

# New York Supreme Court

## Appellate Division – Fourth Department

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

*Petitioners – 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, NEW YORK STATE BOARD OF ELECTIONS, and THE NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT,

*Respondents – Respondents.*

THE PARENT PARTY OF NEW YORK,

*Intervenors-Appellants,*

TYRRELL BEN-AVI, MARK BRAIMAN,  
UPSTATE JOBS PARTY and UNITE NEW YORK,

*Intervenors.*

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**Docket No.**  
CAE 22-00895

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

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STATE OF NEW YORK  
SUPREME COURT : COUNTY OF STEUBEN

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

Petitioners,

-against-

ADVISORY OPINION

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.

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

The court has learned from ongoing conversations with the Board of Elections that there is some confusion which has developed with regard to the time frames for gathering signatures for Independent Nominating Petitions. Some statewide elections require signatures from a variety of congressional districts. Those congressional districts were invalidated by the Court of Appeals Opinion dated April 27, 2022. The question has come up as to what persons seeking statewide office should do with regard to gathering signatures since there currently are no Congressional Districts.

The Court of Appeals directed this court to retain an independent special master to develop both new Congressional and State Senate maps. By Order dated April 18, 2022 this court appointed Dr. Jonathan Cervas to serve as the special master. This court expects to have the new Congressional maps finalized and published by May 20, 2022. However, this court

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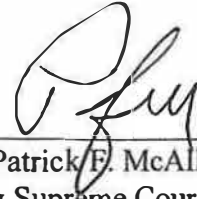
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does not intend to alter the time frame for gathering signatures for Independent Nominating Petitions for statewide elections. Elections Law §6-138(4) sets a six week time period for the gathering of signatures for Independent petitions. Elections Law §6-158(9) requires the petition for an independent nomination for office to be filed not earlier than 24 weeks and not later than 23 weeks preceding the general election. Therefore, those petitions will need to be filed between May 24<sup>th</sup> - May 31st.

Although a potential candidate does not currently know the boundaries for various Congressional Districts, the candidate should still be gathering signatures. The time period for gathering said signatures began in mid-April. Once the Congressional map has been established it will be up to the candidate to make sure he/she has the appropriate number of signatures from the appropriate number of different districts.

Candidates should continue to monitor the Board of Elections website for any potential changes.

Dated: May 5, 2022



Hon. Patrick F. McAllister  
Acting Supreme Court Justice

ENTER

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3McAllister Order dated May  
11, 2022 pp 3 to 7SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF STEUBEN

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TIM HARKENRIDER, GUY C. BROUGHT,  
LAWRENCE CANNING, PATRICIA CLARINO,  
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SUSAN ROWLEY, JOSEPHINE THOMAS,  
AND MARIANNE VIOLANTE,

Index No.

E2022-0116CV

Petitioners,

**ORDER**

-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.

---

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

The Court of Appeals Remittitur in this matter directed the record of the proceedings of the Court of Appeals be remitted to this Court "there to be proceeded upon according to law." The Court of Appeals provided "[w]e are confident that, in consultation with the Board of Elections, Supreme Court can swiftly develop a schedule to facilitate an August primary election, allowing time for the adoption of new congressional maps, the dissemination of correct information to voters, the completion of the petitioning process, and compliance with federal voting laws, including the Uniformed and Overseas Citizen Absentee Voting Act..." In accordance with that command, to facilitate the orderly unfolding of elections for State Senate and Members of the United States House of Representative, on Constitutionally sound maps

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changes to the political calendar and certain nominating and designating processes must be provided for. . On May 10, 2022, the United States Federal District Court for the Northern District of New York (Judge Gary Sharpe) ordered an August 23, 2022 primary for Member of the United States House of Representatives from New York "to accommodate New York's congressional redistricting process" provided that such election and the subsequent General Election shall be fully compliant with federal laws, in particular those related to military and overseas voters. Dates and methods recommended herein are recommended by the New York State Board of Elections.

**NOW**, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberations it is

**ORDERED** that ballot access for the August 23, 2022 primary elections for State Senate and offices or party positions elected by Congressional Districts, including the public office of Member of House of Representatives and members of any party state committee elected by Congressional District, shall be by the following methods, which are not mutually exclusive:

(1) *Ballot Access Method One: Candidates who previously qualified for ballot access for the June 28, 2022 primary:*

*State Senate Districts. A person duly designated for nomination at the June 28, 2022 primary for the office of New York State Senator, whose petition was valid at the board of elections or by determination of a court of competent jurisdiction, shall be deemed to have been likewise duly designated by the same party for the office of State Senator at the August 23, 2022 primary election in any Senate District for which they are constitutionally and legally eligible to run, to be specified by such candidate in a signed writing filed with the appropriate board of elections no later than May 31, 2022. No new acceptance or authorization shall be required. The State Board of Elections shall set forth the elements that must be contained in such writing no later than May 15, 2022 and shall conspicuously post the same on their web site. In addition, the State Board of Elections shall advise all county boards of election of the elements that must be contained therein.*

*Congressional Districts. A person duly designated for nomination at the June 28, 2022 primary for the office of Member of Congress, in any district, whose petition was valid at the board of elections or by determination of a court of competent jurisdiction, shall be deemed to have been likewise duly designated by the same party for the office of Member of Congress at the August 23, 2022 primary election in any one Congressional District, to be specified by such candidate in a signed writing filed with the appropriate board of elections no later than May 31, 2022. No new acceptance or authorization shall be required. The State Board of Elections shall set forth the elements that must be contained in such writing no later than May 15, 2022 and shall conspicuously post the same on their web site. In addition, the State Board of Elections shall advise all county boards of election of the elements that must be contained therein.*

(2) *Ballot Access Method Two: Party Designating petitioning (and opportunity to ballot petitioning) for any candidate eligible to seek the aforesaid offices or positions, shall occur in accordance with law such that the maximum number of signatures required on any such*

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*designating petition for a State Senate District shall be 850 and for a Congressional District shall be 1,062, or 4.25% of the number of enrolled members of the party in such district, whichever is less. The requirements of valid acceptances and authorizations shall apply..*

**ORDERED** that the following political calendar dates shall apply for the primary election to be held on August 23, 2022, for State Senate and offices or party positions elected by Congressional Districts, with all filings required to be made at the appropriate board of elections with no filings permitted by mail except to the extent that any mailed filing is actually received by the last date allowed.:

<b>BALLOT ACCESS METHOD ONE: PRIOR CANDIDATE QUALIFICATION</b>	
5/31/22	Last day to file Certificate to use Prior Petition specifying district
6/3/2022	Last day to decline designation
6/6/2022	Last day to file a substitution after a declination
6/10/2022	Last day to authorize substitution

<b>BALLOT ACCESS METHOD TWO: DESIGNATING PETITIONING</b>		
5/21/22	First day to sign	1 day after the district lines are finalized and published.
6/8-6/10	Filing Period	18-20 days after First day to sign Designating Petition
6/13/22	Last day to accept or decline nomination	3 days after last day to file Designating Petition
6/13/22	Last Day to Authorize	3 days after last day to file Designating Petition
6/15/22	Last day to file substitution to fill vacancy created by a declination	2 days after last day to decline Designating Petition
Rolling	General Objections	3 Days after Designating Petition is filed



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6/15/22	Specific Objections	5 Days after last day to file Designating Petition (fixed date)
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**ORDERED** that the following political calendar dates shall apply to the independent nominating process for Member of Congress and New York State Senate, for the November 8, 2022 General Election for State Senate and Member of New York State House of Representatives, with the signature requirements provided for by current law to be unchanged, as follows, with all filings required to be made at the appropriate board of elections with no filings permitted by mail except to the extent that any mailed filings is actually received by the last date allowed:

5/21/22	First day to sign	1 day after the district lines are finalized and published.
6/27-7/5	Filing Period and Last Day to Sign	Final week of six week period (6-138 (4)) with added day owing to July 4
7/11/22	Last day to accept or decline nomination	3 days after last day to file rolls to Monday
7/12/22	Last day to file substitution to fill vacancy created by a declination	6 days after last day to file
rolling	General Objections	3 days after petition is filed
7/11/22	Specific Objections	5 days after last day to file petition

**ORDERED** that time frames for the August 23 primary applicable to absentee ballots, certification of the elections, voter registration cutoffs, campaign financial disclosure and early voting and transmission of military and overseas ballots shall be as provided for by current law as measured from the date of the August 23, 2022 primary election;

**ORDERED** that the State Board of Elections shall post a full calendar of dates on the New York State Board of Elections web site no later than May 21, 2022;

**ORDERED** this court will entertain any applications from the New York State Board of Elections for any further or additional accommodations required to ensure political calendar

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compliance and actual transmission of ballot requirements, with all provisions of federal law related to transmission of military and overseas ballots;

**ORDERED** that nothing herein shall be construed to prevent the New York State Legislature from providing for an August 23, 2022 UOCAVA compliant election calendar and ballot access schema by statute in lieu of this *Order* but that in the absence of such a legislatively adopted plan this *Order* is necessary to effectuate the remedial Constitutional imperative to conduct State Senate and Congressional elections on district lines that are Constitutional.

Dated: May 11, 2022



Hon. Patrick F. McAllister A.J.S.C.

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8Zebrowski Stavisky Affidavit  
dated May 18, 2022 pp 8 to 15SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF STEUBEN

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TIM HARKENRIDER, GUY C. BROUGHT,  
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AND MARIANNE VIOLANTE,

Petitioners,

-against-

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E2022-0116CV

AFFIDAVIT OF

KRISTEN ZEBROWSKI

STAVISKY

GOVERNOR KATHY HOCHUL, LIEUTENANT  
GOVERNOR AND PRESIDENT OF THE SENATE  
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER  
AND PRESIDENT PRO TEMPORE OF THE SENATE  
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ASSEMBLY CARL HEASTIE, NEW YORK STATE  
BOARD OF ELECTIONS, AND THE NEW YORK  
STATE LEGISLATIVE TASK FORCE ON  
DEMOGRAPHIC RESEARCH AND  
REAPPORTIONMENT,

Respondents.

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KRISTEN ZEBROWSKI STAVISKY being duly sworn does depose and say:

1. I am the co-executive director of the New York State Board of Elections  
and as such am familiar with the facts and circumstances of this matter, and I make this  
affidavit on personal knowledge.

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## **I. New York's Independent Nomination Petitioning Process**

2. For an independent candidate (i.e., one supported by an organization or group that is not a “party”) to secure nomination and access to the November General Election ballot, the requisite number of valid signatures of registered New York voters who reside in the political unit for which the nomination is sought must be collected, within a limited period of six weeks, on an independent nominating petition, which must then be filed with either the State Board of Elections or in some cases local boards. N.Y. Election Law §§ 138(4), 144. The form of the independent nominating petition is prescribed by Election Law § 6-140. It identifies the candidate(s), public office(s) and relevant political subdivisions as well as the “independent body” ballot label under which the candidate will seek office. See <https://www.elections.ny.gov/NYSBOE/download/law/IndependentNominatingPetition.pdf> which is the form of independent nominating petition prescribed by Election Law § 6-140. The Libertarian Party of New York has been such an “independent body” for candidates in many past New York elections.

3. Some of the intervenors in this action claim to seek candidacy for statewide office in New York. To be nominated for such a statewide office, 45,000 valid signatures are required on an independent nominating petition from among the 12,982,819 registered voters in New York State, with at least 500 from each of half of New York's Congressional districts. See <https://www.elections.ny.gov/EnrollmentCounty.html>: N.Y. Election Law § 6-142(1). All New York registered voters are eligible to sign a

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statewide independent nominating petition, provided they have not already signed a valid petition for the same office for another candidate, pursuant to N.Y. Election Law § 6-140(1).

4. The nominating petition and the required number of signatures provides a means for proposed candidates to demonstrate sufficient support in the electorate to obtain ballot access, so that candidates that are politically viable are able to access the ballot and those without a modicum of support are not, thus avoiding a ballot that lists so many candidates that voters would become confused. New York's statewide signature requirement (which amounts to 0.35% of New York's registered voter population) is significantly lower than that of many other states, both in absolute numbers and percentage of registered voters, thus comparatively imposing much less of a burden on candidates and their supporters.

5. An independent nomination petition for a Congressional petition requires 3,500 valid signatures and a valid independent nomination petition for State Senate requires 3,000. These requirements are provided for in Election Law § 6-142.

6. The 6-week or 42-day collection period for signatures was adopted in 1946. *See* 1946 by N.Y. Sess. Laws, Ch. 17, § 137(4).

## II. Political Calendar in 2022

7. The independent nominating period pursuant to the Election Law for 2022 spanned from April 19 to May 31, with filings permitted between May 24 and May 31.

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8. As a result of the invalidation of New York's congressional lines and state senate district lines on April 27, during the independent nominating period, and with new lines not to be promulgated until May 20, this court issued a new political calendar setting a full independent nominating period for congress and state senate to run from May 21, 2022 to July 5, 2022. (NYSCEF # 524).

9. The court expressly did not alter the political calendar for statewide or other independent candidates.

10. The Court observed at NYSCEF # 409 on May 5, 2022 that "this court does not intend to alter the time frame for gathering signatures for Independent Nominating Petitions for statewide elections. Election Law § 138 (4) sets a six-week time period for the gathering of signatures for Independent petitions .... Once the Congressional map has been established it will be up to the candidate to make sure he/she has the appropriate number of signatures from the appropriate number of different districts."

### **III. Pandemic Petition Circulation**

11. Currently there is no public health emergency in New York preventing petitioning, albeit indoor masking is strongly recommended in most places and required in some. Nothing in current New York law prevents persons circulating independent nominating petitions from calling voters by phone, emailing voters or using social media to solicit signature and then make comfortable arrangements for the actual signature collection.

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12. The signature collection process can easily be accomplished applying social distancing. For example, the clip board or folder containing the petition sheet the voter needs to sign can be placed for the signer to pick up at a comfortable distance after the witness steps back, or the witness can hand the petition clipboard or folder to the signer at mutual arms' lengths. Social distancing concerns may add additional aspects to the signature collection process, but it does not render the collection process undoable.

13. No part of the petitioning process is uniquely difficult as compared to ordinary commercial interactions widely practiced by New Yorkers daily.

#### **IV. No Requirement For Petitioning Periods For All Office to Align**

14. Proposed intervenors posit that their inability to petition along with Congressional and State Senate candidates should permit a reduction of signatures and extension of time. Between 2012 and 2018, by design New York had a period for independent nominations for federal offices apart from state and local offices as a result of a series of federal court orders designed to move up the federal independent nominating period to ensure compliance with federal laws ensuring timely transmission of ballots. The current situation in 2022 is not dissimilar. While the parsing of the independent nominating period is not ideal, the reason it is required is because of the delays occasioned to come to new district lines for congress and state senate that meet constitutional muster. This burden is not one that reasonably diligent candidates cannot meet.

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15. The burden is also greatly overstated. There is no requirement in law or equity that all petitioning processes must align in terms of time and filing.

**V. Distribution Table To Identify 500 Signatures In Each of One Half of New York's Congressional Districts**

16. The only part of the statewide petitioning process implicated by the decision in *Harkenrider* is the requirement to file a schedule indicating the pages of the petition on which at least 500 signatures from each of half of the congressional districts appear. There are 26 Congressional Districts so a statewide petition filer must demonstrate that there are at least 500 signatures from at least 13 Congressional Districts. This distribution requirement applies to **6,500 of the 45,000** required signatures (13 x 500). The congressional districts will be known, for certain, as of May 20, 2022 which is approximately eleven days from the end of the Independent petitioning period on May 31, 2022.

17. The proposed intervenors have alleged a profound burden figuring out which Congressional District their signatures apply to in eleven days. These averments imply it is necessary to lookup each voter to determine their congressional district.

18. It is not necessary to look up each voter.

19. When petition sheets are signed, the "town or city" in which each voter resides is provided next to the voter's signature and address—except in New York city where the County is provided. Ascertaining the Congressional District in which a town is



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situated (there are very few towns divided between Congressional Districts) allows ready ascertainment of the congressional district to which a signature relates. Typically, all of the signers on a given page are from the same town, allowing in most instances entire pages to be readily assigned to a congressional district. This process is slightly more complicated in larger counties or in New York City, but given the entire state is only divided into 26 Congressional Districts, a glancing familiarity with the geography of even a large county with respect to its Congressional Districts would allow the determination of the Congressional District applicable to any given page expeditiously.

20. The intervenors will have 11 days to create their distribution schedule as part of the page numbering and bindery of the petitions. This is not insurmountable nor particularly difficult and certainly not a burden a reasonably diligent slate of candidates for statewide office cannot meet. The requirement is that the independent nominating petition filer identify what sheets of the petition contain collectively, for each of half of the congressional districts, at least 500 signatures. If a sheet has any signature for a congressional district the page can be listed for that district even if it has signatures from another Congressional District thereon. The page number can likewise be listed for the other Congressional Districts appearing thereon as well.

21. It must also be noted that the new Congressional map proposed on May 16, 2022 contains only 15 divided counties, compared to 34 under the prior legislative map. Accordingly, ascertaining a voter's county from the town indicated on the petition also allows the immediate discernment of the Congressional District with respect to 47 of

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New York's 62 counties. Finally, it is difficult to image a scenario where an effort to geographically disburse signature collection under the prior map would not provide adequate under the new one, again being cognizant that the distribution requirement only applies to 6,500 of the required signatures.

Dated: May 18, 2022

  
KRISTEN ZEBROWSKI STAVISKY

Sworn to before me this  
18<sup>th</sup> day of May 2022



NOTARY PUBLIC

Nicholas R. Cartagena, Esq.  
Notary Public, State of New York  
Commission #: 02CA6408982  
Qualified in Albany County  
My Commission Expires: September 14, 2024

STIPULATION TO FILE  
A SUPPLEMENTAL RECORD

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**New York Supreme Court**

Appellate Division – Fourth Department

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

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-against-

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*Respondents – Respondents.*

---

THE PARENT PARTY OF NEW YORK,

*Intervenors-Appellants,*

TYRRELL BEN-AVI, MARK BRAIMAN,  
UPSTATE JOBS PARTY and UNITE NEW YORK,

*Intervenors.*

**IT IS HEREBY STIPULATED AND AGREED** by the parties to this proceeding, by and through their undersigned counsel, to supplement the Record on Appeal with the following documents:

- 1) Affidavit of Kristen Zebrowski Stavisky, dated May 18, 2022
- 2) Advisory Opinion on Statewide Independent Nominating Period, Hon. Patrick F. McAllister, dated May 5, 2022
- 3) Ballot Access Order, Hon. Patrick F. McAllister, dated May 11, 2022

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*Attorneys for Respondent-Respondent  
Governor Kathy Hochul*

Dated: \_\_\_\_\_

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