 3266 |
| S12 | Testimony of Dr. Wah Lee, submitted to Commission | In Evidence Reproduced | 2784 3267 |
| | Stipulation Pursuant to CPLR § 5532..... | | 3270 |

**EXHIBIT C TO MOSKOWITZ AFFIRMATION -
SUBPOENA DUCES TECUM AD TESTIFICANDUM TO MICHAEL GIANARIS,
DATED MARCH 9, 2022 [1489 - 1650]**

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 179

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: **Michael Gianaris**
Member, 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

NYSCEF DOC. NO. 179

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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 Michael Gianaris 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,

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 179

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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.

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 179

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

EXHIBIT B

FILED: STEUBEN COUNTY CLERK 02/03/2022 02:02 PM

NYSCEF DOC. NO. 179

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."¹ 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."² 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."³ 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.

¹ 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).

² 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/>.

³ 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.⁴

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.

⁴ 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."⁵

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.

⁵ 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).⁶ 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 A14.⁷ 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

⁶Available at <http://observer.com/2010/12/background-how-redistricting-will-reshape-new-yorks-battle-lines/>.

⁷ 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.*⁸

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

⁸ 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).⁹

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

⁹ 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).¹⁰

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.

¹⁰ 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).¹¹

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:

¹¹ 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 Cjf State’s New Map-Drawing Process*, Gotham Gazette (July 20, 2021);¹² Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).¹³

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).

¹² Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

¹³ 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).¹⁴

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”).¹⁵

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.

¹⁴ Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

¹⁵ 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).¹⁶

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).¹⁷

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

¹⁶ Available at <https://www.nyasembly.gov/av/session/>.

¹⁷ 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).¹⁸

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

¹⁸ 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).¹⁹

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.

¹⁹ 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).²⁰ 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.

²⁰ 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.

Map of Prior Congressional Districts 1 & 2²¹



Map of New Congressional Districts 1 & 2



²¹ 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.

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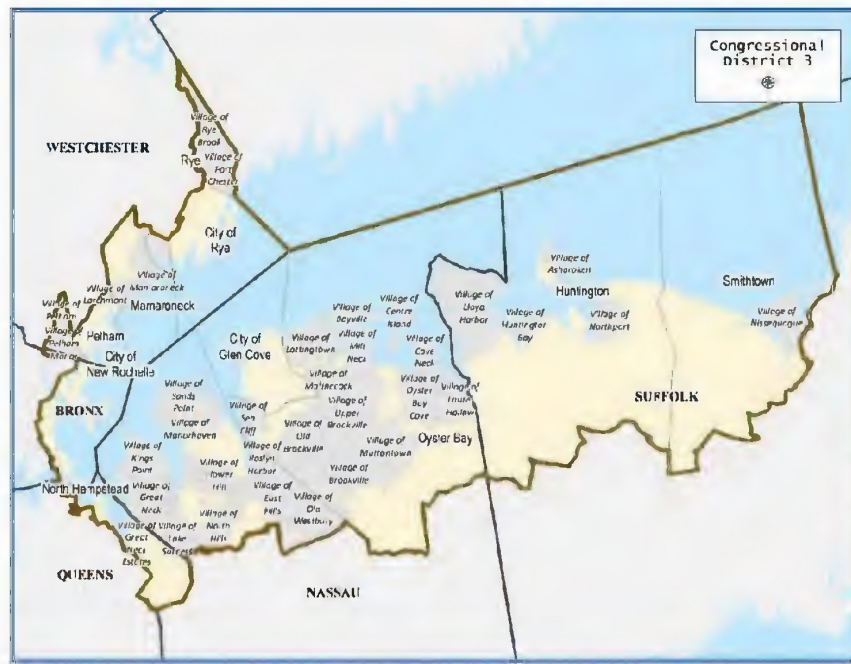
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Map of Old Congressional District 3



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).²² 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.*

²² 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).²³

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);²⁴ Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).²⁵

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.

²³ Available at https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing.

²⁴ Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

²⁵ 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”²⁶:



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.

²⁶ Available at <https://twitter.com/aaldef/status/1488223479371599876>.

FILED: STEUBEN COUNTY CLERK 02/03/2022 02:02 PM

NYSCEF DOC. NO. 179

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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

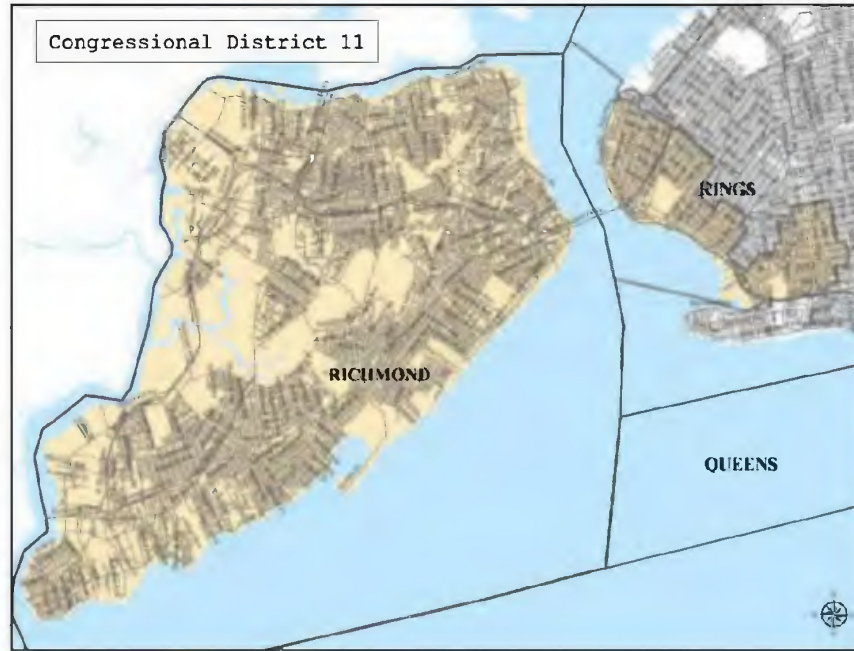


Map of Old Congressional District 10**Map of New Congressional District 10**

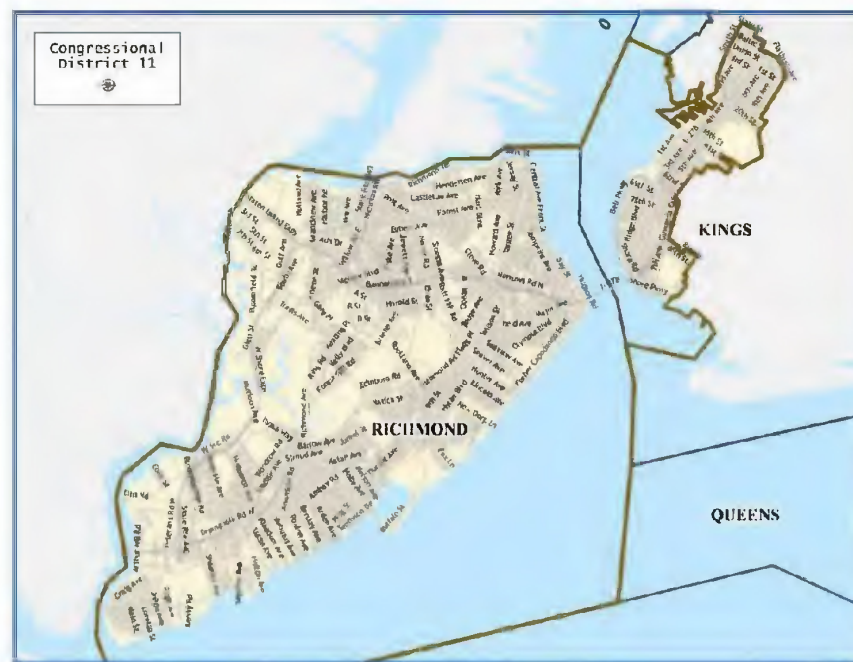
Overlay of Old Congressional District 10 and New Congressional District 10²⁷

²⁷ 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.

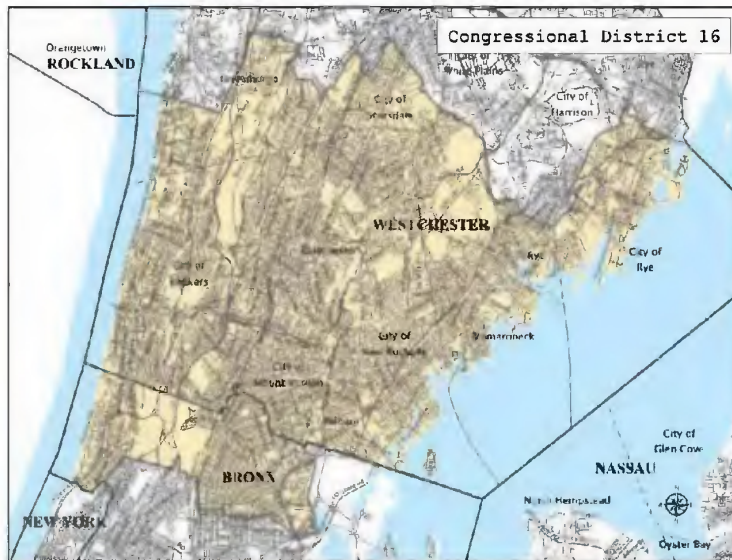
137. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 into a strong Democratic district, making Congressional District 18 a safer Democratic district, without jeopardizing the Democratic Party’s interests in Congressional District 16.

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



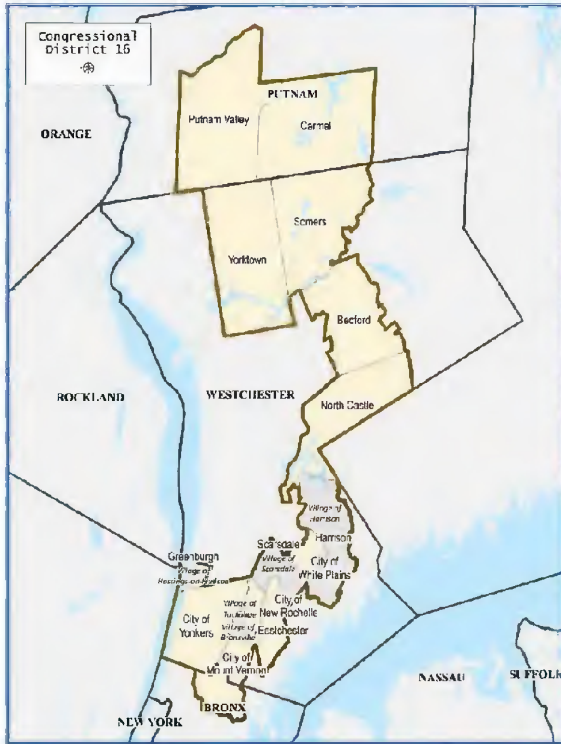
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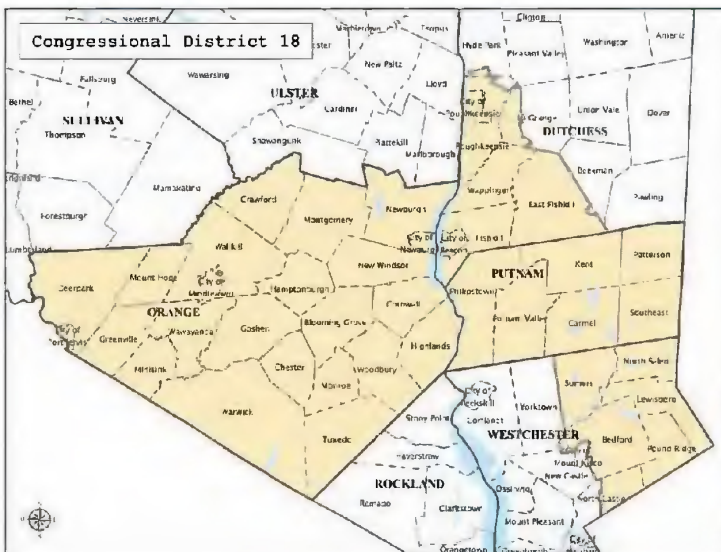
INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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.

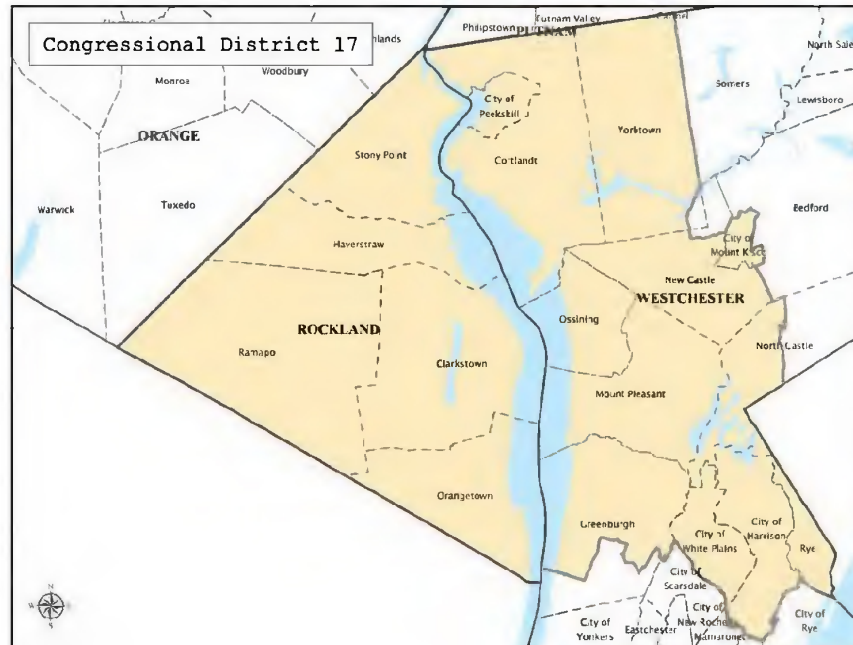
144. The District also includes part of the strongly Democrat city of White Plains.

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.

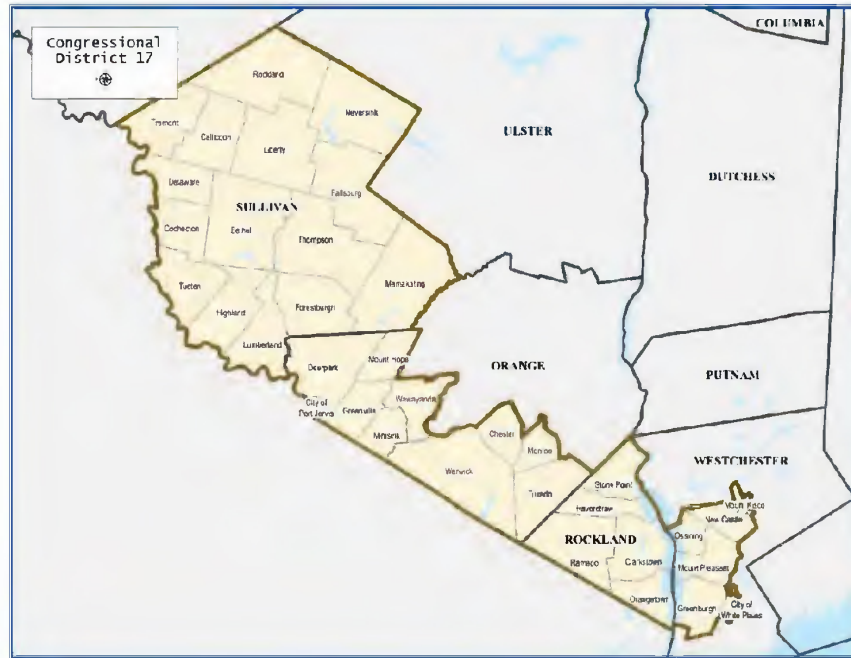
146. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power, without jeopardizing any Democratic districts.

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.

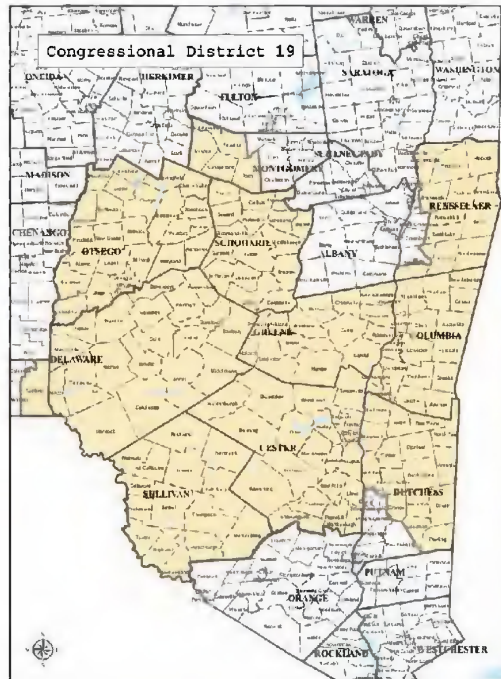
149. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

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

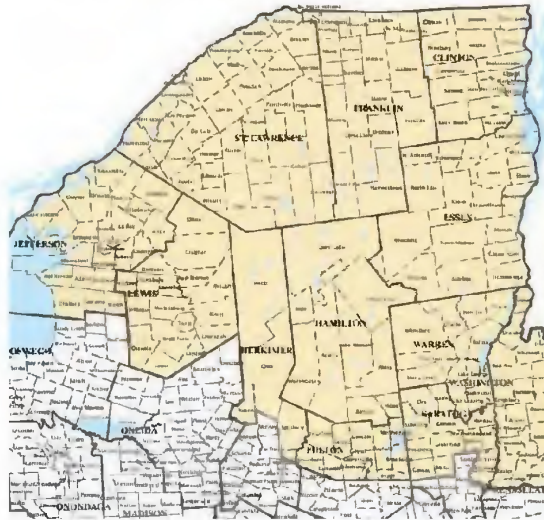


154. The Legislature also gerrymandered Congressional District 21 to pack it with additional Republican voters.

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



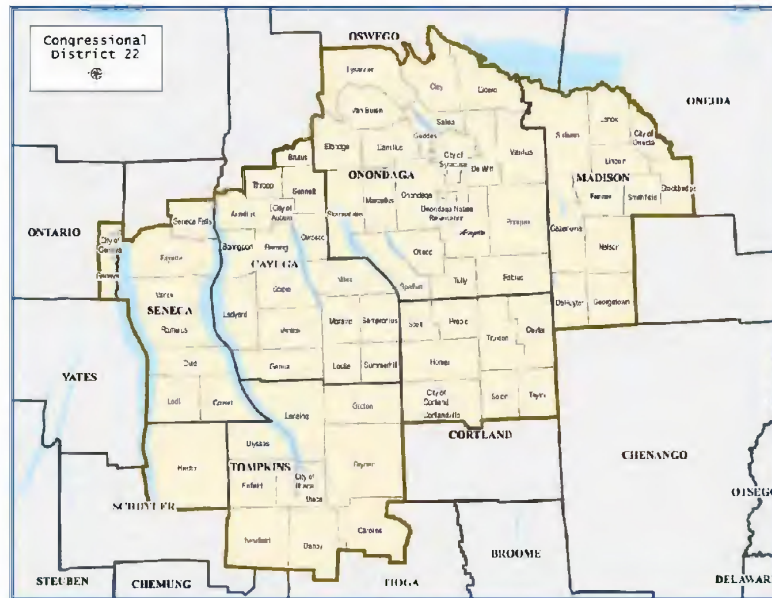
156. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

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.

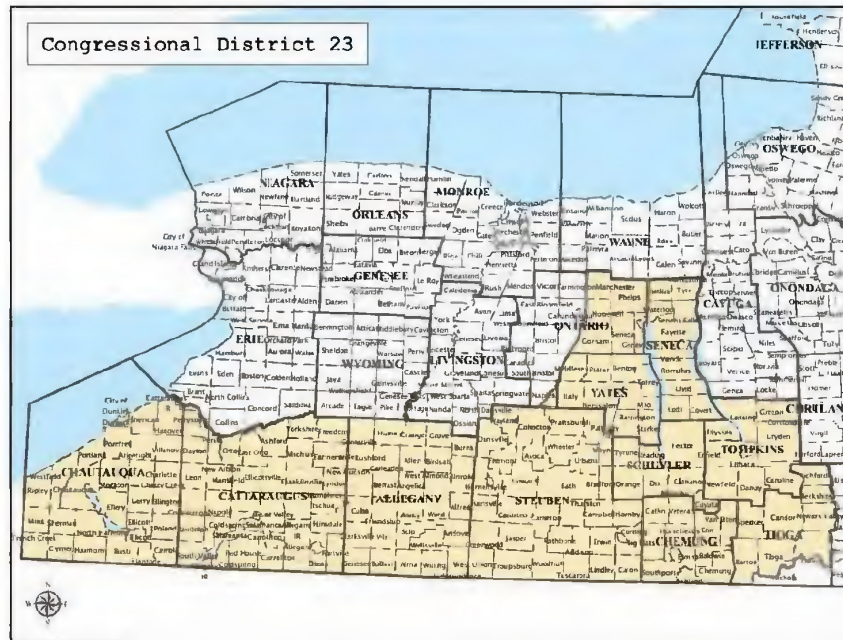
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NYSCEF DOC. NO. 179

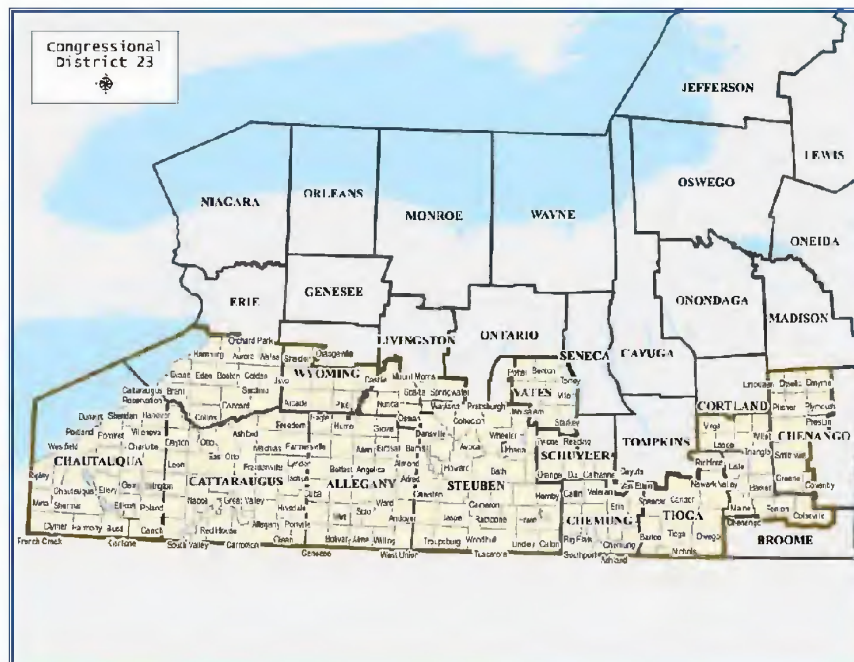
INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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.

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”).²⁸ 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).²⁹ 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

²⁸ Available at <https://nyirc.gov/submissions>.

²⁹ 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).³⁰

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).³¹ 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.

³⁰ Available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

³¹ Available at 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;

FILED: STEUBEN COUNTY CLERK 02/03/2022 02:02 PM

NYSCEF DOC. NO. 179

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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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FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 179

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

EXHIBIT C

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 189

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/08/2022

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

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."¹ 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."² 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."³ Indeed,

¹ 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).

² 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/>.

³ 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.⁴

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."⁵

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

⁴ Amicus Br. for States of N.Y., et al. at 18, *Rucho v. Common Cause*, 558 U.S. ____ (2019) (No. 18-422).

⁵ 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.⁶ 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.⁷

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.

⁶ 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.

⁷ 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).⁸ 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 A14.⁹ 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

⁸Available at <http://observer.com/2010/12/background-how-redistricting-will-reshape-new-yorks-battle-lines/>.

⁹ 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.*¹⁰

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

¹⁰ 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).¹¹

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.

¹¹ 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).¹²

¹² 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).¹³

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.

¹³ 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 Bengier, 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 Bengier, 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);¹⁴ Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).¹⁵

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

¹⁴ Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

¹⁵ 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).¹⁶

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”).¹⁷

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:

¹⁶ Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

¹⁷ 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).¹⁸

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).¹⁹

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

¹⁸ Available at <https://www.nyassembly.gov/av/session/>.

¹⁹ 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).²⁰

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

²⁰ 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).²¹

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

²¹ 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).²²

120. The result is unmistakably gerrymandered maps for Congress and state Senate.²³

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).²⁴ So, even though the New York Constitution prohibits partisan gerrymandering, she noted that the congressional map “reflect[s] a

²² 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>.

²³ 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.

²⁴ Available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-state-senate-nyc-seats-legislative-redistricting-20220202-2xoyaqnvlfhdliax5tosbnuage-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.

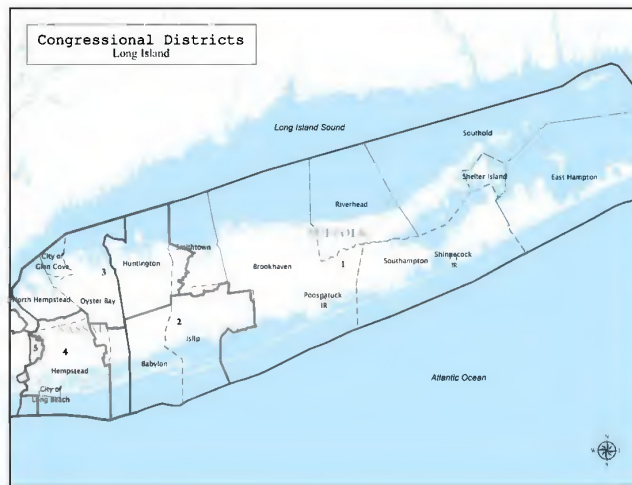
126. In particular, the Legislature placed areas with high concentrations of Republican voters into new Congressional District 2 while moving solidly Democrat communities into Congressional District 1—all the Republican communities in Brookhaven on the south shore are now in District 2, whereas the heavily 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.

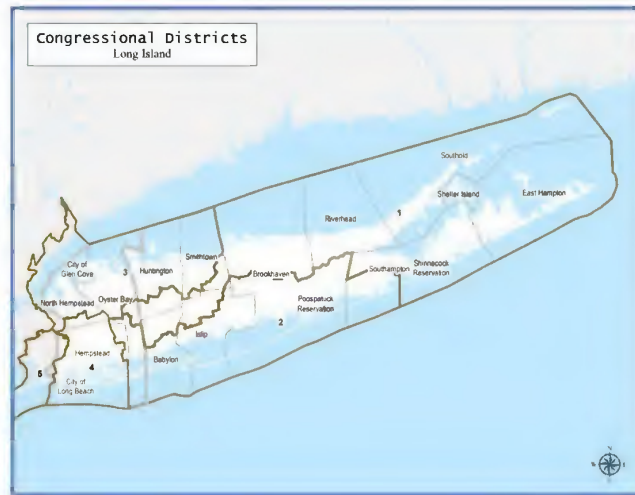
129. Similarly, the redrawing shifted District 2 from a safe Republican district into an outright uncompetitive Republican stronghold.

Map of Prior Congressional Districts 1 & 2²⁵



²⁵ 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.

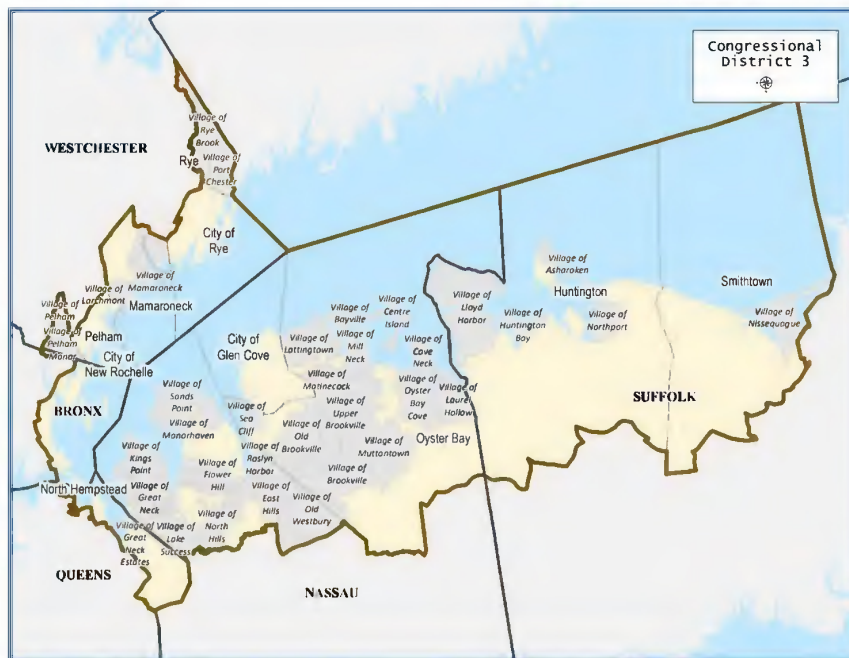
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Map of Old Congressional District 3



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).²⁶ 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.*

²⁶ 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).²⁷

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);²⁸ Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).²⁹

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.

²⁷ Available at https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing.

²⁸ Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

²⁹ 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”³⁰.



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.

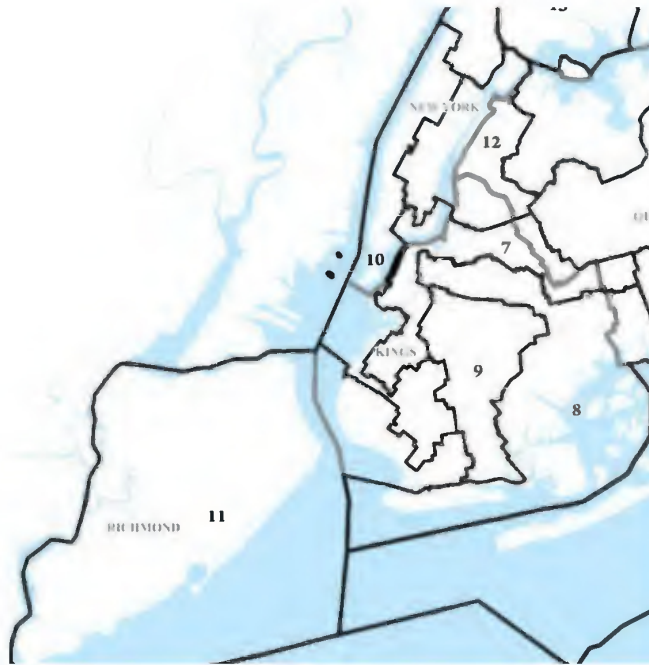
³⁰ Available at <https://twitter.com/aaldef/status/1488223479371599876>.

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NYSCEF DOC. NO. 189

INDEX NO. E2022-0116CV

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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



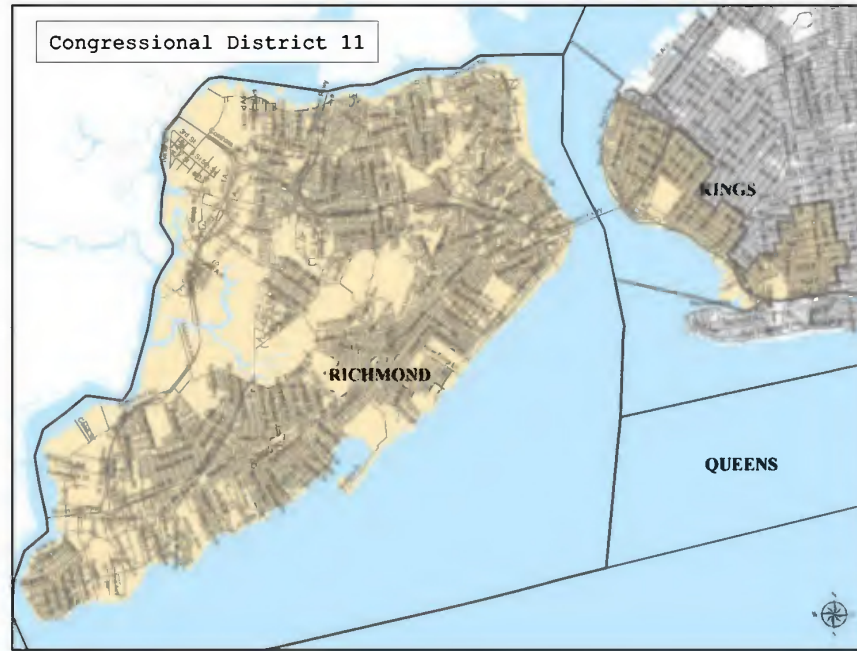
Overlay of Old Congressional District 10 and New Congressional District 10³¹

³¹ 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>.

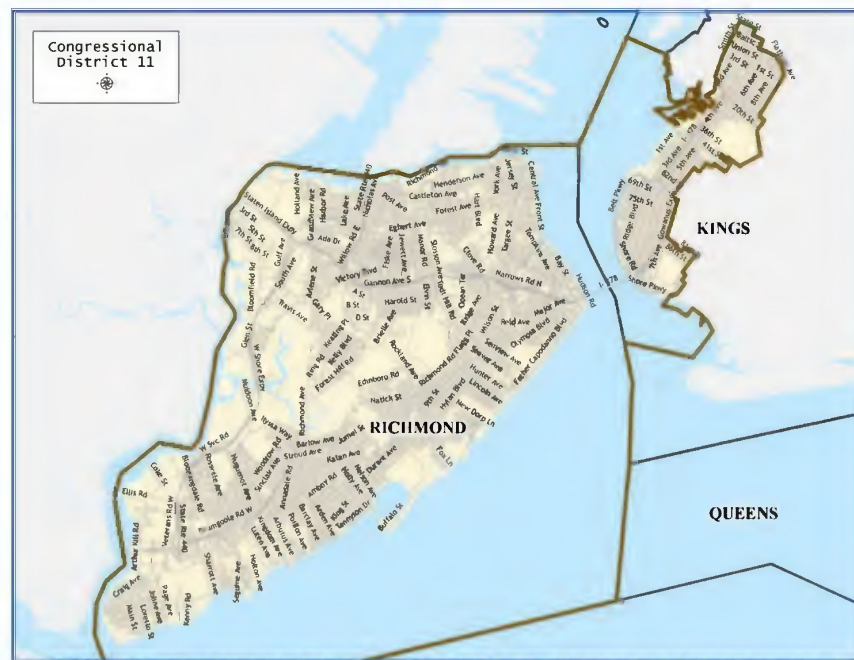
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INDEX NO. E2022-0116CV
RECEIVED NYSCEF: 03/08/2022

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.

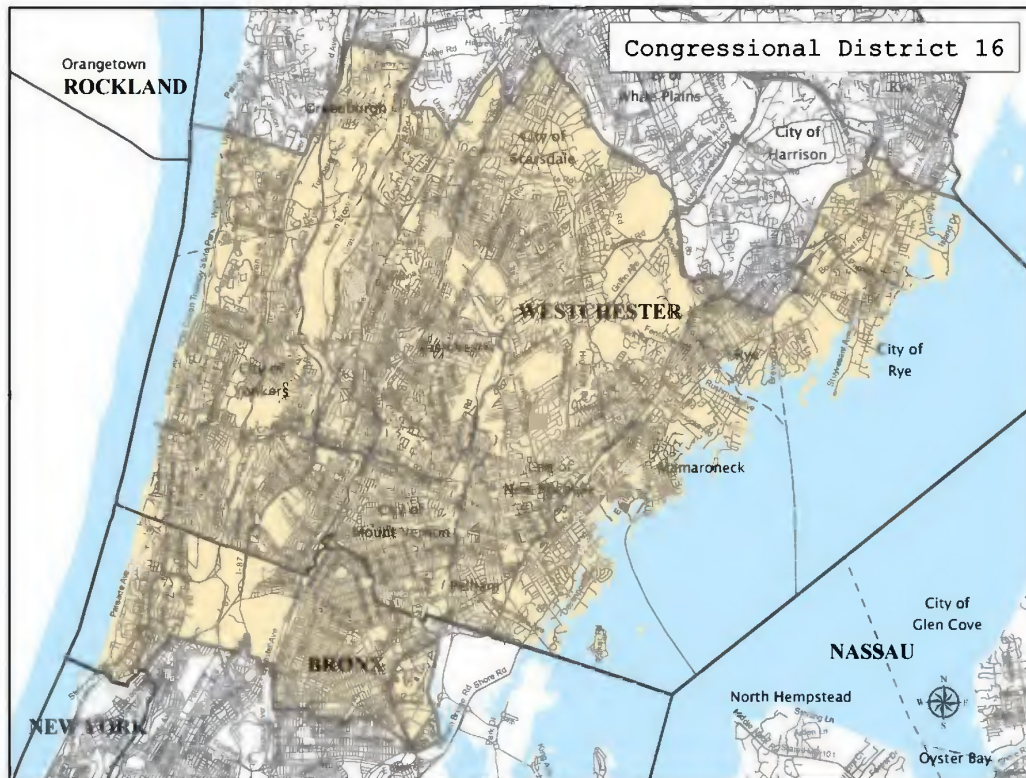
147. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 and places them into a strong Democratic district, making Congressional District 18 a safer Democratic district without jeopardizing the Democratic Party’s interests in Congressional 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.

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.

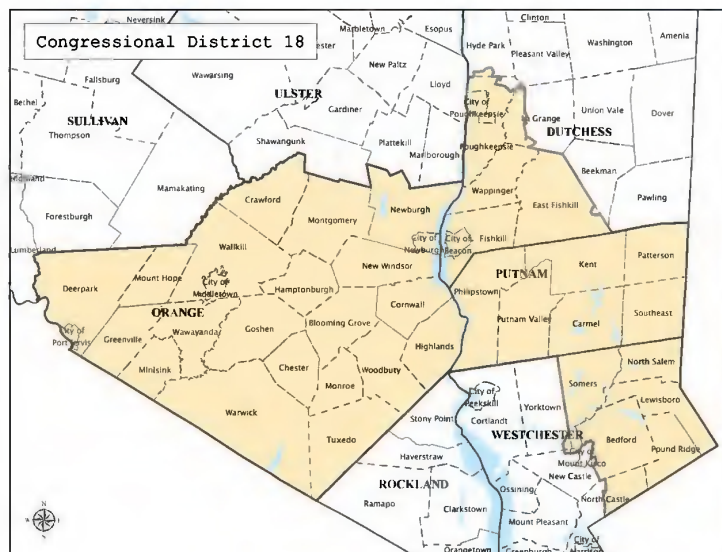
Map of Old Congressional District 16



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.

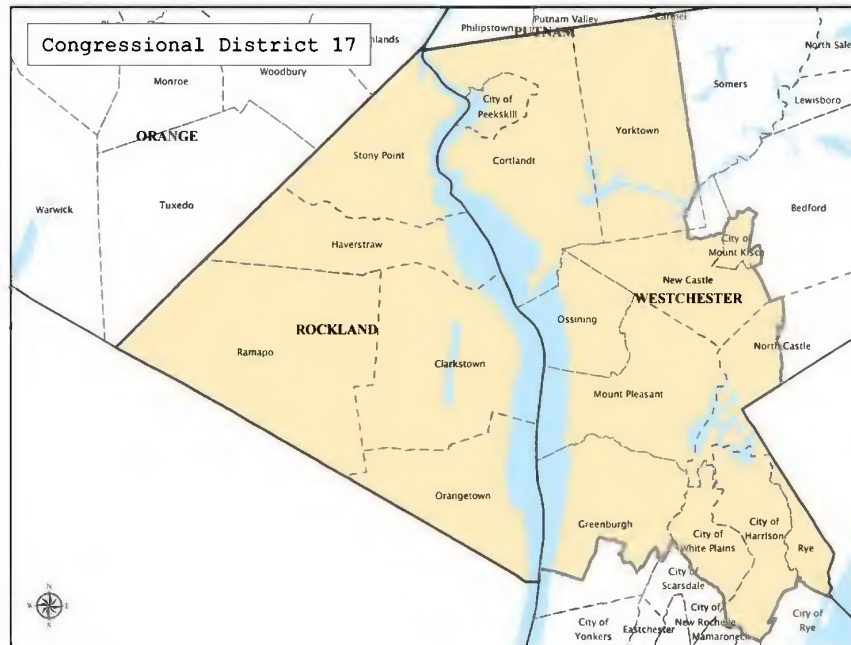
154. The District also includes part of the strongly Democrat city of White Plains.

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.

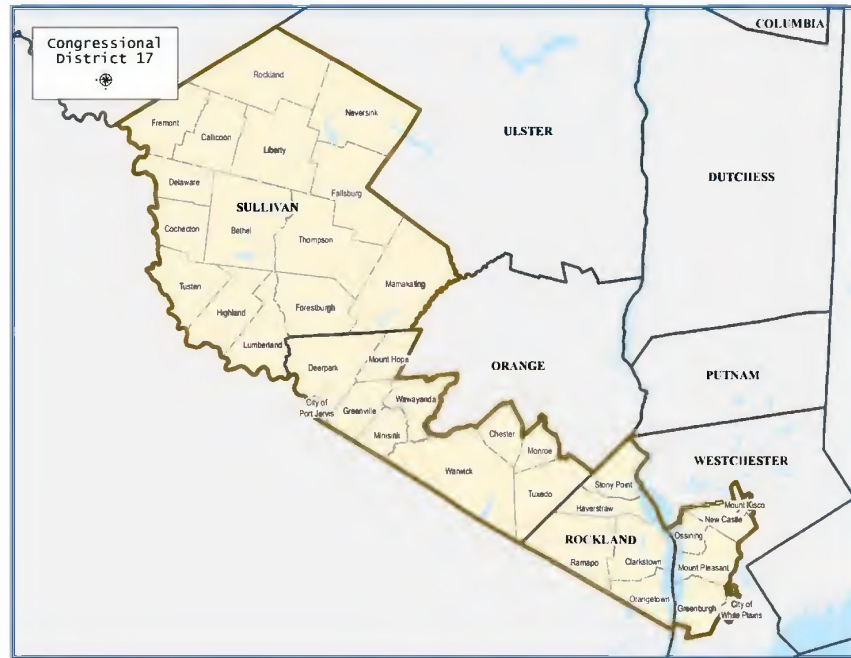
156. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power without jeopardizing any Democratic districts.

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.

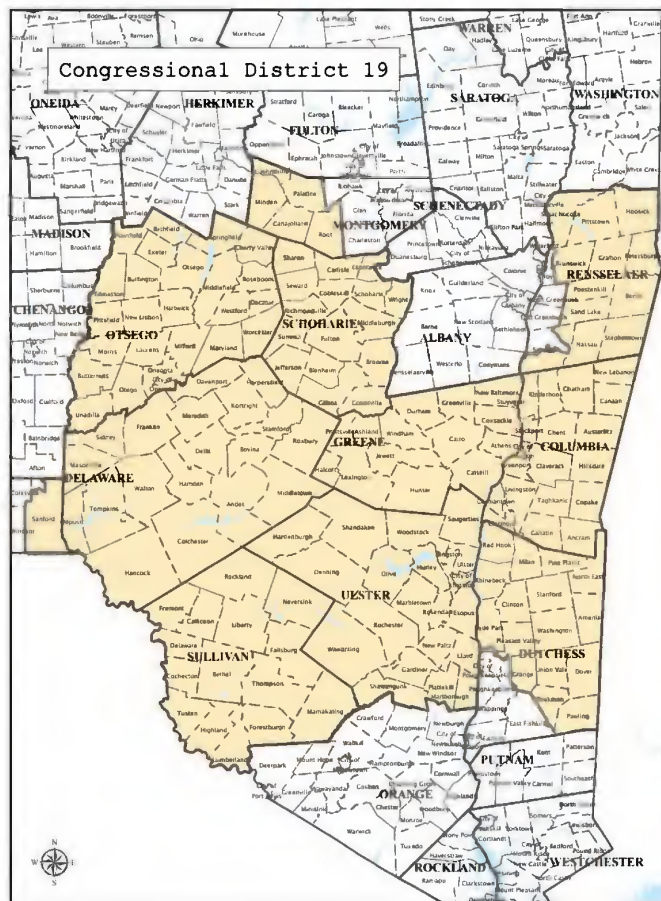
159. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

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

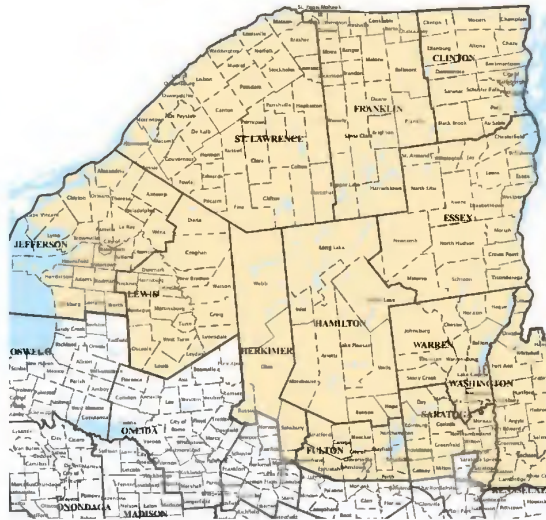


164. The Legislature also gerrymandered Congressional District 21 by packing it with additional Republican voters.

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

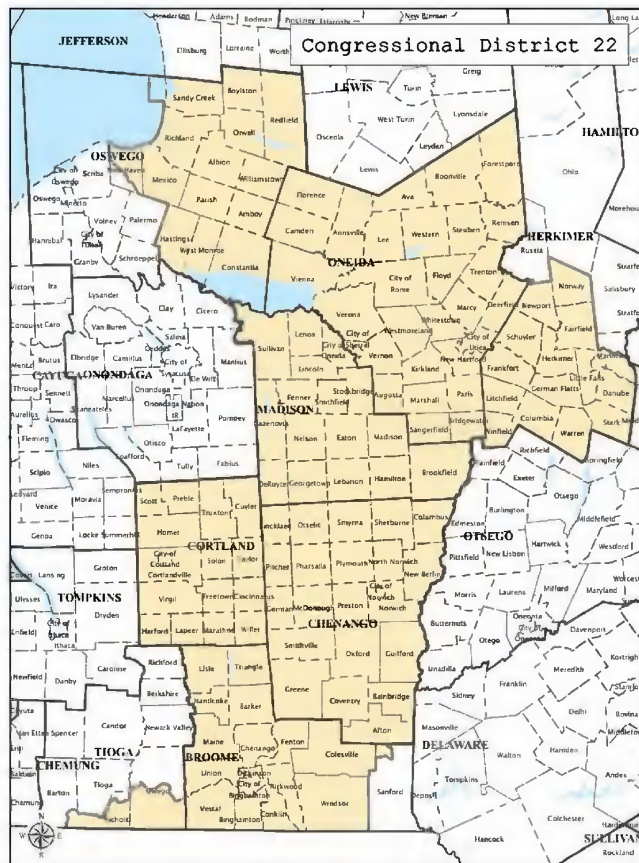
Congressional District 21



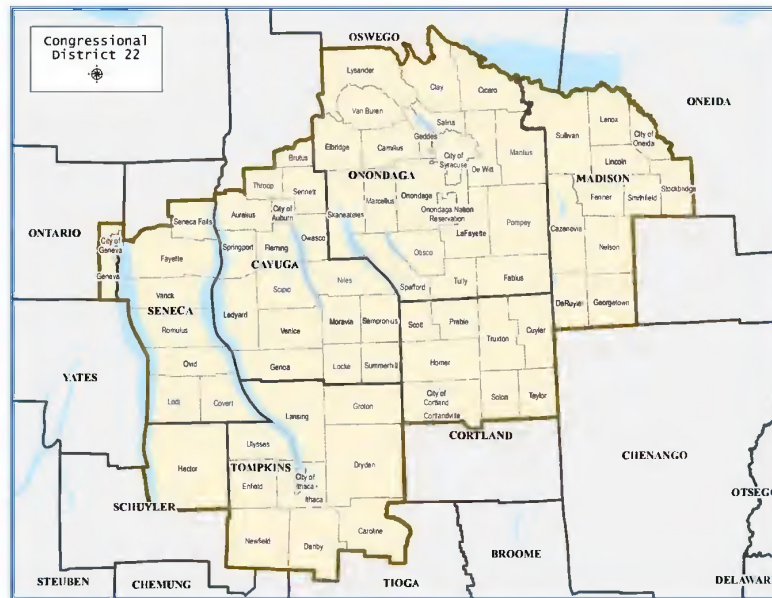
166. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

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



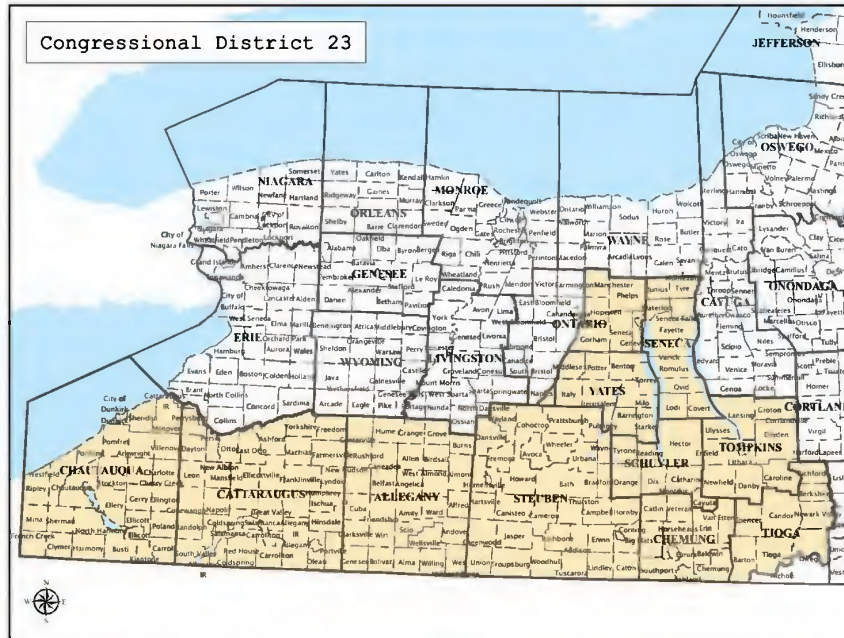
168. The Legislature gerrymandered Congressional District 23 by “packing” as many Republican votes into this district as it could, again for partisan gain.

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.

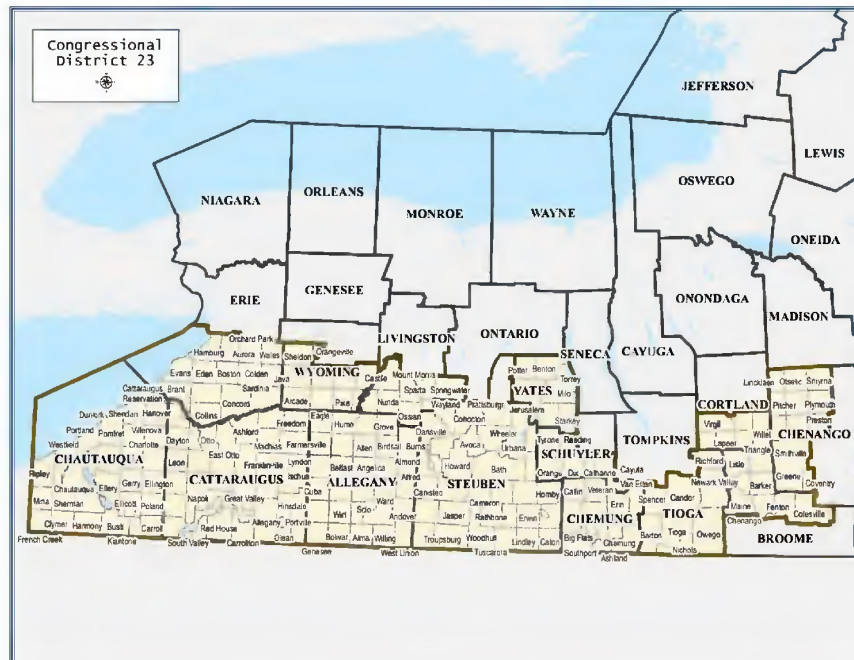
170. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22 to flip that district.

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.

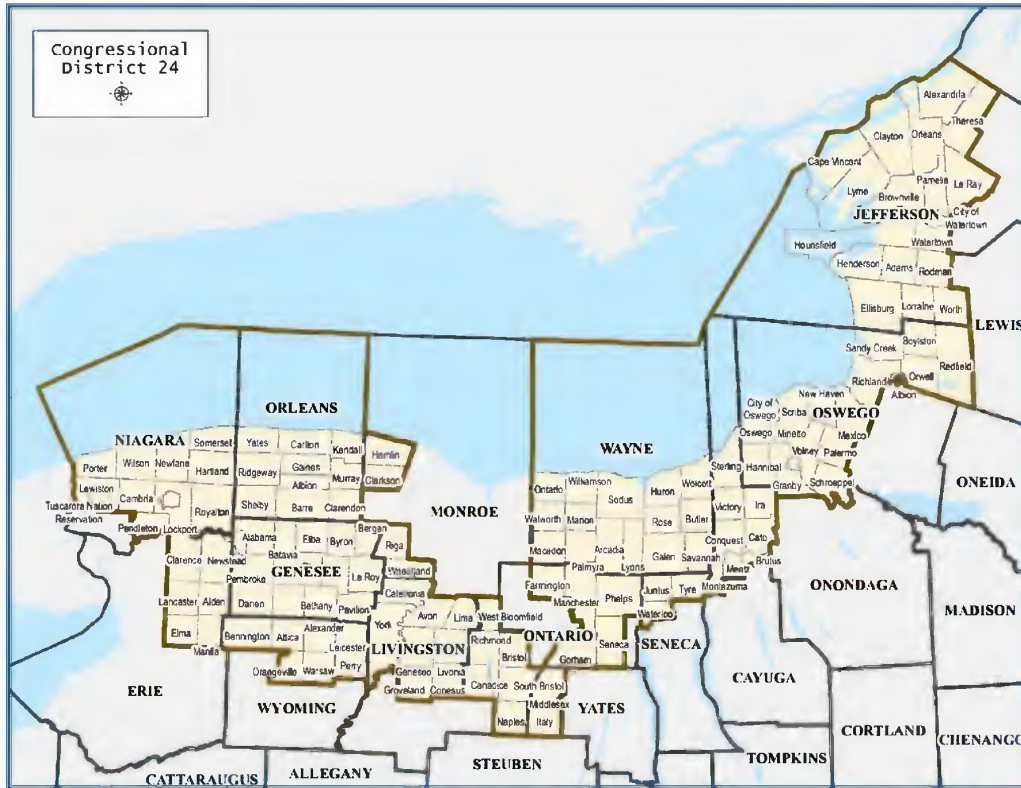
174. Indeed, this District now stretches across four media markets, connecting numerous areas over more than 250 miles with little or nothing in common.

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.

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.

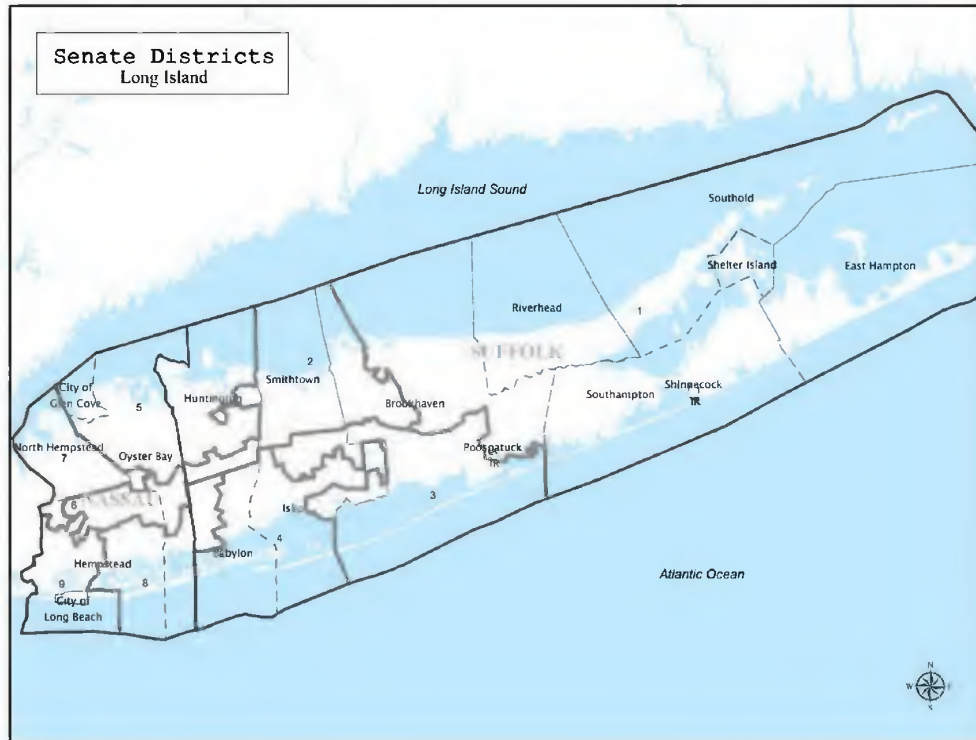
188. The Legislature also increased the Democratic Party's advantage in state Senate District 7, and in state Senate District 9, the Legislature removed the heavily Orthodox Jewish communities known as the Five Towns, which have a history of voting strongly Republican, from the district and then moved 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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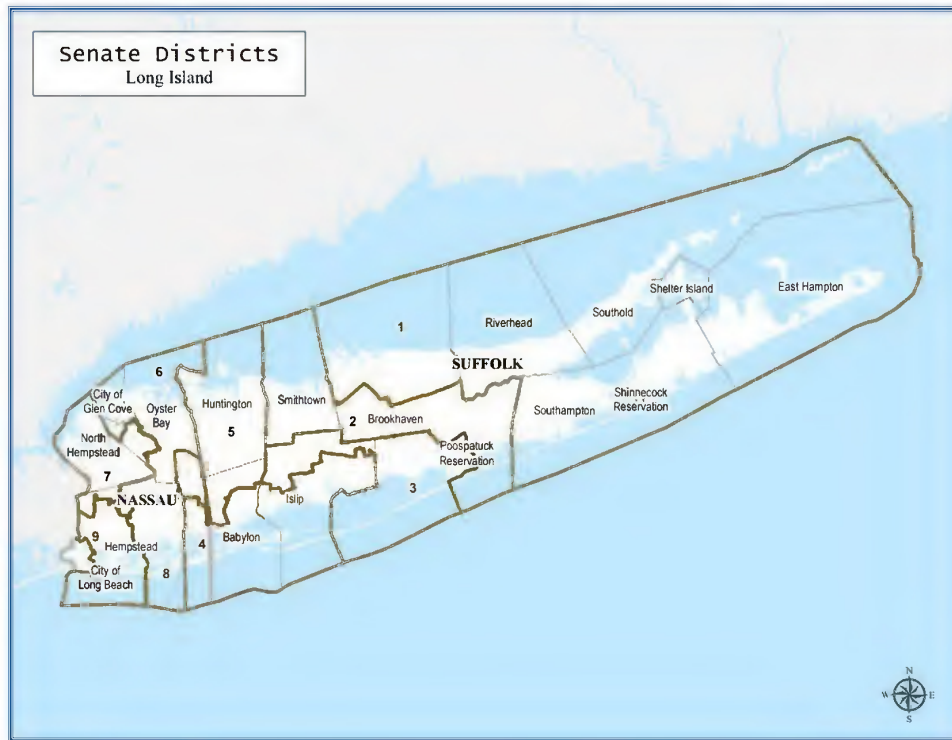
NYSCEF DOC. NO. 189

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/08/2022

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.

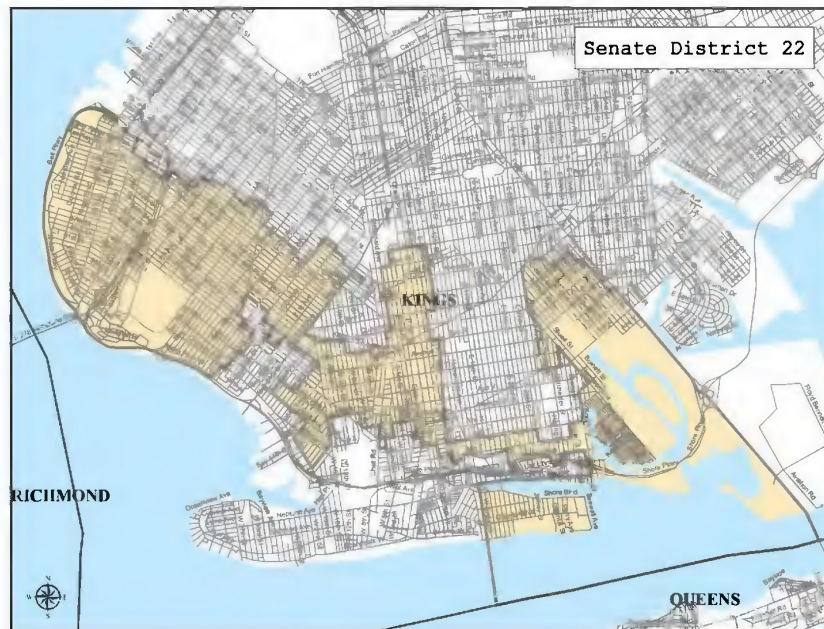
190. Moreover, the Legislature failed to respect the longstanding division of Nassau County from New York City by breaking the Nassau County-Queens County border, where there had been no prior cross-border state Senate districts breaching that line. By moving the Five Towns to a Queens-based Senate district, 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



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NYSCEF DOC. NO. 189

INDEX NO. E2022-0116CV

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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



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").³² 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).³³ 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).³⁴

³² Available at <https://nyirc.gov/submissions>.

³³ Available at <https://queenseagle.com/all/state-legislature-shares-version-of-congressional-redistricting-map>.

³⁴ 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).³⁵ 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).³⁶

³⁵ Available at https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html.

³⁶ 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.

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 189

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/08/2022

Dated: New York, New York

February 8, 2022

TROUTMAN PEPPER HAMILTON
SANDERS LLPBy: 

Bennet J. Moskowitz, Reg. No. 4693842
875 Third Avenue
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(212) 704-6000
bennet.moskowitz@troutman.comMisha Tseytlin, Reg. No. 4642609
227 W. Monroe St.
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Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.comKEYSER MALONEY &
WINNER LLP

By: s/ George H. Winner, Jr.

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

**EXHIBIT D TO MOSKOWITZ AFFIRMATION -
NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION TO
MICHAEL GIANARIS DATED MARCH 10, 2022 [1651 - 1652]**

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 180

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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 Respondent Michael Gianaris, Member of 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

NYSCEF DOC. NO. 180

INDEX NO. E2022-0116CV

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

TROUTMAN PEPPER HAMILTON
SANDERS LLP

s/ Bennet J. Moskowitz
Bennet J. Moskowitz
875 Third Avenue
New York, NY 10022
Tel: (212) 704-6000
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No. 4642609
227 W. Monroe St.
Suite 3900
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(608) 999-1240
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Attorneys for Petitioners

**EXHIBIT E TO MOSKOWITZ AFFIRMATION -
SUBPOENA DUCES TECUM AD TESTIFICANDUM TO DAVID IMAMURA,
DATED MARCH 9, 2022 [1653 - 1813]**

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 181

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: **David Imamura**
Commissioner, New York State Independent Redistricting Commission
Abrams Fensterman LLP
81 Main Street
Suite 400
White Plains, NY 10601

YOU ARE COMMANDED to appear for a deposition upon oral examination at the offices of **Hinman, Howard & Kattell LLP, 707 Westchester Avenue, Suite 407, White Plains, New York 10604** 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

NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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 David Imamura 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. The terms “all,” “any” and “each” shall each be construed as encompassing any and all.

11. 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.

12. The use of the singular form of any word includes the plural and vice versa.

13. 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, 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.

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

DOCUMENT REQUEST

1. All documents and communications concerning the redistricting process and/or maps referenced in the Petition and Amended Petition that you received from, or which you provided to, one or more Democratic members of the New York State Legislature, Governor Kathy Hochul, and any other Democratic Party politicians or officials, as well as any person acting or purporting to act on behalf of any of the foregoing.

1662

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

EXHIBIT B

FILED: STEUBEN COUNTY CLERK 02/03/2022 02:02 PM

NYSCEF DOC. NO. 181

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."¹ 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."² 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."³ 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.

¹ 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).

² 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/>.

³ 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.⁴

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.

⁴ 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."⁵

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.

⁵ 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 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.

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, *Backgrounder: How Redistricting Will Reshape New York’s Battle Lines*, Observer (Dec. 27, 2010).⁶ 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 A14.⁷ 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

⁶Available at <http://observer.com/2010/12/backgrounder-how-redistricting-will-reshape-new-yorks-battle-lines/>.

⁷ 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.*⁸

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

⁸ 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).⁹

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

⁹ 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).¹⁰

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.

¹⁰ 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).¹¹

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:

¹¹ 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);¹² Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).¹³

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).

¹² Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

¹³ 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).¹⁴

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”).¹⁵

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.

¹⁴ Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

¹⁵ 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).¹⁶

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).¹⁷

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

¹⁶ Available at <https://www.nyasembly.gov/av/session/>.

¹⁷ 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).¹⁸

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

¹⁸ 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).¹⁹

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.

¹⁹ 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).²⁰ 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.

²⁰ 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.

Map of Prior Congressional Districts 1 & 2²¹



Map of New Congressional Districts 1 & 2



²¹ 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.

FILED: STEUBEN COUNTY CLERK 02/03/2022 07:02 PM

NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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).²² 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.*

²² 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).²³

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);²⁴ Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).²⁵

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.

²³ Available at https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing.

²⁴ Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

²⁵ 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”²⁶:



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.

²⁶ Available at <https://twitter.com/aaldef/status/1488223479371599876>.

FILED: STEUBEN COUNTY CLERK 02/03/2022 02:02 PM

NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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



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NYSCEF DOC. NO. 181

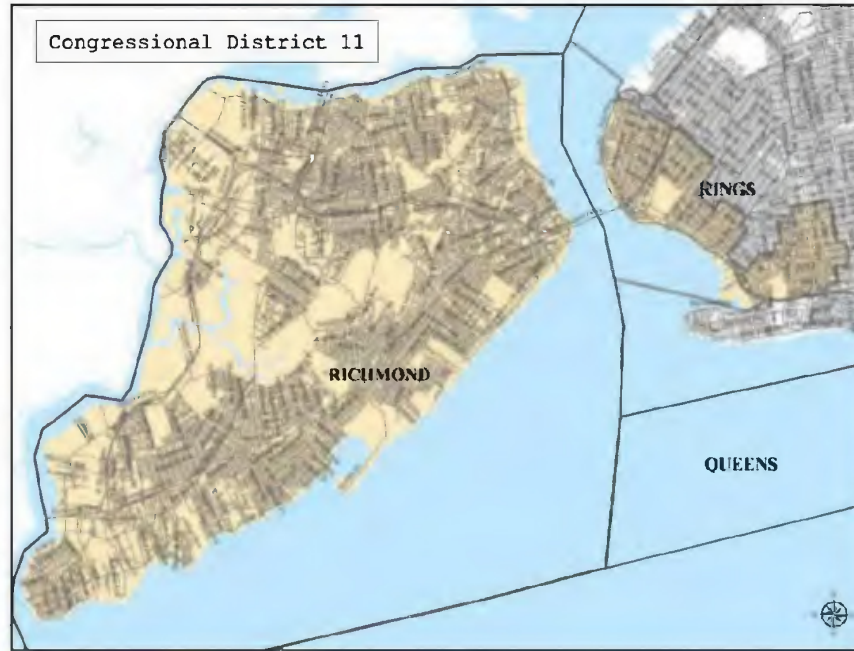
INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

Overlay of Old Congressional District 10 and New Congressional District 10²⁷

²⁷ 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.

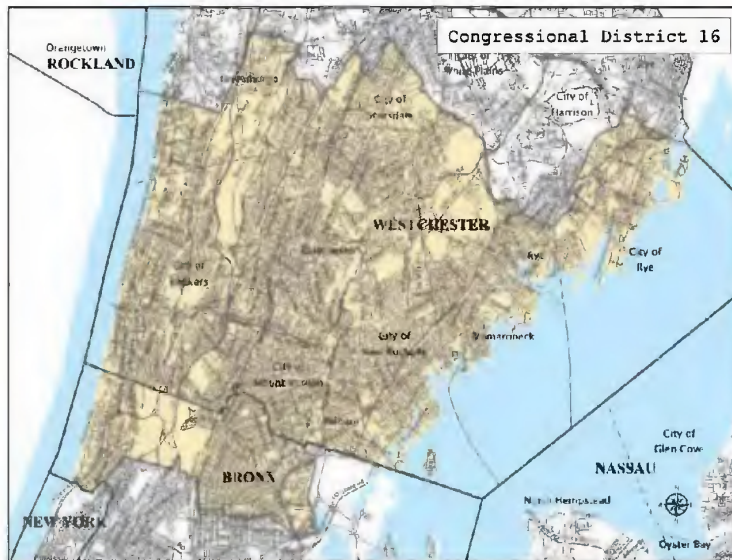
137. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 into a strong Democratic district, making Congressional District 18 a safer Democratic district, without jeopardizing the Democratic Party’s interests in Congressional District 16.

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



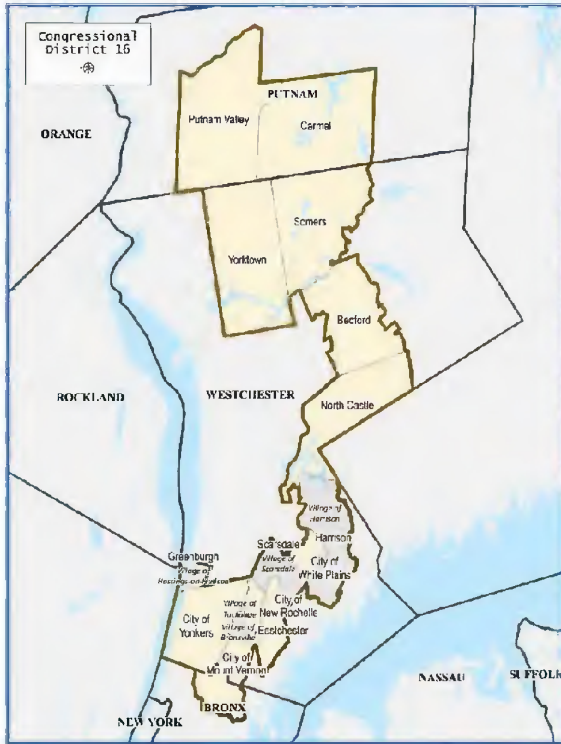
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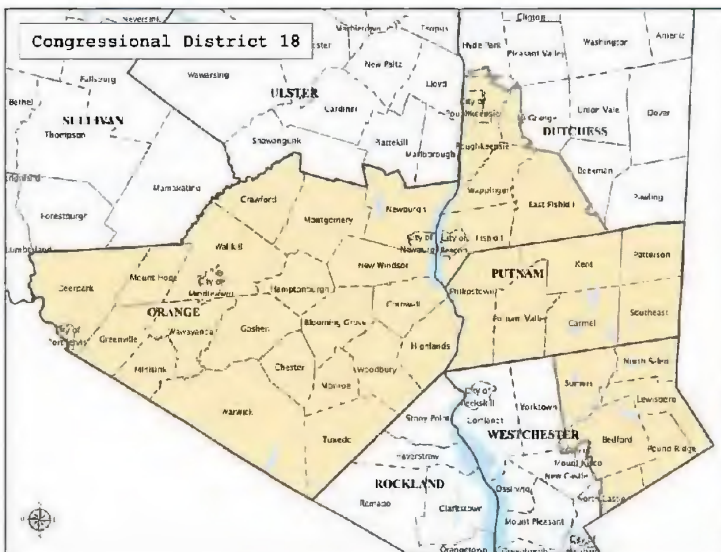
INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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.

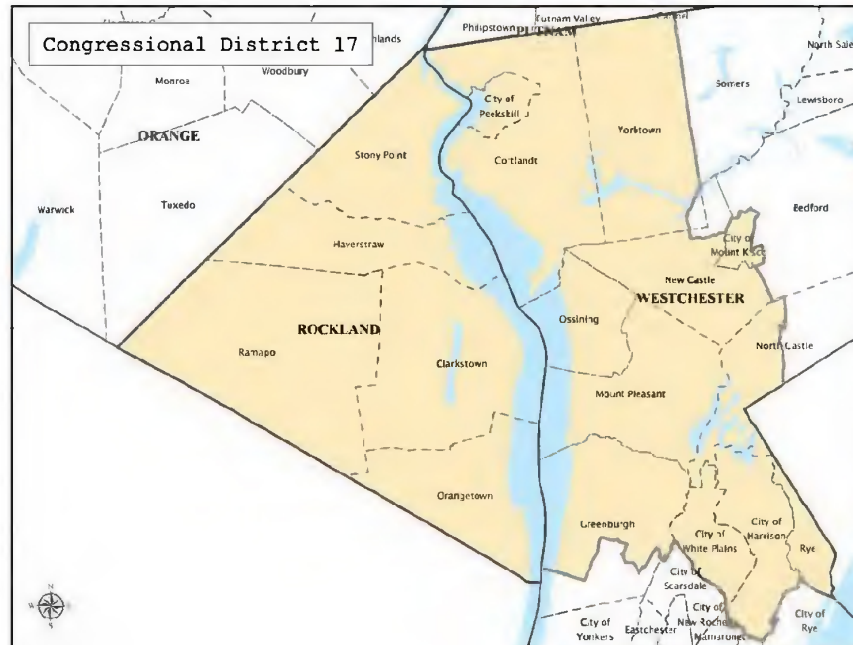
144. The District also includes part of the strongly Democrat city of White Plains.

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.

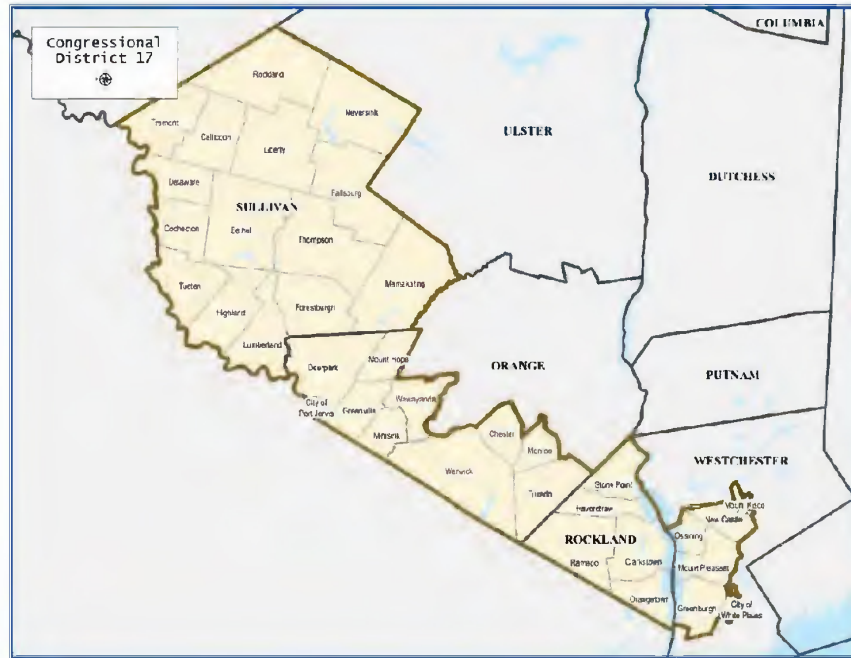
146. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power, without jeopardizing any Democratic districts.

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.

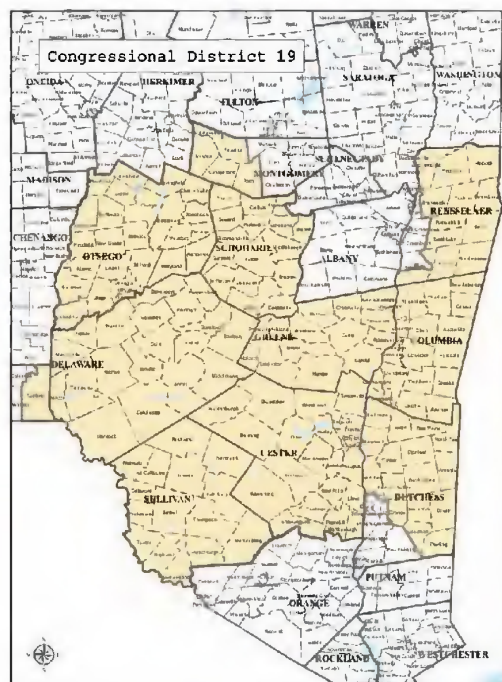
149. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

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

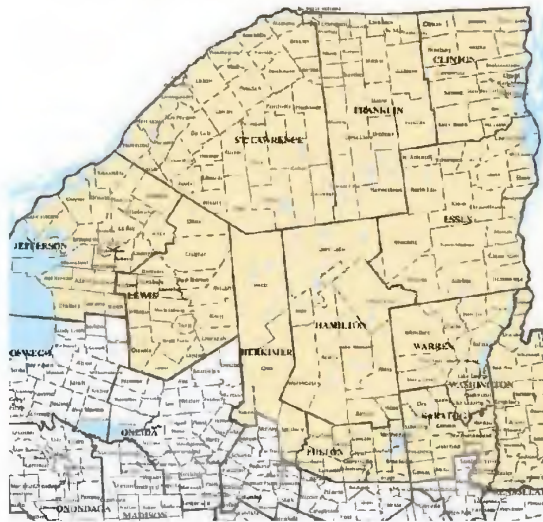


154. The Legislature also gerrymandered Congressional District 21 to pack it with additional Republican voters.

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



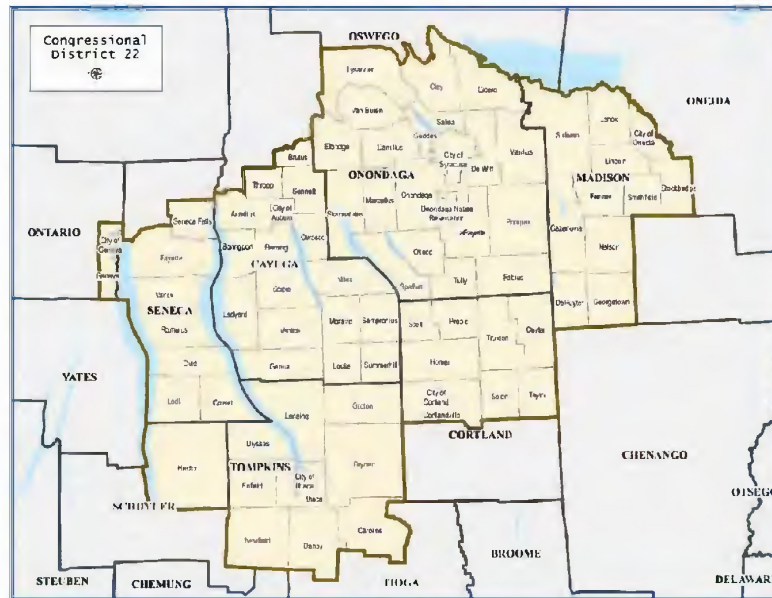
156. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

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



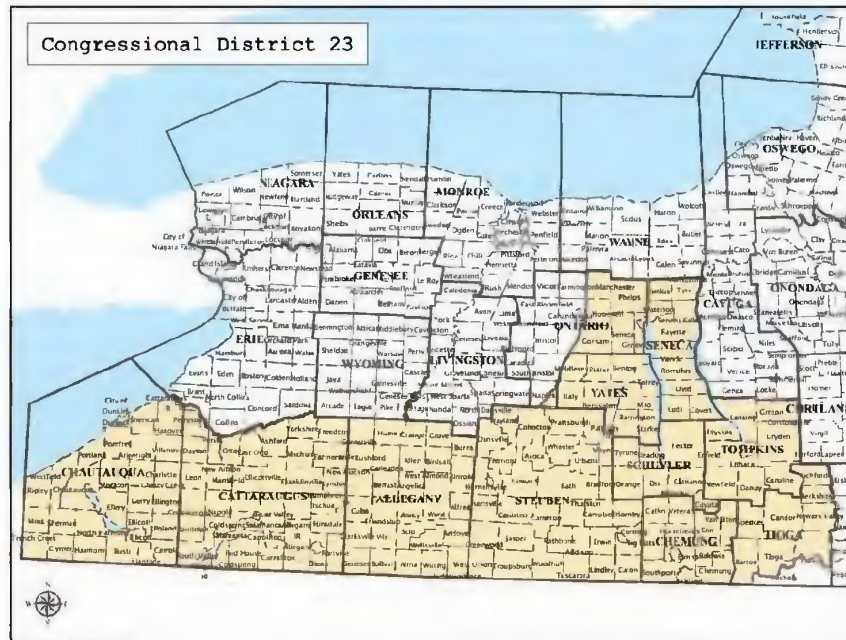
158. The Legislature gerrymandered Congressional District 23 by “packing” as many Republican votes into this district as it could, for partisan gain.

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.

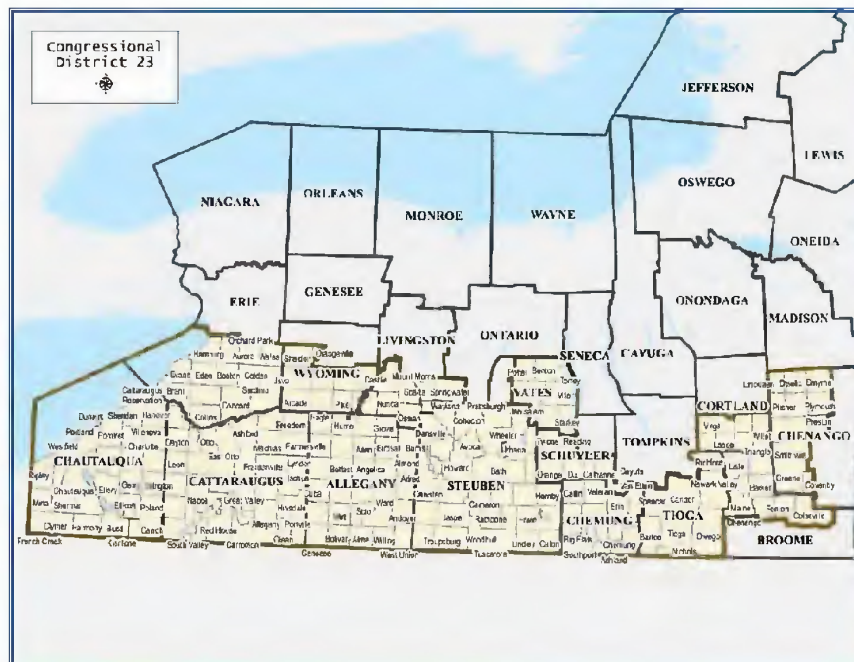
160. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22, in order to flip that district.

161. As a result, Congressional District 23 became less competitive and shifted from a very strong Republican district to an uncontested Republican district.

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.

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").²⁸ 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).²⁹ 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

²⁸ Available at <https://nyirc.gov/submissions>.

²⁹ 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).³⁰

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).³¹ 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.

³⁰ Available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

³¹ Available at 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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NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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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NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

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EXHIBIT C

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NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/08/2022

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

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."¹ 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."² 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."³ Indeed,

¹ 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).

² 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/>.

³ 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.⁴

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."⁵

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

⁴ Amicus Br. for States of N.Y., et al. at 18, *Rucho v. Common Cause*, 558 U.S. ____ (2019) (No. 18-422).

⁵ 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.⁶ 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.⁷

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.

⁶ 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.

⁷ 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).⁸ 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 A14.⁹ 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

⁸Available at <http://observer.com/2010/12/background-how-redistricting-will-reshape-new-yorks-battle-lines/>.

⁹ 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.*¹⁰

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

¹⁰ 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).¹¹

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.

¹¹ 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).¹²

¹² 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).¹³

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.

¹³ 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 Bengier, 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 Bengier, 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 Cjf State’s New Map-Drawing Process*, Gotham Gazette (July 20, 2021);¹⁴ Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).¹⁵

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

¹⁴ Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

¹⁵ 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).¹⁶

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”).¹⁷

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:

¹⁶ Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

¹⁷ 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).¹⁸

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).¹⁹

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

¹⁸ Available at <https://www.nyassembly.gov/av/session/>.

¹⁹ 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).²⁰

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

²⁰ 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).²¹

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

²¹ 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).²²

120. The result is unmistakably gerrymandered maps for Congress and state Senate.²³

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).²⁴ So, even though the New York Constitution prohibits partisan gerrymandering, she noted that the congressional map “reflect[s] a

²² 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>.

²³ 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.

²⁴ 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.

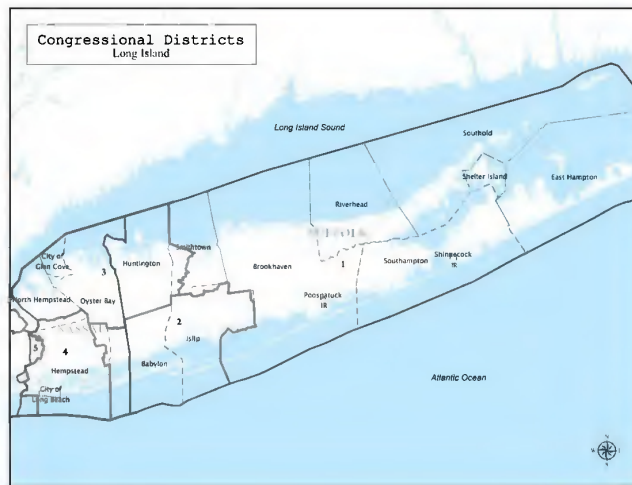
126. In particular, the Legislature placed areas with high concentrations of Republican voters into new Congressional District 2 while moving solidly Democrat communities into Congressional District 1—all the Republican communities in Brookhaven on the south shore are now in District 2, whereas the heavily 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.

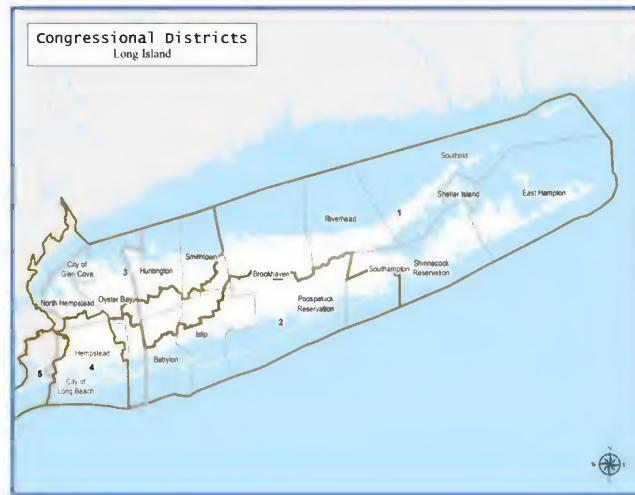
129. Similarly, the redrawing shifted District 2 from a safe Republican district into an outright uncompetitive Republican stronghold.

Map of Prior Congressional Districts 1 & 2²⁵



²⁵ 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.

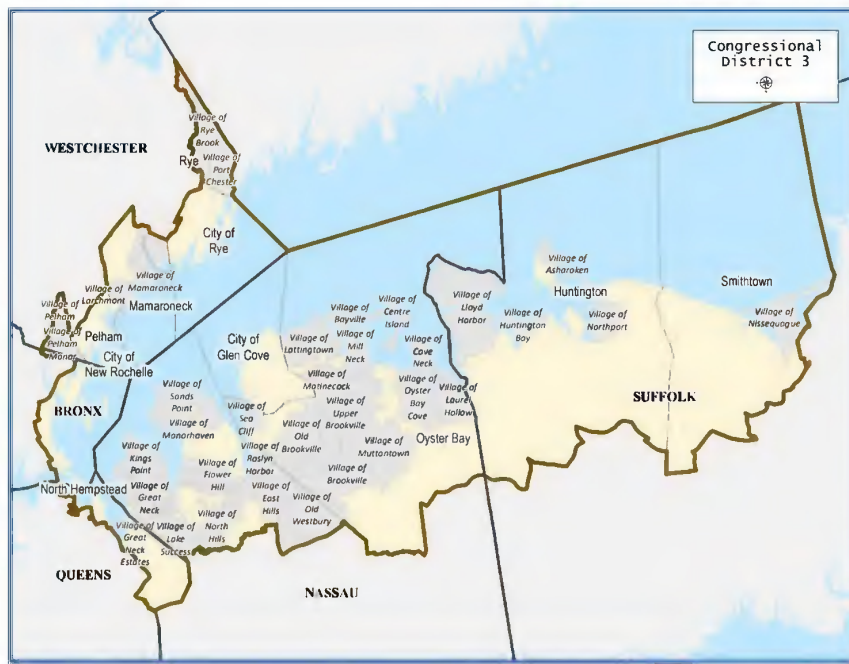
132. This combination of Westchester, with a district largely populated on Suffolk and Nassau counties, makes no sense. These communities have no nexus and share no communities of interest.

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).²⁶ 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.*

²⁶ 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).²⁷

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);²⁸ Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).²⁹

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.

²⁷ Available at https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing.

²⁸ Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

²⁹ 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”³⁰.



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.

³⁰ Available at <https://twitter.com/aaldef/status/1488223479371599876>.

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 10³¹

³¹ 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>.

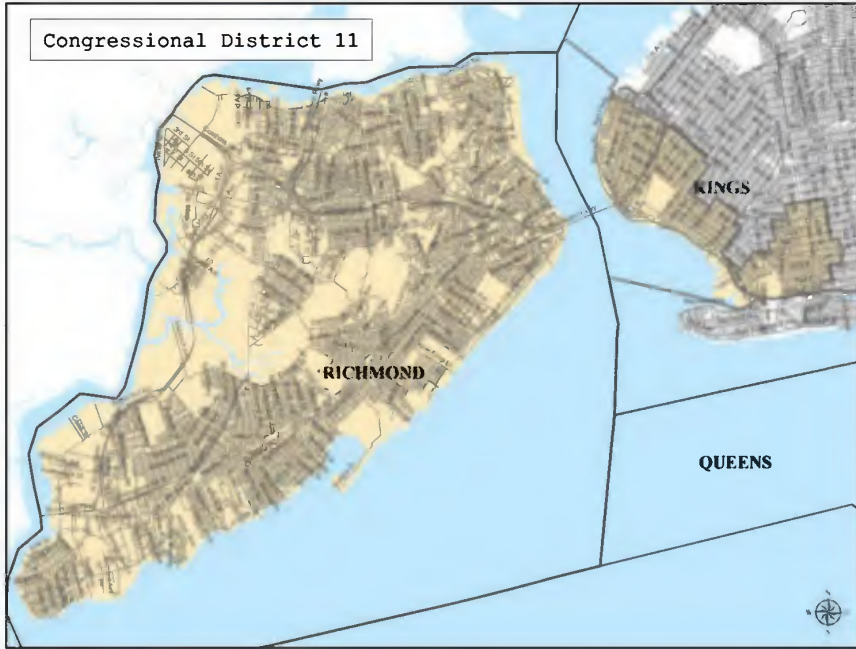
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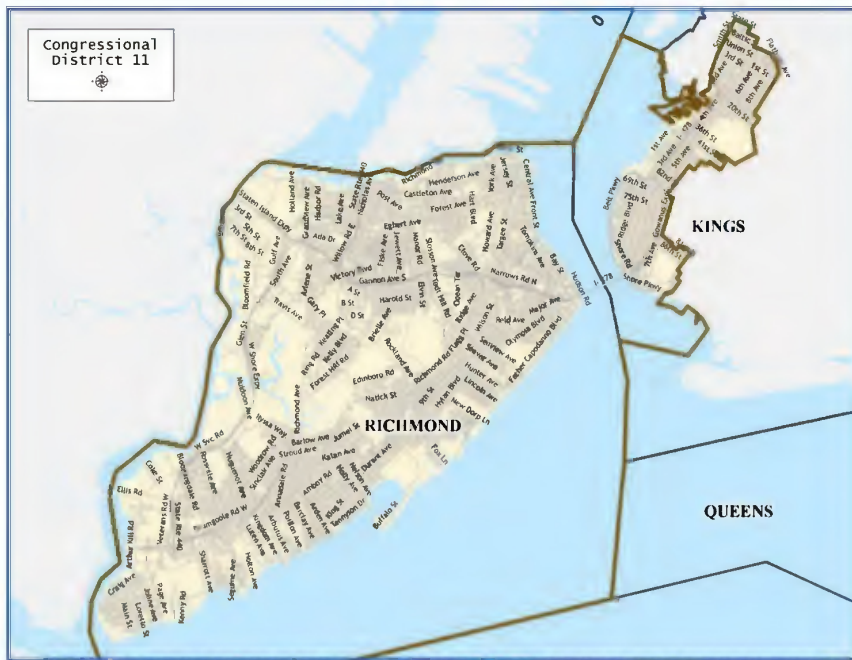
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Map of Old Congressional District 11



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.

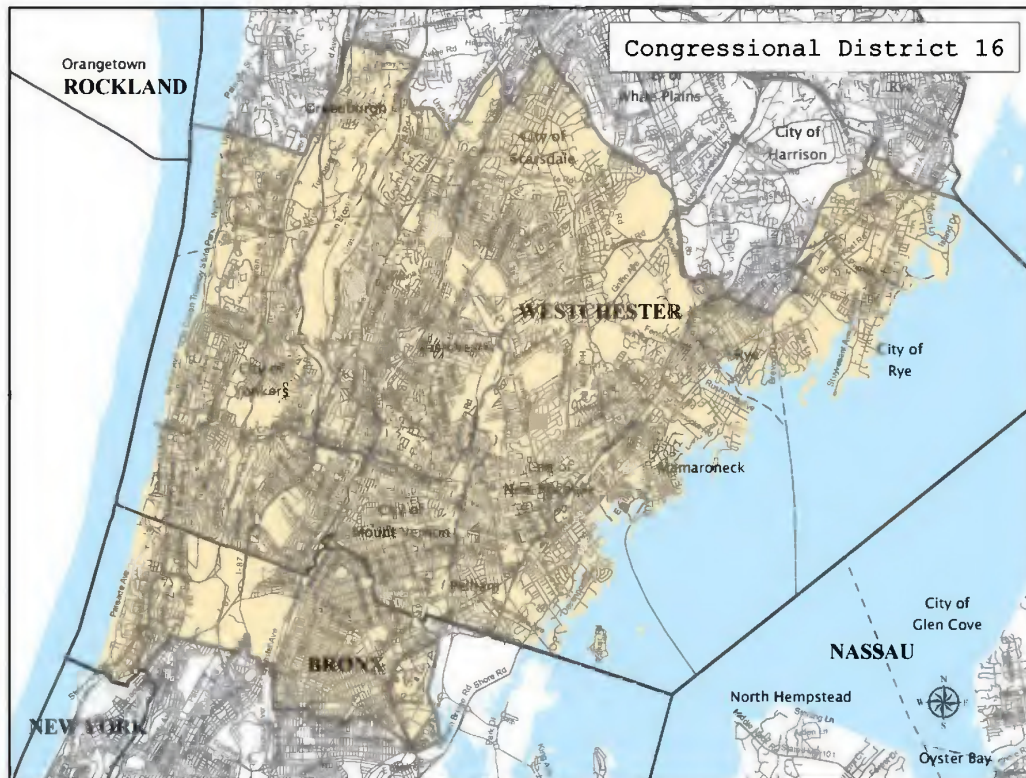
147. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 and places them into a strong Democratic district, making Congressional District 18 a safer Democratic district without jeopardizing the Democratic Party’s interests in Congressional 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.

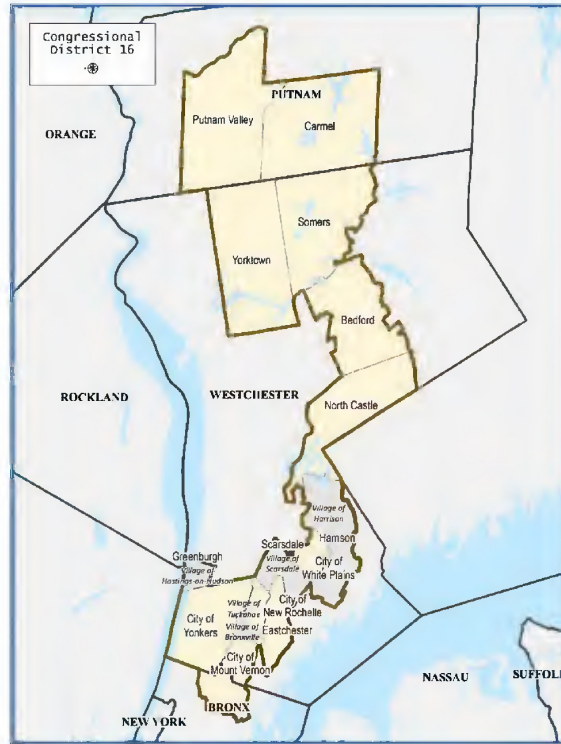
149. The legislative Democrats made these shifts not only to shore up their party’s chances in Congressional District 18, but also to protect incumbent Democratic Congressman Sean Maloney, the newly elected chair of the Democratic Congressional Campaign Committee.

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.

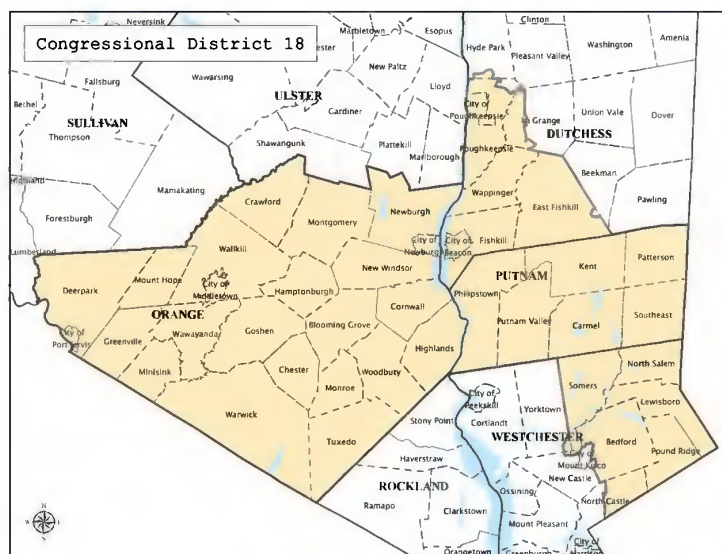
Map of Old Congressional District 16



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.

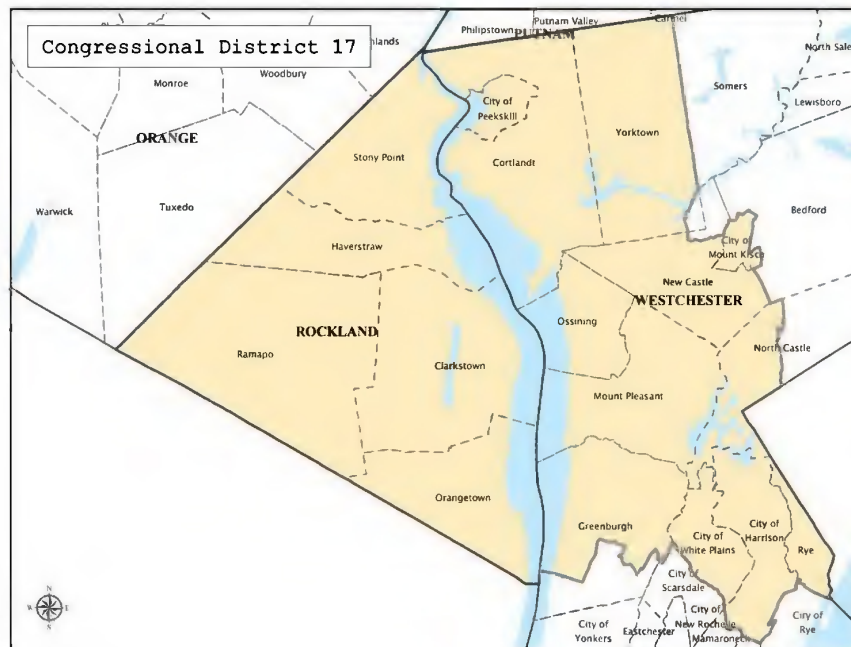
154. The District also includes part of the strongly Democrat city of White Plains.

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.

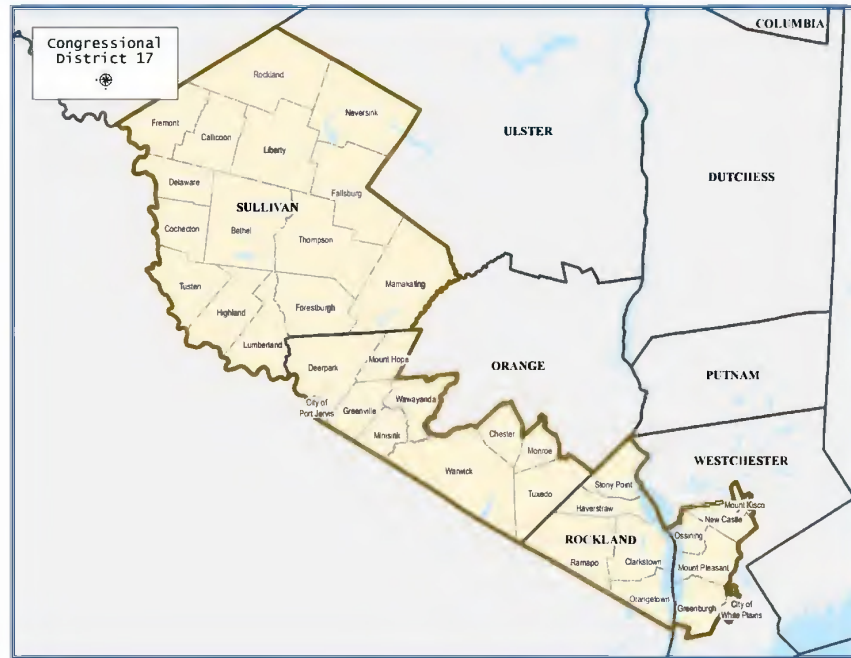
156. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power without jeopardizing any Democratic districts.

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.

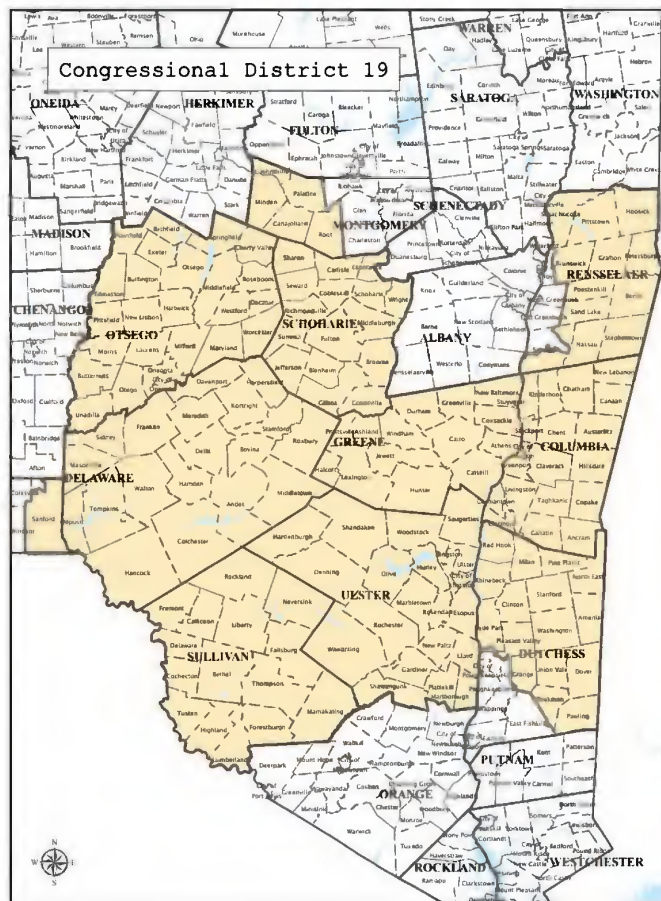
159. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

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

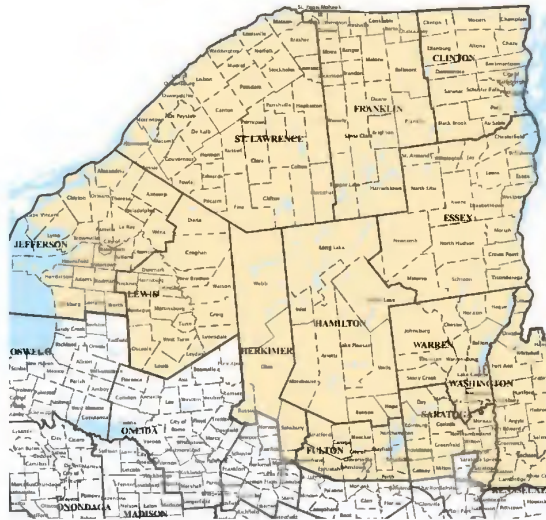


164. The Legislature also gerrymandered Congressional District 21 by packing it with additional Republican voters.

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

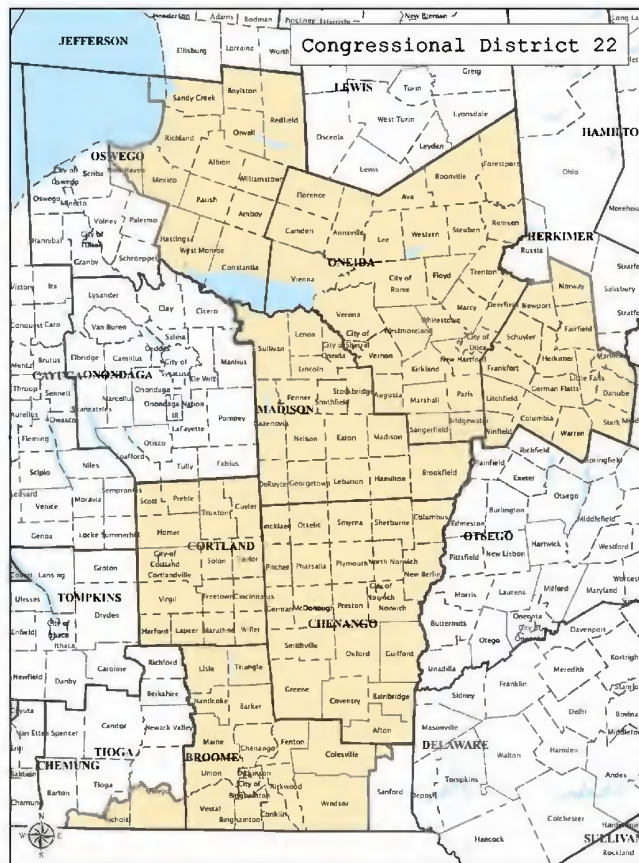
Congressional District 21



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



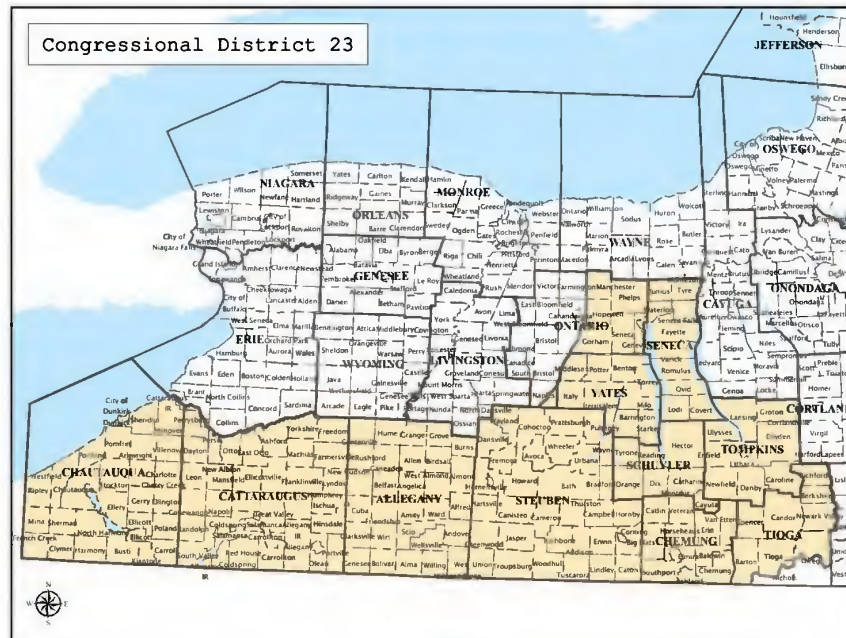
168. The Legislature gerrymandered Congressional District 23 by “packing” as many Republican votes into this district as it could, again for partisan gain.

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.

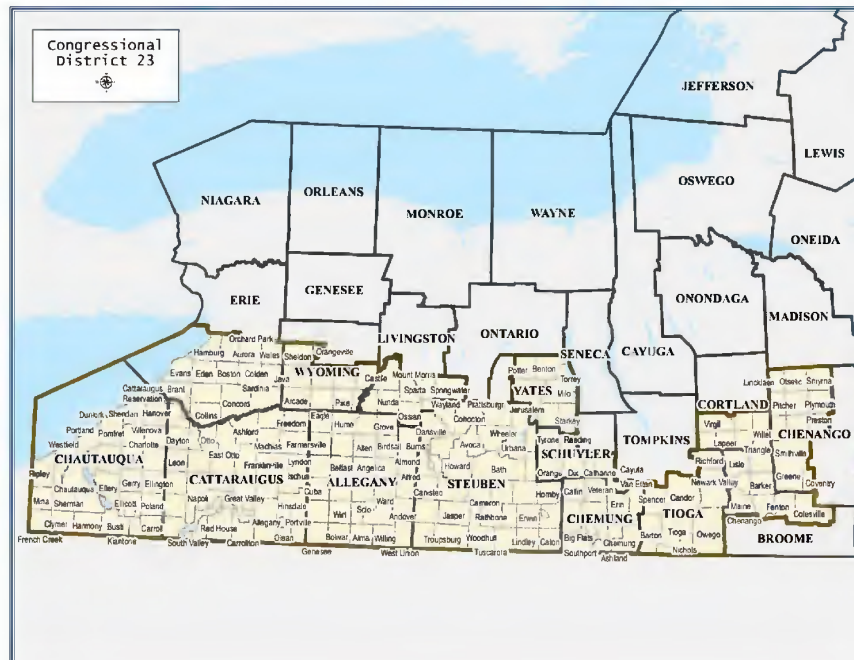
170. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22 to flip that district.

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.

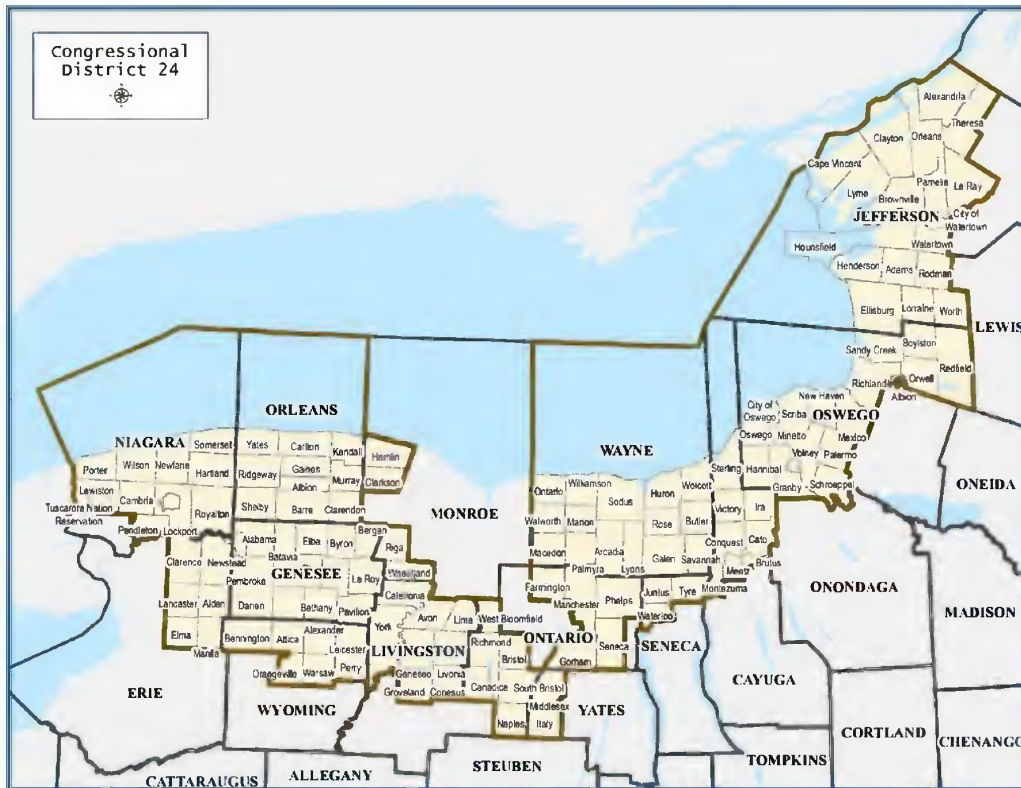
NYSCEF DOC. NO. 181

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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.

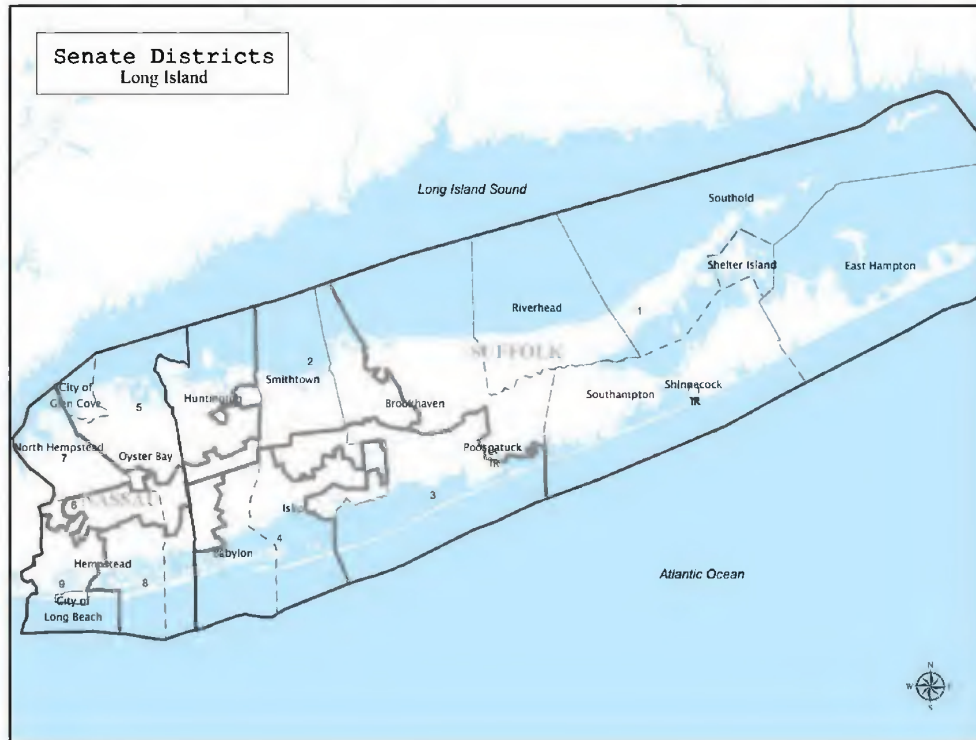
188. The Legislature also increased the Democratic Party's advantage in state Senate District 7, and in state Senate District 9, the Legislature removed the heavily Orthodox Jewish communities known as the Five Towns, which have a history of voting strongly Republican, from the district and then moved 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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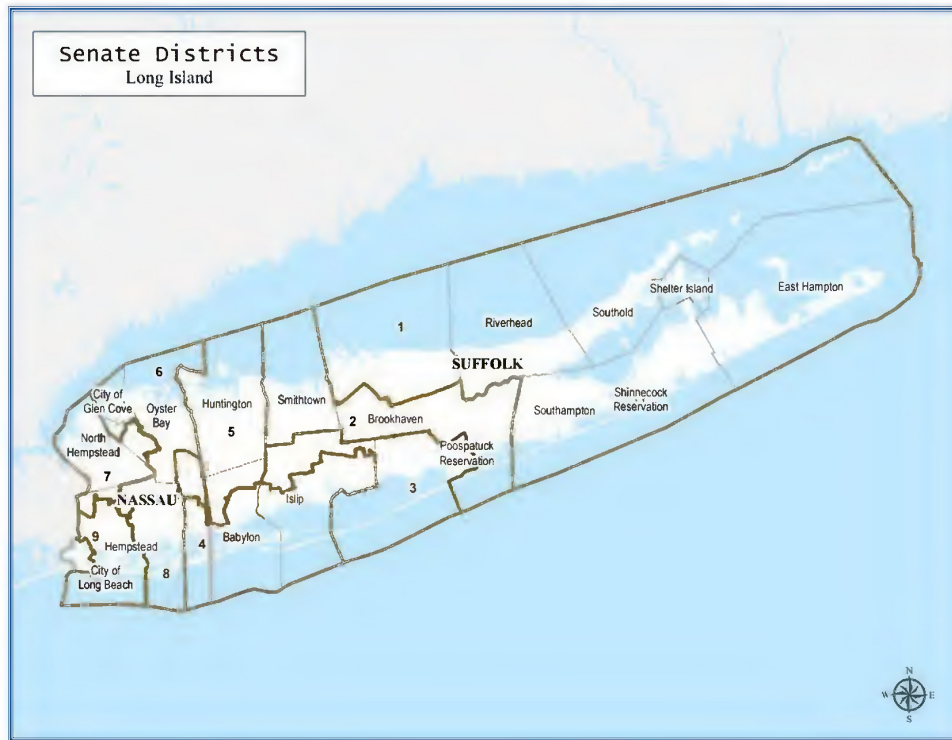
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INDEX NO. E2022-0116CV

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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.

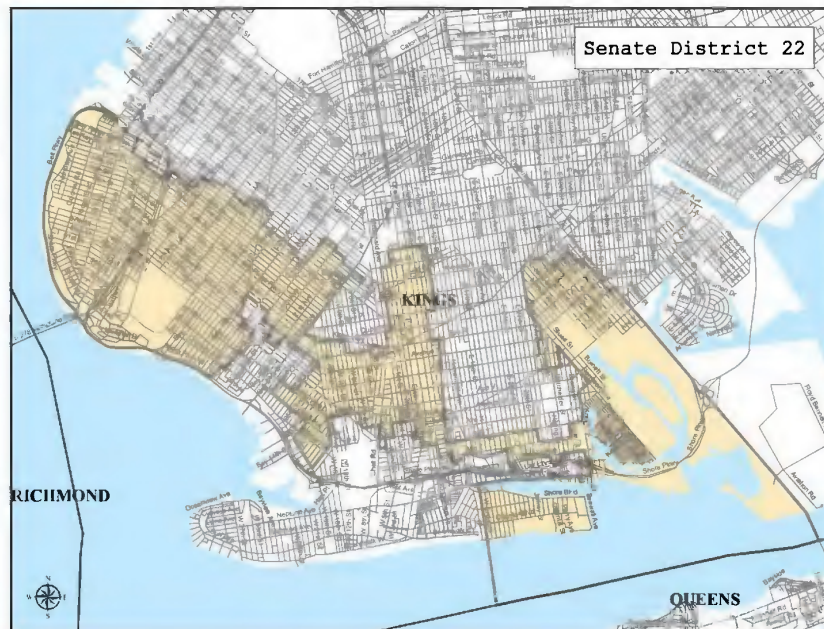
190. Moreover, the Legislature failed to respect the longstanding division of Nassau County from New York City by breaking the Nassau County-Queens County border, where there had been no prior cross-border state Senate districts breaching that line. By moving the Five Towns to a Queens-based Senate district, 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.

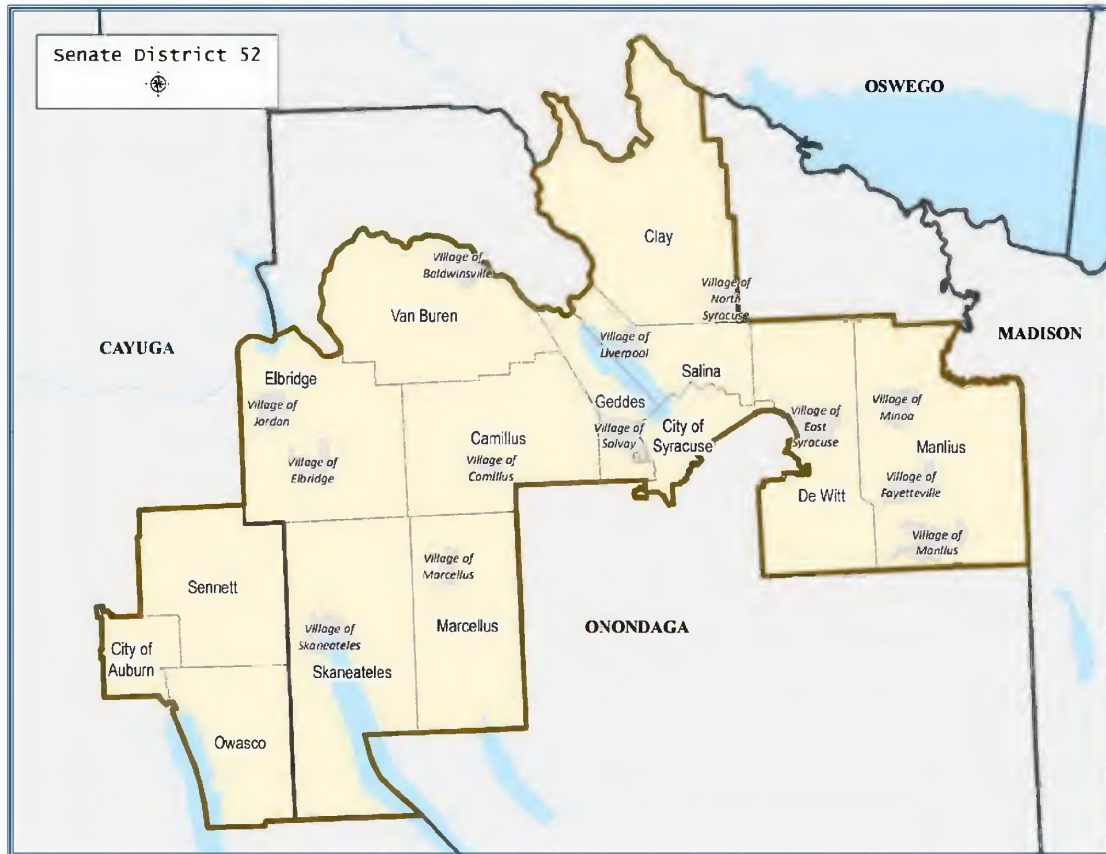
199. The Legislature's drawing of new state Senate District 51 lumps both Republican Senator James Tedisco and Republican Senator Peter Oberacker into the same district. The Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican 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



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").³² 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).³³ 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).³⁴

³² Available at <https://nyirc.gov/submissions>.

³³ Available at <https://queenseagle.com/all/state-legislature-shares-version-of-congressional-redistricting-map>.

³⁴ 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).³⁵ 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).³⁶

³⁵ Available at https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html.

³⁶ 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.

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 181

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/08/2022

Dated: New York, New York

February 8, 2022

TROUTMAN PEPPER HAMILTON
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**EXHIBIT F TO MOSKOWITZ AFFIRMATION -
SUBPOENA DUCES TECUM AD TESTIFICANDUM TO ERIC KATZ,
DATED MARCH 9, 2022 [1814 - 1975]**

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NYSCEF DOC. NO. 182

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: **Eric Katz**
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

NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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 Eric Katz 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,

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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.

1824

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

EXHIBIT B

FILED: STEUBEN COUNTY CLERK 02/03/2022 02:02 PM

NYSCEF DOC. NO. 182

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."¹ 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."² 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."³ 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.

¹ 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).

² 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/>.

³ 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.⁴

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.

⁴ 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."⁵

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.

⁵ 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 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.

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, *Backgrounder: How Redistricting Will Reshape New York’s Battle Lines*, Observer (Dec. 27, 2010).⁶ 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 A14.⁷ 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

⁶Available at <http://observer.com/2010/12/backgrounder-how-redistricting-will-reshape-new-yorks-battle-lines/>.

⁷ 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.*⁸

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

⁸ 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).⁹

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

⁹ 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).¹⁰

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.

¹⁰ 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).¹¹

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:

¹¹ 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);¹² Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).¹³

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).

¹² Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

¹³ 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).¹⁴

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”).¹⁵

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.

¹⁴ Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

¹⁵ 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).¹⁶

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).¹⁷

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

¹⁶ Available at <https://www.nyassembly.gov/av/session/>.

¹⁷ 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).¹⁸

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

¹⁸ 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).¹⁹

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.

¹⁹ 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).²⁰ 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.

²⁰ 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.

Map of Prior Congressional Districts 1 & 2²¹



Map of New Congressional Districts 1 & 2



²¹ 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).²² 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.*

²² 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).²³

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);²⁴ Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).²⁵

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.

²³ Available at https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing.

²⁴ Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

²⁵ 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”²⁶:



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.

²⁶ Available at <https://twitter.com/aaldef/status/1488223479371599876>.

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



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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

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Map of Old Congressional District 10



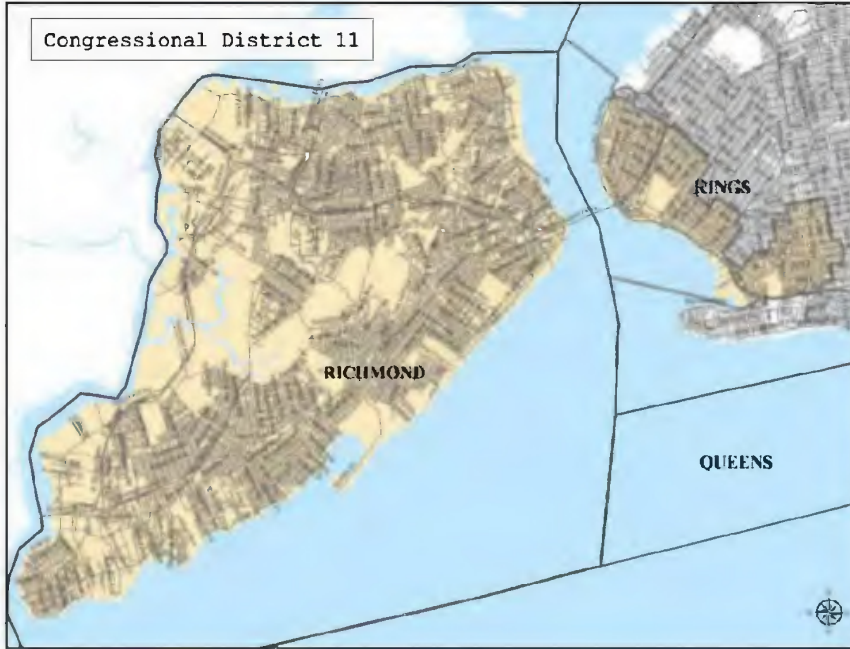
Map of New Congressional District 10



Overlay of Old Congressional District 10 and New Congressional District 10²⁷

²⁷ 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.

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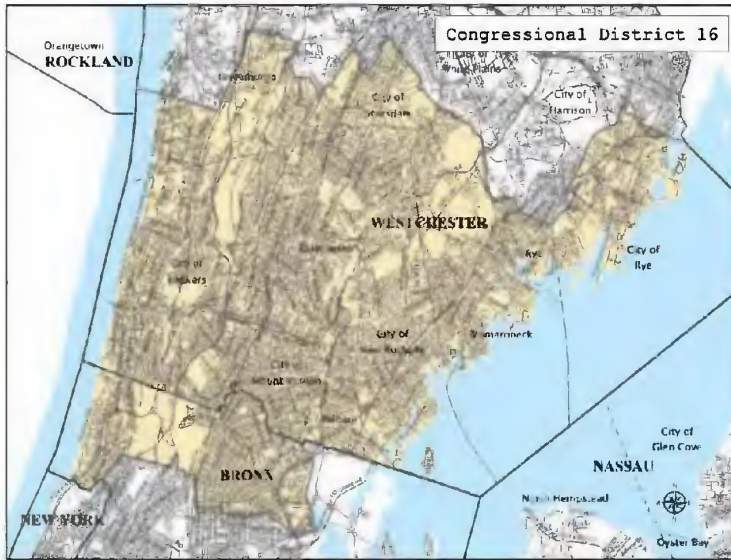
NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

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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.

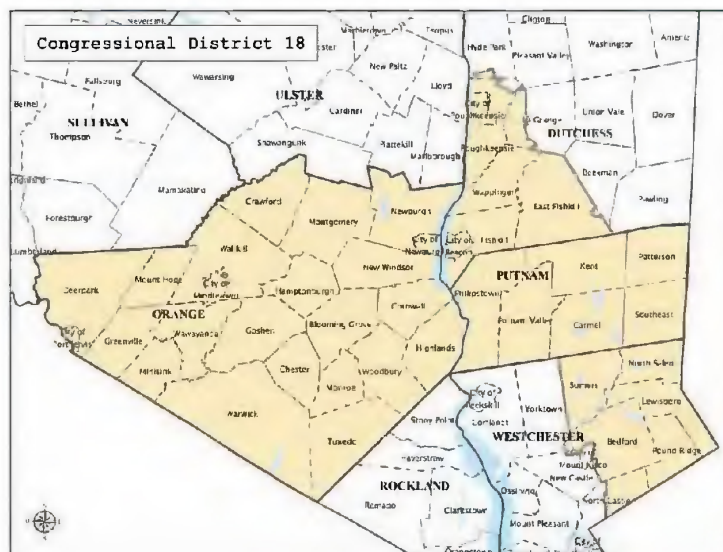
Map of Old Congressional District 16



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.

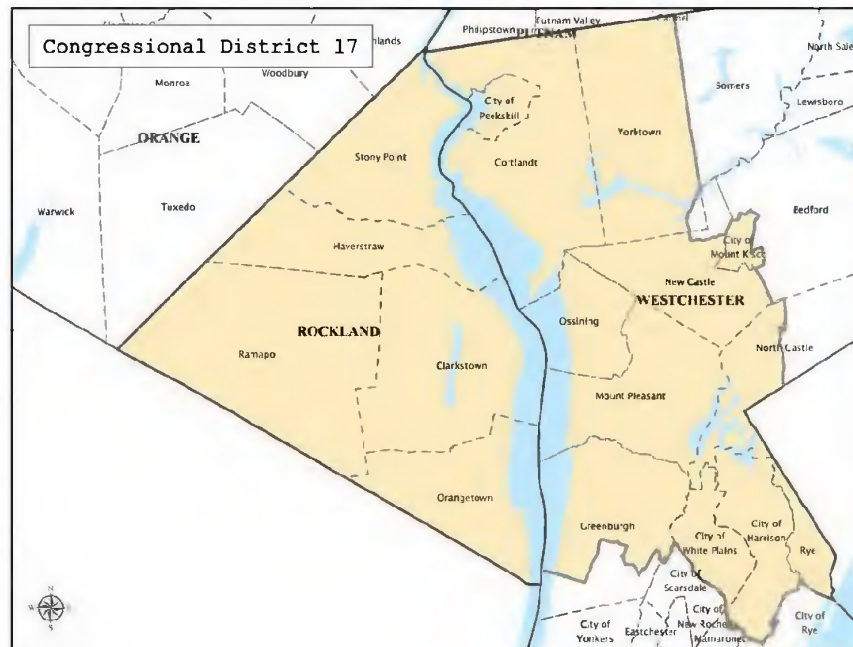
144. The District also includes part of the strongly Democrat city of White Plains.

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.

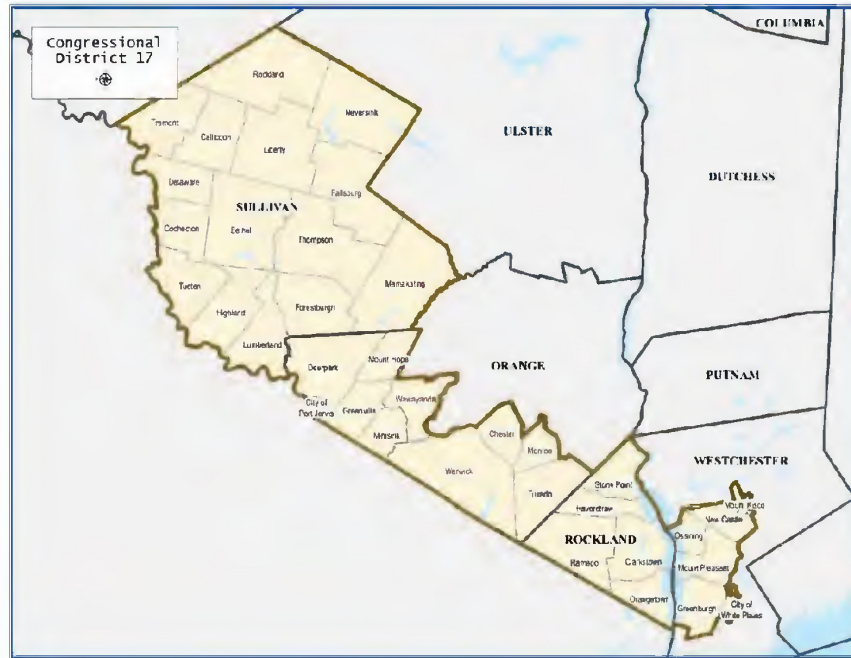
146. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power, without jeopardizing any Democratic districts.

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.

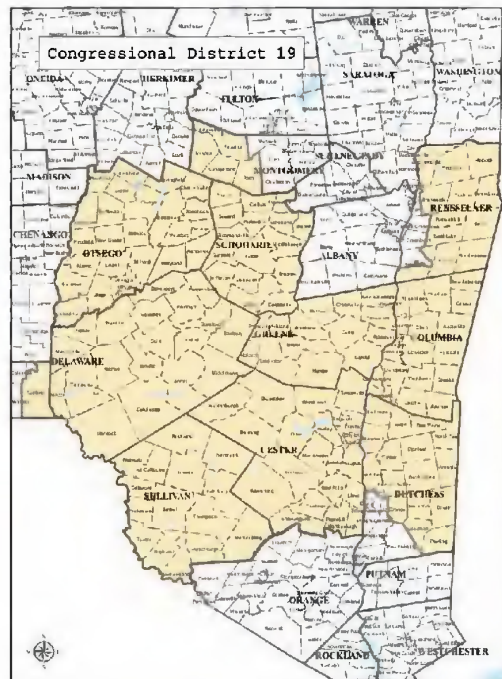
149. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

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

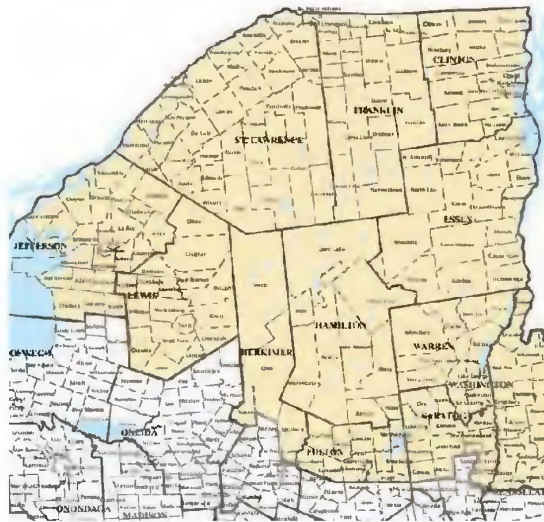


154. The Legislature also gerrymandered Congressional District 21 to pack it with additional Republican voters.

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



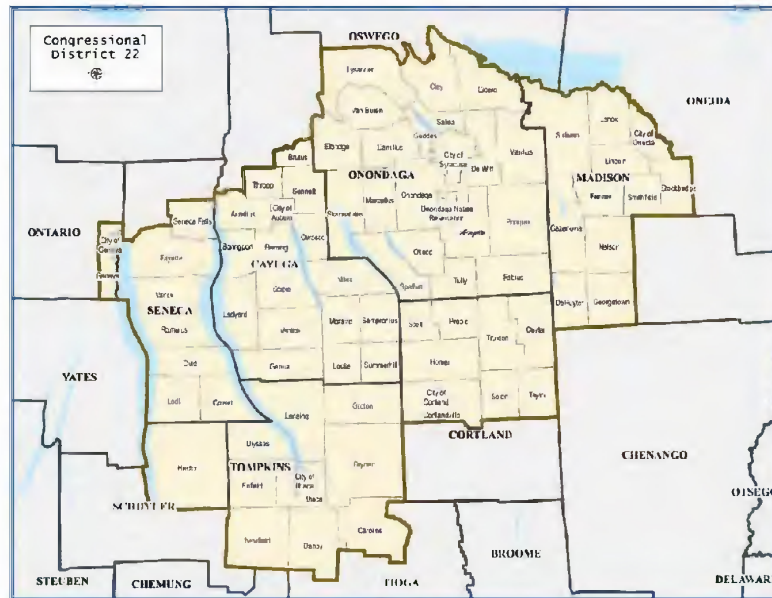
156. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

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



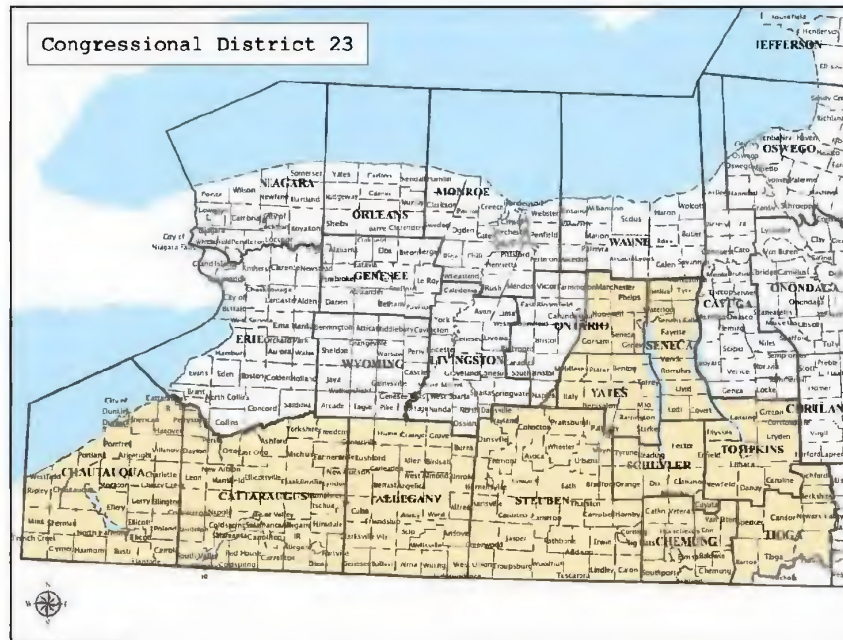
158. The Legislature gerrymandered Congressional District 23 by “packing” as many Republican votes into this district as it could, for partisan gain.

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.

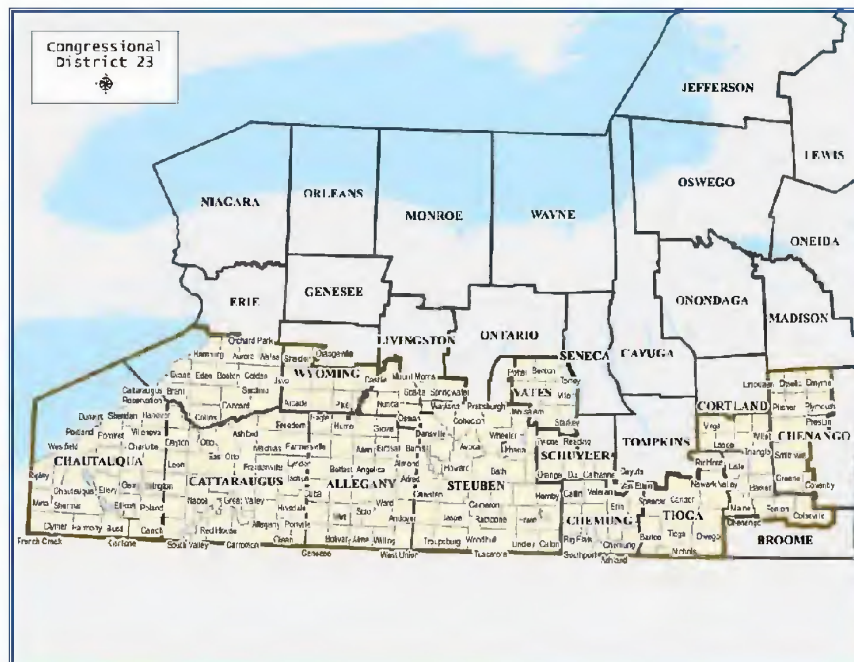
160. The old district also included some heavily Democratic areas in Tompkins County, but the Legislature removed those areas, as noted above, placing them in Congressional District 22, in order to flip that district.

161. As a result, Congressional District 23 became less competitive and shifted from a very strong Republican district to an uncontested Republican district.

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.

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”).²⁸ 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).²⁹ 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

²⁸ Available at <https://nyirc.gov/submissions>.

²⁹ 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).³⁰

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).³¹ 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.

³⁰ Available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

³¹ Available at 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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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/03/2022

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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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

EXHIBIT C

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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

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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
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."¹ 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."² 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."³ Indeed,

¹ 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).

² 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/>.

³ 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.⁴

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."⁵

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

⁴ Amicus Br. for States of N.Y., et al. at 18, *Rucho v. Common Cause*, 558 U.S. ____ (2019) (No. 18-422).

⁵ 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.⁶ 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.⁷

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.

⁶ 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.

⁷ 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, *Backgrounder: How Redistricting Will Reshape New York’s Battle Lines*, Observer (Dec. 27, 2010).⁸ 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 A14.⁹ 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

⁸Available at <http://observer.com/2010/12/backgrounder-how-redistricting-will-reshape-new-yorks-battle-lines/>.

⁹ 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.*¹⁰

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

¹⁰ 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).¹¹

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.

¹¹ 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).¹²

¹² 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).¹³

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.

¹³ 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 Bengier, 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 Bengier, 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);¹⁴ Sarah Darmanjian, *NY’s Independent Redistricting Commission Clinches \$4M Budget*, News10 (Apr. 12, 2021).¹⁵

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

¹⁴ Available at <https://www.gothamgazette.com/state/10664-new-york-redistricting-commission-set-to-kick-off>.

¹⁵ 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).¹⁶

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”).¹⁷

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:

¹⁶ Available at <https://www.cityandstateny.com/policy/2021/09/new-yorks-first-draft-2022-redistricting-maps-have-been-released/185374/>.

¹⁷ 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).¹⁸

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).¹⁹

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

¹⁸ Available at <https://www.nyasembly.gov/av/session/>.

¹⁹ 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).²⁰

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

²⁰ 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).²¹

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

²¹ 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).²²

120. The result is unmistakably gerrymandered maps for Congress and state Senate.²³

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).²⁴ So, even though the New York Constitution prohibits partisan gerrymandering, she noted that the congressional map “reflect[s] a

²² 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>.

²³ 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.

²⁴ 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.

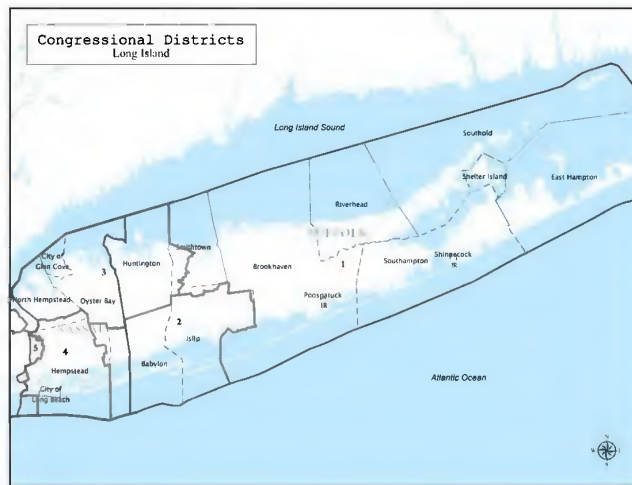
126. In particular, the Legislature placed areas with high concentrations of Republican voters into new Congressional District 2 while moving solidly Democrat communities into Congressional District 1—all the Republican communities in Brookhaven on the south shore are now in District 2, whereas the heavily 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.

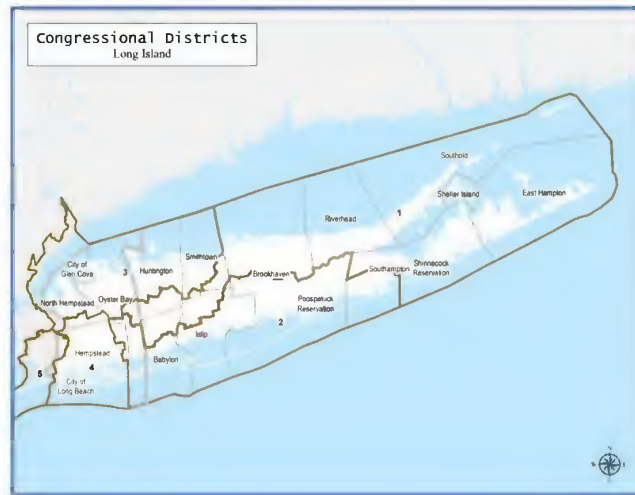
129. Similarly, the redrawing shifted District 2 from a safe Republican district into an outright uncompetitive Republican stronghold.

Map of Prior Congressional Districts 1 & 2²⁵



²⁵ 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.

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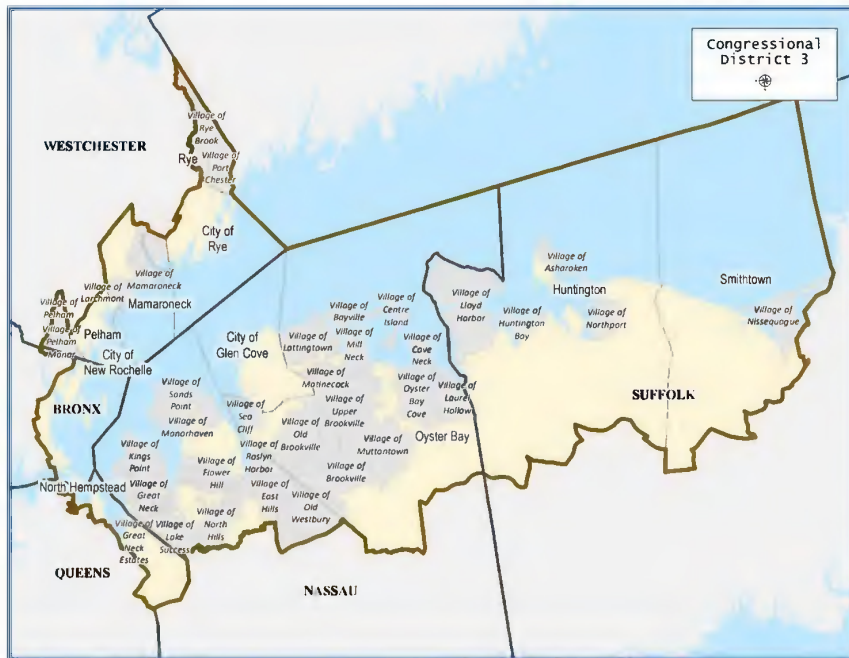
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Map of Old Congressional District 3



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).²⁶ 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.*

²⁶ 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).²⁷

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);²⁸ Jeff Coltin, *Rep. Nicole Malliotakis is (Probably) Screwed*, City & State New York (Jan. 31, 2022).²⁹

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.

²⁷ Available at https://docs.google.com/document/d/16jJFKDH-_U8P5aAsjwEOCQaLZSIXsAkTnaZiW9xaCMs/edit?usp=sharing.

²⁸ Available at <https://nypost.com/2022/01/27/dems-plan-to-topple-gop-rep-nicole-malliotakis-in-redistricting-plan/>.

²⁹ 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”³⁰.



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.

³⁰ Available at <https://twitter.com/aaldef/status/1488223479371599876>.

1927

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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

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Map of Old Congressional Districts 8, 9, 10, & 11



Map of New Congressional Districts 8, 9, 10, & 11



1928

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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

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Map of Old Congressional District 8



Map of New Congressional District 8



1929

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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

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Map of Old Congressional District 9



Map of New Congressional District 9



1930

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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

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Map of Old Congressional District 10



Map of New Congressional District 10



Overlay of Old Congressional District 10 and New Congressional District 10³¹

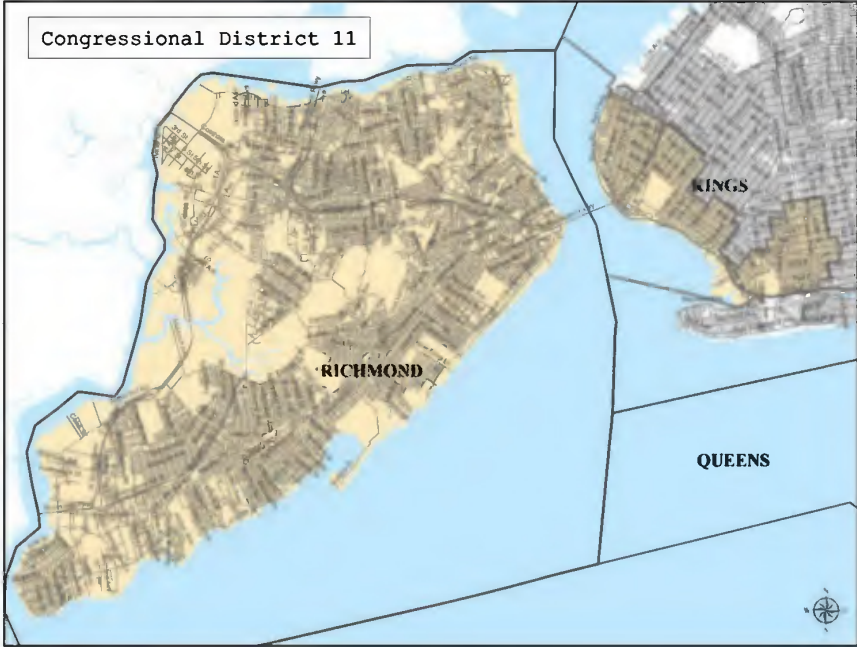
³¹ Nicholas Fandos, *How N.Y. Democrats Came Up With Their Gerrymandered Districts on Their New Map*, N.Y. Times (Jan. 31, 2022), available at <https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html>.

1932

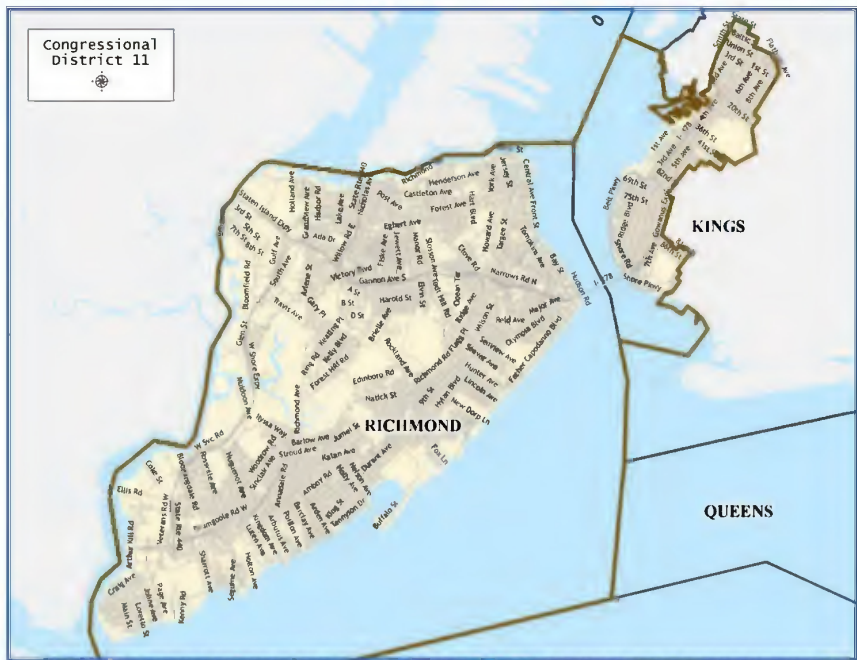
NYSCEF DOC. NO. 182

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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.

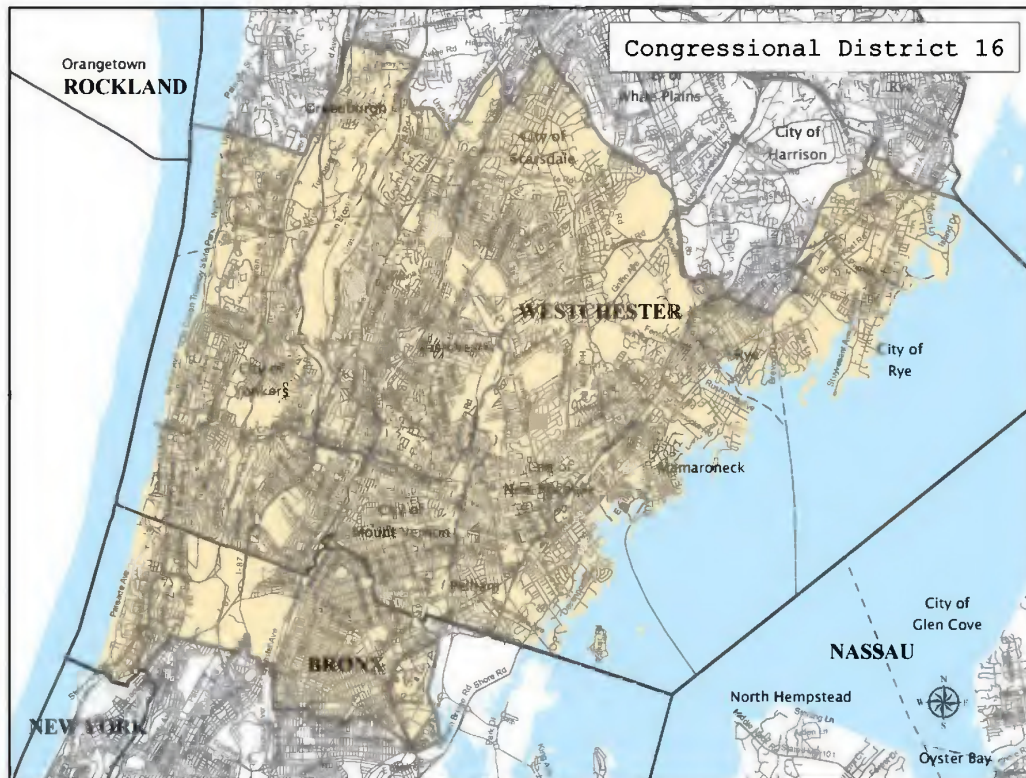
147. Furthermore, the gerrymander of Congressional District 16 removes Republican voters from Congressional District 18 and places them into a strong Democratic district, making Congressional District 18 a safer Democratic district without jeopardizing the Democratic Party’s interests in Congressional 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.

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



1935

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NYSCEF DOC. NO. 182

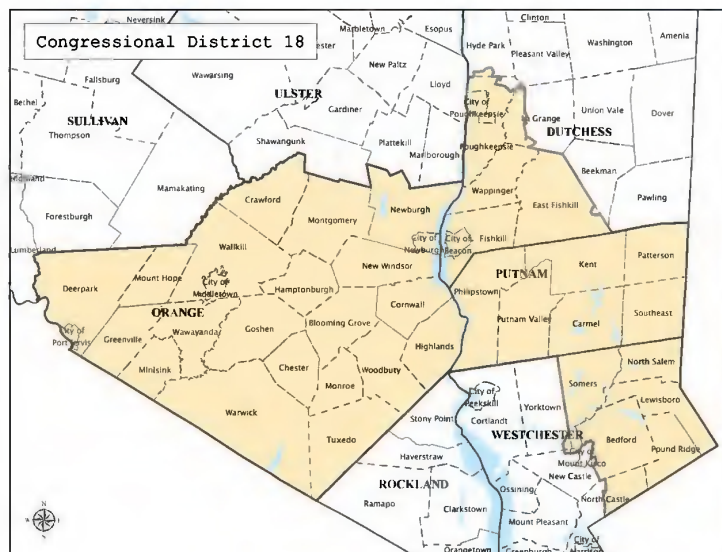
INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/08/2022

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.

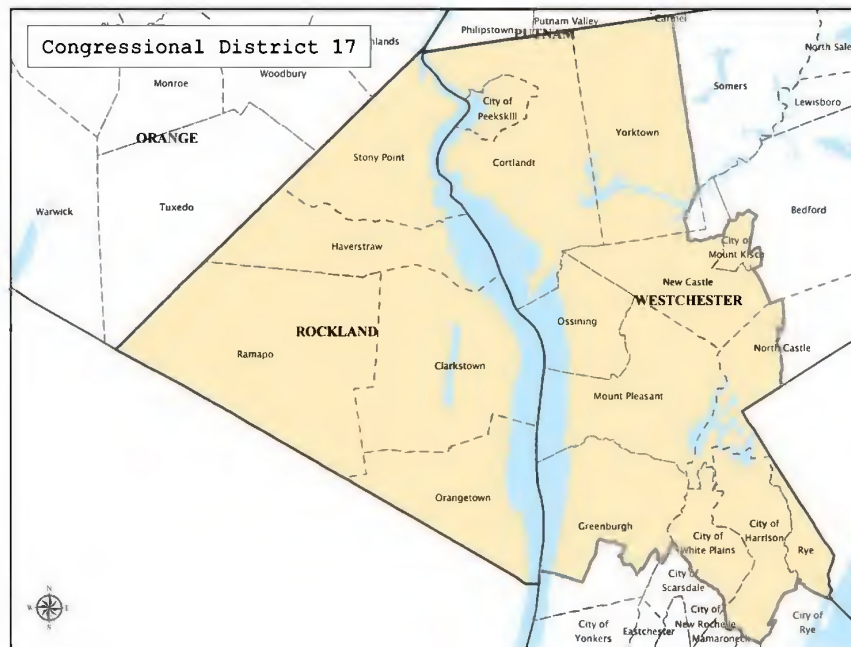
154. The District also includes part of the strongly Democrat city of White Plains.

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.

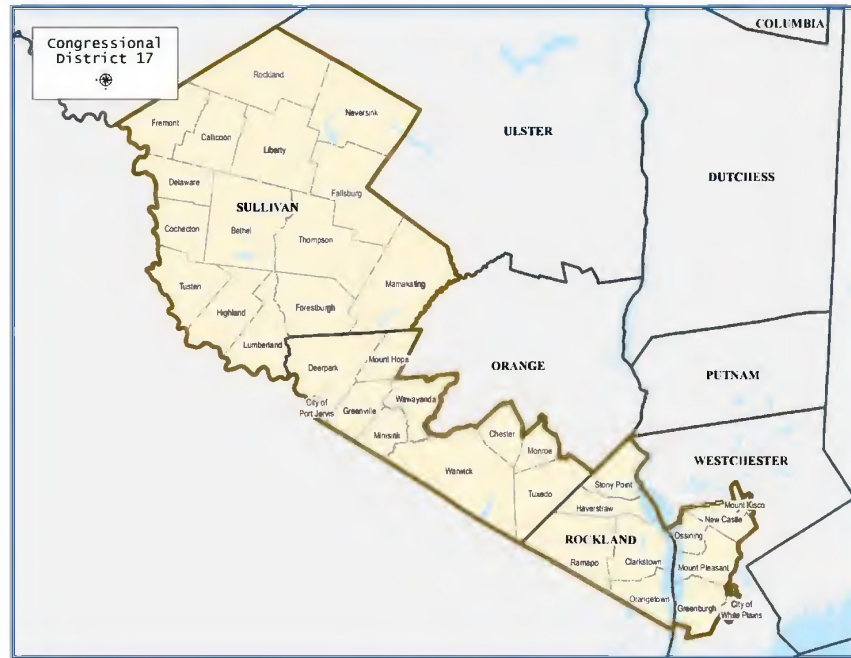
156. The resulting new District cracks those conservative communities, spreading Republican voters among multiple districts to decrease their voting power without jeopardizing any Democratic districts.

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.

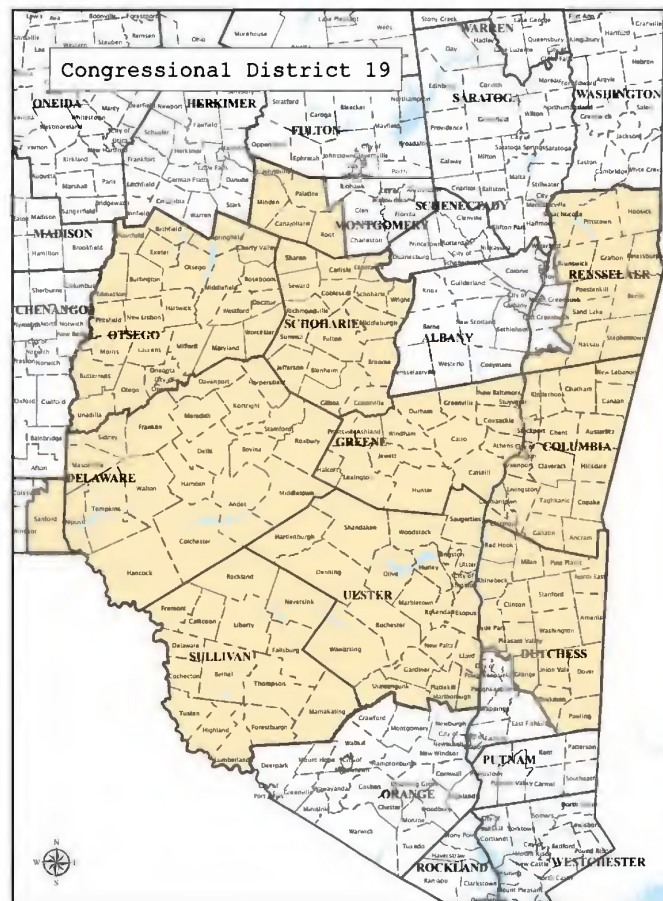
159. The new Congressional District 19 extends through the Republican communities in Columbia and Greene counties to pick up part of Albany County—specifically the Town of Bethlehem—to add Democrat voters and a new county split.

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.

1941

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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/08/2022

Map of Old Congressional District 21

Congressional District 21



Map of New Congressional District 21

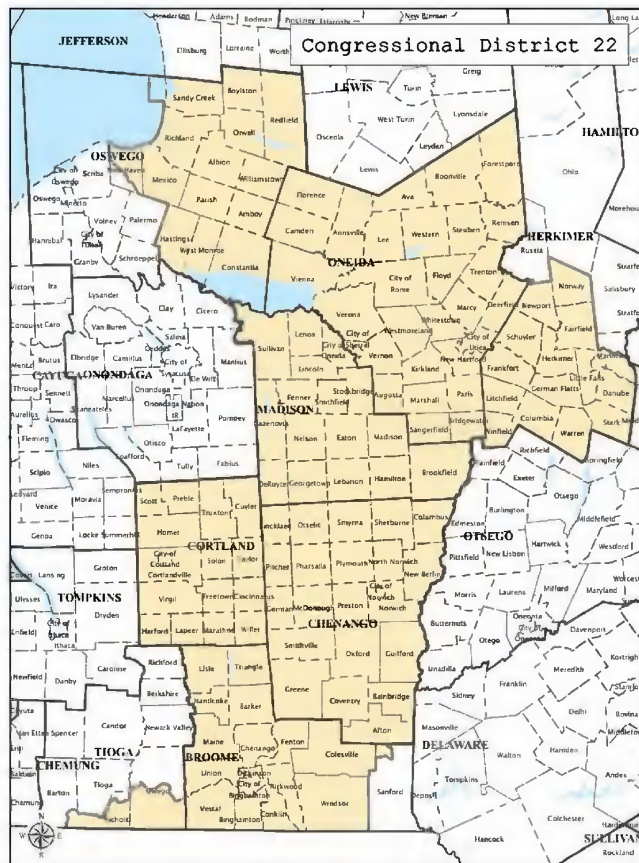
Congressional District 21



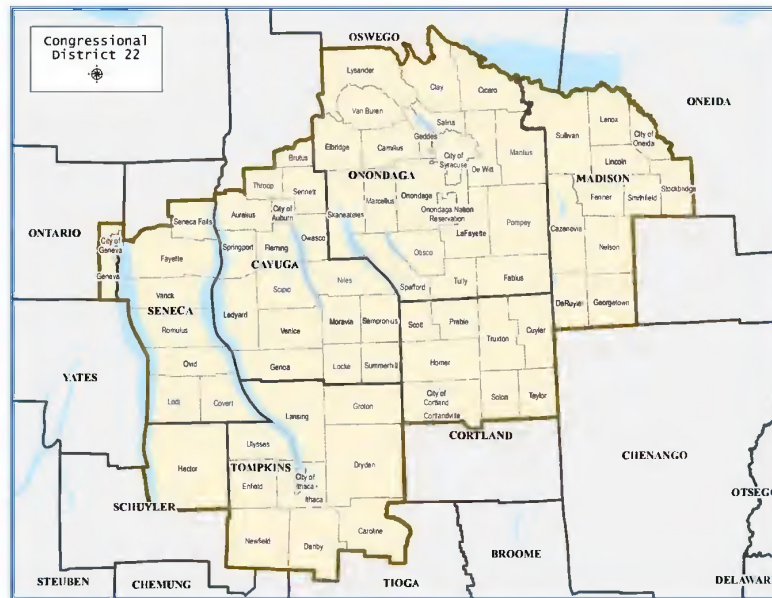
166. In Congressional District 22, the Legislature removed Republican areas and replaced them with Tompkins County, including the city of Ithaca, to flip the district from a competitive Republican district to a strong Democratic one.

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.

1944

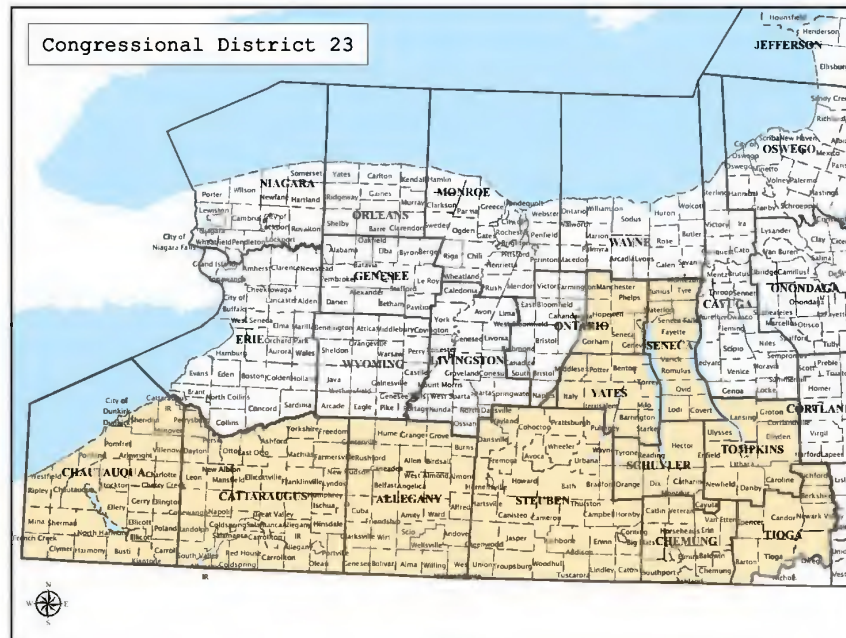
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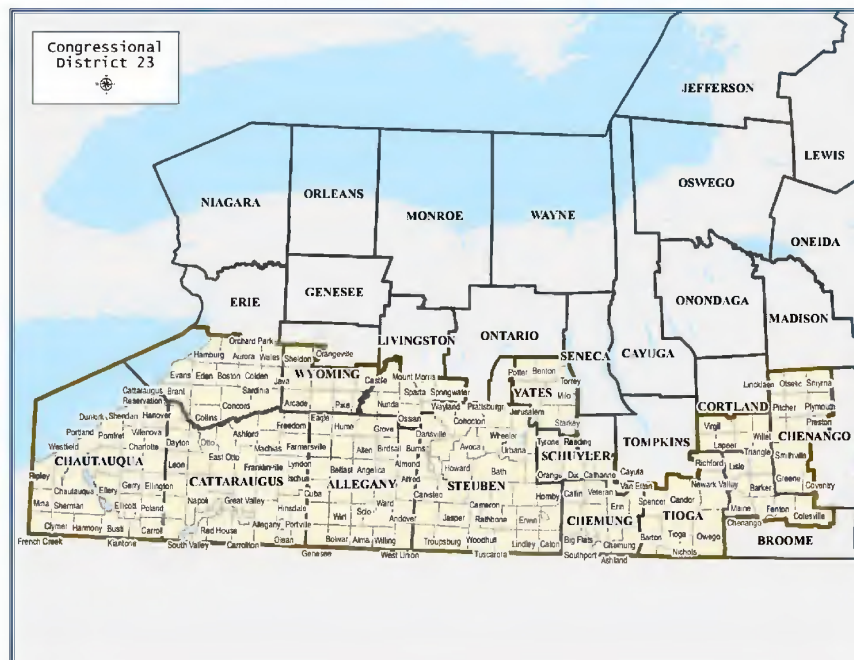
INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/08/2022

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.

1946

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NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/08/2022

Map of Old Congressional District 24



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.

1950

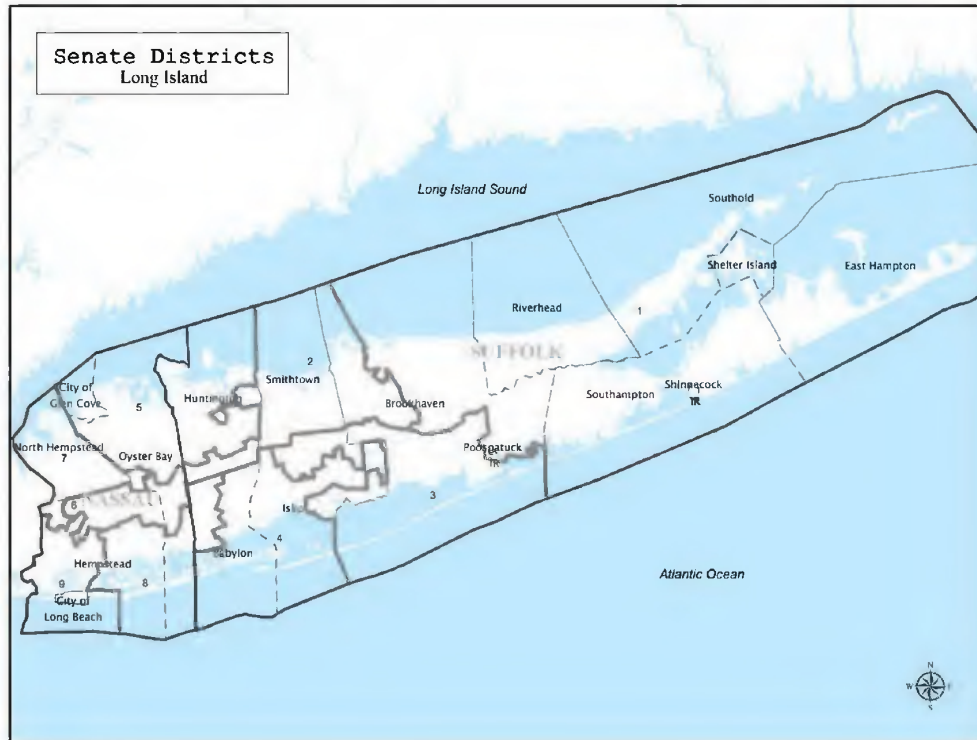
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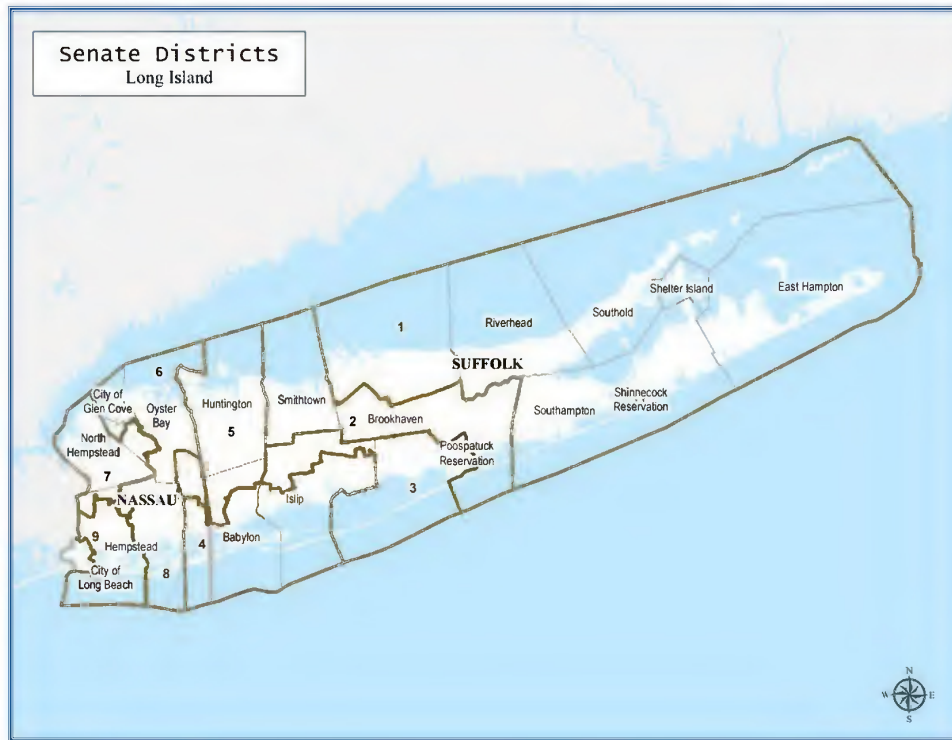
INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 02/08/2022

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.

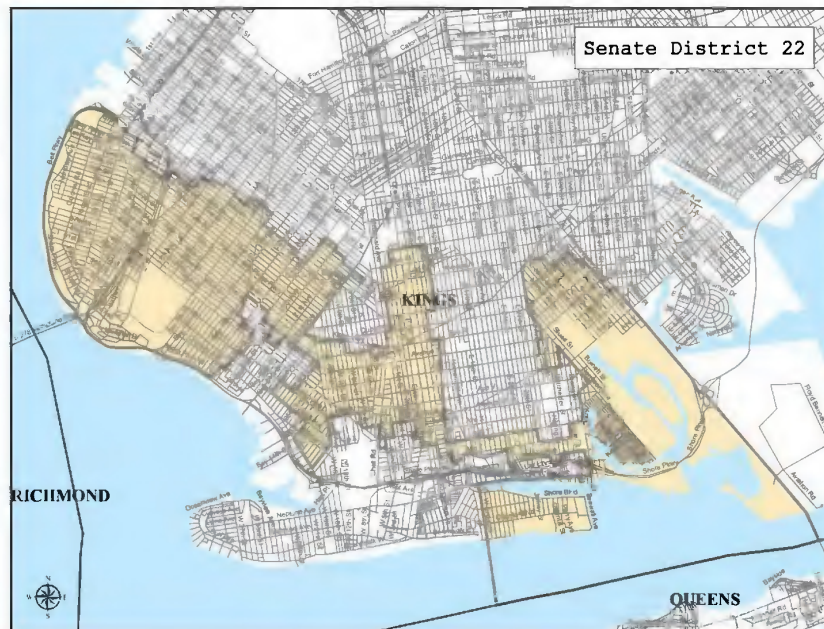
190. Moreover, the Legislature failed to respect the longstanding division of Nassau County from New York City by breaking the Nassau County-Queens County border, where there had been no prior cross-border state Senate districts breaching that line. By moving the Five Towns to a Queens-based Senate district, 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.

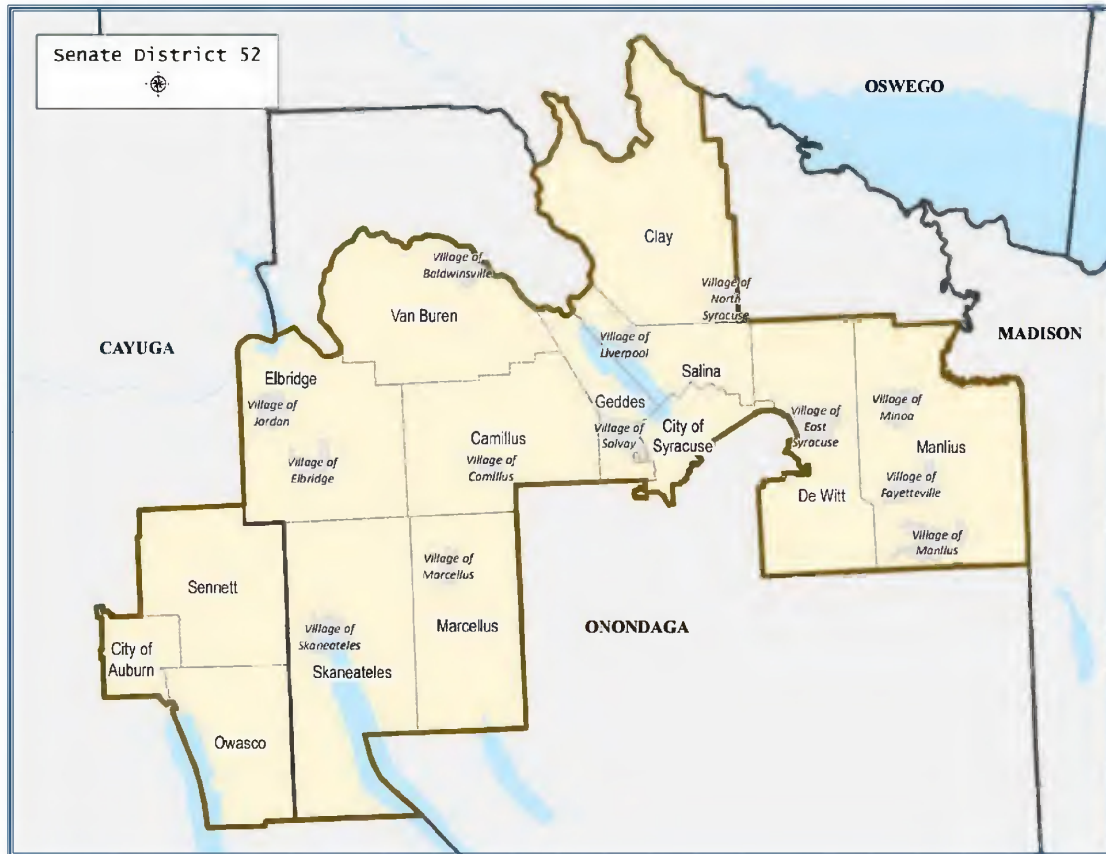
199. The Legislature's drawing of new state Senate District 51 lumps both Republican Senator James Tedisco and Republican Senator Peter Oberacker into the same district. The Democratic leaders in the Legislature drew this district specifically to disfavor or remove one of these two incumbent Republican 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



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").³² 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).³³ 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).³⁴

³² Available at <https://nyirc.gov/submissions>.

³³ Available at <https://queenseagle.com/all/state-legislature-shares-version-of-congressional-redistricting-map>.

³⁴ 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).³⁵ 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).³⁶

³⁵ Available at https://buffalonews.com/news/new-congressional-map-sparks-gerrymandering-outcry/article_0ab6b528-82e6-11ec-8d7b-07d7c0c217b8.html.

³⁶ 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.

1975

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 182

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/08/2022

Dated: New York, New York

February 8, 2022

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1976

**EXHIBIT G TO MOSKOWITZ AFFIRMATION -
NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION TO ERIC KATZ,
DATED MARCH 10, 2022 [1976 - 1977]**

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NYSCEF DOC. NO. 183

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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 Eric Katz, 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.

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NYSCEF DOC. NO. 183

INDEX NO. E2022-0116CV

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

TROUTMAN PEPPER HAMILTON
SANDERS LLP

s/ Bennet J. Moskowitz
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1978

**EXHIBIT H TO MOSKOWITZ AFFIRMATION -
NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION TO THE NEW YORK
STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND
REAPPORTIONMENT, DATED MARCH 9, 2022 [1978 - 1979]**

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NYSCEF DOC. NO. 184

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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 Respondent the New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”), by a duly authorized representative with knowledge and information concerning the allegations contained in the Petition and Amended Petition—specifically, Eric Katz, Phillip Chonigman, and/or Michael Gianaris—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

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 184

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

evidence material and necessary in the prosecution of this action. The examination will continue from day to day until complete.

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 9, 2022

TROUTMAN PEPPER HAMILTON
SANDERS LLP

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Attorneys for Petitioners

1980

EXHIBIT I TO MOSKOWITZ AFFIRMATION -
PETITIONERS' FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS
TO RESPONDENTS, DATED MARCH 9, 2022 [1980 - 1988]

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 185

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

**PETITIONERS' FIRST
REQUEST FOR THE
PRODUCTION OF
DOCUMENTS TO
RESPONDENTS**

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

PLEASE TAKE NOTICE that, pursuant to CPLR § 408 and CPLR 3120, as well as by the March 9, 2022 Order and March 3, 2022 Decision of the Court, Petitioners Tim Harkendrider, Guy Brought, Lawrence Canning, Patricia Clarino, Georgia Dooher, Stephen Evans, Linda Fanton, Jerry Fishman, Jay Frantz, Lawrence Garvey, Alan Nephew, Susan Rowley, Josephine Thomas, and Marianne Volante, through their undersigned counsel, Troutman Pepper Hamilton Sanders LLP ("Troutman Pepper"), request that Respondents in the above-captioned matter produce the documents described herein for inspection and copying by March 12, 2022 at the offices of Troutman Pepper, 875 Third Avenue, New York, New

York 10022, in accordance with the following Definitions and Instructions.

DEFINITIONS

For purposes of these requests for the production of documents (the “Requests,” and each a “Request”), the following definitions apply:

1. 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.

2. 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).

3. 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.

4. 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.

5. “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.

6. “Concerning,” and all tenses thereof, means referring to, relating to, constituting, describing or evidencing.

7. 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.

8. As used herein, each singular word shall include its plural and vice versa.
9. The terms “all,” “any” and “each” shall be construed as encompassing any and all.
10. “You” or “Your” means the respective Respondent responding to the Requests, and all other persons acting or purporting to act for or on his/her/its behalf, including, without limitation, representatives, agents, employees, attorneys, accountants and investigators.
11. “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.
12. “This Action” means the above-captioned action.
13. “Amended Petition” means the Verified Amended Petition dated February 8, 2022 filed in This Action (NYSCEF No.18).
14. Defined terms and phrases have the meanings ascribed to them above regardless of capitalization.

INSTRUCTIONS

1. If any documents requested are not produced but are withheld on a claim of privilege, identify each such document by providing the date of its preparation, the name of the persons preparing and receiving it, and the identity of each person to whom a copy of such document has been delivered, or to whom disclosure of the document was made, either orally or in writing.
2. If You claim any ambiguity in interpreting any Request or any definition or instruction applicable to a Request, You may not use such a claim as a basis for refusing to respond to the Request, but shall respond to the Request applying the broadest possible interpretation.

3. Where documents in the possession of a legal entity are requested, such Request includes the entity's employees, advisors, attorneys, representatives, agents, members, partners, officers, directors, independent contractors, successors and assigns, and all other persons acting or purporting to act for or on behalf of any one or more of the foregoing now or at any prior time.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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, based on such search, no such information or documents exist.

9. These Requests are continuing in nature so as to require further and supplemental productions if You discover, receive or generate additional responsive documents between the time of Your original production and the time of the final disposition of this lawsuit.

10. “Identify” (with respect to natural persons). When referring to, or when applicable to, a natural person, “to identify” means to contain the following information: the person’s full name, present or last known address, and the present or last known place of employment.

11. “Identify” (with respect to persons other than natural persons). When referring to, or when applicable to, a person other than a natural person, “to identify” means to contain the following information: the full name, present or last known address, and the present or last

known place of employment of each of the person's partners, officers, directors, members and agents authorized to accept service of process.

12. The use of any tense of any verb includes all other tenses of the verb.

13. Defined terms and phrases have the meanings ascribed to them above regardless of capitalization.

14. Unless otherwise indicated, the time frame applicable to these Document Requests is August 1, 2021 through the present.

DOCUMENTS REQUESTED*

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.

* These Requests are materially identical to and consistent with what the Court permitted in its March 9, 2022 Order and March 3, 2022 Decision.

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 185

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

Dated: March 9, 2022

TROUTMAN PEPPER HAMILTON SANDERS LLP

By: s/ Bennet J. Moskowitz

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Misha Tseytlin, Reg. No. 4642609
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Attorneys for Petitioners

**EXHIBIT J TO MOSKOWITZ AFFIRMATION -
LETTER DATED MARCH 10, 2022, FROM JOHN R. CUTI, COUNSEL
FOR RESPONDENTS, TO COUNSEL FOR PETITIONERS**

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 186

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

CUTI HECKER WANG LLP

305 BROADWAY, SUITE 607
NEW YORK, NY 10007

JOHN R. CUTI
212.620.2601 TEL
212.620.2611 FAX

JCUTI@CHWLLP.COM

March 10, 2022

By Email

Bennet J. Moskowitz
Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, NY 10022
(212) 704-6000

Re: *Harkenrider et al. v. Hochul et al.*, Index No. E2022-0116CV (Steuben Cnty.)

Dear Mr. Moskowitz:

As you know, this firm represents 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 (collectively, the "Senate Respondents").

Because Senator Gianaris and Mr. Katz are members, and Mr. Chonigman is a director, of LATFOR, they are parties in this proceeding within the meaning of CPLR § 3101(a)(1). Thus, the only proper way to have sought their testimony was by notice of deposition. Petitioners have no right to serve a subpoena on a party. Your purported subpoenas are therefore invalid and require no response.

Even construing your invalid subpoenas as proper notices, neither Senator Gianaris nor Messrs. Katz and Chonigman would be required to appear for a deposition in this proceeding in response to any deposition notices for at least two reasons. First, you have no authority to obtain deposition testimony because neither the Court's Decision dated March 3, 2022 nor its Order dated March 9, 2022 mentions or permits depositions. You had the opportunity to seek clarification of any ambiguity when you wrote to the Court yesterday afternoon, but your letter never mentioned depositions. Second, even if you had leave to serve notices of deposition, we would object to any deposition notices because questioning any of these parties about legislative activity would violate absolute legislative privilege and the separation of powers and therefore be improper under CPLR § 3101(b).

Very truly yours,



John R. Cuti

cc: All Counsel of Record

1990

EXHIBIT K TO MOSKOWITZ AFFIRMATION -
LETTER DATED MARCH 10, 2022, FROM COUNSEL FOR PETITIONERS TO
JOHN R. CUTI, COUNSEL FOR RESPONDENTS [1990 - 1991]

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 187

Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, New York 10022

troutman.com

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

**troutman
pepper**

Bennet J. Moskowitz
bennet.moskowitz@troutman.com

March 10, 2022

VIA E-MAIL

John R. Cuti
Cuti Hecker Wang LLP
305 Broadway, Suite 607
New York, NY 10007

Re: *Harkenrider, et al. v. Hochul, et al.*, Index No. E2022-0116CV (Sup. Ct. Steuben Cnty.)

Dear Mr. Cuti:

This letter is in response to your March 10, 2022 letter declaring Senator Michael Gianaris, Mr. Eric Katz, and Mr. Phillip Chonigman's intention to fail to appear at their depositions duly set for tomorrow starting at 9:00 a.m. ET. Please be advised that the witnesses' failure to appear tomorrow for their respective depositions will constitute a default and result in discovery sanctions, including adverse inferences on the subjects on which the Court permitted discovery.

Your assertion that the subpoenas to the foregoing individuals are invalid is obviously wrong. We properly noticed a deposition for the New York State Legislative Task Force on Demographic Research and Reapportionment, which is a party to this action, and properly subpoenaed the individuals, who are not parties to the action and from whom we are entitled to obtain discovery given their roles in the redistricting process. In any event, to put this frivolous issue to rest, we have enclosed copies of notices of deposition for these individuals to take place tomorrow; all of the notices and subpoenas are valid, and no amount of procedural gamesmanship would excuse their absence tomorrow.

Your statement that we have no authority to obtain the deposition testimony is also false. The Court, in both its March 3, 2022 Decision and March 9, 2022 Order, expressly allowed Petitioners to conduct discovery of Respondents—and depositions are, of course, a form of discovery. Petitioners' proposal to take depositions has always been a part of what they sought in their motion to conduct expedited discovery; your feigning surprise is unacceptable.

Finally, the Court already rejected Respondents' assertion of an absolute legislative privilege. Obviously, that is not an appropriate basis for anyone to fail to appear for a deposition.

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 187

John R. Cuti
March 10, 2022
Page 2

INDEX NO. E2022-0116CV
RECEIVED NYSCEF: 03/13/2022



Sincerely,

A handwritten signature in blue ink, appearing to read "Bennet J. Moskowitz".

Bennet J. Moskowitz

A handwritten signature in blue ink, appearing to read "Misha Tseytlin".

Misha Tseytlin

cc: All Counsel of Record

1992

EXHIBIT L TO MOSKOWITZ AFFIRMATION -
LETTER DATED MARCH 10, 2022, FROM JOHN R. CUTI, COUNSEL
FOR RESPONDENTS, TO COUNSEL FOR PETITIONERS [1992 - 1993]

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 188

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

CUTI HECKER WANG LLP

305 BROADWAY, SUITE 607
NEW YORK, NY 10007

JOHN R. CUTI
212.620.2601 TEL
212.620.2611 FAX

JCUTI@CHWLLP.COM

March 10, 2022

By Email

Bennet J. Moskowitz
Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, NY 10022

Re: *Harkenrider et al. v. Hochul et al.*, Index No. E2022-0116CV (Steuben Cnty.)

Dear Mr. Moskowitz:

Thank you for withdrawing the improper subpoenas that you served. Sending your agents to contact represented parties in a litigation to serve subpoenas was highly improper.

The deposition notices that you emailed at 3:50 pm today purporting to require witnesses to appear at 9:00 am tomorrow, in person at your Manhattan offices, for an examination to “continue from day to day until complete” are invalid on numerous grounds.

First, we do not read the March 3 Decision or the March 9 Order to have granted Petitioners leave to conduct depositions. Neither the Decision nor the Order ever mentions depositions, nor did the Court mention depositions during the March 3 oral argument.

Second, your assertion that the Court already rejected the objection that these deposition notices seek discovery of information that is protected by an absolute evidentiary privilege is baseless. The only issue the Court decided on March 3 was whether Petitioners could seek discovery. The Court did not rule on any specific privilege objection because no requests had been served.

Third, Petitioners have made plain that they seek to question these witnesses about core legislative activities. For example, the papers Petitioners filed in the Fourth Department reveal that there is substantial confusion even on Petitioners’ side about what discovery from LATFOR would or would not be protected by the legislative privilege. Because it is clear that Petitioners seek information from LATFOR members or employees that falls squarely within the absolute legislative privilege, the Senate Respondents hereby assert the objection under CPLR § 3101(b) that the information you seek is privileged matter that is not obtainable under Article 31.

Fourth, the Court granted Petitioners leave to serve discovery on March 3 at 11:45 am. It is not Respondents’ fault that you misunderstood the scope of the Court’s decision or the effect that the filing of a notice of appeal had with respect to your right to seek discovery. You did not serve subpoenas on these witnesses until yesterday, and those were nullities. Then, at 3:50 p.m. today, *more than a week after the Court permitted you to serve discovery requests*, you emailed notices of deposition. As we explained in our submissions to Justice Lindley, the Senate

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 188

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

CUTI HECKER WANG LLP
PAGE 2

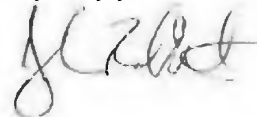
Respondents are in the midst of the heat of budget season, yet you demand that senior legislative officials appear in your office tomorrow morning on 17 hours notice. That is so unreasonable that any party would have valid objections on that ground alone. That you purport to command these government witnesses to appear on such a schedule only makes the point more clear.

Fifth, Petitioners do not have even a colorable basis to seek sanctions under CPLR § 3126. As Justice Lindley's decision explained, Justice McAllister has not ordered Respondents to do anything, much less to appear on extremely truncated notice to sit for a deposition, much less to do so to accommodate your failure to serve deposition notices for more than a week. The papers you filed in the Appellate Division make clear that you intend to question these witnesses about their intentions and motivations with respect to debating and participating in the legislative enactment of the challenged plans. Such inquiry is absolutely foreclosed by the New York Constitution's Speech or Debate Clause and the case law construing it. The Fourth Department's ruling makes clear that there is no operative Order or ruling compelling Respondents to appear for depositions, and we doubt that Justice McAllister would order these witnesses to appear in the first instance. At the bare minimum, they have a good faith basis to assert their objections (which they have done by this letter and in my letter of earlier today).

Finally, the Senate Respondents and their counsel have been working diligently to search through documents and identify any non-privileged information that can be produced. We anticipate that we will serve responses and objections to Petitioners' document demands, together with responsive documents, by the date specified in the notice. There is no basis to suggest that the Senate Respondents are acting in anything other than good faith. Once the privilege is invaded, the bell cannot be unring. Petitioners have no right to purport to force these witnesses to surrender their privilege based on Petitioners' threats of sanctions and Petitioners' self-serving interpretation of Justice McAllister's Decision and Order.

If Petitioners move to compel, we will of course respond. In the meanwhile, we will continue to prepare our discovery responses and document production and for the expert testimony that begins in four days.

Very truly yours,



John R. Cuti

cc: All Counsel of Record

1994

EXHIBIT M TO MOSKOWITZ AFFIRMATION -
LETTER DATED MARCH 10, 2022, FROM COUNSEL FOR PETITIONERS
TO JOHN R. CUTI, COUNSEL FOR RESPONDENTS

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 189

Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, New York 10022

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INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

**troutman
pepper**

Bennet J. Moskowitz
bennet.moskowitz@troutman.com

March 10, 2022

VIA E-MAIL

John R. Cuti
Cuti Hecker Wang LLP
305 Broadway, Suite 607
New York, NY 10007

Re: *Harkenrider, et al. v. Hochul, et al.*, Index No. E2022-0116CV (Sup. Ct. Steuben Cnty.)

Dear Mr. Cuti:

Please refrain from trying to create a false record. We did not withdraw anything—you know this.

Justice McAllister through his March 3 Decision rejected all of the substantive objections you now re-raise. As for your meritless timing objections, we served our deposition notice and subpoenas within hours of Justice McAllister's March 9 Order authorizing discovery, as Justice Lindley made clear that the March 3 Decision was not an effective order.

You made your arguments and they lost in court. Failure to follow court orders, including discovery orders, has consequences under New York law, as you well know. The depositions will occur as scheduled tomorrow, and we expect your clients to appear and testify under oath concerning the very subjects that Justice McAllister explicitly found are proper subjects for discovery in this proceeding.

Sincerely,



Bennet J. Moskowitz



Misha Tseytlin

cc: All Counsel of Record

1995

EXHIBIT N TO MOSKOWITZ AFFIRMATION -
LETTER DATED MARCH 10, 2022, FROM JOHN R. CUTI, COUNSEL
FOR RESPONDENTS, TO COUNSEL FOR PETITIONERS

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 190

INDEX NO. E2022-0116CV

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305 BROADWAY, SUITE 607
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JCUTI@CHWLLP.COM

March 10, 2022

By Email

Bennet J. Moskowitz
Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, NY 10022

Re: *Harkenrider et al. v. Hochul et al.*, Index No. E2022-0116CV (Steuben Cnty.)

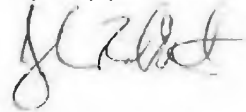
Dear Mr. Moskowitz:

As a professional courtesy to spare expense and wasted attorney time during a busy period, we write to reiterate and state explicitly what we communicated in our earlier letters – our clients will not appear for depositions at 9:00 a.m. tomorrow.

There is no “failure to follow court orders” here as your letter falsely asserts. Petitioners conceded before Justice Lindley, and Justice Lindley ruled, that there is no discovery order directed at Respondents, and certainly no discovery order compelling Respondents to appear at depositions. The only order granted Petitioners leave to seek discovery. Your claim to the contrary is baseless.

You emailed deposition notices demanding testimony from legislative officials during budget negotiations on 17 hours notice. The testimony you seek is plainly privileged for all the reasons we explained at length in our submissions to the Appellate Division. Like many discovery devices propounded in litigation, these notices are objectionable. We have interposed our objections.

Very truly yours,



John R. Cuti

cc: All Counsel of Record

1996

EXHIBIT O TO MOSKOWITZ AFFIRMATION -
LETTER DATED MARCH 10, 2022, FROM COUNSEL FOR MR. IMAMURA
TO COUNSEL FOR PETITIONERS [1996 - 1997]

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 191

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

1099 NEW YORK AVENUE NW WASHINGTON, DC 20001

JENNER & BLOCK LLP

March 10, 2022

Jessica Ring Amunson
Tel +1 202 639 6023
jamunson@jenner.com

VIA EMAIL

Bennet J. Moskowitz
Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, NY 10022
bennet.moskowitz@troutman.com

Re: Harkenrider et al. v. Hochul et al. (Index No. E2022-0116CV, Steuben County)

Dear Mr. Moskowitz:

I am writing on behalf of my client, non-party David Imamura, to object to the subpoena served upon him *today* purporting to require him to appear for a deposition in White Plains and produce a substantial volume of documents *tomorrow* morning. The subpoena was not authorized by the court in violation of CPLR 408 and it does not comply with the CPLR's 20-day notice requirement, among other defects. Accordingly, it is invalid, and Mr. Imamura will not be appearing for the deposition or producing the requested documents.

Your firm served Mr. Imamura, the Chair of New York's Independent Redistricting Commission at approximately 10:45 a.m. this morning with a subpoena in connection with the above-referenced proceeding. The subpoena says Mr. Imamura is "commanded to appear for a deposition" tomorrow, March 11, at 9:00 a.m. in White Plains, and to "produce for use at the deposition examination" "[a]ll documents and communications concerning the redistricting process and/or maps referenced in the Petition and Amended Petition that [Mr. Imamura] received from, or which [Mr. Imamura] provided to, one or more Democratic members of the New York State Legislature, Governor Kathy Hochul, and any other Democratic Party politicians or officials, as well as any person acting or purporting to act on behalf of any of the foregoing."

Mr. Imamura is not a party to the above-referenced action and the service of Exhibits B and C of the subpoena are the first that Mr. Imamura has been officially noticed of this action at all. As Exhibits B and C make clear, this is a special proceeding under Article 4 and therefore leave of court is required for any disclosure under CPLR 408. Although it appears from examining the docket that the court has granted your clients leave to seek limited disclosure from *Respondents* in this action, the court has not authorized your clients to undertake any disclosure from third parties such as Mr. Imamura. And the court certainly has not authorized overbroad and unduly burdensome subpoenas to third parties for depositions and documents upon less than 24-hours'

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 191

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

Bennet J. Moskowitz

March 10, 2022

Page 2

notice. As you are no doubt aware, CPLR 3106(b) requires at least 20 days' notice for a subpoenaed deposition of a third party.

In any event, the information sought by the overbroad and unduly burdensome subpoena is protected by legislative privilege. To the extent any such information is not protected by the legislative privilege, it is already available on the website of the New York Independent Redistricting Commission at nyirc.gov or can be sought from the parties to this action without burdening Mr. Imamura to produce it.

In sum, Mr. Imamura has no obligation to comply and will not comply with the subpoena served upon him this morning because it is unauthorized and invalid under the CPLR, and in any event seeks privileged information. Mr. Imamura reserves all rights to make these and other objections should your clients eventually obtain leave of court to engage in third-party disclosure under CPLR 408 and renew your efforts to subpoena Mr. Imamura.

Sincerely,

/s/ Jessica Amunson

Jessica Amunson

cc: Jeremy Ershow, Esq.

1998

EXHIBIT P TO MOSKOWITZ AFFIRMATION -
LETTER DATED MARCH 10, 2022, FROM PETITIONERS' COUNSEL TO
MR. IMAMURA'S COUNSEL [1998 - 1999]

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 192

Troutman Pepper Hamilton Sanders LLP
875 Third Avenue
New York, New York 10022

troutman.com

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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pepper

Bennet J. Moskowitz
bennet.moskowitz@troutman.com

March 10, 2022

VIA E-MAIL

Jessica Amunson
Jenner & Block LLP
1099 New York Avenue, NW, Suite 900
Washington, DC 20001

Re: Harkenrider, et al. v. Hochul, et al., Index No. E2022-0116CV (Sup. Ct. Steuben Cnty.)

Dear Ms. Amunson:

This letter is in response to your March 10, 2022 letter unilaterally declaring that the Chair of New York's Independent Redistricting Commission, David Imamura, will fail to appear at his deposition duly set for tomorrow starting at 9:00 a.m. ET. This is contrary to a court order that you claim to have already reviewed.

We do not understand how, having represented that you read the Court's March 3, 2022 Decision and March 9, 2022 Order (enclosed) granting Petitioners leave to seek expedited discovery, you can claim that the subpoena to your client was not authorized by the Court and that the information sought is overbroad, unduly burdensome, unnecessary, and entirely protected by legislative privilege. None of those assertions is correct.

The Court's Decision that you read clearly states that "[m]embers of the IRC and at least two members of LATFOR **are not legislators**. Therefore, **discovery from these individuals is not prohibited under the Federal or State Constitution as these people do not enjoy legislative immunity or legislative privilege**." (emphasis added). The Court also clearly directed "[a]ll persons asked to provide discovery . . . to give his/her highest priority and to set aside other matters," and ordered "**all discovery [to] be completed by March 12, 2022**." (emphasis added).

Your client's deposition is, of course, a form of discovery. Your purported lack of more advanced notice and any delay in the commencement of discovery is attributable entirely to Respondents, and, in any event, does not relieve your client of his obligation to comply with the Court's Decision and Order and discovery served pursuant thereto.

Should your client fail to appear for his deposition tomorrow and to produce all requested documents, Petitioners will seek all appropriate relief from the Court.

1999

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 192

Jessica R. Amunson
March 10, 2022
Page 2

INDEX NO. E2022-0116CV
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Sincerely,

A handwritten signature in blue ink, appearing to read "Bennet J. Moskowitz".

Bennet J. Moskowitz

A handwritten signature in blue ink, appearing to read "Misha Tseytlin".

Misha Tseytlin

**EXHIBIT Q TO MOSKOWITZ AFFIRMATION -
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 [2000 - 2048]**

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NYSCEF DOC. NO. 193

INDEX NO. E2022-0116CV

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1 STATE OF NEW YORK
SUPREME COURT: COUNTY OF STEUBEN
2 - - - - - x
TIM HARKENRIDER, GUY C. BROUGHT, :
3 LAWRENCE CANNING, PATRICIA CLARINO, : Index No.
GEORGE DOOHER, JR., STEVEN EVANS, : E2022
4 LINDA FANTON, JERRY FISHMAN, : 0116cv
JAY FRANTZ, LAWRENCE GARVEY, :
5 ALAN NEWPHEW, SUSAN ROWLEY, :
JOSEPHINE THOMAS and MARIANNE VOLANTE, :
6 :
Petitioners, :
7 :
vs. :
8 :
GOVERNOR KATHY HOCHUL, LIEUTENANT :
9 GOVERNOR AND PRESIDENT OF THE SENATE :
BRIAN A. BENJAMIN, SENATE MAJORITY :
10 LEADER AND PRESIDENT PRO TEMPORE OF THE :
SENATE ANDREA STEWART-COUSINS, SPEAKER :
11 OF THE ASSEMBLY CARL HEASTIE, NEW YORK :
STATE BOARD OF ELECTIONS and THE :
12 NEW YORK STATE LEGISLATIVE TASK FORCE :
ON DEMOGRAPHIC RESEARCH AND :
13 REAPPORTIONMENT, :
14 Respondents. :
- - - - - x
15
16 Veritext Virtual Zoom Proceeding, taken on
17 Friday, March 11, 2022, held in New York, New York,
18 commencing at 9:32 a.m., before Jamie I. Moskowitz,
19 a Certified Court Reporter and Certified Livenote
20 Reporter.
21
22
23

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NYSCEF DOC. NO. 193

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

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1 A P P E A R A N C E S:

2

TROUTMAN PEPPER HAMILTON SANDERS LLP

3 BY: DANIEL E. GORMAN, ESQUIRE

daniel.gorman@troutman.com

4 New York Times Building

620 8th Avenue

5 New York, New York 10018

212.808.2700

6 Counsel for the Petitioners

7

OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL

8 BY: MICHELE ROMANCE CRAIN, ESQUIRE

28 Liberty Street

9 New York, New York 10005

800.771.7755

10 Counsel for the Respondents Governor Kathy Hochul

and Lieutenant Governor and President of the Senate

11 Brian A. Benjamin

12

ALSO PRESENT:

13

ROSEMARY BENCHER

14 Legal Videographer

15

16

17

18

19

20

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NYSCEF DOC. NO. 193

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

22

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E X H I B I T S

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EXHIBIT NUMBER

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PAGE

3

4

5

6

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8

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2003

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 193

INDEX NO. E2022-0116CV

RECEIVED NYSCEF: 03/13/2022

20

21

22

23

24

25

4

1 TABLE OF CONTENTS

2

3

Questions by Mr. Epstein.....Page *

4

Index of Exhibits.....Page

5

Reporter Certificate.....Page *

6

7

8

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5

1 THE VIDEOGRAPHER: Good morning. We
2 are going on the record at 9:32 a.m. Eastern
3 Standard Time on Friday, March 11, 2022. This
4 is the video recorded deposition of
5 Philip Chonigman taken in the matter of
6 Tim Harkenrider, et al., versus Governor Kathy
7 Hocu, et al., filed in the Supreme Court for
8 the State of New York, County of Steuben. The
9 index number is E2022-0116CV.

10 This deposition is being held remotely
11 via Zoom, located in New York, New York 10001.
12 My name is Rosemary Bencher from the firm
13 Veritext Legal Solutions, and I am the
14 videographer. The court reporter is
15 Jamie Moskowitz, from Veritext Legal Solutions.

16 The witness is not present for this
17 deposition, so there will be no swearing in of
18 the witness.

19 Thank you. You may proceed.

20 MR. GORMAN: Good morning. My name is
21 Daniel Gorman. I am with the law firm of
22 Troutman Pepper Hamilton Sanders, and I
23 represent petitioners in this matter.

24 I'm going to introduce as Exhibit 1, a
25 subpoena to Philip Chonigman, through Exhibit

6

1 Share. The exhibit has now been introduced.

2 (Whereupon, Exhibit 1 was marked for
3 Identification.)

4 MR. GORMAN: This is a subpoena duces
5 tecum ad testificandum, dated March 9, 2022, to
6 Phillip Choningman Senior, Co-executive
7 Director and Democratic Head New York State
8 Legislative Task Force on Demographic Research
9 and Reapportionment.

10 Mr. Chonigman has not appeared today.
11 This was dually issued and executed.

12 I'm now going to introduce Exhibit 2,
13 which is a Notice of Deposition dated

14 March 10, 2022 to Mr. Phillip Chonigman.
15 Again, Mr. Chonigman has failed to appear today
16 for his deposition.
17 Questions will be asked that can be
18 used for all purposes, including for purposes
19 of an adverse inference.
20 (Whereupon, Exhibit 2 was marked for
21 Identification.)
22 MR. GORMAN: Exhibit 2 has now been
23 marked and added to the shared exhibit folder.
24 BY MR. GORMAN:
25 Q What general duties does LATFOR

7

1 perform.
2 Q What is your current position with
3 LATFOR.
4 Q What are your responsibilities in that
5 position?
6 Q How long have you been in that
7 position?
8 Q How long have you been working with
9 LATFOR?
10 Q Do you currently work somewhere else?
11 Q Did you work somewhere before you were

12 appointed to LATFOR or hired at another job?

13 Q What positions did you hold there?

14 Q What were your responsibilities?

15 Q Why did you leave?

16 Q Are you familiar with the process

17 LATFOR used to draw the 2022 redistricting maps?

18 Q Can you describe this process?

19 Q What programs or software tools did

20 LATFOR use?

21 Q What data did LATFOR input into the

22 tools or programs to create the maps?

23 Q What data did LATFOR rely on?

24 Q Did LATFOR rely on the population

25 consensus block?

8

1 Q Did LATFOR rely on geographic

2 demographic or political information?

3 Q What sources of political data did

4 LATFOR consider?

5 Q Why did LATFOR decide to use this

6 source?

7 Q What did LATFOR get there political --

8 where did LATFOR this political data?

9 Q Did LATFOR look at any other sources

10 for political data?

11 Q Did LATFOR consider any political data
12 that showed that the final house of representative
13 map favored the demographic party?

14 Q Did LATFOR consider any political data
15 that showed that the final state senate map would
16 favor the democratic party?

17 Q Did LATFOR communicate with any
18 outside organizations or politicians, legislators
19 about political data?

20 Did LATFOR consider political data
21 when drafting Congressional District 1?

22 Q Did LATFOR consider whether changing
23 Congressional District 1's lines benefit the
24 democratic party?

25 Q Did LATFOR consider political data

9

1 when drafting Congressional District 2?

2 Q Did LATFOR consider whether changing
3 Congressional 2's lines would benefit the democratic
4 party?

5 Q Did LATFOR consider political data
6 when drafting Congressional District 3?

7 Q Did LATFOR consider whether changing

8 Congressional District 3's lines would benefit the
9 democratic party?

10 Q Did LATFOR consider political data
11 when drafting Congressional District 8?

12 Q Did LATFOR consider whether changing
13 Congressional 8's lines would benefit the democratic
14 party?

15 Q Did LATFOR consider political data
16 when drafting Congressional District 9?

17 Q Did LATFOR consider whether changing
18 Congressional District 9's lines would benefit the
19 democratic party?

20 Q Did LATFOR consider political data
21 when drafting Congressional District 10?

22 Q Did LATFOR consider whether changing
23 Congressional District 10's lines would benefit the
24 democratic party?

25 Q Did LATFOR consider political data

10

1 when drafting Congressional District 11?

2 Q Did LATFOR consider whether changing
3 Congressional District 11's lines would benefit the
4 democratic party?

5 Q Did LATFOR consider political data

6 when drafting Congressional District 16?

7 Q Did LATFOR consider whether changing
8 Congressional District 16's lines would benefit the
9 democratic party?

10 Q Did LATFOR consider political data
11 when drafting Congressional District 17?

12 Q Did LATFOR consider whether changing
13 Congressional District 17's lines would benefit the
14 democratic party?

15 Q Did LATFOR consider political data
16 when drafting Congressional District 18?

17 Q Did LATFOR consider whether changing
18 Congressional District 18's line would benefit the
19 democratic party?

20 Q Did LATFOR consider political data
21 when drafting Congressional District 19?

22 Q Did LATFOR consider whether changing
23 Congressional District 19's lines would benefit the
24 democratic party?

25 Did LATFOR consider political data

11

1 when drafting Congressional District 21?

2 Q Did LATFOR consider whether changing
3 Congressional District 21's lines would benefit the

4 democratic party?

5 Q Did LATFOR consider political data
6 when drafting Congressional District 22?

7 Q Did LATFOR consider whether changing
8 Congressional District 22's lines would benefit the
9 democratic party?

10 Q Did LATFOR consider political data
11 when drafting Congressional District 23?

12 Q Did LATFOR consider whether changing
13 Congressional District 23's lines would benefit the
14 democratic party?

15 Q Did LATFOR consider political data
16 when drafting Congressional District 24?

17 Q Did LATFOR consider whether changing
18 Congressional District 24's lines would benefit the
19 party?

20 Q Did you consider political data when
21 drafting any of the congressional districts?

22 Q Did you consider whether the change of
23 any of these congressional districts would benefit
24 the democratic party?

25 Q Did LATFOR consider political data

1 when drafting Senate District 1?

2 Q Did LATFOR consider whether changing
3 Senate District 1's lines would benefit the
4 democratic party?

5 Q Did LATFOR consider political data
6 when drafting Senate District 2?

7 Q Did LATFOR consider whether changing
8 Senate District 2's lines would benefit the
9 democratic party?

10 Q Did LATFOR consider political data
11 when drafting Senate District 3?

12 Q Did LATFOR consider whether changing
13 Senate District 3's lines would benefit the
14 democratic party?

15 Q Did LATFOR consider political data
16 when drafting Senate District 4?

17 Q Did LATFOR consider whether changing
18 Senate District 4's lines would benefit the
19 democratic party?

20 Q Did LATFOR consider political data
21 when drafting Senate District 5?

22 Q Did LATFOR consider whether changing
23 Senate District 5's lines would benefit the
24 democratic party?

25 Q Did LATFOR consider political data

1 when drafting Senate District 6?

2 Q Did LATFOR consider whether changing

3 Senate District 6's lines would benefit the

4 democratic party?

5 Q Did LATFOR consider political data

6 when drafting Senate District 7?

7 Q Did LATFOR consider whether changing

8 Senate District 7's lines would benefit the

9 democratic party?

10 Q Did LATFOR consider political data

11 when drafting Senate District 9?

12 Q Did LATFOR consider whether changing

13 Senate District 9's lines would benefit the

14 democratic party?

15 Q Did LATFOR consider political data

16 when drafting Senate District 10?

17 Q Did LATFOR consider whether changing

18 Senate District 10's lines would benefit the

19 democratic party?

20 Q Did LATFOR consider political data

21 when drafting Senate District 22?

22 Q Did LATFOR consider whether changing

23 Senate District 22's lines would benefit the

24 democratic party?

25 Q Did LATFOR consider political data

14

1 when drafting Senate District 22?

2 Q Did LATFOR consider whether changing
3 Senate District 42's lines would benefit the
4 democratic party?

5 Q Did LATFOR consider changing whether
6 Senate District 42's lines, which resembled 2012
7 District 40, would benefit the democratic party?

8 Q Did LATFOR consider political data
9 when drafting Senate District 41?

10 Q Did LATFOR consider changing whether
11 Senate District 41's lines would benefit the
12 democratic party?

13 Q Did LATFOR consider whether changing
14 Senate District 41's lines, which resembled 2012
15 District 39, would benefit the democratic party?

16 Q Did LATFOR consider political data
17 when drafting Senate District 44?

18 Q Did LATFOR consider whether changing
19 Senate District 44's lines would benefit the
20 democratic party?

21 Q Did LATFOR consider political data in
22 drafting Senate District 48?

23 Q Did LATFOR consider whether changing
24 Senate District 48's lines would benefit the
25 democratic party?

15

1 Q Did LATFOR consider whether changing
2 Senate District 48's lines, which resemble 2012
3 District 46, would benefit the democratic party?

4 Q Did LATFOR consider political data
5 when drafting Senate District 51?

6 Q Did LATFOR consider whether changing
7 Senate District 51's lines would benefit the
8 democratic party?

9 Q Did LATFOR consider political data
10 when drafting Senate District 52?

11 Q Did LATFOR consider whether changing
12 Senate District 52's lines would benefit the
13 democratic party?

14 Q Did LATFOR consider whether changing
15 Senate District 52's lines, which resemble 2012
16 District 50, would benefit the democratic party?

17 Q Did LATFOR consider political data
18 when drafting Senate District 53?

19 Q Did LATFOR consider whether changing
20 Senate District 53's lines would benefit the

21 democratic party?

22 Q Did LATFOR consider political data

23 when drafting the Senate District 54?

24 Q Did LATFOR consider whether changing

25 Senate District 54's lines would benefit the

16

1 democratic party?

2 Q Did LATFOR consider political data

3 when drafting Senate District 56?

4 Q Did LATFOR consider whether changing

5 Senate District 56's lines would benefit the

6 democratic party?

7 Q Did LATFOR consider whether changing

8 Senate District 56's lines, which resemble 2012

9 District 55, would benefit the democratic party?

10 Q Did LATFOR consider political data

11 when drafting Senate District 60?

12 Q Did LATFOR consider whether changing

13 Senate District 60's lines would benefit the

14 democratic party?

15 Q Did LATFOR consider political data

16 when drafting Senate District 62?

17 Q Did LATFOR consider whether changing

18 Senate District 62's lines would benefit the

19 democratic party?

20 Q Did LATFOR consider political data
21 when drafting Senate District 63?

22 Q Did LATFOR consider whether changing
23 Senate District 63's lines would benefit the
24 democratic party?

25 Q Isn't it true that LATFOR specifically

17

1 drew the final House of Representative map with the
2 goal of favoring the democratic party?

3 Q Isn't it true that LATFOR specifically
4 drew the final State Senate map with the goal of
5 favoring the democratic party?

6 Q Are you familiar with the process the
7 democratic IRC members used to draft the maps that
8 they submitted to the legislature?

9 Q Can you please describe this process?

10 Q How does LATFOR's process align with
11 or differ from the IRC process?

12 Q Did LATFOR consider additional types
13 of data when drawing its maps?

14 Q Did LATFOR use different sources of
15 data to draw its maps?

16 Q Did LATFOR start at square 1 and not

17 utilize any of the prior work done or collected by
18 the IRC in drawing its maps?

19 Q Before LATFOR assumed redistricting
20 responsibility, did you communicate with any outside
21 organizations or politicians regarding post-2020
22 census redistricting process?

23 Q Are you aware of any other LATFOR
24 appointee or staff member communicating with any
25 outside organizations or politicians regarding the

18

1 post-2020 census redistricting process?

2 Q After LATFOR assumed redistricting
3 responsibility and began its map drawing process,
4 did you communicate with any outside organizations
5 or politicians regarding the new maps?

6 Q Are you aware of any LATFOR appointee
7 or staff members communicating with any outside
8 organizations or politicians regarding the new maps?

9 Q Did you receive any unsolicited
10 inquiries or communications from outside
11 organizations or politicians regarding LATFOR's
12 redistricting process or new maps?

13 Q Are you aware of any other LATFOR
14 appointee or staff member receiving any unsolicited

15 inquiries or communications from outside

16 organizations or politicians regarding LATFOR's

17 redistricting process for new maps?

18 Q After the IRC's redistricting attempt

19 failed, LATFOR assumed responsibility for drawing

20 new maps, correct?

21 Q At that time, who was on the task

22 force?

23 Q Please list all members.

24 Q Are you publicly affiliated with a

25 political party?

19

1 Q Do you represent a political party in

2 any capacity?

3 Q Is any other member politically

4 affiliated with a political party?

5 Q Do you represent a political party in

6 any capacity?

7 Q Who appointed or hired you?

8 Q What is that person's political

9 affiliation?

10 Q Who appointed and hired the other

11 members?

12 Q What are those individuals' political

13 parties or affiliation?

14 Q Were there any republicans on the task
15 force during the map drawing process?

16 Q Did you or any other LATFOR appointee
17 staff member discuss the post-2020 redistricting
18 process with any republican legislator not on the
19 task force?

20 Q Did you provide that republican
21 legislator the opportunity to give meaningful input
22 into the LATFOR redistrictingredistricting process
23 and new maps?

24 Q Did you or any other LATFOR appointee
25 staff member discuss preliminary maps, districts or

20

1 district lines with any republican legislator not on
2 the task force?

3 Q Did you provide that republican
4 legislator with the opportunity to give meaningful
5 input into LATFOR's redistricting process and new
6 maps?

7 Q At any time during LATFOR's
8 redistricting process and drawing of the new maps,
9 was any republican legislator given the opportunity
10 to provide meaningful input in a way that affected

11 the final outcome?

12 Q Did LATFOR discuss the redistricting
13 process with any republicans before releasing maps
14 to the full Senate and assembly?

15 Q Did you or any other LATFOR appointee
16 staff member consult or contact any republicans at
17 any point during the map drawing process?

18 Q Did LATFOR show the maps to any
19 democrats before sharing them with the republicans?

20 Q Before LATFOR assumed redistricting
21 responsibility, did you or any other LATFOR
22 appointee staff member discuss the post-2020 census
23 redistricting process with any IRC commissioner?

24 Q Please describe any conversations or
25 communications.

21

1

2 Q Were you or any other LATFOR appointee
3 staff member privy to the IRC's redistricting
4 negotiation at any point?

5 Q Please describe any conversation or
6 communications or interactions.

7 Q Have you had ever had any contact with
8 IRC Commissioner and Chair David Imamura,

9 I-M-A-M-U-R-A, regarding the redistricting process
10 or anything related to drawing new maps?

11 Q Please describe any conversations or
12 communications.

13 Q Have you ever had any contact with IRC
14 Commissioner Eugene Benger, B-E-N-G-E-R, regarding
15 the redistricting process or anything related to
16 drawing new maps?

17 Q Please describe any communication or
18 conversation.

19 Q Have you ever had any contact with IRC
20 commissioner Ivelisse Cuevas-Molina,
21 I-V-E-L-I-S-S-E, C-U-E-V-A-S-Molina, M-O-L-I-N-A,
22 regarding the redistricting process or anything
23 related to drawing new maps?

24 Q Please describe any conversations,
25 communications.

22

1 Q Have you ever had any contact with IRC
2 Commissioner John Flateau, F-L-A-T-E-A-U, regarding
3 the redistricting process or anything related to
4 drawing new maps?

5 Q Please describe any conversations many
6 and communications.

7 Have you ever had any contact with IRC
8 Commissioner Elaine Frazier, E-L-A-I-N-E, second
9 name Frazier, F-R-A-Z-I-E-R, regarding the
10 redistricting process or anything related to drawing
11 new maps?

12 Q Please describe any conversations or
13 communications.

14 Q Before LATFOR assumed a redistricting
15 responsibility, did you or any other LATFOR
16 appointee staff members discuss the possibility of
17 LATFOR, the New York State Legislature, drawing the
18 22 map -- 2022 map?

19 Q Please describe any conversations or
20 communications.

21 Are you aware of any redistricting
22 preparations made by LATFOR or democrats in the
23 legislature in advance of the IRC's January 24th
24 announcement that they would not submit revised
25 maps?

23

1 Q Please describe.

2 Q Did you or any other LATFOR appointee
3 or staff member discuss the post-2020 redistricting
4 process with any democratic legislature --

5 legislator not on the task force?

6 Q Please describe any conversations or
7 communications.

8 Q Did you or any other LATFOR appointee
9 or staff member discuss preliminary maps, districts
10 or district lines with any democratic legislator not
11 on the task force?

12 Q Please describe any conversations or
13 communications.

14 Q Were you or any other LATFOR member
15 contacted by any republican legislator during the
16 map drawing process?

17 Q Please describe any conversations or
18 communications?

19 A Isn't it true that you communicated
20 directly or through your staff with the democratic
21 commissioner on the IRC to tell them not to adopt a
22 congressional redistricting map as part of the
23 constitutional process?

24 Q Isn't it true that you communicated
25 directly or through your staff with the democratic

24

1 commissioners on the IRC to tell them not to adopt a
2 state senate redistricting map as part of the

3 constitutional process?

4 Q Did you or any other LATFOR appointee
5 or staff member provide comments to any news outlet
6 or members of the media regarding the 2022
7 redistricting process for new maps?

8 Q Did you or any other LATFOR appointee
9 or staff member provide off-the-record or background
10 comments through any news outlets or members of the
11 media regarding the 2022 redistricting process or
12 maps?

13 Q Were you or any other LATFOR appointee
14 or staff member contacted by any news outlet or
15 member of the media regarding the 2022 redistricting
16 process or new maps?

17 Q Did you or any other LATFOR appointee
18 discuss the 2022 redistricting process or new maps
19 with any constituent?

20 Q Did any constituents contact you or
21 any other LATFOR appointees regarding the 2022
22 redistricting process or new maps?

23 Q Did you or any other LATFOR appointees
24 or staff members discuss the 2022 redistricting
25 process or new maps with any member of the public?

1 Q Did any member of public contact you
2 from or any other LATFOR appointee or staff member
3 regarding the 2022 redistricting process or new
4 maps?

5 Q Are you aware of any public comments
6 or concerns submitted to LATFOR by any member of the
7 public regarding the 2022 redistricting process or
8 new maps?

9 Q Did LATFOR consider such comments and
10 concerns when drawing the new maps?

11 MR. GORMAN: I'm going to take a
12 two-minute break, and then we may be able to
13 wrap this one up and start the next deposition.

14 THE VIDEOGRAPHER: We are going off
15 the record at 9:57 a.m.

16 (Whereupon, a short break was taken.)

17 THE VIDEOGRAPHER: We are back on the
18 record at 10:20 a.m.

19 MR. GORMAN: I have no further
20 questions at this time.

21 THE VIDEOGRAPHER: We are off the
22 record at 10:20 a.m.

23

24

25

1 ***Note, I need to start a new
2 transcript for this representative of LATFOR,
3 we don't have a witness name for this one.

4 THE VIDEOGRAPHER: Good morning. We
5 are going on the record at 10:26 a.m. Eastern
6 Standard Time on Friday, March 11th, 2022.
7 This is the video recorded deposition of the
8 representative for LATFOR taken in the matter
9 of Tim Harkenrider et al., Versus
10 Governor Kathy Hochul et al., in the Supreme
11 Court for the State of New York, County of
12 Steuben. The index number is E20220116CV.

13 This deposition is being held remotely
14 via Zoom. My name's Rosemary Bencher from the
15 firm Veritext Legal Solutions, and I'm the
16 videographer. The court reporter is Jamie
17 Moskowitz from the firm Veritext Legal
18 Solutions. The witness is not appearing, so
19 there will be no swearing in of the witness.

20 BY MR. GORMAN:

21 Q Good morning. My name is Daniel
22 Gorman. I'm an attorney with the law firm Troutman
23 Pepper Hamilton Sanders, and I represent the

24 petitioner in this matter.

25 I will be introducing as Exhibit 1 the

27

1 document titled "Notice to Take Deposition Upon Oral
2 Examination of a Representative of Respondent the
3 New York State Legislative Task Force on Demographic
4 Research and Reapportionment."

5 Throughout the course of this
6 deposition, I will be using the acronym LATFOR,
7 L-A-T-F-O-R, all capital letters, for this entity.
8 The entity did not appear, but a notice of
9 deposition was duly issued on March 9th and is now
10 being introduced through Exhibit Share as Exhibit 1.

11 (Whereupon, Exhibit 1 was marked for
12 Identification.)

13 MR. GORMAN: The notice to take
14 deposition upon oral examination has now been
15 entered into Exhibit Share.

16 BY MR. GORMAN:

17 Q What general duties does LATFOR
18 perform?

19 Q What is your current position with
20 LATFOR.

21 Q What are your responsibilities in that

22 position?

23 Q How long have you been in that

24 position?

25 Q Do you currently work somewhere else?

28

1 Q Did you work somewhere before you were

2 appointed to LATFOR?

3 Q What positions did you hold there?

4 Q Are you familiar with the process

5 LATFOR used to draw the 2022 redistricting maps?

6 Q Can you describe this process?

7 Q What programs or software did LATFOR

8 use?

9 Q What data did LATFOR input into the

10 program or software to create the maps?

11 Q What data did LATFOR rely on?

12 Q Did LATFOR rely on the population

13 census block geographic, demographic or political

14 data?

15 Q What source of political data did

16 LATFOR consider?

17 Q Why did LATFOR decide to use this

18 source?

19 Q Where did LATFOR get this political

20 data?

21 Q Did LATFOR look at any other sources
22 for political data?

23 Q Did LATFOR consider any political data
24 that showed that the final House of Representative
25 map would favor the democratic party?

29

1 Q Did LATFOR consider any political data
2 that showed that the final State Senate map would
3 favor the democratic party?

4 Q Did LATFOR communicate with any
5 outside organizations or politicians, legislators
6 about political data?

7 Q Did LATFOR consider political data
8 when drafting Congressional District 1?

9 Q Did LATFOR consider whether changing
10 Congressional District 1's lines would benefit the
11 democratic party?

12 Q Did LATFOR consider political data
13 when drafting Congressional District 2?

14 Q Did LATFOR consider whether changing
15 Congressional District 2's lines would benefit the
16 democratic party?

17 Q Did LATFOR consider political data

18 when drafting Congressional District 3?

19 Q Did LATFOR consider whether changing

20 Congressional District 3's lines would benefit the

21 democratic party?

22 Q Did LATFOR consider political data

23 when drafting Congressional District 8?

24 Q Did LATFOR consider whether changing

25 Congressional District 8's lines would benefit the

30

1 democratic party?

2 Q Did LATFOR consider political data

3 when drafting Congressional District 9?

4 Q Did LATFOR consider whether changing

5 Congressional District 9's lines would benefit the

6 democratic party?

7 Q Did LATFOR consider political data

8 when drafting Congressional District 10?

9 Q Did LATFOR consider whether changing

10 Congressional District 10's lines would benefit the

11 democratic party?

12 Q Did LATFOR consider political data

13 when drafting Congressional District 11?

14 Q Did LATFOR consider whether changing

15 Congressional District 11's lines would benefit the

16 democratic party?

17 Q Did LATFOR consider political data
18 when drafting Congressional District 16?

19 Q Did LATFOR consider whether changing
20 Congressional District 16's lines would benefit the
21 democratic party?

22 Q Did LATFOR consider political data
23 when drafting Congressional District 17?

24 Q Did LATFOR consider whether changing
25 Congressional District 17's lines would benefit the

31

1 democrat party?

2 Q Did LATFOR consider political data
3 when drafting Congressional District 18?

4 Q Did LATFOR consider whether changing
5 Congressional District 18's lines would benefit the
6 democratic party?

7 Q Did LATFOR consider political data
8 when drafting Congressional District 19?

9 Q Did LATFOR consider whether changing
10 Congressional District 19's lines would benefit the
11 democratic party?

12 Q Did LATFOR consider political data
13 when drafting Congressional District 21?

14 Q Did LATFOR consider whether changing
15 Congressional District 21's lines would benefit the
16 democratic party?

17 Q Did LATFOR consider political data
18 when drafting Congressional District 22?

19 Q Did LATFOR consider whether changing
20 Congressional District 22's line would benefit the
21 democratic party?

22 Q Did LATFOR consider political data in
23 drafting Congressional District 23?

24 Q Did LATFOR consider whether changing
25 Congressional District 23's lines would benefit the

32

1 democratic party?

2 Q Did LATFOR consider political data
3 when drafting Congressional District 24?

4 Q Did LATFOR consider whether changing
5 Congressional District 24's lines would benefit the
6 democratic party?

7 Q Did LATFOR consider political data
8 when drafting Senate District 1?

9 Q Did LATFOR consider whether changing
10 Senate District 1's lines would benefit democratic
11 party?

12 Q Did LATFOR consider political data
13 when drafting Senate District 2?
14 Q Did LATFOR consider whether changing
15 Senate District 2's lines would benefit the
16 democratic party?
17 Q Did LATFOR consider political data
18 when drafting changing Senate District 3's?
19 Q Did LATFOR consider whether changing
20 District 3's lines would benefit the democratic
21 party?
22 Q Did LATFOR consider political data
23 when drafting Senate District 4?
24 Q Did LATFOR consider whether changing
25 Senate District 4's lines would benefit the

33

1 democratic party?
2 Q Did LATFOR consider political data
3 when drafting Senate District 5?
4 Q Did LATFOR consider whether changing
5 Senate District 5's lines would benefit the
6 democratic party?
7 Q Did LATFOR consider political data
8 when drafting Senate District 6?
9 Q Did LATFOR consider whether changing

10 Senate District 6's lines would benefit the
11 democratic party?

12 Q Did LATFOR consider political data
13 when drafting Senate District 7?

14 Q Did LATFOR consider whether changing
15 Senate District 7's lines would benefit the
16 democratic party?

17 Q Did LATFOR consider political data in
18 drafting Senate District 9?

19 Q Did LATFOR consider whether changing
20 Senate District 9's lines would benefit the
21 democratic party?

22 Q Did LATFOR consider political data
23 when drafting Senate District 10?

24 Q Did LATFOR consider whether changing
25 Senate District 10's lines would benefit the

34

1 democratic party?

2 Q Did LATFOR consider political data
3 when drafting Senate District 22?

4 Q Did LATFOR consider whether changing
5 Senate District 22's lines would benefit the
6 democratic party?

7 Q Did LATFOR consider political data

8 when drafting Senate District 42?

9 Q Did LATFOR consider whether changing
10 Senate District 42's lines would benefit the
11 democratic party?

12 Q Did LATFOR consider whether changing
13 Senate District 42's lines, which resemble 2012
14 District 40, would benefit the democratic party?

15 Q Did LATFOR consider political data
16 when drafting Senate District 41?

17 Q Did LATFOR consider whether changing
18 Senate District 41's lines would benefit the
19 democratic party?

20 Q Did LATFOR consider whether changing
21 Senate District 41's lines, which resemble 2012
22 District 39, would benefit the democratic party?

23 Q Did LATFOR consider political data
24 when drafting Senate District 44?

25 Q Did LATFOR consider whether changing

35

1 Senate District 44's lines would benefit the
2 democratic party?

3 Q Did LATFOR consider political data
4 when drafting Senate District 48?

5 Q Did LATFOR consider whether changing

6 Senate District 48's lines would benefit the
7 democratic party?

8 Q Did LATFOR consider whether changing
9 Senate District 48's lines, which resemble 2012
10 District 46, would benefit the democratic party?

11 Q Did LATFOR consider political data
12 when drafting Senate District 51?

13 Q Did LATFOR consider whether changing
14 Senate District 51's lines would benefit the
15 democratic party?

16 Q Did LATFOR consider political data
17 when drafting Senate District 52?

18 Q Did LATFOR consider whether changing
19 Senate District 52's lines would benefit the
20 democratic party?

21 Q Did LATFOR consider whether changing
22 Senate District 52's lines, which resemble 2012
23 District 50, would benefit the democratic party?

24 Q Did LATFOR consider political data
25 when drafting Senate District 53?

36

1 Q Did LATFOR consider whether changing
2 Senate District 54's lines would benefit the
3 democratic party?

4 Q Did LATFOR consider political data
5 when drafting Senate District 54?

6 Q Did LATFOR consider whether changing
7 Senate District 54's lines would benefit the
8 democratic party?

9 Q Did LATFOR consider political data
10 when drafting Senate District 56?

11 Q Did LATFOR consider whether changing
12 Senate District 56's lines would benefit the
13 democratic party?

14 Q Did LATFOR consider whether changing
15 Senate District 56 lines, which resemble 2012
16 District 25, would benefit the democratic party?

17 Q Did LATFOR consider political data
18 when drafting Senate District 60?

19 Q Did LATFOR consider whether changing
20 Senate District 60's lines would benefit the
21 democratic party?

22 Q Did LATFOR consider political data
23 when drafting Senate District 62?

24 Q Did LATFOR consider whether changing
25 Senate District 62's lines would benefit the

1 democratic party?

2 Q Did LATFOR consider political data
3 when drafting Senate District 63?

4 Q Did LATFOR consider whether changing
5 Senate District 63's lines would benefit the
6 democratic party?

7 Q Isn't it true that LATFOR specifically
8 drew the final House of Representative map with the
9 goal of favoring the democratic party?

10 Q Isn't it true that LATFOR specifically
11 drew the final State Senate map with the goal of
12 favoring the democratic party?

13 Q Are you familiar with the process the
14 democratic IRC members used to draft the maps they
15 submitted to the legislature?

16 Q Can you please describe this process?

17 Q How does LATFOR's process align with
18 or differ from the IRC process?

19 Q Did LATFOR consider additional types
20 of data when drawing its maps?

21 Q Did LATFOR use different sources of
22 data to draw its maps?

23 Q So you are saying that LATFOR started
24 at square 1 and did not utilize any of the prior
25 work or data collected by the IRC?

1 Q Did LATFOR start at square 1 and fail
2 to use any of the prior work or data collected by
3 the IRC?

4 Q Before LATFOR assumed redistricting
5 responsibility, did you communicate with any outside
6 organizations or politicians regarding the post-2020
7 census redistricting process?

8 Q Are you aware of any other LATFOR
9 appointee or staff member communicating with any
10 outside organizations or politicians regarding the
11 post-2020 census redistricting process?

12 Q After LATFOR assumed redistricting
13 responsibility and began its map drawing process,
14 did you communicate with any outside organizations
15 or politicians regarding the new maps?

16 Q Are you aware of any other LATFOR
17 appointee or staff member communicating with any
18 outside organization or politician regarding the new
19 maps?

20 Q Did you receive any unsolicited
21 communications or solicitations from outside
22 organizations or politicians regarding LATFOR's
23 redistricting process or new maps?

24 Q Are you aware of any other LATFOR

25 appointee or staff member receiving any unsolicited

39

1 inquiries or communications from outside

2 organizations or politicians regarding LATFOR's

3 redistricting process or new maps?

4 Q After the IRC's redistricting attempts

5 failed, LATFOR assumed responsibility for drawing

6 new maps; is that correct?

7 A At this time, who was on the task

8 force?

9 Q Please list all members.

10 Q Are you publicly affiliated with a

11 political party?

12 Q Do you represent a political party in

13 any capacity?

14 Q Is any other member publicly

15 affiliated with a political party?

16 Q Do they represent a political party in

17 any capacity?

18 Q Who appointed or hired you?

19 Q What is that person's political party

20 or affiliation?

21 Q Who appointed or hired the other

22 members?

23 Q What is that person's political party
24 affiliation?
25 Q Were there any republicans on the task

40

1 force during the map drawing process?

2 Q Did you or any other LATFOR appointee
3 or staff member discuss the post-2020 redistricting
4 process with any republican legislator not on the
5 task force?

6 Q Did you provide that republican
7 legislature -- legislator the opportunity to give
8 meaningful input into the LATFOR's redistricting
9 process or new maps?

10 Q Did you or any other LATFOR appointee
11 or staff member discuss preliminary maps, district
12 or district lines with any republican legislator not
13 on the task force?

14 Q Did you provide that republican
15 legislature the opportunity to give meaningful input
16 into LATFOR's redistricting process or new maps?

17 Q At any time during LATFOR's
18 redistricting process and drawing of the new maps,
19 was any republican legislator given the opportunity
20 to provide meaningful input in a way that affected

21 the final outcome?

22 Q Did LATFOR discuss the redistricting
23 process with any republicans before releasing maps
24 to the full senate and assembly?

25 Q Did you or any other LATFOR appointee

41

1 or staff member consult or contact any republicans
2 at any point during the map drawing process?

3 Q Did LATFOR show the maps to any
4 democrats before sharing them with the republicans?

5 Q Before LATFOR assumed redistricting
6 responsibility, did you or any other LATFOR
7 appointee or staff member discuss the post-2020
8 census redistricting process with any IRC
9 commissioner?

10 Q Please describe any conversation or
11 communications.

12 Q Were you or any other LATFOR appointee
13 or staff member privy to the IRC's redistricting
14 negotiations at any point?

15 Q Please describe any conversations or
16 communications or interactions.

17 Q Have you ever had any contact with IRC
18 Commissioner and Chair David Imamura, I-M-A-M-U-R-A,

19 regarding the redistricting process or anything
20 related to drawing new maps?

21 Q Please describe any conversations
22 or -- please describe any conversations or
23 communications.

24 Q Have you ever had any contact with IRC
25 commissioner Eugene Benger, B-E-N-G-E-R, regarding

42

1 the redistricting process or anything related to
2 drawing new maps?

3 Q Please describe any conversations or
4 communications.

5 Q Have you ever had any contact with IRC
6 Commissioner Ivelisse Cueva-Molina regarding the
7 redistricting process or anything related to drawing
8 new maps? I-V-E-L-I-S-S-E, C-U-E-V-A-M-O-L-I-N-A.

9 Q Please describe any conversations or
10 communications.

11 Q Have you ever had any contact with ICC
12 Commissioner John Flateau, F-L-A-T-E-A-U, regarding
13 the redistricting process or anything related to
14 drawing new maps?

15 Q Please describe any conversations or
16 communications.

17 Q Have you had any contact with IRC
18 Commissioner Elanie Frazier, F-R-A-Z-I-E-R,
19 regarding the redistricting process or anything
20 related to drawing new maps?

21 Q Please describe any communications or
22 conversations.

23 Q Before LATFOR assumed redistricting
24 responsibility, did you or any other LATFOR
25 appointees or staff members discuss the possibility

43

1 of LATFOR, the New York State Legislature, drawing
2 the 2022 maps?

3 Q Please describe any conversations or
4 communications.

5 Q Are you aware of any redistricting
6 preparations made by LATFOR or democrats in the
7 legislature in advance of the IRC's January 24th
8 announcement that they would not submit revised
9 maps?

10 Q Please describe.

11 Q Did you or any other LATFOR appointee
12 or staff member discuss the post-2020 redistricting
13 process with any democratic legislator not on the
14 task force?

15 Q Please describe any conversations or
16 communications.

17 Q Did you or any other LATFOR appointee
18 or staff member discuss preliminary maps, districts
19 or district lines with any democratic legislature --
20 legislator not on the task force?

21 Q Please describe any conversations or
22 communications.

23 Q Were you or any other LATFOR member
24 contacted by any republican legislator during the
25 map drawing process?

44

1 Q Please describe any conversations or
2 communications.

3 Q Isn't it true that you communicated
4 directly or through your staff with the democratic
5 commissioners on the IRC to tell them not to adopt a
6 congressional redistricting map as part of the
7 constitutional process?

8 Q Isn't it true that you communicated
9 directly or through your staff with the democratic
10 commissioners on the IRC to tell them not to adopt a
11 State Senate redistricting map as part of the
12 constitutional process?

13 Q Do you or any other LATFOR appointee
14 or staff member provide comments to any news outlet
15 or member of the media regarding the 2022
16 redistricting process or new maps?

17 Q Did you or any other LATFOR appointee
18 or staff member provide off-the-record or background
19 comments to any news outlet or member of the media
20 regarding the 2022 redistricting process or new
21 maps?

22 Q Were you or any other LATFOR appointee
23 or staff member contacted by any news outlet or
24 member of the media regarding the 2022 redistricting
25 process or new maps?

45

1 Q Did you or any other LATFOR appointee
2 discuss the 2022 redistricting process for new maps
3 with any constituents?

4 Q Did any constituent contact you or any
5 other elected appointee regarding the 2022
6 redistricting process or new maps?

7 Q Did you or any other LATFOR appointee
8 or staff member discuss the 2022 redistricting
9 process or new maps with any member of the public?

10 Q Did any member of the public contact

11 you or any other LATFOR appointee or staff member
12 regarding the 2022 redistricting process or new
13 maps?

14 Q Are you aware of any public comments
15 or concerns submitted to LATFOR by any member of the
16 public regarding the 2022 redistricting process or
17 new maps?

18 Q Did LATFOR consider such comments and
19 concerns when drawing the new maps?

20 MR. GORMAN: I have no further
21 questions.

22 THE VIDEOGRAPHER: We are going off
23 the record at 10:47 a.m. (we are finished)

24

25

EXHIBIT R TO MOSKOWITZ AFFIRMATION -
ROUGH TRANSCRIPT FROM THE MARCH 11, 2022 DEPOSITION
OF MICHAEL GIANARIS [2049 - 2068]

FILED: STEUBEN COUNTY CLERK 03/13/2022 12:02 PM

NYSCEF DOC. NO. 194

INDEX NO. E2022-0116CV

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1

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2 The following transcript of
3 proceedings, or any portion thereof,
4 in the above-titled matter is being
5 delivered UNEDITED and UNCERTIFIED by
6 the court reporter. This is an
7 unofficial transcript, which should
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INDEX NO. E2022-0116CV

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23 transcript, resulting in differences
24 in content, page and line numbers,
25 punctuation and formatting.
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2

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 THE VIDEOGRAPHER: We are on the
3 record. The time is 9:08 a.m. on
4 March 11, 2022. This is the video
5 recorded deposition of Senator Michael
6 Gianaris in the matter of Harkenrider
7 et al. versus Governor Kathy Hochul et
8 al. filed in the State of New York
9 Supreme Court County of Steuben case
10 Number E2022-0116CV.

11 I am Ken Williamson the
12 videographer for Veritext New York.
13 Our court reporter is Garry Torres
14 also with Veritext New York and our
15 concierge is Peter Curran.

16 At this time George Winner will
17 take over and make a statement.

18 MR. WINNER: I've got a thing in

19 front of me here. Thank you. For.
20 The record, this is March 11th
21 at 9:00 a.m. start a few minutes
22 after. It is apparent that the
23 witness who is duly noticed Senator
24 Michael Gianaris notwithstanding
25 proper notice has not appeared and is
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3

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 refusing to appear and as such I'm
3 prepared to go forward with a number
4 of questions that would have been
5 asked of him had he appeared. These
6 questions in our judgement are within
7 the purview of the March 3rd decision
8 of Judge Peter (sic) McAllister and
9 his further decision uploaded as an
10 order referencing the March 3rd
11 decision which outlined the parameters
12 under which this deposition would be
13 able to be held. As such, these
14 questions are totally within the
15 purview of the directed and authorized

16 order of Judge Justice Patrick
17 McAllister and they are as follows:
18 Q. Senator Gianaris, did you attend
19 college?
20 Q. Where?
21 Q. What year did you graduate?
22 Q. What was your degree in?
23 Q. What was your major?
24 Q. Do you have a graduate level
25 degree?
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4

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 Q. Where did you attend graduate
3 school?
4 Q. What year did you obtain your
5 graduate degree?
6 Q. Any further education or
7 classes?
8 Q. What?
9 Q. Where?
10 Q. When?
11 Q. Any professional licensure?

12 Q. What kind?

13 Q. Is it current?

14 Q. What generally duties does

15 Latfor perform?

16 Q. And what is your current

17 position with Latfor?

18 Q. What are your responsibilities

19 in that position?

20 Q. And how long have you been in

21 that position?

22 Q. How long have you been working

23 with Latfor?

24 Q. Are you familiar with the

25 process Latfor used to draw in 2022
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5

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 redistricting maps?

3 Q. Can you describe this process?

4 Q. What program software tools did

5 Latfor use?

6 Q. And what data did Latfor input

7 in the tool program to create the maps?

8 Q. What data did Latfor rely on;

9 population, census blocks, geographic,
10 demographic, political?
11 Q. What source of political data
12 did Latfor use?
13 Q. Why did Latfor decide to use
14 that source?
15 Q. And where did Latfor get this
16 political data?
17 Q. Did Latfor look at any other
18 sources for political data?
19 Q. And did Latfor consider any
20 political data that showed that the final
21 house -- that the final house of
22 representative map would favor the
23 Democratic party?
24 Q. Did Latfor consider any
25 political data that showed that the final
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6

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 state senate map would favor the
3 Democratic party?
4 Q. And did Latfor communicate with

5 any outside organizations or politicians
6 or legislators about the political data?
7 Q. Did Latfor consider political
8 data when drafting Congressional district
9 one?

10 Q. Did Latfor consider whether
11 changing Congressional district one's
12 lines would benefit the Democratic party?

13 Q. Did Latfor consider political
14 data when drafting Congressional district
15 two?

16 Q. Did Latfor consider whether
17 changing Congressional district two lines
18 would benefit the Democratic party?

19 Q. Did Latfor consider political
20 data when drafting Congressional district
21 three?

22 Q. District Latfor consider whether
23 changing Congressional district three's
24 lines would benefit the Democratic party?

25 Q. Did Latfor consider political
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2 data when drafting Congressional district
3 eight?

4 Q. And did Latfor consider whether
5 changing Congressional district eight's
6 lines would benefit the Democratic party?

7 Q. Did Latfor consider political
8 data when drafting Congressional district
9 nine?

10 Q. Did Latfor consider whether
11 changing the Congressional district lines
12 would benefit the Democratic party? Did
13 Latfor consider political data when
14 drafting Congressional district ten?

15 Q. Did Latfor consider whether
16 changing Congressional district ten's line
17 would benefit the Democratic party?

18 Q. Can Latfor consider political
19 data when drafting Congressional district
20 16?

21 Q. Did Latfor consider whether
22 changing Congressional district 16's lines
23 would benefit the Democratic party?

24 Q. Did Latfor consider political
25 data when drafting Congressional 17?
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2 Q. Did Latfor consider whether
3 changing Congressional district 17's lines
4 would benefit the Democratic party?

5 Q. Did Latfor consider political
6 data when drafting the Congressional
7 district 18?

8 Q. Did Latfor consider whether
9 changing Congressional district 18's lines
10 would benefit the Democratic party?

11 Q. And did Latfor consider
12 political data when drafting Congressional
13 district 19?

14 Q. Did Latfor consider whether
15 changing Congressional district 19's lines
16 would benefit the Democratic party?

17 Q. Did Latfor consider political
18 data when drafting Congressional district
19 21?

20 Q. Did Latfor consider whether
21 changing Congressional district 21's lines
22 would benefit the Democratic party?

23 Q. And did Latfor consider
24 political data when drafting Congressional
25 district 22?
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9

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 Q. And did Latfor consider whether
3 changing Congressional district 22's lines
4 would benefit the Democratic party?

5 Q. Did Latfor consider political
6 data when drafting Congressional district
7 23?

8 Q. Did Latfor consider whether
9 changing Congressional district 23's line
10 would benefit the Democratic party?

11 Q. And data Latfor consider
12 political data when drafting Congressional
13 district 24?

14 Q. Did Latfor consider whether
15 changing Congressional district 24's lines
16 would benefit the Democratic party?

17 Q. Did Latfor consider political
18 data when drafting senate district Number
19 1?

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NYSCEF DOC. NO. 194

INDEX NO. E2022-0116CV

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20 Q. Did Latfor consider whether
21 changing Senate district one's lines would
22 benefit the Democratic party?

23 Q. Did Latfor consider political
24 data when drafting Senate district two?

25 Q. Did Latfor consider whether
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10

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 changing Senate district two's lines would
3 benefit the Democratic party?

4 Q. Did Latfor consider political
5 data when drafting Senate district three?

6 Q. Did Latfor consider whether
7 changing Senate district lines three would
8 benefit the Democratic party?

9 Q. Did Latfor consider political
10 data when drafting Senate district four?

11 Q. Did Latfor consider whether
12 changing Senate district four's lines
13 would benefit the Democratic party?

14 Q. Did Latfor consider political
15 data when drafting Senate district five?

16 Q. Did Latfor consider whether
17 changing Senate district five's lines
18 would benefit the Democratic party?
19 Q. Did Latfor consider political
20 data when drafting Senate district six?
21 Q. Did Latfor car whether changing
22 Senate district six's line would benefit
23 the Democratic party?
24 Q. Did Latfor consider political
25 data when drafting Senate district seven?
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11

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 Q. Did Latfor consider whether
3 changing Senate district seven's lines
4 would benefit the Democratic party?
5 Q. Did Latfor consider political
6 data when drafting Senate district nine?
7 Q. Did Latfor consider whether
8 changing Senate district lines (sic) would
9 benefit the Democratic party?
10 Q. Did Latfor consider political
11 data when drafting Senate district ten?
12 Q. Did Latfor consider whether

13 changing Senate district ten's lines would

14 benefit the Democratic party?

15 Q. Did Latfor consider political

16 data when drafting Senate district 22?

17 Q. Did Latfor consider whether

18 changing Senate district 22's lines would

19 benefit the Democratic party?

20 Q. Did Latfor consider political

21 data when drafting Senate district 42?

22 Q. Did Latfor consider whether

23 changing Senate district 42's lines with

24 resembles 2012 district 40 would benefit

25 the Democratic party?

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12

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 Q. Did Latfor consider political

3 data when drafting Senate district 41?

4 Q. Did Latfor consider whether

5 changing Senate district 41's lines which

6 resembles 2012 district 39 would benefit

7 the Democratic party?

8 Q. Did Latfor consider political

9 data when drafting Senate district 44?

10 Q. Did Latfor consider whether
11 changing Senate district 44's lines would
12 benefit the Democratic party?

13 Q. Did Latfor consider political
14 data when drafting Senate district 48?

15 Q. Did Latfor consider whether
16 changing Senate district 48's lines which
17 resembles 2012 district 46 would benefit
18 the Democratic party?

19 Q. Did Latfor consider political
20 data when drafting Senate district 51?

21 Q. Did Latfor consider whether
22 changing Senate district 51's lines would
23 benefit the Democratic party?

24 Q. Did Latfor consider political
25 data when drafting Senate district 52?
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13

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 Q. Did Latfor consider whether
3 changing Senate district 52's lines which
4 resembles 2012 district 50 would benefit
5 the Democratic party?

6 Q. Did Latfor consider political

7 data when drafting Senate district 53?

8 Q. And Latfor consider whether

9 changing Senate district 53's lines would

10 benefit the Democratic party?

11 Q. Did Latfor consider whether

12 changing district 54's lines would benefit

13 the Democratic party?

14 Q. Did Latfor consider political

15 data when drafting Senate district 56?

16 Q. Did Latfor consider whether

17 changing Senate district 56's lines which

18 resembled 2012 district 55 would benefit

19 the Democratic party?

20 Q. Did Latfor consider political

21 data when drafting Senate district 60?

22 Q. Did Latfor consider whether

23 changing Senate district 60's lines would

24 benefit the Democratic party?

25 Q. Did Latfor consider political

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2 data when drafting Senate district 62?

3 Q. Did Latfor consider whether
4 changing Senate district 62's lines would
5 benefit the Democratic party?

6 Q. Did Latfor consider political
7 data when drafting Senate district 63?

8 Q. Did Latfor consider whether
9 changing Senate district 63's lines would
10 benefit the Democratic party?

11 Q. Senator Gianaris, isn't it true
12 that Latfor specifically drew the final
13 House of Representatives map with the goal
14 of favoring the Democratic party?

15 Q. And isn't it true that Latfor
16 specifically drew the final state Senate
17 map with the goal of favoring the
18 Democratic party?

19 Q. Senator Gianaris, when the
20 legislature adopted the Senate and the
21 House of Representative maps did Latfor
22 conduct a meeting of the members of Latfor
23 prior to the adoption of those maps?

24 Q. If so who attended that meeting?

25 Q. Did Latfor engage the
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UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 participation of any Republican members of
3 Latfor or any Republican representatives
4 of Latfor in the adoption of the House of
5 Representatives and Senate and assembly
6 maps?

7 Q. Were there any public hearings
8 conducted by Latfor or the state Senate
9 relative to the adoption of these maps?

10 Q. Senator, are you familiar with
11 the process the Democratic IRC members
12 used to draft the maps they submitted to
13 the legislature?

14 Q. Can you describe that process?

15 Q. And how did Latfor and their
16 process align with or differ from the IRC
17 process?

18 Q. And did Latfor consider any
19 additional types of maps when drawing its
20 maps?

21 Q. And did Latfor use different
22 sources of data to draw its maps?

23 Q. Did Latfor start at square one

24 and didn't utilize any of the prior work
25 done or data collected by the IRC?
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16

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 Q. Before Latfor assumed
3 redistricting responsibility, Senator, did
4 you communicate with any outside
5 organizations or politicians regarding the
6 post-22 -- 2020 sentence redistricting
7 process?

8 Q. Are you aware of any other
9 Latfor appointee or staff member
10 communicating with any outside
11 organizations or politicians regarding the
12 post-2020 census redistricting process?

13 Q. After Latfor assumed
14 redistricting responsibility and began its
15 map drawing process did you communicate
16 with any outside organizations or
17 politicians regarding the new maps?

18 Q. Are you aware of any other
19 Latfor appointee or staff member

20 communicating with any outside
21 organizations or politicians regarding the
22 new maps?
23 Q. Did you receive any unsolicited
24 inquiries or communications from outside
25 organizations or politicians regarding
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17

UNCERTIFIED ROUGH DRAFT, BUST STATEMENT, 03/11/22

2 Latfor's redistricting process or new
3 maps?
4 Q. And are you aware of any other
5 Latfor appointee or staff member receiving
6 any unsolicited inquiries or
7 communications from outside organizations
8 or politicians regarding Latfor's
9 redistricting process or new maps?

10 MR. WINNER: Just give me one
11 moment. That's all have. Thank you.

12 THE VIDEOGRAPHER: Then the time
13 is 9:26 a.m. We are off the record.

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NYSCEF DOC. NO. 194

INDEX NO. E2022-0116CV

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